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

Aggregation:

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

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

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

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

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

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

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

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

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

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

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

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

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

Carbon Tax:

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

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

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

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

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

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

GHG:

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

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

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

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

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

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

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

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

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

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

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

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

NSPS – Existing:

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

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

NAAQS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RFS

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

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

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

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

PM

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

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

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

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

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

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

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

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

Response: No.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Energy Reliability:

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

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

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

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

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

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

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

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

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

CCS:

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

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

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

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

Gasoline Blends:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Aggregation

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

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

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

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

Automobile Mandate:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Response: The Agency committed to issuing the Nonhazardous Secondary Materials (NHSM) categorical listing rule in a timely manner. I understand that, recently, the Agency received important new information from industry that will inform the rulemaking. If confirmed, I am committed to keeping the Committee apprised of ongoing NHSM rulemaking efforts.

In response to petitions from environmental organizations to initiate a 404(c) veto process for a potential mine site in Bristol Bay before a permit application was submitted, EPA – pointing to its authority under CWA Sec. 104 – initiated a draft watershed assessment that involved the crafting of a hypothetical mining scenario in Bristol Bay. EPA has stated that the assessment will not have any legal consequences, but also that it is intended to provide a scientific and technical foundation for decision-making. How exactly does EPA intend to utilize this study under your leadership?

Response: I understand that EPA is currently undertaking a peer reviewed study of the potential impacts of large scale mining on the Bristol Bay Watershed. If I'm confirmed, I commit to learn more about the process and the assessment and I would happy to follow up with you.

EPA has full authority under the well-established Sec. 404 process to review any future permit application submitted to make a determination as to whether or not there will be any of the unacceptable adverse effects listed in CWA Sec. 404(c) at the disposal sites being considered by the U.S. Army Corps of Engineers, including unacceptable impacts to fishery areas and wildlife. Why, then, is EPA using its limited resources to conduct a watershed assessment on a hypothetical mining scenario that even EPA's scientific review panel found did not accurately reflect the conditions of a real mine, rather than allow the companies that have invested millions of dollars to submit their proposal which EPA would then review?

Why does the draft assessment only focus on two hydrologic units in the watershed and assume that such a small area is representative of a 40,000 square mile region?

Why did EPA not note the risk assessment scenarios in their proper explanatory context, as they would have been in a typical risk assessment document?

Why did EPA fail to address mitigation and impact avoidance or minimization actions that would undoubtedly be included in any actual mine plan?

What impact do you think EPA's actions with respect to Bristol Bay will have on investment in U.S. property and natural resource development?

Has EPA considered the positive environmental justice impacts high-paying jobs and tax revenue will have on the region?

Response (to the six questions above): I understand that EPA is currently undertaking a peer reviewed study of the potential impacts of large scale mining on the Bristol Bay Watershed. I understand the need to ensure that the Agency is spending the taxpayer's money wisely. If I'm confirmed, I will review the study carefully. I understand that the Agency has already undertaken one expert peer review, and has begun a second round of review of the revised draft. I believe that strong science is crucial for all the work EPA does, and incorporating peer review helps to address such technical issues. I understand that the Agency has publicly stated that no regulatory decision would be made until the science is fully

understood, and that it is premature for speculation on economic impact.

Section 112(r)(1) of the Clean Air Act is commonly used in EPA enforcement actions as a "General Duty" provision. It requires owners and operators of stationary sources of emissions to identify and prevent accidental releases of hazardous substances. Although the section states that "it shall be the objective of the regulations and programs authorized" under 112(r) to prevent accidental releases and to minimize the consequences of any such release, EPA has yet to issue any regulations or enforcement directives identifying what is expected of these sources. In recent years, EPA has increasingly used the General Duty provision to impose substantial penalties on facilities. This situation has created uncertainty for industry, leaving questions about the consistency of how compliance is measured and when compliance has been achieved. In addition to this uncertainty, certain interest groups are now calling on EPA to use the provision to regulate chemical facility security, regardless of the fact that the subsection is clearly limited to "accidental releases." Furthermore, in the Homeland Security Appropriations Act of 2007, Congress explicitly assigned jurisdiction over security to the Department of Homeland Security (DHS). What is your position on EPA's role in regulating chemical facilities using the General Duty Clause? Do you believe that legislation is needed to clarify the use of the clause as well as ensure its proper application by affirming that jurisdiction of chemical facility security remains with DHS, as Congress intended? Why or why not?

Response: I understand that there are several laws, including the Emergency Planning and Community Right-to-Know Act and Clean Air Act 112(r), which require facilities to report to the community the chemicals at their site and establish and maintain a program for preventing accidental releases of those chemicals. However, I have not had direct experience implementing Section 112(r)(1). Although it is in the Clean Air Act, it is implemented by the Office of Solid Waste and Emergency Response, not the Office of Air and Radiation. I understand that EPA is working with federal agencies, including the Department of Homeland Security, to address chemical safety issues by identifying common issues related to chemical safety and leveraging federal resources to resolve them. If I'm confirmed, I'd be happy to explore these issues with your office.

EPA makes several statements and assumptions regarding CCS in the proposed standards, and proposes that new coal fired units could comply with the rule through a 30 year "averaging" option that would allow them to deploy CCS in year 11 of operation and average their emissions over a 30 year span: While conceding that CCS does not meet the requirements of BSER, EPA claims that CCS is an available compliance option. In your estimation, is CCS commercially feasible today?

In the proposed carbon pollution standards for new power plants, EPA did not declare that CCS is not BSER. The agency is still considering a wide range of comments on the proposal, including on this issue, and we will of course take these comments into consideration in taking any final action on the proposal. The EPA stated in the preamble of the proposed rule that "CCS is technologically feasible for implementation at new coal-fired power plants and its core components (CO_2 capture, compression, transportation and storage) have already been

implemented at commercial scale." [77 FR 22414]. As explained in response to other questions, EPA's view is that new coal-fired units can meet the proposed limit. While a number of commenters have pointed out concerns about the current availability of CCS, others have noted that a number of full scale commercial projects are currently in development. The agency is still actively considering a wide range of comments on this issue, and any final decision will reflect careful consideration of the issue.

Are there any CCS plants that are deployed and demonstrated on a large scale?

A number of full scale commercial projects are currently in development, including Southern Company's Kemper Project, which is more than 75% complete; the Texas Clean Energy Project (TCEP), which has signed contracts for electricity, CO2 and other products from the plant and hopes to close financing this summer; and, the California Hydrogen Energy Center Project, which is currently undergoing regulatory review in California. In addition, for more than a decade, Dakota Gasification Company's Great Plains Synfuels Plant in Bismarck, North Dakota, has been capturing and storing approximately 1.6 million tonnes of CO_2 per year.

EPA has stated that the proposed GHG NSPS will promote the development of CCS in the United States. How do you expect the rule to do so?

The proposed rule would promote development of CCS because it would set emission limits that, in the case of coal- or petroleum coke-fire units, would require use of CCS at a moderate level. A number of full scale commercial projects are currently in development, including Southern Company's Kemper Project, which is more than 75% complete; the Texas Clean Energy Project (TCEP), which has signed contracts for electricity, CO2 and other products from the plant and hopes to close financing this summer; and, the California Hydrogen Energy Center Project, which is currently undergoing regulatory review in California.

Is there an existing and robust transportation pipeline system available to handle the CO2 captured by CCS?

Carbon dioxide has been transported via pipelines in the U.S. for nearly 40 years. Approximately 50 million metric tons of CO_2 are transported each year through 3,600 miles of pipelines. [77 FR 22392]

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

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

In what year do you expect CCS to be commercially viable, given current funding?

EPA stated in the preamble of the proposed rule that "CCS is technologically feasible for implementation at new coal-fired power plants and its core components (CO_2 capture, compression, transportation and storage) have already been implemented at commercial scale." [77 FR 22414]. As noted in response to one of your other questions, a number of full scale commercial projects are currently in development (please see response to question 76 for more information).

Carbon Neutrality / GHG:

In a reversal of precedence and established practice, EPA in the GHG Tailoring Rule, between proposed and final and without opportunity for public comment, treated biomass the same as fossil fuels rather than recognizing that biomass actually recycles carbon and does not increase carbon in the atmosphere. A partial recognition of this mistake was the 3-year deferral by the Agency of the regulation of biomass under the Tailoring Rule to review the science and policy. While an EPA convened Clean Air Act Science Advisory Board Panel submitted recommendations, these suggested remedies are complex, difficult to implement, and again unnecessary. So as to not miss the end of the deferral period in June of 2014 and inadvertently keep a flawed policy change in place, a final policy consistent with the science that encourages biomass as an energy source and accounts for the natural recycling of the biomass carbon is necessary. Can you imagine a scenario whereby EPA would not recognize the well-established science supporting the carbon neutrality of biomass combusted for energy by forest products manufacturers and others? As EPA Administrator, will you work with me and all affected industries to ensure that renewable biomass remains a carbon neutral fuel, and as such, receives favorable treatment in the permitting program?

The purpose of the 3-year deferral is to give EPA time to conduct a detailed examination of the science associated with biogenic CO_2 emissions and to consider the technical issues that the agency must resolve in order to account for biogenic CO2 emissions in ways that are scientifically sound and also manageable in practice. In September 2011, EPA submitted its draft "Accounting Framework for Biogenic CO_2 Emissions from Stationary Sources" to the Science Advisory Board (SAB) for peer review. EPA is considering the September 2012 SAB Peer Review Report now, and will determine the most technically sound approach for treatment of biogenic CO_2 in a regulatory context as the agency reviews the report and its recommendations.

Do you or will you support a carbon tax? More specifically, what is your sentiment with respect to the Boxer-Sanders bill?

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

Can you comment on Australia's experience with a carbon tax?

Response: I am not familiar with the details of Australia's carbon tax.

We have all heard the claims that if the US acts then other countries will follow. Can EPA provide this committee which examples of specific countries that will follow the US lead if the US adopts more stringent regulations on existing power plants?

During my tenure at EPA, I have seen that the United States is recognized as a global leader in many aspects of environmental protection and many countries look to the United States for leadership in this area. Although I would defer to the State Department with regard to the positions and commitments of specific countries in this area, I believe that U.S. leadership in reducing carbon pollution will encourage greater action from other countries and will enhance U.S. leverage in international climate discussions.

If all the regulations enacted or being contemplated with respect to greenhouse gases are fully implemented, what the impact be on global concentrations of greenhouse gases and on global average temperature? Please cite your source.

To respond to your precise question would require more specific information about the current or potential future regulations to be considered. The common sense regulations to address greenhouse gases that EPA has undertaken under this administration will achieve significant emission reductions. The light-duty vehicle emissions and fuel economy standards that EPA and NHTSA have established for model years 2012-2025, for example, are expected to result in reductions of over 6 billion metric tons carbon dioxide equivalent over the lifetime of these vehicles. Further actions, from both the United States and all of the major emitting countries, will be necessary to achieve the reductions that science indicates are necessary to address climate change.

If the US has committed to a specific course of action through regulations, what leverage would U.S. diplomats have to craft international compromises on climate issues?

I would defer to the State Department with regard to the positions and commitments of specific countries in this area and more generally with regard to the conduct of international climate negotiations. That said, I believe U.S. leadership in reducing carbon pollution will encourage greater action from other countries and will enhance U.S. leverage in these discussions.

<u>CBA:</u>

In March of 2011 EPA released a report: "The Benefits and Costs of the Clean Air Act from 1990 to 2020" that estimated that the monetized benefits of CAA regulations would be 2 trillion dollars annually by 2020 with cumulative benefits reaching $12 Trillion. Nearly all of the benefits came from avoiding 230,000 premature deaths annually in 2020 due to reductions in fine particulate emitted into the air we breathe. EPA stated that monetized benefits exceed costs of compliance by a 30 to 1 factor. What value did EPA use for a premature death avoided (PDA)? How was that value determined? Just how long was the PDA avoided? Was the same benefit used regardless of the time period of avoided mortality? Did the National Research Council suggest in a 2008 report to EPA that it

was more appropriate to use of the value of statistical life years (VSLY) saved for determining a value of a PDA? Did EPA incorporate that recommendation?

In the March 2011 study, estimated reductions in premature mortality were monetized using EPA's standard default Value of Statistical Life (VSL) methodology, which is based on 26 premature mortality valuation studies and is expressed as a statistical distribution with a central value of $8.9 million (in year 2006 value dollars) for premature mortality risk reductions projected for the year 2020. This mortality valuation methodology was explicitly peer-reviewed by the statutorily-prescribed Advisory Council for Clean Air Compliance Analysis (Council) for use in developing the primary results of the March 2011 study. The VSL is applied to monetize the value of incremental reductions in population-wide mortality risks for each year analyzed.

EPA does not interpret the 2008 National Research Council (NRC) study you reference as expressing a preference for a value of statistical life years (VSLY) approach. To the contrary, the NRC report expresses a preference for a VSL approach in stating that "...the committee recommends the use of a constant WTP [Willingness to Pay] and corresponding VSL as the most scientifically supportable approach to monetary valuation of ozone-related mortality risk given the information available in the epidemiologic and economics literature." Consistent with that approach, the March 2011 report relied on the peer-reviewed, EPA standard VSL methodology for primary results but also estimated life-years gained and life expectancy gained using a dynamic population model, and these results were used as inputs to the economy-wide modeling conducted for the study.

The Office of Chemical Safety and Pollution Prevention has been engaged in negotiations with industry to develop an enforceable consent agreement for an environmental monitoring program of the effluent of octamethylcyclotetrasiloxane (D4). We understand the Agency has recently advised the industry stakeholders that it will submit the draft agreement to "peer consultation." We are troubled by this proposed action as it does not afford the protections of a formal peer review to interested parties. This could be a very one-sided process and give the Agency the ability to claim the need for a far more extensive and unnecessarily expensive monitoring program. Will you commit to either abandon the peer consultation proposal or elevate it to an independent formal peer review by the Agency's Science Advisory Board or an equivalently independent body?

Response: I am committed to ensuring the safe manufacture and use of chemicals in this country. I am equally committed to following the processes laid out in the agency's Peer Review Handbook on issues related to peer consultation and peer review. I can assure you and this committee that any review process for this or other chemicals will be consistent with the agency's peer review guidelines.

For chemicals management, the Agency has traditionally used an approach where the risks associated with a chemical are systematically evaluated first. If risks are identified that merit the introduction of risk management intervention, EPA separately assesses risk management instruments that would be the most appropriate. Will the Agency continue to use this tiered approach where risks are assessed

separately from consideration of the need for risk management? Some regional regulatory authorities, most notably the Europeans, are increasingly using hazard as the basis for proposing regulatory restrictions for industrial chemicals. This appears especially the case for controversial human health endpoints, such as endocrine activity, where the science in still evolving. Will EPA continue to use risk as the basis for regulating industrial chemicals?"

Response: It is my understanding that currently under TSCA, the EPA is required to use risk as a basis for risk management activities, recognizing the need to act in the absence of scientific certainty. I also support the Administration's interest in reforming this outdated law and, if confirmed, look forward to working on it with you and this committee.

The Agency proposed a coal combustion residuals (CCR) rule in 2010, and that rule has not been finalized. At the same time EPA has made a commitment to propose revised effluent guidelines for the steam electric industry by April 19 and then finalize the guidelines by May 2014. How does the Agency plan to ensure coordination between these two rules, which involve many of the same wastestreams?

Response: It is my understanding that as part of a recent proposal to reduce pollution from steam electric plants, EPA also announced its intention to align that proposed rule with the proposed coal ash rule and stated that such alignment could provide strong support for a conclusion that regulation of CCR as non-hazardous could be adequate. The two rules would apply to many of the same facilities and would work together to reduce pollution associated with coal ash and related wastes. EPA is seeking comment from industry and other stakeholders to ensure that both final rules are aligned. If confirmed, I would continue to work to ensure that these two proposed rules are appropriately coordinated.

EPA is still considering two regulatory options for coal ash – the first would regulate coal ash under RCRA's Subtitle C hazardous waste program and the second would regulate coal ash as a non-hazardous waste under RCRA's Subtitle D program. Both options have their drawbacks, especially in my view the Subtitle C option, and EPA has received approximately 450,000 comments on the proposal identifying major shortcomings with both approaches. Given this, last year the Senate introduced bi-partisan legislation (S. 3512) that would establish federal non-hazardous waste standards for the management of coal ash under RCRA Subtitle D. I expect similar legislation to be introduced shortly in the House. The legislation draws from the key components of EPA's proposed Subtitle D regulatory proposal and would allow the States to take the lead in implementing enforceable permit programs for coal ash, with EPA ensuring that State programs meet the federal standards or, if not, EPA would implement and enforce the federal controls for coal ash. In light of the controversy surrounding EPA's regulatory options, would you support federal legislation along the lines of S. 3512 that would create a federal regime for the management of coal ash? What would be the key criteria that EPA would like to see in federal legislation for coal ash? Do you agree with the

views of ECOS, ASTSWMO and individual state agencies that the states are up to task of implementing federal controls for coal ash?"

Response: I am not familiar with the provisions of that particular legislative proposal; however, if confirmed, I would be happy to take a look at that and/or other bills and to provide feedback at that time.

Suzanne Rudzinski, Director of the Office of Resource Conservation and Recovery, on Oct. 11, 2012, documented in a declaration to the U.S. District Court for the District of Columbia in Appalachian Voices v. Jackson (Civ. No. 1:12-cv-00523-RBW) why the agency could not promulgate a final rule on the disposal and management of coal combustion residuals in surface impoundments and landfills in the six-month timeframe requested by plaintiffs. Ms. Rudzinski told the court that EPA could not meet that deadline because "such a schedule does not provide EPA with the time necessary to allow sound-decision making, and would result in final agency actions that, in [her] view, are neither scientifically sound nor legally defensible." EPA's semi-annual regulatory agenda provides no projected date for completion of this rulemaking. What are EPA's plans for issuing a final rule? Specifically, what are the major actions EPA plans to complete prior to issuing a final rule and the projected deadlines for completing those actions (i.e., plans for issuing a notice of data availability or any other rulemaking steps requiring public comment)? Can you assure us that EPA will not define coal ash as a hazardous waste?

Response: It is my understanding that as part of a recent proposal to reduce pollution from steam electric plants, EPA also announced its intention to align that proposed rule with the proposed coal ash rule and stated that such alignment could provide strong support for a conclusion that regulation of CCR as non-hazardous could be adequate. The two rules would apply to many of the same facilities and would work together to reduce pollution associated with coal ash and related wastes. EPA is seeking comment from industry and other stakeholders to ensure that both final rules are aligned. If confirmed, I would continue to work to ensure that these two proposed rules are appropriately coordinated.

<u>Coal Power Plant Closings:</u>

A large number of plants are expected to retire in 2015/16 – as the economy recovers and electric demand recovers. Experts expect regional problems because there are areas not served by natural gas pipelines where needed infrastructu re may not be able to be put in place in this time frame or where replacement plants cannot be permitted and built within this time frame. MISO has done an analysis that shows 9% of capacity (12.9 GW at last estimate) is closing and there is probably not sufficient gas infrastructure to serve existing demand let alone new demand. Did EPA examine natural gas availability when you issued the Utility MACT rule, CSAPR, the PM NAAQS and NSPS for GHGs?

Electric utilities, grid operators and electric regulatory bodies, like state public utility commissions, have a wide variety of options for meeting electric demand. EPA conducts detailed analysis to support its actions and projects that fuel diversity will be maintained in the

future so that the full range of electric generating resources is maintained, helping to ensure reliability. This includes coal and natural gas – since natural gas is the primary fuel that responds during time of high system demand. EPA analysis projects that areas experiencing coal retirements will also retain significant coal capacity and an adequate mix of diverse generating resources. EPA takes into account the availability of natural gas pipeline capacity to meet the needs of natural gas generators when conducting analyses of its power sector rules.

EPA has not done a cumulative analysis of the impact of its many recent regulations affecting power plants. There has been no government analysis by any government agency of which plants are closing, where they are located and whether or not the area has natural gas infrastructure in place or can be supplied with additional supplies of natural gas in existing infrastructure. Certain sections of the country are very coal dependent while others have little coal generation. Ten states depend on coal for over 70% of generation; 11 states are 50-70% dependent. These states will experience disproportionate impacts including higher costs. Is this something EPA examined? Does this concern you?

Electric utilities, grid operators and electric regulatory bodies, like state public utility commissions, have a wide variety of options for meeting electric demand. Many existing coal plants are already very well controlled for pollution, and other coal plants have the ability to retrofit with widely available pollution control technologies. External analysts, including GAO[i], CRS[ii], the Bipartisan Policy Center[iii], and Analysis Group[iv],have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. EPA performs detailed regulatory impact analyses of its power sector rules, including estimates of potential impacts on the mix of generation resources as well as electricity prices, and these analyses are publicly available and subject to notice and comment.

Have EPA regulations played a role in the premature closing of coal-fired powerplants?

A number of factors may influence an owner/operator's business decision to retire a plant; in some instances, environmental rules may be a part of the equation. External analysts, including GAO[v], CRS[vi], the Bipartisan Policy Center[vii], and Analysis Group[viii], have found that decisions to

---

[i] Government Accountability Office – "EPA Regulations and Electricity: Better Monitoring by Agencies Could Strengthen Efforts to Address Potential Challenges" http://www.gao.gov/assets/600/592542.pdf

[ii] Congressional Research Service – "EPA's Regulation of Coal-Fired Power: Is a "Train Wreck" Coming?" http://insideepa.com/iwpfile.html?file=aug2011%2Fepa2011_1545.pd f

[iii] Bipartisan Policy Center – "Environmental Regulation and Electric System Reliability" http://bipartisanpolicy.org/library/report/environmental -regulation-and-electric-system-reliability

[iv] Analysis Group – "Why Coal Plants Retire" http://www.analysisgroup.com/uploadedFiles/News and Events/News/ 2012 Tierney WhyCoalPlantsRetire.pdf

[v] Government Accountability Office – "EPA Regulations and Electricity: Better Monitoring by Agencies Could Strengthen Efforts to Address Potential Challenges" http://www.gao.gov/assets/600/592542.pdf

[vi] Congressional Research Service – "EPA's Regulation of Coal-Fired Power: Is a "Train Wreck" Coming?" http://insideepa.com/iwpfile.html?file=aug2011%2Fepa2011_1545.pd f

[vii] Bipartisan Policy Center – "Environmental Regulation and Electric System Reliability" http://bipartisanpolicy.org/library/report/environmental -regulation-and-electric-system-reliability

retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth.

Bloomberg Government recently put together a comparison chart of various estimates of plant closures made by government agencies and private financial firms and other experts. EPA's estimate in December 2011 of plant closures resulting from EPA's regulation at 17.5 GW. The EIA estimated 49 GW in July 2012, most of it within 5 years but put the overall range at 34 GW to 70 GW. Other private sector groups have estimated coal plant closures at 34.5 GW to 77 GW. Is it concerning to you that EPA's estimate constitutes such an outlier?

A number of economic factors influencing retirements well beyond EPA's clean air rules are included in these non-EPA figures. External analysts, including GAO[ix], CRS[x], the Bipartisan Policy Center[xi], and Analysis Group[xii], have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. Because EPA's power sector analyses look at the effects of its rules alone to evaluate incremental impacts, EPA's analyses are not comparable to other assessments that also take into account broader economic factors.

EPA regulations and low natural gas prices are leading many utilities to fuel switch from coal- to natural gas-fired generation. However, it is not clear yet whether there will be sufficient pipeline infrastructure or storage to accommodate the greater use of natural gas by electric utilities. And as is evidenced in your home region of New England, a region heavily reliant on natural gas for electric generation, there are issues with pipeline capacity and competing demand for gas for home heating. Electricity prices in New England were four to eight times higher than normal in February 2013 because of the lack of fuel diversity. And New England is not the only region of the country with potential reliability concerns. A January 2013 EPA Compliance Update by the Midwest Independent System Operator (MISO) states the ISO has concerns about whether there is sufficient resource adequacy in the Midwest beginning in 2016. With the significant number of coal-fired generation retiring due to EPA regulations and low natural gas prices, MISO projects there will be a potential 11.7 GW shortfall of resource adequacy in the winter of 2016 and a 3.5 GW one in the summer of 2016. MISO anticipates increased utilization of natural gas fuel generation that will result in "changes to the system's generation configuration and concerns about the ability of the current pipeline infrastructure's ability to deliver enough gas." Do you agree that EPA environmental regulations are now driving U.S. energy policy with serious implications for electric reliability and electricity prices? Is EPA working closely with the Federal Energy Regulatory Commission to ensure the reliability of the electric grid and smaller load pockets facing potential generation shortfalls? Can you please provide

---

[viii] Analysis Group – "Why Coal Plants Retire" http://www.analysisgroup.com/uploadedFiles/News_and_Events/News/_2012_Tierney_WhyCoalPlantsRetire.pdf

[ix] Government Accountability Office – "EPA Regulations and Electricity: Better Monitoring by Agencies Could Strengthen Efforts to Address Potential Challenges" http://www.gao.gov/assets/600/592542.pdf

[x] Congressional Research Service – "EPA's Regulation of Coal-Fired Power: Is a "Train Wreck" Coming?" http://insideepa.com/iwpfile.html?file=aug2011%2Fepa2011_1545.pdf

[xi] Bipartisan Policy Center – "Environmental Regulation and Electric System Reliability" http://bipartisanpolicy.org/library/report/environmental-regulation-and-electric-system-reliability

[xii] Analysis Group – "Why Coal Plants Retire" http://www.analysisgroup.com/uploadedFiles/News_and_Events/News/_2012_Tierney_WhyCoalPlantsRetire.pdf

the committee with specific information about inter-agency meetings on these issues?

EPA is working closely with FERC and DOE, as well as with grid planning authorities and other key stakeholders, to ensure implementation of EPA rules and requirements in a manner consistent with maintenance of electric reliability. EPA will continue to work with FERC, DOE, grid planning authorities and electric utilities to address any specific challenges that may arise. EPA, FERC and DOE meet regularly to coordinate on these issues. The three agencies participate jointly in monthly calls with key Regional Transmission Organizations, have met jointly with other key planning authorities, and participate in engagement with state regulatory authorities and other stakeholders. With regard to your question concerning impacts of environmental regulations, please see the agency's responses to the previous questions.

As you may be aware, the Federal Energy Regulatory Commission (FERC) is examining how to promote greater coordination between the electricity and natural gas industries. The Commission has held five technical conferences on this issue and plans to hold another in April. The one thing that is clear from all these conferences is that no one knows whether all the changes needed for fuel switching from coal- to natural gas-fired electric generation on this scale can be accomplished in the time needed to comply with EPA regulations. What involvement, to date, has EPA had with FERC on these technical conferences? Has the agency considered providing utilities with more time to comply with regulations (by perhaps providing larger spacing between regulations) in order to allow the infrastructure upgrades and market reforms (e.g., synchronization of scheduling between electricity and natural gas markets) needed to enable this massive amount of fuel switching?

EPA's Clean Air Act power plant rules provide flexibility to help ensure a path forward for all types of electric generators. Additionally, EPA regulations and guidance have provided tools to allow for planning flexibility in response to reliability challenges. For example, EPA has taken steps to ensure broad availability of an additional year to comply with the MATS rule where needed for technology installation, including in situations implicating reliability considerations. In addition, concurrent with the final MATS rule EPA has identified a clear pathway for up to one additional (fifth) year to come into compliance where needed to address a documented reliability issue. EPA is working closely with FERC and DOE, as well as with grid planning authorities and other key stakeholders, to ensure implementation of EPA rules and requirements in a manner consistent with maintenance of electric reliability.

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

EPA's Clean Air Act power plant rules provide flexibility to regulated entities to help ensure a path forward for generating units of all types. EPA analyses conducted in support of its power plant rules project that fuel diversity will be maintained in the future, helping to ensure reliability. This includes coal and natural gas – since natural gas is the primary fuel that responds during time of high system demand. EPA analysis has shown that areas experiencing coal retirements will also retain significant coal capacity and an adequate mix of diverse generating resources. EPA also takes into account the availability of natural gas pipeline capacity to meet

the needs of natural gas generators when conducting its analyses. EPA works closely with DOE, FERC, grid planning authorities and other entities with expertise related to electric reliability to help ensure that the agency's rules are implemented in a manner consistent with maintaining electric reliability.

Can you remember any instance in which EPA has disagreed with a State's approach on an environmental issue and ultimately decided that the State was correct?

Response: I do have experience both at EPA and in my work with the States of EPA and a State working together to resolve issues in a mutually agreeable fashion. For example, EPA and the State of New Mexico initially disagreed on the regional haze implementation plan for the San Juan Generating Station. However, after working together, the parties were able to come to an agreed upon path forward. That collaboration with state and local governments is something that I would hope to bring to the job of Administrator if confirmed.

On March 29, 2013, the Department of Justice filed a cert petition asking the Supreme Court to reverse the decision by the D.C. Circuit striking down EPA's Cross State Air Pollution Rule (CSAPR). This cert petition makes certain claims about the impact of the Court's decision that appear to be inconsistent with statements that you recently made to the U.S. General Accountability Office (GAO). In a letter dated January 7, 2013, to David Trimble of the GAO, you stated as follows: Annual 2012 SO2 emissions levels from power plants within the CSAPR region are on track to be 23% below what CSAPR would have required in 2012. Similary, annual NOx and ozone season NOx emissions in the CSAPR region are projected to be 12% and 5% below what CSAPR required for 2012." Yet the cert petition to the Supreme Court asserts that "By vacating the Transport Rule [CSAPR], . . . the court of appeals' decision will directly and negatively affect the public health." How does the court of appeals' decision "directly and negatively affect the public health" if emissions from power plants are well below the levels that would have been required under CSAPR?

Response: I can't speak to matters that are currently in litigation or to specific litigation decisions made by the Department of Justice. However, the brief filed by the Department of Justice speaks for itself and I am told that it explains, with specific citation to the CSAPR rulemaking record, the ways in which the EME Homer City decision directly and negatively affects the public health by delaying needed emission reductions and hobbling EPA's efforts to address interstate air pollution problems. A single year of emissions data does not provide a complete picture and is not a substitute for having the CSAPR regulatory requirements in place to guarantee that those emission reductions endure over time. Unfortunately, in recent months, we have seen an increase in harmful emissions from some sources that were covered by CSAPR.

Do you believe that EPA and the Department of Justice have an obligation to be forthright and honest with the Supreme Court? Do you agree that, at the very least, the statements in the cert petition regarding the public health impacts of the CSAPR decision could be misleading?

Response: I, personally, believe it is extremely important to be forthright and honest in all circumstances and especially with the courts. As noted above, the brief filed by the Department of Justice speaks for itself and I am told that it explains, based on specific findings made by EPA as part of the CSAPR rulemaking, the ways in which the EME Homer City decision directly and negatively affects the public health.

In CSAPR, EPA originally proposed that Texas would not be covered under the rule because power plants in Texas did not "contribute significantly" to nonattainment problems in other states. In the final rule, however, EPA changed its mind and asserted that emissions from Texas would contribute just over one percent of the problem with projected PM2.5 concentrations at one air monitor in Illinois. As a result of this new projection, EPA issued a final rule that required substantial and costly emission reductions in Texas. In fact, emission reductions required in Texas amounted to more than 25 percent of the total SO2 reductions in CSAPR. Do you believe that EPA overreached by imposing such a substantial burden on Texas in the final rule? When trying to regulate interstate transport of emissions, do you agree with the D.C. Circuit that EPA can only regulate to the extent necessary to eliminate a state's contribution to downwind nonattainment?

EPA's requirements of Texas in CSAPR were in fact calculated as the reductions necessary to resolve Texas's significant contribution to nonattainment and interference with maintenance at downwind receptors projected to have difficulty attaining and maintaining the NAAQS without the rule. The D.C. Circuit Court's ruling made no finding regarding EPA's requirements of Texas under CSAPR. EPA is moving forward to assess options that implement the interstate transport requirements of the Clean Air Act. As part of this effort, EPA is seeking input from Texas and the other states.

Do you anticipate proposing a replacement rule for CSAPR? Will EPA ensure that states and utilities are given adequate time to comply with the rule?

EPA and the states are responsible under the Clean Air Act for addressing inter-state transport of air pollution. EPA is assessing how to move forward to address transport pollution and is taking the Court's *EME Homer City* opinion into account. EPA has already invited the states to participate directly in the assessment of the path forward and will continue working with the states collaboratively in determining the next steps needed to address the threat of transported air pollution to public health. As these efforts continue, EPA will be mindful of the need to provide appropriate timelines for states and the regulated community.

What lessons have you learned from the CSAPR experience?

The CSAPR experience reinforces that upwind state emissions of ozone and PM precursors can be important contributors to levels of PM and ozone in downwind states. Reducing emissions of these precursors will have important public health benefits, and EPA is already working closely with states on further efforts to address interstate transport of these pollutants.

Does EPA plan to return to its determination that compliance with CAIR constitutes compliance with BART? If not, does EPA intend to subject electric generating stations in the East to regional haze BART requirements? When does EPA expect do decide?

EPA is waiting to learn whether the Supreme Court will hear an appeal of the *EME Homer City* decision as that action will affect the options for regional haze and EGUs in the East. The agency will move as quickly as possible once the Court decides, and depending on the Court's decision, the options to consider will include the states' ability to rely on CAIR to satisfy the BART requirements or whether (if the Court were to reverse the lower court decision) states can continue to rely on the Cross State Air Pollution Rule (CSAPR) to meet those requirements.

EPA had determined that electric generating units in the East that were subject to the CAIR program did not have to comply with regional haze best available retrofit technology (BART) requirements because CAIR would reduce emissions more than BART. When EPA replaced CAIR without CSAPR, it revoked the determination that compliance with CAIR constituted compliance with BART, and instead determined that compliance with CSAPR constituted compliance with BART. But now CSAPR has been overturned in court. Does EPA plan to return to its determination that compliance with CAIR constitutes compliance with BART? If not, does EPA intend to subject electric generating stations in the East to regional haze BART requirements on a source by source basis? When does EPA expect to decide?

EPA is waiting to learn whether the Supreme Court will hear an appeal of the *EME Homer City* decision as that action will affect the options for regional haze and EGUs in the East. The agency will move as quickly as possible once the Court decides, and depending on the Court's decision, the options to consider will include the states' ability to rely on CAIR to satisfy the BART requirements or whether (if the Court were to reverse the lower court decision) states can continue to rely on the Cross State Air Pollution Rule (CSAPR) to meet those requirements.

When will EPA produce a full analysis of the impacts of all of its power sector regulations?

Response: EPA performs detailed analysis of the impacts of our regulations as part of the regulatory impact analysis. The modeling approaches we use can take into account other rules. For example, when EPA modeled our mercury and air toxics (MATS) rule using our integrated planning model, those requirements were added on top of the existing air rules (CSAPR) which are already coded into the model. These models capture the investment decisions of plant owners as they look at all of the investments they will have to make over the modeled timeline. The result is that the model captures the combined impact of all of these requirements on both electricity prices and electricity generating margins. If confirmed, I will work to ensure that future EPA rules reflect careful consideration of the overall state of the power sector, including the impacts of previously finalized rules.

<u>Section 321(a)</u>

In EPA's Utility MACT proposal, EPA stated that: "EGUs are the subject of several rulemaking efforts that either are or will soon be underway. . . . EPA recognizes that it is important that each and all of these efforts achieve their intended environmental objectives in a common-sense manner that allows the industry to comply with its obligations under these rules as efficiently as possible and to do so by making coordinated investment decisions and, to the greatest extent possible, by adopting integrated compliance strategies." So, EPA recognizes that it needs to approach these rulemakings, to the extent

that its legal obligations permit, in ways that allow the industry to make practical investment decisions that minimize costs in complying with all of the final rules, while still achieving the fundamentally important environmental and public health benefits that the rulemakings must achieve. The upcoming rulemaking under section 111 regarding GHG emissions from EGUs may provide an opportunity to facilitate the industry's undertaking integrated compliance strategies in meeting the requirements of these rulemakings. The Agency expects to have ample latitude to set requirements and guidelines in ways that can support the states' and industry's efforts in pursuing practical, cost-effective and coordinated compliance strategies encompassing a broad suite of its pollution-control obligations. EPA will be taking public comment on such flexibilities in the context of that rulemaking. Does EPA intend to follow through on this commitment and provide a forum in which EPA notifies utilities of all of the impending power sector regulations and discusses ways for industry to comply with all of these regulations in a least cost fashion?

As stated in the cited portion of the preamble to the proposed utility MACT rule (later finalized as the Mercury and Air Toxics Standards or "MATS"), the agency's intent was to use the rulemaking process itself to address issues of flexibility that might support industry's efforts to develop integrated compliance strategies for affected sources. In developing the final MATS rule, for example, the agency received substantial comment suggesting ways in which the final rule could provide compliance flexibility and the agency adopted several of these suggestions, resulting, according to the Regulatory Impact Analysis for the final standards, in $1.3 billion in annual cost-savings relative to the proposed standards. With regard to section 111, EPA is still in the process of reviewing comments submitted in response to the proposed carbon pollution standard for new power plants under section 111(b). The agency is not currently developing any existing source GHG regulations for power plants under section 111(d).

In section 402(p) of the Clean Water Act, Congress established a procedure that requires EPA to give Congress the opportunity to fully review and analyze EPA's rationale for expanding the federal regulation of stormwater before taking any regulatory action. For instance, the 402(p) report to Congress justifying the 1999 Phase II expansion of the stormwater regulations was submitted to Congress in 1995 – four years before the regulations were finalized. Will EPA follow that procedure for the stormwater rulemaking the Agency is currently working on? What is your anticipated schedule for delivery of the 402(p)5 report to Congress justifying any new post-construction stormwater regulations and how does that compare to your anticipated release date for the draft regulation itself for Public Comment?

Response: I am not aware of a specific timetable for delivery of a 402(p) report or with the specific requirement you cite under the Clean Water Act; however, if confirmed, I would certainly commit to ensure that the Agency meet its requirements under the law.

The recent federal District Court decision in Virginia Dept. of Transportation v. EPA (which concerned the Accotink Creek in northern Virginia) held that the Clean Water Act limits EPA's regulatory authority to "pollutants" rather than water flow and EPA chose not to appeal the case. Do you believe EPA presently has any authority to regulate the flow of water? Do you believe that EPA can

control the volume, velocity or any other characteristic of stormwat er that is discharged from a point source, without directly relating those characteristics to a specific level of a specific pollutant that is in that stormwater?

Response: I understand that the federal government chose not to appeal the decision in Virgi nia Dept of Transportation v. EPA and EPA will respect the court's decision. EPA is working closely with the Commonwealth to assure effective protection of Virginia waters from pollutants of concern. If confirmed, I look forward to working with you on this important issue.

We understand that a draft rule intended to clarify the Clean Water Act's definition of "Waters of the United States" will soon be transmitted to OMB for review. Given how far-reaching and significant this regulation would be, will you commit to at least a 120 day notice and comment period for this rule to ensure an adequate amount of time for the public to engage in this process? Will you agree to withdraw the Guidance document currently being reviewed by OMB once a draft rule is sent to OMB?

Response: I understand that the Agency and the Army Corps of Engineers have submitted a guidance document to the Office of Management and Budget. I believe that it is important that industry, states and the regulators have certainty, with respect to the Clean Water Act. If I'm confirmed, I will certainly review this topic.

The 8th Circuit (in Iowa League of Cities v. EPA) recently joined a long line of courts that have held that EPA has no authority under the Clean Water Act to regulate the source of pollution. Congress only delegated to EPA the authority to regulate the discharge of a pollutant. This means that EPA can set permit limits for discharges but cannot specify how to meet them. Will you commit that EPA will not propose any regulation that would attempt to impose specific control requirements on land, buildings or other sources of runoff, upstream from a discharge into water?

Response: I appreciate your concern regarding this important issue. The EPA is still reviewing the Eighth Circuit's decision, but I want to assure you that if EPA proposes a new regulatio n, it would be consistent with the law as interpreted by the courts. If confirmed, I look forward to working with you as we implement the requirements of the CWA to protect public health and water quality.

EPA's current municipal stormwater regulations only regulate stormwater flows from municipal storm sewers into waters of the U.S. The discharge from the municipal system is a validly regulated point source, but the runoff into the municipal system is nonpoint source stormwater flow. Do you believe that EPA has Clean Water Act authority to regulate the flow of runoff into a storm sewer?

Response: I appreciate your interest in this issue. It is important to clarify that only point source discharges to waters of the U.S. require a permit under the Clean Water Act. Non-point source runoff into a storm sewer is generally not regulated by EPA. If I am confirmed, I look forward to talking with you in more detail about your concerns.

According to Justice Scalia in the Supreme Court's Rapanos decision, the average applicant for an individual Clean Water Act permit spends 788 days and $271,596 in completing the process, and the average applicant for a nationwide permit spends 313 days and $28,910 -- not counting costs of mitigation or design changes. What has EPA done to reduce these regulatory costs? And what you intend to do as EPA Administrator to further lessen this onerous burden faced by regulated parties?

Response: Having come from the State and local level, I understand how important it is to be able to obtain a permit quickly and affordably, and the need for that permit to withstand legal scrutiny. I agree that the requirements of the Clean Water Act need to have additional clarity. If I'm confirmed, I will explore ways to provide additional clarity to the regulated community.

The current definition of fill material, finalized in May, 2002, unified the Corps and EPA's prior conflicting definitions so as to be consistent with each other and the structure of the CWA. The current rule solidifies decades of regulatory practice, and includes as fill material those materials that, when placed in waters of the U.S., have the effect of raising the bottom elevation or filling the water. However, both EPA and the Corps have stated that they are now considering revising the definition of fill material. What is EPA's rationale for revisiting the well-established division of the Sec. 402 and Sec. 404 programs?

What specific problems is EPA seeking to address by revisiting the definition of fill material, and how exactly is EPA intending to address them?

Has EPA yet considered the time and costs associated with making such a change to the two major CWA permitting schemes – Secs. 402 and 404?

Response (to the three questions above): I understand the importance of clarity, with respect to the permitting process. If I'm confirmed, I'll work closely with the Army Corps and others to ensure that there is increased clarity in the permitting process.

E15:

In February 2013, the President of the American Automobile Association testified before Congress that the introduction of E15 to commerce was done "without adequate protections to prevent misfuelings and despite remaining questions about potential vehicle damage." In further testimony, he suggested that testing of E15 was far too narrow in scope and that sales should be suspended until further study is done on the potential full impact of E15 on all aspects of vehicles and appropriate. Do you believe testing on E15 should have included potential impacts on engine life and fuel pumps? Do you stand by EPA's conclusion that E15 is safe and reliable for consumers to use?

EPA issued its E15 partial waiver decisions based on an extensive review of all relevant scientific and engineering information. For model year 2001 and newer light-duty motor vehicles, across the approximately 30 studies EPA used to support its waiver decisions, which included the comprehensive work conducted by the Department of Energy (DOE), no issues regarding vehicle fuel system compatibility or engine durability arose when the fuel systems and/or engines were operated or tested on E15. Taken together, these studies represent the operation of hundreds of vehicles over millions of miles on E15 under real world and testing conditions without issue. The model year 2001 and newer light-duty motor vehicles continued to meet applicable federal emissions standards over the vehicles' full useful lives when operated and tested on E15.

Through its waiver, EPA has concluded that E15 "will not cause or contribute to the failure of engines or vehicles." If you stand by EPA's conclusion, would you support legislation requiring the federal government should indemnify companies that sell E15 from any future liability related to the use of E15 in motor vehicles and motor vehicle engines?

I am not aware of any current proposed legislation of this nature, but in any event, the EPA has no position with regard to such proposed legislation if it exists.

When the RFS was passed, gasoline demand was projected to increase for the foreseeable future. Now, gasoline demand is flat or declining for the foreseeable future. Even if more E15 were used in the marketplace, there would not be enough room in the fuel supply, particularly given new CAFE standards. How does EPA plan on addressing this conflict between mandated ethanol volumes and decreasing fuel demand due to the Administration's CAFÉ standards?

Congress mandated that increasing amounts of renewable fuel be used nationwide, while providing industry with flexibility to determine the most cost-effective fuel mix needed to meet the requirements of the law. EPA is reviewing comments submitted in response to the agency's proposed rulemaking for the 2013 RFS volume standards, and will carefully consider this input as it sets future RFS standards. Going forward, EPA will consider whether any further actions under the directives and authorities provided by Congress are appropriate to help ensure orderly implementation of the program.

Many auto companies are actually warning consumers against using E15 even in EPA-approved vehicles and AAA is warning consumers not to use it. What does EPA know that the auto companies don't?

EPA would defer to the automakers to explain the basis of their communications . The EPA issued its E15 partial waiver decisions based on an extensive review of all relevant scientific and engineering information. For model year 2001 and newer light-duty motor vehicles, across the approximately 30 studies the EPA used to support its waiver decisions, which included the comprehensive work conducted by the Department of Energy (DOE), no issues regarding vehicle fuel system compatibility or engine durability arose when the fuel systems and/or engines were operated or tested on E15. Taken together, these studies represent the operation of hundreds of vehicles over millions of miles on E15 under real world and testing conditions without issue. The model year 2001 and newer light-duty motor vehicles continued to meet applicable federal emissions standards over the vehicles' full useful lives when operated and tested on E15.

Did EPA look at any testing data other than emissions before approving E15?

EPA issued its E15 partial waiver decisions based on an extensive review of all relevant scientific and engineering information. For model year 2001 and newer light-duty motor vehicles, across the approximately 30 studies EPA used to support its waiver decisions, which included the comprehensive work conducted by the Department of Energy (DOE), no issues regarding vehicle fuel system compatibility or engine durability arose when the fuel systems and/or engines were operated or tested on E15. Taken together, these studies represent the operation of hundreds of vehicles over millions of miles on E15 under real world and testing conditions without issue. The model year 2001 and newer light-duty motor vehicles continued to meet applicable federal emissions standards over the vehicles' full useful lives when operated and tested on E15.

Was EPA aware of ongoing CRC testing on engine durability, fuel pumps and other engine components? Why not wait until that test was complete before making a decision? Because in the aftermath it looks like the decision was, at best, premature. The CRC data shows millions of approved vehicles are in danger of engine damage.

EPA has reviewed the limited portions of the CRC test program made available to the public. Unfortunately, complete information on the testing program has not been made available to the government, and the CRC expressly denied EPA or the Department of Energy (DOE) a role in the test program. As DOE has highlighted repeatedly (see for example here: http://energy.gov/articles/ge tting-it-right-accurate-testing-and-assessments-critical-deploying-next-generation-auto), the CRC E15 test programs have a number of significant scientific shortcomings, including failure to test components or vehicles on E0 and E10 to provide information on typical failure rates for baseline fuels.

How many stations are carrying E15? How is EPA ensuring compliance with the labeling requirement? Recent reports show that as many as 1/3 of stations carrying e15 are not properly labeling it.

As of April 15, 2013, EPA has approved misfueling mitigation plans for 11 companies that are offering E15 at approximately 20 retail stations. EPA is closely monitoring results from the E15 compliance survey to ensure that stations that offer E15 are complying with applicable E15 labeling requirements. In 2012, the E15 survey checked every E15 station registered with an approved Misfueling Mitigation Plan and found 100 percent compliance with the labeling requirements. Reports suggesting that 1/3 of the stations with approved misfueling mitigation plans were found not to be in compliance with the labeling requirements, are erroneous.

At what point should we conclude the mandate is causing significant harm?

EPA is not requiring the use of E15 – this will be up to the marketplace.

What was the rate of consumer misfueling during the switch from leaded to unleaded gasoline? Why didn't EPA promulgate stricter misfueling mitigation requirements like it did during that time - or even the more stringent warning label (considering that was the only misfueling mitigation measure EPA is requiring)?

EPA does not believe there was significant misfueling as unleaded gasoline was introduced. The agency did conduct tampering and misfueling surveys throughout the 1980's and into the early

90's during the phase out of lead in gasoline. The surveys generally found a very low incidence of misfueling. Further, state inspection programs implemented in many areas of the country also implemented tampering and misfueling inspections, which acted as additional deterrents to misfueling.

What is the status of an ANSI standard for E15?

I am not aware of any ANSI standards for E15.

Why is EPA suggesting an E15 cert fuel in the Tier 3 rule, considering one of the justifications is to harmonize regulations with the State of California, which certifies to E10? Is this a way to force automakers to build cars to use fuels that may or may not be commercially available?

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

Given the number of issues with E15, not the least of which is liability, why does EPA think half of the fuel consumption will be E15 in 2017?

Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine our analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

The majority of gas stations are single store operators, and more than 90 percent are independent from refineries. Why would these small businessmen take on potential liability to sell a fuel that can only be used in less than 5 percent of vehicle (those certified by manufacturers to use E15 or FFV) and no other type of engine?

EPA does not require that any party offer E15 for sale. EPA has not made a projection of potential E15 sales, but would note that light-duty diesel vehicles represent less than five percent of vehicle sales, yet many retail stations now offer diesel fuel in order to appeal to a wider clientele of potential customers.

Despite guidance from OMB, EPA frequently does not assess the cumulative economic impact of regulations on the regulated community. For example, although EPA touts the cumulative benefits of its Clean Air Act regulations, each regulatory proposal under the Act is only assessed for its particular costs and impacts. Will you commit to ensuring that EPA does a better job assessing the cumulative impacts of regulatory proposals, including impacts on U.S. competitiveness?

Response: EPA performs detailed analysis of the impacts of our regulations as part of the regulatory impact analysis. The modeling approaches we use can take into account other rules. For example, when EPA modeled our mercury and air toxics rule using our integrated planning model, those requirements were added on top of the existing air rules (CSAPR) which are already coded into the model. These models capture the investment decisions of plant owners as they look at all of the investments they will have to make over the modeled timeline. The result is that the model captures the combined impact of all of these requirements on both electricity prices and electricity generating margins. If confirmed, I would be happy to work with EPA economists to investigate and refine economic tools that can help us better assess our regulations.

EPA is required by statute to evaluate the costs and benefits of each regulation. For cooling water intake structures Clean Water Act Sec. 316(b) regulations, EPA's own analysis states costs 20 times greater than the expected benefit. To justify the imbalance between costs and benefit the EPA provides all kinds of caveats calling the analysis incomplete and the costs overstated. The agency is required to conduct these analyses in a way that supports sound decision-making when setting standards. Such a gap between costs and benefits is troubling – especially for those in rural America and other economically disadvantaged communities who will ultimately be paying for these changes. Does this analysis reflect the state of EPA's science and if not, what steps will EPA take to redo the analysis so that it accurately reflects the cost and benefits before making any policy decision and before issuing any proposed or final regulation?

Response: As you know, I have worked hard to find practical approaches to regulation under the Clean Air Act. If confirmed, I look forward to working to ensure that rules like 316(b) are similarly sensitive to the variations across the electric utility industry and to look for flexibilities that can reduce costs while maintaining environmental protection. Similarly, I will always work to ensure that the EPA uses the best science available for regulatory analysis.

It is my understanding that endocrine screening results have been submitted to EPA on about 50 pesticide chemicals. What has been EPA's experience with the Endocrine Disruptor Screening Program (EDSP) to date? How is EPA applying a weight of evidence approach to screening level results to determine whether the chemicals need to go on to higher tiered endocrine testing?

Response: As I understand it, the agency has received data on a number of pesticides and is in the process of conducting a technical review of the data. If confirmed, I will work to ensure that the endocrine program is on sound scientific footing.

I understand EPA is conducting an evaluation of how well the EDSP Tier 1 screening methods and Battery actually performed. If certain methods are found to be flawed or aren't performing adequately, will EPA make the necessary adjustments to the methods or test Battery before requiring additional substances to undergo EDSP Tier 1 screening? What challenges does EPA see in this next phase? What lessons has EPA drawn from its implementation of the EDSP program to date?

Response: As I understand it, the EDSP screening methods are undergoing external peer review. If confirmed, I will work to ensure that the endocrine program is on sound scientific footing.

EPA's endocrine disruptor regulatory program is risk based, which allows EPA to set safe levels of exposures based on a determination of both hazard and exposure. Do you agree that a risk-based approach is more scientifically sound than a hazard based approach? Do you think this approach provides EPA adequate authority for addressing the "endocrine disruptor" issue?

Response: My understanding is that EPA's endocrine disruptor screening program is a risk based program and is statutorily based. I will work with you and the committee to ensure that the endocrine program is on sound scientific footing.

Endangerment Finding / Peer Review

In 2009, EPA determined in its Endangerment Finding that carbon dioxide and related substances pose a danger to human health and welfare. EPA made this determination without the peer review of the Scientific Advisory Board, a panel of independent scientists whose function is to ensure the scientific credibility of EPA's Clean Air Act proposals. What explains EPA decision to impose such a draconian regulation without complying with its statutory duty of scientific peer review?

> EPA relied on comprehensive peer-reviewed scientific assessment reports conducted by the US Global Change Research Program, the Intergovernmental Panel on Climate Change, and the National Research Council, which are subjected to rigorous expert and in some cases government review. This approach was validated by the D.C. Circuit Court in *Coalition for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102 (D.C. Cir. 2012). The Court found that EPA had based its Endangerment Finding on substantial scientific evidence, noting that "the body of scientific evidence marshaled by EPA in support of the Endangerment Finding is substantial," and that EPA's reliance on these scientific assessments was proper and consistent with the methods decision-makers often use to make a science-based judgment. EPA followed all applicable agency and OMB guidelines regarding data quality and peer review in developing the Endangerm ent Finding. The D.C. Circuit rejected arguments that EPA was required to submit the proposed Endangerment Finding to SAB for review under the terms of 42 U.S.C. § 4365(c)(1).

EPA has for years maintained that reduction, reuse, recycling and recovery are all preferable to landfill disposal. For municipal waste that cannot be recycled (due to food contamination, or other reasons)

recovery is better than disposal. New and emerging technologies are enabling the production of a variety of clean, renewable fuels and energy from non-recycled plastic in municipal solid waste, and communities across the country are taking integrated approaches to increase recycling and maximize the energy value across the entire municipal waste streams. We hope we can count on EPA's leadership to find ways to ensure that these potentially significant domestic energy sources are not wasted in landfill, but instead treated as the renewable fuels that they are. Do you agree that energy recovery from non-recycled plastics and other waste streams is an underutilized resource? Will you consider appropriate changes to EPA's regulatory programs to do a better job of promoting energy recovery across many different industries and processes? Will you commit to work with the Committee to give energy recovery a proper place in a true "all-of-the-above" energy strategy?

Response: I am happy to work with the Committee. I agree with President Obama that we need an all of the above energy strategy to achieve energy independence in a manner that protects our resources, our health and our environment. I believe that energy recovery from waste streams is an important part of that strategy.

<u>Energy Star</u>

Why, after being warned of the problem by the EPA's Office of Inspector General, did you allow so many products to be labeled as ENERGY STAR appliances devices even though they weren't among the more efficient ones?

> Keeping ENERGY STAR requirements up-to-date is a priority for the Agency. All appliance specifications have been recently updated, with effective dates as follows: clothes washers (January 2011), dish washers (January 2012), dehumidifiers (October 2012), room air conditioners (October 2013), water heaters (July 2013), refrigerators (in process, anticipated March 2014).

It is my understanding that EPA's Office of Enforcement and Compliance Assurance (OECA) is considering eliminating EPA's "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" (Audit Policy) in an effort to deploy its enforcement resources to address more significant noncompliance issues. This would be a grave mistake as the Audit Policy, which has been in place since 1995, is one of the most successful voluntary programs that the Agency has implemented. The Audit Policy encourages regulated entities to voluntarily discover, and promptly report and correct violations of federal environmental requirements that are not otherwise required to be reported. This Policy has resulted in significant benefits both in terms of protection of human health and the environment and in the development of more comprehensive and sophisticated environmental compliance programs by industry. The Audit Policy does not require a lot of EPA resources. In fact, the Policy requires little of OECA other than a decision, or not, to investigate further the voluntary notifications of noncompliance that it receives. Do you agree that the Audit Policy is an important program? As Administrator will you commit to preserve the Audit Policy so that

the beneficial effects of this Policy continue to be achieved? OECA decisions to review or take action under the Audit Policy are discretionary and nothing requires OECA to follow-up on each and every notification it receives. What steps should OECA take to be more judicious and reduce the number notifications it reviews or follow-up actions it takes?

Response: I know that the practices of environmental management systems and internal audits of company performance have become much more widespread since EPA issued the Audit Policy over 15 years ago. Companies are increasingly aware that good environmental management is part of overall sound business management. This general corporate acceptance of auditing enables EPA to better align the Audit Policy with Agency resources and compliance priorities, and apply it where it can be most effective. If confirmed, I commit to applying compliance incentives in a manner that best advances the goals of good environmental management.

Thinking about environmental justice issues for a minute, why is EPA issuing "papers" proposing changes to policies that were initially published in the Federal Register? What has changed that justifies this significantly less-transparent approach?

Response: While I am not familiar with this specific issue, I commit that I will look into this and ensure that any work that the Agency is doing is consistent with the law and the spirit of transparency.

The "Role of Complainants and Recipients in the Title VI Complaints and Resolution Process" paper leaves an important stakeholder out of the arbitration process as EPA merely proposes negotiations between complainants and the state permitting agencies who receive federal funding. The actual permit holders are not just excluded from negotiations – there is no requirement they even be notified that a complaint has been filed. Shouldn't EPA require both notification and inclusion of all stakeholders potentially affected by a Title XI complaint?

Response: I agree that it is vital that the Agency's Title VI program be administrated in a thoughtful manner, consistent with the law. If I'm confirmed, I commit to receiving additional briefing on the specifics of the program.

The ability for states to develop approvable implementation plans or other submissions, such as Exceptional Events demonstrations, has been hindered by: EPA's inability to provide timely guidance; undefined processes that do not clearly establish the criteria EPA will use to evaluate submissions; and, in some cases, the lack of a dispute resolution processes. If confirmed, what are your plans to correct these deficiencies?

EPA is committed to working collaboratively with our state, local, and tribal co-regulators to produce timely NAAQS implementation guidance. In fact, the agency is in the final stages of drafting Interim Exceptional Events Implementation Guidance, which clarifies and provides

examples of information that air agencies can include in their exceptional event demonstration submittals and identifies mechanisms that air agencies can use to resolve disagreements regarding exceptional event non-concurrence on submittal packages. EPA has had extensive stakeholder involvement during the development of this guidance, and the agency would expect that the final product will address some of your specific concerns.

The ability for states to develop approvable implementation plans or other submissions, such as Exceptional Events demonstrations, has been hindered by: EPA's inability to provide timely guidance; undefined processes that do not clearly establish the criteria EPA will use to evaluate submissions; and, in some cases, the lack of a dispute resolution processes. If confirmed, what are your plans to correct these deficiencies?

EPA is committed to working collaboratively with our state, local, and tribal co-regulators to produce timely NAAQS implementation guidance. In fact, we are in the final stages of drafting Interim Exceptional Events Implementation Guidance, which clarifies and provides examples of information that air agencies can include in their exceptional event demonstration submittals and identifies mechanisms that air agencies can use to resolve disagreements regarding exceptional event non-concurrence on submittal packages. We have had extensive stakeholder involvement during the development of this guidance, so we trust that the final product will address some of your specific concerns.

Under your direction, would EPA seek to improve the pesticide consultation process with the Services (Fish and Wildlife and National Marine Fisheries) mandated under section 7 of the Endangered Species Act? In order to improve this process, how would you guide the agency to ensure actions are taken to be consistent with the statutory mandate to use the best available information in regulatory decisions regarding pesticide reviews and registrations?

Response: I am committed to working with the U.S. Fish & Wildlife Service and the National Marine Fisheries Service to ensure that the agency fulfills its responsibilities to protect endangered species, including in the decisions made under FIFRA. To achieve this result, I commit that, if confirmed, I will emphasize the importance of using the best available scientific information in decision-making, and conducting regulatory activities in a transparent manner that provides ample opportunities for public participation.

What are the costs (in dollars and time) to EPA headquarters and regional offices related to the implementation and enforcement of the Pesticide General Permit (PGP) under the National Pollutant Discharge Elimination System (NPDES)? In a time of limited resources, how would you seek to manage these requirements while being judicious with available resources?

Response: If I'm confirmed, I'll ensure that the Agency take the least burdensome approach that is consistent with recent court decisions on this topic. If I'm confirmed, I will also work with you, the States and the Agricultural community on this important issue.

What do you see as the appropriate balance between a science-based risk assessment and precaution in making decisions about pesticide approvals under FIFRA? Explain how you would defend EPA's support and implementation of risk assessments against international regulatory authorities who favor a hazard-only based precautionary principle (e.g. the European Union)? What are your views on how best to consider impacts to international trade when make regulatory decisions?

Response: I am committed to protecting the environment as mandated by Congress. FIFRA requires the agency to balance the risks and benefits of pesticides based on the best science available. If I am confirmed I will continue to support stakeholder involvement in strong science-based risk assessments and an open and transparent process. I will continue to collaborate with our global regulatory partners, such as the OECD and the European Food Safety Authority. I look forward to sharing the results of our assessments with our international partners.

Will you support an EPA response to argue against the European Union's prohibition on 350. neonicotinoid insecticides?

Response: I am committed to protecting the environment as mandated by Congress. FIFRA requires the agency to balance the risks and benefits of pesticides based on the best science available. If I am confirmed I will continue to support stakeholder involvement in strong science-based risk assessments and an open and transparent process. I will continue to collaborate with our global regulatory partners, such as the OECD and the European Food Safety Authority. I look forward to sharing the results of our assessments with our international partners.

The government spends millions of dollars on water monitoring that is not used by the EPA Office of Pesticide Programs during the risk assessment process for the registration of pesticides. In general, EPA not using this real-world monitoring data leads to the Agency relying on modeling that over-estimates the potential human exposure to pesticides from drinking water. Being protective is good, but being over-precautionary can have the unintended consequence of eliminating safe uses of pesticide thus driving up the cost of production and limiting the pest control options for farmers and other users. What would you do to ensure that EPA risk assessments as accurate as possible and based on the best available information, while balancing the protection of human health with the needs of agriculture and food/fiber production?

Response: I am committed to applying the best available science – using both monitoring and modeling, as appropriate – to protect human health and the environment.

Does it make sense to regulate pesticides in water runoff as a Clean Water Act program when FIFRA is the congressional statement on the extent of pesticide regulations? Why not consider that pesticides, used in compliance with FIFRA, are not pollutants under the CWA?

Response: I am not familiar enough with the issues you have raised in these questions to provide a detailed response. If confirmed, the Agency and I will work with you and other members of the Committee on this important issue.

Will EPA commit to aligning its FOIA redaction practices with DOJ guidelines?

Response: I agree with you and with Acting Administrator Perciasepe that EPA must strive towards excellence with respect to our transparency policies. If I'm confirmed, I commit to working with you, and others to ensure that our policies are strong, and consistent with the law and appropriate guidelines.

What assurances can you give us that your agency will not continue to stand in the way of the new energy related jobs and the creation of more domestic energy here at home?

Response: I agree with President Obama that we need an all of the above energy strategy to utilize our domestic energy sources to achieve energy independence in a manner that protects our resources, our health and our environment.

What is the communication between stationary and mobile source emissions staff? How do you reconcile requirements to produce new fuels (such as the proposed Tier 3 gasoline sulfur reduction) with requirements to reduce emissions at refineries? Are these contradictory or do you believe that both can be done? For example, don't gasoline sulfur reduction processes increase refinery greenhouse gases, Nitrogen Oxides and Particulate Matter emissions?

Stationary and mobile source emissions staff coordinate closely with regard to interactions between regulatory actions in their respective spheres. For example, the proposed Tier 3 standards will play a critical role in state and local agencies' plans for attaining and maintaining the ozone NAAQS. Joint stationary and mobile source modeling indicates that, in the absence of additional controls such as the Tier 3 standards, many areas would continue to have air pollution levels that exceed the existing health-based National Ambient Air Quality Standard (NAAQS) in the future. The proposed Tier 3 rule includes a detailed consideration of potential impacts on refinery emissions. For example, the relatively small projected increase from CO2 emissions from refineries is expected to be offset through reductions in other greenhouse gas emissions from improved operation of vehicle catalysts as a result of the proposed Tier 3 rule.

President Obama stated that if Congress doesn't adopt climate change legislation he finds acceptable then executive actions will be taken to address climate change. What regulatory options are under

consideration by EPA to fulfill this promise, given that the President identified actions that would be taken "now"?

EPA currently is focused on reviewing more than 2 million comments received on its proposed carbon pollution standards for new power plants. In addition, the model year 2014-2018 heavy-duty GHG and fuel efficiency final rulemaking discussed a potential future phase of standards for model years beyond 2018. The agency has begun some initial discussions with stakeholders regarding a potential second phase of greenhouse gas standards for heavy duty vehicles that would extend beyond the current model year 2014-2018 standards as contemplated in the initial rulemaking. Further, EPA also oversees a number of non-regulatory programs, such as ENERGY STAR and others, which have resulted in the achievement of substantial GHG reductions.

A cursory look at the some of the largest rules that you have issued or proposed in your tenure at EPA suggests that your office has imposed between $300 to $400 billion dollars per year in higher costs on American businesses and consumers. Could you provide this Committee with an estimate of the total annual costs of all the rules you have proposed and finalized since becoming Assistant Administrator for Air and Radiation? How do you think these costs impact the ability of American firms to compete internationally? How do you think these costs impact the price of goods for people who are struggling to get by?

The Office of Management and Budget (OMB) issues a Report to Congress each year which compiles estimates of the benefits and costs of federal regulation.[xiii] For each year since 2009, these OMB Reports to Congress indicate the quantified benefits of air rules issued in that year significantly exceeded the costs of those rules. In addition, in a March 2011 report that studied the 1990 Clean Air Act amendments and the effects of associated programs on the economy, public health and the environment between 1990 and 2020, EPA estimated that the benefits of these clean air programs will reach approximately $2 trillion in 2020. By comparison, the cost of these actions was estimated to total $85 billion, resulting in a benefit to cost ratio of approximately 30 to one. An important implication of these findings is that prices of some goods and services may be affected by investments to reduce pollution, but the value to all Americans of cleaner air vastly exceeds those costs. These benefits include reductions in the number of work days lost to air pollution-related health effects, and the resulting improvements in the productivity of American workers enhance the global competitiveness of American workers and the firms that employ them. Cleaner air also reduces medical costs incurred for air pollution-related health effects, resulting in direct savings to American households. In fact, the March 2011 report included economy-wide modeling which demonstrated that just these two beneficial effects alone more than offset the economy-wide effects of all compliance expenditures, with the result that economic growth rates were faster –and the economic welfare of American households was higher—throughout the study period with these clean air programs than without them

[xiii] Latest draft report: http://www.whitehouse.gov/sites/default/files/omb/inforeg/2013_c_b/draft_2013_cost_benefit_report.pdf

How many of EPA's significant rules in the last four years have had to be reconsidered and revised after promulgation of the final rule?

Response: I am aware of some instances in the last four years in which EPA has reconsidered and revised a Clean Air Act rule after promulgation of the final rule. For example, in March of this year EPA finalized updates to certain emission limits for new power plants under the Mercury and Air Toxics Standards (MATS) after reconsideration of the final MATS rulemaking that was signed in December 2011. However, I am not aware of every instance in which EPA has taken such an action. If confirmed, I can examine this issue more thoroughly.

The office of the Scientific Advisory Board (SAB) is located inside the Administrator's office and my understanding is that the Administrator actually oversees and approves the selection of SAB and CASAC officials. Is this correct? Do you see an inherent conflict of interest in having EPA select and approve its own peer review committees? Isn't it possible that the selection is likely to reflect people who have general views that are congenial to the way EPA approaches the science? Wouldn't it be better to have officials outside EPA select peer review panels for significant rules, such as NAAQS?

Congress in the Environmental Research and Development Demonstration Authorization Act required that the Administrator establish the Board. As a federal advisory committee, the SAB is subject to the requirements set out in the Federal Advisory Committee Act (FACA), 5 USC App. 2. FACA requires that, consistent with the management of all committees subject to FACA, EPA must make "appropriate provisions to assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment."5 USC App. 2 § 5(b)(3). The General Services Administration Federal Advisory Committee Management Rule, which governs federal advisory committees government-wide, requires the head of an agency that establishes one or more federal advisory committees to develop procedures to assure that advisory committees are not inappropriately influenced. 41 CFR § 1-2-3.105(g). The EPA's procedures are set out in its Federal Advisory Committee Handbook.

If confirmed, do you plan on continuing with EPA's Design for the Environment Safer Product Labeling Program? In what ways do you believe this has been a valuable program for the manufacturing community?

The DfE process for certification under the Safer Product Labeling Program is often criticized by many as costly, cumbersome and extremely slow. What would you do as EPA Administrator to make the process more efficient and cost-effective?

The DfE Safer Product Labeling Program requires review and approval of a product's composition by a third party. It is my understanding that DfE contracts with two companies to conduct these reviews. Is there a process to re-qualify these organizations? Doesn't the current format of exclusive reviews

by just two companies unfairly exclude other prospective reviewers? What, if anything, would you do to address this apparent monopoly that has been created by the EPA?

Last year, EPA's DfE program published a list of "safer chemicals" on its website as part of its Safer Product Labeling Program. What types of review has the Agency undertaken to classify these chemicals as "safer"? What criteria are used in these reviews? Is there opportunity for public review and comment on the list prior to its publication? Are chemicals not listed as "safer" unsafe for use as intended?

What challenges is the DfE Safer Product Labeling Program facing?

Response to all DfE questions: I strongly support the EPA's efforts to encourage the design and use of safer chemicals and this includes the Design for the Environment (DfE) program, a voluntary partnership program designed to help consumers and purchasers find safer products. If confirmed, I will be happy to work with you and committee on this program.

GHG

How do U.S. greenhouse gas emissions compare to other countries on an apples-to-apples basis, such as the ratio of emissions to GDP? What is an acceptable amount of greenhouse gas emissions annually for the United States?

> The U.S. and other countries report total greenhouse gas emissions annually the United Nations Framework Convention on Climate Change using common methodologies [xiv]. In Copenhagen in 2009, the U.S. committed to reducing U.S. greenhouse gas emissions in the range of 17 percent by 2020 from 2005 levels.

You previously co-authored a paper which stated that "the location of CO2 emission reductions is irrelevant in reducing global emissions of this pollutant". Do you still agree with this assessment? If so, where do you think the most cost-effective emission reductions can be made in the world?

> CO_2 and other greenhouse gases, once emitted, can remain in the atmosphere for decades to centuries, meaning that their concentrations become well-mixed throughout the global atmosphere regardless of emissions origin, and their effects on climate are long lasting. This means that the impact of GHG emissions reductions on GHG concentrations is not dependent on the location of the emissions reductions. Cost-effective emissions reductions opportunities exist throughout the world. For example, the EPA report Global Mitigation of Non-CO_2 Greenhouse Gases (EPA 430-R-06-005, 2006) finds that major emitting regions of the world, including China, the United States, the EU, India, and Brazil offer large potential mitigation opportunities from the energy, waste, and agriculture sectors. Energy efficiency improvements, for example in

[xiv] U.S. Greenhouse Gas Emissions and Sinks Inventory
http://www.epa.gov/climatechange/ghgemissions/usinventoryreport. html

buildings and the transportation sector, also have the potential to yield substantial cost-effective emission reductions in major emitting countries.

The two states where you worked and developed environmental regulations for the electric power sector have the most expensive power in the Nation. I understand that during your tenure in these states that you pursued the adoption of the first ever plant-by-plant CO2 limits and the first ever CO2 cap-and-trade program. Do you think these policies contributed to the very high cost of power in these States? Can you please outline the specific environmental and health benefits realized in these States that have resulted solely from reducing CO2 emissions as a result of these programs? As EPA Administrator do you intend to pursue similar programs on a national scale?

Although I am proud of the work that I did on climate policies at the state level, I have now been with EPA for nearly four years and at this point am best positioned to discuss my work at the federal level. With regard to the power sector, last year EPA proposed carbon pollution standards for new power plants. The Agency currently is working to review the nearly 2 million comments received on that proposal.

After addressing greenhouse gas emissions in the motor vehicle and utility sector, do you have a plan for addressing GHG emissions in the rest of the economy? You have said EPA plans to focus on the biggest emitters first. Have you prioritized which industries you intend to address after motor vehicles and the power sector?

The agency is currently focused on reviewing the more than 2 million comments received on its proposed carbon standards for new power plants. Although EPA is evaluating GHG emissions information from a limited number of source categories, the agency has not determined that it is appropriate to regulate GHG emissions from other industrial sectors with the exception of the Agency previous acknowledgment that it is appropriate to issue regulations for refinery greenhouse gas emissions. But as stated in the answer to a related question, the agency has no current plan for issuing refinery greenhouse gas regulations. The agency has also previously said that it had insufficient data to regulate Portland cement facilities, and it does not have a timetable or plan for issuing GHG regulations of this sector.

EPA has been petitioned to regulate GHG emissions from animal feeding operations. Can you assure us that EPA won't regulate GHG emissions from any agricultural facilities during the second term?

Currently EPA has no plans with respect to regulating greenhouse gas emissions from animal feeding operations or any other agricultural facility.

EPA has been petitioned to regulate GHG emissions from coal mines. What are your plans with respect to such a petition?

On April 5, EPA informed the US District Court for the District of Columbia that it would be acting on a petition to regulate greenhouse gases from coal mines and in that motion, EPA stated that it plans to deny the Plaintiffs' petition for rulemaking.

EPA has been petitioned to establish National Ambient Air Quality Standards (NAAQS) for GHGs. What are your plans with respect to such a petition? Can you assure us EPA will not establish a NAAQS for GHGs?

Although EPA has not taken any final action on the petition, I do not believe that setting a national ambient air quality standard for greenhouse gases would be advisable.

Has EPA done any analysis of the value of diverse energy sources as a basis for energy independence?

Response: Not to my knowledge, though it is clear that the United States is fortunate to have a broad range of domestic energy sources, which includes – among others - coal, oil, natural gas, wind, solar, biofuels and nuclear.

Why hasn't EPA studied the cumulative impact of all its recent rulemakings which are causing the retirement of coal fired energy sources?

EPA has been monitoring the changes taking place in the electric utility industry, including the significant decline in natural gas prices, rising coal prices, and reduced demand for electricity. This, when combined with the fact that a majority of coal plants have been in service 40 years or longer and many of these older plants are significantly less efficient (resulting in lower utilization rates), has led to electric utility owners making decisions to retire some of these plants. Many analysts believe that these market changes in gas prices and other factors have the largest impact on retirements in this sector.

The modeling approaches EPA uses can take into account both these market shifts and recent rulemakings. For example, when EPA modeled our mercury and air toxics rule using our integrated planning model, those requirements were added on top of the existing air rules (CSAPR) which are already coded into the model. These models capture the investment decisions of plant owners (including retirement decisions) as they look at all of the investments they will have to make over the modeled timeline. The result is that the model captures the combined impact of all of these requirements on both electricity prices and electricity generating capacity.

EPA's own data in relation to various carbon reduction plans continuously indicates reducing GHG emissions domestically will have no impact on worldwide emissions. In fact, US emissions are now below 2005 levels and have been flat or declining for nearly 12 years now. This has all occurred without cap-and-trade and, until the last few years, any other GHG regulations. In light of these facts, why do you feel the Agency still needs to move forward with its GHG regulations under the Clean Air Act?

The Supreme Court in *Massachusetts v. EPA*, 549 U.S. 497 (2007), held that greenhouse gases "fit well within the CAA's [Clean Air Act's] capacious definition of air pollutant." As a result of this decision, EPA has certain legal obligations to address greenhouse gases under the Act. Further, although U.S. greenhouse gas emissions currently are below 2005 levels, the science indicates that the U.S. and other major emitting countries must achieve much more substantial reductions in emissions to mitigate harmful climate change. As I stated in my testimony, I strongly believe that we can and must take common sense steps – such as the light- and heavy-duty vehicle emission standards issued under this Administration – that can reduce emissions while maintaining economic growth and prosperity.

In addressing the need for unilateral, domestic GHG reductions, regardless of what the rest of the world does, the Administration has historically said that we need to be "leaders" in this arena to encourage other nations to follow. The U.S. has had some sort of GHG regulation in place since 2007, ranging from the GHG requirements in the RFS, to EPA's GHG regulations for stationary sources under the Clean Air Act, to two stages of CAFÉ and GHG tailpipe standards. How has leading through such actions to control GHGs caused China, India or other developing countries to "follow our lead" in reducing GHG emissions?

My understanding is that a number of major developing countries have taken significant actions to reduce greenhouse gas emissions in recent years. Although I don't have sufficient information to respond to your question as to the relationship between those actions and specific actions taken by the United States, I believe U.S. leadership in reducing carbon pollution does help to encourage greater action from other countries and enhances U.S. leverage in international climate discussions.

The EPA's greenhouse gas regulations, along with a host of other onerous regulations, are unnecessarily driving out conventional fuels as part of America's energy mix. The consequences are higher energy prices for families and a contraction of our nation's economic growth for no noticeable impact on the earth's temperature as major developing countries like India and China repeatedly have said they would not cut economic growth to curb GHG emissions. Do you agree with former EPA administrator Lisa Jackson that unilateral actions on greenhouse gas emissions will not significantly impact global emissions and thus have a negligible effect on climate change?

In order to achieve the reductions in greenhouse gas emissions that science indicates are necessary to address the most severe impacts of climate change, all major emitting countries will need to take action. As I indicated in my testimony before the Committee, I believe the United States can achieve meaningful reductions in greenhouse gas emissions through common sense steps, such as the light duty vehicle emission and fuel economy standards established by this Administration, that are fully consistent with domestic economic growth. I also believe U.S. leadership in reducing carbon pollution helps to encourage greater action from other countries and enhances U.S. leverage in international climate discussions.

Under EPA's Mandatory Reporting Rule for GHG Emissions, EPA has developed a timeframe for categories of GHG emitters to report GHG emissions data. Some companies are currently working on submitting 2012 GHG emission data to EPA and others are on a deferred schedule. EPA issued a memorandum dated December 17, 2012 (attached) which concluded that because some of the data required to be reported may already be in the public arena and therefore EPA would not accord it Confidential Business Information (CBI) protection. As you might expect, some view this conclusion as premature, and one that should be made at on a case by case basis during the data collection period. In particular, certain industries for which GHG data reporting is currently deferred are very concerned that sensitive business information and trade secrets will not be adequately protected by EPA once their data must be reported. Do you agree that certain sensitive information and trade secrets reported under the greenhouse gas reporting rule should be treated as CBI and protected? Will EPA reconsider the approach announced in its December 17, 2012 memorandum? How does EPA intend to use all of the GHG data being collected under the rule?

Data submitted under the GHG Reporting Program (GHGRP) that has been determined to be confidential business information should be protected under the provisions of 40 CFR part 2, Subpart B. In response to comments raised by stakeholders, EPA deferred reporting of certain

data elements for 3-5 years in order to provide time for the agency to evaluate confidentiality concerns (76 FR 53057, August 2011). When EPA deferred reporting for those data elements, the agency said it would conduct a sensitivity analysis of the data and the 2012 memo sets forth the results of our analysis for the data elements deferred until 2013. EPA has not received any specific stakeholder feedback or additional information that would warrant reconsideration of that analysis. EPA plans to propose a rulemaking for notice and comment related to the inputs whose reporting deadline was deferred until 2015. The GHGRP was mandated by Congress in the FY2008 Consolidated Appropriations Act and the data will inform policy decisions.

Health Benefits

What health benefits are projected to occur as a result of an existing source NSPS - that is, benefits other than the co-control of criteria pollutants or NESHAPS?

At this time, EPA is working to finalize the proposed NSPS for new power plants. The agency is not currently developing any existing source GHG regulations for power plants. As a result, we have performed no analysis that would identify specific health benefits from establishing an existing source program.

Why does EPA claim that its green house gas regulations will have health benefits at levels far below the current PM NAAQS, yet has only set the new PM NAAQS at much higher level? Shouldn't EPA be consistent in justifying regulations on the basis of PM health benefits and where its best scientific judgment sets the health protective PM NAAQS?

EPA's approach to estimating the benefits of reducing fine particulate matter pollution is consistent with the best available science and advice from two Congressionally-created independent review boards, the Clean Air Scientific Advisory Committee and the Advisory Council on Clean Air Compliance Analysis. There are health benefits attributable to reducing particulate matter pollution below the NAAQS and the agency does take those benefits into account. There is no scientific basis for ignoring those benefits. While the NAAQS is set at a level adequate to provide protection of public health – and should be neither more nor less stringent than necessary to do so – it is not set at a zero risk level.

Has EPA done any studies on the health impacts of job losses?

Response: I'm concerned about any American involuntarily displaced from a job, for whatever reason, and the impacts that can have on a family. However, I also understand that the peer-reviewed literature shows the effect of environmental regulation on jobs is far smaller than the exaggerated claims we often hear. The most convincing research out there shows that air pollution is a real threat to Americans' health and that claims of "job killing" regulations aren't supported by the evidence.

EPA performs detailed regulatory impact analyses (RIA) for each major rule it issues, including cost-benefit analysis, various types of economic impacts analysis, and analysis of any significant small business impacts. Since 2009 EPA has focused increased attention on consideration and (where data and methods permit) assessment of potential employment effects as part of the routine RIAs conducted for each major rule.

How many human health impacts are avoided if the proposed CWA 316(b) standards are promulgated?

Response: It is my understanding that Section 316(b) of the Clean Water Act requirements primarily relate to aquatic life; however, if confirmed, I will work to ensure that this and all Agency rules meet the appropriate scientific and legal standards with regard to all types of benefits.

In 1997, EPA changed the way that it conducts Regulatory Impact Analyses (RIA) to justify the costs of many of its regulations. Specifically, EPA now regularly addresses the criteria pollutant, PM2.5, which is already regulated under its own National Ambient Air Quality Standard (NAAQS), in the benefit cost analysis (BCA) for other pollutant regulations, particularly air toxics. Where the Agency finds that PM2.5 emissions reductions show benefits that are the same or greater than that for the pollutant being regulated (a "co-benefit"), the agency has based the rule at least in part on that result. EPA's Mercury and Air Toxics rule for power plants is an example of this approach, which presents at a minimum some practical and scientific questions of validity. Depending on the degree to which EPA relies on co-benefits, EPA could be over-regulating the pollutant(s) that is the focus of an RIA. Since PM2.5 is regulated separately from other pollutants, doesn't this approach really mean that EPA is "double counting" these PM2.5 reductions across other regulations? As Administrator, what steps would you take to ensure that the co-benefits of regulation do not become a regular basis for the calculated benefit of any particular regulatory proposal?

The purpose of the Mercury and Air Toxics Standards is to reduce mercury and other air toxics, following the approach set out in the Clean Air Act. While the EPA does not set out to regulate PM in toxics rules such as MATS, such rule achieve these PM reductions as an additional benefit at no additional cost. EPA accounts for the PM benefits in our cost-benefits analysis, because they are real, they are significant, and best practices for economic analysis require that the agency consider all benefits. The PM2.5 benefits the EPA estimates for new rules such as CSAPR and MATS are not "double-counting." Those benefits are above and beyond those the agency previously estimated for other rules establishing controls on pollution that are already "on the books," and are appropriate to include in the benefit-cost analysis for a regulation, regardless of whether those PM2.5 benefits are the direct target of a regulation or a co-benefit.

EPA rationalizes many of the very costly regulations it has proposed by citing theoretical PM related health benefit estimates that are based on data collected over 30 years ago. In fact, the key Harvard Six Cities and American Cancer Society data are based on surveys that are over 30 years old. Are you aware that in 2004 the NAS recommended that EPA not rely on these benefit studies because the individual data have not been updated? Why does the EPA continue to rely on studies that the NAS has stated should have "little use for decision making?" Is EPA misleading the public in citing these implausibly high benefit estimates when the NAS has clearly told the Agency not to rely on these

studies? Is EPA's claim of achieving benefits equivalent to curing cancer based on these same flawed studies that rely on outdated information? Will you promise not to rely on studies using the American Cancer Society or Harvard Six City databases until the data are updated as recommended by the National Academy of Sciences?

The quotation in your question is taken out of context. The NAS commented that the EPA should not rely on the Harvard Six Cities cohort and American Cancer Society cohort alone to the exclusion of a "new generation of cohort studies." In formulating the decisions on the PM NAAQS, the EPA considered all of the available scientific evidence, including studies of new cohorts. In addition, two separate panels of EPA's independent Science Advisory Board (SAB) recently recommended that the EPA use these two cohorts to quantify PM2.5-related mortality risks and benefits (i.e., CASAC (2009, 2010) and Council (2010)). Despite some inherent limitations, these cohorts continue to have several advantages over other currently available cohorts, including age and gender representativeness, geographic representativeness, study size, consideration of confounders, and length of follow-up. EPA's approach is consistent with the advice from NAS and SAB.

On one of his first days in office, the President signed a memorandum entitled "Transparency and Open Government" in which he committed to create "an unprecedented level" of openness and transparency. The President correctly stated "transparency promotes accountability". Given the President's commitment, will you promise today to release to the American public all of the underlying research data supporting the PM and ozone benefit studies that your office has used to support such costly regulations? Given the hundreds of billions of dollars in real costs that EPA estimates will result from these regulations, doesn't the public have a right to have the data in order to assess its validity?

EPA is committed to transparency with regard to the scientific bases of agency decision making. In setting the National Ambient Air Quality Standards (NAAQS) and in assessing health benefits anticipated from air pollution regulations, EPA relies on the scientific studies that are published in the peer-reviewed literature. EPA provides the information used in regulatory decisions, including the epidemiological studies, in the publicly available docket accompanying each rulemaking. It is important to understand that the underlying data you are requesting for each epidemiological study consist of three distinct datasets, which the researchers link together in order to estimate the relative risks of exposure to air pollution: (1) air quality data; (2) health event data, which in these studies are data from the National Death Index; and (3) individual health data that are gathered through questionnaires completed for each study participant in the cohort. The questionnaires for these studies requested very detailed personal information, including questions on residential location, age, race, educational attainment, body mass index, alcohol consumption, smoking history, occupational exposure to pollution, and medical history. The complete, linked set of data underlying these studies is held by the scientific researchers that conducted the relevant research, not EPA. The availability of some of these datasets is subject to certain protections against disclosure of medical or similar information that could be used to identify a particular person in a research study.

Does EPA's benefit estimates for the utility MACT rule, which you estimate will cost up to $10 billion, rely on the same two studies (Pope 2002 and Laden 2006) and the same secret databases (American Cancer Society and Harvard Six City data) that we have requested and EPA has failed to release?

The PM2.5 benefits analysis for the Mercury and Air Toxics Standards relied upon earlier studies of the American Cancer Society cohort (Pope et al., 2002) and the Harvard Six Cities cohort (Laden et al. (2006). EPA currently uses updated studies of these cohorts (Krewski et al. (2009) and Lepeule et al. (2012), respectively.

Did the 2008 proposed ozone reconsideration, which you estimated could cost $90 billion, also rely on the same two studies (Pope 2002 and Laden 2006) and the same two secret data bases (American Cancer Society and Harvard Six City data) to estimate benefits?

The PM2.5 benefits analysis for the 2008 Ozone NAAQS relied upon earlier studies of the American Cancer Society cohort (Pope et al., 2002) and the Harvard Six Cities cohort (Laden et al. (2006). EPA currently uses updated studies of these cohorts (Krewski et al. (2009) and Lepeule et al. (2012), respectively.

Does the just released Tier III rule also rely on the same two studies (Pope 2002 and Laden 2006) and the same two secret data bases (American Cancer Society and Harvard Six City data) to estimate benefits?

The PM2.5 benefits analysis for the Tier 3 proposed rule relied upon earlier studies of the American Cancer Society cohort (Pope et al., 2002) and the Harvard Six Cities cohort (Laden et al. (2006). EPA currently uses updated studies of these cohorts (Krewski et al. (2009) and Lepeule et al. (2012), respectively, and will use these in future EPA analyses such as that supporting the Tier 3 final rule.

Doesn't your reticence to release the data suggest that the Agency is fearful the data will not hold up to public scrutiny and that there really is no support for the hundreds of billions of dollars in costs that you have imposed on the American public?

The studies of the American Cancer Society cohort (Pope et al., 2002) and the Harvard Six Cities cohort (Laden et al. (2006) have been extensively peer-reviewed. Studies of these cohorts were subject to a full external re-analysis by the Health Effects Institute in 2000. The results of this peer-reviewed reanalysis confirmed the findings in the original studies, concluding that "[o]verall, the reanalyses assured the quality of the original data, replicated the original results, and tested those results against alternative risk models and analytic approaches without substantively altering the original findings of an association between indicators of particulate matter air pollution and mortality."

Given that you are relying on 30-year old data for your health benefit estimates, can you realistically argue that your benefit estimates are in any way as certain as your cost estimates that are based on current market prices for equipment and labor?

EPA currently uses updated studies of these cohorts (Krewski et al. (2009) and Lepeule et al. (2012), respectively).

If HHS can code medical records to protect confidentiality and other agencies can code research data, why can't EPA do the same for data that are now over 30 years old?

EPA provided all of the data received from the researchers. These underlying data consist of three distinct datasets, which the researchers link together in order to estimate the relative risks of exposure to air pollution. Due to this linkage, at minimum there are serious questions as to whether it would be possible to fully protect the confidential medical information by coding the data.

What efforts have you taken to investigate the potential of employing these techniques?

Prior to disseminating the death data provided by Harvard University, EPA coordinated with the Centers for Disease Control and Prevention to ensure that the data did not identify the particular establishment or individual supplying the information.

As part of its proposed air emission standards for hydraulically fractured oil and gas wells, EPA declined to directly regulate emissions of methane but instead mandated "green completions" of wells to control volatile organic compound emissions. It appears -- based on your own testimony stating that this rule could end up "reducing up to 290,000 tons of harmful volatile organic compound emissions and a side-benefit of reducing methane emissions equivalent to 33 million metric tons of carbon dioxide" - that EPA's decision to mandate "green completions" was in effect an effort to control methane emissions. Do you agree with this assertion? Is it typical for an EPA rules stated benefit to be vastly dwarfed by a "side-benefit?"

The oil and gas standards to which your question refers regulate emissions of volatile organic compounds (VOCs) from more than 11,000 new hydraulically fractured gas wells each year – achieving a 95 percent reduction in such emissions. These reductions are achieved through the use of a proven process – known as reduced emissions completions or "green completions" – to capture natural gas that currently escapes to the air. This process has the co-benefit of substantially reducing methane emissions, as well as reducing waste of natural gas – yielding substantial cost savings. Although the rule does not target methane emissions, it is appropriate and beneficial to account for this co-benefit in analyzing and describing the rule.

Are you familiar with and confident in the data EPA used to justify the "green completion" mandate?

EPA based all provisions of the Oil and Natural Gas NSPS on the best available data sources and on proven technology that will result in net cost savings to operators through recovery of natural gas otherwise lost during well completions. A variety of data sources informed development of the rule, including data from the U.S. greenhouse gas inventory, Natural Gas STAR program, State programs, and other published studies and materials. In addition, during an extended comment period, several commenters provided supplemental data for the agency's consideration. The agency considered all of this for the final rule.

As you are aware, certain outside groups have filed a lawsuit challenging EPA's decision not to explicitly regulate emissions of methane. Can you commit today that you will vigorously defend your rule against this challenge and not enter into a quick settlement that will require EPA to regulate emissions of methane?

EPA will evaluate the claims but at this time cannot predetermine how the agency will respond.

During your tenure as Assistant Administrator for Air and Radiation, EPA issued new air emission standards for hydraulically fractured oil and gas wells. This rule was challenged by multiple outside groups and EPA indicated earlier this year that it intends to amend and reissue the rule later this year. This February, EPA's Inspector General (IG) issued a report stating that EPA's air emissions data for the oil and gas production sector is lacking and needs to improve. As part of the report, in a memorandum dated November 16, 2012 from you to the EPA IG's office, you agreed with an IG recommendation to develop a cross-office strategy designed to address gaps in the emissions data possessed by EPA on the oil and gas production sector. Do you think it is advisable to delay any new emission rules until this strategy is in place and these data gaps are addressed? Was it a mistake for EPA to propose the air emission rules in light of the data gaps identified in the IG report?

The 2012 oil and natural gas rules were based on the best information available. The final rule achieved significant emission reductions while increasing natural gas supply, providing a common sense answer to a significant environmental concern. EPA continues to refine and improve its knowledge of the oil and gas industry as data and information become available. I can assure you that future policy decisions concerning the oil and natural gas sector will be informed by any new data received.

Former Administrator Lisa Jackson acknowledged that the states "are stepping up and doing a good job" regulating hydraulic fracturing. Do you see a need for the EPA to regulate fracking? Lisa Jackson also answered a question about EPA's ability to keep pace with oversight on day-to-day hydraulic fracturing operations by saying "I don't think we can" and later said EPA is "not nearly large enough to be on the ground the same way" as State regulators. Do you disagree with these comments by Lisa Jackson?

Response: I can't speak to the exact context in which Former Administrator Jackson made these comments; however, I agree with what I perceive to be the sentiment that the State regulators are the primary regulators of fracking activities.

The EPA is currently in the middle of a multi-year, multi-million dollar project examining the relationship between drinking water and hydraulic fracturing at the urging of Congress. At the same time, we understand there have been several petitions to the Agency from groups requesting immediate action on hydraulic fracturing related activities (examples include: TRI Petition in October 2012; TSCA Petition in August 2011; E&P Waste Petition of 2010). Does it make sense for the Agency to wait on the outcome of the national water study before responding to any of these petitions or

developing rulemakings associated with any one of the petitions? If not, what scientific work is being done that would support taking any action at this time? If you are not going to wait before moving forward with regulatory changes, should we continue with the study?

Response: As I understand it, the Agency's study addresses drinking water and the petitions you mention contain questions not limited to the scope of the study. If confirmed, I will take a close look at the interaction between the study and the pending petitions and will ensure that any action taken by the Agency is grounded in science.

Last August, the EPA's Science Advisory Board (SAB) noticed in the Federal Register a call for experts to sit on an ad hoc panel to advise the SAB on the EPA's national hydraulic fracturing and water study. Given the significance of this study into the relationship between drinking water and hydraulic fracturing, shouldn't the panel include experts in the oil and natural gas industry that have direct, current and real world experience in unconventional oil and natural gas development? It has come to my attention that a number of industry experts that were included on the November 2012 list of candidates for the SAB ad hoc panel have been notified that certain financial interests in oil and natural gas companies are considered by EPA to be "disqualifying financial interests" under the Ethics in Government Act of 1978 and related regulations. Isn't there a conflict of interest waiver available for special government employees serving on SAB panels and other committees subject to the Federal Advisory Committee Act? Other federal agencies overseeing regulated industries, including the DOE and FDA have issued waivers to individuals. EPA's own guidance recognizes that a waiver may be warranted when "the participation of the individual is so vital as to waive a conflict of interest." Given that current oil and natural gas experience is important to a study looking at today's drilling and production technologies and EPA has clear authority to waive a conflict of interest based on a disqualifying financial interest, should conflict of interest waivers be used to ensure that current, real world experience in today's unconventional oil and natural gas industry is included on the peer review panel for the EPA study?

Response: From what I understand, members of the panel were chosen because of their scientific expertise and represent a wide variety of expertise areas. If confirmed, I would be happy to discuss this issue with you further.

EPA has repeatedly stated that with regard to its studies associated with hydraulic fracturing, a transparent, research-driven approach with significant stakeholder involvement can address questions about hydraulic fracturing and strengthen the nation's clean energy future. However there are several examples, such as Dimock, PA, Parker County, Texas, and Pavillion, Wyoming where it appears the Agency is more interested in rushed judgments, which turn out to be inaccurate, and placing information in the hands of the media rather than undertaking a sound scientific approach to addressing fundamental questions. Will this continue to be the Agency's response to difficult technical issues under your leadership?

Response: As I have previously stated, I believe that the Agency's actions should be guided by sound science and the law, and if confirmed, I would continue to affirm those principles.

Congress made clear in the Energy Policy Act of 2005 that the states are responsible for regulating hydraulic fracturing within their borders, and that the EPA has a very limited role regulating hydraulic fracturing through the Safe Drinking Water AcT. EPA has constantly pushed to expand its reach beyond what Congress has authorized, and that seems to be what the agency is attempting to do with draft guidance on the use of diesel fuels in hydraulic fracturing issued last year. The guidance offers a vague and unworkable definition of "diesel fuels," which covers more than just diesel fuels, and unnecessarily calls into question the legitimacy of decades-old, state-run regulatory programs that to date have produced zero cases of groundwater contamination as a result of hydraulic fracturing. If you are confirmed, will you withdraw this draft guidance? What are the plans of the Agency with regard to the diesel issue? What is the timing?

Response: As I understand it, EPACT 2005 specifically exempted diesel fuel from the exclusion from the Safe Drinking Water Act. If confirmed, I will work with you on the specifics of the issue of diesel fuel use in fracking.

The president as well as top officials in the Department of the Interior and Department of Energy have emphasized the importance of shale gas development and touted the increase in U.S. oil and natural gas development. The use of hydraulic fracturing and horizontal drilling has been essential to this increased development of oil and natural gas as well as the resurgence of American industry including the manufacturing sector. Before Congress in May 2011 former EPA Administrator Lisa Jackson testified to the absence of any "proven case where the fracking process itself has affected water" and then reiterated in an April 2012 interview that "in no case have we made a definitive determination that the fracking process has caused chemicals to enter groundwater." Do you agree with this position? Are you aware of any definitive determinations that would contradict these statements?

Response: Although I am not familiar with the exact context of her testimony, I am not aware of any definitive determinations that would contradict those statements.

In December 2011, EPA released a draft report entitled "Investigation of Ground Water Contamination near Pavillion, Wyoming." This report concluded that fracking fluid was present in groundwater at Pavillion and set off newspaper headlines suggesting that EPA had a documented case of groundwater contamination from shale gas development activities. In January 2013, over a year later, EPA announced it was delaying the release of findings in the Pavillion matter by 8 more months to evaluate new data. Do you believe that EPA's Pavillion draft report met the standards of quality assurance and scientific rigor that you will expect as EPA Administrator?

Response: I have not had the opportunity to review or be briefed on that particular draft report, so I can't speak to its quality; however, if confirmed, I will hold the Agency to the highest scientific standards.

Will you commit that EPA's final report on Pavillion will be undertaken in accordance with EPA standards on quality assurance and with appropriate opportunities for peer review?

Response: If confirmed, I commit to ensuring that Agency standards for quality assurance and peer review are followed.

Do you believe that EPA should refrain from issuing conclusions such as those reached in the Pavillion case before having all of the relevant data confirmed and subjected to Agency-standard quality controls and peer reviews? As Administrator will you encourage EPA officials to refrain from making public conclusions or accusations such as these prior to confirming that the conclusions reached are supported by scientific evidence?

In December 2010, EPA's Region 6 issued an emergency order under the Safe Drinking Water Act alleging that gas wells operated by Range Resources in Parker County, Texas were leaking methane into local residences. Once again, this led to headlines indicating that EPA had linked shale gas development to groundwater contamination. In April 2012, this case was dropped. As Administrator will you encourage EPA officials to refrain from making public accusations such as these prior to confirming that the conclusions reached are supported by scientific evidence?

In 2011, EPA investigated groundwater contamination issues in Dimock, Pennsylvania. While this investigation triggered headlines suggesting that hydraulic fracturing was responsible for water contamination, EPA testing in 2012, indicated that there was no risk to human health from the drinking water and that no significant levels of fracture fluid had been found. Based on the discontinued or discredited investigations in Pavillion, Wyoming, Parker County, Texas, and Dimock, Pennsylvania, do you think that EPA has a credibility problem with its actions relating to hydraulic fracturing? What steps will you take as Administrator to address this before the release of any further reports on hydraulic fracturing?

Response (to the three questions above): If confirmed, I will work to ensure that EPA work is guided by the requirements of the law, the best available science and information, principles of scientific integrity, transparency, and continued stakeholder engagement.

With EPA's record on Pavillion, Dimock, and Parker County, how can the public be confident the largely agency water study will be conducted based upon sound science?

Response: I believe that sound science is crucial for the Agency's work. If confirmed I commit to ensuring that the study integrates sound science.

How will information received at various stakeholder meetings be used with the study?

Response: If confirmed, I will support a transparent research-driven approach, with significant stakeholder involvement to address questions about hydraulic fracturing while strengthening our nation's clean energy future.

When will testing of the prospective sites begin? Can you tell us where these sites are located?

Response: If confirmed, I commit to look into this issue.

What involvement have State officials, and organizations such as the Ground Water Protection Council, have with the study?

Response: The vast majority of my career has been at the State and local level. I know that in order to make environmental progress, we need to have partnerships with the States. If confirmed, I will ensure that States and the Federal government work together, collaboratively to solve problems.

Why did EPA decide to test retrospective sites to start the study? As we have seen with Pavillion and other such sites, going back in time it makes it very difficult to have a baseline and to determine if there are any issues. Why did the agency not start with prospective sites, and test the technology in real time?

Response: If confirmed, I commit to look into this issue.

How much has EPA spent on the hydraulic fracturing study to date? How much do you anticipate that it will spend before it is completed in 2014? Can you provide a breakdown of how that money has been allocated by EPA? Have other agencies spent funds on the study as well? If so, how much?

Response: If confirmed, I commit to look into this issue.

What has been the involvement of the White House Hydraulic Fracturing Task Force? Have they been overseeing they study? Have they been briefed on the study? What about other agencies, who else is now involved with the study?

Response: If confirmed, I will review the Agency's involvement with the Task Force.

What is EPA's policy on Instant Messaging (IM)? Has EPA taken steps to preserve IM communications consistent with their obligations under the Federal Records Act? Have IM records been destroyed? Will EPA commit to releasing IM's that are responsive to FOIA and Congressional requests?

Response: As I said during my confirmation hearing, I do not use Instant Messaging. If I'm confirmed, I commit to reviewing the Agency's policies on this topic. Additionally, I commit that if I'm confirmed, I will work with other agency officials to continue ongoing efforts to ensure compliance with the Federal Records Act and the Freedom of Information Act, in addition to being responsive to Congressional requests.

A few years ago, the EPA Inspector General raised serious procedural questions about EPA's compliance with its own peer review guidelines. What has been done to ensure that the EPA peer Review requirements are followed?

Response: Peer review is a critical step to ensuring the integrity of our scientific and technical work products, as well as to ensuring that our decision makers are fully informed. The EPA has a long and substantial history implementing peer review in its programs. I am told that currently, the EPA uses the 3rd Edition of the *Peer Review Handbook* and the 2009 addendum to promote consistency not only across the Agency, but with the Office of Management and Budget's 2004 *Final Information Quality Bulletin for Peer Review*, as well as other relevant policies and guidelines.

Can you give me assurances that EPA will follow all requirements for having independent peer review of significant technical assessments?

Response: Yes. The EPA continues to evaluate its peer review processes to determine whether improvements are needed.

Do you think that publication in peer reviewed journals is the same thing as the independent peer review discussed in the EPA peer review guidelines?

Response: I understand the need for independent peer reviewed science. Without knowing more about the context of the question, it is difficult to comment beyond that; however, I will commit that if I'm confirmed, independent peer review continue to be an important part of the science used by and conducted by the Agency.

Will you commit to send this committee and the House Speaker a detailed report of how EPA has responded to the Inspector General's report, with a list of those convened independent peer review panels?

Response: I am not familiar with that particular report or to which panels you refer, but if confirmed, I will commit to take a look at the Agency's response and work with you to get additional information that you may be seeking.

Can you commit to ensuring that all draft and final assessments released by the IRIS program are consistent with the recommendations of the recent NAS Formaldehyde committee which recommended changes for all IRIS assessments, not just formaldehyde?

Response: I agree that strong science should be the foundation of all the work that the Agency conducts. If I'm confirmed, I will carefully consider the recommendations of the recent NAS Formaldehyde review and will work with career scientists within the Agency to ensure that we have a robust, open and transparent scientific process.

Currently the IRIS program does not consider natural background levels of chemicals in the environment or levels produced by the human body when developing hazard values. Do you support this approach? As Administrator, how will you improve the development of IRIS hazard values to make sure they pass a reality check and don't overestimate existing natural exposures that are not known to be associated with any adverse effects at naturally low exposure levels?

Response: I completely agree that strong science should be the foundation of all the work that the Agency conducts. If I'm confirmed, I will work with the scientists within the Agency, and outside of the Agency, to ensure that all of our work reflects the best possible science.

In a letter to Dr. Kenneth Olden from the Formaldehyde Panel of the American Chemistry Council dated January 4, 2013, stakeholders called for an "open scientific forum" prior to the release of the revised draft assessment, to focus on the epidemiology studies and mode-of-action data concerning the possible causal association between exposure to formaldehyde and leukemia. As you know, the National Academy of Sciences in its highly critical review of the 2010 draft IRIS assessment of formaldehyde cast significant doubt on such a causal association. It is our understanding the Office of Research and Development is resistant to convening such a science forum. We find this position incomprehensible considering the criticism EPA has endured over this particular IRIS assessment. Will you commit to instructing ORD to convene the workshop prior to release of the discussion draft, to publically document the findings and conclusions of the workshop and to incorporate those findings and conclusions in the discussion draft?

Response: I am unaware of the specifics of this issue, but I believe that it is important to share scientific view points. If I am confirmed, I commit to looking into this issue.

A recent analysis presented at the Society of Toxicology meeting showed that 67% of the Hazardous Air Pollutants (HAPs) have no IRIS value. What are the criteria for selecting chemicals for assessment within the IRIS Program? Do you believe that HAPs should be priorities for assessment within the IRIS program? Will you commit to developing a clearly articulated prioritization process for high priority IRIS assessments that benefits from, and is responsive to, engagement from all stakeholders?

Response: I am quite aware of the impacts associated with Hazardous Air Pollutants from the perspective of EPA's office of Air and Radiation, but I am not familiar with the issue you raise with respect to the IRIS assessment. If I'm confirmed, I will look into this issue and ensure that the prioritization of the IRIS program is appropriate.

The scientific integrity of EPA's hallmark Integrated Risk Information System (IRIS) program has been questioned by Congress as well as the National Academies of Science (NAS). While Dr. Ken Olden is working to bring new leadership to the IRIS program, there is much more work that needs to be done. Can you commit to ensuring that all draft and final assessments released by the IRIS program are consistent with the recommendations of the recent NAS Formaldehyde committee which recommended changes for all IRIS assessments, not just formaldehyde? Will you ensure that as part of the improvements in the IRIS program, the Agency will move away from outdated default assumptions and instead always start with an evaluation of the data and use modern knowledge of mode of action -- how chemicals cause toxicity – instead of defaults? Do you agree that all studies should be independently judged based on their quality, strength, and relevance regardless of the author affiliation or funding source? To further improve the IRIS Program, will you commit to revising the way hazard values are presented to the public to ensure that critical science policy assumptions are transparently presented and not comingled with scientific assumptions? Currently the IRIS program does not consider natural background levels of chemicals in the environment or levels produced by the human body when developing hazard values. Do you support this approach? As Administrator, how will you improve the development of IRIS hazard values to make sure they pass a reality check and don't overestimate existing natural exposures that are not known to be associated with any adverse effects at naturally low exposure levels?

Response: I am unaware of the specifics of this issue, but I completely agree that strong science should be the foundation of all the work that the Agency conducts. If I'm confirmed, I will work with the scientists within the Agency, and outside of the Agency, to ensure that all of our work reflects the best possible science.

Currently the IRIS staff are the sole arbiters of whether and to what extent draft IRIS assessments should be revised to reflect input from peer reviewers and the public. EPA's own Scientific Advisory Board has recommended the use of a "monitor" or "editor." Will you commit to using a 3rd party, independent of the IRIS program, to ensure that EPA staff have sufficiently considered and responded to peer reviewer and public input before assessments and other documents are finalized?

Response: If I'm confirmed, I commit to working with scientists such as Dr. Ken Olden and others to ensure that the IRIS program is as efficient, robust, and transparent as possible. It is imperative that sound science be the basis of all decisions that the Agency, as well as the IRIS program, makes.

317. What role will EPA play in the development of the State Department's Final Environmental Impact Statement for the Keystone XL pipeline permit?

318. What role will EPA play in the development of the Administration's National Interest Determination for the Keystone XL pipeline permit?

319. According to a State Department spokeswoman, the agency has been working with the EPA on the latest Draft Supplemental Environmental Impact Statement. What role has EPA played in the Draft SEIS?

320. The State Department is in the midst of an open comment period on the Draft Environmental Impact Statement for the KXL project. What do you think about State's climate estimates in the new Draft Supplemental EIS? Do you think they took a thorough enough look at the GHG emissions?

321. In the draft SEIS, the State Department seems to indicate that Keystone XL is the safest, most environmentally responsible way to deliver the oil that refineries and consumers need to fuel our economy, businesses, homes and maintain our quality of life. What are your thoughts on that?

322. The DSEIS noted that Keystone XL would result in "no substantive change in global GHG emissions" and it is "unlikely to have a substantial impact on the rate of development in the oil sands, or on the amount of heavy crude oil refined in the Gulf Coast area." Based on your agencies review of the Draft SEIS and your office's work in helping the State Department develop the latest Draft SEIS, would you comment on those statements?

Response (to Keystone XL questions): The State Department has long held the permitting authority for energy projects crossing international boundaries, including the Keystone XL pipeline project, and for gathering all facts necessary to make such permitting decisions. Accordingly, the State Department has overseen a process that provides for input by several federal departments, interested stakeholders, and members of the public. The State Department's publication of the Draft Supplemental Environmental Impact Statement marks an important step in that process. The public and all interested stakeholders will now have an opportunity to comment on the Draft Supplemental EIS. Any comments on the DSEIS should therefore be directed to the State Department. I understand that EPA has reviewed the DSEIS

and made appropriate comments. Ultimately, the decision on TransCanada's permit will be based upon a "national interest" determination, taking all relevant factors into account.

LCFS:

Several bills have been introduced in the U.S. Congress to establish a federal low-carbon fuel standard, or "LCFS" – including by then-Senator Obama in 2007. In fact, LCFS was originally part of the 2009 Waxman-Markey climate bill before being removed at the request of a number of Democrats. However, given that efforts to move LCFS legislation through Congress have failed, some proponents of such a program have raised the question of whether EPA might implement a federal LCFS through regulation. Do you believe that EPA has the statutory authority, under the Clean Air Act to promulgate a federal low-carbon fuel standard? If so, what is the legal basis upon which the EPA has the authority to promulgate an LCFS?

During the previous administration, in the July 11, 2008, Advance Notice of Proposed Rulemaking: Regulating Greenhouse Gas Emissions under the Clean Air Act, EPA solicited comment on whether the agency had the authority under the Clean Air Act to design and implement a new GHG fuel program that is broader in scope than the RFS program. EPA has not addressed this issue further at this time. The agency is not considering nor does it currently have any plans to establish an LCFS under the Clean Air Act.

You may be aware a study was done in 2010 by Charles River Associates, a highly regarded economic forecasting firm, on what the impacts of a national LCFS program would be. The results were fairly impressive – up to 4.5 million American jobs lost, a reduction in U.S. GDP of up to $750 billion, and an increase in gasoline prices of up to 170 percent over a 10-year period. In fact, a number of studies have analyzed what the results of an LCFS would be, either at the state, regional, or national level – and the consensus is that there would be universally negative, severe economic impacts. These studies all used the Energy Information Administration's projections for the availability of some of these low-carbon fuel options, such as cellulosic ethanol and electric vehicles. In light of the conclusions from these studies, will the Agency seek to promulgate a federal LCFS during the current Administration? If so, how does the Agency intent to mitigate the consumer costs associated with an LCFS?

I am not personally aware of the study to which your question refers, and EPA is not considering nor does it have any plans to seek to establish a federal LCFS.

Given the numerous problems now evident with the federal Renewable Fuels Standard, the prospect of simply replacing the RFS with a federal LCFS is starting to be discussed by some in Congress. What is the Agency's position on this possible substitute?

I am not aware of any current legislative proposal to replace the RFS with a federal LCFS, but in any event EPA has no position on any such proposal.

Can you discuss the problems associated with potential "fuel shuffling" that might occur as the result of the imposition of an LCFS? Does the agency have the ability to prevent such compliance approaches?

EPA is not considering nor does it have any plans to seek to establish a federal LCFS, and I am not familiar with the issue to which your question refers.

Lead

According to a recent lawsuit filed by environmental groups, EPA has known for a decade that "general aviation aircraft" are the single largest source of lead emissions. Yet, EPA has made its own judgment not to issue an endangerment finding regarding lead emissions from air plane fuel. Why has EPA decided to not regulate lead emissions from aircraft which it has acknowledged is the largest source of lead emissions?

EPA has not made any decisions on whether to regulate lead emissions from aircraft at this time. EPA is currently conducting the analytical work, including modeling and monitoring, to evaluate whether lead emissions from the use of leaded aviation gasoline (avgas) in piston-engine aircraft cause or contribute to the endangerment of human health or welfare. Any proposed determination with regard to endangerment would be subject to notice and comment, and we estimate the final determination will be in mid-to-late 2015. If a positive endangerment determination were made, as part of any future assessment of control measures, EPA would consider safety, fuel supply, and economic impact issues, including effects on small businesses.

On March 7, EPA responded to questions for the record from a Senate hearing, held last summer, regarding lead-based paint exposures. In the response, EPA cited 8 studies as "relevant" to information to lead-based paint (LBP) and renovations in public and commercial (P&C) buildings. On April 9, EPA responded to another letter on this issue. This time, EPA identified 5 studies as "relevant" to LBP and renovations in P&C buildings. In fact, 3 of the same studies cited in the April 9 letter were also cited in the March 7 letter. One of the studies cited twice plainly states: "There are no data at this time to assess whether environmental exposures monitored in target housing are representative of environmental exposures encountered in public and commercial buildings." (Environmental Field Sampling Study, Volume I Technical Report, (May 1997) at p. 4-5).) Why did EPA cite this study, when it is plainly not relevant to lead-based paint exposures in public and commercial buildings?

In EPA's April 9 letter, one of the new studies that the agency cites is a "Health Hazard and Evaluation Report" out of the University of California at Berkley, from July 2001: http://www.cdc.gov/niosh/hhe/reports/pdfs/1999 -0113-2853.pdf. This study states (at p. 1) that the project took place at 3 "unoccupied" buildings that were scheduled for demolition: two 2-story multifamily residences, and a "daycare center." All three of these buildings would be already covered

under EPA's current lead-based paint program for "target housing." Were any public or commercial buildings assessed in this 2001 Berkley study? If no, then why did EPA cite it as relevant to the issue of lead-based paint exposures and renovation activities in public and commercial buildings?

In fact, in looking through all of the studies cited in both the March 7 and April 9 letters, all of the structures assessed in these studies concern "target housing" or "child occupied facilities," which are regulated under EPA's current residential lead paint rules. In all of these studies, the only non-residential structures considered by EPA that we could identify were: (1) a school built in 1967; and (2) a 1-story office building well over 150 years old. Does EPA think that a major new regulatory program, regulating renovation activities in public and commercial buildings across the U.S., can be supported by the studies on a 1960s-era school, and a 150-year old, 1-story office building? In any of the studies cited by EPA, can the agency point to any structure that is a public and commercial building, where lead-based paint issues and renovation activities were assessed? Would you please describe any non-residential structure that was considered in these studies? Will your staff meet with interested private sector stakeholders, who would be immediately affected by any new lead-paint program, to go over these studies jointly with Committee staff? In the April 9 letter, EPA also refers to a lead "technical studies" webpage: http://www2.epa.gov/lead/technical -studies. Can you show us where, in any of these studies, public and commercial buildings specifically were assessed for possible lead-based paint hazards?

Shouldn't EPA have a public and commercial building "hazard" finding in place first, and then determine if it needs to regulate renovation activities? After all, this is the sequence the agency followed for pre-1978 "target housing." Over seven years lapsed between the residential "hazard" finding, and the eventual residential "renovation" rule. Why isn't EPA pursuing the same process here? What "hazard" may any commercial building renovation regulations be designed to prevent?

The February 13 letter to EPA explained that this commercial building rule will have great consequences for federal buildings – including those right here on Capitol Hill. In EPA's April 9 response, the agency generally identified the agencies and departments it has, or plans to, contact in the federal buildings community. But the agency has not provided the Committee with any substantive, detailed plans for how it is coordinating with agencies and departments like the General Services Administration, the Architect of the Capitol, or the military branches. Please give details on the steps EPA has taken to work with GSA and other federal building managers to carefully study lead-based paint hazards in federal buildings. What outreach plans does EPA have in place to gather substantive information on lead-based paint issues in public and commercial buildings? Does EPA know what the lead paint hazards are in its own buildings?

Has EPA contacted the Architect of the Capitol to get an understanding of any lead paint hazards on Capitol Hill – such as at the House Cannon Building, which is undergoing a major renovation project?

Would EPA be willing to meet with the GSA, Architect of the Capitol, the military branches, and other federal facilities owners – along with EPW Committee staff – to get a better understanding of EPA's plan to coordinate with the federal buildings community on this rule?

We understand that affected real estate and contracting trade groups have offered to meet jointly with EPA, GSA, and other federal building managers on this issue. Does EPA plan to hold such a joint meeting with real estate and contracting trade groups? If yes, when?

Response (to the eight questions above): I support the Agency's goals to reduce childhood lead poisoning during renovation and repair activities, including in public and commercial buildings if they pose a risk. If confirmed, the Agency and I will work with you and other members of the Committee, as well as the range of entities who may be affected by the Agency's efforts on this important issue.

In November 2012, EPA's Region 3 wrote a letter to the Federal Energy Regulatory Commission (FERC) recommending that FERC and DOE expand their NEPA analysis of LNG export facilities to include a study of the indirect and cumulative environmental impacts of exporting LNG. Do FERC and DOE have the sole statutory and regulatory authority to review and approve LNG export applications?

Response: I am not familiar with the details of LNG export applications, but it is my understanding that FERC and DOE are the two Agencies with approval authority for export facility applications.

What is your view of EPA's role in the LNG export application process?

Response: Again, I am not familiar with the details of the LNG export application process; however, it is my understanding that as part of the process under the National Environmental Policy Act, EPA can offer comments to FERC on the scope of the environmental review.

What "indirect" environmental impacts might result from LNG exports?

Response: I am not familiar enough with the process of LNG exports or with any specific proposals to offer concrete thoughts on what might constitute direct or indirect effects of any particular project. If confirmed, I would work with the Agency and with the Administration to make an appropriate determination on what, if any, environmental considerations might be appropriate to consider through the FERC led NEPA process.

<u>NAAQS SO2 (Marine)</u>

The International Maritime Convention (IMO) has amended the International Convention for the Prevention of Pollution from Ships (MARPOL) to require ships operating in Emissions Control Areas (ECA), which include the vast majority of the US coastline, to use only low sulfur fuels. The first stage

of this program, which required use of fuel oil with a sulfur content of 1% or less came into effect this past summer and has led to increased shipping costs. There is evidence that these stringent limits are having a significant financial impact on short seas shipping companies, and, in some cases, higher shipping costs are resulting in higher costs for downstream consumers in the U.S.
For this reason, I am troubled that by August 2015, ship owners operating in these waters will be required to use fuel that contains no more than 0.1% sulfur. I have significant concerns about the impact such a cut would have, not just on short seas shipping companies, but the health and safety of the U.S. economy.

The ECA is one of the most important environmental air programs established in the past decade and will result in the prevention of tens of thousands of premature deaths. EPA and Coast Guard are committed to allowing flexibilities allowed under the applicable IMO requirements that can reduce the costs of compliance with the ECA and incentivize advanced technologies, without compromising the environmental benefits of the ECA. In 2030 the combination of our national standards and ECA controls will prevent between 12,000 and 31,000 premature deaths and 1.4 million work days lost. The benefits of the coordinated strategy in 2030 are estimated to be between $110 and $270 billion, which is up to 90 times the projected costs of $3.1 billion.

MATS:

In March 28, 2013 the Environmental Protection Agency (EPA) published updated emissions standards for power plants under the Mercury and Air Toxics Standards (MATS). The MATS rule imposes sweeping new emissions requirements for power plants, and EPA expects that the MATS rule will entail upwards of $10 billion in compliance costs, making it the most expensive rule in EPA's history. In promulgating the MATS rules, EPA relied heavily on the claim that the rule will benefit public health through decreases in particulate matter pollution (PM). However, regulation of PM is primarily accomplished through National Ambient Air Quality Standards (NAAQS), which are required to be set at levels that provide adequate protection for the public health or welfare. Accordingly, it appears that the agency has set a NAAQS standard for particulate matter at a level insufficiently protective of public health and welfare. Can you share your thoughts on this?

Even after several decades of pollution control laws, until MATS there were no national limits on emissions of mercury and other air toxics from power plants. Power plants emit mercury, other metals, acid gases, and other air toxics – as well as particulate matter – all of which harm people's health. The rule regulates mercury and other air toxics, but the control technologies installed to reduce these air pollutants also yield significant reductions in particulate matter.

What percentage of the health benefits in all EPA's air regulations taken together over the last five years are attributable to collateral reductions in particulate matter arising from these regulations?

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

EPA's website says that mercury "can travel thousands of miles in the atmosphere before it is eventually deposited back to the earth in rainfall or in dry gaseous forms." If this is true, wouldn't rising consumption of coal in countries like China and India (whose regulatory regimes are less stringent than our own) offset any domestic mercury reductions connected to the MATS rule? In fact, if more US manufacturing moves to these countries, which have less stringent emission controls than the US, wouldn't a possible result of MATS be an increase in global mercury emissions?

A substantial portion of the mercury that is deposited in the U.S. comes from U.S. sources, especially near the source. For example, based on EPA's air quality modeling for the Mercury and Air Toxics Standard, U.S. EGUs contributed up to 30 percent of total mercury deposition in some U.S. watersheds in 2005. To reduce atmospheric transport of mercury globally, EPA together with the State Department is participating in United Nations efforts to encourage all countries to reduce their mercury emissions. Those efforts include negotiations toward an international agreement and partnerships for training and information on strategies for reducing mercury emissions.

During consideration of the MATS rule both Commissioners at FERC and outside electricity experts raised concerns about the potential for forced retirement of generating facilities causing costly reliability problems. EPA even admitted that localized reliability problems could result from the rule. Given that the construction and use of generating facilities is time and capital-intensive, at what point do you think that cumulative regulatory burdens on the electricity sector may create reliability problems?

EPA takes electric reliability concerns very seriously. EPA determined that many existing coal plants are already very well controlled for pollution, and other coal plants have the ability to retrofit with widely available pollution control technologies. EPA and DOE analyzed the resource adequacy impacts of the MATS rule prior to its finalization and determined that the rule would not adversely affect resource adequacy in any region of the country. Additionally, since finalizing MATS, EPA has continued to work with FERC, DOE, state regulators, and the regional transmission organizations and other planning authorities to help ensure early planning and prompt action to assess and mitigate any potential reliability issues associated with implementation of EPA rules. Those efforts have confirmed EPA's analysis that utilities and grid planners have significant tools to address reliability challenges within the timeframes set forth in the Clean Air Act. EPA has taken steps to ensure broad availability of an additional year to comply with the MATS rule where needed for technology installation, including in situations implicating reliability considerations. To the extent any localized reliability challenges emerge, there are adequate tools to address them. For example, concurrent with the final MATS rule EPA has identified a clear pathway for up to one additional (fifth) year to come into compliance where needed to address a documented reliability issue.

In March, 2012, a federal court struck down EPA's retroactive revocation of a mining-related CWA Sec. 404 permit, holding unequivocally that EPA has no authority to retroactively veto CWA Sec. 404 permits issued by the U.S. Army Corps of Engineers. EPA has appealed the decision, maintaining that at any time after the issuance of the permit – even where, as here, the permit has been being properly followed for several years and EPA had worked with the permittee and the Army Corps for ten years prior to permit issuance to reach an acceptable alternative – EPA may veto the permit. What do you

think the practical effect on industry would be of having Sec. 404 permits be subject to EPA's veto whenever the agency chooses?

Response: I understand the important concerns raised by your question regarding the use of EPA Clean Water Act authorities and potential effects on the nation's business community. During the pendency of the appeal of the district court's decision, EPA will not exercise its 404(c) authority after a permit is issued. If I am confirmed, I look forward to working with you to assure that the final court decision is implemented consistent with the law and in careful consideration of the issues you raise.

During deliberations on the Clean Water Act in Congress, Senator Muskie note that there are three essential elements to the Clean Water Act -- "uniformity, finality, and enforceability". How do the assertions made by EPA regarding the scope of its authority under Sec. 404 comport with the notion of permit finality?

Response: I appreciate your concerns regarding the importance of providing permittees with a sense of finality when their permits are issued. If confirmed, I will work to implement the CWA to provide the uniformity, finality, and enforceability that are so important in our regulatory programs.

Has EPA considered what effects its actions might have on state SMCRA permitting programs?

Response: It is very important to me that EPA implements its responsibilities in coordination with our federal, state, and local partners, including our partners in state and federal SMCRA permit programs. If confirmed, I will make respectful coordination with our partners an Agency priority.

EPA is on schedule to propose a new ozone NAAQS this December and finalize it in September 2014. We understand that EPA's Clean Air Science Advisory Committee (CASAC) has recommended that the standard be set between 60 and 70 ppb based on recent health studies and has asked EPA to evaluate a standard at 55 ppb. We are concerned about the economic impacts of any change to the standard (EPA has estimated the costs of a 60 ppb standard to be $90 billion/year). Can you identify the language in Section 109 of the Clean Air Act that prohibits EPA from considering costs? Have you seen any of the maps of projected nonattainment areas at 60 ppb? Most of the country would be nonattainment, and the ability of the regulated community to obtain a permit for the construction or expansion of any new manufacturing or power generation facility could be compromised. I understand such impacts are being felt right now from the rules your department issued in December to tighten standards for particulate matter

The U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), that in setting standards that are requisite to protect public health and welfare, as

provided in section 109(b) of the Clean Air Act, EPA may not consider the costs of implementing the standards.

I also understand that while the agency tightened the particulate matter standard, you did not issue any accompanying rules or guidance that would allow for smooth implementation. Can you tell us how and when EPA will prepare implementation rules for particulate matter and ozone to prevent disruptions to the economy, and in particular how EPA will ensure the availability of low-cost offsets to allow new plants and the expansion of existing plants?

The PM2.5 NAAQS were revised in December 2012, and EPA is working to develop guidance and rules to provide for smooth implementation. EPA recently issued guidance on the area designations process. EPA is also developing an implementation rule that we expect to finalize soon after nonattainment areas are designated. Should EPA revise the ozone NAAQS, we would intend to develop an implementation rule for that standard in a similar manner, and finalize that implementation rule around the time that area designations are finalized.

Regarding the new source review (NSR) pre-construction permitting programs, EPA included a transition (or regulatory grandfathering) provision in the final 2012 PM NAAQS rule to help smooth the implementation of new requirements associated with the revised NAAQS under the PSD program. Emission offsets are generally associated with non-attainment NSR, which would apply to any newly designated nonattainment areas upon the effective date of such designations (2015 at the earliest). Most states projected to have areas that may be designated nonattainment for the revised PM NAAQS already have nonattainment NSR programs for PM2.5 (i.e., they currently have areas that are or were previously designated nonattainment for PM2.5), including functioning emission offset programs. Those same programs will apply to any newly designated nonattainment areas. For the limited areas that do not have an existing nonattainment NSR program for PM2.5, the lead time built into the designation process will provide the opportunity for states and sources to plan for projected offset needs.

EPA routinely justifies more stringent air quality standards on the basis of reducing asthma attacks. In fact, EPA credits its rules with avoiding about a million asthma attacks each year. However, while U.S. emissions of criteria pollutants have been cut by about 50% since just 1990, the incidence of asthma attacks has increased. Taken together, these two facts suggest that EPA efforts to further reduce emissions and consequent health benefits will not necessarily be correlated. In fact, the US Government's own CDC cites numerous triggers for asthma attacks that are not related to ambient air quality. Of course, the dramatic improvements to our air quality must be maintained, but each incremental improvement comes at a greater and greater cost. Is it time for EPA to re-think some its valuations of health benefits? Is it time to consider that implementation of the rules, ultimately yield a negative impact on consumers' health and welfare because they make them poorer?

EPA's approach to estimating the health benefits associated with reducing air pollution, including avoided asthma attacks, is based on the best available, peer-reviewed science. Projected health benefits from EPA's recent Clean Air Act rules, including avoided asthma attacks, are substantial and often substantially outweigh projected costs. Newer scientific studies have shown that some pollutants can harm public health and welfare even at lower levels than before.

The U.S. has achieved significant progress in reducing air pollution in the 40 years since the Clean Air Act's passage. According to EPA statistics, total emissions of the six principal air pollutants have dropped by 59 percent since 1970. Current federal regulations will continue this progress by significantly reducing ground level ozone-causing emissions over the next two decades. Emissions from power plants are expected to be cut in half by 2015 and the emissions from cars and trucks are expected to be reduced by 70 percent by 2030. Do you think that Americans are enjoying the benefits of cleaner air, and will continue to enjoy those benefits as the air gets cleaner in the future, regardless whether the existing standards are adjusted?

Despite dramatic progress improving air quality since 1970, air pollution in the United States continues to harm people's health and the environment. Under the Clean Air Act, EPA continues to work with state, local and tribal governments, other federal agencies, and stakeholders to reduce air pollution and the damage that it causes.

Ozone NAAQS

In 2010, EPA proposed to reconsider the existing ozone NAAQS, an effort the Administration ultimately abandoned. The standards your office proposed could have potentially tripled the number of ozone non-attainment counties. In fact, many of America's most pristine national parks would have failed those standards. Do you continue to believe that it make sense to pursue a policy that puts the Grand Canyon and Yellowstone National park in non-attainment? How would developed areas ever comply with such a standard, if wilderness areas cannot?

The Clean Air Act directs EPA to set NAAQS that are requisite to protect public health with an adequate margin of safety and the public welfare from any known or anticipated adverse effects of air pollutants. These standards are based on consideration of the most up- to-date scientific evidence and technical information, advice from CASAC, and public comments. As part of the ongoing review of the ozone NAAQS, EPA will evaluate the extent to which it is appropriate to revise these standards in order to protect against adverse public health and welfare effects.

EPA's own estimates anticipated that the revised ozone NAAQS that your office proposed in 2010 would have cost American manufacturing, agriculture and other sectors over $90 billion per year. President Obama halted that effort, citing "regulatory burdens and regulatory uncertainty, particularly as our economy continues to recover." As EPA is now in the process of again reviewing the ozone NAAQS, do you agree with the President that the Administration should be mindful of the potential regulatory burden that revised standards could have on a recovering U.S. economy?

EPA is prohibited by law from considering costs of implementation in setting NAAQS. Specifically, the U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001) that in setting standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, the EPA may not consider the costs of implementing the standards. However, the Clean Air Act gives state and local officials in nonattainment areas the ability to consider several factors, including employment impacts and costs of controls, when designing their state implementation plans to implement the NAAQS.

EPA's own estimates anticipated that the revised ozone NAAQS that your office proposed in 2010 would have cost American manufacturing, agriculture and other sectors over $90 billion per year. We are driving manufacturing out of the U.S., to other countries with lax environmental standards. In

analyzing these proposed regulations, does EPA consider the effects of driving manufacturing offshore, to countries with little or no environmental controls?

EPA is prohibited by law from considering costs of implementation in setting NAAQS. Specifically, the U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001) that in setting standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, the EPA may not consider the costs of implementing the standards. However, the Clean Air Act gives state and local officials in nonattainment areas the ability to consider several factors, including employment impacts and costs of controls, when designing their state implementation plans to implement the NAAQS.

EPA revised the ozone NAAQS in 2008 by adopting more stringent standards. Designations for that standard were made last May. EPA has said that it plans to adopt a rule on the content of state plans for implementing the revised standards. The Agency has said that it will propose that rule this coming May. What is the schedule for finalizing that rule?

Once the rule proposing requirements for state plans implementing the standards is published in the Federal Register, EPA will accept public comment for at least 60-days. After carefully considering the comments received, EPA will move as quickly as possible to finalize the rule. Achieving the health benefits required by the CAA will require the combined efforts of federal, state, local, and in some cases tribal governments, each accomplishing the tasks for which it is best suited. The agency is mindful that the requirement to implement the ozone NAAQS comes at a time when many states are facing substantial resource challenges. EPA is committed to working in partnership with states and other stakeholders to share the burden of implementing the ozone NAAQS by promulgating a number of national regulations that will provide significant reductions in ozone precursors.

A tightening of the standard from .075ppb will most likely put a significant amount of new areas into non-attainment. Your Agency has even admitted during the reconsideration in 2009 that "a significant portion of the country" cannot meet EPA's proposed ozone requirements. Studies also show that if the standard is set at .060ppb that most of the counties that already have monitors would be in violation, as well as a vast majority of unmonitored areas would be in violation of the lower standard. How does EPA expect to handle the significant amount of new counties being in non-attainment, especially with some being in non-attainment for the first time?

EPA has not yet reached a decision about what revisions to the ozone standards may be appropriate in light of the current scientific evidence so it is premature to conclude that a significant number of new counties would be in non-attainment.

This year marks the end of the five year review period for the ozone national ambient air quality standard (NAAQS), which was last set in 2008. Currently, the 1997 standard is still not fully implemented and EPA has yet to resolve issues concerning the 2008 standard. Given the problems and delays in implementation, do you think EPA will recommend a further reduction in the ozone NAAQS standard? If so, what justification does the Agency have for further reducing the standard? Is it not true that air quality will continue to improve without a new ozone NAAQS?

The ongoing review of the ozone standards is part of the EPA's periodic review of the science and the NAAQS required by the Clean Air Act. Section 109(d) of the Clean Air Act requires EPA to

complete a review of the science upon which the NAAQS are based and the standards themselves every five years. EPA has not yet reached a decision about what revisions to the ozone standards may be appropriate in light of the current scientific evidence.

Given EPA's issues with implementation of the 2008 standard, and that you are still finishing the work to attain the 1997 standard, do you think the Agency's implementation schedule is too aggressive considering so many areas in non-attainment are still struggling to comply with the standard set more than 15 years ago? Is the Agency required by law to reduce the ozone NAAQS following each 5 year review period?

The ongoing review of the ozone standards is part of the EPA's periodic review of the science and the NAAQS required by the Clean Air Act. Section 109(d) of the Clean Air Act requires EPA to complete a review of the science upon which the NAAQS are based and the standards themselves every five years. EPA is not required to reduce the level of the standard in each review; rather, the agency is required to determine what standards are requisite (i.e., neither more nor less stringent than necessary) to protect public health with an adequate margin of safety.

Further reduction of the ozone standard could cost between $20 and $90 billion annually according to government estimates and if the standard were set at .060ppb, the lowest in the range EPA considered during the reconsideration in 2009, a NAM study estimated that more than 7 million jobs could be lost. When CASAC and EPA are looking at proposing a range for a new ozone NAAQS, do you consider the impact on jobs and manufacturing in the areas that could be captured under the new standard?

EPA is prohibited by law from considering costs of implementation in setting NAAQS. Specifically, the U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), that in setting standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, EPA may not consider the costs of implementing the standards. However, the Clean Air Act gives state and local officials in non-attainment areas the ability to consider several factors, including employment impacts and costs of controls, when designing their state implementation plans to implement the NAAQS.

It seems that EPA tends to look at regulations it promulgates in a vacuum and does not consider how a particular regulation affects another. For example, in order for refiners to remove sulfur from gasoline under the new Tier 3 rule, they will be reducing sulfur, but in exchange they will also be increasing their GHGs. Additionally, the lowering of the ozone NAAQS will also result in an energy penalty for refiners, as their RTOs require more natural gas usage. Why does the agency not consider these types of conflicts before moving forward with regulations that conflict with one another?

EPA works to take a comprehensive approach to its regulations, and offices within the agency coordinate closely to ensure that regulations achieve complementary health benefits and pollution reductions whenever possible. For example, the proposed Tier 3 standards will play a critical role in state and local agencies' plans for attaining and maintaining the ozone NAAQS. Additionally, the proposed Tier 3 implementation schedule is aligned with the timeframe for EPA's program for reducing greenhouse gas (GHG) emissions from light-duty vehicles starting in model year 2017. Further, the relatively small projected increase from CO2 emissions from

refineries is expected to be offset through reductions in other greenhouse gas emissions from improved operation of vehicle catalysts as a result of the proposed Tier 3 rule.

In the Clean Air Act, please provide your definition of cooperative federalism. Can you conceive of any circumstances where EPA has disagreed with a State's approach, on policy grounds, and decided that the Agency will not intervene to override the state?

Response: "Cooperative federalism" is generally used to describe the Clean Air Act's approach of assigning tasks to EPA and States that, when taken together, result in cleaner air and important public health protections. For example, EPA sets the National Ambient Air Quality Standards for specific pollutants. EPA works with States to set up monitoring networks and to designate areas as ones that are attaining, not attaining or lack sufficient data with respect to the standards. States submit plans that must meet the requirements of the Act, including the requirement to bring all areas into the state into attainment with the Standards. If EPA determines that the plans do not meet the Act's requirements, or if a State fails to submit relevant plan provisions, the Act generally requires EPA to issue a federal plan for that area or state. EPA also issues rules (such as the recently proposed Tier 3 fuel and vehicle regulations) that assist areas in meeting the air quality standards. I can conceive of circumstances where EPA has disagreed with State's approach on policy grounds but did not intervene to override the state because the state met the relevant legal criteria.

Are there any circumstances where a State implementing the Clean Air Act should, as a policy matter, be insulated from EPA interference?

Partnership between the states and the federal government in reducing air pollution is one of the cornerstone principles of the Clean Air Act. For example, EPA sets the National Ambient Air Quality Standards for specific pollutants. EPA works with States to set up monitoring networks and to designate areas as ones that are attaining, not attaining or lack sufficient data with respect to the standards. States submit plans that must meet the requirements of the Act, including the requirement to bring all areas into the state into attainment with the Standards. If EPA determines that the plans do not meet the Act's requirements, or if a State fails to submit relevant plan provisions, the Act generally requires EPA to issue a federal plan for that area or state. EPA also issues federal rules that assist areas in meeting the air quality standards.

Do you believe that the NAAQS review and Implementation process will ever catch up to its statutory 5 year deadlines for review? what steps would you take to have the timing of the NAAQS program comply with the Clean Air Act?

EPA is continuing to work to streamline its NAAQS review process in order to comply with the five-year review cycle established in the Clean Air Act. EPA's goals are to maximize the efficiency and transparency of the process while maintaining its scientific and technical integrity.

On December 7, 2012, a PM2.5 monitor in the North Pole, Alaska registered a concentration of approximately 172 micrograms per cubic meter for the 24-hours of that day, almost five times the EPA health based standard. The average daily temperature for that location was -26 degrees Fahrenheit. PM2.5 comes primarily from combustion, which, given the temperature, was likely wood or fuel oil burning for heating purposes, meaning that people were generating heat in order to survive the cold. Given the choice, many likely chose to survive the elements that day by burning fuel despite the potential long-term health risk associated with being exposed to such a high concentration of air pollution. If confirmed, how will EPA balance incremental, long-term health improvements with the acute, or short-term, health impacts that could occur if the standards are lowered?

As with all NAAQS, EPA's primary PM2.5 standards are set to protect the public health with an adequate margin of safety, based on the body of available health evidence and technical information. In determining whether a given area meets or violates the EPA's 24-hour PM2.5 standard, it is not appropriate to compare a single high day to the standard level. Rather, the 24-hour PM2.5 standard requires that the 3-year average of the 98th percentile of annual 24-hour average PM2.5 concentrations be below 35 micrograms per cubic meter. This approach to determining whether areas meet or violate the 24-hour PM2.5 standard is meant to ensure appropriate public health protection. A single day with a high PM2.5 concentration, by itself, does not result in a violation of the standard.

EPA currently uses a mass based PM 2.5 NAAQS without regard to the chemical make-up of the particulate. Early in the Bush Administration, OMB's then-Director of OIRA, John Graham, wrote a letter to then-Administrator of EPA Christy Todd Whitman, suggesting that EPA needed to redirect Agency research funds to do speciation studies to determine the source of PM2.5 health effects. Do you know if those studies were done? Doesn't the chemical makeup of PM 2.5 effect determine the degree of health impact? Should the PM 2.5 NAAQS be species weighed to better protect the public?

EPA has funded, and continues to fund, a number of research studies evaluating the links between PM composition and toxicity. The agency has invested in a PM2.5 speciation monitoring program since 1999 to provide ambient air data for tracking air quality and to support scientific studies. In addition, the EPA and other organizations (e.g., HEI, EPRI) have funded research on health effects related to PM composition. In the PM NAAQS review completed in 2012, the agency concluded that the currently available scientific information continues to provide evidence that many different components of the fine particle mixture - as well as groups of components associated with specific source categories of fine particles – are linked to adverse health effects. However, the scientific evidence is not yet sufficient to allow differentiation of those components or sources that are more closely related to specific health outcomes, nor is it sufficient to exclude any component or group of components from the mix of fine particles included in the PM2.5 indicator (78 FR 3123). The CASAC, EPA's statutorily mandated external science advisory committee, agreed with this conclusion and with the approach of continuing to define the PM2.5 standards in terms of PM2.5 mass.

If confirmed, will you commit to address NAAQS implementation issues? Can you give the Committee a schedule of concrete actions you will undertake and the deadlines for those actions? Are you open to delaying the effective date of the PM NAAQS until EPA, states and permittees have the right implementation tools in place?

If confirmed, I will continue to be committed to addressing NAAQS implementation issues. EPA can provide the committee a planned schedule of NAAQS-related rules and policy guidance

documents. In general, the agency's objective is to issue rules and policy guidance as quickly as practicable after a NAAQS has been promulgated to facilitate timely state planning. To avoid any delay in achieving the important health benefits of the PM NAAQS, EPA provided a transition mechanism in the final 2012 PM NAAQS rule that allowed for grandfathering of qualifying PSD permit applications by exempting them from new requirements associated with the revised NAAQS. This was the most urgent immediate concern because the regulations otherwise require that PSD permits address all NAAQS that are in effect as of the date of permit issuance. For permit actions that do not qualify for the grandfathering exemption, prior to the effective date of the 2012 PM NAAQS EPA issued draft guidance on performing required air quality impact analyses for PM2.5 under the PSD program. In addition to these two actions, the agency continues to work diligently on other aspects of NSR/PSD implementation for PM2.5 to ensure that permitting processes are not disrupted or delayed by the revised NAAQS.

What is EPA doing to collect additional relevant data that is necessary in determining the SO2 emission reductions from prior industry investments to reduce SO2?

EPA has conducted an extensive stakeholder process to develop a strategy for improving air quality by reducing emissions of sulfur dioxide. The strategy, available at http://www.epa.gov/oaqps001/sulfurdioxide/pdfs/20130207SO2Strategy Paper.pdf, outlines the Agency's next steps for designating and implementing the 2010 SO2 NAAQS. EPA works closely with our state, local and tribal partners to collect regularly emission information, including emissions information about SO2.

As the EPA considers its approach to implementing the Sulfur Dioxide (SO2) National Ambient Air Quality Standards, we urge you to ensure States have maximum flexibility to determine the most appropriate approach to accurately establish their attainment status. While the preference is the use of actual monitors in gathering the necessary data, we recognize financial constraints may force States to rely on modeling or perhaps a hybrid approach. The current models and assumptions in EPA guidelines are of concern as they over predict expected ambient air quality levels. Factors such as wind speed, the number of SO2 sources in a geographic area and the height of SO2 sources all can create distortions in the data. These distortions can result in pollution controls that are unnecessary from both capital and operating perspectives. Can you assure us that the proposed modeling guidelines will include more accurate assumptions, and not solely worst case scenarios? What types of assumptions are you considering?

EPA is sensitive to and shares the interests of our air quality management partners and others that the modeling to determine compliance with the new national SO2 standard be as accurate and reflective of what might have been monitored as is possible. EPA's forthcoming modeling technical assistance document will reflect input from the extensive stakeholder outreach efforts that have been underway and the latest techniques. The public and stakeholders have and will continue to have opportunities to comment on EPA's modeling guidance.

NAAQS – SO2 (Maritime)

I understand and appreciate the benefits of controlling sulfur emissions, and I understand that EPA has provided estimates of the health impacts of using ultralow sulfur fuels in the North American ECA, but why did EPA put a rule in place that will cause customers to utilize higher emitting modes of transportation? Did EPA's analysis consider the fact that this "intermodal leakage" moves the

emissions source from as much as 200 miles offshore to within a few yards of schools, hospitals, residences, and urban areas? If not, shouldn't EPA take a hard look at the real world consequences of the regulation before it potentially pushes thousands more emissions sources into our communities and neighborhoods?

EPA does not agree that compliance with the ECA fuel sulfur limits will lead to transportation mode shift. The majority of the shipping affected by the ECA sulfur limits is made up of international voyages where land-based transportation is not a realistic alternative. Even in cases where mode shift can be contemplated, ships have significant cost advantages over land-based transportation. The North American ECA requires the use of 10,000 ppm sulfur fuel from August 2012 through December 2014, and 1,000 ppm sulfur fuel for January 2015 and later. The 2015 and later ECA fuel sulfur limits are more than 60 times higher than for the ultra low sulfur diesel (ULSD) used in land based modes of transport. EPA performed a detailed analysis of the economic impact of the ECA on ships operating on the Great Lakes, including whether the ECA would lead to a transportation mode shift. This study, which was developed cooperatively with stakeholders, relied on actual routes and freight rates and indicated transportation mode shift is not likely to occur in the Great Lakes area. If the rail, truck and marine freight rates for coastal areas are similar to those for the Great Lakes, then modal shift would also not be expected in other parts of the country.

Would EPA consider other means of reducing sulfur emissions from maritime shipping? Will EPA consider an equivalency for companies that minimize the impact on onshore air quality, rather than only analyzing the mass of SO2 generated?

EPA is committed to allowing flexibilities allowed under the applicable International Maritime Organization requirements that can reduce the costs of compliance with the ECA and incentivize advanced technologies within the requirements of the ECA. EPA (and Coast Guard) have utilized two flexibilities allowed under the requirements of the North American ECA, approving projects undertaken by TOTE, a U.S. based shipping firm which operates two vessels between Tacoma, Washington and Anchorage, Alaska, and Royal Caribbean Cruises.

In postponing issuance of the revised NAAQS, the President specifically cited economic reasons. Does this conform to EPA's past insistence that they are prohibited by the Clean Air Act from considering economic and other concerns in the setting of standards?

On September 2, 2011, President Obama issued a statement on the ozone NAAQS, noting that EPA was engaged in updating its review of the science underlying the 2008 ozone NAAQS, as part of the ongoing periodic review of the Ozone NAAQS, and requested that EPA withdraw from interagency review the draft final rule addressing the reconsideration of the 2008 ozone NAAQS. On that same day, OMB returned to EPA the draft final rule, stating that "the draft final rule warrants [the Administrator's] reconsideration." Letter from Cass R. Sunstein, OMB, Administrator, Office of Information and Regulatory Affairs to Administrator Lisa R. Jackson, EPA. In returning the rule, OMB stated that President Obama had requested that the draft rule be returned as he did "not support finalizing the rule at this time." Consistent with the President's statement, EPA is continuing with its statutorily mandated periodic review of the 2008 ozone NAAQS. In that ongoing review, EPA will consider the current state of the science, which will include the new science not considered as part of the 2008 rule, as well as the science taken into account in previous reviews. Given that, EPA intends to conclude its rulemaking on

reconsideration of the 2008 ozone NAAQS in conjunction with its ongoing review of the ozone NAAQS.

A former Administration official (one of your former colleagues) at a panel during the Society of Environmental Journalists meeting in Miami in the Fall of 2012 said that the President committed an impeachable offense by explicitly linking the postponement of the revised ozone NAAQS with the economic recovery. Can you comment?

On September 2, 2011, President Obama issued a statement on the ozone NAAQS, noting that EPA was engaged in updating its review of the science underlying the 2008 ozone NAAQS, as part of the ongoing periodic review of the Ozone NAAQS, and requested that EPA withdraw from interagency review the draft final rule addressing the reconsideration of the 2008 ozone NAAQS. On that same day, OMB returned to EPA the draft final rule, stating that "the draft final rule warrants [the Administrator's] reconsideration." Letter from Cass R. Sunstein, OMB, Administrator, Office of Information and Regulatory Affairs to Administrator Lisa R. Jackson, EPA. In returning the rule, OMB stated that President Obama had requested that the draft rule be returned as he did "not support finalizing the rule at this time." Consistent with the President's statement, EPA is continuing with its statutorily mandated periodic review of the 2008 ozone NAAQS. In that ongoing review, EPA will consider the current state of the science, which will include the new science not considered as part of the 2008 rule, as well as the science taken into account in previous reviews. Given that, EPA intends to conclude its rulemaking on reconsideration of the 2008 ozone NAAQS in conjunction with its ongoing review of the ozone NAAQS.

In the upcoming ozone NAAQS, EPA has stated that it will rely on one result from one epidemiology study to quantify mortality benefits from reductions in chronic ozone exposure when they are 11 other equally well designed epidemiology studies that suggest there is no increase in risk. Why does EPA focus only on the one positive study and the one positive result within that study to estimate benefits?

As explained in an April 10, 2013 letter sent to you by EPA on this subject (footnotes omitted):

"In developing an ISA [Integrated Science Assessment], the EPA uses a formal causal framework that provides a consistent and transparent basis for integration of scientific evidence and evaluation of the causal nature of air pollution-related health effects. This approach has been reviewed and endorsed by the Clean Air Scientific Advisory Committee (CASAC). This framework employs a five-level hierarchy that classifies the overall weight of evidence and causality using the following categorizations: causal relationship; likely to be a causal relationship; suggestive of a causal relationship; inadequate to infer a causal relationship; and not likely to be a causal relationship. Pursuant to this framework, in order to reach a determination that the weight of scientific evidence is suggestive of a causal relationship, the evidence should include "at least one high-quality epidemiologic study show[ing] an association with a given health outcome."

The previous scientific assessment for ozone in 2006 concluded that an insufficient amount of evidence existed to suggest a causal relationship between chronic ozone exposure and increased risk of mortality in humans. However, two recent studies provided new evidence for the 2013 assessment. This new evidence is consistent and coherent with the evidence from epidemiological, controlled human exposure, and animal toxicological studies for the effects of

short- and long-term exposure to ozone on respiratory effects. The current body of evidence, including these two high-quality, peer-reviewed studies that observed associations between long-term exposure to ozone and mortality, is suggestive of a causal relationship between long-term exposure to ozone and total mortality.

Your letter stated that 11 earlier studies did not find statistically significant associations between long-term exposure to ozone and mortality and that the EPA selectively relied on the one positive study to support the causality determination of "suggestive." A key explanation for the lack of associations found in most of these earlier studies is that they did not specifically assess respiratory mortality. However, unlike the earlier studies, Jerrett et al. (2009) did specifically evaluate respiratory mortality and found a statistically significant association. This finding is consistent with other studies finding associations with respiratory effects (e.g., morbidity and mortality). Because of the strength of the evidence between ozone exposure and respiratory effects, it is reasonable to find associations between long-term exposure to ozone and respiratory mortality but not other sources of mortality (e.g., all-cause, cardiovascular, and cardiopulmonary). As noted above, one high-quality epidemiological study showing an association is sufficient for a determination of "suggestive" under the EPA's causal framework, even if the results of other studies do not consistently show the same association."

Given the significant controversies surrounding the studies supporting a tightening of the ozone standard, will you commit today to taking comment on the current standard?

The review of the ozone NAAQS is ongoing and EPA is committed to following the science and the law in developing the proposal. As with prior NAAQS rulemaking, the public will have the full ability to comment on all elements of EPA's proposal and provide EPA with views on whether to retain or revise the current ozone standard.

According to recent NOAA reports, half of all the current ozone exceedances in many areas in the Western US are due to emissions from Asia. How do you plan to address this important problem?

Ozone concentrations can be affected by local, regional, international, and natural sources. EPA analyses indicate that the majority of ozone exceedances within the U.S. are driven primarily by local and regional sources of ozone precursors. For those rare cases in which international emissions can be shown to result in a violation of the NAAQS, there is a specific Clean Air Act provision (Section 179B) that can be invoked to ensure those cases do not lead to inappropriate regulatory consequences.

EPA's own modeling shows simulated ozone background levels as high as 77ppb – a level that already exceeds the current standard. There is also strong evidence from NOAA, using a more sophisticated model with higher resolution, that EPA is still under-predicting ozone background levels. How will you take into account the fact that even the NOAA model is likely to under predict true background levels due to model limitations? How will you consider these high ozone background levels in setting the standard?

As part of the ozone review, EPA will focus on the health effects evidence and related exposure and risk analyses in determining the appropriate level of the ozone standard, and will provide information on ozone background concentrations from multiple air quality models and discuss spatial and temporal variations in peak and mean concentration levels. Regarding the assertion that current air quality models are underestimating background concentrations, EPA's analyses

have shown that model predictions estimate concentrations at remote sites with considerable accuracy, especially for seasonal averages compared to individual days.

Are you planning on estimating and counting ozone benefits down to zero ozone levels?

EPA does include benefits below the standard using a methodology that is consistent with the best available science. The primary NAAQS is set at a level requisite to protect public health with an adequate margin of safety – and should be neither more nor less stringent than necessary to do so. The NAAQS is not set at a zero risk level. In setting the NAAQS, EPA takes into account health effects experienced by the general population and at-risk groups (like asthmatics, children, and the elderly). While there is lower confidence in estimates of benefits of reductions in exposure occurring at very low ozone levels, the risk assessment for the current ozone NAAQS review provides estimates of total risk from exposure to ozone concentrations well below the standard and also provides information about how much of total risk occurs on days with different ozone concentrations.

How would you count benefits from reductions in exposure that occur far below the level you consider as safe?

EPA's approach to estimating the benefits of reducing ozone pollution is consistent with the best available science. The primary NAAQS is set at a level requisite to protect public health with an adequate margin of safety – and should be neither more nor less stringent than necessary to do so. The NAAQS is not set at a zero risk level. In setting the NAAQS, EPA takes into account health effects experienced by the general population and at-risk groups (like asthmatics, children, and the elderly). While there is lower confidence in estimates of benefits of reductions in exposure occurring at very low ozone levels, the epidemiological evidence suggests a generally linear response with no indication of a threshold. To reflect this, the risk assessment for the current ozone NAAQS review provides estimates of total risk from exposure to ozone concentrations well below the standard The risk assessment also provides information about how much of total risk occurs on days with different ozone concentrations

Navajo Generating Station:

Recently, EPA proposed a regional haze federal implementation plan for NGS that would require the installation of the most expensive emissions-control technology. The proposal is currently open for public comment, and EPA indicated that it will hold public hearings to accept oral and written comments on the proposed rulemaking. Can you give assurances that, if you are confirmed, EPA will host public hearings that allow meaningfully public participation, including at least one hearing apiece in northern Arizona, central Arizona, and southern Arizona, as well as conduct meaningful outreach and consultation with all affected Native American communities?

Yes. EPA has recently invited every tribe in Arizona, including the Navajo Nation, to formal tribal consultation in Phoenix on April 29, 2013. EPA is also available to hold additional consultation with tribes. In addition, EPA intends to hold public hearings this summer in Page, Phoenix, and Tucson AZ as well as a location on the Navajo Nation and a location on or near the Hopi Tribe.

If confirmed, will you commit to identifying an NGS solution that upholds federal trust obligations to Native American communities, supports sustainable water policy, does not impose significant

additional costs on struggling Arizonans, and does not require an appropriation or otherwise add to the national debt?

EPA is committed to working with the Department of the Interior and the Department of Energy, our federal partners in the Joint Interagency Working Group on Navajo Generating Station, to find a long-term path forward for NGS that meets the needs to the wide variety of stakeholders involved in this issue. DOI, DOE, and EPA will work together to support Arizona and tribal stakeholders' interests in aligning energy infrastructure investments made by the Federal and private owners of the NGS (such as upgrades that may be needed for NGS to comply with Clean Air Act emission requirements) with long term goals of producing clean, affordable and reliable power, affordable and sustainable water supplies, and sustainable economic development, while minimizing negative impacts on those who currently obtain significant benefits from NGS, including tribal nations.

EPA's proposal did not include cost estimates for baghouses. Can you confirm that the NGS owners would not be required to install baghouses as a result of the change in emissions created by installing SCRs?

EPA's proposed BART determination and BART alternatives do not require the installation of baghouses at NGS. The alternative timeframes for meeting BART limits could extend roughly a decade or more into the future and EPA cannot determine now what a future permit many years down the road might require. However, we note that permitting of SCR on a similar facility in Arizona, the Coronado Generating Station, did not require the installation of a new baghouse.

Re: NHSM rulemaking, Can you tell us what the proposed rule will be completed? Will you keep the committee appraised of the process?

Response: The Agency committed to issuing the Nonhazardous Secondary Materials (NHSM) categorical listing rule in a timely manner. I understand that, recently, the Agency received important new information from industry that will inform the rulemaking. If confirmed, I am committed to keeping the Committee apprised of ongoing NHSM rulemaking efforts.

A federal court in the case of NMA v. Jackson recently struck down several EPA actions – specifically, EPA's Enhanced Coordination Process (ECP) and Multi-Criteria Integrated Resource Assessment (MCIR) for Appalachia surface coal mining, as well as EPA's guidance document, "Improving EPA Review of Appalachian Surface Coal Mining Operations Under the Clean Water Act, National Environmental Policy Act, and the Environmental Justice Executive Order" – as violating the CWA and Administrative Procedure Act, as well as, in the case of the guidance document, the Surface Mining Control and Reclamation Act. What steps has EPA taken to implement the court's decision?

Response: I appreciate your interest in this important matter. Although the agency's appeal of the District Court's decision is pending, I understand that the Agency has directed its field offices not to use

the guidance documents affected by the court decision and instead to rely on regulations promulgated under the APA.

NSPS (Existing)

In December of last year the NRDC released a report calling on EPA to use Section 111(d) of the Clean Air Act to establish a new greenhouse gas program for existing power plants. Have any officials from your office, or elsewhere in EPA that you are aware of, met with NRDC to discuss their proposal?

A representative of NRDC asked for, and was granted, the opportunity to present the organization's proposal to senior management and staff in the Office of Air and Radiation.

Can you assure us that EPA will not adopt a cap and trade program?

Both former Administrator Jackson and I have said in the past that the EPA has no intention of pursuing a cap and trade program for greenhouse gases and I continue to stand by those statements.

Can you assure us that EPA will adopt a program that will not force new retirements of coal units?

I do not foresee the EPA adopting an NSPS program that would mandate the retirement of coal units.

Do you believe that EPA has the authority under the current language of the Clean Air Act to establish a new climate change program for existing power plants, such as the one called for by the NRDC? If so, what analyses has EPA conducted regarding the practicality or legality of using Section 111(d) of the Clean Air Act to regulate existing power plants?

Section 111(d) of the Clean Air Act (CAA) provides authority to regulate existing sources where EPA establishes a new source performance standard (NSPS) under section 111(b) for a certain pollutants. EPA has not developed an analysis of whether section 111(d) provides the authority to adopt the program proposed by NRDC.

What plans does EPA have to adopt new GHG regulations for existing power plants? Specifically, has your office prepared draft regulations, what regulatory options are you considering, and what is the likely timeline for such action?

EPA is not currently developing any existing source GHG regulations for power plants. Accordingly, the Office of Air and Radiation has not prepared draft regulations. The office's current work is focused on reviewing the comments submitted in response to the proposed carbon pollution standard for new power plants under section 111(b).

Once EPA finalizes its proposed NSPS for GG Emissions for New Stationary Sources: Electric Generating Units (EGUs), does the agency intend to propose regulations under Section 111(d) of the Clean Air Act to establish procedures whereby states set standards of performance for GHG emissions from existing EGUs in their jurisdiction? If so, does EPA agree that it can only issue guidance to the

states on regulating GHG emissions from power plants and that each state must submit a plan to the agency that sets standards for performance for existing power plants within the state? Will EPA discuss its plans for the guidance with states prior to issuing such guidance?

EPA is not currently developing any existing source GHG regulations for power plants. As a general matter, the provisions of section 111(d)(1) are plain on their face to the extent that they require EPA to "prescribe regulations which shall establish a procedure … under which each State shall submit … a plan which … establishes standards of performance for any existing source …." In the event that EPA does undertake action to address GHG emissions from existing power plants, the agency will ensure, as it always seeks to do, ample opportunity for the public and stakeholders to offer meaningful input on potentia l approaches.

Does EPA believe it has the legal authority to impose a cap and trade mechanism in place under Section 111(d) of the Clean Air Act to reduce GHG emissions from existing power plants? If so, can you please explain how the agency could do so? Please provide citations to any relevant statutes, regulations, or case law in your explanation.

I am aware that in connection with the Clean Air Mercury Rule, issued under the prior Administration, EPA took the position that section 111(d) obligations could be met through a cap-and-trade program.

NSPS (new)

Using the logic in the draft NSPS to create a category for "fossil fuel-fired EGUs," why did EPA stop at including just coal and natural gas units? If you're going to combine power generators into one category, why not extend the proposal to its logical conclusion and include nuclear units? If we did that, what would the practical result be?

CAA section 111(b) requires EPA to list categories of stationary sources that cause or contribute significantly to air pollution anticipated to endanger public health or welfare. When EPA listed fossil fuel-fired electric generating units in the 1970s, those decision s were based specifically on findings with respect to the emissions from combustion of fossil fuels. Other types of electricity generation that do not rely at least in part on fossil fuel combustion, such as nuclear and solar power generation that have not been listed under 111(b) and thus were not included in this source category.

Why did EPA choose to exempt simple-cycle natural gas turbines from the proposed rule?

In the preamble to the proposed new source carbon pollution standard for power plants, the EPA laid out its rationale for not including simple-cycle natural gas turbines in the proposal. Commenters also raised this issue and the agency, of course, will address the matter further in the final rule.

How can EPA justify calling a NGCC turbine the Best System of Emissions Reduction (BSER) for a coal-fueled unit? Has such a BSER determination – that BSER for a specific unit would be to not exist as that type of unit – ever been made in the past?

The preamble set out the extent to which EPA had the latitude under 111(b) and applicable regulations to propose a particular system of emission reduction as the BSER for different types of fossil fuel generating units that have the same function of generating electricity, as well as its rationale for that proposal. EPA has made a comparable BSER determination in the past. See "Standards of Performance for New Stationary Sources, Primary Copper, Zinc, and Lead Smelters," 41 Fed. Reg. 2,332, 2,333 (Jan. 15, 1976) (establishing a single standard for different types of furnaces in primary copper smelters). In addition, the D.C. Circuit recently upheld a similar action EPA took under CAA section 112 in a rulemaking for processing plywood and composite wood products (PCWP). There, EPA adopted a single standard for multiple production methods. The Court noted that in the rulemaking, EPA subcategorized PCWP equipment "according to its function." NRDC v. EPA, 489 F.3d 1364, 1375 (D.C. Cir. 2007) (citing 69 Fed. Reg. at 45,948). The agency received comments on this set of issues and is evaluating them carefully and will take them fully into account before issuing a final rule.

Is CCS considered BSER for coal plants? Assuming CCS was BSER, would it apply to all fossil-fueled plants – both coal and gas?

In the NSPS proposal, EPA proposed that natural gas-fired combined cycle technology represented BSER for intermediate and base-load fossil fuel-fired power plants. We did not make a separate determination as to what represented BSER for coal-fired power plants alone. EPA received many comments on this proposed determination and is considering them.

Last August you stated: "My job is primarily to implement the Clean Air Act. Our Clean Air Act is prescriptive, but it does allow flexibility. It looks at variability in technology and design. It is not a law that picks winners and losers." However, your department just issued a draft New Source Performance Standard (NSPS) that limits carbon dioxide emissions for new power plants to 1,000 pounds per MW and, if we exclude all of the wind and solar, essentially requires all new power plants to be fueled with natural gas. Do you believe that EPA should use the "flexibility" that you referenced in the Clean Air Act to determine what fuels can and cannot be used to power, heat and cool our homes, businesses and manufacturing facilities? What about transportation fuels?

The proposed carbon pollution standard is a fuel neutral emission rate, which can be met by natural gas fired plants or coal- or petroleum -coke fired plants using carbon capture and sequestration. With respect to transportation fuels, the Agency is committed to carrying out the obligations established by Congress for the EPA under the Energy Policy Act of 2005, the Energy Independence and Security Act of 2007 and the Clean Air Act.

EPA has specifically exempted both modified (units that make major changes) and transitional (units that have yet to begin construction but have already secured a Prevention of Significant Deterioration (PSD) operating permit) from adhering to the proposed standard. EPA has stated that it does not intend to issue a standard for modified units. What will the Agency do if sued by environmental groups on this issue? Is it possible that such a lawsuit might result in the application of the new standard to all facilities that are being forced to install major upgrades to comply with other EPA regulations, such as the Mercury and Air Toxics Standards (MATS)?

I believe that the approach we proposed to take with respect to modified sources is sound. Beyond that I believe that it would be neither appropriate nor useful for me to speculate on potential litigation and possible judicial decisions that at this point are entirely hypothetical.

Do you agree that the current proposed standard is completely infeasible for modified power plants?

The main reason that EPA declined to propose a standard for modifications was that the agency concluded that it lacked sufficient information to propose such a standard.

On March 27, 2012, EPA proposed a rule that would set a limit on the amount of carbon dioxide that new power plants could emit. In this proposal, EPA recognized that coal-fired power plants will not be able to meet this limit unless they install carbon capture and storage – a technology that EPA admits is not commercially available and, according to EPA, would almost double the cost of building a new coal-fired power plant. Do you agree that this rule, if finalized as proposed, will effectively ban new coal-fired power plants in the U.S.?

As EPA explained in the preamble to the proposed carbon pollution standard for new power plants, it was not the agency's intent to propose a rule that resulted in a de facto ban on the building of new coal-fired power plants nor does EPA believe that would be the effect of the proposed rule. The proposal reflected, instead, EPA's analysis and understanding of new electricity generation capacity expected to be built in the foreseeable future. Further, the proposal offered for comment an alternative compliance pathway for new coal-fired generation that included substantial flexibility for new coal-fired facilities. Finally, commenters raised this and related issues regarding the impact of the proposed standard on prospective coal-fired sources and the agency is still in the process of evaluating those comments, which it will consider and take fully into account in issuing a final rule

When you proposed the NSPS for new powerplants, you acknowledged that it would not be equitable to apply the new standard to plants that have already been under development for many years and have already obtained their air permits. As I understand it, you recognized that these plants will not be able to meet the new standards and you didn't want to pull the rug out from under companies who have already spent a lot of time and money to develop new plants based on EPA's long-standing rules. Is this the basic reasoning behind EPA's proposal for dealing with "transitional sources"?

In the preamble to the proposed carbon pollution standards, EPA laid out its reasoning in proposing an approach to "transitional" sources. EPA emphasized that sources could qualify as "transitional sources" only if they were on the verge of commencing construction in addition to having obtained their PSD permits.

EPA also said that transitional sources had to officially "commence construction" by April of this year, or they would lose their status as "transitional sources." In other words, they would be required to meet a standard that EPA has said they can't meet. Can you explain why this deadline was chosen?

As stated in related answers, EPA laid out in detail its reasoning for the approach it proposed to take with respect to "transitional" sources, including the proposal for a one-year time line. EPA included the one-year period because sources on the verge of commencing construction could reasonably be expected to do so within one year. Commenters raised this and related issues regarding "transitional" sources and the agency is still in the process of evaluating those comments, which it will consider and take fully into account in issuing a final rule.

There is a power plant that has been proposed for western Kansas known as Holcomb 2. Two rural co-ops have been developing this plant for more than 6 years and have already invested almost $90 million dollars to develop a plant that they believe is in the best interests of their members. They have obtained all the necessary permits, but their air permit has now been challenged to the Kansas

Supreme Court. When EPA finishes the NSPS for new power plants, will you treat plants like Holcomb 2 fairly? Will you commit to issuing a rule that will allow them to move forward with their project after getting a decision from the Kansas Supreme Court?

EPA included an explicit reference to Holcomb 2 as a potential transitional source under the proposal. The Agency has received comments and additional information with respect to this project and is carefully evaluating those comments, which it will consider and take fully into account in issuing the final rule.

EPA's April 2012 proposed New Source Performance Standards (NSPS) for Greenhouse Gas Emissions for New Stationary Sources: Electric Generating Units (EGUs) sets a standard of performance based on a single fuel – natural gas. This proposed standard cannot be achieved in practice for any source except natural gas combined cycle (NGCC) units. Can you please explain to the committee how setting a standard for all fuel types based on a single one does not violate the definition of "standard of performance" in Section 111(a)(1) of the Clean Air Act?

In the preamble and the supporting documents for the proposal, EPA explained its reasoning for proposing a single standard of performance for the fossil fuel-fired category. As noted in the answer to question 194, there are precedents for this type of action. At the same time, the proposal included an alternative compliance pathway for new coal-fired facilities. The public provided comment on these issues; the Agency is currently evaluating those comments and will take full account of them before issuing a final rule.

Given the price variation in electricity produced from natural gas in New England in the winter of 2013, does EPA still believe that the price of electricity from natural gas-fired generation will remain almost the same as it is today until 2035, as the proposed New Source Performance Standards (NSPS) for Greenhouse Gas (GHG) Emissions for New Stationary Sources: Electric Generating Units (EGUs) projects? If so, could you please provide the committee with a written explanation of EPA's rationale for such a projection? If you do not believe the price in 2035 will remain close to what it is today, will EPA address this changed assumption about electricity prices from natural gas in final NSPS for GHG emissions from new power plants?

As part of the rulemaking package for the proposal EPA included economic analyses that addressed, among a set of related economic issues, projections of future electricity prices. That analysis acknowledged the historic volatility in natural gas markets, including seasonal shifts in response to weather, and also examined the potential impacts of the proposed standard under a range of natural gas prices. EPA also plans to include updated economic analysis addressing these issues in support of a final rule.

EPA states that there are no costs and, concurrently, no benefits associated with the proposed rulemaking to regulate greenhouse gases from new sources. What analysis did EPA undertake to determine that there are no costs or benefits from the proposed rule?

In the preamble and supporting documents for the proposal, EPA provided an extensive discussion of this analysis of costs and benefits that was undertaken to address this question.

Why did EPA only analyze out until the year 2020 in order to determine the lack of costs and benefits?

Because the Clean Air Act requires that the NSPS be reviewed every eight years, this economic analysis focuses on benefits and costs of this proposal for the years through 2020. Although

2020 is the primary focus of proposed rule, EPA did perform economic modeling out to 2030. The analysis helps confirm the conclusions are consistent even beyond 2020.

A recent comprehensive modeling effort done by ICF International – using the same proprietary ICF Integrated Planning Model with EPA uses to model each of its rules – project forecasts about 50 GW of coal-fired generation retirements over the next few years, driven mostly by pending EPA rules, with the expectation of another 20 GW of retirements after that. How can you explain the difference between this analysis and EPA's?

A number of economic factors influencing retirements well beyond EPA's clean air rules are included in these ICF figures. **Error! Bookmark not defined.** External analysts, including GAO[xv], CRS[xvi], the Bipartisan Policy Center[xvii], and Analysis Group[xviii], have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. Because EPA's power sector analyses look at the effects of its rules alone to evaluate incremental impacts, EPA's analyses are not comparable to other assessments that also take into account broader economic factors.

When you served as commissioner of the Connecticut Department of Environmental Protection you expressed concerns that some state policies would cause businesses to leave Connecticut for other states more favorable to business development. Tell us if you share the same concern about EPA acting much the same way on a national level – driving energy and manufacturing companies out of the United States due to stringent, overly burdensome environmental rules.

In the past 40 years, we have made dramatic progress reducing pollution in our air, land and water. That progress has gone hand in hand with long-term economic growth and prosperity. I strongly believe that we can continue to build on this success through smart, pragmatic regulatory and non-regulatory actions that achieve further progress in protecting public health in the environment, while supporting continued economic growth.

The Administration has continuously made the case that new regulations add jobs given the need for more investments for environmental controls. However, a DOE report from only a few years ago says that the compounded burden of various regulations contributed to 66 refineries closing in the last 20 years; they even have a chart that overlays new regulations with refinery closures. If new regulations add jobs, why does DOE say it has led to closed manufacturing facilities?

Your question appears to refer to DOE's 2011 study assessing whether the congressionally mandated renewable fuel standard program would impose a disproportionate economic hardship on small refineries, such that these refineries should receive an exemption under that program. My staff informs me that while this study assessed the potential need for extending relief from the RFS program for small refineries, it did not analyze the impacts of any other EPA

[xv] Government Accountability Office – "EPA Regulations and Electricity: Better Monitoring by Agencies Could Strengthen Efforts to Address Potential Challenges" http://www.gao.gov/assets/600/592542.pdf

[xvi] Congressional Research Service – "EPA's Regulation of Coal-Fired Power: Is a "Train Wreck" Coming?" http://insideepa.com/iwpfile.html?file=aug2011%2Fepa2011_1545.pd f

[xvii] Bipartisan Policy Center – "Environmental Regulation and Electric System Reliability" http://bipartisanpolicy.org/library/report/environmental -regulation-and-electric-system-reliability

[xviii] Analysis Group – "Why Coal Plants Retire" http://www.analysisgroup.com/uploadedFiles/News and Event s/News/2012_Tierney_WhyCoalPlantsRetire.pdf

regulations or reach the conclusion reflected in your question. Rather, refinery closures over the past three decades have been driven primarily by market factors unrelated to environmental regulation

Like many of my colleagues, I am concerned by the recent onslaught of proposed EPA regulations and the chilling effect they are having on the economy. Many businesses are sitting on the sidelines and are unwilling to make major investments in this uncertain and unpredictable environment. What steps will you take to ensure businesses have a more stable and predictable regulatory environment?

I understand the importance of regulatory certainty to the business community. As I stated in my testimony, I have done my best to keep my door open to businesses, environmental advocates, local communities, the states, tribes, labor and the public at large, and I will continue to do so if I am confirmed as EPA Administrator. Interactions with stakeholders has provided information and insights that have led to the development of smarter, more cost-effective rules, and better designed and implemented policies and programs to build partnerships and enhance collaboration. If confirmed, I hope to continue to build on this record of outreach and engagement.

EPA's proposed rule would impose expensive new study, monitoring, and retrofit requirements on all existing facilities, including "baseload" facilities that are the foundation of our electric system and "peaking" facilities that are used more sparingly to meet periods of peak electricity use. But the peaking units may be used for as little as a few days a year when electricity demand is high, and it would be uneconomic to spend a great deal on money on them for studies and equipment that would be rarely used and would not provide commensurate environmental benefit. In an earlier version of the rule, EPA provided an exemption for such units. Yet in the current proposed rule, which is soon to be finalized, EPA eliminated the exemption. Would you consider reinstating that exemption or providing equivalent relief from the rule's requirements for peaking facilities so they can continue to perform their crucial reliability function?

Response: As you know, I have worked hard to make sure that we carefully monitor the design and implementation of EPA's air pollution rules to keep costs reasonable and ensure that the reliability of our electrical system is protected. If confirmed, I look forward to working to ensure that requirements and implementation of rules like 316(b) are similarly sensitive to electrical reliability issues.

EPA's proposed rule outlines a rigid schedule of expensive and time consuming studies that are required as an interim measure before a plant installs technology to comply with the rule's requirements. It is also my understanding that this set of interim measures would apply to facilities even if they announce they plan to retire prior to compliance deadlines. Why would we subject existing facilities to additional and unnecessary expenses if, in fact, they have announced retirement and ultimately would not be expect to comply with the rule because they no longer would be in operation? Will you ensure the final rule provides compliance relief for generation assets that announce retirement?

Response: I fully recognize that this is a period of transition for the power sector and that operators do not want to undertake studies for control technologies if they are certain to retire a unit. If confirmed, I look forward to working to ensure that we carefully consider the special circumstances of retiring units as we finalize the 316(b) rule.

There is currently a project under review by EPA in Arecibo, Puerto Rico that is experiencing a lengthy delay in obtaining a permit under the Clean Air Act. I understand that this state-of-the-art waste to energy facility meets your Agency's most stringent air emissions standards and will help to alleviate Puerto Rico's landfill emissions problem that has created so many health challenges for that island's population. The delay in permitting this facility is even stranger considering your Agency permitted a nearly identical facility in Baltimore in August 2010. That permit process, from application to final order, took only 15 months. In the present case, the permit process has extended well over 2 years and we still have not seen action. Can you explain this situation?

Response: I understand that there has been wide public interest in the proposed permit for the Energy Answers waste to energy facility. Since first proposing the permit in May 2012, the EPA held six public hearings in Arecibo, Puerto Rico. The agency extended its public comment period and ultimately reviewed over 3,000 public comments on the proposed permit. The EPA is carefully considering all comments and is preparing detailed responses to the comments.

Ms. McCarthy, your Agency is well past its statutory deadline for issuing the permit. Your delay is preventing the island of Puerto Rico from reducing greenhouse gas emissions by over 1 million tons per year, as well as creating green technology jobs for that struggling economy. Please give me a date certain when I can expect to see that permit signed.

Response: As noted above, it is my understanding that the EPA has not completed the review of public comments received on the proposed permit for the for the Energy Answers waste to energy facility. The agency is making every effort to ensure a thorough and comprehensive review prior to taking final action on the air permit.

Congress has been informed that there is no process whereby all of the petitions for rulemaking or reconsideration may be available to the public. Recent EPA testimony indicates that at any given time the Administrator does not know what or how many petitions have been filed. Will you promise to establish a system for keeping better track of this correspondence?

Response: If confirmed, I will seek ways to further transparency, and I will learn more about the agency's current systems for tracking these types of documents agency-wide.

In this era of unsustainable federal government budget deficits, if you are confirmed, will you commit to review thoroughly the current status of the perchlorate rulemaking and determine whether regulating perchlorate under the SDWA is a rational and reasonable use of the Agency's limited resources?

If you determine that regulating perchlorate under the SDWA is a rational and reasonable use of the Agency's limited resources will you provide me with an explanation of other EPA priorities that will need to be delayed or abandoned in order to finalize the perchlorate MCL?

If you determine to forge ahead with the perchlorate MCL, will you provide me with a detailed analysis of the costs that will be imposed on private and public drinking water purveyors by that MCL?

Response (to the three questions above): It is imperative that the Agency use the best available science to guide its decision making on Perchlorate and other contaminants. If I'm confirmed, I commit to looking at the science, as well as the requirements of the Safe Drinking Water Act and I will ensure that EPA follows the science and the law.

The manufacturing sector is seeing considerable new investment in new and modified facilities, and the prospect of maintaining and creating thousands of jobs, thanks in part to enhanced production of unconventional oil and gas (e.g., shale gas). Under the Clean Air Act, EPA is required to issue a Prevention of Significant Deterioration (PSD) permit within one year of deeming the permit application "complete." What has your office done to ensure these permits are issued in a timely manner to prevent permits from slowing recovery and growth in the manufacturing sector?

In October 2012, EPA issued an internal memo to the Regional Office to clarify expectations and responsibilities for timely processing of PSD permits to assure compliance with the CAA requirement for EPA action within one year of an application being complete. While this guidance only applies to PSD permits issued by EPA itself or by states issuing PSD permits under a delegation agreement with EPA, EPA recommends that state permitting offices consider following the approaches outlined in this memo if their procedural regulations are comparable to EPA's. EPA's recent final rule revising the annual PM2.5 NAAQS provided for grandfathering of in-progress PSD permit applications, applicable to both EPA-issued and state-issued permits, which will help avoid delays in issuing permits.

What will you do to ensure PSD permits are timely, especially considering that NAAQS requirements are constantly changing?

In October 2012, EPA issued an internal memo to the Regional Office to clarify expectations and responsibilities for timely processing of PSD permits to assure compliance with the CAA requirement for EPA action within one year of an application being complete. While this guidance only applies to PSD permits issued by EPA itself or by states issuing PSD permits under a delegation agreement with EPA, EPA recommends that state permitting offices consider following the approaches outlined in this memo if their procedural regulations are comparable to EPA's. EPA's recent final rule revising the annual PM2.5 NAAQS provided for grandfathering of in-progress PSD permit applications, applicable to both EPA-issued and state-issued permits,

which will help avoid delays in issuing permits. EPA will consider adopting similar provisions as warranted whenever the agency changes NAAQS requirements.

How will you ensure that, given the EPA and states' budgetary pressures, facilities are able to get permits and begin operating as soon as possible? Do you expect to develop or modify guidance to State permitting offices?

In October 2012, EPA issued an internal memo to the Regional Office to clarify expectations and responsibilities for timely processing of PSD permits to assure compliance with the CAA requirement for EPA action within one year of an application being complete. While this guidance only applies to PSD permits issued by EPA itself or by states issuing PSD permits under a delegation agreement with EPA, EPA recommends that state permitting offices consider following the approaches outlined in this memo if their procedural regulations are comparable to EPA's. EPA's recent final rule revising the annual PM2.5 NAAQS provided for grandfathering of in-progress PSD permit applications, applicable to both EPA-issued and state-issue permits, which will help avoid delays in issuing permits.

In an April 10, 2013 response to a January 23, 2013 letter from Senator Vitter regarding EPA compliance with the Regulatory Flexibility Act (RFA), EPA said that it takes its responsibility to comply with the RFA "very seriously." However, while EPA used to post its regulatory agendas on the EPA website, the agency stopped after 2011 (See http://www.epa.gov/lawsregs/regulations/regagenda.html#backgroun d). Please explain why EPA stopped posting its regulatory agendas on its website. Does EPA plan to post its regulatory agendas on its website in the future?

Response: I believe that government should be transparent and open. If confirmed, I will ensure that the public has access to EPA's regulatory agenda, either through its website, or through regulations.gov.

In a January 23, 2013 letter, Senator Vitter asked EPA to explain its plan for satisfying its legal obligations under the Regulatory Flexibility Act (RFA) since its regulatory flexibility agenda was an unprecedented 8 months past the statutory April deadline. In its April 10, 2013 response, EPA ignored this question and simply said that it takes its responsibility to comply with the RFA "very seriously," yet EPA did not published its regulatory flexibility agenda in the Federal Register until January 8, 2013. Is it EPA's position that a January 8, 2013 publication of its regulatory flexibility agenda complies with the statutory requirements of 5 U.S.C. § 602 ("During the months of October and April of each year, each agency shall publish in the Federal Register a regulatory flexibility agenda.")?

Response: I believe that the Agency should be sensitive to the needs of small business as it implements its regulatory agenda. If confirmed, I will ensure that the Agency meets its statutory deadlines for publishing the regulatory flexibility agenda.

Regarding cellulosic volumes, each year since 2010 EPA has taken EIA's projections about projected cellulosic biofuel production and increased it for the purpose of setting the following year's mandate. Each year, EIA has been wrong, and EPA has been more wrong, leading the U.S. Court of Appeals for the DC Circuit to vacate the 2012 cellulosic mandate. EPA is expected to voluntarily rescind the 2011 mandate. Yet the week after the Court decision, EPA proposed an *increase* in the cellulosic mandate despite the fact that only 1,000 gallons of the 10.45 million ethanol-equivalent gallons mandate was produced for compliance in 2012. The EPA's Moderated Transaction System (EMTS) shows no cellulosic production *again* in January, 2013. Given the Court's admonition and the data we now have, will EPA reduce the cellulosic mandate to zero when it finally promulgates final volumes for 2013, which are now 4 months late?

EPA is required under the CAA to annually set the standard for cellulosic biofuel at the projected volume of cellulosic biofuel production, which EPA determines based on projections from the EIA and considering other available information. In February 2013, EPA released a proposal that projected the volume of cellulosic biofuel production for 2013 at 14 million gallons, which is below the statutory volume of 1 billion gallons. EPA's proposed projection for cellulosic biofuel production is consistent with the DC Circuit's direction and is based on a neutral assessment of reasonably anticipated production for 2013. The agency will fully consider comments on the proposed cellulosic level before finalizing the standard, and will make adjustments to the proposed levels, if appropriate.

The last administrator clearly took on the role of promoting the ethanol industry. Do you believe your role as administrator is promote one industry over others, or that decisions should be made that consider the protection of the environment and the economy?

EPA implements conventional and renewable fuels and fuel additives regulations and programs as required under the CAA. EPA does not promote any specific industry.

Given the multitude of problems from the implementation of Renewable Fuels Standard (RFS), including the issue of the "blend wall," where the amount of ethanol required to be blended into gasoline exceeds the E10 threshold, is it now time to admit that the RFS is a broken program and is need of significant revisions?

Congress mandated that increasing amounts of renewable fuel be used nationwide, while providing industry with flexibility to determine the most cost-effective fuel mix needed to meet the requirements of the law. EPA has met with representatives of a broad array of stakeholders from the oil and renewable fuels industries, and we are working with the Department of Agriculture and the Department of Energy to discuss the E10 blendwall and other issues related to RFS implementation. EPA will take this information into consideration as the agency moves forward with implementation of the program.

In your role as administrator will you have the flexibility to address the longer term issues of the Renewable Fuel Standard? What do you plan to do to address the immediate problems?

EPA is looking at the potential impacts of the blendwall and related RFS implementation issues over the near and longer term. The agency is also reviewing comments submitted in response to the proposed rulemaking for the 2013 RFS volume standards, and will carefully consider this input in setting future RFS standards. Going forward, EPA will consider whether any further actions under the directives and authorities provided by Congress are appropriate to help ensure orderly implementation of the program. Given the importance of these issues, however, EPA recognizes that it is important to avoid precipitous action that could have adverse effects on the market.

EPA has not yet promulgated the renewable fuel obligations for 2013 for the Renewable Fuel Standard. What action will the Agency take soon to address this problem? Obviously, 2013 has already begun. Will this rule be retroactive as of January 1, 2013? Will EPA get back on schedule and finalize values for 2014 before December 31, 2013?

The public comment period recently closed for the 2013 volume standards. EPA intends to finalize the 2013 standards by the summer of 2013, and intends to propose the 2014 standards in the same time frame.

Do you agree that it is within EPA's legal authority to waive or modify the renewable fuel volume requirements of the RFS if meeting such requirements will cause severe harm to the Nation's economy? Do you think that rising consumer prices constitute the potential for severe economic harm? As Administrator, would you consider waiving or modifying the renewable volume requirements to avoid or mitigate higher gas prices on our Nation's working families?

Congress established a stringent test for granting a waiver under the RFS program. Section 211(o)(7) of the Clean Air Act allows the EPA Administrator, in consultation with the Secretaries of Agriculture and Energy, to waive the requirements of the RFS under certain criteria. The waiver could be issued if the Administrator determines – after a notice and comment period – that implementation of the RFS requirements would severely harm the economy or environment of a State, a region, or the United States. That is a very fact-specific determination, and therefore would be best addressed in the context of a specific request after considering public comments.

EPA is proud of its "global leadership" role. EPA also takes the view that it is the aggregate effects of chemicals and emissions that really matter. Has EPA taken an aggregate, global approach in analyzing the impacts of its ethanol programs? I know you've analyzed national effects, but have you looked at global effects as well?

EPA has analyzed the impacts of the Renewable Fuel Standard (RFS) program in a number of different regulatory actions. For example, EPA issued a regulatory impact analysis (RIA) for the March 26, 2010 RFS final rule, which implemented the requirements of the Energy Independence and Security Act (EISA) of 2007. That RIA provided a detailed assessment of a wide variety of key impacts from the RFS program. EPA's analysis addressed impacts of EISA's requirements both on U.S. food prices and global food consumption, and contains explicit information about the assumptions and limitation of the data used to support the analyses. In

addition, in evaluating whether a fuel meets the greenhouse gas reductions for the RFS program EPA conducts a lifecycle analysis of greenhouse gas emissions that includes both domestic and global impacts.

EPA states, in regard to its RFS mandates, that "the quantity of food brought to market might decrease, resulting in higher food prices and possibly more malnutrition". If these higher prices and increased levels of malnutrition were shown to actually cause deaths, how serious an issue would that be, in your view?

Protecting public health is central to EPA's mission, and we therefore would consider such issues very seriously.

What is your response to recent studies, such as that by Dr. Indur Goklany in 2011, which finds that the higher food prices resulting from ethanol diversion might be responsible for as much as 192,000 deaths annually?

EPA is aware of the Goklany study and other analysis that look at global biofuels policies and their impacts. In the RIA for the March 26, 2010 RFS final rule, EPA analyzed the impacts of EISA's requirements on food prices and global food production.

Studies have been made that show that the increase of food prices due to ethanol policy have increased hunger in countries such as Guatemala and Mexico, causing violent protests in Yemen, Haiti, Egypt, Pakistan, Indonesia and Ivory Coast, and could possibly create 42 million new poor people in India. What is your response to these studies, taking into account that the U.S. alone is responsible for approximately 62 percent of the world's biofuel production?

EPA is aware of studies such as the type referenced, but the agency has not reviewed the specific studies referenced in a level of detail sufficient to enable us to comment on them at this point. In the RIA for the March 26, 210 RFS final rule, EPA analyzed the impacts of EISA's requirements on food prices and global food production.

Last year, the EPA denied petitions from seven governors to suspend RFS blending requirements. The governors contended that by diverting 40% of the U.S. corn crop to ethanol production, the RFS combined with the worst drought in 50 years drove corn prices to record heights, imposing severe hardship on poultry, beef, and pork producers in their states. Citing Section 211(o)(7) of the Clean Air Act, the EPA argued that to grant a waiver it must "determine that the implementation of the mandate itself would severely harm the economy; it is not enough to determine that implementation of RFS would contribute to such harm." But job losses, declining sales, bankruptcies, plant closures, and the like often have more than one cause. An RFS that does no harm when corn production and corn stocks are high and global demand is low might do considerable harm when the opposite conditions prevail, as they did in 2012. By insisting that the RFS "itself" must be responsible for severe harm, the EPA's denial of the petitions was disconcerting. If severe harm is occurring and the RFS contributes to it, what language in the statute prohibits the EPA from taking action?

In responding to the petitions, EPA consulted with the U.S. Department of Agriculture and the U.S. Department of Energy, and examined a wide variety of evidence, including modeling of the impact that a waiver would have on ethanol use, corn prices, and food prices. The agency also looked at empirical evidence, such as the current price for renewable fuel credits, called RINs, which are used to demonstrate compliance with the RFS mandate. EPA's analysis showed that it

is highly unlikely that waiving the RFS volume requirements would have a significant impact on ethanol production or use in the relevant time frame that a waiver could apply (the 2012-2013 corn marketing season) and therefore little or no impact on corn, food, or fuel prices. This was because the modeling showed that in almost all scenarios modeled the market would demand more ethanol than the RFS would require. While EPA recognized that many parties had raised issues of significant concern to them and to others in the nation regarding the role of renewable fuels and the RFS program and the severity of the drought and its major impacts on multiple sectors across the country, the issue directly before the Agency was limited given EPA's authority under section 211(o)(7)(A) of the Act. EPA applied the detailed analysis to the statutory criteria for a waiver. EPA found that the evidence did not support a determination that the criteria for a waiver had been met, and therefore was required by law to deny the waiver.

In October of 2011, two organizations, one of them an anti-hunger group, petitioned EPA to acknowledge the deadly side-effects of its ethanol-fuel programs. EPA took over a year—14 months, to be exact, to deny that petition. In contrast, the White House has a "We Can't Wait" series of policy initiatives that stress the need for urgent action. Why is that, on this issue of life-and-death, EPA obviously could wait? This was a data quality petition, and your own data quality regulations provide for a 90-day response time. What took so long?

EPA received a request for correction under the Information Quality Guidelines from the Competitive Enterprise Institute and ActionAid USA on October 13, 2011, and responded to that request in a letter dated December 13, 2012. Subsequently, EPA has received a request for reconsideration from the same two organizations. EPA acknowledges the length of time it required to respond to the October 13, 2011 letter and is currently in the process of responding to the request for reconsideration, on which the agency hopes to move more quickly.

A recent study conducted by NERA Economic Consulting, the same firm engaged by DOE for analysis of LNG exports, found that the current RFS mandates could lead to a 30% increase in consumer gas prices by 2015. NERA also found that the RFS mandates could result in a $580 billion decrease in take-home pay for working families. In your role as EPA Administrator, what steps do you intend to take to prevent these adverse impacts on our Nation's economy and working families?

The Agency has seen several analyses focusing on the potential impacts of the RFS program on retail gasoline prices. Some of these show minimal or indiscernible price impacts. The agency is carefully monitoring market dynamics. EPA has met with representatives of a broad array of stakeholders from the oil and renewable fuels industries, and is working with the Department of Agriculture and the Department of Energy, to assess current market activity related to the implementation of the RFS. As EPA implements the RFS program, the agency will continue to closely evaluate the impacts of the program and to consider whether any further actions under the directives and authorities provided by Congress are appropriate to address any such impacts.

Almost all analysts agree that we have reached or will soon reach the "blend wall"—or the time when the volumes of renewable fuel required by the RFS require producers to exceed the 10% volume threshold. A recent study by NERA Economic Consulting stated that the blend wall will result in fewer available RINs available for purchase to comply with the RFS and lead to higher gasoline prices at the pump for working families. In recent weeks this analysis has been borne out as RIN prices have skyrocketed from $.05 a RIN to over $1 a RIN. Do you agree that it is within EPA's legal authority to

release more RINs into the RFS market to reduce the impact of the blend wall on gas prices for consumers? As Administrator, would you favor doing so?

Only qualified registered renewable fuel producers are authorized to generate RINs. However, as we continue implementing the RFS program, EPA recognizes the need to closely evaluate the impacts of the program and consider its options under the authority of the Clean Air Act to address the E10 blendwall and other issues associated with implementation of the program.

Is it within EPA's legal authority to establish a "safety valve" as part of the RFS program whereby the EPA would cap/hold steady RIN prices based on their impact on the Nation's economy? As Administrator, would you consider establishing such a safety valve as part of the RFS?

The market sets the price of the RINs. However, as EPA continues implementing the RFS program, the agency recognizes the need to closely evaluate the impacts of the program and consider its options under the authority of the Clean Air Act to address adverse issues that may result from the program.

There appears to be increasing capability to calibrate dose-response mechanisms for many chemicals and naturally-occurring compounds, such that an exposure threshold can be established and that exposures below that threshold are safe. This is contrary to the methods EPA has routinely employed in risk assessments as the Agency continues to utilize a linear, no-threshold approach. Do you believe it is timely to revisit the Agency's risk assessment methodologies? Will you commit to requesting the NAS to undertake an appropriate revision to the Silver Book?

Response: I understand that sound science must be the basis for all of EPA's actions. If I'm confirmed, I commit to getting fully briefed on the issues that you raise.

Given tight budgets, shouldn't EPA be focusing its efforts on rulemakings mandated by a specific environmental statute?

Response: Tight budgets are requiring EPA to carefully assess how it prioritizes its actions and deployment of resources with a goal of maximizing its mission to protect human health and the environment in today's challenging context. Many factors, including which rulemakings are mandated by specific environmental statutes, are considered as part of determining the Agency's priority actions. If confirmed, I will ensure that EPA's process for establishing priorities is appropriate and prudent given the fiscal realities we face.

To understand the scientific underpinnings of conclusions provided in many of EPA's documents, the public has had to resort to using Freedom of Information Act requests or other approaches, to try to obtain scientific reviews, assessments, and rulemakings and other information and data that the EPA has relied upon, but which is not made readily available to the public. As use of these tools is time consuming and creates legal hurdles, the information has not been available in a timeframe that can

inform public review and public comment of these documents. As part of a commitment to transparency and openness, do you agree that the data and information which underlies the key scientific studies the agency relies upon in important scientific reviews, assessments, and rulemakings (e.g., National Ambient Air Quality Standards Integrated Science Assessments, IRIS Toxicological Review), should be available to the public? As Administrator, will you commit to making this information available in public dockets?

Response: As I said during the confirmation hearing, I agree with you that transparency should be a major priority for the Agency. If I'm confirmed, I will take steps to increase the availability of data, across the Agency.

EPA is currently involved in a scientific assessment of Selenium that will be used to propose a new national Selenium water quality criterion. EPA has stated that it intends to put out its proposed criteria for public comment this coming Fall. Under your leadership, what would EPA's strategy be for incorporating relevant scientific critiques and comments EPA receives into its final Selenium criteria?

Response: I share your interest in assuring that EPA's decisions regarding selenium are based consistently on the best available science that fairly and effectively takes into account technical critiques. If confirmed, I will work hard to make sure that any future agency decisions regarding selenium adhere to this principle. I understand that if and when the EPA proposes a revised proposed selenium criterion, that criterion would be available for public review and comment, and I commit to ensuring that the EPA reviews the technical comments it receives and makes appropriate revisions to ensure that any final criterion is of high quality.

How is EPA taking the site-specific nature of Selenium issues into account when developing the national standard?

Response: I share your interest in assuring that we consistently apply the highest scientific standards in the development of proposed national water quality criteria, including current efforts to revise the existing selenium criterion. If confirmed, I look forward to working with you to develop a national selenium criterion that the public can be confident satisfies these technical standards while retaining appropriate site-specific flexibility.

EPA is subject to a consent decree requiring it propose revised effluent guidelines for power plants by April 19. I have heard concerns expressed about the cost of the technologies being considered relative to the amount of pollutants removed. Cost effective regulations are important – especially to small utilities and those serving rural or economically disadvantaged communities. Why did EPA not

convene a formal small business advocacy review panel ahead of the pending proposed wastewater rules as required by the Small Business Regulatory Enforcement Fairness Act? Can you assure me that EPA has thoroughly evaluated the potential impacts on small utilities and that the proposed rule will not adversely affect small, member-owned cooperatives, especially those serving rural or economically disadvantaged communities?

Response: The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act, requires EPA to convene a Small Business Advocacy Review (SBAR) Panel for proposed rules unless the agency can certify that a rule will not have a significant economic impact on a substantial number of small entities. I will look into the particulars of the above rule if confirmed.

The Definition of Solid Waste (DSW) rule was finalized in December 2008. The rule permits certain valuable secondary material streams that are beneficially reclaimed, such as spent catalysts and spent solvents, to be excluded from RCRA Subtitle C requirements. The reclamation process must be either (1) under the control of the generator of the materials, or (2) the materials may be transferred by the generator to another person or company for reclamation. The 2008 rule was challenged by the Sierra Club but the case was put in abeyance after EPA agreed in a settlement with the Sierra Club that it would reconsider parts of the rule. The reconsidered rule was proposed for comment in July 2011. In that rule EPA proposed to take away the transfer based exclusion and proposed numerous additional requirements and conditions on the recycling and reclamation of valuable secondary materials. The 2011 reconsidered proposed rule creates little to no incentive for parties to recycle or reclaim secondary materials. Even more problematic, EPA has requested comment on subjecting 32 regulatory exclusions or exemptions that have been in existence for decades and have become part of manufacturing operations, for example, the closed-loop recycling exclusion, to a new level of scrutiny, and additional recordkeeping and notification requirements. Do you think that EPA should increase incentives for reuse/recycling, since incentives for recycling not only divert hazardous wastes from landfills and incinerators, but also allow the manufacture of valuable products? Do you think that the increased burden of the proposed DSW rule will tend to drive wastes that are currently recycled to disposal, which directly conflicts with the foundation of RCRA—reduce waste through recycling? Will you commit to reexamine the rule to ensure that it is based on sound scientific data, that it will decrease the burden of facility waste management and increase incentives to recycle materials to recover valuable waste streams?

Response: As a former state environmental agency commissioner, I know the importance of encouraging recycling to reduce waste disposal and the transition to sustainable materials management to support the reclamation of valuable secondary materials. If confirmed, I will plan to be actively engaged in EPA's DSW rulemaking efforts.

Without analysis how can EPA determine that SIP provisions related to start-up, shut-down, and malfunction are "substantially inadequate" for purposes of the Clean Air Act?

EPA's proposed SIP call to amend provisions applying to excess emissions contains 49 pages of analysis that comprehensively discuss each affected SIP provision of each affected state. There, EPA carefully explained its reasoning for proposing to find that a given provision is or is not "substantially inadequate" to satisfy the legal requirements of the CAA. Where EPA proposed to find that a provision is impermissible under the CAA, but the exact meaning of that provision was open to interpretation, the agency solicited comments from all parties including the affected state to determine whether EPA's reading of the provision was accurate or whether the state had an alternative interpretation that would render the provision permissible.

Has EPA done any analysis of the impacts on an emissions source trying to operate without the SSM provision?

The implications for a regulated source in a given state, in terms of whether and how it would potentially have to change its equipment or practices in order to operate with emissions that comply with the revised SIP, will depend on the nature and frequency of the source's SSM events and how the state chooses to revise the SIP to address excess emissions during SSM events, consistent with the requirements of the Clean Air Act. The preamble to the proposed action describes EPA's assessment of the potential impacts of the proposed SIP calls on sources. See "What are potential impacts on affected states and sources?" at 78 FR 12467.

Do you agree that policy changes are not enforceable or mandatory requirements of the EPA?

EPA agrees that policy changes are not enforceable or mandatory until the interpretations reflected in those changes have gone through the appropriate legal process, such as notice-and-comment rulemaking. EPA's interpretation of the CAA with respect to the treatment of excess emissions during SSM periods is expressed in a series of guidance documents issued in 1982, 1983, 1999, and 2001. While these guidance documents are not themselves binding on the states, EPA has consistently applied the SSM policy contained therein in a number of individual rulemaking actions that were subject to notice and comment. Therefore, because the SSM policy has undergone and survived the rigors of public scrutiny associated with the rulemaking process, and has previously been upheld by courts, EPA believes that the SSM policy is correct interpretation of the requirements of the CAA.

Has EPA done any analysis like it did for the NOx SIP call to determine if the SIP provisions in question are threatening the NAAQS?

EPA has not based its proposed findings of inadequacy on a quantitative assessment that the specific SIP provisions in question resulted in a specific violation of the NAAQS. In fact, it is because of SSM exemptions that excess emissions during periods of SSM are not accurately accounted for in SIPs, with the result that even though the attainment and maintenance of the NAAQS is potentially compromised by SSM exemptions, there are few data readily available on which to conduct a quantitative assessment.

EPA argues that SSM prevents the enforcement of emissions limits. Isn't this circular since the validly approved SIP exempts such events from the emissions limits?

EPA's proposed action addresses existing SIP provisions with several types of deficiencies, including automatic exemptions from emissions limits and discretionary exemptions from emissions limits during SSM events. Because these types of exemptions are not valid under the CAA, EPA's approval of these types of provisions was in error. Reliance on such provisions has thus frustrated effective enforcement of emissions limits in SIPs. Other types of provisions addressed in the proposal also interfere with effective enforcement of emissions limits by purporting to prevent enforcement by EPA or citizens if the state elects not to enforce or to preclude the availability of penalties or injunctive relief for violations in enforcement actions by any party.

Were the existing SIP provisions in question legally approved and promulgated by EPA and the states? What is the legal basis for declaring a validly-approve SIP provision invalid after the fact?

Under CAA section 110(k)(5), EPA is authorized to require states to revise previously approved SIP provisions. In this instance, EPA has acknowledged that it should not have approved the provisions in the first instance, and thus is proposing to require the affected states to correct these provisions.

Has EPA done any analysis of the impacts on an emissions source trying to operate without the SSM provision?

The implications for a regulated source in a given state, in terms of whether and how it would potentially have to change its equipment or practices in order to operate with emissions that comply with the revised SIP, will depend on the nature and frequency of the source's SSM events and how the state chooses to revise the SIP to address excess emissions during SSM events, consistent with the requirements of the Clean Air Act. The preamble to the proposed action describes EPA's assessment of the potential impacts of the proposed SIP calls on sources. See "What are potential impacts on affected states and sources?" at 78 FR 12467.

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

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

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

It is often not feasible to operate or use pollution control equipment during SSM periods without causing damage to that equipment. Some types of pollution control equipment cannot operate at full efficiency during startup periods, and some facilities and equipment must use alternative fuels during startup periods that pollution control equipment was not designed to target. What steps will EPA take to avoid a one-size-fits-all approach to implementing this rulemaking? Why is the EPA proposing to take away the ability of states to use enforcement discretion for excess emissions resulting from startup, shutdown and malfunctioning periods? Does EPA think that states are abusing this authority?

EPA is not taking a "one-size-fits-all" approach in the February 2013 proposed rulemaking. Under the principles of cooperative federalism, the CAA vests air agencies with substantial discretion as to how their SIP provisions meet the legal requirements and objectives of the CAA. EPA is not prescribing to states exactly how they must implement the CAA, nor is EPA directing states to adopt particular control measures. Rather, in issuing a SIP call, EPA is requiring that states bring their SIPs into compliance with the legal requirements of the CAA but leaving discretion to the states to remove or revise impermissible provisions, consistent with CAA requirements. Implementation concerns would be more appropriately considered during the state's process of revising its SIP to remove illegal SSM-related provisions. EPA's proposed rule also does not take away the ability of states to use enforcement discretion.

State Primacy

Do you agree that it was Congress' intent for the States to play the lead role in relevant air quality regulatory decisions? Are you committed to having the EPA implement the Clean Air Act in a manner that reflected that intent?

Congress established the Clean Air Act as a system under which the EPA and States both have important roles in setting and implementing the Clean Air Act. Congress assigned different roles to EPA and the states, respectively, depending on the nature of the air pollution problem. If confirmed as Administrator, I am committed to ensuring that EPA continues to implement the Clean Air Act in partnership with state, local, federal and tribal governments, consistent with the Clean Air Act's requirements.

States have the primary responsibility for implementing the environmental programs and regulations that EPA develops. Most States receive less than 20% of their overall budget from EPA, and in some cases, significantly less; yet EPA continues to adopt new regulations and programs without providing the States with commensurate funding. If confirmed, how will you balance the increasing demand for the State's services with the decreasing availability of the resources needed to implement EPA's ever expanding programs?

Response: Having over two decades of experience at the State and Local level, I recognize and appreciate the need for funding to States. If I'm confirmed, I will work with you and others to find innovative solutions to balance the need for federal funding to States with the need to continue important State efforts.

Tier 3

Why did EPA withhold the findings of its backsliding study until the Tier 3 rule was released?

The proposed Tier 3 rule is independent of the anti-backsliding study required by sections 211(q) and 211(v) of the Clean Air Act. EPA is currently conducting analysis and peer review for the anti-backsliding study and is not currently prepared to release it.

Generally, EPA shows the results of its studies, but withholds the modeling. Why is this a common practice of EPA?

It is unclear to which modeling this question refers. When EPA runs the IPM model for analysis of power sector rules, for example, it places model output in the docket for public review.

Last year, EPA identified 36 marginal ozone nonattainment areas that must attain by 2015. This means 3 clean summers, 2013 through 2015. Tier 3 will not be effective during this period. There are not many areas with attainment dates after 2015. Do they all need Tier 3? Do we need a national Tier 3 program to help a few areas?

Reductions in motor vehicle emissions from the proposed Tier 3 standards would improve air quality across the country, helping areas to attain and maintain the NAAQS. The proposed standards would significantly decrease ambient concentrations of harmful pollutants such as ozone, $PM_{2.5}$ and air toxics by 2030, and would immediately reduce ozone in 2017 when the proposed sulfur controls take effect. NO_X emissions would be reduced by about 284,000 tons, or about 8 % of emissions from on-highway vehicles, in 2017 alone. In 2030, when Tier 3 vehicles would make up the majority of the fleet, NO_X and VOC emissions from on-highway vehicles would be reduced by about 525,000 tons and 226,000 tons, respectively, or about 25%. By 2050, when Tier 3 vehicles would make up almost the entire fleet, NO_X and VOC would be reduced by nearly 40% for on-highway vehicles.

EPA's Tier 3 proposed rule would change the certification fuel that is used to test vehicles and engines for compliance with Clean Air Act standards. EPA is proposing to mandate that gasoline with 15% ethanol be used as certification fuel. Your rule describes this action as "forward looking" while admitting that E15 is now only commercially available in a limited number of fuel retailers. Is it appropriate for EPA to use its Tier III regulation to compel automakers to produce E15 vehicles? Why is EPA making this change now?

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

Wouldn't it be prudent for EPA wait to see how E15 performs in the marketplace prior to mandating its use as the new certification fuel?

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

If E10 is now the predominant gasoline blend, why wouldn't EPA consider this fuel first as the new certification fuel?

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

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

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

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

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

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

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

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

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

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

It has been more than 10 years since any changes have been made to federal certification test fuel, but it is time to change the certification fuel to reflect the fact that ethanol is found in most retail gasoline today. In an effort to focus on the longer term, EPA is proposing that manufacturers use E15 as the test fuel for certification purposes, but the agency is also seeking comment on whether E10 should be the federal certification test fuel. EPA will fully consider comments from stakeholders and the public before making a final decision.

The Tier 3 rule solicits comments on various alternative approaches in transitioning to E15 as certification fuel. Would E10 be an appropriate certification fuel since it appears to meet EPA's criteria of that test fuel that "better align(s) with the current and projected in-use fuel"?

Vehicles must be tested under conditions which reflect conditions they experience in-use. Since Tier 3 standards phase in from 2017-2025 this means in-use conditions well out into the future. In light of uncertainty regarding future conditions, it seemed prudent to ensure that all new vehicles going forward were designed to be durable and emission compliant on ethanol

concentrations up to the E15 waiver limit. At the same time EPA is seeking comment on whether we should finalize E10 for certification test fuel.

Would your estimates of the benefits of the Tier 3 proposed rule appreciably change if E10 was selected as the new certification fuel?

Selecting E10 as the certification fuel would not impact the exhaust emissions benefits of the proposed Tier 3 rule. However, it could effectively increase the stringency of the evaporative emission standards if the volatility of the E10 certification fuel were to be set at 10 psi, consistent with in-use fuel.

Have you considered whether the proposed tailpipe and evaporative standards are appropriate if E10 is the new certification fuel, or would they need to be adjusted?

EPA does not believe there would need to be any adjustment to the exhaust emission standards. However, it could effectively increase the stringency of the evaporative emission standards if the volatility of the E10 certification fuel were to be set at 10 psi, consistent with in-use fuel.

E15 is not the certification fuel in California. It is E10. I understand that California does not permit its gasoline to be E15. EPA has touted national uniformity in many areas of mobile source regulation. Why have you proposed E15 as a federal certification fuel when it cannot be used as such in California?

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

Your Regulatory Impact Analysis assumes that E15 utilization for 2001 and later model vehicles will be 50% by 2017, about 80% by 2019 and 90% by 2020. You also project that use of E15 will be substantially higher in Reformulated Gasoline (RFG) areas, which are major population areas by Clean Air Act definition – EPA projects nearly 75% of gasoline will be E15 in RFG areas by 2017. Yet E15 is now almost entirely absent from the market by EPA's own assessment. Are you assuming, then, that nearly all MY 2001 and later car owners will be using E15 even if automobile companies don't warrant such cars for using E15? Why do you assume such levels of consumer acceptance?

Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine its analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

EPA data indicates that pre-MY 2001 vehicles and other equipment that cannot use E15 were almost 40% of the gasoline market in 2010. How will EPA ensure that E10 will be available for older model cars less than a few years from now?

EPA is not mandating E15 and the market will determine what among the range of legal fuels are sold to satisfy customer demand. Regardless, since E15 is currently distributed from less than 20 of the approximately 150,000 retail stations nationwide, this would not appear to be a near-term concern. Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine its analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

Doesn't EPA analysis of RFG areas effectively project that 3 out of 4 retail outlets will have to be selling E15 in major cities in less than four years?

Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine its analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

Your Regulatory Impact Analysis assumes that E15 utilization in nonroad equipment (like construction equipment, lawnmowers and chain saws) will ramp up from zero percent in 2017 to 100 percent by 2030. Yet, to date, EPA has not acted to waive restrictions on using E15 for any nonroad vehicle or piece of equipment. On what analysis is this E15 penetration rate for nonroad vehicles based?

Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine its analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

Please detail what other regulations or EPA determinations will be necessary to force this amount of E15 into the nonroad sector within the time period projected.

Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine its analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal. The Tier 3 proposal has no bearing on fuels used in the nonroad sector. The Tier 3 proposal does not change the fact that the partial waiver for E15 does not allow for its use by nonroad equipment.

Is EPA currently considering issuing a Clean Air Act section 211(f)(4) waiver for use of E15 blends in nonroad equipment, motorcycles and other vehicles and equipment not covered by current waivers?

No, there is no such action under consideration by the Agency.

Doesn't this mean that EPA considers E85 not to be a viable option for meeting renewable fuel standard requirements?

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

Recent reports on the proposed Tier 3 rule have warned that it could actually increase greenhouse gas emissions from the production of gasoline due to the energy-intensive equipment that would be needed to comply with the rule. Would you support rescinding the proposed Tier 3 rule if compliance with the rule was found to increase greenhouse gas emissions?

The proposed Tier 3 standards would result in very large emission reductions from both new and existing vehicles. The additional gasoline hydrotreating would also cause a relatively small increase in greenhouse gas (GHG) emissions at the refinery due to the additional gasoline hydrotreating. EPA analyzed these impacts in detail using our refinery-by-refinery analysis. The relatively small increase in GHG emissions from refining would be offset though reductions in vehicle emissions of GHG pollutants (methane and N_2O) from the improved operation of the vehicle catalysts.

Is it EPA's intention to use the E15 cert fuel to force the automakers to produce E15 capable vehicles? Is it appropriate for EPA to use its Tier III regulation to force autos to produce E15 capable vehicles? Is the cost of hardening vehicles for E15 included in the Tier III cost calculations?

Vehicles must be tested under conditions which reflect conditions they experience in-use. Since the proposed Tier 3 standards would phase in from 2017-2025 this would mean in-use conditions well out into the future. In light of uncertainty regarding future conditions, it seemed prudent to ensure that all new vehicles going forward were designed to be durable and emission compliant on ethanol concentrations up to the E15 waiver limit. At the same time EPA is seeking comment on whether the agency should finalize E10 for certification test fuel. Many of the vehicle manufacturers are already warranting their new vehicles to operate on E15. The change of certification fuel to E15 would thus have little impact on vehicle hardware, but would ensure manufacturers design their vehicles to account for emission impacts of ethanol concentrations up to E15 over the life of the vehicle.

In 2009 EPA issued a set of principles on TSCA modernization. In 2010 EPA participated in the House Energy and Commerce Committee's dialogue on discussion draft TSCA legislation. Over the last

several years, EPA has provided technical support to both Senate Democratic and Republican staff on TSCA reform matters. But it's my understanding that EPA has not taken a public position on any of the House or Senate TSCA reform bills introduced to date. Do you anticipate that EPA will take a position on TSCA legislation going forward? What is the Administration's view of its role in the TSCA debate? Will EPA continue to provide just technical support, or will EPA provide more leadership in the TSCA debate under your administration?

EPA's TSCA principles set out several key objectives for reform. TSCA is a complex statute, with many different programs intended to address new and existing chemicals. What are EPA's most important objectives in reforming TSCA?

Most of the concerns raised about TSCA have focused on its "existing chemicals" program, not its "new chemicals" program. Do you agree that EPA's new chemicals review program is successful? What level of confidence does EPA have in its new chemical review program?

Response (to the three questions above): While I am not familiar with any position that the Administration may or may not take, I do agree with you that our chemical safety laws are antiquated and need to be reformed. Furthermore, I understand that the TSCA law, as written in 1976, creates challenges with the new and existing chemicals program.

I understand that the Agency's principles for TSCA reform are:

Principle No. 1: Chemicals Should be Reviewed Against Safety Standards that are Based on Sound Science and Reflect Risk-based Criteria Protective of Human Health and the Environment.

EPA should have clear authority to establish safety standards that are based on scientific risk assessments. Sound science should be the basis for the assessment of chemical risks, while recognizing the need to assess and manage risk in the face of uncertainty.

Principle No. 2: Manufacturers Should Provide EPA with the Necessary Information to Conclude That New and Existing Chemicals are Safe and Do Not Endanger Public Health or the Environment.

Manufacturers should be required to provide sufficient hazard, exposure, and use data for a chemical to support a determination by the Agency that the chemical meets the safety standard. Exposure and hazard assessments from manufacturers should be required to include a thorough review of the chemical's risks to sensitive subpopulations

Where manufacturers do not submit sufficient information, EPA should have the necessary authority and tools, such as data call in, to quickly and efficiently require testing or obtain other information from manufacturers that is relevant to determining the safety of chemicals. EPA should also be provided the necessary authority to efficiently follow up on chemicals which have been previously assessed (e.g., requiring additional data or testing, or taking action to reduce risk) if there is a change which may affect safety, such as increased production volume, new uses or new information on potential hazards or

exposures. EPA's authority to require submission of use and exposure information should extend to downstream processors and users of chemicals.

Principle No. 3: Risk Management Decisions Should Take into Account Sensitive Subpopulations, Cost, Availability of Substitutes and Other Relevant Considerations.

EPA should have clear authority to take risk management actions when chemicals do not meet the safety standard, with flexibility to take into account a range of considerations, including children's health, economic costs, social benefits, and equity concerns.

Principle No. 4: Manufacturers and EPA Should Assess and Act on Priority Chemicals, Both Existing and New, in a Timely Manner.

EPA should have authority to set priorities for conducting safety reviews on existing chemicals based on relevant risk and exposure considerations. Clear, enforceable and practicable deadlines applicable to the Agency and industry should be set for completion of chemical reviews, in particular those that might impact sensitive sub-populations.

Principle No. 5: Green Chemistry Should Be Encouraged and Provisions Assuring Transparency and Public Access to Information Should Be Strengthened.

The design of safer and more sustainable chemicals, processes, and products should be encouraged and supported through research, education, recognition, and other means. The goal of these efforts should be to increase the design, manufacture, and use of lower risk, more energy efficient and sustainable chemical products and processes.

TSCA reform should include stricter requirements for a manufacturer's claim of Confidential Business Information (CBI). Manufacturers should be required to substantiate their claims of confidentiality. Data relevant to health and safety should not be claimed or otherwise treated as CBI. EPA should be able to negotiate with other governments (local, state, and foreign) on appropriate sharing of CBI with the necessary protections, when necessary to protect public health and safety.

Principle No. 6: EPA Should Be Given a Sustained Source of Funding for Implementation.

Implementation of the law should be adequately and consistently funded, in order to meet the goal of assuring the safety of chemicals, and to maintain public confidence that EPA is meeting that goal. To that end, manufacturers of chemicals should support the costs of Agency implementation, including the review of information provided by manufacturers.

I look forward to working with you, and others on these reforms.

In 2012 EPA identified 83 chemicals as priorities for further assessment by the Agency. Earlier this year EPA released draft targeted assessments on five of these chemicals. What has EPA learned to date from the TSCA Work Plan chemical assessment process and in particular? How is the TSCA Work Plan chemical program relevant to the debate on TSCA reform?

Response: While I am not familiar with the specifics of the assessments, I can tell you that the Agency and I are committed to ensuring the American public that the chemicals manufactured and used in the products that they and their families use are safe.

In 2010, EPA announced a very significant policy shift in its interpretation of the CBI provisions under TSCA. This policy shift abandoned more than 35 years of EPA's legal and policy interpretation and adopted a very narrow interpretation as to when claims for confidential chemical identity will receive trade secret protection under TSCA -- significantly harming the protection of legitimate confidential business information. The Agency has never responded to public comment on that 2010 CBI policy announcement. Do you believe that President Obama's Strategy on Mitigating Theft of U.S. Trade Secrets should affect EPA's 2010 CBI policy change? If so, how? As Administrator, do you intend to pursue regulations implementing the 2010 CBI policy change?

Response: I strongly support this Administration's efforts to increase the public's access to critical chemical information and to reduce unwarranted confidentiality claims by industry. However, if a company has a legitimate confidential business information claim, EPA takes very seriously its commitment to protect that information so as not to cause harm to the company. Please be assured that I share this commitment and look forward to working with the Committee on this issue.

In a January 23, 2013 letter, Senator Vitter asked EPA to provide the dates EPA submitted its Spring 2012 Unified Agenda and Fall 2012 Unified Agenda to the Office of Information and Regulatory Affairs (OIRA). In its April 10, 2013 response, EPA stated that they complied with OIRA's data call letters. Please provide the specific dates EPA submitted its 2012 Spring Unified Agenda and Fall 2012 Unified Agenda to OIRA.

Response: The Office of Air and Radiation complied with all internal deadlines related to the Regulatory Agenda. If confirmed, I will respect the deadlines specified in OIRA call letters.

EPA is increasingly using ""willingness-to-pay"" (WTP) surveys to supplement the expected benefits of regulatory actions with substantial projected costs. Two recent examples include the proposed Clean Water Act section 316(b) requirements for cooling water intake structures (CWIS) and total maximum daily load (TMDL) cleanup plans for nutrients and sediments in watersheds. EPA estimated CWIS costs at over $300 million, although the final rule could change significantly. EPA estimated TMDL

capital costs of $28 billion and an additional $2.7 billion dollars per year for operating and maintaining costs. The surveys are intended to represent what price people might assign to a theoretical effect (e.g., having a healthy fish population) of a proposed rule from which they gain no direct benefit. Thus the effects are a hypothetical and subjective justification for the proposed rule. As such, it would be inappropriate for EPA to count the results of these surveys as actual monetary benefits for a proposed rulemaking. Economic experts have concluded that there are very few instances in which such a complicated subjective tool can be used with any degree of reliability. Following a National Oceanic and Atmospheric Administration (NOAA) blue-ribbon panel review of contingent valuation surveys, a Nobel laureate economist on the panel noted that ""many departures from the guidelines or even a single serious deviation would, however, suggest unreliability prima facie."" Should EPA address public concerns about the direction of EPA's monetization of these survey results and their use in benefit calculations for proposed rulemakings? What steps will you take as Administrator to ensure that EPA's assessment of economic costs and benefits of its proposed rules meet standards for high quality, reliability, and reproducibility?

Response: My understanding is that stated preference is a tool that EPA has used in the past and that the appropriate use of stated preference, and the challenges, are discussed in the Agency's peer-reviewed "Guidelines for Preparing Economic Analyses". If confirmed, I am committed to ensure that EPA's economic studies are conducted in a high quality fashion, consistent with best economic practices.

As you know, EPA has granted a waiver to California for its Zero Emission Vehicle (ZEV) program. As a general matter, what is your view on sales mandates, or, in this case, using environmental laws to require that automakers sell a certain number of a particular type of vehicle? Do you believe that a manufacturer should be required to sell the mandated vehicles at a loss if that is the only way to meet the required Government sales volume? What is EPA's role in assessing the efforts of states that adopt this program to create the infrastructure, incentives, and other mechanisms that will help this program be successful? What recourse do automakers have if EPA does not exercise this oversight?

EPA's waiver decisions are governed by section 209(b) of the Clean Air Act, which requires the Administrator of EPA to grant a California waiver request unless the Administrator makes any of the following three findings:

- California's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious,
- California does not need its standards to meet compelling and extraordinary conditions, or
- California's standards and accompanying enforcement procedures are not consistent with section 202(a) of the Clean Air Act.

At the direction of Congress, EPA has contracted with the National Academy of Sciences to assist in the development and eventual peer review of the IRIS assessment of inorganic arsenic. Recently, the newly formed NAS panel on arsenic convened a workshop to explore answers to some key science policy questions. In advance of the convening of the NAS panel, the EPA's National Center for Environmental Assessments conducted a workshop in December 2012. A member of the NCEA staff at

that workshop seemed to trivialize the impact of the NAS work in this matter and stated that although IRIS is re-writing the document, several old sections will be used, and the bottom-line conclusion is not going to change. This statement seems to summarize the current position of the IRIS program. On the one hand, Dr. Olden, the recently named director of NCEA, makes claims of a new, improved and transparent IRIS process but, on the other hand, this approach does not appear to have devolved to the staff, leaving one to question whether real change in the program is actually occurring. What steps do you plan to take to ensure the IRIS program reflects a thorough and objective review of the science and develops hazard assessments that can withstand rigorous independent scrutiny?

Response: If I'm confirmed, the first step I will take to understand the IRIS review process is getting a full and robust briefing from staff on the current status of their work in the program. I will then work with other scientific groups, industry and health advocates to understand their perspectives.

In the April 9 letter, EPA recognizes that it only has authority to regulate renovation activities in P&C buildings if it finds that renovations in those structures create a lead-based paint hazard. EPA also states that it is in the "very early stage of evaluating approaches" in determining whether such a lead hazard exists in P&C buildings. EPA also recognizes that, based on a litigation settlement agreement with the Sierra Club, EPA has deadlines in place to propose and finalize regulations for renovation activities in commercial buildings. In short, EPA has deadlines in place to establish regulations for renovations activities in P&C buildings. But, it does not have deadlines in place to guide the fundamental decision on whether a hazard even exists. Why does EPA have a schedule to develop regulations for renovation activities in commercial buildings, but does not have a schedule to determine if any lead paint hazard even exists in these buildings in the first place?

Response: I support the Agency's goals to reduce childhood lead poisoning during renovation and repair activities, including in public and commercial buildings if they pose a risk. If confirmed, the Agency and I will work with you and other members of the Committee, as well as the range of entities who may be affected by the Agency's efforts on this important issue.

James M. Inhofe

Questions for the Record

Gina McCarthy Confirmation Hearing

Environment and Public Works Committee

Regional Haze

The Regional Haze program is purely for aesthetics, has nothing to do with public health, and was intended to improve visibility at national parks. States were given control by Congress to establish the emission standards and the appropriate controls for implementation. Your agency overruled Oklahoma's Regional Haze State Implementation Plan (SIP) following a Sue & Settle Consent Decree with environmental groups because you said Oklahoma's cost estimates were inaccurate. In response, EPA issued its own implementation plan that would cost $1.8 billion and would not have any more favorable impact on visibility than the SIP.

1. **Inhofe 1. Did EPA do a technical, an economic, and a cost-benefit comparative analysis between Oklahoma's State Implementation Plan (SIP) that was overturned by EPA and the Federal Implementation Plan (FIP) that EPA imposed instead? If EPA performed any of those three analyses for either or both the SIP and the FIP, please provide them to me. If EPA did not perform any or all of those three analyses for the two plans, please explain why you did not do so.**

   EPA carefully assessed the costs and the visibility benefits associated with the controls in both Oklahoma's Regional Haze SIP and our FIP. The Clean Air Act and EPA's implementing regulations require that both the costs of controls and the visibility benefits be taken into account in making a determination of the appropriate controls. The agency took comment on our analyses before taking final action on our FIP for Oklahoma. The analysis can be accessed at http://www.regulations.gov/#!documentDetail;D=EP A-R06-OAR-2010-0190-0019.

2. **Inhofe 2. Do you agree that Oklahoma's low-cost SIP is more cost effective than EPA's FIP? What is the comparative cost-benefit analyses of the SIP vs. the FIP? Are there any additional or greater visibility gains achievable by the FIP that are not attainable by the SIP?**

   EPA does not agree that Oklahoma's SIP is more cost-effective than our FIP. The agency's analysis of the costs of control indicated that the six coal-fired units in question could install air pollution controls at less than half the cost that Oklahoma estimated, while at the same time resulting in greater visibility benefits at several Class I areas than Oklahoma's plan. However, EPA has recently reached an agreement with the state and one of the companies affected by the FIP on an alternative pathway that the agency expects will be submitted by the state as a SIP to replace the FIP. EPA is also in negotiations with the remaining company about possible replacements for the FIP at one of its plants.

3. **Inhofe 3. Did EPA use the Regional Haze program to force Oklahoma utilities to install scrubbers on coal fired utilities despite Oklahoma's equally effective, less expensive SIP?**

   EPA disagrees that Oklahoma's plan was equally effective, as explained in the answer to Question 2. EPA's FIP follows the requirements of the Regional Haze rule, which implements the requirements established by Congress in Sections 169A and 169B of the Clean Air Act. The FIP does not close off other paths toward compliance, as evidenced by our agreement on an alternative to the FIP controls with one of the companies involved and our continuing negotiations with the remaining company.

4. **Inhofe 4. Did EPA alert the state of Oklahoma or utilities in the state prior to entering into a consent decree involving Oklahoma's SIP?**
   a. **If EPA did, did EPA provide both the state and the utilities with an opportunity to participate in the settlement discussions?**
   b. **If EPA did not, why not?**
   c. **Do you believe EPA should allow states and affected utilities to participate in any negotiation process prior to a Consent Decree being agreed to that would affect the SIP, the state, and the state's utilities?**

   In keeping with the requirements of the Clean Air Act, the states and the utilities had an opportunity to comment on the proposed consent decree before EPA provided its final agreement and the consent decree was approved by the court. EPA recently has begun providing notices of intent to sue the agency on EPA's publicly available website, which will help to provide states and others notice of potential litigation that may affect their interests. See http://epa.gov/ogc/noi.html

5. **Inhofe 5. Will you please provide me with all of the unredacted correspondence between EPA and the environmental groups regarding the Regional Haze program during your tenure at the Air Office?**

   I am informed by agency staff that the normal protocol for such a request for documents is to submit a separate letter to the agency, rather than through a question for the record. EPA will respond appropriately to any such request it receives.

6. **Inhofe 6. Through the Consent Decree, did EPA intend to establish an unrealistically aggressive set of targets and timelines for approving State Implementation Plans to artificially constrain the amount of time available to work with states on procedural issues like cost estimates so that it could ultimately force a Federal Implementation Plan at a much greater cost?**

   EPA's efforts to work with the states on submitting SIPs are long-standing. At the time EPA negotiated the consent decrees for taking action on the regional haze plans, the deadline for submitting the state plans had passed by more than two years. In these negotiations, EPA sought to obtain a schedule that would allow EPA time to responsibly discharge its overdue mandatory duties under the CAA through notice-and-comment rulemaking. The agency was mindful that the plaintiffs had the option of seeking an even more expedited schedule from the court, and that there was a significant risk that that the court might establish a very aggressive schedule. In EPA's judgment, a

court addressing the issue of an overdue mandatory duty by EPA would be unlikely to provide time for a second chance for a state to complete the planning obligation it has already failed to meet. Some states have been able to submit SIP updates as EPA was taking action on their original submissions, and the agency has been able to approve such updates in some cases. Where a federal plan has been established under this consent decree, it is still EPA's preference that it be replaced by an approvable state plan. EPA has sought, and mostly obtained, numerous extensions to the dates in the original consent decrees when EPA determined that additional time was needed; in most instances, these extensions have allowed the agency to consider additional information provided by the states.

7. **Inhofe 7. Why did EPA decide to overrule Oklahoma's State Implementation Plan (SIP) and impose a FIP instead of working with the State to address whatever deficiencies EPA saw in the SIP's cost estimate?**

The Agency disapproved Oklahoma's plan because Oklahoma's cost analysis for scrubbers did not follow the requirements outlined in the Regional Haze rule. EPA pointed out this concern while Oklahoma was still developing its SIP, but the state did not change its cost evaluation before submitting the SIP. Consequently, EPA disapproved Oklahoma's SIP, which triggered a legal obligation to issue a FIP in its place. While it is the agency's preference to allow states the opportunity to correct deficiencies in their SIPs, EPA was unable to negotiate enough time in the consent decree for Oklahoma to submit a new SIP with a corrected cost analysis. Nonetheless, EPA still prefers that the state replace the FIP with a SIP.

8. **Inhofe 8. As Administrator, what will your primary objective be when implementing the Regional Haze program?**
    a. **Will you assure me that EPA will make every conceivable effort to work with states to ensure that their SIPs are approved, and that FIPs will only be implemented once EPA has exhausted the Clean Air Act's cooperative federalism concepts and conclusively determines through a technical comparative analysis that the overruled SIP will not meet the visibility requirements outlined in the Regional Haze program?**
    b. **Will you also ensure that any FIP is the least expensive option available to EPA to meet the minimum requirements of the Regional Haze law? Will you provide economic comparative analysis of the separate plans?**

In general, it is my goal to work with the states as closely as possible and I will continue to look for opportunities to involve them in decision making that affects their interests. The states are required to submit their next full regional haze plans in 2018. I am committed to work with states to approve their SIPs.

9. **Inhofe 9. In the CAA, please provide your definition of cooperative federalism. Can you conceive of any circumstances where EPA has disagreed with a State's approach, on policy grounds, and decided that the Agency will not intervene to override the state?**

"Cooperative federalism" is generally used to describe the Clean Air Act's approach of assigning tasks to EPA and States that, when taken together, result in cleaner air and important public health protections. For example, EPA sets the National Ambient Air Quality Standards for specific

pollutants. EPA works with States to set up monitoring networks and to designate areas as ones that are attaining, not attaining or lack sufficient data with respect to the standards. States submit plans that must meet the requirements of the Act, including the requirement to bring all areas into the state into attainment with the standards. If EPA disapproves a plan for failing to meet the Act's requirements, or if a State fails to submit a plan in whole or in part, then the Act requires EPA to issue a federal plan for the State unless there is a timely correction of the deficiency and subsequent approval by EPA. EPA also issues rules (such as the recently proposed Tier 3 fuel and vehicle regulations) that assist areas in meeting the air quality standards. In instances where EPA has not been under a consent decree deadline for a federal plan, the agency has disapproved SIPs with technical errors without immediately putting into place a federal plan. Except for a few instances in which EPA and the state agreed in advance that EPA would promulgate a FIP because of resource and technical capacity limitations at the state level (Hawaii, Virgin Islands, and Montana), in every instance in which EPA has adopted a federal regional haze plan, the agency had found errors in the state's technical analysis that the agency concluded would make EPA approval of the state plan unsustainable under legal challenge. In all cases without such technical errors, EPA has accepted the state's balancing of costs and visibility benefits.

Aggregation

The Clean Air Act requires facilities to obtain a Federal Operating Permit for air emissions from the EPA if they emit 100 tons or more of any criteria pollutant per year. Properties that are truly next to one another are generally considered one facility. But if one owner has multiple facilities spread out over a large area, say 42 square miles, the facilities are considered separate. In 2007, the Bush Administration issued a memo applying this policy in the oil and gas industry, but you overturned this memo in 2009 and instead issued one that would combine the emissions of wells that are spread over a large area, triggering significantly greater permitting requirements. When this was challenged in the 6th Circuit last year, the court agreed that "adjacent" is a plain word with plain meaning, but you have not yet applied the decision outside that circuit. Also, the states have regulations that adequately address the aggregation matter, which regulations have been reviewed and found acceptable by the state regulatory bodies as well as the stakeholder groups.

10. EPA lost this case because the court found it misinterpreted the plain meaning of the law. Will you commit to apply the 6th Circuit Court decision to the rest of the country?

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

Hydraulic Fracturing Studies and Review Board

As you know, the EPA is currently engaged in a study on the impact of Hydraulic Fracturing on drinking water. The Agency has assembled a panel to review the study's findings, but very few industry participants were included because many hold too much stock in the oil and gas industry. It is my understanding that EPA has significant authority to waive these restrictions for participants.

11. Will you agree to reassemble the panel and, using your waiver authority, ensure an equal representation of industry participants with other stakeholders?

Response: From what I understand, members of the SAB Hydraulic Fracturing Research Advisory Panel were chosen because of their scientific expertise. If confirmed, I would be happy to discuss this issue with you further.

12. Do you think EPA should consider the potential bias of scientists who receive grant money from environmental groups when determining whether they should be included on EPA review panels and boards?

Response: For the Science Advisory Board, all members are hired as Special Government Employees (SGEs). They are therefore subject to the federal conflicts of interest laws and the Standards of Ethical Conduct for Employees of the Executive Branch. For the members who serve as SGEs, EPA does consider conflict of interest, appearance of loss of impartiality, and potential bias of all candidate experts when determining whether they should be included as members of the SAB and its review panels.

13. What is EPA's current objective for the 2014 final hydraulic fracturing study report? Will the report merely report on the results of EPA's Study? Or will the report also contain recommendations? What would be the purpose and scope of any such recommendations?

Response: As I understand, the objective of the 2014 hydraulic fracturing study report is to identify potential impacts to drinking water resources, if any, and to identify the driving factors that may affect the severity and frequency of such impacts. If confirmed, I will certainly review this topic.

14. EPA's Progress Report contains information about potential hazards associated with the chemicals used in hydraulic fracturing operations. Is EPA planning to evaluate not only these potential chemical hazards, but also whether there exist any potential human or ecological exposures to these chemicals? Standard EPA risk assessment protocols require not only an assessment of potential hazards, but also potential exposures.

Response: It is my understandin g that the agency is not conducting a full risk assessment as part of this study. If confirmed, I can explore this issue further.

15. EPA's draft report regarding groundwater contamination in the Pavillion area has been the subject of significant criticism from BLM and others. I presume that EPA will not make use of the draft

Pavillion report in connection with its broader hydraulic fracturing study unless and until that draft Pavillion report is peer reviewed and a final report is issued that takes into account all of the comments that EPA has received. Is that correct?

Response: As I understand, the EPA will consider the results of the Pavillion report only after it is peer reviewed and finalized.

16. To date, there has been no evidence of groundwater contamination caused by hydraulic fracturing. The nonexistence of incidents related to the fracturing undermine claims that a systemic environmental management problem exists. Do you share this view and do you believe states have effectively managed the risks of hydraulic fracturing on state and private lands?

Response: The purpose of the EPA's study is to identify potential impacts to drinking water resources, if any, and to identify the driving factors that may affect the severity and frequency of such impacts. I do not believe that the EPA intends to address the efficacy of the regulatory framework at the federal or state level as part of this study.

Section 321

Section 321 of the Clean Air Act (42 U.S.C. § 7621) requires the EPA Administrator to "conduct continuing evaluations of potential loss or shifts of employment" which may result from the administration or enforcement of regulations issued under the Act, "including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement." Most other major environmental statutes contain similar language to Section 321.

17. Inhofe 17. Do you believe the Agency has an obligation to conduct continuing evaluations of the impact its regulations could have on jobs?

CAA section 321 authorizes the Administrator to investigate, report and make recommendations regarding employer or employee concerns that requirements under the Clean Air Act will adversely affect employment. In keeping with congressional intent, EPA has not interpreted this provision to require EPA to conduct employment investigations in taking regulatory actions. Section 321 consistently has been interpreted by EPA to provide a mechanism for investigating specific allegations by particular employers or employees that specific requirements applied to individual companies would result in layoffs. EPA has found no records indicating that any Administration since 1977 has interpreted section 321 to require job impacts analysis for rulemaking actions. Nevertheless, since 2009 EPA has focused increased attention on consideration and (where data and methods permit) assessment of potential employment effects as part of the routine regulatory impact analyses (RIAs) conducted for each major rule.

18. Inhofe 18. Has EPA done a Section 321 jobs analysis for any of the major regulations it has proposed or finalized since you took office in 2009?

EPA has found no records indicating that any Administration since passage of the 1977 Amendments has interpreted CAA section 321 as requiring jobs analysis of rulemaking actions. Section 321 consistently has been interpreted by EPA to provide a mechanism for investigating specific allegations by particular employers or employees that specific requirements applied to individual companies would result in layoffs. Nevertheless, since 2009 EPA has focused increased attention on consideration and (where data and methods permit) assessment of potential employment effects as part of the routine regulatory impact analyses (RIAs) conducted for each major rule.

19. Inhofe 19. EPA's own estimates anticipated that the revised ozone NAAQS that your office proposed in 2010 would have cost American manufacturing, agriculture and other sectors over $90 billion per year. These are straight-up, added costs to American manufacturing. I'm concerned that, during this slow economic recovery, we are driving manufacturing out of the U.S., to other countries with lax environmental standards. In analyzing these proposed regulations, does EPA consider the effects of driving manufacturing offshore, to countries with little or no environmental controls? Do you believe this analysis could be covered under the Section 321 review requirement of the Clean Air Act?

EPA has found no records to indicate that CAA section 321, since its inclusion in the 1977 amendments, has been interpreted by any Administration to provide for job impacts analysis of rulemakings. Section 321 does provide a mechanism for EPA investigation of particular claims of job loss related to plant closure or layoffs in response to environmental regulation, and this would presumably include plant closures resulting from alleged environmental regulation-induced overseas relocation. However, EPA could not find any records of any requests for section 321 investigation of job losses alleged to be related to regulation-induced plant closure, including overseas relocation. This is not surprising since data from the Bureau of Labor Statistics consistently indicate that labor markets are primarily influenced by other, larger factors including routine business cycles, changes in production technology, and the state of the overall economy. Nevertheless, since 2009 EPA has focused increased attention on consideration and (where data and methods permit) assessment of potential employment effects as part of the routine regulatory impact analyses (RIAs) conducted for each major rule.

<u>Renewable Fuel Standard</u>

Failure to exercise EPA discretion:

20. Inhofe 20. Are you aware of the run-up in RIN prices and do you agree that it is evidence that the industry has or soon will hit the E-10 blendwall? If not, what is your explanation for the run-up?

EPA is aware of the recent activity in the RIN markets, and together with the Department of Agriculture (USDA) and the Department of Energy (DOE), we have been monitoring this activity

closely. EPA and industry alike expected a more dynamic RIN market in 2013. Industry stakeholders and market observers have expected some upward pressure on RIN prices, as the volumes of biofuel required by law approach the E10 blendwall, and as market pressure for the use of higher blends of ethanol increases. EPA has met with representatives of a broad array of stakeholders from the oil and renewable fuels industries, and we are working with USDA and DOE to assess current RIN price activity and any related impacts.

21. **Inhofe 21. In light of the clear evidence that the market is anticipating dire consequences from the E10 blendwall, why has EPA refused to use its discretionary powers under EISA to lower the total and advance mandates by the same amount it is lowering the cellulosic mandate?**

    EPA is monitoring market conditions closely and staying engaged with key stakeholders in the private sector and with other relevant federal agencies. We are also reviewing comments submitted in response to the Agency's proposed rulemaking for the 2013 RFS volume standards, and we will carefully consider this input as we set future RFS standards. Going forward, we will continue to consider whether any further actions under the directives and authorities provided by Congress are appropriate to help ensure orderly implementation of the program. We will continue to watch this issue carefully, but given the size of the market it is important that the Agency not act precipitously in a way that could adversely affect the market.

Warranty coverage:

22. **Inhofe 22. Why do you think that the automakers, except for GM on 2012+ and Ford on 2013+ have refused to warrant E15 use in their existing fleet?**

    I would defer to the automakers with regard to explanations of the rationale for their decisions with regard to warranties.

23. **Inhofe 23. Have you reviewed the fuel pump and fuel sender system test report issued by CRC in January? DO you agree that the results of that testing go a long way towards explaining why the automakers are concerned about the use of E15 in their vehicles, since it showed significant and extensive damage to fuel pumps and fuel senders?**

    EPA has reviewed the limited portions of the CRC test program made available to the public. Unfortunately, complete information on the testing program has not been made available to the government, and the CRC expressly denied EPA and the Department of Energy (DOE) a role in the test program). The CRC E15 test programs have a number of significant scientific shortcomings, including failure to test components or vehicles on E0 and E10 to provide information on typical failure rates for baseline fuels.

<u>New Source Performance Standards – New Sources</u>

EPA states that there are no costs and, concurrently, no benefits associated with the proposed rulemaking to regulate greenhouse gases (GHGs) from new sources. If that is true, then:

24. **Inhofe 24. Why is EPA promulgating a rule that has no benefits, especially in light of the President's numerous Executive Orders that are intended to eliminate unnecessary regulatory burdens on the business community? Did EPA factor in the need to have a diverse mix of electric generation into its analysis?**

    Power plants are the biggest emitters of carbon pollution. This proposed rule would require that any new power plants use modern technology to minimize this harmful carbon pollution, while at the same time maintaining diversity of our electric generating fleet. Companies building power plants today are already making cleaner generation choices, such as the use of natural gas combined cycle or coal with CCS, and this trend is projected to continue.

25. **Inhofe 25. Why did EPA only analyze out until the year 2020 in order to determine the lack of costs and benefits?**

    As the Clean Air Act requires that the NSPS be reviewed every eight years, this economic analysis focuses on benefits and costs of this proposal for the years through 2020. Although 2020 is the primary focus of the proposed rule, EPA did perform economic modeling out to 2030 which can be found in the docket for the proposed rule (EPA-HQ-OAR-2011-0660). The analysis helps confirm that the conclusions are consistent even beyond 2020.

26. **Inhofe 26. Did EPA perform a robust analysis on the true cost of a long term switch to natural gas powered electric generation, as the rule assumes?**

    Yes. Moving forward, EPA predicts a mix of coal and natural gas-powered electric generation. EPA has conducted a series of sensitivity analyses to further examine the role that natural gas prices could play in the future choices of new power plants. The analyses support the conclusion that new conventional coal-fired plants, without CCS technology, are not likely to be built under a wide range of natural gas prices, even prices considerably higher than today's prices. Other independent analyses, like the Energy Information Administration's Annual Energy Outlook, support this conclusion. Even with considerably higher prices of natural gas and increased future energy demand, EPA and EIA analyses project that new coal plants will not be economic relative to other technologies in 2020.

27. **Inhofe 27. A recent comprehensive modeling effort done by ICF International – using the same proprietary ICF Integrated Planning Model (IPM) with EPA uses to model each of its rules – project forecasts about 50 GW of coal-fired generation retirements over the next few years, driven mostly by pending EPA rules, with the expectation of another 20 GW of retirements after that. How do you explain the difference between this analysis and EPA's?**

A number of economic factors influencing retirements well beyond EPA's clean air rules are included in ICF's figures[xix]. External analysts, including GAO[xx], CRS[xxi], the Bipartisan Policy Center[xxii], and Analysis Group[xxiii], have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. Because EPA's power sector analyses look at the effects of its rules alone to evaluate incremental impacts, EPA's analyses are not comparable to other assessments that also take into account broader economic factors.

28. **Inhofe 28. Can you explain why you used your "discretion" at the Air Office to abandon the long-standing Clean Air Act precedence of subcategorizing fuel types? Will you commit to reproposing the rule so that EPA's precedent is maintained and fuel types are subcategorized?**

The Clean Air Act gives EPA the discretion to subcategorize a source category based on size, type or class. EPA has previously set fuel neutral standards (e.g., the 1998 utility boiler NSPS for NOx). The agency is still actively considering a wide range of comments on this issue. A final decision will reflect careful consideration of the issue.

29. **Inhofe 29. Do you intend to continue using one source category for all power plants in the final rule as opposed to issuing different NSPSs or emission limits for different types of plants burning different types of fuel?**

The agency is still considering a wide range of comments on this issue. A final decision will reflect careful consideration of the issue.

30. **Inhofe 30. Using the logic in the NSPS to create a category for "fossil fuel-fired EGUs," why did EPA stop at including just coal and natural gas units? If you're going to combine power generators into one category, why not extend the proposal to its logical conclusion and include nuclear units? Or solar units? If EPA did that, what would the practical result be?**

CAA section 111(b) requires EPA to list categories of stationary sources that cause or contribute significantly to air pollution anticipated to endanger public health or welfare. When EPA listed fossil

---

[xix] New Insights from ICF's Integrated Energy Outlook: January 2013 http://www.icfi.com/insights/webinars/2013/recording_-new-insights-icfs-integrated-energy-outlook-january-2013

[xx] Government Accountability Office – "EPA Regulations and Electricity: Better Monitoring by Agencies Could Strengthen Efforts to Address Potential Challenges" http://www.gao.gov/assets/600/592542.pdf

[xxi] Congressional Research Service – "EPA's Regulation of Coal-Fired Power: Is a "Train Wreck" Coming?" http://insideepa.com/iwpfile.html_?file=aug2011%2Fepa2011_1545.pdf

[xxii] Bipartisan Policy Center – "Environmental Regulation and Electric System Reliability" http://bipartisanpolicy.org/library/report/environmental_-regulation-and-electric-system-reliability

[xxiii] Analysis Group – "Why Coal Plants Retire" http://www.analysisgroup.com/uploadedFiles/News_and_Events/News/2012_Tierney_WhyCoalPlantsRetire.pdf

fuel-fired electric generating units in the 1970s, those decisions were based specifically on findings with respect to the emissions from combustion of fossil fuels. Other types of electricity generation that do not rely at least in part on fossil fuel combustion, such as nuclear and solar power generation that have not been listed under 111(b) and thus were not included in this source category.

31. **Inhofe 31. How can EPA justify calling a NGCC turbine the Best System of Emissions Reduction (BSER) for a coal-fueled unit?**
    a. **Has such a BSER determination – that BSER for a specific unit would be to not exist as that type of unit – ever been made in the past?**
    b. **Is CCS considered BSER for coal plants? Assuming CCS was BSER, would it apply to all fossil-fueled plants – both coal and gas?**

In the NSPS proposal, EPA proposed that natural gas-fired combined cycle technology represented BSER for intermediate and base-load fossil fuel-fired power plants. We did not make a separate determination as to what represented BSER for coal-fired power plants alone. EPA received many comments on this proposed determination and is considering them.

32. **Inhofe 32. We have heard people say, on many occasions, that this proposed rule represents the first time that EPA has proposed a new source performance standard for the electricity generation sector without subcategorizing by fuel source, thereby pitting one source against another. For example, Phase I and Phase II of the Acid Rain Program utilized separate categories for reducing sulfur dioxide and nitrogen oxides. The recently-finalized Utility MACT Rule did the same thing. Considering the differences between coal and natural gas on greenhouse gas emissions, and carbon capture and sequestration technology is not commercially available, why would EPA intentionally put coal into such an untenable position?**

EPA has previously set an NSPS for the electricity generation sector without subcategorizing by fuel source. The 1998 utility boiler NSPS for NOx is an example of such a fuel neutral standard. The agency is still considering a wide range of comments on this issue. A final decision will reflect careful consideration of the issue. While a number of commenters have pointed out concerns about the current availability of CCS, others have noted that a number of full scale commercial projects are currently in development, including Southern Company's Kemper Project, which is more than 75% complete; the Texas Clean Energy Project (TCEP), which has signed contracts for electricity, CO2 and other products from the plant and hopes to close financing this summer; and, the California Hydrogen Energy Center Project, which is currently undergoing regulatory review in California.

Best Available Control Technology

In their guidance establishing what could be considered Best Available Control Technology (BACT) for regulating GHGs in the permitting process, EPA stated that fuel-switching from coal to natural gas would not and could not be considered BACT:

33. Inhofe 33. Since NSPS are traditionally interpreted to set the BACT "floor" for permitting purposes, how can a NSPS that eliminates the ability to construct new coal units without the implementation of commercially infeasible carbon capture and storage (CCS) be consistent with EPA's previous guidance?

The statement that "EPA stated that fuel-switching from coal to natural gas would not and could not be considered BACT" is not entirely correct. EPA's March 2011 GHG Permitting Guidance says that, "a permitting authority retains the discretion to conduct a broader BACT analysis and to consider changes in the primary fuel in Step 1 of the analysis." Thus, EPA never ruled out the possibility that a permitting agency could require that an applicant consider natural gas, or other cleaner fuels, when proposing a coal-fired EGU. EPA is still carefully evaluating public comments on the proposed carbon pollution standards for new power plants, including comments related to the issue raised in your question. The agency will take these comments into consideration in taking any final action on the proposal. While EPA did not propose that CCS represented BSER, the agency stated in the preamble of the proposed NSPS rule that "CCS is technologically feasible for implementation at new coal-fired power plants and its core components (CO_2 capture, compression, transportation and storage) have already been implemented at commercial scale." [77 FR 22414]. Furthermore, it is worth noting that, today, coal-fired power plants are being constructed that will have CCS, and EPA's view is that coal-fired units can meet the proposed limit.

34. Inhofe 34. EPA's BACT guidance stated that units should consider the "most energy efficient design and control options" when determining GHG BACT for power plants, regardless of fuel source. Why, then, did the Agency deviate from this plan in setting standards for new sources?

The EPA's GHG BACT guidance was intended to provide general guidance to permitting authorities on pollution control methods worthy of evaluation in a Best Available Control Technology assessment for a wide range of sources, and the guidance does not represent an EPA determination regarding the control method that must be selected as BACT for a particular source or category of sources. Subsequent to issuance of the guidance, EPA undertook a more detailed technological assessment of emissions control systems for the purposes of developing a proposed NSPS for the power plant category. At this time, CCS is the only system that EPA has identified for coal-fired electric generating units as being capable of meeting the proposed standard. EPA is still carefully evaluating public comments on the proposed carbon pollution standards for new power plants, including comments related to the issue raised in your question. We of course will take these comments into consideration in taking any final action on the proposal.

Carbon Capture and Storage

EPA makes several statements and assumptions regarding CCS in the proposed standards, and proposes that new coal fired units could comply with the rule through a 30 year "averaging" option that would allow them to deploy CCS in year 11 of operation and average their emissions over a 30 year span:

35. Inhofe 35. While conceding that CCS does not meet the requirements of BSER, EPA claims that CCS is an available compliance option. In your estimation, is CCS commercially feasible today? Are there any CCS plants that are deployed and demonstrated on a large scale? In what year do you expect CCS to be commercially viable, given current funding?

In the NSPS proposal, EPA did not state or propose to determine that CCS is not BSER. The agency is still considering a wide range of comments on this issue. EPA stated in the preamble of the proposed rule that "CCS is technologically feasible for implementation at new coal-fired power plants and its core components (CO_2 capture, compression, transportation and storage) have already been implemented at commercial scale." [77 FR 22414]. EPA's view is that new coal-fired units can meet the proposed limit. While a number of commenters have pointed out concerns about the current availability of CCS, others have noted that a number of full scale commercial projects are currently in development.

Existing Units – GHG

36. Inhofe 36. Does EPA intend to propose and adopt a standard to regulate greenhouse gases from existing power plants? If so, when, and what role will states play in promulgating rules related to this new regulation?

At this time, EPA is working to finalize the proposed NSPS for new sources. The agency is not currently developing any existing source GHG regulations. In the event that EPA does undertake action to address GHG emissions from existing power plants, the agency would ensure, as it always seeks to do, ample opportunity for States, the public and stakeholders to offer meaningful input on potential approaches. In addition, as a general matter, the provisions of section 111(d)(1) are plain on their face to the extent that they require EPA to "prescribe regulations which shall establish a procedure … under which each State shall submit … a plan which … establishes standards of performance for any existing source …."

Modified and Transitional Sources – GHG

EPA has specifically exempted both modified (units that make major changes) and transitional (units that have yet to begin construction but have already secured a Prevention of Significant Deterioration (PSD) operating permit) from adhering to the proposed standard.

37. Inhofe 37. EPA has stated that it did not have the information to issue a standard for modified units – under your leadership, will EPA work to establish GHG rules for modified units?

EPA's proposed carbon pollution standard does not apply to modified sources. In the proposal, the agency stated that, at that time, EPA did not have enough information, to set a standard for modified sources.

a. Inhofe 37(a). Would such a move force EPA to apply this standard to all plants that are being forced to install major upgrades to comply with other EPA regulations, such as the Mercury and Air Toxics Standards (MATS)?

EPA's proposed carbon pollution standard does not apply to modified sources. If EPA were to set a standard for modified sources, technologies installed by sources to comply with MATS are currently exempted under EPA regulations from triggering any such modified source standard.

b. Inhofe 37(b). Why did EPA only grant sources with a PSD permit one year to commence construction? If those sources already had permits that would prevent any more emissions than is already allowable, why did EPA force them to comply with a one year limitation?

In EPA's proposal (published in the Federal Register on April 13, 2012), EPA did not propose to apply the NSPS requirements for greenhouse gases to new coal-fired power plants that were on the verge of commencing construction, as indicated by the fact that they already had a PSD permit and would commence construction within one year of the proposal. For sources that were not on the verge of construction, EPA proposed to apply the NSPS requirements because, according to the proposal, it was reasonable to expect those sources to build in the proposed greenhouse gas emission limits. EPA received many comments on this proposal and is reviewing them closely to determine the appropriate action to take.

Utility MACT (UMACT) and Coal Plant Retirements

EPA projected that UMACT would cause 4.7 GW of coal plant retirements (RIA, P. 3-16). The North American Electric Reliability Corporation (NERC) recently issued its Long-Term Reliability Assessment, determining that over 70 GW of fossil-fired generating capacity – predominantly coal – will retire over the next ten years. According to NERC, 90% of those retirements will take place over the next five years, resulting in the loss of 20% of the nation's coal-fired generation by 2017.

38. Inhofe 38. Please explain - how can EPA's estimates of retirements be so low when compared with NERC's estimate?

Included in NERC's 2012 Long-Term Reliability Assessment are a number of economic factors influencing retirements well beyond EPA's clean air rules. External analysts, including GAO[xxiv], CRS[xxv], the Bipartisan Policy Center[xxvi], and Analysis Group[xxvii], have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. Because EPA's power sector analyses look at the effects of its rules alone to evaluate incremental impacts, EPA's analyses are not comparable to other assessments that also take into account broader economic factors.

National Ambient Air Quality Standards

39. Inhofe 39. Last June, EPA proposed to lower standards for fine particulate matter from 15.0 micrograms to 12 to 13 micrograms. EPA also took comment on levels as low as 11, but did not take comment on retaining the current standard at 15, or on other possible levels. Given that there is uncertainty in different studies and given that EPA received lengthy comments during its review process arguing against revising the 15 microgram standard – why did EPA not solicit comments on maintaining the current standard? Do you believe EPA is limiting its ability to consider alternative science by only taking comment on options that would substantially lower fine particulate standards and other NAAQS?

In formulating proposed and final decisions on the PM NAAQS, the EPA considered the available scientific evidence, advice of CASAC and extensive public comments. Based on these considerations, the agency concluded that the previous suite of primary $PM_{2.5}$ standards was not requisite to protect public health with an adequate margin of safety, and that revision was needed to increase public health protection. In the proposal EPA explained in detail its reasons for believing the then current annual standard of 15 micrograms/cubic meter was inadequate and needed to be revised to a level between 11-13 micrograms/cubic meter. EPA's proposal invited comment on all elements of the proposal, including these proposed judgments. The agency received – and considered – comments supporting retaining the standard at a level of 15 ug/m3.

[xxiv] Government Accountability Office – "EPA Regulations and Electricity: Better Monitoring by Agencies Could Strengthen Efforts to Address Potential Challenges" http://www.gao.gov/assets/600/592542.pdf

[xxv] Congressional Research Service – "EPA's Regulation of Coal-Fired Power: Is a "Train Wreck" Coming?" http://insideepa.com/iwpfile.html?file=aug2011%2Fepa2011_1545.pd f

[xxvi] Bipartisan Policy Center – "Environmental Regulation and Electric System Reliability" http://bipartisanpolicy.org/library/report/environmental -regulation-and-electric-system-reliability

[xxvii] Analysis Group – "Why Coal Plants Retire" http://www.analysisgroup.com/uploadedFiles/News_and_Events/News/ 2012_Tierney_WhyCoalPlantsRetire.pdf

40. Former EPA policy advisor Lisa Heinzerling said that the reason given for the withdrawal of the ozone standard was unlawful. Do you agree? Could the President instruct EPA where to set national ambient air quality standards based on policy considerations, or could he delay a decision?

Response: On September 2, 2011, President Obama issued a statement on the ozone NAAQS, noting that EPA was engaged in updating its review of the science underlying the 2008 ozone NAAQS, as part of the ongoing periodic review of the Ozone NAAQS, and requested that EPA withdraw from interagency review the draft final rule addressing the reconsideration of the 2008 ozone NAAQS. On that same day, OMB returned to EPA the draft final rule, stating that "the draft final rule warrants [the Administrator's] reconsideration." Letter from Cass R. Sunstein, OMB, Administrator, Office of Information and Regulatory Affairs to Administrator Lisa R. Jackson, EPA. In returning the rule, OMB stated that President Obama had requested that the draft rule be returned as he did "not support finalizing the rule at this time."

41. OMB cited Executive Order 13563 in its 2011 letter to EPA on the ozone NAAQS and stated that EPA should avoid "inconsistent, incompatible, or duplicative" regulations. In EPA's most recent E.O. 13563 statement on the PM NAAQS, however, the Agency only cites the fact that it performed a cost-benefit analysis.

a. Why did EPA not perform a regulatory overlap analysis?

b. If you are confirmed, how will you instruct EPA to consider whether NAAQS, in particular, may be duplicative of all the other EPA regulations that impose direct standards on powerplants, major industrial facilities and mobile sources?

The PM NAAQS are not "inconsistent, incompatible, or duplicative" of other regulations. The reference to E.O. 13563 in the September 2, 2011 letter from OMB concerned the unique circumstances where the proposed rulemaking to reconsider the 2008 ozone NAAQS was occurring at the same time EPA was conducting the required 5-year periodic review of the science and the ozone NAAQS. That is not the case with the PM NAAQS rulemaking. The NAAQS – promulgation and periodic review of which is required by the Clean Air Act – focus on the identification of pollution concentrations in the ambient air that are necessary to protect public health and welfare. The Clean Air Act requires states to adopt and implement State Implementation Plans that meet the requirements of the Act, including the requirement to achieve the NAAQS. The Clean Air Act also requires the EPA to establish federal emission standards applicable to sources such as power plants, industrial sources, and mobile sources, which in many instances help states to meet the PM (and other) NAAQS.

42. Inhofe 42. It is my understanding that EPA is now reviewing the Ozone rule again. Will you commit to proposing the current standard so that the public can comment on whether it will meet the health standards established in the Clean Air Act?

The review of the ozone NAAQS is ongoing. EPA is committed to following the science and the law in developing the proposed rule. As with prior NAAQS rulemakings, the agency expects the public will

have the full ability to comment on all elements of EPA's proposal and provide EPA with views on whether to retain or revise the current ozone standard.

43. Inhofe 43. If EPA is considering a similar range for ozone as they did in 2010, is there any reason to believe the economic impacts will be substantially different than the estimates from the 2010 reconsideration?

The review of the ozone NAAQS is ongoing. The Supreme Court held in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), that the Clean Air Act prohibits EPA from considering costs of implementation in setting or revising the NAAQS. To inform the public and consistent with applicable Executive Orders, EPA will provide an updated economic analysis in conjunction with the issuance of the proposed rule.

Cross-State Air Pollution Rule (CSAPR) and the Clean Air Interstate Rule (CAIR)

44. Inhofe 44. This rule caused great concern in the industry because of its incredibly short compliance timeline. Final rule wasn't published in the Federal Register until August 2011, yet utilities were expected to begin complying in 2012. In late December 2011, on the eve of the rule going into effect, the D.C. Circuit Court of Appeals stayed the rule and the Court subsequently overturned it. One of the reasons the Court overturned the rule is because EPA did not give states the time to develop their own compliance plans. What are EPA's intentions with respect to a new transport pollution rule? What timeline will EPA give to states and utilities to comply with the rules? Will you set a timeline that states and utilities agree to?

EPA and the states are responsible under the Clean Air Act for addressing inter-state transport of air pollution. EPA is assessing how to move forward to address transport pollution and is taking the Court's *EME Homer City* opinion into account. EPA has already invited the states to participate directly in the assessment of the path forward and will continue working with the states collaboratively in determining the next steps needed to address the threat of transported air pollution to public health. As these efforts continue, the agency will be mindful of the need to provide appropriate timelines for states and the regulated community.

45. Inhofe 45. EPA had determined that electric generating units in the East that were subject to the CAIR program did not have to comply with regional haze best available retrofit technology (BART) requirements because CAIR would reduce emissions more than BART. When EPA replaced CAIR without CSAPR, it revoked the determination that compliance with CAIR constituted compliance with BART, and instead determined that compliance with CSAPR constituted compliance with BART. But now CSAPR has been overturned in court. Does EPA plan to return to its determination that compliance with CAIR constitutes compliance with BART? If not, does EPA intend to subject electric generating stations in the East to regional haze BART requirements on a source by source basis? When does EPA expect to decide?

EPA is waiting to learn whether the Supreme Court will grant certiorari on the *EME Homer City* decision, as that action will affect the agency's options for regional haze and EGUs in the East.

The agency will move as quickly as possible once the Court decides. Depending on the Court's decision, the options to consider will include the states' ability to rely on CAIR to satisfy the BART requirements or whether (if the Court were to reverse the lower court's decision) states can continue to rely on the Cross State Air Pollution Rule (CSAPR) to meet those requirements.

Greenhouse Gases and Global Warming

46. **Inhofe 46. During the Administration's first term, EPA promulgated its endangerment finding and adopted GHG regulations for motor vehicles. It also proposed GHG NSPS for the power sector. What other areas of the economy can we expect GHG regulations in the second term? (Oil and gas, refineries, cement kilns, other industrial facilities) Do you have a plan for addressing GHG emissions in the rest of the economy?**

    EPA is currently focused on reviewing the more than 2 million comments received on its proposed carbon standards for new power plants. While the agency is evaluating GHG emissions information from a limited number of source categories, EPA has not determined that it is appropriate to regulate GHG emissions from the oil and gas sector, or from other industrial sectors. EPA has previously acknowledged that it is appropriate to issue regulations for refinery greenhouse gas emissions, but as stated in the answer to a related question, the Agency has no current plan for issuing such regulations. The agency also has previously said that it had insufficient data to regulate Portland cement facilities, and we do not have a timetable or plan for issuing GHG regulations of this sector.

47. **Inhofe 47. Do you plan on issuing a GHG NSPS rule for refineries or oil and gas delivery systems? If so, when?**

    EPA has not made a determination that it is appropriate to regulate GHG emissions from oil and gas delivery systems. While the Agency acknowledged that it is appropriate to regulate greenhouse gas emissions from refineries, we do not have a current plan or timetable for regulating carbon pollution from refiners.

48. **Inhofe 48. EPA has been petitioned to establish NAAQS for GHGs. What are your plans with respect to such a petition? Can you assure us EPA will not establish a NAAQS for GHGs? Do you agree with such a proposed approach?**

    Although EPA has not taken any action on the petition, I do not believe that setting a national ambient air quality standard for greenhouse gases would be advisable.

Hazardous Waste (Coal Ash)

Suzanne Rudzinski, Director of the Office of Resource Conservation and Recovery, on Oct. 11, 2012, documented in a declaration to the U.S. District Court for the District of Columbia in *Appalachian Voices v. Jackson* (Civ. No. 1:12-cv-00523-RBW) why the agency could not promulgate a final rule on the disposal and management of coal combustion residuals in surface impoundments and landfills in the six-month timeframe requested by plaintiffs. Ms. Rudzinski told the court that EPA could not meet that deadline because "such a schedule does not provide EPA with the time necessary to allow sound-decision making, and would result in final agency actions that, in [her] view, are neither scientifically sound nor legally defensible." EPA's semi-annual regulatory agenda provides no projected date for completion of this rulemaking.

49. What are EPA's plans for issuing a final rule? Specifically, what are the major actions EPA plans to complete prior to issuing a final rule and the projected deadlines for completing those actions (i.e., plans for issuing a notice of data availability or any other rulemaking steps requiring public comment)?

Response: It is my understanding that as part of a recent proposal to reduce pollution from steam electric plants, EPA also announced its intention to align that proposed rule with the proposed coal ash rule and stated that such alignment could provide strong support for a conclusion that regulation of CCR as non-hazardous could be adequate. The two rules would apply to many of the same facilities and would work together to reduce pollution associated with coal ash and related wastes. EPA is seeking comment from industry and other stakeholders to ensure that both final rules are aligned. If confirmed, I would continue to work to ensure that these two proposed rules are appropriately coordinated.

Definition of Fill Material

The current definition of fill material, finalized in May, 2002, unified the Corps and EPA's prior conflicting definitions so as to be consistent with each other and the structure of the CWA. The current rule solidifies decades of regulatory practice, and includes as fill material those materials that, when placed in waters of the U.S., have the effect of raising the bottom elevation or filling the water. However, both EPA and the Corps have stated that they are now considering revising the definition of fill material.

50. What is EPA's rationale for revisiting the well-established division of the Sec. 402 and Sec. 404 programs?

> **a. What specific problems is EPA seeking to address by revisiting the definition of fill material, and how exactly is EPA intending to address them?**
>
> **b. Has EPA yet considered the time and costs associated with making such a change to the two major CWA permitting schemes – Secs. 402 and 404?**

Response: I understand the importance of clarity, with respect to the permitting process. If I'm confirmed, I'll work closely with the Army Corps and others to ensure that there is increased clarity in the permitting process.

Cooling Water Intake Structure Rule for Electric-Generating Facilities Under CWA Sec. 316(b)

The proposed § 316(b) rule applies to facilities whose construction began before 2002 and that withdraw more than two million gallons per day. It would apply to facilities that have either closed-cycle or once-through cooling, and focuses on reducing fish and shellfish mortality attributable to "impingement" on intake structure screens and "entrainment" into cooling water systems.

Industry has urged that any acceptable § 316(b) rule for existing facilities be applied site-by-site, recognize constraints involved in modifying existing technology, include the designation of pre-approved technologies, and include provisions for taking into account prior actions to reduce impacts. A fair cost-benefit test reflecting the Supreme Court's opinion endorsing EPA's historical decision to balance costs and benefits in setting national § 316(b) standards and site-specific requirements is central to an acceptable final rule. A final rule is expected by the court-ordered deadline of June 2013.

More than 890 electric generations facilities would be affected by the rule as even facilities operating closed-cycle cooling would have to comply with the study requirements and significant technological modifications associated with impingement. This could affect approximately 35 percent of existing U.S. generation capacity—a controversial proposition that could have negative environmental, energy, cost and reliability impacts. Some facilities will be unable to meet expensive new cooling water intake structure (CWIS) requirements and remain economic. A rigid rule requiring unnecessary retrofits could cause extended outages and loss of capacity; in turn, this could affect reliability-related capacity margins.

51. Relief for "peaking" facilities – EPA's proposed rule would impose expensive new study, monitoring, and retrofit requirements on all existing facilities, including "baseload" facilities that are the foundation of our electric system and "peaking" facilities that are used more sparingly to meet periods of peak electricity use. But the peaking units may be used for as little as a few days a year when electricity demand is high, and it would be uneconomic to spend a great deal on money on them for studies and equipment that would be rarely used and would not provide commensurate environmental benefit. In an earlier version of the rule, EPA provided an exemption for such units. Yet in the current proposed rule, which is soon to be finalized, EPA eliminated the exemption. Would you consider reinstating that exemption or providing equivalent relief from the rule's requirements for peaking facilities so they can continue to perform their crucial reliability function?

Response: As you know, I have worked hard to make sure that we carefully monitor the design and implementation of EPA's air pollution rules to keep costs reasonable and ensure that the reliability of

our electrical system is protected. If confirmed, I look forward to working to ensure that requirements and implementation of rules like 316(b) are similarly sensitive to electrical reliability issues.

52. Relief for facilities being retired – EPA's proposed rule outlines a rigid schedule of expensive and time consuming studies that are required as an interim measure before a plant installs technology to comply with the rule's requirements. It is also my understanding that this set of interim measures would apply to facilities even if they announce they plan to retire prior to compliance deadlines. Why would we subject existing facilities to additional and unnecessary expenses if, in fact, they have announced retirement and ultimately would not be expect to comply with the rule because they no longer would be in operation? Will you ensure the final rule provides compliance relief for generation assets that announce retirement?

Response: I fully recognize that this is a period of transition for the power sector and that operators do not want to undertake studies for control technologies if they are certain to retire a unit. If confirmed, I look forward to working to ensure that we carefully consider the special circumstances of retiring units as we finalize the 316(b) rule.

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

Response: It is my understanding that EPA explicitly discussed possible changes to the proposed 316(b) rule's impingement standard in the NODA published in the Federal Register on June 11, 2012, and that EPA is carefully reviewing those comments as the agency develops the final rule. If confirmed, would be willing to look closely at flexibilities for compliance with the impingement standard.

54. Improvements as to "closed cycle" cooling – In EPA's proposed 316(b) rule, EPA has correctly NOT required existing facilities to retrofit "closed cycle" systems such as cooling towers or cooling ponds if the facilities do not already have such systems, because such retrofits are not generally necessary, feasible, or cost effective. At the same time, facilities that do have closed-cycle systems have long been viewed as satisfying the requirements of section 316(b). Yet in the proposed rule, EPA has defined "closed cycle" cooling much more narrowly for existing facilities than EPA did for new

facilities several years ago , thereby excluding a number of facilities. And even for the facilities that qualify, EPA is still imposing new study and impingement requirements. In the final rule that is due this summer, would you support a broader definition of closed-cycle cooling and measures that more fully view these facilities as compliant?

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

55. Concerns about EPA's willingness-to-pay survey – EPA is seeking to justify its costly proposed 316(b) rule, which would affect more than 1,260 power plants and industrial facilities nationwide, on the basis of a public opinion survey asking "how much" a random group of individuals would be willing to pay to reduce fish losses at intakes. This willingness-to-pay approach to determining "benefits" contrasts sharply with the far more traditional approach used by EPA in its earlier 316(b) rulemakings. The earlier analyses relied on actual market prices and costs incurred by individuals, rather than hypothetical questions in a public survey. The "willingness-to-pay" or "stated preference" survey is clearly intended to increase the anticipated benefits of the proposed rule. Yet such stated preference surveys are notoriously difficult to design and implement and often are very unreliable. Using such unreliable benefit estimates will inappropriately lead to cooling water controls that are neither necessary nor cost beneficial and that will not deliver the anticipated benefits but will materially affect compliance and consumer costs. Given all these problems, in the final rule that is due this summer, would you support withdrawing the survey and clarifying that the survey and its results are inappropriate to use in implementing the final rule?

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

56. In October 2010, NERC issued a report concluding that a one-size-fits-all 316(b) approach could have economic impacts nearly three times greater than the combination of the Cross State Air Pollution Rule and the Mercury and Air Toxis Standards. See NERC, 2010 Special Reliability Scenario Assessment: Resource Adequacy Impacts of Potential U.S. Environmental Regulations (October 2010). How will EPA ensure that its 316(b) rulemaking will not precipitate the reliability and cost implications discussed in the NERC report?

Response: NERC's hypothetical analysis assumed that states will choose to mandate that all affected plants install cooling towers, even if this leads to plant retirements causing reliability problems. EPA did not propose a "one-size fits" all approach for entrainment for its 316(b) rule, instead EPA proposed a site-specific approach to entrainment. My understanding is that EPA rejected a uniform closed-cycle cooling requirement based on consideration of possible local energy reliability concerns, air quality

issues, geographical constraints on the installation of closed-cycle cooling and facilities with a limited remaining useful plant life.

57. In June 2012, EPA proposed replacing the results of its conventional benefits analysis performed for its proposed 316(b) cooling water intake structure rule with the results of a public opinion survey. The survey results are 140 times greater than EPA's conventional analysis using tried and true methods. Public opinion surveys have never been used to justify a major rulemaking, such as EPA's 316(b) rule. We understand that EPA received many comments criticizing EPA's potential replacement of the survey results with the results of its conventional analysis. What are your thoughts on whether stated preference surveys are an appropriate tool to measure benefits?
Response: My understanding is that stated preference is a tool that EPA has used in the past and that the use of stated preference is discussed in detail in the Agency's peer-reviewed "Guidelines for Preparing Economic Analyses". If confirmed, I am committed to ensure that all such studies are conducted and used in an appropriate fashion.

58. EPA's proposed rule pursuant to section 316(b) of the CWA contains a one-size fits all impingement standard. EPA received many critical comments indicating that most facilities could not meet the proposed standard even if they were to install the technology upon which EPA based the standard. Determining the best available technology at a given site requires a consideration of many site-specific factors, such as the geographic location, type of ecosystem and plant design. In June 2012, EPA issued a Notice of Data Availability indicating that EPA was considering designating a suite of pre-approved technologies as compliant with the rule. Do you agree that it is important for EPA to consider site-specific factors in determining best available technology?

Response: It is my understanding that EPA explicitly discussed possible changes to the proposed 316(b) rule's impingement standard in the NODA published in the Federal Register on June 11, 2012 and that EPA is carefully reviewing those comments as the agency develops the final rule. If confirmed, I would be happy to look closely at site-specific flexibilities for compliance with the impingement standard.

59. EPA has continually maintained that closed-cycle cooling (i.e., cooling towers) is the best technology available to minimize environmental impacts from cooling water intake structures. [76 Fed. Reg. 22207]. In fact, Ms. Stoner testified in a March 28th Committee on Transportation and Infrastructure, Subcommittee on Water Resources and Environment budget hearing that facilities with closed-cycle cooling satisfy both the impingement and entrainment requirements of the proposed rule. However, EPA's proposed rule nonetheless subjects facilities that have spent hundreds of millions of dollars on cooling towers to additional costly controls without additional benefits. Why would facilities with closed-cycle cooling systems be required to install additional controls? What are the benefits from the additional controls?

Response: It is my understanding that, in the June 11th, 2012 NODA, EPA took comment on a possible alternative compliance provision that would deem a facility in compliance with impingement limitation if

the facility employed a closed cycle cooling system that minimizes water withdrawals, and is reviewing those comments. If confirmed, I would look be happy to examine this issue further.

60. How many human health impacts are avoided if the proposed CWA 316(b) standards are promulgated?

Response: It is my understanding that Section 316(b) of the Clean Water Act requirements primarily relate to aquatic life; however, if confirmed, I will work to ensure that this and all Agency rules meet the appropriate scientific and legal standards with regard to all types of benefits.

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

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

<u>Startups, Shutdowns and Malfunctions (SSM) and State Implementation Plans (SIP)</u>

62. Inhofe 62. EPA recently proposed to disapprove provisions in 36 state SIPs based on a change in EPA policy in response to a petition for rulemaking. Were the existing SIP provisions in question legally approved and promulgated by EPA and the states?

- **a. What is the legal basis for declaring a validly approved SIP provision invalid after the fact?**
- **b. Has EPA done any analysis to determine if the SIP provisions in question are threatening attaining the NAAQS?**
- **c. Without such an analysis, how can EPA determine that such SIP provisions are "substantially inadequate" for purposes of the CAA?**
- **d. Has EPA done any analysis of the impacts on an emissions source trying to operate without the SSM provision?**

The bulk of the proposed action is not based on any change in EPA policy. The majority of the existing SIP provisions at issue were adopted by the states and approved by EPA, mostly before 1982. EPA realized and announced in 1982 that some SIP actions taken in the early phase of implementing the CAA were simply incorrect. In the SSM rulemaking, EPA is proposing to clarify and update the SSM policy and to correct mistakes we have generally recognized and communicated to the states for over 30 years. To evaluate these SIP provisions, EPA is using the public notice-and-comment rulemaking process explicitly set out in the Clean Air Act for addressing existing deficient

provisions in SIPs. For each state, there will be another notice-and-comment rulemaking to approve the SIP revisions that are submitted in response to the SIP call.

With regard to your more specific questions:

- **a.** CAA section 110(k)(5) provides the legal basis for EPA to call for a SIP revision whenever the Administrator finds that the SIP for an area is substantially inadequate to attain or maintain a NAAQS, to mitigate interstate pollutant transport adequately, or to otherwise comply with any requirement of the CAA.
- **b.** EPA has not based its proposed findings of inadequacy on a quantitative assessment that the specific SIP provisions in question resulted in a specific violation of the NAAQS. EPA's proposal that the affected SIP provisions are substantially inadequate is based upon the concern that the provisions in question do not meet legal requirements of the CAA.
- **c.** EPA's proposed SIP call to amend provisions applying to excess emissions contains 49 pages of analysis that comprehensively discuss each affected SIP provision of each affected state, including an explanation of the agency's reasoning for proposing to find that a given provision is or is not "substantially inadequate" to satisfy the legal requirements of the CAA.
- **d.** The implications for a regulated source in a given state, in terms of whether and how it would potentially have to change its equipment or practices in order to operate with emissions that comply with the revised SIP, will depend on the nature and frequency of the source's SSM events and how the state chooses to revise the SIP to address excess emissions during SSM events, consistent with CAA requirements. The preamble to the proposed action describes EPA's assessment of the potential impacts of the proposed SIP calls on sources. See "*What are potential impacts on affected states and sources?*" at 78 FR 12467.

Independent Peer Review & Scientific Integrity

63. A couple of years ago, serious procedural questions were raised by the EPA Inspector General about EPA's compliance with its own peer review guidelines. What has been done to ensure that the EPA peer review requirements are followed?

Response: Peer review is a critical step to ensuring the integrity of our scientific and technical work products, as well as to ensuring that our decision makers are fully informed. The EPA has a long and substantial history implementing peer review in its programs. I am told that currently, the EPA uses the 3rd Edition of the *Peer Review Handbook* and the 2009 addendum to promote consistency not only across the Agency, but with the Office of Management and Budget's 2004 *Final Information Quality Bulletin on Peer Review*, as well as other relevant policies and guidelines.

64. Can you give assurances that EPA will follow all requirements for having independent peer review of significant technical assessments?

Response: Yes. The EPA continues to evaluate its peer review processes to determine whether improvements are needed.

65. Will you commit to send this committee and the House Speaker a detailed report of how EPA has responded to the IG's report, with a list of those convened independent peer review panels?

Response: I am not familiar with that particular report or to which panels you refer, but if confirmed, I will commit to take a look at the Agency's response and work with you to get additional information that you may be seeking.

Sue and Settle

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

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

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

67. Where there are no statutory deadlines EPA may be required to Act within a "reasonable time." EPA is also subjected to citizen suits for not meeting the plaintiff's sense of when EPA should have acted. EPA also often signs a rulemaking schedule with a court enforceable deadline and does not provide enough time for regulated entities to do the necessary technical studies to properly comment on the proposed regulations. Additionally, the schedules result in very short compliance timelines making it difficult to install the mandated pollution controls. Why hasn't the EPA consulted with the regulated entities that have to comply with these regulatory timelines to determine if the required deadlines provide feasible periods for meaningful comment and compliance? Why doesn't EPA have a policy of insisting on intervention into law suits by adversely impacted regulated businesses and industry?

Response: While EPA may agree in settlement to promulgate a rule or standard required by statute, the substantive level or nature of that required action is determined through the rulemaking process, which offers ample opportunity for regulated entities to provide meaningful comment on the proposed regulation itself. EPA, in conjunction with the U.S. Department of Justice (DOJ), rarely opposes motions to intervene.

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

68. On December 23, 2010, EPA entered into a settlement agreement with environmentalists and some states in which the agency agreed to set new source performance standards for greenhouse gases from new power plants and, eventually, existing power plants. All of the parties to the settlement agreement are clearly in favor of drastically reducing the amount of coal that we burn for electricity. Yet the type of regulations that could come out of this settlement will impact much of the country by eliminating thousands of jobs, raising electricity rates and jeopardizing reliability, which we are already seeing. I should also add that these policies will disproportionately impact the poor and working poor.

Should the Sierra Club and Natural Resources Defense Council have more access to the federal government than the average citizens who will be most impacted by these types of settlements? Isn't that exactly what they have gotten in the case of this NSPS settlement?

Response: The Clean Air Act allows citizens, including organizations like Sierra Club, to sue EPA if they believe the agency's actions are unlawful. In addition, the statute provides all citizens the opportunity to comment on settlement agreements before they become final. Before finalizing the greenhouse gas power plant settlement agreement, EPA published the proposed agreement in the Federal Register and sought comment on it from the public.
Citizens also have the right to comment on proposed rules such as the NSPS addressing greenhouse gas emissions from power plants. In fact, EPA is currently considering the more than 2 million comments that have been filed by the public in response to EPA's proposed NSPS for greenhouse gas emissions from new power plants.

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

69. Of the states that were party to the settlement agreement, all but one of them generate between zero and 17 percent of their electricity from coal, yet the states that were not privy to the settlement agreement generate as much as 96 percent from coal. In other words, the people who were in the room have the least to lose while those who were not in the room will suffer the most.

a. **Do you consider that to be good policy-making? I consider this a yes or no question.**

b. **Should the states have equal access to the EPA in formulating a path forward on consequential issues that will impact a broad swath of the economy?**

c. **If they should, why then did EPA and the Administration enter into closed door settlement negotiations on the NSPS that included the states it agreed with and excluded the states that it didn't agree with?**

Response: The standards that were the subject of the settlement agreement are being set through a rulemaking process that provides for participation by all states, as well as all interested members of the public and the regulated industry in question, through a public notice and comment process. EPA routinely receives substantive input from States through the rulemaking process, and considers all comments it receives before taking final action. The EPA is currently reviewing the 2 million plus public comments received on the proposed NSPS. The settlement agreement, which was also put out for public notice and comment before it was finalized, addressed only the timing of the rulemaking; the substance will be determined through the rulemaking process where everyone has the opportunity to comment.

70. Over the past four years, EPA frequently allowed its rulemaking agenda and schedule be driven by voluntary settlements entered in response to lawsuits by environmental advocacy groups. How will EPA respond to these sorts of lawsuits if you are confirmed? Does it damage respect for the rule of law among your state partners when you enter settlements that affect specific states without first consulting with the affected states. Does it damage respect for the rule of law when EPA fails to vigorously defend its prerogatives in responding to these lawsuits?

Response: It is current and longstanding practice to determine whether or not to seek settlement principally upon an assessment of the Agency's duties under the relevant statute, and the legal risks presented by the litigation. The rule of law, along with sound science and transparency, is one of EPA's core values and, if I am confirmed, it will continue to guide all EPA action.

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

Court Cases – National Mining Association v. Jackson

The U.S. District Court for the District of Columbia in the case of *NMA v. Jackson* recently struck down several EPA actions – specifically, EPA's Enhanced Coordination Process (ECP) and Multi-Criteria Integrated Resource Assessment (MCIR) for Appalachia surface coal mining, as well as EPA's guidance document, "Improving EPA Review of Appalachian Surface Coal Mining Operations Under the Clean

Water Act, National Environmental Policy Act, and the Environmental Justice Executive Order" – as violating the CWA and Administrative Procedure Act, as well as, in the case of the guidance document, the Surface Mining Control and Reclamation Act.

71. What steps has EPA taken to implement the District Court's decision?

Response: I appreciate your interest in this important matter and assure you that EPA takes very seriously the decision of the court in this case. I understand the Agency has directed its field offices not to use the guidance documents affected by the court decision.

Court Cases – *Mingo Logan Coal Co. v. EPA*

In March, 2012, the U.S. District Court for the District of Columbia struck down EPA's retroactive revocation of a mining-related CWA Sec. 404 permit, holding unequivocally that EPA has no authority to retroactively veto CWA Sec. 404 permits issued by the U.S. Army Corps of Engineers. EPA has appealed the decision, maintaining that at any time after the issuance of the permit – even where, as here, the permit has been being properly followed for several years and EPA had worked with the permittee and the Army Corps for ten years prior to permit issuance to reach an acceptable alternative – EPA may veto the permit.

72. What do you think the practical effect on industry would be of having Sec. 404 permits be subject to EPA's potentially ever-changing list of acceptable disposal sites?

Response: Please see response to question 74.

73. How do the assertions made by EPA regarding the scope of its authority under Sec. 404 comport with the notion of permit finality, which Congress clearly acknowledged was needed in the context of the CWA (see remarks of Sen. Muskie - there are "three essential elements" to the CWA: "uniformity, finality, and enforceability")?

Response: Please see response to question 74.

74. Has EPA considered what effects its actions might have on state SMCRA permitting programs?

Response (to 72-74): I understand the important concerns raised by your question regarding the use of EPA Clean Water Act authorities and potential effects on the nation's business community. During the pendency of the appeal of the district court's decision, EPA will not exercise its 404(c) authority after a permit is issued. If I am confirmed, I look forward to working with you to assure that the final court decision is implemented consistent with the law and in careful consideration of the issues you raise.

Water Quality Criteria – Conductivity

While EPA's conductivity "benchmark" that it had applied to Appalachian streams got set aside by the U.S. District Court for the District of Columbia in the case of *NMA v. Jackson*, EPA recently published several papers supporting its conductivity actions.

75. What are EPA's next steps with respect to conductivity? Is EPA intending to propose a national conductivity criteria? Regional criteria?

Response: Please see response to question 77.

76. In the past, EPA has not addressed scientific critiques that have produced evidence that conductivity is not a good indicator of benthic/aquatic health. Going forward, what plans does EPA have to take this growing number of studies into account?

Response: Please see response to question 77.

77. How, if at all, does EPA intend to convert a field-based study performed in Appalachian waters into a national standard?

Response (to 75-77): I share your interest in assuring that EPA's decisions regarding conductivity are based consistently on the best available science that fairly and effectively takes into account technical critiques. If confirmed, I will work hard to make sure that any future agency decisions regarding conductivity adhere to this principle.

<u>Financial Assurance</u>

On March 8, 2011, Senator Lisa Murkowski (D-Alaska) sent a letter jointly addressed to Secretary of the Interior Ken Salazar and Secretary of Agriculture Tom Vilsack regarding EPA's planned rulemaking under Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to impose financial assurance regulations on the hardrock mining industry. The letter highlighted the history and effectiveness of the Bureau of Land Management (BLM) and U.S. Forest Service (USFS) financial assurance requirements. Expressing concern that EPA is moving forward without properly taking into consideration the existing financial assurance programs, Senator Murkowski posed a series of questions to Secretaries Salazar and Vilsack regarding whether EPA's rulemaking is warranted. One of those questions asked how many hardrock mining and beneficiation plans of operation had their agencies approved since 1990, and how many of those sites were placed on the CERCLA National Priorities List (NPL). On June 21, 2011, Robert Abbey, Director of BLM, responded that the bureau held $1.7 billion dollars in financial assurances, 659 plans of operations authorized by BLM's Mining Law Administration Program had been authorized since 1990 and none of those sites had been placed on the CERCLA NPL. Secretary Vilsack replied on July 20, 2011 that his department had permitted 2,685 hardrock mines since 1990 and that none of those sites had been placed on the CERCLA NPL list.

78. Given the response from the Departments of Interior and Agriculture, what evidence does EPA have that additional financial assurance requirements under CERCLA are warranted for *currently* operating hardrock mining sites?

Response: EPA's 2009 Federal Register Notice identified classes of facilities within the hard rock mining industry as those for which EPA would first develop CERCLA 108(b) financial assurance requirements based upon several factors, including the quantities of hazardous substances released to the environment and clean up expenditures on these types of facilities. If confirmed, I can examine this issue more thoroughly.

79. What steps has EPA taken to consider the BLM and USFS programs implementing financial assurance requirements on the hardrock mining industry to avoid unnecessary and costly duplication of existing federal programs?

Response: It is my understanding that EPA is working with the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS).

Additionally, the Western Governors' Association (WGA) in Policy Resolution 11-4 on "Bonding for Mine Reclamation" expressed concern that "a new federal program could not only duplicate, but in fact supplant the state's existing and proven regulatory programs" for bonding of reclamat ion activities for hardrock mining. According to the WGA, "[t]he member states have a proven track record in regulating mine reclamation in the modern era, having developed appropriate statutory and regulatory controls, and are dedicating resources and staff to ensure responsible industry oversight." The WGA sent this policy resolution to EPA on Aug. 10, 2010, asking the agency to work in partnership with the states on this issue.

80. What has or is EPA doing to learn about and address the state pre-emption concerns voiced by the WGA in advance of issuing a proposed rule? Has EPA formally reached out to the WGA to forge a partnership on this issue?

Response: Having worked for state government, I understand the importance of working with our state agency partners. It is my understanding that EPA is reaching out to states, including states in the Western Governors' Association, to discuss the interaction of a Section 108(b) rule with existing state hard rock mining state financial responsibility programs. If I'm confirmed, I commit to working with States, and other stakeholders.

<u>Natural Gas Star Program</u>

81. Inhofe 81. The emission factor applied to Completions with Hydraulic Fracturing remains an overestimate and an inappropriate use of Natural Gas Star data, and EPA has so far failed to incorporate a method of correctly using this data. The EPA staff bears a responsibility to the public to use the best available scientific data provided to them. If confirmed, will you commit to adopting the scientific data and methodology provided to EPA during the Expert Review Period, and accordingly revise your emission factor?

I am committed to ensuring that EPA uses sound science and maintains open and transparent processes. EPA continues to use the best available data to produce its estimates of GHG emissions in the U.S. Inventory. EPA's emission factor is used to reflect a nationally averaged potential release of gas from hydraulic fracturing, absent controls to either capture or flare the gas. An independent study from MIT (2012) concluded that the factor was a reasonable estimate for this purpose. EPA's emissions estimates take into account emission reducing activities (including Gas STAR voluntary actions and regulatory activities) to get a more accurate picture of actual emissions from hydraulically fractured gas wells. EPA has had several technical discussions with industry about their suggestions for different methodologies for estimating emissions from hydraulically fractured gas wells. In the latest Inventory, EPA explains the Agency's plans to consider alternative methods, and has requested the data necessary to consider making such an update to future inventories.

82. Inhofe 82. EPA's 2013 Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2011 does not account for the flaring of gas wells where flaring is not required by state regulations, and therefore text in the inventory is incorrect and misleading. The assumption that flaring is not used where there is no state regulation mandating its use is not an accurate representation of industry practice. Will the EPA commit to creating an alternate category for those wells that are flared, reflective of actual survey data provided in the URS Memo Data, to more accurately represent the industry practice of flaring completion emissions from wells using hydraulic fracturing?

EPA recognizes the need to ensure that the U.S. Inventory reflects current industry practices, and we have made improvements to the Inventory this year through incorporating industry data on liquids unloading, updating our coverage of gas wells with hydraulic fracturing, and updating the refracture rate. In the latest Inventory, EPA commits to continuing to seek information on flaring to ensure that the Inventory reflects industry practices and evaluating data reported to the GHG Reporting Program. This Inventory also notes that several methods are being considered for estimating well completion emissions reductions to account for reduced emission completions (RECs) and flaring not reported to Gas STAR.

83. Is EPA still planning to issue a notice of proposed rulemaking under TSCA for chemicals used in hydraulic fracturing operations in light of the fact that EPA has generated and will continue to generate information on fracturing fluids as part of its study of hydraulic fracturing and has a wealth of other information regarding fracturing fluids available to it through FracFocus and a variety of other sources?

Response: It is my understanding that the EPA plans to engage stakeholders before the agency makes any final decisions regarding the notice of proposed rulemaking on oil and gas exploration and production chemicals. If confirmed I look forward to working with you and the stakeholders to address this issue.

Natural Gas

Some environmental organizations filed comments on the DOE economic impact study of LNG exports that argued that DOE should examine the upstream environmental impacts of the natural gas that supplies the gas to the LNG export facilities. EPA did not file any comments on the DOE study and did not take the opportunity to weigh in on the point raised by the environmental organizations. Two regional EPA offices have filed comments on LNG exports projects calling for an EIS that assesses the upstream impact of the natural gas to the LNG export facility – basically taking the position of the environmental activists.

84. As EPA Administrator would you oppose DOE LNG export approvals if DOE did not change its established practice of deferring to FERC, as the lead NEPA agency, given that FERC has long-established practices of looking at a project's direct environmental impact but not the upstream impacts of those projects?

Response: I am not familiar with the details of how the LNG export approval process works. It is my general understanding that EPA has the ability to submit comments to other agencies, such as FERC, as part of the NEPA process. If confirmed, I can examine this issue more thoroughly.

85. Inhofe 85. Testifying before Congress in 2011, EPA Administrator Lisa Jackson said that natural gas creates less air pollution than other fossil fuels, "so increasing America's natural gas production is a good thing." Do you agree with this statement and could you please explain why or why not?

As I stated in my opening remarks at my nomination hearing, during these past four years, one of the most dramatic and potentially beneficial changes that our energy markets and overall economy has seen has come in the steep growth in the production and use of natural gas. I share the President's view that we must have an all of the above strategy to achieve energy independence, and a clean energy future.

Senator Barrasso

1. EPA has the ability to conduct cost-benefit analysis that considers the impact of regulations on the economy, including the effects of job losses caused by the regulations and how increased costs ripple through society. EPA used this method for two major rules in 2005.

NERA, a nationally recognized consulting firm, recently conducted a study where they did this analysis for a number of recent EPA rules, including Utility MACT, and the Cross State Air Pollution Rule. NERA's analysis demonstrates that under this EPA approved analysis tool, EPA is better able to inform Congress and the American public of the true costs of its regulations. If confirmed, will you commit to do "whole economy modeling" on all pending Clean Air Act and Clean Water Act regulations?

Response: I believe that whole economy modeling is an important type of modeling for the agency to conduct, when it is technically appropriate and when relevant data exists. I believe it is important to develop regulations with a clear understanding of the impacts on industries from the array of regulatory requirements. If confirmed, I will continue to take this approach in regulatory development and the agency will continue to work on whole economy modeling.

2. Do you believe the severe weather events that have occurred over the last few years are a direct result of anthropogenic, manmade climate change?

Response: The scientific research indicates that man made emissions of greenhouse gases do contribute to climate change. While it is difficult to pinpoint the cause of any specific weather event, the scientific evidence indicates that climate change does and will lead to more extreme weather events.

3. Do you believe we can predict what the weather will be in Wyoming or any other State 10, 20 or 50 years from now with any accuracy, and what the impact will be to the landscape from that weather?

Response: I do not believe that we can predict the weather years in advance; however, scientists can predict changes to the climate and patterns of effect from those changes.

4. With regard to question 3, if you cannot predict with any accuracy, how will U.S. taxpayer investments made today to protect communities decades from now, based on inaccurate computer models, guarantee any success?

Response: The scientific predictions of climate change (not weather) have proven to be reliable and that scientific modeling is used as the basis for many public and private sector actions with great success.

5. Do you believe sue and settle agreements are an open and transparent way to make public policy that significantly impacts Americans?

Response: The EPA does not agree to the final substantive outcome of an agency action through settlement. All interested parties have an opportunity to provide input on the action itself through the rulemaking process, which offers ample opportunity for regulated entities to provide meaningful comment on the proposed regulation.

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

6. Do you believe States and communities impacted by sue and settle agreements should have a say in court agreements that might severely impact them?

Response: As explained above, the substantive level or nature of a required action is not determined through the settlement process. Nonetheless, most litigation against EPA arises under the Clean Air Act, which provides the public, including any affected businesses, notice and the opportunity to comment on any consent order or settlement before it is final or filed with the court.

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

7. If confirmed, would you agree not to enter into closed-door settlements where the public and affected States are not a party to these agreements?

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

8. If confirmed, would you open up litigation to local stakeholders and give impacted States and communities a seat at the table before any final agreements are signed?

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

9. In a recent appropriations hearing on the House side, Assistant Secretary Jo-Ellen Darcy of the U.S. Army Corps of Engineers testified that her agency and yours had written regulatory language regarding redefining "waters of the United States."

a) Is it your intent to increase the authority of the EPA beyond the current regulations and, if so, in what way?

Response: No. It is my understanding that the Agency's goal is to respond to requests from members of Congress, the Supreme Court, the regulated public, states, and others to improve predictability, consistency, and clarity in the process of identifying waters protected under the CWA after the Supreme Court decisions in SWANCC and Rapanos.

b) Does the regulatory language increase the number of waters that will come under federal jurisdiction?

Response: It is my understanding that the Supreme Court decisions in SWANCC and Rapanos have resulted in reducing the scope of waters protected under the CWA, and any guidance and/or rulemaking will recognize that reduction.

c) Does the regulatory language or the guidance wrap any isolated waters under Clean Water Act (CWA) jurisdiction?

Response: Consistent with existing law as clarified by the Supreme Court in SWANCC and Rapanos, the only waters, including isolated waters, that may be protected under the CWA are those waters that

meet the tests established in the SWANCC and Rapanos decisions. The agencies' regulations and/or guidance will continue to adhere to the standards established by the Court and the CWA.

d) When does the Corps and EPA intend to propose such a rulemaking?

Response: The agencies currently do not have a schedule for this rulemaking.

e) Do you intend to finalize the guidance first? If so, what would be the point? Wouldn't the rulemaking make any such guidance moot?

Response: The agencies are interested in proceeding with a rulemaking and have not decided whether or not to issue guidance in the interim.

f) Have you done an economic analysis on the rulemaking? If so, how much will it cost?

Response: I strongly agree that a thorough economic analysis is very important. I understand that EPA is working with the Corps of Engineers to conduct this important analysis. I want to emphasize that the Agency's goal is to improve clarity, consistency, and predictability in a way that reduces costs and delays for the regulated community.

g) Did you evaluate it in terms of the entire Clean Water Act or just the 404 program, which is what you did for the proposed guidance?

Response: I am advised that the Agency's analysis will encompass programs across the entire Clean Water Act.

h) Have you done an economic analysis on the rulemaking? How much is this guidance document projected to cost?

Response: I understand that EPA and the Corps are continuing to develop an economic analysis. I appreciate and share your interest in the importance of developing a thorough economic analysis of any Waters of the U.S. rule or guidance and assure you that you will be provided a copy of the analysis. I want to emphasize that the Agency's goal is to improve clarity, consistency, and predictability in a way that reduces costs and delays for the regulated community.

10. Do you believe there are waters that are beyond the jurisdiction of the CWA? If so, what are they?

Response: Yes, the Supreme Court decisions in SWANCC and Rapanos have resulted in reducing the scope of waters protected under the CWA, and any guidance and/or rulemaking will recognize that reduction.

11. What do you believe is the meaning of the phrase "significant nexus" as it relates to jurisdictional determinations under the CWA?

Response: I understand the importance of clarifying the meaning of this term, which Justice Kennedy has relied on in Rapanos as the test for determining which waters are protected under the CWA. If confirmed, I look forward to working with you as we further clarify this important term in order to provide needed predictability in the process of determining waters protected under the Act.

12. Many of our farmers and ranchers are concerned with the recent vigorous efforts by the EPA to re-write U.S. environmental policy through administrative rulemaking. Some agricultural interests claim that, in several of EPA's efforts, the emphasis appears to be on ratcheting up a regulatory enforcement philosophy, rather than encouraging incentive-driven efforts to address the Nation's water quality challenges.

If confirmed, how would you respond to this observation as Administrator? Do you believe collaborative, incentive-based approaches to water quality problems have merit or would you support a more regulatory compliance approach?

Response: The vast majority of my career has been at the State and local level. I know that in order to make environmental progress, we need to have partnerships with the States. I believe in an approach where States and the Federal government work together, collaboratively to solve problems.

13. There is growing concern about so-called "closed door" settlements between federal agencies and environmental organizations who sue those agencies, often over minor administrative errors. By the time those settlements are approved, the plaintiffs have essentially been paid by our government for suing our government. In his January 21, 2009, Open Government Directive, President Obama instructed federal agency heads to promote openness in government by "establishing a system of transparency, public participation, and collaboration." EPA has responded to the President's directive by developing and implementing an Open Government Plan.

Can you tell us more about this plan, and do you think it could be improved by including a notification system that would immediately provide all stakeholders with timely and transparent access to information involving any legal action, or notice of intended legal action, against the EPA in advance of any "settlement" discussions?

Response: The EPA's Open Government Plan implements the Administration's Open Government Directive to ensure that the EPA's work supports the tenets of open government – transparency, participation and collaboration – and upholds EPA's mission to protect human health and the environment. I am happy to consider suggestions about how to best implement this plan. If I am confirmed, transparency, participation and collaboration will continue to be priorities at the EPA.

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

14. Do you believe the statutory limits placed on EPA's authority by Congress are important and should be respected when EPA promulgates rules and takes other actions?

Response: Yes.

15. As Administrator, will you continue to permit the promulgation of rules and the taking of actions that are outside the scope of EPA's statutory authority, or will you only allow such activities to be taken within the confines of authority delegated to EPA by Congress and, by extension, the American people?

Response: I believe that EPA should continue to take actions that are within the scope of its statutory authority.

Barrasso 16. As Assistant Administrator for EPA's OAR, you have had direct responsibility for promulgating the Mercury and Air Toxics Standards (MATS) for power plants. On March 20th 2012 before the Senate Environment and Public Works Committee's Subcommittee on Clean Air and Nuclear Safety, you testified that "only a modest amount of generating capacity" -- 4,700 megawatts (MW) -- will become uneconomic to operate under MATS. This rule will cause 35,000 MW to retire, according to the Institute for Energy Research, and 42,000 MW to retire, according to Barclays.

Do you stand by your testimony that "only a modest amount" of coal-fired generating capacity will be forced to retire by EPA regulations? Or would you reconsider your testimony in light of more recent analyses and already announced retirements that show EPA's projections to be off by as much as 800 percent?

A number of economic factors influencing retirements well beyond EPA's clean air rules are included in these non-EPA figures[xxviii]. External analysts, including GAO[xxix], CRS[xxx], the Bipartisan Policy Center[xxxi], and Analysis Group[xxxii], have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. Because EPA's power sector analyses look at the effects of its rules alone to evaluate incremental impacts, EPA's analyses are not comparable to other assessments that also take into account broader economic factors.

Barrasso 17. On March 20th, 2012 before the Senate Environment and Public Works Committee's Subcommittee on Clean Air and Nuclear Safety, you testified that MATS would have a "very small" impact on electricity rates, yet they have soared by 23 percent in the Mid-Atlantic region and 183 percent in the northern Ohio region from the 2014/2015 Delivery Year to the 2015/2016 Delivery Year. According to PJM Interconnection, this is due to "an unprecedented amount of planned generation retirements (more than 14,000 MW) driven largely by environmental regulations, which drove prices higher than last year's auction."

Do you stand by your testimony that MATS will have a "very small" impact on electricity rates? Or would you reconsider your testimony in light of market evidence that electricity rates have increased by up to 183 percent in response to EPA regulations?

[xxviii] New Insights from ICF's Integrated Energy Outlook: January 2013 http://www.icfi.com/insights/webinars/2013/recording -new-insights-icfs-integrated-energy-outlook-january-2013

[xxix] Government Accountability Office – "EPA Regulations and Electricity: Better Monitoring by Agencies Could Strengthen Efforts to Address Potential Challenges" http://www.gao.gov/assets/600/592542.pdf

[xxx] Congressional Research Service – "EPA's Regulation of Coal-Fired Power: Is a "Train Wreck" Coming?" http://insideepa.com/iwpfile.html?file=aug2011%2Fepa2011 1545.pd f

[xxxi] Bipartisan Policy Center – "Environmental Regulation and Electric System Reliability" http://bipartisanpolicy.org/library/report/environmental -regulation-and-electric-system-reliability

[xxxii] Analysis Group – "Why Coal Plants Retire" http://www.analysisgroup.com/uploadedFiles/News and Events/News/ 2012 Tierney WhyCoal PlantsRetire.pdf

The cited percent increases are capacity prices, which are only a small component of the retail electricity prices paid by consumers. Regionally, PJM's auction prices were middle-of-the-road prices compared to other years. EPA's MATS analysis, which accounts for these capacity prices, found that electricity rates are projected to stay well within normal historical fluctuations and result in relatively small changes in the average retail price of electricity, keeping electricity prices below 1990 levels.

Barasso 18. The EPA stated in the Federal Register on February 16th, 2012 that the "great majority" of benefits from MATS will come from reductions in particulate matter, not mercury or air toxics. "The benefits of controlling mercury and air toxics comprise less than one ten-thousandths of the total benefits reported for the mercury and air toxics rule," according to George Washington University Research Professor Susan Dudley's testimony on April 17th of last year before the Senate Environment and Public Works Committee's Subcommittee on Clean Air and Nuclear Safety. She stated "Ninety-nine percent of the benefits attributed to the MATS rule were derived by assigning high dollar values to reductions in emissions of fine particles (PM2.5), which are not the focus of this regulation and which are regulated elsewhere." You and other EPA officials decided to refer to this rule in the Federal Register on February 16th, 2012 as "in short as the Mercury and Air Toxics Standards (MATS)." But this rule really targets particulate matter emissions, not mercury and air toxics. Why did your team decide to label this rule as something it is not?

Even after several decades of pollution control laws, until MATS there were no national limits on emissions of mercury and other air toxics from power plants. Power plants emit mercury, other metals, acid gases, and other air toxics – as well as particulate matter – all of which harm people's health. The rule targets mercury and other air toxics, but the control technologies installed to reduce them also yield significant reductions in particulate matter.

Barasso 19. You and other EPA officials have repeatedly ignored congressional requests to make publicly-available the taxpayer-financed databases used to conduct the cost-benefit analysis for MATS. Do you believe Congress, stakeholders, and the American people can adequately review EPA's cost-benefit analysis for MATS and other rules without access to the actual data upon which it rests?

While not legally relevant for setting maximum achievable control technology (MACT) standards under the Clean Air Act, the EPA did assess the costs and benefits of MATS, as we do for all major MACT standards, to improve public understanding of the impacts of MATS. Our economic analysis of MATS was conducted in compliance with relevant Executive Orders and guidance on economic analysis from the Office of Management and Budget (OMB), and was reviewed by OMB before we publicly released it. It followed standard, peer-reviewed methodologies and provided consistent information about anticipated benefits and costs, ensuring the public would have access to an effective and reliable comparison of benefits and costs. EPA relies on published peer-reviewed scientific studies for regulatory decisions.

20. As Administrator, would you advocate for requiring the federal government and/or other parties to consider, under NEPA or any other environmental law, greenhouse gas emissions

produced outside the United States by any good exported from the United States? If yes, can you please explain the rationale behind that position and how you believe it would impact the American economy?

Response: I believe that the NEPA process allows for the consideration of a number of factors as part of its process and that these factors can vary based on the parameters of a particular project. If confirmed, I commit that EPA will continue to use its ability to comment as part of the NEPA process in accordance with the law.

21. Relief for "peaking" facilities – EPA's proposed rule would impose expensive new study, monitoring, and retrofit requirements on all existing facilities, including "baseload" facilities that are the foundation of our electric system and "peaking" facilities that are used more sparingly to meet periods of peak electricity use. But the peaking units may be used for as little as a few days a year when electricity demand is high, and it would be uneconomic to spend a great deal on money on them for studies and equipment that would be rarely used and would not provide commensurate environmental benefit. In an earlier version of the rule, EPA provided an exemption for such units. Yet in the current proposed rule, which is soon to be finalized, EPA eliminated the exemption. Would you consider reinstating that exemption or providing equivalent relief from the rule's requirements for peaking facilities so they can continue to perform their crucial reliability function?

Response: As you know, I have worked hard to make sure that we carefully monitor the design and implementation of EPA's air pollution rules to keep costs reasonable and ensure that the reliability of our electrical system is protected. If confirmed, I look forward to working to ensure that requirements and implementation of rules like 316(b) are similarly sensitive to electrical reliability issues.

22. Relief for facilities being retired – EPA's proposed rule outlines a rigid schedule of expensive and time consuming studies that are required as an interim measure before a plant installs technology to comply with the rule's requirements. It is also my understanding that this set of interim measures would apply to facilities even if they announce they plan to retire prior to compliance deadlines. Why would we subject existing facilities to additional and unnecessary expenses if, in fact, they have announced retirement and ultimately would not be expect to comply with the rule because they no longer would be in operation? Will you ensure the final rule provides compliance relief for generation assets that announce retirement?

Response: I fully recognize that this is a period of transition for the power sector and that operators do not want to undertake studies for control technologies if they are certain to retire a unit. If confirmed, I look forward to working to ensure that we carefully consider the special circumstances of retiring units as we finalize the 316(b) rule.

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

are de minimis impingement or entrainment impacts on fishery resources or costs of additional measures would outweigh benefits?

Response: It is my understanding that EPA explicitly discussed possible changes to the proposed 316(b) rule's impingement standard in the NODA published in the Federal Register on June 11, 2012 and that EPA is carefully reviewing those comments as we develop the final rule. If confirmed, I would be willing to look closely at flexibilities for compliance with the impingement standard.

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

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

25. Concerns about EPA's willingness-to-pay survey – EPA is seeking to justify its costly proposed 316(b) rule, which would affect more than 1,260 power plants and industrial facilities nationwide, on the basis of a public opinion survey asking "how much" a random group of individuals would be willing to pay to reduce fish losses at intakes. This willingness-to-pay approach to determining "benefits" contrasts sharply with the far more traditional approach used by EPA in its earlier 316(b) rulemakings. The earlier analyses relied on actual market prices and costs incurred by individuals, rather than hypothetical questions in a public survey. The "willingness-to-pay" or "stated preference" survey is clearly intended to increase the anticipated benefits of the proposed rule. Yet such stated preference surveys are notoriously difficult to design and implement and often are very unreliable. Using such unreliable benefit estimates will inappropriately lead to cooling water controls that are neither necessary nor cost beneficial and that will not deliver the anticipated benefits but will materially affect compliance and consumer costs. Given all these problems, in the final rule that is due this summer, would you support withdrawing the survey and clarifying that the survey and its results are inappropriate to use in implementing the final rule?

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

26. Where do you stand on the proposed coal residuals regulation? Regulation as hazardous waste would mean important efforts to reuse or recycle material would be curtailed. Is a "one size fits all" policy for the nation really necessary, or would it better to let the states manage coal waste? Do you believe a system of state led oversight based on sound science would be much more preferable than the top-down approach currently proposed by EPA?

Response: It is my understanding that as part of a recent proposal to reduce pollution from steam electric plants, EPA also announced its intention to align that proposed rule with the proposed coal ash rule and

stated that such alignment could provide strong support for a conclusion that regulation of CCR as non-hazardous could be adequate. The two rules would apply to many of the same facilities and would work together to reduce pollution associated with coal ash and related wastes. EPA is seeking comment from industry and other stakeholders to ensure that both final rules are aligned. If confirmed, I would continue to work to ensure that these two proposed rules are appropriately coordinated.

Barasso 27. My home state of Wyoming is the largest coal producer in the country. I have deep concerns about the process for developing and implementing the regional haze program in Wyoming. Can you commit to a process that does not disadvantage generation or the coal based resource in Wyoming?

Because of public comments that were critical of some of the basic technical analysis supporting our first proposed action on Wyoming's regional haze SIP, EPA plans to re-propose that action soon and provide the public with another comment period to review our revised technical analysis before taking final action. The agency is sensitive to the large number of coal-fired units that are at issue in Wyoming, and to the challenges of addressing the best available retrofit technology and reasonable progress requirements for these units in the limited compliance time period allowed under the CAA. EPA plans to note these challenges in our new proposal and invite comment, including supporting technical information, on a number of alternative paths forward.

28. In your personal meeting with me, you often sympathized with the concerns I have regarding the impact of EPA regulations on jobs. However, you also expressed in many instances that you would look for flexibility, but you were bound by agency processes, and law. If you are concerned about the impact of EPA regulations on jobs and communities, I believe you should seek the flexibility you need from Congress through policy recommendations to help save these communities and jobs. What specific legislative changes would you recommend to provide flexibility to protect workers, families and communities from job losses that might occur as a result of EPA's regulations?

Response: As you note in your question, I am very sensitive to the state of the economy and to the impacts of EPA regulation on jobs. If confirmed, I would continue to work hard to seek opportunities to find more cost-effective approaches to protecting human health and the environment.

29. Some in EPA and outside activist groups have been critical of the work of the Small Business Administration's Office of Advocacy in playing a role in the evaluation EPA regulations to protect small business. If confirmed, what steps will you take to work with the Small Business Administration's Office of Advocacy to ensure that their role is respected and maintained?

Response: I believe the Small Business Administration has an important role in the evaluation of regulations. If confirmed, I will continue to work to ensure that EPA regulations are developed in a common sense manner without unnecessarily harming small businesses.

Barrasso 30. Please explain why you decided to ignore your responsibilities as a federal trustee to the Navajo Nation during the development of the Utility MACT rule, when your offices had prior knowledge of the Navajo Nation's concerns about EPA regulatory impacts to Four Corners Power Plant and Navajo Generating Station; and when your offices had collaborated with the Navajo Nation in proposing and promulgating the Clean Air Mercury Rule? Since 2010, EPA has

proposed new regulations that impact coal fired power plants, yet there has been very little communication between EPA and Navajo Nation about the Navajo Nation's desire to continue the use of coal for generating electricity and other purposes. Further EPA may be developing greenhouse gas and carbon dioxide regulations without consulting or understanding what impact this may have on Indian Country and tribes that rely on natural resources to fuel their economies.

EPA has held a number of meetings, conversations, and consultations with the Navajo and other Tribes in the region regarding both MATS and BART. Many of these meetings have been face-to-face meetings in Arizona. For example, in January 2012, I went to the Navajo Generating Station and also met with the Navajo Nation. Additionally, the Deputy Assistant Administrator Janet McCabe held at least 5 different meetings with Tribes, including the Navajo Nation, between mid-September and early-November 2011. EPA also held national conference calls and webinars for Tribes on MATS, given that MATS is a national rule and many Tribes have an interest in it. EPA intends to continue to work with the Navajo and all other Tribes to meet federal trust obligations and provide opportunities for consultation on issues that are of interest to individual Tribes and groups of Tribes.

Barasso 31. Ms. McCarthy, what is your view of the EPA's responsibilities to consult with Indian Tribes about the potential impacts of these forthcoming regulations on the tribal economies that rely on non renewable natural resources?

EPA values its relationship with Indian Tribes and takes its federal trust responsibility seriously. I have learned from experience that working closely with tribes can lead to better programs. EPA regularly conducts consultation and outreach activities with tribal governments because dialogue and partnerships with stakeholders are an important part of EPA's efforts to reduce pollution under the Clean Air Act. The Office of Air and Radiation consults with Tribal governments to review EPA regulatory actions for possible impacts on tribes and Indian country. Consulting with and offering early, meaningful tribal involvement is consistent with the federal trust responsibility to federally-recognized tribes.

Barrasso 32. On April 4, 2013, *Politico* reported that you continue to support the Renewable Fuel Standard (RFS). However, there is a growing recognition from people across industries and the political spectrum that the RFS is fundamentally broken and beyond reform. The RFS has failed to result in large-scale production of advanced biofuels. It has failed to provide any meaningful environmental benefits, and in certain respects, has accelerated environmental degradation. The RFS has contributed to significant increases in feed and food prices which is hurting low-income people in this country and around the world. The RFS has led EPA to approve E15 gasoline which threatens our nation's transportation and fueling infrastructure, and will almost certainly result in widespread litigation against engine manufacturers, refiners, and fuel marketers, among others. The RFS has facilitated widespread fraud in the marketing and sale of Renewable Identification Numbers (RINs). Finally, the RFS, and specifically the dramatic rise RIN prices, will significantly increase fuel costs for Americans.

a) **Is it true that you continue to support the RFS? If so, why?**
b) **Do you consider the RFS a success?**
c) **Do you believe Congress should repeal the RFS? If not, what changes to the RFS would you propose to Congress if confirmed?**

EPA is required by statute to implement the RFS program, and I support doing so in a manner consistent with Congressional requirements. Thus far, the program has created a substantial market for renewable fuels and enhanced the volume of advanced fuels that result in greater

greenhouse gas reductions than traditional renewable fuels. The agency does not have a position on legislative changes to the program.

Senator Sessions

General Questions: Transparency, Accountability & Cooperation with the States

1. Over-regulation harms American workers. Today, the United States has 3 million fewer jobs than in January 2008.

(a) Do you commit to do everything within your authority as Administrator of the EPA to ensure that the United States economy is more, not less, productive?

Response: I believe that a healthy economy and clean air and water go hand in hand. If confirmed, I commit to you that I will follow the law, the science and work with all stakeholders on commonsense solutions to our problems.

(b) Do you commit to do everything within your authority as Administrator of the EPA to ensure that more, not fewer, jobs are available for American workers?

Response: I believe that a healthy economy and clean air and water go hand in hand. If confirmed, I commit to you that I will follow the law, the science and work with all stakeholders on commonsense solutions to our problems.

2. I am the Ranking member of the Senate Subcommittee on Clean Air and Nuclear Safety. It is important that I have your commitment that EPA staff will provide briefings to my staff on a regular basis during the development of important new air regulations.

a. **Will you commit to ensure that my staff receives regular updates and briefings on all pending major air regulations?**

Response: Yes.

b. **In particular, to the extent EPA seeks to initiate new rulemaking proceedings in light of the D.C. Circuit's recent vacatur of the Cross State Air Pollution Rule (CSAPR), will you commit to ensure that EPA provides me and/or my staff with regular briefings on the status of any EPA decisions or efforts related to the CSAPR?**

Response: Yes

3. I am concerned that EPA is not working as cooperatively with the States as it should under the law. That was the clear message of the D.C. Circuit in its recent decision striking down the CSAPR. I am concerned that EPA is not giving due deference to the States.

a. **The Clean Air Act is based on a principle of "cooperative federalism." Do you agree?**

Response: As someone who spent the bulk of my career at the State level, I certainly appreciate that cooperative federalism is a cornerstone of the success of the Clean Air Act.

b. **Will you commit to sit down with State leaders—Governors, State Attorneys General, and State Environmental Agencies—to solicit their ideas for improving the Clean Air Act,**

including steps that can be taken to reduce red-tape, increase efficiencies, reduce costs, and minimize economic impacts?

Response: Yes

4. The Clean Air Act has not been updated since 1990—23 years ago.

a. Do you agree that the Clean Air Act should be modernized to take into account economic impacts when establishing air quality standards?

b. What specific amendments to the Clean Air Act would you recommend?

Response (to a and b): History has shown us that the Clean Air Act has numerous flexibilities to allow EPA to craft reasonable, flexible rules with benefits that far outweigh the costs.

5. EPA has been increasingly relying on a tactic known as "sue and settle" with non-governmental organizations (NGOs) over issues with nationwide significance. In many of these cases, an NGO notifies EPA of its intent to sue the agency over an alleged failure by EPA to take a particular action. In many instances, EPA has negotiated settlements with these NGOs with any advance notice to impacted stakeholders or the States. Then, the NGO takes the perfunctory step of filing a lawsuit against EPA along with a proposed consent decree for the Court's approval; and, then, and only then, do affected parties, including State regulatory agencies, become aware of the often severe consequences to them of the negotiated settlement. An example of this is EPA's recent 36-State SIP call regarding startup, shutdown, and malfunction (SSM), which was discussed in my recent letter to you.

a. Do you believe that State agencies should have an opportunity to participate in negotiating terms of a settlement when the effects are greatest upon them as the primary regulatory authorities?

b. Do you believe other impacted stakeholders should be notified before EPA initiates settlement discussions in these circumstances and that those impacted stakeholders should be given an opportunity to participate in the settlement process?

c. Will you commit to increase transparency in this process?

d. Do you agree that this transparency should include public, online disclosure of the use of federal funds to cover any plaintiffs' attorneys fees or other legal costs in civil actions filed under Section 304(a)(2) of the Clean Air Act, 42 U.S.C. § 7604(a)(2); Section 505(a)(2) of the Federal Water Pollution Control Act, 33 U.S.C. § 1365(a)(2); or Section 7000(a)(2) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6972(a)(2); or other similar statutes?

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

e. With respect to the SSM issue, should EPA analyze whether the nationwide costs to impacted industries of the action are sufficient to trigger the necessity of OMB review?

The SIP call would leave to states the choice of how to revise their SIP provisions in question to make them consistent with Clean Air Act (CAA) requirements, and states have substantial

discretion when revising their SIPs as to treatment of excess emissions from sources during SSM events. The implications for a regulated source in a given state, in terms of whether and how it would potentially have to change its equipment or practices in order to operate with emissions that comply with the revised SIP, will depend on the nature and frequency of the source's SSM events consistent with CAA requirements and how the state chooses to revise the SIP to address excess emissions during SSM events. Analysis of impacts to emissions sources as a result of removing SSM exemptions from a SIP would appropriately be conducted as part of the state's process of revising its SIP.

f. With respect to the SSM issue, should EPA be required to show that air quality is harmed by SSM excursions before calling for States to revise their SIPs?

The Clean Air Act requires continuous compliance with emission limitations by sources, including during periods of startup, shutdown, and malfunction. The law requires that EPA disapprove (or find to be substantially inadequate) SIPs with provisions that are inconsistent with this fundamental requirement of the Clean Air Act. That said, EPA notes that an impermissible SIP provision could have adverse impacts, such as by interfering with attainment and maintenance of the NAAQS, protection of PSD increments, protection of visibility, or meeting other Clean Air Act requirements. For citations to court decisions supporting EPA's position, see EPA's February 2013 proposed rulemaking (footnote 22, 78 FR at 12470) and EPA's supporting "Statutory, Regulatory, and Policy Context for this Rulemaking" memorandum in the rulemaking docket (see pages 17 and 21).

Sessions 6. I am concerned about EPA's failure to fully defend the laws and regulations of the United States. That is partly a concern for EPA, and partly a concern for the Department of Justice. But there is no doubt that the Administration has not always defended existing laws and regulations to the fullest extent possible. For example, in June 2011 when you appeared before our committee, I asked you about EPA's plans to reconsider the ozone standards. You explained: "Senator, we are moving forward with the five-year review of ozone, but when Administrator Jackson came into office, we were facing litigation [regarding] the prior administration's decision to make a determination that 75 ppb was the appropriate level for ozone. ... The Administrator decided that rather than litigate, she would work with the litigants to put that litigation on hold; she would revisit the science. ... [and] rather than to defend that standard and to move forward with it, [EPA decided] to reconsider that..." Fortunately, after a bipartisan group of Senators raised serious concerns about EPA's ozone reconsideration —an effort that I was glad to lead with Sen. Landrieu, the President directed EPA to not finalize a new ozone standard at that time.

a. Would you agree that, in light of the President's subsequent decision to forego changing the ozone standard, EPA Administrator Jackson made the wrong decision to "reconsider" the ozone standard instead of, in your words, to "defend that standard"?

b. Did EPA incur significant costs as part of the ozone reconsideration process; if so, how much?

c. Do you agree that the ozone reconsideration process created significant regulatory uncertainty throughout the U.S. economy that could have been avoided if EPA had chosen to defend the standard, as ultimately decided by the President?

On September 2, 2011, President Obama issued a statement on the ozone NAAQS, noting that EPA was engaged in updating its review of the science underlying the 2008 ozone NAAQS, as part of the ongoing periodic review of the Ozone NAAQS, and requested that EPA withdraw from interagency review the draft final rule addressing the reconsideration of the 2008 ozone NAAQS. On that same day, OMB returned to EPA the draft final rule, stating that "the draft final rule warrants [the Administrator's] reconsideration." Letter from Cass R. Sunstein, OMB, Administrator, Office of Information and Regulatory Affairs to Administrator Lisa R. Jackson, EPA. In returning the rule, OMB stated that President Obama had requested that the draft rule be returned as he did "not support finalizing the rule at this time." Consistent with the President's statement, EPA is continuing with its statutorily mandated periodic review of the 2008 ozone NAAQS. In that ongoing review, EPA will consider the current state of the science, which will include the new science not considered as part of the 2008 rule, as well as the science taken into account in previous reviews. Given that, EPA intends to conclude its rulemaking on reconsideration of the 2008 ozone NAAQS in conjunction with its ongoing review of the ozone NAAQS.

7. Another recent example of the "sue and settle" problem involves EPA's recent decision to propose to eliminate a 40-year old regulatory exemption for emissions during periods of startup, shutdown, and malfunction (SSM). Senator Vitter and I recently wrote you about this topic, and on the issue of EPA's failure to defend the law, our letter stated: "In November 2011, the Environmental Protection Agency (EPA) and the Sierra Club negotiated a settlement whereby EPA unilaterally agreed to respond to a petition filed by Sierra Club seeking the elimination of a longstanding Clean Air Act (CAA) exemption for excess emissions during periods of startup, shutdown, and malfunction ("SSM"). The EPA went out of its way further to deny the participation of the States, and other affected parties. Oddly, it appears that, instead of defending EPA's own regulations and the SSM provisions in the EPA-approved air programs of 39 states, EPA simply agreed to include an obligation to respond to the petition in the settlement of an entirely separate lawsuit. In other words, EPA went out of its way to resolve the SSM petition in a coordinated settlement with the Sierra Club. Our concerns with the Agency's sue and settle tactics are well documented—these settlement agreements are often accomplished in a closed door fashion that contravenes the Executive Branch's solemn obligation to defend the law, avoids transparency and accountability, excludes impacted parties, and often results in the federal government paying the legal bills of these special interest groups at taxpayer expense. The circumstance under which EPA has agreed to initiate this new rulemaking reaffirms a pattern and practice of circumventing transparency."

(a) Please list all instances since January 2009 where EPA decided to settle a lawsuit challenging the validity of a law or regulation that had been in effect before January 20, 2009.

Response: I am aware of some instances since January 2009 where EPA decided to settle a lawsuit challenging the validity of a CAA-related regulation that had been in effect before January 20, 2009. For example, Navistar brought a case in the D.C. Circuit Court challenging a 2001 final rule that promulgated standards for new heavy-duty engines and vehicles. EPA settled that lawsuit by agreeing to a hold a public process to reexamine our policies regarding the use of SCR technology (a type of NOx control) in

future model year engines. However, I am not aware of every instance in which EPA has entered into such an agreement. If confirmed, I can examine this issue more thoroughly.

(b) Please include all disbursements of federal funds to cover plaintiffs' attorney fees or legal costs in such cases.

Response: In the *Navistar* case discussed above, EPA did not pay any such fees or costs. While I am generally aware that EPA has paid such fees and costs in some cases—for example, under the Equal Access to Justice Act—I do not have specific information regarding those payments in all cases brought against EPA.

(c)Do you commit to defend all existing statutes and regulations to the extent required by law?

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

8. I am told that EPA often issues guidance on important issues when rules would be appropriate. EPA staff then treats this guidance as if it were rules, when in fact guidance is just one path States or the regulated community can take to reach EPA's desired goal.

a. When, in your view, is it appropriate for EPA to issue agency guidance documents and what procedures should be followed in those circumstances?

Response: In my view, it is appropriate for EPA to issue guidance documents to help the regulated community understand environmental statutes and regulations, assist in the implementation of environmental regulations, give regulated parties information on the types of things we would look for in enforcement actions, encourage compliance with environmental requirements, and suggest promising practices.

Because guidance documents do not contain legally binding requirements, but instead provide information and suggestions that may be helpful to the regulated community, they are considered advisory. The procedure that should be followed in issuing agency guidance documents depends on the purpose of the particular guidance document. For significant guidance documents, EPA should, and does, follow the EPA and OMB procedures outlining good guidance practices, including creating opportunities for meaningful public participation in the development of guidance documents.

b. When, in your view, it is appropriate for EPA to initiate rulemaking proceedings and what procedures should be followed in those circumstances?

Response: In my view, it is appropriate for EPA to initiate rulemaking proceedings when implementation of its statutory authority makes it necessary to impose legally binding requirements on outside parties. In promulgating rules, EPA should, and does, comply with rulemaking procedures set out in applicable statutes and executive orders, including the notice and comment procedures in the Administrative Procedure Act.

c. What will you do to increase the use of rulemaking rather than guidance documents and to impart to EPA staff the proper use of guidance documents?

Response: As a general matter, I believe that the EPA properly uses guidance. The agency is cognizant of the distinction between guidance and rulemaking and the appropriate use of each, as discussed above in question 8a and 8b. If confirmed, I will direct the agency to make appropriate and effective use of Agency guidance.

9. EPA often goes outside the bounds of its statutory authority to achieve ends it deems desirable. Examples include a recent push to regulate water quantity (flow) as a pollutant and the attempt to add unwarranted conditions to coal mining permits. What will you do to ensure that EPA stays within the bounds of its authority?

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

Budget

10. I am the Ranking member of the Senate Budget Committee. I am very concerned about where EPA places its priorities, as reflected in the Administration's budget requests over the past several years. Your budgets have tended to reduce funding for programs at the state level in favor of increasing funding for EPA regulations. For example, the largest reductions in EPA programs under the President's latest budget proposal come from the drinking water and clean water state revolving funds, which provide assistance to states for water programs. The Brownfields program would also be cut under the President's proposal. Yet, the President's budget proposes increasing spending on EPA Clean Air Act regulatory programs.

a. Can you please justify that rationale for these EPA budget priorities?

Response: I understand that EPA's proposed budget defines EPA's program goals for fiscal year 2014 (October 1, 2013 to September 30, 2014) and associated resource requirements. The President's proposed budget reinforces our firm commitment to keeping American communities clean and healthy, while also taking into consideration the difficult fiscal situation and the declining resources of state, local and tribal programs.

EPA's 2014 budget request supports our ongoing effort to transform the way EPA does business. It takes a balanced approach to funding the Agency and underscores our commitment to finding the most efficient and effective ways to work toward our core mission of protecting people's health and the environment.

Most importantly, the request allows the Agency to build on progress in reducing climate change; protecting our air, waters and lands; supporting sustainable water infrastructure; and assuring the safety of chemicals.

b. Within EPA's annual budget request, will you commit to maximize EPA's financial commitment to state-level programs?

Response: If confirmed, I will work with States and others to maximize environmental benefit from federal funds.

11. Under the Budget Control Act, sequestration has resulted in across-the-board cuts to an expansive list of accounts, including those at EPA, and lowered discretionary appropriations levels for the next several years. Can you please describe your priorities as Administrator to deal with the impact of sequestration?

Air Quality

Response: I am hopeful that Congress can agree to a long term budget deal that gives the Agency an ability to engage in long term planning. If confirmed, I will work with Congress and my colleagues in the Executive Branch on implementing the budget.

Sessions 12. Air quality in the United States has improved significantly over the past 40 years. The Clean Air Act and the clean air laws of the States deserve great credit for these improvements, as do the voluntary efforts of millions of Americans and businesses. Air quality is not a political issue. We all want our friends, families, and fellow Americans to breathe clean air. A recent report about Alabama emissions[1] found that since 1999:

a. NOx emissions have dropped more than 35% overall—and more than 65% for coal-fired power plants. Do you agree that, even without additional new regulations from EPA on NOx, this downward trajectory will continue?

b. SO2 emissions have dropped more than 50% overall—and more than 60% for coal-fired power plants. Do you agree that, even without additional new regulations from EPA on SO2, this downward trajectory will continue?

c. PM2.5 emissions have decreased by more than 30% overall. Do you agree that, even without additional new regulations from EPA on PM2.5, this downward trajectory will continue?

d. Ozone levels in Alabama are also on a downward trend. Do you believe an even tighter ozone standard is necessary? Did you support EPA's decision to reconsider the ozone standard in 2011, and did you agree with the President's decision to forego changing the ozone standard at that time?

e. For these pollutants, the numbers are on a downward trajectory even without new EPA air regulations regarding those pollutants. Do you agree?

Although emissions are likely to continue to decline as state and federal control programs already 'on the books' continue to be implemented, it is not at all clear that, without additional state or federal efforts, emissions would continue to decline in perpetuity. It also is possible that, absent additional state or federal efforts, emissions could increase depending on a number of factors. Great progress has been made to reduce emissions considerably since the 1970s, including in Alabama, but more work remains to be done to protect public health.

Under President Obama's leadership, the EPA has worked to ensure health protections for the American people, and has made tremendous progress to ensure that Clean Air Act standards protect all Americans by reducing our exposures to harmful air pollution. In accordance with the requirements of the Clean Air Act, EPA currently is engaged in reviewing the ozone NAAQS and the science underlying these standards. Given the importance of this decision, it makes sense to ensure that the agency gives full consideration to all of the scientific evidence that is available since the conclusion of the last review in 2008. Any decisions as to whether to revise the ozone standard will be based on the available scientific evidence, exposure/risk information, the advice

of CASAC, and public comments. The reconsideration will be concluded in conjunction with the ongoing review.

Sessions 13. As the Assistant Administrator in charge of EPA's air programs since 2009, were you the principal architect of (that is, the person primarily responsible for) the Administration's efforts on Boiler MACT, Utility MACT/MATS, Greenhouse Gas NSPS, Ozone, PM2.5, and the Cross-State Air Rule?

Under the Clean Air Act, the Administrator of EPA has authority to promulgate the rules to which your question refers, and it was Administrator Lisa P. Jackson who signed the proposed and (where applicable) final rules for each of these rulemakings. As Assistant Administrator for the Office of Air and Radiation, I was responsible for overseeing the development of these proposed and (where applicable) final rules and for advising the Administrator in these areas.

14. I have been advised that, several years ago, EPA in conjunction with the States devised a new formula for allocating State and Tribal Air Grants (STAG grants/105 grants) to the ten EPA regions. This new allocation scheme was necessary, I am told, because no adjustments had been made to it for years, resulting in a substantial misallocation of resources. In Region IV, which includes the State of
Alabama, the new formula would have resulted in a 25% increase in STAG/105 funds. I am told that EPA planned to transition into the revised scheme beginning in FY2012. However, this effort has apparently not been implemented. Why has the new allocation program not been implemented, and do you support immediate use of the new allocation scheme? When do you anticipate EPA will implement the new funding scheme?

Response: Senator, having 25 years of experience at the State and Local level, I agree with you that it is crucial to provide adequate funding at the State level. If I'm confirmed, I will look into this issue and would be happy to speak with you further.

Sessions 15. States justifiably should expect that, when reductions in air pollutants result in areas transitioning from non-attainment to attainment for the air quality standards, this success should be recognized by EPA quickly by completing the formal re-designations. My understanding is that EPA has often taken several years to complete this process.

a. Do you agree that clean air attainment designations should be formally adopted as soon as possible when the data show that air standards have been met?
b. What will you do to insure that EPA acts quickly to complete re-designation actions, given the immediate job growth implications of these actions?

When areas in a state attain the standards, states have to submit plans to satisfy certain Clean Air Act requirements. When valid plans documenting these requirements are submitted, EPA generally moves to approve these in a timely manner. There have been cases where litigation about programs that the states have relied on to control air quality has created uncertainty and delayed EPA's ability to take these actions. However, the agency is committed to keeping states

informed in these circumstances, moving quickly to resolve issues, and processing redesignations in a timely manner.

Sessions 16. I have been advised that EPA has, in several instances, illegally made unilateral revisions to State SIP's when the proper procedure was through a SIP Call.

a. Please explain how you determine if a SIP call or a FIP should be used.

The use of a SIP call or a FIP is governed by the provisions of the Clean Air Act. Under section 110(c), the EPA is legally required to issue FIPs in two specific circumstances:

1. If EPA finds that the state failed to make a required SIP submission that is complete (including failure to make any SIP submission whatsoever),or
2. If EPA disapproves a required SIP submission in whole or in part.

EPA's legal obligation to promulgate such a FIP only ends if the state makes, and EPA fully approves, the required SIP submission before the promulgation of the FIP. EPA does not have legal authority or a legal obligation to promulgate a FIP in other circumstances.

By contrast, EPA is authorized to promulgate a SIP call under section 110(k)(5) whenever EPA determines that a state's existing SIP is substantially inadequate to provide for attainment and maintenance of the NAAQS, to mitigate interstate transport adequately, or to meet any other requirements of the CAA. EPA has discretion regarding whether to make a finding on whether a state's SIP is substantially inadequate. If EPA makes such a finding, however, then the agency has a legal obligation to issue a SIP call and to require the state to revise its SIP to bring it into compliance with CAA requirements.

b. Will you limit the use of FIPs to the situations actually anticipated in the CAA?

States and EPA both have authorities and responsibilities under the CAA. As noted above, EPA has a mandatory duty under the CAA to promulgate a FIP in certain circumstances that are required by law when a state does not meet its SIP obligations under the CAA. In practice, EPA already strives to avoid situations in which a FIP is necessary. EPA's strong preference is for states to develop and submit their own SIPs that meet CAA requirements, and EPA works with states to help them to develop approvable SIPs in order to avoid a FIP in the first instance or to replace a FIP with an approvable SIP as soon as possible. EPA does not use FIPs in situations not anticipated in the CAA.

Sessions 17. You oversaw development of "Utility MACT," also referred to as the Mercury and Air Toxics Standards (MATS). Testifying before Congress, you stated that the MATS rule would lead to the loss of only a "modest amount of generating capacity." However, according to the Institute for Energy Research, the MATS rule will result in at least 35,000 MW closing and Barclay's estimates that 42,000 MW will close because of MATS. Your own estimates fall significantly short of those estimates.

a. Do you agree that the United States is losing some of its coal-fired generating capacity as a result of recent EPA regulations?

A number of factors may influence an owner/operator's independent business decision to retire a plant. Environmental rules are only a part of the equation. External analysts, including GAO[xxxiii], CRS[xxxiv], the Bipartisan Policy Center[xxxv], and Analysis Group[xxxvi],have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal- fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth.

b. Why were EPA's estimates for the impact on the electricity generating sector so much different than those identified by Barclay's and the Institute for Energy Research?

A number of economic factors influencing retirements well beyond EPA's clean air rules are included in these non-EPA figures[xxxvii]. As noted above, external analysts, including GAO[xxxviii], CRS[xxxix], the Bipartisan Policy Center[xl], and Analysis Group[xli], have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. Because EPA's power sector analyses look at the effects of its rules alone to evaluate incremental impacts, EPA's analyses are not comparable to other assessments that also take into account broader economic factors.

Sessions 18. In the Utility MACT proposal, EPA stated that: "EGUs are the subject of several rulemaking efforts that either are or will soon be underway....EPA recognizes that it is important that each and all of these efforts achieve their intended environmental objectives in a common-sense manner that allows the industry to comply with its obligations under these rules as efficiently as possible and to do so by making coordinated investment decisions and, to the greatest extent possible, by adopting integrated compliance strategies. ... Thus, EPA recognizes that it needs to approach these rulemakings, to the extent that its legal obligations permit, in ways that allow the industry to make practical investment decisions that minimize costs in complying with all of the final rules, while still achieving the fundamentally important environmental and public health

---

[xxxiii] Government Accountability Office – "EPA Regulations and Electricity: Better Monitoring by Agencies Could Strengthen Efforts to Address Potential Challenges" http://www.gao.gov/assets/600/592542.pdf

[xxxiv] Congressional Research Service – "EPA's Regulation of Coal-Fired Power: Is a "Train Wreck" Coming?" http://insideepa.com/iwpfile.html ?file=aug2011%2Fepa2011 1545.pdf

[xxxv] Bipartisan Policy Center – "Environmental Regulation and Electric System Reliability" http://bipartisanpoli cy.org/library/report/environmental -regulation-and-electric-system-reliability

[xxxvi] Analysis Group – "Why Coal Plants Retire" http://www.analysi sgroup.com/uploadedFiles/News and Events/News/2012 Tierney WhyCo alPlantsRetire.pdf

[xxxvii] New Insights from ICF's Integrated Energy Outlook: January 2013 http://www.icfi.com/insights/webinars/2013/recording -new-insights-icfs-integrated-energy-outlook-january-2013

[xxxviii] Government Accountability Office – "EPA Regulations and Electricity: Better Monitoring by Agencies Could Strengthen Efforts to Address Potential Challenges" http://www.gao.gov/assets/600/592542.pdf

[xxxix] Congressional Research Service – "EPA's Regulation of Coal-Fired Power: Is a "Train Wreck" Coming?" http://insideepa.com/iwpfile.html?file=aug2011%2Fepa2011 1545.pd f

[xl] Bipartisan Policy Center – "Environmental Regulation and Electric System Reliability" http://bipartisanpolicy.org/library/report/environmental -regulation-and-electric-system-reliability

[xli] Analysis Group – "Why Coal Plants Retire" http://www.analysisgroup.com/uploadedFiles/News and Events/News/ 2012 Tierney WhyCoalPlantsRetire.pdf

benefits that the rulemakings must achieve. The upcoming rulemaking under section 111 regarding GHG emissions from EGUs may provide an opportunity to facilitate the industry's undertaking integrated compliance strategies in meeting the requirements of these rulemakings....The Agency expects to have ample latitude to set requirements and guidelines in ways that can support the states' and industry's efforts in pursuing practical, cost-effective and coordinated compliance strategies encompassing a broad suite of its pollution-control obligations. EPA will be taking public comment on such flexibilities in the context of that rulemaking."

a. Does EPA intend to follow through on this commitment and provide a forum in which EPA notifies utilities of all of the impending power sector regulations and discusses ways for industry to comply with all of these regulations in a least cost fashion?

As stated in the cited portion of the preamble to the Mercury and Air Toxics Standards (MATS) NPRM, the Agency's intent was to use the rulemaking process itself to address issues of flexibility that might support industry's efforts to develop integrated compliance strategies for affected sources. In developing the final MATS, for example, the Agency received substantial comment suggesting ways in which the final rule could provide compliance flexibility and the Agency adopted several of these suggestions, which according to the Regulatory Impact Analysis for the final standards, resulted in $1.3 billion in annual cost-savings relative to the proposed standards.

EPA is still in the process of reviewing comments submitted in response to the carbon pollution standard for new power plants proposed under section 111(b). The agency is not currently developing any existing source GHG regulations for power plants under section 111(d).

b. Can you give a timeframe at which time this process will begin?

Please see the response to provided to question (a), above.

Sessions 19. I have been advised that, as a general matter, market-based approaches to reducing emissions of traditional air pollutants have proven to be more cost-effective than command-and-control approaches.

a. Do you agree?

As a general matter, market-based approaches provide flexibility to sources in determining how best to comply with an environmental program. This flexibility gives sources the opportunity to comply in the most cost-effective manner. Market-based approaches reward efficiency, innovation, and early action and provide environmental accountability without inhibiting economic growth.

b. It has been said that NOx and SO2 from Electric Utility Fuel Combustion sources show significant decreases over time as a result of the Acid Rain Program, NOx Budget Trading Program, and CAIR control implementation. Do you agree?

These programs have been very successful in reducing SO2 and NOx emissions from the U.S. power sector. Recent EPA air programs continue and complement the Acid Rain Program's (ARP) history of emission reductions. In 2011, sources in the ARP and the Clean Air Interstate Rule (CAIR) SO2 annual program reduced SO2 emissions by over 11 million tons (a 71 percent reduction) from 1990 levels (before ARP implementation). Similarly, sources in the ARP and CAIR NOx annual program emitted 4.4 million fewer tons of NOx (a 60 percent reduction) in 2011 than in 1990.

Sessions 20. We understand that EPA is currently evaluating whether to finalize a consent decree with the Sierra Club for the issuance of new MACT standards for the brick industry. EPA began the rulemaking process for the second MACT several years ago, requiring two sets of information collection requests (ICRs) to be completed by the industry. However, EPA recently proposed a new schedule whereby the rule would be finalized in July 2014. I am concerned that the proposed schedule for this new Brick MACT is too short to allow meaningful review of brick industry emissions, how the proposed rule would affect the economic survival of the brick industry - especially with respect to impacted small businesses - and whether the proposed rule would provide discernible environmental and health benefits.

a. How did EPA arrive at the Brick MACT schedule contained in the proposed consent decree?

Environmental plaintiffs sued the EPA, arguing that the Agency should be subject to a court-imposed schedule. EPA asked the court to dismiss the case, but the court ruled in the plaintiffs' favor. In order to avoid a court-imposed schedule that might be more difficult to meet, EPA negotiated a proposed schedule for new rulemaking with the litigants. The proposed schedule was based on consideration of the efforts needed to gather and evaluate information relevant to developing standards that meet the requirements of CAA section 112(d)(2) and (d)(3). The proposed consent decree, including the proposed schedule, was published in the Federal Register on December 7, 2012, with a request for public comment. EPA has subsequently negotiated a revised schedule that will allow us additional time to, among other things, address small business concerns. The final schedule provided in the consent decree that was filed with the U.S. Court of Appeals for the D.C. Circuit on April 12, 2013, extends the period for rulemaking to February 6, 2014, for the proposal, and December 18, 2014, for the final rule.

b. Does EPA's schedule allow for adequate consideration of the Small Business Administration's (SBA) Small Business Panel review pursuant to SBREFA?

Yes. EPA takes very seriously the potential impacts of its rules on small businesses, as well as its obligations to confer with those businesses and to work to minimize any avoidable adverse impacts. The final schedule provided in the consent decree that was filed with the U.S. Court of Appeals for the D.C. Circuit on April 12, 2013, extends the period for rulemaking to February 6, 2014, for the proposal, and December 18, 2014, for the final rule. This will ensure adequate time for review by the SBA's Small Business Panel.

c. What emissions reductions would be achieved pursuant to full implementation of the proposed standards?

Because the agency has neither concluded its analyses of the available information, nor consulted with interested stakeholders, let alone developed or issued any proposed emission standards, it is premature to speculate about the emission reductions that would result. This process will include small business consultation under SBREFA, as well as interagency review prior to proposing any emission standards.

d. What are the potential economic impacts and costs to the domestic US brick industry related to the proposed standards?

Because the agency has neither concluded its analyses of the available information, nor consulted with stakeholders, let alone developed or issued any proposed emission standards, it is premature to speculate about the economic impacts and costs of compliance. However, EPA fully intends to consult with members of the U.S. brick industry, including through the SBREFA process, to identify potential impacts and ways to minimize any unnecessary and avoidable adverse economic impacts on the brick industry.

e. How would the costs of these new standards compare, on a per-ton basis, with other industries recently subjected to new MACT standards?

Because the agency has not yet concluded its analyses of the available information, nor consulted with stakeholders, let alone developed or issued any proposed emission standards, it is premature to speculate about the costs of compliance or how they would compare with other industries subject to MACT standards.

21. The brick industry was subject to a Brick MACT issued in 2003. The industry came into compliance with that MACT (and continues to comply) at a cumulative cost upward of $100 million. This MACT was vacated by the D.C. Circuit in 2007, but many of the controls installed by the brick industry remain in place. I am told that these new controls are now being used to establish a new "floor" for brick industry emissions. This "MACT on MACT" situation (i.e. full compliance with a MACT standard for almost a year before the rule was vacated) is very concerning to brick manufacturers around the country.

a. What other industries have been subject to successive rounds of regulation similar to the situation the brick industry now finds itself?

Several rules have been remanded to EPA for further justification or revision based on court decisions holding that EPA's original MACT standards were unlawful. This includes, for example, rules for Hospital, Medical, and Infectious Waste Incineration; Commercial and Industrial Waste Incinerators; and Commercial, Industrial, and Institutional Boilers. The D.C. Circuit has upheld the agency's ability to correct errors in its MACT standards and rejected the "MACT on MACT" argument where the agency is either responding to a court remand or otherwise correcting a legally deficient MACT standard.

b. What other industries have installed emissions controls pursuant to an EPA requirement then had those controls used to establish more stringent emissions limitations within the operational lifetime of the previously installed control equipment?

EPA has revised a number of MACT standards to comply with court decisions. Some of the revised standards can be complied with using the same control technologies as those needed to comply with the original remanded standards, while others could require sources to employ additional methods to reduce emissions.

c. What steps will EPA take to ensure that controls installed in good faith are not needlessly removed before the end of their useful life?

In accordance with the requirements of the Clean Air Act, EPA will continue to establish standards in a way that does not dictate the use of any particular type of control technology. Source owners and operators remain free to employ whatever process or technological improvements will result in compliance with the standards. This could include, for instance, actions to improve the efficiency of existing systems, thereby making it highly unlikely that existing equipment must be replaced before reaching the end of its useful life.

d. Why would EPA propose standards that do not utilize the full discretionary power granted by the Clean Air Act, such as the ability to create subcategories or distinguish among sizes, types and classes within a category or subcategory to minimize or eliminate that cost and economic impacts that do not create commensurate environmental benefit?

EPA is sensitive to the economic impacts of its rules on affected industries and seeks to minimize any unnecessary adverse impacts. In that regard, EPA does, and will continue to, determine whether distinguishing among sources within a given category based on meaningful differences in size, type or class will achieve the environmental benefits called for by the Clean Air Act at lower costs to affected sources.

Sessions 22. I am aware that the EPA is considering whether a health-based standard is possible for the brick industry. I also understand that the brick industry has supplied you with all information necessary to evaluate a health-based compliance alternative for every major source.

a. What are the impediments to establishing a health-based rule for this industry comprised of a large number of small businesses, and how could those impediments be overcome?

Under the Clean Air Act, EPA is authorized to establish MACT standards that consider a health threshold where the science supports a finding that such a threshold exists. In order to establish such a standard, EPA would need sufficient information to determine whether a threshold for health effects indeed exists and that the health-based standard being established provides for an ample margin of safety. EPA is currently evaluating information provided by the industry to determine whether such a standard would be appropriate and consistent with the statutory requirements.

b. An emission standard is broadly defined in the Clean Air Act. Why would EPA look to a single facility to establish the emission level for all facilities to meet, rather than consider a health-based metric as a possible emission standard format?

As stated above, under the Clean Air Act, EPA may only establish a standard considering a health threshold where the science supports a finding that such a threshold exists, and where the

standard provides an ample margin of safety. EPA is currently considering the range of potential approaches that could be used to set a standard.

Sessions 23. Do you believe Congress intended to give EPA the authority to regulate emissions of CO2 as a "pollutant" when it enacted the Clean Air Act?

Congress in the Clean Air Act defined "air pollutant" as "any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive . . . substance or matter which is emitted into or otherwise enters the ambient air." 42 U.S.C. 7602(g). The Supreme Court in *Massachusetts v. EPA*, 549 U.S. 497 528-29 (2007), held that "greenhouse gases fit well within the CAA's capacious definition of air pollutant," as established by Congress.

Sessions 24. I am told that China is the world's largest producer of CO2, and that CO2 levels have been steadily declining in the United States in recent years. EPA Administrator Lisa Jackson testified at a July 7, 2009 Senate EPW hearing that "U.S. action alone will not impact world CO2 levels." Do you agree that, even if the United States reduces CO2 emissions in line with legislative proposals in recent Congresses, such U.S. action alone would have little or no impact on global average temperatures?

In order to achieve the reductions in greenhouse gas emissions that science indicates are necessary to address climate change, all major emitting countries will need to take action. As I indicated in my testimony before the Committee, I believe that the United States can achieve meaningful reductions in greenhouse gas emissions through common sense steps, such as the light duty vehicle emission and fuel economy standards established by this Administration, that are fully consistent with domestic economic growth. I also believe that U.S. leadership in reducing carbon pollution helps to encourage greater action from other countries and enhances U.S. leverage in international climate discussions.

Sessions 25. During the Administration's first term, EPA promulgated an endangerment finding and adopted GHG regulations for motor vehicles. It also proposed GHG NSPS for the power sector.

a. What other areas of the economy can we expect GHG regulations during your tenure as Administrator?

EPA is still in the process of reviewing comments submitted in response to the proposed carbon pollution standard for new power plants under section 111(b) and is not currently developing any existing source GHG regulations for power plants under section 111(d). The agency has previously acknowledged that it is appropriate to issue regulations for refinery greenhouse gas emissions, but has no current plan for issuing such regulations. The agency has also previously said that it had insufficient data to regulate Portland cement facilities, and EPA does not have a timetable or plan for issuing GHG regulations of this sector.

b. What standard is EPA going to apply in determining what sectors GHG regulations should apply to?

Please see the answer to question (a), above. Administrator Jackson stressed a common sense approach to the issue of GHG regulations that included focusing on the largest sources of GHG emissions; I continue to believe that general approach was correct.

Sessions 26: On December 4, 2012, I wrote EPA Administrator Lisa Jackson regarding the President's statement that "the temperature around the globe is increasing faster than was predicted even 10 years ago." I asked EPA to provide the specific data supporting the President's assertion along with a "chart of the actual global average temperature increases since 1979 [] versus the latest IPCC predictions..." You responded in a letter dated February 14, 2013, by asserting that "there are multiple lines of evidence that clearly demonstrate that average global temperatures are rising...," yet you did not provide any data relating to average global temperatures.

a. Will you provide me with data showing actual global average temperatures since 1979 versus IPCC predictions, as was requested in my letter?

The agency's original response provided global temperature graphics from NOAA, but the underlying data for these global annual average temperature data are available from NOAA's National Climate Data Center (www.ncdc.noaa.gov/oa/ncdc.html) and can also be seen in EPA's *Climate Change Indicators in the United States, 2012* Report [EPA 430-R-12-004] (http://www.epa.gov/climatechange/science/indicators/weather -climate/temperature.html). These data include the University of Alabama-Huntsville lower tropospheric satellite measurements referred to in your letter dated December 4, 2012. Regarding a comparison of recent observations to former temperature projections of the IPCC, EPA has not produced its own analysis, but we expect a definitive comparison in the forthcoming IPCC Fifth Assessment Report. Until then, for a peer-reviewed study of this question, we refer you to Rahmstorf et al. (2012)[xlii], which found that, "global temperature continues to increase in good agreement with the best estimates of the IPCC, especially if we account for the effects of short-term variability... The rate of sea-level rise of the past few decades, on the other hand, is greater than projected by IPCC models."

b. Your letter also states that "2012 set a new record high for average temperatures in the United States." Do you agree that global temperature averages are more relevant for evaluating climate change than record high temperatures for a single year in a single country?

Long-term changes in global average temperatures are indeed one of the most important metrics to gauge climate change. The IPCC (2007)[xliii] was referring to global average temperature in its finding that "Most of the observed increase in global average temperatures since the mid-20th century is very likely [where very likely signifies a 90-99% probability the statement is true] due to the observed increase in anthropogenic GHG concentrations." Worldwide, 2001-2012 was the warmest decade on record since thermometer-based observations began. However, there are important regional indicators of climate change as well, and trends in U.S. climate data should not be ignored. Though we agree that one year's data for one region alone is not sufficient to reach

[xlii] S. Rahmstorf, G. Foster, and A. Cazenave, "Comparing climate projections to observatio ns up to 2011", *Environmental Research Letters*, vol. 7, pp. 044035, 2012. http://dx.doi.org/10.1088/1748 -9326/7/4/044035

[xliii] IPCC (2007). Summary for Policymakers. In: Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change [Solomon, S., D. Qin, M. Manning, Z. Chen, M. Marquis, K.B. Averyt, M.Tignor and H.L. Miller (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA

conclusions about long-term climate change trends, the degree to which 2012 broke records in the U.S. was noteworthy and relevant to human health and welfare.

c. A March 30, 2013 article in The Economist stated: "Over the past 15 years, air temperatures at the Earth's surface have been flat while greenhouse-gas emissions have continued to soar..." Is this statement correct?

Although most of the warmest years on record have occurred in the last decade, the rate of warming has, for a short time, slowed (Karl et al., 2009). It is important to recognize, however, that year-to-year fluctuations in natural weather and climate patterns can produce a period—of individual years or even individual decades—that does not follow the long-term trend (NRC, 2010; Karl et al., 2009). EPA has responded to similar comments in the record for the 2009 Endangerment Finding regarding differences between models and observed temperatures, and has found that the possible slowdown in warming over the last decade or so does not undermine the linkage between greenhouse gases and temperature over appropriately long timescales.

d. In your letter, you stated that "only looking at 10 years of a single dataset cannot provide a full picture of climate change trends, and should also not be the sole test by which to judge the usefulness of climate models in either simulating past climates or projecting further climate change." What is the best test for judging the usefulness of a climate model? Should policymakers rely on climate models that have over-predicted the degree of warming every year since at least 1990?

Observations over short time periods (e.g., ten years) examined in isolation may be misleading in the interpretation of the longer-term trend in temperatures. It is reasonable and appropriate to rely on climate models that do not (and cannot) accurately model every aspect of the global climate but which are nonetheless useful for attribution, projections, and understanding of climate phenomena. This is particularly the case when multiple models are applied, as is done in the climate assessment literature, and the results are examined across them all. Thus the possible slowdown in the rate of warming over the past decade or so does not undermine confidence in the utility of climate models for either attributing or projecting climate change over appropriately long timescales.

e. Your letter provides a series of charts (from NOAA's State of the Climate in 2009 report) related to land surface air temperatures, sea surface temperatures, marine air temperatures, tropospheric temperatures, and stratospheric temperatures. Importantly, while you did not provide the requested chart comparing global temperature averages that correlate to the global temperature averages predicted by the IPCC, the charts you provided are, nonetheless, intriguing because all of these charts show no increases in temperatures for at least the past decade. Do you agree that the data for each these charts shows no increases in these temperature sets for at least the past decade? Of these temperature data sets, which one was the President referring to when he said that "temperature around the globe is increasing faster than was predicted even 10 years ago"?

As stated above, observations over short time periods (e.g., ten years) examined in isolation may be misleading. That can be seen in nearly every data set in the NOAA graphic that the most recent decade indicates greater changer than all previous decades. However, EPA recognizes that

analysis of surface and lower tropospheric temperature data over the last 10 years or so indicates that the *rate* of surface warming may have temporarily slowed, although the magnitude of the slowdown varies depending on dataset and choice of start date. Warming has been pronounced in the last 30 years or so and the warmth of the short-term period of the last decade should be viewed in the context of temperature and other climatic data spanning the last century, such as global sea surface temperatures, precipitation, Arctic sea ice extent, ocean acidification, etc. EPA's Climate Change Indicators in the United States, 2012 Report [EPA 430-R-12-004] provides other examples of observed climate changes.

Water Quality

27. I am concerned about the expansive interpretation the current Administration gives to the jurisdictional term "waters of the United States." In your opinion, do non-navigable streams constitute "waters of the United States," as originally intended by Congress when it enacted the Clean Water Act? In your opinion, do isolated ponds without significant hydrological connections to navigable waters constitute "waters of the United States," as originally intended by Congress when it enacted the Clean Water Act?

Response: I believe that clarity is important at the State, and local level, and also for industry to understand the scope of EPA regulations, including what waters fall into the scope of the Clean Water Act. If I'm confirmed, I will work with all of these entities, in addition to other stakeholders, to examine the issue that you have raised.

28. I understand EPA is in the process of developing a Section 316(b) rule.

a. Do you support a technology-based standard for the Section 316(b) rule?

b. I am told that the EPA Water Office conducted a willingness-to-pay survey for the 316(b) rule to monetize benefits, noting that this methodology is widely used and supported by the academic literature. It is my understanding that this literature specifies that a given survey should focus on one or two rare species and be geographically restricted to the area where these species live. It is my understanding that the EPA survey, on the other hand, involves all species in the waters of the United States nationwide, including common species with a commercial market. When the 316(b) survey results are published, will EPA specify that its survey was not conducted according to the accepted methodology?

c. Will states be required to use EPA's survey results in 316(b) BTA [best technology available] decision-making?

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

29. I am concerned about EPA's continuation of efforts to establish effluent limitation guidelines (ELG) for coalbed methane (CBM) production. As outlined in my letter to the EPA dated May 10, 2012, the ELG process, which started in 2008, cannot be justified in light of prevailing economic conditions and the price of natural gas in today's market. Natural gas prices are much lower now

than in 2008 when EPA started this process. Moreover, I am advised that there is no need for these ELGs because Alabama has successfully managed the National Pollutant Discharge Elimination System (NPDES) for more than 25 years with EPA regional supervision, and that an ELG is even less necessary now because of decreased gas and water production. A CBM ELG would threaten production across the country and could even end production in Alabama, thereby harming the great progress this country has made toward energy independence and progress in domestic natural gas production. I appreciate EPA's response dated June 12, 2012, that acknowledges the ELG must be economically achievable. The EPA has been working on a proposed rule regarding effluent limitation guidelines (ELG) for CBM since 2008. During that time, natural gas prices have decreased significantly. I am told that this dynamic renders a CBM ELG economically unachievable. Rather than devoting additional time and resources to an effort that the EPA cannot justify - economically or on the merits - I encourage you to abandon any efforts to establish a CBM ELG. Please provide an update on this process. Does EPA intend to continue this ELG process even though EPA acknowledges that it cannot issue new guidelines if they are economically unachievable? What are the costs to EPA of the entire ELG process for coalbed methane? I am told that EPA has actively been working on the CBM ELG since 2007 including an extensive survey of companies and that, to date, no economic information has been provided to the public even though the Clean Water Act requires an economic feasibility test. When can stakeholders expect to see such an analysis?

Response: I understand the importance of your questions to natural gas producers in Alabama and elsewhere. I have not been directly involved in this CWA issue, but if confirmed, I look forward to working with you as EPA looks at this important issue under the CWA.

30. EPA released proposals to further regulate coal fly ash in 2010, but has since failed to give any indication on how it might move forward. One of the proposals that EPA put forth would regulate coal fly ash as a "hazardous material" (under Subtitle C of RCRA). The uncertainty created by EPA's proposal and subsequent years of inaction are adversely impacting many industries including those that reuse and recycle coal fly ash to make safe products like cement, wallboard and carpet backing. These industries not only provide valuable products for Americans all over the country, but they help avoid disposing of coal fly ash in landfills and other impoundments. To what extent is EPA still considering this "hazardous materials" treatment for coal fly ash? Do you support regulating coal fly ash instead under Subtitle D and treat it as a "solid waste"? When can we expect EPA to announce a final determination on this important matter?

Response: It is my understanding that as part of a recent proposal to reduce pollution from steam electric plants, EPA also announced its intention to align that proposed rule with the proposed coal ash rule and stated that such alignment could provide strong support for a conclusion that regulation of CCR as non-hazardous could be adequate. The two rules would apply to many of the same facilities and would work together to reduce pollution associated with coal ash and related wastes. EPA is seeking comment from industry and other stakeholders to ensure that both final rules are aligned. If confirmed, I would continue to work to ensure that these two proposed rules are appropriately coordinated.

Nuclear Radiation Monitoring (RadNet)

Sessions 31 In EPA's response to the accident at the Fukushima Daiichi nuclear power plant in Japan, I am told that the RadNet system carried out its mission "to monitor environmental radioactivity in the United States in order to provide high quality data for assessing public exposure and environmental impacts resulting from nuclear emergencies." In particular, my understanding

is that the timely, comprehensive and publicly accessible monitoring data generated from RadNet provided a factual basis for federal and state governments to reassure the American people that levels of radioactivity reaching the United States from Fukushima were "hundreds of times below levels of concern." As recognized at the time of inception of the RadNet system, it would be impractical to attempt to stand up such a monitoring system only in the event of an actual nuclear emergency. This is particularly true considering the need to make near-term assessments of potential risks and formulate protective actions, if needed, to protect public health. In addition, I am told that maintaining RadNet in a monitoring mode is necessary to maintain data on ambient levels of radiation in the environment for baseline and trend analysis, as well as in assuring continual readiness, including maintaining equipment and training personnel to respond rapidly to an event. Nevertheless, I am also told that some shortcomings in the RadNet system were noted during the Fukushima event and thereafter. What is needed to assure that the RadNet system will be fully maintained at a high level of readiness? What has EPA learned from the Fukushima event in regard to potential improvements to the system? More generally, what has EPA learned from the Fukushima event in regard to our nation's capability to monitor and analyze radiation in real-time to be able to more effectively fulfill its mission?

EPA agrees that the RadNet System performed well in providing information to the American public during the Fukushima event. As you noted, the Agency also identified challenges during this event and has taken a number of steps to further improve the program. Foremost, EPA has established stricter readiness goals and improved internal reporting for RadNet. EPA has an established goal of at least 80% of the RadNet monitors operating at all times, with the expectation that the Agency will regularly exceed that goal in practice. Additionally, the Agency has improved these elements:

- EPA personnel at the National Analytical Radiation Environmental Laboratory (NAREL) in Montgomery, Alabama, evaluate the status of each monitor daily.
- NAREL staff use high-speed computer connections to each air monitor to perform significant remote maintenance each day. NAREL is also installing backup telecommunications methods.
- Monitors requiring repair are returned to full service within two weeks, or sooner if EPA is responding to an emergency such as the Fukushima event. NAREL has worked with the monitor manufacturer to ensure that essential components are available, and appropriately stocked in inventory.
- EPA has also improved the presentation of RadNet data on the Agency's website so that it is easier to access and understand. This is an ongoing project and EPA will continue to work on ways to improve how radiation information is presented.

Senator Crapo

1. More than a year after the Supreme Court ruled unanimously against the EPA in the Sackett case, your agency continues its relentless harassment of the Sackett family in Idaho. In fact, for six years—and using an expansive view of power under the Clean Water Act--EPA has prevented the Sacketts from completing the construction of their dream home. It is unclear how exactly EPA's assertion of regulatory jurisdiction over the Sacketts would further the Clean Water Act's environmental objectives, especially given that the Sacketts have completed all the necessary local permitting. Given the toll this has taken on the Sackett family and the message it sends to small landowners across America, isn't it time for EPA to move on to higher priorities? When will your agency's harassment of the Sacketts cease?

Response: I believe that it is crucial that we follow the law with respect any statute that EPA implements, including the Clean Water Act. I understand that the Agency has taken steps to fully address the issues raised in the Supreme Court case that you reference. If confirmed, I commit to looking into this important issue.

2. Over the past couple of years, I have worked with a bi-partisan group of Senators to address the Ninth Circuit's 2011 ruling that forest roads are subject to a mandatory permit requirement under EPA's point source rules. Our legislation would codify into law EPA's 37-year policy that that forest management and associated forest roads are nonpoint sources under the Clean Water Act best regulated through state-adopted Best Management Practices. The litigation threatens the rural road network which is owned and managed, in large part, by counties, states and federal agencies. This is a priority and there is bi-partisan support to address this issue. While the U.S. Supreme Court recently ruled favorably on the mandatory permit issue, the court left open the question of forest roads as point sources of pollution. How will the agency comply with the recent Supreme Court rulings? Do I have your commitment that the EPA will work in cooperation with Congress as it develops a statutory fix for forest roads as point sources?

Response: I look forward to working with Congress on this key issue, if confirmed. In the meantime, the Agency will work with states, the forest industry, and other stakeholders to identify best management practices that can be used to protect water quality without creating burdensome or costly rules.

3. The US coordinated framework for the regulation of biotechnology was created to ensure environmental protection and consumer safety. This framework is the basis for a science based system and along with later laws that apply to EPA, such as the Pesticide Registration Improvement Act (PRIA), provide a predictable regulatory pathway across multiple government agencies for innovative new technologies to be put in the hands of American farmers. Given this Administration's policy positions supportive of development and use of biotechnology, including those articulated in the Bioeconomy Blueprint in April 2012 and commitment to transparency and science based decision making, I am troubled by recent delays in the regulatory process and impact on our agricultural competitiveness. Rather than embracing the coordinated framework, the EPA instead continues to operate under an unwritten policy that resists interagency coordination and ignores EPA's timelines under PRIA. This is especially important with respect to the approval of chemistries when they are tied to a deregulation of a biotech trait at USDA. How do you propose to deal with EPA's lack of timely chemistry approval with the respect to biotech traits given the administration's clear position on biotechnology?

Response: As the Assistant Administrator for the Office of Air and Radiation, I have not been involved in this issue. If confirmed, I can examine this issue more thoroughly and would be happy to discuss it with you in the future.

4. Many of our farmers and ranchers are concerned with the recent vigorous efforts by the EPA to re-write U.S. environmental policy through administrative rulemaking. Some agricultural interests claim that, in several of EPA's efforts, the emphasis appears to be on ratcheting up a regulatory enforcement philosophy, rather than encouraging incentive-driven efforts to address the Nation's water quality challenges. If confirmed, how would you respond to this observation as Administrator? Do you believe collaborative, incentive-based approaches to water quality problems have merit or would you support a more regulatory compliance approach?

Response: Senator, my entire career prior to coming to EPA in 2009 has been at the State and local level. I know that in order to make environmental progress, we need to have partnerships with the States. I believe in an approach where States and the Federal government work together, collaboratively to solve problems.

5. EPA has historically supported implementation and use of water quality trading as an innovative approach to achieve water quality goals more efficiently. As you know, trading is based on the fact that sources in a watershed can face very different costs to control the same pollutant. Trading programs allow facilities facing higher pollution control costs to meet their regulatory obligations by purchasing environmentally equivalent (or superior) pollution reductions from another source at lower cost, thus achieving the same water quality improvement at lower overall cost. In Idaho, for example, the Boise River watershed represents a unique opportunity to reduce non-point source pollutants coming from area agriculture communities to significantly lower costs for downstream municipalities to achieve even higher levels of pollution control. Given the success of trading mechanisms in the air program, would you support a trading structure for water quality improvements such as in the Boise River watershed? If water quality trading does not work everywhere, can the agency prioritize areas where water quality trading mechanisms could achieve cost effective environmental results?

Response: I understand that water quality trading has worked well in numerous circumstances, most recently associated with efforts to restore the Chesapeake Bay. The EPA has supported these efforts and works closely with states and local agencies who seek to initiate water quality trading opportunities. If confirmed, I look forward to working with you to learn more about water quality trading opportunities in Idaho and how the EPA could support them.

Crapo 6. The Air Pollution Cost Manual currently used by EPA in estimating costs for regional haze and other "best available retrofit technology (BART) determinations was published in 2002. Costs for designing, engineering and installing controls obviously have increased significantly since then. Given that the current cost manual was published over a decade ago, is it out-of-date? What steps are being taken by EPA to update it? Doesn't the use of an outdated cost manual increase the likelihood that EPA is underestimating regional haze compliance costs?

> EPA encourages the use of up-to-date, case-specific cost information. The Control Cost Manual and EPA's Best Available Retrofit Technology (BART) Guidelines state that users of the manual, including states when developing regional haze state implementation plans (SIPs) and EPA when developing federal implementation plans (FIPs), can and should use more recent and more case-specific information provided it is properly documented so that the public and the state can assess its relevance and technical validity.

Crapo 7. EPA uses an air dispersion model, called CALPUFF Version 5.8, to assess projected improvements in visibility from proposed Nox retrofit technologies. How does EPA respond to scholarly, peer-reviewed studies asserting that CALPUFF Version 5.8 overestimates visibility

improvements? What does EPA need to do to update CALPUFF Version 5.8? Is this underway? Why is EPA not allowing the use of more recent versions of CALPUFF, such as Version 6.4?

EPA has a long-standing practice of, and is committed to, using state-of-the-art models in the agency's efforts to improve air quality and reduce regional haze. EPA solicits and incorporates information and suggestions from the technical expertise in the modeling community as a matter of course. To that end, EPA is currently updating CALPUFF Version 5.8 to address issues identified by stakeholders and federal partners. EPA is aware of conference presentations that have evaluated CALPUFF version 5.8; however, none of these studies are considered scholarly, peer-reviewed studies. EPA has committed, as part of a recent grant of a 2011 petition, to revising its *Guideline on Air Quality Models* (published as Appendix W to 40 CFR Part 51) to incorporate model(s) or technical approaches, as appropriate, to address chemistry for assessing source impacts on ozone and secondary PM2.5.

Crapo 8. A large number of plants are expected to retire in 2015/16 – as the economy recovers and electric demand recovers. Experts expect regional problems because there are areas not served by natural gas pipelines where needed infrastructure may not be able to be put in place in this time frame or where replacement plants cannot be permitted and built within this time frame. MISO has done an analysis that shows 9% of capacity (12.9 GW at last estimate) is closing and there is not sufficient gas infrastructure to serve existing demand let alone new demand. Did EPA examine natural gas availability (via infrastructure such as pipelines and permitting timelines) when you issued the utility MATS rule, CASPR and the PM NAAQS and NSPS for GHGs?

Electric utilities and electric regulatory bodies, like state public utility commissions, have a wide variety of options for meeting electric demand. There are adequate provisions in EPA regulations to allow for planning flexibility in response to reliability challenges. EPA conducts detailed analysis to support its actions and projects that fuel diversity will be maintained in the future and that the full range of electric generating resources will be maintained, helping to ensure reliability. This includes coal and natural gas – since natural gas is the primary fuel that responds during time of high system demand. EPA analysis has shown that areas experiencing coal retirements will also retain significant coal capacity and an adequate mix of diverse generating resources. EPA also takes into account the availability of natural gas pipeline capacity to meet the needs of natural gas generators when conducting its analyses.

9. I understand EPA is conducting an evaluation of how well the EDSP Tier 1 screening methods and Battery actually performed.
- If certain methods are found to be flawed or aren't performing adequately, will EPA make the necessary adjustments to the methods or test Battery before requiring additional substances to undergo EDSP Tier 1 screening?
- What challenges does EPA see in this next phase?
- What lessons has EPA drawn from its implementation of the EDSP program to date?

Response: As I understand it, the EDSP screening methods are undergoing external peer review. If confirmed, I will work to ensure that the endocrine program is on sound scientific footing.

10. EPA's endocrine disruptor regulatory program is risk based, which allows EPA to set safe levels of exposures based on a determination of both hazard and exposure.
- Do you agree that a risk-based approach is more scientifically sound than a hazard based approach?
- Do you think this approach provides EPA adequate authority for addressing the "endocrine

disruptor" issue?

Response: My understanding is that the EPA's endocrine disruptor screening program is a risk based program and is statutorily based. If confirmed, I will work with you and the committee to ensure that the endocrine program is on sound scientific footing.

11. The Definition of Solid Waste (DSW) rule was finalized in December 2008. The rule permits certain valuable secondary material streams that are beneficially reclaimed, such as spent catalysts and spent solvents, to be excluded from RCRA Subtitle C requirements. The reclamation process must be either (1) under the control of the generator of the materials, or (2) the materials may be transferred by the generator to another person or company for reclamation. The 2008 rule was challenged by the Sierra Club but the case was put in abeyance after EPA agreed in a settlement with the Sierra Club that it would reconsider parts of the rule. The reconsidered rule was proposed for comment in July 2011. In that rule EPA proposed to take away the transfer based exclusion and proposed numerous additional requirements and conditions on the recycling and reclamation of valuable secondary materials. The 2011 reconsidered proposed rule creates little to no incentive for parties to recycle or reclaim secondary materials. Even more problematic, EPA has requested comment on subjecting 32 regulatory exclusions or exemptions that have been in existence for decades and have become part of manufacturing operations, for example, the closed-loop recycling exclusion, to a new level of scrutiny, and additional recordkeeping and notification requirements.
- Do you agree that EPA should increase incentives for reuse/recycling, since incentives for recycling not only divert hazardous wastes from landfills and incinerators, but also allow the manufacture of valuable products?
- Do you agree that the increased burden of the proposed DSW rule will tend to drive wastes that are currently recycled to disposal, which directly conflicts with the foundation of RCRA—reduce waste through recycling?
- EPA is still at the proposal stage on the DSW rule. The proposal does not promote an "all-ofthe-above" national energy strategy consistent with the President's stated objectives. Will you commit to reexamine the rule to ensure that it is based on sound scientific data, that it will decrease the burden of facility waste management and increase incentives to recycle materials to recover valuable waste streams?

Response: As a former state environmental agency commissioner, I know the importance of encouraging recycling to reduce waste disposal and the transition to sustainable materials management to support the reclamation of valuable secondary materials. If confirmed, I will plan to be actively engaged in EPA's DSW rulemaking efforts.

12. On March 8, 2011, Senator Lisa Murkowski (D-Alaska) sent a letter jointly addressed to Secretary of the Interior Ken Salazar and Secretary of Agriculture Tom Vilsack regarding EPA's planned rulemaking under Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to impose financial assurance regulations on the hardrock mining industry. The letter highlighted the history and effectiveness of the Bureau of Land Management (BLM) and U.S. Forest Service (USFS) financial assurance requirements. Expressing concern that EPA is moving forward without properly taking into consideration the existing financial assurance programs, Senator Murkowski posed a series of questions to Secretaries Salazar and Vilsack regarding whether EPA's rulemaking is warranted. One of

those questions asked how many hardrock mining and beneficiation plans of operation had their agencies approved since 1990, and how many of those sites were placed on the CERCLA National Priorities List (NPL). On June 21, 2011, Robert Abbey, Director of BLM, responded that the bureau held $1.7 billion dollars in financial assurances, 659 plans of operations authorized by BLM's Mining Law Administration Program had been authorized since 1990 and none of those sites had been placed on the CERCLA NPL. Secretary Vilsack replied on July 20, 2011 that his department had permitted 2,685 hardrock mines since 1990 and that none of those sites had been placed on the CERCLA NPL list. a. Given the response from the Departments of Interior and Agriculture, what evidence does EPA have that additional financial assurance requirements under CERCLA are warranted for currently operating hardrock mining sites?

Response: EPA's 2009 Federal Register Notice identified classes of facilities within the hard rock mining industry as those for which EPA would first develop CERCLA 108(b) financial assurance requirements based upon several factors, including the quantities of hazardous substances released to the environment and clean up expenditures on these types of facilities. If confirmed, I can examine this issue more thoroughly.

13. What steps has EPA taken to consider the BLM and USFS programs implementing financial assurance requirements on the hardrock mining industry to avoid unnecessary and costly duplication of existing federal programs?

Response: It is my understanding that EPA is working with the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS).

14. Additionally, the Western Governors' Association (WGA) in Policy Resolution 11-4 on "Bonding for Mine Reclamation" expressed concern that "a new federal program could not only duplicate, but in fact supplant the state's existing and proven regulatory programs" for bonding of reclamation activities for hardrock mining. According to the WGA, "[t]he member states have a proven track record in regulating mine reclamation in the modern era, having developed appropriate statutory and regulatory controls, and are dedicating resources and staff to ensure responsible industry oversight." The WGA sent this policy resolution to EPA on Aug. 10, 2010, asking the agency to work in partnership with the states on this issue. c. What has or is EPA doing to learn about and address the state pre-emption concerns voiced by the WGA in advance of issuing a proposed rule? Has EPA formally reached out to the WGA to forge a partnership on this issue?

Response: Having worked for state government, I understand the importance of working with our state agency partners. It is my understanding that EPA is reaching out to states, including states in the Western Governors' Association, to discuss the interaction of a Section 108(b) rule with existing state hard rock mining state financial responsibility programs. If I'm confirmed, I commit to work with States and other stakeholders on this issue.

15. On April 9, 2013, EPA notified my office that the Agency is suspending its action to compel my constituent, Tru Prodigy, to change its product trade name that was previously approved by the Agency and that is similar to trade names used by manufacturers of comparable products. I presume no further agency action will be taken on this matter, especially in light of the significant sums invested by Tru Prodigy to support its product trade name following the Agency's initial approval.

a. **Will you assure me that my office will be informed in advance of any action to change its position on this matter, that any new policy would apply uniformly to all trade names of a**

similar nature, and that any entity using a trade name previously approved by the EPA will not be forced to abandon use of that name?

Response: If confirmed, I assure you that your office will be informed in advance of any such actions.

Senator Wicker

Wicker 1. Should our nation's steady progress in making reductions to air pollution be considered in the NAAQS revision process?

While great progress has been made in achieving national air quality standards, air pollution levels remain unhealthy in numerous areas of the country. The Clean Air Act requires EPA, every five years, to review the body of scientific evidence on the effects of air pollution on public health and

welfare, and, based on that, determine whether to revise the standards to meet the requirements of the Act.

Wicker 2. NAAQS regulations are purely to benefit public health and not economic cost, but has the EPA considered how health is negatively impacted by the job losses caused by these regulations?

The over 40-year history of the Clean Air Act is one in which reducing harmful air pollution has gone hand in hand with economic growth and job creation. EPA's mission is protecting Americans from pollution and its adverse health and environmental effects, including through implementation of Clean Air Act's requirements in accordance with the law and the best available science. Congress mandated that the NAAQS be set based on a scientific assessment of the effects of relevant air pollution on public health and welfare. The air quality standards must be set based on science without regard to costs of implementing pollution controls to achieve the standards. Costs are considered during implementation of the standards.

Wicker 3. Will you be accepting comment on maintaining the current ozone standard once you propose the new rule? Do you believe it is appropriate to consider only new proposals that lower the current standard? Doesn't that prevent EPA from considering science showing that the current standard or even a higher standard is sufficient to maintain public health?

As with prior NAAQS rulemakings, the public will have the full ability to comment on all elements of EPA's proposal and provide EPA with views on whether to retain or revise the current ozone standard.

Wicker 4. Can the President tell EPA where to set national ambient air quality standards based on policy considerations?

a. Since the President directed EPA not to reconsider the 2008 ozone standard, can he also direct EPA to take additional time to consider revisions to NAAQS?

The Clean Air Act requires EPA periodically (every five years) to review the body of scientific evidence on the effects of air pollution on public health and welfare, and based on that determine whether to revise the standards to meet the requirements of the Act. In the rulemaking to reconsider the 2008 ozone NAAQS, the President did not instruct EPA where to set the ozone standard; instead, his request concerned the timing of the reconsideration, which is a separate rulemaking from the ongoing, five-year periodic review

On September 2, 2011, President Obama issued a statement on the ozone NAAQS, noting that EPA was engaged in updating its review of the science underlying the 2008 ozone NAAQS, as part of the ongoing periodic review of the Ozone NAAQS, and requested that EPA withdraw from interagency review the draft final rule addressing the reconsideration of the 2008 ozone NAAQS. On that same day, the Office of Management and Budget (OMB) returned to EPA the draft final rule, stating that "the draft final rule warrants [the Administrator's] reconsideration." Letter from Cass R. Sunstein, OMB, Administrator, Office of Information and Regulatory Affairs to Administrator Lisa R. Jackson, EPA. In returning the rule, OMB stated that President Obama

had requested that the draft rule be returned as he did "not support finalizing the rule at this time."

Consistent with the President's statement, EPA is continuing with its statutorily mandated periodic review of the 2008 ozone NAAQS. In that ongoing review, EPA will consider the current state of the science, which will include the new science not considered as part of the 2008 rule, as well as the science taken into account in previous reviews. Given that, EPA intends to conclude its rulemaking on reconsideration of the 2008 ozone NAAQS in conjunction with its ongoing review of the ozone NAAQS.

Wicker 5 How do you view the importance of input from the states when formulating standards and reviewing implementation?

In the Clean Air Act, Congress established a system under which EPA and states each have important roles in setting standards and implementing the Act. Dialogue and partnerships with States are an important part of EPA's efforts to reduce air pollution under the Clean Air Act. I have learned from experience, including my experience working for state governments, that working closely with stakeholders, including state government partners, can lead to better programs. *If I am confirmed, EPA will continue to work with states and other stakeholders under the Clean Air Act to reduce air pollution and the damage that it causes.*

Wicker 6. If you do lower the standard for ozone, what will be the compliance burden on the states?

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

Wicker 7. Do you believe that the NAAQS review and implementation process will ever catch up to its statutory 5 year deadlines for review? What steps would you take to have the timing of the NAAQS program comply with the Clean Air Act?

EPA is continuing to work to streamline its NAAQS review process in order to comply with the five-year review cycle established in the Clean Air Act. The agency's goals are to maximize the efficiency and transparency of the process while maintaining its scientific and technical depth and integrity

Wicker 8. Please identify language in Section 109 of the Clean Air Act that specifically prohibits the consideration of costs in the setting of National Ambient Air Quality Standards?

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

Wicker 9. As part of the standard setting process, is EPA prevented from comparing the health and other effects of a considered NAAQS standard with the health and other effects of unemployment and economic dislocation?

In *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), the Supreme Court held that EPA may not consider the costs of implementing the standards in setting NAAQS that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act. The Court rejected the argument that EPA could consider costs of implementation because health

and other effects could stem from implementation strategies. Although the EPA cannot consider the costs of implementing the standards when setting the NAAQS, the Clean Air Act gives state and local officials in nonattainment areas the ability to consider several factors, including employment impacts and costs of controls, when designing their state implementation plans (SIPs) to implement the NAAQS. Likewise EPA has discretion to consider costs in many of the Clean Air Act provisions authorizing EPA to set standards to control emissions.

Wicker 10. Leaving aside the question of cost, how does EPA assess the health benefits associated with economic dislocation caused or likely to be caused by the new standards? How are they quantified when making health-based assessments for revised National Ambient Air Quality Standards?

The over 40-year history of the Clean Air Act is one in which reducing harmful air pollution has gone hand in hand with economic growth and job creation. EPA's benefits assessments focus on the benefits associated with reductions in air pollution. EPA acknowledges in the regulatory impact analyses that there are unquantified benefits and disbenefits that are not included in our estimates of total net benefits.

Wicker 11. How will you work with the CDC and others outside the agency to ensure you are using the very best science before you set the new ozone standard?

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

E-15 / Ethanol

Earlier this year I introduced with Senator Vitter a bill to reverse an EPA regulation that would lead to an increase in the amount of ethanol in gasoline. Ethanol is less energy efficient than oil and adds to the cost consumers pay at the pump. Furthermore, many environmental organizations have raised concerns about the increased inputs of energy, pesticides, and fertilizer needed to grow more corn for ethanol production. World hunger organizations have raised concerns about the mandate's effect on food prices. If ethanol production is a profitable venture, some claim it should not need to be mandated.

12. Can you justify why we should continue mandating the use of ethanol?

Response: EPA implements conventional and renewable fuels and fuel additives regulations and programs as required under the Clean Air Act, passed by Congress.

13. The last administrator clearly took on the role of promoting the ethanol industry. Do you believe your role as administrator is to promote one industry over others, or that decisions should be made that consider the protection of the environment and the economy?

Response: EPA implements conventional and renewable fuels and fuel additives regulations and programs as required under the Clean Air Act. EPA does not promote any specific industry.

Wicker 14. EPA has granted a waiver to California for its Zero Emission Vehicle (ZEV) program. As a general matter, what is your view on sales mandates, i.e., using environmental laws as authority to require that automakers sell a certain number of a particular type of vehicle?

Wicker 15. Do you believe that a manufacturer should be required to sell the mandated vehicles at a loss if that is the only way to meet the required Government sales volume?

Wicker 16. What is EPA's role in assessing the efforts of states that adopt this program to create the infrastructure, incentives, and other mechanisms that will help this program be successful?

Response to questions 14, 15 and 16: EPA's waiver decisions are governed by the Section 209(b) of the Clean Air Act, which requires the agency to grant a waiver request from California unless the Administrator makes any of the following three findings:

- California's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious,
- California does not need its standards to meet compelling and extraordinary conditions, or
- California's standards and accompanying enforcement procedures are not consistent with section 202(a) of the Clean Air Act.

Wicker 17. What recourse do automakers have if EPA does not exercise this oversight?

The automakers have supported one national vehicle program, and harmonization of federal greenhouse gas and criteria emission vehicle standards with California standards. EPA's role in providing a waiver for California is governed Section 209(b) as described above.

Wicker 18. EPA recently mandated a third-party certification regime for products in order to participate in the ENERGY STAR program. This appears to be an effort to address concerns raised in a 2010 GAO report. I am concerned the EPA's response is overly broad and attempts to use a one-size-fits-all approach to a program with over 60 diverse product categories. Will you closely review these changes, specifically the addition of the third-party certification process, and meet with industry stake-holders to discuss the real impact of these regulatory changes?

Yes, EPA continues to monitor the new third-party certification process, working with EPA-recognized certification bodies and industry stake-holders on an ongoing basis to minimize adverse impacts.

Wicker 19. Will you ensure that a consensus-based process is utilized, as accredited by the American National Standards Institute, to safeguard transparency and fairness in any changes to and development of the ENERGY STAR program?

In changing or developing new elements of the ENERGY STAR program, EPA remains committed to an open and transparent process that actively engages stakeholder input.

Wicker 20. What is EPA's plan for product categories to "test-out" of the new testing mandates based on their compliance track record?

EPA is open to adjusting aspects of the ENERGY STAR third-party certification program, in consultation with our industry partners, as our experience with it grows.

Water Issues

21. In 1941, Congress authorized the Yazoo Backwater Project to protect the Delta area of Mississippi from flooding on the Mississippi River. This project included a combination of levees, drainage structures, and pumps. When the time came to complete the final component of the project, backwater pumps to protect homes and agricultural lands, EPA vetoed its construction. How does the construction of a pump, that would complete the Yazoo Backwater Project to protect vulnerable Mississippians from catastrophic flooding, differ from pumps constructed in Louisiana following Hurricane Katrina?

Response: I am not familiar with the issues associated with the proposed Yazoo pumps or the veto decision made in the previous administration. If confirmed, however, I am eager to learn more and to understand better what options may be available for providing Mississippians with flood protection.

22. How could EPA be more transparent in the decision-making process for situations like the Yazoo Backwater Project, so a congressional hearing is not required to learn what the differences are between the proposed pump project in my state and the important pump projects that were constructed in other states?

Response: Opportunities for public participation and transparency are key elements for any agency as we establish policy and develop regulations. I am not familiar with the details of the Yazoo Backwater project, but, if confirmed, I am eager to learn more and to understand better what options may be available for flood protection.

23. Much of your time at EPA has been spent directing the office of Air and Radiation overseeing regulations pertaining to the Clean Air Act. As Administrator of EPA you would oversee a significant amount of regulations and policy development under the Clean Water Act. How would you approach balancing our nation's economic recovery and growth with commonsense policies to ensure Americans have clean water?

Response: Yes, my time at EPA thus far has been spent focused largely on issues related to implementation of the Clean Air Act. I agree with you that administration of agency programs requires a commonsense approach that works to protect public health and the environment as well as jobs and the economy. If confirmed, I look forward to benefiting from your experience and advice regarding the Clean Water Act and implementing the law with fairness, predictability, and common sense.

24. How would you interact with states when updating or developing water regulations, such as determining numeric nutrient standards for the Mississippi River and Gulf of Mexico?

Response: I have experience working in a state agency and understand the importance of an effective partnership between federal and state programs. If confirmed, I will rely extensively on my state background to assure that CWA requirements, such as the water quality standards program, are effectively implemented as partnerships and that reflect the specific circumstances present in each state.

25. Do you agree that States should be able to provide meaningful input and direct the development process of water regulations with the assistance, not coercion or threat by EPA?

Response: Yes, I agree.

26. Across Mississippi and the country, many small towns and municipalities have come under pressure by EPA to upgrade their wastewater treatment facilities by more stringent water regulations. A significant and pervasive problem is that many of these towns do not have the tax base or means to meet the cost of upgrading their wastewater systems. However, not acting could result in harsh fines imposed by EPA.
Does the concept of imposing fines on small towns across the country for not upgrading water and wastewater facilities – when they have no capital or means to do so – make sense?

Response: I am not as familiar with Clean Water Act issues but, if confirmed, I look forward to better understanding these concerns and improving the manner in which we implement our programs. I look forward to working with you to identify opportunities to increase flexibility for small communities so they may focus tight resources on infrastructure improvements that yield the greatest results. This is a commonsense solution we can work together to apply in communities in Mississippi and across the nation.

27. What options could EPA offer to small towns and rural communities to realistically help them achieve cleaner water standards besides imposing fines?

Response: I share your interest in working to increase flexibility and improve opportunities for small towns and rural communities to achieve their clean water goals. I believe a key is to allow communities to establish cost effective priorities based on results that achieve the greatest clean and safe water return on their investments. If confirmed, I look forward to working with you and communities in Mississippi to achieve cost effective and common sense solutions to their aging infrastructure concerns.

28. Why has the Administration proposed cutting funding from Drinking Water and Clean Water state revolving funds, in the amount of $472 million, when localities depend on this funding to help maintain and upgrade critical water infrastructure?

Response: Senator, I share your view that the Drinking Water and Clean Water SRF are crucial for our States. I understand that the American Recovery and Reinvestment Act made a major investment into these funds. If confirmed, I will continue to work with States on water infrastructure.

29. Can the cost-savings of this cut to state revolving funds be found elsewhere within EPA's budget that would not significantly impact rural communities?

Response: Senator, I am not familiar with the entirety of the EPA budget request. If I'm confirmed, I would work to ensure that the proper emphasis is given to the crucial issue of infrastructure.

30. In reference to the EPA's recent letter to the U.S. Army Corps of Engineers (USACE), Mobile District, related to the Port of Gulfport Harbor Expansion project: Are you aware that the Port of Gulfport (hereafter referred to as "the Port") is currently undergoing an EIS review of its expansion plan?

Response: Please see response to question 40.

31. Are you aware that the EIS process is well underway, and in fact is almost half complete?

Response: Please see response to question 40.

32. Are you aware of the projects that Region 4 NEPA Chief, Heinz Mueller, has recommended the USACE look at includes the cumulative impacts of the Port expansion project, the proposed MS DOT Hwy 601 project, and a separate project apparently called the "Domain at Prime Centre"?

Response: Please see response to question 40.

33. Is Region 4 aware that the ongoing EIS process for the Port expansion is currently reviewing cumulative impacts?

Response: Please see response to question 40.

34. Are you aware that the "Domain at Prime Centre" project is in no way a part of the Port expansion project, that it has no official sanction from the Port, that it is not contemplated in any future expansion plans of the Port, and that any claims to the contrary are purposefully misleading and in direct conflict with what has been communicated by the Port and the State to the developers of that property?

Response: Please see response to question 40.

35. Please explain why the EPA is attempting to utilize the EIS process of the Port expansion to advance the special interest request of a developer.

Response: Please see response to question 40.

36. Can you share all written communications and a list of meetings, with attendees and purposes, between Region 4 and/or EPA HQ employees with representatives of the "Domain at Prime Centre?"

Response: Please see response to question 40.

37. Please explain what Mr. Mueller meant in the aforementioned letter by: "...the EPA recommends the use of both regulatory and non-regulatory approaches in an effort to better evaluate the cumulative impacts of these projects...?"

Response: Please see response to question 40.

38. Are you of the opinion that the process used by the USACE and governed by law and established regulations are somehow insufficient and requires "non-regulatory" additions?

Response: Please see response to question 40.

39. What other "non-regulatory" review processes are currently being promoted by EPA and will you attempt to push "non-regulatory" efforts in regulatory processes if you are confirmed as Administrator?

Response: Please see response to question 40.

40. Please explain why EPA's Region 4 has suggested the Partnership for Sustainable Communities be engaged in an EIS process for a project that proposes the expansion of a port terminal into the Mississippi Sound and a deepening of the federal channel?

Response (to 30-40): I am not familiar with the issues surrounding the Port of Gulfport Harbor, but if I am confirmed I look forward to working with you and with EPA's Region 4 office in Atlanta to better understand the situation.

Senator Boozman

SDWA (Electronic Water Quality Reports)

Historically, most water utilities have sent hard copies of annual water quality reports to their customers through the postal mail, at a cost of millions of dollars per year. During the 112th Congress, I was pleased to be the lead original cosponsor of S. 1578, the "End Unnecessary Mailers Act," with Senator Toomey. We were joined on this legislation by Senators Casey, Harkin, Pryor, and several others. Our bill would have given most community water systems the option to: (1) mail the annual consumer confidence report on the level of contaminants in the drinking water purveyed by that system to each customer (required under current law); or (2) make such report available on the system's website and, upon request, by mail. S. 1578 would have required a system that elects the latter to provide customers notice, in the manner elected by the customers to pay their bill, of such report's availability and that the system has remained in compliance with maximum contaminant levels. S. 1578 did not pass last year, but in January 2013 it was rendered unnecessary following EPA's "Retrospective Review of Existing Regulations," when the EPA issued an "interpretive memorandum" and determined that water utilities may stop mailing hard copies of the reports if they appropriately notify customers of their availability on the Internet, and mail customers a hard copy upon request. This decision actually increases transparency, by making more reports available online and in hard copy, and it allows utilities to spend resources cleaning our water, instead of printing and mailing unnecessary mailers to citizens who would often rather be notified and review reports electronically. I strongly support this EPA action. Question: If confirmed, will you support the EPA's interpretive memorandum on this issue?

Response: Yes, if confirmed, I will support the implementation of the interpretive memo on this issue.

Safe Drinking Water Act (SDWA) - MCL

EPA is considering regulating several naturally occurring contaminants found in drinking water that originates as groundwater or surface waters. Some have suggested that EPA regulate these contaminants to low levels because they can cause cancer at high levels. However, regulation at low levels would raise technical feasibility and implementation cost challenges. Given the potentially enormous compliance burdens on water utilities throughout the U.S., reasoning would lead to EPA redirecting some of its research budget to conduct health-based studies of these naturally occurring substances – before regulating them. The studies would determine whether naturally occurring levels of these substances affect human tissues in the same way as high levels do in experimental animals. I recognize these types of studies are time intensive, are expensive to undertake, and involve sophisticated scientific protocols and analyses. At the same time, I think we all recognize that the costs of over-regulation are likely to dwarf the costs of a very good research program to answer the relevancy question of high-dose animal studies for the public.

2. Why has EPA not lead such a research effort that would have broad applicability for public health and will you commit your leadership at EPA to implementing such a program?

Response: Please see response to question 3.

3. What incentives do you believe are needed for EPA to encourage the regulated community to invest research dollars in providing the agency highly relevant information illuminating the mechanisms of toxicity of substances in order for EPA to make better regulatory decisions?

Response (to 2 and 3): These are very important questions that address issues associated with implementation of EPA's Safe Drinking Water Act responsibilities with which I am not yet familiar. If confirmed, I will look forward to further discussing these concerns with you and to better understand options available under the SDWA to respond to them. I strongly share your interest in providing leadership on these key questions.

4. Petitions to ban or restrict the use of ammunition and tackle containing lead components for use in hunting, fishing and shooting continue to arise. The EPA has correctly denied these petitions in the past. If you are confirmed, will you uphold EPA's decision that it does not have authority under the Toxic Substances Control Act (TSCA) to regulate ammunition and fishing tackle? Would you support efforts to amend TSCA in order to provide additional reassurances that the EPA does not have the authority to regulate traditional ammunition with lead components and lead fishing tackle?

Response: Senator, I understand that EPA has denied petitions to regulate ammunition and fishing tackle. I have no position on Congressional efforts to codify that denial.

5. In March 2011, EPA issued a document that said states should take the lead in addressing nutrient pollution. Some states took the agency at its word and have developed robust plans for reducing nutrient loading into waterways. Despite state actions that will actually reduce nutrient loading, EPA still is pressuring states to waste resources on trying to develop scientifically defensible numeric nutrient criteria – an effort that failed in Florida and is proving equally challenging elsewhere. Will you commit that EPA will not try to force states to agree to a schedule for adopting numeric nutrient criteria, particularly if they are already taking other actions to address nutrients?

Response: I believe that States should take the lead, with respect to numeric nutrient criteria. If confirmed, I commit to working with States to find innovative solutions to pressing water quality challenges.

6. I am told that EPA is linking the federal assistance that Congress appropriates to fund state water quality programs to state commitments to a timetable for the development of numeric nutrient criteria. Congress has not authorized these conditions on funding. Will you commit that EPA will not use congressionally appropriated funding to black mail states into taking actions that are not required by the Clean Water Act, including the development of numeric nutrient criteria to replace legally adopted, EPA-approved, narrative nutrient criteria?

Response: While I am not familiar with this specific issue, I commit that the Agency will not take any action that would be inconsistent with the Clean Water Act if I am confirmed. I believe that States should be in the lead, with respect to numeric nutrient criteria.

7. In 2012, the Secretary of the Interior signed Secretarial Order 3321, establishing the National Blueways System (NBS). According to the Department of the Interior, the NBS was established to recognize large river systems conserved through diverse stakeholder partnerships and to promote cooperation in support of economic development, natural resource conservation, outdoor recreation, and education in these river systems. Secretary Salazar has written that the NBS is "locally-led, voluntary and non-regulatory." Accordingly, I have been pleased to see that the EPA is not participating in the NBS program. If confirmed, would you maintain EPA's non-participatory status in the National Blueways System?

Response: I am not familiar with this Department of Interior program. However, if confirmed, I will certainly review it before any decision is made regarding participation.

Senator Fischer

Spill Prevention, Control, and Countermeasure (SPCC) Plans

1. In order to comply with the Spill Prevention, Control, and Countermeasure (SPCC) rule for on-farm fuel storage, EPA officials have said farmers and ranchers need to determine if fuel storage on their farm and ranches "would reasonably be expected" to discharge oil into waters of the United States. If so, they are then subject to the rule. But when questioned, EPA officials have refused to further define the phrase "reasonably be expected" and only say farmers and ranchers should consider a worst case scenario. Could you help my constituents by better defining when a "reasonable expectation" exists? If a farmer determines a reasonable expectation for a spill to reach waters does not exist, what criteria will EPA use to evaluate whether they agree with a farmer's determination? What certainty do farmers and ranchers have that their determinations will be agreed to by EPA if inspected?

(a) Does agriculture have a history of large oil or fuel spills?

Response: As the Assistant Administrator for the Office of Air and Radiation, I have not been involved in this issue. If confirmed, I will commit to helping ensure the EPA's oil spill prevention program offers and welcomes an open discussion with the farming and ranching sectors.

b) If not, why did EPA seek to include farms and ranches in the SPCC regulation?

Response: Please see response to (a).

(c) How does EPA justify the possibly significant compliance cost to farmers and ranchers given the lack of history of spills?

Response: As a former state environmental agency commissioner, I know the importance of preventing oil spills from contaminating water resources. If confirmed, I will commit to helping ensure the EPA's oil spill prevention program offers and welcomes an open discussion with the farming and ranching sectors.

2. Because of the SPCC regulation, I have heard farmers and ranchers are now buying smaller fuel tanks in order to avoid the high cost of compliance. The smaller tanks mean that fuel delivery personnel would likely need to deliver fuel more often (at a higher cost to the farmer) in order to meet the needs of their customers. Would you agree that large fuel trucks making more trips and spending more time on the road not only increases the potential for a spill from those trucks, but also increases the environmental impacts because of the increased time spent on the road?

Response: If confirmed, I commit to learning more about the issue of fuel tank replacement in the farming and ranching sector and will provide you with information resulting from EPA review of this issue.

Concentrated Animal Feeding Operation (CAFO) Data Release

3. In 2011, the Department of Homeland Security (DHS), U.S. Department of Agriculture (USDA), EPA, and others engaged in discussions with the Office of Management and Budget's Office of Information and Regulatory Affairs with regard to information sought by EPA through its

proposed Clean Water Act Section 308 Concentrated Animal Feeding Operation Reporting Rule. At that time, food and agricultur e stakeholders, including DHS and USDA, raised concerns related to biosecurity of the facilities about which information was to be collected and compiled. Concerns were expressed that such information, available in a single publically accessible database, constituted a potential threat to the security of the animal feeding operations listed in the database and even a potential threat to the owners/operators living in close proximity to the operations. At the hearing, you stated, "I'm not familiar with this database." So, I would like to ask again, for the record, will you commit to not developing, contracting for, or implementing a national animal feeding operation database during your tenure, should you be confirmed as Administrator?

Response: As the Assistant Administrator for Air and Radiation, I have not had the opportunity to become familiar with the database in question. However, I share your concerns about the protection of our nation's food supply, and I commit to you that if confirmed, I will take a closer look at this issue and will work with you on this and other agricultural issues going forward.

CAFO Clean Water Act Permits for "Dust and Feathers"

4. It is my understanding that EPA has been issuing enforcement orders compelling livestock and poultry farmers to seek a federal Clean Water Act permit for small, incidental amounts of dust, feed, feathers, and manure on the farmyard that could be washed away by rainwater, even if the farm is located a long way from any stream.
Do small amounts of dust, feathers, and manure found on any livestock farmyard require a federal Clean Water Act permit when washed by rain into a stream, or is this ordinary agricultural stormwater specifically exempted from regulation by the Clean Water Act?

Response: As the Assistant Administrator for the Office of Air and Radiation, I have not been involved in the regulation of stormwater from poultry and livestock operations under the Clean Water Act. Your question raises very important issues about the commonsense implementation of the Act and appropriate application of existing agricultural exemptions. If I am confirmed, I will work with you to better understand these issues and to identify options for fairly and effectively responding to them.

Electric Utility Issues

5. Since 2009 EPA has issued or proposed over 2,900 pages of greenhouse gas regulations and you have stated in the past your intent to pursue a "deliberate, common sense approach"[1] to regulating carbon. However, I am concerned that there are inconsistencie s with this statement and EPA's actions. For example, EPA entered into a consent decree to issue greenhouse gas New Source Performance Standards for existing units by May 26, 2012. Yet EPA has not clearly stated its plans regarding regulation of existing fossil fuel power plants. I represent a state that gets approximately 70% of its electricity from coal. How do you reconcile these inconsistencies, and can you please explain what the plan really is?

With regard to power plants, EPA is still in the process of reviewing comments submitted in response to the proposed carbon pollution standard for new power plants and is not currently developing any existing source GHG regulations for power plants. It should be noted for the record that a significant portion of the regulations to which your question refers are those addressing greenhouse gas emissions from light-duty vehicles for model years 2012-2016 and

2017-2025 and from heavy-duty vehicles from 2014-2018. As I stated in my testimony before the Committee, these common-sense regulations will achieve substantial oil savings and consumer cost savings, while dramatically reducing greenhouse gas emissions. Other relevant regulations include those implementing the congressionally mandated greenhouse gas reporting program, which helps to provide the general public, industry and policymakers with transparent information with regard to greenhouse gas emissions.

6. Issuing proposed greenhouse gas (GHG) New Source Performance Standards for new and existing power plants carries an additional burden, insofar as these regulations are deemed to be in effect when proposed, not when finalized. Done incorrectly, just proposing these rules has significant negative consequences for our economy. Will you commit that when the EPA is ready to address GHGs from existing fossil fuel power plants, it will issue an Advanced Notice of Proposed Rulemaking (ANPRM) that includes substantive content and a record backing up the proposal to allow industry and others to fully comment on EPA's contemplated approach before moving forward with a proposal?

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

7. Regarding impacts from final, proposed, and expected EPA regulations on coal-fired generation, please explain the significant differences on coal-fired generation shutdown projections between the EPA projections and industry expert organizations projections, such as those from FERC, NERC, EIA, and others.

A number of economic factors influencing retirements well beyond EPA's clean air rules are included in these non-EPA figures. External analysts, , including GAO[xliv], CRS[xlv], the Bipartisan Policy Center[xlvi], and Analysis Group[xlvii] have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal- fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. Because EPA's power sector analyses look at the effects of its rules alone to evaluate incremental impacts, EPA's analyses are not comparable to other assessments that also take into account broader economic factors.

8. How will you assure us that the finalized greenhouse gas New Source Performance Standards for new coal fired power plants will address the concerns that the standards be technically achievable and cost effective?

[xliv] Government Accountability Office – "EPA Regulations and Electricity: Better Monitoring by Agencies Could Strengthen Efforts to Address Potential Challenges" http://www.gao.gov/assets/600/592542.pdf

[xlv] Congressional Research Service – "EPA's Regulation of Coal-Fired Power: Is a "Train Wreck" Coming?" http://insideepa.com/iwpfile.html?file=aug2011%2Fepa2011_1545.pdf

[xlvi] Bipartisan Policy Center – "Environmental Regulation and Electric System Reliability" http://bipartisanpolicy.org/library/report/environmental -regulation-and-electric-system-reliability

[xlvii] Analysis Group – "Why Coal Plants Retire" http://www.analysisgroup.com/uploadedFiles/News and Events/News/2 012 Tierney WhyCoalPlantsRetire.pdf

In response to its proposal, EPA received extensive public comment, much of it addressed to issues related to technical achievability and to cost. The agency is evaluating those comments and will take those comments fully into account before issuing a final rule. Any final rule that EPA issues will reflect the agency's best analysis of cost and achievability.

9. What are your plans to lead the EPA in the forthcoming development of the carbon dioxide New Source Performance Standards for existing power plants? How would you assure these new standards will be technically achievable and cost effective for existing coal fired power plants?

EPA is not currently developing any existing source GHG regulations for power plants, but if the agency does undertake existing source guidelines, it will ensure that they meet the Clean Air Act requirements of achievability and cost considerations.

10. How would you assure the upcoming EPA proposed rules to tighten the Clean Water Act power plant effluent discharge standards are reasonable, technically achievable, and cost effective for all fuel types?

Response: As you know, I have worked hard to make sure that we carefully monitor the design and implementation of EPA's air pollution rules to keep costs reasonable. If confirmed, I look forward to working to ensure that requirements and implementation of rules like the Clean Water Act power plant effluent discharge standards are reasonable, technically achievable, and cost effective.

11. **In your experience and opinion, do you believe states do a good job of protecting state and local environments? Do you believe the states have the first responsibility to develop environmental compliance plans? If so, how would you explain the EPA's recent efforts to put Federal Implementation Plans in place prior to allowing the States to implement their State Implementation Plans?**

My experience is that states and EPA need to work together to protect the environment. This is the approach taken in the Clean Air Act, which gives both states and EPA authorities and responsibilities to provide clean air and protect public health. As discussed below, EPA has a mandatory duty under the CAA to promulgate a FIP in certain circumstances that are required by law when a state does not meet its SIP obligations under the CAA. In practice, EPA strives to avoid situations in which a FIP is necessary. EPA's strong preference is for states to develop and submit their own SIPs that meet CAA requirements, and EPA works with states to help them to develop approvable SIPs in order to avoid a FIP in the first instance or to replace a FIP with an approvable SIP as soon as possible.

The use of a SIP call or a FIP is governed by the provisions of the Clean Air Act. Under section 110(c), the EPA is legally required to issue FIPs in two specific circumstances:

1. If EPA finds that the state failed to make a required SIP submission that is complete (including failure to make any SIP submission whatsoever), or
2. If EPA disapproves a required SIP submission in whole or in part.

EPA's legal obligation to promulgate such a FIP only ends if the state makes, and EPA fully approves, the required SIP submission before the promulgation of the FIP. EPA does not have legal authority or a legal obligation to promulgate a FIP in other circumstances.

Coal Ash

12. What is EPA doing to encourage the recycling of coal ash? As Administrator, will you help the growth in coal ash recycling resume by at least taking the threat of a hazardous waste designation off the table?

Response: It is my understanding that as part of a recent proposal to reduce pollution from steam electric plants, EPA also announced its intention to align that proposed rule with the proposed coal ash rule and stated that such alignment could provide strong support for a conclusion that regulation of CCR as non-hazardous could be adequate. The two rules would apply to many of the same facilities and would work together to reduce pollution associated with coal ash and related wastes. EPA is seeking comment from industry and other stakeholders to ensure that both final rules are aligned. If confirmed, I would continue to work to ensure that these two proposed rules are appropriately coordinated.

Regulatory Certainty for Animal Feeding Operations

13. Livestock and poultry operations are seeking regulatory certainty on the applicability of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, the Superfund law) and the Emergency Planning and Community Right-to-Know Act (EPCRA) to their operations. Superfund and EPCRA include citizen suit provisions that have been used to sue poultry producers and swine operations. If you are confirmed as EPA Administrator, will you clarify that manure is not a hazardous substance, pollutant, or contaminant under CERCLA and that the notification requirements of both laws would not apply to releases of manure?

Response: My understanding is that EPA already addressed the burdens to farmers related to air release reporting. In December 2008, EPA issued a final rule that became effective on January 20, 2009. The final rule exempts all farms that release hazardous substances from animal waste to the air from reporting under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 103. The final rule also exempts farms that release hazardous substances from animal waste to the air from reporting under the Emergency Planning and Community Right to Know Act (EPCRA) section 304 if they stable or confine fewer than the number of animal species of the large CAFO threshold as defined in Clean Water Act National Pollutant Discharge Elimination System program regulations.

City of Omaha-CSO Affordability

14. Our communities are facing a number of environmental challenges associated both with aging infrastructure and federal mandates. Many of our rural communities are facing huge economic challenges in financing upgrades to drinking water and wastewater infrastructure, while their demographics are aging and overall populations are declining. It is difficult for many communities to finance such improvements, and the economic sustainability of these communities is highly problematic.

Our urban centers are also facing economic challenges to comply with a number of sometimes competing federal environmental mandates. Nebraska's largest city, Omaha, is one of 772 U.S. communities that is mandated to reduce combined sewer overflows (CSOs) from its regional

wastewater treatment system. Omaha's cost for CSO compliance over the next 15 years is estimated at $2 billion and will more than double the city's existing debt burden. Residential sewer bills are projected rise from $10/month to more than $50/month by 2017. On January 18, 2013, EPA Headquarters issued a memo presenting a framework for community financial capability assessment. Under your leadership, how do you see EPA and state and local governments working together to prioritize local environmental investments in an affordable, financially sustainable manner for all community stakeholders?

Response: As I mentioned during my confirmation hearing, I believe it is important for the EPA, states and local governments to work together to prioritize local environmental investments in a sustainable manner for all community stakeholders. Prioritizing and sequencing water projects to get the best and most affordable environmental results is exactly what we are doing with our integrated planning framework for wastewater and stormwater. If confirmed, I will work with you, the states and local communities on this issue.

Ozone

15. Funding for mitigation activities related to ozone is currently tied to "non-attainment" status. Therefore, communities such as the Omaha metro area, which are currently in "attainment" but are trying to be pro-active and address ozone-forming emissions prior to violating air quality standards, have little financial assistance available. This places communities in the unenviable situation of having to violate air standards in order to become eligible for additional funding. EPA recently developed the Ozone Advance program to attempt to provide funds for metro areas, such as the Omaha region. Would you take proactive measures, such as participation in Ozone Advance, into consideration when designating whether a region will be deemed "non-attainment"? And would you champion opportunities to provide funding for communities that are in attainment?

Participation in Ozone Advance can help areas maintain air quality that meets the health standards. EPA is currently providing technical assistance to participants in the Advance Program but has not offered direct funding to participants. However, I have been and will continue to be a strong advocate for providing support at the community level, including EPA assistance and funding, to the extent possible given budget constraints.

16. High ozone formation frequently occurs as a result of natural processes (heat, lack of wind, etc.) that are beyond human control. Emissions traveling from other metro areas can also have an impact. For instance, in the Omaha metro area, one can track a direct correlation between the number of high ozone days and extreme high temperature days, whereas mild summers usually result in few, if any, high ozone days. We also have annual burns that occur in the Flint Hills in Kansas that appear to contribute air quality problems. It is unfair to punish communities for factors that are beyond their control. How would EPA take into account factors that are beyond a region's control when designating attainment and non-attainment areas?

The Clean Air Act directs the EPA to designate an area "nonattainment" if it is violating a national ambient air quality standard (NAAQS) or if it is contributing to a violation of the NAAQS in a nearby area. Air quality monitoring data affected by exceptional events (e.g., wildfires, high wind dust events, stratospheric intrusions) may be excluded from use in identifying a violation at a monitor, and subsequently excluded from regulatory actions (e.g., area designations or classifications) that rely upon these data, if the data meet the criteria for exclusion

specified in EPA's Final Rule on the Treatment of Data Influenced by Exceptional Events, commonly known as the 2007 Exceptional Events Rule.

17. The EPA Clean Air Scientific Advisory Committee (CASAC) last recommended the Ozone standard be set at a range between 60 and 70 parts per billion (ppb). If the standard were set at 60 parts per billion, the vast majority of the United States—including the Nebraska Panhandle (due to emissions from the Denver metro area), one of the most sparsely populated regions of the United States—would be in violation of the standard. Many metro areas who struggled for years to attain the standard set in 1997 now fear the standard will be set at an unrealistic level that will only result in perpetual nonattainment status. How would you apply common sense and reasonableness in setting air quality standards? Do you think that there are diminishing returns of further reducing air quality standards past a certain point?

Response: EPA is prohibited by law from considering costs of implementation in setting NAAQS. Specifically, the U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001) that in setting standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, the EPA may not consider the costs of implementing the standards. However, the Clean Air Act gives state and local officials in nonattainment areas the ability to consider several factors, including employment impacts and costs of controls, when designing their state implementation plans to implement the NAAQS.

Hazardous Air Pollutant Regulations for Stationary Irrigation Engines

18. In 2009, the EPA released their new National Emissions Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines. For engines with less than 300 brake horsepower—which would include many diesel irrigation engines across Nebraska, EPA has essentially turned regular maintenance (changing oil filters and inspecting equipment regularly) into a federal mandate. Please explain the air quality value of making it a federal requirement for farmers to conduct maintenance that they are already doing and maintaining five years' worth of records to show to EPA if they knock on the door of a farmer?

EPA is statutorily required to set emission standards for hazardous air pollutants (HAP) for stationary reciprocating internal combustion engines under section 112 of the Clean Air Act. The management practices in the rule require the engine owner/operator to maintain and replace the oil and oil filters, spark plugs, hoses, and belts of stationary engines subject to the rule. According to manufacturers and operators of such stationary engines, these management practices are the most appropriate ones to ensure proper operation for minimizing HAP emissions, by allowing the engine to operate at peak efficiency. Public comments submitted on the proposed rule by owners and operators of these engines were supportive of these management practices. The requirement to maintain records is intended to ensure that regulatory agencies have the necessary information to determine if the engine has been in compliance with the applicable requirements. In many cases maintenance records are already being kept, and it already is in the best interest of the owner and operator to maintain such documentation to ensure that the engine is properly taken care of and that necessary warranty information is maintained.

19. How does EPA plan to enforce this rule and what type of financial resources is EPA planning to put forth for enforcement and compliance?

States generally assume primary enforcement authority, with federal oversight, through delegation from EPA. EPA does not budget for enforcement on a source-category basis.

Biotechnology

20. Agricultural biotechnology provides farmers with new tools to manage weeds, insects, and drought. In the case of weeds, the need for herbicides with multiple modes of action is something farmers are demanding in order to preserve yield while trying to manage resistant weeds. Approximately 60% of all biotechnology traits pending review have a herbicidetolerant component to them, requiring timely EPA review and action. What will your agency do to meet the needs of growers and accelerate the approval of these products that not only enable solutions to weed management, but also preserve the ability to utilize environmentally beneficial soil-conserving practices, like conservation tillage?

Response: It is my understanding that the USDA, not the EPA, regulates plants genetically engineered for herbicide tolerance. The EPA does, however, regulate the herbicides used to protect those plants. I look forward to working closely with USDA to ensure our respective reviews are conducted in a timely and coordinated manner

21. Over 13 years ago this month, the National Research Council of the National Academy of Sciences released its report on EPA's proposed regulation of insect-resistant traits in transgenic plants. While the report noted that EPA's intent to regulate such substances was consistent with its statutory authority, it recommended that EPA dispel any notion that transgenic plants themselves were being regulated by EPA as pesticides. Under the Executive Branch's Coordinated Framework for Regulation of Biotechnology, in effect since 1986, EPA is responsible for regulating pesticides while the Secretary of Agriculture is responsible for regulating plants and seeds.

In July of 2011, more than 60 members of the National Academy including two Nobel Laureates wrote to Administrator Jackson to voice their concern that EPA was attempting to "expand its regulatory coverage over transgenic crops in a way that cannot be justified on the basis of either scientific evidence or experience gained over the past several decades, both of which support the conclusion that molecular modification techniques are no more dangerous than any modification technique now in use. The increased regulatory burdens that would result from this expansion would impose steep barriers to scientific innovation and product development across all sectors of our economy and would not only fail to enhance safety, but would likely prolong reliance on less safe and obsolete practices."

Not long after, the Biotechnology Industry Organization wrote to Administrator Jackson expressing similar concerns and citing specific examples that "suggest rather strongly that, as a practical matter, [EPA] is looking to expand its oversight over biotechnology products and regulate plants themselves as pesticides." The industry's letter warned that such policy shifts would create a regulatory system for low-risk products with substantial environmental benefits that "is not only duplicative but also dismissive of science and experience" and conflicts with the Principles for Regulation and Oversight of Emerging Technologies that was issued by the White House in support of Executive Order 13563.

In spite of these pleas to the Administrator, reports of EPA's efforts to regulate transgenic plants and seeds that have insect resistant traits continue to be received. Can you assure this Committee that, if confirmed, you will work to ensure that, in regulating products of biotechnology that contain insect-resistant traits, EPA will respect sound scientific principles and the division of responsibility set out in the Coordinated Framework?

Response: As the Assistant Administrator for the Office of Air and Radiation, I have not been involved in this issue. If confirmed, I can examine this issue more thoroughly and would be happy to discuss it with you in the future.

Ethanol

22. Nebraska is a leading ethanol producer, and I want to ensure that my constituents continue to have the ability to purchase Flex Fuel Vehicles (FFVs) and fuel up with higher ethanol blends. Do the new Corporate Average Fuel Economy (CAFE)/greenhouse gas rule and accompanying guidance appropriately incentivize production of FFVs? If so,how? Is the incentive on par with that of electric vehicles?

Through Model Year (MY) 2015, the CAFE and GHG programs treat FFVs the same, i.e., they receive the same credits under the GHG program that FFVs have long received under the CAFE program. Beginning in MY2015, the CAFE credits begin a phase-out period under the Energy Independence and Security Act (EISA) of 2007. Starting in MY2016, EPA's GHG program provides credits for FFVs based on the actual use of E85 and the related GHG emissions benefits of ethanol combustion relative to gasoline. EPA believes that the GHG and CAFE credits will continue to provide an incentive to automakers to continue to build FFVs. While the FFV credits are not as large as the temporary and limited incentives that have been provided for the production of electric vehicles, the FFV credits do not phase-out over time and may actually provide stronger incentives, as the incremental costs of FFVs are much lower than for electric vehicles.

23. It is my understanding that the evaporative emissions profile for E15 and higher ethanol blends is actually somewhat better than conventional E10 gasoline. Is this true, and if so, why are EPA's current Vapor Control requirements locking these blends out of the year-round fuel market?

The evaporative emissions profile for E15 is typically better than for E10, assuming the same gasoline is used for blending. However, the volatility of E15 is limited to 9 psi Reid Vapor Pressure (RVP) in the summer for two reasons. First, the emissions testing and analysis for the waiver demonstrated that E15 needed to have an RVP of no higher than 9 psi for motor vehicles to meet EPA's evaporative emissions standards. Since compliance with the emissions standard was the criterion for granting a waiver, EPA conditioned the waiver on E15 having an RVP no higher than 9 psi. Second, the Clean Air Act (CAA) provides that summertime RVP can be no higher than 9 psi, with a 1 psi RVP increase for blends with ethanol between 9 and 10%. E15 is not eligible for this 1 psi wavier, thus the CAA limits the RVP of E15 to 9 psi in the summer.

Consultation Process for Pesticides under the Endangered Species Act

I am very concerned about how the Endangered Species Act (ESA) is being used to disrupt the supply of pesticides that are vital to American agriculture. I know that this is not a subject that has come within your authority in your prior position, but I need to be sure it will receive your attention if you are confirmed as Administrator.

As I understand it, EPA has been subjected over the last decade to several lawsuits on the issue of its ESA responsibilities, and is now working hard to balance its obligations under both the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) pesticide statute and the ESA. To that end, I also understand that the Agency's Office of Pesticide programs intends to catch up on most of its ESA responsibilities through the registration review program that was mandated by Congress in 1996, and which is statutorily required to be completed by 2022. That will be a very big job, since there are thousands of individual products that contain over 1000 different active ingredients. But addressing ESA issues in the structured registration review program seems to me sensible and a reasonable use of limited budgetary resources.

But it seems to me there is a big problem here, because in reality the U.S. Fish &Wildlife Service and National Marine Fisheries Service with which EPA is supposed to consult cannot keep up with you. The Services have been pretty clear about this. They have told both EPA (in a January 2009 letter) and a House Oversight Committee (at a May 2011 hearing) that they do not have adequate resources to keep up with the pace of EPA consultation requests. Indeed, EPA told that same House Oversight Committee that, at least as of 2011, about a third of your consultation requests were met by the Services with claims that they needed more information from EPA, and about half received no response at all.

Response: I understand that the EPA, USDA and the Services have asked the National Academy of Sciences' National Research Council for recommendations on scientific and technical issues related to the methods and assumptions used to conduct scientific assessments of ecological risks from pesticides. I look forward to seeing their report, which I understand should be out soon. If confirmed, I will continue to work with other agencies to find an efficient and effective path forward.

24. In view of these facts, do you think that there is any realistic basis to believe that registration review can be completed in the timeframe set by Congress? If so, please explain. How, as Administrator, would you overcome the roadblock to completion of registration review on a timely basis that the Services' limited capabilities obviously present?

Response: If confirmed, I will continue to work with our federal agency partners to find an efficient and effective path forward.

25. I understand that a policy notice that the EPA published on March 19 said that the Agency hoped to limit its burdens in this area by convincing registrants to limit the use of their products in some areas, so that no consultation would be necessary. Do you believe this is a realistic strategy? If so, please explain. Do you believe EPA adequately has considered the economic impact of imposing such limitations on farmers? Do you believe EPA has adequately considered what the ecological impact might be if farmers switched to alternative pesticides or agronomic practices?

Response: As the Assistant Administrator for the Office of Air and Radiation, I have not been involved in this issue. I understand that the EPA's notice describes process changes developed with the benefit of significant input from the regulated community, and I believe that an open process leads to better decisions.

I also have been very troubled to hear that confusion over the Agency's policy in implementing ESA requirements is delaying the approval of several products that are of critical importance to farmers who are facing increasing difficulties with glyphosate-resistant weeds. Almost a decade ago, in what I understand is generally referred to as the "Overview Document" (but more formally known as the *Overview of the Ecological Risk Assessment Process in the Office of Pesticide Programs*), EPA stated a policy of deferring until registration review all ESA reviews except those for new pesticide active ingredients, for "new uses" for existing products, or for emergency or special local need situations. Again, this makes good sense to me. But I also understand that the Agency in fact is allowing fear of additional ESA suits to hold up other registration actions, including some of critical importance to growers. So here are my questions on this subject:

26. Has the agency abandoned or modified the policy stated in the Overview document? If so, why? And how has it communicated its change(s) in policy to stakeholders? If not, in your view, what circumstances are sufficient to allow deviation from that policy?

Response: Please see response to question 27.

27. Are you personally satisfied that the deviations that have occurred received adequate consideration at appropriate levels of the agency?

Response (to 26 and 27): As I understand it, the EPA is actively discussing with the companies how best to address any issues relating to protection of endangered species that arise in connection with the Agency's review of their application.

28. Finally, I am concerned that EPA has moved away from respecting a key policy stated by Congress in 1988—that the concerns of those involved in producing food and fiber be respected as ESA is implemented and, most importantly, that the impacts of the implementation of the ESA on agricultural production be minimized. (That policy was embodied Section 1010 of Pub. L. 100-478.) I recognize that the publication last month of the policy statement on stakeholder participation in ESA consultation processes, to which I referred above, was one effort to address those concerns. But I am very concerned about how that policy is going to be implemented, and whether other steps can be taken to assure farmland is not forced out of production without very solid evidence of an imperative need to do so. What further steps do you believe EPA should take to achieve that result?

Response: I am committed to ensuring that the agency carefully considers the interests of all stakeholders as it makes decisions regarding how best to meet the requirements of the federal law concerning protection of endangered species.

<u>Insecticide Review Process Changes</u>

29. As a result of litigation, it is my understanding that EPA is accelerating its timetable in reviewing important agricultural crop protection products (chlorpyrifos) and attempting its first ever assessment of volatility exposures from the use of nonfumigant products. I understand that because of this short litigation-driven time-frame, the assessment is highly precautionary and assumption-based, and EPA lacks an established regulatory policy on which to proceed. This unrefined assessment could result in posted buffers all the way around the perimeter of treated fields that measure 361 feet to as high as 4,724 feet, and this approach would also create precedents for other pest control products that would become increasingly burdensome over time. Given these potential impacts, shouldn't adequate time be taken to develop a regulatory policy that considers feasibility and economic impact on agriculture, rather than placing our American farmers at a

competitive disadvantage to satisfy frequent litigators? Has the Agency actually evaluated if there is any data that indicates exposure to vapors of these compounds have ever caused observable effects in animals by inhalation without first creating aerosol droplets of the product?

Response: As the Assistant Administrator for the Office of Air and Radiation, I have not been involved in this issue. It is my understanding that the EPA has evaluated all available information, from laboratory studies to appropriate field studies, and is seeking public comment on the Agency's risk assessment. This is consistent with my commitment to an open and transparent process in which decisions are based on sound science.

Sulfuryl Fluoride

In January of 2011, the Agency proposed rulemaking to withdraw the food tolerances for the fumigant sulfuryl fluoride (SF)—a product the Agency has aggressively promoted as a substitute for methyl bromide, a pesticide being phased out due to environmental concerns. SF helps safeguard public health by helping keep food and feed safe from dangerous and destructive pest infestations. The U.S. Department of Agriculture, Natural Resources Defense Council, and numerous industry groups have objected to the Agency's proposal. Even the Agency noted in the January 19, 2011, Federal Register notice that SF contributes no more that 2-3% of the public's exposure to fluoride, that use of SF is responsible for a tiny fraction of aggregate fluoride exposure, and elimination of SF does not solve, or even significantly decrease, the fluoride aggregate exposure problems.

30. Why then has the Agency included exposure to naturally occurring fluoride in drinking water systems and fluoride to toothpaste in its Section 408 Federal Food, Drug and Cosmetic Act aggregate risk assessment of the pesticide SF when neither naturally occurring fluoride nor toothpaste is a "pesticide chemical residue" under the statute and the Agency has another statute—the Safe Drinking Water Act—that expressly applies to the naturally occurring fluoride exposure issue?

Response: I believe it's critical that the Agency follow both the science and the law, with respect to Sulfuryl Fluoride, FIFRA and the Safe Drinking Water Act. If confirmed, I will work with scientific staff to understand the interaction between the statutes and this pesticide.

Fill Material

31. The current definition of fill material, finalized in May, 2002, unified the Corps and EPA's prior conflicting definitions so as to be consistent with each other and the structure of the CWA. The current rule solidifies decades of regulatory practice, and includes as fill material those materials that, when placed in waters of the U.S., have the effect of raising the bottom elevation or filling the water. However, both EPA and the Corps have stated that they are now considering revising the definition of fill material.

a. What is EPA's rationale for revisiting the well-established division of the Section 402 and Section 404 programs?

b. What specific problems is EPA seeking to address by revisiting the definition of fill material, and how exactly is EPA intending to address them?

c. Has EPA yet considered the time and costs associated with making such a change to the two major CWA permitting schemes—Sections 402 and 404?

Response (to a-c): I understand the importance of clarity, with respect to the permitting process. If I'm confirmed, I'll work closely with the Army Corps and others to ensure that there is increased clarity in the permitting process.

Willingness-to-Pay Surveys/Economic Impact Analysis

EPA is increasingly using "willingness-to-pay" (WTP) surveys to supplement the expected benefits of regulatory actions with substantial projected costs. Two recent examples include the proposed Clean Water Act section 316(b) requirements for cooling water intake structures (CWIS) and total maximum daily load (TMDL) cleanup plans for nutrients and sediments in watersheds. EPA estimated CWIS costs at over $300 million, although the final rule could change significantly. EPA estimated
TMDL capital costs of $28 billion and an additional $2.7 billion dollars per year for operating and maintaining costs. The surveys are intended to represent what price people might assign to a theoretical effect (e.g., having a healthy fish population) of a proposed rule from which they gain no direct benefit. Thus, the effects are a hypothetical and subjective justification for the proposed rule. As such, it would be inappropriate for EPA to count the results of these surveys as actual monetary benefits for a proposed rulemaking.

Economic experts have concluded that there are very few instances in which such a complicated subjective tool can be used with any degree of reliability. Following a National Oceanic and Atmospheric Administration (NOAA) blue-ribbon panel review of contingent valuation surveys, a Nobel laureate economist on the panel noted that "many departures from the guidelines or even a single serious deviation would, however, suggest unreliability prima facie."[3] Although guidelines for WTP studies require that surveys be well-designed, extensively peer-reviewed, and subject to reliability testing, EPA has largely ignored comments from the public that raise serious concerns about the nature of the survey.

32. Do you believe these willingness-to-pay surveys should be used to enhance the benefits of a proposed rule?

Response: I believe it is important to consider regulatory decisions within the framework of a clear sense of the costs and benefits for the options under consideration, where allowable under the statute. I also believe that the agency should make decisions based on the fullest understanding of the benefits to society from protecting the environment. If confirmed, I will continue to follow this pattern of decision making.

33. Do you believe that EPA should address public concerns about the direction of EPA's monetization of these survey results and their use in benefit calculations for proposed rulemakings?

Response: Please see response to question 34.

34. What steps will you take as Administrator to ensure that EPA's assessment of economic costs and benefits of its proposed rules meet standards for high quality and reliability?

Response (to 33 and 34): My understanding is that stated preference is a tool that EPA has used in the past and that the appropriate use of stated preference, and the challenges, are discussed in the Agency's peer-reviewed "Guidelines for Preparing Economic Analyses". If confirmed, I am committed to ensure that EPA's economic studies are conducted in a high quality fashion, consistent with best economic practices.

Uranium

35. It is my understanding that over the past three years EPA has caused significant delays and interference with the implementation of several state's Underground Injection Control (UIC) programs with respect to the approval of new EPA Class I disposal well permit applications, renewal of existing disposal well permits, and EPA Class III well permits. These particular states have for many years maintained their UIC program primacy and have successfully implemented EPA's UIC programs with limited EPA oversight. Why is EPA now inserting itself into the permitting process for UIC programs where the states have primacy for these activities?

Response: Please see response to question 37.

36. To the extent that EPA does seek to make changes to the existing requirements, will you commit to a public process that includes input from members of the uranium industry?

Response: Please see response to question 37.

37. Will you commit to adding at least one representative from the uranium industry on EPA's Science Advisory Board that is currently evaluating the need for pre-operational baseline monitoring as well as additional post-mining monitoring?

Response (to 35-37): As a former administrator of a state agency, I am particularly sensitive to the significance of your question and issues associated with effective and helpful coordination between EPA and delegated state programs. As the Assistant Administrator for the Office of Air and Radiation, I have not been involved in the implementation of EPA's UIC program roles and responsibilities. If confirmed, however, I will work with you to understand the circumstances involved in this important matter and to identify options for a timely and effective solution under the law.

Senator Boxer

1. Perchlorate is a dangerous drinking water contaminant that can harm the mental and physical development infants and children. In February 2011, EPA said it would regulate perchlorate under the Safe Drinking Water Act, and the Agency has stated that it anticipates issuing a proposed drinking water standard for perchlorate in 2013.

If you are confirmed, will you commit to provide me with a detailed status report and regular updates on the schedule for issuing a proposed and final rule to address perchlorate in drinking water?

Response: Yes.

2. Last year, USA Today published a series that investigated hundreds of old industrial sites that had emitted lead into the nearby areas, including where people live today. While EPA and states have tracked and begun cleanups at some sites, I believe that more must be done to protect families and children who live in neighborhoods near these sites. Cleaning these sites up is particularly important in light of the best available science demonstrating that lead is even more dangerous to the health of infants and children than we had previously known.

If you are confirmed, will you commit to review the adequacy of lead-contaminated soil and dust
standards to ensure they are set or revised at a level that protects pregnant women, infants, and
children, and will you commit to an open and public process of tracking and cleaning up these old
lead-contaminated sites?

Response: Yes.

3. The EPA is revising a Chrome 6 risk assessment before deciding whether to regulate this toxic metal under the Safe Drinking Water Act. If confirmed, will you commit to provide me with:

a. Records that describe the conflict of interest disclosures by members of the panel reviewing the Chrome 6 risk assessment and follow-up actions undertaken by the Agency to address any conflict of interest concerns raised by members on the review panel; and

Response: Yes.

b. A schedule for expeditiously finishing this risk assessment and making a decision on whether
to regulate Chrome 6 as a drinking water contaminant?

Response: Yes.

4. In April 2013, EPA issued proposed revisions to the Protective Action Guidelines (PAGs), which should be used to help federal, state, and local officials make decisions that protect public health and environment when addressing an emergency involving the release of radiation.

If confirmed, will you agree to review the proposed guidance and work to ensure strong public health protections in the final guidance, including reviewing whether the guidance is sufficient to protect public health and ensure that the public is fully informed about the potential health threats from exposure to radiation at or below levels that the guidance uses to initiate or complete agency actions?
Response: Yes.

5. In February 2013, EPA issued a final rule strengthening protections for pesticide research that involves people, including pregnant women and children. If confirmed, will you commit to ensure that the rule's protections are strictly applied and that Agency guidance on these matters incorporates, at a minimum, the protections contained in the February 2013 rule?

Response: Yes

6. EPA issued a proposed rule on whether to regulate the safe disposal of coal ash waste in June,
2010. If confirmed, will you agree to immediately provide a detailed report of the Agency's plans and actions in connection with issuance of a final rule on this important Agency initiative?

Response: Yes.

7. I believe that it is important for Congress to pass bipartisan legislation to reform and improve the Toxic Substances Control Act (TSCA) so that it protects people, including pregnant women, infants, and children, from dangerous chemicals and ensures that chemicals used in everyday products are safe for our children and families. If confirmed, will you work closely with me on the Agency's activities in connection with modernizing TSCA and provide me with timely technical assistance in assessing such efforts?

Response: Yes.

8. While the Agency has made important strides in helping to address environmental injustice in communities harmed by dangerous air pollution, toxic waste sites, and other environmental health threats, many environmental justice communities continue to suffer. As Administrator Jackson stated in EPA's plan to help the Agency better address environmental justice issues: "Plan EJ 2014 offers a road map that will enable us to better integrate environmental justice and civil rights into our programs, policies and daily work. The plan focuses on agencywide areas critical to advancing environmental justice, including rulemaking, permitting, compliance and enforcement, community-based programs and our work with other federal agencies."

If confirmed, do you agree to provide me with a comprehensive overview of the Agency's efforts to implement the 2014 Plan and to update me on the Agency's achievement of specific interim and long-term goals to better integrate agency environmental justice activities, as described in the 2014 Plan and other EPA and White House policies and guidance documents?

Response: Yes.

Senator Carper

1. In my written statement, I complement your efforts to work across the aisle and with various stakeholders toward a consensus-based approach. One such example is your work regarding poultry and feedstock air monitoring. It is my understanding that the EPA – under your leadership in the air office– has been working to review and process air emissions monitoring data collected by leading air researchers from U.S. poultry and livestock farms as part of EPA's National Air Emissions Study. This collaborative effort between industry and the EPA is intended to help develop tools to help poultry and livestock farmers better monitor their emissions. It is also my understanding that the development of these tools has been more challenging than expected, and you have asked the Science Advisory Board for assistance. If confirmed as EPA Administrator, will you continue to ensure good and sound science is applied to the development of these estimating tools, and for taking the time necessary to see that is done?

Response: Yes.

2. Last year, this country saw one of the worst droughts it has seen in over fifty years. As a result, corn prices skyrocketed, which in turn caused huge price spikes for those farmers that depend on corn feed for the animals they raise. In response to these high prices, some governors petitioned the EPA for a waiver to the RFS for fuels made from corn. As you know, the agency denied the waivers because EPA determined there would be no impacts to our economy – for better or worse – if the waivers were approved.

a. Since you oversee the part of EPA responsible for the RFS, what were the critical factors and thresholds EPA used to determine economic disruptions from the RFS?

b. If confirmed as EPA Administrator, what data will you need to see to approve a RFS waiver if we continue to have record droughts into the future?

Response:

While EPA recognized that many parties had raised issues of significant concern to them and to others in the nation concerning the role of renewable fuels and the RFS program and the severity of the drought and its major impacts on multiple sectors across the country, the issue directly before the Agency was limited given EPA's authority under section 211(o)(7)(A) of the Act.

In consultation with the U.S. Department of Agriculture and the U.S. Department of Energy, EPA examined a wide variety of evidence, including modeling of the impact that a waiver would have on ethanol use, corn prices, and food prices. The agency also looked at empirical evidence,

such as the current price for renewable fuel credits, called RINs, which are used to demonstrate compliance with the RFS mandate. EPA's analysis showed that it is highly unlikely that waiving the RFS volume requirements would have a significant impact on ethanol production or use in the relevant time frame that a waiver could apply (the 2012-2013 corn marketing season) and therefore little or no impact on corn, food, or fuel prices. This was because the modeling showed that in almost all scenarios modeled the market would demand more ethanol than the RFS would require.

EPA applied the detailed analysis to the statutory criteria for a waiver. EPA found that the evidence did not support a determination that the criteria for a waiver had been met, and therefore by law must deny the waiver.

3. During your term as Assistant Administrator for Air, you finalized the Cross-state Air Pollution Rule which addresses transport pollution that crosses state boundaries. This is air pollution that drifts downwind across state lines to states like Delaware – making it hard for Delaware to comply with public health air quality rules. Unfortunately, this rule was vacated by the DC Circuit Court. If confirmed as EPA Administrator, can I have your assurances that you will continue to address the problem of air transport – an ongoing issue that risks the lives of thousands of Americans, many of which are living in my home state of Delaware?
Response: Yes

4. If confirmed as EPA Administrator, you will likely oversee the finalization of new standards under Section 316(b) of the Clean Water Act regarding the best technology available for the location, design, construction and capacity of cooling water intake structures. Many of the constituents that will be impacted by this rule are similar to the ones you have dealt with in your days as Assistant Administrator for Air. As you know from experience, facilities in the same source category can be constructed very differently depending on various factors such as location and age – making it hard at times to have a one-size-fits-all approach. The 316(b) rule crosses over so many different types of source categories – the variants between facilities are likely to be exponential – which makes a blanketed approach even less practical. If confirmed, do I have your assurances that when issuing the 316(b) rule you will consider flexibilities that will allow facility owners to comply with a rule in a way that makes it as economical as possible for that facility, while still putting in standards that protect our water wildlife? When determining the cost-benefit ratio for new 316(b) regulations or other rules coming before you, do I have your assurances that you will use the best science available to determine both costs and benefits?

Response: As you know, I have worked hard to find practical approaches to regulation under the Clean Air Act. If confirmed, I look forward to working to ensure that rules like 316(b) are

similarly sensitive to the variations across the electric utility industry and to look for flexibilities that can reduce costs while maintaining environmental protection. Similarly, I will always work to ensure that the EPA uses the best science available for regulatory analysis.

Senator Baucus

1. EPA plans to finalize nonattainment designations in June 2013 for the revised sulfur dioxide national ambient air quality standard. EPA has proposed a nonattainment designation for Yellowstone County, Montana, where almost 1,000 Montanans work at the three local oil refineries. Given the status of documented anomalies in the county's 2010 monitored emissions that appear unrepresentative of recent and projected emissions trends, will you commit to work closely with me on Yellowstone County's final designation?

Response: Yes

2. EPA is currently revising a draft toxicological assessment of the type of amphibole asbestos found in Libby, Montana. This assessment will quantify the danger posed by "Libby Amphibole." While cleanup of asbestos in Libby under the Comprehensive Environmental Response, Compensation, and Liability Act began in 2002, it remains essential that the final cleanup reflect the best available science. Will you commit that EPA will proceed deliberately with finalizing the assessment and determining its impact on the cleanup in Libby?

Response: Yes, EPA will continue its work to finalize its toxicological efforts which will inform final cleanup decisions for the site.

3. On February 4, 2013, the EPA Office of Water released unredacted state-collected information about an estimated 85,000 to 100,000 livestock and poultry operations under the Freedom of Information Act. The data related to concentrated animal feeding operations (CAFOs). I am deeply disappointed at how this action confirms a common perception in rural states like Montana that EPA approaches every farm or ranch activity as if it is a violation waiting to happen.

For example, the data related to Montana includes sensitive information about deceased spouses, elderly widows, speculation about pasture leasing within families, and confidential business information about the precise size of livestock operations. Our federal sunshine laws appear to have been used to empower private citizens to obtain personal information about other private citizens.

a) Given this very recent EPA action, the agency's admission that it incorrectly failed to redact information collected by ten states (including Montana), and your experience as the Assistant Administrator of the Office of Air and Radiation, what specifically do you plan to do to prevent incidents like this in the future?

b) More generally, why the heck should Montana farmers and ranchers trust EPA in the future?

Response: My understanding is the agency has taken steps to prevent incidents like this from happening in the future. I am committed to conducting all EPA activities with the highest legal and ethical standards and in the public interest. I also want to affirm my commitment to working cooperatively with agriculture producers to achieve our mutual goals for protection of the environment and our food supply.

4. In the wake of the 2008 failure of a dike used to contain fly ash at the Tennessee Valley Authority's Kingston Fossil Plant, EPA initiated a rulemaking for coal combustion residuals under the Solid Waste Disposal Act. Four and a half years after the Kingston spill, the rulemaking is ongoing and coal combustion residuals remain regulated only by inconsistent state laws. Will you commit to work with members of Congress on amending the Solid Waste Disposal Act to authorize the regulation of coal combustion residuals under a nonhazardous waste permit program?

Response: Yes, EPA stands ready to provide technical assistance to members of Congress in its efforts to develop legislation regarding coal combustion residuals (CCR).

Senator Merkley

1. During the last several years, the windows manufacturing and installing industry has been through difficult market declines and destabilizing economic times. While the overall economy has been challenging to many Americans, those in the housing sector have been particularly hard hit. One of the major areas of interaction between those who provide windows to the market and consumers is the Energy Star program.

The Energy Star program is essential to delivering information to consumers on how to buy the most energy efficient appliances and products. My understanding is that the EPA is currently reevaluating the proposed standards for the Energy Star for Windows, Doors, and Skylights. The original proposed effective date the new standard was targeted for the end of this calendar year. Obviously, the Agency's thoughtful review of the standard has taken longer than envisioned.

New standards involve significant and expensive changes to production, which means that manufacturers need substantial notice to give time to make those changes. In the interest of providing certainty to this important domestic manufacturing industry, EPA's own guidelines for progressing from final proposal to effective date requires no less than 9 months and the product cycle for manufacturers really requires a January 1 effective date. Can you confirm that the effective date for whatever the new standards may come from this process will be January 1, 2015 to prevent unnecessary and extraordinary ramp up costs for a sector struggling to recover from the recession?

Response: EPA recognizes that it needs additional time to review and respond to the comments received on the ENERGY STAR for Windows, Doors, and Skylights Version 6.0 Draft 2 specification and revised skylight criteria. While a revised timeline is not yet available and we are not ready to make a formal announcement, it is likely this additional work will result in delaying the effective date closer to the January 1, 2015 timeframe. EPA plans to keep stakeholders informed of its process on the criteria revision. We are committed to ensuring that our partners have adequate time to respond to the final Version 6.0 specification and will make adjustments to the implementation schedule as needed.

2. The forestry sector is very important in my state. It provides 120,538 jobs, $4 billion in payroll, $11.8 billion in sales and $4.15 billion toward Oregon's state GDP.

An important decision made under your direction was the three-year deferral of "biogenic GHG emissions" from biomass under the Tailoring Rule. Until the deferral, the Tailoring Rule would have treated biogenic GHG emissions the same as GHG emissions from fossil energy.

The decision by your office at EPA was to defer the regulation of biomass under the Tailoring Rule to take a closer look at the science and policy. My understanding is that EPA has now completed the Biogenic Carbon Accounting Framework, and that framework has been reviewed by an independent Scientific Advisory Board.

Now we need a final policy that fully recognizes the carbon benefits of biomass energy, and we need it done before the deferral period you put in place expires in July of 2014. When the deferral expires, we revert back to the policy in the original Tailoring Rule.

When do you intend to issue a proposal?

Response: EPA does not have a schedule for a proposed rule; however, I intend for the Agency to undertake the process before the July 2014 deferral expiration date. The Agency will keep you and your staff updated on the process as we work to move forward in a way that is appropriate and takes into consideration the requirements of the Clean Air Act and existing regulations as well as the results of the scientific study.

3. Among the Potential Responsible Parties for cleaning up the Portland Harbor Superfund site, there is a group of stakeholders called the Lower Willamette Group who have chosen to work in collaboration with the Environmental Protection Agency to expedite the planning and cleanup process. The fourteen members of the Lower Willamette Group have already invested close to $100 million in the past 12 years since the Portland Harbor Superfund site was put on the National Priorities List by the EPA.

(a) Will you closely follow the Portland Harbor Superfund process as the EPA Regional Office and the parties involved try to reach a balance between protecting the environment and public health on the one hand, and incurring reasonable cost and time requirements on the other hand?

(b) Can I also count on the EPA to work collaboratively with the Lower Willamette Group to ensure the planning process is completed expeditiously, so that the cleanup of the river can begin?

Response: Yes

Senator Udall

1. San Juan Generating Station

During my opening remarks, I mentioned the recent settlement between EPA, the State of New Mexico and PNM Resources.

(a) EPA has been charged with overreaching on regional haze rules. The story of the San Juan Generating Station would suggest otherwise, wouldn't it?

Response: Yes, the story of San Juan Generating Station is a great example of EPA working with the State of New Mexico, PNM, and other stakeholders to finalize a plan that will improve visibility in the surrounding areas while also being cost-effective.

(b) In the end, we want the states implementing these programs, don't we?

Response: Yes, it is EPA's preference to work with states to approve a State Implementation Plan, rather than issue a Federal Implementation Plan.

2. Navajo Generating Station

Last spring, I understand that you toured the Navajo Generating Station in Arizona to see first-hand the plant operations and community. With your five hour drive there, I am sure the remoteness of the location was very apparent to you.

As you know, the plant and mine have 1,000 jobs, over 800 of which come from the Navajo Nation, where unemployment levels fluctuate between 40 and 45 percent. This is particularly important to Navajo living and working in New Mexico.

(a) Given the importance of the plant, and the impact potential regulations can have on it, can EPA continue to work with the Navajo Nation the way it worked with the State of New Mexico and PNM to ensure that the economic necessities of the tribe and its unique reliance on the Navajo Generating Station are appropriately taken into consideration in EPA decision-making?

Response: Yes, it is EPA's intent to work with the Navajo Nation and other stakeholders as we move forward in the rulemaking process.

(b) Do you believe EPA will work with all stakeholders who are seeking reasonable ways forward to address pollution issues, but to preserve jobs and keep electricity rates down?

Response: Yes

3. Uranium Cleanup

Ms. McCarthy, EPA Region 9 recently concluded a five year plan to address uranium contamination in the Navajo Nation. In coordination with several other agencies, including the Bureau of Indian Affairs, Department of Energy, Nuclear Regulatory Commission and others, EPA Region 9 was able to take significant steps towards addressing uranium legacy issues in the Navajo and Hopi Nations. It is my understanding that the EPA is coordinating with the other agencies to identify next steps in cleanup of uranium contamin ation and expects to have a new five year plan for this region put together by this coming fall.

Additionally, EPA Region 6, which covers the rest of New Mexico, is currently carrying out a similar 5 year plan to address legacy uranium in my state. I applaud the agency for taking these deliberate steps to address this important public health and environmental issue.

(a) If confirmed, will support the efforts being carried out by EPA Regions 6 and 9 to address legacy uranium issues?

Response: Yes, EPA is committed to continue working with the Navajo Nation to understand and address the health and environmental risks and to find long-term solutions to the remaining uranium issues on Navajo lands.

(b) Will you continue to seek out and collaborate with the other relevant agencies to ensure that cleanup of legacy uranium is completed in New Mexico and the Navajo Nation?

Response: Yes

(c) Will you continue to ensure that these efforts are carried out in coordination with, and through consultation with the Navajo Nation and other local tribes and communities?

Response: Yes

Senator Lautenberg

1. The Government Accountability Office has listed the Toxic Substances Control Act (TSCA) as a "high risk" area of the law due to its limited ability to protect Americans from toxic chemicals. In September 2009, former Administrator Jackson unveiled six principles to reform and modernize TSCA.

Do you support these principles?

Response: Yes

2. In 2012, the Environmental Protection Agency (EPA) announced plans to conduct risk assessments for 83 chemical substances under the Toxic Substances Control Act (TSCA). These chemicals were selected based on existing information demonstrating health hazards and widespread exposure. In many cases, these chemicals are found in everyday consumer products.

What constraints does the EPA face in performing these risk assessments, including potential efforts to pursue risk management for chemical substances that are found to pose a risk, due to the statutory limitations of TSCA?

Response: The EPA should have the necessary tools to assess the safety of chemicals and to take action on chemicals that cause harm. If confirmed, I look forward to working with you and the committee on this issue.

3. Superstorm Sandy decimated New Jersey's coastal communities, claiming lives and causing tens of billions of dollars in damage. Since climate change will continue to increase the intensity of hurricanes and other extreme weather, this type of damage will only be more likely in the future.

How will the EPA incorporate the rising cost of extreme weather damage when considering actions to address climate change?

Response: Senator, as I said indicated at my confirmation hearing, climate change is one of the greatest challenges of our generation and our great obligation to future generations. I am convinced that we can take steps to combat climate change in a common sense manner. If confirmed, I look forward to working with you and other members of Congress on this important issue.

4. There are currently 1,312 Superfund sites in the U.S., including 111 sites in New Jersey. Over the past decade, construction completions have steadily declined as federal funding for the program has been reduced.

Would the EPA be able to increase the number of construction completions and site removals from the National Priorities List if the Superfund tax were reinstated?

Response: The revenues from reinstated Superfund taxes would be placed in the Superfund Trust Fund and made available to EPA through Congressional appropriation. If Congress were to use Superfund tax revenue to increase the level of appropriations, then the level and rate of construction work would be expected to increase, which would lead to more site construction completions.

Senator Gillibrand

1. I would like to thank you for all of the hard work that you put into the proposed Tier 3 rule to reduce tailpipe emissions. I believe that this is a good rule, and will result in significant health and air quality benefits for the American people by reducing the amount of sulfur emissions released into the environment. Regions across my State of New York are expected to see ozone reductions by 2030 because of Tier 3.
Can you discuss for the Committee some of the positive health and environmental benefits that we could be expected to see by implementing the Tier 3 rule by the end of this year?
Response: By 2030, EPA estimates that the proposed cleaner fuels and cars program will annually prevent up to 2,400 premature deaths, 23,000 cases of respiratory ailments in children, 3,200 hospital admissions and asthma-related emergency room visits, and 1.8 million lost school days, work days and days when activities would be restricted due to air pollution. Total estimated health-related benefits in 2030 for the proposal are between $8 and $23 billion annually.

The proposal would substantially reduce emissions of a range of harmful pollutants that can cause premature death and respiratory illnesses. This includes reducing smog-forming volatile organic compounds and nitrogen oxides by 80 percent, establishing a 70 percent tighter particulate matter standard, and reducing fuel vapor emissions to near zero. The proposal would also reduce vehicle emissions of toxic air pollutants, such as benzene and 1,3-butadiene, by up to 40 percent.

2. Thank you for mentioning the need to reform our country's chemical laws in your testimony. I have been working closely with Senator Lautenberg on reforming the Toxic Substances Control Act. I have been appalled to learn that under the current TSCA regime, the EPA is practically powerless to regulate chemicals that are known carcinogens – such as asbestos and formaldehyde, and other dangerous hormone-disrupting chemicals such as BPA, which are found in childrens' products.

Would you agree that the current TSCA system is inadequate to protect public health and give consumers the necessary information that they need to make informed decisions about which products are safe for themselves and their families?

Response: The EPA should have the necessary tools to provide the public with greater access to chemical information. If confirmed, I look forward to working with you and the committee on this issue.

3. When we met a few weeks ago, I discussed with you the importance of Long Island Sound, and asked for your help to build on the progress that we have already made to improve the water quality and natural ecosystems of the Sound. I know that you are very familiar with this issue from your time as the Connecticut Commissioner for Environmental Protection.

If confirmed, will you make the Long Island Sound a priority and work with my office to ensure that the programs to improve the Sound receive adequate attention and funding?

Response: The EPA is committed to working with states on ways to maintain and build upon the successes achieved in our nation's estuaries. If confirmed, I look forward to working with you on this priority issue.

4. The New York Times recently wrote an article on March 15th highlighting the serious issue of blue-green algae on to Lake Erie. While the algae is currently concentrated on the western end of the Lake, there are concerns that the algae problem could spread more widely and threaten Western New York's economy and aquatic resources.
If confirmed, will you make it a priority to address the spread of harmful algae in the Lake Erie?

Response: Harmful algal blooms are a focus of concern for the EPA. If confirmed, I look forward to working with you to address this problem in Lake Erie waters.

QFR's for Gina McCarthy Confirmation Hearing

Table of Contents

MATS: 2

CARBON TAX: 9

GHGs 10

NAAQS: 23

Ozone NAAQS 34

PM NAAQS 46

Sulfur NAAQS 51

RFS: 53

E15: 60

PM: 71

NSPS: 76

Sue and Settle Practices: 86

Economic Cost of Regulations 94

CBA: 98

Automobile Mandates: 100

Automobile Fuel Economy 101

Energy Reliability: 103

Natural Gas v. Coal 103

CCS: 105

Tier 3: 108

316(b) 112

Employment and EPA regulations 116

O & G Issues 119

LNG: 122

SSM Policy 123

Regional Haze 125

BACT Standards 131

Data Quality 133

NHSM Rule: 133

Boiler MACT 133

Power plant Regulations 134

Coal Power Plant Closings 135
International Issues 140
Risk Management: 141
CCR: 141
CSAPR: 143
Endangerment: 146
Energy Star 147
Federal-State Relationship 148
Health Concerns: 151
Keystone XL 155
LCFS: 155
Lead Issues 156
ECA: 158
Native Issues 159
Cap and Trade: 161
SIP's: State Implementation Plans 161
Brick Industry MACT's 170
RadNet 171

MATS:

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

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

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

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

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

EPA staff has informed me that mercury poisoning is not a reportable condition in the United States, and therefore, accurate statistics on the number of people presenting in clinical settings with mercury poisoning are not readily available. The 2011 Annual Report of the American Association of Poison Control Centers' National Poison Data System documented about 1,700 single exposures to mercury or

compounds containing mercury. Most people in the United States are exposed to mercury when they eat fish and shellfish that are contaminated with methylmercury, an organic compound that can be formed when mercury is released to the environment. Most mercury exposures tend to be manifested in subtle, yet very serious, health effects such as neuro-cognitive deficits. For fetuses, infants, and children in the U.S., the primary concern of methylmercury exposure is impaired neurological development. Methylmercury exposure in the womb, which can result from a mother's consumption of fish and shellfish that contain methylmercury, can adversely affect a baby's growing brain and nervous system. Impacts on cognitive thinking, memory, attention, language, and fine motor and visual spatial skills have been seen in children exposed to methylmercury in the womb. Human biological monitoring by the Centers for Disease Control and Prevention and other health organizations shows that most people have blood mercury levels below a level associated with possible health effects. However, these studies also consistently confirm that approximately 5% of childbearing-aged women have methylmercury levels in their blood at levels of potential concern.

In EPA's Utility MACT proposal, EPA stated that: "EGUs are the subject of several rulemaking efforts that either are or will soon be underway. . . . EPA recognizes that it is important that each and all of these efforts achieve their intended environmental objectives in a common-sense manner that allows the industry to comply with its obligations under these rules as efficiently as possible and to do so by making coordinated investment decisions and, to the greatest extent possible, by adopting integrated compliance strategies." So, EPA recognizes that it needs to approach these rulemakings, to the extent that its legal obligations permit, in ways that allow the industry to make practical investment decisions that minimize costs in complying with all of the final rules, while still achieving the fundamentally important environmental and public health benefits that the rulemakings must achieve. The upcoming rulemaking under section 111 regarding GHG emissions from EGUs may provide an opportunity to facilitate the industry's undertaking integrated compliance strategies in meeting the requirements of these rulemakings. The Agency expects to have ample latitude to set requirements and guidelines in ways that can support the states' and industry's efforts in pursuing practical, cost-effective and coordinated compliance strategies encompassing a broad suite of its pollution-control obligations. EPA will be taking public comment on such flexibilities in the context of that rulemaking. Does EPA intend to follow through on this commitment and provide a forum in which EPA notifies utilities of all of the impending power sector regulations and discusses ways for industry to comply with all of these regulations in a least cost fashion?

As stated in the cited portion of the preamble to the proposed utility MACT rule (later finalized as the Mercury and Air Toxics Standards or "MATS"), the agency's intent was to use the rulemaking process itself to address issues of flexibility that might support industry's efforts to develop integrated compliance strategies for affected sources. In developing the final MATS rule, for example, the agency received substantial comment suggesting ways in which the final rule could provide compliance flexibility and the agency adopted several of these suggestions, resulting, according to the Regulatory Impact Analysis for the final standards, in $1.3 billion in annual cost-savings relative to the proposed standards. With regard to section 111, EPA is still in the process of reviewing comments submitted in response to the proposed carbon pollution standard for new power plants under section 111(b). The agency is not currently developing any existing source GHG regulations for power plants under section 111(d).

In 1997, EPA changed the way that it conducts Regulatory Impact Analyses (RIA) to justify the costs of many of its regulations. Specifically, EPA now regularly addresses the criteria pollutant, PM2.5, which is already regulated under its own National Ambient Air Quality Standard (NAAQS), in the benefit cost analysis (BCA) for other pollutant regulations, particularly air toxics. Where the Agency finds that PM2.5 emissions reductions show benefits that are the same or greater than that for the pollutant being regulated (a "co-benefit"), the agency has based the rule at least in part on that result. EPA's Mercury and Air Toxics rule for power plants is an example of this approach, which presents at a minimum some practical and scientific questions of validity. Depending on the degree to which EPA relies on co-benefits, EPA could be over-regulating the pollutant(s) that is the focus of an RIA. Since PM2.5 is regulated separately from other pollutants, doesn't this approach really mean that EPA is "double counting" these PM2.5 reductions across other regulations? As Administrator, what steps would you take to ensure that the co-benefits of regulation do not become a regular basis for the calculated benefit of any particular regulatory proposal?

The purpose of the Mercury and Air Toxics Standards is to reduce mercury and other air toxics, following the approach set out in the Clean Air Act. While the EPA does not set out to regulate PM in toxics rules such as MATS, such rule achieve these PM reductions as an additional benefit at no additional cost. EPA accounts for the PM benefits in our cost-benefits analysis, because they are real, they are significant, and best practices for economic analysis require that the agency consider all benefits. The PM2.5 benefits the EPA estimates for new rules such as CSAPR and MATS are not "double-counting." Those benefits are above and beyond those the agency previously estimated for other rules establishing controls on pollution that are already "on the books," and are appropriate to include in the benefit-cost analysis for a regulation, regardless of whether those PM2.5 benefits are the direct target of a regulation or a co-benefit.

Does EPA's benefit estimates for the utility MACT rule, which you estimate will cost up to $10 billion, rely on the same two studies (Pope 2002 and Laden 2006) and the same secret databases (American Cancer Society and Harvard Six City data) that we have requested and EPA has failed to release?

The PM2.5 benefits analysis for the Mercury and Air Toxics Standards relied upon earlier studies of the American Cancer Society cohort (Pope et al., 2002) and the Harvard Six Cities cohort (Laden et al. (2006). EPA currently uses updated studies of these cohorts (Krewski et al. (2009) and Lepeule et al. (2012), respectively.

In March 28, 2013 the Environmental Protection Agency (EPA) published updated emissions standards for power plants under the Mercury and Air Toxics Standards (MATS). The MATS rule imposes sweeping new emissions requirements for power plants, and EPA expects that the MATS rule will entail upwards of $10 billion in compliance costs, making it the most expensive rule in EPA's history. In promulgating the MATS rules, EPA relied heavily on the claim that the rule will benefit public health through decreases in particulate matter pollution (PM). However, regulation of PM is primarily accomplished through National Ambient Air Quality Standards (NAAQS), which are required to be set at levels that provide adequate protection for the public health or welfare. Accordingly, it appears that the agency has set a NAAQS standard for particulate matter at a level insufficiently protective of public health and welfare. Can you share your thoughts on this?

Even after several decades of pollution control laws, until MATS there were no national limits on emissions of mercury and other air toxics from power plants. Power plants emit mercury, other metals,

acid gases, and other air toxics – as well as particulate matter – all of which harm people's health. The rule regulates mercury and other air toxics, but the control technologies installed to reduce these air pollutants also yield significant reductions in particulate matter.

EPA's website says that mercury "can travel thousands of miles in the atmosphere before it is eventually deposited back to the earth in rainfall or in dry gaseous forms." If this is true, wouldn't rising consumption of coal in countries like China and India (whose regulatory regimes are less stringent than our own) offset any domestic mercury reductions connected to the MATS rule? In fact, if more US manufacturing moves to these countries, which have less stringent emission controls than the US, wouldn't a possible result of MATS be an increase in global mercury emissions?

A substantial portion of the mercury that is deposited in the U.S. comes from U.S. sources, especially near the source. For example, based on EPA's air quality modeling for the Mercury and Air Toxics Standard, U.S. EGUs contributed up to 30 percent of total mercury deposition in some U.S. watersheds in 2005. To reduce atmospheric transport of mercury globally, EPA together with the State Department is participating in United Nations efforts to encourage all countries to reduce their mercury emissions. Those efforts include negotiations toward an international agreement and partnerships for training and information on strategies for reducing mercury emissions.

During consideration of the MATS rule both Commissioners at FERC and outside electricity experts raised concerns about the potential for forced retirement of generating facilities causing costly reliability problems. EPA even admitted that localized reliability problems could result from the rule. Given that the construction and use of generating facilities is time and capital-intensive, at what point do you think that cumulative regulatory burdens on the electricity sector may create reliability problems?

EPA takes electric reliability concerns very seriously. EPA determined that many existing coal plants are already very well controlled for pollution, and other coal plants have the ability to retrofit with widely available pollution control technologies. EPA and DOE analyzed the resource adequacy impacts of the MATS rule prior to its finalization and determined that the rule would not adversely affect resource adequacy in any region of the country. Additionally, since finalizing MATS, EPA has continued to work with FERC, DOE, state regulators, and the regional transmission organizations and other planning authorities to help ensure early planning and prompt action to assess and mitigate any potential reliability issues associated with implementation of EPA rules. Those efforts have confirmed EPA's analysis that utilities and grid planners have significant tools to address reliability challenges within the timeframes set forth in the Clean Air Act. EPA has taken steps to ensure broad availability of an additional year to comply with the MATS rule where needed for technology installation, including in situations implicating reliability considerations. To the extent any localized reliability challenges emerge, there are adequate tools to address them. For example, concurrent with the final MATS rule EPA has identified a clear pathway for up to one additional (fifth) year to come into compliance where needed to address a documented reliability issue.

EPA has specifically exempted both modified (units that make major changes) and transitional (units that have yet to begin construction but have already secured a Prevention of Significant Deterioration (PSD) operating permit) from adhering to the proposed standard. EPA has stated that it does not intend to issue a standard for modified units. What will the Agency do if sued by environmental groups on this issue? Is it possible that such a lawsuit might result in the application of the new

standard to all facilities that are being forced to install major upgrades to comply with other EPA regulations, such as the Mercury and Air Toxics Standards (MATS)?
I believe that the approach we proposed to take with respect to modified sources is sound. Beyond that I believe that it would be neither appropriate nor useful for me to speculate on potential litigation and possible judicial decisions that at this point are entirely hypothetical.

Inhofe 37(a). Would such a move force EPA to apply this standard to all plants that are being forced to install major upgrades to comply with other EPA regulations, such as the Mercury and Air Toxics Standards (MATS)?
EPA's proposed carbon pollution standard does not apply to modified sources. If EPA were to set a standard for modified sources, technologies installed by sources to comply with MATS are currently exempted under EPA regulations from triggering any such modified source standard.
Barrasso 16. As Assistant Administrator for EPA's OAR, you have had direct responsibility for promulgating the Mercury and Air Toxics Standards (MATS) for power plants. On March 20th 2012 before the Senate Environment and Public Works Committee's Subcommittee on Clean Air and Nuclear Safety, you testified that "only a modest amount of generating capacity" -- 4,700 megawatts (MW) -- will become uneconomic to operate under MATS. This rule will cause 35,000 MW to retire, according to the Institute for Energy Research, and 42,000 MW to retire, according to Barclays.
Do you stand by your testimony that "only a modest amount" of coal-fired generating capacity will be forced to retire by EPA regulations? Or would you reconsider your testimony in light of more recent analyses and already announced retirements that show EPA's projections to be off by as much as 800 percent?
A number of economic factors influencing retirements well beyond EPA's clean air rules are included in these non-EPA figuresxxviii. External analysts, including GAOxxix, CRSxxx, the Bipartisan Policy Centerxxxi, and Analysis Groupxxxii, have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. Because EPA's power sector analyses look at the effects of its rules alone to evaluate incremental impacts, EPA's analyses are not comparable to other assessments that also take into account broader economic factors.
Barrasso 17. On March 20th, 2012 before the Senate Environment and Public Works Committee's Subcommittee on Clean Air and Nuclear Safety, you testified that MATS would have a "very small" impact on electricity rates, yet they have soared by 23 percent in the Mid-Atlantic region and 183 percent in the northern Ohio region from the 2014/2015 Delivery Year to the 2015/2016 Delivery Year. According to PJM Interconnection, this is due to "an unprecedented amount of planned generation retirements (more than 14,000 MW) driven largely by environmental regulations, which drove prices higher than last year's auction."
Do you stand by your testimony that MATS will have a "very small" impact on electricity rates? Or would you reconsider your testimony in light of market evidence that electricity rates have increased by up to 183 percent in response to EPA regulations?
The cited percent increases are capacity prices, which are only a small component of the retail electricity prices paid by consumers. Regionally, PJM's auction prices were middle-of-the-road prices compared to

other years. EPA's MATS analysis, which accounts for these capacity prices, found that electricity rates are projected to stay well within normal historical fluctuations and result in relatively small changes in the average retail price of electricity, keeping electricity prices below 1990 levels.

Barasso 18. The EPA stated in the Federal Register on February 16th, 2012 that the "great majority" of benefits from MATS will come from reductions in particulate matter, not mercury or air toxics. "The benefits of controlling mercury and air toxics comprise less than one ten-thousandths of the total benefits reported for the mercury and air toxics rule," according to George Washington University Research Professor Susan Dudley's testimony on April 17th of last year before the Senate Environment and Public Works Committee's Subcommittee on Clean Air and Nuclear Safety. She stated "Ninety-nine percent of the benefits attributed to the MATS rule were derived by assigning high dollar values to reductions in emissions of fine particles (PM2.5), which are not the focus of this regulation and which are regulated elsewhere." You and other EPA officials decided to refer to this rule in the Federal Register on February 16th, 2012 as "in short as the Mercury and Air Toxics Standards (MATS)." But this rule really targets particulate matter emissions, not mercury and air toxics. Why did your team decide to label this rule as something it is not?

Even after several decades of pollution control laws, until MATS there were no national limits on emissions of mercury and other air toxics from power plants. Power plants emit mercury, other metals, acid gases, and other air toxics – as well as particulate matter – all of which harm people's health. The rule targets mercury and other air toxics, but the control technologies installed to reduce them also yield significant reductions in particulate matter.

Barasso 19. You and other EPA officials have repeatedly ignored congressional requests to make publicly-available the taxpayer-financed databases used to conduct the cost-benefit analysis for MATS. Do you believe Congress, stakeholders, and the American people can adequately review EPA's cost-benefit analysis for MATS and other rules without access to the actual data upon which it rests?

While not legally relevant for setting maximum achievable control technology (MACT) standards under the Clean Air Act, the EPA did assess the costs and benefits of MATS, as we do for all major MACT standards, to improve public understanding of the impacts of MATS. Our economic analysis of MATS was conducted in compliance with relevant Executive Orders and guidance on economic analysis from the Office of Management and Budget (OMB), and was reviewed by OMB before we publicly released it. It followed standard, peer-reviewed methodologies and provided consistent information about anticipated benefits and costs, ensuring the public would have access to an effective and reliable comparison of benefits and costs. EPA relies on published peer-reviewed scientific studies for regulatory decisions.

Barrasso 30. Please explain why you decided to ignore your responsibilities as a federal trustee to the Navajo Nation during the development of the Utility MACT rule, when your offices had prior knowledge of the Navajo Nation's concerns about EPA regulatory impacts to Four Corners Power Plant and Navajo Generating Station; and when your offices had collaborated with the Navajo Nation in proposing and promulgating the Clean Air Mercury Rule? Since 2010, EPA has proposed new regulations that impact coal fired power plants, yet there has been very little communication between EPA and Navajo Nation about the Navajo Nation's desire to continue the use of coal for generating electricity and other purposes. Further EPA may be developing greenhouse gas and carbon dioxide regulations without consulting or understanding what impact this may have on Indian Country

and tribes that rely on natural resources to fuel their economies.

EPA has held a number of meetings, conversations, and consultations with the Navajo and other Tribes in the region regarding both MATS and BART. Many of these meetings have been face-to-face meetings in Arizona. For example, in January 2012, I went to the Navajo Generating Station and also met with the Navajo Nation. Additionally, the Deputy Assistant Administrator Janet McCabe held at least 5 different meetings with Tribes, including the Navajo Nation, between mid-September and early-November 2011. EPA also held national conference calls and webinars for Tribes on MATS, given that MATS is a national rule and many Tribes have an interest in it. EPA intends to continue to work with the Navajo and all other Tribes to meet federal trust obligations and provide opportunities for consultation on issues that are of interest to individual Tribes and groups of Tribes.

Sessions 17. You oversaw development of "Utility MACT," also referred to as the Mercury and Air Toxics Standards (MATS). Testifying before Congress, you stated that the MATS rule would lead to the loss of only a "modest amount of generating capacity." However, according to the Institute for Energy Research, the MATS rule will result in at least 35,000 MW closing and Barclay's estimates that 42,000 MW will close because of MATS. Your own estimates fall significantly short of those estimates.

a. Do you agree that the United States is losing some of its coal-fired generating capacity as a result of recent EPA regulations?

A number of factors may influence an owner/operator's independent business decision to retire a plant. Environmental rules are only a part of the equation. External analysts, including GAOxxxiii, CRSxxxiv, the Bipartisan Policy Centerxxxv, and Analysis Groupxxxvi,have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth.

b. Why were EPA's estimates for the impact on the electricity generating sector so much different than those identified by Barclay's and the Institute for Energy Research?

A number of economic factors influencing retirements well beyond EPA's clean air rules are included in these non-EPA figuresxxxvii. As noted above, external analysts, including GAOxxxviii, CRSxxxix, the Bipartisan Policy Centerxl, and Analysis Groupxli, have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. Because EPA's power sector analyses look at the effects of its rules alone to evaluate incremental impacts, EPA's analyses are not comparable to other assessments that also take into account broader economic factors.

Sessions 18. In the Utility MACT proposal, EPA stated that: "EGUs are the subject of several rulemaking efforts that either are or will soon be underway….EPA recognizes that it is important that each and all of these efforts achieve their intended environmental objectives in a common-sense manner that allows the industry to comply with its obligations under these rules as efficiently as possible and to do so by making coordinated investment decisions and, to the greatest extent possible, by adopting integrated compliance strategies. … Thus, EPA recognizes that it needs to approach these rulemakings, to the extent that its legal obligations permit, in ways that allow the industry to make practical investment decisions that minimize costs in complying with all of the final rules, while still achieving the fundamentally important environmental and public healthbenefits that

the rulemakings must achieve. The upcoming rulemaking under section 111 regarding GHG emissions from EGUs may provide an opportunity to facilitate the industry's undertaking integrated compliance strategies in meeting the requirements of these rulemakings....The Agency expects to have ample latitude to set requirements and guidelines in ways that can support the states' and industry's efforts in pursuing practical, cost-effective and coordinated compliance strategies encompassing a broad suite of its pollution-control obligations. EPA will be taking public comment on such flexibilities in the context of that rulemaking."

a. Does EPA intend to follow through on this commitment and provide a forum in which EPA notifies utilities of all of the impending power sector regulations and discusses ways for industry to comply with all of these regulations in a least cost fashion?

As stated in the cited portion of the preamble to the Mercury and Air Toxics Standards (MATS) NPRM, the Agency's intent was to use the rulemaking process itself to address issues of flexibility that might support industry's efforts to develop integrated compliance strategies for affected sources. In developing the final MATS, for example, the Agency received substantial comment suggesting ways in which the final rule could provide compliance flexibility and the Agency adopted several of these suggestions, which according to the Regulatory Impact Analysis for the final standards, resulted in $1.3 billion in annual cost-savings relative to the proposed standards.

EPA is still in the process of reviewing comments submitted in response to the carbon pollution standard for new power plants proposed under section 111(b). The agency is not currently developing any existing source GHG regulations for power plants under section 111(d).

b. Can you give a timeframe at which time this process will begin?

Please see the response to provided to question (a), above.

Sessions 19. I have been advised that, as a general matter, market-based approaches to reducing emissions of traditional air pollutants have proven to be more cost-effective than command-and-control approaches.

a. Do you agree?

As a general matter, market-based approaches provide flexibility to sources in determining how best to comply with an environmental program. This flexibility gives sources the opportunity to comply in the most cost-effective manner. Market-based approaches reward efficiency, innovation, and early action and provide environmental accountability without inhibiting economic growth.

CARBON TAX:

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

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

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

The social cost of carbon (SCC) is an estimate of the net present value of the flow of monetized damages

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

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

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

Do you or will you support a carbon tax? More specifically, what is your sentiment with respect to the Boxer-Sanders bill?

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

Can you comment on Australia's experience with a carbon tax?

Response: I am not familiar with the details of Australia's carbon tax.

GHGs

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

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

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

EPA addressed the public health consequences of greenhouse gases in the atmosphere in the 2009 Endangerment Finding, where EPA found that elevated concentrations of the well-mixed greenhouse gases in the atmosphere may reasonably be anticipated to endanger the public health and to endanger the public welfare of the current and future generations. Greenhouse gases impact human health by altering the climate. In the recent D.C. Circuit Court decision (*Coalition for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102 (D.C. Cir. 2012)) regarding the 2009 Endangerment Finding, the Court found that "EPA had before it substantial record evidence that anthropogenic emissions of greenhouse gases "very likely" caused warming of the climate over the last several decades. EPA further had evidence of current and future effects of this warming on public health and welfare. Relying again upon substantial scientific evidence, EPA determined that anthropogenically induced climate change threatens both public health

and public welfare." The Court upheld EPA's approach of relying "on a substantial record of empirical data and scientific evidence, making many specific and often quantitative findings regarding the impacts of greenhouse gases on climate change and the effects of climate change on public health and welfare" in order to make its determination of endangerment.

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

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

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

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

If greenhouse gases are air pollutants, and if they endanger public health, and if they come from numerous large, area, and minor sources, why has the agency not chosen to regulate them under the NAAQS program? If we believe GHGs are deleterious to public health, isn't the appropriate response to promulgate a standard above which humans are at risk?

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

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

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

EPA has stated that the proposed GHG NSPS will promote the development of CCS in the United States. How do you expect the rule to do so?

The proposed rule would promote development of CCS because it would set emission limits that, in the case of coal- or petroleum coke-fire units, would require use of CCS at a moderate level. A number of full scale commercial projects are currently in development, including Southern Company's Kemper Project, which is more than 75% complete; the Texas Clean Energy Project (TCEP), which has signed contracts for electricity, CO2 and other products from the plant and hopes to close financing this summer; and, the California Hydrogen Energy Center Project, which is currently undergoing regulatory review in California.

In a reversal of precedence and established practice, EPA in the GHG Tailoring Rule, between proposed and final and without opportunity for public comment, treated biomass the same as fossil fuels rather than recognizing that biomass actually recycles carbon and does not increase carbon in the atmosphere. A partial recognition of this mistake was the 3-year deferral by the Agency of the regulation of biomass under the Tailoring Rule to review the science and policy. While an EPA convened Clean Air Act Science Advisory Board Panel submitted recommendations, these suggested remedies are complex, difficult to implement, and again unnecessary. So as to not miss the end of the deferral period in June of 2014 and inadvertently keep a flawed policy change in place, a final policy consistent with the science that encourages biomass as an energy source and accounts for the natural recycling of the biomass carbon is necessary. Can you imagine a scenario whereby EPA would not recognize the well-established science supporting the carbon neutrality of biomass combusted for energy by forest products manufacturers and others? As EPA Administrator, will you work with me and all affected industries to ensure that renewable biomass remains a carbon neutral fuel, and as such, receives favorable treatment in the permitting program?

The purpose of the 3-year deferral is to give EPA time to conduct a detailed examination of the science associated with biogenic CO2 emissions and to consider the technical issues that the agency must resolve in order to account for biogenic CO2 emissions in ways that are scientifically sound and also manageable in practice. In September 2011, EPA submitted its draft "Accounting Framework for Biogenic CO2 Emissions from Stationary Sources" to the Science Advisory Board (SAB) for peer review. EPA is considering the September 2012 SAB Peer Review Report now, and will determine the most technically sound approach for treatment of biogenic CO2 in a regulatory context as the agency reviews the report and its recommendations.

If all the regulations enacted or being contemplated with respect to greenhouse gases are fully implemented, what the impact be on global concentrations of greenhouse gases and on global average temperature? Please cite your source.

To respond to your precise question would require more specific information about the current or potential future regulations to be considered. The common sense regulations to address greenhouse gases that EPA has undertaken under this administration will achieve significant emission reductions. The light-duty vehicle emissions and fuel economy standards that EPA and NHTSA have established for model years 2012-2025, for example, are expected to result in reductions of over 6 billion metric tons

carbon dioxide equivalent over the lifetime of these vehicles. Further actions, from both the United States and all of the major emitting countries, will be necessary to achieve the reductions that science indicates are necessary to address climate change.

In EPA's Utility MACT proposal, EPA stated that: "EGUs are the subject of several rulemaking efforts that either are or will soon be underway. . . . EPA recognizes that it is important that each and all of these efforts achieve their intended environmental objectives in a common-sense manner that allows the industry to comply with its obligations under these rules as efficiently as possible and to do so by making coordinated investment decisions and, to the greatest extent possible, by adopting integrated compliance strategies." So, EPA recognizes that it needs to approach these rulemakings, to the extent that its legal obligations permit, in ways that allow the industry to make practical investment decisions that minimize costs in complying with all of the final rules, while still achieving the fundamentally important environmental and public health benefits that the rulemakings must achieve. The upcoming rulemaking under section 111 regarding GHG emissions from EGUs may provide an opportunity to facilitate the industry's undertaking integrated compliance strategies in meeting the requirements of these rulemakings. The Agency expects to have ample latitude to set requirements and guidelines in ways that can support the states' and industry's efforts in pursuing practical, cost-effective and coordinated compliance strategies encompassing a broad suite of its pollution-control obligations. EPA will be taking public comment on such flexibilities in the context of that rulemaking. Does EPA intend to follow through on this commitment and provide a forum in which EPA notifies utilities of all of the impending power sector regulations and discusses ways for industry to comply with all of these regulations in a least cost fashion?

As stated in the cited portion of the preamble to the proposed utility MACT rule (later finalized as the Mercury and Air Toxics Standards or "MATS"), the agency's intent was to use the rulemaking process itself to address issues of flexibility that might support industry's efforts to develop integrated compliance strategies for affected sources. In developing the final MATS rule, for example, the agency received substantial comment suggesting ways in which the final rule could provide compliance flexibility and the agency adopted several of these suggestions, resulting, according to the Regulatory Impact Analysis for the final standards, in $1.3 billion in annual cost-savings relative to the proposed standards. With regard to section 111, EPA is still in the process of reviewing comments submitted in response to the proposed carbon pollution standard for new power plants under section 111(b). The agency is not currently developing any existing source GHG regulations for power plants under section 111(d).

What is the communication between stationary and mobile source emissions staff? How do you reconcile requirements to produce new fuels (such as the proposed Tier 3 gasoline sulfur reduction) with requirements to reduce emissions at refineries? Are these contradictory or do you believe that both can be done? For example, don't gasoline sulfur reduction processes increase refinery greenhouse gases, Nitrogen Oxides and Particulate Matter emissions?

Stationary and mobile source emissions staff coordinate closely with regard to interactions between regulatory actions in their respective spheres. For example, the proposed Tier 3 standards will play a critical role in state and local agencies' plans for attaining and maintaining the ozone NAAQS. Joint stationary and mobile source modeling indicates that, in the absence of additional controls such as the Tier 3 standards, many areas would continue to have air pollution levels that exceed the existing health-

based National Ambient Air Quality Standard (NAAQS) in the future. The proposed Tier 3 rule includes a detailed consideration of potential impacts on refinery emissions. For example, the relatively small projected increase from CO2 emissions from refineries is expected to be offset through reductions in other greenhouse gas emissions from improved operation of vehicle catalysts as a result of the proposed Tier 3 rule.

How do U.S. greenhouse gas emissions compare to other countries on an apples-to-apples basis, such as the ratio of emissions to GDP? What is an acceptable amount of greenhouse gas emissions annually for the United States?

The U.S. and other countries report total greenhouse gas emissions annually the United Nations Framework Convention on Climate Change using common methodologiesxiv. In Copenhagen in 2009, the U.S. committed to reducing U.S. greenhouse gas emissions in the range of 17 percent by 2020 from 2005 levels.

You previously co-authored a paper which stated that "the location of CO2 emission reductions is irrelevant in reducing global emissions of this pollutant". Do you still agree with this assessment? If so, where do you think the most cost-effective emission reductions can be made in the world?

CO2 and other greenhouse gases, once emitted, can remain in the atmosphere for decades to centuries, meaning that their concentrations become well-mixed throughout the global atmosphere regardless of emissions origin, and their effects on climate are long lasting. This means that the impact of GHG emissions reductions on GHG concentrations is not dependent on the location of the emissions reductions. Cost-effective emissions reductions opportunities exist throughout the world. For example, the EPA report Global Mitigation of Non-CO2 Greenhouse Gases (EPA 430-R-06-005, 2006) finds that major emitting regions of the world, including China, the United States, the EU, India, and Brazil offer large potential mitigation opportunities from the energy, waste, and agriculture sectors. Energy efficiency improvements, for example in buildings and the transportation sector, also have the potential to yield substantial cost-effective emission reductions in major emitting countries.

The two states where you worked and developed environmental regulations for the electric power sector have the most expensive power in the Nation. I understand that during your tenure in these states that you pursued the adoption of the first ever plant-by-plant CO2 limits and the first ever CO2 cap-and-trade program. Do you think these policies contributed to the very high cost of power in these States? Can you please outline the specific environmental and health benefits realized in these States that have resulted solely from reducing CO2 emissions as a result of these programs? As EPA Administrator do you intend to pursue similar programs on a national scale?

Although I am proud of the work that I did on climate policies at the state level, I have now been with EPA for nearly four years and at this point am best positioned to discuss my work at the federal level. With regard to the power sector, last year EPA proposed carbon pollution standards for new power plants. The Agency currently is working to review the nearly 2 million comments received on that proposal.

After addressing greenhouse gas emissions in the motor vehicle and utility sector, do you have a plan for addressing GHG emissions in the rest of the economy? You have said EPA plans to focus on the biggest emitters first. Have you prioritized which industries you intend to address after motor vehicles and the power sector?

The agency is currently focused on reviewing the more than 2 million comments received on its

proposed carbon standards for new power plants. Although EPA is evaluating GHG emissions information from a limited number of source categories, the agency has not determined that it is appropriate to regulate GHG emissions from other industrial sectors with the exception of the Agency previous acknowledgment that it is appropriate to issue regulations for refinery greenhouse gas emissions. But as stated in the answer to a related question, the agency has no current plan for issuing refinery greenhouse gas regulations. The agency has also previously said that it had insufficient data to regulate Portland cement facilities, and it does not have a timetable or plan for issuing GHG regulations of this sector.

EPA has been petitioned to regulate GHG emissions from animal feeding operations. Can you assure us that EPA won't regulate GHG emissions from any agricultural facilities during the second term?

Currently EPA has no plans with respect to regulating greenhouse gas emissions from animal feeding operations or any other agricultural facility.

EPA has been petitioned to regulate GHG emissions from coal mines. What are your plans with respect to such a petition?

On April 5, EPA informed the US District Court for the District of Columbia that it would be acting on a petition to regulate greenhouse gases from coal mines and in that motion, EPA stated that it plans to deny the Plaintiffs' petition for rulemaking.

EPA has been petitioned to establish National Ambient Air Quality Standards (NAAQS) for GHGs. What are your plans with respect to such a petition? Can you assure us EPA will not establish a NAAQS for GHGs?

Although EPA has not taken any final action on the petition, I do not believe that setting a national ambient air quality standard for greenhouse gases would be advisable.

EPA's own data in relation to various carbon reduction plans continuously indicates reducing GHG emissions domestically will have no impact on worldwide emissions. In fact, US emissions are now below 2005 levels and have been flat or declining for nearly 12 years now. This has all occurred without cap-and-trade and, until the last few years, any other GHG regulations. In light of these facts, why do you feel the Agency still needs to move forward with its GHG regulations under the Clean Air Act?

The Supreme Court in *Massachusetts v. EPA*, 549 U.S. 497 (2007), held that greenhouse gases "fit well within the CAA's [Clean Air Act's] capacious definition of air pollutant." As a result of this decision, EPA has certain legal obligations to address greenhouse gases under the Act. Further, although U.S. greenhouse gas emissions currently are below 2005 levels, the science indicates that the U.S. and other major emitting countries must achieve much more substantial reductions in emissions to mitigate harmful climate change. As I stated in my testimony, I strongly believe that we can and must take common sense steps – such as the light- and heavy-duty vehicle emission standards issued under this Administration – that can reduce emissions while maintaining economic growth and prosperity.

In addressing the need for unilateral, domestic GHG reductions, regardless of what the rest of the world does, the Administration has historically said that we need to be "leaders" in this arena to encourage other nations to follow. The U.S. has had some sort of GHG regulation in place since 2007, ranging from the GHG requirements in the RFS, to EPA's GHG regulations for stationary sources under the Clean Air Act, to two stages of CAFÉ and GHG tailpipe standards. How has leading through such actions to control GHGs caused China, India or other developing countries to "follow our lead" in

reducing GHG emissions?

My understanding is that a number of major developing countries have taken significant actions to reduce greenhouse gas emissions in recent years. Although I don't have sufficient information to respond to your question as to the relationship between those actions and specific actions taken by the United States, I believe U.S. leadership in reducing carbon pollution does help to encourage greater action from other countries and enhances U.S. leverage in international climate discussions.

The EPA's greenhouse gas regulations, along with a host of other onerous regulations, are unnecessarily driving out conventional fuels as part of America's energy mix. The consequences are higher energy prices for families and a contraction of our nation's economic growth for no noticeable impact on the earth's temperature as major developing countries like India and China repeatedly have said they would not cut economic growth to curb GHG emissions. Do you agree with former EPA administrator Lisa Jackson that unilateral actions on greenhouse gas emissions will not significantly impact global emissions and thus have a negligible effect on climate change?

In order to achieve the reductions in greenhouse gas emissions that science indicates are necessary to address the most severe impacts of climate change, all major emitting countries will need to take action. As I indicated in my testimony before the Committee, I believe the United States can achieve meaningful reductions in greenhouse gas emissions through common sense steps, such as the light duty vehicle emission and fuel economy standards established by this Administration, that are fully consistent with domestic economic growth. I also believe U.S. leadership in reducing carbon pollution helps to encourage greater action from other countries and enhances U.S. leverage in international climate discussions.

Under EPA's Mandatory Reporting Rule for GHG Emissions, EPA has developed a timeframe for categories of GHG emitters to report GHG emissions data. Some companies are currently working on submitting 2012 GHG emission data to EPA and others are on a deferred schedule. EPA issued a memorandum dated December 17, 2012 (attached) which concluded that because some of the data required to be reported may already be in the public arena and therefore EPA would not accord it Confidential Business Information (CBI) protection. As you might expect, some view this conclusion as premature, and one that should be made at on a case by case basis during the data collection period. In particular, certain industries for which GHG data reporting is currently deferred are very concerned that sensitive business information and trade secrets will not be adequately protected by EPA once their data must be reported. Do you agree that certain sensitive information and trade secrets reported under the greenhouse gas reporting rule should be treated as CBI and protected? Will EPA reconsider the approach announced in its December 17, 2012 memorandum? How does EPA intend to use all of the GHG data being collected under the rule?

Data submitted under the GHG Reporting Program (GHGRP) that has been determined to be confidential business information should be protected under the provisions of 40 CFR part 2, Subpart B. In response to comments raised by stakeholders, EPA deferred reporting of certain data elements for 3-5 years in order to provide time for the agency to evaluate confidentiality concerns (76 FR 53057, August 2011). When EPA deferred reporting for those data elements, the agency said it would conduct a sensitivity analysis of the data and the 2012 memo sets forth the results of our analysis for the data elements deferred until 2013. EPA has not received any specific stakeholder feedback or additional information that would warrant reconsideration of that analysis. EPA plans to propose a rulemaking for

notice and comment related to the inputs whose reporting deadline was deferred until 2015. The GHGRP was mandated by Congress in the FY2008 Consolidated Appropriations Act and the data will inform policy decisions.

What health benefits are projected to occur as a result of an existing source NSPS - that is, benefits other than the co-control of criteria pollutants or NESHAPS?

At this time, EPA is working to finalize the proposed NSPS for new power plants. The agency is not currently developing any existing source GHG regulations for power plants. As a result, we have performed no analysis that would identify specific health benefits from establishing an existing source program.

What plans does EPA have to adopt new GHG regulations for existing power plants? Specifically, has your office prepared draft regulations, what regulatory options are you considering, and what is the likely timeline for such action?

EPA is not currently developing any existing source GHG regulations for power plants. Accordingly, the Office of Air and Radiation has not prepared draft regulations. The office's current work is focused on reviewing the comments submitted in response to the proposed carbon pollution standard for new power plants under section 111(b).

Once EPA finalizes its proposed NSPS for GG Emissions for New Stationary Sources: Electric Generating Units (EGUs), does the agency intend to propose regulations under Section 111(d) of the Clean Air Act to establish procedures whereby states set standards of performance for GHG emissions from existing EGUs in their jurisdiction? If so, does EPA agree that it can only issue guidance to the states on regulating GHG emissions from power plants and that each state must submit a plan to the agency that sets standards for performance for existing power plants within the state? Will EPA discuss its plans for the guidance with states prior to issuing such guidance?

EPA is not currently developing any existing source GHG regulations for power plants. As a general matter, the provisions of section 111(d)(1) are plain on their face to the extent that they require EPA to "prescribe regulations which shall establish a procedure … under which each State shall submit … a plan which … establishes standards of performance for any existing source …." In the event that EPA does undertake action to address GHG emissions from existing power plants, the agency will ensure, as it always seeks to do, ample opportunity for the public and stakeholders to offer meaningful input on potential approaches.

Does EPA believe it has the legal authority to impose a cap and trade mechanism in place under Section 111(d) of the Clean Air Act to reduce GHG emissions from existing power plants? If so, can you please explain how the agency could do so? Please provide citations to any relevant statutes, regulations, or case law in your explanation.

I am aware that in connection with the Clean Air Mercury Rule, issued under the prior Administration, EPA took the position that section 111(d) obligations could be met through a cap-and-trade program.

EPA states that there are no costs and, concurrently, no benefits associated with the proposed rulemaking to regulate greenhouse gases from new sources. What analysis did EPA undertake to determine that there are no costs or benefits from the proposed rule?

In the preamble and supporting documents for the proposal, EPA provided an extensive discussion of this analysis of costs and benefits that was undertaken to address this question.

There is currently a project under review by EPA in Arecibo, Puerto Rico that is experiencing a lengthy

delay in obtaining a permit under the Clean Air Act. I understand that this state-of-the-art waste to energy facility meets your Agency's most stringent air emissions standards and will help to alleviate Puerto Rico's landfill emissions problem that has created so many health challenges for that island's population. The delay in permitting this facility is even stranger considering your Agency permitted a nearly identical facility in Baltimore in August 2010. That permit process, from application to final order, took only 15 months. In the present case, the permit process has extended well over 2 years and we still have not seen action. Can you explain this situation?

Response: I understand that there has been wide public interest in the proposed permit for the Energy Answers waste to energy facility. Since first proposing the permit in May 2012, the EPA held six public hearings in Arecibo, Puerto Rico. The agency extended its public comment period and ultimately reviewed over 3,000 public comments on the proposed permit. The EPA is carefully considering all comments and is preparing detailed responses to the comments.

Ms. McCarthy, your Agency is well past its statutory deadline for issuing the permit. Your delay is preventing the island of Puerto Rico from reducing greenhouse gas emissions by over 1 million tons per year, as well as creating green technology jobs for that struggling economy. Please give me a date certain when I can expect to see that permit signed.

Response: As noted above, it is my understanding that the EPA has not completed the review of public comments received on the proposed permit for the for the Energy Answers waste to energy facility. The agency is making every effort to ensure a thorough and comprehensive review prior to taking final action on the air permit.

36. Inhofe 36. Does EPA intend to propose and adopt a standard to regulate greenhouse gases from existing power plants? If so, when, and what role will states play in promulgating rules related to this new regulation?

At this time, EPA is working to finalize the proposed NSPS for new sources. The agency is not currently developing any existing source GHG regulations. In the event that EPA does undertake action to address GHG emissions from existing power plants, the agency would ensure, as it always seeks to do, ample opportunity for States, the public and stakeholders to offer meaningful input on potential approaches. In addition, as a general matter, the provisions of section 111(d)(1) are plain on their face to the extent that they require EPA to "prescribe regulations which shall establish a procedure … under which each State shall submit … a plan which … establishes standards of performance for any existing source …."

EPA has specifically exempted both modified (units that make major changes) and transitional (units that have yet to begin construction but have already secured a Prevention of Significant Deterioration (PSD) operating permit) from adhering to the proposed standard.

37. Inhofe 37. EPA has stated that it did not have the information to issue a standard for modified units – under your leadership, will EPA work to establish GHG rules for modified units?

EPA's proposed carbon pollution standard does not apply to modified sources. In the proposal, the agency stated that, at that time, EPA did not have enough information, to set a standard for modified sources.

a. Inhofe 37(a). Would such a move force EPA to apply this standard to all plants that are being forced to install major upgrades to comply with other EPA regulations, such as the Mercury and Air Toxics

Standards (MATS)?

EPA's proposed carbon pollution standard does not apply to modified sources. If EPA were to set a standard for modified sources, technologies installed by sources to comply with MATS are currently exempted under EPA regulations from triggering any such modified source standard.

b. Inhofe 37(b). Why did EPA only grant sources with a PSD permit one year to commence construction? If those sources already had permits that would prevent any more emissions than is already allowable, why did EPA force them to comply with a one year limitation?

In EPA's proposal (published in the Federal Register on April 13, 2012), EPA did not propose to apply the NSPS requirements for greenhouse gases to new coal-fired power plants that were on the verge of commencing construction, as indicated by the fact that they already had a PSD permit and would commence construction within one year of the proposal. For sources that were not on the verge of construction, EPA proposed to apply the NSPS requirements because, according to the proposal, it was reasonable to expect those sources to build in the proposed greenhouse gas emission limits. EPA received many comments on this proposal and is reviewing them closely to determine the appropriate action to take.

46. Inhofe 46. During the Administration's first term, EPA promulgated its endangerment finding and adopted GHG regulations for motor vehicles. It also proposed GHG NSPS for the power sector. What other areas of the economy can we expect GHG regulations in the second term? (Oil and gas, refineries, cement kilns, other industrial facilities) Do you have a plan for addressing GHG emissions in the rest of the economy?

EPA is currently focused on reviewing the more than 2 million comments received on its proposed carbon standards for new power plants. While the agency is evaluating GHG emissions information from a limited number of source categories, EPA has not determined that it is appropriate to regulate GHG emissions from the oil and gas sector, or from other industrial sectors. EPA has previously acknowledged that it is appropriate to issue regulations for refinery greenhouse gas emissions, but as stated in the answer to a related question, the Agency has no current plan for issuing such regulations. The agency also has previously said that it had insufficient data to regulate Portland cement facilities, and we do not have a timetable or plan for issuing GHG regulations of this sector.

47. Inhofe 47. Do you plan on issuing a GHG NSPS rule for refineries or oil and gas delivery systems? If so, when?

EPA has not made a determination that it is appropriate to regulate GHG emissions from oil and gas delivery systems. While the Agency acknowledged that it is appropriate to regulate greenhouse gas emissions from refineries, we do not have a current plan or timetable for regulating carbon pollution from refiners.

48. Inhofe 48. EPA has been petitioned to establish NAAQS for GHGs. What are your plans with respect to such a petition? Can you assure us EPA will not establish a NAAQS for GHGs? Do you agree with such a proposed approach?

Although EPA has not taken any action on the petition, I do not believe that setting a national ambient air quality standard for greenhouse gases would be advisable.

20. As Administrator, would you advocate for requiring the federal government and/or other parties to consider, under NEPA or any other environmental law, greenhouse gas emissions produced outside the United States by any good exported from the United States? If yes, can you please explain the rationale behind that position and how you believe it would impact the American economy?

Response: I believe that the NEPA process allows for the consideration of a number of factors as part of its process and that these factors can vary based on the parameters of a particular project. If confirmed, I commit that EPA will continue to use its ability to comment as part of the NEPA process in accordance with the law.

Sessions 23. Do you believe Congress intended to give EPA the authority to regulate emissions of CO2 as a "pollutant" when it enacted the Clean Air Act?

Congress in the Clean Air Act defined "air pollutant" as "any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive . . . substance or matter which is emitted into or otherwise enters the ambient air." 42 U.S.C. 7602(g). The Supreme Court in *Massachusetts v. EPA*, 549 U.S. 497 528-29 (2007), held that "greenhouse gases fit well within the CAA's capacious definition of air pollutant," as established by Congress.

Sessions 24. I am told that China is the world's largest producer of CO2, and that CO2 levels have been steadily declining in the United States in recent years. EPA Administrator Lisa Jackson testified at a July 7, 2009 Senate EPW hearing that "U.S. action alone will not impact world CO2 levels." Do you agree that, even if the United States reduces CO2 emissions in line with legislative proposals in recent Congresses, such U.S. action alone would have little or no impact on global average temperatures?

In order to achieve the reductions in greenhouse gas emissions that science indicates are necessary to address climate change, all major emitting countries will need to take action. As I indicated in my testimony before the Committee, I believe that the United States can achieve meaningful reductions in greenhouse gas emissions through common sense steps, such as the light duty vehicle emission and fuel economy standards established by this Administration, that are fully consistent with domestic economic growth. I also believe that U.S. leadership in reducing carbon pollution helps to encourage greater action from other countries and enhances U.S. leverage in international climate discussions.

Sessions 25. During the Administration's first term, EPA promulgated an endangerment finding and adopted GHG regulations for motor vehicles. It also proposed GHG NSPS for the power sector.

a. What other areas of the economy can we expect GHG regulations during your tenure as Administrator?

EPA is still in the process of reviewing comments submitted in response to the proposed carbon pollution standard for new power plants under section 111(b) and is not currently developing any existing source GHG regulations for power plants under section 111(d). The agency has previously acknowledged that it is appropriate to issue regulations for refinery greenhouse gas emissions, but has no current plan for issuing such regulations. The agency has also previously said that it had insufficient data to regulate Portland cement facilities, and EPA does not have a timetable or plan for issuing GHG regulations of this sector.

b. What standard is EPA going to apply in determining what sectors GHG regulations should apply to?

Please see the answer to question (a), above. Administrator Jackson stressed a common sense approach to the issue of GHG regulations that included focusing on the largest sources of GHG emissions; I continue to believe that general approach was correct.

c. A March 30, 2013 article in The Economist stated: "Over the past 15 years, air temperatures at the Earth's surface have been flat while greenhouse-gas emissions have continued to soar..." Is this statement correct?

Although most of the warmest years on record have occurred in the last decade, the rate of warming has, for a short time, slowed (Karl et al., 2009). It is important to recognize, however, that year-to-year fluctuations in natural weather and climate patterns can produce a period—of individual years or even individual decades—that does not follow the long-term trend (NRC, 2010; Karl et al., 2009). EPA has responded to similar comments in the record for the 2009 Endangerment Finding regarding differences between models and observed temperatures, and has found that the possible slowdown in warming over the last decade or so does not undermine the linkage between greenhouse gases and temperature over appropriately long timescales.

5. Since 2009 EPA has issued or proposed over 2,900 pages of greenhouse gas regulations and you have stated in the past your intent to pursue a "deliberate, common sense approach"[1] to regulating carbon. However, I am concerned that there are inconsistencies with this statement and EPA's actions. For example, EPA entered into a consent decree to issue greenhouse gas New Source Performance Standards for existing units by May 26, 2012. Yet EPA has not clearly stated its plans regarding regulation of existing fossil fuel power plants. I represent a state that gets approximately 70% of its electricity from coal. How do you reconcile these inconsistencies, and can you please explain what the plan really is?

With regard to power plants, EPA is still in the process of reviewing comments submitted in response to the proposed carbon pollution standard for new power plants and is not currently developing any existing source GHG regulations for power plants. It should be noted for the record that a significant portion of the regulations to which your question refers are those addressing greenhouse gas emissions from light-duty vehicles for model years 2012-2016 and2017-2025 and from heavy-duty vehicles from 2014-2018. As I stated in my testimony before the Committee, these common-sense regulations will achieve substantial oil savings and consumer cost savings, while dramatically reducing greenhouse gas emissions. Other relevant regulations include those implementing the congressionally mandated greenhouse gas reporting program, which helps to provide the general public, industry and policymakers with transparent information with regard to greenhouse gas emissions.

6. Issuing proposed greenhouse gas (GHG) New Source Performance Standards for new and existing power plants carries an additional burden, insofar as these regulations are deemed to be in effect when proposed, not when finalized. Done incorrectly, just proposing these rules has significant negative consequences for our economy. Will you commit that when the EPA is ready to address GHGs from existing fossil fuel power plants, it will issue an Advanced Notice of Proposed Rulemaking (ANPRM) that includes substantive content and a record backing up the proposal to allow industry and others to fully comment on EPA's contemplated approach before moving forward with a proposal?

EPA is not currently developing any existing source GHG regulations for power plants. In the event that EPA does undertake action to address GHG emissions from existing power plants, the agency would

ensure, as it always seeks to do, ample opportunity for States, the public and stakeholders to offer meaningful input on potential approaches.

22. Nebraska is a leading ethanol producer, and I want to ensure that my constituents continue to have the ability to purchase Flex Fuel Vehicles (FFVs) and fuel up with higher ethanol blends. Do the new Corporate Average Fuel Economy (CAFE)/greenhouse gas rule and accompanying guidance appropriately incentivize production of FFVs? If so,how? Is the incentive on par with that of electric vehicles?

Through Model Year (MY) 2015, the CAFE and GHG programs treat FFVs the same, i.e., they receive the same credits under the GHG program that FFVs have long received under the CAFE program. Beginning in MY2015, the CAFE credits begin a phase-out period under the Energy Independence and Security Act (EISA) of 2007. Starting in MY2016, EPA's GHG program provides credits for FFVs based on the actual use of E85 and the related GHG emissions benefits of ethanol combustion relative to gasoline. EPA believes that the GHG and CAFE credits will continue to provide an incentive to automakers to continue to build FFVs. While the FFV credits are not as large as the temporary and limited incentives that have been provided for the production of electric vehicles, the FFV credits do not phase-out over time and may actually provide stronger incentives, as the incremental costs of FFVs are much lower than for electric vehicles.

2. The forestry sector is very important in my state. It provides 120,538 jobs, $4 billion in payroll, $11.8 billion in sales and $4.15 billion toward Oregon's state GDP.

An important decision made under your direction was the three-year deferral of "biogenic GHG emissions" from biomass under the Tailoring Rule. Until the deferral, the Tailoring Rule would have treated biogenic GHG emissions the same as GHG emissions from fossil energy. The decision by your office at EPA was to defer the regulation of biomass under the Tailoring Rule to take a closer look at the science and policy. My understanding is that EPA has now completed the Biogenic Carbon Accounting Framework, and that framework has been reviewed by an independent Scientific Advisory Board.

Now we need a final policy that fully recognizes the carbon benefits of biomass energy, and we need it done before the deferral period you put in place expires in July of 2014. When the deferral expires, we revert back to the policy in the original Tailoring Rule.

When do you intend to issue a proposal?

Response: EPA does not have a schedule for a proposed rule; however, I intend for the Agency to undertake the process before the July 2014 deferral expiration date. The Agency will keep you and your staff updated on the process as we work to move forward in a way that is appropriate and takes into consideration the requirements of the Clean Air Act and existing regulations as well as the results of the scientific study.

NAAQS:

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

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

standards. The Court's reasoning is found at 531 U.S. 464-472.

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

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

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

The over 40-year history of the Clean Air Act is one in which reducing harmful air pollution has gone hand in hand with economic growth and job creation. EPA's benefits assessments focus on the benefits associated with reductions in air pollution. EPA acknowledges in the regulatory impact analyses that there are unquantified benefits and disbenefits that are not included in our estimates of total net benefits.

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

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

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

The Clean Air Act directs the Administrator of EPA to set primary standards that, in the Administrator's judgment, are requisite to protect public health, including the health of sensitive subpopulations, with an adequate margin of safety and secondary standards that are requisite to protect the public welfare.

The Clean Air act requires EPA to periodically review the body of scientific evidence on the effects of air pollution on public health and welfare, and, based on that, determine whether to revise the standards to meet the requirements of the Act. This is required every five years. See response to the related question for discussion of the public health policy judgments involved in setting a primary NAAQS. OMB review of federal regulations occurs in accordance with Executive Order 12866.

The ability for states to develop approvable implementation plans or other submissions, such as Exceptional Events demonstrations, has been hindered by: EPA's inability to provide timely guidance; undefined processes that do not clearly establish the criteria EPA will use to evaluate submissions; and, in some cases, the lack of a dispute resolution processes. If confirmed, what are your plans to correct these deficiencies?

EPA is committed to working collaboratively with our state, local, and tribal co-regulators to produce timely NAAQS implementation guidance. In fact, we are in the final stages of drafting Interim Exceptional Events Implementation Guidance, which clarifies and provides examples of information that air agencies can include in their exceptional event demonstration submittals and identifies mechanisms that air agencies can use to resolve disagreements regarding exceptional event non-concurrence on submittal packages. We have had extensive stakeholder involvement during the development of this guidance, so we trust that the final product will address some of your specific concerns.

What is the communication between stationary and mobile source emissions staff? How do you reconcile requirements to produce new fuels (such as the proposed Tier 3 gasoline sulfur reduction) with requirements to reduce emissions at refineries? Are these contradictory or do you believe that both can be done? For example, don't gasoline sulfur reduction processes increase refinery greenhouse gases, Nitrogen Oxides and Particulate Matter emissions?

Stationary and mobile source emissions staff coordinate closely with regard to interactions between regulatory actions in their respective spheres. For example, the proposed Tier 3 standards will play a critical role in state and local agencies' plans for attaining and maintaining the ozone NAAQS. Joint stationary and mobile source modeling indicates that, in the absence of additional controls such as the Tier 3 standards, many areas would continue to have air pollution levels that exceed the existing health-based National Ambient Air Quality Standard (NAAQS) in the future. The proposed Tier 3 rule includes a detailed consideration of potential impacts on refinery emissions. For example, the relatively small projected increase from CO2 emissions from refineries is expected to be offset through reductions in other greenhouse gas emissions from improved operation of vehicle catalysts as a result of the proposed Tier 3 rule.

EPA has been petitioned to establish National Ambient Air Quality Standards (NAAQS) for GHGs. What are your plans with respect to such a petition? Can you assure us EPA will not establish a NAAQS for GHGs?

Although EPA has not taken any final action on the petition, I do not believe that setting a national ambient air quality standard for greenhouse gases would be advisable.

On one of his first days in office, the President signed a memorandum entitled "Transparency and Open Government" in which he committed to create "an unprecedented level" of openness and transparency. The President correctly stated "transparency promotes accountability". Given the President's commitment, will you promise today to release to the American public all of the underlying research data supporting the PM and ozone benefit studies that your office has used to

support such costly regulations? Given the hundreds of billions of dollars in real costs that EPA estimates will result from these regulations, doesn't the public have a right to have the data in order to assess its validity?

EPA is committed to transparency with regard to the scientific bases of agency decision making. In setting the National Ambient Air Quality Standards (NAAQS) and in assessing health benefits anticipated from air pollution regulations, EPA relies on the scientific studies that are published in the peer-reviewed literature. EPA provides the information used in regulatory decisions, including the epidemiological studies, in the publicly available docket accompanying each rulemaking. It is important to understand that the underlying data you are requesting for each epidemiological study consist of three distinct datasets, which the researchers link together in order to estimate the relative risks of exposure to air pollution: (1) air quality data; (2) health event data, which in these studies are data from the National Death Index; and (3) individual health data that are gathered through questionnaires completed for each study participant in the cohort. The questionnaires for these studies requested very detailed personal information, including questions on residential location, age, race, educational attainment, body mass index, alcohol consumption, smoking history, occupational exposure to pollution, and medical history. The complete, linked set of data underlying these studies is held by the scientific researchers that conducted the relevant research, not EPA. The availability of some of these datasets is subject to certain protections against disclosure of medical or similar information that could be used to identify a particular person in a research study.

EPA is on schedule to propose a new ozone NAAQS this December and finalize it in September 2014. We understand that EPA's Clean Air Science Advisory Committee (CASAC) has recommended that the standard be set between 60 and 70 ppb based on recent health studies and has asked EPA to evaluate a standard at 55 ppb. We are concerned about the economic impacts of any change to the standard (EPA has estimated the costs of a 60 ppb standard to be $90 billion/year). Can you identify the language in Section 109 of the Clean Air Act that prohibits EPA from considering costs? Have you seen any of the maps of projected nonattainment areas at 60 ppb? Most of the country would be nonattainment, and the ability of the regulated community to obtain a permit for the construction or expansion of any new manufacturing or power generation facility could be compromised. I understand such impacts are being felt right now from the rules your department issued in December to tighten standards for particulate matter

The U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), that in setting standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, EPA may not consider the costs of implementing the standards.

In 2010, EPA proposed to reconsider the existing ozone NAAQS, an effort the Administration ultimately abandoned. The standards your office proposed could have potentially tripled the number of ozone non-attainment counties. In fact, many of America's most pristine national parks would have failed those standards. Do you continue to believe that it make sense to pursue a policy that puts the Grand Canyon and Yellowstone National park in non-attainment? How would developed areas ever comply with such a standard, if wilderness areas cannot?

The Clean Air Act directs EPA to set NAAQS that are requisite to protect public health with an adequate margin of safety and the public welfare from any known or anticipated adverse effects of air pollutants. These standards are based on consideration of the most up- to-date scientific evidence and technical

information, advice from CASAC, and public comments. As part of the ongoing review of the ozone NAAQS, EPA will evaluate the extent to which it is appropriate to revise these standards in order to protect against adverse public health and welfare effects.

EPA's own estimates anticipated that the revised ozone NAAQS that your office proposed in 2010 would have cost American manufacturing, agriculture and other sectors over $90 billion per year. President Obama halted that effort, citing "regulatory burdens and regulatory uncertainty, particularly as our economy continues to recover." As EPA is now in the process of again reviewing the ozone NAAQS, do you agree with the President that the Administration should be mindful of the potential regulatory burden that revised standards could have on a recovering U.S. economy?

EPA is prohibited by law from considering costs of implementation in setting NAAQS. Specifically, the U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001) that in setting standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, the EPA may not consider the costs of implementing the standards. However, the Clean Air Act gives state and local officials in nonattainment areas the ability to consider several factors, including employment impacts and costs of controls, when designing their state implementation plans to implement the NAAQS.

EPA's own estimates anticipated that the revised ozone NAAQS that your office proposed in 2010 would have cost American manufacturing, agriculture and other sectors over $90 billion per year. We are driving manufacturing out of the U.S., to other countries with lax environmental standards. In analyzing these proposed regulations, does EPA consider the effects of driving manufacturing offshore, to countries with little or no environmental controls?

EPA is prohibited by law from considering costs of implementation in setting NAAQS. Specifically, the U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001) that in setting standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, the EPA may not consider the costs of implementing the standards. However, the Clean Air Act gives state and local officials in nonattainment areas the ability to consider several factors, including employment impacts and costs of controls, when designing their state implementation plans to implement the NAAQS.

It seems that EPA tends to look at regulations it promulgates in a vacuum and does not consider how a particular regulation affects another. For example, in order for refiners to remove sulfur from gasoline under the new Tier 3 rule, they will be reducing sulfur, but in exchange they will also be increasing their GHGs. Additionally, the lowering of the ozone NAAQS will also result in an energy penalty for refiners, as their RTOs require more natural gas usage. Why does the agency not consider these types of conflicts before moving forward with regulations that conflict with one another?

EPA works to take a comprehensive approach to its regulations, and offices within the agency coordinate closely to ensure that regulations achieve complementary health benefits and pollution reductions whenever possible. For example, the proposed Tier 3 standards will play a critical role in state and local agencies' plans for attaining and maintaining the ozone NAAQS. Additionally, the proposed Tier 3 implementation schedule is aligned with the timeframe for EPA's program for reducing greenhouse gas (GHG) emissions from light-duty vehicles starting in model year 2017. Further, the relatively small projected increase from CO2 emissions from refineries is expected to be offset through reductions in other greenhouse gas emissions from improved operation of vehicle catalysts as a result of

the proposed Tier 3 rule.

Do you believe that the NAAQS review and Implementation process will ever catch up to its statutory 5 year deadlines for review? what steps would you take to have the timing of the NAAQS program comply with the Clean Air Act?

EPA is continuing to work to streamline its NAAQS review process in order to comply with the five-year review cycle established in the Clean Air Act. EPA's goals are to maximize the efficiency and transparency of the process while maintaining its scientific and technical integrity.

If confirmed, will you commit to address NAAQS implementation issues? Can you give the Committee a schedule of concrete actions you will undertake and the deadlines for those actions? Are you open to delaying the effective date of the PM NAAQS until EPA, states and permittees have the right implementation tools in place?

If confirmed, I will continue to be committed to addressing NAAQS implementation issues. EPA can provide the committee a planned schedule of NAAQS-related rules and policy guidance documents. In general, the agency's objective is to issue rules and policy guidance as quickly as practicable after a NAAQS has been promulgated to facilitate timely state planning. To avoid any delay in achieving the important health benefits of the PM NAAQS, EPA provided a transition mechanism in the final 2012 PM NAAQS rule that allowed for grandfathering of qualifying PSD permit applications by exempting them from new requirements associated with the revised NAAQS. This was the most urgent immediate concern because the regulations otherwise require that PSD permits address all NAAQS that are in effect as of the date of permit issuance. For permit actions that do not qualify for the grandfathering exemption, prior to the effective date of the 2012 PM NAAQS EPA issued draft guidance on performing required air quality impact analyses for PM2.5 under the PSD program. In addition to these two actions, the agency continues to work diligently on other aspects of NSR/PSD implementation for PM2.5 to ensure that permitting processes are not disrupted or delayed by the revised NAAQS.

In postponing issuance of the revised NAAQS, the President specifically cited economic reasons. Does this conform to EPA's past insistence that they are prohibited by the Clean Air Act from considering economic and other concerns in the setting of standards?

On September 2, 2011, President Obama issued a statement on the ozone NAAQS, noting that EPA was engaged in updating its review of the science underlying the 2008 ozone NAAQS, as part of the ongoing periodic review of the Ozone NAAQS, and requested that EPA withdraw from interagency review the draft final rule addressing the reconsideration of the 2008 ozone NAAQS. On that same day, OMB returned to EPA the draft final rule, stating that "the draft final rule warrants [the Administrator's] reconsideration." Letter from Cass R. Sunstein, OMB, Administrator, Office of Information and Regulatory Affairs to Administrator Lisa R. Jackson, EPA. In returning the rule, OMB stated that President Obama had requested that the draft rule be returned as he did "not support finalizing the rule at this time." Consistent with the President's statement, EPA is continuing with its statutorily mandated periodic review of the 2008 ozone NAAQS. In that ongoing review, EPA will consider the current state of the science, which will include the new science not considered as part of the 2008 rule, as well as the science taken into account in previous reviews. Given that, EPA intends to conclude its rulemaking on reconsideration of the 2008 ozone NAAQS in conjunction with its ongoing review of the ozone NAAQS.

A former Administration official (one of your former colleagues) at a panel during the Society of Environmental Journalists meeting in Miami in the Fall of 2012 said that the President committed an

impeachable offense by explicitly linking the postponement of the revised ozone NAAQS with the economic recovery. Can you comment?

On September 2, 2011, President Obama issued a statement on the ozone NAAQS, noting that EPA was engaged in updating its review of the science underlying the 2008 ozone NAAQS, as part of the ongoing periodic review of the Ozone NAAQS, and requested that EPA withdraw from interagency review the draft final rule addressing the reconsideration of the 2008 ozone NAAQS. On that same day, OMB returned to EPA the draft final rule, stating that "the draft final rule warrants [the Administrator's] reconsideration." Letter from Cass R. Sunstein, OMB, Administrator, Office of Information and Regulatory Affairs to Administrator Lisa R. Jackson, EPA. In returning the rule, OMB stated that President Obama had requested that the draft rule be returned as he did "not support finalizing the rule at this time." Consistent with the President's statement, EPA is continuing with its statutorily mandated periodic review of the 2008 ozone NAAQS. In that ongoing review, EPA will consider the current state of the science, which will include the new science not considered as part of the 2008 rule, as well as the science taken into account in previous reviews. Given that, EPA intends to conclude its rulemaking on reconsideration of the 2008 ozone NAAQS in conjunction with its ongoing review of the ozone NAAQS.

What will you do to ensure PSD permits are timely, especially considering that NAAQS requirements are constantly changing?

In October 2012, EPA issued an internal memo to the Regional Office to clarify expectations and responsibilities for timely processing of PSD permits to assure compliance with the CAA requirement for EPA action within one year of an application being complete. While this guidance only applies to PSD permits issued by EPA itself or by states issuing PSD permits under a delegation agreement with EPA, EPA recommends that state permitting offices consider following the approaches outlined in this memo if their procedural regulations are comparable to EPA's. EPA's recent final rule revising the annual PM2.5 NAAQS provided for grandfathering of in-progress PSD permit applications, applicable to both EPA-issued and state-issued permits, which will help avoid delays in issuing permits. EPA will consider adopting similar provisions as warranted whenever the agency changes NAAQS requirements.

How will you ensure that, given the EPA and states' budgetary pressures, facilities are able to get permits and begin operating as soon as possible? Do you expect to develop or modify guidance to State permitting offices?

In October 2012, EPA issued an internal memo to the Regional Office to clarify expectations and responsibilities for timely processing of PSD permits to assure compliance with the CAA requirement for EPA action within one year of an application being complete. While this guidance only applies to PSD permits issued by EPA itself or by states issuing PSD permits under a delegation agreement with EPA, EPA recommends that state permitting offices consider following the approaches outlined in this memo if their procedural regulations are comparable to EPA's. EPA's recent final rule revising the annual PM2.5 NAAQS provided for grandfathering of in-progress PSD permit applications, applicable to both EPA-issued and state-issue permits, which will help avoid delays in issuing permits.

39. Inhofe 39. Last June, EPA proposed to lower standards for fine particulate matter from 15.0 micrograms to 12 to 13 micrograms. EPA also took comment on levels as low as 11, but did not take comment on retaining the current standard at 15, or on other possible levels. Given that there is uncertainty in different studies and given that EPA received lengthy comments during its review process arguing against revising the 15 microgram standard – why did EPA not solicit comments on

maintaining the current standard? Do you believe EPA is limiting its ability to consider alternative science by only taking comment on options that would substantially lower fine particulate standards and other NAAQS?

In formulating proposed and final decisions on the PM NAAQS, the EPA considered the available scientific evidence, advice of CASAC and extensive public comments. Based on these considerations, the agency concluded that the previous suite of primary PM2.5 standards was not requisite to protect public health with an adequate margin of safety, and that revision was needed to increase public health protection. In the proposal EPA explained in detail its reasons for believing the then current annual standard of 15 micrograms/cubic meter was inadequate and needed to be revised to a level between 11-13 micrograms/cubic meter. EPA's proposal invited comment on all elements of the proposal, including these proposed judgments. The agency received – and considered – comments supporting retaining the standard at a level of 15 ug/m3.

40. Former EPA policy advisor Lisa Heinzerling said that the reason given for the withdrawal of the ozone standard was unlawful. Do you agree? Could the President instruct EPA where to set national ambient air quality standards based on policy considerations, or could he delay a decision?

Response: On September 2, 2011, President Obama issued a statement on the ozone NAAQS, noting that EPA was engaged in updating its review of the science underlying the 2008 ozone NAAQS, as part of the ongoing periodic review of the Ozone NAAQS, and requested that EPA withdraw from interagency review the draft final rule addressing the reconsideration of the 2008 ozone NAAQS. On that same day, OMB returned to EPA the draft final rule, stating that "the draft final rule warrants [the Administrator's] reconsideration." Letter from Cass R. Sunstein, OMB, Administrator, Office of Information and Regulatory Affairs to Administrator Lisa R. Jackson, EPA. In returning the rule, OMB stated that President Obama had requested that the draft rule be returned as he did "not support finalizing the rule at this time."

41. OMB cited Executive Order 13563 in its 2011 letter to EPA on the ozone NAAQS and stated that EPA should avoid "inconsistent, incompatible, or duplicative" regulations. In EPA's most recent E.O. 13563 statement on the PM NAAQS, however, the Agency only cites the fact that it performed a cost-benefit analysis.

a. Why did EPA not perform a regulatory overlap analysis?

b. If you are confirmed, how will you instruct EPA to consider whether NAAQS, in particular, may be duplicative of all the other EPA regulations that impose direct standards on powerplants, major industrial facilities and mobile sources?

The PM NAAQS are not "inconsistent, incompatible, or duplicative" of other regulations. The reference to E.O. 13563 in the September 2, 2011 letter from OMB concerned the unique circumstances where the proposed rulemaking to reconsider the 2008 ozone NAAQS was occurring at the same time EPA was conducting the required 5-year periodic review of the science and the ozone NAAQS. That is not the case with the PM NAAQS rulemaking. The NAAQS – promulgation and periodic review of which is required by the Clean Air Act – focus on the identification of pollution concentrations in the ambient air that are necessary to protect public health and welfare. The Clean Air Act requires states to adopt and implement State Implementation Plans that meet the requirements of the Act, including the requirement to achieve the NAAQS. The Clean Air Act also requires the EPA to establish federal emission standards applicable to sources such as power plants, industrial sources, and mobile sources, which in

many instances help states to meet the PM (and other) NAAQS.

48. Inhofe 48. EPA has been petitioned to establish NAAQS for GHGs. What are your plans with respect to such a petition? Can you assure us EPA will not establish a NAAQS for GHGs? Do you agree with such a proposed approach?

Although EPA has not taken any action on the petition, I do not believe that setting a national ambient air quality standard for greenhouse gases would be advisable.

Sessions 12. Air quality in the United States has improved significantly over the past 40 years. The Clean Air Act and the clean air laws of the States deserve great credit for these improvements, as do the voluntary efforts of millions of Americans and businesses. Air quality is not a political issue. We all want our friends, families, and fellow Americans to breathe clean air. A recent report about Alabama emissions[1] found that since 1999:

a. NOx emissions have dropped more than 35% overall—and more than 65% for coal-fired power plants. Do you agree that, even without additional new regulations from EPA on NOx, this downward trajectory will continue?

b. SO2 emissions have dropped more than 50% overall—and more than 60% for coal-fired power plants. Do you agree that, even without additional new regulations from EPA on SO2, this downward trajectory will continue?

c. PM2.5 emissions have decreased by more than 30% overall. Do you agree that, even without additional new regulations from EPA on PM2.5, this downward trajectory will continue?

d. Ozone levels in Alabama are also on a downward trend. Do you believe an even tighter ozone standard is necessary? Did you support EPA's decision to reconsider the ozone standard in 2011, and did you agree with the President's decision to forego changing the ozone standard at that time?

e. For these pollutants, the numbers are on a downward trajectory even without new EPA air regulations regarding those pollutants. Do you agree?

Although emissions are likely to continue to decline as state and federal control programs already 'on the books' continue to be implemented, it is not at all clear that, without additional state or federal efforts, emissions would continue to decline in perpetuity. It also is possible that, absent additional state or federal efforts, emissions could increase depending on a number of factors. Great progress has been made to reduce emissions considerably since the 1970s, including in Alabama, but more work remains to be done to protect public health.

Under President Obama's leadership, the EPA has worked to ensure health protections for the American people, and has made tremendous progress to ensure that Clean Air Act standards protect all Americans by reducing our exposures to harmful air pollution. In accordance with the requirements of the Clean Air Act, EPA currently is engaged in reviewing the ozone NAAQS and the science underlying these standards. Given the importance of this decision, it makes sense to ensure that the agency gives full consideration to all of the scientific evidence that is available since the conclusion of the last review in 2008. Any decisions as to whether to revise the ozone standard will be based on the available scientific evidence, exposure/risk information, the advice of CASAC, and public comments. The reconsideration will be concluded in conjunction with the ongoing review.

Sessions 15. States justifiably should expect that, when reductions in air pollutants result in areas transitioning from non-attainment to attainment for the air quality standards, this success should be recognized by EPA quickly by completing the formal re-designations. My understanding is that EPA

has often taken several years to complete this process.

a. Do you agree that clean air attainment designations should be formally adopted as soon as possible when the data show that air standards have been met? b. What will you do to insure that EPA acts quickly to complete re-designation actions, given the immediate job growth implications of these actions?

When areas in a state attain the standards, states have to submit plans to satisfy certain Clean Air Act requirements. When valid plans documenting these requirements are submitted, EPA generally moves to approve these in a timely manner. There have been cases where litigation about programs that the states have relied on to control air quality has created uncertainty and delayed EPA's ability to take these actions. However, the agency is committed to keeping statesinformed in these circumstances, moving quickly to resolve issues, and processing redesignations in a timely manner.

b. It has been said that NOx and SO2 from Electric Utility Fuel Combustion sources show significant decreases over time as a result of the Acid Rain Program, NOx Budget Trading Program, and CAIR control implementation. Do you agree?

These programs have been very successful in reducing SO2 and NOx emissions from the U.S. power sector. Recent EPA air programs continue and complement the Acid Rain Program's (ARP) history of emission reductions. In 2011, sources in the ARP and the Clean Air Interstate Rule (CAIR) SO2 annual program reduced SO2 emissions by over 11 million tons (a 71 percent reduction) from 1990 levels (before ARP implementation). Similarly, sources in the ARP and CAIR NOx annual program emitted 4.4 million fewer tons of NOx (a 60 percent reduction) in 2011 than in 1990.

Wicker 1. Should our nation's steady progress in making reductions to air pollution be considered in the NAAQS revision process?

While great progress has been made in achieving national air quality standards, air pollution levels remain unhealthy in numerous areas of the country. The Clean Air Act requires EPA, every five years, to review the body of scientific evidence on the effects of air pollution on public health and welfare, and, based on that, determine whether to revise the standards to meet the requirements of the Act.

Wicker 2. NAAQS regulations are purely to benefit public health and not economic cost, but has the EPA considered how health is negatively impacted by the job losses caused by these regulations?

The over 40-year history of the Clean Air Act is one in which reducing harmful air pollution has gone hand in hand with economic growth and job creation. EPA's mission is protecting Americans from pollution and its adverse health and environmental effects, including through implementation of Clean Air Act's requirements in accordance with the law and the best available science. Congress mandated that the NAAQS be set based on a scientific assessment of the effects of relevant air pollution on public health and welfare. The air quality standards must be set based on science without regard to costs of implementing pollution controls to achieve the standards. Costs are considered during implementation of the standards.

Wicker 4. Can the President tell EPA where to set national ambient air quality standards based on policy considerations?

a. Since the President directed EPA not to reconsider the 2008 ozone standard, can he also direct EPA to take additional time to consider revisions to NAAQS?

The Clean Air Act requires EPA periodically (every five years) to review the body of scientific evidence on the effects of air pollution on public health and welfare, and based on that determine whether to revise

the standards to meet the requirements of the Act. In the rulemaking to reconsider the 2008 ozone NAAQS, the President did not instruct EPA where to set the ozone standard; instead, his request concerned the timing of the reconsideration, which is a separate rulemaking from the ongoing, five-year periodic review

On September 2, 2011, President Obama issued a statement on the ozone NAAQS, noting that EPA was engaged in updating its review of the science underlying the 2008 ozone NAAQS, as part of the ongoing periodic review of the Ozone NAAQS, and requested that EPA withdraw from interagency review the draft final rule addressing the reconsideration of the 2008 ozone NAAQS. On that same day, the Office of Management and Budget (OMB) returned to EPA the draft final rule, stating that "the draft final rule warrants [the Administrator's] reconsideration." Letter from Cass R. Sunstein, OMB, Administrator, Office of Information and Regulatory Affairs to Administrator Lisa R. Jackson, EPA. In returning the rule, OMB stated that President Obamahad requested that the draft rule be returned as he did "not support finalizing the rule at this time."

Consistent with the President's statement, EPA is continuing with its statutorily mandated periodic review of the 2008 ozone NAAQS. In that ongoing review, EPA will consider the current state of the science, which will include the new science not considered as part of the 2008 rule, as well as the science taken into account in previous reviews. Given that, EPA intends to conclude its rulemaking on reconsideration of the 2008 ozone NAAQS in conjunction with its ongoing review of the ozone NAAQS.

Wicker 7. Do you believe that the NAAQS review and implementation process will ever catch up to its statutory 5 year deadlines for review? What steps would you take to have the timing of the NAAQS program comply with the Clean Air Act?

EPA is continuing to work to streamline its NAAQS review process in order to comply with the five-year review cycle established in the Clean Air Act. The agency's goals are to maximize the efficiency and transparency of the process while maintaining its scientific and technical depth and integrity

Wicker 8. Please identify language in Section 109 of the Clean Air Act that specifically prohibits the consideration of costs in the setting of National Ambient Air Quality Standards?

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

Wicker 9. As part of the standard setting process, is EPA prevented from comparing the health and other effects of a considered NAAQS standard with the health and other effects of unemployment and economic dislocation?

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

emissions.

15. Funding for mitigation activities related to ozone is currently tied to "non-attainment" status. Therefore, communities such as the Omaha metro area, which are currently in "attainment" but are trying to be pro-active and address ozone-forming emissions prior to violating air quality standards, have little financial assistance available. This places communities in the unenviable situation of having to violate air standards in order to become eligible for additional funding. EPA recently developed the Ozone Advance program to attempt to provide funds for metro areas, such as the Omaha region. Would you take proactive measures, such as participation in Ozone Advance, into consideration when designating whether a region will be deemed "non-attainment"? And would you champion opportunities to provide funding for communities that are in attainment?

Participation in Ozone Advance can help areas maintain air quality that meets the health standards. EPA is currently providing technical assistance to participants in the Advance Program but has not offered direct funding to participants. However, I have been and will continue to be a strong advocate for providing support at the community level, including EPA assistance and funding, to the extent possible given budget constraints.

17. The EPA Clean Air Scientific Advisory Committee (CASAC) last recommended the Ozone standard be set at a range between 60 and 70 parts per billion (ppb). If the standard were set at 60 parts per billion, the vast majority of the United States—including the Nebraska Panhandle (due to emissions from the Denver metro area), one of the most sparsely populated regions of the United States—would be in violation of the standard. Many metro areas who struggled for years to attain the standard set in 1997 now fear the standard will be set at an unrealistic level that will only result in perpetual nonattainment status. How would you apply common sense and reasonableness in setting air quality standards? Do you think that there are diminishing returns of further reducing air quality standards past a certain point?

Response: EPA is prohibited by law from considering costs of implementation in setting NAAQS. Specifically, the U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001) that in setting standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, the EPA may not consider the costs of implementing the standards. However, the Clean Air Act gives state and local officials in nonattainment areas the ability to consider several factors, including employment impacts and costs of controls, when designing their state implementation plans to implement the NAAQS.

1. EPA plans to finalize nonattainment designations in June 2013 for the revised sulfur dioxide national ambient air quality standard. EPA has proposed a nonattainment designation for Yellowstone County, Montana, where almost 1,000 Montanans work at the three local oil refineries. Given the status of documented anomalies in the county's 2010 monitored emissions that appear unrepresentative of recent and projected emissions trends, will you commit to work closely with me on Yellowstone County's final designation?

Response: Yes

Ozone NAAQS

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

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

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

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

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

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

What is the communication between stationary and mobile source emissions staff? How do you reconcile requirements to produce new fuels (such as the proposed Tier 3 gasoline sulfur reduction) with requirements to reduce emissions at refineries? Are these contradictory or do you believe that both can be done? For example, don't gasoline sulfur reduction processes increase refinery greenhouse gases, Nitrogen Oxides and Particulate Matter emissions?

Stationary and mobile source emissions staff coordinate closely with regard to interactions between regulatory actions in their respective spheres. For example, the proposed Tier 3 standards will play a critical role in state and local agencies' plans for attaining and maintaining the ozone NAAQS. Joint stationary and mobile source modeling indicates that, in the absence of additional controls such as the Tier 3 standards, many areas would continue to have air pollution levels that exceed the existing health-based National Ambient Air Quality Standard (NAAQS) in the future. The proposed Tier 3 rule includes a detailed consideration of potential impacts on refinery emissions. For example, the relatively small projected increase from CO2 emissions from refineries is expected to be offset through reductions in other greenhouse gas emissions from improved operation of vehicle catalysts as a result of the proposed Tier 3 rule.

EPA is on schedule to propose a new ozone NAAQS this December and finalize it in September 2014. We understand that EPA's Clean Air Science Advisory Committee (CASAC) has recommended that the standard be set between 60 and 70 ppb based on recent health studies and has asked EPA to evaluate a standard at 55 ppb. We are concerned about the economic impacts of any change to the standard (EPA has estimated the costs of a 60 ppb standard to be $90 billion/year). Can you identify the language in Section 109 of the Clean Air Act that prohibits EPA from considering costs? Have you seen any of the maps of projected nonattainment areas at 60 ppb? Most of the country would be nonattainment, and the ability of the regulated community to obtain a permit for the construction or expansion of any new manufacturing or power generation facility could be compromised. I understand such impacts are being felt right now from the rules your department issued in December

to tighten standards for particulate matter

The U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), that in setting standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, EPA may not consider the costs of implementing the standards.

In 2010, EPA proposed to reconsider the existing ozone NAAQS, an effort the Administration ultimately abandoned. The standards your office proposed could have potentially tripled the number of ozone non-attainment counties. In fact, many of America's most pristine national parks would have failed those standards. Do you continue to believe that it make sense to pursue a policy that puts the Grand Canyon and Yellowstone National park in non-attainment? How would developed areas ever comply with such a standard, if wilderness areas cannot?

The Clean Air Act directs EPA to set NAAQS that are requisite to protect public health with an adequate margin of safety and the public welfare from any known or anticipated adverse effects of air pollutants. These standards are based on consideration of the most up- to-date scientific evidence and technical information, advice from CASAC, and public comments. As part of the ongoing review of the ozone NAAQS, EPA will evaluate the extent to which it is appropriate to revise these standards in order to protect against adverse public health and welfare effects.

EPA's own estimates anticipated that the revised ozone NAAQS that your office proposed in 2010 would have cost American manufacturing, agriculture and other sectors over $90 billion per year. President Obama halted that effort, citing "regulatory burdens and regulatory uncertainty, particularly as our economy continues to recover." As EPA is now in the process of again reviewing the ozone NAAQS, do you agree with the President that the Administration should be mindful of the potential regulatory burden that revised standards could have on a recovering U.S. economy?

EPA is prohibited by law from considering costs of implementation in setting NAAQS. Specifically, the U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001) that in setting standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, the EPA may not consider the costs of implementing the standards. However, the Clean Air Act gives state and local officials in nonattainment areas the ability to consider several factors, including employment impacts and costs of controls, when designing their state implementation plans to implement the NAAQS.

EPA's own estimates anticipated that the revised ozone NAAQS that your office proposed in 2010 would have cost American manufacturing, agriculture and other sectors over $90 billion per year. We are driving manufacturing out of the U.S., to other countries with lax environmental standards. In analyzing these proposed regulations, does EPA consider the effects of driving manufacturing offshore, to countries with little or no environmental controls?

EPA is prohibited by law from considering costs of implementation in setting NAAQS. Specifically, the U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001) that in setting standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, the EPA may not consider the costs of implementing the standards. However, the Clean Air Act gives state and local officials in nonattainment areas the ability to consider several factors, including employment impacts and costs of controls, when designing their state implementation plans to implement the NAAQS.

EPA revised the ozone NAAQS in 2008 by adopting more stringent standards. Designations for that

standard were made last May. EPA has said that it plans to adopt a rule on the content of state plans for implementing the revised standards. The Agency has said that it will propose that rule this coming May. What is the schedule for finalizing that rule?

Once the rule proposing requirements for state plans implementing the standards is published in the Federal Register, EPA will accept public comment for at least 60-days. After carefully considering the comments received, EPA will move as quickly as possible to finalize the rule. Achieving the health benefits required by the CAA will require the combined efforts of federal, state, local, and in some cases tribal governments, each accomplishing the tasks for which it is best suited. The agency is mindful that the requirement to implement the ozone NAAQS comes at a time when many states are facing substantial resource challenges. EPA is committed to working in partnership with states and other stakeholders to share the burden of implementing the ozone NAAQS by promulgating a number of national regulations that will provide significant reductions in ozone precursors.

A tightening of the standard from .075ppb will most likely put a significant amount of new areas into non-attainment. Your Agency has even admitted during the reconsideration in 2009 that "a significant portion of the country" cannot meet EPA's proposed ozone requirements. Studies also show that if the standard is set at .060ppb that most of the counties that already have monitors would be in violation, as well as a vast majority of unmonitored areas would be in violation of the lower standard. How does EPA expect to handle the significant amount of new counties being in non-attainment, especially with some being in non-attainment for the first time?

EPA has not yet reached a decision about what revisions to the ozone standards may be appropriate in light of the current scientific evidence so it is premature to conclude that a significant number of new counties would be in non-attainment.

This year marks the end of the five year review period for the ozone national ambient air quality standard (NAAQS), which was last set in 2008. Currently, the 1997 standard is still not fully implemented and EPA has yet to resolve issues concerning the 2008 standard. Given the problems and delays in implementation, do you think EPA will recommend a further reduction in the ozone NAAQS standard? If so, what justification does the Agency have for further reducing the standard? Is it not true that air quality will continue to improve without a new ozone NAAQS?

The ongoing review of the ozone standards is part of the EPA's periodic review of the science and the NAAQS required by the Clean Air Act. Section 109(d) of the Clean Air Act requires EPA to complete a review of the science upon which the NAAQS are based and the standards themselves every five years. EPA has not yet reached a decision about what revisions to the ozone standards may be appropriate in light of the current scientific evidence.

Given EPA's issues with implementation of the 2008 standard, and that you are still finishing the work to attain the 1997 standard, do you think the Agency's implementation schedule is too aggressive considering so many areas in non-attainment are still struggling to comply with the standard set more than 15 years ago? Is the Agency required by law to reduce the ozone NAAQS following each 5 year review period?

The ongoing review of the ozone standards is part of the EPA's periodic review of the science and the NAAQS required by the Clean Air Act. Section 109(d) of the Clean Air Act requires EPA to complete a review of the science upon which the NAAQS are based and the standards themselves every five years. EPA is not required to reduce the level of the standard in each review; rather, the agency is required to

determine what standards are requisite (i.e., neither more nor less stringent than necessary) to protect public health with an adequate margin of safety.

Further reduction of the ozone standard could cost between $20 and $90 billion annually according to government estimates and if the standard were set at .060ppb, the lowest in the range EPA considered during the reconsideration in 2009, a NAM study estimated that more than 7 million jobs could be lost. When CASAC and EPA are looking at proposing a range for a new ozone NAAQS, do you consider the impact on jobs and manufacturing in the areas that could be captured under the new standard?

EPA is prohibited by law from considering costs of implementation in setting NAAQS. Specifically, the U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), that in setting standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, EPA may not consider the costs of implementing the standards. However, the Clean Air Act gives state and local officials in non-attainment areas the ability to consider several factors, including employment impacts and costs of controls, when designing their state implementation plans to implement the NAAQS.

It seems that EPA tends to look at regulations it promulgates in a vacuum and does not consider how a particular regulation affects another. For example, in order for refiners to remove sulfur from gasoline under the new Tier 3 rule, they will be reducing sulfur, but in exchange they will also be increasing their GHGs. Additionally, the lowering of the ozone NAAQS will also result in an energy penalty for refiners, as their RTOs require more natural gas usage. Why does the agency not consider these types of conflicts before moving forward with regulations that conflict with one another?

EPA works to take a comprehensive approach to its regulations, and offices within the agency coordinate closely to ensure that regulations achieve complementary health benefits and pollution reductions whenever possible. For example, the proposed Tier 3 standards will play a critical role in state and local agencies' plans for attaining and maintaining the ozone NAAQS. Additionally, the proposed Tier 3 implementation schedule is aligned with the timeframe for EPA's program for reducing greenhouse gas (GHG) emissions from light-duty vehicles starting in model year 2017. Further, the relatively small projected increase from CO2 emissions from refineries is expected to be offset through reductions in other greenhouse gas emissions from improved operation of vehicle catalysts as a result of the proposed Tier 3 rule.

In postponing issuance of the revised NAAQS, the President specifically cited economic reasons. Does this conform to EPA's past insistence that they are prohibited by the Clean Air Act from considering economic and other concerns in the setting of standards?

On September 2, 2011, President Obama issued a statement on the ozone NAAQS, noting that EPA was engaged in updating its review of the science underlying the 2008 ozone NAAQS, as part of the ongoing periodic review of the Ozone NAAQS, and requested that EPA withdraw from interagency review the draft final rule addressing the reconsideration of the 2008 ozone NAAQS. On that same day, OMB returned to EPA the draft final rule, stating that "the draft final rule warrants [the Administrator's] reconsideration." Letter from Cass R. Sunstein, OMB, Administrator, Office of Information and Regulatory Affairs to Administrator Lisa R. Jackson, EPA. In returning the rule, OMB stated that President Obama had requested that the draft rule be returned as he did "not support finalizing the rule at this time." Consistent with the President's statement, EPA is continuing with its statutorily mandated

periodic review of the 2008 ozone NAAQS. In that ongoing review, EPA will consider the current state of the science, which will include the new science not considered as part of the 2008 rule, as well as the science taken into account in previous reviews. Given that, EPA intends to conclude its rulemaking on reconsideration of the 2008 ozone NAAQS in conjunction with its ongoing review of the ozone NAAQS.

A former Administration official (one of your former colleagues) at a panel during the Society of Environmental Journalists meeting in Miami in the Fall of 2012 said that the President committed an impeachable offense by explicitly linking the postponement of the revised ozone NAAQS with the economic recovery. Can you comment?

On September 2, 2011, President Obama issued a statement on the ozone NAAQS, noting that EPA was engaged in updating its review of the science underlying the 2008 ozone NAAQS, as part of the ongoing periodic review of the Ozone NAAQS, and requested that EPA withdraw from interagency review the draft final rule addressing the reconsideration of the 2008 ozone NAAQS. On that same day, OMB returned to EPA the draft final rule, stating that "the draft final rule warrants [the Administrator's] reconsideration." Letter from Cass R. Sunstein, OMB, Administrator, Office of Information and Regulatory Affairs to Administrator Lisa R. Jackson, EPA. In returning the rule, OMB stated that President Obama had requested that the draft rule be returned as he did "not support finalizing the rule at this time." Consistent with the President's statement, EPA is continuing with its statutorily mandated periodic review of the 2008 ozone NAAQS. In that ongoing review, EPA will consider the current state of the science, which will include the new science not considered as part of the 2008 rule, as well as the science taken into account in previous reviews. Given that, EPA intends to conclude its rulemaking on reconsideration of the 2008 ozone NAAQS in conjunction with its ongoing review of the ozone NAAQS.

In the upcoming ozone NAAQS, EPA has stated that it will rely on one result from one epidemiology study to quantify mortality benefits from reductions in chronic ozone exposure when they are 11 other equally well designed epidemiology studies that suggest there is no increase in risk. Why does EPA focus only on the one positive study and the one positive result within that study to estimate benefits?

As explained in an April 10, 2013 letter sent to you by EPA on this subject (footnotes omitted):

"In developing an ISA [Integrated Science Assessment], the EPA uses a formal causal framework that provides a consistent and transparent basis for integration of scientific evidence and evaluation of the causal nature of air pollution-related health effects. This approach has been reviewed and endorsed by the Clean Air Scientific Advisory Committee (CASAC). This framework employs a five-level hierarchy that classifies the overall weight of evidence and causality using the following categorizations: causal relationship; likely to be a causal relationship; suggestive of a causal relationship; inadequate to infer a causal relationship; and not likely to be a causal relationship. Pursuant to this framework, in order to reach a determination that the weight of scientific evidence is suggestive of a causal relationship, the evidence should include "at least one high-quality epidemiologic study show[ing] an association with a given health outcome."

The previous scientific assessment for ozone in 2006 concluded that an insufficient amount of evidence existed to suggest a causal relationship between chronic ozone exposure and increased risk of mortality in humans. However, two recent studies provided new evidence for the 2013 assessment. This new evidence is consistent and coherent with the evidence from epidemiological, controlled human exposure, and animal toxicological studies for the effects of short- and long-term exposure to ozone on

respiratory effects. The current body of evidence, including these two high-quality, peer-reviewed studies that observed associations between long-term exposure to ozone and mortality, is suggestive of a causal relationship between long-term exposure to ozone and total mortality.

Your letter stated that 11 earlier studies did not find statistically significant associations between long-term exposure to ozone and mortality and that the EPA selectively relied on the one positive study to support the causality determination of "suggestive." A key explanation for the lack of associations found in most of these earlier studies is that they did not specifically assess respiratory mortality. However, unlike the earlier studies, Jerrett et al. (2009) did specifically evaluate respiratory mortality and found a statistically significant association. This finding is consistent with other studies finding associations with respiratory effects (e.g., morbidity and mortality). Because of the strength of the evidence between ozone exposure and respiratory effects, it is reasonable to find associations between long-term exposure to ozone and respiratory mortality but not other sources of mortality (e.g., all-cause, cardiovascular, and cardiopulmonary). As noted above, one high-quality epidemiological study showing an association is sufficient for a determination of "suggestive" under the EPA's causal framework, even if the results of other studies do not consistently show the same association."

Given the significant controversies surrounding the studies supporting a tightening of the ozone standard, will you commit today to taking comment on the current standard?

The review of the ozone NAAQS is ongoing and EPA is committed to following the science and the law in developing the proposal. As with prior NAAQS rulemaking, the public will have the full ability to comment on all elements of EPA's proposal and provide EPA with views on whether to retain or revise the current ozone standard.

According to recent NOAA reports, half of all the current ozone exceedances in many areas in the Western US are due to emissions from Asia. How do you plan to address this important problem?

Ozone concentrations can be affected by local, regional, international, and natural sources. EPA analyses indicate that the majority of ozone exceedances within the U.S. are driven primarily by local and regional sources of ozone precursors. For those rare cases in which international emissions can be shown to result in a violation of the NAAQS, there is a specific Clean Air Act provision (Section 179B) that can be invoked to ensure those cases do not lead to inappropriate regulatory consequences.

EPA's own modeling shows simulated ozone background levels as high as 77ppb – a level that already exceeds the current standard. There is also strong evidence from NOAA, using a more sophisticated model with higher resolution, that EPA is still under-predicting ozone background levels. How will you take into account the fact that even the NOAA model is likely to under predict true background levels due to model limitations? How will you consider these high ozone background levels in setting the standard?

As part of the ozone review, EPA will focus on the health effects evidence and related exposure and risk analyses in determining the appropriate level of the ozone standard, and will provide information on ozone background concentrations from multiple air quality models and discuss spatial and temporal variations in peak and mean concentration levels. Regarding the assertion that current air quality models are underestimating background concentrations, EPA's analyses have shown that model predictions estimate concentrations at remote sites with considerable accuracy, especially for seasonal averages compared to individual days.

Are you planning on estimating and counting ozone benefits down to zero ozone levels?

EPA does include benefits below the standard using a methodology that is consistent with the best available science. The primary NAAQS is set at a level requisite to protect public health with an adequate margin of safety – and should be neither more nor less stringent than necessary to do so. The NAAQS is not set at a zero risk level. In setting the NAAQS, EPA takes into account health effects experienced by the general population and at-risk groups (like asthmatics, children, and the elderly). While there is lower confidence in estimates of benefits of reductions in exposure occurring at very low ozone levels, the risk assessment for the current ozone NAAQS review provides estimates of total risk from exposure to ozone concentrations well below the standard and also provides information about how much of total risk occurs on days with different ozone concentrations.

How would you count benefits from reductions in exposure that occur far below the level you consider as safe?

EPA's approach to estimating the benefits of reducing ozone pollution is consistent with the best available science. The primary NAAQS is set at a level requisite to protect public health with an adequate margin of safety – and should be neither more nor less stringent than necessary to do so. The NAAQS is not set at a zero risk level. In setting the NAAQS, EPA takes into account health effects experienced by the general population and at-risk groups (like asthmatics, children, and the elderly). While there is lower confidence in estimates of benefits of reductions in exposure occurring at very low ozone levels, the epidemiological evidence suggests a generally linear response with no indication of a threshold. To reflect this, the risk assessment for the current ozone NAAQS review provides estimates of total risk from exposure to ozone concentrations well below the standard The risk assessment also provides information about how much of total risk occurs on days with different ozone concentrations.

19. Inhofe 19. EPA's own estimates anticipated that the revised ozone NAAQS that your office proposed in 2010 would have cost American manufacturing, agriculture and other sectors over $90 billion per year. These are straight-up, added costs to American manufacturing. I'm concerned that, during this slow economic recovery, we are driving manufacturing out of the U.S., to other countries with lax environmental standards. In analyzing these proposed regulations, does EPA consider the effects of driving manufacturing offshore, to countries with little or no environmental controls? Do you believe this analysis could be covered under the Section 321 review requirement of the Clean Air Act?

EPA has found no records to indicate that CAA section 321, since its inclusion in the 1977 amendments, has been interpreted by any Administration to provide for job impacts analysis of rulemakings. Section 321 does provide a mechanism for EPA investigation of particular claims of job loss related to plant closure or layoffs in response to environmental regulation, and this would presumably include plant closures resulting from alleged environmental regulation-induced overseas relocation. However, EPA could not find any records of any requests for section 321 investigation of job losses alleged to be related to regulation-induced plant closure, including overseas relocation. This is not surprising since data from the Bureau of Labor Statistics consistently indicate that labor markets are primarily influenced by other, larger factors including routine business cycles, changes in production technology, and the state of the overall economy. Nevertheless, since 2009 EPA has focused increased attention on consideration and (where data and methods permit) assessment of potential employment effects as part of the routine regulatory impact analyses (RIAs) conducted for each major rule.

40. Former EPA policy advisor Lisa Heinzerling said that the reason given for the withdrawal of the

ozone standard was unlawful. Do you agree? Could the President instruct EPA where to set national ambient air quality standards based on policy considerations, or could he delay a decision?
Response: On September 2, 2011, President Obama issued a statement on the ozone NAAQS, noting that EPA was engaged in updating its review of the science underlying the 2008 ozone NAAQS, as part of the ongoing periodic review of the Ozone NAAQS, and requested that EPA withdraw from interagency review the draft final rule addressing the reconsideration of the 2008 ozone NAAQS. On that same day, OMB returned to EPA the draft final rule, stating that "the draft final rule warrants [the Administrator's] reconsideration." Letter from Cass R. Sunstein, OMB, Administrator, Office of Information and Regulatory Affairs to Administrator Lisa R. Jackson, EPA. In returning the rule, OMB stated that President Obama had requested that the draft rule be returned as he did "not support finalizing the rule at this time."

41. OMB cited Executive Order 13563 in its 2011 letter to EPA on the ozone NAAQS and stated that EPA should avoid "inconsistent, incompatible, or duplicative" regulations. In EPA's most recent E.O. 13563 statement on the PM NAAQS, however, the Agency only cites the fact that it performed a cost-benefit analysis.

a. Why did EPA not perform a regulatory overlap analysis?

b. If you are confirmed, how will you instruct EPA to consider whether NAAQS, in particular, may be duplicative of all the other EPA regulations that impose direct standards on powerplants, major industrial facilities and mobile sources?

The PM NAAQS are not "inconsistent, incompatible, or duplicative" of other regulations. The reference to E.O. 13563 in the September 2, 2011 letter from OMB concerned the unique circumstances where the proposed rulemaking to reconsider the 2008 ozone NAAQS was occurring at the same time EPA was conducting the required 5-year periodic review of the science and the ozone NAAQS. That is not the case with the PM NAAQS rulemaking. The NAAQS – promulgation and periodic review of which is required by the Clean Air Act – focus on the identification of pollution concentrations in the ambient air that are necessary to protect public health and welfare. The Clean Air Act requires states to adopt and implement State Implementation Plans that meet the requirements of the Act, including the requirement to achieve the NAAQS. The Clean Air Act also requires the EPA to establish federal emission standards applicable to sources such as power plants, industrial sources, and mobile sources, which in many instances help states to meet the PM (and other) NAAQS.

42. Inhofe 42. It is my understanding that EPA is now reviewing the Ozone rule again. Will you commit to proposing the current standard so that the public can comment on whether it will meet the health standards established in the Clean Air Act?

The review of the ozone NAAQS is ongoing. EPA is committed to following the science and the law in developing the proposed rule. As with prior NAAQS rulemakings, the agency expects the public willhave the full ability to comment on all elements of EPA's proposal and provide EPA with views on whether to retain or revise the current ozone standard.

43. Inhofe 43. If EPA is considering a similar range for ozone as they did in 2010, is there any reason to believe the economic impacts will be substantially different than the estimates from the 2010 reconsideration?

The review of the ozone NAAQS is ongoing. The Supreme Court held in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), that the Clean Air Act prohibits EPA from considering costs of

implementation in setting or revising the NAAQS. To inform the public and consistent with applicable Executive Orders, EPA will provide an updated economic analysis in conjunction with the issuance of the proposed rule.

Sessions 6. I am concerned about EPA's failure to fully defend the laws and regulations of the United States. That is partly a concern for EPA, and partly a concern for the Department of Justice. But there is no doubt that the Administration has not always defended existing laws and regulations to the fullest extent possible. For example, in June 2011 when you appeared before our committee, I asked you about EPA's plans to reconsider the ozone standards. You explained: "Senator, we are moving forward with the five-year review of ozone, but when Administrator Jackson came into office, we were facing litigation [regarding] the prior administration's decision to make a determination that 75 ppb was the appropriate level for ozone. … The Administrator decided that rather than litigate, she would work with the litigants to put that litigation on hold; she would revisit the science. … [and] rather than to defend that standard and to move forward with it, [EPA decided] to reconsider that..." Fortunately, after a bipartisan group of Senators raised serious concerns about EPA's ozone reconsideration—an effort that I was glad to lead with Sen. Landrieu, the President directed EPA to not finalize a new ozone standard at that time.

a. Would you agree that, in light of the President's subsequent decision to forego changing the ozone standard, EPA Administrator Jackson made the wrong decision to "reconsider" the ozone standard instead of, in your words, to "defend that standard"?

b. Did EPA incur significant costs as part of the ozone reconsideration process; if so, how much?

c. Do you agree that the ozone reconsideration process created significant regulatory uncertainty throughout the U.S. economy that could have been avoided if EPA had chosen to defend the standard, as ultimately decided by the President?

On September 2, 2011, President Obama issued a statement on the ozone NAAQS, noting that EPA was engaged in updating its review of the science underlying the 2008 ozone NAAQS, as part of the ongoing periodic review of the Ozone NAAQS, and requested that EPA withdraw from interagency review the draft final rule addressing the reconsideration of the 2008 ozone NAAQS. On that same day, OMB returned to EPA the draft final rule, stating that "the draft final rule warrants [the Administrator's] reconsideration." Letter from Cass R. Sunstein, OMB, Administrator, Office of Information and Regulatory Affairs to Administrator Lisa R. Jackson, EPA. In returning the rule, OMB stated that President Obama had requested that the draft rule be returned as he did "not support finalizing the rule at this time." Consistent with the President's statement, EPA is continuing with its statutorily mandated periodic review of the 2008 ozone NAAQS. In that ongoing review, EPA will consider the current state of the science, which will include the new science not considered as part of the 2008 rule, as well as the science taken into account in previous reviews. Given that, EPA intends to conclude its rulemaking on reconsideration of the 2008 ozone NAAQS in conjunction with its ongoing review of the ozone NAAQS.

Sessions 12. Air quality in the United States has improved significantly over the past 40 years. The Clean Air Act and the clean air laws of the States deserve great credit for these improvements, as do the voluntary efforts of millions of Americans and businesses. Air quality is not a political issue. We all want our friends, families, and fellow Americans to breathe clean air. A recent report about Alabama emissions[1] found that since 1999:

a. NOx emissions have dropped more than 35% overall—and more than 65% for coal-fired power

plants. Do you agree that, even without additional new regulations from EPA on NOx, this downward trajectory will continue?
b. SO2 emissions have dropped more than 50% overall—and more than 60% for coal-fired power plants. Do you agree that, even without additional new regulations from EPA on SO2, this downward trajectory will continue?
c. PM2.5 emissions have decreased by more than 30% overall. Do you agree that, even without additional new regulations from EPA on PM2.5, this downward trajectory will continue?
d. Ozone levels in Alabama are also on a downward trend. Do you believe an even tighter ozone standard is necessary? Did you support EPA's decision to reconsider the ozone standard in 2011, and did you agree with the President's decision to forego changing the ozone standard at that time?
e. For these pollutants, the numbers are on a downward trajectory even without new EPA air regulations regarding those pollutants. Do you agree?
Although emissions are likely to continue to decline as state and federal control programs already 'on the books' continue to be implemented, it is not at all clear that, without additional state or federal efforts, emissions would continue to decline in perpetuity. It also is possible that, absent additional state or federal efforts, emissions could increase depending on a number of factors. Great progress has been made to reduce emissions considerably since the 1970s, including in Alabama, but more work remains to be done to protect public health.
Under President Obama's leadership, the EPA has worked to ensure health protections for the American people, and has made tremendous progress to ensure that Clean Air Act standards protect all Americans by reducing our exposures to harmful air pollution. In accordance with the requirements of the Clean Air Act, EPA currently is engaged in reviewing the ozone NAAQS and the science underlying these standards. Given the importance of this decision, it makes sense to ensure that the agency gives full consideration to all of the scientific evidence that is available since the conclusion of the last review in 2008. Any decisions as to whether to revise the ozone standard will be based on the available scientific evidence, exposure/risk information, the advice of CASAC, and public comments. The reconsideration will be concluded in conjunction with the ongoing review.
Wicker 3. Will you be accepting comment on maintaining the current ozone standard once you propose the new rule? Do you believe it is appropriate to consider only new proposals that lower the current standard? Doesn't that prevent EPA from considering science showing that the current standard or even a higher standard is sufficient to maintain public health?
As with prior NAAQS rulemakings, the public will have the full ability to comment on all elements of EPA's proposal and provide EPA with views on whether to retain or revise the current ozone standard.
Wicker 4. Can the President tell EPA where to set national ambient air quality standards based on policy considerations?
a. Since the President directed EPA not to reconsider the 2008 ozone standard, can he also direct EPA to take additional time to consider revisions to NAAQS?
The Clean Air Act requires EPA periodically (every five years) to review the body of scientific evidence on the effects of air pollution on public health and welfare, and based on that determine whether to revise the standards to meet the requirements of the Act. In the rulemaking to reconsider the 2008 ozone NAAQS, the President did not instruct EPA where to set the ozone standard; instead, his request concerned the timing of the reconsideration, which is a separate rulemaking from the ongoing, five-year

periodic review

On September 2, 2011, President Obama issued a statement on the ozone NAAQS, noting that EPA was engaged in updating its review of the science underlying the 2008 ozone NAAQS, as part of the ongoing periodic review of the Ozone NAAQS, and requested that EPA withdraw from interagency review the draft final rule addressing the reconsideration of the 2008 ozone NAAQS. On that same day, the Office of Management and Budget (OMB) returned to EPA the draft final rule, stating that "the draft final rule warrants [the Administrator's] reconsideration." Letter from Cass R. Sunstein, OMB, Administrator, Office of Information and Regulatory Affairs to Administrator Lisa R. Jackson, EPA. In returning the rule, OMB stated that President Obamahad requested that the draft rule be returned as he did "not support finalizing the rule at this time."

Consistent with the President's statement, EPA is continuing with its statutorily mandated periodic review of the 2008 ozone NAAQS. In that ongoing review, EPA will consider the current state of the science, which will include the new science not considered as part of the 2008 rule, as well as the science taken into account in previous reviews. Given that, EPA intends to conclude its rulemaking on reconsideration of the 2008 ozone NAAQS in conjunction with its ongoing review of the ozone NAAQS.

Wicker 6. If you do lower the standard for ozone, what will be the compliance burden on the states?

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

Wicker 11. How will you work with the CDC and others outside the agency to ensure you are using the very best science before you set the new ozone standard?

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

15. Funding for mitigation activities related to ozone is currently tied to "non-attainment" status. Therefore, communities such as the Omaha metro area, which are currently in "attainment" but are trying to be pro-active and address ozone-forming emissions prior to violating air quality standards, have little financial assistance available. This places communities in the unenviable situation of having to violate air standards in order to become eligible for additional funding. EPA recently developed the Ozone Advance program to attempt to provide funds for metro areas, such as the Omaha region. Would you take proactive measures, such as participation in Ozone Advance, into consideration when designating whether a region will be deemed "non-attainment"? And would you champion opportunities to provide funding for communities that are in attainment?

Participation in Ozone Advance can help areas maintain air quality that meets the health standards. EPA is currently providing technical assistance to participants in the Advance Program but has not offered direct funding to participants. However, I have been and will continue to be a strong advocate for providing support at the community level, including EPA assistance and funding, to the extent possible given budget constraints.

16. High ozone formation frequently occurs as a result of natural processes (heat, lack of wind, etc.) that are beyond human control. Emissions traveling from other metro areas can also have an impact. For instance, in the Omaha metro area, one can track a direct correlation between the number of high

ozone days and extreme high temperature days, whereas mild summers usually result in few, if any, high ozone days. We also have annual burns that occur in the Flint Hills in Kansas that appear to contribute air quality problems. It is unfair to punish communities for factors that are beyond their control. How would EPA take into account factors that are beyond a region's control when designating attainment and non-attainment areas?

The Clean Air Act directs the EPA to designate an area "nonattainment" if it is violating a national ambient air quality standard (NAAQS) or if it is contributing to a violation of the NAAQS in a nearby area. Air quality monitoring data affected by exceptional events (e.g., wildfires, high wind dust events, stratospheric intrusions) may be excluded from use in identifying a violation at a monitor, and subsequently excluded from regulatory actions (e.g., area designations or classifications) that rely upon these data, if the data meet the criteria for exclusion specified in EPA's Final Rule on the Treatment of Data Influenced by Exceptional Events, commonly known as the 2007 Exceptional Events Rule.

17. The EPA Clean Air Scientific Advisory Committee (CASAC) last recommended the Ozone standard be set at a range between 60 and 70 parts per billion (ppb). If the standard were set at 60 parts per billion, the vast majority of the United States—including the Nebraska Panhandle (due to emissions from the Denver metro area), one of the most sparsely populated regions of the United States—would be in violation of the standard. Many metro areas who struggled for years to attain the standard set in 1997 now fear the standard will be set at an unrealistic level that will only result in perpetual nonattainment status. How would you apply common sense and reasonableness in setting air quality standards? Do you think that there are diminishing returns of further reducing air quality standards past a certain point?

Response: EPA is prohibited by law from considering costs of implementation in setting NAAQS. Specifically, the U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001) that in setting standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, the EPA may not consider the costs of implementing the standards. However, the Clean Air Act gives state and local officials in nonattainment areas the ability to consider several factors, including employment impacts and costs of controls, when designing their state implementation plans to implement the NAAQS.

1. EPA plans to finalize nonattainment designations in June 2013 for the revised sulfur dioxide national ambient air quality standard. EPA has proposed a nonattainment designation for Yellowstone County, Montana, where almost 1,000 Montanans work at the three local oil refineries. Given the status of documented anomalies in the county's 2010 monitored emissions that appear unrepresentative of recent and projected emissions trends, will you commit to work closely with me on Yellowstone County's final designation?

Response: Yes

PM NAAQS

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

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

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

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

Understanding the components of particulate matter is important. The Agency has invested in a PM2.5 speciation monitoring program since 1999 to provide ambient air data for tracking air quality and to support scientific studies. In addition, the EPA and other organizations (e.g., HEI, EPRI) have funded research on health effects related to PM composition. In the PM NAAQS review completed in 2012, the Agency concluded that the currently available scientific information continues to provide evidence that many different components of the fine particle mixture as well as groups of components associated with specific source categories of fine particles are linked to adverse health effects. However, the scientific evidence is not yet sufficient to allow differentiation of those components or sources that are more closely related to specific health outcomes nor to exclude any component or group of components from the mix of fine particles included in the PM2.5 indicator.

Why does EPA claim that its green house gas regulations will have health benefits at levels far below the current PM NAAQS, yet has only set the new PM NAAQS at much higher level? Shouldn't EPA be consistent in justifying regulations on the basis of PM health benefits and where its best scientific judgment sets the health protective PM NAAQS?

EPA's approach to estimating the benefits of reducing fine particulate matter pollution is consistent with the best available science and advice from two Congressionally-created independent review boards, the Clean Air Scientific Advisory Committee and the Advisory Council on Clean Air Compliance Analysis. There are health benefits attributable to reducing particulate matter pollution below the NAAQS and the agency does take those benefits into account. There is no scientific basis for ignoring those benefits. While the NAAQS is set at a level adequate to provide protection of public health – and should be neither more nor less stringent than necessary to do so – it is not set at a zero risk level.

In March 28, 2013 the Environmental Protection Agency (EPA) published updated emissions standards for power plants under the Mercury and Air Toxics Standards (MATS). The MATS rule imposes sweeping new emissions requirements for power plants, and EPA expects that the MATS rule will entail upwards of $10 billion in compliance costs, making it the most expensive rule in EPA's history. In promulgating the MATS rules, EPA relied heavily on the claim that the rule will benefit public health through decreases in particulate matter pollution (PM). However, regulation of PM is primarily accomplished through National Ambient Air Quality Standards (NAAQS), which are required to be set at levels that provide adequate protection for the public health or welfare. Accordingly, it appears that the agency has set a NAAQS standard for particulate matter at a level insufficiently protective of public health and welfare. Can you share your thoughts on this?

Even after several decades of pollution control laws, until MATS there were no national limits on emissions of mercury and other air toxics from power plants. Power plants emit mercury, other metals, acid gases, and other air toxics – as well as particulate matter – all of which harm people's health. The rule regulates mercury and other air toxics, but the control technologies installed to reduce these air

pollutants also yield significant reductions in particulate matter.

I also understand that while the agency tightened the particulate matter standard, you did not issue any accompanying rules or guidance that would allow for smooth implementation. Can you tell us how and when EPA will prepare implementation rules for particulate matter and ozone to prevent disruptions to the economy, and in particular how EPA will ensure the availability of low-cost offsets to allow new plants and the expansion of existing plants?

The PM2.5 NAAQS were revised in December 2012, and EPA is working to develop guidance and rules to provide for smooth implementation. EPA recently issued guidance on the area designations process. EPA is also developing an implementation rule that we expect to finalize soon after nonattainment areas are designated. Should EPA revise the ozone NAAQS, we would intend to develop an implementation rule for that standard in a similar manner, and finalize that implementation rule around the time that area designations are finalized.

Regarding the new source review (NSR) pre-construction permitting programs, EPA included a transition (or regulatory grandfathering) provision in the final 2012 PM NAAQS rule to help smooth the implementation of new requirements associated with the revised NAAQS under the PSD program. Emission offsets are generally associated with non-attainment NSR, which would apply to any newly designated nonattainment areas upon the effective date of such designations (2015 at the earliest). Most states projected to have areas that may be designated nonattainment for the revised PM NAAQS already have nonattainment NSR programs for PM2.5 (i.e., they currently have areas that are or were previously designated nonattainment for PM2.5), including functioning emission offset programs. Those same programs will apply to any newly designated nonattainment areas. For the limited areas that do not have an existing nonattainment NSR program for PM2.5, the lead time built into the designation process will provide the opportunity for states and sources to plan for projected offset needs.

On December 7, 2012, a PM2.5 monitor in the North Pole, Alaska registered a concentration of approximately 172 micrograms per cubic meter for the 24-hours of that day, almost five times the EPA health based standard. The average daily temperature for that location was -26 degrees Fahrenheit. PM2.5 comes primarily from combustion, which, given the temperature, was likely wood or fuel oil burning for heating purposes, meaning that people were generating heat in order to survive the cold. Given the choice, many likely chose to survive the elements that day by burning fuel despite the potential long-term health risk associated with being exposed to such a high concentration of air pollution. If confirmed, how will EPA balance incremental, long-term health improvements with the acute, or short-term, health impacts that could occur if the standards are lowered?

As with all NAAQS, EPA's primary PM2.5 standards are set to protect the public health with an adequate margin of safety, based on the body of available health evidence and technical information. In determining whether a given area meets or violates the EPA's 24-hour PM2.5 standard, it is not appropriate to compare a single high day to the standard level. Rather, the 24-hour PM2.5 standard requires that the 3-year average of the 98th percentile of annual 24-hour average PM2.5 concentrations be below 35 micrograms per cubic meter. This approach to determining whether areas meet or violate the 24-hour PM2.5 standard is meant to ensure appropriate public health protection. A single day with a high PM2.5 concentration, by itself, does not result in a violation of the standard.

EPA currently uses a mass based PM 2.5 NAAQS without regard to the chemical make-up of the particulate. Early in the Bush Administration, OMB's then-Director of OIRA, John Graham, wrote a

letter to then-Administrator of EPA Christy Todd Whitman, suggesting that EPA needed to redirect Agency research funds to do speciation studies to determine the source of PM2.5 health effects. Do you know if those studies were done? Doesn't the chemical makeup of PM 2.5 effect determine the degree of health impact? Should the PM 2.5 NAAQS be species weighed to better protect the public?
EPA has funded, and continues to fund, a number of research studies evaluating the links between PM composition and toxicity. The agency has invested in a PM2.5 speciation monitoring program since 1999 to provide ambient air data for tracking air quality and to support scientific studies. In addition, the EPA and other organizations (e.g., HEI, EPRI) have funded research on health effects related to PM composition. In the PM NAAQS review completed in 2012, the agency concluded that the currently available scientific information continues to provide evidence that many different components of the fine particle mixture - as well as groups of components associated with specific source categories of fine particles – are linked to adverse health effects. However, the scientific evidence is not yet sufficient to allow differentiation of those components or sources that are more closely related to specific health outcomes, nor is it sufficient to exclude any component or group of components from the mix of fine particles included in the PM2.5 indicator (78 FR 3123). The CASAC, EPA's statutorily mandated external science advisory committee, agreed with this conclusion and with the approach of continuing to define the PM2.5 standards in terms of PM2.5 mass.

If confirmed, will you commit to address NAAQS implementation issues? Can you give the Committee a schedule of concrete actions you will undertake and the deadlines for those actions? Are you open to delaying the effective date of the PM NAAQS until EPA, states and permittees have the right implementation tools in place?
If confirmed, I will continue to be committed to addressing NAAQS implementation issues. EPA can provide the committee a planned schedule of NAAQS-related rules and policy guidance documents. In general, the agency's objective is to issue rules and policy guidance as quickly as practicable after a NAAQS has been promulgated to facilitate timely state planning. To avoid any delay in achieving the important health benefits of the PM NAAQS, EPA provided a transition mechanism in the final 2012 PM NAAQS rule that allowed for grandfathering of qualifying PSD permit applications by exempting them from new requirements associated with the revised NAAQS. This was the most urgent immediate concern because the regulations otherwise require that PSD permits address all NAAQS that are in effect as of the date of permit issuance. For permit actions that do not qualify for the grandfathering exemption, prior to the effective date of the 2012 PM NAAQS EPA issued draft guidance on performing required air quality impact analyses for PM2.5 under the PSD program. In addition to these two actions, the agency continues to work diligently on other aspects of NSR/PSD implementation for PM2.5 to ensure that permitting processes are not disrupted or delayed by the revised NAAQS.

The manufacturing sector is seeing considerable new investment in new and modified facilities, and the prospect of maintaining and creating thousands of jobs, thanks in part to enhanced production of unconventional oil and gas (e.g., shale gas). Under the Clean Air Act, EPA is required to issue a Prevention of Significant Deterioration (PSD) permit within one year of deeming the permit application "complete." What has your office done to ensure these permits are issued in a timely manner to prevent permits from slowing recovery and growth in the manufacturing sector?
In October 2012, EPA issued an internal memo to the Regional Office to clarify expectations and responsibilities for timely processing of PSD permits to assure compliance with the CAA requirement for

EPA action within one year of an application being complete. While this guidance only applies to PSD permits issued by EPA itself or by states issuing PSD permits under a delegation agreement with EPA, EPA recommends that state permitting offices consider following the approaches outlined in this memo if their procedural regulations are comparable to EPA's. EPA's recent final rule revising the annual PM2.5 NAAQS provided for grandfathering of in-progress PSD permit applications, applicable to both EPA-issued and state-issued permits, which will help avoid delays in issuing permits.

What will you do to ensure PSD permits are timely, especially considering that NAAQS requirements are constantly changing?

In October 2012, EPA issued an internal memo to the Regional Office to clarify expectations and responsibilities for timely processing of PSD permits to assure compliance with the CAA requirement for EPA action within one year of an application being complete. While this guidance only applies to PSD permits issued by EPA itself or by states issuing PSD permits under a delegation agreement with EPA, EPA recommends that state permitting offices consider following the approaches outlined in this memo if their procedural regulations are comparable to EPA's. EPA's recent final rule revising the annual PM2.5 NAAQS provided for grandfathering of in-progress PSD permit applications, applicable to both EPA-issued and state-issued permits, which will help avoid delays in issuing permits. EPA will consider adopting similar provisions as warranted whenever the agency changes NAAQS requirements.

How will you ensure that, given the EPA and states' budgetary pressures, facilities are able to get permits and begin operating as soon as possible? Do you expect to develop or modify guidance to State permitting offices?

In October 2012, EPA issued an internal memo to the Regional Office to clarify expectations and responsibilities for timely processing of PSD permits to assure compliance with the CAA requirement for EPA action within one year of an application being complete. While this guidance only applies to PSD permits issued by EPA itself or by states issuing PSD permits under a delegation agreement with EPA, EPA recommends that state permitting offices consider following the approaches outlined in this memo if their procedural regulations are comparable to EPA's. EPA's recent final rule revising the annual PM2.5 NAAQS provided for grandfathering of in-progress PSD permit applications, applicable to both EPA-issued and state-issue permits, which will help avoid delays in issuing permits.

39. Inhofe 39. Last June, EPA proposed to lower standards for fine particulate matter from 15.0 micrograms to 12 to 13 micrograms. EPA also took comment on levels as low as 11, but did not take comment on retaining the current standard at 15, or on other possible levels. Given that there is uncertainty in different studies and given that EPA received lengthy comments during its review process arguing against revising the 15 microgram standard – why did EPA not solicit comments on maintaining the current standard? Do you believe EPA is limiting its ability to consider alternative science by only taking comment on options that would substantially lower fine particulate standards and other NAAQS?

In formulating proposed and final decisions on the PM NAAQS, the EPA considered the available scientific evidence, advice of CASAC and extensive public comments. Based on these considerations, the agency concluded that the previous suite of primary PM2.5 standards was not requisite to protect public health with an adequate margin of safety, and that revision was needed to increase public health protection. In the proposal EPA explained in detail its reasons for believing the then current annual standard of 15 micrograms/cubic meter was inadequate and needed to be revised to a level between 11-

13 micrograms/cubic meter. EPA's proposal invited comment on all elements of the proposal, including these proposed judgments. The agency received – and considered – comments supporting retaining the standard at a level of 15 ug/m3.

41. OMB cited Executive Order 13563 in its 2011 letter to EPA on the ozone NAAQS and stated that EPA should avoid "inconsistent, incompatible, or duplicative" regulations. In EPA's most recent E.O. 13563 statement on the PM NAAQS, however, the Agency only cites the fact that it performed a cost-benefit analysis.

a. Why did EPA not perform a regulatory overlap analysis?

b. If you are confirmed, how will you instruct EPA to consider whether NAAQS, in particular, may be duplicative of all the other EPA regulations that impose direct standards on powerplants, major industrial facilities and mobile sources?

The PM NAAQS are not "inconsistent, incompatible, or duplicative" of other regulations. The reference to E.O. 13563 in the September 2, 2011 letter from OMB concerned the unique circumstances where the proposed rulemaking to reconsider the 2008 ozone NAAQS was occurring at the same time EPA was conducting the required 5-year periodic review of the science and the ozone NAAQS. That is not the case with the PM NAAQS rulemaking. The NAAQS – promulgation and periodic review of which is required by the Clean Air Act – focus on the identification of pollution concentrations in the ambient air that are necessary to protect public health and welfare. The Clean Air Act requires states to adopt and implement State Implementation Plans that meet the requirements of the Act, including the requirement to achieve the NAAQS. The Clean Air Act also requires the EPA to establish federal emission standards applicable to sources such as power plants, industrial sources, and mobile sources, which in many instances help states to meet the PM (and other) NAAQS.

Sulfur NAAQS

The International Maritime Convention (IMO) has amended the International Convention for the Prevention of Pollution from Ships (MARPOL) to require ships operating in Emissions Control Areas (ECA), which include the vast majority of the US coastline, to use only low sulfur fuels. The first stage of this program, which required use of fuel oil with a sulfur content of 1% or less came into effect this past summer and has led to increased shipping costs. There is evidence that these stringent limits are having a significant financial impact on short seas shipping companies, and, in some cases, higher shipping costs are resulting in higher costs for downstream consumers in the U.S.

For this reason, I am troubled that by August 2015, ship owners operating in these waters will be required to use fuel that contains no more than 0.1% sulfur. I have significant concerns about the impact such a cut would have, not just on short seas shipping companies, but the health and safety of the U.S. economy.

The ECA is one of the most important environmental air programs established in the past decade and will result in the prevention of tens of thousands of premature deaths. EPA and Coast Guard are committed to allowing flexibilities allowed under the applicable IMO requirements that can reduce the costs of compliance with the ECA and incentivize advanced technologies, without compromising the environmental benefits of the ECA. In 2030 the combination of our national standards and ECA controls will prevent between 12,000 and 31,000 premature deaths and 1.4 million work days lost. The benefits of the coordinated strategy in 2030 are estimated to be between $110 and $270 billion, which is up to

90 times the projected costs of $3.1 billion.

What is EPA doing to collect additional relevant data that is necessary in determining the SO2 emission reductions from prior industry investments to reduce SO2?

EPA has conducted an extensive stakeholder process to develop a strategy for improving air quality by reducing emissions of sulfur dioxide. The strategy, available at http://www.epa.gov/oaqps001/sulfurdioxide/pdfs/20130207SO2StrategyPaper.pdf, outlines the Agency's next steps for designating and implementing the 2010 SO2 NAAQS. EPA works closely with our state, local and tribal partners to collect regularly emission information, including emissions information about SO2.

As the EPA considers its approach to implementing the Sulfur Dioxide (SO2) National Ambient Air Quality Standards, we urge you to ensure States have maximum flexibility to determine the most appropriate approach to accurately establish their attainment status. While the preference is the use of actual monitors in gathering the necessary data, we recognize financial constraints may force States to rely on modeling or perhaps a hybrid approach. The current models and assumptions in EPA guidelines are of concern as they over predict expected ambient air quality levels. Factors such as wind speed, the number of SO2 sources in a geographic area and the height of SO2 sources all can create distortions in the data. These distortions can result in pollution controls that are unnecessary from both capital and operating perspectives. Can you assure us that the proposed modeling guidelines will include more accurate assumptions, and not solely worst case scenarios? What types of assumptions are you considering?

EPA is sensitive to and shares the interests of our air quality management partners and others that the modeling to determine compliance with the new national SO2 standard be as accurate and reflective of what might have been monitored as is possible. EPA's forthcoming modeling technical assistance document will reflect input from the extensive stakeholder outreach efforts that have been underway and the latest techniques. The public and stakeholders have and will continue to have opportunities to comment on EPA's modeling guidance.

I understand and appreciate the benefits of controlling sulfur emissions, and I understand that EPA has provided estimates of the health impacts of using ultralow sulfur fuels in the North American ECA, but why did EPA put a rule in place that will cause customers to utilize higher emitting modes of transportation? Did EPA's analysis consider the fact that this "intermodal leakage" moves the emissions source from as much as 200 miles offshore to within a few yards of schools, hospitals, residences, and urban areas? If not, shouldn't EPA take a hard look at the real world consequences of the regulation before it potentially pushes thousands more emissions sources into our communities and neighborhoods?

EPA does not agree that compliance with the ECA fuel sulfur limits will lead to transportation mode shift. The majority of the shipping affected by the ECA sulfur limits is made up of international voyages where land-based transportation is not a realistic alternative. Even in cases where mode shift can be contemplated, ships have significant cost advantages over land-based transportation. The North American ECA requires the use of 10,000 ppm sulfur fuel from August 2012 through December 2014, and 1,000 ppm sulfur fuel for January 2015 and later. The 2015 and later ECA fuel sulfur limits are more than 60 times higher than for the ultra low sulfur diesel (ULSD) used in land based modes of transport. EPA performed a detailed analysis of the economic impact of the ECA on ships operating on the Great

Lakes, including whether the ECA would lead to a transportation mode shift. This study, which was developed cooperatively with stakeholders, relied on actual routes and freight rates and indicated transportation mode shift is not likely to occur in the Great Lakes area. If the rail, truck and marine freight rates for coastal areas are similar to those for the Great Lakes, then modal shift would also not be expected in other parts of the country.

Would EPA consider other means of reducing sulfur emissions from maritime shipping? Will EPA consider an equivalency for companies that minimize the impact on onshore air quality, rather than only analyzing the mass of SO2 generated?

EPA is committed to allowing flexibilities allowed under the applicable International Maritime Organization requirements that can reduce the costs of compliance with the ECA and incentivize advanced technologies within the requirements of the ECA. EPA (and Coast Guard) have utilized two flexibilities allowed under the requirements of the North American ECA, approving projects undertaken by TOTE, a U.S. based shipping firm which operates two vessels between Tacoma, Washington and Anchorage, Alaska, and Royal Caribbean Cruises.

b. It has been said that NOx and SO2 from Electric Utility Fuel Combustion sources show significant decreases over time as a result of the Acid Rain Program, NOx Budget Trading Program, and CAIR control implementation. Do you agree?

These programs have been very successful in reducing SO2 and NOx emissions from the U.S. power sector. Recent EPA air programs continue and complement the Acid Rain Program's (ARP) history of emission reductions. In 2011, sources in the ARP and the Clean Air Interstate Rule (CAIR) SO2 annual program reduced SO2 emissions by over 11 million tons (a 71 percent reduction) from 1990 levels (before ARP implementation). Similarly, sources in the ARP and CAIR NOx annual program emitted 4.4 million fewer tons of NOx (a 60 percent reduction) in 2011 than in 1990.

RFS:

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

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

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

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

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

In the E15 waiver decision, EPA explained in detail its views on the authority to grant a partial waiver. The D.C. Circuit later rejected petitions for review on the grounds that the petitioners did not have

standing, and the Court did not decide on the merits of EPA's waiver decision. While one Judge expressed his view that EPA lacked authority for a partial waiver, there was no decision by the D. C. Circuit on this issue. In any future waiver proceeding, EPA will carefully consider this issue of authority to the extent it arises.

When the RFS was passed, gasoline demand was projected to increase for the foreseeable future. Now, gasoline demand is flat or declining for the foreseeable future. Even if more E15 were used in the marketplace, there would not be enough room in the fuel supply, particularly given new CAFE standards. How does EPA plan on addressing this conflict between mandated ethanol volumes and decreasing fuel demand due to the Administration's CAFÉ standards?

Congress mandated that increasing amounts of renewable fuel be used nationwide, while providing industry with flexibility to determine the most cost-effective fuel mix needed to meet the requirements of the law. EPA is reviewing comments submitted in response to the agency's proposed rulemaking for the 2013 RFS volume standards, and will carefully consider this input as it sets future RFS standards. Going forward, EPA will consider whether any further actions under the directives and authorities provided by Congress are appropriate to help ensure orderly implementation of the program.

The Administration has continuously made the case that new regulations add jobs given the need for more investments for environmental controls. However, a DOE report from only a few years ago says that the compounded burden of various regulations contributed to 66 refineries closing in the last 20 years; they even have a chart that overlays new regulations with refinery closures. If new regulations add jobs, why does DOE say it has led to closed manufacturing facilities?

Your question appears to refer to DOE's 2011 study assessing whether the congressionally mandated renewable fuel standard program would impose a disproportionate economic hardship on small refineries, such that these refineries should receive an exemption under that program. My staff informs me that while this study assessed the potential need for extending relief from the RFS program for small refineries, it did not analyze the impacts of any other EPA regulations or reach the conclusion reflected in your question. Rather, refinery closures over the past three decades have been driven primarily by market factors unrelated to environmental regulation.

Regarding cellulosic volumes, each year since 2010 EPA has taken EIA's projections about projected cellulosic biofuel production and increased it for the purpose of setting the following year's mandate. Each year, EIA has been wrong, and EPA has been more wrong, leading the U.S. Court of Appeals for the DC Circuit to vacate the 2012 cellulosic mandate. EPA is expected to voluntarily rescind the 2011 mandate. Yet the week after the Court decision, EPA proposed an *increase* in the cellulosic mandate despite the fact that only 1,000 gallons of the 10.45 million ethanol-equivalent gallons mandate was produced for compliance in 2012. The EPA's Moderated Transaction System (EMTS) shows no cellulosic production *again* in January, 2013. Given the Court's admonition and the data we now have, will EPA reduce the cellulosic mandate to zero when it finally promulgates final volumes for 2013, which are now 4 months late?

EPA is required under the CAA to annually set the standard for cellulosic biofuel at the projected volume of cellulosic biofuel production, which EPA determines based on projections from the EIA and considering other available information. In February 2013, EPA released a proposal that projected the volume of cellulosic biofuel production for 2013 at 14 million gallons, which is below the statutory volume of 1 billion gallons. EPA's proposed projection for cellulosic biofuel production is consistent with

the DC Circuit's direction and is based on a neutral assessment of reasonably anticipated production for 2013. The agency will fully consider comments on the proposed cellulosic level before finalizing the standard, and will make adjustments to the proposed levels, if appropriate.

The last administrator clearly took on the role of promoting the ethanol industry. Do you believe your role as administrator is promote one industry over others, or that decisions should be made that consider the protection of the environment and the economy?

EPA implements conventional and renewable fuels and fuel additives regulations and programs as required under the CAA. EPA does not promote any specific industry.

Given the multitude of problems from the implementation of Renewable Fuels Standard (RFS), including the issue of the "blend wall," where the amount of ethanol required to be blended into gasoline exceeds the E10 threshold, is it now time to admit that the RFS is a broken program and is need of significant revisions?

Congress mandated that increasing amounts of renewable fuel be used nationwide, while providing industry with flexibility to determine the most cost-effective fuel mix needed to meet the requirements of the law. EPA has met with representatives of a broad array of stakeholders from the oil and renewable fuels industries, and we are working with the Department of Agriculture and the Department of Energy to discuss the E10 blendwall and other issues related to RFS implementation. EPA will take this information into consideration as the agency moves forward with implementation of the program.

In your role as administrator will you have the flexibility to address the longer term issues of the Renewable Fuel Standard? What do you plan to do to address the immediate problems?

EPA is looking at the potential impacts of the blendwall and related RFS implementation issues over the near and longer term. The agency is also reviewing comments submitted in response to the proposed rulemaking for the 2013 RFS volume standards, and will carefully consider this input in setting future RFS standards. Going forward, EPA will consider whether any further actions under the directives and authorities provided by Congress are appropriate to help ensure orderly implementation of the program. Given the importance of these issues, however, EPA recognizes that it is important to avoid precipitous action that could have adverse effects on the market.

EPA has not yet promulgated the renewable fuel obligations for 2013 for the Renewable Fuel Standard. What action will the Agency take soon to address this problem? Obviously, 2013 has already begun. Will this rule be retroactive as of January 1, 2013? Will EPA get back on schedule and finalize values for 2014 before December 31, 2013?

The public comment period recently closed for the 2013 volume standards. EPA intends to finalize the 2013 standards by the summer of 2013, and intends to propose the 2014 standards in the same time frame.

Do you agree that it is within EPA's legal authority to waive or modify the renewable fuel volume requirements of the RFS if meeting such requirements will cause severe harm to the Nation's economy? Do you think that rising consumer prices constitute the potential for severe economic harm? As Administrator, would you consider waiving or modifying the renewable volume requirements to avoid or mitigate higher gas prices on our Nation's working families?

Congress established a stringent test for granting a waiver under the RFS program. Section 211(o)(7) of the Clean Air Act allows the EPA Administrator, in consultation with the Secretaries of Agriculture and Energy, to waive the requirements of the RFS under certain criteria. The waiver could be issued if the

Administrator determines – after a notice and comment period – that implementation of the RFS requirements would severely harm the economy or environment of a State, a region, or the United States. That is a very fact-specific determination, and therefore would be best addressed in the context of a specific request after considering public comments.

EPA is proud of its "global leadership" role. EPA also takes the view that it is the aggregate effects of chemicals and emissions that really matter. Has EPA taken an aggregate, global approach in analyzing the impacts of its ethanol programs? I know you've analyzed national effects, but have you looked at global effects as well?

EPA has analyzed the impacts of the Renewable Fuel Standard (RFS) program in a number of different regulatory actions. For example, EPA issued a regulatory impact analysis (RIA) for the March 26, 2010 RFS final rule, which implemented the requirements of the Energy Independence and Security Act (EISA) of 2007. That RIA provided a detailed assessment of a wide variety of key impacts from the RFS program. EPA's analysis addressed impacts of EISA's requirements both on U.S. food prices and global food consumption, and contains explicit information about the assumptions and limitation of the data used to support the analyses. In addition, in evaluating whether a fuel meets the greenhouse gas reductions for the RFS program EPA conducts a lifecycle analysis of greenhouse gas emissions that includes both domestic and global impacts.

EPA states, in regard to its RFS mandates, that "the quantity of food brought to market might decrease, resulting in higher food prices and possibly more malnutrition". If these higher prices and increased levels of malnutrition were shown to actually cause deaths, how serious an issue would that be, in your view?

Protecting public health is central to EPA's mission, and we therefore would consider such issues very seriously.

What is your response to recent studies, such as that by Dr. Indur Goklany in 2011, which finds that the higher food prices resulting from ethanol diversion might be responsible for as much as 192,000 deaths annually?

EPA is aware of the Goklany study and other analysis that look at global biofuels policies and their impacts. In the RIA for the March 26, 2010 RFS final rule, EPA analyzed the impacts of EISA's requirements on food prices and global food production.

Studies have been made that show that the increase of food prices due to ethanol policy have increased hunger in countries such as Guatemala and Mexico, causing violent protests in Yemen, Haiti, Egypt, Pakistan, Indonesia and Ivory Coast, and could possibly create 42 million new poor people in India. What is your response to these studies, taking into account that the U.S. alone is responsible for approximately 62 percent of the world's biofuel production?

EPA is aware of studies such as the type referenced, but the agency has not reviewed the specific studies referenced in a level of detail sufficient to enable us to comment on them at this point. In the RIA for the March 26, 210 RFS final rule, EPA analyzed the impacts of EISA's requirements on food prices and global food production.

Last year, the EPA denied petitions from seven governors to suspend RFS blending requirements. The governors contended that by diverting 40% of the U.S. corn crop to ethanol production, the RFS combined with the worst drought in 50 years drove corn prices to record heights, imposing severe hardship on poultry, beef, and pork producers in their states. Citing Section 211(o)(7) of the Clean Air

Act, the EPA argued that to grant a waiver it must "determine that the implementation of the mandate itself would severely harm the economy; it is not enough to determine that implementation of RFS would contribute to such harm." But job losses, declining sales, bankruptcies, plant closures, and the like often have more than one cause. An RFS that does no harm when corn production and corn stocks are high and global demand is low might do considerable harm when the opposite conditions prevail, as they did in 2012. By insisting that the RFS "itself" must be responsible for severe harm, the EPA's denial of the petitions was disconcerting. If severe harm is occurring and the RFS contributes to it, what language in the statute prohibits the EPA from taking action?

In responding to the petitions, EPA consulted with the U.S. Department of Agriculture and the U.S. Department of Energy, and examined a wide variety of evidence, including modeling of the impact that a waiver would have on ethanol use, corn prices, and food prices. The agency also looked at empirical evidence, such as the current price for renewable fuel credits, called RINs, which are used to demonstrate compliance with the RFS mandate. EPA's analysis showed that it is highly unlikely that waiving the RFS volume requirements would have a significant impact on ethanol production or use in the relevant time frame that a waiver could apply (the 2012-2013 corn marketing season) and therefore little or no impact on corn, food, or fuel prices. This was because the modeling showed that in almost all scenarios modeled the market would demand more ethanol than the RFS would require. While EPA recognized that many parties had raised issues of significant concern to them and to others in the nation regarding the role of renewable fuels and the RFS program and the severity of the drought and its major impacts on multiple sectors across the country, the issue directly before the Agency was limited given EPA's authority under section 211(o)(7)(A) of the Act. EPA applied the detailed analysis to the statutory criteria for a waiver. EPA found that the evidence did not support a determination that the criteria for a waiver had been met, and therefore was required by law to deny the waiver.

In October of 2011, two organizations, one of them an anti-hunger group, petitioned EPA to acknowledge the deadly side-effects of its ethanol-fuel programs. EPA took over a year—14 months, to be exact, to deny that petition. In contrast, the White House has a "We Can't Wait" series of policy initiatives that stress the need for urgent action. Why is that, on this issue of life-and-death, EPA obviously could wait? This was a data quality petition, and your own data quality regulations provide for a 90-day response time. What took so long?

EPA received a request for correction under the Information Quality Guidelines from the Competitive Enterprise Institute and ActionAid USA on October 13, 2011, and responded to that request in a letter dated December 13, 2012. Subsequently, EPA has received a request for reconsideration from the same two organizations. EPA acknowledges the length of time it required to respond to the October 13, 2011 letter and is currently in the process of responding to the request for reconsideration, on which the agency hopes to move more quickly.

A recent study conducted by NERA Economic Consulting, the same firm engaged by DOE for analysis of LNG exports, found that the current RFS mandates could lead to a 30% increase in consumer gas prices by 2015. NERA also found that the RFS mandates could result in a $580 billion decrease in take-home pay for working families. In your role as EPA Administrator, what steps do you intend to take to prevent these adverse impacts on our Nation's economy and working families?

The Agency has seen several analyses focusing on the potential impacts of the RFS program on retail gasoline prices. Some of these show minimal or indiscernible price impacts. The agency is carefully

monitoring market dynamics. EPA has met with representatives of a broad array of stakeholders from the oil and renewable fuels industries, and is working with the Department of Agriculture and the Department of Energy, to assess current market activity related to the implementation of the RFS. As EPA implements the RFS program, the agency will continue to closely evaluate the impacts of the program and to consider whether any further actions under the directives and authorities provided by Congress are appropriate to address any such impacts.

Almost all analysts agree that we have reached or will soon reach the "blend wall"—or the time when the volumes of renewable fuel required by the RFS require producers to exceed the 10% volume threshold. A recent study by NERA Economic Consulting stated that the blend wall will result in fewer available RINs available for purchase to comply with the RFS and lead to higher gasoline prices at the pump for working families. In recent weeks this analysis has been borne out as RIN prices have skyrocketed from $.05 a RIN to over $1 a RIN. Do you agree that it is within EPA's legal authority to release more RINs into the RFS market to reduce the impact of the blend wall on gas prices for consumers? As Administrator, would you favor doing so?

Only qualified registered renewable fuel producers are authorized to generate RINs. However, as we continue implementing the RFS program, EPA recognizes the need to closely evaluate the impacts of the program and consider its options under the authority of the Clean Air Act to address the E10 blendwall and other issues associated with implementation of the program.

Is it within EPA's legal authority to establish a "safety valve" as part of the RFS program whereby the EPA would cap/hold steady RIN prices based on their impact on the Nation's economy? As Administrator, would you consider establishing such a safety valve as part of the RFS?

The market sets the price of the RINs. However, as EPA continues implementing the RFS program, the agency recognizes the need to closely evaluate the impacts of the program and consider its options under the authority of the Clean Air Act to address adverse issues that may result from the program.

20. Inhofe 20. Are you aware of the run-up in RIN prices and do you agree that it is evidence that the industry has or soon will hit the E-10 blendwall? If not, what is your explanation for the run-up?

EPA is aware of the recent activity in the RIN markets, and together with the Department of Agriculture (USDA) and the Department of Energy (DOE), we have been monitoring this activity closely. EPA and industry alike expected a more dynamic RIN market in 2013. Industry stakeholders and market observers have expected some upward pressure on RIN prices, as the volumes of biofuel required by law approach the E10 blendwall, and as market pressure for the use of higher blends of ethanol increases. EPA has met with representatives of a broad array of stakeholders from the oil and renewable fuels industries, and we are working with USDA and DOE to assess current RIN price activity and any related impacts.

21. Inhofe 21. In light of the clear evidence that the market is anticipating dire consequences from the E10 blendwall, why has EPA refused to use its discretionary powers under EISA to lower the total and advance mandates by the same amount it is lowering the cellulosic mandate?

EPA is monitoring market conditions closely and staying engaged with key stakeholders in the private sector and with other relevant federal agencies. We are also reviewing comments submitted in response to the Agency's proposed rulemaking for the 2013 RFS volume standards, and we will carefully consider

this input as we set future RFS standards. Going forward, we will continue to consider whether any further actions under the directives and authorities provided by Congress are appropriate to help ensure orderly implementation of the program. We will continue to watch this issue carefully, but given the size of the market it is important that the Agency not act precipitously in a way that could adversely affect the market.

Barrasso 32. On April 4, 2013, *Politico* reported that you continue to support the Renewable Fuel Standard (RFS). However, there is a growing recognition from people across industries and the political spectrum that the RFS is fundamentally broken and beyond reform. The RFS has failed to result in large-scale production of advanced biofuels. It has failed to provide any meaningful environmental benefits, and in certain respects, has accelerated environmental degradation. The RFS has contributed to significant increases in feed and food prices which is hurting low-income people in this country and around the world. The RFS has led EPA to approve E15 gasoline which threatens our nation's transportation and fueling infrastructure, and will almost certainly result in widespread litigation against engine manufacturers, refiners, and fuel marketers, among others. The RFS has facilitated widespread fraud in the marketing and sale of Renewable Identification Numbers (RINs). Finally, the RFS, and specifically the dramatic rise RIN prices, will significantly increase fuel costs for Americans.

a) Is it true that you continue to support the RFS? If so, why?

b) Do you consider the RFS a success?

c) Do you believe Congress should repeal the RFS? If not, what changes to the RFS would you propose to Congress if confirmed?

EPA is required by statute to implement the RFS program, and I support doing so in a manner consistent with Congressional requirements. Thus far, the program has created a substantial market for renewable fuels and enhanced the volume of advanced fuels that result in greater greenhouse gas reductions than traditional renewable fuels. The agency does not have a position on legislative changes to the program.

2. Last year, this country saw one of the worst droughts it has seen in over fifty years. As a result, corn prices skyrocketed, which in turn caused huge price spikes for those farmers that depend on corn feed for the animals they raise. In response to these high prices, some governors petitioned the EPA for a waiver to the RFS for fuels made from corn. As you know, the agency denied the waivers because EPA determined there would be no impacts to our economy – for better or worse – if the waivers were approved.

a. Since you oversee the part of EPA responsible for the RFS, what were the critical factors and thresholds EPA used to determine economic disruptions from the RFS?

b. If confirmed as EPA Administrator, what data will you need to see to approve a RFS waiver if we continue to have record droughts into the future?

Response:

While EPA recognized that many parties had raised issues of significant concern to them and to others in the nation concerning the role of renewable fuels and the RFS program and the severity of the drought and its major impacts on multiple sectors across the country, the issue directly before the Agency was limited given EPA's authority under section 211(o)(7)(A) of the Act.

In consultation with the U.S. Department of Agriculture and the U.S. Department of Energy, EPA examined a wide variety of evidence, including modeling of the impact that a waiver would have on ethanol use, corn prices, and food prices. The agency also looked at empirical evidence, such as the current price for renewable fuel credits, called RINs, which are used to demonstrate compliance with the RFS mandate. EPA's analysis showed that it is highly unlikely that waiving the RFS volume requirements would have a significant impact on ethanol production or use in the relevant time frame that a waiver could apply (the 2012-2013 corn marketing season) and therefore little or no impact on corn, food, or fuel prices. This was because the modeling showed that in almost all scenarios modeled the market would demand more ethanol than the RFS would require.

EPA applied the detailed analysis to the statutory criteria for a waiver. EPA found that the evidence did not support a determination that the criteria for a waiver had been met, and therefore by law must deny the waiver.

3. During your term as Assistant Administrator for Air, you finalized the Cross-state Air Pollution Rule which addresses transport pollution that crosses state boundaries. This is air pollution that drifts downwind across state lines to states like Delaware– making it hard for Delaware to comply with public health air quality rules. Unfortunately, this rule was vacated by the DC Circuit Court. If confirmed as EPA Administrator, can I have your assurances that you will continue to address the problem of air transport – an ongoing issue that risks the lives of thousands of Americans, many of which are living in my home state of Delaware?

Response: Yes

E15:

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

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

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

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

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

Consideration of the need to change the certification test fuel to include ethanol goes back to at least

2006 as ethanol use began increasing dramatically. During this multi-year period, the topic was discussed on numerous occasions with all relevant stakeholders, including the vehicle manufacturers, refiners, ethanol producers, nonroad engine manufacturers, the California Air Resources Board, State organizations, and NGOs. EPA is proposing that manufacturers use E15 as the test fuel for certification purposes, but the agency is also seeking comment on whether E10 should be the federal certification test fuel. EPA further anticipates that the agency will again have numerous discussions with many stakeholders in the post-proposal timeframe prior to making any decision for the final rule, and all meetings and comments from stakeholders will be placed in the rulemaking docket. EPA will fully consider comments and feedback from stakeholders and the public before making a final decision. With regard to your request for documents, EPA staff informs me that the appropriate protocol is to make such a request through a separate letter to the agency. EPA will respond appropriately to any such request. **Please provide the Committee with a detailed written analysis regarding how finalizing E15 as a certification fuel would affect EPA's assessment of future waiver requests for higher ethanol blends under Clean Air Act section 211(f)(4).**

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

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

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

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

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

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

In the E15 waiver decision, EPA explained in detail its views on the authority to grant a partial waiver.

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

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

EPA is not mandating E15 and the market will determine what among the range of legal fuels are sold to satisfy customer demand. Regardless, since E15 is currently distributed from less than 20 of the approximately 150,000 retail stations nationwide, this would not appear to be a near-term concern. Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. We will continue to refine our analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

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

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

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

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

In February 2013, the President of the American Automobile Association testified before Congress that the introduction of E15 to commerce was done "without adequate protections to prevent misfuelings and despite remaining questions about potential vehicle damage." In further testimony,

he suggested that testing of E15 was far too narrow in scope and that sales should be suspended until further study is done on the potential full impact of E15 on all aspects of vehicles and appropriate. Do you believe testing on E15 should have included potential impacts on engine life and fuel pumps? Do you stand by EPA's conclusion that E15 is safe and reliable for consumers to use?

EPA issued its E15 partial waiver decisions based on an extensive review of all relevant scientific and engineering information. For model year 2001 and newer light-duty motor vehicles, across the approximately 30 studies EPA used to support its waiver decisions, which included the comprehensive work conducted by the Department of Energy (DOE), no issues regarding vehicle fuel system compatibility or engine durability arose when the fuel systems and/or engines were operated or tested on E15. Taken together, these studies represent the operation of hundreds of vehicles over millions of miles on E15 under real world and testing conditions without issue. The model year 2001 and newer light-duty motor vehicles continued to meet applicable federal emissions standards over the vehicles' full useful lives when operated and tested on E15.

Through its waiver, EPA has concluded that E15 "will not cause or contribute to the failure of engines or vehicles." If you stand by EPA's conclusion, would you support legislation requiring the federal government should indemnify companies that sell E15 from any future liability related to the use of E15 in motor vehicles and motor vehicle engines?

I am not aware of any current proposed legislation of this nature, but in any event, the EPA has no position with regard to such proposed legislation if it exists.

When the RFS was passed, gasoline demand was projected to increase for the foreseeable future. Now, gasoline demand is flat or declining for the foreseeable future. Even if more E15 were used in the marketplace, there would not be enough room in the fuel supply, particularly given new CAFE standards. How does EPA plan on addressing this conflict between mandated ethanol volumes and decreasing fuel demand due to the Administration's CAFÉ standards?

Congress mandated that increasing amounts of renewable fuel be used nationwide, while providing industry with flexibility to determine the most cost-effective fuel mix needed to meet the requirements of the law. EPA is reviewing comments submitted in response to the agency's proposed rulemaking for the 2013 RFS volume standards, and will carefully consider this input as it sets future RFS standards. Going forward, EPA will consider whether any further actions under the directives and authorities provided by Congress are appropriate to help ensure orderly implementation of the program.

Many auto companies are actually warning consumers against using E15 even in EPA-approved vehicles and AAA is warning consumers not to use it. What does EPA know that the auto companies don't?

EPA would defer to the automakers to explain the basis of their communications. The EPA issued its E15 partial waiver decisions based on an extensive review of all relevant scientific and engineering information. For model year 2001 and newer light-duty motor vehicles, across the approximately 30 studies the EPA used to support its waiver decisions, which included the comprehensive work conducted by the Department of Energy (DOE), no issues regarding vehicle fuel system compatibility or engine durability arose when the fuel systems and/or engines were operated or tested on E15. Taken together, these studies represent the operation of hundreds of vehicles over millions of miles on E15 under real world and testing conditions without issue. The model year 2001 and newer light-duty motor vehicles continued to meet applicable federal emissions standards over the vehicles' full useful lives when

operated and tested on E15.

Did EPA look at any testing data other than emissions before approving E15?

EPA issued its E15 partial waiver decisions based on an extensive review of all relevant scientific and engineering information. For model year 2001 and newer light-duty motor vehicles, across the approximately 30 studies EPA used to support its waiver decisions, which included the comprehensive work conducted by the Department of Energy (DOE), no issues regarding vehicle fuel system compatibility or engine durability arose when the fuel systems and/or engines were operated or tested on E15. Taken together, these studies represent the operation of hundreds of vehicles over millions of miles on E15 under real world and testing conditions without issue. The model year 2001 and newer light-duty motor vehicles continued to meet applicable federal emissions standards over the vehicles' full useful lives when operated and tested on E15.

Was EPA aware of ongoing CRC testing on engine durability, fuel pumps and other engine components? Why not wait until that test was complete before making a decision? Because in the aftermath it looks like the decision was, at best, premature. The CRC data shows millions of approved vehicles are in danger of engine damage.

EPA has reviewed the limited portions of the CRC test program made available to the public. Unfortunately, complete information on the testing program has not been made available to the government, and the CRC expressly denied EPA or the Department of Energy (DOE) a role in the test program. As DOE has highlighted repeatedly (see for example here: http://energy.gov/articles/getting-it-right-accurate-testing-and-assessments-critical-deploying-next-generation-auto), the CRC E15 test programs have a number of significant scientific shortcomings, including failure to test components or vehicles on E0 and E10 to provide information on typical failure rates for baseline fuels.

How many stations are carrying E15? How is EPA ensuring compliance with the labeling requirement? Recent reports show that as many as 1/3 of stations carrying e15 are not properly labeling it.

As of April 15, 2013, EPA has approved misfueling mitigation plans for 11 companies that are offering E15 at approximately 20 retail stations. EPA is closely monitoring results from the E15 compliance survey to ensure that stations that offer E15 are complying with applicable E15 labeling requirements. In 2012, the E15 survey checked every E15 station registered with an approved Misfueling Mitigation Plan and found 100 percent compliance with the labeling requirements. Reports suggesting that 1/3 of the stations with approved misfueling mitigation plans were found not to be in compliance with the labeling requirements, are erroneous.

At what point should we conclude the mandate is causing significant harm?

EPA is not requiring the use of E15 – this will be up to the marketplace.

What was the rate of consumer misfueling during the switch from leaded to unleaded gasoline? Why didn't EPA promulgate stricter misfueling mitigation requirements like it did during that time- or even the more stringent warning label (considering that was the only misfueling mitigation measure EPA is requiring)?

EPA does not believe there was significant misfueling as unleaded gasoline was introduced. The agency did conduct tampering and misfueling surveys throughout the 1980's and into the early 90's during the phase out of lead in gasoline. The surveys generally found a very low incidence of misfueling. Further, state inspection programs implemented in many areas of the country also implemented tampering and misfueling inspections, which acted as additional deterrents to misfueling.

What is the status of an ANSI standard for E15?
I am not aware of any ANSI standards for E15.
Why is EPA suggesting an E15 cert fuel in the Tier 3 rule, considering one of the justifications is to harmonize regulations with the State of California, which certifies to E10? Is this a way to force automakers to build cars to use fuels that may or may not be commercially available?
Vehicles must be tested under conditions which reflect conditions they experience in-use. Since Tier 3 standards phase in from 2017-2025 this means in-use conditions well out into the future. In light of uncertainty regarding future conditions, it seemed prudent to ensure that all new vehicles going forward were designed to be durable and emission compliant on ethanol concentrations up to the E15 waiver limit. At the same time EPA is seeking comment on whether we should finalize E10 for certification test fuel. If we finalize E15, the agency intends to allow use of E10 as the certification test fuel through 2019.
Given the number of issues with E15, not the least of which is liability, why does EPA think half of the fuel consumption will be E15 in 2017?
Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine our analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.
The majority of gas stations are single store operators, and more than 90 percent are independent from refineries. Why would these small businessmen take on potential liability to sell a fuel that can only be used in less than 5 percent of vehicle (those certified by manufacturers to use E15 or FFV) and no other type of engine?
EPA does not require that any party offer E15 for sale. EPA has not made a projection of potential E15 sales, but would note that light-duty diesel vehicles represent less than five percent of vehicle sales, yet many retail stations now offer diesel fuel in order to appeal to a wider clientele of potential customers.
EPA's Tier 3 proposed rule would change the certification fuel that is used to test vehicles and engines for compliance with Clean Air Act standards. EPA is proposing to mandate that gasoline with 15% ethanol be used as certification fuel. Your rule describes this action as "forward looking" while admitting that E15 is now only commercially available in a limited number of fuel retailers. Is it appropriate for EPA to use its Tier III regulation to compel automakers to produce E15 vehicles? Why is EPA making this change now?
Vehicles must be tested under conditions which reflect conditions they experience in-use. Since Tier 3 standards phase in from 2017-2025 this means in-use conditions well out into the future. In light of uncertainty regarding future conditions, it seemed prudent to ensure that all new vehicles going forward were designed to be durable and emission compliant on ethanol concentrations up to the E15 waiver limit. At the same time EPA is are seeking comment on whether we should finalize E10 for certification test fuel.
Wouldn't it be prudent for EPA wait to see how E15 performs in the marketplace prior to mandating its use as the new certification fuel?
EPA is proposing that manufacturers use E15 as the test fuel for certification purposes, but the agency is also seeking comment on whether E10 should be the federal certification test fuel. EPA will fully

consider comments from stakeholders and the public before making a final decision.

If E10 is now the predominant gasoline blend, why wouldn't EPA consider this fuel first as the new certification fuel?

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

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

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

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

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

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

Consideration of the need to change the certification test fuel to include ethanol goes back to at least 2006 as ethanol use began increasing dramatically. During this multi-year period, the topic was discussed on numerous occasions with all relevant stakeholders, including the vehicle manufacturers, refiners, ethanol producers, nonroad engine manufacturers, the California Air Resources Board, State organizations, and NGOs. EPA is proposing that manufacturers use E15 as the test fuel for certification purposes, but the agency is also seeking comment on whether E10 should be the federal certification test fuel. EPA further anticipates that the agency will again have numerous discussions with many

stakeholders in the post-proposal timeframe prior to making any decision for the final rule, and all meetings and comments from stakeholders will be placed in the rulemaking docket. EPA will fully consider comments and feedback from stakeholders and the public before making a final decision. With regard to your request for documents, EPA staff inform me that the appropriate protocol is to make such a request through a separate letter to the agency. I will ask that the agency respond to any such request.

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

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

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

It has been more than 10 years since any changes have been made to federal certification test fuel, but it is time to change the certification fuel to reflect the fact that ethanol is found in most retail gasoline today. In an effort to focus on the longer term, EPA is proposing that manufacturers use E15 as the test fuel for certification purposes, but the agency is also seeking comment on whether E10 should be the federal certification test fuel. EPA will fully consider comments from stakeholders and the public before making a final decision.

The Tier 3 rule solicits comments on various alternative approaches in transitioning to E15 as certification fuel. Would E10 be an appropriate certification fuel since it appears to meet EPA's criteria of that test fuel that "better align(s) with the current and projected in-use fuel"?

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

Would your estimates of the benefits of the Tier 3 proposed rule appreciably change if E10 was selected as the new certification fuel?

Selecting E10 as the certification fuel would not impact the exhaust emissions benefits of the proposed Tier 3 rule. However, it could effectively increase the stringency of the evaporative emission standards if the volatility of the E10 certification fuel were to be set at 10 psi, consistent with in-use fuel.

Have you considered whether the proposed tailpipe and evaporative standards are appropriate if E10 is the new certification fuel, or would they need to be adjusted?

EPA does not believe there would need to be any adjustment to the exhaust emission standards.

However, it could effectively increase the stringency of the evaporative emission standards if the volatility of the E10 certification fuel were to be set at 10 psi, consistent with in-use fuel.

E15 is not the certification fuel in California. It is E10. I understand that California does not permit its gasoline to be E15. EPA has touted national uniformity in many areas of mobile source regulation. Why have you proposed E15 as a federal certification fuel when it cannot be used as such in California?

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

Your Regulatory Impact Analysis assumes that E15 utilization for 2001 and later model vehicles will be 50% by 2017, about 80% by 2019 and 90% by 2020. You also project that use of E15 will be substantially higher in Reformulated Gasoline (RFG) areas, which are major population areas by Clean Air Act definition – EPA projects nearly 75% of gasoline will be E15 in RFG areas by 2017. Yet E15 is now almost entirely absent from the market by EPA's own assessment. Are you assuming, then, that nearly all MY 2001 and later car owners will be using E15 even if automobile companies don't warrant such cars for using E15? Why do you assume such levels of consumer acceptance?

Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine its analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

EPA data indicates that pre-MY 2001 vehicles and other equipment that cannot use E15 were almost 40% of the gasoline market in 2010. How will EPA ensure that E10 will be available for older model cars less than a few years from now?

EPA is not mandating E15 and the market will determine what among the range of legal fuels are sold to satisfy customer demand. Regardless, since E15 is currently distributed from less than 20 of the approximately 150,000 retail stations nationwide, this would not appear to be a near-term concern. Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine its analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

Doesn't EPA analysis of RFG areas effectively project that 3 out of 4 retail outlets will have to be selling E15 in major cities in less than four years?

Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine its analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission

reductions and benefits of the Tier 3 proposal.

Your Regulatory Impact Analysis assumes that E15 utilization in nonroad equipment (like construction equipment, lawnmowers and chain saws) will ramp up from zero percent in 2017 to 100 percent by 2030. Yet, to date, EPA has not acted to waive restrictions on using E15 for any nonroad vehicle or piece of equipment. On what analysis is this E15 penetration rate for nonroad vehicles based?

Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine its analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

Please detail what other regulations or EPA determinations will be necessary to force this amount of E15 into the nonroad sector within the time period projected.

Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine its analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal. The Tier 3 proposal has no bearing on fuels used in the nonroad sector. The Tier 3 proposal does not change the fact that the partial waiver for E15 does not allow for its use by nonroad equipment.

Is EPA currently considering issuing a Clean Air Act section 211(f)(4) waiver for use of E15 blends in nonroad equipment, motorcycles and other vehicles and equipment not covered by current waivers?

No, there is no such action under consideration by the Agency.

Doesn't this mean that EPA considers E85 not to be a viable option for meeting renewable fuel standard requirements?

EPA considers a wide range of renewable fuel types as the agency conducts assessments for the annual RFS volume standards as required under the CAA. E85 is one of several means that can be used to deliver renewable fuel volumes required to meet the renewable fuel standard requirements.

Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine its analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

Recent reports on the proposed Tier 3 rule have warned that it could actually increase greenhouse gas emissions from the production of gasoline due to the energy-intensive equipment that would be needed to comply with the rule. Would you support rescinding the proposed Tier 3 rule if compliance with the rule was found to increase greenhouse gas emissions?

The proposed Tier 3 standards would result in very large emission reductions from both new and existing vehicles. The additional gasoline hydrotreating would also cause a relatively small increase in greenhouse gas (GHG) emissions at the refinery due to the additional gasoline hydrotreating. EPA analyzed these impacts in detail using our refinery-by-refinery analysis. The relatively small increase in GHG emissions from refining would be offset though reductions in vehicle emissions of GHG pollutants (methane and N2O) from the improved operation of the vehicle catalysts.

Is it EPA's intention to use the E15 cert fuel to force the automakers to produce E15 capable vehicles? Is it appropriate for EPA to use its Tier III regulation to force autos to produce E15 capable vehicles? Is the cost of hardening vehicles for E15 included in the Tier III cost calculations?
Vehicles must be tested under conditions which reflect conditions they experience in-use. Since the proposed Tier 3 standards would phase in from 2017-2025 this would mean in-use conditions well out into the future. In light of uncertainty regarding future conditions, it seemed prudent to ensure that all new vehicles going forward were designed to be durable and emission compliant on ethanol concentrations up to the E15 waiver limit. At the same time EPA is seeking comment on whether the agency should finalize E10 for certification test fuel. Many of the vehicle manufacturers are already warranting their new vehicles to operate on E15. The change of certification fuel to E15 would thus have little impact on vehicle hardware, but would ensure manufacturers design their vehicles to account for emission impacts of ethanol concentrations up to E15 over the life of the vehicle.

22. Inhofe 22. Why do you think that the automakers, except for GM on 2012+ and Ford on 2013+ have refused to warrant E15 use in their existing fleet?
I would defer to the automakers with regard to explanations of the rationale for their decisions with regard to warranties.
23. Inhofe 23. Have you reviewed the fuel pump and fuel sender system test report issued by CRC in January? DO you agree that the results of that testing go a long way towards explaining why the automakers are concerned about the use of E15 in their vehicles, since it showed significant and extensive damage to fuel pumps and fuel senders?

EPA has reviewed the limited portions of the CRC test program made available to the public. Unfortunately, complete information on the testing program has not been made available to the government, and the CRC expressly denied EPA and the Department of Energy (DOE) a role in the test program). The CRC E15 test programs have a number of significant scientific shortcomings, including failure to test components or vehicles on E0 and E10 to provide information on typical failure rates for baseline fuels.
Earlier this year I introduced with Senator Vitter a bill to reverse an EPA regulation that would lead to an increase in the amount of ethanol in gasoline. Ethanol is less energy efficient than oil and adds to the cost consumers pay at the pump. Furthermore, many environmental organizations have raised concerns about the increased inputs of energy, pesticides, and fertilizer needed to grow more corn for ethanol production. World hunger organizations have raised concerns about the mandate's effect on food prices. If ethanol production is a profitable venture, some claim it should not need to be mandated.
12. Can you justify why we should continue mandating the use of ethanol?
Response: EPA implements conventional and renewable fuels and fuel additives regulations and programs as required under the Clean Air Act, passed by Congress.
13. The last administrator clearly took on the role of promoting the ethanol industry. Do you believe your role as administrator is to promote one industry over others, or that decisions should be made that consider the protection of the environment and the economy?
Response: EPA implements conventional and renewable fuels and fuel additives regulations and

programs as required under the Clean Air Act. EPA does not promote any specific industry. **Wicker 14. EPA has granted a waiver to California for its Zero Emission Vehicle (ZEV) program. As a general matter, what is your view on sales mandates, i.e., using environmental laws as authority to require that automakers sell a certain number of a particular type of vehicle?**

Wicker 15. Do you believe that a manufacturer should be required to sell the mandated vehicles at a loss if that is the only way to meet the required Government sales volume?

Wicker 16. What is EPA's role in assessing the efforts of states that adopt this program to create the infrastructure, incentives, and other mechanisms that will help this program be successful?

Response to questions 14, 15 and 16: EPA's waiver decisions are governed by the Section 209(b) of the Clean Air Act, which requires the agency to grant a waiver request from California unless the Administrator makes any of the following three findings:

California's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious,

California does not need its standards to meet compelling and extraordinary conditions, or

California's standards and accompanying enforcement procedures are not consistent with section 202(a) of the Clean Air Act.

Wicker 17. What recourse do automakers have if EPA does not exercise this oversight?

The automakers have supported one national vehicle program, and harmonization of federal greenhouse gas and criteria emission vehicle standards with California standards. EPA's role in providing a waiver for California is governed Section 209(b) as described above.

22. Nebraska is a leading ethanol producer, and I want to ensure that my constituents continue to have the ability to purchase Flex Fuel Vehicles (FFVs) and fuel up with higher ethanol blends. Do the new Corporate Average Fuel Economy (CAFE)/greenhouse gas rule and accompanying guidance appropriately incentivize production of FFVs? If so,how? Is the incentive on par with that of electric vehicles?

Through Model Year (MY) 2015, the CAFE and GHG programs treat FFVs the same, i.e., they receive the same credits under the GHG program that FFVs have long received under the CAFE program. Beginning in MY2015, the CAFE credits begin a phase-out period under the Energy Independence and Security Act (EISA) of 2007. Starting in MY2016, EPA's GHG program provides credits for FFVs based on the actual use of E85 and the related GHG emissions benefits of ethanol combustion relative to gasoline. EPA believes that the GHG and CAFE credits will continue to provide an incentive to automakers to continue to build FFVs. While the FFV credits are not as large as the temporary and limited incentives that have been provided for the production of electric vehicles, the FFV credits do not phase-out over time and may actually provide stronger incentives, as the incremental costs of FFVs are much lower than for electric vehicles.

23. It is my understanding that the evaporative emissions profile for E15 and higher ethanol blends is actually somewhat better than conventional E10 gasoline. Is this true, and if so, why are EPA's current Vapor Control requirements locking these blends out of the year-round fuel market?

The evaporative emissions profile for E15 is typically better than for E10, assuming the same gasoline is used for blending. However, the volatility of E15 is limited to 9 psi Reid Vapor Pressure (RVP) in the

summer for two reasons. First, the emissions testing and analysis for the waiver demonstrated that E15 needed to have an RVP of no higher than 9 psi for motor vehicles to meet EPA's evaporative emissions standards. Since compliance with the emissions standard was the criterion for granting a waiver, EPA conditioned the waiver on E15 having an RVP no higher than 9 psi. Second, the Clean Air Act (CAA) provides that summertime RVP can be no higher than 9 psi, with a 1 psi RVP increase for blends with ethanol between 9 and 10%. E15 is not eligible for this 1 psi wavier, thus the CAA limits the RVP of E15 to 9 psi in the summer.

PM:

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

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

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

EPA's approach to estimating the benefits of reducing fine particulate matter pollution is consistent with the best available science and advice from two Congressionally-created independent review boards, the Clean Air Scientific Advisory Committee and the Advisory Council on Clean Air Compliance Analysis. There are health benefits attributable to reducing particulate matter pollution below the NAAQS and the agency does take those benefits into account. There is no scientific basis for ignoring those benefits. While the NAAQS is set at a level adequate to provide protection of public health – and should be neither more nor less stringent than necessary to do so – it is not set at a zero risk level.

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

Understanding the components of particulate matter is important. The Agency has invested in a PM2.5 speciation monitoring program since 1999 to provide ambient air data for tracking air quality and to support scientific studies. In addition, the EPA and other organizations (e.g., HEI, EPRI) have funded research on health effects related to PM composition. In the PM NAAQS review completed in 2012, the Agency concluded that the currently available scientific information continues to provide evidence that many different components of the fine particle mixture as well as groups of components associated with specific source categories of fine particles are linked to adverse health effects. However, the scientific evidence is not yet sufficient to allow differentiation of those components or sources that are more closely related to specific health outcomes nor to exclude any component or group of components from the mix of fine particles included in the PM2.5 indicator.

In 1997, EPA changed the way that it conducts Regulatory Impact Analyses (RIA) to justify the costs of many of its regulations. Specifically, EPA now regularly addresses the criteria pollutant, PM2.5, which is already regulated under its own National Ambient Air Quality Standard (NAAQS), in the benefit cost

analysis (BCA) for other pollutant regulations, particularly air toxics. Where the Agency finds that PM2.5 emissions reductions show benefits that are the same or greater than that for the pollutant being regulated (a "co-benefit"), the agency has based the rule at least in part on that result. EPA's Mercury and Air Toxics rule for power plants is an example of this approach, which presents at a minimum some practical and scientific questions of validity. Depending on the degree to which EPA relies on co-benefits, EPA could be over-regulating the pollutant(s) that is the focus of an RIA. Since PM2.5 is regulated separately from other pollutants, doesn't this approach really mean that EPA is "double counting" these PM2.5 reductions across other regulations? As Administrator, what steps would you take to ensure that the co-benefits of regulation do not become a regular basis for the calculated benefit of any particular regulatory proposal?

The purpose of the Mercury and Air Toxics Standards is to reduce mercury and other air toxics, following the approach set out in the Clean Air Act. While the EPA does not set out to regulate PM in toxics rules such as MATS, such rule achieve these PM reductions as an additional benefit at no additional cost. EPA accounts for the PM benefits in our cost-benefits analysis, because they are real, they are significant, and best practices for economic analysis require that the agency consider all benefits. The PM2.5 benefits the EPA estimates for new rules such as CSAPR and MATS are not "double-counting." Those benefits are above and beyond those the agency previously estimated for other rules establishing controls on pollution that are already "on the books," and are appropriate to include in the benefit-cost analysis for a regulation, regardless of whether those PM2.5 benefits are the direct target of a regulation or a co-benefit.

EPA rationalizes many of the very costly regulations it has proposed by citing theoretical PM related health benefit estimates that are based on data collected over 30 years ago. In fact, the key Harvard Six Cities and American Cancer Society data are based on surveys that are over 30 years old. Are you aware that in 2004 the NAS recommended that EPA not rely on these benefit studies because the individual data have not been updated? Why does the EPA continue to rely on studies that the NAS has stated should have "little use for decision making?" Is EPA misleading the public in citing these implausibly high benefit estimates when the NAS has clearly told the Agency not to rely on these studies? Is EPA's claim of achieving benefits equivalent to curing cancer based on these same flawed studies that rely on outdated information? Will you promise not to rely on studies using the American Cancer Society or Harvard Six City databases until the data are updated as recommended by the National Academy of Sciences?

The quotation in your question is taken out of context. The NAS commented that the EPA should not rely on the Harvard Six Cities cohort and American Cancer Society cohort alone to the exclusion of a "new generation of cohort studies." In formulating the decisions on the PM NAAQS, the EPA considered all of the available scientific evidence, including studies of new cohorts. In addition, two separate panels of EPA's independent Science Advisory Board (SAB) recently recommended that the EPA use these two cohorts to quantify PM2.5-related mortality risks and benefits (i.e., CASAC (2009, 2010) and Council (2010)). Despite some inherent limitations, these cohorts continue to have several advantages over other currently available cohorts, including age and gender representativeness, geographic representativeness, study size, consideration of confounders, and length of follow-up. EPA's approach is consistent with the advice from NAS and SAB.

In March 28, 2013 the Environmental Protection Agency (EPA) published updated emissions standards

for power plants under the Mercury and Air Toxics Standards (MATS). The MATS rule imposes sweeping new emissions requirements for power plants, and EPA expects that the MATS rule will entail upwards of $10 billion in compliance costs, making it the most expensive rule in EPA's history. In promulgating the MATS rules, EPA relied heavily on the claim that the rule will benefit public health through decreases in particulate matter pollution (PM). However, regulation of PM is primarily accomplished through National Ambient Air Quality Standards (NAAQS), which are required to be set at levels that provide adequate protection for the public health or welfare. Accordingly, it appears that the agency has set a NAAQS standard for particulate matter at a level insufficiently protective of public health and welfare. Can you share your thoughts on this?

Even after several decades of pollution control laws, until MATS there were no national limits on emissions of mercury and other air toxics from power plants. Power plants emit mercury, other metals, acid gases, and other air toxics – as well as particulate matter – all of which harm people's health. The rule regulates mercury and other air toxics, but the control technologies installed to reduce these air pollutants also yield significant reductions in particulate matter.

What percentage of the health benefits in all EPA's air regulations taken together over the last five years are attributable to collateral reductions in particulate matter arising from these regulations?

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

I also understand that while the agency tightened the particulate matter standard, you did not issue any accompanying rules or guidance that would allow for smooth implementation. Can you tell us how and when EPA will prepare implementation rules for particulate matter and ozone to prevent disruptions to the economy, and in particular how EPA will ensure the availability of low-cost offsets to allow new plants and the expansion of existing plants?

The PM2.5 NAAQS were revised in December 2012, and EPA is working to develop guidance and rules to provide for smooth implementation. EPA recently issued guidance on the area designations process. EPA is also developing an implementation rule that we expect to finalize soon after nonattainment areas are designated. Should EPA revise the ozone NAAQS, we would intend to develop an implementation rule for that standard in a similar manner, and finalize that implementation rule around the time that area designations are finalized.

Regarding the new source review (NSR) pre-construction permitting programs, EPA included a transition (or regulatory grandfathering) provision in the final 2012 PM NAAQS rule to help smooth the implementation of new requirements associated with the revised NAAQS under the PSD program. Emission offsets are generally associated with non-attainment NSR, which would apply to any newly designated nonattainment areas upon the effective date of such designations (2015 at the earliest). Most states projected to have areas that may be designated nonattainment for the revised PM NAAQS already have nonattainment NSR programs for PM2.5 (i.e., they currently have areas that are or were previously designated nonattainment for PM2.5), including functioning emission offset programs. Those same programs will apply to any newly designated nonattainment areas. For the limited areas that do

not have an existing nonattainment NSR program for PM2.5, the lead time built into the designation process will provide the opportunity for states and sources to plan for projected offset needs.

On December 7, 2012, a PM2.5 monitor in the North Pole, Alaska registered a concentration of approximately 172 micrograms per cubic meter for the 24-hours of that day, almost five times the EPA health based standard. The average daily temperature for that location was -26 degrees Fahrenheit. PM2.5 comes primarily from combustion, which, given the temperature, was likely wood or fuel oil burning for heating purposes, meaning that people were generating heat in order to survive the cold. Given the choice, many likely chose to survive the elements that day by burning fuel despite the potential long-term health risk associated with being exposed to such a high concentration of air pollution. If confirmed, how will EPA balance incremental, long-term health improvements with the acute, or short-term, health impacts that could occur if the standards are lowered?

As with all NAAQS, EPA's primary PM2.5 standards are set to protect the public health with an adequate margin of safety, based on the body of available health evidence and technical information. In determining whether a given area meets or violates the EPA's 24-hour PM2.5 standard, it is not appropriate to compare a single high day to the standard level. Rather, the 24-hour PM2.5 standard requires that the 3-year average of the 98th percentile of annual 24-hour average PM2.5 concentrations be below 35 micrograms per cubic meter. This approach to determining whether areas meet or violate the 24-hour PM2.5 standard is meant to ensure appropriate public health protection. A single day with a high PM2.5 concentration, by itself, does not result in a violation of the standard.

EPA currently uses a mass based PM 2.5 NAAQS without regard to the chemical make-up of the particulate. Early in the Bush Administration, OMB's then-Director of OIRA, John Graham, wrote a letter to then-Administrator of EPA Christy Todd Whitman, suggesting that EPA needed to redirect Agency research funds to do speciation studies to determine the source of PM2.5 health effects. Do you know if those studies were done? Doesn't the chemical makeup of PM 2.5 effect determine the degree of health impact? Should the PM 2.5 NAAQS be species weighed to better protect the public?

EPA has funded, and continues to fund, a number of research studies evaluating the links between PM composition and toxicity. The agency has invested in a PM2.5 speciation monitoring program since 1999 to provide ambient air data for tracking air quality and to support scientific studies. In addition, the EPA and other organizations (e.g., HEI, EPRI) have funded research on health effects related to PM composition. In the PM NAAQS review completed in 2012, the agency concluded that the currently available scientific information continues to provide evidence that many different components of the fine particle mixture - as well as groups of components associated with specific source categories of fine particles – are linked to adverse health effects. However, the scientific evidence is not yet sufficient to allow differentiation of those components or sources that are more closely related to specific health outcomes, nor is it sufficient to exclude any component or group of components from the mix of fine particles included in the PM2.5 indicator (78 FR 3123). The CASAC, EPA's statutorily mandated external science advisory committee, agreed with this conclusion and with the approach of continuing to define the PM2.5 standards in terms of PM2.5 mass.

If confirmed, will you commit to address NAAQS implementation issues? Can you give the Committee a schedule of concrete actions you will undertake and the deadlines for those actions? Are you open to delaying the effective date of the PM NAAQS until EPA, states and permittees have the right implementation tools in place?

If confirmed, I will continue to be committed to addressing NAAQS implementation issues. EPA can provide the committee a planned schedule of NAAQS-related rules and policy guidance documents. In general, the agency's objective is to issue rules and policy guidance as quickly as practicable after a NAAQS has been promulgated to facilitate timely state planning. To avoid any delay in achieving the important health benefits of the PM NAAQS, EPA provided a transition mechanism in the final 2012 PM NAAQS rule that allowed for grandfathering of qualifying PSD permit applications by exempting them from new requirements associated with the revised NAAQS. This was the most urgent immediate concern because the regulations otherwise require that PSD permits address all NAAQS that are in effect as of the date of permit issuance. For permit actions that do not qualify for the grandfathering exemption, prior to the effective date of the 2012 PM NAAQS EPA issued draft guidance on performing required air quality impact analyses for PM2.5 under the PSD program. In addition to these two actions, the agency continues to work diligently on other aspects of NSR/PSD implementation for PM2.5 to ensure that permitting processes are not disrupted or delayed by the revised NAAQS.

39. Inhofe 39. Last June, EPA proposed to lower standards for fine particulate matter from 15.0 micrograms to 12 to 13 micrograms. EPA also took comment on levels as low as 11, but did not take comment on retaining the current standard at 15, or on other possible levels. Given that there is uncertainty in different studies and given that EPA received lengthy comments during its review process arguing against revising the 15 microgram standard – why did EPA not solicit comments on maintaining the current standard? Do you believe EPA is limiting its ability to consider alternative science by only taking comment on options that would substantially lower fine particulate standards and other NAAQS?

In formulating proposed and final decisions on the PM NAAQS, the EPA considered the available scientific evidence, advice of CASAC and extensive public comments. Based on these considerations, the agency concluded that the previous suite of primary PM2.5 standards was not requisite to protect public health with an adequate margin of safety, and that revision was needed to increase public health protection. In the proposal EPA explained in detail its reasons for believing the then current annual standard of 15 micrograms/cubic meter was inadequate and needed to be revised to a level between 11-13 micrograms/cubic meter. EPA's proposal invited comment on all elements of the proposal, including these proposed judgments. The agency received – and considered – comments supporting retaining the standard at a level of 15 ug/m3.

NSPS:

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

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

BACT standards apply to individual sources on a case-by-case basis. They generally are more stringent

– and by law may not be less stringent – than Clean Air Act new source performance standards (NSPS), which the EPA establishes for categories of industrial sources. In other words, NSPS are the "floor" or minimum emission control standards for BACT determinations. Is that correct?

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

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

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

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

As explained in responses to related questions, the statement that "EPA stated that fuel-switching from coal to natural gas would not and could not be considered BACT" is not entirely correct. While EPA did not propose that CCS represented BSER, EPA stated in the preamble of the proposed NSPS rule that "CCS is technologically feasible for implementation at new coal-fired power plants and its core components (CO2 capture, compression, transportation and storage) have already been implemented at commercial scale." [77 FR 22414]. As noted in answers to other questions, several commercial-scale coal-fired power plants with CCS are currently progressing, and EPA's view is that coal-fired units can meet the proposed limit. The agency is still actively considering a wide range of comments on these issues, and any final decision will reflect careful consideration of these issues.

EPA has stated that the proposed GHG NSPS will promote the development of CCS in the United States. How do you expect the rule to do so?

The proposed rule would promote development of CCS because it would set emission limits that, in the case of coal- or petroleum coke-fire units, would require use of CCS at a moderate level. A number of full scale commercial projects are currently in development, including Southern Company's Kemper Project, which is more than 75% complete; the Texas Clean Energy Project (TCEP), which has signed contracts for electricity, CO2 and other products from the plant and hopes to close financing this summer; and, the California Hydrogen Energy Center Project, which is currently undergoing regulatory review in California.

What health benefits are projected to occur as a result of an existing source NSPS - that is, benefits other than the co-control of criteria pollutants or NESHAPS?
At this time, EPA is working to finalize the proposed NSPS for new power plants. The agency is not currently developing any existing source GHG regulations for power plants. As a result, we have performed no analysis that would identify specific health benefits from establishing an existing source program.

Are you familiar with and confident in the data EPA used to justify the "green completion" mandate?
EPA based all provisions of the Oil and Natural Gas NSPS on the best available data sources and on proven technology that will result in net cost savings to operators through recovery of natural gas otherwise lost during well completions. A variety of data sources informed development of the rule, including data from the U.S. greenhouse gas inventory, Natural Gas STAR program, State programs, and other published studies and materials. In addition, during an extended comment period, several commenters provided supplemental data for the agency's consideration. The agency considered all of this for the final rule.

In December of last year the NRDC released a report calling on EPA to use Section 111(d) of the Clean Air Act to establish a new greenhouse gas program for existing power plants. Have any officials from your office, or elsewhere in EPA that you are aware of, met with NRDC to discuss their proposal?
A representative of NRDC asked for, and was granted, the opportunity to present the organization's proposal to senior management and staff in the Office of Air and Radiation.

Can you assure us that EPA will adopt a program that will not force new retirements of coal units?
I do not foresee the EPA adopting an NSPS program that would mandate the retirement of coal units.

Do you believe that EPA has the authority under the current language of the Clean Air Act to establish a new climate change program for existing power plants, such as the one called for by the NRDC? If so, what analyses has EPA conducted regarding the practicality or legality of using Section 111(d) of the Clean Air Act to regulate existing power plants?
Section 111(d) of the Clean Air Act (CAA) provides authority to regulate existing sources where EPA establishes a new source performance standard (NSPS) under section 111(b) for a certain pollutants. EPA has not developed an analysis of whether section 111(d) provides the authority to adopt the program proposed by NRDC.

What plans does EPA have to adopt new GHG regulations for existing power plants? Specifically, has your office prepared draft regulations, what regulatory options are you considering, and what is the likely timeline for such action?
EPA is not currently developing any existing source GHG regulations for power plants. Accordingly, the Office of Air and Radiation has not prepared draft regulations. The office's current work is focused on reviewing the comments submitted in response to the proposed carbon pollution standard for new power plants under section 111(b).

Once EPA finalizes its proposed NSPS for GG Emissions for New Stationary Sources: Electric Generating Units (EGUs), does the agency intend to propose regulations under Section 111(d) of the Clean Air Act to establish procedures whereby states set standards of performance for GHG emissions from existing EGUs in their jurisdiction? If so, does EPA agree that it can only issue guidance to the states on regulating GHG emissions from power plants and that each state must submit a plan to the agency that sets standards for performance for existing power plants within the state? Will EPA discuss its

plans for the guidance with states prior to issuing such guidance?

EPA is not currently developing any existing source GHG regulations for power plants. As a general matter, the provisions of section 111(d)(1) are plain on their face to the extent that they require EPA to "prescribe regulations which shall establish a procedure … under which each State shall submit … a plan which … establishes standards of performance for any existing source …." In the event that EPA does undertake action to address GHG emissions from existing power plants, the agency will ensure, as it always seeks to do, ample opportunity for the public and stakeholders to offer meaningful input on potential approaches.

Once EPA finalizes its proposed NSPS for GG Emissions for New Stationary Sources: Electric Generating Units (EGUs), does the agency intend to propose regulations under Section 111(d) of the Clean Air Act to establish procedures whereby states set standards of performance for GHG emissions from existing EGUs in their jurisdiction? If so, does EPA agree that it can only issue guidance to the states on regulating GHG emissions from power plants and that each state must submit a plan to the agency that sets standards for performance for existing power plants within the state? Will EPA discuss its plans for the guidance with states prior to issuing such guidance?

EPA is not currently developing any existing source GHG regulations for power plants. As a general matter, the provisions of section 111(d)(1) are plain on their face to the extent that they require EPA to "prescribe regulations which shall establish a procedure … under which each State shall submit … a plan which … establishes standards of performance for any existing source …." In the event that EPA does undertake action to address GHG emissions from existing power plants, the agency will ensure, as it always seeks to do, ample opportunity for the public and stakeholders to offer meaningful input on potential approaches.

Using the logic in the draft NSPS to create a category for "fossil fuel-fired EGUs," why did EPA stop at including just coal and natural gas units? If you're going to combine power generators into one category, why not extend the proposal to its logical conclusion and include nuclear units? If we did that, what would the practical result be?

CAA section 111(b) requires EPA to list categories of stationary sources that cause or contribute significantly to air pollution anticipated to endanger public health or welfare. When EPA listed fossil fuel-fired electric generating units in the 1970s, those decisions were based specifically on findings with respect to the emissions from combustion of fossil fuels. Other types of electricity generation that do not rely at least in part on fossil fuel combustion, such as nuclear and solar power generation that have not been listed under 111(b) and thus were not included in this source category.

Why did EPA choose to exempt simple-cycle natural gas turbines from the proposed rule?

In the preamble to the proposed new source carbon pollution standard for power plants, the EPA laid out its rationale for not including simple-cycle natural gas turbines in the proposal. Commenters also raised this issue and the agency, of course, will address the matter further in the final rule.

How can EPA justify calling a NGCC turbine the Best System of Emissions Reduction (BSER) for a coal-fueled unit? Has such a BSER determination – that BSER for a specific unit would be to not exist as that type of unit – ever been made in the past?

The preamble set out the extent to which EPA had the latitude under 111(b) and applicable regulations to propose a particular system of emission reduction as the BSER for different types of fossil fuel generating units that have the same function of generating electricity, as well as its rationale for that

proposal. EPA has made a comparable BSER determination in the past. See "Standards of Performance for New Stationary Sources, Primary Copper, Zinc, and Lead Smelters," 41 Fed. Reg. 2,332, 2,333 (Jan. 15, 1976) (establishing a single standard for different types of furnaces in primary copper smelters). In addition, the D.C. Circuit recently upheld a similar action EPA took under CAA section 112 in a rulemaking for processing plywood and composite wood products (PCWP). There, EPA adopted a single standard for multiple production methods. The Court noted that in the rulemaking, EPA subcategorized PCWP equipment "according to its function." NRDC v. EPA, 489 F.3d 1364, 1375 (D.C. Cir. 2007) (citing 69 Fed. Reg. at 45,948). The agency received comments on this set of issues and is evaluating them carefully and will take them fully into account before issuing a final rule.

Is CCS considered BSER for coal plants? Assuming CCS was BSER, would it apply to all fossil-fueled plants – both coal and gas?

In the NSPS proposal, EPA proposed that natural gas-fired combined cycle technology represented BSER for intermediate and base-load fossil fuel-fired power plants. We did not make a separate determination as to what represented BSER for coal-fired power plants alone. EPA received many comments on this proposed determination and is considering them.

Last August you stated: "My job is primarily to implement the Clean Air Act. Our Clean Air Act is prescriptive, but it does allow flexibility. It looks at variability in technology and design. It is not a law that picks winners and losers." However, your department just issued a draft New Source Performance Standard (NSPS) that limits carbon dioxide emissions for new power plants to 1,000 pounds per MW and, if we exclude all of the wind and solar, essentially requires all new power plants to be fueled with natural gas. Do you believe that EPA should use the "flexibility" that you referenced in the Clean Air Act to determine what fuels can and cannot be used to power, heat and cool our homes, businesses and manufacturing facilities? What about transportation fuels?

The proposed carbon pollution standard is a fuel neutral emission rate, which can be met by natural gas fired plants or coal- or petroleum-coke fired plants using carbon capture and sequestration. With respect to transportation fuels, the Agency is committed to carrying out the obligations established by Congress for the EPA under the Energy Policy Act of 2005, the Energy Independence and Security Act of 2007 and the Clean Air Act.

When you proposed the NSPS for new powerplants, you acknowledged that it would not be equitable to apply the new standard to plants that have already been under development for many years and have already obtained their air permits. As I understand it, you recognized that these plants will not be able to meet the new standards and you didn't want to pull the rug out from under companies who have already spent a lot of time and money to develop new plants based on EPA's long-standing rules. Is this the basic reasoning behind EPA's proposal for dealing with "transitional sources"?

In the preamble to the proposed carbon pollution standards, EPA laid out its reasoning in proposing an approach to "transitional" sources. EPA emphasized that sources could qualify as "transitional sources" only if they were on the verge of commencing construction in addition to having obtained their PSD permits.

There is a power plant that has been proposed for western Kansas known as Holcomb 2. Two rural co-ops have been developing this plant for more than 6 years and have already invested almost $90 million dollars to develop a plant that they believe is in the best interests of their members. They have obtained all the necessary permits, but their air permit has now been challenged to the Kansas

Supreme Court. When EPA finishes the NSPS for new power plants, will you treat plants like Holcomb 2 fairly? Will you commit to issuing a rule that will allow them to move forward with their project after getting a decision from the Kansas Supreme Court?

EPA included an explicit reference to Holcomb 2 as a potential transitional source under the proposal. The Agency has received comments and additional information with respect to this project and is carefully evaluating those comments, which it will consider and take fully into account in issuing the final rule.

EPA's April 2012 proposed New Source Performance Standards (NSPS) for Greenhouse Gas Emissions for New Stationary Sources: Electric Generating Units (EGUs) sets a standard of performance based on a single fuel – natural gas. This proposed standard cannot be achieved in practice for any source except natural gas combined cycle (NGCC) units. Can you please explain to the committee how setting a standard for all fuel types based on a single one does not violate the definition of "standard of performance" in Section 111(a)(1) of the Clean Air Act?

In the preamble and the supporting documents for the proposal, EPA explained its reasoning for proposing a single standard of performance for the fossil fuel-fired category. As noted in the answer to question 194, there are precedents for this type of action. At the same time, the proposal included an alternative compliance pathway for new coal-fired facilities. The public provided comment on these issues; the Agency is currently evaluating those comments and will take full account of them before issuing a final rule.

Given the price variation in electricity produced from natural gas in New England in the winter of 2013, does EPA still believe that the price of electricity from natural gas-fired generation will remain almost the same as it is today until 2035, as the proposed New Source Performance Standards (NSPS) for Greenhouse Gas (GHG) Emissions for New Stationary Sources: Electric Generating Units (EGUs) projects? If so, could you please provide the committee with a written explanation of EPA's rationale for such a projection? If you do not believe the price in 2035 will remain close to what it is today, will EPA address this changed assumption about electricity prices from natural gas in final NSPS for GHG emissions from new power plants?

As part of the rulemaking package for the proposal EPA included economic analyses that addressed, among a set of related economic issues, projections of future electricity prices. That analysis acknowledged the historic volatility in natural gas markets, including seasonal shifts in response to weather, and also examined the potential impacts of the proposed standard under a range of natural gas prices. EPA also plans to include updated economic analysis addressing these issues in support of a final rule.

EPA states that there are no costs and, concurrently, no benefits associated with the proposed rulemaking to regulate greenhouse gases from new sources. What analysis did EPA undertake to determine that there are no costs or benefits from the proposed rule?

In the preamble and supporting documents for the proposal, EPA provided an extensive discussion of this analysis of costs and benefits that was undertaken to address this question.

Why did EPA only analyze out until the year 2020 in order to determine the lack of costs and benefits?

Because the Clean Air Act requires that the NSPS be reviewed every eight years, this economic analysis focuses on benefits and costs of this proposal for the years through 2020. Although 2020 is the primary focus of proposed rule, EPA did perform economic modeling out to 2030. The analysis helps confirm the

conclusions are consistent even beyond 2020.

EPA states that there are no costs and, concurrently, no benefits associated with the proposed rulemaking to regulate greenhouse gases (GHGs) from new sources. If that is true, then:

24. Inhofe 24. Why is EPA promulgating a rule that has no benefits, especially in light of the President's numerous Executive Orders that are intended to eliminate unnecessary regulatory burdens on the business community? Did EPA factor in the need to have a diverse mix of electric generation into its analysis?

Power plants are the biggest emitters of carbon pollution. This proposed rule would require that any new power plants use modern technology to minimize this harmful carbon pollution, while at the same time maintaining diversity of our electric generating fleet. Companies building power plants today are already making cleaner generation choices, such as the use of natural gas combined cycle or coal with CCS, and this trend is projected to continue.

25. Inhofe 25. Why did EPA only analyze out until the year 2020 in order to determine the lack of costs and benefits?

As the Clean Air Act requires that the NSPS be reviewed every eight years, this economic analysis focuses on benefits and costs of this proposal for the years through 2020. Although 2020 is the primary focus of the proposed rule, EPA did perform economic modeling out to 2030 which can be found in the docket for the proposed rule (EPA-HQ-OAR-2011-0660). The analysis helps confirm that the conclusions are consistent even beyond 2020.

26. Inhofe 26. Did EPA perform a robust analysis on the true cost of a long term switch to natural gas powered electric generation, as the rule assumes?

Yes. Moving forward, EPA predicts a mix of coal and natural gas-powered electric generation. EPA has conducted a series of sensitivity analyses to further examine the role that natural gas prices could play in the future choices of new power plants. The analyses support the conclusion that new conventional coal-fired plants, without CCS technology, are not likely to be built under a wide range of natural gas prices, even prices considerably higher than today's prices. Other independent analyses, like the Energy Information Administration's Annual Energy Outlook, support this conclusion. Even with considerably higher prices of natural gas and increased future energy demand, EPA and EIA analyses project that new coal plants will not be economic relative to other technologies in 2020.

27. Inhofe 27. A recent comprehensive modeling effort done by ICF International – using the same proprietary ICF Integrated Planning Model (IPM) with EPA uses to model each of its rules – project forecasts about 50 GW of coal-fired generation retirements over the next few years, driven mostly by pending EPA rules, with the expectation of another 20 GW of retirements after that. How do you explain the difference between this analysis and EPA's?

A number of economic factors influencing retirements well beyond EPA's clean air rules are included in ICF's figuresxix. External analysts, including GAOxx, CRSxxi, the Bipartisan Policy Centerxxii, and Analysis Groupxxiii, have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. Because EPA's power

sector analyses look at the effects of its rules alone to evaluate incremental impacts, EPA's analyses are not comparable to other assessments that also take into account broader economic factors.

28. Inhofe 28. Can you explain why you used your "discretion" at the Air Office to abandon the long-standing Clean Air Act precedence of subcategorizing fuel types? Will you commit to reproposing the rule so that EPA's precedent is maintained and fuel types are subcategorized?

The Clean Air Act gives EPA the discretion to subcategorize a source category based on size, type or class. EPA has previously set fuel neutral standards (e.g., the 1998 utility boiler NSPS for NOx). The agency is still actively considering a wide range of comments on this issue. A final decision will reflect careful consideration of the issue.

29. Inhofe 29. Do you intend to continue using one source category for all power plants in the final rule as opposed to issuing different NSPSs or emission limits for different types of plants burning different types of fuel?

The agency is still considering a wide range of comments on this issue. A final decision will reflect careful consideration of the issue.

30. Inhofe 30. Using the logic in the NSPS to create a category for "fossil fuel-fired EGUs," why did EPA stop at including just coal and natural gas units? If you're going to combine power generators into one category, why not extend the proposal to its logical conclusion and include nuclear units? Or solar units? If EPA did that, what would the practical result be?

CAA section 111(b) requires EPA to list categories of stationary sources that cause or contribute significantly to air pollution anticipated to endanger public health or welfare. When EPA listed fossil fuel-fired electric generating units in the 1970s, those decisions were based specifically on findings with respect to the emissions from combustion of fossil fuels. Other types of electricity generation that do not rely at least in part on fossil fuel combustion, such as nuclear and solar power generation that have not been listed under 111(b) and thus were not included in this source category.

31. Inhofe 31. How can EPA justify calling a NGCC turbine the Best System of Emissions Reduction (BSER) for a coal-fueled unit?

a. Has such a BSER determination – that BSER for a specific unit would be to not exist as that type of unit – ever been made in the past?

b. Is CCS considered BSER for coal plants? Assuming CCS was BSER, would it apply to all fossil-fueled plants – both coal and gas?

In the NSPS proposal, EPA proposed that natural gas-fired combined cycle technology represented BSER for intermediate and base-load fossil fuel-fired power plants. We did not make a separate determination as to what represented BSER for coal-fired power plants alone. EPA received many comments on this proposed determination and is considering them.

32. Inhofe 32. We have heard people say, on many occasions, that this proposed rule represents the first time that EPA has proposed a new source performance standard for the electricity generation sector without subcategorizing by fuel source, thereby pitting one source against another. For example, Phase I and Phase II of the Acid Rain Program utilized separate categories for reducing sulfur

dioxide and nitrogen oxides. The recently-finalized Utility MACT Rule did the same thing. Considering the differences between coal and natural gas on greenhouse gas emissions, and carbon capture and sequestration technology is not commercially available, why would EPA intentionally put coal into such an untenable position?

EPA has previously set an NSPS for the electricity generation sector without subcategorizing by fuel source. The 1998 utility boiler NSPS for NOx is an example of such a fuel neutral standard. The agency is still considering a wide range of comments on this issue. A final decision will reflect careful consideration of the issue. While a number of commenters have pointed out concerns about the current availability of CCS, others have noted that a number of full scale commercial projects are currently in development, including Southern Company's Kemper Project, which is more than 75% complete; the Texas Clean Energy Project (TCEP), which has signed contracts for electricity, CO2 and other products from the plant and hopes to close financing this summer; and, the California Hydrogen Energy Center Project, which is currently undergoing regulatory review in California.

33. Inhofe 33. Since NSPS are traditionally interpreted to set the BACT "floor" for permitting purposes, how can a NSPS that eliminates the ability to construct new coal units without the implementation of commercially infeasible carbon capture and storage (CCS) be consistent with EPA's previous guidance?
The statement that "EPA stated that fuel-switching from coal to natural gas would not and could not be considered BACT" is not entirely correct. EPA's March 2011 GHG Permitting Guidance says that, "a permitting authority retains the discretion to conduct a broader BACT analysis and to consider changes in the primary fuel in Step 1 of the analysis." Thus, EPA never ruled out the possibility that a permitting agency could require that an applicant consider natural gas, or other cleaner fuels, when proposing a coal-fired EGU. EPA is still carefully evaluating public comments on the proposed carbon pollution standards for new power plants, including comments related to the issue raised in your question. The agency will take these comments into consideration in taking any final action on the proposal. While EPA did not propose that CCS represented BSER, the agency stated in the preamble of the proposed NSPS rule that "CCS is technologically feasible for implementation at new coal-fired power plants and its core components (CO2 capture, compression, transportation and storage) have already been implemented at commercial scale." [77 FR 22414]. Furthermore, it is worth noting that, today, coal-fired power plants are being constructed that will have CCS, and EPA's view is that coal-fired units can meet the proposed limit.

36. Inhofe 36. Does EPA intend to propose and adopt a standard to regulate greenhouse gases from existing power plants? If so, when, and what role will states play in promulgating rules related to this new regulation?
At this time, EPA is working to finalize the proposed NSPS for new sources. The agency is not currently developing any existing source GHG regulations. In the event that EPA does undertake action to address GHG emissions from existing power plants, the agency would ensure, as it always seeks to do, ample opportunity for States, the public and stakeholders to offer meaningful input on potential approaches. In addition, as a general matter, the provisions of section 111(d)(1) are plain on their face to the extent that they require EPA to "prescribe regulations which shall establish a procedure … under which each

State shall submit … a plan which … establishes standards of performance for any existing source ….”

b. Inhofe 37(b). Why did EPA only grant sources with a PSD permit one year to commence construction? If those sources already had permits that would prevent any more emissions than is already allowable, why did EPA force them to comply with a one year limitation?

In EPA's proposal (published in the Federal Register on April 13, 2012), EPA did not propose to apply the NSPS requirements for greenhouse gases to new coal-fired power plants that were on the verge of commencing construction, as indicated by the fact that they already had a PSD permit and would commence construction within one year of the proposal. For sources that were not on the verge of construction, EPA proposed to apply the NSPS requirements because, according to the proposal, it was reasonable to expect those sources to build in the proposed greenhouse gas emission limits. EPA received many comments on this proposal and is reviewing them closely to determine the appropriate action to take.

46. Inhofe 46. During the Administration’s first term, EPA promulgated its endangerment finding and adopted GHG regulations for motor vehicles. It also proposed GHG NSPS for the power sector. What other areas of the economy can we expect GHG regulations in the second term? (Oil and gas, refineries, cement kilns, other industrial facilities) Do you have a plan for addressing GHG emissions in the rest of the economy?

EPA is currently focused on reviewing the more than 2 million comments received on its proposed carbon standards for new power plants. While the agency is evaluating GHG emissions information from a limited number of source categories, EPA has not determined that it is appropriate to regulate GHG emissions from the oil and gas sector, or from other industrial sectors. EPA has previously acknowledged that it is appropriate to issue regulations for refinery greenhouse gas emissions, but as stated in the answer to a related question, the Agency has no current plan for issuing such regulations. The agency also has previously said that it had insufficient data to regulate Portland cement facilities, and we do not have a timetable or plan for issuing GHG regulations of this sector.

47. Inhofe 47. Do you plan on issuing a GHG NSPS rule for refineries or oil and gas delivery systems? If so, when?

EPA has not made a determination that it is appropriate to regulate GHG emissions from oil and gas delivery systems. While the Agency acknowledged that it is appropriate to regulate greenhouse gas emissions from refineries, we do not have a current plan or timetable for regulating carbon pollution from refiners.

5. Since 2009 EPA has issued or proposed over 2,900 pages of greenhouse gas regulations and you have stated in the past your intent to pursue a “deliberate, common sense approach”[1] to regulating carbon. However, I am concerned that there are inconsistencies with this statement and EPA’s actions. For example, EPA entered into a consent decree to issue greenhouse gas New Source Performance Standards for existing units by May 26, 2012. Yet EPA has not clearly stated its plans regarding regulation of existing fossil fuel power plants. I represent a state that gets approximately 70% of its electricity from coal. How do you reconcile these inconsistencies, and can you please explain what the plan really is?

With regard to power plants, EPA is still in the process of reviewing comments submitted in response to the proposed carbon pollution standard for new power plants and is not currently developing any existing source GHG regulations for power plants. It should be noted for the record that a significant portion of the regulations to which your question refers are those addressing greenhouse gas emissions from light-duty vehicles for model years 2012-2016 and2017-2025 and from heavy-duty vehicles from 2014-2018. As I stated in my testimony before the Committee, these common-sense regulations will achieve substantial oil savings and consumer cost savings, while dramatically reducing greenhouse gas emissions. Other relevant regulations include those implementing the congressionally mandated greenhouse gas reporting program, which helps to provide the general public, industry and policymakers with transparent information with regard to greenhouse gas emissions.

6. Issuing proposed greenhouse gas (GHG) New Source Performance Standards for new and existing power plants carries an additional burden, insofar as these regulations are deemed to be in effect when proposed, not when finalized. Done incorrectly, just proposing these rules has significant negative consequences for our economy. Will you commit that when the EPA is ready to address GHGs from existing fossil fuel power plants, it will issue an Advanced Notice of Proposed Rulemaking (ANPRM) that includes substantive content and a record backing up the proposal to allow industry and others to fully comment on EPA's contemplated approach before moving forward with a proposal?

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

8. How will you assure us that the finalized greenhouse gas New Source Performance Standards for new coal fired power plants will address the concerns that the standards be technically achievable and cost effective?

In response to its proposal, EPA received extensive public comment, much of it addressed to issues related to technical achievability and to cost. The agency is evaluating those comments and will take those comments fully into account before issuing a final rule. Any final rule that EPA issues will reflect the agency's best analysis of cost and achievability.

9. What are your plans to lead the EPA in the forthcoming development of the carbon dioxide New Source Performance Standards for existing power plants? How would you assure these new standards will be technically achievable and cost effective for existing coal fired power plants?

EPA is not currently developing any existing source GHG regulations for power plants, but if the agency does undertake existing source guidelines, it will ensure that they meet the Clean Air Act requirements of achievability and cost considerations.

Sue and Settle Practices:

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

Response: No.

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

Response (to two questions above): The EPA is sued hundreds of times a year and many environmental statues include provisions that allow for any citizen to file a petition or commence a civil action against the agency whether or not they are directly regulated under a particular standard or rule. EPA does not enter into settlement agreements that purport to provide the Agency with a new authority. Nor does EPA commit in settlement agreements or consent decrees to any final, substantive outcome of a prospective rulemaking or other decision-making process. I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

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

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

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

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

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

I recognize that this committee has focused many of its questions on EPA settlement practices and, if

confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

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

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

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

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

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

Response: If confirmed, I will consult with our Office of General Counsel as well as the Department of Justice about ways to reduce the number of lawsuits filed against the agency. **At the confirmation hearing, Ms. McCarthy indicated that under the Clean Air Act, the agency is required to seek public comment on settlement agreements. Does EPA also seek public comment on settlement agreements that do not pertain to the CAA? Please identify all instances where the Agency has sought public comment on settlement agreements, not associated with the CAA.**

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

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

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

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

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

Response: My staff has made me aware of some instances in which EPA has changed the substance of Clean Air Act settlement agreements in response to public comments. For example, after receiving

adverse comments on a proposed settlement agreement regarding the technology and residual risk review for more than 25 source categories, EPA modified deadlines for taking proposed or final actions and clarified the scope of such actions for a number of source categories before finalizing the agreement. However, I am not aware of every instance in which EPA has made such a change.

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

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

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

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

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

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

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

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

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

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

67. Where there are no statutory deadlines EPA may be required to Act within a "reasonable time." EPA is also subjected to citizen suits for not meeting the plaintiff's sense of when EPA should have acted. EPA also often signs a rulemaking schedule with a court enforceable deadline and does not provide enough time for regulated entities to do the necessary technical studies to properly comment on the proposed regulations. Additionally, the schedules result in very short compliance timelines making it difficult to install the mandated pollution controls. Why hasn't the EPA consulted with the regulated entities that have to comply with these regulatory timelines to determine if the required deadlines provide feasible periods for meaningful comment and compliance? Why doesn't EPA have a policy of insisting on intervention into law suits by adversely impacted regulated businesses and industry?

Response: While EPA may agree in settlement to promulgate a rule or standard required by statute, the substantive level or nature of that required action is determined through the rulemaking process, which offers ample opportunity for regulated entities to provide meaningful comment on the proposed regulation itself. EPA, in conjunction with the U.S. Department of Justice (DOJ), rarely opposes motions to intervene.

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

68. On December 23, 2010, EPA entered into a settlement agreement with environmentalists and some states in which the agency agreed to set new source performance standards for greenhouse gases from new power plants and, eventually, existing power plants. All of the parties to the settlement agreement are clearly in favor of drastically reducing the amount of coal that we burn for electricity. Yet the type of regulations that could come out of this settlement will impact much of the country by eliminating thousands of jobs, raising electricity rates and jeopardizing reliability, which we are already seeing. I should also add that these policies will disproportionately impact the poor and working poor.

Should the Sierra Club and Natural Resources Defense Council have more access to the federal government than the average citizens who will be most impacted by these types of settlements? Isn't that exactly what they have gotten in the case of this NSPS settlement?

Response: The Clean Air Act allows citizens, including organizations like Sierra Club, to sue EPA if they believe the agency's actions are unlawful. In addition, the statute provides all citizens the opportunity to

comment on settlement agreements before they become final. Before finalizing the greenhouse gas power plant settlement agreement, EPA published the proposed agreement in the Federal Register and sought comment on it from the public.

Citizens also have the right to comment on proposed rules such as the NSPS addressing greenhouse gas emissions from power plants. In fact, EPA is currently considering the more than 2 million comments that have been filed by the public in response to EPA's proposed NSPS for greenhouse gas emissions from new power plants.

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

69. Of the states that were party to the settlement agreement, all but one of them generate between zero and 17 percent of their electricity from coal, yet the states that were not privy to the settlement agreement generate as much as 96 percent from coal. In other words, the people who were in the room have the least to lose while those who were not in the room will suffer the most.

a. Do you consider that to be good policy-making? I consider this a yes or no question.

b. Should the states have equal access to the EPA in formulating a path forward on consequential issues that will impact a broad swath of the economy?

c. If they should, why then did EPA and the Administration enter into closed door settlement negotiations on the NSPS that included the states it agreed with and excluded the states that it didn't agree with?

Response: The standards that were the subject of the settlement agreement are being set through a rulemaking process that provides for participation by all states, as well as all interested members of the public and the regulated industry in question, through a public notice and comment process. EPA routinely receives substantive input from States through the rulemaking process, and considers all comments it receives before taking final action. The EPA is currently reviewing the 2 million plus public comments received on the proposed NSPS. The settlement agreement, which was also put out for public notice and comment before it was finalized, addressed only the timing of the rulemaking; the substance will be determined through the rulemaking process where everyone has the opportunity to comment.

70. Over the past four years, EPA frequently allowed its rulemaking agenda and schedule be driven by voluntary settlements entered in response to lawsuits by environmental advocacy groups. How will EPA respond to these sorts of lawsuits if you are confirmed? Does it damage respect for the rule of law among your state partners when you enter settlements that affect specific states without first consulting with the affected states. Does it damage respect for the rule of law when EPA fails to vigorously defend its prerogatives in responding to these lawsuits?

Response: It is current and longstanding practice to determine whether or not to seek settlement principally upon an assessment of the Agency's duties under the relevant statute, and the legal risks presented by the litigation. The rule of law, along with sound science and transparency, is one of EPA's core values and, if I am confirmed, it will continue to guide all EPA action.

I recognize that this committee has focused many of its questions on EPA settlement practices and, if

confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

5. Do you believe sue and settle agreements are an open and transparent way to make public policy that significantly impacts Americans?

Response: The EPA does not agree to the final substantive outcome of an agency action through settlement. All interested parties have an opportunity to provide input on the action itself through the rulemaking process, which offers ample opportunity for regulated entities to provide meaningful comment on the proposed regulation.

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

6. Do you believe States and communities impacted by sue and settle agreements should have a say in court agreements that might severely impact them?

Response: As explained above, the substantive level or nature of a required action is not determined through the settlement process. Nonetheless, most litigation against EPA arises under the Clean Air Act, which provides the public, including any affected businesses, notice and the opportunity to comment on any consent order or settlement before it is final or filed with the court.

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

7. If confirmed, would you agree not to enter into closed-door settlements where the public and affected States are not a party to these agreements?

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

8. If confirmed, would you open up litigation to local stakeholders and give impacted States and communities a seat at the table before any final agreements are signed?

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

13. There is growing concern about so-called "closed door" settlements between federal agencies and environmental organizations who sue those agencies, often over minor administrative errors. By the time those settlements are approved, the plaintiffs have essentially been paid by our government for suing our government. In his January 21, 2009, Open Government Directive, President Obama instructed federal agency heads to promote openness in government by "establishing a system of transparency, public participation, and collaboration." EPA has responded to the President's directive by developing and implementing an Open Government Plan.

Can you tell us more about this plan, and do you think it could be improved by including a notification system that would immediately provide all stakeholders with timely and transparent access to information involving any legal action, or notice of intended legal action, against the EPA in advance of any "settlement" discussions?

Response: The EPA's Open Government Plan implements the Administration's Open Government

Directive to ensure that the EPA's work supports the tenets of open government – transparency, participation and collaboration – and upholds EPA's mission to protect human health and the environment. I am happy to consider suggestions about how to best implement this plan. If I am confirmed, transparency, participation and collaboration will continue to be priorities at the EPA.
I recognize that this committee has focused many of its questions on EPA settlement practices and, if confirmed, I commit to learning more about the Agency's practices in settling litigation across its program areas.

5. EPA has been increasingly relying on a tactic known as "sue and settle" with non-governmental organizations (NGOs) over issues with nationwide significance. In many of these cases, an NGO notifies EPA of its intent to sue the agency over an alleged failure by EPA to take a particular action. In many instances, EPA has negotiated settlements with these NGOs with any advance notice to impacted stakeholders or the States. Then, the NGO takes the perfunctory step of filing a lawsuit against EPA along with a proposed consent decree for the Court's approval; and, then, and only then, do affected parties, including State regulatory agencies, become aware of the often severe consequences to them of the negotiated settlement. An example of this is EPA's recent 36-State SIP call regarding startup, shutdown, and malfunction (SSM), which was discussed in my recent letter to you.

a. Do you believe that State agencies should have an opportunity to participate in negotiating terms of a settlement when the effects are greatest upon them as the primary regulatory authorities?

b. Do you believe other impacted stakeholders should be notified before EPA initiates settlement discussions in these circumstances and that those impacted stakeholders should be given an opportunity to participate in the settlement process?

c. Will you commit to increase transparency in this process?

d. Do you agree that this transparency should include public, online disclosure of the use of federal funds to cover any plaintiffs' attorneys fees or other legal costs in civil actions filed under Section 304(a)(2) of the Clean Air Act, 42 U.S.C. § 7604(a)(2); Section 505(a)(2) of the Federal Water Pollution Control Act, 33 U.S.C. § 1365(a)(2); or Section 7000(a)(2) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6972(a)(2); or other similar statutes?

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

7. Another recent example of the "sue and settle" problem involves EPA's recent decision to propose to eliminate a 40-year old regulatory exemption for emissions during periods of startup, shutdown, and malfunction (SSM). Senator Vitter and I recently wrote you about this topic, and on the issue of EPA's failure to defend the law, our letter stated: "In November 2011, the Environmental Protection Agency (EPA) and the Sierra Club negotiated a settlement whereby EPA unilaterally agreed to respond to a petition filed by Sierra Club seeking the elimination of a longstanding Clean Air Act (CAA) exemption for excess emissions during periods of startup, shutdown, and malfunction ("SSM"). The EPA went out of its way further to deny the participation of the States, and other affected parties. Oddly, it appears that, instead of defending EPA's own regulations and the SSM provisions in the EPA-approved air programs of 39 states, EPA simply agreed to include an obligation to respond to the petition in the settlement of an entirely separate lawsuit. In other words, EPA went out of its way to

resolve the SSM petition in a coordinated settlement with the Sierra Club. Our concerns with the Agency's sue and settle tactics are well documented—these settlement agreements are often accomplished in a closed door fashion that contravenes the Executive Branch's solemn obligation to defend the law, avoids transparency and accountability, excludes impacted parties, and often results in the federal government paying the legal bills of these special interest groups at taxpayer expense. The circumstance under which EPA has agreed to initiate this new rulemaking reaffirms a pattern and practice of circumventing transparency."

(a) Please list all instances since January 2009 where EPA decided to settle a lawsuit challenging the validity of a law or regulation that had been in effect before January 20, 2009.

Response: I am aware of some instances since January 2009 where EPA decided to settle a lawsuit challenging the validity of a CAA-related regulation that had been in effect before January 20, 2009. For example, Navistar brought a case in the D.C. Circuit Court challenging a 2001 final rule that promulgated standards for new heavy-duty engines and vehicles. EPA settled that lawsuit by agreeing to a hold a public process to reexamine our policies regarding the use of SCR technology (a type of NOx control) in future model year engines. However, I am not aware of every instance in which EPA has entered into such an agreement. If confirmed, I can examine this issue more thoroughly.

(b) Please include all disbursements of federal funds to cover plaintiffs' attorney fees or legal costs in such cases.

Response: In the *Navistar* case discussed above, EPA did not pay any such fees or costs. While I am generally aware that EPA has paid such fees and costs in some cases—for example, under the Equal Access to Justice Act—I do not have specific information regarding those payments in all cases brought against EPA.

(c)Do you commit to defend all existing statutes and regulations to the extent required by law?

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

Economic Cost of Regulations

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

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

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

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

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

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

How concerned are you about the growing reliance of utilities on natural gas to fire powerplants? The simple reality is that natural gas is intensely volatile with respect to price. It always has been and it probably always will be. Coal, on other is very stable with respect to price. Do you think people will blame the agency when their electricity prices start to climb or, worse, gyrate? How concerned are you about public backlash against the agency eroding its ability to do its important work.

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

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

Response: EPA has conducted a peer-reviewed retrospective study on the benefits and costs of the Clean Air Act;"The Benefits and Costs of the Clean Air Act, 1970 to 1990" was issued in 1997. In that study EPA found that, by 1990, the differences between the scenarios were so great that, under the so-called "no-control" case, an additional 205,000 Americans would have died prematurely and millions more would have suffered illnesses ranging from mild respiratory symptoms to heart disease, chronic bronchitis, asthma attacks, and other severe respiratory problems. As a result, the monetized benefits massively outweighed the costs. It is my understanding that the public was given an opportunity to comment during the development of the study. More recently, as part of E.O. 13563, EPA is taking additional steps to improve environmental regulation by retrospectively examining the process and factors that affect the estimated costs of regulations. My understanding is that a draft report of several case studies is currently undergoing review by the Scientific Advisory Board, in a process that involved input from outside stakeholders, such as the American Forest and Paper Association. If confirmed, I would look to continue an open dialog with stakeholders about the impacts of already-promulgated rules and ways in which EPA can do a better job estimating both costs and benefits going forward.

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

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

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

CAA section 321 authorizes the Administrator to investigate, report and make recommendations regarding employer or employee allegations that requirements under the Clean Air Act will adversely affect employment. In keeping with congressional intent, EPA has not interpreted this provision to require EPA to conduct employment investigations in taking regulatory actions. Section 321 was instead intended to protect employees in individual companies by providing a mechanism for EPA to investigate allegations that specific requirements, including enforcement actions, as applied to those individual companies, would result in lay-offs. EPA has found no records indicating that any Administration since 1977 has interpreted section 321 to require job impacts analysis for rulemaking actions. EPA does perform detailed regulatory impact analyses (RIAs) for each major rule it issues, including cost-benefit analysis, various types of economic impacts analysis, and analysis of any significant small business impacts. Since 2009 EPA has focused increased attention on consideration and (where data and methods permit) assessment of potential employment effects as part of the routine RIAs conducted for each major rule. The agency could not find any records of any requests for section 321 investigation of job losses alleged to be related to regulation-induced plant closure.

Despite guidance from OMB, EPA frequently does not assess the cumulative economic impact of regulations on the regulated community. For example, although EPA touts the cumulative benefits of its Clean Air Act regulations, each regulatory proposal under the Act is only assessed for its particular costs and impacts. Will you commit to ensuring that EPA does a better job assessing the cumulative impacts of regulatory proposals, including impacts on U.S. competitiveness?

Response: EPA performs detailed analysis of the impacts of our regulations as part of the regulatory impact analysis. The modeling approaches we use can take into account other rules. For example, when EPA modeled our mercury and air toxics rule using our integrated planning model, those requirements were added on top of the existing air rules (CSAPR) which are already coded into the model. These models capture the investment decisions of plant owners as they look at all of the investments they will have to make over the modeled timeline. The result is that the model captures the combined impact of all of these requirements on both electricity prices and electricity generating margins. If confirmed, I would be happy to work with EPA economists to investigate and refine economic tools that can help us better assess our regulations.

A cursory look at the some of the largest rules that you have issued or proposed in your tenure at EPA suggests that your office has imposed between $300 to $400 billion dollars per year in higher costs on American businesses and consumers. Could you provide this Committee with an estimate of the total annual costs of all the rules you have proposed and finalized since becoming Assistant Administrator for Air and Radiation? How do you think these costs impact the ability of American firms to compete internationally? How do you think these costs impact the price of goods for people who are struggling to get by?

The Office of Management and Budget (OMB) issues a Report to Congress each year which compiles estimates of the benefits and costs of federal regulation.xiii For each year since 2009, these OMB Reports to Congress indicate the quantified benefits of air rules issued in that year significantly exceeded the costs of those rules. In addition, in a March 2011 report that studied the 1990 Clean Air Act amendments and the effects of associated programs on the economy, public health and the

environment between 1990 and 2020, EPA estimated that the benefits of these clean air programs will reach approximately $2 trillion in 2020. By comparison, the cost of these actions was estimated to total $85 billion, resulting in a benefit to cost ratio of approximately 30 to one. An important implication of these findings is that prices of some goods and services may be affected by investments to reduce pollution, but the value to all Americans of cleaner air vastly exceeds those costs. These benefits include reductions in the number of work days lost to air pollution-related health effects, and the resulting improvements in the productivity of American workers enhance the global competitiveness of American workers and the firms that employ them. Cleaner air also reduces medical costs incurred for air pollution-related health effects, resulting in direct savings to American households. In fact, the March 2011 report included economy-wide modeling which demonstrated that just these two beneficial effects alone more than offset the economy-wide effects of all compliance expenditures, with the result that economic growth rates were faster –and the economic welfare of American households was higher—throughout the study period with these clean air programs than without them

Why hasn't EPA studied the cumulative impact of all its recent rulemakings which are causing the retirement of coal fired energy sources?

EPA has been monitoring the changes taking place in the electric utility industry, including the significant decline in natural gas prices, rising coal prices, and reduced demand for electricity. This, when combined with the fact that a majority of coal plants have been in service 40 years or longer and many of these older plants are significantly less efficient (resulting in lower utilization rates), has led to electric utility owners making decisions to retire some of these plants. Many analysts believe that these market changes in gas prices and other factors have the largest impact on retirements in this sector.

The modeling approaches EPA uses can take into account both these market shifts and recent rulemakings. For example, when EPA modeled our mercury and air toxics rule using our integrated planning model, those requirements were added on top of the existing air rules (CSAPR) which are already coded into the model. These models capture the investment decisions of plant owners (including retirement decisions) as they look at all of the investments they will have to make over the modeled timeline. The result is that the model captures the combined impact of all of these requirements on both electricity prices and electricity generating capacity.

In postponing issuance of the revised NAAQS, the President specifically cited economic reasons. Does this conform to EPA's past insistence that they are prohibited by the Clean Air Act from considering economic and other concerns in the setting of standards?

On September 2, 2011, President Obama issued a statement on the ozone NAAQS, noting that EPA was engaged in updating its review of the science underlying the 2008 ozone NAAQS, as part of the ongoing periodic review of the Ozone NAAQS, and requested that EPA withdraw from interagency review the draft final rule addressing the reconsideration of the 2008 ozone NAAQS. On that same day, OMB returned to EPA the draft final rule, stating that "the draft final rule warrants [the Administrator's] reconsideration." Letter from Cass R. Sunstein, OMB, Administrator, Office of Information and Regulatory Affairs to Administrator Lisa R. Jackson, EPA. In returning the rule, OMB stated that President Obama had requested that the draft rule be returned as he did "not support finalizing the rule at this time." Consistent with the President's statement, EPA is continuing with its statutorily mandated periodic review of the 2008 ozone NAAQS. In that ongoing review, EPA will consider the current state of the science, which will include the new science not considered as part of the 2008 rule, as well as the

science taken into account in previous reviews. Given that, EPA intends to conclude its rulemaking on reconsideration of the 2008 ozone NAAQS in conjunction with its ongoing review of the ozone NAAQS.
Like many of my colleagues, I am concerned by the recent onslaught of proposed EPA regulations and the chilling effect they are having on the economy. Many businesses are sitting on the sidelines and are unwilling to make major investments in this uncertain and unpredictable environment. What steps will you take to ensure businesses have a more stable and predictable regulatory environment?
I understand the importance of regulatory certainty to the business community. As I stated in my testimony, I have done my best to keep my door open to businesses, environmental advocates, local communities, the states, tribes, labor and the public at large, and I will continue to do so if I am confirmed as EPA Administrator. Interactions with stakeholders has provided information and insights that have led to the development of smarter, more cost-effective rules, and better designed and implemented policies and programs to build partnerships and enhance collaboration. If confirmed, I hope to continue to build on this record of outreach and engagement.

CBA:

In March of 2011 EPA released a report: "The Benefits and Costs of the Clean Air Act from 1990 to 2020" that estimated that the monetized benefits of CAA regulations would be 2 trillion dollars annually by 2020 with cumulative benefits reaching $12 Trillion. Nearly all of the benefits came from avoiding 230,000 premature deaths annually in 2020 due to reductions in fine particulate emitted into the air we breathe. EPA stated that monetized benefits exceed costs of compliance by a 30 to 1 factor. What value did EPA use for a premature death avoided (PDA)? How was that value determined? Just how long was the PDA avoided? Was the same benefit used regardless of the time period of avoided mortality? Did the National Research Council suggest in a 2008 report to EPA that it was more appropriate to use of the value of statistical life years (VSLY) saved for determining a value of a PDA? Did EPA incorporate that recommendation?
In the March 2011 study, estimated reductions in premature mortality were monetized using EPA's standard default Value of Statistical Life (VSL) methodology, which is based on 26 premature mortality valuation studies and is expressed as a statistical distribution with a central value of $8.9 million (in year 2006 value dollars) for premature mortality risk reductions projected for the year 2020. This mortality valuation methodology was explicitly peer-reviewed by the statutorily-prescribed Advisory Council for Clean Air Compliance Analysis (Council) for use in developing the primary results of the March 2011 study. The VSL is applied to monetize the value of incremental reductions in population-wide mortality risks for each year analyzed.
EPA does not interpret the 2008 National Research Council (NRC) study you reference as expressing a preference for a value of statistical life years (VSLY) approach. To the contrary, the NRC report expresses a preference for a VSL approach in stating that "...the committee recommends the use of a constant WTP [Willingness to Pay] and corresponding VSL as the most scientifically supportable approach to monetary valuation of ozone-related mortality risk given the information available in the epidemiologic and economics literature." Consistent with that approach, the March 2011 report relied on the peer-reviewed, EPA standard VSL methodology for primary results but also estimated life-years gained and life expectancy gained using a dynamic population model, and these results were used as inputs to the

economy-wide modeling conducted for the study.

When will EPA produce a full analysis of the impacts of all of its power sector regulations?

Response: EPA performs detailed analysis of the impacts of our regulations as part of the regulatory impact analysis. The modeling approaches we use can take into account other rules. For example, when EPA modeled our mercury and air toxics (MATS) rule using our integrated planning model, those requirements were added on top of the existing air rules (CSAPR) which are already coded into the model. These models capture the investment decisions of plant owners as they look at all of the investments they will have to make over the modeled timeline. The result is that the model captures the combined impact of all of these requirements on both electricity prices and electricity generating margins. If confirmed, I will work to ensure that future EPA rules reflect careful consideration of the overall state of the power sector, including the impacts of previously finalized rules.

EPA is required by statute to evaluate the costs and benefits of each regulation. For cooling water intake structures Clean Water Act Sec. 316(b) regulations, EPA's own analysis states costs 20 times greater than the expected benefit. To justify the imbalance between costs and benefit the EPA provides all kinds of caveats calling the analysis incomplete and the costs overstated. The agency is required to conduct these analyses in a way that supports sound decision-making when setting standards. Such a gap between costs and benefits is troubling – especially for those in rural America and other economically disadvantaged communities who will ultimately be paying for these changes. Does this analysis reflect the state of EPA's science and if not, what steps will EPA take to redo the analysis so that it accurately reflects the cost and benefits before making any policy decision and before issuing any proposed or final regulation?

Response: As you know, I have worked hard to find practical approaches to regulation under the Clean Air Act. If confirmed, I look forward to working to ensure that rules like 316(b) are similarly sensitive to the variations across the electric utility industry and to look for flexibilities that can reduce costs while maintaining environmental protection. Similarly, I will always work to ensure that the EPA uses the best science available for regulatory analysis.

In 1997, EPA changed the way that it conducts Regulatory Impact Analyses (RIA) to justify the costs of many of its regulations. Specifically, EPA now regularly addresses the criteria pollutant, PM2.5, which is already regulated under its own National Ambient Air Quality Standard (NAAQS), in the benefit cost analysis (BCA) for other pollutant regulations, particularly air toxics. Where the Agency finds that PM2.5 emissions reductions show benefits that are the same or greater than that for the pollutant being regulated (a "co-benefit"), the agency has based the rule at least in part on that result. EPA's Mercury and Air Toxics rule for power plants is an example of this approach, which presents at a minimum some practical and scientific questions of validity. Depending on the degree to which EPA relies on co-benefits, EPA could be over-regulating the pollutant(s) that is the focus of an RIA. Since PM2.5 is regulated separately from other pollutants, doesn't this approach really mean that EPA is "double counting" these PM2.5 reductions across other regulations? As Administrator, what steps would you take to ensure that the co-benefits of regulation do not become a regular basis for the calculated benefit of any particular regulatory proposal?

The purpose of the Mercury and Air Toxics Standards is to reduce mercury and other air toxics, following the approach set out in the Clean Air Act. While the EPA does not set out to regulate PM in toxics rules such as MATS, such rule achieve these PM reductions as an additional benefit at no additional cost. EPA

accounts for the PM benefits in our cost-benefits analysis, because they are real, they are significant, and best practices for economic analysis require that the agency consider all benefits. The PM2.5 benefits the EPA estimates for new rules such as CSAPR and MATS are not "double-counting." Those benefits are above and beyond those the agency previously estimated for other rules establishing controls on pollution that are already "on the books," and are appropriate to include in the benefit-cost analysis for a regulation, regardless of whether those PM2.5 benefits are the direct target of a regulation or a co-benefit.

EPA states that there are no costs and, concurrently, no benefits associated with the proposed rulemaking to regulate greenhouse gases from new sources. What analysis did EPA undertake to determine that there are no costs or benefits from the proposed rule?

In the preamble and supporting documents for the proposal, EPA provided an extensive discussion of this analysis of costs and benefits that was undertaken to address this question.

Why did EPA only analyze out until the year 2020 in order to determine the lack of costs and benefits?

Because the Clean Air Act requires that the NSPS be reviewed every eight years, this economic analysis focuses on benefits and costs of this proposal for the years through 2020. Although 2020 is the primary focus of proposed rule, EPA did perform economic modeling out to 2030. The analysis helps confirm the conclusions are consistent even beyond 2020.

1. EPA has the ability to conduct cost-benefit analysis that considers the impact of regulations on the economy, including the effects of job losses caused by the regulations and how increased costs ripple through society. EPA used this method for two major rules in 2005.

NERA, a nationally recognized consulting firm, recently conducted a study where they did this analysis for a number of recent EPA rules, including Utility MACT, and the Cross State Air Pollution Rule. NERA's analysis demonstrates that under this EPA approved analysis tool, EPA is better able to inform Congress and the American public of the true costs of its regulations. If confirmed, will you commit to do "whole economy modeling" on all pending Clean Air Act and Clean Water Act regulations?

Response: I believe that whole economy modeling is an important type of modeling for the agency to conduct, when it is technically appropriate and when relevant data exists. I believe it is important to develop regulations with a clear understanding of the impacts on industries from the array of regulatory requirements. If confirmed, I will continue to take this approach in regulatory development and the agency will continue to work on whole economy modeling.

Automobile Mandates:

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

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

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

EPA and DOT act under their respective statutory authorities, the Clean Air Act (CAA) and the Energy Policy and Conservation Act (EPCA) to promulgate vehicle emissions standards (CAA) and corporate fuel

economy standards (EPCA). In the Clean Air Act, Congress included preemption waiver provisions allowing California to have a state new motor.

Automobile Fuel Economy

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

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

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

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

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

The two are closely aligned but they are different. EPA must follow the language of section 202(a) of the Clean Air Act; the Supreme Court rejected the argument that EPA does not have authority to regulate CO2 from vehicles because it would impact fuel economy. The Supreme Court concluded that, "the two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency."

The framework document for the Obama administration's model year 2017-2025 fuel economy program, the September 2010 Interim Joint Technical Assessment Report published by the EPA, NHTSA, and the CARB, considers four fuel economy standards, ranging from 47 mpg to 62 mpg. Each is the simple reciprocal of an associated CO2 emission reduction scenario. The 54.5 mpg standard for

model year 2025, approved by the White House in August 2012, is a negotiated compromise between the 4% per year (51 mpg) and 5% per year (56 mpg) CO2 reduction scenarios. If fuel economy standards derive mathematically from CO2 emission reduction scenarios, and CO2 accounts for 94.9% of all greenhouse gas emissions from motor vehicles, are not the two types of standards related?
The two are closely aligned but they are different. EPA must follow the language of section 202(a) of the Clean Air Act; the Supreme Court in *Massachusetts v. EPA*, 549 U.S. 497 (2007), rejected the argument that EPA does not have authority to regulate CO2 from vehicles because it would impact fuel economy. The Court concluded that, "the two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency."
Nearly all of CARB's recommended technologies for reducing greenhouse gas emissions (Table 5.2-3 in CARB's 2004 Staff Report on options for implementing AB 1493) were previously recommended in a 2002 National Research Council study on fuel economy (Tables 3-1, 3-2). CARB proposes a few additional options, but each is a fuel-saving technology, not an emissions-control technology. These facts tell me that greenhouse gas emission standards inescapably and primarily regulate fuel economy. What conclusion do you draw?
The two are closely aligned but they are different. EPA must follow the language of section 202(a) of the Clean Air Act. The Supreme Court in *Massachusetts v. EPA*, 549 U.S. 497 (2007), rejected the argument that EPA does not have authority to regulate CO2 from vehicles because it would impact fuel economy. The Court concluded that, "the two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency."
How does the "national" program created in the wake of this backroom deal comport with congressional intent? Under the statutory scheme Congress created, one agency – NHTSA – to regulate fuel economy under one statute – EPCA as amended by the Energy Independence and Security Act (EISA) – through one set of rules – corporate average fuel economy. Today, three agencies – NHTSA, the EPA, and CARB – make fuel economy policy under three statutes – EPCA, the Clean Air Act, and AB 1493 – through three sets of regulations. Where does EPCA as amended authorize this triplification of fuel economy regulation?
In *Massachusetts v. EPA*, 549 U.S. 497 (2007), the Supreme Court rejected the argument that EPA does not have authority to regulate CO2 from vehicles because it would impact fuel economy and concluded that, "the two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency." The National Program approach has garnered widespread support from a broad range of stakeholders including the automobile industry, for this joint, harmonized effort.
49 U.S.C. § 32919 says: "When an average fuel economy standard prescribed under this chapter is in effect, a State or a political subdivision of a State may not adopt or enforce a law or regulation related to fuel economy standards." Yet holding out the threat of California setting greenhouse gas standards that were very clearly "related to fuel economy standards" was almost certainly at the heart of what went on in that secret negotiations. Two questions: Are vehicle greenhouse gas regulations wholly unrelated to fuel economy? If not, how can we have any confidence that you won't try to sidestep clear statutory limits on your authority as administrator?
The two are closely aligned but they are different. EPA must follow the language of section 202(a) of the Clean Air Act. The Supreme Court in *Massachusetts v. EPA*, 549 U.S. 497 (2007), rejected the argument

that EPA does not have authority to regulate CO2 from vehicles because it would impact fuel economy. The Court concluded that, "the two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency." As to your second question, let me assure you that I am committed to following the requirements of the law.

Energy Reliability:

Natural Gas v. Coal

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

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

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

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

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

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

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

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

26. Inhofe 26. Did EPA perform a robust analysis on the true cost of a long term switch to natural gas powered electric generation, as the rule assumes?

Yes. Moving forward, EPA predicts a mix of coal and natural gas-powered electric generation. EPA has conducted a series of sensitivity analyses to further examine the role that natural gas prices could play in the future choices of new power plants. The analyses support the conclusion that new conventional coal-fired plants, without CCS technology, are not likely to be built under a wide range of natural gas prices, even prices considerably higher than today's prices. Other independent analyses, like the Energy Information Administration's Annual Energy Outlook, support this conclusion. Even with considerably higher prices of natural gas and increased future energy demand, EPA and EIA analyses project that new coal plants will not be economic relative to other technologies in 2020.

32. Inhofe 32. We have heard people say, on many occasions, that this proposed rule represents the first time that EPA has proposed a new source performance standard for the electricity generation sector without subcategorizing by fuel source, thereby pitting one source against another. For example, Phase I and Phase II of the Acid Rain Program utilized separate categories for reducing sulfur dioxide and nitrogen oxides. The recently-finalized Utility MACT Rule did the same thing. Considering the differences between coal and natural gas on greenhouse gas emissions, and carbon capture and

sequestration technology is not commercially available, why would EPA intentionally put coal into such an untenable position?

EPA has previously set an NSPS for the electricity generation sector without subcategorizing by fuel source. The 1998 utility boiler NSPS for NOx is an example of such a fuel neutral standard. The agency is still considering a wide range of comments on this issue. A final decision will reflect careful consideration of the issue. While a number of commenters have pointed out concerns about the current availability of CCS, others have noted that a number of full scale commercial projects are currently in development, including Southern Company's Kemper Project, which is more than 75% complete; the Texas Clean Energy Project (TCEP), which has signed contracts for electricity, CO2 and other products from the plant and hopes to close financing this summer; and, the California Hydrogen Energy Center Project, which is currently undergoing regulatory review in California.

CCS:

In March of 2012, EPA proposed New Source Performance Standards (NSPS) for CO2 for new coal, oil and natural-gas fired power plants. As proposed, the regulation would effectively prohibit the construction of new coal fired power plants.

EPA's proposal for new power plants abandons decades of precedence under the Clean Air Act (CAA) by setting one standard for all fuel types used in electricity generation. Historically, EPA considered each fuel type in a separate category with a separate standard. In the proposal all the fuel choices (coal, oil, and natural gas) are included in one overarching category/standard. The standard is that for natural gas, which in reality will be impossible for coal and oil to meet. In other words, the required "best demonstrated technology" for all categories to achieve the emission limitation is a natural gas combined cycle plant. New coal fired power plants would have to utilize carbon capture and storage (CCS) technologies that currently do not exist.

EPA makes several statements and assumptions regarding CCS in the NSPS proposal including that new coal fired units could comply with the rule through a 30 year averaging option that would allow them to deploy CCS in 11th year of operation and average emissions over a 30 year span.Is CCS commercially feasible today?

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

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

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

commercial-scale CCS projects, and projects have been proceeding under existing laws.

EPA makes several statements and assumptions regarding CCS in the proposed standards, and proposes that new coal fired units could comply with the rule through a 30 year "averaging" option that would allow them to deploy CCS in year 11 of operation and average their emissions over a 30 year span: While conceding that CCS does not meet the requirements of BSER, EPA claims that CCS is an available compliance option. In your estimation, is CCS commercially feasible today?

In the proposed carbon pollution standards for new power plants, EPA did not declare that CCS is not BSER. The agency is still considering a wide range of comments on the proposal, including on this issue, and we will of course take these comments into consideration in taking any final action on the proposal. The EPA stated in the preamble of the proposed rule that "CCS is technologically feasible for implementation at new coal-fired power plants and its core components (CO2 capture, compression, transportation and storage) have already been implemented at commercial scale." [77 FR 22414]. As explained in response to other questions, EPA's view is that new coal-fired units can meet the proposed limit. While a number of commenters have pointed out concerns about the current availability of CCS, others have noted that a number of full scale commercial projects are currently in development. The agency is still actively considering a wide range of comments on this issue, and any final decision will reflect careful consideration of the issue.

Are there any CCS plants that are deployed and demonstrated on a large scale?

A number of full scale commercial projects are currently in development, including Southern Company's Kemper Project, which is more than 75% complete; the Texas Clean Energy Project (TCEP), which has signed contracts for electricity, CO2 and other products from the plant and hopes to close financing this summer; and, the California Hydrogen Energy Center Project, which is currently undergoing regulatory review in California. In addition, for more than a decade, Dakota Gasification Company's Great Plains Synfuels Plant in Bismarck, North Dakota, has been capturing and storing approximately 1.6 million tonnes of CO2 per year.

EPA has stated that the proposed GHG NSPS will promote the development of CCS in the United States. How do you expect the rule to do so?

The proposed rule would promote development of CCS because it would set emission limits that, in the case of coal- or petroleum coke-fire units, would require use of CCS at a moderate level. A number of full scale commercial projects are currently in development, including Southern Company's Kemper Project, which is more than 75% complete; the Texas Clean Energy Project (TCEP), which has signed contracts for electricity, CO2 and other products from the plant and hopes to close financing this summer; and, the California Hydrogen Energy Center Project, which is currently undergoing regulatory review in California.

Is there an existing and robust transportation pipeline system available to handle the CO2 captured by CCS?

Carbon dioxide has been transported via pipelines in the U.S. for nearly 40 years. Approximately 50 million metric tons of CO2 are transported each year through 3,600 miles of pipelines. [77 FR 22392]

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

For over five years, EPA has worked to establish a regulatory framework under the Safe Drinking Water Act (SDWA) and Clean Air Act (CAA) to facilitate CCS deployment. Under SDWA and through the Underground Injection Control Program, EPA established minimum Federal requirements to ensure that

geologic sequestration wells are appropriately constructed, tested, monitored, and closed to ensure protection of drinking water. Under the CAA and through the Greenhouse Gas Reporting Program, EPA outlined requirements for quantifying the amount of CO2 captured and geologically sequestered. With respect to liability and insurance, the 2010 Interagency Task Force on Carbon Capture and Storage found that existing mechanisms related to long-term liability could be adequate to facilitate the initial commercial-scale CCS projects, and projects have been proceeding under existing laws.

In what year do you expect CCS to be commercially viable, given current funding?

EPA stated in the preamble of the proposed rule that "CCS is technologically feasible for implementation at new coal-fired power plants and its core components (CO2 capture, compression, transportation and storage) have already been implemented at commercial scale." [77 FR 22414]. As noted in response to one of your other questions, a number of full scale commercial projects are currently in development (please see response to question 76 for more information).

Is CCS considered BSER for coal plants? Assuming CCS was BSER, would it apply to all fossil-fueled plants – both coal and gas?

In the NSPS proposal, EPA proposed that natural gas-fired combined cycle technology represented BSER for intermediate and base-load fossil fuel-fired power plants. We did not make a separate determination as to what represented BSER for coal-fired power plants alone. EPA received many comments on this proposed determination and is considering them.

On March 27, 2012, EPA proposed a rule that would set a limit on the amount of carbon dioxide that new power plants could emit. In this proposal, EPA recognized that coal-fired power plants will not be able to meet this limit unless they install carbon capture and storage – a technology that EPA admits is not commercially available and, according to EPA, would almost double the cost of building a new coal-fired power plant. Do you agree that this rule, if finalized as proposed, will effectively ban new coal-fired power plants in the U.S.?

As EPA explained in the preamble to the proposed carbon pollution standard for new power plants, it was not the agency's intent to propose a rule that resulted in a de facto ban on the building of new coal-fired power plants nor does EPA believe that would be the effect of the proposed rule. The proposal reflected, instead, EPA's analysis and understanding of new electricity generation capacity expected to be built in the foreseeable future. Further, the proposal offered for comment an alternative compliance pathway for new coal-fired generation that included substantial flexibility for new coal-fired facilities. Finally, commenters raised this and related issues regarding the impact of the proposed standard on prospective coal-fired sources and the agency is still in the process of evaluating those comments, which it will consider and take fully into account in issuing a final rule.

33. Inhofe 33. Since NSPS are traditionally interpreted to set the BACT "floor" for permitting purposes, how can a NSPS that eliminates the ability to construct new coal units without the implementation of commercially infeasible carbon capture and storage (CCS) be consistent with EPA's previous guidance?

The statement that "EPA stated that fuel-switching from coal to natural gas would not and could not be considered BACT" is not entirely correct. EPA's March 2011 GHG Permitting Guidance says that, "a permitting authority retains the discretion to conduct a broader BACT analysis and to consider changes in the primary fuel in Step 1 of the analysis." Thus, EPA never ruled out the possibility that a permitting agency could require that an applicant consider natural gas, or other cleaner fuels, when proposing a

coal-fired EGU. EPA is still carefully evaluating public comments on the proposed carbon pollution standards for new power plants, including comments related to the issue raised in your question. The agency will take these comments into consideration in taking any final action on the proposal. While EPA did not propose that CCS represented BSER, the agency stated in the preamble of the proposed NSPS rule that "CCS is technologically feasible for implementation at new coal-fired power plants and its core components (CO2 capture, compression, transportation and storage) have already been implemented at commercial scale." [77 FR 22414]. Furthermore, it is worth noting that, today, coal-fired power plants are being constructed that will have CCS, and EPA's view is that coal-fired units can meet the proposed limit.

EPA makes several statements and assumptions regarding CCS in the proposed standards, and proposes that new coal fired units could comply with the rule through a 30 year "averaging" option that would allow them to deploy CCS in year 11 of operation and average their emissions over a 30 year span:

35. Inhofe 35. While conceding that CCS does not meet the requirements of BSER, EPA claims that CCS is an available compliance option. In your estimation, is CCS commercially feasible today? Are there any CCS plants that are deployed and demonstrated on a large scale? In what year do you expect CCS to be commercially viable, given current funding?

In the NSPS proposal, EPA did not state or propose to determine that CCS is not BSER. The agency is still considering a wide range of comments on this issue. EPA stated in the preamble of the proposed rule that "CCS is technologically feasible for implementation at new coal-fired power plants and its core components (CO2 capture, compression, transportation and storage) have already been implemented at commercial scale." [77 FR 22414]. EPA's view is that new coal-fired units can meet the proposed limit. While a number of commenters have pointed out concerns about the current availability of CCS, others have noted that a number of full scale commercial projects are currently in development.

Tier 3:

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

EPA is not mandating E15 and the market will determine what among the range of legal fuels are sold to satisfy customer demand. Regardless, since E15 is currently distributed from less than 20 of the approximately 150,000 retail stations nationwide, this would not appear to be a near-term concern. Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. We will continue to refine our analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

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

requirements?

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

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

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

What is the communication between stationary and mobile source emissions staff? How do you reconcile requirements to produce new fuels (such as the proposed Tier 3 gasoline sulfur reduction) with requirements to reduce emissions at refineries? Are these contradictory or do you believe that both can be done? For example, don't gasoline sulfur reduction processes increase refinery greenhouse gases, Nitrogen Oxides and Particulate Matter emissions?

Stationary and mobile source emissions staff coordinate closely with regard to interactions between regulatory actions in their respective spheres. For example, the proposed Tier 3 standards will play a critical role in state and local agencies' plans for attaining and maintaining the ozone NAAQS. Joint stationary and mobile source modeling indicates that, in the absence of additional controls such as the Tier 3 standards, many areas would continue to have air pollution levels that exceed the existing health-based National Ambient Air Quality Standard (NAAQS) in the future. The proposed Tier 3 rule includes a detailed consideration of potential impacts on refinery emissions. For example, the relatively small projected increase from CO2 emissions from refineries is expected to be offset through reductions in other greenhouse gas emissions from improved operation of vehicle catalysts as a result of the proposed Tier 3 rule.

Does the just released Tier III rule also rely on the same two studies (Pope 2002 and Laden 2006) and the same two secret data bases (American Cancer Society and Harvard Six City data) to estimate benefits?

The PM2.5 benefits analysis for the Tier 3 proposed rule relied upon earlier studies of the American Cancer Society cohort (Pope et al., 2002) and the Harvard Six Cities cohort (Laden et al. (2006). EPA currently uses updated studies of these cohorts (Krewski et al. (2009) and Lepeule et al. (2012), respectively, and will use these in future EPA analyses such as that supporting the Tier 3 final rule.

It seems that EPA tends to look at regulations it promulgates in a vacuum and does not consider how a particular regulation affects another. For example, in order for refiners to remove sulfur from

gasoline under the new Tier 3 rule, they will be reducing sulfur, but in exchange they will also be increasing their GHGs. Additionally, the lowering of the ozone NAAQS will also result in an energy penalty for refiners, as their RTOs require more natural gas usage. Why does the agency not consider these types of conflicts before moving forward with regulations that conflict with one another?
EPA works to take a comprehensive approach to its regulations, and offices within the agency coordinate closely to ensure that regulations achieve complementary health benefits and pollution reductions whenever possible. For example, the proposed Tier 3 standards will play a critical role in state and local agencies' plans for attaining and maintaining the ozone NAAQS. Additionally, the proposed Tier 3 implementation schedule is aligned with the timeframe for EPA's program for reducing greenhouse gas (GHG) emissions from light-duty vehicles starting in model year 2017. Further, the relatively small projected increase from CO2 emissions from 85

refineries is expected to be offset through reductions in other greenhouse gas emissions from improved operation of vehicle catalysts as a result of the proposed Tier 3 rule.
Why did EPA withhold the findings of its backsliding study until the Tier 3 rule was released?
The proposed Tier 3 rule is independent of the anti-backsliding study required by sections 211(q) and 211(v) of the Clean Air Act. EPA is currently conducting analysis and peer review for the anti-backsliding study and is not currently prepared to release it.
Generally, EPA shows the results of its studies, but withholds the modeling. Why is this a common practice of EPA?
It is unclear to which modeling this question refers. When EPA runs the IPM model for analysis of power sector rules, for example, it places model output in the docket for public review.
Last year, EPA identified 36 marginal ozone nonattainment areas that must attain by 2015. This means 3 clean summers, 2013 through 2015. Tier 3 will not be effective during this period. There are not many areas with attainment dates after 2015. Do they all need Tier 3? Do we need a national Tier 3 program to help a few areas?
Reductions in motor vehicle emissions from the proposed Tier 3 standards would improve air quality across the country, helping areas to attain and maintain the NAAQS. The proposed standards would significantly decrease ambient concentrations of harmful pollutants such as ozone, PM2.5 and air toxics by 2030, and would immediately reduce ozone in 2017 when the proposed sulfur controls take effect. NOX emissions would be reduced by about 284,000 tons, or about 8 % of emissions from on-highway vehicles, in 2017 alone. In 2030, when Tier 3 vehicles would make up the majority of the fleet, NOX and VOC emissions from on-highway vehicles would be reduced by about 525,000 tons and 226,000 tons, respectively, or about 25%. By 2050, when Tier 3 vehicles would make up almost the entire fleet, NOX and VOC would be reduced by nearly 40% for on-highway vehicles.
EPA's Tier 3 proposed rule would change the certification fuel that is used to test vehicles and engines for compliance with Clean Air Act standards. EPA is proposing to mandate that gasoline with 15% ethanol be used as certification fuel. Your rule describes this action as "forward looking" while admitting that E15 is now only commercially available in a limited number of fuel retailers. Is it appropriate for EPA to use its Tier III regulation to compel automakers to produce E15 vehicles? Why is EPA making this change now?
Vehicles must be tested under conditions which reflect conditions they experience in-use. Since Tier 3

standards phase in from 2017-2025 this means in-use conditions well out into the future. In light of uncertainty regarding future conditions, it seemed prudent to ensure that all new vehicles going forward were designed to be durable and emission compliant on ethanol concentrations up to the E15 waiver limit. At the same time EPA is are seeking comment on whether we should finalize E10 for certification test fuel.

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

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

The Tier 3 rule solicits comments on various alternative approaches in transitioning to E15 as certification fuel. Would E10 be an appropriate certification fuel since it appears to meet EPA's criteria of that test fuel that "better align(s) with the current and projected in-use fuel"?

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

Would your estimates of the benefits of the Tier 3 proposed rule appreciably change if E10 was selected as the new certification fuel?

Selecting E10 as the certification fuel would not impact the exhaust emissions benefits of the proposed Tier 3 rule. However, it could effectively increase the stringency of the evaporative emission standards if the volatility of the E10 certification fuel were to be set at 10 psi, consistent with in-use fuel.

EPA data indicates that pre-MY 2001 vehicles and other equipment that cannot use E15 were almost 40% of the gasoline market in 2010. How will EPA ensure that E10 will be available for older model cars less than a few years from now?

EPA is not mandating E15 and the market will determine what among the range of legal fuels are sold to satisfy customer demand. Regardless, since E15 is currently distributed from less than 20 of the

approximately 150,000 retail stations nationwide, this would not appear to be a near-term concern. Assumptions with respect to in-use fuel quality well out into the future, including future ethanol use, were necessary to conduct the analysis of the emission impacts and benefits of the Tier 3 proposal. EPA will continue to refine its analysis prior to finalizing the rule. However, because the same assumptions apply in both the baseline and control cases for the proposal, it has a negligible impact on the emission reductions and benefits of the Tier 3 proposal.

Recent reports on the proposed Tier 3 rule have warned that it could actually increase greenhouse gas emissions from the production of gasoline due to the energy-intensive equipment that would be needed to comply with the rule. Would you support rescinding the proposed Tier 3 rule if compliance with the rule was found to increase greenhouse gas emissions?

The proposed Tier 3 standards would result in very large emission reductions from both new and existing vehicles. The additional gasoline hydrotreating would also cause a relatively small increase in greenhouse gas (GHG) emissions at the refinery due to the additional gasoline hydrotreating. EPA analyzed these impacts in detail using our refinery-by-refinery analysis. The relatively small increase in GHG emissions from refining would be offset though reductions in vehicle emissions of GHG pollutants (methane and N2O) from the improved operation of the vehicle catalysts.

1. I would like to thank you for all of the hard work that you put into the proposed Tier 3 rule to reduce tailpipe emissions. I believe that this is a good rule, and will result in significant health and air quality benefits for the American people by reducing the amount of sulfur emissions released into the environment. Regions across my State of New York are expected to see ozone reductions by 2030 because of Tier 3.

Can you discuss for the Committee some of the positive health and environmental benefits that we could be expected to see by implementing the Tier 3 rule by the end of this year?

Response: By 2030, EPA estimates that the proposed cleaner fuels and cars program will annually prevent up to 2,400 premature deaths, 23,000 cases of respiratory ailments in children, 3,200 hospital admissions and asthma-related emergency room visits, and 1.8 million lost school days, work days and days when activities would be restricted due to air pollution. Total estimated health-related benefits in 2030 for the proposal are between $8 and $23 billion annually.

The proposal would substantially reduce emissions of a range of harmful pollutants that can cause premature death and respiratory illnesses. This includes reducing smog-forming volatile organic compounds and nitrogen oxides by 80 percent, establishing a 70 percent tighter particulate matter standard, and reducing fuel vapor emissions to near zero. The proposal would also reduce vehicle emissions of toxic air pollutants, such as benzene and 1,3-butadiene, by up to 40 percent.

316(b)

In EPA's proposed 316(b) rule EPA has adopted starkly different approaches to managing "impingement" and "entrainment" at existing cooling water intake structures. For entrainment, EPA appropriately adopted a site-specific approach, recognizing that (a) existing facilities already have measures in place to protect fish, (b) further measures may or may not be needed, and (c) the costs, benefits, and feasibility of such measures have to be evaluated at each site. Yet for impingement, EPA adopted rigid, nationwide numeric criteria that appear unworkable and in many cases unnecessary. In a notice of data availability issued last year, EPA signaled that it would consider a more flexible

approach for impingement. In the final rule that is due this summer, would you support replacing the original impingement proposal with a more flexible approach that pre-approves multiple technology options, allows facility owners to propose alternatives to those options, and provides site-specific relief where there are de minimis impingement or entrainment impacts on fishery resources or costs of additional measures would outweigh benefits?

Response: It is my understanding that EPA explicitly discussed possible changes to the proposed 316(b) rule's impingement standard in the NODA published in the Federal Register on June 11, 2012 and that EPA is carefully reviewing those comments as the agency develops the final rule. If confirmed, would be willing to look closely at flexibilities for compliance with the impingement standard.

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

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

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

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

EPA is required by statute to evaluate the costs and benefits of each regulation. For cooling water intake structures Clean Water Act Sec. 316(b) regulations, EPA's own analysis states costs 20 times greater than the expected benefit. To justify the imbalance between costs and benefit the EPA provides all kinds of caveats calling the analysis incomplete and the costs overstated. The agency is required to conduct these analyses in a way that supports sound decision-making when setting standards. Such a gap between costs and benefits is troubling – especially for those in rural America and other economically disadvantaged communities who will ultimately be paying for these changes. Does this analysis reflect the state of EPA's science and if not, what steps will EPA take to redo the analysis so that it accurately reflects the cost and benefits before making any policy decision and before issuing any proposed or final regulation?

Response: As you know, I have worked hard to find practical approaches to regulation under the Clean Air Act. If confirmed, I look forward to working to ensure that rules like 316(b) are similarly sensitive to the variations across the electric utility industry and to look for flexibilities that can reduce costs while

maintaining environmental protection. Similarly, I will always work to ensure that the EPA uses the best science available for regulatory analysis.

EPA's proposed rule would impose expensive new study, monitoring, and retrofit requirements on all existing facilities, including "baseload" facilities that are the foundation of our electric system and "peaking" facilities that are used more sparingly to meet periods of peak electricity use. But the peaking units may be used for as little as a few days a year when electricity demand is high, and it would be uneconomic to spend a great deal on money on them for studies and equipment that would be rarely used and would not provide commensurate environmental benefit. In an earlier version of the rule, EPA provided an exemption for such units. Yet in the current proposed rule, which is soon to be finalized, EPA eliminated the exemption. Would you consider reinstating that exemption or providing equivalent relief from the rule's requirements for peaking facilities so they can continue to perform their crucial reliability function?

Response: As you know, I have worked hard to make sure that we carefully monitor the design and implementation of EPA's air pollution rules to keep costs reasonable and ensure that the reliability of our electrical system is protected. If confirmed, I look forward to working to ensure that requirements and implementation of rules like 316(b) are similarly sensitive to electrical reliability issues.

EPA's proposed rule outlines a rigid schedule of expensive and time consuming studies that are required as an interim measure before a plant installs technology to comply with the rule's requirements. It is also my understanding that this set of interim measures would apply to facilities even if they announce they plan to retire prior to compliance deadlines. Why would we subject existing facilities to additional and unnecessary expenses if, in fact, they have announced retirement and ultimately would not be expect to comply with the rule because they no longer would be in operation? Will you ensure the final rule provides compliance relief for generation assets that announce retirement?

Response: I fully recognize that this is a period of transition for the power sector and that operators do not want to undertake studies for control technologies if they are certain to retire a unit. If confirmed, I look forward to working to ensure that we carefully consider the special circumstances of retiring units as we finalize the 316(b) rule.

55. Concerns about EPA's willingness-to-pay survey – EPA is seeking to justify its costly proposed 316(b) rule, which would affect more than 1,260 power plants and industrial facilities nationwide, on the basis of a public opinion survey asking "how much" a random group of individuals would be willing to pay to reduce fish losses at intakes. This willingness-to-pay approach to determining "benefits" contrasts sharply with the far more traditional approach used by EPA in its earlier 316(b) rulemakings. The earlier analyses relied on actual market prices and costs incurred by individuals, rather than hypothetical questions in a public survey. The "willingness-to-pay" or "stated preference" survey is clearly intended to increase the anticipated benefits of the proposed rule. Yet such stated preference surveys are notoriously difficult to design and implement and often are very unreliable. Using such unreliable benefit estimates will inappropriately lead to cooling water controls that are neither necessary nor cost beneficial and that will not deliver the anticipated benefits but will materially affect compliance and consumer costs. Given all these problems, in the final rule that is due this summer, would you support withdrawing the survey and clarifying that the survey and its results are inappropriate to use in implementing the final rule?

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

56. In October 2010, NERC issued a report concluding that a one-size-fits-all 316(b) approach could have economic impacts nearly three times greater than the combination of the Cross State Air Pollution Rule and the Mercury and Air Toxis Standards. See NERC, 2010 Special Reliability Scenario Assessment: Resource Adequacy Impacts of Potential U.S. Environmental Regulations (October 2010). How will EPA ensure that its 316(b) rulemaking will not precipitate the reliability and cost implications discussed in the NERC report?

Response: NERC's hypothetical analysis assumed that states will choose to mandate that all affected plants install cooling towers, even if this leads to plant retirements causing reliability problems. EPA did not propose a "one-size fits" all approach for entrainment for its 316(b) rule, instead EPA proposed a site-specific approach to entrainment. My understanding is that EPA rejected a uniform closed-cycle cooling requirement based on consideration of possible local energy reliability concerns, air quality issues, geographical constraints on the installation of closed-cycle cooling and facilities with a limited remaining useful plant life.

22. Relief for facilities being retired – EPA's proposed rule outlines a rigid schedule of expensive and time consuming studies that are required as an interim measure before a plant installs technology to comply with the rule's requirements. It is also my understanding that this set of interim measures would apply to facilities even if they announce they plan to retire prior to compliance deadlines. Why would we subject existing facilities to additional and unnecessary expenses if, in fact, they have announced retirement and ultimately would not be expect to comply with the rule because they no longer would be in operation? Will you ensure the final rule provides compliance relief for generation assets that announce retirement?

Response: I fully recognize that this is a period of transition for the power sector and that operators do not want to undertake studies for control technologies if they are certain to retire a unit. If confirmed, I look forward to working to ensure that we carefully consider the special circumstances of retiring units as we finalize the 316(b) rule.

28. I understand EPA is in the process of developing a Section 316(b) rule.

a. Do you support a technology-based standard for the Section 316(b) rule?

b. I am told that the EPA Water Office conducted a willingness-to-pay survey for the 316(b) rule to monetize benefits, noting that this methodology is widely used and supported by the academic literature. It is my understanding that this literature specifies that a given survey should focus on one or two rare species and be geographically restricted to the area where these species live. It is my understanding that the EPA survey, on the other hand, involves all species in the waters of the United States nationwide, including common species with a commercial market. When the 316(b) survey results are published, will EPA specify that its survey was not conducted according to the accepted methodology?

c. Will states be required to use EPA's survey results in 316(b) BTA [best technology available] decision-making?

Response (to a through c): It is my understanding that EPA is still reviewing the peer-review comments

on the 316(b) stated preference study as well as concerns raised by stakeholders in comments. EPA would need to complete that review before it can make any decisions about applicability and appropriateness of the study results.

4. If confirmed as EPA Administrator, you will likely oversee the finalization of new standards under Section 316(b) of the Clean Water Act regarding the best technology available for the location, design, construction and capacity of cooling water intake structures. Many of the constituents that will be impacted by this rule are similar to the ones you have dealt with in your days as Assistant Administrator for Air. As you know from experience, facilities in the same source category can be constructed very differently depending on various factors such as location and age – making it hard at times to have a one-size-fits-all approach. The 316(b) rule crosses over so many different types of source categories – the variants between facilities are likely to be exponential – which makes a blanketed approach even less practical. If confirmed, do I have your assurances that when issuing the 316(b) rule you will consider flexibilities that will allow facility owners to comply with a rule in a way that makes it as economical as possible for that facility, while still putting in standards that protect our water wildlife? When determining the cost-benefit ratio for new 316(b) regulations or other rules coming before you, do I have your assurances that you will use the best science available to determine both costs and benefits?

Response: As you know, I have worked hard to find practical approaches to regulation under the Clean Air Act. If confirmed, I look forward to working to ensure that rules like 316(b) are similarly sensitive to the variations across the electric utility industry and to look for flexibilities that can reduce costs while maintaining environmental protection. Similarly, I will always work to ensure that the EPA uses the best science available for regulatory analysis.

Employment and EPA regulations

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

CAA section 321 authorizes the Administrator to investigate, report and make recommendations regarding employer or employee allegations that requirements under the Clean Air Act will adversely affect employment. In keeping with congressional intent, EPA has not interpreted this provision to require EPA to conduct employment investigations in taking regulatory actions. Section 321 was instead intended to protect employees in individual companies by providing a mechanism for EPA to investigate allegations that specific requirements, including enforcement actions, as applied to those individual companies, would result in lay-offs. EPA has found no records indicating that any Administration since 1977 has interpreted section 321 to require job impacts analysis for rulemaking actions. EPA does perform detailed regulatory impact analyses (RIAs) for each major rule it issues, including cost-benefit analysis, various types of economic impacts analysis, and analysis of any significant small business impacts. Since 2009 EPA has focused increased attention on consideration and (where data and methods permit) assessment of potential employment effects as part of the routine RIAs conducted for each major rule. The agency could not find any records of any requests for section 321 investigation of job losses alleged to be related to regulation-induced plant closure.

What assurances can you give us that your agency will not continue to stand in the way of the new energy related jobs and the creation of more domestic energy here at home?

Response: I agree with President Obama that we need an all of the above energy strategy to utilize our

domestic energy sources to achieve energy independence in a manner that protects our resources, our health and our environment.

Has EPA done any studies on the health impacts of job losses?

Response: I'm concerned about any American involuntarily displaced from a job, for whatever reason, and the impacts that can have on a family. However, I also understand that the peer-reviewed literature shows the effect of environmental regulation on jobs is far smaller than the exaggerated claims we often hear. The most convincing research out there shows that air pollution is a real threat to Americans' health and that claims of "job killing" regulations aren't supported by the evidence.

EPA performs detailed regulatory impact analyses (RIA) for each major rule it issues, including cost-benefit analysis, various types of economic impacts analysis, and analysis of any significant small business impacts. Since 2009 EPA has focused increased attention on consideration and (where data and methods permit) assessment of potential employment effects as part of the routine RIAs conducted for each major rule.

The Administration has continuously made the case that new regulations add jobs given the need for more investments for environmental controls. However, a DOE report from only a few years ago says that the compounded burden of various regulations contributed to 66 refineries closing in the last 20 years; they even have a chart that overlays new regulations with refinery closures. If new regulations add jobs, why does DOE say it has led to closed manufacturing facilities?

Your question appears to refer to DOE's 2011 study assessing whether the congressionally mandated renewable fuel standard program would impose a disproportionate economic hardship on small refineries, such that these refineries should receive an exemption under that program. My staff informs me that while this study assessed the potential need for extending relief from the RFS program for small refineries, it did not analyze the impacts of any other EPA regulations or reach the conclusion reflected in your question. Rather, refinery closures over the past three decades have been driven primarily by market factors unrelated to environmental regulation.

Section 321 of the Clean Air Act (42 U.S.C. § 7621) requires the EPA Administrator to "conduct continuing evaluations of potential loss or shifts of employment" which may result from the administration or enforcement of regulations issued under the Act, "including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement." Most other major environmental statutes contain similar language to Section 321.

17. Inhofe 17. Do you believe the Agency has an obligation to conduct continuing evaluations of the impact its regulations could have on jobs?

CAA section 321 authorizes the Administrator to investigate, report and make recommendations regarding employer or employee concerns that requirements under the Clean Air Act will adversely affect employment. In keeping with congressional intent, EPA has not interpreted this provision to require EPA to conduct employment investigations in taking regulatory actions. Section 321 consistently has been interpreted by EPA to provide a mechanism for investigating specific allegations by particular employers or employees that specific requirements applied to individual companies would result in layoffs. EPA has found no records indicating that any Administration since 1977 has interpreted section 321 to require job impacts analysis for rulemaking actions. Nevertheless, since 2009 EPA has focused

increased attention on consideration and (where data and methods permit) assessment of potential employment effects as part of the routine regulatory impact analyses (RIAs) conducted for each major rule.

18. Inhofe 18. Has EPA done a Section 321 jobs analysis for any of the major regulations it has proposed or finalized since you took office in 2009?

EPA has found no records indicating that any Administration since passage of the 1977 Amendments has interpreted CAA section 321 as requiring jobs analysis of rulemaking actions. Section 321 consistently has been interpreted by EPA to provide a mechanism for investigating specific allegations by particular employers or employees that specific requirements applied to individual companies would result in layoffs. Nevertheless, since 2009 EPA has focused increased attention on consideration and (where data and methods permit) assessment of potential employment effects as part of the routine regulatory impact analyses (RIAs) conducted for each major rule.

19. Inhofe 19. EPA's own estimates anticipated that the revised ozone NAAQS that your office proposed in 2010 would have cost American manufacturing, agriculture and other sectors over $90 billion per year. These are straight-up, added costs to American manufacturing. I'm concerned that, during this slow economic recovery, we are driving manufacturing out of the U.S., to other countries with lax environmental standards. In analyzing these proposed regulations, does EPA consider the effects of driving manufacturing offshore, to countries with little or no environmental controls? Do you believe this analysis could be covered under the Section 321 review requirement of the Clean Air Act?

EPA has found no records to indicate that CAA section 321, since its inclusion in the 1977 amendments, has been interpreted by any Administration to provide for job impacts analysis of rulemakings. Section 321 does provide a mechanism for EPA investigation of particular claims of job loss related to plant closure or layoffs in response to environmental regulation, and this would presumably include plant closures resulting from alleged environmental regulation-induced overseas relocation. However, EPA could not find any records of any requests for section 321 investigation of job losses alleged to be related to regulation-induced plant closure, including overseas relocation. This is not surprising since data from the Bureau of Labor Statistics consistently indicate that labor markets are primarily influenced by other, larger factors including routine business cycles, changes in production technology, and the state of the overall economy. Nevertheless, since 2009 EPA has focused increased attention on consideration and (where data and methods permit) assessment of potential employment effects as part of the routine regulatory impact analyses (RIAs) conducted for each major rule.

28. In your personal meeting with me, you often sympathized with the concerns I have regarding the impact of EPA regulations on jobs. However, you also expressed in many instances that you would look for flexibility, but you were bound by agency processes, and law. If you are concerned about the impact of EPA regulations on jobs and communities, I believe you should seek the flexibility you need from Congress through policy recommendations to help save these communities and jobs. What specific legislative changes would you recommend to provide flexibility to protect workers, families and communities from job losses that might occur as a result of EPA's regulations?

Response: As you note in your question, I am very sensitive to the state of the economy and to the

impacts of EPA regulation on jobs. If confirmed, I would continue to work hard to seek opportunities to find more cost-effective approaches to protecting human health and the environment.

29. Some in EPA and outside activist groups have been critical of the work of the Small Business Administration's Office of Advocacy in playing a role in the evaluation EPA regulations to protect small business. If confirmed, what steps will you take to work with the Small Business Administration's Office of Advocacy to ensure that their role is respected and maintained?

Response: I believe the Small Business Administration has an important role in the evaluation of regulations. If confirmed, I will continue to work to ensure that EPA regulations are developed in a common sense manner without unnecessarily harming small businesses.

1. Over-regulation harms American workers. Today, the United States has 3 million fewer jobs than in January 2008.

(a) Do you commit to do everything within your authority as Administrator of the EPA to ensure that the United States economy is more, not less, productive?

Response: I believe that a healthy economy and clean air and water go hand in hand. If confirmed, I commit to you that I will follow the law, the science and work with all stakeholders on commonsense solutions to our problems.

(b) Do you commit to do everything within your authority as Administrator of the EPA to ensure that more, not fewer, jobs are available for American workers?

Response: I believe that a healthy economy and clean air and water go hand in hand. If confirmed, I commit to you that I will follow the law, the science and work with all stakeholders on commonsense solutions to our problems.

Wicker 2. NAAQS regulations are purely to benefit public health and not economic cost, but has the EPA considered how health is negatively impacted by the job losses caused by these regulations?

The over 40-year history of the Clean Air Act is one in which reducing harmful air pollution has gone hand in hand with economic growth and job creation. EPA's mission is protecting Americans from pollution and its adverse health and environmental effects, including through implementation of Clean Air Act's requirements in accordance with the law and the best available science. Congress mandated that the NAAQS be set based on a scientific assessment of the effects of relevant air pollution on public health and welfare. The air quality standards must be set based on science without regard to costs of implementing pollution controls to achieve the standards. Costs are considered during implementation of the standards.

O & G Issues

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

EPA believes that it is essential to preserve flexibility in determining the scope of a source based on a case-by-case analysis of the three factors. EPA believes its historical interpretation of the "contiguous or

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

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

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

As part of its proposed air emission standards for hydraulically fractured oil and gas wells, EPA declined to directly regulate emissions of methane but instead mandated "green completions" of wells to control volatile organic compound emissions. It appears -- based on your own testimony stating that this rule could end up "reducing up to 290,000 tons of harmful volatile organic compound emissions and a side-benefit of reducing methane emissions equivalent to 33 million metric tons of carbon dioxide" - that EPA's decision to mandate "green completions" was in effect an effort to control methane emissions. Do you agree with this assertion? Is it typical for an EPA rules stated benefit to be vastly dwarfed by a "side-benefit?"

The oil and gas standards to which your question refers regulate emissions of volatile organic compounds (VOCs) from more than 11,000 new hydraulically fractured gas wells each year – achieving a 95 percent reduction in such emissions. These reductions are achieved through the use of a proven process – known as reduced emissions completions or "green completions" – to capture natural gas that currently escapes to the air. This process has the co-benefit of substantially reducing methane emissions, as well as reducing waste of natural gas – yielding substantial cost savings. Although the rule does not target methane emissions, it is appropriate and beneficial to account for this co-benefit in analyzing and describing the rule.

Are you familiar with and confident in the data EPA used to justify the "green completion" mandate?

EPA based all provisions of the Oil and Natural Gas NSPS on the best available data sources and on proven technology that will result in net cost savings to operators through recovery of natural gas otherwise lost during well completions. A variety of data sources informed development of the rule,

including data from the U.S. greenhouse gas inventory, Natural Gas STAR program, State programs, and other published studies and materials. In addition, during an extended comment period, several commenters provided supplemental data for the agency's consideration. The agency considered all of this for the final rule.

As you are aware, certain outside groups have filed a lawsuit challenging EPA's decision not to explicitly regulate emissions of methane. Can you commit today that you will vigorously defend your rule against this challenge and not enter into a quick settlement that will require EPA to regulate emissions of methane?

EPA will evaluate the claims but at this time cannot predetermine how the agency will respond.

The Clean Air Act requires facilities to obtain a Federal Operating Permit for air emissions from the EPA if they emit 100 tons or more of any criteria pollutant per year. Properties that are truly next to one another are generally considered one facility. But if one owner has multiple facilities spread out over a large area, say 42 square miles, the facilities are considered separate. In 2007, the Bush Administration issued a memo applying this policy in the oil and gas industry, but you overturned this memo in 2009 and instead issued one that would combine the emissions of wells that are spread over a large area, triggering significantly greater permitting requirements. When this was challenged in the 6th Circuit last year, the court agreed that "adjacent" is a plain word with plain meaning, but you have not yet applied the decision outside that circuit. Also, the states have regulations that adequately address the aggregation matter, which regulations have been reviewed and found acceptable by the state regulatory bodies as well as the stakeholder groups.

10. EPA lost this case because the court found it misinterpreted the plain meaning of the law. Will you commit to apply the 6th Circuit Court decision to the rest of the country?

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

85. Inhofe 85. Testifying before Congress in 2011, EPA Administrator Lisa Jackson said that natural gas creates less air pollution than other fossil fuels, "so increasing America's natural gas production is a good thing." Do you agree with this statement and could you please explain why or why not?

As I stated in my opening remarks at my nomination hearing, during these past four years, one of the most dramatic and potentially beneficial changes that our energy markets and overall economy has seen has come in the steep growth in the production and use of natural gas. I share the President's view that we must have an all of the above strategy to achieve energy independence, and a clean energy future.

Crapo 8. A large number of plants are expected to retire in 2015/16 – as the economy recovers and electric demand recovers. Experts expect regional problems because there are areas not served by natural gas pipelines where needed infrastructure may not be able to be put in place in this time frame or where replacement plants cannot be permitted and built within this time frame. MISO has done an analysis that shows 9% of capacity (12.9 GW at last estimate) is closing and there is not

sufficient gas infrastructure to serve existing demand let alone new demand. Did EPA examine natural gas availability (via infrastructure such as pipelines and permitting timelines) when you issued the utility MATS rule, CASPR and the PM NAAQS and NSPS for GHGs?
Electric utilities and electric regulatory bodies, like state public utility commissions, have a wide variety of options for meeting electric demand. There are adequate provisions in EPA regulations to allow for planning flexibility in response to reliability challenges. EPA conducts detailed analysis to support its actions and projects that fuel diversity will be maintained in the future and that the full range of electric generating resources will be maintained, helping to ensure reliability. This includes coal and natural gas – since natural gas is the primary fuel that responds during time of high system demand. EPA analysis has shown that areas experiencing coal retirements will also retain significant coal capacity and an adequate mix of diverse generating resources. EPA also takes into account the availability of natural gas pipeline capacity to meet the needs of natural gas generators when conducting its analyses.

LNG:

In November 2012, EPA's Region 3 wrote a letter to the Federal Energy Regulatory Commission (FERC) recommending that FERC and DOE expand their NEPA analysis of LNG export facilities to include a study of the indirect and cumulative environmental impacts of exporting LNG. Do FERC and DOE have the sole statutory and regulatory authority to review and approve LNG export applications?
Response: I am not familiar with the details of LNG export applications, but it is my understanding that FERC and DOE are the two Agencies with approval authority for export facility applications.
What is your view of EPA's role in the LNG export application process?
Response: Again, I am not familiar with the details of the LNG export application process; however, it is my understanding that as part of the process under the National Environmental Policy Act, EPA can offer comments to FERC on the scope of the environmental review.
What "indirect" environmental impacts might result from LNG exports?
Response: I am not familiar enough with the process of LNG exports or with any specific proposals to offer concrete thoughts on what might constitute direct or indirect effects of any particular project. If confirmed, I would work with the Agency and with the Administration to make an appropriate determination on what, if any, environmental considerations might be appropriate to consider through the FERC led NEPA process.

Some environmental organizations filed comments on the DOE economic impact study of LNG exports that argued that DOE should examine the upstream environmental impacts of the natural gas that supplies the gas to the LNG export facilities. EPA did not file any comments on the DOE study and did not take the opportunity to weigh in on the point raised by the environmental organizations. Two regional EPA offices have filed comments on LNG exports projects calling for an EIS that assesses the upstream impact of the natural gas to the LNG export facility – basically taking the position of the environmental activists.
84. As EPA Administrator would you oppose DOE LNG export approvals if DOE did not change its established practice of deferring to FERC, as the lead NEPA agency, given that FERC has long-established practices of looking at a project's direct environmental impact but not the upstream impacts of those projects?

Response: I am not familiar with the details of how the LNG export approval process works. It is my general understanding that EPA has the ability to submit comments to other agencies, such as FERC, as part of the NEPA process. If confirmed, I can examine this issue more thoroughly.

SSM Policy

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

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

62. Inhofe 62. EPA recently proposed to disapprove provisions in 36 state SIPs based on a change in EPA policy in response to a petition for rulemaking. Were the existing SIP provisions in question legally approved and promulgated by EPA and the states?

a. What is the legal basis for declaring a validly approved SIP provision invalid after the fact?

b. Has EPA done any analysis to determine if the SIP provisions in question are threatening attaining the NAAQS?

c. Without such an analysis, how can EPA determine that such SIP provisions are "substantially inadequate" for purposes of the CAA?

d. Has EPA done any analysis of the impacts on an emissions source trying to operate without the SSM provision?

The bulk of the proposed action is not based on any change in EPA policy. The majority of the existing SIP provisions at issue were adopted by the states and approved by EPA, mostly before 1982. EPA realized and announced in 1982 that some SIP actions taken in the early phase of implementing the CAA were simply incorrect. In the SSM rulemaking, EPA is proposing to clarify and update the SSM policy and to correct mistakes we have generally recognized and communicated to the states for over 30 years. To evaluate these SIP provisions, EPA is using the public notice-and-comment rulemaking process explicitly set out in the Clean Air Act for addressing existing deficientprovisions in SIPs. For each state, there will be another notice-and-comment rulemaking to approve the SIP revisions that are submitted in response to the SIP call.

With regard to your more specific questions:

a. CAA section 110(k)(5) provides the legal basis for EPA to call for a SIP revision whenever the Administrator finds that the SIP for an area is substantially inadequate to attain or maintain a NAAQS, to

mitigate interstate pollutant transport adequately, or to otherwise comply with any requirement of the CAA.

b. EPA has not based its proposed findings of inadequacy on a quantitative assessment that the specific SIP provisions in question resulted in a specific violation of the NAAQS. EPA's proposal that the affected SIP provisions are substantially inadequate is based upon the concern that the provisions in question do not meet legal requirements of the CAA.

c. EPA's proposed SIP call to amend provisions applying to excess emissions contains 49 pages of analysis that comprehensively discuss each affected SIP provision of each affected state, including an explanation of the agency's reasoning for proposing to find that a given provision is or is not "substantially inadequate" to satisfy the legal requirements of the CAA.

d. The implications for a regulated source in a given state, in terms of whether and how it would potentially have to change its equipment or practices in order to operate with emissions that comply with the revised SIP, will depend on the nature and frequency of the source's SSM events and how the state chooses to revise the SIP to address excess emissions during SSM events, consistent with CAA requirements. The preamble to the proposed action describes EPA's assessment of the potential impacts of the proposed SIP calls on sources. See "*What are potential impacts on affected states and sources?*" at 78 FR 12467.

e. With respect to the SSM issue, should EPA analyze whether the nationwide costs to impacted industries of the action are sufficient to trigger the necessity of OMB review?

The SIP call would leave to states the choice of how to revise their SIP provisions in question to make them consistent with Clean Air Act (CAA) requirements, and states have substantial discretion when revising their SIPs as to treatment of excess emissions from sources during SSM events. The implications for a regulated source in a given state, in terms of whether and how it would potentially have to change its equipment or practices in order to operate with emissions that comply with the revised SIP, will depend on the nature and frequency of the source's SSM events consistent with CAA requirements and how the state chooses to revise the SIP to address excess emissions during SSM events. Analysis of impacts to emissions sources as a result of removing SSM exemptions from a SIP would appropriately be conducted as part of the state's process of revising its SIP.

f. With respect to the SSM issue, should EPA be required to show that air quality is harmed by SSM excursions before calling for States to revise their SIPs?

The Clean Air Act requires continuous compliance with emission limitations by sources, including during periods of startup, shutdown, and malfunction. The law requires that EPA disapprove (or find to be substantially inadequate) SIPs with provisions that are inconsistent with this fundamental requirement of the Clean Air Act. That said, EPA notes that an impermissible SIP provision could have adverse impacts, such as by interfering with attainment and maintenance of the NAAQS, protection of PSD increments, protection of visibility, or meeting other Clean Air Act requirements. For citations to court decisions supporting EPA's position, see EPA's February 2013 proposed rulemaking (footnote 22, 78 FR at 12470) and EPA's supporting "Statutory, Regulatory, and Policy Context for this Rulemaking" memorandum in the rulemaking docket (see pages 17 and 21).

7. Another recent example of the "sue and settle" problem involves EPA's recent decision to propose to eliminate a 40-year old regulatory exemption for emissions during periods of startup, shutdown,

and malfunction (SSM). Senator Vitter and I recently wrote you about this topic, and on the issue of EPA's failure to defend the law, our letter stated: "In November 2011, the Environmental Protection Agency (EPA) and the Sierra Club negotiated a settlement whereby EPA unilaterally agreed to respond to a petition filed by Sierra Club seeking the elimination of a longstanding Clean Air Act (CAA) exemption for excess emissions during periods of startup, shutdown, and malfunction ("SSM"). The EPA went out of its way further to deny the participation of the States, and other affected parties. Oddly, it appears that, instead of defending EPA's own regulations and the SSM provisions in the EPA-approved air programs of 39 states, EPA simply agreed to include an obligation to respond to the petition in the settlement of an entirely separate lawsuit. In other words, EPA went out of its way to resolve the SSM petition in a coordinated settlement with the Sierra Club. Our concerns with the Agency's sue and settle tactics are well documented—these settlement agreements are often accomplished in a closed door fashion that contravenes the Executive Branch's solemn obligation to defend the law, avoids transparency and accountability, excludes impacted parties, and often results in the federal government paying the legal bills of these special interest groups at taxpayer expense. The circumstance under which EPA has agreed to initiate this new rulemaking reaffirms a pattern and practice of circumventing transparency."

(a) Please list all instances since January 2009 where EPA decided to settle a lawsuit challenging the validity of a law or regulation that had been in effect before January 20, 2009.

Response: I am aware of some instances since January 2009 where EPA decided to settle a lawsuit challenging the validity of a CAA-related regulation that had been in effect before January 20, 2009. For example, Navistar brought a case in the D.C. Circuit Court challenging a 2001 final rule that promulgated standards for new heavy-duty engines and vehicles. EPA settled that lawsuit by agreeing to a hold a public process to reexamine our policies regarding the use of SCR technology (a type of NOx control) in future model year engines. However, I am not aware of every instance in which EPA has entered into such an agreement. If confirmed, I can examine this issue more thoroughly.

Regional Haze

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

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

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

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

Does EPA plan to return to its determination that compliance with CAIR constitutes compliance with BART? If not, does EPA intend to subject electric generating stations in the East to regional haze BART requirements? When does EPA expect do decide?

EPA is waiting to learn whether the Supreme Court will hear an appeal of the *EME Homer City* decision as that action will affect the options for regional haze and EGUs in the East. The agency will move as quickly as possible once the Court decides, and depending on the Court's decision, the options to consider will include the states' ability to rely on CAIR to satisfy the BART requirements or whether (if the Court were to reverse the lower court decision) states can continue to rely on the Cross State Air Pollution Rule (CSAPR) to meet those requirements.

EPA had determined that electric generating units in the East that were subject to the CAIR program did not have to comply with regional haze best available retrofit technology (BART) requirements because CAIR would reduce emissions more than BART. When EPA replaced CAIR without CSAPR, it revoked the determination that compliance with CAIR constituted compliance with BART, and instead determined that compliance with CSAPR constituted compliance with BART. But now CSAPR has been overturned in court. Does EPA plan to return to its determination that compliance with CAIR constitutes compliance with BART? If not, does EPA intend to subject electric generating stations in the East to regional haze BART requirements on a source by source basis? When does EPA expect to decide?

EPA is waiting to learn whether the Supreme Court will hear an appeal of the *EME Homer City* decision as that action will affect the options for regional haze and EGUs in the East. The agency will move as quickly as possible once the Court decides, and depending on the Court's decision, the options to consider will include the states' ability to rely on CAIR to satisfy the BART requirements or whether (if the Court were to reverse the lower court decision) states can continue to rely on the Cross State Air Pollution Rule (CSAPR) to meet those requirements.

Recently, EPA proposed a regional haze federal implementation plan for NGS that would require the installation of the most expensive emissions-control technology. The proposal is currently open for public comment, and EPA indicated that it will hold public hearings to accept oral and written comments on the proposed rulemaking. Can you give assurances that, if you are confirmed, EPA will host public hearings that allow meaningfully public participation, including at least one hearing apiece in northern Arizona, central Arizona, and southern Arizona, as well as conduct meaningful outreach and consultation with all affected Native American communities?

Yes. EPA has recently invited every tribe in Arizona, including the Navajo Nation, to formal tribal consultation in Phoenix on April 29, 2013. EPA is also available to hold additional consultation with tribes. In addition, EPA intends to hold public hearings this summer in Page, Phoenix, and Tucson AZ as well as a location on the Navajo Nation and a location on or near the Hopi Tribe.

The Regional Haze program is purely for aesthetics, has nothing to do with public health, and was intended to improve visibility at national parks. States were given control by Congress to establish the emission standards and the appropriate controls for implementation. Your agency overruled Oklahoma's Regional Haze State Implementation Plan (SIP) following a Sue & Settle Consent Decree

with environmental groups because you said Oklahoma's cost estimates were inaccurate. In response, EPA issued its own implementation plan that would cost $1.8 billion and would not have any more favorable impact on visibility than the SIP.

1. Inhofe 1. Did EPA do a technical, an economic, and a cost-benefit comparative analysis between Oklahoma's State Implementation Plan (SIP) that was overturned by EPA and the Federal Implementation Plan (FIP) that EPA imposed instead? If EPA performed any of those three analyses for either or both the SIP and the FIP, please provide them to me. If EPA did not perform any or all of those three analyses for the two plans, please explain why you did not do so.

EPA carefully assessed the costs and the visibility benefits associated with the controls in both Oklahoma's Regional Haze SIP and our FIP. The Clean Air Act and EPA's implementing regulations require that both the costs of controls and the visibility benefits be taken into account in making a determination of the appropriate controls. The agency took comment on our analyses before taking final action on our FIP for Oklahoma. The analysis can be accessed at http://www.regulations.gov/#!documentDetail;D=EPA-R06-OAR-2010-0190-0019.

2. Inhofe 2. Do you agree that Oklahoma's low-cost SIP is more cost effective than EPA's FIP? What is the comparative cost-benefit analyses of the SIP vs. the FIP? Are there any additional or greater visibility gains achievable by the FIP that are not attainable by the SIP?

EPA does not agree that Oklahoma's SIP is more cost-effective than our FIP. The agency's analysis of the costs of control indicated that the six coal-fired units in question could install air pollution controls at less than half the cost that Oklahoma estimated, while at the same time resulting in greater visibility benefits at several Class I areas than Oklahoma's plan. However, EPA has recently reached an agreement with the state and one of the companies affected by the FIP on an alternative pathway that the agency expects will be submitted by the state as a SIP to replace the FIP. EPA is also in negotiations with the remaining company about possible replacements for the FIP at one of its plants.

3. Inhofe 3. Did EPA use the Regional Haze program to force Oklahoma utilities to install scrubbers on coal fired utilities despite Oklahoma's equally effective, less expensive SIP?

EPA disagrees that Oklahoma's plan was equally effective, as explained in the answer to Question 2. EPA's FIP follows the requirements of the Regional Haze rule, which implements the requirements established by Congress in Sections 169A and 169B of the Clean Air Act. The FIP does not close off other paths toward compliance, as evidenced by our agreement on an alternative to the FIP controls with one of the companies involved and our continuing negotiations with the remaining company.

4. Inhofe 4. Did EPA alert the state of Oklahoma or utilities in the state prior to entering into a consent decree involving Oklahoma's SIP?

a. If EPA did, did EPA provide both the state and the utilities with an opportunity to participate in the settlement discussions?

b. If EPA did not, why not?

c. Do you believe EPA should allow states and affected utilities to participate in any negotiation process prior to a Consent Decree being agreed to that would affect the SIP, the state, and the state's

utilities?

In keeping with the requirements of the Clean Air Act, the states and the utilities had an opportunity to comment on the proposed consent decree before EPA provided its final agreement and the consent decree was approved by the court. EPA recently has begun providing notices of intent to sue the agency on EPA's publicly available website, which will help to provide states and others notice of potential litigation that may affect their interests. See http://epa.gov/ogc/noi.html

5. Inhofe 5. Will you please provide me with all of the unredacted correspondence between EPA and the environmental groups regarding the Regional Haze program during your tenure at the Air Office?

I am informed by agency staff that the normal protocol for such a request for documents is to submit a separate letter to the agency, rather than through a question for the record. EPA will respond appropriately to any such request it receives.

6. Inhofe 6. Through the Consent Decree, did EPA intend to establish an unrealistically aggressive set of targets and timelines for approving State Implementation Plans to artificially constrain the amount of time available to work with states on procedural issues like cost estimates so that it could ultimately force a Federal Implementation Plan at a much greater cost?

EPA's efforts to work with the states on submitting SIPs are long-standing. At the time EPA negotiated the consent decrees for taking action on the regional haze plans, the deadline for submitting the state plans had passed by more than two years. In these negotiations, EPA sought to obtain a schedule that would allow EPA time to responsibly discharge its overdue mandatory duties under the CAA through notice-and-comment rulemaking. The agency was mindful that the plaintiffs had the option of seeking an even more expedited schedule from the court, and that there was a significant risk that that the court might establish a very aggressive schedule. In EPA's judgment, a court addressing the issue of an overdue mandatory duty by EPA would be unlikely to provide time for a second chance for a state to complete the planning obligation it has already failed to meet. Some states have been able to submit SIP updates as EPA was taking action on their original submissions, and the agency has been able to approve such updates in some cases. Where a federal plan has been established under this consent decree, it is still EPA's preference that it be replaced by an approvable state plan. EPA has sought, and mostly obtained, numerous extensions to the dates in the original consent decrees when EPA determined that additional time was needed; in most instances, these extensions have allowed the agency to consider additional information provided by the states.

7. Inhofe 7. Why did EPA decide to overrule Oklahoma's State Implementation Plan (SIP) and impose a FIP instead of working with the State to address whatever deficiencies EPA saw in the SIP's cost estimate?

The Agency disapproved Oklahoma's plan because Oklahoma's cost analysis for scrubbers did not follow the requirements outlined in the Regional Haze rule. EPA pointed out this concern while Oklahoma was still developing its SIP, but the state did not change its cost evaluation before submitting the SIP. Consequently, EPA disapproved Oklahoma's SIP, which triggered a legal obligation to issue a FIP in its place. While it is the agency's preference to allow states the opportunity to correct deficiencies in their

SIPs, EPA was unable to negotiate enough time in the consent decree for Oklahoma to submit a new SIP with a corrected cost analysis. Nonetheless, EPA still prefers that the state replace the FIP with a SIP.

8. Inhofe 8. As Administrator, what will your primary objective be when implementing the Regional Haze program?

a. Will you assure me that EPA will make every conceivable effort to work with states to ensure that their SIPs are approved, and that FIPs will only be implemented once EPA has exhausted the Clean Air Act's cooperative federalism concepts and conclusively determines through a technical comparative analysis that the overruled SIP will not meet the visibility requirements outlined in the Regional Haze program?

b. Will you also ensure that any FIP is the least expensive option available to EPA to meet the minimum requirements of the Regional Haze law? Will you provide economic comparative analysis of the separate plans?

In general, it is my goal to work with the states as closely as possible and I will continue to look for opportunities to involve them in decision making that affects their interests. The states are required to submit their next full regional haze plans in 2018. I am committed to work with states to approve their SIPs.

9. Inhofe 9. In the CAA, please provide your definition of cooperative federalism. Can you conceive of any circumstances where EPA has disagreed with a State's approach, on policy grounds, and decided that the Agency will not intervene to override the state?

"Cooperative federalism" is generally used to describe the Clean Air Act's approach of assigning tasks to EPA and States that, when taken together, result in cleaner air and important public health protections. For example, EPA sets the National Ambient Air Quality Standards for specific pollutants. EPA works with States to set up monitoring networks and to designate areas as ones that are attaining, not attaining or lack sufficient data with respect to the standards. States submit plans that must meet the requirements of the Act, including the requirement to bring all areas into the state into attainment with the standards. If EPA disapproves a plan for failing to meet the Act's requirements, or if a State fails to submit a plan in whole or in part, then the Act requires EPA to issue a federal plan for the State unless there is a timely correction of the deficiency and subsequent approval by EPA. EPA also issues rules (such as the recently proposed Tier 3 fuel and vehicle regulations) that assist areas in meeting the air quality standards. In instances where EPA has not been under a consent decree deadline for a federal plan, the agency has disapproved SIPs with technical errors without immediately putting into place a federal plan. Except for a few instances in which EPA and the state agreed in advance that EPA would promulgate a FIP because of resource and technical capacity limitations at the state level (Hawaii, Virgin Islands, and Montana), in every instance in which EPA has adopted a federal regional haze plan, the agency had found errors in the state's technical analysis that the agency concluded would make EPA approval of the state plan unsustainable under legal challenge. In all cases without such technical errors, EPA has accepted the state's balancing of costs and visibility benefits.

Barasso 27. My home state of Wyoming is the largest coal producer in the country. I have deep concerns about the process for developing and implementing the regional haze program in Wyoming.

Can you commit to a process that does not disadvantage generation or the coal based resource in Wyoming?
Because of public comments that were critical of some of the basic technical analysis supporting our first proposed action on Wyoming's regional haze SIP, EPA plans to re-propose that action soon and provide the public with another comment period to review our revised technical analysis before taking final action. The agency is sensitive to the large number of coal-fired units that are at issue in Wyoming, and to the challenges of addressing the best available retrofit technology and reasonable progress requirements for these units in the limited compliance time period allowed under the CAA. EPA plans to note these challenges in our new proposal and invite comment, including supporting technical information, on a number of alternative paths forward.

Crapo 6. The Air Pollution Cost Manual currently used by EPA in estimating costs for regional haze and other "best available retrofit technology (BART) determinations was published in 2002. Costs for designing, engineering and installing controls obviously have increased significantly since then. Given that the current cost manual was published over a decade ago, is it out-of-date? What steps are being taken by EPA to update it? Doesn't the use of an outdated cost manual increase the likelihood that EPA is underestimating regional haze compliance costs?
EPA encourages the use of up-to-date, case-specific cost information. The Control Cost Manual and EPA's Best Available Retrofit Technology (BART) Guidelines state that users of the manual, including states when developing regional haze state implementation plans (SIPs) and EPA when developing federal implementation plans (FIPs), can and should use more recent and more case-specific information provided it is properly documented so that the public and the state can assess its relevance and technical validity.

During my opening remarks, I mentioned the recent settlement between EPA, the State of New Mexico and PNM Resources.
(a) EPA has been charged with overreaching on regional haze rules. The story of the San Juan Generating Station would suggest otherwise, wouldn't it?
Response: Yes, the story of San Juan Generating Station is a great example of EPA working with the State of New Mexico, PNM, and other stakeholders to finalize a plan that will improve visibility in the surrounding areas while also being cost-effective.
(b) In the end, we want the states implementing these programs, don't we?
Response: Yes, it is EPA's preference to work with states to approve a State Implementation Plan, rather than issue a Federal Implementation Plan.

BACT Standards

BACT standards apply to individual sources on a case-by-case basis. They generally are more stringent – and by law may not be less stringent – than Clean Air Act new source performance standards (NSPS), which the EPA establishes for categories of industrial sources. In other words, NSPS are the "floor" or minimum emission control standards for BACT determinations. Is that correct?
Yes. The Clean Air Act specifies that BACT for a source cannot be less stringent than an applicable NSPS.

Thus, when EPA completes an NSPS for a source category, BACT determinations that follow for applicable sources would need to consider the levels of the pollutant standards and the supporting rationale of the NSPS.

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

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

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

As explained in responses to related questions, the statement that "EPA stated that fuel-switching from coal to natural gas would not and could not be considered BACT" is not entirely correct. While EPA did not propose that CCS represented BSER, EPA stated in the preamble of the proposed NSPS rule that "CCS is technologically feasible for implementation at new coal-fired power plants and its core components (CO2 capture, compression, transportation and storage) have already been implemented at commercial scale." [77 FR 22414]. As noted in answers to other questions, several commercial-scale coal-fired power plants with CCS are currently progressing, and EPA's view is that coal-fired units can meet the proposed limit. The agency is still actively considering a wide range of comments on these issues, and any final decision will reflect careful consideration of these issues.

The Air Office's PSD and Title V Permitting Guidance for Greenhouse Gases, both as proposed in November 20102 and as adopted in March 2011, similarly states that the "initial list of control options for a BACT analysis does not need to include 'clean fuel' options that would fundamentally redefine the source." In other words, an applicant would not be required to "switch to a primary fuel type other than the type of fuel that an applicant proposes to use for its primary combustion process." In addition, a Q&A document published along with March 2011 guidance asks whether "fuel switching (coal to natural gas) should be selected as BACT for a power plant?" The document answers: "No." It goes on to state that BACT for CO2 should "consider the most energy efficient design," but "does not necessarily require a different type of fuel from the one proposed." These documents suggest that the EPA will not require fuel switching in BACT determinations. Was that a reasonable conclusion for Congress and electric utilities to draw at the time?

That is a reasonable interpretation, and EPA continues to believe that its BACT guidance is reasonable

for the specific purposes for which the guidance is intended.

In their guidance establishing what could be considered Best Available Control Technology (BACT) for regulating GHGs in the permitting process, EPA stated that fuel-switching from coal to natural gas would not and could not be considered BACT:

33. Inhofe 33. Since NSPS are traditionally interpreted to set the BACT "floor" for permitting purposes, how can a NSPS that eliminates the ability to construct new coal units without the implementation of commercially infeasible carbon capture and storage (CCS) be consistent with EPA's previous guidance?

The statement that "EPA stated that fuel-switching from coal to natural gas would not and could not be considered BACT" is not entirely correct. EPA's March 2011 GHG Permitting Guidance says that, "a permitting authority retains the discretion to conduct a broader BACT analysis and to consider changes in the primary fuel in Step 1 of the analysis." Thus, EPA never ruled out the possibility that a permitting agency could require that an applicant consider natural gas, or other cleaner fuels, when proposing a coal-fired EGU. EPA is still carefully evaluating public comments on the proposed carbon pollution standards for new power plants, including comments related to the issue raised in your question. The agency will take these comments into consideration in taking any final action on the proposal. While EPA did not propose that CCS represented BSER, the agency stated in the preamble of the proposed NSPS rule that "CCS is technologically feasible for implementation at new coal-fired power plants and its core components (CO2 capture, compression, transportation and storage) have already been implemented at commercial scale." [77 FR 22414]. Furthermore, it is worth noting that, today, coal-fired power plants are being constructed that will have CCS, and EPA's view is that coal-fired units can meet the proposed limit.

34. Inhofe 34. EPA's BACT guidance stated that units should consider the "most energy efficient design and control options" when determining GHG BACT for power plants, regardless of fuel source. Why, then, did the Agency deviate from this plan in setting standards for new sources?

The EPA's GHG BACT guidance was intended to provide general guidance to permitting authorities on pollution control methods worthy of evaluation in a Best Available Control Technology assessment for a wide range of sources, and the guidance does not represent an EPA determination regarding the control method that must be selected as BACT for a particular source or category of sources. Subsequent to issuance of the guidance, EPA undertook a more detailed technological assessment of emissions control systems for the purposes of developing a proposed NSPS for the power plant category. At this time, CCS is the only system that EPA has identified for coal-fired electric generating units as being capable of meeting the proposed standard. EPA is still carefully evaluating public comments on the proposed carbon pollution standards for new power plants, including comments related to the issue raised in your question. We of course will take these comments into consideration in taking any final action on the proposal.

Data Quality

In most cases, the EPA is required to document a threat to public health or the environment before issuing a new regulation. But evidence abounds that the agency routinely relies upon speculative and poorly constructed computer models to justify its rulemaking. The Government Accountability Office, among others, has revealed serious shortcomings in the agency's scientific analyses. Unjustified

regulations misdirect resources from real threats, and thus jeopardize public health and safety. What actions, if any, will you take to ensure that the agency applies the best science available through rulemaking?

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

NHSM Rule:

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

Response: The Agency committed to issuing the Nonhazardous Secondary Materials (NHSM) categorical listing rule in a timely manner. I understand that, recently, the Agency received important new information from industry that will inform the rulemaking. If confirmed, I am committed to keeping the Committee apprised of ongoing NHSM rulemaking efforts.

Boiler MACT

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

Response: The Agency committed to issuing the Nonhazardous Secondary Materials (NHSM) categorical listing rule in a timely manner. I understand that, recently, the Agency received important new

information from industry that will inform the rulemaking. If confirmed, I am committed to keeping the Committee apprised of ongoing NHSM rulemaking efforts.

Power plant Regulations

We have all heard the claims that if the US acts then other countries will follow. Can EPA provide this committee which examples of specific countries that will follow the US lead if the US adopts more stringent regulations on existing power plants?

During my tenure at EPA, I have seen that the United States is recognized as a global leader in many aspects of environmental protection and many countries look to the United States for leadership in this area. Although I would defer to the State Department with regard to the positions and commitments of specific countries in this area, I believe that U.S. leadership in reducing carbon pollution will encourage greater action from other countries and will enhance U.S. leverage in international climate discussions.

Suzanne Rudzinski, Director of the Office of Resource Conservation and Recovery, on Oct. 11, 2012, documented in a declaration to the U.S. District Court for the District of Columbia in Appalachian Voices v. Jackson (Civ. No. 1:12-cv-00523-RBW) why the agency could not promulgate a final rule on the disposal and management of coal combustion residuals in surface impoundments and landfills in the six-month timeframe requested by plaintiffs. Ms. Rudzinski told the court that EPA could not meet that deadline because "such a schedule does not provide EPA with the time necessary to allow sound-decision making, and would result in final agency actions that, in [her] view, are neither scientifically sound nor legally defensible." EPA's semi-annual regulatory agenda provides no projected date for completion of this rulemaking. What are EPA's plans for issuing a final rule? Specifically, what are the major actions EPA plans to complete prior to issuing a final rule and the projected deadlines for completing those actions (i.e., plans for issuing a notice of data availability or any other rulemaking steps requiring public comment)? Can you assure us that EPA will not define coal ash as a hazardous waste?

Response: It is my understanding that as part of a recent proposal to reduce pollution from steam electric plants, EPA also announced its intention to align that proposed rule with the proposed coal ash rule and stated that such alignment could provide strong support for a conclusion that regulation of CCR as non-hazardous could be adequate. The two rules would apply to many of the same facilities and would work together to reduce pollution associated with coal ash and related wastes. EPA is seeking comment from industry and other stakeholders to ensure that both final rules are aligned. If confirmed, I would continue to work to ensure that these two proposed rules are appropriately coordinated.

Coal Power Plant Closings

A large number of plants are expected to retire in 2015/16 – as the economy recovers and electric demand recovers. Experts expect regional problems because there are areas not served by natural gas pipelines where needed infrastructure may not be able to be put in place in this time frame or where replacement plants cannot be permitted and built within this time frame. MISO has done an analysis that shows 9% of capacity (12.9 GW at last estimate) is closing and there is probably not sufficient gas infrastructure to serve existing demand let alone new demand. Did EPA examine natural gas availability when you issued the Utility MACT rule, CSAPR, the PM NAAQS and NSPS for GHGs?

Electric utilities, grid operators and electric regulatory bodies, like state public utility commissions, have

a wide variety of options for meeting electric demand. EPA conducts detailed analysis to support its actions and projects that fuel diversity will be maintained in the future so that the full range of electric generating resources is maintained, helping to ensure reliability. This includes coal and natural gas – since natural gas is the primary fuel that responds during time of high system demand. EPA analysis projects that areas experiencing coal retirements will also retain significant coal capacity and an adequate mix of diverse generating resources. EPA takes into account the availability of natural gas pipeline capacity to meet the needs of natural gas generators when conducting analyses of its power sector rules.

EPA has not done a cumulative analysis of the impact of its many recent regulations affecting power plants. There has been no government analysis by any government agency of which plants are closing, where they are located and whether or not the area has natural gas infrastructure in place or can be supplied with additional supplies of natural gas in existing infrastructure. Certain sections of the country are very coal dependent while others have little coal generation. Ten states depend on coal for over 70% of generation; 11 states are 50-70% dependent. These states will experience disproportionate impacts including higher costs. Is this something EPA examined? Does this concern you?

Electric utilities, grid operators and electric regulatory bodies, like state public utility commissions, have a wide variety of options for meeting electric demand. Many existing coal plants are already very well controlled for pollution, and other coal plants have the ability to retrofit with widely available pollution control technologies. External analysts, including GAOi, CRSii, the Bipartisan Policy Centeriii, and Analysis Groupiv,have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. EPA performs detailed regulatory impact analyses of its power sector rules, including estimates of potential impacts on the mix of generation resources as well as electricity prices, and these analyses are publicly available and subject to notice and comment.

Have EPA regulations played a role in the premature closing of coal-fired powerplants?

A number of factors may influence an owner/operator's business decision to retire a plant; in some instances, environmental rules may be a part of the equation. External analysts, including GAOv, CRSvi, the Bipartisan Policy Centervii, and Analysis Groupviii, have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth.

Bloomberg Government recently put together a comparison chart of various estimates of plant closures made by government agencies and private financial firms and other experts. EPA's estimate in December 2011 of plant closures resulting from EPA's regulation at 17.5 GW. The EIA estimated 49 GW in July 2012, most of it within 5 years but put the overall range at 34 GW to 70 GW. Other private sector groups have estimated coal plant closures at 34.5 GW to 77 GW. Is it concerning to you that EPA's estimate constitutes such an outlier?

A number of economic factors influencing retirements well beyond EPA's clean air rules are included in these non-EPA figures. External analysts, including GAOix, CRSx, the Bipartisan Policy Centerxi, and Analysis Groupxii, have found that decisions to retire some of the country's oldest, most inefficient, and

smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. Because EPA's power sector analyses look at the effects of its rules alone to evaluate incremental impacts, EPA's analyses are not comparable to other assessments that also take into account broader economic factors.

EPA regulations and low natural gas prices are leading many utilities to fuel switch from coal- to natural gas-fired generation. However, it is not clear yet whether there will be sufficient pipeline infrastructure or storage to accommodate the greater use of natural gas by electric utilities. And as is evidenced in your home region of New England, a region heavily reliant on natural gas for electric generation, there are issues with pipeline capacity and competing demand for gas for home heating. Electricity prices in New England were four to eight times higher than normal in February 2013 because of the lack of fuel diversity. And New England is not the only region of the country with potential reliability concerns. A January 2013 EPA Compliance Update by the Midwest Independent System Operator (MISO) states the ISO has concerns about whether there is sufficient resource adequacy in the Midwest beginning in 2016. With the significant number of coal-fired generation retiring due to EPA regulations and low natural gas prices, MISO projects there will be a potential 11.7 GW shortfall of resource adequacy in the winter of 2016 and a 3.5 GW one in the summer of 2016. MISO anticipates increased utilization of natural gas fuel generation that will result in "changes to the system's generation configuration and concerns about the ability of the current pipeline infrastructure's ability to deliver enough gas." Do you agree that EPA environmental regulations are now driving U.S. energy policy with serious implications for electric reliability and electricity prices? Is EPA working closely with the Federal Energy Regulatory Commission to ensure the reliability of the electric grid and smaller load pockets facing potential generation shortfalls? Can you please provide the committee with specific information about inter-agency meetings on these issues?

EPA is working closely with FERC and DOE, as well as with grid planning authorities and other key stakeholders, to ensure implementation of EPA rules and requirements in a manner consistent with maintenance of electric reliability. EPA will continue to work with FERC, DOE, grid planning authorities and electric utilities to address any specific challenges that may arise. EPA, FERC and DOE meet regularly to coordinate on these issues. The three agencies participate jointly in monthly calls with key Regional Transmission Organizations, have met jointly with other key planning authorities, and participate in engagement with state regulatory authorities and other stakeholders. With regard to your question concerning impacts of environmental regulations, please see the agency's responses to the previous questions.

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

EPA's Clean Air Act power plant rules provide flexibility to regulated entities to help ensure a path forward for generating units of all types. EPA analyses conducted in support of its power plant rules project that fuel diversity will be maintained in the future, helping to ensure reliability. This includes coal and natural gas – since natural gas is the primary fuel that responds during time of high system demand.

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

Why hasn't EPA studied the cumulative impact of all its recent rulemakings which are causing the retirement of coal fired energy sources?

EPA has been monitoring the changes taking place in the electric utility industry, including the significant decline in natural gas prices, rising coal prices, and reduced demand for electricity. This, when combined with the fact that a majority of coal plants have been in service 40 years or longer and many of these older plants are significantly less efficient (resulting in lower utilization rates), has led to electric utility owners making decisions to retire some of these plants. Many analysts believe that these market changes in gas prices and other factors have the largest impact on retirements in this sector.

The modeling approaches EPA uses can take into account both these market shifts and recent rulemakings. For example, when EPA modeled our mercury and air toxics rule using our integrated planning model, those requirements were added on top of the existing air rules (CSAPR) which are already coded into the model. These models capture the investment decisions of plant owners (including retirement decisions) as they look at all of the investments they will have to make over the modeled timeline. The result is that the model captures the combined impact of all of these requirements on both electricity prices and electricity generating capacity.

Can you assure us that EPA will adopt a program that will not force new retirements of coal units?

I do not foresee the EPA adopting an NSPS program that would mandate the retirement of coal units.

A recent comprehensive modeling effort done by ICF International – using the same proprietary ICF Integrated Planning Model with EPA uses to model each of its rules – project forecasts about 50 GW of coal-fired generation retirements over the next few years, driven mostly by pending EPA rules, with the expectation of another 20 GW of retirements after that. How can you explain the difference between this analysis and EPA's?

A number of economic factors influencing retirements well beyond EPA's clean air rules are included in these ICF figures.**Error! Bookmark not defined.** External analysts, including GAOxv, CRSxvi, the Bipartisan Policy Centerxvii, and Analysis Groupxviii,have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. Because EPA's power sector analyses look at the effects of its rules alone to evaluate incremental impacts, EPA's analyses are not comparable to other assessments that also take into account broader economic factors.

Inhofe 27. A recent comprehensive modeling effort done by ICF International – using the same proprietary ICF Integrated Planning Model (IPM) with EPA uses to model each of its rules – project forecasts about 50 GW of coal-fired generation retirements over the next few years, driven mostly by pending EPA rules, with the expectation of another 20 GW of retirements after that. How do you explain the difference between this analysis and EPA's?

133

A number of economic factors influencing retirements well beyond EPA's clean air rules are included in ICF's figuresxix. External analysts, including GAOxx, CRSxxi, the Bipartisan Policy Centerxxii, and Analysis Groupxxiii, have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. Because EPA's power sector analyses look at the effects of its rules alone to evaluate incremental impacts, EPA's analyses are not comparable to other assessments that also take into account broader economic factors.

EPA projected that UMACT would cause 4.7 GW of coal plant retirements (RIA, P. 3-16). The North American Electric Reliability Corporation (NERC) recently issued its Long-Term Reliability Assessment, determining that over 70 GW of fossil-fired generating capacity – predominantly coal – will retire over the next ten years. According to NERC, 90% of those retirements will take place over the next five years, resulting in the loss of 20% of the nation's coal-fired generation by 2017.

38. Inhofe 38. Please explain - how can EPA's estimates of retirements be so low when compared with NERC's estimate?

Included in NERC's 2012 Long-Term Reliability Assessment are a number of economic factors influencing retirements well beyond EPA's clean air rules. External analysts, including GAOxxiv, CRSxxv, the Bipartisan Policy Centerxxvi, and Analysis Groupxxvii, have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. Because EPA's power sector analyses look at the effects of its rules alone to evaluate incremental impacts, EPA's analyses are not comparable to other assessments that also take into account broader economic factors.

Barrasso 16. As Assistant Administrator for EPA's OAR, you have had direct responsibility for promulgating the Mercury and Air Toxics Standards (MATS) for power plants. On March 20th 2012 before the Senate Environment and Public Works Committee's Subcommittee on Clean Air and Nuclear Safety, you testified that "only a modest amount of generating capacity" -- 4,700 megawatts (MW) -- will become uneconomic to operate under MATS. This rule will cause 35,000 MW to retire, according to the Institute for Energy Research, and 42,000 MW to retire, according to Barclays.

Do you stand by your testimony that "only a modest amount" of coal-fired generating capacity will be forced to retire by EPA regulations? Or would you reconsider your testimony in light of more recent analyses and already announced retirements that show EPA's projections to be off by as much as 800 percent?

A number of economic factors influencing retirements well beyond EPA's clean air rules are included in these non-EPA figuresxxviii. External analysts, including GAOxxix, CRSxxx, the Bipartisan Policy Centerxxxi, and Analysis Groupxxxii, have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. Because EPA's power sector analyses look at the effects of its rules alone to evaluate incremental impacts, EPA's analyses are not comparable to other assessments that also take into account broader economic factors.

22. Relief for facilities being retired – EPA's proposed rule outlines a rigid schedule of expensive and

time consuming studies that are required as an interim measure before a plant installs technology to comply with the rule's requirements. It is also my understanding that this set of interim measures would apply to facilities even if they announce they plan to retire prior to compliance deadlines. Why would we subject existing facilities to additional and unnecessary expenses if, in fact, they have announced retirement and ultimately would not be expect to comply with the rule because they no longer would be in operation? Will you ensure the final rule provides compliance relief for generation assets that announce retirement?

Response: I fully recognize that this is a period of transition for the power sector and that operators do not want to undertake studies for control technologies if they are certain to retire a unit. If confirmed, I look forward to working to ensure that we carefully consider the special circumstances of retiring units as we finalize the 316(b) rule.

a. Do you agree that the United States is losing some of its coal-fired generating capacity as a result of recent EPA regulations?

A number of factors may influence an owner/operator's independent business decision to retire a plant. Environmental rules are only a part of the equation. External analysts, including GAOxxxiii, CRSxxxiv, the Bipartisan Policy Centerxxxv, and Analysis Groupxxxvi,have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth.

7. Regarding impacts from final, proposed, and expected EPA regulations on coal-fired generation, please explain the significant differences on coal-fired generation shutdown projections between the EPA projections and industry expert organizations projections, such as those from FERC, NERC, EIA, and others.

A number of economic factors influencing retirements well beyond EPA's clean air rules are included in these non-EPA figures. External analysts, , including GAOxliv, CRSxlv, the Bipartisan Policy Centerxlvi, and Analysis Groupxlvii have found that decisions to retire some of the country's oldest, most inefficient, and smallest coal-fired generators are driven in large part by economic factors—primarily low natural gas prices, relatively high coal prices, and low regional electricity demand growth. Because EPA's power sector analyses look at the effects of its rules alone to evaluate incremental impacts, EPA's analyses are not comparable to other assessments that also take into account broader economic factors.

8. How will you assure us that the finalized greenhouse gas New Source Performance Standards for new coal fired power plants will address the concerns that the standards be technically achievable and cost effective?

In response to its proposal, EPA received extensive public comment, much of it addressed to issues related to technical achievability and to cost. The agency is evaluating those comments and will take those comments fully into account before issuing a final rule. Any final rule that EPA issues will reflect the agency's best analysis of cost and achievability.

9. What are your plans to lead the EPA in the forthcoming development of the carbon dioxide New Source Performance Standards for existing power plants? How would you assure these new standards will be technically achievable and cost effective for existing coal fired power plants?

EPA is not currently developing any existing source GHG regulations for power plants, but if the agency

does undertake existing source guidelines, it will ensure that they meet the Clean Air Act requirements of achievability and cost considerations.

International Issues

If all the regulations enacted or being contemplated with respect to greenhouse gases are fully implemented, what the impact be on global concentrations of greenhouse gases and on global average temperature? Please cite your source.

To respond to your precise question would require more specific information about the current or potential future regulations to be considered. The common sense regulations to address greenhouse gases that EPA has undertaken under this administration will achieve significant emission reductions. The light-duty vehicle emissions and fuel economy standards that EPA and NHTSA have established for model years 2012-2025, for example, are expected to result in reductions of over 6 billion metric tons carbon dioxide equivalent over the lifetime of these vehicles. Further actions, from both the United States and all of the major emitting countries, will be necessary to achieve the reductions that science indicates are necessary to address climate change.

If the US has committed to a specific course of action through regulations, what leverage would U.S. diplomats have to craft international compromises on climate issues?

I would defer to the State Department with regard to the positions and commitments of specific countries in this area and more generally with regard to the conduct of international climate negotiations. That said, I believe U.S. leadership in reducing carbon pollution will encourage greater action from other countries and will enhance U.S. leverage in these discussions.

In addressing the need for unilateral, domestic GHG reductions, regardless of what the rest of the world does, the Administration has historically said that we need to be "leaders" in this arena to encourage other nations to follow. The U.S. has had some sort of GHG regulation in place since 2007, ranging from the GHG requirements in the RFS, to EPA's GHG regulations for stationary sources under the Clean Air Act, to two stages of CAFÉ and GHG tailpipe standards. How has leading through such actions to control GHGs caused China, India or other developing countries to "follow our lead" in reducing GHG emissions?

My understanding is that a number of major developing countries have taken significant actions to reduce greenhouse gas emissions in recent years. Although I don't have sufficient information to respond to your question as to the relationship between those actions and specific actions taken by the United States, I believe U.S. leadership in reducing carbon pollution does help to encourage greater action from other countries and enhances U.S. leverage in international climate discussions.

The EPA's greenhouse gas regulations, along with a host of other onerous regulations, are unnecessarily driving out conventional fuels as part of America's energy mix. The consequences are higher energy prices for families and a contraction of our nation's economic growth for no noticeable impact on the earth's temperature as major developing countries like India and China repeatedly have said they would not cut economic growth to curb GHG emissions. Do you agree with former EPA administrator Lisa Jackson that unilateral actions on greenhouse gas emissions will not significantly impact global emissions and thus have a negligible effect on climate change?

In order to achieve the reductions in greenhouse gas emissions that science indicates are necessary to address the most severe impacts of climate change, all major emitting countries will need to take action.

As I indicated in my testimony before the Committee, I believe the United States can achieve meaningful reductions in greenhouse gas emissions through common sense steps, such as the light duty vehicle emission and fuel economy standards established by this Administration, that are fully consistent with domestic economic growth. I also believe U.S. leadership in reducing carbon pollution helps to encourage greater action from other countries and enhances U.S. leverage in international climate discussions.

Risk Management:

For chemicals management, the Agency has traditionally used an approach where the risks associated with a chemical are systematically evaluated first. If risks are identified that merit the introduction of risk management intervention, EPA separately assesses risk management instruments that would be the most appropriate. Will the Agency continue to use this tiered approach where risks are assessed separately from consideration of the need for risk management? Some regional regulatory authorities, most notably the Europeans, are increasingly using hazard as the basis for proposing regulatory restrictions for industrial chemicals. This appears especially the case for controversial human health endpoints, such as endocrine activity, where the science in still evolving. Will EPA continue to use risk as the basis for regulating industrial chemicals?"

Response: It is my understanding that currently under TSCA, the EPA is required to use risk as a basis for risk management activities, recognizing the need to act in the absence of scientific certainty. I also support the Administration's interest in reforming this outdated law and, if confirmed, look forward to working on it with you and this committee.

CCR:

The Agency proposed a coal combustion residuals (CCR) rule in 2010, and that rule has not been finalized. At the same time EPA has made a commitment to propose revised effluent guidelines for the steam electric industry by April 19 and then finalize the guidelines by May 2014. How does the Agency plan to ensure coordination between these two rules, which involve many of the same wastestreams?

Response: It is my understanding that as part of a recent proposal to reduce pollution from steam electric plants, EPA also announced its intention to align that proposed rule with the proposed coal ash rule and stated that such alignment could provide strong support for a conclusion that regulation of CCR as non-hazardous could be adequate. The two rules would apply to many of the same facilities and would work together to reduce pollution associated with coal ash and related wastes. EPA is seeking comment from industry and other stakeholders to ensure that both final rules are aligned. If confirmed, I would continue to work to ensure that these two proposed rules are appropriately coordinated.

EPA is still considering two regulatory options for coal ash – the first would regulate coal ash under RCRA's Subtitle C hazardous waste program and the second would regulate coal ash as a non-hazardous waste under RCRA's Subtitle D program. Both options have their drawbacks, especially in my view the Subtitle C option, and EPA has received approximately 450,000 comments on the proposal identifying major shortcomings with both approaches. Given this, last year the Senate introduced bi-partisan legislation (S. 3512) that would establish federal non-hazardous waste

standards for the management of coal ash under RCRA Subtitle D. I expect similar legislation to be introduced shortly in the House. The legislation draws from the key components of EPA's proposed Subtitle D regulatory proposal and would allow the States to take the lead in implementing enforceable permit programs for coal ash, with EPA ensuring that State programs meet the federal standards or, if not, EPA would implement and enforce the federal controls for coal ash. In light of the controversy surrounding EPA's regulatory options, would you support federal legislation along the lines of S. 3512 that would create a federal regime for the management of coal ash? What would be the key criteria that EPA would like to see in federal legislation for coal ash? Do you agree with the views of ECOS, ASTSWMO and individual state agencies that the states are up to task of implementing federal controls for coal ash?"

Response: I am not familiar with the provisions of that particular legislative proposal; however, if confirmed, I would be happy to take a look at that and/or other bills and to provide feedback at that time.

Suzanne Rudzinski, Director of the Office of Resource Conservation and Recovery, on Oct. 11, 2012, documented in a declaration to the U.S. District Court for the District of Columbia in *Appalachian Voices v. Jackson* (Civ. No. 1:12-cv-00523-RBW) why the agency could not promulgate a final rule on the disposal and management of coal combustion residuals in surface impoundments and landfills in the six-month timeframe requested by plaintiffs. Ms. Rudzinski told the court that EPA could not meet that deadline because "such a schedule does not provide EPA with the time necessary to allow sound-decision making, and would result in final agency actions that, in [her] view, are neither scientifically sound nor legally defensible." EPA's semi-annual regulatory agenda provides no projected date for completion of this rulemaking.

49. What are EPA's plans for issuing a final rule? Specifically, what are the major actions EPA plans to complete prior to issuing a final rule and the projected deadlines for completing those actions (i.e., plans for issuing a notice of data availability or any other rulemaking steps requiring public comment)?

Response: It is my understanding that as part of a recent proposal to reduce pollution from steam electric plants, EPA also announced its intention to align that proposed rule with the proposed coal ash rule and stated that such alignment could provide strong support for a conclusion that regulation of CCR as non-hazardous could be adequate. The two rules would apply to many of the same facilities and would work together to reduce pollution associated with coal ash and related wastes. EPA is seeking comment from industry and other stakeholders to ensure that both final rules are aligned. If confirmed, I would continue to work to ensure that these two proposed rules are appropriately coordinated.

26. Where do you stand on the proposed coal residuals regulation? Regulation as hazardous waste would mean important efforts to reuse or recycle material would be curtailed. Is a "one size fits all" policy for the nation really necessary, or would it better to let the states manage coal waste? Do you believe a system of state led oversight based on sound science would be much more preferable than the top-down approach currently proposed by EPA?

Response: It is my understanding that as part of a recent proposal to reduce pollution from steam electric plants, EPA also announced its intention to align that proposed rule with the proposed coal ash rule and stated that such alignment could provide strong support for a conclusion that regulation of CCR as non-hazardous could be adequate. The two rules would apply to many of the same facilities and

would work together to reduce pollution associated with coal ash and related wastes. EPA is seeking comment from industry and other stakeholders to ensure that both final rules are aligned. If confirmed, I would continue to work to ensure that these two proposed rules are appropriately coordinated.

12. What is EPA doing to encourage the recycling of coal ash? As Administrator, will you help the growth in coal ash recycling resume by at least taking the threat of a hazardous waste designation off the table?

Response: It is my understanding that as part of a recent proposal to reduce pollution from steam electric plants, EPA also announced its intention to align that proposed rule with the proposed coal ash rule and stated that such alignment could provide strong support for a conclusion that regulation of CCR as non-hazardous could be adequate. The two rules would apply to many of the same facilities and would work together to reduce pollution associated with coal ash and related wastes. EPA is seeking comment from industry and other stakeholders to ensure that both final rules are aligned. If confirmed, I would continue to work to ensure that these two proposed rules are appropriately coordinated.

4. In the wake of the 2008 failure of a dike used to contain fly ash at the Tennessee Valley Authority's Kingston Fossil Plant, EPA initiated a rulemaking for coal combustion residuals under the Solid Waste Disposal Act. Four and a half years after the Kingston spill, the rulemaking is ongoing and coal combustion residuals remain regulated only by inconsistent state laws. Will you commit to work with members of Congress on amending the Solid Waste Disposal Act to authorize the regulation of coal combustion residuals under a nonhazardous waste permit program?

Response: Yes, EPA stands ready to provide technical assistance to members of Congress in its efforts to develop legislation regarding coal combustion residuals (CCR).

CSAPR:

On March 29, 2013, the Department of Justice filed a cert petition asking the Supreme Court to reverse the decision by the D.C. Circuit striking down EPA's Cross State Air Pollution Rule (CSAPR). This cert petition makes certain claims about the impact of the Court's decision that appear to be inconsistent with statements that you recently made to the U.S. General Accountability Office (GAO). In a letter dated January 7, 2013, to David Trimble of the GAO, you stated as follows: Annual 2012 SO2 emissions levels from power plants within the CSAPR region are on track to be 23% below what CSAPR would have required in 2012. Similary, annual NOx and ozone season NOx emissions in the CSAPR region are projected to be 12% and 5% below what CSAPR required for 2012." Yet the cert petition to the Supreme Court asserts that "By vacating the Transport Rule [CSAPR], . . . the court of appeals' decision will directly and negatively affect the public health." How does the court of appeals' decision "directly and negatively affect the public health" if emissions from power plants are well below the levels that would have been required under CSAPR?

Response: I can't speak to matters that are currently in litigation or to specific litigation decisions made by the Department of Justice. However, the brief filed by the Department of Justice speaks for itself and I am told that it explains, with specific citation to the CSAPR rulemaking record, the ways in which the EME Homer City decision directly and negatively affects the public health by delaying needed emission reductions and hobbling EPA's efforts to address interstate air pollution problems. A single year of emissions data does not provide a complete picture and is not a substitute for having the CSAPR regulatory requirements in place to guarantee that those emission reductions endure over time.

Unfortunately, in recent months, we have seen an increase in harmful emissions from some sources that were covered by CSAPR.

Do you believe that EPA and the Department of Justice have an obligation to be forthright and honest with the Supreme Court? Do you agree that, at the very least, the statements in the cert petition regarding the public health impacts of the CSAPR decision could be misleading?

Response: I, personally, believe it is extremely important to be forthright and honest in all circumstances and especially with the courts. As noted above, the brief filed by the Department of Justice speaks for itself and I am told that it explains, based on specific findings made by EPA as part of the CSAPR rulemaking, the ways in which the EME Homer City decision directly and negatively affects the public health.

In CSAPR, EPA originally proposed that Texas would not be covered under the rule because power plants in Texas did not "contribute significantly" to nonattainment problems in other states. In the final rule, however, EPA changed its mind and asserted that emissions from Texas would contribute just over one percent of the problem with projected PM2.5 concentrations at one air monitor in Illinois. As a result of this new projection, EPA issued a final rule that required substantial and costly emission reductions in Texas. In fact, emission reductions required in Texas amounted to more than 25 percent of the total SO2 reductions in CSAPR. Do you believe that EPA overreached by imposing such a substantial burden on Texas in the final rule? When trying to regulate interstate transport of emissions, do you agree with the D.C. Circuit that EPA can only regulate to the extent necessary to eliminate a state's contribution to downwind nonattainment?

EPA's requirements of Texas in CSAPR were in fact calculated as the reductions necessary to resolve Texas's significant contribution to nonattainment and interference with maintenance at downwind receptors projected to have difficulty attaining and maintaining the NAAQS without the rule. The D.C. Circuit Court's ruling made no finding regarding EPA's requirements of Texas under CSAPR. EPA is moving forward to assess options that implement the interstate transport requirements of the Clean Air Act. As part of this effort, EPA is seeking input from Texas and the other states.

Do you anticipate proposing a replacement rule for CSAPR? Will EPA ensure that states and utilities are given adequate time to comply with the rule?

EPA and the states are responsible under the Clean Air Act for addressing inter-state transport of air pollution. EPA is assessing how to move forward to address transport pollution and is taking the Court's *EME Homer City* opinion into account. EPA has already invited the states to participate directly in the assessment of the path forward and will continue working with the states collaboratively in determining the next steps needed to address the threat of transported air pollution to public health. As these efforts continue, EPA will be mindful of the need to provide appropriate timelines for states and the regulated community.

What lessons have you learned from the CSAPR experience?

The CSAPR experience reinforces that upwind state emissions of ozone and PM precursors can be important contributors to levels of PM and ozone in downwind states. Reducing emissions of these precursors will have important public health benefits, and EPA is already working closely with states on further efforts to address interstate transport of these pollutants.

Does EPA plan to return to its determination that compliance with CAIR constitutes compliance with

BART? If not, does EPA intend to subject electric generating stations in the East to regional haze BART requirements? When does EPA expect do decide?

EPA is waiting to learn whether the Supreme Court will hear an appeal of the *EME Homer City* decision as that action will affect the options for regional haze and EGUs in the East. The agency will move as quickly as possible once the Court decides, and depending on the Court's decision, the options to consider will include the states' ability to rely on CAIR to satisfy the BART requirements or whether (if the Court were to reverse the lower court decision) states can continue to rely on the Cross State Air Pollution Rule (CSAPR) to meet those requirements.

EPA had determined that electric generating units in the East that were subject to the CAIR program did not have to comply with regional haze best available retrofit technology (BART) requirements because CAIR would reduce emissions more than BART. When EPA replaced CAIR without CSAPR, it revoked the determination that compliance with CAIR constituted compliance with BART, and instead determined that compliance with CSAPR constituted compliance with BART. But now CSAPR has been overturned in court. Does EPA plan to return to its determination that compliance with CAIR constitutes compliance with BART? If not, does EPA intend to subject electric generating stations in the East to regional haze BART requirements on a source by source basis? When does EPA expect to decide?

EPA is waiting to learn whether the Supreme Court will hear an appeal of the *EME Homer City* decision as that action will affect the options for regional haze and EGUs in the East. The agency will move as quickly as possible once the Court decides, and depending on the Court's decision, the options to consider will include the states' ability to rely on CAIR to satisfy the BART requirements or whether (if the Court were to reverse the lower court decision) states can continue to rely on the Cross State Air Pollution Rule (CSAPR) to meet those requirements.

44. Inhofe 44. This rule caused great concern in the industry because of its incredibly short compliance timeline. Final rule wasn't published in the Federal Register until August 2011, yet utilities were expected to begin complying in 2012. In late December 2011, on the eve of the rule going into effect, the D.C. Circuit Court of Appeals stayed the rule and the Court subsequently overturned it. One of the reasons the Court overturned the rule is because EPA did not give states the time to develop their own compliance plans. What are EPA's intentions with respect to a new transport pollution rule? What timeline will EPA give to states and utilities to comply with the rules? Will you set a timeline that states and utilities agree to?

EPA and the states are responsible under the Clean Air Act for addressing inter-state transport of air pollution. EPA is assessing how to move forward to address transport pollution and is taking the Court's *EME Homer City* opinion into account. EPA has already invited the states to participate directly in the assessment of the path forward and will continue working with the states collaboratively in determining the next steps needed to address the threat of transported air pollution to public health. As these efforts continue, the agency will be mindful of the need to provide appropriate timelines for states and the regulated community.

45. Inhofe 45. EPA had determined that electric generating units in the East that were subject to the CAIR program did not have to comply with regional haze best available retrofit technology (BART) requirements because CAIR would reduce emissions more than BART. When EPA replaced CAIR

without CSAPR, it revoked the determination that compliance with CAIR constituted compliance with BART, and instead determined that compliance with CSAPR constituted compliance with BART. But now CSAPR has been overturned in court. Does EPA plan to return to its determination that compliance with CAIR constitutes compliance with BART? If not, does EPA intend to subject electric generating stations in the East to regional haze BART requirements on a source by source basis? When does EPA expect to decide?

EPA is waiting to learn whether the Supreme Court will grant certiorari on the *EME Homer City* decision, as that action will affect the agency's options for regional haze and EGUs in the East. The agency will move as quickly as possible once the Court decides. Depending on the Court's decision, the options to consider will include the states' ability to rely on CAIR to satisfy the BART requirements or whether (if the Court were to reverse the lower court's decision) states can continue to rely on the Cross State Air Pollution Rule (CSAPR) to meet those requirements.

b. In particular, to the extent EPA seeks to initiate new rulemaking proceedings in light of the D.C. Circuit's recent vacatur of the Cross State Air Pollution Rule (CSAPR), will you commit to ensure that EPA provides me and/or my staff with regular briefings on the status of any EPA decisions or efforts related to the CSAPR?
Response: Yes

Endangerment:

In 2009, EPA determined in its Endangerment Finding that carbon dioxide and related substances pose a danger to human health and welfare. EPA made this determination without the peer review of the Scientific Advisory Board, a panel of independent scientists whose function is to ensure the scientific credibility of EPA's Clean Air Act proposals. What explains EPA decision to impose such a draconian regulation without complying with its statutory duty of scientific peer review?
EPA relied on comprehensive peer-reviewed scientific assessment reports conducted by the US Global Change Research Program, the Intergovernmental Panel on Climate Change, and the National Research Council, which are subjected to rigorous expert and in some cases government review. This approach was validated by the D.C. Circuit Court in *Coalition for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102 (D.C. Cir. 2012). The Court found that EPA had based its Endangerment Finding on substantial scientific evidence, noting that "the body of scientific evidence marshaled by EPA in support of the Endangerment Finding is substantial," and that EPA's reliance on these scientific assessments was proper and consistent with the methods decision-makers often use to make a science-based judgment. EPA followed all applicable agency and OMB guidelines regarding data quality and peer review in developing the Endangerment Finding. The D.C. Circuit rejected arguments that EPA was required to submit the proposed Endangerment Finding to SAB for review under the terms of 42 U.S.C. § 4365(c)(1).

Energy Star

Why, after being warned of the problem by the EPA's Office of Inspector General, did you allow so many products to be labeled as ENERGY STAR appliances devices even though they weren't among the more efficient ones?

Keeping ENERGY STAR requirements up-to-date is a priority for the Agency. All appliance specifications have been recently updated, with effective dates as follows: clothes washers (January 2011), dish washers (January 2012), dehumidifiers (October 2012), room air conditioners (October 2013), water heaters (July 2013), refrigerators (in process, anticipated March 2014).

Wicker 18. EPA recently mandated a third-party certification regime for products in order to participate in the ENERGY STAR program. This appears to be an effort to address concerns raised in a 2010 GAO report. I am concerned the EPA's response is overly broad and attempts to use a one-size-fits-all approach to a program with over 60 diverse product categories. Will you closely review these changes, specifically the addition of the third-party certification process, and meet with industry stake-holders to discuss the real impact of these regulatory changes?

Yes, EPA continues to monitor the new third-party certification process, working with EPA-recognized certification bodies and industry stake-holders on an ongoing basis to minimize adverse impacts.

Wicker 19. Will you ensure that a consensus-based process is utilized, as accredited by the American National Standards Institute, to safeguard transparency and fairness in any changes to and development of the ENERGY STAR program?

In changing or developing new elements of the ENERGY STAR program, EPA remains committed to an open and transparent process that actively engages stakeholder input.

Wicker 20. What is EPA's plan for product categories to "test-out" of the new testing mandates based on their compliance track record?

EPA is open to adjusting aspects of the ENERGY STAR third-party certification program, in consultation with our industry partners, as our experience with it grows.

1. During the last several years, the windows manufacturing and installing industry has been through difficult market declines and destabilizing economic times. While the overall economy has been challenging to many Americans, those in the housing sector have been particularly hard hit. One of the major areas of interaction between those who provide windows to the market and consumers is the Energy Star program.

The Energy Star program is essential to delivering information to consumers on how to buy the most energy efficient appliances and products. My understanding is that the EPA is currently reevaluating the proposed standards for the Energy Star for Windows, Doors, and Skylights. The original proposed effective date the new standard was targeted for the end of this calendar year. Obviously, the Agency's thoughtful review of the standard has taken longer than envisioned.

New standards involve significant and expensive changes to production, which means that manufacturers need substantial notice to give time to make those changes. In the interest of providing certainty to this important domestic manufacturing industry, EPA's own guidelines for progressing from final proposal to effective date requires no less than 9 months and the product cycle for manufacturers really requires a January 1 effective date. Can you confirm that the effective date for whatever the new standards may come from this process will be January 1, 2015 to prevent unnecessary and extraordinary ramp up costs for a sector struggling to recover from the recession?

Response: EPA recognizes that it needs additional time to review and respond to the comments received on the ENERGY STAR for Windows, Doors, and Skylights Version 6.0 Draft 2 specification and revised skylight criteria. While a revised timeline is not yet available and we are not ready to make a formal announcement, it is likely this additional work will result in delaying the effective date closer to

the January 1, 2015 timeframe. EPA plans to keep stakeholders informed of its process on the criteria revision. We are committed to ensuring that our partners have adequate time to respond to the final Version 6.0 specification and will make adjustments to the implementation schedule as needed.

Federal-State Relationship

The ability for states to develop approvable implementation plans or other submissions, such as Exceptional Events demonstrations, has been hindered by: EPA's inability to provide timely guidance; undefined processes that do not clearly establish the criteria EPA will use to evaluate submissions; and, in some cases, the lack of a dispute resolution processes. If confirmed, what are your plans to correct these deficiencies?

EPA is committed to working collaboratively with our state, local, and tribal co-regulators to produce timely NAAQS implementation guidance. In fact, the agency is in the final stages of drafting Interim Exceptional Events Implementation Guidance, which clarifies and provides examples of information that air agencies can include in their exceptional event demonstration submittals and identifies mechanisms that air agencies can use to resolve disagreements regarding exceptional event non-concurrence on submittal packages. EPA has had extensive stakeholder involvement during the development of this guidance, and the agency would expect that the final product will address some of your specific concerns.

The ability for states to develop approvable implementation plans or other submissions, such as Exceptional Events demonstrations, has been hindered by: EPA's inability to provide timely guidance; undefined processes that do not clearly establish the criteria EPA will use to evaluate submissions; and, in some cases, the lack of a dispute resolution processes. If confirmed, what are your plans to correct these deficiencies?

EPA is committed to working collaboratively with our state, local, and tribal co-regulators to produce timely NAAQS implementation guidance. In fact, we are in the final stages of drafting Interim Exceptional Events Implementation Guidance, which clarifies and provides examples of information that air agencies can include in their exceptional event demonstration submittals and identifies mechanisms that air agencies can use to resolve disagreements regarding exceptional event non-concurrence on submittal packages. We have had extensive stakeholder involvement during the development of this guidance, so we trust that the final product will address some of your specific concerns.

Congress made clear in the Energy Policy Act of 2005 that the states are responsible for regulating hydraulic fracturing within their borders, and that the EPA has a very limited role regulating hydraulic fracturing through the Safe Drinking Water AcT. EPA has constantly pushed to expand its reach beyond what Congress has authorized, and that seems to be what the agency is attempting to do with draft guidance on the use of diesel fuels in hydraulic fracturing issued last year. The guidance offers a vague and unworkable definition of "diesel fuels," which covers more than just diesel fuels, and unnecessarily calls into question the legitimacy of decades-old, state-run regulatory programs that to date have produced zero cases of groundwater contamination as a result of hydraulic fracturing. If you are confirmed, will you withdraw this draft guidance? What are the plans of the Agency with regard to the diesel issue? What is the timing?

Response: As I understand it, EPACT 2005 specifically exempted diesel fuel from the exclusion from the Safe Drinking Water Act. If confirmed, I will work with you on the specifics of the issue of diesel fuel use

in fracking.

In the Clean Air Act, please provide your definition of cooperative federalism. Can you conceive of any circumstances where EPA has disagreed with a State's approach, on policy grounds, and decided that the Agency will not intervene to override the state?

Response: "Cooperative federalism" is generally used to describe the Clean Air Act's approach of assigning tasks to EPA and States that, when taken together, result in cleaner air and important public health protections. For example, EPA sets the National Ambient Air Quality Standards for specific pollutants. EPA works with States to set up monitoring networks and to designate areas as ones that are attaining, not attaining or lack sufficient data with respect to the standards. States submit plans that must meet the requirements of the Act, including the requirement to bring all areas into the state into attainment with the Standards. If EPA determines that the plans do not meet the Act's requirements, or if a State fails to submit relevant plan provisions, the Act generally requires EPA to issue a federal plan for that area or state. EPA also issues rules (such as the recently proposed Tier 3 fuel and vehicle regulations) that assist areas in meeting the air quality standards. I can conceive of circumstances where EPA has disagreed with State's approach on policy grounds but did not intervene to override the state because the state met the relevant legal criteria.

Are there any circumstances where a State implementing the Clean Air Act should, as a policy matter, be insulated from EPA interference?

Partnership between the states and the federal government in reducing air pollution is one of the cornerstone principles of the Clean Air Act. For example, EPA sets the National Ambient Air Quality Standards for specific pollutants. EPA works with States to set up monitoring networks and to designate areas as ones that are attaining, not attaining or lack sufficient data with respect to the standards. States submit plans that must meet the requirements of the Act, including the requirement to bring all areas into the state into attainment with the Standards. If EPA determines that the plans do not meet the Act's requirements, or if a State fails to submit relevant plan provisions, the Act generally requires EPA to issue a federal plan for that area or state. EPA also issues federal rules that assist areas in meeting the air quality standards.

Do you agree that it was Congress' intent for the States to play the lead role in relevant air quality regulatory decisions? Are you committed to having the EPA implement the Clean Air Act in a manner that reflected that intent?

Congress established the Clean Air Act as a system under which the EPA and States both have important roles in setting and implementing the Clean Air Act. Congress assigned different roles to EPA and the states, respectively, depending on the nature of the air pollution problem. If confirmed as Administrator, I am committed to ensuring that EPA continues to implement the Clean Air Act in partnership with state, local, federal and tribal governments, consistent with the Clean Air Act's requirements.

States have the primary responsibility for implementing the environmental programs and regulations that EPA develops. Most States receive less than 20% of their overall budget from EPA, and in some cases, significantly less; yet EPA continues to adopt new regulations and programs without providing the States with commensurate funding. If confirmed, how will you balance the increasing demand for the State's services with the decreasing availability of the resources needed to implement EPA's ever expanding programs?

Response: Having over two decades of experience at the State and Local level, I recognize and appreciate the need for funding to States. If I'm confirmed, I will work with you and others to find innovative solutions to balance the need for federal funding to States with the need to continue important State efforts.

3. I am concerned that EPA is not working as cooperatively with the States as it should under the law. That was the clear message of the D.C. Circuit in its recent decision striking down the CSAPR. I am concerned that EPA is not giving due deference to the States.

a. The Clean Air Act is based on a principle of "cooperative federalism." Do you agree?

Response: As someone who spent the bulk of my career at the State level, I certainly appreciate that cooperative federalism is a cornerstone of the success of the Clean Air Act.

b. Will you commit to sit down with State leaders—Governors, State Attorneys General, and State Environmental Agencies—to solicit their ideas for improving the Clean Air Act, including steps that can be taken to reduce red-tape, increase efficiencies, reduce costs, and minimize economic impacts?

Response: Yes

Wicker 5 How do you view the importance of input from the states when formulating standards and reviewing implementation?

In the Clean Air Act, Congress established a system under which EPA and states each have important roles in setting standards and implementing the Act. Dialogue and partnerships with States are an important part of EPA's efforts to reduce air pollution under the Clean Air Act. I have learned from experience, including my experience working for state governments, that working closely with stakeholders, including state government partners, can lead to better programs. *If I am confirmed, EPA will continue to work with states and other stakeholders under the Clean Air Act to reduce air pollution and the damage that it causes.*

Health Concerns:

What health benefits are projected to occur as a result of an existing source NSPS - that is, benefits other than the co-control of criteria pollutants or NESHAPS?

At this time, EPA is working to finalize the proposed NSPS for new power plants. The agency is not currently developing any existing source GHG regulations for power plants. As a result, we have performed no analysis that would identify specific health benefits from establishing an existing source program.

Why does EPA claim that its green house gas regulations will have health benefits at levels far below the current PM NAAQS, yet has only set the new PM NAAQS at much higher level? Shouldn't EPA be consistent in justifying regulations on the basis of PM health benefits and where its best scientific judgment sets the health protective PM NAAQS?

EPA's approach to estimating the benefits of reducing fine particulate matter pollution is consistent with the best available science and advice from two Congressionally-created independent review boards, the Clean Air Scientific Advisory Committee and the Advisory Council on Clean Air Compliance Analysis. There are health benefits attributable to reducing particulate matter pollution below the NAAQS and the agency does take those benefits into account. There is no scientific basis for ignoring those benefits.

While the NAAQS is set at a level adequate to provide protection of public health – and should be neither more nor less stringent than necessary to do so – it is not set at a zero risk level.

Has EPA done any studies on the health impacts of job losses?

Response: I'm concerned about any American involuntarily displaced from a job, for whatever reason, and the impacts that can have on a family. However, I also understand that the peer-reviewed literature shows the effect of environmental regulation on jobs is far smaller than the exaggerated claims we often hear. The most convincing research out there shows that air pollution is a real threat to Americans' health and that claims of "job killing" regulations aren't supported by the evidence.

EPA performs detailed regulatory impact analyses (RIA) for each major rule it issues, including cost-benefit analysis, various types of economic impacts analysis, and analysis of any significant small business impacts. Since 2009 EPA has focused increased attention on consideration and (where data and methods permit) assessment of potential employment effects as part of the routine RIAs conducted for each major rule.

EPA rationalizes many of the very costly regulations it has proposed by citing theoretical PM related health benefit estimates that are based on data collected over 30 years ago. In fact, the key Harvard Six Cities and American Cancer Society data are based on surveys that are over 30 years old. Are you aware that in 2004 the NAS recommended that EPA not rely on these benefit studies because the individual data have not been updated? Why does the EPA continue to rely on studies that the NAS has stated should have "little use for decision making?" Is EPA misleading the public in citing these implausibly high benefit estimates when the NAS has clearly told the Agency not to rely on these studies? Is EPA's claim of achieving benefits equivalent to curing cancer based on these same flawed studies that rely on outdated information? Will you promise not to rely on studies using the American Cancer Society or Harvard Six City databases until the data are updated as recommended by the National Academy of Sciences?

The quotation in your question is taken out of context. The NAS commented that the EPA should not rely on the Harvard Six Cities cohort and American Cancer Society cohort alone to the exclusion of a "new generation of cohort studies." In formulating the decisions on the PM NAAQS, the EPA considered all of the available scientific evidence, including studies of new cohorts. In addition, two separate panels of EPA's independent Science Advisory Board (SAB) recently recommended that the EPA use these two cohorts to quantify PM2.5-related mortality risks and benefits (i.e., CASAC (2009, 2010) and Council (2010)). Despite some inherent limitations, these cohorts continue to have several advantages over other currently available cohorts, including age and gender representativeness, geographic representativeness, study size, consideration of confounders, and length of follow-up. EPA's approach is consistent with the advice from NAS and SAB.

On one of his first days in office, the President signed a memorandum entitled "Transparency and Open Government" in which he committed to create "an unprecedented level" of openness and transparency. The President correctly stated "transparency promotes accountability". Given the President's commitment, will you promise today to release to the American public all of the underlying research data supporting the PM and ozone benefit studies that your office has used to support such costly regulations? Given the hundreds of billions of dollars in real costs that EPA estimates will result from these regulations, doesn't the public have a right to have the data in order to assess its validity?

EPA is committed to transparency with regard to the scientific bases of agency decision making. In setting the National Ambient Air Quality Standards (NAAQS) and in assessing health benefits anticipated from air pollution regulations, EPA relies on the scientific studies that are published in the peer-reviewed literature. EPA provides the information used in regulatory decisions, including the epidemiological studies, in the publicly available docket accompanying each rulemaking. It is important to understand that the underlying data you are requesting for each epidemiological study consist of three distinct datasets, which the researchers link together in order to estimate the relative risks of exposure to air pollution: (1) air quality data; (2) health event data, which in these studies are data from the National Death Index; and (3) individual health data that are gathered through questionnaires completed for each study participant in the cohort. The questionnaires for these studies requested very detailed personal information, including questions on residential location, age, race, educational attainment, body mass index, alcohol consumption, smoking history, occupational exposure to pollution, and medical history. The complete, linked set of data underlying these studies is held by the scientific researchers that conducted the relevant research, not EPA. The availability of some of these datasets is subject to certain protections against disclosure of medical or similar information that could be used to identify a particular person in a research study.

Doesn't your reticence to release the data suggest that the Agency is fearful the data will not hold up to public scrutiny and that there really is no support for the hundreds of billions of dollars in costs that you have imposed on the American public?

The studies of the American Cancer Society cohort (Pope et al., 2002) and the Harvard Six Cities cohort (Laden et al. (2006) have been extensively peer-reviewed. Studies of these cohorts were subject to a full external re-analysis by the Health Effects Institute in 2000. The results of this peer-reviewed reanalysis confirmed the findings in the original studies, concluding that "[o]verall, the reanalyses assured the quality of the original data, replicated the original results, and tested those results against alternative risk models and analytic approaches without substantively altering the original findings of an association between indicators of particulate matter air pollution and mortality."

Given that you are relying on 30-year old data for your health benefit estimates, can you realistically argue that your benefit estimates are in any way as certain as your cost estimates that are based on current market prices for equipment and labor?

EPA currently uses updated studies of these cohorts (Krewski et al. (2009) and Lepeule et al. (2012), respectively).

If HHS can code medical records to protect confidentiality and other agencies can code research data, why can't EPA do the same for data that are now over 30 years old?

EPA provided all of the data received from the researchers. These underlying data consist of three distinct datasets, which the researchers link together in order to estimate the relative risks of exposure to air pollution. Due to this linkage, at minimum there are serious questions as to whether it would be possible to fully protect the confidential medical information by coding the data.

What efforts have you taken to investigate the potential of employing these techniques?

Prior to disseminating the death data provided by Harvard University, EPA coordinated with the Centers for Disease Control and Prevention to ensure that the data did not identify the particular establishment or individual supplying the information.

EPA is on schedule to propose a new ozone NAAQS this December and finalize it in September 2014.

We understand that EPA's Clean Air Science Advisory Committee (CASAC) has recommended that the standard be set between 60 and 70 ppb based on recent health studies and has asked EPA to evaluate a standard at 55 ppb. We are concerned about the economic impacts of any change to the standard (EPA has estimated the costs of a 60 ppb standard to be $90 billion/year). Can you identify the language in Section 109 of the Clean Air Act that prohibits EPA from considering costs? Have you seen any of the maps of projected nonattainment areas at 60 ppb? Most of the country would be nonattainment, and the ability of the regulated community to obtain a permit for the construction or expansion of any new manufacturing or power generation facility could be compromised. I understand such impacts are being felt right now from the rules your department issued in December to tighten standards for particulate matter

The U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), that in setting standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act, EPA may not consider the costs of implementing the standards.

EPA routinely justifies more stringent air quality standards on the basis of reducing asthma attacks. In fact, EPA credits its rules with avoiding about a million asthma attacks each year. However, while U.S. emissions of criteria pollutants have been cut by about 50% since just 1990, the incidence of asthma attacks has increased. Taken together, these two facts suggest that EPA efforts to further reduce emissions and consequent health benefits will not necessarily be correlated. In fact, the US Government's own CDC cites numerous triggers for asthma attacks that are not related to ambient air quality. Of course, the dramatic improvements to our air quality must be maintained, but each incremental improvement comes at a greater and greater cost. Is it time for EPA to re-think some its valuations of health benefits? Is it time to consider that implementation of the rules, ultimately yield a negative impact on consumers' health and welfare because they make them poorer?

EPA's approach to estimating the health benefits associated with reducing air pollution, including avoided asthma attacks, is based on the best available, peer-reviewed science. Projected health benefits from EPA's recent Clean Air Act rules, including avoided asthma attacks, are substantial and often substantially outweigh projected costs. Newer scientific studies have shown that some pollutants can harm public health and welfare even at lower levels than before.

The U.S. has achieved significant progress in reducing air pollution in the 40 years since the Clean Air Act's passage. According to EPA statistics, total emissions of the six principal air pollutants have dropped by 59 percent since 1970. Current federal regulations will continue this progress by significantly reducing ground level ozone-causing emissions over the next two decades. Emissions from power plants are expected to be cut in half by 2015 and the emissions from cars and trucks are expected to be reduced by 70 percent by 2030. Do you think that Americans are enjoying the benefits of cleaner air, and will continue to enjoy those benefits as the air gets cleaner in the future, regardless whether the existing standards are adjusted?

Despite dramatic progress improving air quality since 1970, air pollution in the United States continues to harm people's health and the environment. Under the Clean Air Act, EPA continues to work with state, local and tribal governments, other federal agencies, and stakeholders to reduce air pollution and the damage that it causes.

Sessions 22. I am aware that the EPA is considering whether a health-based standard is possible for the brick industry. I also understand that the brick industry has supplied you with all information

necessary to evaluate a health-based compliance alternative for every major source.

a. What are the impediments to establishing a health-based rule for this industry comprised of a large number of small businesses, and how could those impediments be overcome?

Under the Clean Air Act, EPA is authorized to establish MACT standards that consider a health threshold where the science supports a finding that such a threshold exists. In order to establish such a standard, EPA would need sufficient information to determine whether a threshold for health effects indeed exists and that the health-based standard being established provides for an ample margin of safety. EPA is currently evaluating information provided by the industry to determine whether such a standard would be appropriate and consistent with the statutory requirements.

b. An emission standard is broadly defined in the Clean Air Act. Why would EPA look to a single facility to establish the emission level for all facilities to meet, rather than consider a health-based metric as a possible emission standard format?

As stated above, under the Clean Air Act, EPA may only establish a standard considering a health threshold where the science supports a finding that such a threshold exists, and where the standard provides an ample margin of safety. EPA is currently considering the range of potential approaches that could be used to set a standard.

Wicker 10. Leaving aside the question of cost, how does EPA assess the health benefits associated with economic dislocation caused or likely to be caused by the new standards? How are they quantified when making health-based assessments for revised National Ambient Air Quality Standards?

The over 40-year history of the Clean Air Act is one in which reducing harmful air pollution has gone hand in hand with economic growth and job creation. EPA's benefits assessments focus on the benefits associated with reductions in air pollution. EPA acknowledges in the regulatory impact analyses that there are unquantified benefits and disbenefits that are not included in our estimates of total net benefits.

Keystone XL

317. What role will EPA play in the development of the State Department's Final Environmental Impact Statement for the Keystone XL pipeline permit?

318. What role will EPA play in the development of the Administration's National Interest Determination for the Keystone XL pipeline permit?

319. According to a State Department spokeswoman, the agency has been working with the EPA on the latest Draft Supplemental Environmental Impact Statement. What role has EPA played in the Draft SEIS?

320. The State Department is in the midst of an open comment period on the Draft Environmental Impact Statement for the KXL project. What do you think about State's climate estimates in the new Draft Supplemental EIS? Do you think they took a thorough enough look at the GHG emissions?

321. In the draft SEIS, the State Department seems to indicate that Keystone XL is the safest, most environmentally responsible way to deliver the oil that refineries and consumers need to fuel our economy, businesses, homes and maintain our quality of life. What are your thoughts on that?

322. The DSEIS noted that Keystone XL would result in "no substantive change in global GHG emissions" and it is "unlikely to have a substantial impact on the rate of development in the oil sands,

or on the amount of heavy crude oil refined in the Gulf Coast area." Based on your agencies review of the Draft SEIS and your office's work in helping the State Department develop the latest Draft SEIS, would you comment on those statements?

Response (to Keystone XL questions): The State Department has long held the permitting authority for energy projects crossing international boundaries, including the Keystone XL pipeline project, and for gathering all facts necessary to make such permitting decisions. Accordingly, the State Department has overseen a process that provides for input by several federal departments, interested stakeholders, and members of the public. The State Department's publication of the Draft Supplemental Environmental Impact Statement marks an important step in that process. The public and all interested stakeholders will now have an opportunity to comment on the Draft Supplemental EIS. Any comments on the DSEIS should therefore be directed to the State Department. I understand that EPA has reviewed the DSEIS and made appropriate comments. Ultimately, the decision on TransCanada's permit will be based upon a "national interest" determination, taking all relevant factors into account.

LCFS:

Several bills have been introduced in the U.S. Congress to establish a federal low-carbon fuel standard, or "LCFS" – including by then-Senator Obama in 2007. In fact, LCFS was originally part of the 2009 Waxman-Markey climate bill before being removed at the request of a number of Democrats. However, given that efforts to move LCFS legislation through Congress have failed, some proponents of such a program have raised the question of whether EPA might implement a federal LCFS through regulation. Do you believe that EPA has the statutory authority, under the Clean Air Act to promulgate a federal low-carbon fuel standard? If so, what is the legal basis upon which the EPA has the authority to promulgate an LCFS?

During the previous administration, in the July 11, 2008, Advance Notice of Proposed Rulemaking: Regulating Greenhouse Gas Emissions under the Clean Air Act, EPA solicited comment on whether the agency had the authority under the Clean Air Act to design and implement a new GHG fuel program that is broader in scope than the RFS program. EPA has not addressed this issue further at this time. The agency is not considering nor does it currently have any plans to establish an LCFS under the Clean Air Act.

You may be aware a study was done in 2010 by Charles River Associates, a highly regarded economic forecasting firm, on what the impacts of a national LCFS program would be. The results were fairly impressive – up to 4.5 million American jobs lost, a reduction in U.S. GDP of up to $750 billion, and an increase in gasoline prices of up to 170 percent over a 10-year period. In fact, a number of studies have analyzed what the results of an LCFS would be, either at the state, regional, or national level – and the consensus is that there would be universally negative, severe economic impacts. These studies all used the Energy Information Administration's projections for the availability of some of these low-carbon fuel options, such as cellulosic ethanol and electric vehicles. In light of the conclusions from these studies, will the Agency seek to promulgate a federal LCFS during the current Administration? If so, how does the Agency intent to mitigate the consumer costs associated with an LCFS?

I am not personally aware of the study to which your question refers, and EPA is not considering nor does it have any plans to seek to establish a federal LCFS.

Given the numerous problems now evident with the federal Renewable Fuels Standard, the prospect of simply replacing the RFS with a federal LCFS is starting to be discussed by some in Congress. What is the Agency's position on this possible substitute?

I am not aware of any current legislative proposal to replace the RFS with a federal LCFS, but in any event EPA has no position on any such proposal.

Can you discuss the problems associated with potential "fuel shuffling" that might occur as the result of the imposition of an LCFS? Does the agency have the ability to prevent such compliance approaches?

EPA is not considering nor does it have any plans to seek to establish a federal LCFS, and I am not familiar with the issue to which your question refers.

Lead Issues

According to a recent lawsuit filed by environmental groups, EPA has known for a decade that "general aviation aircraft" are the single largest source of lead emissions. Yet, EPA has made its own judgment not to issue an endangerment finding regarding lead emissions from air plane fuel. Why has EPA decided to not regulate lead emissions from aircraft which it has acknowledged is the largest source of lead emissions?

EPA has not made any decisions on whether to regulate lead emissions from aircraft at this time. EPA is currently conducting the analytical work, including modeling and monitoring, to evaluate whether lead emissions from the use of leaded aviation gasoline (avgas) in piston-engine aircraft cause or contribute to the endangerment of human health or welfare. Any proposed determination with regard to endangerment would be subject to notice and comment, and we estimate the final determination will be in mid-to-late 2015. If a positive endangerment determination were made, as part of any future assessment of control measures, EPA would consider safety, fuel supply, and economic impact issues, including effects on small businesses.

On March 7, EPA responded to questions for the record from a Senate hearing, held last summer, regarding lead-based paint exposures. In the response, EPA cited 8 studies as "relevant" to information to lead-based paint (LBP) and renovations in public and commercial (P&C) buildings. On April 9, EPA responded to another letter on this issue. This time, EPA identified 5 studies as "relevant" to LBP and renovations in P&C buildings. In fact, 3 of the same studies cited in the April 9 letter were also cited in the March 7 letter. One of the studies cited twice plainly states: "There are no data at this time to assess whether environmental exposures monitored in target housing are representative of environmental exposures encountered in public and commercial buildings." (Environmental Field Sampling Study, Volume I Technical Report, (May 1997) at p. 4-5).) Why did EPA cite this study, when it is plainly not relevant to lead-based paint exposures in public and commercial buildings?

In EPA's April 9 letter, one of the new studies that the agency cites is a "Health Hazard and Evaluation Report" out of the University of California at Berkley, from July 2001: http://www.cdc.gov/niosh/hhe/reports/pdfs/1999-0113-2853.pdf. This study states (at p. 1) that the project took place at 3 "unoccupied" buildings that were scheduled for demolition: two 2-story multifamily residences, and a "daycare center." All three of these buildings would be already covered under EPA's current lead-based paint program for "target housing." Were any public or commercial

buildings assessed in this 2001 Berkley study? If no, then why did EPA cite it as relevant to the issue of lead-based paint exposures and renovation activities in public and commercial buildings?
In fact, in looking through all of the studies cited in both the March 7 and April 9 letters, all of the structures assessed in these studies concern "target housing" or "child occupied facilities," which are regulated under EPA's current residential lead paint rules. In all of these studies, the only non-residential structures considered by EPA that we could identify were: (1) a school built in 1967; and (2) a 1-story office building well over 150 years old. Does EPA think that a major new regulatory program, regulating renovation activities in public and commercial buildings across the U.S., can be supported by the studies on a 1960s-era school, and a 150-year old, 1-story office building? In any of the studies cited by EPA, can the agency point to any structure that is a public and commercial building, where lead-based paint issues and renovation activities were assessed? Would you please describe any non-residential structure that was considered in these studies? Will your staff meet with interested private sector stakeholders, who would be immediately affected by any new lead-paint program, to go over these studies jointly with Committee staff? In the April 9 letter, EPA also refers to a lead "technical studies" webpage: http://www2.epa.gov/lead/technical-studies. Can you show us where, in any of these studies, public and commercial buildings specifically were assessed for possible lead-based paint hazards?
Shouldn't EPA have a public and commercial building "hazard" finding in place first, and then determine if it needs to regulate renovation activities? After all, this is the sequence the agency followed for pre-1978 "target housing." Over seven years lapsed between the residential "hazard" finding, and the eventual residential "renovation" rule. Why isn't EPA pursuing the same process here? What "hazard" may any commercial building renovation regulations be designed to prevent?
The February 13 letter to EPA explained that this commercial building rule will have great consequences for federal buildings – including those right here on Capitol Hill. In EPA's April 9 response, the agency generally identified the agencies and departments it has, or plans to, contact in the federal buildings community. But the agency has not provided the Committee with any substantive, detailed plans for how it is coordinating with agencies and departments like the General Services Administration, the Architect of the Capitol, or the military branches. Please give details on the steps EPA has taken to work with GSA and other federal building managers to carefully study lead-based paint hazards in federal buildings. What outreach plans does EPA have in place to gather substantive information on lead-based paint issues in public and commercial buildings? Does EPA know what the lead paint hazards are in its own buildings?
Has EPA contacted the Architect of the Capitol to get an understanding of any lead paint hazards on Capitol Hill – such as at the House Cannon Building, which is undergoing a major renovation project? Would EPA be willing to meet with the GSA, Architect of the Capitol, the military branches, and other federal facilities owners – along with EPW Committee staff – to get a better understanding of EPA's plan to coordinate with the federal buildings community on this rule? We understand that affected real estate and contracting trade groups have offered to meet jointly with EPA, GSA, and other federal building managers on this issue. Does EPA plan to hold such a joint meeting with real estate and contracting trade groups? If yes, when?
Response (to the eight questions above): I support the Agency's goals to reduce childhood lead poisoning during renovation and repair activities, including in public and commercial buildings if they

pose a risk. If confirmed, the Agency and I will work with you and other members of the Committee, as well as the range of entities who may be affected by the Agency's efforts on this important issue.

2. Last year, USA Today published a series that investigated hundreds of old industrial sites that had emitted lead into the nearby areas, including where people live today. While EPA and states have tracked and begun cleanups at some sites, I believe that more must be done to protect families and children who live in neighborhoods near these sites. Cleaning these sites up is particularly important in light of the best available science demonstrating that lead is even more dangerous to the health of infants and children than we had previously known.
If you are confirmed, will you commit to review the adequacy of lead-contaminated soil and dust standards to ensure they are set or revised at a level that protects pregnant women, infants, and children, and will you commit to an open and public process of tracking and cleaning up these old lead-contaminated sites?
Response: Yes.

ECA:

The International Maritime Convention (IMO) has amended the International Convention for the Prevention of Pollution from Ships (MARPOL) to require ships operating in Emissions Control Areas (ECA), which include the vast majority of the US coastline, to use only low sulfur fuels. The first stage of this program, which required use of fuel oil with a sulfur content of 1% or less came into effect this past summer and has led to increased shipping costs. There is evidence that these stringent limits are having a significant financial impact on short seas shipping companies, and, in some cases, higher shipping costs are resulting in higher costs for downstream consumers in the U.S.
For this reason, I am troubled that by August 2015, ship owners operating in these waters will be required to use fuel that contains no more than 0.1% sulfur. I have significant concerns about the impact such a cut would have, not just on short seas shipping companies, but the health and safety of the U.S. economy.
The ECA is one of the most important environmental air programs established in the past decade and will result in the prevention of tens of thousands of premature deaths. EPA and Coast Guard are committed to allowing flexibilities allowed under the applicable IMO requirements that can reduce the costs of compliance with the ECA and incentivize advanced technologies, without compromising the environmental benefits of the ECA. In 2030 the combination of our national standards and ECA controls will prevent between 12,000 and 31,000 premature deaths and 1.4 million work days lost. The benefits of the coordinated strategy in 2030 are estimated to be between $110 and $270 billion, which is up to 90 times the projected costs of $3.1 billion.

Native Issues

Recently, EPA proposed a regional haze federal implementation plan for NGS that would require the installation of the most expensive emissions-control technology. The proposal is currently open for public comment, and EPA indicated that it will hold public hearings to accept oral and written comments on the proposed rulemaking. Can you give assurances that, if you are confirmed, EPA will host public hearings that allow meaningfully public participation, including at least one hearing apiece in northern Arizona, central Arizona, and southern Arizona, as well as conduct meaningful outreach

and consultation with all affected Native American communities?
Yes. EPA has recently invited every tribe in Arizona, including the Navajo Nation, to formal tribal consultation in Phoenix on April 29, 2013. EPA is also available to hold additional consultation with tribes. In addition, EPA intends to hold public hearings this summer in Page, Phoenix, and Tucson AZ as well as a location on the Navajo Nation and a location on or near the Hopi Tribe.
If confirmed, will you commit to identifying an NGS solution that upholds federal trust obligations to Native American communities, supports sustainable water policy, does not impose significant additional costs on struggling Arizonans, and does not require an appropriation or otherwise add to the national debt?
EPA is committed to working with the Department of the Interior and the Department of Energy, our federal partners in the Joint Interagency Working Group on Navajo Generating Station, to find a long-term path forward for NGS that meets the needs to the wide variety of stakeholders involved in this issue. DOI, DOE, and EPA will work together to support Arizona and tribal stakeholders' interests in aligning energy infrastructure investments made by the Federal and private owners of the NGS (such as upgrades that may be needed for NGS to comply with Clean Air Act emission requirements) with long term goals of producing clean, affordable and reliable power, affordable and sustainable water supplies, and sustainable economic development, while minimizing negative impacts on those who currently obtain significant benefits from NGS, including tribal nations.
EPA's proposal did not include cost estimates for baghouses. Can you confirm that the NGS owners would not be required to install baghouses as a result of the change in emissions created by installing SCRs?
EPA's proposed BART determination and BART alternatives do not require the installation of baghouses at NGS. The alternative timeframes for meeting BART limits could extend roughly a decade or more into the future and EPA cannot determine now what a future permit many years down the road might require. However, we note that permitting of SCR on a similar facility in Arizona, the Coronado Generating Station, did not require the installation of a new baghouse.

Barrasso 30. Please explain why you decided to ignore your responsibilities as a federal trustee to the Navajo Nation during the development of the Utility MACT rule, when your offices had prior knowledge of the Navajo Nation's concerns about EPA regulatory impacts to Four Corners Power Plant and Navajo Generating Station; and when your offices had collaborated with the Navajo Nation in proposing and promulgating the Clean Air Mercury Rule? Since 2010, EPA has proposed new regulations that impact coal fired power plants, yet there has been very little communication between EPA and Navajo Nation about the Navajo Nation's desire to continue the use of coal for generating electricity and other purposes. Further EPA may be developing greenhouse gas and carbon dioxide regulations without consulting or understanding what impact this may have on Indian Country and tribes that rely on natural resources to fuel their economies.
EPA has held a number of meetings, conversations, and consultations with the Navajo and other Tribes in the region regarding both MATS and BART. Many of these meetings have been face-to-face meetings in Arizona. For example, in January 2012, I went to the Navajo Generating Station and also met with the Navajo Nation. Additionally, the Deputy Assistant Administrator Janet McCabe held at least 5 different meetings with Tribes, including the Navajo Nation, between mid-September and early-November 2011.

EPA also held national conference calls and webinars for Tribes on MATS, given that MATS is a national rule and many Tribes have an interest in it. EPA intends to continue to work with the Navajo and all other Tribes to meet federal trust obligations and provide opportunities for consultation on issues that are of interest to individual Tribes and groups of Tribes.

Barasso 31. Ms. McCarthy, what is your view of the EPA's responsibilities to consult with Indian Tribes about the potential impacts of these forthcoming regulations on the tribal economies that rely on non renewable natural resources?

EPA values its relationship with Indian Tribes and takes its federal trust responsibility seriously. I have learned from experience that working closely with tribes can lead to better programs. EPA regularly conducts consultation and outreach activities with tribal governments because dialogue and partnerships with stakeholders are an important part of EPA's efforts to reduce pollution under the Clean Air Act. The Office of Air and Radiation consults with Tribal governments to review EPA regulatory actions for possible impacts on tribes and Indian country. Consulting with and offering early, meaningful tribal involvement is consistent with the federal trust responsibility to federally-recognized tribes.

Last spring, I understand that you toured the Navajo Generating Station in Arizona to see first-hand the plant operations and community. With your five hour drive there, I am sure the remoteness of the location was very apparent to you.

As you know, the plant and mine have 1,000 jobs, over 800 of which come from the Navajo Nation, where unemployment levels fluctuate between 40 and 45 percent. This is particularly important to Navajo living and working in New Mexico.

(a) Given the importance of the plant, and the impact potential regulations can have on it, can EPA continue to work with the Navajo Nation the way it worked with the State of New Mexico and PNM to ensure that the economic necessities of the tribe and its unique reliance on the Navajo Generating Station are appropriately taken into consideration in EPA decision-making?

Response: Yes, it is EPA's intent to work with the Navajo Nation and other stakeholders as we move forward in the rulemaking process.

(b) Do you believe EPA will work with all stakeholders who are seeking reasonable ways forward to address pollution issues, but to preserve jobs and keep electricity rates down?

Response: Yes

Cap and Trade:

Can you assure us that EPA will not adopt a cap and trade program?

Both former Administrator Jackson and I have said in the past that the EPA has no intention of pursuing a cap and trade program for greenhouse gases and I continue to stand by those statements.

Does EPA believe it has the legal authority to impose a cap and trade mechanism in place under Section 111(d) of the Clean Air Act to reduce GHG emissions from existing power plants? If so, can you please explain how the agency could do so? Please provide citations to any relevant statutes, regulations, or case law in your explanation.

I am aware that in connection with the Clean Air Mercury Rule, issued under the prior Administration, EPA took the position that section 111(d) obligations could be met through a cap-and-trade program.

SIP's: State Implementation Plans

Without analysis how can EPA determine that SIP provisions related to start-up, shut-down, and malfunction are "substantially inadequate" for purposes of the Clean Air Act?

EPA's proposed SIP call to amend provisions applying to excess emissions contains 49 pages of analysis that comprehensively discuss each affected SIP provision of each affected state. There, EPA carefully explained its reasoning for proposing to find that a given provision is or is not "substantially inadequate" to satisfy the legal requirements of the CAA. Where EPA proposed to find that a provision is impermissible under the CAA, but the exact meaning of that provision was open to interpretation, the agency solicited comments from all parties including the affected state to determine whether EPA's reading of the provision was accurate or whether the state had an alternative interpretation that would render the provision permissible.

Has EPA done any analysis of the impacts on an emissions source trying to operate without the SSM provision?

The implications for a regulated source in a given state, in terms of whether and how it would potentially have to change its equipment or practices in order to operate with emissions that comply with the revised SIP, will depend on the nature and frequency of the source's SSM events and how the state chooses to revise the SIP to address excess emissions during SSM events, consistent with the requirements of the Clean Air Act. The preamble to the proposed action describes EPA's assessment of the potential impacts of the proposed SIP calls on sources. See "What are potential impacts on affected states and sources?" at 78 FR 12467.

Do you agree that policy changes are not enforceable or mandatory requirements of the EPA?

EPA agrees that policy changes are not enforceable or mandatory until the interpretations reflected in those changes have gone through the appropriate legal process, such as notice-and-comment rulemaking. EPA's interpretation of the CAA with respect to the treatment of excess emissions during SSM periods is expressed in a series of guidance documents issued in 1982, 1983, 1999, and 2001. While these guidance documents are not themselves binding on the states, EPA has consistently applied the SSM policy contained therein in a number of individual rulemaking actions that were subject to notice and comment. Therefore, because the SSM policy has undergone and survived the rigors of public scrutiny associated with the rulemaking process, and has previously been upheld by courts, EPA believes that the SSM policy is correct interpretation of the requirements of the CAA.

Has EPA done any analysis like it did for the NOx SIP call to determine if the SIP provisions in question are threatening the NAAQS?

EPA has not based its proposed findings of inadequacy on a quantitative assessment that the specific SIP provisions in question resulted in a specific violation of the NAAQS. In fact, it is because of SSM exemptions that excess emissions during periods of SSM are not accurately accounted for in SIPs, with the result that even though the attainment and maintenance of the NAAQS is potentially compromised by SSM exemptions, there are few data readily available on which to conduct a quantitative assessment.

EPA argues that SSM prevents the enforcement of emissions limits. Isn't this circular since the validly approved SIP exempts such events from the emissions limits?

EPA's proposed action addresses existing SIP provisions with several types of deficiencies, including

automatic exemptions from emissions limits and discretionary exemptions from emissions limits during SSM events. Because these types of exemptions are not valid under the CAA, EPA's approval of these types of provisions was in error. Reliance on such provisions has thus frustrated effective enforcement of emissions limits in SIPs. Other types of provisions addressed in the proposal also interfere with effective enforcement of emissions limits by purporting to prevent enforcement by EPA or citizens if the state elects not to enforce or to preclude the availability of penalties or injunctive relief for violations in enforcement actions by any party.

Were the existing SIP provisions in question legally approved and promulgated by EPA and the states? What is the legal basis for declaring a validly-approve SIP provision invalid after the fact?

Under CAA section 110(k)(5), EPA is authorized to require states to revise previously approved SIP provisions. In this instance, EPA has acknowledged that it should not have approved the provisions in the first instance, and thus is proposing to require the affected states to correct these provisions.

Has EPA done any analysis of the impacts on an emissions source trying to operate without the SSM provision?

The implications for a regulated source in a given state, in terms of whether and how it would potentially have to change its equipment or practices in order to operate with emissions that comply with the revised SIP, will depend on the nature and frequency of the source's SSM events and how the state chooses to revise the SIP to address excess emissions during SSM events, consistent with the requirements of the Clean Air Act. The preamble to the proposed action describes EPA's assessment of the potential impacts of the proposed SIP calls on sources. See "What are potential impacts on affected states and sources?" at 78 FR 12467.

It is often not feasible to operate or use pollution control equipment during SSM periods without causing damage to that equipment. Some types of pollution control equipment cannot operate at full efficiency during startup periods, and some facilities and equipment must use alternative fuels during startup periods that pollution control equipment was not designed to target. What steps will EPA take to avoid a one-size-fits-all approach to implementing this rulemaking? Why is the EPA proposing to take away the ability of states to use enforcement discretion for excess emissions resulting from startup, shutdown and malfunctioning periods? Does EPA think that states are abusing this authority?

EPA is not taking a "one-size-fits-all" approach in the February 2013 proposed rulemaking. Under the principles of cooperative federalism, the CAA vests air agencies with substantial discretion as to how their SIP provisions meet the legal requirements and objectives of the CAA. EPA is not prescribing to states exactly how they must implement the CAA, nor is EPA directing states to adopt particular control measures. Rather, in issuing a SIP call, EPA is requiring that states bring their SIPs into compliance with the legal requirements of the CAA but leaving discretion to the states to remove or revise impermissible provisions, consistent with CAA requirements. Implementation concerns would be more appropriately considered during the state's process of revising its SIP to remove illegal SSM-related provisions. EPA's proposed rule also does not take away the ability of states to use enforcement discretion.

The Regional Haze program is purely for aesthetics, has nothing to do with public health, and was intended to improve visibility at national parks. States were given control by Congress to establish the emission standards and the appropriate controls for implementation. Your agency overruled

Oklahoma's Regional Haze State Implementation Plan (SIP) following a Sue & Settle Consent Decree with environmental groups because you said Oklahoma's cost estimates were inaccurate. In response, EPA issued its own implementation plan that would cost $1.8 billion and would not have any more favorable impact on visibility than the SIP.

1. Inhofe 1. Did EPA do a technical, an economic, and a cost-benefit comparative analysis between Oklahoma's State Implementation Plan (SIP) that was overturned by EPA and the Federal Implementation Plan (FIP) that EPA imposed instead? If EPA performed any of those three analyses for either or both the SIP and the FIP, please provide them to me. If EPA did not perform any or all of those three analyses for the two plans, please explain why you did not do so.

EPA carefully assessed the costs and the visibility benefits associated with the controls in both Oklahoma's Regional Haze SIP and our FIP. The Clean Air Act and EPA's implementing regulations require that both the costs of controls and the visibility benefits be taken into account in making a determination of the appropriate controls. The agency took comment on our analyses before taking final action on our FIP for Oklahoma. The analysis can be accessed at http://www.regulations.gov/#!documentDetail;D=EPA-R06-OAR-2010-0190-0019.

2. Inhofe 2. Do you agree that Oklahoma's low-cost SIP is more cost effective than EPA's FIP? What is the comparative cost-benefit analyses of the SIP vs. the FIP? Are there any additional or greater visibility gains achievable by the FIP that are not attainable by the SIP?

EPA does not agree that Oklahoma's SIP is more cost-effective than our FIP. The agency's analysis of the costs of control indicated that the six coal-fired units in question could install air pollution controls at less than half the cost that Oklahoma estimated, while at the same time resulting in greater visibility benefits at several Class I areas than Oklahoma's plan. However, EPA has recently reached an agreement with the state and one of the companies affected by the FIP on an alternative pathway that the agency expects will be submitted by the state as a SIP to replace the FIP. EPA is also in negotiations with the remaining company about possible replacements for the FIP at one of its plants.

3. Inhofe 3. Did EPA use the Regional Haze program to force Oklahoma utilities to install scrubbers on coal fired utilities despite Oklahoma's equally effective, less expensive SIP?

EPA disagrees that Oklahoma's plan was equally effective, as explained in the answer to Question 2. EPA's FIP follows the requirements of the Regional Haze rule, which implements the requirements established by Congress in Sections 169A and 169B of the Clean Air Act. The FIP does not close off other paths toward compliance, as evidenced by our agreement on an alternative to the FIP controls with one of the companies involved and our continuing negotiations with the remaining company.

4. Inhofe 4. Did EPA alert the state of Oklahoma or utilities in the state prior to entering into a consent decree involving Oklahoma's SIP?

a. If EPA did, did EPA provide both the state and the utilities with an opportunity to participate in the settlement discussions?

b. If EPA did not, why not?

c. Do you believe EPA should allow states and affected utilities to participate in any negotiation process prior to a Consent Decree being agreed to that would affect the SIP, the state, and the state's utilities?

In keeping with the requirements of the Clean Air Act, the states and the utilities had an opportunity to comment on the proposed consent decree before EPA provided its final agreement and the consent decree was approved by the court. EPA recently has begun providing notices of intent to sue the agency on EPA's publicly available website, which will help to provide states and others notice of potential litigation that may affect their interests. See http://epa.gov/ogc/noi.html

5. Inhofe 5. Will you please provide me with all of the unredacted correspondence between EPA and the environmental groups regarding the Regional Haze program during your tenure at the Air Office?

I am informed by agency staff that the normal protocol for such a request for documents is to submit a separate letter to the agency, rather than through a question for the record. EPA will respond appropriately to any such request it receives.

6. Inhofe 6. Through the Consent Decree, did EPA intend to establish an unrealistically aggressive set of targets and timelines for approving State Implementation Plans to artificially constrain the amount of time available to work with states on procedural issues like cost estimates so that it could ultimately force a Federal Implementation Plan at a much greater cost?

EPA's efforts to work with the states on submitting SIPs are long-standing. At the time EPA negotiated the consent decrees for taking action on the regional haze plans, the deadline for submitting the state plans had passed by more than two years. In these negotiations, EPA sought to obtain a schedule that would allow EPA time to responsibly discharge its overdue mandatory duties under the CAA through notice-and-comment rulemaking. The agency was mindful that the plaintiffs had the option of seeking an even more expedited schedule from the court, and that there was a significant risk that that the court might establish a very aggressive schedule. In EPA's judgment, a court addressing the issue of an overdue mandatory duty by EPA would be unlikely to provide time for a second chance for a state to complete the planning obligation it has already failed to meet. Some states have been able to submit SIP updates as EPA was taking action on their original submissions, and the agency has been able to approve such updates in some cases. Where a federal plan has been established under this consent decree, it is still EPA's preference that it be replaced by an approvable state plan. EPA has sought, and mostly obtained, numerous extensions to the dates in the original consent decrees when EPA determined that additional time was needed; in most instances, these extensions have allowed the agency to consider additional information provided by the states.

7. Inhofe 7. Why did EPA decide to overrule Oklahoma's State Implementation Plan (SIP) and impose a FIP instead of working with the State to address whatever deficiencies EPA saw in the SIP's cost estimate?

The Agency disapproved Oklahoma's plan because Oklahoma's cost analysis for scrubbers did not follow the requirements outlined in the Regional Haze rule. EPA pointed out this concern while Oklahoma was still developing its SIP, but the state did not change its cost evaluation before submitting the SIP.

Consequently, EPA disapproved Oklahoma's SIP, which triggered a legal obligation to issue a FIP in its place. While it is the agency's preference to allow states the opportunity to correct deficiencies in their SIPs, EPA was unable to negotiate enough time in the consent decree for Oklahoma to submit a new SIP with a corrected cost analysis. Nonetheless, EPA still prefers that the state replace the FIP with a SIP.

8. Inhofe 8. As Administrator, what will your primary objective be when implementing the Regional Haze program?

a. Will you assure me that EPA will make every conceivable effort to work with states to ensure that their SIPs are approved, and that FIPs will only be implemented once EPA has exhausted the Clean Air Act's cooperative federalism concepts and conclusively determines through a technical comparative analysis that the overruled SIP will not meet the visibility requirements outlined in the Regional Haze program?

b. Will you also ensure that any FIP is the least expensive option available to EPA to meet the minimum requirements of the Regional Haze law? Will you provide economic comparative analysis of the separate plans?

In general, it is my goal to work with the states as closely as possible and I will continue to look for opportunities to involve them in decision making that affects their interests. The states are required to submit their next full regional haze plans in 2018. I am committed to work with states to approve their SIPs.

9. Inhofe 9. In the CAA, please provide your definition of cooperative federalism. Can you conceive of any circumstances where EPA has disagreed with a State's approach, on policy grounds, and decided that the Agency will not intervene to override the state?

"Cooperative federalism" is generally used to describe the Clean Air Act's approach of assigning tasks to EPA and States that, when taken together, result in cleaner air and important public health protections. For example, EPA sets the National Ambient Air Quality Standards for specific pollutants. EPA works with States to set up monitoring networks and to designate areas as ones that are attaining, not attaining or lack sufficient data with respect to the standards. States submit plans that must meet the requirements of the Act, including the requirement to bring all areas into the state into attainment with the standards. If EPA disapproves a plan for failing to meet the Act's requirements, or if a State fails to submit a plan in whole or in part, then the Act requires EPA to issue a federal plan for the State unless there is a timely correction of the deficiency and subsequent approval by EPA. EPA also issues rules (such as the recently proposed Tier 3 fuel and vehicle regulations) that assist areas in meeting the air quality standards. In instances where EPA has not been under a consent decree deadline for a federal plan, the agency has disapproved SIPs with technical errors without immediately putting into place a federal plan. Except for a few instances in which EPA and the state agreed in advance that EPA would promulgate a FIP because of resource and technical capacity limitations at the state level (Hawaii, Virgin Islands, and Montana), in every instance in which EPA has adopted a federal regional haze plan, the agency had found errors in the state's technical analysis that the agency concluded would make EPA approval of the state plan unsustainable under legal challenge. In all cases without such technical errors, EPA has accepted the state's balancing of costs and visibility benefits.

62. Inhofe 62. EPA recently proposed to disapprove provisions in 36 state SIPs based on a change in EPA policy in response to a petition for rulemaking. Were the existing SIP provisions in question legally approved and promulgated by EPA and the states?
a. What is the legal basis for declaring a validly approved SIP provision invalid after the fact?
b. Has EPA done any analysis to determine if the SIP provisions in question are threatening attaining the NAAQS?
c. Without such an analysis, how can EPA determine that such SIP provisions are "substantially inadequate" for purposes of the CAA?
d. Has EPA done any analysis of the impacts on an emissions source trying to operate without the SSM provision?
The bulk of the proposed action is not based on any change in EPA policy. The majority of the existing SIP provisions at issue were adopted by the states and approved by EPA, mostly before 1982. EPA realized and announced in 1982 that some SIP actions taken in the early phase of implementing the CAA were simply incorrect. In the SSM rulemaking, EPA is proposing to clarify and update the SSM policy and to correct mistakes we have generally recognized and communicated to the states for over 30 years. To evaluate these SIP provisions, EPA is using the public notice-and-comment rulemaking process explicitly set out in the Clean Air Act for addressing existing deficientprovisions in SIPs. For each state, there will be another notice-and-comment rulemaking to approve the SIP revisions that are submitted in response to the SIP call.

With regard to your more specific questions:

a. CAA section 110(k)(5) provides the legal basis for EPA to call for a SIP revision whenever the Administrator finds that the SIP for an area is substantially inadequate to attain or maintain a NAAQS, to mitigate interstate pollutant transport adequately, or to otherwise comply with any requirement of the CAA.

b. EPA has not based its proposed findings of inadequacy on a quantitative assessment that the specific SIP provisions in question resulted in a specific violation of the NAAQS. EPA's proposal that the affected SIP provisions are substantially inadequate is based upon the concern that the provisions in question do not meet legal requirements of the CAA.

c. EPA's proposed SIP call to amend provisions applying to excess emissions contains 49 pages of analysis that comprehensively discuss each affected SIP provision of each affected state, including an explanation of the agency's reasoning for proposing to find that a given provision is or is not "substantially inadequate" to satisfy the legal requirements of the CAA.

d. The implications for a regulated source in a given state, in terms of whether and how it would potentially have to change its equipment or practices in order to operate with emissions that comply with the revised SIP, will depend on the nature and frequency of the source's SSM events and how the state chooses to revise the SIP to address excess emissions during SSM events, consistent with CAA requirements. The preamble to the proposed action describes EPA's assessment of the potential

impacts of the proposed SIP calls on sources. See *"What are potential impacts on affected states and sources?"* at 78 FR 12467.

Barasso 27. My home state of Wyoming is the largest coal producer in the country. I have deep concerns about the process for developing and implementing the regional haze program in Wyoming. Can you commit to a process that does not disadvantage generation or the coal based resource in Wyoming?

Because of public comments that were critical of some of the basic technical analysis supporting our first proposed action on Wyoming's regional haze SIP, EPA plans to re-propose that action soon and provide the public with another comment period to review our revised technical analysis before taking final action. The agency is sensitive to the large number of coal-fired units that are at issue in Wyoming, and to the challenges of addressing the best available retrofit technology and reasonable progress requirements for these units in the limited compliance time period allowed under the CAA. EPA plans to note these challenges in our new proposal and invite comment, including supporting technical information, on a number of alternative paths forward.

e. With respect to the SSM issue, should EPA analyze whether the nationwide costs to impacted industries of the action are sufficient to trigger the necessity of OMB review?

The SIP call would leave to states the choice of how to revise their SIP provisions in question to make them consistent with Clean Air Act (CAA) requirements, and states have substantial discretion when revising their SIPs as to treatment of excess emissions from sources during SSM events. The implications for a regulated source in a given state, in terms of whether and how it would potentially have to change its equipment or practices in order to operate with emissions that comply with the revised SIP, will depend on the nature and frequency of the source's SSM events consistent with CAA requirements and how the state chooses to revise the SIP to address excess emissions during SSM events. Analysis of impacts to emissions sources as a result of removing SSM exemptions from a SIP would appropriately be conducted as part of the state's process of revising its SIP.

f. With respect to the SSM issue, should EPA be required to show that air quality is harmed by SSM excursions before calling for States to revise their SIPs?

The Clean Air Act requires continuous compliance with emission limitations by sources, including during periods of startup, shutdown, and malfunction. The law requires that EPA disapprove (or find to be substantially inadequate) SIPs with provisions that are inconsistent with this fundamental requirement of the Clean Air Act. That said, EPA notes that an impermissible SIP provision could have adverse impacts, such as by interfering with attainment and maintenance of the NAAQS, protection of PSD increments, protection of visibility, or meeting other Clean Air Act requirements. For citations to court decisions supporting EPA's position, see EPA's February 2013 proposed rulemaking (footnote 22, 78 FR at 12470) and EPA's supporting "Statutory, Regulatory, and Policy Context for this Rulemaking" memorandum in the rulemaking docket (see pages 17 and 21).

Sessions 16. I have been advised that EPA has, in several instances, illegally made unilateral revisions to State SIP's when the proper procedure was through a SIP Call.

a. Please explain how you determine if a SIP call or a FIP should be used.

The use of a SIP call or a FIP is governed by the provisions of the Clean Air Act. Under section 110(c), the

EPA is legally required to issue FIPs in two specific circumstances:
1. If EPA finds that the state failed to make a required SIP submission that is complete (including failure to make any SIP submission whatsoever),or
2. If EPA disapproves a required SIP submission in whole or in part.

EPA's legal obligation to promulgate such a FIP only ends if the state makes, and EPA fully approves, the required SIP submission before the promulgation of the FIP. EPA does not have legal authority or a legal obligation to promulgate a FIP in other circumstances.
By contrast, EPA is authorized to promulgate a SIP call under section 110(k)(5) whenever EPA determines that a state's existing SIP is substantially inadequate to provide for attainment and maintenance of the NAAQS, to mitigate interstate transport adequately, or to meet any other requirements of the CAA. EPA has discretion regarding whether to make a finding on whether a state's SIP is substantially inadequate. If EPA makes such a finding, however, then the agency has a legal obligation to issue a SIP call and to require the state to revise its SIP to bring it into compliance with CAA requirements.

b. Will you limit the use of FIPs to the situations actually anticipated in the CAA?

States and EPA both have authorities and responsibilities under the CAA. As noted above, EPA has a mandatory duty under the CAA to promulgate a FIP in certain circumstances that are required by law when a state does not meet its SIP obligations under the CAA. In practice, EPA already strives to avoid situations in which a FIP is necessary. EPA's strong preference is for states to develop and submit their own SIPs that meet CAA requirements, and EPA works with states to help them to develop approvable SIPs in order to avoid a FIP in the first instance or to replace a FIP with an approvable SIP as soon as possible. EPA does not use FIPs in situations not anticipated in the CAA.

11. **In your experience and opinion, do you believe states do a good job of protecting state and local environments? Do you believe the states have the first responsibility to develop environmental compliance plans? If so, how would you explain the EPA's recent efforts to put Federal Implementation Plans in place prior to allowing the States to implement their State Implementation Plans?**

My experience is that states and EPA need to work together to protect the environment. This is the approach taken in the Clean Air Act, which gives both states and EPA authorities and responsibilities to provide clean air and protect public health. As discussed below, EPA has a mandatory duty under the CAA to promulgate a FIP in certain circumstances that are required by law when a state does not meet its SIP obligations under the CAA. In practice, EPA strives to avoid situations in which a FIP is necessary. EPA's strong preference is for states to develop and submit their own SIPs that meet CAA requirements, and EPA works with states to help them to develop approvable SIPs in order to avoid a FIP in the first instance or to replace a FIP with an approvable SIP as soon as possible.
The use of a SIP call or a FIP is governed by the provisions of the Clean Air Act. Under section 110(c), the EPA is legally required to issue FIPs in two specific circumstances:
1. If EPA finds that the state failed to make a required SIP submission that is complete (including failure to make any SIP submission whatsoever), or
2. If EPA disapproves a required SIP submission in whole or in part.

EPA's legal obligation to promulgate such a FIP only ends if the state makes, and EPA fully approves, the required SIP submission before the promulgation of the FIP. EPA does not have legal authority or a legal obligation to promulgate a FIP in other circumstances.

During my opening remarks, I mentioned the recent settlement between EPA, the State of New Mexico and PNM Resources.
(a) EPA has been charged with overreaching on regional haze rules. The story of the San Juan Generating Station would suggest otherwise, wouldn't it?
Response: Yes, the story of San Juan Generating Station is a great example of EPA working with the State of New Mexico, PNM, and other stakeholders to finalize a plan that will improve visibility in the surrounding areas while also being cost-effective.
(b) In the end, we want the states implementing these programs, don't we?
Response: Yes, it is EPA's preference to work with states to approve a State Implementation Plan, rather than issue a Federal Implementation Plan.

Brick Industry MACT's

Sessions 20. We understand that EPA is currently evaluating whether to finalize a consent decree with the Sierra Club for the issuance of new MACT standards for the brick industry. EPA began the rulemaking process for the second MACT several years ago, requiring two sets of information collection requests (ICRs) to be completed by the industry. However, EPA recently proposed a new schedule whereby the rule would be finalized in July 2014. I am concerned that the proposed schedule for this new Brick MACT is too short to allow meaningful review of brick industry emissions, how the proposed rule would affect the economic survival of the brick industry - especially with respect to impacted small businesses - and whether the proposed rule would provide discernible environmental and health benefits.
a. How did EPA arrive at the Brick MACT schedule contained in the proposed consent decree?
Environmental plaintiffs sued the EPA, arguing that the Agency should be subject to a court-imposed schedule. EPA asked the court to dismiss the case, but the court ruled in the plaintiffs' favor. In order to avoid a court-imposed schedule that might be more difficult to meet, EPA negotiated a proposed schedule for new rulemaking with the litigants. The proposed schedule was based on consideration of the efforts needed to gather and evaluate information relevant to developing standards that meet the requirements of CAA section 112(d)(2) and (d)(3). The proposed consent decree, including the proposed schedule, was published in the Federal Register on December 7, 2012, with a request for public comment. EPA has subsequently negotiated a revised schedule that will allow us additional time to, among other things, address small business concerns. The final schedule provided in the consent decree that was filed with the U.S. Court of Appeals for the D.C. Circuit on April 12, 2013, extends the period for rulemaking to February 6, 2014, for the proposal, and December 18, 2014, for the final rule.
b. Does EPA's schedule allow for adequate consideration of the Small Business Administration's (SBA) Small Business Panel review pursuant to SBREFA?
Yes. EPA takes very seriously the potential impacts of its rules on small businesses, as well as its obligations to confer with those businesses and to work to minimize any avoidable adverse impacts. The final schedule provided in the consent decree that was filed with the U.S. Court of Appeals for the D.C.

Circuit on April 12, 2013, extends the period for rulemaking to February 6, 2014, for the proposal, and December 18, 2014, for the final rule. This will ensure adequate time for review by the SBA's Small Business Panel.

c. What emissions reductions would be achieved pursuant to full implementation of the proposed standards? Because the agency has neither concluded its analyses of the available information, nor consulted with interested stakeholders, let alone developed or issued any proposed emission standards, it is premature to speculate about the emission reductions that would result. This process will include small business consultation under SBREFA, as well as interagency review prior to proposing any emission standards.

d. What are the potential economic impacts and costs to the domestic US brick industry related to the proposed standards?

Because the agency has neither concluded its analyses of the available information, nor consulted with stakeholders, let alone developed or issued any proposed emission standards, it is premature to speculate about the economic impacts and costs of compliance. However, EPA fully intends to consult with members of the U.S. brick industry, including through the SBREFA process, to identify potential impacts and ways to minimize any unnecessary and avoidable adverse economic impacts on the brick industry.

e. How would the costs of these new standards compare, on a per-ton basis, with other industries recently subjected to new MACT standards?

Because the agency has not yet concluded its analyses of the available information, nor consulted with stakeholders, let alone developed or issued any proposed emission standards, it is premature to speculate about the costs of compliance or how they would compare with other industries subject to MACT standards.

21. The brick industry was subject to a Brick MACT issued in 2003. The industry came into compliance with that MACT (and continues to comply) at a cumulative cost upward of $100 million. This MACT was vacated by the D.C. Circuit in 2007, but many of the controls installed by the brick industry remain in place. I am told that these new controls are now being used to establish a new "floor" for brick industry emissions. This "MACT on MACT" situation (i.e. full compliance with a MACT standard for almost a year before the rule was vacated) is very concerning to brick manufacturers around the country.

a. What other industries have been subject to successive rounds of regulation similar to the situation the brick industry now finds itself?

Several rules have been remanded to EPA for further justification or revision based on court decisions holding that EPA's original MACT standards were unlawful. This includes, for example, rules for Hospital, Medical, and Infectious Waste Incineration; Commercial and Industrial Waste Incinerators; and Commercial, Industrial, and Institutional Boilers. The D.C. Circuit has upheld the agency's ability to correct errors in its MACT standards and rejected the "MACT on MACT" argument where the agency is either responding to a court remand or otherwise correcting a legally deficient MACT standard.

RadNet

Sessions 31 In EPA's response to the accident at the Fukushima Daiichi nuclear power plant in Japan, I am told that the RadNet system carried out its mission "to monitor environmental radioactivity in the

United States in order to provide high quality data for assessing public exposure and environmental impacts resulting from nuclear emergencies." In particular, my understanding is that the timely, comprehensive and publicly accessible monitoring data generated from RadNet provided a factual basis for federal and state governments to reassure the American people that levels of radioactivity reaching the United States from Fukushima were "hundreds of times below levels of concern." As recognized at the time of inception of the RadNet system, it would be impractical to attempt to stand up such a monitoring system only in the event of an actual nuclear emergency. This is particularly true considering the need to make near-term assessments of potential risks and formulate protective actions, if needed, to protect public health. In addition, I am told that maintaining RadNet in a monitoring mode is necessary to maintain data on ambient levels of radiation in the environment for baseline and trend analysis, as well as in assuring continual readiness, including maintaining equipment and training personnel to respond rapidly to an event. Nevertheless, I am also told that some shortcomings in the RadNet system were noted during the Fukushima event and thereafter. What is needed to assure that the RadNet system will be fully maintained at a high level of readiness? What has EPA learned from the Fukushima event in regard to potential improvements to the system? More generally, what has EPA learned from the Fukushima event in regard to our nation's capability to monitor and analyze radiation in real-time to be able to more effectively fulfill its mission?

EPA agrees that the RadNet System performed well in providing information to the American public during the Fukushima event. As you noted, the Agency also identified challenges during this event and has taken a number of steps to further improve the program. Foremost, EPA has established stricter readiness goals and improved internal reporting for RadNet. EPA has an established goal of at least 80% of the RadNet monitors operating at all times, with the expectation that the Agency will regularly exceed that goal in practice. Additionally, the Agency has improved these elements:

EPA personnel at the National Analytical Radiation Environmental Laboratory (NAREL) in Montgomery, Alabama, evaluate the status of each monitor daily.

NAREL staff use high-speed computer connections to each air monitor to perform significant remote maintenance each day. NAREL is also installing backup telecommunications methods.

Monitors requiring repair are returned to full service within two weeks, or sooner if EPA is responding to an emergency such as the Fukushima event. NAREL has worked with the monitor manufacturer to ensure that essential components are available, and appropriately stocked in inventory.

EPA has also improved the presentation of RadNet data on the Agency's website so that it is easier to access and understand. This is an ongoing project and EPA will continue to work on ways to improve how radiation information is presented.

To: Stoner, Nancy[Stoner.Nancy@epa.gov]; Kopocis, Ken[Kopocis.Ken@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]
From: Peck, Gregory
Sent: Tue 7/23/2013 8:02:49 PM
Subject: FW: House Approps Riders
2014 HAC Riders - OW highlight.docx

House approps riders – fyi.

Greg

Riders include:

- Waters of the U.S.
- Stormwater rule
- National Ocean Policy
- Buy American
- MS4 permitting
- 316(b)
- CAFO data
- Logging roads
- Fill rule

Gregory E. Peck

Chief of Staff

Office of Water

1200 Pennsylvania Avenue

Washington, D.C. 20460

202-564-5700

GREENHOUSE GAS METHANE RESTRICTIONS	SEC. 420. Notwithstanding any other provision of law, none of the funds made available in this Act or any other Act may be used to promulgate or implement any regulation requiring the issuance of permits under title V of the Clean Air Act (42 U.S.C. 7661 et seq.) for carbon dioxide, nitrous oxide, water vapor, or methane emissions resulting from biological processes associated with livestock production.
GREENHOUSE GAS REPORTING RESTRICTIONS	SEC. 421. Notwithstanding any other provision of law, none of the funds made available in this or any other Act may be used to implement any provision in a rule, if that provision requires mandatory reporting of greenhouse gas emissions from manure management systems.
WATERS OF THE UNITED STATES	SEC. 435. None of the funds made available in this Act or any other Act making appropriations for the Environmental Protection Agency may be used by the Environmental Protection Agency to develop, adopt, implement, administer, or enforce any change to the regulations and guidance in effect on October 1, 2012, pertaining to the definition of waters under the jurisdiction of the Federal Water Pollution Control Act (33 U.S.C. § 1251, et seq.), including the provisions of the rules dated November 13, 1986 and August 25, 1993, relating to said jurisdiction, and the guidance documents dated

	January 15, 2003 and December 2, 2008, relating to said jurisdiction.
STREAM BUFFER	SEC. 436. None of the funds made available by this Act may be used to develop, carry out, implement, or otherwise enforce proposed regulations published June 18, 2010 (75 Fed. Reg. 34,667) by the Office of Surface Mining Reclamation and Enforcement of the Department of the Interior.
STORMWATER DISCHARGE	SEC. 437. None of the funds made available by this Act or any other Act may be expended for the development, adoption, implementation, or enforcement of regulations or guidance that would expand the Federal stormwater discharge program under section 402(p) of the Federal Water Pollution Control Act (33 U.S.C. 1342(p)) to post-construction commercial or residential properties until 90 days after the Administrator of the Environmental Protection Agency submits to the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives and the Committee on Environment and Public Works and the Committee on Appropriations of the Senate the study of stormwater discharges required under section 402(p)(5) of such Act (33 U.S.C. 1342(p)(5)). Such study shall include—

	(1) a thorough review and analysis of potential regulatory options under the stormwater program; (2) the program's anticipated costs (including to the Environmental Protection Agency, States, and potentially regulated entities) and benefits; and (3) a numerical identification of both relative cost effectiveness among the options and the anticipated water quality enhancements that would result from each option.
LIMITATION ON USE OF FUNDS FOR NATIONAL OCEAN POLICY	SEC. 439. None of the funds made available by this Act may be used to develop, propose, finalize, administer, or implement, the National Ocean Policy developed under Executive Order 13547. Not later than 60 days after the date on which the President's fiscal year 2015 budget re quest is submitted to Congress, the President shall submit a report to the Committees on Appropriations of the House of Representatives and the Senate identifying all Federal expenditures in fiscal years 2011, 2012, and 2013, by agency, account, and any pertinent subaccounts, for the development, administration, or implementation of the National Ocean Policy developed under Executive Order 13547. The President's budget submission for fiscal year 2015 shall identify all such funding proposed for the

	implementation of such Policy.
USE OF AMERICAN IRON AND STEEL	SEC. 441. (a)(1) None of the funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C.300j–12) shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States. (2) In this section, the term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. (b) Subsection (a) shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency (in this section referred to as the "Administrator") finds that—(1) applying subsection (a) would be inconsistent with the public interest; (2) iron and steel products are not produced in the United States in sufficient and

	reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent. (c) If the Administrator receives a request for a waiver under this section, the Administrator shall make available to the public on an informal basis a copy of the request and information available to the Administrator concerning the request, and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including on the official public Internet Web site of the Environmental Protection Agency. (d) This section shall be applied in a manner consistent with United States obligations under international agreements. (e) The Administrator may retain up to .25 percent of the funds appropriated in this Act for the Clean and Drinking Water State Revolving Funds for carrying out the provisions described in subsection (a)(1) for management and oversight of the requirements of this section.(f) This section does not apply with respect to a project if a State agency approves the engineering plans and specifications for the project, in that agency's capacity to approve

	such plans and specifications prior to a project requesting bids, prior to the date of the enactment of thisAct.
MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMITTING	SEC. 442. Section 402(p)(3) of the Federal Water Pollution Control Act (33 U.S.C. 1342(p)(3)) is amended by adding at the end the following new subparagraph: "(C) LIMITATION.—The Administrator or a State may not require a municipality operating a municipal separate storm sewer system serving a population of less than 100,000 to obtain a permit under this subsection for a discharge that— "'(i) is composed entirely of stormwater from a facility that is not owned or operated by the municipality; and "(ii) does not enter into the municipal separate storm sewer system.".
LEAD TEST KIT	SEC. 443. None of the funds made available by this Act may be used to implement or enforce regulations under subpart E of part 745 of title 40, Code of Federal Regulations (commonly referred to as the "Lead; Renovation, Repair, and Painting Rule"), or any subsequent amendments to such regulations, until the Administrator of the Environmental Protection Agency publicizes Environmental Protection Agency recognition of a commercially available lead test kit that meets both criteria under section 745.88(c) of title 40, Code of Federal Regulations
FINANCIAL ASSURANCE	SEC. 444. None of the funds made available by this Act may be used to

	develop, propose, finalize, implement, enforce, or administer any regulation that would establish new financial responsibility requirements pursuant to section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (4216 U.S.C. 9608(b)).
GHG NSPS	SEC. 445. None of the funds made available by this Act may be used to develop, issue, implement, or enforce any regulation or guidance under section 111 of the Clean Air Act establishing any standard of performance applicable to the emission of any greenhouse gas by any new or existing source that is an electric utility generating unit.
COST MANUAL UPDATE	SEC. 446. Not later than 30 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall begin development of a seventh edition of the document entitled ''EPA Air Pollution Control Cost Manual''. The Administrator shall consult, and seek comment from, State, local, and tribal departments of environmental quality during development of such seventh edition, and provide opportunity for public comment.
COMMENTS ON AIR QUALITY MODELS	SEC. 447. Not later than 30 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall publish in the Federal Register a notice to solicit comment on

	revising the Agency's "Guideline on Air Quality Models" under appendix W to part 51 of title 40, Code of Federal Regulations, to allow flexible modeling approaches and to adopt the most recently published version of the CALPUFF modeling system (or portions thereof) as a preferred air quality model under such Guideline.
COOLING TOWERS	SEC. 448. None of the funds made available by this Act or any other Act shall be used to further develop, finalize, implement, or enforce the proposed regulatory requirements issued by the Environmental Protection Agency and published for public comment in the Federal Register on April 20, 2011 (76 Fed. Reg. 22,174); or to develop or enforce any other new regulations or requirements designed to implement section 316(b) of the Federal Water Pollution Control Act (33 U.S.C. 1312 (b)).
SULFURYL FLUORIDE	SEC. 449. None of the funds made available by this Act may be used by the Environmental Protection Agency to prepare and finalize an order under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) that in any way removes, withdraws, revokes, or stays tolerances for the pesticide chemical sulfuryl fluoride if that final order takes into consideration aggregate or cumulative exposure to other substances related to sulfuryl

	fluoride or its metabolites or degradates pursuant to sections 408(b)(2)(A), 408(b)(2)(C), 408(b)(2)(D)(v), and 408(b)(2)(D)(vi) of such Act (21 U.S.C. 346a (b)(2)(A),346a(b)(2)(C), 346a(b)(2)(D)(v), and 346a (b)(2)(D)(vi)).
PROTECTION OF PERSONAL INFORMATION	SEC. 450. None of the funds made available by this Act may be used by the Administrator of the Environmental Protection Agency to compile, publicly disclose, or compel the consent to public disclosure of any personally identifiable information, including the name, physical address, global positioning system coordinates, email address, telephone number, or other location-specific information, of an owner, operator, or employee of any live stock, poultry, or dairy, operation involved in the raising, milking, or finishing of livestock, the raising or finishing of poultry, or the producing or processing of dairy products, unless such personally identifiable information— (1) has been transformed into a statistical or aggregate form at the county level or higher without any such personally identifiable information; or (2) the owner, operator, or employee voluntarily consents to the disclosure of such personally identifiable information.
EMISSION AND FUEL STANDARDS	SEC. 451. None of the funds made available by this Act may be used to finalize, implement, administer, or

	enforce the proposed rule entitled "Control of Air Pollution From Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards" published by the Environmental Protection Agency in the Federal Register on May 21, 2013 (78 Fed. Reg. 29816 et seq.), or any successor or subsequent rule that would require a reduction in the sulfur content of gasoline.
SILVICULTURAL ACTIVITIES	SEC. 452. Section 402(l) of the Federal Water Pollution Control Act (33 U.S.C. 1342(l)) is amended by adding at the end the following: ".—The Admin istrator shall not, under this section, require a permit for or otherwise regulate, nor shall the Administrator directly or indirectly require any State to require a permit under this section for discharges of stormwater runoff from roads, the construction, use, or maintenance of which are associated with silvicultural activities, or from other silvicultural activities involving nursery operations, site preparation, reforestation and subsequent cultural treatment,thinning, prescribed burning, pest and fire control, harvesting operations, or surface drainage.".
DEFINITION OF FILL MATERIAL	SEC. 456. None of the funds made available in this Act or any other Act making appropriations for the Environmental Protection Agency may be used by the Environmental

	Protection Agency to develop, adopt, implement, administer, or enforce any change to the regulations in effect on October 1, 2012, pertaining to the definitions of the terms "fill material" or "discharge of fill material" for the purposes of the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq.).
FOUNDRIES	SEC. 457. The requirements of subpart UUU of part 60 of title 40, Code of Federal Regulations (or any successor regulations), shall not apply with respect to any foundry or other facilities for metal casting, including the processes of such facilities for reclaiming, using, and reusing industrial sand.
PUBLIC DISCLOSURE	SEC. 458. (a) The Secretary of the Interior, the Administrator of the Environmental Protection Agency, or the Attorney General, as appropriate, shall disclose all of the terms and conditions (including awards, fees, attorney fees, damages, or any other form of compensation) of a settlement and shall post such terms and conditions within 30 days of the settlement on the website of the Office of the Solicitor of the Department of the Interior or the Office of General Counsel of the Environmental Protection Agency, as appropriate, if— (1) the Secretary or the Administrator enters into a settlement with any person; (2) the Department of Justice, on

	behalf of the Department of the Interior or the Environmental Protection Agency, enters into a settlement with any person; or (3) a judge in any Federal court grants an award or judgment to any person to settle a matter involving the Department of the Interior or the Environmental Protection Agency. (b) This section shall not apply to a settlement involving a claim to the Equal Employment Opportunity Commission, under the Americans with Disabilities Act, or for personal or work-related injury

To: Stoner, Nancy[Stoner.Nancy@epa.gov]; Kopocis, Ken[Kopocis.Ken@epa.gov]; Gilinsky, Ellen[Gilinsky.Ellen@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Lousberg, Macara[Lousberg.Macara@epa.gov]
Cc: Klasen, Matthew[Klasen.Matthew@epa.gov]
From: Jones-Coleman, Diane
Sent: Tue 7/23/2013 4:54:27 PM
Subject: Courtesy Copy of AL-13-000-7698 (David Vitter, et al)
AL-13-000-7698_David Vitter et al.pdf

CONTROL NUMBER: AL-13-000-7698

FROM: DAVID VITTER, ET AL

RECEIVED: JULY 23, 2013

SUBJECT: EPA'S ATTEMPT TO DELIBERATELY INFLATE BENEFITS CALCULATIONS IN ORDER TO JUSTIFY HIGH COST OF COOLING WATER INTAKE RULE

ASSIGNED: OST to prepare response for AAA-OW signature

DUE OW-IO: AUGUST 5, 2013

Diane

Diane C. Coleman

OW Correspondence Team Leader
(202) 564-0379
E-mail: Jones-Coleman.Diane@epa.gov

BARBARA BOXER, CALIFORNIA, CHAIRMAN

MAX BAUCUS, MONTANA
THOMAS R. CARPER, DELAWARE
FRANK R. LAUTENBERG, NEW JERSEY
BERNARD SANDERS, VERMONT
SHELDON WHITEHOUSE, RHODE ISLAND
TOM UDALL, NEW MEXICO
AL FRANKEN, MINNESOTA
KIRSTEN GILLIBRAND, NEW YORK
BARBARA BOXER, CALIFORNIA

DAVID VITTER, LOUISIANA
JAMES M. INHOFE, OKLAHOMA
JOHN BARRASSO, WYOMING
JEFF SESSIONS, ALABAMA
MIKE CRAPO, IDAHO
ROGER WICKER, MISSISSIPPI
JOHN BOOZMAN, ARKANSAS
DEB FISCHER, NEBRASKA

RUTH ANNA FISHER, STAFF DIRECTOR
TAYLOR WHITMIRE, MINORITY DIRECTOR

United States Senate

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

July 22, 2013

Ms. Nancy K. Stoner
Acting Assistant Administrator for the Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, D.C. 20460

Dear Acting Assistant Administrator Stoner:

We write to express our concern regarding the Environmental Protection Agency's (EPA) apparent attempt to deliberately inflate benefits calculations in order to justify the high cost of a rule. EPA is seeking to exaggerate benefits through the use of a "stated preference survey"[1] to calculate the alleged "non-use" benefits of the proposed rule for cooling water intake structures under Section 316(b) of the Clean Water Act (CWA).[2] Use of a stated preference survey is inappropriate. Furthermore, reliance on non-use benefits, as opposed to traditional "use" benefits, to justify a significant regulation is without precedent and should not be permitted. Accordingly, we request that EPA refrain from using this survey as a basis for the final rule and stick to well-established methods to determine the costs and benefits of the regulation.

In April 2011, EPA issued a proposed rule under Section 316(b) of the CWA, which requires that standards governing cooling water intake structures reflect the best technology available (BTA) for minimizing adverse environmental impact.[3] EPA's proposed rule would set new standards for cooling water intake structures at approximately 1,260 existing power generating and manufacturing and industrial facilities.[4] EPA is required by a modified court settlement agreement to publish the final rule by November 4, 2013.[5]

As part of its required regulatory analysis, EPA conducted an original cost-benefit analysis.[6] In this analysis, EPA used conventional methods to determine the use benefits for

---

[1] National Pollutant Discharge Elimination System--Proposed Regulations To Establish Requirements for Cooling Water Intake Structures at Existing Facilities; Notice of Data Availability Related to EPA's Stated Preference Survey, 77 Fed. Reg. 113 (proposed June 12, 2012) (to be codified at 40 C.F.R. pts. 122, 123, 124, 125).
[2] National Pollutant Discharge Elimination System—Cooling Water Intake Structures at Existing Facilities and Phase I Facilities, 76 Fed. Reg. 76 (proposed on April 20, 2011) (to be codified at 40 C.F.R. pts. 122 and 125).
[3] 33 U.S.C. § 1326(b).
[4] U.S. ENVIRONMENTAL PROTECTION AGENCY, EPA 820-F-11-002, FACT SHEET: PROPOSED REGULATIONS TO ESTABLISH REQUIREMENTS FOR COOLING WATER INTAKE STRUCTURES AT EXISTING FACILITIES (2011), http://water.epa.gov/lawsregs/lawsguidance/cwa/316b/upload/factsheet_proposed.pdf.
[5] Third Amendment to Settlement Agreement Among the Envtl. Prot. Agency, the Plaintiffs in Cronin v. Reilly, No. 93 Civ. 0314 (LTS) (S.D.N.Y.), and the Plaintiffs in Riverkeeper. v. EPA, No. 06 Civ. 12987 (PKC) (S.D.N.Y.) (June 27, 2013), *available at* http://water.epa.gov/lawsregs/lawsguidance/cwa/316b/upload/amendment3rd.pdf.
[6] National Pollutant Discharge Elimination System—Cooling Water Intake Structures at Existing Facilities and Phase I Facilities, 76 Fed. Reg. 76 (proposed on April 20, 2011) (to be codified at 40 C.F.R. pts. 122 and 125).

PRINTED ON RECYCLED PAPER

commercial and recreational fishing.[7] EPA then decided that its first cost-benefit analysis was "incomplete" and attempted to recalculate not only the use benefits, but the non-use benefits as well.[8] In order to do so, EPA conducted a national "stated preference survey" in which individuals, who would gain no direct benefit, were asked how much they were hypothetically willing to pay to prevent distant fish from being harmed.[9] Attempting to monetize non-use benefits in this way, and on this scale, is highly questionable.

As you may know, stated preference surveys are one of the most controversial methods for estimating non-use benefits because they are based on what individuals say they would do as opposed to what they are actually observed doing.[10] There are very few instances in which such a complicated and subjective tool can be used with any degree of reliability.[11] According to leading economists, stated preference surveys should only be used in situations where the resources are unique or limited and the impacts are substantial or irreversible.[12] This is not the case here. The results of this survey cannot be taken as credible estimates of potential benefits of the proposed rule and certainly cannot be used to justify spending hundreds of millions or potentially billions of dollars each year. Accordingly, EPA should not use the results of the stated preference survey as a basis for the final rule.

Additionally, EPA conducted two separate benefits analyses in little more than a year that resulted in dramatically different conclusions.[13] EPA's original cost-benefit analysis, using conventional methods, determined that the $466 million annual costs of the preferred option outweighed the $16.3 million annual benefits by a ratio of 29 to 1.[14] Conversely, the annual benefits from the stated preference survey were $2.275 billion for the preferred option, with a cost to benefit ratio of 1 to 5.[15] This is a substantial and questionable increase in benefits, all due to EPA's decision to rely on a controversial method to recalculate benefits. If EPA were to substitute the survey results for the original benefits calculation, the majority of all benefits would be non-use benefits as opposed to the traditionally calculated use benefits associated with commercial and recreational fishing. This would be highly unusual. EPA has never attempted to justify an entire regulation primarily on non-use benefits. Doing so now would set a dangerous precedent that would interject arbitrariness and unpredictability in the regulatory process and allow regulators to justify actions based on public opinion surveys rather than sound science.

---

[7] *Id.*
[8] National Pollutant Discharge Elimination System--Proposed Regulations To Establish Requirements for Cooling Water Intake Structures at Existing Facilities; Notice of Data Availability Related to EPA's Stated Preference Survey, 77 Fed. Reg. 113 (proposed June 12, 2012) (to be codified at 40 C.F.R. pts. 122, 123, 124, 125).
[9] *Id.*
[10] *See* Jerry Hausman, *Contingent Valuation: From Dubious to Hopeless*, 26(4) J. ECON. PERSPECTIVES 43 (2012).
[11] *Id.*
[12] A. MYRICK FREEMAN, THE MEASUREMENT OF ENVIRONMENTAL AND RESOURCE VALUES: THEORY AND METHODS 156-57 (Resources for the Future 2003) (1993).
[13] Comments on EPA's notice of Data Availability for §316(b) Stated Preference Survey: Prepared for: Utility Water Act Group and Edison Electric Institute, NERA ECON. CONSULTING E-8 (July 2012), http://www.nera.com/nera-files/PUB_UWAG_0712_final.pdf.
[14] *Id.*
[15] *Id.*

EPA's previous estimate of use benefits associated with commercial and recreational fishing provides a far more accurate gauge of the potential benefits of the proposed rule than the results of the controversial stated preference survey. Accordingly, EPA should withdraw the survey and not attempt to use the results as a basis for the final rule.

If you have any questions regarding this letter, please feel free to have your staff contact Kristina Moore with the Senate Committee on Environment and Public Works at (202) 224-6176.

Sincerely,

David Vitter
U.S. Senator

James Inhofe
U.S. Senator

Mike Crapo
U.S. Senator

John Boozman
U.S. Senator

cc: Ken Kopocis
Senior Advisor for the Office of Water

To: Southerland, Elizabeth[Southerland.Elizabeth@epa.gov]; Kopocis, Ken[Kopocis.Ken@epa.gov]; Hewitt, Julie[Hewitt.Julie@epa.gov]; Gilinsky, Ellen[Gilinsky.Ellen@epa.gov]
Cc: Zipf, Lynn[Zipf.Lynn@epa.gov]
From: Wood, Robert
Sent: Tue 7/23/2013 2:30:37 PM
Subject: Fw: Fwd: ARTICLE: Four Senators Ask EPA Not to Use Survey to Calculate Benefits of Cooling Water Rule

FYI, More from the Senate.

From: Alexandra Dunn <adunn@acwa-us.org>
Sent: Tuesday, July 23, 2013 10:11:10 AM
To: Wood, Robert
Subject: Fwd: ARTICLE: Four Senators Ask EPA Not to Use Survey to Calculate Benefits of Cooling Water Rule

Sent from my iPhone

Begin forwarded message:

> **From:** "Tracy, Kirk" <ktracy@acwa-us.org>
> **Date:** July 23, 2013, 9:54:20 AM EDT
> **To:** "Dunn, Alexandra D." <adunn@acwa-us.org>
> **Subject: ARTICLE: Four Senators Ask EPA Not to Use Survey to Calculate Benefits of Cooling Water Rule**
>
> To: Permitting & Compliance Committee and Industrial Branch Workgroup
>
> *Water Pollution*
>
> **Four Senators Ask EPA Not to Use Survey to Calculate Benefits of Cooling Water Rule**
>
> *By Pat Ware*
>
> Four Republican senators sent a letter to the Environmental Protection Agency's top water official July 22 expressing concern about what they said was an "apparent attempt to deliberately inflate benefits calculations" to justify the cost of a proposed rule on cooling water intake structures.

The letter said EPA is trying to exaggerate the benefits of the Clean Water Act rule through the use of a "stated preference survey" to calculate "alleged 'nonuse' benefits."

Sens. David Vitter (R-La.), ranking member on the Senate Environment and Public Works Committee, James Inhofe (R-Okla.), Mike Crapo (R-Idaho), and John Boozman (R-Ark.) sent the letter to Nancy Stoner, acting EPA assistant administrator for water.

EPA's rule, proposed in 2011, is designed to reduce the amount of aquatic life, including fish, that get sucked into the cooling water intake structures of industrial facilities. It would require that standards for intake structures reflect the best technology available (BTA) for minimizing adverse environmental impact. The rule would impose costly, burdensome requirements on U.S. power plants and manufacturing facilities, according to a statement accompanying the letter.

The rule would affect about 1,260 existing power plants, manufacturing plants, and other industrial facilities, the statement said.

Benefits Calculated, Recalculated

EPA originally conducted a cost-benefit analysis in 2011 using "well-established" methods that determined the benefits for fishing, the statement said

EPA then determined that its first analysis was "incomplete" and recalculated the benefits by conducting a national "stated preference survey" that heavily focused on "hypothetical questions," the senators' statement said (106 DEN A-9, 6/4/12).

In the survey, the senators said, individuals who would not directly benefit from the rule "were asked how much they were hypothetically willing to pay to prevent distant fish from being harmed."

"The results of this survey cannot be taken as credible estimates of potential

benefits of the proposed rule and certainly cannot be used to justify spending hundreds of millions or potentially billions of dollars each year," the letter from the senators said.

"If EPA were to substitute the survey results for the original benefits calculation, it would interject arbitrariness and unpredictability in the regulatory process and allow regulators to justify actions based on public opinion surveys rather than sound science," they said.

"Accordingly, we request that EPA refrain from using this survey as a basis for the final rule and stick to well-established methods to determine the costs and benefits of the regulation," the letter said.

For More Information

The letter from the Republican senators to EPA is available at http://op.bna.com/env.nsf/r?Open=jstn-99uvss.

To: Kopocis, Ken[Kopocis.Ken@epa.gov]
Cc: Peck, Gregory[Peck.Gregory@epa.gov]; Kaiser, Sven-Erik[Kaiser.Sven-Erik@epa.gov]
From: Klasen, Matthew
Sent: Tue 7/23/2013 2:38:19 AM
Subject: New Vitter et al. letter on 316(b)
72213316bSurveyLetterFINAL.pdf

Hi Ken,

Marna in OGC made me aware of a letter sent today from Senators Vitter, Inhofe, Crapo, and Boozman, to Nancy regarding 316(b), asking us to not use the stated preference survey in support of the final 316(b) rulemaking.

The letter (available on the EPW Minority website) is attached. Ex. 5 - Deliberative

Ex. 5 - Deliberative

Thanks,

Matt

Matt Klasen

U.S. Environmental Protection Agency

Office of Water (IO)

(202) 566-0780

cell (202) 380-7229

BARBARA BOXER, CALIFORNIA, *CHAIRMAN*

MAX BAUCUS, MONTANA
THOMAS R. CARPER, DELAWARE
BENJAMIN L. CARDIN, MARYLAND
BERNARD SANDERS, VERMONT
SHELDON WHITEHOUSE, RHODE ISLAND
TOM UDALL, NEW MEXICO
JEFF MERKLEY, OREGON
KIRSTEN GILLIBRAND, NEW YORK
MAZIE K. HIRONO, HAWAII

DAVID VITTER, LOUISIANA
JAMES M. INHOFE, OKLAHOMA
JOHN BARRASSO, WYOMING
JEFF SESSIONS, ALABAMA
MIKE CRAPO, IDAHO
ROGER WICKER, MISSISSIPPI
JOHN BOOZMAN, ARKANSAS
DEB FISCHER, NEBRASKA

BETTINA POIRIER, *MAJORITY STAFF DIRECTOR*
ZAK BAIG, *REPUBLICAN STAFF DIRECTOR*

United States Senate

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

July 22, 2013

Ms. Nancy K. Stoner
Acting Assistant Administrator for the Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, D.C. 20460

Dear Acting Assistant Administrator Stoner:

We write to express our concern regarding the Environmental Protection Agency's (EPA) apparent attempt to deliberately inflate benefits calculations in order to justify the high cost of a rule. EPA is seeking to exaggerate benefits through the use of a "stated preference survey"[1] to calculate the alleged "non-use" benefits of the proposed rule for cooling water intake structures under Section 316(b) of the Clean Water Act (CWA).[2] Use of a stated preference survey is inappropriate. Furthermore, reliance on non-use benefits, as opposed to traditional "use" benefits, to justify a significant regulation is without precedent and should not be permitted. Accordingly, we request that EPA refrain from using this survey as a basis for the final rule and stick to well-established methods to determine the costs and benefits of the regulation.

In April 2011, EPA issued a proposed rule under Section 316(b) of the CWA, which requires that standards governing cooling water intake structures reflect the best technology available (BTA) for minimizing adverse environmental impact.[3] EPA's proposed rule would set new standards for cooling water intake structures at approximately 1,260 existing power generating and manufacturing and industrial facilities.[4] EPA is required by a modified court settlement agreement to publish the final rule by November 4, 2013.[5]

As part of its required regulatory analysis, EPA conducted an original cost-benefit analysis.[6] In this analysis, EPA used conventional methods to determine the use benefits for

---

[1] National Pollutant Discharge Elimination System--Proposed Regulations To Establish Requirements for Cooling Water Intake Structures at Existing Facilities; Notice of Data Availability Related to EPA's Stated Preference Survey, 77 Fed. Reg. 113 (proposed June 12, 2012) (to be codified at 40 C.F.R. pts. 122, 123, 124, 125).
[2] National Pollutant Discharge Elimination System—Cooling Water Intake Structures at Existing Facilities and Phase I Facilities, 76 Fed. Reg. 76 (proposed on April 20, 2011) (to be codified at 40 C.F.R. pts. 122 and 125).
[3] 33 U.S.C. § 1326(b).
[4] U.S. ENVIRONMENTAL PROTECTION AGENCY, EPA 820-F-11-002, FACT SHEET: PROPOSED REGULATIONS TO ESTABLISH REQUIREMENTS FOR COOLING WATER INTAKE STRUCTURES AT EXISTING FACILITIES (2011), http://water.epa.gov/lawsregs/lawsguidance/cwa/316b/upload/factsheet_proposed.pdf.
[5] Third Amendment to Settlement Agreement Among the Envtl. Prot. Agency, the Plaintiffs in Cronin v. Reilly, No. 93 Civ. 0314 (LTS) (S.D.N.Y.), and the Plaintiffs in Riverkeeper. v. EPA, No. 06 Civ. 12987 (PKC) (S.D.N.Y.) (June 27, 2013), *available at* http://water.epa.gov/lawsregs/lawsguidance/cwa/316b/upload/amendment3rd.pdf.
[6] National Pollutant Discharge Elimination System—Cooling Water Intake Structures at Existing Facilities and Phase I Facilities, 76 Fed. Reg. 76 (proposed on April 20, 2011) (to be codified at 40 C.F.R. pts. 122 and 125).

PRINTED ON RECYCLED PAPER

commercial and recreational fishing.[7] EPA then decided that its first cost-benefit analysis was "incomplete" and attempted to recalculate not only the use benefits, but the non-use benefits as well.[8] In order to do so, EPA conducted a national "stated preference survey" in which individuals, who would gain no direct benefit, were asked how much they were hypothetically willing to pay to prevent distant fish from being harmed.[9] Attempting to monetize non-use benefits in this way, and on this scale, is highly questionable.

As you may know, stated preference surveys are one of the most controversial methods for estimating non-use benefits because they are based on what individuals say they would do as opposed to what they are actually observed doing.[10] There are very few instances in which such a complicated and subjective tool can be used with any degree of reliability.[11] According to leading economists, stated preference surveys should only be used in situations where the resources are unique or limited and the impacts are substantial or irreversible.[12] This is not the case here. The results of this survey cannot be taken as credible estimates of potential benefits of the proposed rule and certainly cannot be used to justify spending hundreds of millions or potentially billions of dollars each year. Accordingly, EPA should not use the results of the stated preference survey as a basis for the final rule.

Additionally, EPA conducted two separate benefits analyses in little more than a year that resulted in dramatically different conclusions.[13] EPA's original cost-benefit analysis, using conventional methods, determined that the $466 million annual costs of the preferred option outweighed the $16.3 million annual benefits by a ratio of 29 to 1.[14] Conversely, the annual benefits from the stated preference survey were $2.275 billion for the preferred option, with a cost to benefit ratio of 1 to 5.[15] This is a substantial and questionable increase in benefits, all due to EPA's decision to rely on a controversial method to recalculate benefits. If EPA were to substitute the survey results for the original benefits calculation, the majority of all benefits would be non-use benefits as opposed to the traditionally calculated use benefits associated with commercial and recreational fishing. This would be highly unusual. EPA has never attempted to justify an entire regulation primarily on non-use benefits. Doing so now would set a dangerous precedent that would interject arbitrariness and unpredictability in the regulatory process and allow regulators to justify actions based on public opinion surveys rather than sound science.

---

[7] *Id.*
[8] National Pollutant Discharge Elimination System--Proposed Regulations To Establish Requirements for Cooling Water Intake Structures at Existing Facilities; Notice of Data Availability Related to EPA's Stated Preference Survey, 77 Fed. Reg. 113 (proposed June 12, 2012) (to be codified at 40 C.F.R. pts. 122, 123, 124, 125).
[9] *Id.*
[10] *See* Jerry Hausman, *Contingent Valuation: From Dubious to Hopeless*, 26(4) J. ECON. PERSPECTIVES 43 (2012).
[11] *Id.*
[12] A. MYRICK FREEMAN, THE MEASUREMENT OF ENVIRONMENTAL AND RESOURCE VALUES: THEORY AND METHODS 156-57 (Resources for the Future 2003) (1993).
[13] Comments on EPA's notice of Data Availability for §316(b) Stated Preference Survey: Prepared for: Utility Water Act Group and Edison Electric Institute, NERA ECON. CONSULTING E-8 (July 2012), http://www.nera.com/nera-files/PUB_UWAG_0712_final.pdf.
[14] *Id.*
[15] *Id.*

EPA's previous estimate of use benefits associated with commercial and recreational fishing provides a far more accurate gauge of the potential benefits of the proposed rule than the results of the controversial stated preference survey. Accordingly, EPA should withdraw the survey and not attempt to use the results as a basis for the final rule.

If you have any questions regarding this letter, please feel free to have your staff contact Kristina Moore with the Senate Committee on Environment and Public Works at (202) 224-6176.

Sincerely,

David Vitter
U.S. Senator

James Inhofe
U.S. Senator

Mike Crapo
U.S. Senator

John Boozman
U.S. Senator

cc: Ken Kopocis
Senior Advisor for the Office of Water

To: Kopocis, Ken[Kopocis.Ken@epa.gov]; Ganesan, Arvin[Ganesan.Arvin@epa.gov]; Vaught, Laura[Vaught.Laura@epa.gov]; Distefano, Nichole[DiStefano.Nichole@epa.gov]
From: Kaiser, Sven-Erik
Sent: Mon 7/22/2013 10:16:52 PM

Ex. 5 - Deliberative

Vitter, EPW Republicans: EPA Sets Dangerous Precedent on Expensive Water Rule
EPA is attempting to use a questionable public opinion survey to inflate the benefits of a Clean Water Act regulation
July 22, 2013

U.S. Sen. David Vitter (R-La.), top Republican on the Environment and Public Works Committee, today sent a letter to Ms. Nancy Stoner, Acting Assistant Administrator for the Office of Water of the U.S. Environmental Protection Agency (EPA), along with three other Senators. The letter asked EPA to refrain from using inflated benefits calculations for cooling water intake structures under Section 316(b) of the Clean Water Act (CWA). The EPA's rule is designed to reduce the number of fish entering cooling structures, but would impose high costs and burdensome requirements on our nation's power plants and manufacturing facilities.
EPA's proposed rule would affect approximately 1,260 existing power generating and manufacturing and industrial facilities. In 2011, EPA conducted its original cost-benefit analysis using well-established methods that determined the benefits for fishing. EPA then determined that its first analysis was "incomplete" and recalculated the benefits by conducting a national "stated preference survey" that heavily focused on hypothetical questions.
"The results of this survey cannot be taken as credible estimates of potential benefits of the proposed rule and certainly cannot be used to justify spending hundreds of millions or potentially billions of dollars each year," wrote the Senators in the letter. "If EPA were to substitute the survey results for the original benefits calculation, it would interject arbitrariness and unpredictability in the regulatory process and allow regulators to justify actions based on public opinion surveys rather than sound science."
Signing today's letter are Sens. Vitter, James Inhofe (R-Okla.), Mike Crapo (R-Idaho), and John Boozman (R-Ark.).
Text of today's letter is below. Click here to see the PDF version.
July 22, 2013
Ms. Nancy K. Stoner
Acting Assistant Administrator for the Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, D.C. 20460
Dear Acting Assistant Administrator Stoner:
We write to express our concern regarding the Environmental Protection Agency's (EPA) apparent attempt to deliberately inflate benefits calculations in order to justify the high cost of a rule. EPA is seeking to exaggerate benefits through the use of a "stated preference survey"[1] to calculate the alleged "non-use" benefits of the proposed rule for cooling water intake structures under Section 316(b) of the Clean Water Act (CWA).[2] Use of a stated preference survey is inappropriate. Furthermore, reliance on non-use benefits, as opposed to traditional "use" benefits, to justify a significant regulation is without precedent and should not be permitted. Accordingly, we request that EPA refrain from using this survey as a basis for the final rule and stick to well-established methods to determine the costs and benefits of the regulation.
In April 2011, EPA issued a proposed rule under Section 316(b) of the CWA, which requires that standards governing cooling water intake structures reflect the best technology available (BTA) for minimizing adverse environmental impact.[3] EPA's proposed rule would set new standards for cooling water intake structures at approximately 1,260 existing power generating and manufacturing and

industrial facilities.[4] EPA is required by a modified court settlement agreement to publish the final rule by November 4, 2013.[5]

As part of its required regulatory analysis, EPA conducted an original cost-benefit analysis.[6] In this analysis, EPA used conventional methods to determine the use benefits for commercial and recreational fishing.[7] EPA then decided that its first cost-benefit analysis was "incomplete" and attempted to recalculate not only the use benefits, but the non-use benefits as well.[8] In order to do so, EPA conducted a national "stated preference survey" in which individuals, who would gain no direct benefit, were asked how much they were hypothetically willing to pay to prevent distant fish from being harmed.[9] Attempting to monetize non-use benefits in this way, and on this scale, is highly questionable.

As you may know, stated preference surveys are one of the most controversial methods for estimating non-use benefits because they are based on what individuals say they would do as opposed to what they are actually observed doing.[10] There are very few instances in which such a complicated and subjective tool can be used with any degree of reliability.[11] According to leading economists, stated preference surveys should only be used in situations where the resources are unique or limited and the impacts are substantial or irreversible.[12] This is not the case here. The results of this survey cannot be taken as credible estimates of potential benefits of the proposed rule and certainly cannot be used to justify spending hundreds of millions or potentially billions of dollars each year. Accordingly, EPA should not use the results of the stated preference survey as a basis for the final rule.

Additionally, EPA conducted two separate benefits analyses in little more than a year that resulted in dramatically different conclusions.[13] EPA's original cost-benefit analysis, using conventional methods, determined that the $466 million annual costs of the preferred option outweighed the $16.3 million annual benefits by a ratio of 29 to 1.[14] Conversely, the annual benefits from the stated preference survey were $2.275 billion for the preferred option, with a cost to benefit ratio of 1 to 5.[15] This is a substantial and questionable increase in benefits, all due to EPA's decision to rely on a controversial method to recalculate benefits. If EPA were to substitute the survey results for the original benefits calculation, the majority of all benefits would be non-use benefits as opposed to the traditionally calculated use benefits associated with commercial and recreational fishing. This would be highly unusual. EPA has never attempted to justify an entire regulation primarily on non-use benefits. Doing so now would set a dangerous precedent that would interject arbitrariness and unpredictability in the regulatory process and allow regulators to justify actions based on public opinion surveys rather than sound science.

EPA's previous estimate of use benefits associated with commercial and recreational fishing provides a far more accurate gauge of the potential benefits of the proposed rule than the results of the controversial stated preference survey. Accordingly, EPA should withdraw the survey and not attempt to use the results as a basis for the final rule.

If you have any questions regarding this letter, please feel free to have your staff contact the Senate Committee on Environment and Public Works at (202) 224-6176.

Sincerely,
David Vitter
U.S. Senator
James Inhofe
U.S. Senator
Mike Crapo
U.S. Senator
John Boozman
U.S. Senator

cc: Ken Kopocis
Senior Advisor for the Office of Water

ÿ

To: Stoner, Nancy[Stoner.Nancy@epa.gov]; Gilinsky, Ellen[Gilinsky.Ellen@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Kopocis, Ken[Kopocis.Ken@epa.gov]; Keehner, Denise[Keehner.Denise@epa.gov]; Lape, Jeff[lape.jeff@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Sawyers, Andrew[Sawyers.Andrew@epa.gov]; Southerland, Elizabeth[Southerland.Elizabeth@epa.gov]; Grevatt, Peter[Grevatt.Peter@epa.gov]; Frace, Sheila[Frace.Sheila@epa.gov]; Bissonette, Eric[Bissonette.Eric@epa.gov]
Cc: Telleen, Katherine[Telleen.Katherine@epa.gov]; Flaharty, Stephanie[Flaharty.Stephanie@epa.gov]; Zipf, Lynn[Zipf.Lynn@epa.gov]; Faller, Heidi[Faller.Heidi@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Lousberg, Macara[Lousberg.Macara@epa.gov]; Evalenko, Sandy[Evalenko.Sandy@epa.gov]; Skane, Elizabeth[Skane.Elizabeth@epa.gov]; Ruf, Christine[Ruf.Christine@epa.gov]; Loop, Travis[Loop.Travis@epa.gov]; Scozzafava, MichaelE[Scozzafava.MichaelE@epa.gov]; Code, Tanya[Code.Tanya@epa.gov]; Ortiz, Agnes[Ortiz.Agnes@epa.gov]; Krieger, Andrew[Krieger.Andrew@epa.gov]; Lopez-Carbo, Maria[Lopez-Carbo.Maria@epa.gov]; Sanelli, Diane[Sanelli.Diane@epa.gov]; Peterson, Jeff[Peterson.Jeff@epa.gov]; Bathersfield, Nizanna[Bathersfield.Nizanna@epa.gov]; Penman, Crystal[Penman.Crystal@epa.gov]
From: Nelson, Tomeka
Sent: Fri 7/19/2013 8:05:19 PM
Subject: 2-week review report
7.19.2013 OP Review Status Update and Planning.docx

To: Kopocis, Ken[Kopocis.Ken@epa.gov]
From: Poirier, Bettina (EPW)
Sent: Thur 7/18/2013 1:30:29 PM
Subject: RE: Are you comng to naming ceremony?

Thanks

Sent with Good (www.good.com)

-----Original Message-----
From: Kopocis, Ken [Kopocis.Ken@epa.gov]
Sent: Thursday, July 18, 2013 09:01 AM Eastern Standard Time
To: Poirier, Bettina (EPW)
Subject: RE: Are you comng to naming ceremony?

The Senator's focus was Bristol Bay assessment, using stated preference survey in benefit calculation for the section 316(b) rule (cooling water intakes), upcoming stormwater rule and small business consultation, post-*Sackett* "consult a lawyer" language, and general agency credibility.

Garret is helping with the Senator and staff.

From: Poirier, Bettina (EPW) [mailto:Bettina_Poirier@epw.senate.gov]
Sent: Thursday, July 18, 2013 8:43 AM
To: Kopocis, Ken
Subject: RE: Are you comng to naming ceremony?

What did vitter focus on? Is garrett helping...

Sent with Good (www.good.com)

-----Original Message-----
From: Kopocis, Ken [Kopocis.Ken@epa.gov]
Sent: Thursday, July 18, 2013 07:53 AM Eastern Standard Time
To: Poirier, Bettina (EPW)
Subject: RE: Are you comng to naming ceremony?

It was great. Mr. Clinton makes every event special, and the Chairman was very good.

Unclear about filibuster deal. Some talk of it helping Jim and Avi, but may still be CWA jurisdiction issues to hold me up.

Senator Vitter did not ask about waters of the U.S. I expect Mr. Barrasso will.

We'll see.

Ken

From: Poirier, Bettina (EPW) [mailto:Bettina_Poirier@epw.senate.gov]
Sent: Wednesday, July 17, 2013 8:20 PM
To: Kopocis, Ken
Subject: RE: Are you comng to naming ceremony?

Great day today, wondering if filibuster deal could help you...

Sent with Good (www.good.com)

-----Original Message-----
From: Kopocis, Ken [Kopocis.Ken@epa.gov]
Sent: Wednesday, July 17, 2013 08:36 AM Eastern Standard Time
To: Poirier, Bettina (EPW)
Subject: RE: Are you comng to naming ceremony?

I plan to. Paul sent me an invite last night and I sent an RSVP.
Ken

-----Original Message-----
From: Poirier, Bettina (EPW) [mailto:Bettina_Poirier@epw.senate.gov]
Sent: Wednesday, July 17, 2013 7:02 AM
To: Kopocis, Ken
Subject: Are you comng to naming ceremony?

Sent with Good (www.good.com)

To: KeyesFleming, Gwen[KeyesFleming.Gwendolyn@epa.gov]
Cc: Stoner, Nancy[Stoner.Nancy@epa.gov]; Gilinsky, Ellen[Gilinsky.Ellen@epa.gov]; Kopocis, Ken[Kopocis.Ken@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Scozzafava, MichaelE[Scozzafava.MichaelE@epa.gov]
From: Lousberg, Macara
Sent: Thur 7/18/2013 11:58:38 AM
Subject: OW Actions over next 12 months
OW Activities to be Completed in the Next Year.docx

Good morning. At Nancy's request, I'm forwarding the list of OW actions that will be completed over the next year. If there are any questions, please let me know. Thanks.

Macara

Macara Lousberg

Director, Water Policy Staff

Office of Water

U.S. EPA

202-564-5576

lousberg.macara@epa.gov

Draft – July 17, 2013

Draft Table of Contents for Ken Kopocis Confirmation Hearing Binder

1. **Written Statement** (Ken can plug in)

2. **EPW Member List, Bios, and Invitation Letter**

3. **Fact Sheets on Key Policy Issues**

Ex. 5 - Deliberative

316(b) / Cooling Water Intakes

Ex. 5 - Deliberative

Draft – July 17, 2013

Ex. 5 - Deliberative

To: Stoner, Nancy[Stoner.Nancy@epa.gov]; Kopocis, Ken[Kopocis.Ken@epa.gov]; Gilinsky, Ellen[Gilinsky.Ellen@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Keehner, Denise[Keehner.Denise@epa.gov]; Evans, David[Evans.David@epa.gov]; Southerland, Elizabeth[Southerland.Elizabeth@epa.gov]; Lape, Jeff[lape.jeff@epa.gov]; Sawyers, Andrew[Sawyers.Andrew@epa.gov]; Frace, Sheila[Frace.Sheila@epa.gov]; Bissonette, Eric[Bissonette.Eric@epa.gov]; Lopez-Carbo, Maria[Lopez-Carbo.Maria@epa.gov]; Skane, Elizabeth[Skane.Elizabeth@epa.gov]; Code, Tanya[Code.Tanya@epa.gov]; Faller, Heidi[Faller.Heidi@epa.gov]; Peterson, Jeff[Peterson.Jeff@epa.gov]; Dombrowski, John[Dombrowski.John@epa.gov]; Bravo, Antonio[Bravo.Antonio@epa.gov]; Gude, Karen[Gude.Karen@epa.gov]; Lalley, Cara[Lalley.Cara@epa.gov]; Loop, Travis[Loop.Travis@epa.gov]
Cc: Altieri, Sonia[Altieri.Sonia@epa.gov]; Cash, Debbie[Cash.Debbie@epa.gov]; Penman, Crystal[Penman.Crystal@epa.gov]; Magruder, DeMara[Magruder.Demara@epa.gov]; Wilson, Elaine[Wilson.Elaine@epa.gov]
From: Lousberg, Macara
Sent: Tue 7/16/2013 6:27:31 PM
Subject: Annotated agenda for 7/17/13 Industry Stakeholders Coffee
Industry Stakeholder Coffee annotated agenda july 17 2013.docx

Forwarding the annotated agenda for tomorrow's industry stakeholder coffee. In Sonia's absence, please let me know if you have any questions. Thx.

Macara

Industry Stakeholder Coffee
Wednesday, July 17, 2013
9:00 - 10:00 a.m.
Room 3233 EPA East, 1201 Constitution Avenue, N.W.
Call-in Number: 1-866-299-3188, conference code: 202-564-5066

AGENDA

PENDING ACTIONS

1. Proposal to revise Water Quality Standards Regulation – Betsy Southerland will represent OST
   Requested by Amanda E. Aspatore, Associate General Counsel, National Mining Association

2. National Primary Drinking Water Regulation: Group Regulation of Carcinogenic Volatile Compounds – Eric Bissonette will represent OGWDW
   Requested by Dawn Kristof Champney, President, Water and Wastewater Equipment Manufacturers Assn. (WWEMA)

3. CCL – Reg. Det. 3 – Eric Bissonette will represent OGWDW
   Requested by Dawn Kristof Champney, President, WWEMA

4. 2012 Preliminary 304(m) Plan – Betsy Southerland will represent OST
   Requested by Dawn Kristof Champney, President, WWEMA

5. Electronic Reporting Rule – John Dombrowski from OECA will provide update
   Requested by Dawn Kristof Champney, President, WWEMA

6. Update: National Stormwater Rulemaking – Andrew Sawyers and Betsy Southerland will represent OW
   Requested by Glynn Rountree, Program Manager for Environmental Policy, National Association of Home Builders; Dawn Kristof Champney, President, WWEMA; and Amanda E. Aspatore, Associate General Counsel, National Mining Association

7. Multi Sector General Permit – Andrew Sawyers will represent OWM
   Update requested by Amanda E. Aspatore, Associate General Counsel, National Mining Association

IO **(Jeff Peterson will represent the IO)**

8. Interagency Water and Climate Adaptation Workgroup's Freshwater National Adaptation Strategy – update on implementation activities _Requested by Theresa Pugh; Director, Environmental Services; APPA

OGWDW **(Eric Bissonette will represent OGWDW)**

9. Update: Perchlorate
   Requested by Dawn Kristof Champney, President, WWEMA

10. Hexavalent Chromium (Chromium-6)
    Requested by Dawn Kristof Champney, President, WWEMA

11. Stage 2 Disinfection By-Product Rule and 'Chlorine Burns'
    Requested by Jack Adams, Director Government Affairs, Calgon Carbon Corporation

    Note: Dawn Kristof Champney from WWEMA requested an update on the HF study but none of the ORD experts are available for this meeting, so ORD suggested we postpone the topic until the next industry stakeholders meeting.

OST **(Betsy Southerland will represent OST)**

12. Coal ash as legacy wastes in the Steam Electric ELG rulemaking
    Requested by Theresa Pugh, Director, Environmental Services, APPA

13. 316(b) update
    Requested by Dawn Kristof Champney, President, WWEMA; and Theresa Pugh, Director, Environmental Services, APPA
    Specific question from APPA regarding use of biological studies and request for EPA to hold calls or webinars to share information about conducting the studies.

14. Thermal discharges; any plans for EPA to address this issue?
    Requested by Theresa Pugh, Director, Environmental Services, APPA

15. New nutrient report; barriers and solutions for states to develop and implement water quality criteria for nitrogen/phosphorus.
    Requested by Dawn Kristof Champney, President, WWEMA

16. Update: Conductivity criteria development
    Requested by Amanda E. Aspatore, Associate General Counsel, National Mining Association

17. Update: Selenium criteria development
    Requested by Amanda E. Aspatore, Associate General Counsel, National Mining Association; and Dawn Kristof Champney, President, WWEMA

18. Update: Ammonia criteria development
    Requested by Dawn Kristof Champney, President, WWEMA

19. Update: Chloride criteria development
    Requested by Dawn Kristof Champney, President, WWEMA

OWOW **(Dave Evans will represent OWOW)**

20. Update: Waters of the U.S.
    Requested by Theresa Pugh, Director, Environmental Services, APPA; and Amanda E. Aspatore; Associate General Counsel; National Mining Association

21. Update: Bristol Bay Watershed Assessment
    Requested by Amanda E. Aspatore, Associate General Counsel, National Mining Association

Cooling Water Intake Rules for Existing Facilities (316(b))

Overview

§ 316(b) of the Clean Water Act (CWA) provides for the establishment of technology-based standards to minimize the ecological damage to eggs, larvae, fish and other aquatic creatures from cooling water intake structures. The regulations focus on ecological damage due to impingement (fish hitting screens) and entrainment (smaller fish, larvae and eggs passing through screens and drawn into the facility). Several technologies exist to deal with impingement, but the most effective technology for entrainment is closed cycle cooling, also called cooling towers.

In order to settle outstanding litigation over a previous consent decree and another case, EPA entered into a settlement agreement with Riverkeeper. EPA published a proposed rule in April 2011, which would cover roughly 1,065 existing facilities (manufacturers or power plants) that each withdraw at least 2 million gallons per day of cooling water. The proposed rule would require all facilities to meeting national impingement requirements, but entrainment requirements are dealt with on a site-specific basis by the permitting authority. The proposed rule would require larger facilities to perform studies to aid the permitting authority in its site-specific determination. In addition, any new units added to an existing facility would be required to adopt closed cycle cooling.

EPA issued two Notices of Data Availability (NODAs) in June 2012. NODA 1 describes impingement (fish hitting screens) flexibilities in response to comments EPA received on the proposed rule. NODA 2 describes preliminary results from a stated preference survey regarding households' willingness to pay for reductions in fish mortality. Ex. 5 - Deliberative

Ex. 5 - Deliberative

To: Stoner, Nancy[Stoner.Nancy@epa.gov]; Gilinsky, Ellen[Gilinsky.Ellen@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Kopocis, Ken[Kopocis.Ken@epa.gov]; Lape, Jeff[lape.jeff@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Sawyers, Andrew[Sawyers.Andrew@epa.gov]; Southerland, Elizabeth[Southerland.Elizabeth@epa.gov]; Grevatt, Peter[Grevatt.Peter@epa.gov]; Frace, Sheila[Frace.Sheila@epa.gov]; Evans, David[Evans.David@epa.gov]; Clark, Becki[Clark.Becki@epa.gov]
Cc: Telleen, Katherine[Telleen.Katherine@epa.gov]; Flaharty, Stephanie[Flaharty.Stephanie@epa.gov]; Zipf, Lynn[Zipf.Lynn@epa.gov]; Faller, Heidi[Faller.Heidi@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Lousberg, Macara[Lousberg.Macara@epa.gov]; Evalenko, Sandy[Evalenko.Sandy@epa.gov]; Skane, Elizabeth[Skane.Elizabeth@epa.gov]; Ruf, Christine[Ruf.Christine@epa.gov]; Loop, Travis[Loop.Travis@epa.gov]; Krieger, Andrew[Krieger.Andrew@epa.gov]; Lopez-Carbo, Maria[Lopez-Carbo.Maria@epa.gov]; Sanelli, Diane[Sanelli.Diane@epa.gov]; Peterson, Jeff[Peterson.Jeff@epa.gov]; Bathersfield, Nizanna[Bathersfield.Nizanna@epa.gov]; Penman, Crystal[Penman.Crystal@epa.gov]; Nelson, Tomeka[Nelson.Tomeka@epa.gov]; Nandi, Romell[Nandi.Romell@epa.gov]; Tarquinio, Ellen[Tarquinio.Ellen@epa.gov]
From: Nelson, Tomeka
Sent: Mon 2/3/2014 1:43:19 PM
Subject: 2-week review report
2.3.2014 OP Review Status Update and Planning (2).docx

Tomeka Nelson

OW Water Policy Staff (Detail)

202-566-1291

3226C - WJC East

To: Beauvais, Joel[Beauvais.Joel@epa.gov]
Cc: Balserak, Paul[Balserak.Paul@epa.gov]; Barron, Alex[Barron.Alex@epa.gov]; Southerland, Elizabeth[Southerland.Elizabeth@epa.gov]; Stoner, Nancy[Stoner.Nancy@epa.gov]; Kopocis, Ken[Kopocis.Ken@epa.gov]; Levine, MaryEllen[levine.maryellen@epa.gov]; Witt, Richard[Witt.Richard@epa.gov]; Wade, Alexis[Wade.Alexis@epa.gov]; Hewitt, Julie[Hewitt.Julie@epa.gov]; Biddle, Lisa[Biddle.Lisa@epa.gov]; Shriner, Paul[Shriner.Paul@epa.gov]; Hoffman, Wendy[Hoffman.Wendy@epa.gov]; Pritts, Jesse[Pritts.Jesse@epa.gov]; Zipf, Lynn[Zipf.Lynn@epa.gov]; Clark, Donetta[Clark.Donetta@epa.gov]; Lape, Jeff[lape.jeff@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Born, Tom[Born.Tom@epa.gov]
From: Wood, Robert
Sent: Fri 1/31/2014 11:14:50 PM
Subject: 316(b) Rule and Preamble
EO12866_Cooling Water Intakes_2040-AE95_Final_Rule_20140131.TrackChanges.docx
EO12866_Cooling Water Intakes_2040_Final_Preamble_20140131.TrackChanges.docx

Attached are the revised rule and preamble in redline showing all changes made since the 11/27/14 version. Today's revision incorporates all comments to date from OW and OGC. I'm sure we will be discussing Monday once you have reviewed the package. Many thanks again to the incredible 316(b) Team. You continue to do whatever it takes and it is impressive.

Robert K. Wood, Director

Engineering and Analysis Division

U.S. EPA Office of Water

202-566-1822

To: Stoner, Nancy[Stoner.Nancy@epa.gov]
From: Stoner, Nancy
Sent: Fri 1/31/2014 11:14:33 PM
Subject: OW Hot Issues

We have a lot going on this week. Ken and I are both in town and working particularly hard on Bristol Bay, Waters of the US, and 316(b). Things are going well on the first 2. We won't know how well we are doing on 316(b) until the Principals meeting ÿ

To: Wood, Robert[Wood.Robert@epa.gov]; Southerland, Elizabeth[Southerland.Elizabeth@epa.gov]; Stoner, Nancy[Stoner.Nancy@epa.gov]
From: Kopocis, Ken
Sent: Fri 1/31/2014 10:27:08 PM
Subject: Re: Will be sending 316(b) rule and preamble to OP within the hour.

Thanks.
I am not in the office so electronic is fine.
I told Joel of our plans to send to OP today, and likely discuss on Monday
Ken

From: Wood, Robert
Sent: Friday, January 31, 2014 5:20:04 PM
To: Southerland, Elizabeth; Kopocis, Ken; Stoner, Nancy
Subject: Will be sending 316(b) rule and preamble to OP within the hour.

Robert K. Wood
Director,
Engineering and Analysis Division
U.S. EPA Office of Water
ÿ

To: Kopocis, Ken[Kopocis.Ken@epa.gov]; Feldt, Lisa[Feldt.Lisa@epa.gov]
Cc: Stoner, Nancy[Stoner.Nancy@epa.gov]; Gilinsky, Ellen[Gilinsky.Ellen@epa.gov]; Maddox, Donald[Maddox.Donald@epa.gov]; Penman, Crystal[Penman.Crystal@epa.gov]
From: Bond, Brian
Sent: Fri 1/31/2014 1:21:05 PM
Subject: RE: Meeting with IBEW

Great – I will circle back with them – and work with Crystal and Don on this. Thanks everyone.

Brian K. Bond

Senior Advisor for Public Engagement

Office of the Administrator

U.S. Environmental Protection Agency

(202) 564-6498

From: Kopocis, Ken
Sent: Thursday, January 30, 2014 3:37 PM
To: Feldt, Lisa
Cc: Stoner, Nancy; Gilinsky, Ellen; Bond, Brian
Subject: Re: Meeting with IBEW

Absolutely.

From: Feldt, Lisa
Sent: Thursday, January 30, 2014 3:30:00 PM
To: Kopocis, Ken
Cc: Stoner, Nancy; Gilinsky, Ellen; Bond, Brian
Subject: FW: Meeting with IBEW

Ken, We will need to meet with these folks to listen to their perspective and thoughts. They are aware that nothing is imminent but probably the sooner the better. Brian will coordinate. Sound good?

Lisa Feldt

Associate Deputy Administrator

Office of the Administrator

Environmental Protection Agency

office: 202-564-4711

From: Bond, Brian
Sent: Wednesday, January 29, 2014 6:14 PM
To: Feldt, Lisa
Subject: FW: Meeting with IBEW

Thanks Ann – will start working on this now.

Brian K. Bond

Senior Advisor for Public Engagement

Office of the Administrator

U.S. Environmental Protection Agency

(202) 564-6498

From: Miller, Ann [mailto:Ann_Miller@IBEW.org]
Sent: Wednesday, January 29, 2014 6:11 PM
To: Bond, Brian
Cc: Burton, Bruce G.
Subject: Meeting with IBEW

Hi Brian

Great to talk with you yesterday, and below is more information on the proposed 316(b) cooling water intakes standard we discussed (albeit very briefly). We welcome the chance to meet with you and EPA staff on this issue and given the expected timeline on the announcement of the standard, appreciate very much your accommodation of this meeting very quickly. Participants in the meeting from IBEW would include my colleague Bruce Burton in the Political/Legislative department here at IBEW, and me – depending on schedules, we may also include Breana Malloy, who's also in the IBEW Political/Legislative department. While we'll certainly try to accommodate your team's schedule, we'd be available Friday afternoon January 31, or anytime next week except Monday, February 3rd; please feel free to contact either Bruce (cc'ed here on this email) or me with any questions (though if the questions are policy related please feel free to contact Bruce directly!).

By way of initial and cursory background on this: on August 16, 2011, President Hill submitted formal comments to the EPA regarding the proposed 316(b) cooling water intakes standard and I've attached that letter in which President Hill asked EPA to be flexible with the proposed standard regarding aquatic impingement and recommended EPA revise its proposed impingement standard to mirror the proposed entrainment standard, allowing site-by-site determination of what constitutes best technology available. We can obviously address those comments in more detail when we meet; recent actions including the delayed announcement are of additional concern, too.

Thanks again for your help with this meeting, Brian – not to mix metaphors here but I am swimming out of my depth on this regulation (my 3 weeks at IBEW might be showing just a bit!) and really appreciate your responding so quickly yesterday. And look forward to hearing back from you.

Ann

Ann Miller

International Brotherhood of Electrical Workers

Political/Legislative Department

Office 202-728-6087

Cell 202-230-8526

Ann_Miller@ibew.org

To: Feldt, Lisa[Feldt.Lisa@epa.gov]
Cc: Stoner, Nancy[Stoner.Nancy@epa.gov]; Gilinsky, Ellen[Gilinsky.Ellen@epa.gov]; Bond, Brian[Bond.Brian@epa.gov]
From: Kopocis, Ken
Sent: Thur 1/30/2014 8:36:41 PM
Subject: Re: Meeting with IBEW

Absolutely.

From: Feldt, Lisa
Sent: Thursday, January 30, 2014 3:30:00 PM
To: Kopocis, Ken
Cc: Stoner, Nancy; Gilinsky, Ellen; Bond, Brian
Subject: FW: Meeting with IBEW

Ken, We will need to meet with these folks to listen to their perspective and thoughts. They are aware that nothing is imminent but probably the sooner the better. Brian will coordinate. Sound good?

Lisa Feldt

Associate Deputy Administrator

Office of the Administrator

Environmental Protection Agency

office: 202-564-4711

From: Bond, Brian
Sent: Wednesday, January 29, 2014 6:14 PM
To: Feldt, Lisa
Subject: FW: Meeting with IBEW

Thanks Ann – will start working on this now.

Brian K. Bond

Senior Advisor for Public Engagement

Office of the Administrator

U.S. Environmental Protection Agency

(202) 564-6498

From: Miller, Ann [mailto:Ann_Miller@IBEW.org]
Sent: Wednesday, January 29, 2014 6:11 PM
To: Bond, Brian
Cc: Burton, Bruce G.
Subject: Meeting with IBEW

Hi Brian

Great to talk with you yesterday, and below is more information on the proposed 316(b) cooling water intakes standard we discussed (albeit very briefly). We welcome the chance to meet with you and EPA staff on this issue and given the expected timeline on the announcement of the standard, appreciate very much your accommodation of this meeting very quickly. Participants in the meeting from IBEW would include my colleague Bruce Burton in the Political/Legislative department here at IBEW, and me – depending on schedules, we may also include Breana Malloy, who's also in the IBEW Political/Legislative department. While we'll certainly try to accommodate your team's schedule, we'd be available Friday afternoon January 31, or anytime next week except Monday, February 3rd; please feel free to contact either Bruce (cc'ed here on this email) or me with any questions (though if the questions are policy related please feel free to contact Bruce directly!).

By way of initial and cursory background on this: on August 16, 2011, President Hill submitted formal comments to the EPA regarding the proposed 316(b) cooling water intakes standard and I've attached that letter in which President Hill asked EPA to be flexible with the proposed standard regarding aquatic impingement and recommended EPA revise its proposed impingement standard to mirror the proposed entrainment standard, allowing site-by-site determination of what constitutes best technology available. We can obviously address those comments in more detail when we meet; recent actions including the delayed announcement are of additional concern, too.

Thanks again for your help with this meeting, Brian – not to mix metaphors here but I am swimming out of my depth on this regulation (my 3 weeks at IBEW might be showing just a bit!) and really appreciate your responding so quickly yesterday. And look forward to hearing back from you.

Ann

Ann Miller

International Brotherhood of Electrical Workers

Political/Legislative Department

Office 202-728-6087

Cell 202-230-8526

Ann_Miller@ibew.org

To: Wood, Robert[Wood.Robert@epa.gov]; Stoner, Nancy[Stoner.Nancy@epa.gov]; Kopocis, Ken[Kopocis.Ken@epa.gov]
Cc: Levine, MaryEllen[levine.maryellen@epa.gov]; Witt, Richard[Witt.Richard@epa.gov]; Wade, Alexis[Wade.Alexis@epa.gov]; Hewitt, Julie[Hewitt.Julie@epa.gov]; Biddle, Lisa[Biddle.Lisa@epa.gov]; Shriner, Paul[Shriner.Paul@epa.gov]; Hoffman, Wendy[Hoffman.Wendy@epa.gov]; Pritts, Jesse[Pritts.Jesse@epa.gov]; Zipf, Lynn[Zipf.Lynn@epa.gov]; Clark, Donetta[Clark.Donetta@epa.gov]
From: Southerland, Elizabeth
Sent: Thur 1/30/2014 7:28:03 PM
Subject: RE: 316(b) Rule Language

The 316b team is incredible!!!!! I am so impressed with all the hard work that went into developing this new rule package. I realize you have all worked nights and weekends for an extended period of time in order to get this to us today. The rule was very well-done, and I look forward to reviewing immediately this new preamble. Thanks so much for your dedication and professionalism.

Elizabeth Southerland, Director

Office of Science & Technology

Office Water

Room 5233A - MC - 4301T

Washington, D. C. 20460

Direct: (202) 566-0328

Fax: (202) 566-0441

From: Wood, Robert
Sent: Thursday, January 30, 2014 2:22 PM
To: Southerland, Elizabeth; Stoner, Nancy; Kopocis, Ken
Cc: Levine, MaryEllen; Witt, Richard; Wade, Alexis; Hewitt, Julie; Biddle, Lisa; Shriner, Paul; Hoffman, Wendy; Pritts, Jesse; Zipf, Lynn; Clark, Donetta
Subject: RE: 316(b) Rule Language

Attached is the revised preamble in redline showing all changes made since the 11/27/14 version. We will deliver hard copies to Ken and Nancy shortly. Many thanks to Julie and the incredible 316(b) Team.

Robert K. Wood, Director

Engineering and Analysis Division

U.S. EPA Office of Water

202-566-1822

To: Southerland, Elizabeth[Southerland.Elizabeth@epa.gov]; Stoner, Nancy[Stoner.Nancy@epa.gov]; Kopocis, Ken[Kopocis.Ken@epa.gov]
Cc: Levine, MaryEllen[levine.maryellen@epa.gov]; Witt, Richard[Witt.Richard@epa.gov]; Wade, Alexis[Wade.Alexis@epa.gov]; Hewitt, Julie[Hewitt.Julie@epa.gov]; Biddle, Lisa[Biddle.Lisa@epa.gov]; Shriner, Paul[Shriner.Paul@epa.gov]; Hoffman, Wendy[Hoffman.Wendy@epa.gov]; Pritts, Jesse[Pritts.Jesse@epa.gov]; Zipf, Lynn[Zipf.Lynn@epa.gov]; Clark, Donetta[Clark.Donetta@epa.gov]
From: Wood, Robert
Sent: Thur 1/30/2014 7:22:19 PM
Subject: RE: 316(b) Rule Language
EO12866_Cooling Water Intakes_2040_Final_Preamble_20140130.TrackChanges.docx

Attached is the revised preamble in redline showing all changes made since the 11/27/14 version. We will deliver hard copies to Ken and Nancy shortly. Many thanks to Julie and the incredible 316(b) Team.

Robert K. Wood, Director

Engineering and Analysis Division

U.S. EPA Office of Water

202-566-1822

To: Southerland, Elizabeth[Southerland.Elizabeth@epa.gov]; Stoner, Nancy[Stoner.Nancy@epa.gov]; Kopocis, Ken[Kopocis.Ken@epa.gov]
Cc: Levine, MaryEllen[levine.maryellen@epa.gov]; Witt, Richard[Witt.Richard@epa.gov]; Wade, Alexis[Wade.Alexis@epa.gov]; Hewitt, Julie[Hewitt.Julie@epa.gov]; Biddle, Lisa[Biddle.Lisa@epa.gov]; Shriner, Paul[Shriner.Paul@epa.gov]; Zipf, Lynn[Zipf.Lynn@epa.gov]
From: Wood, Robert
Sent: Thur 1/30/2014 1:33:27 PM
Subject: 316(b) Rule Language
EO12866_Cooling Water Intakes_2040-AE95_Final_Rule_20140130 Track Changes.docx

Attached is the revised rule language in redline showing all changes made since the 11/27/14 version. Preamble to follow this afternoon. We will deliver hard copies to Ken and Nancy shortly. Thanks everyone.

Rob

Robert K. Wood, Director

Engineering and Analysis Division

U.S. EPA Office of Water

202-566-1822

Case No. 12-1860

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

In re SIERRA CLUB and OUR CHILDREN EARTH FOUNDATION,

Petitioners.

RESPONDENT EPA RESPONSE TO PETITION FOR MANDAMUS

Of Counsel:

MARK STEIN
U.S. Environmental Protection Agency
Office of Regional Counsel
5 Post Office Square Suite 100
(ORA 18-1)
Boston, MA 02109-3912

DAWN MESSIER
SYLVIA HORWITZ
U.S. Environmental Protection Agency
Office of General Counsel
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

IGNACIA S. MORENO
Assistant Attorney General

AMY DONA
Environmental Defense Section
Environment & Natural Resources Div.
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044
Tel: (202) 514-0223
amy.dona@usdoj.gov

Attorneys for Respondents

TABLE OF CONTENTS

INTRODUCTION 1

BACKGROUND 2

I. EPA-ISSUED NPDES PERMITS 2

A. Setting Effluent Limitations in NPDES Permits 3

1. Permit Limits for Thermal Discharges 4

2. Permit Limits for Cooling Water Intake Structures. 6

B. Administrative Continuation of NPDES Permits 7

C. Procedures for the Re-Issuance of NPDES Permits 8

II. FACTUAL BACKGROUND 9

A. Region 1 NPDES Permit Program 9

B. Region 1 Action on the Facilities NPDES Permits 11

STANDARD OF REVIEW 12

ARGUMENT 13

I. SUBJECT MATTER JURISDICTION FOR JUDICIAL REVIEW OF ALLEGED UNREASONABLE DELAY OR SEEKING TO COMPEL THE ISSUANCE OF AN EPA-ISSUED NPDES PERMIT IS EXCLUSIVE IN THE COURT OF APPEALS 13

II. EPA IS ACTING ON THE FACILITIES NPDES PERMITS AND THE CIRCUMSTANCES HERE DO NOT WARRANT MANDAMUS 18

A. Mandamus Relief Is Not Warranted Under *TRAC* Factors 19

1. A rule of reason supports additional time in this case 20

2. Health and welfare concerns are not dispositive here

and do not counsel in favor of mandamus 23

3. EPA has competing priorities which impact the time frame for action on re-issuing NPDES permits.....25

4. Petitioners' claims of harm and prejudice do not warrant mandamus 27

5. There is no allegation of impropriety here 28

B. At Most, the Court Should Retain Jurisdiction While EPA Proceeds 28

CONCLUSION 30

TABLE OF AUTHORITIES

CASES

Am. Auto. Mfrs. Ass'n v. Mass. Dep't of Envtl. Prot.,
163 F.3d 74 (1st Cir. 1998) 19

Cal. Energy Comm'n v. Johnson,
767 F.2d 631 (9th Cir. 1985) 18

Chem. Mfrs. Ass'n v. EPA,
870 F.2d 177 (5th Cir. 1989) 17

City of Pittsfield, Mass. v. EPA,
614 F.3d 7 (1st Cir. 2010) 14

Clark v. Busey,
959 F.2d 808 (9th Cir. 1992) 18

Costle v. Pac. Legal Found.,
445 U.S. 198 (1980) 7, 16

Crown Simpson Pulp Co. v. Costle,
445 U.S. 193 (1980) 14

Cutler v. Hayes,
818 F.2d 879 (D.C. Cir. 1987) 20

Entergy Corp. v. Riverkeeper, Inc.,
556 U.S. 208 (2009) 6

EPA v. California ex rel. State Water Resources Control Bd.,
426 U.S. 200 (1976) 2

George Kabeller, Inc. v. Busey,
999 F.2d 1417 (11th Cir. 1993) 13

Grand Canyon Air Tour Coal. v. Fed. Aviation Admin.,
154 F.3d 455 (D.C. Cir. 1998) 22

Gulfstream Aerospace Corp. v. Mayacamas Corp.,
485 U.S. 271 (1988) 1

In re Barr Laboratories,
930 F.2d 72 (D.C. Cir. 1991) 25, 26

In re City of Fall River, Mass.,
470 F.3d 30 (1st Cir. 2006) 12

In re Core Commc'n, Inc.,
531 F.3d 849 (D.C. Cir. 2008) 20

In re Ctr. for Auto Safety,
793 F.2d 1346 (D.C. Cir. 1986) 13, 30

In re Monroe Commc'ns Corp.,
840 F.2d 942 (D.C. Cir. 1988) 26

In re United Mine Workers of Am. Int'l Union,
190 F.3d 545 (D.C. Cir. 1999) 21, 22

In re United Steelworkers of Am., AFL-CIO-CLC, v. Rubber Mfrs. Ass'n,
783 F.2d 1117 (D.C. Cir. 1986) 12

Independence Mining Co., Inc. v. Babbitt,
105 F.3d 502 (9th Cir. 1997) 12

Kerr v. U.S. Dist. Court for N. Dist. of Cal.,
426 U.S. 394 (1976) 12

Kitlutsisti v. ARCO Alaska, Inc.,
592 F. Supp. 832 (D. Alaska 1984) 17

Kitlutsisti v. ARCO Alaska, Inc.,
782 F.2d 800 (9th Cir. 1986) 17

Kokajko v. FERC,
837 F.2d 524 (1st Cir. 1988) 28

Maine v. Thomas,
874 F.2d 883 (1st Cir. 1989) 15

Mashpee Wampanoag Tribal Council, Inc. v. Norton,
336 F.3d 1094 (D.C. Cir. 2003) 20

Nat'l Wildlife Fed'n v. Browner,
No. 95-1811 (JHG), 1996 WL 601451 (D.D.C. Oct. 11, 1996), aff'd,
127 F.3d 1126 (D.C. Cir. 1997) 16

NRDC v. EPA,
859 F.2d 156 (D.C. Cir. 1988) 4, 8

Oil, Chem. & Atomic Workers Int'l Union v. Zegeer,
768 F.2d 1480 (D.C. Cir. 1985) 20

Pan-Atl. S.S. Corp. v. Atl. Coast Line R.R. Co.,
353 U.S. 436 (1957) 7

Pub. Util. Comm'r of Or. v. Bonneville Power Admin.,
767 F.2d 622 (9th Cir. 1985) 18

Sea Air Shuttle Corp. v. United States,
112 F.3d 532 (1st Cir. 1997) 13

Sierra Club v. Thomas,
828 F.2d 783 (D.C. Cir. 1987) 12, 15, 21, 23, 25

Telecomms. Research & Action v. FCC (TRAC),
750 F.2d 70 (D.C. Cir. 1984) 13, 14, 20, 21, 28, 30

Towns of Wellesley, Concord and Norwood, Mass. v. FERC,
829 F.2d 275 (1st Cir. 1987) 19

RULES

Fed. R. App. P. 43(c)(2) 1

STATUTES

5 U.S.C. § 551(8) 7

5 U.S.C. § 552 27

5 U.S.C. § 558 22

5 U.S.C. § 558(c) 7, 8

5 U.S.C. § 559 7

5 U.S.C. § 706(1) 16

33 U.S.C. § 1251(a) 2

33 U.S.C. § 1311 2

33 U.S.C. § 1311(a) 2

33 U.S.C. § 1311(b)(1)(C) 4

33 U.S.C. § 1311(b)(2)(A) 3, 5

33 U.S.C. § 1311(b)(2)(F) 5

33 U.S.C. § 1313 4

33 U.S.C. § 1314(b) 3

33 U.S.C. § 1314(b)(2)(B) 3

33 U.S.C. § 1326(a) 5

33 U.S.C. § 1326(b) 6

33 U.S.C. § 1342 2

33 U.S.C. § 1342(a), (b) 9

33 U.S.C. § 1342(a)(1)(B) 3

33 U.S.C. § 1342(b)(1)(B) 7, 21

33 U.S.C. § 1362(6) 4

33 U.S.C. § 1365(a)(2) 15, 18

33 U.S.C. § 1369(b) 9

33 U.S.C. § 1369(b)(1)(F) 14

STATE STATUTES

N.H. Rev. Stat. Ann. § 485-A:8(II), (VIII) 5

STATE CODE REGULATIONS

314 Mass. Code Regs. 4.03(1)(a), 4.05(3)(b)(2)(a), (b) (2013) 5

N.H. Code R. Env-W1 1703.01(b) & 1703.13(b) 5

CODE OF FEDERAL REGULATIONS

40 C.F.R. § 122.4(d) 3

40 C.F.R. § 122.6 ..... 8,16, 27

40 C.F.R. § 122.21 8

40 C.F.R. § 122.21(d) 8

40 C.F.R. § 122.21(g)(13) 8

40 C.F.R. § 122.41-50 3

40 C.F.R. § 122.44(b)(3) 4, 6

40 C.F.R. § 122.44(d)(1) 4

40 C.F.R. § 122.49 3

40 C.F.R. pt. 123 9

40 C.F.R. § 124.3 8

40 C.F.R. § 124.3(c) 8

40 C.F.R. § 124.6 8

40 C.F.R. § 124.6(e) 9

40 C.F.R. § 124.8(a) 9

40 C.F.R. § 124.9 9

40 C.F.R. § 124.10 27

40 C.F.R. § 124.10(b)(1) 9

40 C.F.R. § 124.15 9

40 C.F.R. § 124.17 9

40 C.F.R. § 124.19 9

40 C.F.R. pt. 125, Subpart H 5

40 C.F.R. § 125.3(c)(2), (d) 3,4, 5

40 C.F.R. § 125.73(c) 6

40 C.F.R. § 125.90(b) 6

40 C.F.R. § 130.3 4

40 C.F.R. pts. 405-471 3

40 C.F.R. pt. 423 4

FEDERAL REGISTER

45 Fed. Reg. 33,290 (May 19, 1980) 8

GLOSSARY

APA	Administrative Procedure Act, 5 U.S.C. §§ 551-559, 701-706
BAT	Best Available Technology, *see* 33 U.S.C. §§ 1311(b)(2)(A), 1314(2)(B); 40 C.F.R. § 125.3 (a)(2)(iv)
BPJ	Best Professional Judgment, *see* 33 U.S.C. § 1342(a)(1)(B); 40 C.F.R. § 125.3(a)(2)(iii)(B), (a)(2)(v)(B), (c)(2), (d)
BTA	Best Technology Available, *see* 33 U.S.C. § 1326(b); 40 C.F.R. § 125.90(b)
CWA	Clean Water Act, 33 U.S.C. §§ 1251, *et. seq.*
EPA	United States Environmental Protection Agency
ESA	Endangered Species Act, 16 U.S.C. §§ 1531, *et seq.*
MW	Megawatt (*i.e.,* one million watts of electricity)
NPDES	National Pollutant Discharge Elimination System, *see* 33 U.S.C. § 1342
WQS	Water quality standards, *see* 33 U.S.C. §§ 1311(b)(1)(C), 1313

INTRODUCTION

Respondents, the United States Environmental Protection Agency; Bob Perciasepe, in his official capacity as Acting Administrator, United States Environmental Protection Agency;[1] and Curt Spalding, in his official capacity as Regional Administrator, Region 1, United States Environmental Protection Agency (錢Region 1錢 or 錢Region 1錢 collectively 錢EPA錢 or 錢Agency錢) offer the following response to the petition for mandamus filed by Petitioners Sierra Club and Our Children Earth Foundation[2] (collectively 錢Petitioners錢).

Petitioners seek to compel EPA action by Petitioners preferred deadlines on National Pollutant Discharge Elimination System (錢NPDES錢) permits under the Clean Water Act (錢CWA錢 or 錢Act錢) for two steam electric power plants, Mt. Tom Station (錢Mt. Tom錢) in Massachusetts, and Schiller Station (錢Schiller錢) in New Hampshire (collectively the 錢Facilities錢). Petition at 1. Issuance of a writ of mandamus 錢is extraordinary remedy, to be reserved for extraordinary situations. 錢 *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 289 (1988). As discussed below, the resources required to issue a single NPDES permit to a steam electric power plant are extensive. EPA Region 1 (the EPA regional office responsible for

[1] Pursuant to Fed. R. App. P. 43(c)(2), Bob Perciasepe, the Acting Administrator of EPA, is automatically substituted for Respondent Lisa Jackson.

[2] Sierra Club has filed three affidavits in support of its standing to bring this petition for writ of mandamus; Our Children Earth Foundation has not attempted to demonstrate standing. *See* Petition Add. at 131-40.

these permits) is currently working on the NPDES permits and has a schedule for completing the complex technical, ecological, and economic analyses needed to draft these permits. However, the Region 's resources are limited, and these permits must be balanced against a number of competing priorities before the Region. Given these considerations, the Court should deny the mandamus petition.

BACKGROUND

I. EPA-ISSUED NPDES PERMITS

Congress enacted the CWA "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" through the reduction and eventual elimination of pollutant discharges to these waters. 33 U.S.C. § 1251(a). To accomplish this end, the CWA establishes a comprehensive regulatory program, key elements of which are: (1) a prohibition on the discharge of pollutants from point sources to waters of the United States, except as authorized by the CWA, *id.* § 1311(a); and (2) authority for EPA or authorized States or Tribes to issue NPDES permits that regulate the discharge of pollutants, *id.* § 1342, through technology-based effluent limitations and, as necessary to meet state water quality standards, more stringent water quality-based effluent limitations, *id.* § 1311.[3] *EPA v. California ex rel. State Water Resources Control Bd.*, 426 U.S. 200, 205 (1976).

[3] "NPDES permits also mandate pollutant discharge monitoring and reporting requirements, various best management practices, and other steps to control and

(footnote continued . . .)

DELIBERATIVE PROCESS PRIVILEGED DOCUMENT

A. Setting Effluent Limitations in NPDES Permits

Effluent limitations in an NPDES permit must, at a minimum, satisfy applicable technology-based standards. Technology-based effluent limitations are requirements based on the degree of pollution control that can be achieved by application of the specified level of treatment technology. *See, e.g.*, 33 U.S.C. §§ 1311(b)(2)(A), 1314(b)(2)(B) (limits based on the 鋟best available technology economically achievable 鏑 are to be met by March 31, 1989).

For certain industries, EPA has established effluent limitations guidelines through nationally-applicable regulations, which are the basis for technology-based limits in permits issued to facilities in those industrial categories. *See* 40 C.F.R. pts. 405-471. In the absence of such categorical guidelines, technology-based limits in permits are based on the applicable technology standards and are determined by permitting agencies on a case-by-case basis using 鋟best professional judgment (鏑BPJ 鏑). *See* 33 U.S.C. § 1342(a)(1)(B); 40 C.F.R. § 125.3(c)(2), (d). This case-specific analysis is, in essence, a 鋟 鄂mini-guidelines, 鏑 which 鋟the permit writer, after full consideration of the factors set forth in section 304(b), 33 U.S.C. § 1314(b), . . . establishes the permit conditions 鄂necessary to carry out the provisions of [the CWA]. 鈦

---

reduce water pollution. *See* 40 C.F.R. § 122.41-50. The NPDES permit-writing process must also account for other considerations such as whether discharge into the waters of one state may cause a violation of water quality standards in a downstream state, *id.* § 122.4(d), and other federal laws, *id.* § 122.49.

DRAFT/ATTORNEY WORK PRODUCT/PRIVILEGED AND CONFIDENTIAL

§ 1342(a)(1). 鍾 *NRDC v. EPA*, 859 F.2d 156, 199 (D.C. Cir. 1988); *see also* 40 C.F.R. § 125.3(c)(2), (d).

In addition to technology-based limits, an NPDES permit also must include any more stringent limits necessary to comply with applicable state water quality standards (鍾WQS33 鍾U.S.C. § 1311(b)(1)(C). This requires additional analysis for each discharged pollutant. State WQS specify designated uses that the state 鍾waterways must support, such as high quality fish habitat or primary contact recreation, and specify narrative and numeric criteria, such as specific ambient water temperatures or levels of dissolved oxygen saturation. *Id.* § 1313; 40 C.F.R. § 130.3. Water quality-based effluent limitations are determined by, in essence, back-calculating from the applicable WQS to determine the discharge limits needed to ensure compliance with those standards. 33 U.S.C. § 1311(b)(1)(C); 40 C.F.R. § 122.44(d)(1).

1. <u>Permit Limits for Thermal Discharges</u>

For many steam electric power plants, including Mt. Tom and Schiller, heat is one of the pollutants that the NPDES permits must address. *See* 33 U.S.C. § 1362(6); 40 C.F.R. § 122.44(b)(3). In 1982, EPA revised the effluent limitations guidelines for the steam electric category, but did not set limits for thermal discharges. 40 C.F.R. pt. 423. Thus, while an NPDES permit for a steam electric power plant must include technology-based limits in accordance with the guideline, for thermal discharges, EPA must perform a case-by-case BPJ analysis. The technology standard for heat is 鍾best available treatment technology economically achievable (鍾BAT鍾), requires

analysis of the technological, environmental, and economic factors specific to each power plant. *See* 33 U.S.C. § 1311(b)(2)(A), (F). Accordingly, when determining a technology-based effluent limitation for heat in a power plant permit, EPA evaluates the age of the equipment and facilities involved, the process employed, the engineering aspects of various types of control techniques, process changes, the cost of achieving pollutant reduction, and non-water quality environmental impacts (including energy requirements). *See* 40 C.F.R. § 125.3(c)(2), (d).

Likewise, water quality-based effluent limitations must be determined on a case-by-case basis in light of the state WQS applicable to the water body receiving the discharge. Both Massachusetts and New Hampshire have WQS pertaining to the thermal condition of their waters. *See* 314 Mass. Code Regs. 4.03(1)(a), 4.05(3)(b)(2)(a), (b) (2013) (Massachusetts WQS related to thermal discharges); N.H. Rev. Stat. Ann. § 485-A:8(II), (VIII) and N.H. Code R. Env-Wq 1703.01(b) and 1703.13(b) (New Hampshire WQS related to thermal discharges).

In addition, the CWA also includes a unique variance provision for thermal discharges. Under CWA section 316(a), 33 U.S.C. § 1326(a), a thermal discharger may qualify for less stringent technology and water quality-based effluent limitations if it can demonstrate that less stringent effluent limitations will nevertheless assure the protection and propagation of the receiving water body balanced, indigenous population of shellfish, fish, and wildlife. *See also* 40 C.F.R. pt. 125, Subpart H. A request for a thermal discharge variance under CWA section 316(a) requires additional

site-specific scientific analysis of the proposed discharge and its effects, in conjunction with other sources of impact. *See id.* § 125.73(c).

2. Permit Limits for Cooling Water Intake Structures

Pursuant to CWA section 316(b), NPDES permits must also include requirements ensuring 鋟that location, design, construc tion, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact, 鏸., 鋟BTA33 U鏸S.C. § 1326(b). The primary environmental concern associated with intake structures is that aquatic life (*e.g.*, fish eggs and larvae, juvenile and adult fish, and other organisms) will be pulled from the water body along with the cooling water and be killed or damaged. *See Entergy Corp. v. Riverkeeper, Inc.*, 556 U.S. 208, 213 (2009).

The regulatory landscape for cooling water intake structures has been in flux over the past 20 years. *See, e.g.*, *id.* at 213-17. EPA is presently scheduled to take final action on proposed nationally applicable standards governing intake structures at existing facilities, such as Mt. Tom and Schiller, by June 27, 2013. Declaration of David Webster (鋟Decl.¶ 56鏸However, in the absence of such regulations, section 316(b) conditions must be determined on a case-by-case BPJ basis. 40 C.F.R. §§ 122.44(b)(3), 125.90(b). To determine the BTA for a specific facility, EPA compares available technological alternatives, determines which are feasible and which achieve the greatest reductions in adverse environmental impacts, as well as the cost of each

option, its non-water environmental effects, its energy effects, and a comparison of its costs and benefits to determine if those costs are warranted. *Id.*

B. Administrative Continuation of NPDES Permits

CWA section 402(b)(1)(B) provides that NPDES permits have fixed terms up to five years, but the statute itself does not expressly address the effect of the expiration of those permits at the end of the stated term. 33 U.S.C. § 1342(b)(1)(B). Section 9(b) of the Administrative Procedure Act (鋟APA鋀), however, provides the general administrative rule[4] that applies to applications for renewal of a license or permit[5]:

> When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.

5 U.S.C. § 558(c). In *Costle v. Pacific Legal Foundation,* the Supreme Court explicitly recognized that the APA mandates continuance of an NPDES permit past its stated term if a timely and sufficient application has been filed but final agency action on the application has yet to occur. 445 U.S. 198, 210-11 n.10 (1980) (鋟Because the EPA has not yet acted upon the city 鋀s application . . . for a new NPDES permit, the terms and

---

[4] Congress made clear its intent that the APA sets forth the general rules governing federal administrative procedure by establishing that a 鋟[s]ubsequent statute may not be held to supersede or modify [the APA] except to the extent that it does so expressly. 鋀 *Id.* § 559; *see also Pan-Atl. S.S. Corp. v. Atl. Coast Line R.R. Co.*, 353 U.S. 436, 439 (1957) (upholding ICC 鋀s extension of a temporary permit beyond the 180-day statutory limit because 5 U.S.C. § 558(c) supplemented the time limit).

[5] The APA defines 鋟license鋀 to include 鋟the whole or a part of an agency permit . . . . 鋀 5 U.S.C. § 551(8).

conditions of the 1975 permit have remained in effect by operation of law, even though the permit expiration date has now passed. *See* 5 U.S.C. § 558(c) . . . . 鐳 (quotation from APA omitted). In 1980, shortly after the *Pacific Legal Foundation* decision, EPA promulgated a regulation expressly applying Section 9(b) of the APA to the continuation of expired NPDES permits. 45 Fed. Reg. 33,290, 33,425 (May 19, 1980), reprinted as amended at 40 C.F.R. § 122.6. The D.C. Circuit upheld the regulation, finding that it was consistent with both the CWA and the APA. *NRDC v. EPA*, 859 F.2d 156, 213-15 (D.C. Cir. 1988).

C. <u>Procedures for the Re-Issuance of NPDES Permits</u>

The NPDES permitting process is initiated when the discharger files a permit application providing information regarding the facility and the planned discharges. 40 C.F.R. §§ 122.21, 124.3. In the case of a permit renewal, the permittee must submit a renewal application no later than 180 days before the permit 鈥 expiration. *Id.* § 122.21(d). EPA reviews the application and notifies the applicant whether the application is complete. *Id.* § 124.3(c). If the applicant submits a timely and complete application, the current NPDES permit is administratively continued. *Id.* § 122.6.

Neither the CWA nor EPA 鈥 implementing regulations specifies a timeframe for issuing a NPDES permit. *See id.* § 124.6. EPA regulations provide for collection of additional information during the NPDES permit-development process. *See id.* §§ 122.21(g)(13), 124.3(c). An EPA-prepared draft permit is supported by an

administrative record, *id.* § 124.9, and accompanied by a Fact sheet setting forth principal facts and the significant fa ctual, legal, methodological and policy questions considered in preparing the draft permit, *id.* § 124.8(a). The Agency provides public notice of its proposed action and invites comment for a minimum of 30 days. *Id.* § 124.6(e). In addition, a public hearing may be held, after 30-days advance, public notice, which may extend the comment period. *Id.* § 124.10(b)(1).

EPA considers the public comments and makes its final permit decision based on the administrative record compiled during these proceedings. *Id.* § 124.15. Together with a final permit, EPA must issue written responses to public comments on the draft permit. *Id.* § 124.17. EPA-issued final NPDES permits are subject to judicial review in federal court following an administrative appeal to EPA Environmental Appeals Board. 33 U.S.C. § 1369(b); 40 C.F.R. § 124.19.

II. FACTUAL BACKGROUND

A. Region 1 NPDES Permit Program

The NPDES permit program may be administered by EPA or by states that have sought and obtained authorization to do so from EPA. *See* 33 U.S.C. § 1342(a), (b); 40 C.F.R. pt. 123. Within Region 1, EPA issues NPDES permits to facilities located in Massachusetts and New Hampshire, as well as certain other NPDES permits under various circumstances, and oversees and assists with the NPDES programs administered by Connecticut, Maine, Rhode Island, and Vermont. Decl. ¶ 9. Region

1 is responsible for issuing more major NPDES permits than any other EPA Regional office. *Id.* ¶ 26.

There is currently a backlog of NPDES permits that have been administratively-continued in Region 1 and throughout the United States. *Id.* ¶ 27. EPA has been tracking this backlog since 1999 and is working diligently to address it. *Id.* ¶ 28. Region 1 is working to reduce the backlog by prioritizing the permits of greatest environmental and programmatic significance, while simultaneously not ignoring any individual permit or category of permits, and has made progress in reducing its backlog with this approach. *Id.* ¶¶ 29-30, 34. At present, there is a backlog of approximately 150 administratively-continued permits in Region 1. *Id.* ¶ 30.

NPDES permits for power plants, such as Mt. Tom and Schiller, present a large number of complex, specialized scientific, technical and legal issues. *Id.* ¶¶ 35-64. In addition, the already complicated legal regime has been subject to significant uncertainty due to multiple changes in the applicable national standards. *Id.* ¶¶ 37, 51-55, 72(f), 73(b)-(e).

Despite these many challenges, Region 1 has made significant progress developing NPDES permits for multiple power plants. *Id.* ¶¶ 33, 65-81. These include large plants, *e.g.*, Brayton Point Station, and smaller plants in environmentally sensitive locations, *e.g.*, Kendall Station and the Wheelabrator Saugus facility. *Id.* ¶¶ 67-77. In addition, Region 1 is in various stages of developing permits for a number of other facilities, including, but not limited to, Mt. Tom and Schiller. *Id.* ¶¶ 33, 76, 78-81.

B. Region 1 Action on the Facilities' NPDES Permits

Mt. Tom is a small-to-moderate sized power plant in Holyoke, Massachusetts, capable of producing 146 megawatts (MW) of power, but in recent years, operated at approximately 20 percent capacity. *Id.* ¶ 80(a)(i), (iv). Mt. Tom is located on a bank of the Connecticut River, a large, multi-state river which flows southward to the Long Island Sound. *Id.* ¶ 80(a)(ii). The Mt. Tom NPDES permit expired on September 17, 1997, and was administratively continued by operation of law. *Id.* ¶ 80(a)(i).

Schiller is also a small-to-moderate sized power plant in Portsmouth, New Hampshire, capable of producing 150 MW of power, but operations have recently diminished significantly, with two of three units operating near 20 percent of capacity. *Id.* ¶ 80(b)(i), (iii). Schiller is located on a bank of the Piscataqua River, a fast-flowing, cold-water river which flows into the Atlantic Ocean. *Id.* ¶ 80(b)(ii). Schiller's NPDES permit expired on September 30, 1995, and was administratively continued by operation of law. *Id.* ¶ 80(b)(i).

Since 2004, Region 1 has sent multiple information requests to both Mt. Tom and Schiller and reviewed their responses. *Id.* ¶ 81(a)-(c), (e). The Region's permit development teams have also collected in-stream temperature data in the vicinity of the Facilities' thermal discharges, and conducted site visits at the Facilities in 2012 and

2013. *Id.* ¶ 81(d), (g). Region 1 has also begun necessary consultations under the Endangered Species Act (錂ESA 錂) ¶ 81(e).

STANDARD OF REVIEW

Mandamus is regarded as an extraordinary writ. *See Kerr v. U.S. Dist. Court for N. Dist. of Cal.*, 426 U.S. 394, 402 (1976) (錂The remedy of mandamus is a drastic one, to be invoked only in extraordinary situations. 錂). 錂Among its extraordinary preconditions are that the agency or official have acted (or failed to act) in disregard of a clear legal duty and that there be no adequate conventional means for review. 錂*In re City of Fall River, Mass.*, 470 F.3d 30, 32 (1st Cir. 2006).

Regarding unreasonable delay claims such as this, an agency is entitled to substantial deference in establishing a timetable for completing administrative proceedings. *Sierra Club v. Thomas*, 828 F.2d 783, 797 (D.C. Cir. 1987). The courts have recognized that they are generally 錂ill-suited to review the order in which an agency conducts its business and 錂 are 錂hesitant to upset an agency 錂priorities by ordering it to expedite one specific action, and thus to give it precedence over others. 錂 *Id.*

When the standard for mandamus relief is not met, the case should be dismissed. *See Sierra Club v. Thomas*, 828 F.2d at 799; *In re United Steelworkers of Am., AFL-CIO-CLC, v. Rubber Mfrs. Ass* 錂*n*, 783 F.2d 1117, 1120 (D.C. Cir. 1986). The courts also retain discretion to deny mandamus relief even when the elements for mandamus are otherwise satisfied. *Independence Mining Co., Inc. v. Babbitt*, 105 F.3d 502, 505 (9th Cir.

1997). Instead of issuing a writ, a court can retain jurisdiction to ensure that future agency action occurs in a timely manner. *In re Ctr. for Auto Safety*, 793 F.2d 1346, 1354 (D.C. Cir. 1986).

ARGUMENT

I. SUBJECT MATTER JURISDICTION FOR JUDICIAL REVIEW OF ALLEGED UNREASONABLE DELAY OR SEEKING TO COMPEL THE ISSUANCE OF AN EPA-ISSUED NPDES PERMIT IS EXCLUSIVE IN THE COURT OF APPEALS

This Court 鈥 jurisdiction over the present case is clear, contrary to Petitioners 鈥 view. Petition at 11-18. The petition asserts that EPA has unreasonably delayed in acting on two NPDES permit applications. *Id.* at 1. As this Court has recognized, it is well-established that where a statute commits exclusive jurisdiction to review an agency action to the courts of appeals, a suit challenging delay in taking that agency action is also subject to the exclusive jurisdiction of the courts of appeals. *See Sea Air Shuttle Corp. v. United States*, 112 F.3d 532, 535, 538 (1st Cir. 1997) (citing *George Kabeller, Inc. v. Busey*, 999 F.2d 1417, 1421 (11th Cir. 1993) and *Telecomms. Research & Action v. FCC* (*TRAC*), 750 F.2d 70, 76 (D.C. Cir. 1984)). The D.C. Circuit in *TRAC* noted that 鈥[b]ridging review of agency action in the Court of Appeals, Congress manifested an intent that the appellate court exercise sole jurisdiction over the class of claims covered by the statutory grant of review power. 鈥 750 F.2d at 77. Thus, in order to protect its future jurisdiction to review the final action, 鈥 where a statute commits review of agency action to the Court of Appeals, any suit seeking relief that

might affect the Circuit Court 鈥ture jurisd iction is subject to the exclusive review of the Court of Appeals. 鈥*d*. at 78-79.

Petitioners seek an order enjoining EPA to issue new or revised NPDES permits to Mt. Tom and Schiller. *See* Petition at 1, 30. Under CWA section 509(b)(1)(F), EPA 鈥ssuance or denial of an NPDES permit is subject to exclusive judicial review in the courts of appeals. 33 U.S.C. § 1369(b)(1)(F). Thus, under the doctrine recognized by the First Circuit in *Sea Air Shuttle*, a claim that asserts unreasonable delay in issuing an NPDES permit and seeks to compel the issuance of such permit is within the exclusive jurisdiction of the courts of appeals.

Congress expressly provided for judicial review of certain EPA agency actions under the CWA exclusively in the United States courts of appeals. Section 509(b)(1)(F) of the CWA vests exclusive jurisdiction in the courts of appeals to review 鈥Administrator 鈥action . . . in issuing or denying any permit under section 1342 of [the CWA]. 鈥 U.S.C. § 1369(b)(1)(F); *see also Crown Simpson Pulp Co. v. Costle*, 445 U.S. 193, 196-97 (1980) (holding that the court of appeals had jurisdiction under 33 U.S.C. § 1369(b)(1)(F) to review EPA 鈥desi sion regarding a state-issued CWA section 402 permit); *City of Pittsfield, Mass. v. EPA*, 614 F.3d 7, 10 (1st Cir. 2010) (鈥The CWA gives us jurisdiction to review the EPA 鈥ual federal permit action[.] 鈥The subject matter covered by CWA section 509 is indeed limited, as noted in the multiple cases cited in the Petition at 16-17, but the limited list of agency actions in CWA section 509 in no way limits the courts of appeals 鈥protective jurisdiction. There can be no

dispute that judicial review of Region 1 issuance of the Mt. Tom and Schiller NPDES permits lies within the exclusive subject matter of the court of appeals. Under the well-established doctrine of protective jurisdiction, set forth in *TRAC* and recognized by this Circuit in *SeaAir Shuttle*, jurisdiction for judicial review of this claim alleging unreasonable delay is exclusive in this Court.

The basis of Petitioners confusion appear s to be their failure to recognize the essential and mutually exclusive difference between claims that may be brought pursuant to section 505(a)(2) of the CWA and claims that assert unreasonable delay in violation of the APA. *See* Petition at 2, 14 (stating that they may assert additionally and alternatively both APA unreasona ble delay claims and CWA section 505 mandatory duty claims in district court). CWA section 505(a)(2), the citizens suit provision, provides subject matter jurisdiction in the district courts for claims alleging EPA failure to perform a duty that is nondiscretionary with the Administrator under the CWA. 33 U.S.C. § 1365(a)(2). In such a suit, the court may order EPA to perform [such nondiscretionary] act or duty. *Id.* However, [i]n order to impose a clear-cut nondiscretionary duty, [the statute] must categorically mandat[e] that the Administrator perform a specified act by a date-certain deadline. *Sierra Club v. Thomas*, 828 F.2d at 791; *see also Maine v. Thomas*, 874 F.2d 883, 888 (1st Cir. 1989)

(noting that a nondiscretionary duty must state 錢who is requir ed to take what action, as 鏐well as 錢when e duty must be fulfilled 鏐).

The APA, on the other hand, provides for judicial review of agency action that has allegedly been 錢unreasonably delayed, 5鏐U.S.C. § 706(1), and as relevant case law makes clear, a CWA section 505(a)(2) mandatory duty cause of action and an APA cause of action for alleged unreasonable delay are distinct and mutually exclusive. An alternative claim alleging agency action unlawfully withheld or unreasonably delayed under the APA is not available where a more particular statute provides a separate remedy to enforce a mandatory duty, as does the CWA in section 505. *See, e.g.*, *Nat 鈦l Wildlife Fed 鈦 Browner* , No. 95-1811 (JHG), 1996 WL 601451, at *6 (D.D.C. Oct. 11, 1996), *aff 鈦* 127 F.3d 1126 (D.C. Cir. 1997) (錢To the extent that the plaintiffs are attempting to sue under the APA to enforce a nondiscretionary duty under Section

[6] In the District of Massachusetts, these Petitioners filed a complaint asserting both an APA unreasonable delay claim and two CWA section 505 mandatory duty claims. *Sierra Club v. EPA*, Case No 1:12-cv-10902 (D. Mass.). As discussed in detail in EPA 鈦s memorandums in support of its motion to dismiss, there was no statutory basis for the mandatory duty claims asserted in the complaint. *See id.,* ECF Nos. 11, 12, 49. In brief, contrary to the allegations in the complaint, nothing in the CWA directs EPA either to deem NPDES permits terminated after the conclusion of a five-year term, or to revise NPDES permits immediately at the conclusion of a five year term. *See generally id.* Moreover, section 558(c) of title 5 of the United States Code applies to expired NPDES permits so that they are administratively continued by operation of law if a timely, complete application for renewal is filed. *See Costle*, 445 U.S. at 210-11 n.10; *see also* 40 C.F.R. § 122.6. Petitioners voluntarily dismissed the district court complaint on January 23, 2013. *Sierra Club*, Case No. 1:12-cv-10902, ECF No. 58.

303(c)(4)(A), [the relevant counts] will be dismissed, because APA review of mandatory duties is not available under the Clean Water Act. 鐳).

In the present case, Petitioners assert that EPA 鈥 action on the pending permit applications constitutes unreasonable delay. Petition at 1. However, Petitioners 鈥 discussion of the cases conflates the mutually exclusive CWA section 505 mandatory duty cause of action and the APA cause of action for alleged unreasonable delay. For example, Petitioners erroneously rely on the Fifth Circuit 鈥 decision in *Chemical Manufacturers Association v. EPA*, 870 F.2d 177, 266 (5th Cir. 1989). Petition at 17. In *Chemical Manufacturers*, the Fifth Circuit considered a CWA claim seeking to compel EPA action to meet 鍥 a specific congressional mandate that the EPA control the discharge of toxic pollutants into navigable waterways. 鍥 870 F.2d at 265. The *Chemical Manufacturers* court held that it did not have jurisdiction over the CWA claim because pursuant to CWA section 505, district courts have exclusive jurisdiction over CWA mandatory duty claims. *Id.* The Fifth Circuit 鈥 conclusion that district courts have exclusive jurisdiction over CWA citizen suit claims for failure to perform a mandatory duty is inapposite to Petitioners 鈥 arguments regarding jurisdiction over their APA claim of unreasonable delay where a mandatory duty is not involved.

Petitioners 鈥 reliance on *Kitlutsisti v. ARCO Alaska, Inc.*, 592 F. Supp. 832, 840-41 (D. Alaska 1984), is also misplaced. Petition at 18. The district court 鈥 decision was vacated by the Ninth Circuit with no discussion of the district court 鈥 jurisdiction. *See Kitlutsisti v. ARCO Alaska, Inc.*, 782 F.2d 800 (9th Cir. 1986). Moreover, the Ninth

Circuit subsequently adopted, and has repeatedly endorsed, the doctrine of protective jurisdiction, stating 鈹where a statute co mmits review of final agency action to the court of appeals, any suit seeking relief that might affect the court 鈹future jurisdiction is subject to its exclusive review. 鈹*Pub. Util. Comm 鈹Or. v. Bonneville Power Admin.*, 767 F.2d 622, 626-27 (9th Cir. 1985); *see also Clark v. Busey*, 959 F.2d 808, 811-12 (9th Cir. 1992); *Cal. Energy Comm 鈹Johnson* , 767 F.2d 631, 634 (9th Cir. 1985).

In sum, Petitioners challenge an alleged delay in EPA action on two pending NPDES permit applications, asserting unreasonable delay; they do not allege a claim that EPA has not performed an enforceable mandatory duty, pursuant to CWA section 505(a)(2), 33 U.S.C. § 1365(a)(2). Because Congress provided that judicial review of the issuance or denial of NPDES permits is exclusively in courts of appeals, under the well-established doctrine of 鈹protective jurisdiction, 鈹jurisdiction for judicial review of this claim of alleged delay is exclusive in the court of appeals.

II. EPA IS ACTING ON THE FACILITIES 鈹NPDES PERMITS AND THE CIRCUMSTANCES HERE DO NOT WARRANT MANDAMUS

Petitioners request that the Court order EPA to prepare NPDES permits for both Mt. Tom and Schiller, and seek to impose their preferred schedule, requiring draft permits in six months and final permits within an additional six months. Petition at 29. EPA recognizes that the existing permits have been administratively continued for a long time. The Agency is actively working on renewing these permits, undertaking the extensive and complex analyses necessary to develop required permit

terms, and has a plan to prepare draft NPDES permits and then take final action on the permits by June 30, 2016. Decl. ¶¶ 82-106. Petitioners proposed schedule does not provide adequate time for the necessary scientific work or administrative process and would disrupt the Agency other priorities. *Id.* ¶¶ 83-96. The extraordinary remedy of mandamus is not appropriate here, and the petition should be denied.

A. Mandamus Relief Is Not Warranted Under the *TRAC* Factors.

In cases seeking mandamus based upon claims of unreasonable agency delay, this Court has adopted factors set forth by the District of Columbia Circuit in *TRAC* as guidance for review of such claims:

> 1) a rule of reason governs the time agencies take to make decisions; 2) delays where human health and welfare are at stake are less tolerable than delays in the economic sphere; 3) consideration should be given to the effect of ordering agency action on agency activities of a competing or higher priority; 4) the court should consider the nature of the interests prejudiced by delay; and 5) the agency need not act improperly to hold that agency action has been unreasonably delayed.

Towns of Wellesley, Concord and Norwood, Mass. v. FERC, 829 F.2d 275, 277 (1st Cir. 1987) (citing *TRAC*, 750 F.2d at 80). This test is very deferential to administrative agencies. *Am. Auto. Mfrs. Ass. v. Mass. Dep. of Envtl. Prot.*, 163 F.3d 74, 82 n.9 (1st Cir. 1998). With this guiding principle in mind, consideration of the factors here should not result in mandamus relief.

1. A rule of reason supports additional time in this case.

The first factor is the time agencies take to make decisions must be governed by a rule of reason. *TeleCore Commc'ns*, 531 F.3d 849, 855 (D.C. Cir. 2008) (quoting *TRAC*, 750 F.2d at 80). The rule of reason . . . cannot be decided in the abstract, by reference to some number of months or years beyond which agency inaction is presumed to be unlawful. *Mashpee Wampanoag Tribal Council, Inc. v. Norton*, 336 F.3d 1094, 1102 (D.C. Cir. 2003). The reasonable time frame for agency action will depend in large part on the complexity of the task at hand, the significance (and permanence) of the outcome, and the resources available to the agency. *Id.* An administrative agency is entitled to considerable deference in establishing a timetable for completing its proceedings, *Butler v. Hayes*, 818 F.2d 879, 896 (D.C. Cir. 1987), particularly when the proceedings present complex scientific and technical issues, *Oil, Chemical & Atomic Workers International Union v. Zegeer*, 768 F.2d 1480, 1488 (D.C. Cir. 1985).

A rule of reason in this case must take into account the extensive resources required for the complex analyses necessary to develop NPDES permits for steam electric power plants, and the time necessary for meaningful public process and development of the Agency response to comments, including additional scientific and technical analyses that may be necessary before final Agency action. *See* Decl. ¶¶ 82-93. The time required to prepare a draft NPDES permit and then take final action on the draft permit varies on a case-by-case basis. Nonetheless, similar

permitting actions, which often required years, provide useful guidance, and show that the 12 months requested by Petitioners is unreasonable. *Id.* ¶¶ 92-93.

The Region must be afforded the time necessary to analyze the complex ecological, technological and economic issues specific to each facility so that it can reach considered results that are appropriately protective of public health and the environment and are not arbitrary, capricious, or an abuse of discretion. *See Sierra Club v. Thomas*, 828 F.2d at 798-99. The time Region 1 is planning to spend evaluating the issues specific to each facility will allow it to make a fully-considered decision and should decrease the chance of future challenges to its ultimate decisions on the merits of the issues. *Id.* In contrast, a rushed and less fully-considered decision is more likely to result in future challenges and increases the risk of a time-consuming remand that will increase the overall time for EPA to implement the statutory scheme. *Id.* The time that Region 1 plans to spend now could well serve to decrease the total time necessary for EPA to implement the statutory scheme. *Id.*; *see also In re United Mine Workers of Am. Int'l Union*, 190 F.3d 545, 555 (D.C. Cir. 1999) ("[T]he agency plan may well shorten the overall period of delay by resolving issues that would otherwise become the subject of litigation.").

Whether the statutory scheme provides a timetable or other indication of the speed with which Congress expects the agency to proceed may inform the "reasonable" agency action. *See TRAC*, 750 F.2d at 79-80. Congress provided that NPDES permits be limited to terms of up to five years, 42 U.S.C. § 1342(b)(1)(B), and

pursuant to the APA section 9(b), 5 U.S.C. § 558, that the permits would be administratively continued by operation of law upon filing of a timely and complete renewal application. EPA does not dispute that the length of administrative continuances for the NPDES permits in this case are extensive. *See* Decl. ¶¶ 27-33. Nonetheless, given the competing priorities in NPDES permitting and limited resources for agency action in administering the NPDES program, as well as the complexity of the issues attendant to these particular agency actions, the five-year term for NPDES permits does not dictate a 鋟more reason for 鋼 agency action in every case, and especially not in this one. Even in the face of a statutory deadline, which is not present in this case, courts have concluded that a delay of years does not warrant mandamus relief when the administrative proceedings present complex issues. *See In re United Mine Workers of Am. Int Union*, 190 F.3d at 554 (finding agency 鈦s schedule of years not facially unreasonable in light of, among other things, the agency 鋟need to collect and analyze data and develop a rulemaking record); *see also Grand Canyon Air Tour Coali. v. Fed. Aviation Admin.*, 154 F.3d 455, 476-78 (D.C. Cir. 1998) (declining to require speedier response where agency had a plan for action and the 鋟issues involved [were] complex 鐳).

In light of the above considerations, under the first factor, this Court should defer to EPA 鈦s timeframe for action on the pending NPDES permit renewals for these two steam electric power plants, which as explained below, also addresses competing priorities in Region 1 鋟s NPDES permit program.

2. Health and welfare concerns are not dispositive here and do not counsel in favor of mandamus.

The second factor, which concerns the length of delay when health and welfare are at stake, does not counsel in favor of granting mandamus in this case. This factor is certainly not dispositive here because EPA entire docket involves issues concerning human health and welfare. *Sierra Club v. Thomas*, 828 F.2d at 798. Whether the public health and welfare will benefit or suffer depends crucially upon the competing priorities that consume EPA time, since any acceleration here may come at the expense of delay of EPA action elsewhere. *Id.* In this case, as explained herein and in the Webster Declaration, accelerating action on the Mt. Tom and Schiller permits two smaller facilities which have operated at significantly below their potential capacity in recent years will delay completion of new NPDES permits for Merrimack Station, GE-Aviation, and Pilgrim Nuclear Power Station, and based on EPA current information, will threaten greater environmental harm. Decl. ¶¶ 82, 94-98. Thus, concern for water quality in the larger New England area weighs against mandamus.

Moreover, Petitioners claims for specific environmental harms related to the Mt. Tom and Schiller permit renewal delays are speculative at best. Petitioners suggest that the new NPDES permits will require more stringent thermal discharge and cooling water withdrawal limits based on closed-cycle cooling and, therefore, permitting delays have caused environmental harm. This argument presumes the

content of EPA's final action on the NPDES permits. While it may be that after due consideration, EPA will conclude that effluent limits based on closed-cycle cooling systems are required, that outcome cannot be presumed. *See, e.g.*, *id.* ¶¶ 72(i), 75(a).

Similarly, in regard to EPA's 2010 non-binding guidance concerning coal combustion residual impoundments, referenced in the Petition at 27, Region 1 will consider the guidance and other information relevant to the Facilities during development of the new permits, but the results of the Region 1 analysis cannot be prematurely presumed. EPA's current information, however, is that Schiller has no such impoundments and that discharges from Mt. Tom's sole impoundment are currently regulated under the existing NPDES permit. Decl. ¶ 98.

Petitioners also incorrectly suggest that delay in renewing Mt. Tom's permit has harmed the environment by delaying decisions about new wastewater treatment equipment for wastewater from the facility's flue gas desulfurization air pollution control equipment. Region 1 understands that Mt. Tom has no discharges at present from that equipment. *Id.* ¶¶ 80(a)(iii), 81(b).

Finally, while the second factor recognizes that human health concerns are, on balance, more important than economic concerns, it does not stand for the proposition that EPA should not be afforded the time necessary for complex decision-making in the realm of human health and the environment.

3. <u>EPA has competing priorities which impact the time frame for action on re-issuing NPDES permits.</u>

The third factor takes into account the effect that expediting agency action may have on agency activities of a higher or competing priority. Congress has assigned EPA very broad responsibilities not only under the CWA, but also under other equally complex environmental statutes. *Sierra Club v. Thomas*, 828 F.2d at 798. Congress has also provided EPA with finite, and potentially diminishing, resources to meet these competing responsibilities. *Id.;* Decl. ¶¶ 34, 103.

Petitioners ask this Court to compel expedited action on two pending NPDES permits, which are amongst a significant number of NPDES permits, including other backlogged permits, that Region 1 must address. EPA has developed a plan to address this backlog and is implementing that plan. Decl. ¶¶ 28-34. The relief requested by Petitioners is 鍵judicial order putting [the Mt. Tom Station and Schiller Station renewal applications] at the head of the queue 鍵which 鍵simply moves all others back one space and produces no net gain. 鍵*In re Barr Laboratories*, 930 F.2d 72, 75 (D.C. Cir. 1991).

In *In re Barr Laboratories*, the D.C. Circuit denied mandamus relief when, under analogous circumstances, a pharmaceutical company sought mandamus requiring the Food and Drug Administration (鍵FDA鍵) to comply with a statutory deadline for review of the company 鍵applications to sell generic drugs. Although the FDA had violated the deadline, the court denied mandamus relief because the court found that

putting plaintiff 鈥檚 application first simply changed the order of applications and did not eradicate the delay. 930 F.2d at 75; *see also In re Monroe Commc 鈥檚 Corp.*, 840 F.2d 942, 946 (D.C. Cir. 1988) (denying mandamus for five year delay in television license renewal because courts 鈥must give agencies great latitude in determining their agendas 鈥).

Petitioners have not explained why action on the NPDES permits for these two facilities is more compelling than any other NPDES permit applications. Indeed, Region 1 has made a reasoned policy decision that action on other permits is even more compelling. Decl. ¶¶ 94-96. In recent years, the Region has completed a number of other permits for power plants, and has published draft permits for GE-Aviation and Merrimack Station, but still needs to prepare responses to comments and issue final permit decisions for these facilities. *Id.* ¶¶ 75-76. The Region is also currently working on a new draft permit for the Pilgrim Nuclear Power Station, another large power plant, and in addition, must address other significant NPDES permits, *e.g.*, municipal sewage treatment plant permits. *Id.* ¶¶ 23-25, 78.

EPA is not arguing that the Mt. Tom and Schiller permits are unimportant, but rather, that their schedules should not have been, and should not currently be, accelerated at the expense of the Region 鈥s efforts to address these other permits. The shortage of resources in the face of this extremely complex and labor-intensive task of evaluating NPDES permits for steam electric power plants (and other complex NPDES permits) weighs strongly against the relief requested by Petitioners.

4. Petitioners claims of harm and prejudice do not warrant mandamus.

As discussed above, Petitioners claims of environmental harm are speculative, and in fact, the potential for environmental harm is greater if EPA was to be forced by a mandate to reorder its priorities and thus delay ongoing actions related to more environmentally significant NPDES permit applications.

Petitioners also assert harm to their ability to participate in the NPDES permitting process, and to inform themselves and educate their members. Petition at 28. Petitioners fail to provide any support for these asserted harms, which are illusory. Once the draft permits are available for public comment, Petitioners will have the opportunity to participate in the NPDES permitting process by submitting comments as set forth in the CWA and EPA implementing regulations. *See* 40 C.F.R. §§ 124.6, 124.10. Petitioners claim that EPA choice to direct its limited resources to more environmentally significant priorities somehow harms their "interest "learning more about the Facilities and "educating their members about the environmental impacts is also meritless. Petitioners have taken advantage of the Freedom of Information Act, 5 U.S.C. § 552, to obtain substantial information about the Facilities from EPA. Decl. ¶ 99.

Petitioners assertions of harm to enforcement and compliance also lack merit. Both Facilities must comply with the CWA and the terms of their existing NPDES permits. Petitioners anticipation of future NPDES permits has no effect on the present-day requirement the Facilities comply with the CWA, and in no way impedes

any potential CWA enforcement action. The nature and extent of the interests that Petitioners claim to be prejudiced by delay do not warrant the issuance of a writ of mandamus here. *See Kokajko v. FERC*, 837 F.2d 524, 526 (1st Cir. 1988) (delay in FERC decision-making process did not subject petitioner to irreparable injury such that issuance of a writ of mandamus was warranted).

5. <u>There is no allegation of impropriety here.</u>

The final *TRAC* factor provides that the Court need not find any impropriety lurking behind agency lassitude in order to hold that agency action is unreasonably delayed. *TRAC*, 750 F.2d at 80 (citations omitted). Petitioners have not suggested that EPA is acting in bad faith. Nor has there been any lassitude on EPA's part. Rather, as explained above and in the Webster Declaration, EPA is and has been diligently addressing the complex technical and scientific issues involved in issuing NPDES permits to steam electric power plants, and it reasonably requires adequate time to complete action on the Facilities permit. Therefore, to the extent this factor has any bearing on this case at all, it counsels *against* a finding of unreasonable delay.

B. <u>At Most, the Court Should Retain Jurisdiction While EPA Proceeds.</u>

Congress did not set forth a specific timeframe for EPA to issue NPDES permits. In the face of a changing regulatory landscape, limited resources, and competing priorities, Region 1 is diligently moving forward to address the controversial and complex issues involved in multiple pending NPDES permitting actions for steam electric power plants, only two of which are the subject of the present case.

Region 1 reasonably requires additional time to complete its review of the complex ecological, technological, and economic issues necessary to issue draft NPDES permits for the two Facilities. *Id.* ¶ 83. Region 1 anticipates that, for the most part, the draft NPDES permits will be ready in spring 2014. However, revisions to the effluent limitations guideline for steam electric power plants are scheduled to be issued by May 22, 2014, pursuant to a judicially entered consent decree. *Defenders of Wildlife v. Jackson*, Case No. 10-cv-01915 (D.D.C). It is reasonable for the draft permits to reflect such revisions; therefore, the Region anticipates that the draft permits will be made available for public comment by June 30, 2014, after it has a chance to consider the application of the new guideline. Decl. ¶¶ 82, 84-86. This will also give concerned persons who might comment on the draft permits the opportunity to consider the effect of the new regulations.

After the close of the comment periods for the two draft permits, Region 1 must consider all the comments, provide written responses to comments, comply with various federal laws applicable to its permit actions, such as the ESA, and take final action on the permits. As explained in the Webster Declaration, based on Region 1 欽s experience in other, similar permit actions, the Region anticipates final action on the Mt. Tom and Schiller NPDES permits by June 30, 2016. *Id.* ¶¶ 82, 88-92, 100-06. EPA 欽schedule takes into account not only the complex scientific, technical, legal and policy issues presented by NPDES permits for power plants, but also the competing priorities to be addressed by the Region, and the needs of the notice-and-comment

process. *Id.* In contrast, the schedule proposed by Petitioners is unsupported and arbitrary. EPA should be allowed to complete its review in a time frame dictated by sound science and in recognition of other competing priorities.

If the Court dismisses the petition, as EPA believes it should, Petitioners can always renew the petition should EPA take significantly longer than anticipated to complete its work. If the Court believes the right to file a new mandamus petition would be insufficient to protect Petitioners, the case law suggests retaining jurisdiction while the Agency completes its action. *See TRAC,* 750 F.2d at 80; *In re Ctr. for Auto Safety*, 793 F.2d at 1354.

CONCLUSION

For all these reasons, the Court should deny and dismiss the petition for a writ of mandamus.

Respectfully Submitted,

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division

Dated: March 14, 2013

s/ Amy. J. Dona
AMY J. DONA
United States Department of Justice
Environmental Defense Section
P.O. Box 7611
Washington, D.C. 20044
(202) 514-0223
amy.dona@usdoj.gov

Attorneys for EPA

CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2013, I electronically filed the foregoing document and the accompanying addendum with the United States Court of Appeals for the First Circuit by using the CM/ ECF system. I certify that the following parties or their counsel of record are registered as ECF Filers and that they will be served by the CM/ ECF system:

Christopher Sproul
Environmental Advocates
5135 Anza Street
San Francisco, CA 94121
(415) 553-3376
E-mail: csproul@enviroadvocates.com

Attorney for Petitioner
OUR CHILDREN'S EARTH FOUNDATION

Nora J. Chorover
Stern Shapiro Weissberg & Garin LLP
90 Canal Street, Suite 500
Boston, MA 02114 - 2022
(617) 742-5800 ext. 135 E-mail: nchorover@sswg.com

Attorney for Petitioner
SIERRA CLUB

s/ Amy J. Dona
AMY J. DONA
United States Department of Justice
Environmental Defense Section
P.O. Box 7611
Washington, D.C. 20044
(202) 514-0223
amy.dona@usdoj.gov

United States Court of Appeals
For the First Circuit

No. 12-1860

IN RE: SIERRA CLUB, INC., ET AL.,

Petitioners.

Before

Lynch, Chief Judge,
Torruella and Thompson, Circuit Judges.

JUDGMENT
Entered: May 8, 2013

Petitioners Sierra Club and Our Children's Earth Foundation have filed a petition for a writ of mandamus, arguing that the EPA has unreasonably delayed reissuing NPDES permits to two steam electric power plants, Mt. Tom Station in Massachusetts and Schiller Station in New Hampshire. We have considered the various submissions.[1]

We hold at the outset that at least petitioner Sierra Club has standing to pursue this petition. See Washington Legal Found. v. Massachusetts Bar Found., 993 F.2d 962, 972 (1st Cir. 1993) (noting that standing by one party as to each claim is sufficient); Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc, 528 U.S. 167, 181-83 (2000) (discussing standing requirements). We also hold that our court has jurisdiction over petitioners' claims of unreasonable delay in the reissuance of the NPDES permits. See 33 U.S.C. § 1369(b)(1)(F) (vesting exclusive jurisdiction in courts of appeals to review "the Administrator's action ... in issuing or denying any permit under section 1342 of [the CWA]"); Sea Air Shuttle Corp. v. United States, 112 F.3d 532, 535, 538 (1st Cir. 1997) (noting that party could pursue writ of mandamus from court of appeals to challenge agency inaction where appellate court is exclusive forum for review of agency action), citing Telecommunications Research & Action Center v. FCC, 750 F.2d 70, 76 (D.C. Cir. 1984) (TRAC).

[1] We grant the motions to intervene by Public Service Company of New Hampshire and Mt. Tom Generating Company, and the motion for leave to file a response as amicus curiae by the Utility Water Act Group.

Turning to the merits of this petition, we note that mandamus is a drastic remedy, reserved for "extraordinary situations." Towns of Wellesley, Concord & Norwood, Mass. v. FERC, 829 F.2d 275, 277 (1st Cir. 1987) (internal quotations and citations omitted). While the EPA's delays in reissuing the NPDES permits are concerning and extensive, petitioners have not shown that mandamus is warranted under the circumstances presented here. See id. (discussing TRAC factors). The EPA states that it is working on the permits, but the process is complex and it must balance competing priorities with its limited resources, explaining that it has a significant backlog of expired permits in this region, and that it has prioritized permits that have greater environmental impact. Petitioners have not shown why these two particular permits should be moved ahead of the queue by our court. See, e.g., In re Barr Labs., Inc., 930 F.2d 72, 75 (D.C. Cir. 1991) (denying mandamus, even though all other TRAC factors favored it, where "a judicial order putting [petitioner] at the head of the queue [would] simply move[] all others back one space and produce[] no net gain").

The EPA estimates that it will issue draft permits to Mt. Tom and Schiller by June 2014 and final permits by June 2016, and petitioners have replied that they are amenable to the EPA's schedule. While petitioners ask us to enforce this timetable, we decline to do so. The EPA recognizes the importance of completing its review and reissuance of these NPDES permits, and the present record provides no reason to think that the EPA will not work diligently to complete its tasks.

The petition for a writ of mandamus is denied.

By the Court:

/s/ Margaret Carter, Clerk.

cc:
Michael Kevin Callahan
Nora Jo Chorover
James Nelson Christman
Amy J. Dona
Michael D. Freeman
Seth D. Jaffe
Christopher Alan Sproul
Spencer McCartney Taylor
Lea J. Tyhach

To: Beauvais, Joel[Beauvais.Joel@epa.gov]
Cc: Stoner, Nancy[Stoner.Nancy@epa.gov]; Evalenko, Sandy[Evalenko.Sandy@epa.gov]; Nelson, Tomeka[Nelson.Tomeka@epa.gov]
From: Lousberg, Macara
Sent: Wed 1/29/2014 7:44:32 PM
Subject: Template for OW reg agenda discussion
OW's OMB Priorities Discussion List 1 29 14 final.docx

Joel – on behalf of Nancy Stoner I am sending OW's input to the template for the OW reg. agenda discussion. If you or your staff have any questions, please let me know. Thanks.

Macara

Macara Lousberg

Director, Water Policy Staff

Office of Water

U.S. EPA

202-564-5576

lousberg.macara@epa.gov

From: Beauvais, Joel
Sent: Sunday, January 19, 2014 2:28:23 PM
To: Stoner, Nancy; Kopocis, Ken
Subject: Template for OW reg agenda discussion

Nancy, Ken - Following up on my discussion with Nancy Friday afternoon, I'm attaching the template we discussed for review of OW's reg agenda. As Nancy and I discussed, the idea is to populate the list and use it as the basis for a discussion between the three of us and the Administrator and Bob with regard to the agenda for the coming 2-3 years. Our hope is that it also can help us in planning our interaction with OIRA on schedules, priorities, etc. (Ken, if you

want to hear more on this, feel free to give me a ring this weekend.)

A few things to note:

1. The info in the template is based on what's currently in OP's tracking system and doesn't reflect any judgments on our part. Some of the dates may be incorrect, and there may be things in here that you're not planning to pursue or things that you are planning to pursue that are not yet in our system.

2. We want to get this done quickly and efficiently, but the better the quality of that info that we include in this, the more useful it will be for engaging with the Administrator. If there are things in here that aren't going to happen in this time frame, we should indicate that. Recognizing that it may be difficult to see 24-36 months out into the future, if there are things you do want to get done in this time frame that aren't on here, it would be good to include them. The more of a heads-up the Administrator has now on significant items for that time frame, the better.

3. We've left the "discussion of priorities" blank. While obviously we'll need to use judgment on what to include, what would be useful here is some very concise info along the following lines, to guide discussion: (a) whether we're legally required to do the action and in what time frame; (b) to the extent we have discretion, how important it is to get the action done in this time (relative to other actions) and why; (c) how controversial the action is likely to be with stakeholders and/or OIRA; and(d) whether this is an action that, even if it's lower priority, should be a candidate for a non-significance determination or (realistically) merits lesser OIRA scrutiny.

4. In terms of time frame, we are hoping to get this teed up internally as soon as possible. If it were possible to get this done this coming week, we could look towards conversations with the Administrator the week of 1/27, which would be great.

5. My folks have asked me to make sure to underscore that, separately, we are about to begin our call for submissions for the semi-annual regulatory agenda for submission to OIRA, which I believe we're supposed to complete by April. These are two distinct exercises, but we should be aware of potential interactions between the two as we go forward.

Let me know if you want to discuss this weekend or when we're back in the office.

Joel