



State of Vermont

Agency of Natural Resources

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Deborah L. Markowitz,
Agency Secretary

April 18, 2012

RECEIVED
APR 26 2012
OFFICE OF THE
EXECUTIVE SECRETARIAT

Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
Mail Code: 6102T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units

Dear Administrator Jackson:

We, the undersigned state environmental leaders, write to applaud the USEPA's recently proposed New Source Performance Standard (NSPS) to limit carbon pollution from new electric generating plants. While power plants are the nation's largest sources of carbon pollution, putting 2.3 billion tons of carbon dioxide into the air each year, there are no national standards limiting this pollution. While many of our states have taken action to reduce carbon emissions from this sector, there is a clear need for federal leadership and action. We believe that the proposed NSPS represents a critical first step.

Scientists, healthcare professionals, and other experts agree that carbon pollution endangers public health. More than 120 health organizations, including the American Academy of Pediatrics, American Lung Association, American Medical Association, American Nurses Association, American Public Health Association, and American Thoracic Society, are on record stating that:

Climate change is a serious public health issue. As temperatures rise, more Americans will be exposed to conditions that can result in illness and death due to respiratory illness, heat- and weather-related stress and disease carried by insects. These health issues are likely to have the greatest impact on our most vulnerable communities, including children, older adults, those with serious health conditions and the most economically disadvantaged.

Carbon pollution and global warming facilitate the formation of smog that triggers asthma attacks and permanently damages and reduces lung function. In addition to these direct health impacts, climate

¹ <http://www.apha.org/about/news/pressreleases/2010/epa+group+letter+release.htm>

change will lead to ever stronger and more frequent storms, floods, and other extreme weather events. Our states have suffered billions of dollars of damage, untold disruptions, and loss of life in such extreme events in just the past few years.

Our states are already demonstrating that smart programs to curb carbon pollution and modernize the electricity sector go hand-in-hand with economic development and job creation. As your proposal recognizes, the most efficient and cost-effective new energy sources already meet the proposed standard, and are driving a manufacturing and construction boom in clean energy across the country.

In addition to finalizing the proposed standards for new power plants, we urge USEPA to work with your state partners to determine the best approaches for gradually reducing carbon pollution from the existing power plant fleet. The Clean Air Act recognizes the key role of the states, acting under federal guidelines, to tailor solutions that reflect each state's unique resources, economy, and power mix and sync with existing state initiatives to reduce emissions from the electric sector. We stand ready to work with each other, USEPA, industry, other stakeholders, and our own residents and businesses to get this job done in a thoughtful way.

We commend USEPA for getting started on this task. Cleaning up harmful carbon pollution from our power plants will protect our environment, save lives, create jobs. We urge you to finalize the NSPS without delay.

Sincerely,

A handwritten signature in black ink, appearing to read 'Deborah Markowitz', written in a cursive style.

Deborah Markowitz
Secretary



Correspondence Management System

Control Number: AX-12-000-7421

Printing Date: April 26, 2012 04:20:49



Citizen Information

Citizen/Originator: Yoo, Young Sook

Organization: Republic of Korea

Address: 88 Gwanmoon-vo, Gwacheon-si, Gyeonggi-do 427-729

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-12-000-7421

Alternate Number: N/A

Status: For Your Information

Closed Date: N/A

Due Date: N/A

of Extensions: 0

Letter Date: Apr 11, 2012

Received Date: Apr 26, 2012

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: LTR (Letter)

Priority Code: Normal

Signature: SNR-Signature Not Required

Signature Date: N/A

File Code: 401_127_a General Correspondence Files Record copy

Subject: Daily Reading File - Honored to meet Administrator Jackson at the 10th OECD Environment Ministers Meeting held March 29-30, 2012 in Paris

Instructions: For Your Information -- No action required

Instruction Note: N/A

General Notes: N/A

CC: OEAE - Office of External Affairs and Environmental Education

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
No Record Found.					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
(b) (6) Personal Privacy	OEX	OITA	Apr 26, 2012

History

Action By	Office	Action	Date
(b) (6) Personal Privacy	OEX	Forward control to OITA	Apr 26, 2012

Comments



Correspondence Management System

Control Number: AX-12-000-7421

Printing Date: April 26, 2012 04:20:49



Commentator	Comment	Date
No Record Found.		

DAILY READING FILE

MINISTRY OF ENVIRONMENT
REPUBLIC OF KOREA



11 April 2012

The Honorable Lisa P. JACKSON
Administrator
US Environmental Protection Agency

RECEIVED
APR 26 2012
OFFICE OF THE
EXECUTIVE SECRETARIAT

The Honorable Lisa P. Jackson,

It was my great honor and pleasure to meet you at the 10th OECD Environment Ministers Meeting held in the OECD headquarters in Paris from 29 to 30 March 2012. As the Chair of the Meeting, I would like to extend my deep gratitude to you for your active participation and devotion to the Meeting.

The spring of Paris was so beautiful but we could not take a single moment to enjoy the warm breeze due to the tight schedule. I believe, however, the outcome of the meeting was tangible and substantial, all thanks to passion and contribution of the participants. It will serve as a solid foundation to further advance our discussion at the upcoming Rio+20.

Regarding the bilateral meeting, I believe that it will serve as a stepping stone to write a new chapter for cooperation between our two organizations, including the conclusion of the pending MOU.

Once again, I would like to express my heartfelt appreciation to you and I look forward to meeting you in the near future.

RECEIVED
APR 26 2012
OFFICE OF THE
EXECUTIVE SECRETARIAT

Sincerely yours,

Yoo, Young Sook
Minister of Environment
Republic of Korea



Correspondence Management System

Control Number: AX-12-000-7475

Printing Date: April 27, 2012 02:53:46



Citizen Information

Citizen/Originator: Roberts, Mark W.

Organization: Environmental Investigation Agency
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Constituent: N/A

Committee: N/A Sub-Committee: N/A

Control Information

Control Number: AX-12-000-7475 Alternate Number: N/A
 Status: Pending Closed Date: N/A
 Due Date: May 14, 2012 # of Extensions: 0
 Letter Date: Apr 26, 2012 Received Date: Apr 27, 2012
 Addressee: AD-Administrator Addressee Org: EPA
 Contact Type: LTR (Letter) Priority Code: Normal
 Signature: DX-Direct Reply Signature Date: N/A
 File Code: 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.

Subject: Daily Reading File - Supplemental Petition to Remove HFC-134a from the List of Acceptable Substitutes under the Significant New Alternatives Policy Program for Non-Essential Uses

Instructions: DX-Respond directly to this citizen's questions, statements, or concerns

Instruction Note: N/A

General Notes: N/A

CC: OCSPP - OCSPP - Immediate Office
 OEAE - Office of External Affairs and Environmental Education
 OITA - Office of International and Tribal Affairs

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6) Personal Privacy	OEX	OAR	Apr 27, 2012	May 14, 2012	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date
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environmental investigation agency

April 26, 2012

Administrator Lisa P. Jackson
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RECEIVED
APR 27 2012
OFFICE OF THE
EXECUTIVE SECRETARIAT

Re: Supplemental Petition to Remove HFC-134a from the List of Acceptable Substitutes under the Significant New Alternatives Policy Program for Non-Essential Uses

Dear Administrator Jackson:

On May 7, 2010, the Environmental Investigation Agency (EIA), the Natural Resources Defense Council and the Institute for Governance and Sustainability petitioned the United States Environmental Protection Agency (EPA) to remove HFC-134a from the list of acceptable substitutes for any ozone depleting substance (ODS) under EPA's Significant New Alternatives Policy (SNAP) program¹ (Initial Petition). The EPA reviewed the petition and, after supplementation determined by letter dated February 14, 2011 that sufficient evidence had been produced to remove HFC-134a from the list of approved substitutes for motor vehicle air conditioning systems (MVACs) on the basis that the availability of MVAC substitutes that present much lower risks to health and environment than those associated with HFC-134a. However, the EPA did not make a ruling concerning other uses of HFC-134a and requested that the petitioners submit further evidence concerning the exact uses which were included in the request and the availability of alternatives with lower risks to health and environment.

EIA hereby supplements the Initial Petition and requests the EPA remove HFC-134a and HFC-134a blends from the list of acceptable substitutes for any ozone depleting substance (ODS) in any non-essential uses under EPA's SNAP program, and to remove HFC-134a and HFC-134a blends from such lists in every other end-use category where more benign alternatives are available.

This supplemental petition is filed pursuant to Section 612(d) of the Clean Air Act and 40 C.F.R. §82.184(b)(3). Under section 612 of the Clean Air Act, EPA has the authority to evaluate alternatives to ozone-depleting substances (ODS) identified in section 602 and to publish a list of acceptable and unacceptable substitutes through the SNAP program. EPA also has the authority to revise this list on its own, or in response to a petition, to remove a substitute previously listed as acceptable.

The SNAP program was created to assure the health and environmental safety of alternatives

¹ Significant New Alternatives Policy Program, Purpose and Scope, 40 C.F.R. § 82.170 (2009).

for ozone-depleting substances that were being phased out under Section 602 of the Act. The purpose of the SNAP program is “to allow a safe, smooth transition away from ozone-depleting compounds by identifying substitutes that offer lower overall risks to human health and the environment.”² Section 602 of the Clean Air Act contains a list of Class I and Class II ozone-depleting substances that have been or are being phased out. Under the SNAP program EPA evaluates proposed substitutes to these ODS and classifies the substitutes as acceptable, acceptable subject to use limits or conditions, or unacceptable.³ The SNAP approval process provides EPA an opportunity to review proposed alternatives before they enter the marketplace. SNAP determinations thus can drive commercial development towards substitutes that present a lower overall risk to human health and the environment.

Applicants for listing of potential substitute applications must provide certain information, including the name and description of the substitute, physical and chemical information, toxicity data, and health and safety studies.⁴ In addition, applicants must include information concerning the ozone-depleting potential and global warming impacts of the substance, including “information on the GWP index and the indirect contributions to global warming caused by the production or use of the substitute.”⁵ EPA’s acceptability determinations are comparative evaluations, where EPA looks not only at the proposed substitute in comparison to the relevant Class I or Class II substance listed in Section 602, but also in comparison to “other substitutes for the same end-use.” As such, EPA must consider not only the original ODS but also the other listed substitutes for that substance in analyzing whether to list new alternatives.

EPA’s criteria for risk comparison in the SNAP program support Title VI’s goal of phasing out ODS from the marketplace in conjunction with the Montreal Protocol. EPA must explicitly analyze, among other things, “[a]tmospheric effects and related health and environmental impacts. . . [and] [g]eneral population risks from ambient exposure to compounds with direct toxicity and to increased ground-level ozone.”⁶ In promulgating the initial SNAP rule in 1994, the agency noted that they had “followed several guiding principles in developing the SNAP program.”⁷ The rule outlines a comparative risk framework, where [t]he Agency’s risk evaluation compares risks of substitutes to risks from continued use of ozone-depleting compounds as well as to risks associated with other substitutes. This evaluation considers effects due to ozone depletion as well as effects due to direct toxicity of substitutes. The proposed rule outlining the SNAP program elaborates on the climate-focused nature of this risk analysis, where the “overall risk” characterization will consider such factors as: Toxicity and exposure -- both human health and ecological; chlorine loadings; ozone-depletion potential; global-warming potential; and flammability.”⁸

² Environmental Protection Agency, Significant New Alternatives Policy (SNAP) Program, <http://www.epa.gov/ozone/snap/index.html> (last visited Mar. 17, 2009).

³ *Id.*

⁴ Significant New Alternatives Policy Program, Information Required to be Submitted, 40 C.F.R. § 82.178 (2009).

⁵ *Id.*

⁶ Significant New Alternatives Policy Program, Agency Review of SNAP Submissions, 40 C.F.R. § 82.180(a)(7)(i)-(ii) (2009).

⁷ 59 Fed. Reg. at 13,046.

⁸ Protection of Stratospheric Ozone; Request for Data and Advanced Notice of Proposed Rulemaking, 57 Fed. Reg. 1984, 1985 (Jan. 16, 1992).

In light of the comparative nature of the SNAP analysis and given that other acceptable substitutes are on the market or soon to be available, we request that EPA remove HFC-134a and HFC-134a blends from the list of acceptable alternatives for non-essential uses, on a schedule that is based on the most rapidly feasible transitions to one or more of the previously referenced acceptable alternatives for each non-essential use.

EPA initially approved HFC-134a for use as an acceptable alternative for a number of applications in the 1990's. The initial approval were based on the facts that 1) HFC-134a does not contribute to ozone depletion; 2) HFC-134a's GWP and atmospheric lifetime were close to those of other alternatives that had been determined to be acceptable for the end-uses; and 3) HFC-134a is not flammable and its toxicity is low.⁹

This analysis, though it may have been appropriate in the 1990's, does not hold true today, and highlights the necessity of phasing out HFC-134a as its GWP of 1300 is much higher than other alternatives. For example, CO₂ has a GWP of 1, isobutene (R-600a) has a GWP of 3, HFO-1234yf has a GWP of 4, HFO-1234ez has a GWP of 6, cyclopentane has a GWP <25, Methylal has a GWP <25, methyl Formate has a GWP <25 and HFC-152a has a GWP of 120. In light of current available alternatives, HFC-134a and HFC-134a blends should be removed from the list of acceptable substitutes in all but essential uses to accelerate the pace of the transition to more benign alternatives.

On November 25, 1992, Parties to the Montreal Protocol adopted a decision for a more stringent ODS phase-out schedule based in part on the concept that all but essential uses should be phased out on an expedited basis within subsequent decisions involving HCFCs. In response, EPA has undertaken rulemaking to ensure that all ODS, including CFCs, halons and HCFCs cannot be used for non-essential uses. Section 610 of the Clean Air Act prohibits the sale, distribution, or offer for sale or distribution in interstate commerce, of certain non-essential products containing CFCs which are listed as class I substances, and HCFCs which are listed as class II substances. The EPA has issued regulations that implement this Congressionally-mandated ban on the sale and distribution of certain non-essential products.¹⁰

EIA hereby requests that the non-essential products ban be extended to HFC-134a and HFC-134a blends in all non-essential uses including aerosols and pressurized dispensers, (including tire inflators), foams blowing; novelty products (including propelled plastic party streamers, Spiderman web string, fake snow, specialty paints and poop freeze), propelled noise horns (including marine safety noise horns, sporting event noise horns, personal safety noise horns, wall-mounted industrial noise horns used as alarms in factories and other work areas, and intruder noise horns used as alarms in homes and cars); foam and refrigerants in new domestic refrigerators and freezers and other retail stand alone coolers and freezers; cleaning fluids for noncommercial electronic, photographic and

⁹ See, e.g., 60 Fed. Reg. at 31,097.

¹⁰ EPA first promulgated regulations implementing this ban, including establishing exemptions to the ban, on January 15, 1993 (58 FR 4768), and on December 30 1993 (58 FR 69638, 58 FR 69672). EPA subsequently amended the class II ban to permit the use of HCFCs as fire extinguishants in portable fire extinguishers for non-residential applications (December 4, 1996, 61 FR 64424). In 2001, EPA published a rule that, among other things, reconsidered the previous exceptions to the class I Nonessential Products Ban (November 15, 2001; 66 FR 57512).

other equipment. (Cleaning fluid products fall into two broad categories: solvent sprays containing HFC-134a sprayed from a pressurized container through a nozzle or tube, and gas sprays containing HFC-134a as a pressurized fluid released as a gas to physically blow particles from a surface. These cleaning fluid products include tape and computer disk head cleaners, electronic circuit and contact cleaners, film and negative cleaners, flux removers, and camera lens and computer keyboard dusters.)

EIA recognizes that the EPA has established a list of uses for CFCs and HCFCs that are exempt from the non-essential use bans and requests that the EPA review this list and determine whether this or other existing exemptions are applicable to HFC-134a and HFC-134a blends, recognizing the major progress that has been made in alternatives to ODS and HFCs since the last time the non-essential use ban was revised in 2001 and therefore, some of the exemptions may not apply to HFC-134a and HFC-134a blends.

Below EIA provides a description of the non-essential uses and the alternatives available that make the continued use of HFC-134a and HFC-134a blends unnecessary for these uses. The discussions of non-essential uses address the use of pure HFC-134a and available alternatives; HFC-134a blends are addressed in a separate section at the end of the petition. EIA hereby requests that the EPA delist HFC-134a and HFC-134a blends as a suitable alternative under the SNAP program for each of the following uses:

Aerosols: Self-pressurized or aerosol packaging is used in many consumer and industrial products ranging from spray paints, hairsprays, cleaning and household products to industrial sealants and lubricants. Since the CFC and HCFC phase-outs, numerous alternatives for aerosols have been developed and as a result, HFC-134a should only be used in aerosol applications where there are no other safe, practical, economic or environmentally acceptable alternative such as metered dose inhalers (MDI) where dry powder inhalers are infeasible. The available alternatives include the following:

- Not-in-kind (NIK) alternatives. These include finger/trigger pumps, powder formulations, sticks, rollers, brushes, nebulizers, and bag-in-can/piston-can systems that displace the need for HFC-134a as a propellant, and often prove to be a better and more cost-effective option than HFC-134a propelled aerosols. Particularly in areas where a unique property of HFC-134a is not specifically needed for a certain end-use, NIK alternatives are often the best option.
- Hydrocarbon aerosol propellants. These are usually mixtures of propane, butane, and isobutane, and are also an inexpensive choice for propellants in consumer products. Their costs average less than one tenth the cost of HFCs. The main disadvantages of hydrocarbon aerosol propellants are flammability and VOC emission concerns. Hydrocarbons are the primary propellant in the non-MDI aerosol market and should replace HFC-134a if flammability and VOCs are not issues.
- Dimethyl ether. Dimethyl ether is a flammable alternative aerosol propellant. While it is a VOC, it has excellent solvency and water compatibility.
- Compressed gases. Gases such as CO₂, N₂, compressed air, or nitrous oxide may be used in aerosol applications. The only disadvantage is that the propellant pressure gradually falls as the aerosol can is emptied. These gases are non-flammable and do not require the use of extra explosion-proof equipment. In addition, technological improvements have offset the effects of decreased pressure through innovative valve configurations and proper selection of compatible solvents.

- Substituting for lower GWP HFCs. Replacement of higher GWP HFC-134a with a lower GWP HFC, such as HFC-152a, will greatly reduce emissions from the aerosols sector. HFC-152a, for instance, has only moderate flammability and is appropriate for many applications.

Tire inflators: Tire inflators are probably the fastest growing use of HFC-134a since the original inflators using hydrocarbons were involved in some high-profile accidents. However, there are numerous products on the market that use a tire sealant such as “Slime” with an air compressor or CO2 canister. See, e.g., <http://www.youtube.com/watch?v=9xqbpUINXhI>. Consumers who take their vehicles off-road rate these compressors and CO2 canisters as the best for reinflating tires. See, e.g. <http://www.parksoffroad.com/prodreview/inflatorstest/inflatormain.htm>. These products are reusable, cost-effective and do not contribute to climate change. As there are appropriate, economical and effective alternatives to the use of HFC-134a for tire inflation, this use of HFC-134a should be banned.

Novelty Items including: 1) **Air guns.** Air guns are used in a game where people shoot small diameter plastic or metal ball bearings at each other similar to paint ball. The guns can be electric, spring, CO2 or propane powered. However, a number of guns use HFC-134a as a propellant that is totally unnecessary given the multiple alternatives; 2) **Wine bottle openers.** For example, “CorkPops Wine Opener, Black. The fastest and easiest way to remove a cork. Simply insert the needle into the cork and press the propellant cartridge and POP!-your cork is out. Uses an environmentally safe, low pressure propellant that does not affect the flavor or bouquet of any wine and has no effect on the atmosphere or ozone layer. Includes one Cork Pops cartridge capable of opening 60-80 bottles. Black unit available only. Materials: Plastic, HFC 134a non-toxic, non-flammable propellant Manufacturer No.: 12237”. Given the literally dozens of ways to open a wine bottle, this use should be banned. 3) **Foam Sting products.** Spiderman Web Blaster: (<http://www.hasbro.com/common/instruct/69239.pdf>) and other products that make foam sting do not require HFC-134a. There are alternative propellants such as compressed air, and the damage to the environment outweighs the need for this product. 4) **Poop freeze and other spray applications that are used to freeze/cool.** The new patent-pending propellant ECO-LOGIC offers both a GWP of 6 and an ODP of zero and can replace both Air Duster and Freezer Spray. There are likely other alternatives and the environmental damage caused by such uses of HFC-134a outweigh any benefit of freezing animal poop before picking it up. 5) **Artificial snow and decorative paints.** These uses and other novelty uses were banned in the EU in 2009 under the EC F-gas regulation. Alternative propellants have been used since without any observable diminishment of EU culture or happiness. The United States should follow suit and ban these uses of HFC-134a.

Foam blowing: As has been proven repeatedly in the HCFC Phase-out Management Plans submitted to the Montreal Protocol’s Multilateral Fund, HFC-134a is no longer needed to be used in any foam blowing applications. Hydrocarbon expansion agents such as pentane, isopentane, cyclopentane, as well as water, CO2, methyl formate and HFOs all exhibit dramatically lower GWP values than HFC-134a and can be used effectively in all foam blowing categories in place of HFC-134a. On the SNAP website there are between 4 and 12 low-GWP alternatives for every class of foam blowing where HFC-134a has been found acceptable for use. Given this plethora of low-GWP alternatives, there can be no justification for the continued use of HFC-134a in foam blowing operations.

Foam and Refrigerant in Domestic and Retail Refrigeration and Freezer Units: Domestic

refrigeration units produced in Europe and Japan have relied on hydrocarbon foam blowing agents for years. While a smaller percentage have transitioned to this alternative in other developed countries, an estimated 20% of units sold today in the United States contain HC blown foam. As described above, HFC-134a should not be an approved blowing agent for foam in domestic or retail refrigeration units or any other foam blowing application.

HFC-134a has been the primary refrigerant used in the United States domestic refrigerators/freezers and stand-alone retail coolers and freezers since the phase-out of CFC-12. However, hydrocarbons including Isobutane, propane and hydrocarbon blends are used in all European and Japanese refrigerators/freezers and the majority of Chinese units. The EPA on December 20, 2011 approved isobutane, propane and a hydrocarbon blend known as R-441A for use as refrigerants in refrigerators and freezers the United States. Additionally, HFOs are being developed for use as refrigerants in domestic and retail refrigerators and freezers. Because of the high GWP of HFC-134a, the soonest possible deadline should be set to ban the use of HFC-134a in all new domestic refrigerators and freezers and in all stand alone retail coolers and freezers.

Gas dusters and other solvent sprays and gas sprays: The EPA has granted SNAP approval for all of the following alternates to HFC-134a for these uses: C3 to C6 light hydrocarbons (e.g., isobutane, propane and n-butane), dimethyl ether (DME), HFC-152a, alternative processes (pumps, mechanical pressure dispensers, non-spray dispensers), compressed gases (carbon dioxide, air, nitrogen, nitrous oxide) and HFO-1234ze(E) (trans-1,3,3,3-tetrafluoroprop-1-ene). Additionally, true "air dusters" using ordinary air are readily available on the market. These typically have much shorter run times than a chemical duster, but are readily refillable. Both hand-pump and electric compressor models have been marketed.

In addition to contributing to climate change, gas dusters with HFC-134a are products that are commonly misused and intentionally inhaled. *"Within minutes, the user experiences feelings of intoxication and may become dizzy, have headaches, abdominal pain, limb spasms, lack of coordination, loss of control, hallucinations, and impaired judgment. Worse, he or she may even die from a condition known as Sudden Sniffing Death Syndrome, which can even occur with first time users. Long-term inhalant users generally suffer from muscle weakness, inattentiveness, lack of coordination, irritability, depression liver or kidney damage and central nervous system (including brain) damage"*. <http://www.inhalant.org/media/duster.pdf>. Therefore, banning HFC-134a for this use will have a secondary health benefit.

Given the wide variety of alternatives and the health benefits of removing HFC-134a as an aerosol, EIA requests that the EPA remove HFC-134a as an approved ODS substitute for these uses.

HFC-134a Blends. HFC-134a blends are used in foam blowing, as a refrigerant for domestic refrigerators and freezers, and as an aerosol for many uses including dust blowing and frosting uses. To the extent that there are safe, effective low-GWP alternatives for pure HFC-134a for all of the uses listed above, HFC-134a blends for these non-essential uses should likewise be prohibited.

In conclusion, EPA should approve this petition to remove HFC-134a and HFC-134a blends from the list of acceptable substitutes for all of the uses described in this petition. HFC-134a was approved for multiple uses at the inception of the SNAP program almost twenty years ago, but is now often the most damaging of the alternatives listed for particular end-uses, and therefore to meet

Administrator Lisa P. Jackson
April 26, 2012

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the statutory requirements of the SNAP program, EPA must now remove HFC-134a and HFC-134a blends from the list of acceptable alternatives for these non-essential uses.

If you or your staff wishes to discuss this petition or have any questions, please contact me at markroberts@eia-global.org or (978) 298-5705.

Very truly yours,
The Environmental Investigation Agency

A handwritten signature in blue ink, appearing to read 'M. Roberts', is written over a faint, illegible stamp or watermark.

Mark W. Roberts

Cc: Cindy Newberg, Branch Chief, EPA's Stratospheric Protection Division



Correspondence Management System

Control Number: AX-12-000-7478

Printing Date: April 27, 2012 03:29:16



Citizen Information

Citizen/Originator: Marks, Jason

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Organization: New Mexico Public Regulation Commission
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Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number:	AX-12-000-7478	Alternate Number:	N/A
Status:	For Your Information	Closed Date:	N/A
Due Date:	N/A	# of Extensions:	0
Letter Date:	Apr 24, 2012	Received Date:	Apr 27, 2012
Addressee:	AD-Administrator	Addressee Org:	EPA
Contact Type:	FAX (Facsimile)	Priority Code:	Normal
Signature:	SNR-Signature Not Required	Signature Date:	N/A
File Code:	401_127_a General Correspondence Files Record copy		
Subject:	Daily Reading File - A Request that the US EPA, the State of New Mexico and Public Service Company of New Mexico Voluntarily Stay their Litigation to Allow Further Time to Seek a Third Alternative Solution for San Juan Generating Station		
Instructions:	For Your Information -- No action required		
Instruction Note:	N/A		
General Notes:	N/A		
CC:	OAR - Office of Air and Radiation -- Immediate Office OCIR - Office of Congressional and Intergovernmental Relations OEAE - Office of External Affairs and Environmental Education		

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
No Record Found.					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
(b) (6) Personal Privacy	OEX	R6	Apr 27, 2012

NEW MEXICO PUBLIC REGULATION COMMISSION



Commissioner Jason Marks

District 1
505-827-8015

DAILY READING FILE

Commissioner Douglas J. Howe

District 3
505-827-4533

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Santa Fe, NM 87504-1269

April 24, 2012

Governor Susana Martinez

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Representative Martin Heinrich

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US Congressman Steve Pearce

2432 Rayburn House Office Bldg
Washington, DC 20515

Senator Tom Udall

110 Hart Senate Office Building
Washington DC, 20510

Congressman Ben Ray Lujan

330 Cannon HOB
Washington, D.C. 20515

Senator Jeff Bingaman

703 Hart Senate Office Bldg.
Washington, D.C. 20510

A Request that the US EPA, the State of New Mexico and Public Service Company of New Mexico Voluntarily Stay their Litigation to Allow Further Time to Seek a Third Alternative Solution for San Juan Generating Station

The four coal-fired generating units at the San Juan Generating Station ("SJGS") first went into service in the 1970s. Although pollution control systems have been updated over the years, SJGS is not compliant with current EPA regional haze reduction standards. Achieving regulatory compliance following the EPA's mandated plan could require an investment of \$750 million or more, leaving the state and its largest utility saddled with an inordinately expensive, aging, and inefficient relic. Even the PNM/State of New Mexico alternate compliance plan for SJGS, estimated to cost "only" \$100 million, looks like an ill-advised investment in the past.

We believe there is a third alternative that must be considered, an alternative that decreases, rather than increases, the state's exposure to the environmental, regulatory and financial risks posed by over-reliance on a 40-year old coal generation plant. This would be based around scheduling the retirement of one or more of the existing SJGS units, to be replaced with natural gas fired combined cycle technology.

We write today to encourage PNM, the State of New Mexico, and the EPA to seek a voluntary stay of the current litigation over the two competing plans in order to allow the parties sufficient time to explore this third alternative and, hopefully, to enter into an agreement that resolves environmental and cost concerns but also, importantly, provides a pathway to the future for the Four Corners Region. We believe that whatever decision is made regarding SJGS will be the *most important strategic energy decision* facing the State now and for the foreseeable future.

The EPA and the PNM/State proposed solutions for SJGS are deeply flawed because:

- Both solutions would entail the investment of significant capital in a 40 year old, inefficient power plant to be paid by the customers of PNM and other New Mexico utilities over a period stretching beyond 2070. By the time this plant and its retrofits would be paid off by the customers it would be 100 years old or older.
- SJGS would remain exposed to future EPA environmental regulation since neither solution reduces the dependence of SJGS on coal.
- Both proposed solutions would have the perverse result of decreasing plant output while increasing the CO₂ emission per MWH produced and increasing the cost per MWH produced. In both solutions, we will get less clean air at higher cost.
- Neither of the proposed solutions address the ancillary impacts of coal use at SJGS, including the worrisome amounts of carbon dioxide emissions, water consumption, and coal ash disposal. In fact, both proposed solutions could exacerbate these impacts.
- The proposed solutions ignore the vast quantities of natural gas - a much cleaner fossil energy resource - abundantly available in New Mexico at historically low costs.

Both proposed solutions leave the Four Corners Region and its citizens bound to an outdated technology and aging infrastructure with no apparent bridge to a future sustainable economic foundation. In short, the current solutions being contemplated for SJGS are simply unsustainable.

There is a third alternative for SJGS, however, which would involve: retiring some of the existing coal units and replacing them with modern, efficient, clean natural gas fired combined cycle technology which takes advantage of New Mexico's abundant natural gas resources; implementing the State/PNM solution for the SJGS units that would continue to be operational; and implementing a modest amount of renewable energy resources in the region.

Preliminary analyses done by independent parties indicate that this third alternative solution would reduce haze by an amount at least equal to the EPA's proposed solution but at a cost savings of more than 40%. Further, this third alternative would significantly reduce CO₂ emissions, water consumption and coal ash disposal requirements, while providing an infrastructure for future cleaner energy development in the Four Corners Region. The addition

of renewable energy resources would not only help PNM to meet its statutory RPS requirements within cost constraints but would also facilitate the attraction of clean-tech companies to the Four Corners, a benefit which could not happen under the currently proposed solutions.

But so far, it appears there is no serious discussion ongoing about this or any other third alternative solution. Given the high stakes and the money involved for New Mexico, we believe that serious consideration has to be given to this third alternative. What it will take is better cooperation between the parties and, especially, *more time to bring the parties into a mutual understanding*.

We believe all reasonable parties would want this third alternative thoroughly explored before customers are forced into an irrevocable commitment involving hundreds of millions of dollars. We are asking that you support our request to the EPA, the State and PNM to enter into a temporary stay of the EPA's order and for them to request the 10th Circuit Court to stay its proceedings so that the parties may have additional time to further discuss and analyze this alternative solution that we believe would be of the greatest benefit to the state. We believe that the parties would be open to such a request and would find your support of a stay to be helpful to the process.

The stakes are high and, unfortunately, time for careful decision-making is running out. The people of New Mexico and the Four Corners will not be served by implementation of a hasty plan, whose long-term consequences are severe, simply to meet an arbitrarily established deadline.

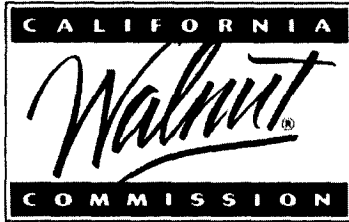
Sincerely,



Jason Marks, Commissioner 1st District
New Mexico Public Regulation Commission



Douglas Howe, Commissioner 3rd District
New Mexico Public Regulation Commission



CALIFORNIA WALNUT COMMISSION

101 Parkshore Drive, Suite 250

Folsom, CA 95630-4726

(916) 932-7070

Fax: (916) 932-7071

info@walnuts.org

An Equal Opportunity Employer and Provider

April 25, 2012

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

Re: Methyl Bromide, Methyl Iodide and Sulfuryl Fluoride

Dear Administrator Jackson:

I am writing on behalf of the more than 4,000 growers and 81 processors (handlers) who farm and market California walnuts. The vast majority of these farms are family operations having been run by the families for two or more generations. This industry, with farm gate revenue of just over \$1 billion dollars in 2010/11, employs more than 60,000 individuals directly and indirectly. California walnuts are also one of the state's top exports, ranking 4th for 2010 in the UC Agricultural Issues Center export data publication.

Recently our committee became aware of the action taken by the registrant of methyl iodide (which is not used on walnuts, but in time could become useful in controlling nematodes and other natural pests in Pre-Plant applications), a methyl bromide alternative, canceling its state registrations of that chemical. That action was taken as a California court was considering a challenge to the state registration of that product. Apparently while the federal registration of the chemical would be maintained to support certain product registrations outside of the United States, the registrant has made clear that it is not proceeding to commercialize the product in the United States.

Growers in Florida and California among others, who have been attempting to transition to alternatives to Methyl Bromide, are adversely impacted by the events concerning methyl iodide. It is yet another step toward the elimination of efficacious products needed by the agricultural community to provide an FDA Ready-To-Eat product for the consuming public. This is coupled with the previously announced proposal by the Agency to revoke the existing tolerances of sulfuryl fluoride, another methyl bromide alternative that has particular use in addressing post-harvest pest problems in the tree nut industry including peanuts, wheat and rice mills and other food storage facilities. This revocation by EPA will have a significant and detrimental effect on the agricultural industry across the width and breadth of these United States and our nation's very regulated food supply.

April 25, 2012

Page 2

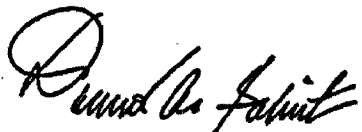
Historically, methyl bromide has played an important role in maintaining the competitiveness of the American food and agriculture industry and helping to assure the wholesomeness of the foods produced. Its use as a pre-plant soil fumigant has allowed our Nation's farmers, particularly those producing specialty crops such as tomatoes, strawberries, walnuts, peppers, flowers and ornamentals, to prepare their land to address various plant, root and weed pests in an efficient, predictable and effective manner.

As a potential alternative to methyl bromide, sulfuryl fluoride has played a major role in the consideration of the US critical use nomination (CUN) by the advisory committees established under the Montréal Protocol. Apparently the availability of these chemicals also was a factor in the evaluation by your Agency of the 2014 Critical Use Exemption (CUE) applications, forming the basis of the State Department 2014 CUN transmitted to the Parties to the Protocol earlier this year.

In view of the action of the registrant regarding methyl iodide and the proposal of your Agency regarding the sulfuryl fluoride tolerances, please advise on the steps your Agency intends to take regarding the 2014 CUN process, as well as the long term approach regarding CUE applications for Methyl Bromide.

We are extremely interested in avoiding adverse impacts on the U.S. agricultural community. Your response to this grave and concerning agricultural matter is anticipated.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis A. Balint". The signature is written in a cursive, flowing style.

Dennis A. Balint
Chief Executive Officer
California Walnut Commission



Correspondence Management System

Control Number: AX-12-000-7490

Printing Date: April 27, 2012 03:09:39



Citizen Information

Citizen/Originator: Moorlach, John M.W.

Organization: Orange County Board of Supervisors

Address: 333 W. Santa Ana Boulevard, 10 Civic Center, Santa Ana, CA 92701

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-12-000-7490

Alternate Number: N/A

Status: For Your Information

Closed Date: N/A

Due Date: N/A

of Extensions: 0

Letter Date: Apr 16, 2012

Received Date: Apr 27, 2012

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: LTR (Letter)

Priority Code: Normal

Signature: SNR-Signature Not Required

Signature Date: N/A

File Code: 401_127_a General Correspondence Files Record copy

Subject: Daily Reading File - EPA Clean Water Protection Guidance OMB Review Under Executive Order No. 12866

Instructions: For Your Information -- No action required

Instruction Note: N/A

General Notes: N/A

CC: OCFO - OCFO -- Immediate Office

OEAEE - Office of External Affairs and Environmental Education

OGC - Office of General Counsel -- Immediate Office

R9 - Region 9 - Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
No Record Found.					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
(b) (6) Personal Privacy	OEX	OW	Apr 27, 2012

History

Action By	Office	Action	Date
(b) (6) Personal Privacy	OEX	Forward control to OW	Apr 27, 2012



DAILY READING FILE
JOHN M. W. MOORLACH, C.P.A.
CHAIRMAN, ORANGE COUNTY BOARD OF SUPERVISORS
SUPERVISOR, SECOND DISTRICT

ORANGE COUNTY HALL OF ADMINISTRATION
333 W. SANTA ANA BLVD.
10 CIVIC CENTER, SANTA ANA, CALIFORNIA 92701
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IAN RUDGE
CHIEF OF STAFF

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KATHLEEN MORAN
POLICY ADVISOR

PAMELA NEWCOMB
POLICY ADVISOR

ALYSON PRICE
POLICY ADVISOR

CAMMY DANCHU
EXECUTIVE ASSISTANT

April 16, 2012

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APR 24 2012

OFFICE OF THE
EXECUTIVE SECRETARIAT

Mr. Jeffrey Zients
Acting Director
The Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

**Subject: RIN: 2040-ZA11 – EPA Clean Water Protection Guidance
OMB Review Under Executive Order No. 12866**

Dear Mr. Zients:

I understand that the Environmental Protection Agency (EPA) has submitted the Clean Water Act Guidance document (Guidance) to the Office of Management and Budget (OMB) for review in compliance with Presidential Executive Order No. 12866. As I am sure you are aware, over 200,000 comments on the Guidance were submitted in response to the May 2, 2011, Federal Register notice for comments (F.R. Vol. 76, No. 84, page 24479). The County of Orange also submitted comments and our letter is attached for your information. I am surprised to learn that, with comments in such volume and significance from across the nation, the EPA would proceed with what I understand is essentially an unchanged document. The Guidance is fundamentally flawed; and if finalized, the impacts on the federal regulatory operations and regulated community will be substantial.

Many have asserted that the Guidance seeks to contravene recent Supreme Court decisions (Solid Waste Agency of Cook County (SWANCC) v. Army Corps of Engineers, and Rapanos v. United States), and expand Federal jurisdiction. As a glaring example, the Guidance specifies that significant nexus to Traditional Navigable Waters (Justice Kennedy's key test in establishing Federal jurisdiction) can be concluded by either the flow of water or the lack of flow of water. This is not guidance; this is expansive criterion.

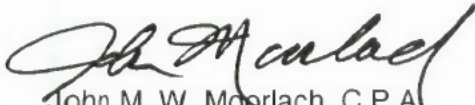
The technical and legal shortfalls of the Guidance are already well documented by extensive public comments. The Guidance is also inconsistent with the President's Executive Order No. 13563 (which also reaffirms Executive Order No. 12866) to identify and correct regulations that are inefficient and excessively burdensome. However, I want to emphasize the failure of the Guidance as a usable policy memorandum to the Federal regulatory field staff and those regulated by the Clean Water Act. The limits of Waters of the US are already nebulous, and the nation needs clarity and predictability—unfortunately, the Guidance fails those needs. When criteria are not clear, regulatory field staff will have to resort to extensive interpretation; and inevitably, inconsistent decisions and delays will be the result. The Federal regulatory function and the regulated community, including local flood protection agencies, will be mired in uncertainty and judicial challenges if the Guidance is finalized. Closer to home, the Guidance will mean delayed permits for flood protection projects and greater risk to life and property due to flooding.

I appeal to OMB, as the organizational and management consultant to federal agencies. The Guidance will not ease the burden on the EPA regulatory function and those under its jurisdiction. The Guidance will create more challenges, appeals, and administrative workload. When guidance lacks clarity, the only certain conclusion is confusion.

I ask that you reject the Guidance as an impractical and unusable document; remand the Guidance back to the EPA; and direct the EPA to draft a clear, concise document within the limitations imposed by the SWANCC and Rapanos Supreme Court decisions.

Please let me know if you would like to discuss our comments, as I would welcome a dialogue with you in hopes of sharing our regional and local perspective. I am also ready to match our comments with resources and have tasked Vincent Gin, P.E., in our OC Public Works Department, to be available to support OMB in our mutual goals. Vincent is well versed in regulatory and flood protection issues and stands ready to directly assist OMB in any way. He can be reached at (714) 647-3907 or vincent.gin@ocpw.ocgov.com.

Very truly yours,



John M. W. Moorlach, C.P.A.
Chairman, Board of Supervisors
Supervisor, Second District

Attachment: County of Orange comment letter, July 25, 2011

- c. The Honorable Cass R. Sunstein, Administrator, OMB/Office of Information and Regulatory Affairs
The Honorable Lisa P. Jackson, Administrator, U.S. Environmental Protection Agency
The Honorable Jo-Ellen Darcy, Assistant Secretary of the Army for Civil Works
Steve Stockton, P.E., SES, Director of Civil Works, US Army Corps of Engineers
Karen Keene, Deputy Director of Federal Affairs, California State Association of Counties
Susan Gilson, Exec. Director, National Assoc. of Flood & Stormwater Management Agencies
Member, Board of Supervisors, County of Orange
Donna Grubaugh, Director of Legislative Affairs, County of Orange
Ignacio G. Ochoa, P.E., Interim Director, OC Public Works, County of Orange
Vincent Gin, P.E., Manager, OC Engineering/Project Management, County of Orange



RECEIVED
APR 27 2012
OFFICE OF THE
EXECUTIVE SECRETARIAT

OFFICE OF THE CITY COUNCIL
CITY OF BIRMINGHAM

710 NORTH TWENTIETH STREET / BIRMINGHAM, ALABAMA 35203
(205) 254-2294 / Fax (205) 254-2603

April 17, 2012

RECEIVED
APR 27 2012
OFFICE OF THE
EXECUTIVE SECRETARIAT

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Mail Code: 1101 A
Washington, D.C. 20406-0001

Dear Mrs. Jackson:

As the city councilor for Birmingham's 8th District, I am writing to oppose recent regulatory measures proposed by the EPA that will negatively affect many residents I represent. The measures propose the cancellation of sale of the most readily available and affordable rodent control products.

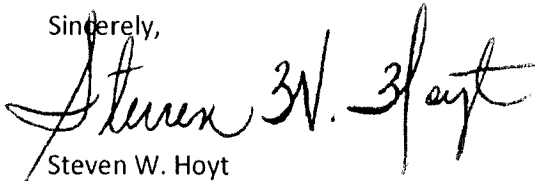
Businesses and residents would no longer have access to these widely-used and affordable rodenticides on which they rely. The alternative measures would be more expensive and less effective, potentially resulting in increased risk to children's health and increased property damage. Increasing the economic burden limits our residents' ability to affordably handle rodent problems; Lower-income individuals and small businesses would be disproportionately affected by the measures.

Finally, the risks cited by the EPA concerning second-generation rodenticides are based on unsupported assumptions. Numerous reports and studies have not indicated a serious health threat to children exists from use of these products, and until the EPA can prove there is a substantial health benefit to regulating rodent control, our residents deserve continued access to these necessary products.

Roderick V. Royal, MPA, President / Steven W. Hoyt, President Pro-Tem
Valerie A. Abbott / Johnathan F. Austin / Maxine Herring Parker / Kim Rafferty
Jay Roberson / Lashunda Roberts-Scales / Carole C. Smitherman, Esq.

At a time when we're facing economic struggles, we cannot afford to put consumers who use these products at a greater disadvantage. Being so, I respectfully ask that the EPA reconsider their current course of action to cancel the sale of affordable and effective rodenticides.

Sincerely,

A handwritten signature in black ink that reads "Steven W. Hoyt". The signature is written in a cursive style with a large, stylized "S" and "H".

Steven W. Hoyt
Birmingham City Council, District 8

CC: The Honorable Richard Shelby, United States Senate
The Honorable Jeff Sessions, United States Senate
The Honorable Terri Sewell, United States House of Representatives
The Honorable Jim Jones
Acting Assistant Administrator
Office of Chemical Safety and Pollution Prevention
ESEPA Headquarters, Ariel Rios Building
1200 Pennsylvania Avenue, N.W,
Mail Code: 7101 M
Washington, DC 20460

THE WHITE HOUSE

WASHINGTON

April 18, 2012

RECEIVED

APR 27 2012

OFFICE OF THE
EXECUTIVE SECRETARIAT

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Establishing Policies for Addressing Domestic
 Violence in the Federal Workforce

Despite the considerable progress made since the initial passage of the Violence Against Women Act in 1994 (Public Law 103-322), domestic violence remains a significant problem facing individuals, families, and communities. Domestic violence causes two million injuries each year, and an average of three women in the United States die each day as a result of domestic violence. While a disproportionate number of victims are women, domestic violence can affect anyone.

The effects of domestic violence spill over into the workplace. The Centers for Disease Control and Prevention estimate that domestic violence costs our Nation \$8 billion a year in lost productivity and health care costs alone, and other studies have suggested that the full economic impact is even higher. Moreover, many victims of domestic violence report being harassed in the workplace or experiencing other employment-related effects.

As the Nation's largest employer, the Federal Government should act as a model in responding to the effects of domestic violence on its workforce. Executive departments and agencies (agencies) have taken steps to address this issue, including by enhancing the quality and effectiveness of security in Federal facilities and by linking victims of domestic violence with Employee Assistance Programs. By building on these important efforts and existing policies, the Federal Government can further address the effects of domestic violence on its workforce.

It is the policy of the Federal Government to promote the health and safety of its employees by acting to prevent domestic

violence within the workplace and by providing support and assistance to Federal employees whose working lives are affected by such violence. Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the following:

Section 1. Government-wide Guidance to Address the Effects of Domestic Violence on the Federal Workforce. Within 240 days of the date of this memorandum, the Director of the Office of Personnel Management (OPM) shall, in consultation with the Attorney General, the Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Homeland Security, and other interested heads of agencies:

(a) issue guidance to agencies on the content of agency-specific policies, as required by section 2 of this memorandum, to prevent domestic violence and address its effects on the Federal workforce. The guidance shall include recommended steps agencies can take as employers for early intervention in and prevention of domestic violence committed against or by employees, guidelines for assisting employee victims, leave policies relating to domestic violence situations, general guidelines on when it may be appropriate to take disciplinary action against employees who commit or threaten acts of domestic violence, measures to improve workplace safety related to domestic violence, and resources for identifying relevant best practices related to domestic violence;

(b) establish a process for providing technical assistance to agencies in developing agency-specific policies, consistent with the guidance created pursuant to subsection (a) of this section, that meet the needs of their workforce; and

(c) consider whether issuing further guidance is warranted with respect to sexual assault and stalking and, if so, issue such guidance.

Sec. 2. Agency-Specific Actions and Policies. (a) Within 90 days from the date of this memorandum, each agency shall make available to the Director of OPM any existing agency-specific policies and practices for addressing the effects of domestic violence on its workforce.

(b) Within 120 days from the issuance of the guidance created pursuant to section 1 of this memorandum, each agency shall develop or modify, as appropriate, agency-specific policies for addressing the effects of domestic violence on its workforce, consistent with OPM guidance. Each agency shall submit for review and comment to the Director of OPM, a draft new or modified agency-specific policy. In reviewing the draft agency-specific policies, the Director of OPM shall consult with the Attorney General, the Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Homeland Security, and other interested agency heads. Each agency shall issue a final agency-specific policy within 180 days after submission of its draft policy to the Director of OPM.

Sec. 3. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

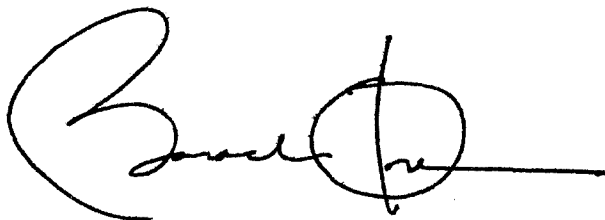
(i) the authority granted by law to an agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of OPM is hereby authorized and directed to publish this memorandum in the *Federal Register*.

A handwritten signature in black ink, appearing to be "B. S. ...", written over a large, stylized circular mark.



Correspondence Management System

Control Number: AX-12-000-6040

Printing Date: April 03, 2012 12:18:46



Citizen Information

Citizen/Originator: Johnson, Jeannie

Organization: Juneau International Airport
Address: 1873 Shell Simmons Drive, Juneau, AK 99801

Constituent: N/A

Committee: N/A Sub-Committee: N/A

Control Information

Control Number: AX-12-000-6040 Alternate Number: N/A
 Status: Pending Closed Date: N/A
 Due Date: Apr 17, 2012 # of Extensions: 0
 Letter Date: Apr 2, 2012 Received Date: Apr 3, 2012
 Addressee: AD-Administrator Addressee Org: EPA
 Contact Type: LTR (Letter) Priority Code: Normal
 Signature: DX-Direct Reply Signature Date: N/A
 File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
 Subject: Daily Reading File-Opposition to EPA's proposed ban on the chemical urea as an airfield pavement deicer
 Instructions: DX-Respond directly to this citizen's questions, statements, or concerns
 Instruction Note: N/A
 General Notes: N/A
 CC: OEAAE - Office of External Affairs and Environmental Education
 R10 - Region 10 -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6) Personal Privacy	OEX	OW	Apr 3, 2012	Apr 17, 2012	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date
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Juneau International Airport

1873 Shell Simmons Drive, Suite 200 • Juneau, Alaska 99801 • (907) 789-7821 • FAX: (907) 789-1227

April 2, 2012

The Honorable Cass R. Sunstein
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
1650 Pennsylvania Avenue, NW
Washington, DC 20503

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC, 20460

**RE: Opposition to EPA's proposed ban on the chemical urea as an airfield pavement deicer
(Docket ID # EPA-HQ-OW-2004-0038)**

Dear Administrators Sunstein and Jackson:

Juneau International Airport (JNU) opposes the U.S. Environmental Protection Agency (EPA's) proposed ban on the use of urea as an airfield pavement deicer and requests a reconsideration of the proposal to ban urea, a waiver and/or a compliance alternative.

While many airports in the Lower 48 states may not use urea extensively, a ban of this chemical will disproportionately and adversely affect JNU and other airports in Alaska. Further, at JNU, the ammonia discharge from urea is only very slightly behind monitoring benchmarks but can and will be improved.

Juneau is the only state capital city in the United States without road connections and can only be reached by air and water. Accordingly, aviation and aviation safety are of paramount importance to Juneau. Alaska has long been able to successfully balance growth and safety with environmental protection. Alaska has cleaner air and water than anywhere in the world, yet it is also the place where cold weather aviation techniques were developed and became Federal Aviation Administration (FAA) and industry standards. In particular, JNU has more than 150 years of hands-on airfield maintenance experience with snow and ice control, as well as general airfield maintenance and wildlife issues. This crew is considered not only experienced, but referred to as experts in snow and ice control and assessment. JNU personnel assisted the FAA in quantifying and validating a prototype for runway condition reports and braking action. FAA is in its final assessment of the prototype and hopes to adapt the system as the international standard within the next few years.ⁱ

In July 2009, JNU's comments were incorporated in a submittal by Alaska Airlines to the docket EPA-HQ-OW-2004-0038. In this letter, JNU would like to expand on those arguments.

JNU began using urea in the early 1980's (dry prill form), then mixed as hot liquid urea by the mid 1980's. The Airfield crew determines urea use (whether liquid or dry prill form) according to several environmental factors: ambient temperature, ground temperature, frost depth, current precipitation and weather forecast. Deicing is a science in and of itself, but a science that must be

balanced with cost and application. Urea is shipped as a dry prill (or pelletized) form, so JNU has the option of using it in the dry prill form, or diluting into a liquid state based on the weather conditions. EPA's Notice of Proposed Rulemaking identified potassium acetate (E36) as a widely used substitute product for urea.ⁱⁱ E36 is distributed/shipped in liquid form only, and therefore much more expensive to barge by ship to Alaska. However, cost is not the only factor in JNU's aversion to E36.

JNU has the following concerns about substituting E36 for urea in airfield pavement deicing:

COST: Cost estimates will vary by year due to the fluctuating price of urea, the price of E36, transportation and delivery costs, and the weather influencing the amount used. In 2009, JNU spent \$3,000 per application of urea and estimates a cost of \$30,000 per application for E36, which is a 10 to 1 increase. In 2012, JNU spent \$135,000 on urea for airfield deicing for the year 2012. Using a similar application rate, JNU would have spent \$877,500 on E36. This means the cost ratio for E36 versus urea is 6.5 to 1 at current prices. This would be an approximate 15% increase to JNU's total budget. JNU cannot accept this increased cost burden when there are less expensive alternatives that work at JNU.

This past winter, JNU used an estimated 130,000 gallons of liquid urea; that is, urea that JNU mixed with water from its delivered dry prill state. JNU also used a nominal amount in its original dry prill form during extreme cold temperatures. At JNU, the urea is mixed in 8,000 gallon batches. An average 8,000 gallon batch requires 11 tons of pelletized (dry prill) urea. Based on the 130,000 gallons used, this equates to 178.75 tons of urea used this year; rounded to 180 tons that will be ordered (including urea used in its original dry prill form). The price of urea delivered to JNU is \$750/ton, or \$135,000 this year. E36 application rate is approximately equal to that of urea. JNU is a wet environment (Juneau is located in the coastal, temperate Tongass Rainforest climate), so application rates of any deicer will typically be greater than those airports in colder, drier climates. Based on equivalent application rates, 130,000 gallons of E36 at \$6.75/gallon delivered to JNU is \$877,500.ⁱⁱⁱ

ENVIRONMENT: Current ammonia runoff due to the use of urea is only slightly behind the monitoring benchmark; however, JNU currently has the flexibility to dilute the urea further and/or redirect runoff into an approved containment pond. JNU complies with EPA Storm Water Pollution Prevention Plan (SWPPP) requirements.^{iv} There were four areas originally identified where airport property discharges storm water into water bodies – three of the four outflows no longer require testing due to either meeting the benchmark standards or no longer discharging into waterways. The fourth area has met the benchmark standards for chemical oxygen demand (COD), biochemical oxygen demand (BOD) and pH, but is 3.32 mg/L away from meeting the ammonia benchmark (see attachment). JNU recognizes that urea is ammonia-based while E36 is not; however, urea can be diluted, and in JNU's case urea is diluted about 95-99% of the time, depending on temperature and precipitation. Further, JNU has the flexibility to reroute the outflow for this area into the Airport's float pond, if necessary. JNU's float pond is an approved containment pond for airfield runoff.

OTHER CONCERNS: Even more troubling, JNU is concerned that E36 is not compatible with galvanized metals and electrical conduit.^v JNU runway and taxiway light bases are composed of galvanized metal and the possibility for degradation of the airfield lighting system and

Honorable Cass R. Sunstein and Honorable Lisa P. Jackson
April 2, 2012

navigational aids (NAVAIDs) is alarming. JNU questions the safety and cost-effectiveness of the long term use of E36 around runway/taxiway lighting and the NAVAID conduits that run throughout the airfield runway/safety areas that are not encased in pavement. This has the potential for not only costly repairs to the lighting system/NAVAIDs, but a loss of the system presents a safety concern for an airport that operates 24/7 and is a diversion port for commercial and military aircraft.

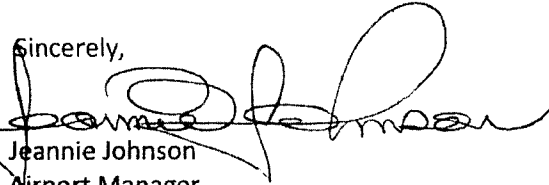
JNU believes that the proposed ban on urea would not only be cost prohibitive to JNU, but the cost would certainly exceed any presumed environmental benefits for this area. JNU is also concerned about the use of E36 around lighting systems and NAVAIDs. Safety is #1 at this Airport. We believe urea is part of that equation.

REQUESTED ACTION

We request reconsideration on the proposed ban on urea or a waiver to the ban on Alaska airports such as JNU. At a minimum, JNU requests that the final rule maintain the option in the NPRM to allow airports to continue using urea if they agree to a compliance alternative to monitor all runway outfalls to demonstrate compliance with a future proposed ammonia limit.

We appreciate your consideration on this matter. Please feel free to contact this office if you have further questions.

Sincerely,



Jeannie Johnson
Airport Manager

Jeannie_Johnson@ci.juneau.ak.us ; (907) 789-7821

Attachment

CC: U.S. Senator Lisa Murkowski; U.S. Senator Mark Begich; U.S. Congressman Don Young

ⁱ FAA Takeoff/Landing Performance Assessment Aviation Rulemaking Committee (TALPA ARC) Runway Matrix Testing (2010-11 and 2011-12).

ⁱⁱ The Seattle-based distributor for E36 stated that there is a new generation of Cryotech NAAC (sodium acetate) sold in a dry pelletized form; however the cost of NAAC is only slightly less than E36.

ⁱⁱⁱ Prices for Urea and E36 have been updated within the past month for the most current price comparisons. Please note that the above cost of E36 does not include the cost of shipping the empty containers back to the distributor on the barge. This would be an additional cost to consider.

^{iv} JNU's SWPPP was developed in 2009 by Contract Engineer (Carson-Dorn) with continued requirements to monitor the outflow points into waterways. The attached **JNU SWPPP Sampling Summary Information** (provided by Carson-Dorn) highlights the test areas and the four analysis parameters: Biochemical Oxygen Demand (BODs), Chemical Oxygen Demand (CODs), Ammonia and acidity/basicity (pH).

^v According to Cryotech, "E36 is an ionized solution and is more conductive than water. Users are advised to take precautions to prevent solutions containing E36 from entering subsurface conduits and electrical components. E36 is compatible with most materials, but exceptions occur such as with galvanized metals. Do not use E36 with galvanized materials."



Correspondence Management System

Control Number: AX-12-000-7521

Printing Date: April 30, 2012 04:06:42



Citizen Information

Citizen/Originator: **Baugh, Don**

Organization: Chesapeake Bay Foundation

Address: Philip Merrill Environmental Center 6 Herndon Avenue, Annapolis, MD 21403

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-12-000-7521

Alternate Number: N/A

Status: For Your Information

Closed Date: N/A

Due Date: N/A

of Extensions: 0

Letter Date: Apr 27, 2012

Received Date: Apr 30, 2012

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: EML (E-Mail)

Priority Code: Normal

Signature: SNR-Signature Not Required

Signature Date: N/A

File Code: 401_127_a General Correspondence Files Record copy

Subject: Daily Reading File - Thank You and Follow Up to EE Summit

Instructions: For Your Information -- No action required

Instruction Note: N/A

General Notes: N/A

CC: R3 - Region 3 - Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
No Record Found.					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
(b) (6) Personal Privacy	OEX	OEAEE	Apr 30, 2012

History

Action By	Office	Action	Date
(b) (6) Personal Privacy	OEX	Forward control to OEAEE	Apr 30, 2012

Comments

Message Information

Date 04/27/2012 09:22 AM
From "Don Baugh - ext. 2054" <DBaugh@cbf.org>
To LisaP Jackson/DC/USEPA/US@EPA
cc Bob Perciasepe/DC/USEPA/US@EPA
Subject Thank You and Follow Up to EE Summit

Message Body

RECEIVED
APR 27 2012
OFFICE OF THE
EXECUTIVE SECRETARIAT

April 27, 2012

The Honorable Lisa Jackson
Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Administrator Jackson,

On behalf of the No Child Left Inside Coalition, I want to thank you for your leadership, participation in, and thoughtful remarks at the White House Summit on Environmental Education on Monday, April 16.

The No Child Left Inside Coalition speaks for a diverse group of more than 2,000 environmental, education, business, public health, outdoor recreation, and religious organizations who believe that environmental education is key to preparing our youth to meet our nation's environmental, energy, and economic challenges. Our national policy focus, since our founding five years ago, has been two-fold:

- 1) Enactment of a federal No Child Left Inside Act, which amends the Elementary and Secondary Education Act to provide our nation's schools and school systems with the resources, flexibility, and authority to train teachers and educate students about the environment and our natural world.
- 2) The issuance of a Presidential Executive Order to make environmental education a national priority by developing a new, cohesive, coordinated environmental literacy policy across the Federal government.

We commend you for convening an historic White House Summit on Environmental Education and committing to reestablish a federal Interagency Task Force on Environmental Education, co-lead by EPA and the Departments of Education and Interior to develop a national plan for environmental education.

In this regard, we urge you to move swiftly to:

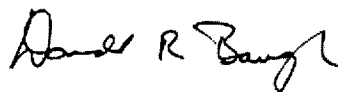
1. Convene the task force and begin the important work of assessing current federal environmental education programs and developing a coordinated national environmental literacy policy and plan,
2. Establish an advisory panel of stakeholders who can advise and support the work of the taskforce, and
3. Establish timetables and milestones for developing a national environmental literacy plan to ensure progress and appropriate accountability.

We remain deeply concerned about the impacts the proposed fiscal year 2013 cuts in EPA's, NOAA's and NSF's budgets will have on environmental education efforts and programs across the country, but believe that your commitments at the summit offer a way forward to advance both the environmental literacy of the American public as well as the Administration's STEM, student achievement, economic sustainability, and environmental stewardship goals. With Federal agencies now in the process of developing their fiscal 2014 budgets, it is vital that these steps begin imminently so that environmental education can be incorporated into their decision making.

The 2,000 organizations of the No Child Left Inside Coalition would be pleased to assist you in any way we can and to support the Administration's efforts to make environmental literacy an educational priority.

Thank you again for your leadership and commitment to a process that I am certain can lead to a new vision for environmental education – one that advances not only environmental stewardship and sustainability, but ensures that our youth are prepared with basic knowledge about the environment, energy, and the natural world to succeed in a 21st century workforce and economy. Our Coalition members, the States – some 40 of which are now in the process of developing environmental literacy plans – and our partners, are looking to the Federal government for leadership and support.

Sincerely,



Don Baugh
Vice President for Education, Chesapeake Bay Foundation
Director, No Child Left Inside Coalition



Correspondence Management System

Control Number: AX-12-000-7554

Printing Date: April 30, 2012 02:17:24



Citizen Information

Citizen/Originator: Wirjawan, Gita I.

Organization: Minister of Trade of the Republic of Indonesia

Address: Jl. M.I Rudwan Rais No. 5, Jakarta 10110

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-12-000-7554

Alternate Number: N/A

Status: For Your Information

Closed Date: N/A

Due Date: N/A

of Extensions: 0

Letter Date: Apr 26, 2012

Received Date: Apr 30, 2012

Addressee: Ron Kirk

Addressee Org: United States Trade Representative

Contact Type: LTR (Letter)

Priority Code: Normal

Signature: SNR-Signature Not Required

Signature Date: N/A

File Code: 401_127_a General Correspondence Files Record copy

Subject: Daily Reading File- Government of Indonesia provides comments on NODA

Instructions: For Your Information -- No action required

Instruction Note: N/A

General Notes: N/A

CC: OEAE - Office of External Affairs and Environmental Education

OITA - Office of International and Tribal Affairs

OP - Office of Policy

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
No Record Found.					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
(b) (6) Personal Privacy	OEX	OAR	Apr 30, 2012

History

Action By	Office	Action	Date
(b) (6) Personal Privacy	OEX	Forward control to OAR	Apr 30, 2012

Comments

RECEIVED
APR 30 2012
OFFICE OF THE
EXECUTIVE SECRETARIAT

Message Information

Date 04/27/2012 03:46 PM
From <Kurt.Blase@hklaw.com>
To LisaP Jackson/DC/USEPA/US@EPA
cc Group ASDInfo@EPA
Subject Comments of Indonisan Trade Ministry on Palm Oil NODA

Message Body

Dear Administrator Jackson,

I am attaching the Comments of the Minister of Trade of the Republic of Indonesia on EPA's Notice of Data Availability (NODA) concerning renewable fuels produced from palm oil under the renewable fuel standard (RFS) program, 77 Fed. Reg. 4300 (January 27, 2012), Docket No. EPA-HQ-OAR-2011-0542. The Comments are in the form of a letter to USTR, with a copy to you that we are now providing. By this message I am also filing these Comments in the relevant EPA docket. Please address questions or comments to the contact persons listed in the Comments.

Thank you for your attention to this matter.

Kurt E. Blase

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Indonesia Trade Comments.pdf



MINISTER OF TRADE OF THE REPUBLIC OF INDONESIA

Ref: 695/M-DAG/SD/4/2012

Jakarta, 26 April 2012

H.E. Ron Kirk
United States Trade Representative
600 17th Street NW
Washington, DC 20508
United States of America

Dear Ambassador,

**Subject: Concerns on Notice of Data Availability
Concerning Renewable Fuels Produced from Palm Oil Under RFS Program**

The Government of Indonesia (GoI) welcomes and wishes to thank the Environment Protection Agency (EPA) for the opportunity to provide comments on the Notice of Data Availability (NODA) and we do hope that the concerns expressed will be taken into account.

1. *Considered impact on the CAA*

It is the understanding of the GoI that the Clean Air Act (CAA) Section 211(o) as amended by the Energy Independence and Security Act of 2007 (EISA) sets a minimum 20% lifecycle GHG reduction threshold needed to qualify as renewable fuel; and that current evaluations are based on an assessment of the lifecycle greenhouse gas (GHG) emissions associated with the production, distribution and use of fuels meet minimum lifecycle GHG reduction threshold, i.e., 60% for cellulosic biofuel, 50% for biomass-based diesel and advanced biofuel, and 20% for other renewable fuels. Palm oil falls within the scope of 'other renewable fuels' and EPA's analysis found that biodiesel and renewable diesel produced from palm oil is below 20% and as such would be banned in the domestic production and imports of renewable fuels in to the US.

2. *GOI committed to environmental protection and GHG reductions*

At the outset, we wish to stress the GoI's robust support for global efforts towards environmental protection and GHG reduction and the important role played by EPA in supporting these goals. In this respect, the opportunity is again taken to highlight the unilateral commitment towards the reduction of GHG announced by President Susilo Bambang Yudhoyono during the Copenhagen Meeting in December 2009 that will see a 26% reduction in GHG by the year 2020; and in order to meet these goals, we believe that it is in the mutual interest of all parties to work closely together.

In spite of these efforts and the commitment of our Government to the environment, the current calculation of the EPA that is based on non-definitive conclusions against palm oil exports to the

United States as a feedstock for renewable fuel or in the form of finished biodiesel has the potential to strain trade relations in unintended ways and may place us in the unenviable position in possible trade dispute. The Gol wishes to add that this is the wrong signal to send to a trading partner committed to GHG reductions well above a number of developed economies. We would also like to note that this decision will effectively remove 600 million gallons of renewable diesel from the US domestic market that would otherwise be there that may lead to even higher prices at the pump for consumers.

It is therefore crucial that the methodology currently used for palm oil by the EPA be reviewed and oriented towards facts rather than assertions; and based on this change of approach – the Gol firmly believes that GHG emissions for palm oil are well above 20% and that palm oil is in fact a key feedstock for renewable fuels if global environmental challenges are to be met.

3. Current methodology applied by EPA for calculating GHG reductions for palm oil uses inconclusive and oversimplified accounting methods

The specific concern of the Gol relates to the current methodology applied by the EPA which concludes that biodiesel and renewable diesel produced from palm oil only contribute to 17% and 11% of GHG emissions reductions, below the threshold of 20% required to be classified as a renewable fuel.

First of all, the GHG accounting methods EPA has chosen to use for this analysis are not internationally accepted nor used by other countries to calculate lifecycle analyses. An EU analysis of methane-flare palm-based renewable diesel demonstrates a 56% GHG reduction.¹ In particular, the FAPRI-CARD method used by EPA is based on a number of assumptions and therefore the result is doubtful.

By using the FAPRI CARD method, EPA has projected that in 2022, the US will need 400 million gallon of renewable energy consumption in USA where half of it derives from biodiesel and the other half comes from renewable energy. The model assumed that to produce 200 million gallon of biodiesel, will need 1.46 million ton of palm oil, which some of them will be provided by global market supply, and the rest (0.562 ton) will be fulfilled from the production of new palm oil plantation of 124.000 ha as well as for other sources such as rice and lard. From those 124.000 hectare of new plantation, the model assumed a 64.000 ha, 40.000 ha and 20.000 ha of new plantation will be open in Indonesia, Malaysia and rest of the world respectively.

Those 64.000 ha of new plantations (56.000 ha in Kalimantan Island and 8.000 ha Sumatra Island) is in fact unlikely to happen since the prices of the land in these areas are considerably high let alone its availability.

Secondly, EPA analysis uses outdated satellite imaging and other inputs when making land use change determinations and peat emissions factors and, therefore, the analysis is not an accurate representative of the industry's production methods and land use. We noted that local zoning plans, environmental permitting activities, and the carbon intensities of the varying types and quality of production lands were not appropriately accounted for in EPA's models. Based on the historical data, USDA reports and other literature, EPA analysis projects that future new palm oil plantations in Indonesia will be mostly on forest (43%), mixed (38%), savanna (10%), cropland (7%), grassland (1%), wetland (1%) while there is no expansion on shrubland (0%). However, an analysis by Agus et

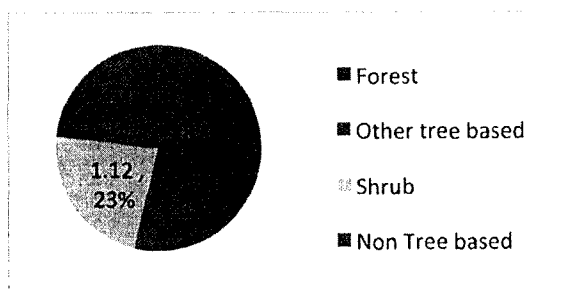
¹ "Biofuels: Sustainable Criteria in the EU Renewable Energy Directive." European Union Delegation to Malaysia. 05 Oct 2011. <http://goog.gl/60F2y>

al. (2011)² shows a much lower reliance of palm oil expansion in the past on forest and an important role of shrubland. Between 1990 to 2010 period, new palm oil plantations used only approximately 34% forest, 26% shrubland and 40% other land uses including rubber plantation, timber plantation and other low carbon biomass agricultural and grasslands whereas for 2000 to 2010, using the same database as the 1990 – 2010, the reliance on forest for palm oil development decreased to 28%, which is much lower than the 2000-2009 figure of EPA. The future use of shrubland will remain important as there are quite significant area of shrubland with mineral and peat soils remaining. In this respect, we recommend that the calculation of land use change affected by forest should be decreased accordingly.

Projected and historical land covers types impacted by palm oil plantation expansion in Indonesia, based on EPA and Agus et. Al. (2011) estimates

Land Cover Types	EPA Projection for 2022 (Table II.5., NODA), based on 2000-2009 trend	Agus et.al. (2011)	
		Historical 1990-2010	Historical 2000-2010 for Sumatera and Kalimantan only (a recalculation)
Forest	43%	34%	28%
Mixed	38%	34%*	26%
Shrubland	0%	26%	23%
Savanna	10%		
Grassland and Croplands	8%	6%	23%
Wetland	1%		

*Rubber, timber plantations, agroforestry
Source: Agus et al. (see footnote 2)



The areas (in million ha and %) of land use types that were affected by oil palm plantations in Sumatra and Kalimantan between 2000 and 2010 (Agus et al. 2012).³

² Agus, F., Gunarso, P., Sahardjo, B.H., Joseph, K.T., Rashid, A., Hamzah, K., Harris, N., and van Noordwijk, M. 2011. Strategies for CO2 emission reduction from land use changes to oil palm plantations in Indonesia, Malaysia and Papua New Guinea. RSPO, Kuala Lumpur. Presented at the Roundtable 9 of the Roundtable on Sustainable Palm Oil, Kota Kinabalu, Malaysia. ([http://www.rt9.rspo.org/ckfinder/userfiles/files/P6_3_Dr_Fahmuddin_Agus\(2\).pdf](http://www.rt9.rspo.org/ckfinder/userfiles/files/P6_3_Dr_Fahmuddin_Agus(2).pdf)).

³ Ibid.

Moreover, palm oil production creates methane gas (a potent GHG), which can be captured and flared to greatly reduce its overall GHG footprint. In conducting its analysis, EPA chose not to distinguish between the use or non-use of methane flaring technologies in production operations in its overall decision. On the calculation of peat-land emission, EPA was also using assumption data and that the result was considerably high compare to other research in Europe and Asia, who came up with a lower number (30-50 tCO₂/ha/year). EPA uses the latest result (73 tCO₂/ha/year) but then changed into 95 tCO₂/ha/year due to the consideration that the former number was too low. This resulted in higher figure on land use change calculation. In this regard, we would like to propose to do recalculation on emission factor. According to Agus Fahmudin⁴ emission factor from peat is as high as 38 tCO₂/ha/year.

In addition to that, when analyzing this peatland area, EPA was using Indonesia peat-land map published by Wetland International (Wahyunto et al. 2003; 2004; 2006)⁵. According to Ritung et. al.⁶, the maps were derived mostly based on the darkness of Landsat image with a relatively limited group survey data for verification, especially for Papua area. With the development in soil survey, the corrected peat-land map in Sumatera and Kalimantan is about 14% smaller than the initial estimation. In this respect, we expect a reduction figure on the calculation of allocation on peat-land for future land affected by palm oil plantation.

Revised estimate of peatland area in Indonesia based on soil survey data

Island	Peatland area (ha)		
	Wahyunto et al. (2003, 2004, 2006)	Revised Wahyunto et al. (2003, 2004, 2006) by Ritung et al. (2011)	Difference
Sumatra	7,212,798	6,436,649	776,149
Kalimantan	5,830,228	4,778,004	1,052,224
Papua	7,759,372	3,690,921	4,868,451
Total	20,802,398	14,905,594	5,896,804

Note: Estimated peatland area is 14% lower than the initial estimate

Source: Wahyunto et al. (see footnote 4)

These key assumptions seemingly ignores the work that is being undertaken by the Gol and international partners to meet the 26% reduction committed by Presiden Susilo Bambang Yudhoyono which includes sustainable peat-land management, reduction in rate of deforestation and land degradation, use of degraded land, development of carbon sequestration projects in forestry and agriculture and reduction in solid and liquid waste.

⁴ Ibid.

⁵ See Wahyunto, Heryanto, B., Bekt, H. and Widiastuti, F. 2006. Maps of peatland distribution, area and carbon content in Papua 2000-2001. Wetlands International – Indonesia Programme, Bogor & Wildlife Habitat Canada; Wahyunto, Ritung, S., and Subagjo, H. 2003. Map of Peatland Distribution Area and Carbon Content in Sumatera 1990-2002. Wetlands International – Indonesia Programme, Bogor & Wildlife Habitat Canada; and Wahyunto, Ritung, S., Suparto and Subagjo, H. 2004. Map of Peatland Distribution Area and Carbon Content in Kalimantan 2000-2002. Wetlands International – Indonesia Programme, Bogor & Wildlife Habitat Canada.

⁶ Ritung, S., Wahyunto, Nugroho, K., Sukarman, Hikmatullah, Suparto, Tafakresnanto, C. 2011. Peta Lahan Gambut Indonesia Skala 1:250.000 (Indonesian Peatland Map at the Scale 1:250.000). Indonesian Center for Agricultural Land Resources Research and Development, Bogor, Indonesia.

In order to achieve this goal, a significant number of regulatory measures are being implemented and on the ground surveillance is continuously being improved. For example, the Gol and the Government of Norway have agreed to cooperate in reducing further GHG from deforestation and forest degradation, which was immediately followed by the moratorium on new forest certification for palm oil plantation, enhancing the forest and peat-land management regulations (the Presidential Instruction No. 10 Year 2011 on the Suspension of New Concession on Primary Forest and Peat-land), as well as the implementation of Indonesian Sustainable Palm Oil (ISPO) 2014 Mandatory Certification Scheme and Roundtable Sustainable Palm Oil (RSPO) as a comprehensive efforts towards reducing GHG. Under this moratorium, the NODA estimates of the percentage of the projected land-cover types impacted by oil palm expansion claimed to be 43% on forest and 13% peat-land – is unfair and not considered reasonable.

The Gol has also issued a regulation on “feed in tariff” for renewable energy including Palm Oil Mill Effluent (POME) through the Regulation of Minister of Energy and Mineral Resources of RI No. 31 Year 2009 which amended by the Regulation of Minister of Energy and Mineral Resources of RI No. 04 Year 2012 on Electricity Purchase Price by PLN from Small and Medium Scale Power Plant Uses Renewable Energy of Excess of Electricity. This regulation represents a significant effort to accelerate the used of POME/solid waste from palm oil plantation (as the main source of methane capture) to be converted into electricity for mandatory purchase by State Electricity Company/PLN through more attractive/competitive new feed tariff (50% higher than other form of renewable energy).

4. *There is a need to consider other methodologies for GHG reductions and also to take account of productivity parameters, environmental and humanitarian considerations*

There are other methods in calculating GHG emissions reduction that will result in different figures. The Gol therefore urges the EPA to broaden the methodologies currently used to gain a better understanding of palm oil and GHG emissions. We wish to reassure the EPA that you will receive our fullest cooperation on this matter.

On this note, we would like to firstly highlight that palm oil is the most efficient energy crop available today. Palm oil produces around 4.4 tons of oil per hectare per year, compared with the average yield of soybeans, which is 0.54 tons of oil per hectare per year, pointing to 8.15 times of yield. Less than 8% of all palm oil production is used to produce biofuels, compared to the 92% used for food, vegetable oil, and chemical production. In short, palm oil’s use in biofuel production is minimal and that existing cropland is capable of meeting all supply needs.

Amongst others, in terms of economic value, palm oil production is more economical compared to other vegetable oils, namely soybean, corn, sugar or even rapeseed. This view is supported by various studies, both in Indonesia and internationally. In particular, a recent report from the World Bank states that:

“Another key reason for palm oil’s dominance in the vegetable oils market is its inherent crop productivity compared with the oil seeds. Majority of farmers have used palm oil due to its high yield oil seed that produces between three and four tonnes per hectare, in comparison to other competitor seeds (rapeseed, sunflower and soybean oils) that yield less than 0.7 tonnes per hectare.”⁷

⁷ World Bank Group Framework and IFC strategy for engagement in the palm oil sector report and Oil World, 2010, “Oil World Annual 2010”, Hamburg, Germany.

In addition, based on recent study by International Food Policy Research Institute ⁸, palm trees only need 0.26 ha of land to produce 1 ton of oil, compare to soybean, sunflower and rapeseed that needs respectively 2.22 ha, 2 ha and 1.52 ha of land to produce the same amount of oil.

Secondly, renewable diesel is fungible and the result of palm oil contribution improves local air quality. Renewable diesel made from palm oil is a hydrocarbon identical to petroleum-based diesel. It is 100% compatible with existing oil infrastructure and can be used safely in today's diesel engines, eliminating the need for costly conversion technologies. Engine test have proven that particulate, carbon monoxide, and nitrogen oxide emissions released by renewable diesel are all lower than with traditional diesel as follow: 10% lower on NOx, 28% lower on particulate, and 28% lower on carbon monoxide.

Thirdly, it is also important to note that palm oil's environmental impacts are limited and the industry is committed to sustainable practices. Many existing plantations are located on old rubber plantations and the new ones can take place on marginal lands not suited for growing other crops. The biofuels industry is also committed to sustainable practices and procures palm oil from independently verified reputable and responsible suppliers in Malaysia and Indonesia. Third party verifiers include the Roundtable on Sustainable Palm Oil and the International Sustainability and Carbon Certification System.

Last, but not least important, key consideration is that palm oil also spurs economic development and reduces poverty. In Indonesia, the palm oil industry employs nearly 6 million people, many of whom have been lifted out of poverty, enabling them greater access to education and health care.⁹

At the global level, the productivity of palm oil is as such that it maybe considered the optimum feedstock for biofuels in achieving global environmental goals and we respectfully urge the EPA to factor this into the methodology used by the EPA.

5. US Obligations under the WTO Agreements to avoid trade restrictive policies

Under its current form, the Gol wishes to respectfully express concerns regarding the possible inconsistency of NODA with the obligation of Members under the World Trade Organization. In this respect, the Gol draws attention to the obligations of Members flowing from Article 2.1 of the Technical Barriers to Trade (TBT Agreement) to ensure that its technical regulations, such as those under RFS2, accord to Member imports treatment no less favorable than that accorded to like products of US origin and to like products originating in any other country. Indonesia considers that the regulatory distinctions drawn under RFS2 between different renewable fuels, in particular those based on GHG emission performance requirements, may contravene this obligation, by treating like renewable fuels from Indonesia less favorably than those of US and other origins.

Indonesia is equally concerned that the GHG emission thresholds for renewable fuels set by the EPA and applied to renewable fuel produced from palm oil create unnecessary obstacles to trade, and are more trade-restrictive than necessary to meet any legitimate objective, contrary to Article 2.2 of the TBT Agreement.

⁸ Recent study by the International Food Policy Research Institute entitled, "*Global Trade and Environmental Impact of the EU Biofuels Mandate*" (trade.ec.europa.eu/doclib/html/145954.htm)

⁹ Sheil, D. et al. (2009). "The impacts and opportunities of oil palm in Southeast Asia." CIFOR, Occasional Paper No. 51 <http://goo.gl/7AQ5g>

For similar reasons, Indonesia is concerned that these US measures contravene the non-discrimination provisions of the General Agreement on Tariffs and Trade 1994 (GATT 1994), notably by providing less favorable treatment to renewable fuels from Indonesia than like renewable fuels of US origin, contrary to Article III:4 and possibly contrary to Article I:1 of the GATT 1994. Furthermore, Indonesia considers that certain regulatory distinctions drawn under RFS2 between different renewable fuels may not be justifiable by reference to any environmental necessity, but instead may constitute a disguised restriction on international trade and arbitrary and unjustifiable discrimination between countries where the same condition prevail.

We would also like to respectfully draw the attention of the US to its obligations under Article 2.9 and Article 2.12 of the TBT Agreement to notify its technical regulations to the WTO and to allow a reasonable interval between their publication and entry into force in order to allow time for producers in exporting Members, particularly in developing countries, to adapt their products or methods of production to the requirements of the importing Member.

Based on the above arguments and other vigorous facts, we urge EPA to recalculate the palm oil emission reduction using reliable data and information.

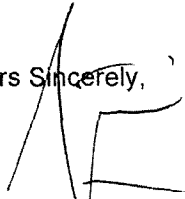
The GoI attaches considerable importance on the need to review the current policy of the EPA with regard to renewable fuel standard (RFS) from palm oil as it may only serve to undermine the bilateral efforts to strengthen cooperation in various fields of common concerns under the Comprehensive Partnership between RI-US, including bilateral trade and renewable energy.

As Indonesia is one of the largest producers and exporter of palm oil, the GoI looks forward to the possibility of collaborating with the US in meeting the demand of biodiesel and renewable diesel production for domestic and global markets in order to meet the environmental challenges ahead based on our mutual interest.

Thank you for your kind attention and cooperation, and I wish to discuss more on this issue during the upcoming TIC/TIFA meeting.

Yours Sincerely,

~


Gita Irawan Wirjawan

Cc:

1. Administrator, US Environmental Protection Agency;
2. Coordinating Minister of Economic Affairs;
3. Minister of Foreign Affairs, the Republic of Indonesia;
4. Minister of Agriculture, the Republic of Indonesia;
5. Ambassador of the Republic of Indonesia to the United States, Washington;
6. Ambassador of the United States to the Republic of Indonesia, Jakarta.

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Message Information

Date 04/27/2012 11:54 AM
From "Doniger, David" <ddoniger@nrdc.org>
To LisaP Jackson/DC/USEPA/US@EPA
cc Gina McCarthy/DC/USEPA/US@EPA
Subject Petition to remove HFC-134a from the SNAP approved alternatives list for certain products

Message Body

Dear Administrator Jackson:

Enclosed is a petition from the Natural Resources Defense Council, the Institute for Governance and Sustainable Development, and the Environmental Investigation Agency for action under the Clean Air Act to restrict the use of HFC-134a in refrigerators, freezers, and certain other products.

HFC-134a is a powerful contributor to climate change, and is one of the chemicals covered by the December 2009 endangerment determination.

For each of the applications covered by the petition, EPA has already approved safer alternatives under the Significant New Alternatives Program carried out under Section 612 of the Clean Air Act.

The petition asks that EPA remove HFC-134a from the SNAP approval list for these applications, setting a reasonable deadline for transitioning to the safer alternatives.

Thank you for your consideration of this petition.

Sincerely,

David Doniger

David D. Doniger
Policy Director, Climate and Clean Air Program
Natural Resources Defense Council
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Washington, DC 20005

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SNAP Petition_2012_04_27.pdf



NATURAL RESOURCES DEFENSE COUNCIL

April 27, 2012

Administrator Lisa P. Jackson
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

By email

- Re:
1. Petition to Remove HFC-134a from the List of Acceptable Substitutes in household refrigerators and freezers and stand-alone retail food refrigerators and freezers under the Significant New Alternatives Policy Program.
 2. Petition to restrict the sales of SNAP listed refrigerants to anyone other than certified technicians.
 3. Petition for a standardized procedure to determine the speed of transition from obsolete high-GWP HFCs to next-generations alternatives and substitutes with superior Life-Cycle Climate Performance (LCCP).
 4. Clarification of May 2010 Petition Regarding Aerosol Products.

Dear Administrator Jackson:

The Natural Resources Defense Council (NRDC), the Institute for Governance & Sustainability (IGSD), and the Environmental Investigation Agency – US (hereafter NRDC/IGSD/EIA) hereby petition the Environmental Protection Agency (EPA) to:

1) Remove HFC-134a from the list of acceptable substitutes for CFC-12 in household refrigerators and freezers and stand-alone retail food refrigerators and freezers maintained under EPA's Significant New Alternatives Policy (SNAP) program,

2) Restrict the sales of SNAP listed refrigerants to all except certified technicians with access to service tools required under existing EPA regulations, and

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3) Adopt a standardized procedure to determine the speed of transition from obsolete high-GWP HFCs to next-generations alternatives and substitutes.

NRDC/IGSD/EIA also hereby clarify the May 2010 Petition regarding aerosol products (see section 4 below).

Background and Introduction

On May 7, 2010 NRDC/IGSD/EIA petitioned EPA to remove HFC-134a from the list of acceptable substitutes for CFC-12 under the SNAP (Significant New Alternatives Policy) program for use in Motor Vehicle Air Conditioners (MVACs) and for other end-use categories where more benign alternatives are available. The MVAC end use under SNAP covers light-duty vehicles (e.g. passenger cars, pick-up trucks, minivans, and sport utility vehicles) as well as other types of vehicles (e.g., off-road construction, mining and agricultural equipment, heavy-duty trucks, airplanes, buses, and passenger trains).

On August 5, 2010, EPA replied seeking additional information before finding the petition complete and on November 16, 2010, NRDC responded to those questions.

On February 14, 2011, EPA responded:

We are finding your May 7, 2010, petition complete for new passenger cars and light duty vehicles, as narrowed by your November 16, 2010 supplement, which petitions us to remove HFC-134a from the list of acceptable alternatives in *new* MVACs only.

Consistent with 40 CFR 82.184(d)(5), EPA will initiate notice and comment rulemaking in response to your petition. EPA acknowledges the need to evaluate and take comment on many factors, including, but not limited to, the time frame for the introduction of newer alternatives into the automotive market, and potential lead time for automobile manufacturers to accommodate alternatives.

EPA has not, however, published a notice of proposal regarding MVAC use of HFC-134a. We do not address this delay here, but we reiterate the need for timely action on the MVAC matter and we intend to pursue such action separately.

The petitions elaborated in this letter are filed pursuant to Section 612(d) of the Clean Air Act and 40 C.F.R § 82.184(b)(3). Under section 612 of the Clean Air Act, EPA has the authority to evaluate alternatives to ozone-depleting substances (ODS) identified in section 602 and to publish a list of acceptable and unacceptable substitutes through the SNAP program. EPA also has the authority to revise this list on its own, or in response to a petition, to remove a substitute previously listed as acceptable.

1. Petition to Remove HFC-134a from the List of Acceptable Substitutes for CFC-12 in: Household Refrigerators and Freezers and Stand-Alone Retail Food Refrigerators and Freezers

CFC-12 is a Class I ozone-depleting chemical under section 602. EPA was required to identify acceptable substitutes for CFC-12 by considering their “atmospheric effects and related health and environmental impacts,” the “general population risks from ambient exposure to compounds with direct toxicity to increased ground-level ozone,” “flammability,” and “cost and availability of the substitute.”¹ In 1995, EPA determined HFC-134a and more than a dozen other refrigerants to be an acceptable substitute for CFC-12 in household refrigerators and freezers and stand-alone retail food refrigerators and freezers because HFC-134a has an ozone-depleting potential (ODP) of zero and a global warming potential (GWP) of 1300, as compared to CFC-12’s ODP of 1 and GWP of 10,890.² On December 20, 2011, EPA listed “isobutane (R-600a) and R-441A as acceptable, subject to use conditions, as substitutes for chlorofluorocarbon (CFC)-12 and hydrochlorofluorocarbon (HCFC)-22 in household refrigerators, freezers, and combination refrigerators and freezers. This action also lists propane (R-290) as acceptable, subject to use conditions, as a substitute for CFC-12, HCFC-22, and R-502 in retail food refrigerators and freezers (stand-alone units only).”³

Isobutane and propane are hydrocarbons, and R-441A is a blend of hydrocarbons. The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 34-2010 “Designation and Safety Classification of Refrigerants” (ASHRAE, 2010) assigns a specific name and safety group classification to each refrigerant. Isobutane is R-600 (also commonly called HC-600) and propane is R-290 (also commonly called HC-290). The blend of four hydrocarbons is R-441A: ethane (3.1 percent by mass), propane (54.8 percent by mass), isobutane (6.0 percent by mass), and butane (36.1 percent by mass).

In the December 2011 EPA SNAP listing of acceptable low-GWP refrigerants for household refrigerators and freezers and stand-alone retail food refrigerators and freezers, EPA listed the relative GWPs as follows:

The GWP of a greenhouse gas (GHG) quantifies its potential integrated climate forcing relative to carbon dioxide (CO₂) over a specified time horizon. The 100-year integrated GWPs of isobutane, propane, and R-441A are estimated to be 8 (GE, 2008), 3 (Ben and Jerry’s, 2008), and less than 5 (A.S. 11 Trust & Holdings, 2009), respectively, relative to a value of 1.0 for CO₂. These are significantly lower than the 100-year integrated GWPs of the substances that they would be

¹ Significant New Alternatives Policy Program, Agency Review of SNAP Submissions, 40 C.F.R. § 82.180(a)(7)(i)-(ii) (2009).

² Protection of Stratospheric Ozone, 60 Fed. Reg. 31,092, 31,097 (June 13, 1995).

³ Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances – Hydrocarbon Refrigerants, 76 Fed. Reg. 78,832 (Dec. 20, 2011).

replacing: CFC-12 (GWP = 10,890); HCFC-22 (GWP = 1,810); and R-502 (GWP = 4,660) (WMO, 2011) and are significantly lower than those of other acceptable refrigerants in these end-uses (e.g., GWPs of HFC-134a, R-404A, and R-410A are approximately 1,430, 3,920, and 2,090, respectively).⁴

It is also expected that energy efficiency will be equal or greater than equipment based on HFC-134a.⁵

...energy efficiency of these refrigerants is likely to be comparable to or higher than that of ODS refrigerants and of HFC refrigerants sometimes used (e.g., HFC-134a).

In the 2010 Assessment Report of the Technology and Economic Assessment Panel, UNEP's Technology and Economic Assessment Panel (TEAP) discusses the energy efficiency of hydrocarbons compared to that of HFC-134a: 'When GWP of HFC-134a is considered prohibitive in relation to HFC emissions (country regulation or company policy), hydrocarbon refrigerants (isobutane and propane, i.e. HC-600a and HC-290) or CO₂ (R-744) are the current alternative solutions, presenting in most of the cases the same technical reliability and energy performance as HFC-134a. [p. 60]

EPA and the Department of Energy (DoE) can assure that energy efficiency of the new products will be higher than that of the obsolete high-GWP products by strengthening the appliance energy efficiency standard and the Energy Star qualification threshold. To achieve even higher energy efficiency and consumer savings, EPA and DoE could transition to a program where the most energy efficient appliance within each category (size and features) is annually designated as the "Top Runner" and every other appliance must equal or better that energy efficiency within two or three years. This approach uses the market to prove technical feasibility and rewards the companies offering the products most in the interest of consumers and society.

In light of the health and environmental goals of the SNAP program and the availability of hydrocarbon substitutes that present much lower risks to health and environment than those associated with already phaseout CFC-12 and currently allowed HFC-134a, NRDC and IGSD request that EPA remove HFC-134a and all other refrigerants with 100-yr GWP>150 from the acceptable substitutes list for household refrigerators and freezers and stand-alone retail food refrigerators and freezers. We recommend the 100-yr GWP threshold of 150 because this value allows hydrocarbons, carbon dioxide, HFC-1234yf, and HFC-152a and is also the maximum allowed by the European Commission (EC) F-gas Directive for motor vehicle air conditioning.

The environmental and legal justification for the petition to un-list HFC-134a in household refrigerators and freezers and stand-alone retail food refrigerators and freezers

⁴ *Id.*

⁵ *Id.*

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is the same as presented by NRDC/IGSD/EIA in the petition EPA granted to un-list HFC-134a from motor vehicle AC.⁶

The Significant New Alternatives Policy program implements section 612 of the Clean Air Act. The SNAP program was created to assure the health and environmental safety of alternatives for ozone-depleting substances that were being phased out under Section 602 of the Act. The purpose of the SNAP program is “to allow a safe, smooth transition away from ozone-depleting compounds by identifying substitutes that offer lower overall risks to human health and the environment.”⁷ Section 602 of the Clean Air Act contains a list of Class I and Class II ozone-depleting substances which have been or are being phased out. Under the SNAP program EPA evaluates proposed substitutes to these ODS and classifies the substitutes as acceptable, acceptable subject to use limits or conditions, or unacceptable.⁸ The SNAP approval process provides EPA an opportunity to review proposed alternatives before they enter the marketplace. SNAP determinations thus can drive commercial development towards substitutes that present a lower overall risk to human health and the environment.

Applicants for listing of potential substitute applications must provide certain information, including the name and description of the substitute, physical and chemical information, toxicity data, and health and safety studies.⁹ In addition, applicants must include information concerning the ozone-depleting potential and global warming impacts of the substance, including “information on the GWP index and the indirect contributions to global warming caused by the production or use of the substitute.”¹⁰ EPA’s acceptability determinations are comparative evaluations, where EPA looks not only at the proposed substitute in comparison to the relevant Class I or Class II substance listed in Section 602, but also in comparison to “other substitutes for the same end-use.” As such, EPA must consider not only the original ODS but also the other listed substitutes for that substance. For example, in the context of household refrigerators and freezers and stand-alone retail food refrigerators and freezers, R-290, R-441A, and R-600 are SNAP listed substitutes for both CFC-12 and HFC-134a. In comparing these substitutes directly with each other, EPA then may “prohibit the use of those substitutes found, based on the same comparisons, to increase overall risks.”¹¹ This progressively comparative analysis allows the SNAP program to continually promote new and less environmentally harmful substitutes as they are developed and listed.

EPA’s criteria for risk comparison in the SNAP program support Title VI’s goal of phasing out ODS from the marketplace in conjunction with the Montreal Protocol. EPA must explicitly analyze, among other things, “[a]tmospheric effects and related health and

⁶ http://www.epa.gov/ozone/downloads/NRDC_petition_responses.pdf.

⁷ Environmental Protection Agency, Significant New Alternatives Policy (SNAP) Program, <http://www.epa.gov/ozone/snap/index.html> (last visited Mar. 17, 2009).

⁸ *Id.*

⁹ Significant New Alternatives Policy Program, Information Required to be Submitted, 40 C.F.R. § 82.178 (2009).

¹⁰ *Id.*

¹¹ Significant New Alternatives Policy Program, Purpose and Scope, 40 C.F.R. § 82.170 (2009).

environmental impacts. . .[and] [g]eneral population risks from ambient exposure to compounds with direct toxicity and to increased ground-level ozone.”¹² In promulgating the initial SNAP rule in 1994, the agency noted that they had “followed several guiding principles in developing the SNAP program.”¹³ The rule outlines a comparative risk framework, where:

The Agency's risk evaluation compares risks of substitutes to risks from continued use of ozone-depleting compounds as well as to risks associated with other substitutes. This evaluation considers effects due to ozone depletion as well as effects due to direct toxicity of substitutes.¹⁴

The proposed rule outlining the SNAP program elaborates on the climate-focused nature of this risk analysis, where the “‘overall risk’ characterization will consider such factors as: Toxicity and exposure -- both human health and ecological; chlorine loadings; ozone-depletion potential; global-warming potential; and flammability.”¹⁵

In light of the comparative nature of the SNAP analysis and given that other acceptable substitutes are on the market or soon to be available, we request that EPA remove HFC-134a and all other refrigerants with 100-yr GWP >150 from the list of acceptable alternatives for household refrigerators and freezers and stand-alone retail food refrigerators and freezers, on a schedule that is based on the most rapid feasible introduction of one or more of the above-mentioned acceptable alternatives. Due to the comparative and progressive nature of the SNAP program, R-290, R-441A, and R-600 and other potential substitutes should be considered substitutes not only for CFC-12 (the initial ODS at issue) but also for alternatives already listed, including HFC-134a. In light of this, we request that EPA establish a schedule for rapidly phasing out the use of HFC-134a in household refrigerators and freezers and stand-alone retail food refrigerators and freezers.

EPA initially approved HFC-134a for use as an acceptable alternative in 1995. The initial approval stated that:

HFC-134a does not contribute to ozone depletion. HFC-134a's GWP and atmospheric lifetime are close to those of other alternatives which have been determined to be acceptable for this end-use. However, HFC-134a's contribution to global warming could be significant in leaky end-uses such as household refrigerators and freezers and stand-alone retail food refrigerators and freezers. EPA has determined that the use of HFC-134a in these applications is acceptable because industry continues to develop technology to limit emissions. In addition,

¹² Significant New Alternatives Policy Program, Agency Review of SNAP Submissions, 40 C.F.R. § 82.180(a)(7)(i)-(ii) (2009).

¹³ 59 Fed. Reg. at 13,046.

¹⁴ *Id.*

¹⁵ Protection of Stratospheric Ozone; Request for Data and Advanced Notice of Proposed Rulemaking, 57 Fed. Reg. 1984, 1985 (Jan. 16, 1992).

the number of substitutes available for use in MVACS is currently limited. HFC-134a is not flammable and its toxicity is low.¹⁶

This analysis, though it may have been appropriate in 1995, does not hold true today, and highlights the necessity of phasing out HFC-134a. HFC-134a's GWP of 1300 is no longer close to that of other alternatives. For example, CO₂ (R-744) has a 100 yr GWP of 1, propane (R-290) a 100 yr GWP of ~3, isobutane a 100 yr GWP of ~8 and R-441A a 100 yr GWP of <5.¹⁷

2. Petition to Restrict the Sales of SNAP Listed Refrigerants to Anyone Other than Certified Technicians

Under Section 609 of the Clean Air Act EPA prohibited the sale of small cans (less than 20 pounds) of CFC-12 to anyone other than an EPA-certified technician. This CFC-12 sales restriction 1) reduced the risk of cross-contaminating refrigerants and lubricants in order to maintaining the cooling capacity, efficiency, and reliability of refrigeration and air conditioning equipment; 2) encouraged the recovery and recycle of refrigerants by avoiding the cost of cleaning up contaminated refrigerants; and 3) discouraged owners of refrigeration and air conditioning equipment from undertaking ill-advised do-it-yourself recharge of leaking systems and significantly reduced the use and emissions of CFCs and CFC substitutes. At the same time, an government-industry partnership, co-chaired by EPA, developed a standard of purity for recycled CFC-12 from motor vehicles and a recycle test standard to certify that recycling machines could clean a standardized worst-case contaminated test sample of refrigerant to the agreed standard of purity. The combination of the ban on small cans and the commercialization of certified CFC-12 recycling equipment eliminated the largest single source of intentional ODS GHG emissions while increasing U.S. manufacturing jobs and profits and also increasing service industry employment. At that time EPA choose not to restrict the sales of HFC-134a in small cans.

EPA data indicate that about half of the HFC-134a sold today for MAC service is used by do-it-yourself car owners to service about 10% of vehicles needing service and that about half is sold for professional service of the other 90% of vehicles needing service. Therefore, if all vehicles were professionally serviced, total service emissions would be reduced by about 40-45%. Professional service is able to achieve this efficiency because those establishments have proper tools including refrigerant recovery equipment, sophisticated leak detectors, and service bulletins and instructions for each vehicle, including the proper charge size. Do-it-yourself vehicle owners (DIYers) rarely own or have access to any of these tools and most often merely recharge leaking systems without repair as frequently as necessary to maintain cooling, leading to higher total emissions. This DIY strategy has the appearance of immediate savings compared to professional service but often is more costly in the long run because improperly charged systems consume more gasoline and under-charged systems, and systems where oil has leaked out

¹⁶ 60 Fed. Reg. at 31,097.

¹⁷ See *supra*, notes 2, 4.

with refrigerant will wear out rapidly and require costly replacement of parts such as the compressor. Used vehicles with broken air conditioners are expensive to repair and have significantly lower resale value. Penny wise and pound foolish. Furthermore, DIY service of high-pressure MAC systems has a risk of injury if systems are improperly disassembled, if refrigerant charging hoses are attached to the wrong fitting, or if hands are in the way of cooling fans that start unexpectedly in response to thermostatic controls.

The EPA ban on sales of small cans of CFC-12 would have been more successful as a ban on all sales in portable containers, because some DIYers merely purchased 20-pound containers of refrigerant at large box stores and other discounters.

The same environmental and consumer protection justification for the ban on purchase of CFC-12 apply to the sales of HFC-134a, but as the global automobile industry transitions from HFC-134a to HFC-1234yf there is a compelling new reason to ban the sales of HFC-134a for all but professional service – to avoid the recharge of MAC systems designed for HFC-1234yf with lower cost HFC-134a. That risk did not exist during the transition from CFC-12 to HFC-134a because the phaseout of CFC-12 and the ban on small can sales kept the price of CFC-12 higher than the price of HFC-134a and the cost of refrigerant was a less significant portion of total repair cost than it will be in the future.

HFC-134a has a chemical production cost of about \$8.00/kg and market price of about \$12 to \$18/kg when sold in small 500 gram cans typically purchased for DIY (price depending on sales promotions available at the time of purchase). HFC-1234yf has an expected chemical production cost of \$40 to \$50/kg which would be \$60 to \$90 per small 500 gram can at the current markup, and \$28 to \$34 per small can if only the actual price increase of the chemical were passed onto the customer. This price difference will be an incentive to switch back to HFC-134a the first time the vehicle is serviced, with a consequence of higher subsequent GHG emissions. The recharge with HFC-134a of vehicle designed and labeled for HFC-1234yf will increase the frequency of refrigerant contamination when these vehicles are later serviced. Cross contamination of refrigerants increases the cost of service because the mixed refrigerant must be removed from vehicles and from recovery/recycle equipment and either remanufactured or destroyed and high cost and inconvenience.

For these reasons, NRDC/IGSD/EIA petition EPA to restrict the sales of all refrigerants to certified technicians with access to service equipment required by EPA regulations.

3. Petition to Adopt a Standardized Transition from obsolete high-GWP HFCs to next-generation low-GWP substitutes and alternatives in refrigeration, stationary air conditioning, foam blowing agents, aerosol products, and all other applications.

In the next few years, EPA will face a growing challenge of un-listing obsolete high-GWP refrigerants, foam-blowing agents, solvents, aerosol products, fire protection chemicals, and other applications, as chemical and product manufacturing companies innovate to protect the climate and to satisfy increasing green market demand. NRDC/IGSD/EIA petition EPA to develop standard procedures that trigger the un-listing

of high-GWP chemical substances at a pace that reward pioneer and innovative companies and that gives all companies time to adjust their manufacturing processes.

For example, NRDC/IGSD/EIA have already petitioned EPA to delist HFC-134a aerosol “dust-off” type products, such as those used to blow debris off of computer keyboards and electronic circuit boards and to prohibit HFC-134a and HFC-152a in such products as silly strings, products to cool objects by fluorocarbon evaporation, and in any other aerosol product currently SNAP listed where safer alternatives exist.

EPA can create a standardized transition strategy based on the date when the first low-GWP product is marketed, the date when the low-GWP product achieves a specific market penetration, the agility of the sector to transform its manufacturing facilities, and other market indicators. In some cases, EPA will want to harmonize its transition schedule with the regulatory schedules of other jurisdictions and with the voluntary pledges of companies to avoid high-GWP refrigerants. The advantage of harmonized schedules is that American companies will be able to offer the same products in all markets with a level competitive playing field. Regulatory certainty lowers the risk of new investment and increases employment for a smooth transition. Prior notice of the transition schedule will allow companies to schedule product improvements (performance, energy efficiency, durability, and convenience) to take advantage of re-design and re-tooling and to reduce the combined cost of bringing the superior products to market.

In the case of the transition from HFC-134a to HFC-1234yf, NRDC and IGSD suggest that EPA un-list HFC-134a for new motor vehicles after January 1, 2017, which is the same schedule as the EC F-gas directive for new vehicles sold in Europe and also corresponds to the incentives under the joint rulemaking between EPA and NHTSA establishing fuel economy and emissions standards with credits for reducing MVAC leakage or adopting lower-GWP alternative refrigerants – credits that count towards compliance with EPA’s greenhouse gas emission standards.¹⁸ This five year transition is longer than the transition from CFC-12 to HFC-134a to account for additional time necessary supply adequate quantities of new refrigerant from manufacturing facilities that will be build from the ground up.

In the case of household refrigerators and freezers and stand-alone retail food refrigerators and freezers NRDC/IGSD/EIA suggest that EPA un-list HFC-134a for new products 24 months after the first low-GWP model is offered for sale within each appliance category. The transition from HFC-134a to low-GWP alternatives can be faster for refrigerators and freezers than for MACs because most refrigerator and freezer manufacturers are already producing and/or marketing these products in global markets. Thus the know-how, production equipment, and components are already readily available. In addition, most refrigerator and freezer component and product manufacturing facilities have long ago incorporated flexible machine tools and assembly lines that can rapidly fabricate the new mix of product. Furthermore, climate leadership

¹⁸ *Supra*, note 17 at 207.

companies including supermarkets, green buildings, and restaurants are already pledged to phase-out use of high-GWP HFCs; creating large markets as soon as the first companies introduce low-GWP products satisfying energy efficiency and durability requirements.

Consider also that federal procurement guidelines and standards for vehicles, refrigerators, and freezers could specify low-GWP/high energy efficiency, when available, as a powerful incentive to rapid commercialization and market penetration. This would be complementary with the efforts of governments to speed technical innovation and product improvement in order to create jobs and reward entrepreneurs for creative solutions to environmental challenges.

4. Clarification of Previous May 2010 Petition Regarding Aerosol Products

In its letter of February 14, 2011, EPA asked whether the amended NRDC/IGSD/EIA petition intended to apply to uses exempt from the ban on nonessential products or only to specific applications mentioned in the November 16, 2010 response (i.e., “dust-off” products and propellant in “silly string”).

The environmental purpose of our petition regarding aerosol products is to eliminate the unnecessary use and emissions of HFC-134a. Therefore we support a three-pronged approach:

- 1) Un-list HFC-134a for any aerosol products considered nonessential uses of Class I ODS (§82.66(a));
- 2) Un-list HFC-134a from any aerosol products that are exempt from the ban on nonessential products if lower-GWP propellant alternatives or not-in-kind product substitutes are technically and economically feasible;
- 3) Un-list HFC-134a from new products introduced after the CFC phase-out that would have used CFCs if available, but instead used HFC-134a.

Conclusion


In conclusion, EPA should approve this petition to remove HFC-134a from the list of acceptable substitutes for new household refrigerators and freezers and stand-alone retail food refrigerators and freezers, approve this petition to restrict the retail sale of HFC-134a to certified technicians, and to approve the petition to adopt a standardized procedure to determine the speed of transition from obsolete high-GWP HFCs to next-generation alternatives and substitutes.

HFC-134a was approved at the inception of the SNAP program almost twenty years ago, but is now often the most damaging of the alternatives listed for particular end-uses, and to meet the statutory requirements of the SNAP program, EPA must now remove HFC-134a from the list of acceptable alternatives.

SNAP Petition
April 27, 2012

If you or your staff wish to discuss this petition, please contact me at ddoniger@nrdc.org
or (202) 289-2403.

Sincerely,

A handwritten signature in black ink that reads "David Doniger". The signature is written in a cursive, flowing style.

David D. Doniger
Policy Director, Climate and Clean Air Program
Natural Resources Defense Council

On behalf of:
Natural Resources Defense Council
Institute for Governance & Sustainable
Development
Environmental Investigation Agency – US

Cc: Assistant Administrator Gina McCarthy



Correspondence Management System

Control Number: AX-12-000-7561

Printing Date: April 30, 2012 04:13:34



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Committee: N/A Sub-Committee: N/A

Control Information

Control Number: AX-12-000-7561 Alternate Number: N/A
 Status: Pending Closed Date: N/A
 Due Date: May 15, 2012 # of Extensions: 0
 Letter Date: Apr 27, 2012 Received Date: Apr 30, 2012
 Addressee: AD-Administrator Addressee Org: EPA
 Contact Type: EML (E-Mail) Priority Code: Normal
 Signature: DX-Direct Reply Signature Date: N/A
 File Code: 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.

Subject: Daily Reading File - Comments on EPA's Forthcoming Revisions to the Stormwater Program
 Instructions: DX-Respond directly to this citizen's questions, statements, or concerns
 Instruction Note: N/A
 General Notes: N/A
 CC: OEAE - Office of External Affairs and Environmental Education
 R2 - Region 2 -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
No Record Found.					

Supporting Information

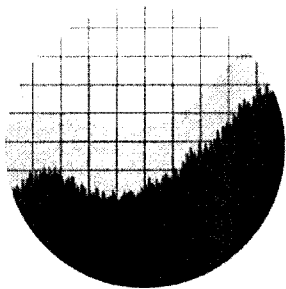
Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
(b) (6) Personal Privacy	OEX	OW	Apr 30, 2012
Diane Jones-Coleman	OW	OW-OWM	Apr 30, 2012

History

Action By	Office	Action	Date
(b) (6) Personal Privacy	OEX	Forward control to OW	Apr 30, 2012
Diane Jones-Coleman	OW	Forwarded control to OW-OWM	Apr 30, 2012



Institute for Policy Integrity

new york university school of law

April 27, 2012

Environmental Protection Agency

Attn: Lisa P. Jackson, Administrator
Nancy K. Stoner, Assistant Administrator for Water
James A. Hanlon, Office of Wastewater Management, Director
Deborah Nagle, Water Permits Division, Director

Office of Information and Regulatory Affairs

Attn: Cass Sunstein, Administrator
Dominic Mancini, Branch Chief

Subject: Comments on EPA's Forthcoming Revisions to the Stormwater Program

The Institute for Policy Integrity ("Policy Integrity") submits the following comments regarding the Environmental Protection Agency's forthcoming revisions to its stormwater regulations. These comments are aimed at ensuring that these regulations maximize net benefits and incorporate flexibility, ease, and efficiency.

The Institute for Policy Integrity at New York University School of Law is a non-partisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy. Environmental quality is one area of particular focus for Policy Integrity.

EPA has announced plans to regulate stormwater discharges from newly-developed and redeveloped sites and to make other regulatory revisions to its stormwater program.¹ As it develops the proposed regulations, EPA should take a number of steps to ensure that the regulations maximize net benefits. Specifically, EPA should:

1. Refine its cost-benefit analysis by considering additional categories of benefits, incorporating non-use values, and accounting for industry adaptation;
2. Analyze whether market-based regulatory approaches can increase the cost-effectiveness of the proposed rule;
3. Minimize economically inefficient grandfathering by adopting a time-limited transition relief scheme;
4. Design the rule in a manner that facilitates watershed-based permitting; and
5. Structure the rule to maximize citizen involvement in the permitting, monitoring, and enforcement process.

¹ Stakeholder Input; Stormwater Management Including Discharges from New Development and Redevelopment, 74 Fed. Reg. 68,617, 68,617-22 (Dec. 28, 2009).

I. EPA Should Refine its Cost-Benefit Analysis by Considering Additional Categories of Benefits, Incorporating Non-Use Values, and Accounting for Industry Adaptation

Consistent with Executive Orders 12,866 and 13,563, EPA guidelines, and persuasive policy arguments, EPA will likely issue this rulemaking on the basis of cost-benefit analysis. There are several opportunities for EPA to improve upon the cost-benefit analysis it conducted for its previous stormwater rulemaking, the Phase II stormwater rule, which was issued in 1999.² In the current stormwater rulemaking, EPA should consider additional categories of benefits, including ancillary benefits; incorporate non-use values, such as existence value, into its calculation of benefits; account for industry adaptation when determining the proposed rule's costs; and analyze whether more stringent regulations are justified in other environmentally sensitive areas besides Chesapeake Bay.

EPA Should Consider Additional Categories of Benefits

To the extent feasible, EPA should quantify the benefits of the proposed rule. In its cost-benefit analysis for the Phase II stormwater rule—the last significant revision to EPA's stormwater regulations—EPA quantified several categories of benefits, including increased harvests from commercial fisheries, reduced beach closures, and reduced health risks from swimming in polluted waters.³ EPA also considered a number of benefits qualitatively, including increased recreation, such as fishing, hunting, and boating; increased subsistence fishing; reduced health risks from consumption of contaminated seafood; reduced damage from flooding; reduced water treatment costs; and benefits due to reduced sedimentation, such as improved navigation and increased water storage in reservoirs.⁴

EPA should also attempt to quantify three categories of benefits it has not considered in previous stormwater rulemakings: reduced erosion, increased tourism, and reductions in discharge from combined sewer overflows.

First, more stringent controls on stormwater runoff will reduce property damage resulting from landslides and from the erosion and collapse of streambanks. Stormwater runoff from developed areas can significantly increase the flow of water in rivers and streams, leading to greater erosion and streambank collapse.⁵ Insufficient stormwater control can increase the number and severity of landslides.⁶ Controlling stormwater runoff will reduce the costs that streambank erosion and landslides impose.

Second, the water quality improvements that result from more stringent stormwater controls will also increase economic benefits from tourism. Research demonstrates that cleaner water will not

² See EPA, *Economic Analysis of the Final Phase II Stormwater Rule* (1999) [hereinafter EPA, *Economic Analysis*].

³ *Id.* at 6-21 to -27.

⁴ *Id.* at 5-4 to -12.

⁵ For a discussion of how stormwater runoff resulting from development increases the size of drainage channels and thus threatens both sidestream and downstream property, see Derek B. Booth, *Stream-Channel Incision Following Drainage-Basin Urbanization*, 26 WATER RESOURCES BULL. 407 (1990).

⁶ DEREK B. BOOTH, BERNADETTE VISITACION & ANNE C. STEINEMANN, UNIV. OF WASH., DAMAGES AND COSTS OF STORMWATER RUNOFF IN THE PUGET SOUND REGION 6-7 (2006) ("Flooding and landslides are natural occurrences, but they are particularly common in areas of urban development and are exacerbated by insufficient or poorly maintained stormwater and drainage facilities."). See also CITY OF SEATTLE, DEP'T OF PLANNING & DEV., SEATTLE LANDSLIDE STUDY (2001), available at <http://www.ci.seattle.wa.us/DPD/Landslide/Study/> (stating that 84 percent of landslides in the Seattle area were influenced by human activity, though not specifying which of the 84 percent might be mitigated by improved stormwater treatment).

only yield recreational benefits measurable by a user's willingness to pay, but economic benefits for surrounding communities in the form of increased tourism.⁷

Third, the proposed rule will reduce water pollution from combined sewer overflows.⁸ Over seven hundred municipalities in the United States have a combined sewer system (one system for both stormwater and sewage).⁹ When combined sewer systems exceed their treatment capacity—for example, after a rainstorm—the stormwater and the untreated sewage are diverted to combined sewer overflows, where they are discharged directly into waterways.¹⁰ Combined sewer overflows are a major source of water pollution in the United States.¹¹ Reducing the amount of stormwater discharged from developed sites will reduce the amount of runoff flowing into combined sewers, thereby reducing water pollution from combined sewer overflows.

EPA Should Consider All Ancillary Benefits of the Proposed Rule

EPA's cost-benefit analysis should quantify the full range of ancillary benefits that will result from the proposed rule. To be balanced, cost-benefit analysis must consider the ancillary, or non-target, benefits of regulation.¹² EPA should attempt to quantify additional ancillary benefits that will result from the implementation of stormwater control technologies.

As a result of the proposed rule, several ancillary benefits will accrue to property owners. For example, green roofs reduce heating and air-conditioning expenses.¹³ Structures specially designed to control stormwater also often have longer life cycles than many of the traditional structures they replace. Green roofs last longer than conventional roofs, for example, and porous pavement lasts longer than asphalt and concrete pavement.¹⁴

Other ancillary benefits will accrue to local governments and communities generally. Permeable pavement is less likely to develop potholes, and it requires less salting in winter, reducing costs for municipal highway departments.¹⁵ Stormwater-control landscaping can mitigate urban heat islands, which can reduce the negative effects of heat waves.¹⁶ Stormwater control measures can

⁷ H. Ken Cordell, John C. Bergstrom, Gregory A. Ashley & John Karish, *Economic Effects of River Recreation on Local Economies*, 26 WATER RESOURCES BULL. 53 (1990) (estimating the economic effects of expenditures by visitors to some recreational river sites on surrounding economies and concluding that visitor spending has a quantifiable, positive economic benefit on local activity and growth).

⁸ EPA, Memorandum of Benjamin H. Grumbles, *Using Green Infrastructure to Protect Water Quality in Stormwater, CSO, Nonpoint Source and Other Water Programs* (2007); BASIL SEGGOS & MIKE PLUMB, RIVERKEEPER, SUSTAINABLE RAINDROPS 14–21 (2006); Christopher Kloss & Crystal Calarusse, Nat'l Res. Defense Council, *Rooftops to Rivers: Green Strategies for Controlling Stormwater and Combined Sewer Overflows* 6–7 (2006).

⁹ EPA, COMBINED SEWER OVERFLOWS DEMOGRAPHICS, <http://cfpub.epa.gov/npdcs/cso/demo.cfm> (last visited Apr. 23, 2012).

¹⁰ EPA, *Combined Sewer Overflows*, http://cfpub.epa.gov/npdcs/home.cfm?program_id=5 (last visited Apr. 21, 2012).

¹¹ EPA, *Report to Congress on the Impacts and Control of CSOs and SSOs*, at ES-7–ES-9 (2004); Nat'l Res. Defense Council, *supra* note 8, at 4.

¹² See RICHARD L. REVESZ & MICHAEL A. LIVERMORE, RETAKING RATIONALITY: HOW COST-BENEFIT ANALYSIS CAN BETTER PROTECT THE ENVIRONMENT AND OUR HEALTH 55–65 (2008) (discussing the ancillary benefit counterparts to three major countervailing-risk categories: direct risk tradeoffs, substitution effects, and lulling effects, and urging for parity between considerations of ancillary benefits and countervailing risks).

¹³ Hao Niu et al., *Scaling of Economic Benefits from Green Roof Implementation in Washington, DC*, 44 ENVTL. SCI. & TECH. 4302, 4305 (2010).

¹⁴ See, e.g., *Cost Sheet*, GREEN VALUES NATIONAL STORMWATER MANAGEMENT CALCULATOR, http://greenvalues.cnt.org/national/cost_detail.php (last visited Apr. 23, 2012).

¹⁵ EPA, *Listening Session on EPA's Proposed Stormwater Rulemaking for New and Redevelopment* (Feb. 3, 2010), www.epa.gov/npdcs/outreach_files/webcast/mp4/sw-020310.mp4.

¹⁶ See E. Gregory McPherson, *Cooling Urban Heat Islands with Sustainable Landscapes*, in THE ECOLOGICAL CITY, PRESERVING AND RESTORING URBAN BIODIVERSITY 151, 151 (R. H. Platt, R. A. Rowntree, and P. C. Muick, eds., 1994) (“[C]oncepts of sustainable landscapes and urban climatology can be applied to counteract urban warming in street canyons, parking lots,

reduce air pollution,¹⁷ increase carbon dioxide sequestration,¹⁸ increase groundwater recharge,¹⁹ reduce water treatment costs,²⁰ increase sound absorption²¹, and provide aesthetic value.²²

Non-Use Values Should Be Included in EPA's Cost-Benefit Analysis

EPA should also incorporate non-use values into its cost-benefit analysis. A cost-benefit analysis that monetizes non-use values is more precise than a cost-benefit analysis that only monetizes direct use market values.²³ Non-use values in the environmental context include existence value (an individual's willingness to pay to maintain an ecological resource even if he or she never uses the resource) and bequest value (an individual's willingness to pay to leave assets to future generations).²⁴

EPA incorporated non-use values into the cost-benefit analysis for the Phase II stormwater rule (a previous stormwater rulemaking). In that cost-benefit analysis, EPA relied on a stated-preference study of household willingness to pay for cleaner water—both cleaner water locally, and cleaner water, in general, on a national scale.²⁵ At the very least, EPA should perform a similar, updated analysis to determine the non-use benefits of the proposed rule. Additionally, EPA's Science Advisory Board is currently consulting with the EPA Office of Water regarding the economic benefits of clean water, including non-use benefits.²⁶ EPA should attempt to estimate the non-use value of the clean water benefits resulting from the proposed rule, either by applying existing studies, as it did in the Phase II stormwater rule, or through additional research.

urban parks, and residential streets. . . . Mitigation of urban heat-islands by landscapes can contribute to the sustainability of our cities.”).

¹⁷ See David Nowak, Daniel Crane & Jack Stevens, *Air Pollution Removal by Urban Trees & Shrubs in the United States*, 4 URB. FORESTRY & URB. GREENING 115, 115 (2006) (presenting the results of a study demonstrating that urban trees and shrubs “remove large amounts of air pollution that consequently improve urban air quality”).

¹⁸ See David Nowak, *Institutionalizing Urban Forestry as a “Biotechnology” to Improve Environmental Quality*, 5 URB. FORESTRY & URB. GREENING 93, 96 (2006) (discussing the mechanism and extent to which urban trees reduce the amount of atmospheric carbon dioxide in the United States).

¹⁹ “Groundwater recharge” refers to the process by which surface water moves downward to groundwater. Activities associated with urban development, such as increasing the amount of impervious land cover, can reduce groundwater recharge, lowering the elevation of the groundwater (the “water table”). Lower groundwater elevations can reduce the yield of water supply wells, N.J. DEP’T OF ENVTL. PROT., NEW JERSEY STORMWATER BEST MANAGEMENT PRACTICES MANUAL at 6-3 (2004), and increase land subsidence, building damage, and habitat deterioration. See BRIAN THOMAS & RICHARD VOGEL, BOSTON GROUNDWATER TRUST, THE IMPACT OF STORMWATER RECHARGE PRACTICES ON BOSTON GROUNDWATER ELEVATION 3 (2011).

²⁰ EPA, *After the Storm*, <http://water.epa.gov/action/weatherchannel/stormwater.cfm> (last visited Apr. 23, 2012) (“Polluted stormwater runoff . . . can affect human health and increase drinking water treatment costs”). See also CHESAPEAKE BAY FOUND., THE ECONOMIC ARGUMENT FOR CLEANING UP THE BAY AND ITS RIVERS 5 (2010) (noting an EPA study concluding that “every \$1 spent on source-water protection saved an average of \$27 in water treatment costs”).

²¹ See, e.g., Ulrich Porsche & Manfred Köhler, *Life Cycle Costs of Green Roofs: A Comparison of Germany, USA, and Brazil*, RIO 3–World Climate & Energy Event, Rio de Janeiro, Braz. 461, 465 (Dec. 1–5, 2003) available at [http://scholar.googleusercontent.com/scholar?q=cache:QgmNd2AUmwk\]:scholar.google.com/&hl=en&as_sdt=0,33](http://scholar.googleusercontent.com/scholar?q=cache:QgmNd2AUmwk]:scholar.google.com/&hl=en&as_sdt=0,33) (noting that green roofs absorb sound and reduce noise levels).

²² See SIM VAN DER RYN & STUART COWAN, ECOLOGICAL DESIGN, at preface, page x (1996) (“[Ecological design] foster[s] community, health, and beauty.”).

²³ See REVESZ & LIVERMORE, *supra* note 12, at 119–29.

²⁴ See EPA, GUIDELINES FOR PREPARING ECONOMIC ANALYSES at xiv (2010); see also EPA, INTERIM ECONOMIC GUIDANCE FOR WATER QUALITY STANDARDS app. C (1995).

²⁵ EPA, *Economic Analysis*, *supra* note 2, at 6-10 to -16.

²⁶ EPA, Memorandum from Dr. Stephen Polasky, *Consultation on the Development of EPA's Report on the Value of Water to the U.S. Economy* (2012), available at [http://yosemite.epa.gov/sab/sabproduct.nsf/c91996cd39a82f648525742400690127/5A974D37B2A710B785257996005D8520/\\$File/EPA-SAB-12-004-unsigned.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/c91996cd39a82f648525742400690127/5A974D37B2A710B785257996005D8520/$File/EPA-SAB-12-004-unsigned.pdf) (last visited Apr. 22, 2012). See also EPA, *Estimating the Value of Water to the U.S. Economy*, <http://yosemite.epa.gov/sab/sabproduct.nsf/c91996cd39a82f648525742400690127/26ed6423f450cda2852578f7004ba0e6!OpenDocument&TableRow=2.0#2> (last visited Apr. 21, 2012) [hereinafter EPA, *Estimating the Value of Water*].

EPA Should Consider Benefits Qualitatively Where Quantification is Not Feasible, and Should Conduct Break-Even Analysis Where Monetized Costs Exceed Monetized Benefits

To the extent feasible, EPA should quantify the benefits described above in its cost-benefit analysis. Where it is infeasible to attach reliable quantified estimates to these benefits, EPA should consider them qualitatively. Such qualitative consideration will ensure that important categories of benefits are taken into account, even where monetization is difficult or data is limited.²⁷

If monetized costs exceed monetized benefits for any policy alternative under consideration, EPA should conduct an explicit break-even analysis to assess the proposed rule. The purpose of break-even analysis is to ensure that federal regulations maximize social welfare even where data is limited.²⁸ The Office of Management and Budget (“OMB”) directs agencies to “exercise professional judgment in determining how important the non-quantified benefits or costs may be in the context of the overall analysis.”²⁹ Where benefit or cost categories are likely to be important, but cannot be quantified reliably, agencies should seek to determine “[h]ow small . . . the value of the non-quantified benefits [could] be (or how large would the value of the non-quantified costs need to be) before the rule [or policy alternative] would yield zero net benefits.”³⁰ EPA guidelines also identify break-even analysis as an appropriate tool when “either risk data or valuation data are lacking.”³¹ Break-even analysis will assist EPA in promulgating a rule that maximizes the aggregate of monetized and non-monetized net benefits.

Industry Adaptation Reduces Compliance Costs

When calculating the rule’s compliance costs, EPA should take industry adaptation into account. Scholars have noted that cost-benefit analyses for proposed regulations often overestimate compliance costs.³² A leading factor contributing to the overestimation of compliance costs is the failure to account for technological innovation and adaptation among regulated firms.³³ As a result of the forthcoming rulemaking, which will significantly expand the number of regulated sources, the leading stormwater control measures, such as permeable pavements and green roofs, will see more widespread use. As with most technologies, their costs are likely to decrease over time due to factors such as technological innovation, economies of scale, and growing competition.³⁴ Further, as regulated entities become more familiar with the adoption and implementation of stormwater control measures, operations costs and learning costs will likely abate. EPA’s cost-benefit analysis should account for these decreasing costs over time.

²⁷ EPA, GUIDELINES FOR PREPARING ECONOMIC ANALYSES at 7-49 (2010).

²⁸ OFFICE OF MGMT. & BUDGET, EXECUTIVE OFFICE OF THE PRESIDENT, CIRCULAR A-4 at 2 (2003), *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/a-4.pdf; EPA, GUIDELINES FOR PREPARING ECONOMIC ANALYSES, *supra* note 27, at 7-50.

²⁹ OFFICE OF MGMT. & BUDGET, *supra* note 28, at 2.

³⁰ *Id.*

³¹ EPA, GUIDELINES FOR PREPARING ECONOMIC ANALYSES, *supra* note 27, at 7-50 (2010).

³² *See* REVESZ & LIVERMORE, *supra* note 12, at 131-43.

³³ “Technological change can be thought of as having at least two components: true technological innovation, such as a new pollution control method; and learning effects, in which experience leads to cost savings through improvements in operations, experience, or similar factors.” EPA, GUIDELINES FOR PREPARING ECONOMIC ANALYSES, *supra* note 27, at 5-7. *See also* Winston Harrington et al., *On the Accuracy of Regulatory Cost Estimates*, 19 J. POL’Y ANAL. & MGMT. 297, 309 (“Most regulatory cost estimates ignore the possibility of technological innovation.”).

³⁴ *See* Frans Oosterhuis, *Planning for the Environment; Netherlands Environmental Assessment Agency, Cost Decreases in Environmental Technology* 27 (Inst. for Envtl. Studies Report No. R-07/05, 2007) (arguing in the context of pollution control that “[j]ust like other innovations, newly developed technologies for emission reduction tend to be expensive in their initial stages and to become cheaper once they are widely used. If this is not accounted for, the *ex ante* pollution control costs may be overestimated.”).

EPA Should Analyze Whether More Stringent Regulations Are Justified in Environmentally Sensitive Areas Beyond Chesapeake Bay

EPA should also determine whether more stringent regulations are justified in other severely impaired water bodies besides Chesapeake Bay. EPA has suggested that the proposed rule will impose additional, more stringent regulations on dischargers within the Chesapeake Bay watershed, including requirements related to turf management, as well as buffers and limits on pesticide and fertilizer usage.³⁵ However, there are other water bodies where stormwater runoff from developed areas contributes to severe water quality impairment, including the Hudson River,³⁶ Puget Sound,³⁷ and Casco Bay.³⁸ If more stringent rules for the Chesapeake Bay are cost-benefit justified because of site-specific factors, more stringent regulations may also be justified in other area where stormwater runoff contributes to severe pollution in a waterbody. EPA should explore whether more stringent regulation would be cost-benefit-justified in those regions.

II. EPA Should Analyze Whether Market-Based Approaches Can Increase the Cost-Effectiveness of the Proposed Rule

Regulatory approaches based on market principles can provide significant advantages over other forms of regulation by offering flexibility to regulated firms and by achieving emissions reductions in the most cost-effective manner. EPA should determine whether market-based approaches such as stormwater utilities, cap-and-trade programs, emissions fees, offsets, and in-lieu fee programs could provide environmental benefits more cost-effectively than the command-and-control approaches that may be contemplated by the forthcoming rule. EPA has the legal authority to implement market-based approaches in the new stormwater program.³⁹

³⁵ EPA, CHESAPEAKE BAY STORMWATER LISTENING SESSION, WASHINGTON, DC, slide 25 (Nov. 4, 2010), available at <http://cfpub.epa.gov/npdes/stormwater/rulemaking/chesbaystakeholder.cfm>. Turf management can refer to various lawn, landscaping, and artificial turf care practices.

³⁶ NEW YORK STATE DEP'T OF ENVTL. CONSERVATION, CLEAN WATER FOR THE HUDSON RIVER ESTUARY (2012), <http://www.dec.ny.gov/lands/5098.html> ("According to DEC, stormwater runoff is the leading source of impairment to Hudson River estuaries.").

³⁷ See BOOTH, VISITACION & STEINEMANN, *supra* note 6 at 1 ("The biological health of Puget Sound is declining, and much of that decline is a direct or indirect consequence of stormwater runoff.").

³⁸ CASCO BAY ESTUARY PARTNERSHIP, STATE OF THE BAY 2010, at 8 (2010), available at <http://www.cascobay.usm.maine.edu/sotb10.html> ("The *Casco Bay Plan* points to stormwater as being the single greatest contributor of contaminants to Casco Bay.").

³⁹ Municipalities may establish stormwater utilities pursuant to state law. See NAT'L ASS'N OF FLOOD AND STORMWATER MGMT. AGENCIES, GUIDANCE FOR MUNICIPAL STORMWATER FUNDING 3-1 to -13 (2006) [hereinafter NAFSMA GUIDANCE]. With respect to trading mechanisms such as marketable permits, offsets, and in-lieu fees, EPA has stated that stormwater dischargers cannot use such trading mechanisms to meet technology-based effluent limitations. OFFICE OF WASTEWATER MGMT., EPA, WATER QUALITY TRADING TOOLKIT FOR PERMIT WRITERS 24 (2009). Instead, dischargers already achieving the most stringent technology-based limitations may generate tradable credits by reducing their pollution further—or may purchase those credits to meet water-quality-based effluent standards, such as those established by TMDLs. *Id.* at 29; OFFICE OF WATER, EPA, WATER QUALITY TRADING POLICY STATEMENT 5 (2003). While it is not currently supported by EPA's trading policy, trading to meet technology-based effluent limitations may be permissible. *Cf.* Inst. for Policy Integrity, *Comments on EPA's Forthcoming Greenhouse Gas New Source Performance Standards for Electric Utility Steam Generating Units* at 15-18 (2011) (arguing that market-mechanisms are consistent with flexible statutory phrases like "performance standards"). EPA has also stated that it may consider revising its policy against trading to meet technology-based effluent limitations "by including provisions for trading in the development of new and revised guidelines for technology-based effluent guidelines and other regulations." OFFICE OF WATER, EPA, WATER QUALITY TRADING POLICY STATEMENT 6 (2003). The arguments for allowing trading to meet technology-based effluent limitations may be particularly forceful in the stormwater context. Because there are a large number of different stormwater control technologies, there is a relatively weak nexus between TBELs and a specific technology. Additionally, there is a wide variety of site-specific conditions among stormwater dischargers, which provides room for larger gains from trades.

A market-based regulatory system for stormwater would function best within a watershed-based permitting framework.⁴⁰ For instance, allowing trading within an entire watershed would expand the number of potential traders, leading to a more efficient market. Trading over an entire watershed would also allow the trading program to be calibrated to achieve the water quality goals of the receiving waterbody.⁴¹ In the case of a stormwater utility, organizing a single stormwater utility on the watershed level—as opposed to several smaller stormwater utilities, each operating on the municipal level—facilitates the implementation of the most cost-effective stormwater control measures.⁴²

Even in the absence of a watershed-based framework, however, market-based approaches offer the potential for significant efficiency gains. Stormwater runoff is a classic example of an externality: because dischargers do not bear the costs of their stormwater runoff, dischargers lack the incentive to reduce their runoff.⁴³ Assessing a fee in proportion to a discharger's runoff, or requiring dischargers to purchase credits on the market in proportion to their runoff, creates a marginal cost to the discharger for stormwater disposal—thereby internalizing the externality and providing the discharger with an incentive to reduce its runoff. If stormwater dischargers are required to fully internalize the costs of their discharge, they will reduce their runoff to the efficient amount of use—that is, to the point at which the marginal abatement cost (the cost of additional stormwater control measures) equals the marginal benefit of additional abatement.⁴⁴

There are additional reasons why market-based approaches may foster efficiency gains. Among dischargers, the costs of abating stormwater runoff differ. By letting high-cost abaters trade with low-cost abaters, market exchanges would equalize the marginal control cost, ensuring that the overall discharge target is attained at the lowest cost.⁴⁵ Additionally, market-based regulation can provide individual dischargers with the incentive to reduce stormwater runoff below the regulatory standard—unlike command-and-control regulation, under which there is no incentive to reduce discharge below the standard.⁴⁶ Market-based approaches can also reduce administrative costs by reducing the information-gathering burdens on administrators.⁴⁷ As EPA has stated, “market-based approaches, such as water quality trading, provide greater flexibility and have the potential to

⁴⁰ See *infra* Part IV.

⁴¹ NAT'L RESEARCH COUNCIL, URBAN STORMWATER MANAGEMENT IN THE UNITED STATES 419 (2008) [hereinafter NRC REPORT].

⁴² As the National Association of Flood and Stormwater Management Agencies notes, “for example, to relieve flooding, a stormwater detention facility built in an upstream portion of a watershed in a rural area may be less expensive and provide better protection than extensive flood protection works installed downstream within a major urban area.” NAFSMA GUIDANCE, *supra* note 39 at 2-6.

⁴³ See RICHARD L. REVESZ, ENVIRONMENTAL LAW AND POLICY 5-6 (2008).

⁴⁴ See Michael A. Livermore, *Reviving Environmental Protection: Preference-Directed Regulation and Regulatory Ossification*, 25 VA. ENVTL. L.J. 311, 325-26 (2007).

⁴⁵ Punam Parikh et al., *Application of Market Mechanisms and Incentives to Reduce Stormwater Runoff*, 8 ENVTL. SCI. & POL'Y 133, 134 (2005) (“When the cost of controlling emissions or runoff differs across individuals, equalizing marginal control costs ensures that the overall target is attained at the lowest aggregate cost.”).

⁴⁶ Bruce Ackerman & Richard Stewart, *Reforming Environmental Law*, 37 STAN. L. REV. 1333, 1341 (1985) (arguing that implementation of the traditional command-and-control system—the best available technology standard—“gives the polluter no incentive to reduce his wastes below the permitted amount.”).

⁴⁷ “[Command-and-control via the best available technology standard] involves the centralized determination of complex scientific, engineering, and economic issues regarding the feasibility of controls on hundreds of thousands of pollution sources. Such determinations impose massive information-gathering burdens on administrators, and provide a fertile ground for complex litigation in the form of massive adversary rulemaking proceedings and protracted judicial review.” *Id.* at 1336-37.

achieve water quality and environmental benefits greater than would otherwise be achieved under more traditional regulatory approaches.”⁴⁸

EPA Should Promote the Adoption of Stormwater Utilities and Issue Guidance to Assist Municipalities in Designing Optimal Rate Structures

A stormwater utility is an entity, created by a municipality, that assesses fees on stormwater dischargers.⁴⁹ Over five hundred cities and counties in the United States have adopted stormwater utilities.⁵⁰ EPA should promote the adoption of stormwater utilities by issuing technical guidance that advises municipalities on how to design rate structures that maximize net benefits.

Stormwater utilities offer the potential to make stormwater regulation more cost-effective. Assessing a fee in proportion to a discharger’s runoff creates a marginal cost to the discharger for stormwater disposal, thereby providing the discharger with an incentive to reduce its runoff. If stormwater dischargers are required to fully internalize the costs of their discharge, they will reduce their runoff to the efficient amount of use.⁵¹ However, municipalities currently lack guidance on optimal rate design. EPA has not published guidance to municipalities on adopting stormwater utilities. The National Association of Flood and Stormwater Management Agencies (“NAFSMA”) has published guidance under contract with EPA, but NAFSMA’s guidance frames stormwater utilities solely as a means of funding stormwater programs. The guidance document provides advice to municipalities about avoiding litigation when establishing stormwater utilities, but does not discuss how to design a stormwater program’s rate structure in a manner that maximizes social benefits.⁵² As a result of this lack of information, many localities have adopted rate structures that fail to provide salutary incentives. For instance, many stormwater utilities impose some or all of the user fee based on the gross area of the property.⁵³ Such user fees provide dischargers with a negligible incentive to reduce their stormwater runoff, because implementing control measures that actually reduce stormwater runoff will not reduce the fee they pay (i.e., most stormwater controls will not reduce the property’s gross area).

In its technical guidance, EPA should make clear to municipalities that the optimal rate structure will be the one that most closely relates to flow. Because they more directly allocate the costs of stormwater runoff to the actors most responsible for the harm, rate structures based on flow—or relatively close proxies for flow—are preferable to rate structures based on gross property area from an efficiency perspective. In areas where the technology is advanced enough to measure, or to accurately model, the flow of stormwater runoff, the rate structure should directly correlate to the data: the greater quantity of flow from a site, the greater the fee should be. However, in areas where measuring or modeling flow is difficult or impossible, rate structures should be based on the closest feasible proxies for flow.⁵⁴ This will hinge on the technical capabilities of the regulators and

⁴⁸ EPA, WATERSHED-BASED NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITTING TECHNICAL GUIDANCE 46 (2007) [hereinafter EPA, NPDES TECHNICAL GUIDANCE].

⁴⁹ See Janice Kaspersen, *The Stormwater Utility: Will it Work in Your Community?*, 1 STORMWATER (2000), available at http://www.stormh2o.com/SW/Articles/The_Stormwater_Utility_Will_It_Work_in_Your_Commun_212.aspx (discussing the increasing prominence of stormwater utilities as well as some of the difficulties of implementing them).

⁵⁰ NAFSMA GUIDANCE, *supra* note 39, at 2-12.

⁵¹ See Livermore, *supra* note 44, at 325–26.

⁵² NAFSMA GUIDANCE, *supra* note 39, at ES-1 (“The focus of this guidance is to provide a resource to local governments as they address contemporary stormwater program financing challenges. The guidance includes procedural, legal, and financial considerations in developing viable funding approaches.”).

⁵³ For a discussion of potential storm rate methodologies (including impervious area, gross area, percentage of impervious coverage, and intensity of development), see *Id.* at 2-36 to -47.

⁵⁴ NRC REPORT, *supra* note 41, at 101 (concluding that “[f]uture land-use development would be controlled to prevent increases in stormwater discharges from predevelopment conditions, and impervious cover and volumetric restrictions would serve as a reliable proxy for stormwater loading from many of these developments.”).

will therefore vary among jurisdictions.

EPA's stormwater utility guidance should also include legal advice for municipalities on how to adopt a legally sound stormwater utility. Several stormwater utility programs have been successfully challenged in courts on the grounds that the utility imposes an impermissible tax rather than a valid user fee.⁵⁵ Such lawsuits may have a chilling effect on the adoption of efficiency-maximizing stormwater utilities.⁵⁶ Official guidance from EPA will help correct for this bias and foster the adoption of stormwater utilities.

EPA Should Explore Additional Market-Based Approaches for Regulating Stormwater

In addition to stormwater utilities, other market-based approaches for stormwater control could theoretically be more cost-effective than command-and-control regulation, including cap-and-trade programs, offsets, and in-lieu fees. These programs could complement any command-and-control approaches contemplated in the forthcoming rule, or could replace them. EPA should perform a cost-benefit analysis to determine which of these market-based approaches could yield efficiency gains, and should incorporate market-based approaches into the final regulations where cost-benefit justified.

EPA should consider implementing a cap-and-trade program for dischargers within a given boundary (such as a watershed or a political jurisdiction, like an MS4). Cap-and-trade programs allow the market to identify the least costly way to achieve a given level of pollution reduction. The cost-effectiveness of tradable allowance programs in the Clean Air Act context is well-established. Watersheds are different than air sheds in many respects, however; water is confined to a channel, does not mix uniformly, and accumulates downstream. These differences, among others, present challenges for tradable allowance programs in the stormwater context.⁵⁷

However, tradable allowance programs for stormwater runoff can be feasible. One of the major barriers to tradable allowance programs is the difficulty in accurately modeling the amount of stormwater runoff from a given site.⁵⁸ New improvements in technology, however—such as Geographic Information System (GIS) mapping—have significantly lowered the costs of collecting and managing large amounts of geological and hydrological data.⁵⁹ These sophisticated models provide a relatively low-cost way to model stormwater runoff from individual properties based on their geological attributes, thereby facilitating tradable allowance programs for stormwater.

⁵⁵ See, e.g., *Howard Jarvis Taxpayers Ass'n v. City of Salinas*, 121 Cal. Rptr. 2d 228 (Cal. Dist. Ct. App. 2002); *Bolt v. City of Lansing*, 587 N.W.2d 264 (Mich. 1998).

⁵⁶ See Avi Brisman, *Considerations in Establishing a Stormwater Utility*, 26 S. ILL. U. L.J. 505, 528 (2002) (arguing that being aware of the potential legal challenges to the creation of a stormwater utility would aid in the creation of a program that would “both gain the support of community members and withstand judicial challenge”).

⁵⁷ See Hale Thurston et al., *Controlling Stormwater Runoff with Tradable Allowances for Impervious Surfaces*, 129 J. WATER RESOURCES PLAN. & MGMT. 410, 411 (2003) (noting that a stormwater trading regime requires “detailed mapping information on individual properties, including size, percent impervious surface, and soil type”).

⁵⁸ *Id.* (noting that, in the past, the high costs of gathering the information needed to accurately model stormwater runoff “made the type of program suggested in this study extremely difficult, if not impossible, to implement.”).

⁵⁹ *Id.* (“Recent improvements in geographic information system (GIS) technology, however, allow us to collect and manage large amounts of geographic data fairly inexpensively.”). EPA has funded the study of advanced computational models that simulate real storm events for the purposes of determining the most efficient methods of mitigating urban stormwater runoff and combined sewer overflow phenomena. WAYNE C. HUBER & ROBERT E. DICKINSON, OFFICE OF RES. & DEV., EPA, STORM WATER MANAGEMENT MODEL, VERSION 4: USER'S MANUAL 1-4 (1992). See also Christina Tague & Molly Pohl-Costello, *The Potential Utility of Physically Based Hydrologic Modeling in Ungauged Urban Streams*, 98 ANNALS ASS'N AM. GEOGRAPHERS 818 (2008) (discussing the ease of use of hydrologic modeling tools based on geographic information systems to aid in urban planning, design, and environmental assessment).

In a cap-and-trade program for stormwater, the cap would be set at the efficient level of runoff. Therefore, parcel owners would have to either install stormwater control technologies or purchase allowances from others who can install such technologies at a lower cost.⁶⁰ Sources for which control measures are expensive—perhaps because of the design of a building or the topography or geology of the land—will trade credits with sources for which control measures are cheaper, until the cost for a single unit of reduction is equal among all sources.⁶¹ The decision about where to set the cap should take into account the most accurate baseline information—data on existing levels of stormwater runoff as well as stormwater runoff under pre-development conditions—that is available.⁶² When a cap is set based on inaccurate data, caps may over- or under-allocate runoff allowances, which will lead to inefficient levels of pollution.

A market-based approach could also take the form of an offset program. An offset is a reduction that takes place at another source, whether the other source is regulated or unregulated.⁶³ In the stormwater context, dischargers could implement offsets by contracting with parties unregulated by the stormwater program to implement stormwater management controls.⁶⁴ Offsets are possible in the stormwater context because, even after the new rule is implemented, many dischargers of stormwater—such as agriculture and existing residential development—will not be covered by the stormwater program, but may still be able to implement stormwater control measures. Offsets present significant verification and monitoring challenges, but existing efforts to use offsets in trading programs are helping to develop solutions to these implementation challenges.

Another option for a market-based approach for stormwater would be an in-lieu fee program. Under an in-lieu fee program, regulated parties would be allowed to make a payment to a local government entity instead of implementing on-site controls. The government entity would use the revenue from the fee to implement stormwater controls elsewhere in the watershed.⁶⁵ Alternatively, a private company, certified by the regulator, could sell credits to regulated parties and use the revenue to purchase land and implement stormwater controls elsewhere in the watershed.⁶⁶

While models of a cap-and-trade program for stormwater runoff have been proposed, no such programs have been established.⁶⁷ Several offset programs and in-lieu fee programs, however, have been implemented. In Maryland, for example, owners of developed sites in Critical Areas—

⁶⁰ See Thurston et al., *supra* note 57, at 412 (arguing that if runoff volume were used as a criterion for initial distribution of stormwater allowances, “most parcel owners would either have to install [best management practices] or purchase allowances from others better positioned to install them.”); Parikh et al., *supra* note 45, at 139 (“[The allowance] system allows parcel owners to trade allowances, which creates incentives for individuals who can reduce runoff at lower costs to take on a larger share of the burden.”).

⁶¹ See Thurston et al., *supra* note 57, at 411–12 (arguing that a demand and supply of allowances will evolve based on varying marginal costs such that an equilibrium allocation will be achieved).

⁶² See Sam Napolitano, et al., *The NO_x Budget Trading Program: A Collaborative, Innovative Approach to Solving a Regional Air Pollution Problem* 20 *ELECTRICITY J.* 65, 73–74 (2007) (arguing that accurate baseline emissions inventory is “critical” for setting a cap in order to ensure effective program design).

⁶³ See, e.g., Andrew Manale et al., *Offset Markets for Nutrient and Sediment Discharges in the Chesapeake Bay Watershed: Policy Tradeoffs and Potential Steps Forward* (Nat’l Ctr. for Env’tl. Econ., Working Paper No. 11-05, 2011). See also SHARYN ROSS-RAKESH, MELBOURNE WATER, *STORMWATER QUALITY OFFSETS: A GUIDE FOR DEVELOPERS* (2006), available at http://library.melbournewater.com.au/content/wsud/Stormwater_Quality_Offset_Scheme.pdf.

⁶⁴ NRC REPORT, *supra* note 41, at 355.

⁶⁵ *Id.* at 422 (“In lieu fee programs are distinguished from other offset programs in that it is the responsibility of the local government (or more generally, any designated fee service provider such as a nongovernmental organization) to provide the off-site SCMs.”).

⁶⁶ Leonard Shabman & Paul Scodari, *Past, Present, and Future of Wetlands Credit Sales* 8 (Res. for the Future, Discussion Paper No. 04-48, 2004) (discussing credit sales in the context of the federal wetlands permit program).

⁶⁷ NRC REPORT, *supra* note 41, at 421.

defined by the Critical Area Act as all land within 1,000 feet of tidal waters or tidal wetlands—are required to reduce stormwater pollutant loads to a level at least 10 percent below the load generated by the same site prior to development.⁶⁸ Where on-site controls are not feasible, the Critical Area Act regulations allow landowners to use offsets or pay an offset fee to meet the pollution reduction requirement.⁶⁹ Acceptable offsets include constructing stormwater controls elsewhere in the watershed, reducing the imperviousness of an existing property, reforestation, and wetland restoration, among others.⁷⁰ Landowners may also pay an in-lieu fee—termed an “offset fee”—which must be equivalent to the cost of constructing an offset capable of meeting the pollutant reduction requirement.⁷¹ In-lieu fee programs have also been implemented in Santa Monica, California; Williamsburg, Virginia; and the Neuse River Basin in North Carolina.⁷²

EPA should compare the various options for market-based approaches to determine which combination of approaches would be optimal in the stormwater context. Particularly, EPA should compare the costs and benefits of marketable-permit schemes, such as a credit-trading program, versus effluent fees, such as a runoff charge imposed by a stormwater utility. In a perfect market, marketable-permit schemes and effluent fees will yield the same level of efficiency gains.⁷³ In determining which approach is preferable, the key variable is uncertainty.⁷⁴ Where uncertainty as to the efficient price is greater than uncertainty as to the efficient level of flow, market-based schemes are likely preferable; when the opposite is true, effluent fees are likely preferable. Effluent fees, however, can achieve lower transaction costs in certain circumstances. Whereas trading programs entail search costs, the costs of establishing a market, and the costs of establishing certain strategic behavior, under a system of effluent fees dischargers respond directly to the incentive provided by the fee.⁷⁵ EPA should determine which program is more efficient based on the levels of uncertainty and transaction costs associated with each.

An additional advantage of marketable-permit schemes, relative to command-and-control regulations, is that they can achieve higher compliance rates and require fewer enforcement resources.⁷⁶ For this advantage to be realized, however, the probability of detection must be sufficiently high.⁷⁷ As the probability of detection decreases—due, for example, to difficulties in monitoring and enforcement—the “expected penalty” could fall below the price of purchasing additional credits, making compliance much less likely.

⁶⁸ CRITICAL AREA COMM’N FOR THE CHESAPEAKE AND ATL. COASTAL BAYS, CRITICAL AREA 10% RULE GUIDANCE MANUAL at 1-1 (2003).

⁶⁹ *Id.* at 6-1.

⁷⁰ *Id.* at 6-1 to -9.

⁷¹ *Id.* at 6-1.

⁷² NRC REPORT, *supra* note 41, at 421.

⁷³ Martin Weitzman, *Prices vs. Quantities*, 41 REV. ECON. STUD. 477, 479 (1974) (“[T]he only fair way to begin must be with the tenet that there is no *basic* or *universal* rationale for having a general predisposition toward one control mode or the other.”).

⁷⁴ *Id.* at 480 (“If there is any advantage to employing price or quantity control modes, therefore, it must be due to inadequate information or uncertainty.”).

⁷⁵ REVESZ, *supra* note 43, at 174 (citing WILLIAM J. BAUMOL & WALLACE E. OATES, THE THEORY OF ENVIRONMENTAL POLICY 178–81 (1988)).

⁷⁶ See Lesley K. McAllister, *Putting Persuasion Back in the Equation: Compliance in Cap and Trade Programs*, 24 PACE ENVTL. L. REV. 299, 314 (2007) (noting that the cap-and-trade program for acid rain has achieved 99 to 100 percent compliance and that compliance rates under the Regional Clean Air Incentives Market have averaged 93 percent). See also ROBERT C. ANDERSON & ANDREW Q. LOHOF, ENVTL. LAW INST., THE UNITED STATES EXPERIENCE WITH ECONOMIC INCENTIVES IN ENVIRONMENTAL POLLUTION CONTROL POLICY 6-21 (1997) (noting that, under EPA’s trading program for lead credits among gasoline refiners, “well over 99 percent of transactions were reported accurately”).

⁷⁷ See, e.g., Gary Becker, *Crime and Punishment: An Economic Approach*, 76 J. POL. ECON. 169, 204–05 (1968).

Implementing market-based regulatory approaches within the stormwater program may raise concerns that such schemes will lead to the creation of “hot spots.” Hot spots are relatively high concentrations of discharge that occur in small areas within the larger pollution control region.⁷⁸ EPA should address hot spot concerns through market design that takes into account the local characteristics and concentrations of pollutants. For example, a trading program could be designed that would approve all trades except those that would concentrate an excessive amount of stormwater discharge within a given area.⁷⁹

III. EPA Should Minimize Economically Inefficient Grandfathering by Adopting a Time-Limited Transition Relief Scheme

Any grandfathering in EPA’s final rule should be implemented only to the extent that it maximizes the net benefits of the regulation. This requires that EPA carefully weigh the efficiency losses due to the “old plant” effect against any efficiency benefits of grandfathering. To minimize economically inefficient grandfathering, EPA should consider adopting limits on the grandfathering of existing sites.

The forthcoming rule may contain a risk of economically inefficient grandfathering. Grandfathering is a form of transition relief under which existing sources of pollution are shielded from a new regulatory regime.⁸⁰ The central problem with grandfathering is that “stringent standards for new sources of pollution, coupled with grandfathering, create undesirable incentives for existing sources to remain in place.”⁸¹ If the proposed rule subjects only newly developed and redeveloped sites to regulation, it will be grandfathering existing sites. This differential system—under which stringent regulations apply to newly developed and redeveloped sites, while existing sites are unregulated—can lead to economic inefficiency by providing dischargers with an incentive to “patch up” existing sites, rather than redevelop them, in order to avoid triggering the new regulatory regime.⁸² As a result of this phenomenon (known as the “old plant” effect), existing sites are maintained in operation longer than is economically efficient.⁸³ Environmental quality may in fact be worsened because the regulations discourage the redevelopment that would subject sites to more stringent environmental regulations.⁸⁴

Maximizing Net Social Benefits May Require Time-Limited Grandfathering for Existing Sites

To determine the optimal level of transition relief, EPA must weigh the efficiency losses due to the “old plant” effect against the efficiency benefits, if any, of grandfathering. Grandfathering can be desirable in contexts where transition costs—the costs of implementing a new control measure apart from the direct cost of the control measure itself—are especially high.⁸⁵ More precisely,

⁷⁸ See Ackerman & Stewart, *supra* note 46, at 1350.

⁷⁹ Jonathan Remy Nash & Richard L. Revesz, *Markets and Geography: Designing Marketable Permit Schemes to Control Local and Regional Pollutants*, 28 *ECOLOGY L.Q.* 569, 572–73 (2001).

⁸⁰ REVESZ, *supra* note 43, at 416.

⁸¹ Richard L. Revesz & Allison L. Westfahl Kong, *Regulatory Change and Optimal Transition Relief*, 105 *Nw. U. L. REV.* 1581, 1615 (2011).

⁸² *Id.* at 1629 (“The existence of pollution regulations applying to new sources, however, may give the plant an incentive to bear these inefficiencies for longer than would otherwise be the case because they are less costly than complying with the standards applicable to new sources.”). See also Jonathan Remy Nash & Richard L. Revesz, *Grandfathering and Environmental Regulation: The Law and Economics of New Source Review*, 101 *Nw. U. L. REV.* 1677, 1707–10 (2007) (describing how “differential environmental regulations delay plant retirement” in the Clean Air Act New Source Review context).

⁸³ Nash & Revesz, *supra* note 82, at 1707–10.

⁸⁴ *Id.*

⁸⁵ Steven Shavell, *On Optimal Legal Change, Past Behavior, and Grandfathering*, 37 *J. LEGAL STUD.* 37, 51–52 (2008).

grandfathering can be preferable where the costs of new pollution control equipment, plus the transition costs, exceed the marginal benefits of the regulation.⁸⁶

While indefinite grandfathering is often undesirable from an economic standpoint, time-limited grandfathering, in certain contexts, may yield efficiency gains. Time-limited grandfathering may be appropriate where new regulations would require the alteration or replacement of durable items, such as “the fixed physical aspects of property.”⁸⁷ Eliminating grandfathering under the stormwater regulations altogether—that is, requiring every developed site in the United States to undertake major changes to its facilities to reduce stormwater runoff to levels under pre-development hydrology—may be prohibitively expensive relative to the regulation’s environmental benefits.⁸⁸ In developing the final rule, EPA should estimate efficiency losses due to grandfathering, as well as any efficiency benefits, and develop a transition relief scheme that maximizes the overall social benefits of the regulation.

Instead of covering only newly developed and redeveloped sites, EPA should consider imposing time limits on the transition relief extended to existing sites so as to minimize inefficiencies due to the “old plant” effect. For example, EPA could design a deadline by which all existing sites must replace particular facilities relevant to stormwater control (e.g., roofs, parking lots), or a deadline by which all existing sites must conform to the standards that the regulation establishes for newly developed and redeveloped sites. In setting such a deadline, EPA should not seek to compel all existing sites to immediately adopt best management practices; because of the variability between sites, this would result in overregulation in instances where the marginal costs of immediate replacement exceed the marginal benefits of the new practices.⁸⁹ Further, simultaneously applying the regulations to all existing sites could result in exorbitant transaction costs that would likely outweigh the environmental benefits of the regulation. Instead, the deadline should be sensitive to the need for gradual implementation of the regulations in order to avoid these costs.

If EPA decides to implement transition relief for existing sources of stormwater discharge, the regulatory standards for stormwater and the transition relief scheme should be determined simultaneously. Regulators frequently choose the optimal regulatory standard for new sources first, and only then choose the optimal scheme of transition relief, in light of that new source standard.⁹⁰ This approach can lead to suboptimal outcomes, as it fails to consider how the disparity in regulatory stringency—between new sources and existing sources—causes grandfathered sources to stay in operation. It does not consider whether, for example, a less stringent standard, coupled with a less generous grandfathering scheme, would be preferable from an efficiency standpoint.⁹¹ EPA should seek to maximize social welfare by considering the regulatory standards and transition relief scheme together.

The Definition of “Redeveloped Site” Must Consider the Incentives to Existing Sites

EPA should define the term “redeveloped site” to minimize efficiency losses due to the old plant effect. “Redeveloped site” could be narrowly defined to apply only to sites where an existing facility relevant to stormwater control—such as a roof or parking lot—is torn down and a new one is

⁸⁶ *Id.*

⁸⁷ *Id.* at 41–42.

⁸⁸ Indeed, without the grandfathering of existing sites, the new regulations may lead, for example, to the result that most nonporous roads and parking lots in the country need to be simultaneously replaced with new, porous asphalt. This could paralyze the United States’ transportation network. Grandfathering in this context may be necessary to avoid such absurdities.

⁸⁹ Shavell, *supra* note 85, at 51–52.

⁹⁰ Revesz & Kong, *supra* note 81, at 1615–16.

⁹¹ *Id.* at 1617.

constructed. This would apply to any development action that involved the alteration of infrastructure of a site such that stormwater runoff is directly affected (e.g., grading, removal of vegetation, soil compaction, and so forth.). A broad definition of “redeveloped site,” on the other hand, would include site owners’ decision to “patch up” the facility that is in place (e.g., patching or resurfacing parking lots).⁹² Defining “redeveloped site” in such a broad fashion could result in the high transition costs highlighted in the previous section. Conversely, if the narrow definition is used, the site owners may decide to “patch up” their facilities so as to avoid being subject to the regulation as a “redeveloped” site. This would increase the danger of inefficiencies due to the old plant effect. EPA should develop a definition of “redeveloped site” that allows site owners to pursue reasonable maintenance work on existing structures while preventing site owners from extending the lives of existing structures beyond their economically optimal replacement dates.

IV. The Structure of the Final Rule Should Facilitate Watershed-Based Permitting

In revising the permitting programs for MS4s and expanding the stormwater program to cover newly developed and redeveloped sites, EPA should structure the regulations to facilitate the transition toward a watershed-based framework for stormwater regulation. Stormwater permitting on a watershed level has the potential to achieve significant efficiency benefits relative to a single national standard. Watershed-level permitting would allow the stormwater program’s standards to be directly tied to the pollution reduction goals for the receiving water, thereby imposing limitations tailored to achieving water quality outcomes. Additionally, stormwater permitting on a watershed level facilitates market-based approaches more efficiently than the current regulatory structure.

EPA has identified a number of benefits of watershed-based permitting, including the ability to achieve water quality goals at a lower cost; greater opportunities for trading; the ability to measure the effectiveness of targeted actions on water quality improvements; more effective implementation of TMDLs; and efficiency gains due to integrating various water programs under one framework.⁹³ Transforming clean water regulation in the United States from site-specific technology-based standards into an integrated, watershed-based permitting program is beyond the scope of this rule. However, EPA should design the stormwater regulations to facilitate a move toward watershed-based permitting, and should issue revised guidance on watershed-based permitting that advises states and localities on how to integrate their stormwater programs with watershed-based permitting frameworks so as to achieve the benefits identified.⁹⁴

EPA has legal authority to issue permits for MS4s on a watershed basis.⁹⁵ Management programs

⁹² For a discussion of the definition of “development and re-development” in the context of Section 438 of the Energy Independence and Security Act of 2007, see OFFICE OF WATER, EPA, TECHNICAL GUIDANCE ON IMPLEMENTING THE STORMWATER RUNOFF REQUIREMENTS FOR FEDERAL PROJECTS UNDER SECTION 438 OF THE ENERGY INDEPENDENCE AND SECURITY ACT 11 (2009).

⁹³ EPA, WATERSHED-BASED NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITTING POLICY STATEMENT 3 (2003).

⁹⁴ NRC REPORT, *supra* note 41, at 388 (noting that the EPA guidance document on watershed-based permitting contains no reference to stormwater, and that, “although the EPA guidance documents lay some groundwork for watershed-based permitting—especially the ideas of integrated municipal permits, water quality trading, and monitoring consortia—the sum total of EPA’s analysis does not define a framework for moving towards true watershed-based permitting”).

⁹⁵ 33 U.S.C. § 1342(p)(3)(B)(i) (2000) (“Permits for discharges from municipal storm sewers . . . (i) may be issued on a system- or jurisdiction-wide basis.”); 40 C.F.R. § 122.26 (a)(3)(ii) (“The Director may either issue one system-wide permit covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system including, but not limited to: all discharges owned or operated by the same municipality; located within the same jurisdiction; *all discharges within a system that discharge to the same watershed*; discharges within a system that are similar in nature; or for individual discharges from municipal separate storm sewers within the system.”) (emphasis added); 40 C.F.R. § 122.26 (a)(3)(v) (“Permits for all or a portion of all discharges from large or medium municipal

may be watershed-based and, upon petition, MS4s located within a watershed boundary may be designated a large or medium MS4 for permitting purposes.⁹⁶

EPA Should Provide States with Guidance on Incorporating Stormwater Runoff into TMDLs

At minimum, EPA should issue guidance to states making clear that TMDLs must assign load allocations for stormwater runoff and advising states on how to incorporate stormwater discharges into TMDLs. TMDLs are pollution limits that enable water bodies to meet water quality standards. States must develop a TMDL for all water bodies that do not meet water quality standards.⁹⁷ The TMDL “defines the specified maximum of [each] pollutant which can be discharged or ‘loaded’ into the waters at issue from all combined sources.”⁹⁸ The effluent limitations specified in NPDES permits for point sources must be set at a level that complies with limitations imposed by TMDLs.⁹⁹ Most stormwater runoff in developed areas, including all stormwater runoff that flows into municipal separate storm sewers and combined sewers, is categorized as point source pollution;¹⁰⁰ therefore, load allocations in TMDLs must be incorporated into stormwater permits.

Few states, however, have incorporated stormwater discharges into TMDLs,¹⁰¹ even though stormwater runoff from urbanized areas is a significant source of water pollution in the United States.¹⁰² EPA should clarify—through the issuance of guidance to the states—that stormwater discharge permits in areas where a TMDL has been implemented must contain effluent limitations sufficient to meet water quality standards established by the TMDL.

Additionally, EPA should consider encouraging states to assign TMDL pollutant loadings for stormwater based on flow, rather than based on the loadings of specific pollutants. One reason that states have been slow to incorporate stormwater into their TMDLs is that specific pollutant loadings in stormwater runoff are difficult to measure.¹⁰³ The technical capacity and prominence of sophisticated monitoring techniques for the determination of stormwater discharge and its impacts on impaired water bodies have increased over time. Yet, monitoring stormwater runoff for specific

separate storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed or other basis may specify different conditions relating to different discharges covered by the permit, including different management programs for different drainage areas which contribute storm water to the system.”); 40 C.F.R. § 122.26 (a)(5) (“The Director may issue permits for municipal separate storm sewers that are designated under paragraph (a)(1)(v) of this section on a system-wide basis, jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue permits for individual discharges.”).

⁹⁶ 40 C.F.R. § 122.26(b)(4)(iv), (b)(7)(iv).

⁹⁷ 33 U.S.C. § 1313(d)(1)(A), § 1313(d)(1)(C).

⁹⁸ *Dioxin/Organochlorine Ctr. v. Clarke*, 57 F.3d 1517, 1520 (9th Cir. 1995).

⁹⁹ 40 C.F.R. § 122.44(d)(1)(vii)(B).

¹⁰⁰ *Nw. Env'tl. Def. Ctr. v. Brown*, 640 F.3d 1063, 1070–71 (9th Cir. 2011) (“[W]hen stormwater runoff is collected in a system of ditches, culverts, and channels and is then discharged into a stream or river, there is a ‘discernable, confined and discrete conveyance’ of pollutants, and there is therefore a discharge from a point source.”).

¹⁰¹ NRC REPORT, *supra* note 41, at 51 (“Despite the potential for positive interaction between stormwater regulation and the TMDL program, there appears to be little activity occurring at the stormwater–TMDL interface.”).

¹⁰² OFFICE OF WATER, EPA, NATIONAL WATER QUALITY INVENTORY 14 (2000) (identifying urban runoff and storm sewers as the fourth-leading source of river and stream impairment); *id.* at 22 (identifying urban runoff and storm sewers as the third-leading source of impairment in lakes, reservoirs, and ponds); *id.* at 30 (identifying urban runoff and storm sewers as the second-leading source of estuary impairment). The National Water Quality Inventory also identified urban runoff and storm sewers as a leading source of Great Lakes shoreline impairment, *id.* at 35, the leading source of ocean shoreline impairment, *id.* at 39, the leading reason for water quality impairment at beaches, *id.* at 59, and a leading source of toxic pollutants in water bodies, *id.* at 68.

¹⁰³ NRC REPORT, *supra* note 41, at 51–52.

pollutants is imprecise and very expensive.¹⁰⁴

Instead, it would be more efficient for EPA to use overall stormwater flow as a surrogate for various pollutants, as it is easier to monitor, model, and approximate.¹⁰⁵ Encouraging the use of flow as a surrogate for numeric effluent data in TMDL regulated areas will have the benefit of lowering the cost of assigning specific stormwater wasteload allocations to individual dischargers, thus facilitating more efficient regulation of stormwater dischargers on the watershed level. EPA should analyze the existing scholarly literature to determine the extent to which flow can serve as an effective surrogate for specific pollutant loadings, and advise the states on cost-effective means for incorporating stormwater runoff into TMDLs.¹⁰⁶

Watershed-Based Permitting Offers the Potential to Maximize Net Benefits

In the final rule, EPA should create a framework under which municipalities—including municipalities across state lines—can form partnerships to pursue watershed-based permitting. Under watershed-based permitting for stormwater, NPDES permits for stormwater discharges would be issued based on pollution reduction goals for a given waterbody, and an institutional structure would be created to facilitate trading within the watershed. Coordinating permitting on a watershed level can facilitate market-based approaches more efficiently.¹⁰⁷ Watershed-based permitting also facilitates the ability of municipalities to coordinate in achieving pollution reduction goals for the receiving waterbody.¹⁰⁸

Issuing individual permits to dischargers located in the same watershed region may be beneficial in cases where data on individual flow rate is ascertainable. However, when such data is not ascertainable, EPA should allow for permitting authorities in watershed regions to issue one permit to cover multiple sources or dischargers based on total flow volume into the relevant waterbody. When appropriate, this has the benefit of lowering the administrative costs of issuing permits and reducing the costs to applicants who jointly apply for permits.¹⁰⁹ In order to realize this potential benefit, EPA should consider structuring the proposed rule in a way that will facilitate the ultimate merging of the municipal, industrial, and construction permitting regimes, so as to coordinate permitting under a single, watershed-based approach.¹¹⁰

Additionally, a joint permitting approach would encourage the use of market-based regulatory tools. Such programs encourage collectively regulated dischargers to identify the least costly way

¹⁰⁴ *Id.* at 84 (“By contrast, the uncertainties and variability surrounding both the nature of the stormwater discharges and the capabilities of various pollution controls for any given industrial site, construction site, or municipal storm sewer make it much more difficult to set precise numeric limits in advance for stormwater sources.”).

¹⁰⁵ *Id.* at 83 (“A more straightforward way to regulate stormwater contributions to waterbody impairment would be to use flow or a surrogate, like impervious cover, as a measure of stormwater loading.”). *See also* Thurston, *supra* note 57, at 411 (“Recent improvements in geographic information system (GIS) technology, however, allow us to collect and manage large amounts of geographic data fairly inexpensively. Using sophisticated geohydrologic models in the GIS platform, we can predict runoff from properties as a function of their physical attributes and effectively turn a nonpoint into a point source problem.”).

¹⁰⁶ *Id.* at 391 (“The inclusion of hydrology is consistent with the CWA on several grounds. First, elevated runoff peak flow rates and volumes increase erosive shear stress on stream beds and banks and directly contribute particulate pollutants to the flow.”); *id.* at 401–03 (describing the use of flow as a surrogate for stormwater pollution in the Potash Brook TMDL in Vermont, and summarizing relevant literature).

¹⁰⁷ *Id.* at 419–23.

¹⁰⁸ *See* NRC REPORT, *supra* note 41, at 397.

¹⁰⁹ EPA, NPDES TECHNICAL GUIDANCE, *supra* note 48, at 8–9.

¹¹⁰ NRC REPORT, *supra* note 33, at 391 (“A true watershed-based approach would incorporate . . . (1) public streets and highways; (2) municipal stormwater drainage systems; (3) municipal separate and combined wastewater collection, conveyance, and treatment systems; (4) industrial stormwater and process wastewater discharges; (5) private residential and commercial property; and (6) construction sites.”).

to achieve a given level of stormwater flow reduction (for example, cap-and-trade programs, stormwater utilities, and offset programs). The watershed permitting approach helps to facilitate trading by clearly defining the sources that may trade with one another.¹¹¹

Watershed-based regulation of stormwater dischargers also increases the ability of authorities to measure the effectiveness of their regulatory actions on the water quality of the relevant waterbody.¹¹² Watershed-based regulation would consolidate the task of regulation to a single permitting authority as compared to the multiple authorities involved when regulation is based on political or census boundaries. By regulating on a watershed level, regulators are able to develop a more effective feedback mechanism for understanding the effects of regulation on the relevant waterbody. Watershed-based regulation of dischargers also lowers the cost of assessing compliance and progress towards achieving water quality goals, allowing for a more active and adaptive regulatory system.¹¹³

Successful watershed-based permitting regimes that include stormwater regulation have already been implemented on a limited basis. In 2004, twelve municipalities in the Tualatin River basin in Oregon that had formed a stormwater utility applied for and received a single NPDES permit that covered publicly owned treatment works, pretreatment facilities, sanitary sewer overflows, biosolid discharges, and stormwater runoff.¹¹⁴ Their goal was to achieve administrative efficiencies by streamlining permits, create a framework for water quality credit trading, and encourage collaboration among key stakeholders.¹¹⁵ The watershed-based partnership had several innovative, efficiency-maximizing components: for example, to manage the temperature of the river, the joint permittees implemented a successful trading program for stream-shading improvement credits.¹¹⁶

Watershed-based permitting remains limited, however, because of insufficient guidance from EPA—according to the National Research Council, “EPA’s analysis does not define a framework for moving toward true watershed-based permitting”¹¹⁷—as well as separate regulatory frameworks within the NPDES program (and within the stormwater program itself).¹¹⁸ EPA should issue revised guidance that contains such a framework, and the final rule should create a regulatory framework that easily facilitates watershed-based permitting.

V. EPA Should Maximize Opportunities for Citizen Involvement in the Permit Review and Enforcement Process

EPA’s new regulations for MS4s and for newly developed and redeveloped sites should be designed in a way that better facilitates citizen participation in the permit review and enforcement process. By leveraging citizen participation, the regulations will more efficiently compel compliance among dischargers, thereby yielding environmental benefits more cost-effectively. To better facilitate

¹¹¹ EPA, NPDES TECHNICAL GUIDANCE, *supra* note 48, at 26–27. *See also* NRC REPORT, *supra* note 41, at 419–23.

¹¹² EPA, WATERSHED-BASED NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITTING POLICY STATEMENT (2003) (“EPA believes that watershed-based permitting can . . . emphasize measuring the effectiveness of targeted actions on improvements in water quality.”); NRC REPORT, *supra* note 33, at 404 (“[T]he endpoints upon which success and compliance would be judged are directly related to the attainment of beneficial uses.”).

¹¹³ NRC REPORT, *supra* note 41, at 411–13 (discussing opportunities for institutional partnerships within the watershed-based permitting framework that can lower compliance costs).

¹¹⁴ *Id.* at 392–93.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 388.

¹¹⁸ *See id.* at 391.

citizen participation, EPA should increase dischargers' duty to self-monitor and self-report and should make those results available to the public. EPA should also require disclosure of dischargers' Stormwater Pollution Prevention Plans and should make those plans available to the public at the earliest feasible time.

Strengthening Stormwater Enforcement is Necessary to Achieve the Environmental Benefits of the Forthcoming Rule

Citizen enforcement plays an important role in Clean Water Act enforcement. Adequate enforcement is necessary if the environmental benefits of the proposed rule are to be realized. Without enforcement, dischargers of pollution lack the incentive to comply with regulations, because compliance imposes an economic cost on the discharger.¹¹⁹ The purpose of enforcement is to use the threat of legal sanctions or penalties to correct for this incentive and compel dischargers to comply with the regulatory program.¹²⁰ The classical theory of deterrence states that individuals who gain an economic benefit from violating a law will instead comply with it when the expected benefit from violating the law is less than the expected penalty.¹²¹ The expected penalty is determined by two factors: the severity of the penalty and the probability of detection.¹²² More deterrence is not necessarily better; because most pollution is the result of socially beneficial activities, such as manufacturing and waste disposal, over-deterrence is possible.¹²³ The goal of enforcement efforts should be to provide an optimal level of deterrence. Empirical scholarship demonstrates that increased monitoring and enforcement activities can produce significant gains in specific deterrence (the reduction of violations at a specific firm), in general deterrence (the reduction of violations at other firms), and in emissions reductions.¹²⁴

The current permitting, monitoring, and enforcement program within EPA's stormwater program provides insufficient levels of deterrence to compel compliance among stormwater dischargers.¹²⁵ Moreover, by expanding the boundaries for MS4s and subjecting all newly developed and redeveloped sites to the stormwater program, the forthcoming regulatory revisions will expand the number of regulated sources significantly. Thus, without greater enforcement, the probability of detection and punishment—already low—will decrease even further. To increase the level of deterrence to regulated firms, therefore, EPA should structure its regulations in a way that facilitates citizen participation in the permit review and enforcement process.

¹¹⁹ David R. Hodas, *Enforcement of Environmental Law in a Triangular Federal System: Can Three Not Be A Crowd When Enforcement Authority Is Shared By the United States, the States, and Their Citizens?*, 54 MD. L. REV. 1552, 1553–54 (1995) (“Unfortunately, polluters have no economic incentive to comply with environmental laws because noncompliance results in economic benefits—the free use of water or air for waste disposal—while compliance exacts an economic cost—the internalization of waste disposal costs.”).

¹²⁰ *Id.* at 1604 (“Effective enforcement is based on the theory of deterrence, which holds that a strong enforcement program deters the regulated community from violating in the first place, deters specific violators from further violations, and deters the public from violating other laws.”).

¹²¹ Becker, *supra* note 77, at 204–05.

¹²² *Id.*

¹²³ Mark A. Cohen, *Empirical Research on the Deterrent Effect of Environmental Monitoring and Enforcement*, 30 ENVTL. L. REP. NEWS & ANALYSIS 10245, 10251 (2000) (“[T]here is a risk that too much deterrence will have the effect of stifling other socially desirable activities. . . . [M]ost environmental offenses are byproducts of socially desirable production or distribution processes.”).

¹²⁴ Wayne B. Gray & Jay P. Shimshack, *The Effectiveness of Environmental Monitoring and Enforcement: A Review of the Empirical Evidence*, 5 REV. ENV. ECON. & POL'Y 3, 22 (2011).

¹²⁵ NRC REPORT, *supra* note 41, at 84–90.

Increased Self-Monitoring and Self-Reporting Requirements Will Lower the Burden for Citizen Participation

The Clean Water Act provides citizens with legal authority to enforce the Act.¹²⁶ The Act corrects a disincentive to filing suits by allowing individuals to recover attorney's fees.¹²⁷ However, courts have created many obstacles to citizen enforcement, such as limitations on which parties may recover attorney's fees; restrictions on standing; broad interpretations of sovereign immunity under the Eleventh Amendment; and ambiguity with regard to the meaning of key legal terms such as "diligent prosecution."¹²⁸ Despite these obstacles, citizen suits remain an important enforcement tool for increasing compliance with NPDES permits.¹²⁹ EPA's stormwater program, however, imposes additional obstacles that limit citizen enforcement in the stormwater context significantly.¹³⁰

Though EPA is restricted in its ability to remove the obstacles to citizen suits created by courts, EPA's final stormwater rule should remove the additional regulatory obstacles to citizen participation in the review and enforcement process, thereby allowing citizens to assume a more robust enforcement role. Greater citizen involvement will enable permitting authorities to achieve greater deterrence and, thus, greater compliance and environmental benefits.

EPA's stormwater program imposes little to no monitoring and reporting requirements on dischargers. Most dischargers are not required to sample their stormwater discharges; they are merely required to conduct visual inspections of the discharge, report its visual appearance, and keep the document on file at the site.¹³¹ Additionally, minimal reporting requirements are imposed on dischargers, and the reports that are required are often not reviewed.¹³²

EPA should require increased disclosure of dischargers' site-specific plans. Scholars of environmental enforcement have identified a relationship between increased disclosure and increased rates of compliance.¹³³ In addition to increasing compliance, self-monitoring and self-

¹²⁶ 33 U.S.C. § 1365.

¹²⁷ *Id.*

¹²⁸ See Will Reisinger, Trent A. Dougherty & Nolan Moser, *Environmental Enforcement and the Limits of Cooperative Federalism: Will Courts Allow Citizen Suits to Pick Up the Slack?*, 20 DUKE ENVTL. L. & POL'Y F. 1, 28-56 (2010) (discussing legal barriers to citizen enforcement of environmental law).

¹²⁹ See James R. May, *Now More Than Ever: Trends in Environmental Citizen Suits at 30*, 10 WIDENER L. REV. 1, 47 (2003) ("Despite ever more cascading burdens respecting notice, jurisdiction, preclusion, actions against EPA and third parties, remedies, SEPs and attorney fees, there are now more reported environmental citizen suits than ever.").

¹³⁰ NRC REPORT, *supra* note 41, at 90.

¹³¹ *Id.* at 88 ("A large subset of dischargers . . . are subject to much more limited monitoring requirements. They are not required to sample contaminant levels, but instead are required only to conduct a visual inspection of a grab sample of their stormwater runoff on a quarterly basis and describe the visual appearance of the sample in a document that is kept on file at the site. . . . A final set of regulated parties . . . are not required to provide any quantitative monitoring of runoff."). See also EPA, NPDES Multi-Sector General Permits for Stormwater Discharges Associated with Industrial Activity 29-30 (2008) (detailing the monitoring and inspection requirements for industrial dischargers) [hereinafter INDUSTRIAL MSGP].

¹³² NRC REPORT, *supra* note 41, at 3 (noting that self-reporting is "unaudited and largely ineffective."). See also *id.* at 68 ("Communities' inconsistent reporting of activities makes it difficult to evaluate program implementation nationwide."); *id.* at 88 (stating that, while a discharger's monitoring plan is subject to review and approval by the permitting authority, limited enforcement resources frequently are inadequate to support ongoing oversight).

¹³³ MARK GREENWOOD, WHITE PAPER FROM INDUSTRY COALITION TO EPA ON CONCERNS OVER INFORMATION PROGRAM, reprinted in BUREAU OF NAT'L AFFAIRS, DAILY ENVT. REP., May 4, 1999, at E-1, E-3.

reporting make entities more aware of their compliance status.¹³⁴ Disclosure also enables members of the public to compel compliance by filing citizen suits.¹³⁵

More Accurate, More Detailed, More Frequent, and More Accessible Self-Reporting is Required for Meaningful Citizen Participation

To increase the opportunity for public review and enforcement, EPA should require dischargers to disclose their permits to the general public at the permit review stage. For example, during the issuance of an NPDES permit for wastewater, the public has the opportunity to review and comment on the permits, which specifically list the allowable discharge.¹³⁶ In contrast, stormwater general permits only contain a description of the regulatory framework and menu of conditions—not the site-specific plan developed by the permittee.¹³⁷ As a result, meaningful citizen review of stormwater permits at the review stage is impossible.¹³⁸ EPA should specify in its regulations that the general permit for MS4s and for newly developed and redeveloped sites will enable members of the public to review permittees' site-specific plans and participate in the review and comment process.

EPA should also make these site-specific plans easily accessible to the public *after* the permit is approved so citizens can participate in overseeing facility compliance with permit requirements. Currently, citizens can only access a discharger's site-specific plan if they request the plan from the facility in writing.¹³⁹ The facility may decline to disclose a permit on the ground that it contains "confidential business information"—a decision that is not reviewable.¹⁴⁰ These rules present major barriers to citizen suits.¹⁴¹ EPA should remove these barriers by making all site-specific plans publicly available on the Internet at the earliest feasible time. Permits for wastewater facilities, for example, are available through EPA's website, where any member of the public can search the effluent limitations and best management practices specific to the wastewater facility, as well as the facility's reporting and compliance history.¹⁴²

Finally, to facilitate more accurate and comprehensive monitoring and reporting, and thus facilitate citizen participation, EPA should consider increasing the requirements for scientifically valid sampling so as to ensure more accurate reporting (or at least more rigorous sampling requirements than mere visual inspection); increasing the self-reporting requirements in terms of the level of detail of disclosure to ensure that both regulating authorities and the public have sufficient information about illegal discharges; requiring that dischargers report earlier and more frequently on the implementation of stormwater control technologies, thereby creating legally binding documents; and making the documents thus generated easily accessible by the general public.

¹³⁴ ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, ENSURING ENVIRONMENTAL COMPLIANCE: TRENDS AND GOOD PRACTICES 69–70 (2009).

¹³⁵ Lori S. Brennar & Sheila M. Olmstead, *The Impacts of "Right to Know": Information Disclosure and the Violation of Drinking Water Standards*, 56 J. ENVTL. ECON. & MGMT. 117, 129 (2008).

¹³⁶ NRC REPORT, *supra* note 41, at 90.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *See, e.g.*, INDUSTRIAL MSGP, *supra* note 131, at 31 (2008) ("EPA may provide access to portions of your SWPPP to a member of the public upon request. Confidential Business Information may be withheld from the public").

¹⁴⁰ NRC REPORT, *supra* note 41, at 90.

¹⁴¹ *Id.*

¹⁴² *See* EPA ENVIROMAPPER, <http://www.epa.gov/emefdata/em4ef.home> (last visited Apr. 22, 2012); EPA, REGION 10, THE PACIFIC NORTHWEST, DRAFT NPDES PERMITS, <http://yosemite.epa.gov/r10/WATER.NSF/NPDES+Permits/Draft+NP787> (last visited Apr. 22, 2012).

VI. Conclusion

EPA's forthcoming stormwater regulations have the potential to achieve significant economic benefits by improving water quality. To ensure that the rule maximizes net benefits, EPA should consider—and quantify where feasible—all relevant costs and benefits in its economic analysis. Further, EPA should analyze whether the net benefits of the regulation can be maximized by incorporating market-based approaches and implementing time limits on grandfathering. Finally, EPA should design the rule in a manner that facilitates watershed-based permitting and citizen involvement in the process of permitting, monitoring, and enforcement. These recommended improvements will help maximize the net social benefits of the regulatory revisions to EPA's stormwater program.

Sincerely,

Michael A. Livermore
Benjamin R. Cady
Stephen J. Elkind
Jason A. Schwartz

Institute for Policy Integrity
New York University School of Law



Correspondence Management System

Control Number: AX-12-000-6065

Printing Date: April 04, 2012 03:56:11



Citizen Information

Citizen/Originator: Lu, Chensheng Alex

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Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-12-000-6065 **Alternate Number:** 79820354505955
Status: Pending **Closed Date:** N/A
Due Date: Apr 17, 2012 **# of Extensions:** 0
Letter Date: Mar 23, 2012 **Received Date:** Apr 3, 2012
Addressee: AD-Administrator **Addressee Org:** EPA
Contact Type: LTR (Letter) **Priority Code:** Normal
Signature: DX-Direct Reply **Signature Date:** N/A
File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: Daily Reading File-The link of neonicotinoid insecticides to honey bee's colony collapse disorder
Instructions: DX-Respond directly to this citizen's questions, statements, or concerns
Instruction Note: N/A
General Notes: N/A
CC: Carol Stangel - OCSPP-OPP-PRD
Lawrence Elworth - AO-IO
OEAEE - Office of External Affairs and Environmental Education
Richard Keigwin - OCSPP-OPP-PRD

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6) Personal Privacy	OEX	OCSPP	Apr 3, 2012	Apr 17, 2012	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					
Zelma Taylor	OCSPP	OCSPP-OPP	Apr 4, 2012	Apr 17, 2012	N/A
Instruction: direct reply--Respond directly to this citizen's questions, statements or concerns					
Shirley Myers	OCSPP-OPP	OCSPP-	Apr 4, 2012	Apr 17, 2012	N/A



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March 23rd, 2012

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

Subject: The link of neonicotinoid insecticides to honey bee's colony collapse disorder (CCD).

Dear Administrator Jackson,

We are writing to inform you about an important manuscript to be published in *Bulletin of Insectology* titled "*In situ replication of honey bee colony collapse disorder*" that links the vast loss of honey bee hives since 2006 to the exposure of imidacloprid, one of the commonly used neonicotinoid insecticides in the U.S. and worldwide.

We found that after three months of exposing honey bee hives to imidacloprid at the sub-lethal levels, 15 out of 16 (94%) exposed hives were lost to CCD six months after the termination of imidacloprid dosing. The loss of honey bee hives proceeded with a dose-response manner in which hives treated with highest imidacloprid dose of 400ppb are found dead first, following by dosages as low as 20ppb. Those levels were comparable to previously reported imidacloprid residue levels seen in the environment.

This *in situ* study was conducted in the natural environment where honey bee hives are normally thriving during the foraging seasons, yet when treated with different levels of imidacloprid, we observed the mortality of honey bee hives throughout their lifecycle resembling the reported CCD.

We conclude that it is likely that the presence of imidacloprid in the environment has placed enormous pressure for survival on honey bees. The design of this *in situ* study in the apiarian setting and the survival of control honey bee hives eliminated the possibility that the loss of honey bee hives is caused by common biological (pathogenic) factors, as reported in the current literature.

As a result of this research, we would like to offer these recommendations:

1. The discovery of sub-lethal doses of imidacloprid leading to honey bee CCD should be considered in the framework of implementing the Food Quality Protection Act for the

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OFFICE OF THE
EXECUTIVE SECRETARY



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neonicotinoid insecticides. Although we used only imidacloprid in this study, we suspect that other neonicotinoid insecticides, such as clothiadin, would share this deadly toxicity.

2. While the delayed mortality of honey bee hives identified in this study requires further validation, it also indicates the insufficiency of current toxicological testing for pesticides. Had we terminated this study at the end of imidacloprid dosing period (September, 2010) due to the survival of all hives (or not finding the dead honeybee colonies), we would have missed those remarkable observations six months later.

3. Considering the unique systematic property of neonicotinoid insecticides and their use in the increasing popularity of seed treatment program, honey bees are facing an enormous pressure for survival. This is in part the reason that we believe that since 2006, the loss of honey bee hives to CCD remains an ongoing challenge among beekeepers worldwide.

Finally, we would like to express our concern over the lack of federal funding to support pesticide research. Our research on CCD and neonicotinoid insecticides would not have been possible without pilot funding from Harvard University. And while U.S. EPA has been very supportive of pesticide research in the past, this commitment has dwindled since the early 2000's. While we were seeking additional funding from other federal agencies to continue this research in early 2012, Peter Alpert, Program Director of Population and Community Ecology Cluster at the National Science Foundation (NSF) said in response to our recent funding request.

"NSF does not support projects whose primary focus is on ecotoxicology and that therefore fall under the auspices of EPA. We felt that, while this project might provide useful information on the effects of toxic substances for purposes of management and regulation, it was not primarily directed at basic scientific questions."

We understand the current challenge of federal budgets and limited resources; however, we urge that you re-examine the priority of the extramural research program within U.S. EPA. The outcomes from this *in situ* study would not only justify EPA's investment in the extramural research and support EPA's regulatory activities, but could help us avoid the crisis of losing this important pollinator.

When we stood in front of the hives last spring, a very strange feeling surfaced. Four of the five hives that are treated with imidacloprid were so dead silent, whereas bees in the other control hive right next to those dead hives were so eager to welcome the arrival of Spring. The evidence of the cause of CCD is therefore so indisputable. The disappearing of the buzzing sound reminds us the "Silent Spring". Similar to the cause of "Silent Spring" as



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described by Ms. Carlson, we believe that the cause of honey bee loss can also be completely avoided.

We wish you the best.

Sincerely,

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*Associate Professor of
Exposure Biology*

Dept. Environmental Health
Harvard School of Public Health
Boston, MA

Richard Callahan, PhD
Retired Entomologist

Worcester County
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Correspondence Management System

Control Number: AX-12-000-6107

Printing Date: April 04, 2012 04:00:37



Citizen Information

Citizen/Originator: Anderson, William

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Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-12-000-6107

Alternate Number: N/A

Status: Pending

Closed Date: N/A

Due Date: Apr 18, 2012

of Extensions: 0

Letter Date: Apr 3, 2012

Received Date: Apr 4, 2012

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: LTR (Letter)

Priority Code: Normal

Signature: DX-Direct Reply

Signature Date: N/A

File Code: 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.

Subject: Daily Reading File- R9 will not grasp opportunity to impose stringent, cost effective controls that will protect public health in the region

Instructions: DX-Respond directly to this citizen's questions, statements, or concerns

Instruction Note: N/A

General Notes: N/A

CC: Linda Huffman - OECA
OAR - Office of Air and Radiation -- Immediate Office
OEAEE - Office of External Affairs and Environmental Education
OECA - OECA -- Immediate Office
OITA - Office of International and Tribal Affairs
OW - Office of Water -- Immediate Office
R9 - Region 9 - Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (7) Personal Privacy	OEX	R9	Apr 4, 2012	Apr 18, 2012	N/A
Instruction: N/A					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			



MOAPA BAND OF PAIUTES

MOAPA RIVER INDIAN RESERVATION

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April 3, 2012

Lisa Jackson, Administrator
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Email: jackson.lisa@epa.gov

Re: EPA's Unjust Proposal with Respect to Reid Gardner Pollution

Dear Administrator Jackson,

I speak for the Moapa Band of Paiutes, a federally recognized Tribe within the plume and downwind of NV Energy's Reid Gardner coal-fired power plant and associated facilities.

Let me note, at the outset, that the land and the air and water here were relatively clean before the coal plant. But with NV Energy's arrival in our ancestral lands we have, for nearly six decades, suffered from the unrelenting air, water, and dust pollution generated by this facility, including the blowing coal ash and hydrogen sulfide gas pollution stemming, respectively, from the Reid Gardner coal ash landfill and wastewater ponds.

Yesterday, Region 9 of EPA proposed a Best Available Control Technology (BART) determination for Reid Gardner NOx pollution, pursuant to the Regional Haze Rule under the Clean Air Act, that is inconsistent with the law, inconsistent with EPA's strong decisions elsewhere (such as at the San Juan Generating Station in New Mexico), and contrary to the environmental justice principles to which you have nominally given support. In particular, EPA's proposed NOx limits allow pollution concentration levels several times greater than the limits you have approved elsewhere.

It is clear now that Region 9 will not, on its own, grasp the opportunity to impose stringent, cost-effective controls that will protect visibility in the region and, as a critical ancillary benefit, protect public health.

The Reid Gardner facility – including its coal ash landfill and its collection of wastewater ponds – is adjacent to the Tribe, within a mile of its community center, and within a ½ mile of the closest homes of Tribal Members. The facility generates significant quantities of regional haze pollution in Nevada and it imposes on Tribal members an overwhelming environmental and public health burden. The impacts of the coal plant, coal ash dump, and the wastewater ponds, on our community and on our way of life cannot be fully understood without coming to our community and speaking with Tribal Members. Because of this, in September 2011, we invited you to visit the Reservation and see for yourself. We hereby renew that invitation, in the hope that you will visit well before making a final decision on BART.

We appealed to you late last year out of concern that Region 9 would not do the right thing. Now, in the wake of the Region's submission to the coal plant and its rejection of the minimal demands of public health, we again seek your engagement. As you stated in your letter that commenced your Agency's Environmental Justice Plan 2014, "every American deserves clean air, water and land in the places where they live, work, play and learn."¹ We must ask you, now: Are we, the Moapa, within your scope of concern? If so, then for EPA to "[lead] by... working for environmental justice,"² it is necessary for you to take back this proposed determination.

Your Agency has acknowledged that breathing ozone reduces lung function, inflames the lining of the lungs, and permanently scars lung tissue.³ Accordingly, failure to impose the most stringent cost effective controls will consign my people to unnecessary disease and early death. This failure itself constitutes a renewed environmental injustice, one that compounds the damage of decades of preventable pollution imposed on my people. Alternatively, you can choose to act firmly to meet Congress's visibility goals with the notable co-benefit of protecting public health and honoring your Agency's long-standing environmental justice commitments.

We urge you take strong action, at long last. Please intervene to ensure that your Agency, in crafting your final determination, upholds the law, protects the environment, and protects our people fully.

Thank you for your consideration. We look forward to hearing from you soon. Should you have any question, or should you wish to accept our invitation to visit the Reservation, please contact our attorney, Dan Galpern, at 541-359-3243, or galpern@westernlaw.org.

Sincerely,


William Anderson, Chairman
Moapa Band of Paiutes

¹ Message from Administrator Jackson in *Plan EJ 2014*, found at <http://www.epa.gov/compliance/ej/plan-ej/index.html>.

² *Id.*

³ <http://www.epa.gov/glo/health.html>

STRATUS CONSULTING
ENVIRONMENTAL RESEARCH AND CONSULTING

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stratusconsulting.com

JOSHUA LIPTON, PHD
President and CEO

April 3, 2012

The Honorable Lisa P. Jackson
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, DC 20460
<via email>

Dear Ms. Jackson:

I am writing to you as President and Chief Executive Officer of Stratus Consulting, an environmental research consulting firm with offices in Boulder, Colorado and Washington, D.C. For more than 20 years, Stratus Consulting has provided expert technical support to our clients -- primarily federal, state, tribal and international governments -- in the areas of environmental science, economics and policy.

It has come to our attention that a group funded by the Competitive Enterprise Institute has initiated an internet-based letter-writing campaign to pressure the U.S. EPA to exclude Stratus Consulting's scientists, including Dr. Ann Maest, from participating in the EPA's Hardrock Mining Conference being held in Denver this week. We have also learned that the Colorado arm of the Washington, DC-based conservative organization Americans for Prosperity is planning to rally outside the conference, targeting Dr. Maest and Stratus Consulting as well as the EPA more generally.

We are concerned that the organizations behind these efforts are unfairly -- and irresponsibly -- taking aim at the integrity and credentials of our scientists in an effort to promote their own political and ideological agenda. The entity promoting the rally, for example, says that it "believes the [EPA's] rogue regulators and biased scientists are destroying jobs, driving-up energy costs, crippling America's competitiveness and contributing to the country's economic crisis."

Dr. Maest is an internationally-renowned geochemist, formerly with the U.S. Geological Survey, who is serving her sixth year as an elected member of the National Academy of Sciences (NAS) Committee on Earth Resources. In addition to serving on other related NAS committees, Dr. Maest has published widely in peer-reviewed scientific literature, and has been an invited speaker on geochemical and earth resource issues at academic institutions, scientific

The Honorable Lisa P. Jackson
April 3, 2012
Page 2

meetings, government agencies, and numerous other national and international groups, including the United Nations. In short, she is an outstanding scientist with impeccable credentials who has made significant contributions to her field.

More broadly, Stratus Consulting stands by the quality, integrity, and reputation of our professional staff. Our senior staff have held staff positions at the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, U.S. Geological Survey, and National Oceanic and Atmospheric Administration; have authored hundreds of peer-reviewed publications and presentations at national and international conferences; hold university appointments; have been appointed to serve on boards convened by the National Academy of Sciences and EPA's Science Advisory Board; have been recognized as part of the international panel that was awarded a Nobel Prize for its work on climate change; and are regularly invited to speak to national and international government agencies because of our technical expertise and reputation.

In advancing their current agenda, the organizations attacking Stratus Consulting and Dr. Maest are repeating unfounded and patently false allegations made by Chevron during its ongoing legal dispute over environmental pollution damage in the Amazon rainforest.

Here are the facts related to that dispute:

Stratus Consulting was hired to provide scientific assistance to attorneys representing a group of rural and indigenous Ecuadorians in their lawsuit in Ecuador against Chevron for large-scale environmental pollution damage in the Amazon rainforest. In the course of our work, we conducted technical analyses of Chevron's oilfield operations in Ecuador, the environmental contamination caused by those operations, and the resulting environmental impacts. Work on the project was similar to the type of environmental assessments Stratus Consulting has routinely performed for its U.S. federal and state government clients over the past two decades.

Released on the eve of the Ecuadorian court's \$18 billion judgment against the company, Chevron asserted a series of unfounded RICO claims against Stratus Consulting and many other parties. Chevron's claims against Stratus Consulting are false and represent a gross misuse of the federal courts. Stratus Consulting never engaged in the misconduct alleged by Chevron, and Chevron knows as much. That Chevron has knowingly filed a series of false charges against Stratus Consulting is reprehensible. It appears that Chevron's strategy is to use every possible tool – without regard to truth, facts or legal ethics – to confuse the issues surrounding its corporate history in Ecuador and avoid taking responsibility for its actions. Chevron's approach has included attempting to discredit the technical work performed by Stratus Consulting's scientists, not by addressing the technical facts and analysis themselves, but by concocting and publicly advancing a series of false accusations against us.

The Honorable Lisa P. Jackson
April 3, 2012
Page 3

I am dismayed that these outrageous attacks have spread to other venues and are now being used by politically motivated groups in an attempt to exclude our scientists from participating in public scientific discourse. The paper that Stratus Consulting is scheduled to present this week has absolutely nothing to do with the work that our scientists conducted on behalf of the Ecuadorian plaintiffs. It is, rather, a highly technical analysis of copper chemistry and bioavailability. I urge you to stand firm in the face of this pressure to ensure that reasoned discussion based on sound scientific inquiry may continue.

Thank you for your attention to this important issue.

Sincerely,

A handwritten signature in black ink, appearing to be 'J. Lipton', written over the printed name.

Joshua Lipton, PhD
President and CEO



Correspondence Management System

Control Number: AX-12-000-6112

Printing Date: April 04, 2012 02:58:50



Citizen Information

Citizen/Originator: White, Arnette C

Organization: Executive Office of the President, Office of Management Budget
Address: 725 17th Street, N.W., Washington, DC 20503

Zients, Jeffrey D

Organization: Office of Management and Budget
Address: 725 17th St., NW, Washington, DC 20503

VanRoekel, Steven

Organization: Executive Office of the President, Office of Management and Budget
Address: 725 17th St., NW, Washington, DC 20503

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number:	AX-12-000-6112	Alternate Number:	N/A
Status:	Pending	Closed Date:	N/A
Due Date:	Apr 18, 2012	# of Extensions:	0
Letter Date:	Mar 30, 2012	Received Date:	Apr 4, 2012
Addressee:	AD-Administrator	Addressee Org:	EPA
Contact Type:	EML (E-Mail)	Priority Code:	Normal
Signature:	DX-Direct Reply	Signature Date:	N/A
File Code:	404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.		
Subject:	Daily Reading File - Implementing PortfolioStat		
Instructions:	DX-Respond directly to this citizen's questions, statements, or concerns		
Instruction Note:	N/A		
General Notes:	N/A		
CC:	OCFO - OCFO -- Immediate Office OEAE - Office of External Affairs and Environmental Education		

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6) Personal Privacy	OEX	OEI	Apr 4, 2012	Apr 18, 2012	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					

Supporting Information

Supporting Author: N/A

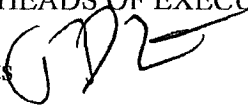


EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 30, 2012

M-12-10

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Jeffrey D. Zients 
Acting Director

Steven VanRoekel
Federal Chief Information Officer

SUBJECT: Implementing PortfolioStat

The stove-piped and complex nature of the Federal enterprise has led over the years to a proliferation of duplicative and low priority investments in information technology (IT). At the same time, agencies too often seek to develop homegrown, proprietary solutions first, before assessing existing options for shared services or components. The Federal Government must have the overarching goal of innovating with less as it pertains to technology. In order to do so, we must end the investment in low priority and duplicative investment in IT.

The Federal Government must focus on maximizing the return on American taxpayers' investment in government IT by ensuring it drives efficiency throughout the Federal Government. The Administration's Campaign to Cut Waste directed agencies to seek opportunities to shift to commodity IT, leverage technology, procurement, and best practices across the whole of government, and build on existing investments.¹

In support of this strategy, the Director of the Office of Management and Budget (OMB) issued a memorandum to Agency heads on August 8, 2011, entitled "Chief Information Officer Authorities" (M-11-29), which clarified the role of Chief Information Officers (CIO). M-11-29 required that agencies, "pool their purchasing power across their entire organization to drive down costs and improve service for commodity IT...CIOs must show a preference for using shared services as a provider or consumer instead of standing up separate independent services."²

Then, in October 2011, the Office of Management and Budget (OMB) launched the Shared First initiative aimed at rooting out waste and duplication across the Federal IT portfolio.³ In order to implement these initiatives, executive departments and agencies (agencies) will

¹ <http://www.whitehouse.gov/goodgovernment/actions/campaign-cut-waste>

² <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-29.pdf>

³ <http://www.cio.gov/pages.cfm/page/Federal-CIO-Steven-VanRoekel-Launches-Shared-First-and-Future-First-Initiatives>

review their respective IT investment portfolios to identify opportunities to consolidate the acquisition and management of commodity IT services, and increase the use of shared-service delivery models.

In support of this review process, Agency Chief Operating Officers (COO), on an annual basis, shall be required to lead an agency-wide IT portfolio review within their respective organization (PortfolioStat).⁴ A PortfolioStat session is a face-to-face, evidence-based review (e.g., including data on commodity IT investments, potential duplications, investments that do not appear to be well aligned to agency missions or business functions, etc.) of an agency's IT portfolio.

PortfolioStat will be a new tool that agencies use to assess the current maturity of their IT portfolio management process, make decisions on eliminating duplication, augment current CIO-led capital planning and investment control processes, and move to shared solutions in order to maximize the return on IT investments across the portfolio. While TechStat examines IT performance at the specific project or investment-level, PortfolioStat examines the portfolio as a whole and draws on the agency's enterprise architecture to help identify and eliminate areas of duplication and waste.⁵

PortfolioStat will help implement the Shared First initiative and the requirements set forth in the Executive Order 13589 (Promoting Efficient Spending),⁶ which targets employee IT devices as a primary area for eliminating waste and duplication. This effort should also assist agencies in meeting the targets and requirements under other initiatives, such as Federal Data Center Consolidation Initiative (FDCCI), the Cloud Computing Initiative, and the draft IT Shared Services Strategy.

CIOs, CFOs, and CAOs must support the PortfolioStat process by providing the necessary data and analysis, attending the PortfolioStat meeting, and support all decisions made through the process. This is necessary so that the portfolio-wide review results in concrete actions to maximize the investment in mission and support IT, consolidate the acquisition and management of commodity IT, reduce duplication, and eliminate waste.

To support this process, OMB is requiring that each agency take the following actions:

- **Designate Lead for Initiative.** Each agency's COO shall designate and communicate to OMB within 10 days of issuance of this memorandum an individual with direct reporting authority to the COO to lead the agency's efforts to implement the PortfolioStat process and guidance contained in this memo.
- **Complete a High-Level IT Portfolio Survey.** The data collection at the Departmental level is a high-level survey of agency IT portfolio status, and shall be completed by the designated lead in

⁴ Chief Operating Officers were designated by the GPRM Modernization Act of 2010, Pub. L. No. 111-352, 124 Stat. 3866 (2011).

⁵ http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m_10-25.pdf

⁶ <http://www.whitehouse.gov/the-press-office/2011/11/09/executive-order-promoting-efficient-spending>

the MAX Collect Tool, with support from the CIO, CFO, and CAO, and submitted to OMB by May 31, 2012.

- **Establish a Commodity IT Investment Baseline.** Each bureau, if applicable, must complete an information request identified in the MAX Collect Tool for specific types of commodity IT investments (including enterprise IT systems, IT infrastructure, and business systems) that will be used to baseline the maturity of agency portfolios. Bureau heads, if applicable, shall lead this request, which shall be completed by OMB by June 15, 2012.
- **Submit a Draft Plan to Consolidate Commodity IT.** Based on the analysis used to respond to the information requests above, the COO, in partnership with the CIO, CAO, and CFO, shall draft a proposed action plan to consolidate the commodity IT spend under the CIO, and establish a measurable financial goal to reduce total IT spend based on more consolidated commodity IT buys and intra-agency shared services. This proposed action plan shall be submitted to OMB by June 29, 2012.
- **Hold PortfolioStat Session.** Agencies shall hold their first PortfolioStat session by July 31, 2012. Further guidance on the process is detailed in Attachment A.
- **Submit a Final Plan to Consolidate Commodity IT.** By August 31, 2012, each Federal Agency shall complete and submit to OMB a document outlining its plan to rationalize and consolidate its IT portfolio, including the adoption of intra and inter agency shared IT services. These comprehensive plans will be informed by the PortfolioStat Process, and will cover at least three years of agency activities.
- **Migrate at Least Two Duplicative Commodities IT Services.** Agencies shall complete the transition of two commodity IT areas by December 31, 2012. In addition to the examples provided in M-11-29, commodity IT would also include IT hardware and software as well as the following services for which Federal Strategic Sourcing Initiative (FSSI)⁷ solutions exist or will soon be awarded: print management, telecommunication expense management, and wireless devices and services. Agency use of these FSSI solutions will count toward meeting this migration goal.
- **Document Lessons Learned.** Agencies shall document and catalogue successes, challenges, and lessons learned from this process into a document that must be submitted to OMB by February 1, 2013.

Through the PortfolioStat process, COOs will have a clearer picture of where duplication exists across their respective agencies. This analysis should inform the budget process and help agency COOs eliminate waste and duplication within the IT portfolio. A specific focus must be placed on reducing duplication within commodity IT by shifting to intra- and inter-agency shared services. Duplicative systems or contracts that support common business functions within an

⁷ <http://www.gsa.gov/portal/content/112561>

agency should be targeted for consolidation in order to leverage the purchasing power of the agency.

To assist with the data collection and reporting requirements listed under this memorandum OMB has created a MAX Collect Tool that will be the required repository for all of the information requested. Please go to the MAX Community for more information.

For any questions regarding this memo, please contact Andrew McMahon at egov@omb.eop.gov, with “PortfolioStat” as the subject line.

Attachment

The PortfolioStat process is structured around five discrete phases: (1) Baseline Data Gathering; (2) Analysis and Proposed Action Plan; (3) PortfolioStat Session; and (4) Final Action Plan Implementation, (5) Lessons Learned. The following provides further details on each phase with guidance on the schedule and requirements surrounding the PortfolioStat process to ensure that this essential management reform is consistently implemented by agencies. In order to maximize the return on investments in IT, agency leadership must engage in proactive performance management using high-quality, targeted data on the maturity of agency portfolios, as well as architectural and asset inventory information.

Phase 1: Baseline Data Gathering

Agencies shall provide the following information to OMB that will be collected through the MAX Collect Tool:

- By May 31, 2012, a high-level survey of agency IT portfolio status;
- By June 15, 2012, an information request for specific types of commodity IT investments (including enterprise IT systems, IT infrastructure, and business systems) that will be used to baseline the maturity of agency portfolios. Bureau heads, if applicable, shall complete this data request for each of the identified areas.

Phase 2: Analysis and Proposed Action Plan

Using the portfolio data gathered in Phase 1, combined with other data available at the bureau and agency level, COOs shall:

- Identify wasteful or duplicative investments, procurements, and/or commodity IT areas;
- Make frequent use of the agency's enterprise architecture future plans for program, system, and service changes;
- Use the agency valuation model to assess the IT portfolio and measure expected outcomes vs. actual business value delivered for major investments; and
- Review the current state of governance and program management.

Based on this analysis, the agency COO, in partnership with the CIO, CAO, and CFO, shall draft a proposed action plan to:

- Consolidate commodity IT spending under the agency CIO;
- Establish targets for commodity IT spending reductions and deadlines for meeting those targets;
- Move at least two commodity IT areas to shared services (e.g. E-mail, collaboration tools, web infrastructure, etc.)
- Target duplicative systems or contracts that support common business functions within an agency for consolidation in order to streamline processes and leverage the purchasing power of the agency;
- Illustrate how investments within the IT portfolio align with the agency's mission and business functions;
- Establish criteria for identifying wasteful, "low-value," or duplicative investments

- Establish a process to identify these potential investments and a schedule for eliminating them from the portfolio;
- Improve governance and program management utilizing best practices and, where possible, benchmarks.

The draft action plan shall be submitted to OMB by June 29, 2012.

Phase 3: PortfolioStat Session

A PortfolioStat session is a face-to-face, evidence-based review (e.g., including data on commodity IT investments, potential duplications, investments that do not appear to be well-aligned to agency missions or business functions, etc.) of an agency's IT portfolio. In the session, the Federal CIO along with the agency CIO, CAO, CFO, and COO, meet for one focused hour to review the agency's portfolio data and proposed action plan. Participants agree on concrete next steps to rationalize the agency's IT portfolio, resulting in a final plan that articulates corrective actions, anticipated results, and which establishes specific timeframes for the actions to be taken.

Agencies shall hold their first PortfolioStat session by July 31, 2012.

Phase 4: Final Action Plan Implementation

The anticipated cost savings and portfolio improvements realized through the PortfolioStat session must be memorialized in a communication from the COO to the agency. Additionally, in the FY 2014 budget process, agencies must document the cost savings and avoidance realized in FY 2013 and into subsequent out years. Effective implementation of the PortfolioStat process will require agencies to incorporate the following activities into their approach:

- Agencies shall complete and submit to OMB a document outlining its plan to rationalize and consolidate its IT portfolio, including the adoption of intra and inter agency shared IT services.

The final action plan to consolidate commodity IT spending shall be shared with OMB by August 31, 2012.

Phase 5: Lessons Learned

The process established in this memo will be an annual requirement for all agencies to continually assess the maturity of IT portfolio management and ensure that any inertia, which would relegate the Federal Government to the status quo, be rooted out on a recurring basis. In order to do so with maximum impact, agencies must document successes, challenges and lessons learned through the PortfolioStat process.

Additionally, OMB will gather its own successes, challenges, and lessons learned through the process and update this memo and data collection parameters accordingly each year. As this process evolves, we will ask agencies to look deeper into their portfolios at more mission oriented and high-value investments. The intention is that this process will inform governance and budget decisions each fiscal year.

- Agencies shall document and catalogue successes, challenges, and lessons learned throughout the process and must submit a consolidated document to OMB. This document shall be submitted to OMB by February 1, 2013.

By undertaking the portfolio review described above, COOs will get a better picture of where potential duplication exists across their respective agencies. In addition, the reviews will enable agencies to use the asset inventory and architectural information to help refine their IT investment portfolios in the future.



Correspondence Management System

Control Number: AX-12-000-6136

Printing Date: April 04, 2012 03:20:39



Citizen Information

Citizen/Originator: Pharr, W. Shaun

Organization: Apartment and Office Building Association of Metropolitan Washington
Address: 1050 17th Street, NW, Washington, DC 20036

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-12-000-6136

Alternate Number: N/A

Status: Pending

Closed Date: N/A

Due Date: Apr 19, 2012

of Extensions: 0

Letter Date: Mar 28, 2012

Received Date: Apr 4, 2012

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: LTR (Letter)

Priority Code: Normal

Signature: DX-Direct Reply

Signature Date: N/A

File Code: 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.

Subject: Daily Reading File - DC Water Green Infrastructure Project

Instructions: DX-Respond directly to this citizen's questions, statements, or concerns

Instruction Note: N/A

General Notes: N/A

CC: OEAE - Office of External Affairs and Environmental Education

OGC - Office of General Counsel -- Immediate Office

OW - Office of Water -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6) Personal Privacy	OEX	R3	Apr 4, 2012	Apr 19, 2012	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date
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March 28, 2012

The Honorable Lisa P. Jackson, Administrator
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

REC-1
2012 APR -4 AM 11:09
OFFICE OF THE
REGISTRE STRICKLAND

RE: DC Water Green Infrastructure Project

Dear Administrator Jackson:

I am writing to express the enthusiastic support of the Apartment and Office Building Association of Metropolitan Washington (AOBA) for an alternative green infrastructure approach to the District's Long Term Control Plan (LTCP) as proposed to your agency by DC Water. AOBA is a non-profit trade association representing owners and managers of commercial office building and multifamily residential properties, as well as companies that provide products and services to the real estate industry. Currently, the combined portfolio of AOBA's membership is more than 156 million square feet of office space and 208,700 residential units in the District of Columbia, Maryland, and Virginia. Here in the District of Columbia, AOBA members own or manage more than 40,000 apartment units and over 70 million square feet of office space.

As you are aware, DC Water is constructing a massive, \$1.3 billion tunnel system to eliminate 98 percent of sewer overflows into the Anacostia River, per the terms of the 2005 consent decree it entered into with the United States Environmental Protection Agency (EPA) and the Department of Justice (DOJ). AOBA members are among the District's largest landowners and currently represent approximately forty-four (44%) percent of the customer base being assessed the impervious surface area charge by DC Water to finance the construction of the tunnel system.

However, DC Water is currently proposing a transformative pilot project that could reduce the burden placed on ratepayers, including AOBA members, for funding the large tunnels. Specifically, DC Water is seeking EPA's approval of a full-scale demonstration of green infrastructure that could offset the need for some of the Potomac and Rock Creek tunnel project capacity, through installation of a wide range of projects across the city for different types of properties and land areas. Project ideas include installation of permeable pavement, tree filters, green roof treatment and vegetated filter strips. The large scale of the proposed pilot project will yield a diversity of ecological, social, and economic benefits, in addition to, hopefully, reducing the needed storage tunnel capacity. The projects envisioned by DC Water

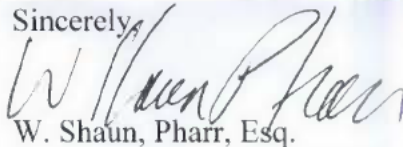


will transform local neighborhoods and improve the quality of life for District residents by creating more green jobs and enhanced green spaces.

For this demonstration project to move forward and prove itself, the consent decree must be amended to grant sufficient time to evaluate the effectiveness of the green infrastructure pilot. Since the negotiation of the 2005 consent decree, EPA has supported and approved green infrastructure approaches to address combined sewer overflows (CSOs) in jurisdictions similar to the District, such as Cleveland and Indianapolis. Further, more recent EPA consent decrees have provided jurisdictions with 25 years to address CSOs, instead of the 20 years allowed under the District's agreement. With that in mind, it is reasonable to provide DC Water with additional time to conduct a rigorous pilot of green infrastructure approaches to CSOs at its own expense.

Thank you for the opportunity to express AOBA's support for the DC Water pilot project and we urge you to approve the necessary modification of the 2005 consent decree.

Sincerely,



W. Shaun, Pharr, Esq.

Senior Vice President of Government Affairs
Apartment and Office Building Association of
Metropolitan Washington



Correspondence Management System

Control Number: AX-12-000-6139

Printing Date: April 04, 2012 04:03:17



Citizen Information

Citizen/Originator: Billie, Colley

Organization: Miccosukee Tribe of Indians of Florida
Address: P.O. Box 440021 Tamiami Station, Miami, FL 33144

Constituent: N/A

Committee: N/A Sub-Committee: N/A

Control Information

Control Number: AX-12-000-6139 Alternate Number: N/A
 Status: For Your Information Closed Date: N/A
 Due Date: N/A # of Extensions: 0
 Letter Date: Mar 28, 2012 Received Date: Apr 4, 2012
 Addressee: DA-Deputy Administrator Addressee Org: EPA
 Contact Type: LTR (Letter) Priority Code: Normal
 Signature: SNR-Signature Not Required Signature Date: N/A
 File Code: 401_127_a General Correspondence Files Record copy
 Subject: Daily Reading File-Thank you letter from Colley Billie
 Instructions: For Your Information -- No action required
 Instruction Note: N/A
 General Notes: N/A
 CC: OCIR - Office of Congressional and Intergovernmental Relations
 OEAE - Office of External Affairs and Environmental Education
 OITA - Office of International and Tribal Affairs
 R10 - Region 10 -- Immediate Office
 R4 - Region 4 -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
No Record Found.					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
(b) (6) Personal Privacy	OEX	R4	Apr 4, 2012

History

Action By	Office	Action	Date
(b) (6) Personal Privacy	OEX	Forward control to OITA	Apr 4, 2012
(b) (6) Personal Privacy	OEX	Control Taken Over	Apr 4, 2012



Miccosukee Tribe of Indians of Florida

Business Council Members

Colley Billie, Chairman

Jasper Nelson, Ass't. Chairman
Jerry L. Cypress, Treasurer

Andrew Bert Sr., Secretary
William M. Osceola, Lawmaker

March 28, 2012

The Honorable Bob Perciasepe
Deputy Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

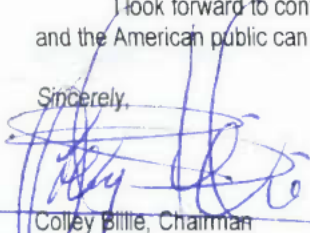
Dear Deputy Administrator Perciasepe:

On behalf of the Miccosukee Tribe of Indians of Florida (Tribe), I thank you and the other officials at the U.S. Environmental Protection Agency (EPA) for meeting with us on February 14th as well as for accommodating our schedule so late in the day. We appreciated the opportunity to discuss with you ways to advance Everglades restoration and the impacts that water resource decisions are having on our homelands. We were encouraged to hear of EPA's resolve to make progress in ensuring that water quality in the Everglades meets tribal and state standards.

The Tribe remains fully committed to restoration of the Everglades. The Tribe supported the original Comprehensive Everglades Restoration Plan and continues to support its overall goals. In addition to the need to improve water quality on tribal lands and other parts of the Everglades, we seek to ensure that the federal government does not engage in further skyway bridging of the Tamiami Trail because it will not achieve its intended environmental purpose and will destroy areas of significant cultural, historical, and archeological value. Instead, the culvert and swale approach is far more cost-effective and less disruptive. Further, it can be implemented immediately to improve the hydrology on tribal lands. We would greatly appreciate EPA's assistance on this matter as well.

I look forward to continuing our work together so the Miccosukee people can continue our traditional ways of life in the Everglades and the American public can enjoy its beauty for many generations to come.

Sincerely,


Colley Billie, Chairman
Miccosukee Tribe of Indians of Florida

cc: Major General Merdith W.B. Temple, U.S. Army Acting Chief of Engineers and Acting Commanding General of the U.S. Army Corps of Engineers
Secretary Ken Salazar, U.S. Department of the Interior
Secretary Ray LaHood, U.S. Department of Transportation
Ms. Kimberly Teehee, Domestic Policy Council, The White House
Mr. Charles Galbraith, Office of Public Engagement, The White House

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2012 APR -4 AM 11:09
OFFICE OF THE
EXECUTIVE SECRETARIAT



Correspondence Management System

Control Number: AX-12-000-6140

Printing Date: April 04, 2012 04:12:54



Citizen Information

Citizen/Originator: Foster, James R.

Organization: George Washington House - Anacostia Watershed Society
Address: 4302 Baltimore Avenue, Bladensburg, MD 20710

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-12-000-6140

Alternate Number: N/A

Status: Pending

Closed Date: N/A

Due Date: Apr 19, 2012

of Extensions: 0

Letter Date: Mar 29, 2012

Received Date: Apr 4, 2012

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: LTR (Letter)

Priority Code: Normal

Signature: DX-Direct Reply

Signature Date: N/A

File Code: 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.

Subject: Daily Reading File - Federal Ambassador to the Anacostia Urban Waters Federal Partnership Pilot Program

Instructions: DX-Respond directly to this citizen's questions, statements, or concerns

Instruction Note: N/A

General Notes: N/A

CC: OAR - Office of Air and Radiation -- Immediate Office
OEAE - Office of External Affairs and Environmental Education
OW - Office of Water -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6) Personal Privacy	OEX	R3	Apr 4, 2012	Apr 19, 2012	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date
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ANACOSTIA WATERSHED SOCIETY

RECEIVED

2012 APR -4 AM 11:09

OFFICE OF THE
EXECUTIVE SECRETARIAT

James R. Foster
President

March 29, 2012

**BOARD OF
DIRECTORS**

Secretary Ken Salazar
Department of the Interior
1849 C Street, NW
Washington DC 20240

Michael Tilchin
Chair

Administrator Lisa Jackson

Sadara Barrow
Treasurer

Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

John W. Lyon
Secretary

Re: Federal Ambassador to the Anacostia Urban Waters Federal
Partnership Pilot Program

Mary Abe

Charles Agle

Dear Secretary Salazar and Administrator Jackson:

Robert E. Boone

James F. Connolly

I am writing to express our full support in assigning a full-time Ambassador to the Urban Waters Initiative Anacostia River Pilot, as announced at the White House Conference on Conservation which I attended. Ambassadors have already been committed at five of the seven other Urban Water pilot sites.

Charles Evans

Elissa Feldman

Greer Goldman

Jacqueline Goodall

Allan Platt

As a local watershed organization with 23 years of focused activities on the Anacostia River and in the watershed, we are well aware of the level of effort that is necessary to move us toward a "fishable and swimmable" Anacostia River. This request for an Ambassador is with the knowledge that a full-time employee would be dedicated to meeting specific outcomes and will, over the course of a two-year effort, make major progress toward those outcomes. AWS is willing to host such a person if that would help bring an Ambassador on sooner.

Anya Schoolman

Antoinette Sebastian

Jack Wennersten

Advisory Council

Adam Ortiz

Our needs are many in the Anacostia so I am suggesting several ideas for the Ambassador to focus on. A review of Federal policies that impact land use and upgrades to those policies would help. A great example is the LEED requirement in federal leases has resulted in more energy efficiencies and

James C. Rosapepe

Clean the Water, Recover the Shores, Honor the Heritage

The George Washington House • 4302 Baltimore Avenue • Bladensburg, MD 20710-1031
o. 301-699-6204 • f. 301-699-3317 • info@anacostiaws.org • www.AnacostiaWS.org

better stormwater management in buildings in the District and surrounding regions.

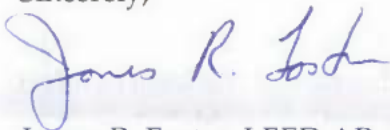
I would like to suggest that you consider a stronger authority to drive river cleanup. I'm thinking of an actual Authority or Commission with specific watershed oversight that transcends political boundaries and has enough authority to set standards and raise clean water, healthy families, and vibrant economies to a higher level in our permitting and planning processes. Let's look at the river as an estuary ecosystem in an urban area and consider what would work best to improve the whole river including the communities in the watershed and the hydrology in the area. Perhaps the Ambassador could help with such model. The Anacostia Watershed Restoration Partnership is a great starting point and model. Perhaps we could add some "authority" to their responsibilities for instance or use that a platform to create a commission with the proper authority.

As a Steering Committee member of the Choose Clean Water Coalition, I see the value brought to the collaboration from the Ambassador assigned from the Bay Program Office. Federal employee Peter Marx, now retired, was critical in supporting our members through the maze of federal programs and agencies. Such a person, working in the Anacostia with the many stakeholders, and collaborating closely with Tammy Stidham, Catherine King, and Lisa Pelstring, would be of incalculable benefit to ensuring success of this pilot and progress on cleaning and restoring the river.

Please move with haste to assign an appropriate candidate to assist this Federal Partnership. Thank you.

If you have any questions please call me at 301 699-6204 ext 105.

Sincerely,



James R. Foster, LEED AP, CHMM

President

cc: Shawn Garvin, USEPA
Lisa Pelstring, DOI
John Tubbs, DOI
Surabhi Shah, EPA
Tammy Stidham
Catherine King

THE WHITE HOUSE

WASHINGTON

March 30, 2012

2012 APR -4 AM 11:08

OFFICE OF
SECURITY SERVICES

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Establishing a Working Group on the Intersection of HIV/AIDS, Violence Against Women and Girls, and Gender-related Health Disparities

Throughout our country, the spread of HIV/AIDS has had a devastating impact on many communities. In the United States, there are approximately 1.2 million people living with HIV/AIDS, including more than 290,000 women. Women and girls now account for 24 percent of all diagnoses of HIV infection among United States adults and adolescents. The domestic epidemic disproportionately affects women of color, with African Americans and Latinas constituting over 70 percent of new HIV cases in women. The spread of HIV/AIDS is, in and of itself, a primary concern to my Administration. However, gender-based violence and gender-related health disparities cannot be ignored when addressing the domestic public health threat of HIV/AIDS. HIV/AIDS programs often ignore the biological differences and the social, economic, and cultural inequities that make women and girls more vulnerable to HIV/AIDS. In our country, women and girls are all too frequently victimized by domestic violence and sexual assault, which can lead to greater risk for acquiring this disease. Teenage girls and young women ages 16-24 face the highest rates of dating violence and sexual assault. In addition, challenges in accessing proper health care can present obstacles to addressing HIV/AIDS. Gender-based violence continues to be an underreported, common problem that, if ignored, increases risks for HIV and may prevent women and girls from seeking prevention, treatment, and health services.

My Administration is committed to improving efforts to understand and address the intersection of HIV/AIDS, violence against women and girls, and gender-related health disparities. To do so, executive departments and agencies (agencies) must build on

their current work addressing the intersection of these issues by improving data collection, research, intervention strategies, and training. In order to develop a comprehensive Government-wide approach to these issues that is data-driven, uses effective prevention and care interventions, engages families and communities, supports research and data collection, and mobilizes both public and private sector resources, I direct the following:

Section 1. Working Group on the Intersection of HIV/AIDS, Violence Against Women and Girls, and Gender-related Health Disparities. There is established within the Executive Office of the President a Working Group on the Intersection of HIV/AIDS, Violence Against Women and Girls, and Gender-related Health Disparities (Working Group), to be co-chaired by the White House Advisor on Violence Against Women and the Director of the Office of National AIDS Policy (Co-Chairs). Within 60 days of the date of this memorandum, the Co-Chairs shall convene the first meeting of the Working Group.

(a) In addition to the Co-Chairs, the Working Group shall consist of representatives from:

- (i) the Department of Justice;
- (ii) the Department of the Interior;
- (iii) the Department of Health and Human Services;
- (iv) the Department of Education;
- (v) the Department of Homeland Security;
- (vi) the Department of Veterans Affairs;
- (vii) the Department of Housing and Urban Development; and
- (viii) the Office of Management and Budget.

(b) The Working Group shall consult with the Presidential Advisory Council on HIV/AIDS, as appropriate.

(c) The Department of State, the United States Agency for International Development, and the President's Emergency Plan for AIDS Relief Gender Technical Working Group shall act in an

advisory capacity to the Working Group, providing information on lessons learned and evidence-based best practices based on their global experience addressing issues involving the intersection between HIV/AIDS and violence against women.

Sec. 2. Mission and Functions of the Working Group. (a) The Working Group shall coordinate agency efforts to address issues involving the intersection of HIV/AIDS, violence against women and girls, and gender-related health disparities. Such efforts shall include, but not be limited to:

- (i) increasing government and public awareness of the need to address the intersection of HIV/AIDS, violence against women and girls, and gender-related health disparities, including sexual and reproductive health and access to health care;
- (ii) sharing best practices, including demonstration projects and international work by agencies, as well as successful gender-specific strategies aimed at addressing risks that influence women's and girls' vulnerability to HIV infection and violence;
- (iii) integrating sexual and reproductive health services, gender-based violence services, and HIV/AIDS services, where research demonstrates that doing so will result in improved and sustained health outcomes;
- (iv) emphasizing evidence-based prevention activities that engage men and boys and highlight their role in the prevention of violence against women and HIV/AIDS infection;
- (v) facilitating opportunities for partnerships among diverse organizations from the violence against women and girls, HIV/AIDS, and women's health communities to address the intersection of these issues;
- (vi) ensuring that the needs of vulnerable and underserved groups are considered in any efforts to address issues involving the intersection of HIV/AIDS, violence against women and girls, and gender-related health disparities;

(vii) promoting research to better understand the intersection of the biological, behavioral, and social sciences bases for the relationship between increased HIV/AIDS risk, domestic violence, and gender-related health disparities; and

(viii) prioritizing, as appropriate, the efforts described in paragraphs (a) (i)-(vii) of this section with respect to women and girls of color, who represent the majority of females living with and at risk for HIV infection in the United States.

(b) The Working Group shall annually provide the President recommendations for updating the National HIV/AIDS Strategy. In addition, the Working Group shall provide information on:

(i) coordinated actions taken by the Working Group to meet its objectives and identify areas where the Federal Government has achieved integration and coordination in addressing the intersection of HIV/AIDS, violence against women and girls, and gender-related health disparities;

(ii) alternative means of making available gender-sensitive health care for women and girls through the integration of HIV/AIDS prevention and care services with intimate partner violence prevention and counseling as well as mental health and trauma services;

(iii) specific, evidence-based goals for addressing HIV among women, including HIV-related disparities among women of color, to inform the National HIV/AIDS Strategy Implementation Plan (for its biannual review);

(iv) research and data collection needs regarding HIV/AIDS, violence against women and girls, and gender-related health disparities to help develop more comprehensive data and targeted research (disaggregated by sex, gender, and gender identity, where practicable); and

(v) existing partnerships and potential areas of collaboration with other public or nongovernmental actors, taking into consideration the types of

implementation or research objectives that other public or nongovernmental actors may be particularly well-situated to accomplish.

Sec. 3. Outreach. Consistent with the objectives of this memorandum and applicable law, the Working Group, in addition to regular meetings, shall conduct outreach with representatives of private and nonprofit organizations, State, tribal, and local government agencies, elected officials, and other interested persons to assist the Working Group in developing a detailed set of recommendations.

Sec. 4. General Provisions. (a) The heads of agencies shall assist and provide information to the Working Group, consistent with applicable law, as may be necessary to carry out the functions of the Working Group. Each agency and office shall bear its own expense for carrying out activities related to the Working Group.

(b) Nothing in this memorandum shall be construed to impair or otherwise affect:

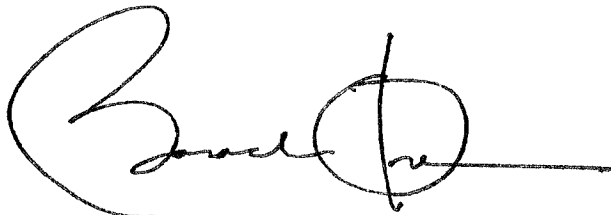
(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(e) The Secretary of Health and Human Services is authorized and directed to publish this memorandum in the *Federal Register*.

A handwritten signature in black ink, appearing to read "B. J. [unclear]", with a large, stylized initial "B" and a circular flourish.



Correspondence Management System

Control Number: AX-12-000-6144

Printing Date: April 04, 2012 03:09:23



Citizen Information

Citizen/Originator: Krancer, Michael L

Organization: Pennsylvania Department of Environmental Protection
Address: Rachel Carson State Office Building, P.O. Box 2063, Harrisburg, PA
17105-2063

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-12-000-6144 **Alternate Number:** N/A
Status: Pending **Closed Date:** N/A
Due Date: Apr 19, 2012 **# of Extensions:** 0
Letter Date: Mar 26, 2012 **Received Date:** Apr 4, 2012
Addressee: AD-Administrator **Addressee Org:** EPA
Contact Type: LTR (Letter) **Priority Code:** Normal
Signature: RA-R3-Regional Administrator - Signature Date: N/A
Region 3

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.

Subject: Daily Reading File - Clean Air Council Petition to the Administrator to Make a Finding that Pennsylvania is Failing to Implement Requirements in it's State Implementation Plan; and to Apply Sanctions Relating to these Alleged Failures

Instructions: RA-R3-Prepare draft response for signature by the Regional Administrator for Region 3

Instruction Note: N/A

General Notes: N/A

CC: Linda Huffman - OECA
OAR - Office of Air and Radiation -- Immediate Office
OEAEE - Office of External Affairs and Environmental Education
OECA - OECA -- Immediate Office
OGC - Office of General Counsel -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6) Personal Privacy	OEX	R3	Apr 4, 2012	Apr 19, 2012	N/A
Instruction: RA-R3-Prepare draft response for signature by the Regional Administrator for Region 3					

Supporting Information

Supporting Author: N/A



pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION

SECRETARY

REC
2012 APR -4 AM 11:08

OFFICE OF THE
EXECUTIVE SECRETARY

March 26, 2012

Lisa P. Jackson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

Re: Clean Air Council Petition to the Administrator to Make a Finding that Pennsylvania is Failing to Implement Requirements in its State Implementation Plan; and to Apply Sanctions Relating to these Alleged Failures.

Dear Administrator Jackson:

This letter is in response to the Clean Air Council (CAC) Petition in the above captioned matter, which was submitted to the U.S. Environmental Protection Agency (EPA) on February 16, 2012.

Introduction

The Pennsylvania Department of Environmental Protection (Department or DEP) is very concerned about the CAC's continued abuse of the Clean Air Act, (CAA), 42 U.S.C. § 7401 *et seq.*, and Administrative Procedure Act (APA), 5 U.S.C. § 553(e) petition processes. As you well know, this is the third petition that CAC has filed against Pennsylvania in yet another transparent attempt to use the petition process as a means to get what they may not otherwise achieve through the judicial, regulatory and policymaking processes. CAC's latest petition seeks to attack how the Department is implementing the Pennsylvania State Implementation Plan (SIP) – even though the Department is implementing and acting in accordance with its regulations concerning the permitting and construction of air contaminant sources. Put simply, there is no credible evidence that the Department is failing to implement its SIP or the Title V program. To the contrary, the Department continues to implement its SIP and Title V program in accordance with the law and will continue to do so.

CAC's petition alleges that the Department is failing to implement the Pennsylvania SIP based on our handling of single source determinations under the CAA and the Pennsylvania SIP, 40 CFR Part 52.2020. The CAC alleges the following to support their petition – permit review memos that discuss "aggregation" are vague, incomplete, and conflict with the CAA; the Department's October 12, 2011 interim final guidance on single source determinations is contrary to the CAA; EPA's comments on the Department's interim final guidance raise concerns with that guidance; and pending litigation on aggregation issues before the Pennsylvania Environmental Hearing Board (EHB) and the U.S. District Court for the Middle District of Pennsylvania.

The CAC petition further alleges that the Commonwealth is failing to adequately administer and enforce its Title V permitting program. The petitioners allege that the Department is “failing to make accurate source determinations for the purpose of assessing applicability” of the Title V program.

The evidence that CAC uses to support its petition does not relate to the Department’s “failure” to implement the Pennsylvania SIP, but rather takes issue with “how” the Department implements the SIP. Moreover, the petition also fails to demonstrate that DEP is not adequately administering and enforcing its Title V program. As explained more fully below, the Department is implementing and acting in compliance with federal and state regulations related to the construction and operation of air contamination sources. Accordingly, the Department believes that this petition is meritless and should be summarily rejected.

Background

The Pennsylvania Environmental Quality Board, an independent entity responsible for the adoption of DEP regulations, finalized a series of regulatory amendments to ensure that Pennsylvania’s air quality permitting program is consistent with both the Pennsylvania Air Pollution Control, 35 P.S. § 4001 *et seq.*, and the CAA. These amendments relate to the construction and operation of sources under 25 Pa. Code Chapter 127 and, in pertinent part, were modified in 1983¹ and 1994.² These amendments were subsequently approved by EPA as revisions to the Pennsylvania SIP.³

Since 1996 the Department issued over 800 Title V permits and over 2,500 state-only operating permits. More specifically, as it relates to permitting operations for natural gas operations within the Marcellus Shale, the Department issued over 400 authorizations to use general permits for natural gas production and/or processing facilities. In addition, the Department issued approximately 20 individual plan approvals for these facilities. Each plan approval, operating permit, or general permit application is reviewed individually to ensure compliance with the applicable regulatory requirements. While some of these DEP permits are subsequently challenged, it is reflective of the implementation decisions that the Department made on these applications.

In no instance has the Department refused to implement any SIP-approved regulation. *See Citizens for Pennsylvania’s Future v. Mallory, et al*, No. 02-798 2002 U.S. Dist. LEXIS 24406 (E.D. Pa. December 18, 2002) (Liability found for failure to implement a SIP-approved inspection and maintenance program). *See also Coalition for Clean Air, Inc., v. South Coast Air Quality Management District*, 1999 U.S. Dist. LEXIS 16106 (C.D. Ca. August 27, 1999) (Liability found for failure to implement control measures in the SIP). This petition is not about

¹ *See* 13 Pa. Bull. 1940, June 18, 1983.

² *See* 24 Pa. Bull. 5899, November 26, 1994.

³ *See* 49 Fed. Reg. 33127, August 21, 1984 and 61 Fed. Reg. 39594, July 30, 1996.

a failure to implement the current SIP, but rather a dispute about how the Department is implementing its SIP. As a result, the allegations set forth in the petition do not support a failure to implement finding as it relates to the Pennsylvania SIP.

Furthermore under 25 Pa. Code §§ 127.13b and 127.422(3) (relating to plan approval changes for cause and operating permit changes for cause), the Department is obligated to deny a plan approval or operating permit if EPA notifies the DEP, in writing, that the plan approval or operating permit is not in compliance with the CAA or its regulations.⁴ To date, EPA has not notified the Department in writing that any plan approval issued for the natural gas industry is contrary to any applicable law and regulation. The fact that EPA has not provided any written notifications shows that both the SIP and the Title V program are being implemented consistent with federal and state law.

Additionally, CAC has an adequate regulatory remedy related to Title V permits. *See* 25 Pa. Code § 127.523 (relating to public petitioners to the administrator of the EPA). Under these provisions, anytime that EPA does not object to a Title V permit issued by the Department, CAC may petition EPA to make an objection. If EPA objects, the Department will suspend the permit until the objection is resolved.

Since it is much easier for EPA to assert its oversight responsibilities under these Pennsylvania regulatory provisions on a case-by-case basis as opposed to making a broader failure to implement finding or failure to adequately administer or enforce the Title V permitting program, CAC's petition should also be rejected because of these adequate regulatory remedies under the *Pennsylvania Code*.

CAC's Allegations Concerning a Failure to Implement the SIP and Failure to Adequately Administer and Enforce the Title V Permitting Program

Pending Litigation

The CAC petition references litigation before the EHB and the U.S. District Court for the Middle District of Pennsylvania as evidence that the Pennsylvania SIP is not being implemented. These litigation matters – *Group Against Smog and Pollution v. DEP*, (2011 EHB 065) *Clean Air Council v. DEP*, (2011 EHB 072), and *PennFuture v. Ultra Resources* (M.D. Pa.11-cv-01360) – involve single-source determination decisions by the Department in implementing the SIP, not in failing to implement the SIP. Obviously, this is specious. As CAC should know and I know EPA knows, lawsuits in and of themselves are not evidence of anything in the American system of law. There have been no findings of fact of any nature in these lawsuits. There have not even been any preliminary decisions of procedural issues. In the federal lawsuit, the defendants have

⁴ *See also* 25 Pa. Code § 127.522 (relating to operating permit application review by the EPA and affected states). (If EPA objects to the issuance of a proposed Title V permit that it determines is not in compliance with the CAA and its regulations, DEP must revise that permit or EPA will issue or deny the permit in accordance with the CAA).

moved to dismiss the case on the ground that the federal court ought to abstain from hearing the matter since it is primarily a state law issue. The federal court has not even yet determined that threshold issue and regardless of which way the court rules on that issue, its opinion on that topic will not decide any factual issues in the suit at all. The state court case is not even finished with the discovery process yet.

As demonstrated by the caption in one of these matters, CAC is an appellant before the EHB. This petition is an obvious case where the CAC is hedging its bets in two different forums. If EPA entertains such a tactic, it would open the flood gates to forum-shopping where CAC, and others, could use the petition process in an improper manner to have its grievances heard where they believe they could receive a more favorable judgment. Such a result would inject a huge amount of inconsistency and uncertainty in the air quality permitting process, because the Department, and not EPA, is the permitting authority in Pennsylvania. Consequently, EPA should reject CAC's invitation to air its grievances within a petition process that is ill-suited to review individual DEP permitting decisions.

In fact the appropriate forum for CAC's challenge is before the EHB, the specialized administrative tribunal established for the purpose of hearing challenges to DEP's permitting decisions. This forum is best suited to review the Department's case-by-case single source determinations within the legal framework established by the EHB's practices and procedures. *See* 25 Pa. Code Chapter 1021. Additionally, this process avails itself to subsequent appeals to the Commonwealth Court of Pennsylvania, and the Pennsylvania Supreme Court. *See* 42 P.S. §§ 763(a) and 723(a), respectively. Therefore, it is these legal processes, that CAC initially chose, that should decide the issues surrounding these case-by-case determinations.

The Department is confident that it made the correct implementation decisions in each of the cases cited in the CAC petition. However, these matters are likely to be protracted without decisions on the merits for the foreseeable future. Therefore citing these pending cases as support for their petition does not advance CAC's cause at all. Citing these cases merely shows that the appellants disagree with the Department's decisions, and not that these decisions are contrary to the law.

In addition, each of the permits in these litigation matters were subject to the public notice and comment provisions under 25 Pa. Code § 124.44 (relating to public notice). At no time did the Department receive comments from EPA objecting to the issuance of these permits. If EPA notified the DEP, in writing, that a plan approval or operating permit is not in compliance with the CAA, the Department is obligated to deny that plan approval or operating permit. *See* 25 Pa. Code §§ 127.13b and 127.422(3).⁵ The fact that EPA did not provide any written notifications is evidence that both the SIP and the Title V program are being implemented consistent with the law.

⁵ *Supra* note 4.

DEP interim guidance and EPA's comments on that guidance

The CAC petition references the DEP interim guidance on single source determinations and EPA's comments on that guidance as evidence that the Pennsylvania SIP is not being implemented. That point is specious because, at the end of the day, the state process is exactly like the federal process on this: a case-by-case determination of the aggregation question. The DEP interim guidance outlines a case-by-case determination process just like the McCarthy Memorandum does. We do it the same way, on a case-by-case basis "represent[ing] highly fact-specific decisions, and...no single determination can serve as an adequate justification for how to treat any other source determination for pollutant-emitting activities with different fact-specific circumstances." McCarthy Memorandum, September 22, 2009, p. 2.

Also, like the litigation matters, the interim guidance is an unresolved matter that was noticed and made available for public comment. See 41 Pa. Bull. 5719, October 22, 2011. Over 300 comment letters were submitted on this guidance, which are currently being reviewed by DEP. In fact, as the CAC indicated in their petition, they submitted comments on the interim guidance through the Columbia University Environmental Law Clinic. Depending on the outcome of DEP's review, the guidance may be revised. Just like the unsettled litigation matters, citing a draft interim guidance document, which may be revised, does not advance CAC's cause.

Similar to the litigation matters, CAC is hedging its bets in two different forums. If EPA granted CAC's petition, it would short circuit the Department's long established policies related to public participation in the development of technical guidance. See "Public Participation in the Development of Regulations and Technical Guidance." (Document No. 012-1920-001).⁶ See also "Policy for Development and Publication of Technical Guidance." (Document No. 012-0900-001).⁷ It is through these documents, which were developed through the public comment process, that the Department establishes the standards and procedures for the drafting of other technical guidance documents, and creates a uniform process for developing, approving, and distributing these documents.

Similar to the litigation matters, the appropriate forum to establish a technical guidance document, which will assist DEP staff and permit applicants in making single source determinations, is through the Department and the public comment process. This forum is best suited to evaluate and respond to the comments submitted on the interim guidance. No one person or group speaks for the public. The Department must reach out to broaden public participation to understand what the public thinks, to better inform the Department, and to ensure that the public understands what the Department is doing, and why it is doing it. Accordingly, CAC's crude attempt at forum shopping must be rejected by EPA.

The Department, in this response, will not take the time to respond to all of the comments submitted by the CAC through the Columbia University Environmental Law Clinic; however it

⁶ Available at <http://www.eLibrary.dep.state.pa.us/dsweb/View/Collection-8309>.

⁷ *Id.*

is clear that those comments confuse the fundamental difference between a regulation that is binding and a technical guidance document that allows for discretion. The guidance is not a regulation because the Department is able to deviate from it, if circumstances warrant. The guidance merely interprets the regulations the air quality permitting staff uses in making single source determinations.

The assertions in the CAC petition that the interim guidance requires air quality staff not to aggregate air contamination sources located on properties outside of a quarter mile, and that the “[g]uidance exempts natural gas operations from aggregation” are absurd.. The guidance document is clear – sources on properties within a quarter mile will be aggregated, and sources on properties located outside of a quarter mile may be aggregated on a case-by-case basis.

While EPA expressed concerns with certain portions of this guidance, EPA does agree with the central premise of the guidance, which is all single source determinations must be conducted on a case-by-case basis in accordance with the applicable law. Moreover, EPA may avail itself to the procedures under 25 Pa. Code §§ 127.13b and 127.422(3) to object to specific permits decisions based on the guidance document. Consequently, the assertions in the petition related to the interim guidance and EPA’s comments on that guidance do not rise to the level of a failure to implement the SIP or failure to adequately administer or enforce the Title V permitting program.

Permit review memos

The CAC petition references certain “vague” and “incomplete” permit review memos on single source determinations as evidence that the Pennsylvania SIP is not being implemented. This particular allegation is puzzling on a number of levels. First, all of the Department actions associated plan approval or general permit applications were noticed for public comment under 25 Pa. Code § 127.44. EPA never notified the Department that any of its single source determinations were contrary to law as it can under 25 Pa. Code §§ 127.13a and 127.461.⁸ As a result, the only conclusion one can reach is that both the SIP and the Title V program are being implemented consistent with the law.

Second, the petition compares and contrasts statements in the Mark West review memos with answers supplied by the Department to CAC’s interrogatories as part of its litigation before the EHB. So it appears that CAC is trying to litigate its case before EPA rather than before the EHB. This, of course, just buttresses the Department’s point that these arguments are better left to a litigation tribunal that can render a case specific judgment on these case-by-case determinations.

Third, the Mark West permit review memos described in the petition were completed prior to the issuance of the DEP guidance on October 12, 2011. So, while the permit review was based on the single source regulatory criteria, it was not based on the DEP interim guidance.

⁸ *Supra* note 4.

Lastly, the Department also reviewed a number of permit review memos on single source determinations and, not surprisingly, takes the opposite view on the quality of the analyses of the single source determinations. The review memos that the Department examined provide a detailed discussion of all regulatory requirements, including those related to the aggregation of sources. Where a single source determination is not discussed in a review memo it is because only one source is being permitted. Therefore, the assertions in the petition related to the permit review memos do not rise to the level of a failure to implement the SIP or failure to adequately administer or enforce the Title V permitting program.

Title V Administration and Enforcement

As previously noted, the CAC petition further alleges that the Commonwealth is failing to adequately administer and enforce its Title V permitting program. The petitioners allege that the Department is “failing to make accurate source determinations for the purpose of assessing applicability” of the Title V program.

The Department issued over 400 general permit authorizations for natural gas production and/or processing facilities. In addition, the Department issued approximately 20 individual plan approvals for these facilities. Each plan approval, operating permit, or general permit application is reviewed individually to ensure compliance with the applicable regulatory requirements.

Like the SIP allegations, the Title V allegations are without merit. EPA has the ability under under 25 Pa. Code §§ 127.13b and 127.422(3) to notify the Department in writing that a plan approval or operating permit is not in compliance with the CAA or its regulations.⁹ Upon that occurrence, the Department is obligated to deny that plan approval or operating permit. At this time EPA has not notified the Department in writing that any plan approval issued for the oil and gas industries is contrary to the applicable law and regulations. The fact that EPA has not made any written notifications shows that the SIP, generally, and the Title V program, in particular, is being implemented consistent with the law.

In addition, the CAC petition fails to note that it has an adequate regulatory remedy related to Title V permits. *See* 25 Pa. Code § 127.523 (relating to public petitioners to the administrator of the EPA). Under these provisions, anytime that EPA does not object to a Title V permit issued by the Department, CAC may petition EPA to make an objection. For that reason, as well, CAC’s petition should be rejected.

Conclusion

The evidence that the CAC offers in its petition is insufficient to carry its burden that DEP is failing to implement the SIP or failing to adequately administer the Title V program. CAC’s

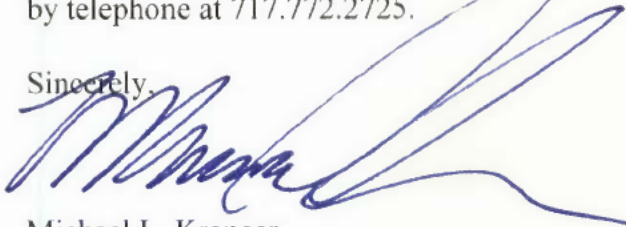
⁹ *Supra* note 4.

allegations merely relate to "how" the Department implements its programs. EPA has not provided any written notifications to DEP that its programs are not being implemented consistent with the law.

The Department is implementing and acting in compliance with its current regulations related to air quality permitting matters on the construction and operation of air contamination sources. Clearly CAC failed to meet its burden. As such, the petition should be rejected.

Should you have any questions on the issues raised in this letter, please contact Vince Brisini, Deputy Secretary for Waste, Air, Radiation, and Remediation, by e-mail at vbrisini@pa.gov or by telephone at 717.772.2725.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael L. Krancer", written over the word "Sincerely,".

Michael L. Krancer
Secretary

cc: Shawn Garvin, Regional Administrator, EPA Region 3
Pennsylvania Congressional Delegation



Correspondence Management System

Control Number: AX-12-000-6180

Printing Date: April 04, 2012 04:08:48



Citizen Information

Citizen/Originator: Napolitano, Janet

Organization: Homeland Security

Address: U.S. Department of Homeland Security, Washington, DC 20528

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-12-000-6180

Alternate Number: N/A

Status: For Your Information

Closed Date: N/A

Due Date: N/A

of Extensions: 0

Letter Date: Mar 30, 2012

Received Date: Apr 4, 2012

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: MEM (Memo)

Priority Code: Normal

Signature: SNR-Signature Not Required

Signature Date: N/A

File Code: 401_127_a General Correspondence Files Record copy

Subject: Daily Reading File- Amended National Security Event designation of Republican National Convention in Tampa, Florida on August 26, 2012

Instructions: For Your Information -- No action required

Instruction Note: N/A

General Notes: N/A

CC: OEAE - Office of External Affairs and Environmental Education
R4 - Region 4 -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
No Record Found.					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
(b) (6) Personal Privacy	OEX	OHS	Apr 4, 2012

History

Action By	Office	Action	Date
(b) (6) Personal Privacy	OEX	Forward control to OHS	Apr 4, 2012

Comments

Secretary


U.S. Department of Homeland Security
Washington, DC 20535



Homeland
Security

March 30, 2012

MEMORANDUM FOR: All Federal Departments and Agencies

FROM: Secretary Napolitano 

SUBJECT: Amendment to Designation of the 2012 Republican National Convention as a National Special Security Event

In accordance with a request from Florida Governor Rick Scott, I have amended my earlier National Special Security Event designation of the Republican National Convention in Tampa, Florida on August 27-30, 2012, to include the Official Welcome Event at the Tropicana Field venue in St. Petersburg, Florida, on August 26, 2012.

The designation of these events as NSSEs allows the full force of the Federal Government to be brought to bear in the development of event security and incident management plans to ensure the safety of all participants.

cc: National Security Staff
American Red Cross



Correspondence Management System

Control Number: AX-12-000-6181

Printing Date: April 04, 2012 03:50:45



Citizen Information

Citizen/Originator: McPhail, Donald L

Organization: United States Department of State
Address: 2201 C Street, NW, Washington, DC 20520

Mull, Stephen D.

Organization: United States Department of State
Address: 2201 C Street, NW, Washington, DC 20520

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number:	AX-12-000-6181	Alternate Number:	N/A
Status:	For Your Information	Closed Date:	N/A
Due Date:	N/A	# of Extensions:	0
Letter Date:	Apr 2, 2012	Received Date:	Apr 4, 2012
Addressee:	AD-Administrator	Addressee Org:	EPA
Contact Type:	EML (E-Mail)	Priority Code:	Normal
Signature:	SNR-Signature Not Required	Signature Date:	N/A
File Code:	401_127_a General Correspondence Files Record copy		
Subject:	Daily Reading File - National Security Affairs Calendar		
Instructions:	For Your Information -- No action required		
Instruction Note:	N/A		
General Notes:	N/A		
CC:	Noah Dubin - OEX OEAEE - Office of External Affairs and Environmental Education OHS - Office of Homeland Security		

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
No Record Found.					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
(b) (6) Personal Privacy	OEX	OITA	Apr 4, 2012

History

Action By	Office	Action	Date
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United States Department of State

Washington, D.C. 20520

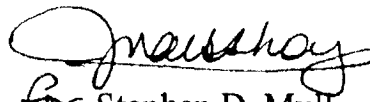
April 2, 2012

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FOR OFFICIAL GOVERNMENT USE ONLY

MEMORANDUM FOR BRIAN P. MCKEON
EXECUTIVE SECRETARY
NATIONAL SECURITY STAFF

SUBJECT: National Security Affairs Calendar

The National Security Affairs Calendar for the upcoming months is attached.


for Stephen D. Mull
Executive Secretary

Attachment:
As stated.

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April 2, 2012

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NATIONAL SECURITY AFFAIRS CALENDAR

ONGOING EVENTS

- Apr 2* North American Leaders' Summit, Washington
- Apr 2 Presidential Inauguration in Senegal
- Apr 2* Visit of President Calderon of Mexico to Washington
- Apr 2* Visit of Prime Minister Harper of Canada to Washington
- Apr 3-4 Global Counterterrorism Forum (GCTF) Countering Violent
Extremism Working Group Meeting, Abu Dhabi
- Apr 3-5 Pan-African Intellectual Property Rights (IPR) Summit, Cape Town
- Apr 3-5 Central African Regional Workshop on Wildlife Trafficking and
Dismantling Illicit Networks, Libreville
- Apr 4 Joint Inter-Governmental Authority on Development (IGAD)
Ministerial and High-Level Development Partners Meeting on
Drought Resilience in the Horn of Africa, Nairobi
- Apr 4-5* Visit of Defense Minister Ng Eng Hen of Singapore to Washington
- Apr 4-6* Visit of Prime Minister Thaci of Kosovo to Washington
- Apr 5-6* Visit of President Barzani of the Kurdistan Regional Government to
Washington

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LOOKING AHEAD

- Apr 9* Visit of President Rousseff of Brazil to Washington
- Apr 9* Visit of Foreign Minister Reynders of Belgium to Washington
- Apr 9* Department of Energy's Peaceful Uses of Nuclear Technology Meeting, Washington
- Apr 9-10* U.S.-China Ten Year Framework on Energy and Environment, Washington
- Apr 10-12* Visit of Foreign Minister Gamba of Japan to Washington
- Apr 10-12 Visit of Defense Minister Salman bin Abdul Aziz of Saudi Arabia to Washington
- Apr 10-13 Visit of Vice President Namadi Sambo of Nigeria to Washington
- Apr 11 National Assembly Elections in the Republic of Korea
- Apr 11* Visit of Deputy Prime Minister Teo Chee Hean of Singapore to Washington
- Apr 11* U.S.-China Investment Forum, Washington
- Apr 11-12* G-8 Foreign Ministerial Meeting, Washington
- Apr 11-14 Young Atlanticist Summit, Bratislava
- Apr 12-13 7th Annual Global Security Forum (GLOBSEC), Bratislava
- Apr 13 Summit of the Americas Foreign Ministerial Meeting, Cartagena

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Apr 13-19 Visit of Secretary of State Clinton to Colombia, Brazil and Belgium

Apr 14-15 6th Summit of the Americas, Cartagena

Apr 14-15 East Asia Low Carbon Growth Partnership, Tokyo

Apr 14-17 Visit of Secretary of the Interior Salazar to Brazil

Apr 16 Presidential Elections in Timor-Leste—2nd Round (if necessary)

Apr 16 Ministerial Global Partnership Dialogue Meeting, Brasilia

Apr 16-17 Visit of Secretary of Health and Human Services Sebelius to Haiti

Apr 16-17 U.S.-Jordan Strategic and Political Reform Dialogue, Amman

Apr 16-18 World Economic Forum on Latin America, Puerto Vallarta

Apr 17-18 Annual Open Government Partnership (OGP) Conference, Brasilia

Apr 17-19 World Travel & Tourism Council's 12th Global Summit, Tokyo

Apr 18-19 Joint NATO Foreign and Defense Ministerial Meeting, Brussels

Apr 18-19 Clean Energy Ministerial, London

Apr 20-22* G-20 Finance Ministers and Central Bank Governors Meeting, Washington

Apr 20-22* World Bank Group/International Monetary Fund Spring Meeting, Washington

Apr 20-26 UN Conference on Trade and Development (UNCTAD)
XIII Ministerial Conference/World Investment Forum, Doha

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Apr 22 Presidential Elections in France-1st Round

Apr 23 Nordic-Baltic-U.S. Cooperation Summit, Vilnius

Apr 23-24* Visit of Foreign Minister Martinez of El Salvador to Washington

Apr 23-25 World Summit of Nobel Peace Laureates 2012, Chicago

Apr 23-25* Visit of Prime Minister Gilauri of Georgia to Washington

Apr 24* (T) Visit of Foreign Minister Carr of Australia to Washington

Apr 25* Visit of Foreign Minister Sikorski of Poland to Washington

Apr 25-28* Visit of Prime Minister Berisha of Albania to Washington

Apr 26* The Secretary of State's Forum on Investing with Impact, Washington

Apr 29 (T) Presidential Elections in Mali-1st Round

Apr 29 or May 6 Parliamentary Elections in Greece (Snap)

Apr 29-May 2* Visit of Foreign Minister del Rosario and Defense Minister Gazmin of the Philippines to Washington

Apr 30* U.S.-Philippines 2+2 Ministerial-Level Dialogue, Washington

Apr 30* Visit of Prime Minister Noda of Japan to Washington

Apr 30-May 11 Nuclear Nonproliferation Treaty Preparatory Committee Meeting, Vienna

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May 1 U.S.-China Science & Technology Cooperation Joint Committee Meeting, Beijing

May 2 U.S.-China Innovation Dialogue Joint Committee Meeting, Beijing

May 2 U.S.-China Strategic Security Dialogue, Beijing

May 3-4 U.S.-China Strategic and Economic Dialogue, Beijing

May 3-4 U.S.-China Consultations on People-to-People Exchange, Beijing

May 4 Presidential and Parliamentary Elections in Palestinian Authority

May 4 Parliamentary Elections in Iran-2nd Round

May 6 Presidential Elections in France-2nd Round

May 6 Parliamentary Elections in Armenia

May 6 Parliamentary Elections in Serbia

May 7 Parliamentary Elections in Syria

May 7-9 International Export Control Conference, Portoroz

May 9-10* U.S. Leadership Conference on International Disability Rights, Washington

May 9-11 World Economic Forum on Africa, Addis Ababa

May 10 Parliamentary Elections in Algeria

May 11-13 5th Lennart Meri Conference, Tallinn

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May 12-Aug 12 Expo 2012 Yeosu Korea: The Living Ocean and Coast

May 13 (T) Presidential Elections in Mali-2nd Round

May 14-15 Arctic Council Deputy Foreign Ministers Meeting, Stockholm

May 14-15 U.S.-Indonesia Science and Technology Joint Commission Meeting, Jakarta

May 15-25 UN Framework Convention on Climate Change (UNFCCC) Meetings of Subsidiary Bodies and Ad-Hoc Working Groups, Bonn

May 17-20* Visit of Prime Minister Najib of Malaysia to Washington

May 18 (T)* Visit of Foreign Minister Peiris of Sri Lanka to Washington

May 18-19 2012 European Bank for Reconstruction and Development (EBRD) Annual Meeting, London

May 18-19 G-8 Summit, Camp David

May 18-21 Young Atlanticist Chicago Summit, Chicago

May 20 Presidential Elections in the Dominican Republic

May 20 10th Anniversary of Independence of Timor-Leste

May 20 Presidential Inauguration in Taiwan

May 20-21 NATO Summit, Chicago

May 20-Jun 5 Asia-Pacific Economic Cooperation (APEC) 2nd Senior Officials Meeting (SOM2) and Related Meetings, Kazan

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- May 21 (T) U.S.-Saudi Arabia Joint Coordination Committee on Infrastructure Protection (JCCIP), Riyadh
- May 21-23 5th Asia-Pacific Economic Cooperation (APEC) Education Ministerial, Gyeongju
- May 21-24 2nd Meeting of the Asia-Pacific Economic Cooperation (APEC) Business Advisory Council (ABAC), Kuala Lumpur
- May 21-26 65th Session, World Health Organization (WHO) World Health Assembly, Geneva
- May 22-26 Visit of Secretary of Transportation LaHood to Indonesia
- May 23 Presidential Elections in Egypt—1st Round
- May 23 (T) Friends of Yemen Meeting, Riyadh
- May 23-24 Organization for Economic Cooperation and Development (OECD) Ministerial Meeting, Paris
- May 24* Visit of Foreign Minister McCully of New Zealand to Washington
- May 25-26 6th Pacific Island Leaders (PALM 6) Meeting, Nago City
- May 26 National Elections in Lesotho
- May 28-30 3rd Preparatory Committee Meeting on UN Conference on Sustainable Development, Rio de Janeiro
- May 30-31 Asia-Pacific Economic Cooperation (APEC) Food Security Ministerial Meeting, Kazan
- May 30-Jun 1 World Economic Forum on East Asia, Bangkok

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May 31-Jun 1	African Development Bank Annual Meeting, Arusha
May 31-Jun 2	2012 Wroclaw Global Forum, Wroclaw
Jun TBD	Parliamentary Elections in Timor-Leste
Jun TBD	Parliamentary Elections in Mongolia
Jun 1-3	Shangri-la Dialogue, Singapore
Jun 3-5	Organization of American States (OAS) General Assembly, Cochabamba
Jun 4-5	Asia-Pacific Economic Cooperation (APEC) Trade Ministerial Meeting, Kazan
Jun 4-6	World Economic Forum on Europe, the Middle East, North Africa and Central Asia, Istanbul
Jun 4-8	International Atomic Energy Agency (IAEA) Board of Governors Meeting, Vienna
Jun 4-8	25 th World Gas Conference: "Gas: Sustaining Future Global Growth," Kuala Lumpur
Jun 7	Global Counterterrorism Forum (GCTF) Coordinating Committee Meeting, Istanbul
Jun 10	Legislative Elections in France-1 st Round
Jun 12*	U.S.-India Higher Education Dialogue, Washington
Jun 14	Kabul Ministerial Conference on the Istanbul Process, Kabul

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Jun 14* (T) U.S.-Thailand Strategic Dialogue, Washington

Jun 14*(T) Visit of Foreign Minister Surapong of Thailand to Washington

Jun 16 Presidential Elections in Egypt-2nd Round

Jun 17 Legislative Elections in France-2nd Round

Jun 17 Parliamentary Elections in Senegal

Jun 18-19 G-20 Leaders Summit, Los Cabos

Jun 18-19* 2012 African Growth Opportunity Act (AGOA) Forum, Washington

Jun 18-Jul 6 20th Session of the Human Rights Council, Geneva

Jun 20 (T) Parliamentary Elections in Libya

Jun 20-22 UN Conference on Sustainable Development (UNCSD) or Rio + 20, Rio de Janeiro

Jun 20-23 U.S.-Africa Business Convention, Cincinnati

Jun 21 National Constitutional Assembly Elections in Libya

Jun 21* U.S.-Portugal Standing Bilateral Commission, Washington

Jun 24-25 Asia-Pacific Economic Cooperation (APEC) 10th Energy Ministerial Meeting, St. Petersburg

Jun 25-Jul 5 36th World Heritage Committee Meeting, St. Petersburg

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Jun 26-28 Asia-Pacific Economic Cooperation (APEC) Women and the Economy Summit, St. Petersburg

Jun 28-29* P-5 Conference on Verification, Transparency and Confidence-Building, Washington

Jun 30 Presidential Elections in Iceland

Jul 1 Presidential and Legislative Elections in Mexico

Jul 1 Parliamentary Elections in Mali-1st Round

Jul 2-27 Arms Trade Treaty (ATT) Conference, New York

Jul 8 Tokyo Development Coordination Conference for Afghanistan, Tokyo

Jul 9-10 Community of Democracies Governing Council Meeting, Ulaanbaatar

Jul 9-13 East Asia Summit Foreign Ministers Meeting, 19th Annual Association of Southeast Asian Nations (ASEAN) Regional Forum, Lower Mekong and Friends of the Lower Mekong Ministers' Meeting, Phnom Penh

Jul 13-15 U.S.-China Sub-National Cooperation Event—National Governors Association (NGA) Annual Conference, Williamsburg

Jul 16* American Australian Leadership Dialogue (AALD), Washington

Jul 16-19 3rd Meeting of the Asia-Pacific Economic Cooperation (APEC) Business Advisory Council (ABAC), Ho Chi Minh City

Jul 22 Parliamentary Elections in Mali-2nd Round

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Jul 22-27* AIDS 2012 XIX, International AIDS Conference, Washington

Jul 25* 2nd Global Diaspora Forum, Washington

Jul 27-Aug 12 XXX Summer Olympic Games, London

Aug 3 Asia-Pacific Economic Cooperation (APEC) Small and Medium Enterprise Ministerial Meeting, St. Petersburg

Aug 6-8 Asia-Pacific Economic Cooperation (APEC) Telecommunications and Information Ministerial Meeting, St. Petersburg

Aug 27-31 Pacific Islands Forum Meetings, Cook Islands

Aug 29-Sep 9 Paralympic Games, London

Aug 30 Asia-Pacific Economic Cooperation (APEC) Finance Ministerial Meeting, Moscow

Sept TBD Australia-U.S. Ministerial (AUSMIN), Australia

Sept 2-9 Asia-Pacific Economic Cooperation (APEC) Summit, Vladivostok

Sept 4-7 4th Meeting of the Asia-Pacific Economic Cooperation (APEC) Business Advisory Council (ABAC), Vladivostok

Sept 6-15 International Union of Conservation of Nature and Natural Resources (IUCN) World Conservation Congress, Jeju

Sep 10-14 International Atomic Energy Agency (IAEA) Board of Governors Meeting, Vienna

Sept 10-28 21st Session of the Human Rights Council, Geneva

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Sept 11-13	Annual Meeting of the New Champions, Tianjin
Sept 14*	U.S.-Indonesia Joint Commission Meeting, Washington
Sept 14*	Visit of Foreign Minister Natalegawa of Indonesia to Washington
Sept 17-21	International Atomic Energy Agency (IAEA) General Conference, Vienna
Sept 24	International Atomic Energy Agency (IAEA) Board of Governors Meeting, Vienna
Sept 24-28	United Nations General Assembly High-Level Week, New York
Sept 24-Oct 15	25 th Universal Postal Union Congress, Doha
Oct 1-19	11 th Meeting of the Conference of Parties to the Convention on Biological Diversity, Hyderabad
Oct 7	Presidential Elections in Venezuela
Oct 8	Presidential Elections in Slovenia
Oct 12-14	World Bank Group/International Monetary Fund Annual Meeting, Tokyo
Oct 24-28	Americas Competitiveness Forum/Pathways to Prosperity Ministerial, Cali
Oct 28	Parliamentary Elections in Ukraine
Oct 30-Nov 1*	G-8 Roma-Lyon Group (RLG) Meeting, Washington
Nov 6-8	India Economic Summit, New Delhi

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- Nov 6-9 7th Annual Internet Governance Forum (IGF), Baku
- Nov 7-10 15th International Anti-Corruption Conference (IACC), Brasilia
- Nov 17 Presidential and Parliamentary Elections in Sierra Leone
- Nov 18-20 (T) 21st Annual Association of Southeast Asian Nations (ASEAN) Summit, Phnom Penh
- Nov 27-Dec 7 18th Session of the Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) and the 8th Session of the Conference of the Parties Serving as a Meeting of the Parties (CMP 8) to the Kyoto Protocol, Qatar
- Nov 29-30 International Atomic Energy Agency (IAEA) Board of Governors Meeting, Vienna
- Dec 6-7 Organization for Security and Cooperation in Europe (OSCE) Ministerial, Dublin
- Dec 19 Presidential Elections in the Republic of Korea

2013

- Mar 4 Presidential and Parliamentary in Kenya-1st Round

* = Taking place in Washington

(T) = Tentative

TBD = To Be Determined

For additions/updates/corrections/changes: Please e-mail Saadia Sarkis at sarkiss@state.sgov.gov or sarkiss@state.gov.

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Correspondence Management System

Control Number: AX-12-000-6262

Printing Date: April 05, 2012 04:42:31



Citizen Information

Citizen/Originator: Finn, Douglas G.

Organization: Douglas County Board of Supervisors

Address: 1313 Belknap, Superior, WI 54880

Sandvick, Susan T

Organization: Douglas County Board of Supervisors

Address: 1313 Belknap Street, Superior, WI 54880

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-12-000-6262

Alternate Number: N/A

Status: For Your Information

Closed Date: N/A

Due Date: N/A

of Extensions: 0

Letter Date: Mar 15, 2012

Received Date: Apr 5, 2012

Addressee: POTUS-President of the United States

Addressee Org: White House

Contact Type: LTR (Letter)

Priority Code: Normal

Signature: SNR-Signature Not Required

Signature Date: N/A

File Code: 401_127_a General Correspondence Files Record copy

Subject: Daily Reading File - Support of the Silviculture Regulatory Consistency Act

Instructions: For Your Information -- No action required

Instruction Note: N/A

General Notes: N/A

CC: OCIR - Office of Congressional and Intergovernmental Relations
OEAEE - Office of External Affairs and Environmental Education
OGC - Office of General Counsel -- Immediate Office
R5 - Region 5 -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
No Record Found.					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
(b) (6) Personal Privacy	OEX	OW	Apr 5, 2012
Wanda Fields	OW	OW-OWM	Apr 5, 2012



DOUGLAS COUNTY

Courthouse • 1313 Bellmap • Superior, Wisconsin 54880



OFFICE OF THE COUNTY BOARD

DOUGLAS FINN, Chairman
(715) 395-1493
(715) 395-1483
FAX (715) 395-1421

March 15, 2012

President Barack Obama
1600 Pennsylvania Avenue, NW
Washington, DC 20500

RE: Support of the Silviculture Regulatory Consistency Act

Dear President Obama:

Douglas County is located in northwestern Wisconsin and is home to the largest and one of the finest County Forests in the State. We are a member of the Wisconsin Counties Association (WCA), a non-partisan association representing all 72 Wisconsin Counties. We are also a member of the Wisconsin County Forests Association (WCFA), representing 29 Wisconsin Counties with County Forest lands encompassing nearly 2.4 million acres, the largest public land base in the State.

The purpose of this letter is to express how critically important the Silvicultural Rule under the Clean Water Act is to our ability to sustainably manage our County Forest lands.

We are deeply concerned that an August 17, 2010 ruling by the United States Court of Appeals for the Ninth Circuit has the potential to adversely impact those Wisconsin Counties whose economies include significant activity in the sectors of forestry, timber harvesting, and industries that depend on a sustainable supply of forest products.

The Clean Water Act requires a National Pollution Discharge Elimination System (NPDES) Permit for the discharge of any pollutant to any navigable water from any point source. Since 1973, rules promulgated by the Environmental Protection Agency (EPA) have distinguished between point source and non-point source pollution in the Clean Water Act. Non-point source pollution, which is not defined in the Clean Water Act, includes any source of water pollution not characterized as a point source discharge.

The Clean Water Act contains what is referred to as EPA's Silvicultural Rule, 40 C.F.R. §122.27(b)(1). Since 1976, Federal and State agencies, courts, and private parties have interpreted the Silvicultural Rule to exempt storm water runoff from forest roads from the NPDES Permit requirement. The Silvicultural Rule specifically defines "timber harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff" to be "non-point source silvicultural activities".

2012 APR -5 AM 10:56
OFFICE OF THE
EXECUTIVE SECRETARY
RFE

In its August 2010 ruling the Ninth Circuit disagreed with the Silvicultural Rule by holding that a NPDES Permit is required for storm water runoff from forest and logging roads. If rural County, Town, or Village owned roads such as logging or forest roads require Federal NPDES Permits, this will be an unfunded mandate and preemption on local units of government. It will also impede timber operations and the favorable jobs and economic activity they generate.

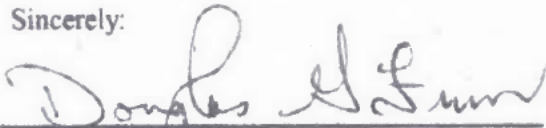
In Wisconsin, our forestry practices are governed by the "Wisconsin's Forestry Best Management Practices for Water Quality" (BMP's). These BMP's have been in place for nearly 20 years and have been proven to be extremely effective in negating adverse impacts to water quality from forestry operations. Regular BMP monitoring on over 600 timber harvests has been completed across all forest land ownerships in Wisconsin. When our BMP's are applied correctly during forestry activities, the monitoring has shown that over 99% of the time there are no impacts to water quality.

Further, we question the efficacy of setting a national environmental standard based on issues found in the Ninth Circuit Court's western mountain states whose steep slopes and highly erodible soils are not at all representative of much of our forest lands.

We are supporting efforts to enact "The Silviculture Regulatory Consistency Act", introduced as S.1369 and H.R. 2541, into law. As head of the executive branch and the EPA we respectfully request that you encourage the EPA to work with Congress to enact this legislation. This legislation does not overturn any EPA policies or rules but rather would restore EPA regulation and intent. In addition, we support the inclusion of language to achieve our goal in a larger appropriations bill, should such an event occur, and would ask you to please be mindful of our support for this change whatever the legislative mechanism.

Thank you for allowing us to provide this information and to express our committed support for the Silvicultural Rule.

Sincerely:



Douglas G. Finn, *Chairman*
Douglas County Board of Supervisors



Susan T. Sandvick, *County Clerk*
Douglas County, Wisconsin

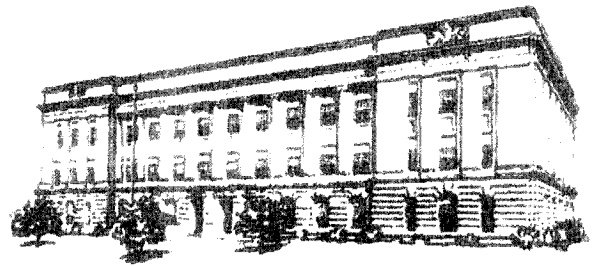
cc: **Lisa Perez Jackson, Administrator of the Environmental Protection Agency**
Jon Carson, *White House Staff*
Senator Ron Johnson
Senator Herb Kohl
Representative Sean Duffy
Representative Reid Ribble
Representative Paul Ryan
Representative Tammy Baldwin
Representative Ron Kind
Representative Gwendolynne Moore
Representative Tom Petri
Representative James Sensenbrenner, Jr.
Dick Koeppen, *President Wisconsin Counties Association*
Jane Severt, *Executive Director Wisconsin County Forests Association*



DOUGLAS COUNTY

Courthouse • 1313 Belknap • Superior, Wisconsin 54880

OFFICE OF THE COUNTY BOARD



DOUGLAS FINN, Chairman
(715) 395-1493
(715) 395-1483
FAX (715) 395-1421

March 23, 2012

TO: President Barack Obama
White House – 1600 Pennsylvania Avenue
Washington, D.C. 20500

FR: Douglas County Board of Supervisors
Douglas County Clerk Susan Sandvick

RE: Douglas County Resolution #26-12
Silviculture Regulatory Consistency Act Supported

Enclosed is a certified copy of the above referenced resolution, adopted by the Douglas County (Wisconsin) Board of Supervisors, at their March 15, 2012, meeting.

Your support for the intent of this resolution is greatly appreciated. Thank you.

Unlimited Fresh Water For Industry and Recreation

RESOLUTION #26-12

RESOLUTION BY THE DOUGLAS COUNTY BOARD OF SUPERVISORS

Subject: Silviculture Regulatory Consistency Act Supported

WHEREAS, the Douglas County Forest, Parks and Recreation Committee recommends supporting the enactment of the "The Silviculture Regulatory Consistency Act" introduced as S.1369 and H.R. 2547 into law, and

WHEREAS, the Environmental Protection Agency's 1976 Silvicultural Rule 40 C.F.R. §122.27(b) specifically defines harvesting operations, surface drainage, and forest road construction and maintenance from which there is natural runoff to be non-point source silvicultural activities and therefore exempt from the National Pollution Discharge Elimination System (NPDES) permit requirement, and

WHEREAS, the Clean Water Act requires NPDES permits for point source discharges of pollutants into waters of the United States, and

WHEREAS, an August 2010 ruling by the United States Court of Appeals for the Ninth Circuit disagreed with the 1976 Silvicultural Rule by holding that a NPDES Permit is required for storm water runoff from forest roads, and

WHEREAS, the State of Wisconsin has been delegated NPDES authority to issue its own Wisconsin-Pollution Discharge Elimination System (WPDES) permits, based on the same underlying federal requirements, including the 1976 Silvicultural Rule, and

WHEREAS, if the Ninth Circuit decision is broadly applied by either the United States Supreme Court or United States Environmental Protection Agency, it would have potentially devastating implications for Wisconsin's forest industry which employs over 65,000 people and contributes over 20 billion dollars to the State's economy, and

WHEREAS, Wisconsin forestry practices are governed by Wisconsin's Forestry Best Management Practices for Water Quality (BMP's), and

WHEREAS, Water Quality BMP's have been in place since 1995 and when applied correctly during forestry activities, studies have shown that over 99% of the time there are no adverse impacts to water quality, and

Roll Call		
District Number	Yes	No
1. Finn		
2. White		
3. O'Brien		
4. Isackson		
5. Baker		
6. Paine		
7. Certa-Werner		
8. Martin		
9. Prette		
10. Robinson		
11. Schulties		
12. Jaques		
13. Quam		
14. Glatman		
15. McKenzie		
16. Sweeney		
17. Lear		
18. Allen		
19. Ryan		
20. Hendrickson		
21. Johnson		
22. Thompson		
23. Corbin		
24. Liebaert		
25. Conley		
26. Gerhardt		
27. Stewart		
28. Bergman		

Roll:
 Ayes _____
 Noes _____
 Absent _____
 Abstain _____

Passed _____
 Lost _____
 Refer _____
 Amend _____
 Other _____

Rev. 07/21/11



Correspondence Management System

Control Number: AX-12-000-6292

Printing Date: April 06, 2012 12:58:58



Citizen Information

Citizen/Originator: Moreau, Megan

Organization: U.S. Environmental Protection Agency, Office of Federal Advisory Committee Management and Outreach

Address: 1200 Pennsylvania Avenue, NW, MC 1601M, Washington, DC 20460

Johnson, James H.

Organization: U.S. Environmental Protection Agency

Address: 1200 Pennsylvania Avenue, NW, Washington, DC 20460

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-12-000-6292

Alternate Number: N/A

Status: Pending

Closed Date: N/A

Due Date: Apr 23, 2012

of Extensions: 0

Letter Date: Apr 5, 2012

Received Date: Apr 6, 2012

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: EML (E-Mail)

Priority Code: Normal

Signature: DX-Direct Reply

Signature Date: N/A

File Code: 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.

Subject: Daily Reading File - NACEPT First Sustainability Advice Letter

Instructions: DX-Respond directly to this citizen's questions, statements, or concerns

Instruction Note: N/A

General Notes: N/A

CC: OARM - OARM -- Immediate Office

OEAE - Office of External Affairs and Environmental Education

OFACMO - Office of Federal Advisory

OP - Office of Policy

ORD - Office of Research and Development -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6) Personal Privacy	OEX	ORD	Apr 6, 2012	Apr 23, 2012	N/A
Instruction: N/A					

Supporting Information

Supporting Author: N/A



**National Advisory Council for
Environmental Policy and Technology**

April 5, 2012

The Honorable Lisa P. Jackson
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington D.C. 20460

Dear Administrator Jackson:

The National Advisory Council for Environmental Policy and Technology (NACEPT) unanimously supports the EPA adopting the National Academies overall recommendation in its *Sustainability and the U.S. EPA* report that EPA more fully incorporate sustainability considerations into its decision-making processes and day-to-day operations.

NACEPT members believe that this recommendation is fully in line with EPA's historical mission to protect human health and the environment in a manner that can also support the nation's economic and social goals. It is in keeping with the National Environment Policy Act's (NEPA) mandate to "create and maintain conditions under which humans and nature can exist in productive harmony, that permit fulfilling the social, economic and other requirements of present and future generations." It is responsive to Executive Order 13514, which sets sustainability goals for Federal agencies and focuses on making improvements in their environmental, energy and economic performance. Moreover, it aligns EPA with the movement among corporations, international organizations, NGOs and governments to adopt sustainability as a common framework for addressing environmental, social and economic issues.

Incorporating sustainability into areas of decision-making where EPA has regulatory authority and discretion in its regulatory and non-regulatory programs will have important benefits for EPA and the nation. It helps the Agency pursue its historical and statutory mission by encouraging a constant search for innovative win-win-win approaches that advance the Agency's environmental and public health goals and optimize economic and social benefits as well. A focus on sustainability will act over time to build EPA's capacity to work more effectively with other organizations in dealing with complex, cross-cutting problems like biodiversity loss, resource depletion, climate change, impacts of emerging technologies and entrenched poverty.

The concept of sustainability has firmly taken hold among EPA's stakeholders from leading corporations and universities to NGOs, and municipal, state and tribal governments. Formally including sustainability considerations into its vision and processes, including decision-making, can help EPA achieve a more comprehensive approach with its stakeholders.

A Vision of Sustainability

The National Academies report urges EPA to adopt a *Sustainability Vision*. NACEPT members believe that, by creating its own sustainability vision, the EPA can embed an emphasis on sustainability into all levels of the Agency's operations.

A vision is a compelling image of the preferred future that sets out an organization's highest aspirations in clear, confident language. The power of an effective vision lies in its ability to motivate and align efforts. When people are committed to a vision, they will stretch themselves and their organization to make it happen. Visions raise people's personal aspirations and provide a focus for collective activity. They create a big picture of "what we are about" and "where we are going" that makes day-to-day activities more meaningful.

NACEPT recommends that EPA consider incorporating the following ideas into its vision of sustainability that describes the future state EPA is trying to help the country reach as well as what it is trying to achieve internally:

- Achieve and advance the Agency's environmental and public health responsibilities in ways that also advance social and economic goals.
- Protect biodiversity and the integrity of the ecological foundations on which our societies and economies are built.
- Ensure that everyone enjoys protection from environmental and health hazards.
- Meet current needs in ways which ensure that future generations have the conditions and resources to meet their needs.
- Facilitate a smooth transition to more efficient, environmentally superior technologies, recognizing that this transition is an opportunity to accelerate innovation, create jobs and foster equitable economic development.
- Promote sustainability as a means to advance U.S. competitiveness.
- Avoid significant irreversible adverse effects on the environment and public health.
- Manage the release of toxic substances to prevent exceeding the assimilative capacity of the natural environment, treating pollution as a "design failure" to be eliminated over time.
- Promote renewable resources, which are continuously regenerated and available, for future use.
- Utilize nonrenewable resources efficiently, recycle them extensively, track their depletion levels and develop substitutes for critical resources with limited availability.

NACEPT members' thoughts on EPA actions to achieve these results are summarized below:

- Connect the EPA's risk-based paradigm with a broader sustainability paradigm to achieve and advance the EPA's environmental and public health responsibilities in ways that also optimize social and economic goals.
- Emphasize whole system thinking aimed at understanding the larger context in which problems arise, the connections between issues, and the full potential benefits and costs of different actions.
- Advance environmental justice, emphasize the social aspect of sustainability and improve human health by utilizing place-based approaches for meeting the needs of underserved communities, reducing disparities and fostering places that are healthy, vibrant and diverse.
- Hire professionals who are proficient in more than one discipline, including social scientists and technologists who have applied their expertise to environmental issues.
- Support and emphasize sustainability R&D that is solutions-driven and interdisciplinary.
- Coordinate extensively with government agencies and a full range of other stakeholders.
- Build a "sustainability toolbox" that includes new methodologies and technologies for addressing complex, cross-cutting issues and draws on traditional knowledge.
- Create a "dashboard of progress" that includes a wide variety of indicators and associated metrics for systematically tracking progress toward the Agency's sustainability goals, and publish progress reports at regular intervals.
- Develop an environmental scanning system and targeted foresight studies to identify emerging environmental threats and to highlight emerging ideas and technologies that support sustainability.

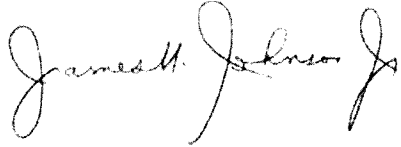
Critical Steps

NACEPT members believe that the initial critical step is to establish an Agency-wide sustainability vision and develop a set of sustainability principles. Rather than starting from the present and setting goals that inch forward, NACEPT recommends a "backcasting" approach that starts with a bold vision of the preferred future and then sets intermediate goals that will help EPA to make significant progress toward the long-term vision.

The next critical step is to establish several 3 to 5-year breakthrough objectives at the program level that extend beyond current capabilities and experiences and require new strategies and approaches to achieve. The Agency should also set several mid-term goals reaching out to 2020. These objectives and goals should demonstrate the commitment of Agency leadership to new ways of operating by being ambitious enough to require a new level of performance in driving toward sustainable outcomes.

Over the next two years, NACEPT is willing to provide additional advice letters responding to specific questions in the formal charges developed on this topic. We have attached recommended charge questions for your review and consideration. NACEPT appreciates the opportunity to work on this important sustainability topic and offer any additional advice that you may require in the future. Thank you for your consideration.

Sincerely,



Dr. James H. Johnson, Jr.
Chair

cc: Bob Perciasepe, Deputy Administrator
Craig E. Hooks, Assistant Administrator, Office of Administration and Resources
Management
Lek Kadeli, Acting Assistant Administrator, Office of Research and Development
Bicky Corman, Deputy Associate Administrator, Office of Policy
Cynthia D. Jones-Jackson, Acting Director, Office of Federal Advisory Committee
Management and Outreach
NACEPT Members

NOTICE

This letter is the product of the National Advisory Council for Environmental Policy and Technology (NACEPT), an advisory committee created under the Federal Advisory Committee Act. NACEPT provides independent advice and recommendations on environmental policy, technology, and management issues to the Administrator and other officials of the U.S. Environmental Protection Agency (EPA). The recommendations in this letter reflect the opinions and views of NACEPT, and not necessarily the views or opinions of the U.S. EPA.

NACEPT's reports and advice letters are posted on the EPA website at <http://www.epa.gov/ofacmo/nacept>.

Appendix I:

NACEPT Recommended Sustainability Charge Questions for Review and Consideration

This First Sustainability Advice Letter responds to Charge Question #1 below. NACEPT suggests Charge Questions #2, #3 and #4 below for the EPA Administrator's consideration as subjects for additional advice letters.

1. The National Academies report on *Sustainability and the U.S. EPA* recommends that the Agency adopt or adapt a comprehensive Sustainability Framework with "... specific processes for incorporating Sustainability into decision processes."

Should EPA adopt the National Academies recommendation to incorporate sustainability into its decision-making processes? If yes: (a) How should the Agency include sustainability in its vision and mission? (b) What are the key points that should be included in a sustainability vision? (c) What are the critical steps necessary to implement sustainability principles and processes into its programs and practices?

2. What strengths can EPA leverage to successfully deploy, across the Agency, sustainability strategies drawing upon both the National Academies report recommendations and, also, approaches to sustainability and recommendations from other sources and stakeholders? How can EPA's deployment also achieve positive influence with other agencies and stakeholders?

Are there internal or external challenges – barriers and gaps – that EPA will need to address, manage and overcome to successfully deploy sustainability strategies drawing upon both the National Academies report recommendations and, also, approaches to sustainability and recommendations from other sources and stakeholders? If yes: (a) Identify the significant internal challenges and then recommend strategies to address, manage and overcome them; and (b) Identify the significant external challenges and the stakeholders involved, and then recommend strategies to address, manage and overcome them and contribute to the EPA's successful roll-out of its defined sustainability strategy while engaging with key stakeholders.

3. Using EPA's sustainability vision as a starting point, and backcasting from that vision, what breakthrough objectives does NACEPT recommend for the EPA over the next 3 - 5 years drawing upon both the National Academies report recommendations and, also, approaches to sustainability and recommendations from other sources and stakeholders? In particular: (a) What measurement systems does NACEPT recommend for assessing progress toward these breakthrough objectives and EPA's sustainability vision? (b) What tools are available to help EPA consider the qualitative and quantitative environmental, public health, social and economic benefits? (c) What approaches should EPA use to share progress with the public? and (d) What other new approaches might be necessary to implement the breakthrough goals that NACEPT has identified?

4. How can sustainability evolve from a vision to be part of EPA's organizational culture? How should EPA leaders integrate sustainability programs across the Agency and with other government programs? How should EPA identify, evaluate and celebrate successful sustainability programs within and outside the Agency?

Appendix II:

NACEPT Sustainability Workgroup Members

Erica Bannerman

Senior Environmental
Specialist
Transportation and
Environmental Services
Alexandria, VA

**Dr. James H. Johnson,
Jr.**

NACEPT Chair
Professor and Dean
Emeritus
College of Engineering,
Architecture and Computer
Sciences
Howard University
Washington, DC

Sara Kendall

Vice President
Corporate Affairs,
Sustainability & EHS
Weyerhaeuser Company
Federal Way, WA

Robert Kerr

Co-Founder and Principal
Pure Strategies, Inc.
Reston, VA

Howard A. Learner

NACEPT Vice-Chair
Executive Director
Environmental Law
& Policy Center
Chicago, IL

Jennifer Nash

Executive Director
Regulatory Policy Program
Kennedy School of
Government
Harvard University
Cambridge, MA

Robert L. Olson

Senior Fellow
Institute for Alternative
Futures
Arlington, VA

Olufemi Osidele

Senior Research Engineer
Geosciences and Research
Division
Southwest Research
Institute
San Antonio, TX

Billy Turner

Founder
BTurner Consulting
Columbus, GA

Supplemental Workgroup
Members

Effenus Henderson

Chief Diversity Officer
Weyerhaeuser Company
Federal Way, WA

Jerome Paulson, MD

*Children's Health
Protection Advisory
Committee Member*
Professor of Pediatrics and
Public Health
GWU School of Medicine
and Health Sciences
Washington, DC

Designated Federal Officer

Mark Joyce

Associate Director
U.S. EPA Office of
Federal Advisory
Committee Management
and Outreach

Resource Specialists

**Frederick W. (Derry)
Allen**

Counselor, Office of
Strategic Environmental
Management
U.S. EPA Office of Policy

Dr. Alan D. Hecht

Director for Sustainable
Development
U.S. EPA Office of
Research and Development

AMALGAMATED MANAGEMENT CORPORATION

3710 Rawlins Street Suite 1380
Dallas, Texas 75219-4217

Ron Shelton, CAPS
rshelton@amcpts.com

Phone (214) 520-8824
Fax (214) 521-1417

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

Administrator Jackson:

I am writing on behalf of Irwin R. Rose and Company, and Amalgamated Management Corporation, two affiliated companies that develop, own, and manage 4,885 units of multi-family housing in Texas, Illinois, and Iowa.

I have read, with deep concern, your agency's proposal to outlaw the sale of second generation rodenticides for general consumer use. I must say, based on our companies' more than 50-years of experience in this industry, that your proposal will likely do more harm than good.

One of the primary reasons stated for your proposed action is public health, the idea being to protect children from toxic exposure to rodenticides. This is a worthy goal, but unfortunately is misguided.

Second generation rodenticides were developed as a response to the decreased efficacy of the earlier generation of rodent control solutions. Essentially, rodents developed immunity to the active ingredients. As that occurred, rodent populations soared, as did the incidence of rodent bites and the risk of catching any one of dozens of diseases that rodents carry.

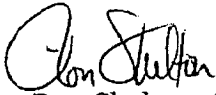
If we are forced to go back to using older, less effective rodent control methods, we can reasonably expect the rodent population to soar once again, resulting in a potentially increased threat to public health.

We take very seriously our responsibility to provide our residents with a comfortable, well cared for environment in which to live and raise a family. Unfortunately, even in the most pristine conditions, rodents can occasionally appear. When that happens, we must have access to effective, proven solutions, including the most modern rodenticides.

Page 2

I respectfully request that you reconsider your proposed to cancel everyday consumer uses of these important products, and consult with experts in the multi-family housing industry, who have on-the-ground experience keeping their properties as rodent-free as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Shelton". The signature is written in a cursive style with a large initial "R".

Ron Shelton, CAPS
Senior Vice President
Amalgamated Management Corporation



Correspondence Management System

Control Number: AX-12-000-6413

Printing Date: April 09, 2012 06:29:06



Citizen Information

Citizen/Originator: Ebrahim, Massoud

Organization: Greenville

Address: 2315 Johnson Street, P.O. Box 1049, Greenville, TX 75403-1049

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-12-000-6413

Alternate Number: N/A

Status: Pending

Closed Date: N/A

Due Date: Apr 24, 2012

of Extensions: 0

Letter Date: Mar 27, 2012

Received Date: Apr 9, 2012

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: LTR (Letter)

Priority Code: Normal

Signature: DX-Direct Reply

Signature Date: N/A

File Code: 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.

Subject: Daily Reading File - Planned Release of Non-Off-site Consequence Analysis Data Via The Internet

Instructions: DX-Respond directly to this citizen's questions, statements, or concerns

Instruction Note: N/A

General Notes: N/A

CC: Brigid Lowery - OSWER-CPA

Kecia Thornton - OSWER

Michelle Crews - OSWER

OEAEE - Office of External Affairs and Environmental Education

OEI - Office of Environmental Information - Immediate Office

OSWER - OSWER -- Immediate Office

R6 - Region 6 -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6) Personal Privacy	OEX	OHS	Apr 9, 2012	Apr 24, 2012	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			



March 27, 2012

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
Washington, DC 20460

RECEIVED
2012 APR -9 PM 1:13

OFFICE OF THE
EXECUTIVE SECRETARY

VIA EMAIL

RE: PLANNED RELEASE OF NON-OCA DATA VIA THE INTERNET

Dear Administrator Jackson:

On behalf of the City of Greenville, Texas, I write today to express our strong objections to EPA's plan to re-establish Internet access to the non-Off-site Consequence Analysis (OCA) sections of Risk Management Plans.

In an April 2000 report from EPA and DOJ¹ the agencies noted that the release of such information via the Internet could help advance terrorist ends in an environment that provides complete anonymity. We do not believe that this interest, intent, or capability to leverage the Internet to support malevolent acts has waned in the ensuing years. In addition, the report notes that "many terrorist organizations are Internet savvy," and that savvy has only increased with technology advances over the past 12 years. Given this acknowledgement in 2000 and the continued and ongoing threat from terrorist organizations per DHS notices, we are highly skeptical of EPA's plan. We believe releasing this sensitive information would constitute a threat to National security.

Equally important is the inclusion of facility safety measures in the non-OCA dataset, specifically, the section on preventative programs. It is not clear how this information came to be reclassified as non-OCA, since the 2000 report by EPA-DOJ labels this information as "data that would be salient to a terrorist for purposes of causing a chemical release."² This data indexes the active and passive mitigation measures installed at a facility. We believe that anonymous and open sharing of such information via the Internet as proposed would serve to further enable those seeking to cause harm. This data could be used to prioritize targets based on the type of mitigation measures and thereby inform perpetrators of the actions necessary to thwart designed protection measures.

This announcement from the Office of Emergency Management (OEM), dated December 7, 2011, cites the burden of complying with Freedom of Information Act (FOIA) requests and a need for the FBI and others to have greater access to non-OCA data as the principle reasons the Agency is proposing this change in data handling.

Public Works
2315 Johnson Street
P.O. Box 1049
Greenville, Texas 75403-1049

903-457-3135
903-457-3140 fax
903-450-1492 metro

Page 2

In terms of the claim that the FBI and others need access to this information, we would remind the Agency that this is already required under several sections of the following:

- Clean Air Act §112(r) requires entities to provide all Risk Management Plan information to local first responders and response planners;
- Emergency Planning and Community Right-to-Know Act §301-303 requires certain entities to coordinate emergency response plans with state and local emergency planning commissions; and,
- P.L. 109-295 §550(c) provides for sharing of sensitive chemical facility security information with law enforcement officials and first responders.

We do not believe that satisfying information needs of other government entities supports putting such sensitive information on full view to the world. Surely technological advances have enabled the government to make the information available on a secure platform available only to personnel with a need to know. Finally, in terms of the FOIA burden, we point back to the 2000 analysis, which notes that, the “more personal contact that is required to obtain information, the less likely it is that someone seeking to misuse the information will attempt to obtain it.” The Internet provides anonymity that undermines the intent of protecting this information from being openly disseminated. We support the current approach for managing access to both OCA and non-OCA that allows an appropriate level of transparency.

We strongly discourage the Agency from proceeding with this planned release of sensitive data and welcome the opportunity to meet with you to discuss our concerns.

Sincerely,



Massoud Ebrahim, P.E.
Director of Public Works

GOVERNMENT OF THE DISTRICT OF COLUMBIA

District Department of the Environment



Office of the Director

April 5, 2012

Lisa P. Jackson, Administrator
c/o Frances Eargle
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Via eargle.frances@epa.gov

RE: Local Government Advisory Committee Membership Nomination 2012

Dear Administrator Jackson:

A handwritten signature in black ink that reads "Lisa" with a long horizontal flourish extending to the right.

I am writing to nominate one of my colleagues to serve on the National Local Governments Advisory Committee panel. Dr. Hamid Karimi, Deputy Director here at the District Department of the Environment is a most capable and energetic candidate for this committee. I am attaching his current resume for more information, but I would like to take this opportunity to relay a few highlights of why I think Hamid is so very qualified and appropriate a candidate. This position was announced in the Federal Register, number FRL-9936-3, dated February 23, 2012.

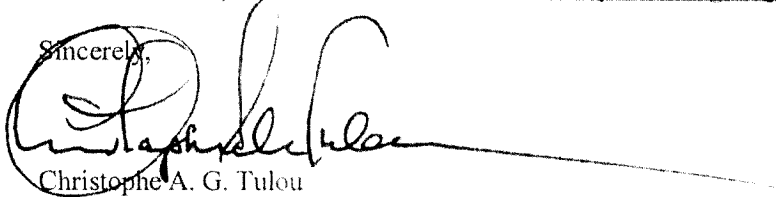
He has served on many multi-jurisdictional panels throughout the Chesapeake Bay, Potomac and Anacostia Rivers watersheds, that make him quite at home among other multi-jurisdictional settings. He is willing and open to see other state/jurisdiction perspectives, as evidenced by his roles on the following organizations: Interstate Commission on Potomac River Basin (ICPRB), Metropolitan Washington Council of Governments, Green Roofs for Healthy Cities (international in scope), Chesapeake Bay Program (6 states), Anacostia Partnership, and more. He is Chair of the Policy Committee on the Green Roofs for Healthy Cities, helping to make DC number two in the nation with more than 1.25 million square feet of green roofs. He helped to usher in the first (in the nation) local multi-jurisdictional Trash Total Maximum Daily Load (a trash budget) between Montgomery and Prince George's Counties and the District of Columbia. Hamid played a key role in this formulation.

With the ICPRB, he worked with utilities that use the Potomac River as a source of drinking water. Further, with them he was Commissioner and past Chair of the Water Resources Committee working with Pennsylvania, West Virginia, DC, Maryland, and Virginia on wide-ranging issues involving the Potomac River. For the Chesapeake Bay he has served on many committees and technical workgroups, such as: Management Board, Implementation Committee and Water Quality Workgroup. He helped to pioneer a DDOE program called RiverSmart Homes which has resulted in unique partnership with the private sector and DC residents to expand the use of Low Impact Development as a viable tool for homes, schools, and businesses to use to control stormwater runoff – while simultaneously beautifying the City and meeting Chesapeake Bay nutrient reduction goals.



I hope I have painted a clear picture of Dr. Karimi's unique qualifications as a candidate. I wholeheartedly support his nomination to the important committee you are forming. He should bring strong skills to this effort, and you would be well supported by him. Please feel free to contact me at any time at 202-535-2600 or christophe.tulou@dc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Christophe A. G. Tulou', with a long horizontal line extending to the right.

Christophe A. G. Tulou
Director

Attachment

Cc: Dr. Hamid Karimi, hamid.karimi@dc.gov

RESUME

Hamid Karimi, M.S., Ph.D.

EXPERIENCE SUMMARY

Over 25 years' experience planning, directing, implementing and managing environmental programs in the District of Columbia, including surrounding jurisdictions. Broad knowledge of administrative, fiscal, and management processes of the District of Columbia Government. Knowledge of federal and local government environmental regulatory and grant programs. Extensive experience in negotiating complex partnerships with local, regional and federal agencies. Management of water and air quality regulatory programs, especially across jurisdictions and state lines. Frequent representative on local, regional, and national environmental organizations. Project manager of large-scale stream and wetland restoration projects. Administration of multi-million dollar grant programs.

RELEVANT EXPERIENCE

2007 to Present

District of Columbia Department of the Environment (DDOE): Deputy Director for Natural Resources

Responsible for managing the DDOE's natural resources programs, involving planning, analysis, policy, regulatory control, and enforcement. Oversee programs for water quality, watershed protection, storm water, fisheries and wildlife. Direct a staff of over 100 employees. Provide technical expertise for the department on issues related to habitat and stream restoration; nonpoint source pollution control; storm water management; wastewater planning; TMDL development and implementation; NPDES; and water quality monitoring and data management. Serve as a member of the following environmental committees: Chesapeake Bay Implementation Committee, and MWCOC's Water Quality Technical Committee. He conducted the following: negotiated wasteload allocations, negotiated a new MS4 Permit, participated in development of legislation/regulation for: stormwater utility, coal tar ban, and grocery bag fee.

2006-2007

District of Columbia Department of the Environment (DDOE): Acting Chief, Bureau of Hazardous Materials and Toxic Substances

Oversaw management of programs in: underground storage tanks, lead, pesticides, brownfields, and hazardous waste. Was member of Tier III for Spring Valley and Navy Yard clean up.

Chief, Bureau of Environmental Quality – managed air quality, water quality, watershed, and fisheries and wildlife divisions. Represented DDOE in negotiation of DC MS4 Permit through the EPA's Environmental Appeals Board.

1998 to 2006

District of Columbia Department of the Environment (DDOE): Program Manager for Watershed Protection

Responsible for: managing the District's nonpoint source control program; its permit review and inspection and enforcement programs for storm water management and sediment and erosion control; and its floodplain management program. Supervise a staff of 35 environmental

professionals. Manage an annual budget of \$5 million. Manage large capital projects for the restoration of the Anacostia River. The following is representative of the Watershed Division accomplishments during that period: Developed a Nonpoint Source Management Plan to support nonpoint source control implementation. Revised the District's soil erosion and sediment control standards and specifications. Restored 42 acres of tidal wetlands in the Anacostia River. Established a strong environmental education program in partnership with the District public schools and environmental groups.

1985-1998

Various positions: as QA Officer, Chief of Water Quality Monitoring Branch, etc.; designed ambient monitoring network.

EDUCATION

B.S., Biological Science (b) (6), Mashhad University

M.S., Plant Physiology (b) (6), Wichita State University

Ph.D., Plant Biochemistry (Hydrology of Salt Marsh Halophytes), (b) (6), Ohio University

Additional course work: Design of Networks for Monitoring Water Quality at Colorado State University; Executive Leadership Management Development at George Washington University; GIS Applications at George Washington University.

AFFILIATIONS (Past & Current)

- Board Member and Chair of Policy Committee of Green Roof for Healthy Cities (international organization)
- Interstate Commission on the Potomac River Basin Commission: Commissioner, and Past Chairman working with WV, VA, MD, DC, PA on Potomac watershed.
- Chesapeake Bay Program:
 - Implementation Committee
 - Budget Steering Committee
 - Management Board
- Metropolitan Washington Council of Government's (MWCG):
 - Management Committee (Past Chair)
 - Chesapeake Bay Policy Committee (Vice Chair);
 - Regional Monitoring Committee (Chair)
 - Anacostia Watershed Restoration Committee (Chair).
- DC MS4 Stormwater Advisory Panel; Stormwater Technical Working Group
- University of the District of Columbia, Water Resources Research Center Advisory Board:
 - Numerous publications, posters, presentations on: LID policy, Green Roofs, Habitat Restoration, and monitoring.

4/6 10520 mwb

DAILY READING FILE

THE WHITE HOUSE

WASHINGTON

March 22, 2012

2012 APR -6 AM 11:58

OFFICE OF THE
EXECUTIVE SECRETARY

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Expediting Review of Pipeline Projects from Cushing, Oklahoma, to Port Arthur, Texas, and Other Domestic Pipeline Infrastructure Projects

In an economy that relies on oil, rising prices at the pump affect all of us. With crude oil prices controlling about three-quarters of gasoline prices, the most important driver of the price here at home is the world oil price -- making our economy vulnerable to events halfway around the globe. There are no quick fixes to this problem. In the long run we need to reduce America's dependence on oil -- which is why my Administration is implementing historic fuel economy standards for cars and trucks, launching new programs to improve energy efficiency in our buildings, and facilitating the safe and responsible development of our natural gas resources.

But for the foreseeable future, we will continue to rely on oil to help fuel our transportation system. As a result, we must safely and responsibly develop our oil resources here at home, as part of an all-of-the-above energy strategy to grow our economy and make us more secure.

Because of rising oil production, more efficient cars and trucks, and a world-class refining sector that last year was a net exporter of petroleum products for the first time in 60 years, we have cut net imports by a million barrels a day in the last year alone. By reducing our dependence on foreign oil, we will make our Nation more secure and improve our trade balance -- creating jobs and supporting domestic industry.

In order to realize these potential benefits, we need an energy infrastructure system that can keep pace with advances in production. To promote American energy sources, we must not only extract oil -- we must also be able to transport it to our world-class refineries, and ultimately to consumers.