

01268-EPA-454

Scott Fulton/DC/USEPA/US

To Bob Sussman

12/02/2009 07:01 PM

cc Richard Windsor, Seth Oster, Shawn Garvin

bcc

Subject Re: Huffman -- Reaction Letter -- Next Steps

LPJ - (b) (5) Deliberative, (b) (5) Attorney Client

Bob - Noticed that there's an extra period at the end of the 4th paragraph page 2.

Bob Sussman

Lisa -- Enclosed is the final version of t...

12/02/2009 06:44:31 PM

From: Bob Sussman/DC/USEPA/US
 To: Richard Windsor/DC/USEPA/US@EPA
 Cc: Allyn Brooks-LaSure/DC/USEPA/US@EPA, Diane Thompson/DC/USEPA/US@EPA, Michael Moats/DC/USEPA/US@EPA, Peter Silva/DC/USEPA/US@EPA, Scott Fulton/DC/USEPA/US@EPA, Shawn Garvin/R3/USEPA/US@EPA, Seth Oster/DC/USEPA/US@EPA, Bob Perciasepe/DC/USEPA/US@EPA, Arvin Ganesan/DC/USEPA/US@EPA, Avi Garbow/DC/USEPA/US@EPA
 Date: 12/02/2009 06:44 PM
 Subject: Re: Huffman -- Reaction Letter -- Next Steps

Lisa -- Enclosed is the final version of the letter Pete will sign responding to Randy Huffman's letter to the WVa delegation. (b) (5) Deliberative, (b) (5) Attorney Client

[Redacted]

[Redacted]

We look forward to your feedback.

(b) (5) Deliberative, (b) (5) Attorney Client

Huffman response.doc
 Robert M. Sussman
 Senior Policy Counsel to the Administrator
 Office of the Administrator
 US Environmental Protection Agency

Seth Oster

All, I believe we now have a locked-do...

12/02/2009 04:52:53 PM

From: Seth Oster/DC/USEPA/US
 To: Bob Sussman/DC/USEPA/US@EPA, Peter Silva/DC/USEPA/US@EPA, Shawn Garvin/R3/USEPA/US@EPA, William Early/R3/USEPA/US, Gregory Peck/DC/USEPA/US@EPA
 Cc: Allyn Brooks-LaSure/DC/USEPA/US@EPA, David Cohen/DC/USEPA/US@EPA, Michael Moats/DC/USEPA/US@EPA, Scott Fulton/DC/USEPA/US@EPA, Diane Thompson/DC/USEPA/US@EPA
 Date: 12/02/2009 04:52 PM
 Subject: Huffman -- Reaction Letter -- Next Steps

All,

I believe we now have a locked-down letter to send to Mr. Huffman [REDACTED]
(b) (5) Deliberative, (b) (5) Attorney Client

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Please react to this plan.

Shawn -- it would helpful to know how your meeting went yesterday .

Bob and/or I and Allyn will take the lead in briefing the Administrator.

Thanks.

Seth

Seth Oster

01268-EPA-491

Scott Fulton/DC/USEPA/US
12/19/2009 12:49 PM

To "Richard Windsor", "Lisa Heinzerling", "David McIntosh",
"Michelle DePass"
cc
bcc

Subject Fw: Copenhagen Accord Gavelled through

Fyi. (b) (5) Deliberative, (b) (5) Attorney Client

From: "Ottinger, Prof. Richard L." [rottinger@law.pace.edu]
Sent: 12/19/2009 09:36 AM EST
To: "cel_list@indaba.iucn.org" <cel_list@indaba.iucn.org>; "ejohn@elaw.org" <ejohn@elaw.org>
Subject: Fw: Copenhagen Accord Gavelled through

[A good summary of the agreement by the CAN ED. Dick Ottnger.](#)

From: Paige Brown <pbrown@cgbd.org>
To: Paige Brown <pbrown@cgbd.org>
Sent: Sat Dec 19 05:42:34 2009
Subject: Copenhagen Accord Gavelled through

COP 15 Participants,

Hello all, today around 11:08am the Copenhagen Accords were gavelled through. I've attached a Factsheet from CAN US.

Also, look for a Climate and Energy Funders Group conference call in the new year to sort through what happened and next steps.

And, thanks everyone for participating. Things did not obviously go as planned but I found it to be an incredible networking and learning opportunity. I hope you did as well.

And, for those of you still in Copenhagen, please join funders and advocates for a party to toast the Copenhagen Accords. We'll be in the funder room at 6pm with nice wine and company.

Many thanks,
Paige

----- Forwarded message -----

From: **Peter Bahouth** <peterb@climatenetwork.org>
Date: Sat, Dec 19, 2009 at 2:26 AM
Subject: <no subject>
To: Paige Brown <pbrown@cgbd.org>

Here you go...

--

Peter Bahouth
(202) 341-3310

--

Climate and Energy Funders Group
Consultative Group on Biological Diversity (CGBD)
415.561.6575 ext. 304 (office)
415.225.2364 (cell)



Factsheet Pros and Cons.doc



Union of Concerned Scientists

Citizens and Scientists for Environmental Solutions

November 16, 2009

The Honorable Lisa Jackson
Administrator
U. S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W. (MC1101A)
Washington, DC 20460

Dear Administrator Jackson:

I am writing to you on behalf of the Union of Concerned Scientists to express our concerns regarding EPA's handling of the posting of a video criticizing a cap and trade policy by two Region 9 lawyers—Allan Zabel and Laurie Williams. While UCS strongly supports cap and trade as part of a suite of climate policies, we believe that these attorneys and all EPA employees should feel empowered to speak as private citizens to inform public policy under debate in the halls of Congress.

We would like to request a meeting sometime in the next week to discuss our concerns and share our suggestions regarding what steps the EPA might take to ensure that this incident can become an opportunity for the agency to move forward on free speech for federal employees. We will follow up by telephone to see when a discussion might be arranged.

As you well know, under the previous administration, EPA scientists and other employees faced severe restrictions on their rights to speak publicly. 'Gag orders' sent from EPA management instructing staff not to speak to the public, the press, and even the Inspector General were all too common over the past few years. We have also heard from EPA employees about continuing difficulties obtaining approval for the publication of scientific papers in peer-reviewed journals.

We very much appreciate that both you and President Obama have spoken clearly and consistently about the importance of transparency in rebuilding the credibility of the agency. This incident can be used as a crucial test of those principles. How EPA responds to this situation will set the tone for agency employees and frame how the public views any further pronouncements on the importance of transparency. We therefore urge the agency to publicly reaffirm the right of EPA employees to speak freely on any topic of their choosing, so long as they make it clear that they are not speaking on behalf of the agency.

We have several concerns with how the incident was handled. Most importantly, press reports indicate that the memo sent to Zabel and Williams threatened disciplinary action if they did not alter or remove their video. As the requested changes to the video were minor and there was every indication that the lawyers were acting in good faith to abide by EPA policies, this language was overly harsh and combative.

In our experience of talking with EPA staff in similar situations, the tone from management matters as much, if not more, than the letter of the law. Other EPA staff may take away from this incident a warning that they will land themselves in hot water by speaking to the public.

To reiterate, while we strongly disagree with the rejection of cap and trade policy espoused by the EPA lawyers' online video and their op-ed in the Washington Post, we strongly support their right to voice their concerns to the public. We look forward to discussing both short and long-term reforms with you in the near future and to working with you to implement improved EPA policies governing employee speech and publication.

Thank you very much.

Sincerely,

Francesca Grifo, Ph.D.
Senior Scientist and Program Director
Scientific Integrity Program
Union of Concerned Scientists

Cc:
Scott Fulton, General Counsel
Seth Oster, Office of Public Affairs
Paul Anastas, Office of Research and Development

01268-EPA-492

Scott Fulton/DC/USEPA/US
12/20/2009 12:35 PM

To Gina McCarthy, "David McIntosh", "Richard Windsor",
"Michelle DePass", "Lisa Heinzerling"
cc
bcc

Subject Fw: Copenhagen Accord

Interesting, and seemingly complete, summary of the Copenhagen outcome by an Australian colleague.

From: Rob Fowler [Rob.Fowler@unisa.edu.au]
Sent: 12/20/2009 06:57 PM ZE10B
To: CEL <CEL_list@indaba.iucn.org>
Subject: Re: Copenhagen Accord

Dear CEL members,

Please find attached an initial assessment of the Copenhagen Accord and associated decisions of the Copenhagen meeting prepared by me whilst still in Copenhagen after having observed the meeting over the past two weeks. No doubt, there will be many more, well-considered assessments in the next few months – this one comes from having been a witness to the events and is a spontaneous attempt to summarize the results of this momentous event.

Apologies to those of you who are also on the envlawprofs list, to which I have also sent this document.

Regards,
Rob.

Adjunct Professor Rob Fowler,
Chair, IUCN Academy of Environmental Law,
Law School,
University of South Australia
GPO Box 2471, Adelaide SA 5001
Ph: 61-8-8172-0558
Mobile: 0410-498-507
Skype: robfowler48

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Group, IUCN, Gland, Switzerland. **Copenhagen assessment RJF.docx**

AN INITIAL ASSESSMENT OF THE COPENHAGEN OUTCOMES¹

Rob Fowler,

Law School,

University of South Australia

Has Copenhagen been a failure or a success? Whilst opinions inevitably will differ widely, the most likely answer is that the principal outcome – the Copenhagen Accord and two supporting decisions of the Parties to the COP 15 and CMP5 respectively - is neither. For many, the inability of the meeting to adopt a legally binding agreement or to address in detail many of the core issues on its agenda will be seized upon as clear evidence of failure. Others will draw comfort from the fact that the meeting did not collapse and managed at the very last moment to produce a political agreement that at least continues the negotiation process and contemplates the possibility of a binding agreement in one year's time. Proponents and opponents of national initiatives to address climate change will predictably choose the view that suits their wider agenda.

Consistent with the "glass half full" view, US President Obama said in his press conference before departing Copenhagen (whilst the meeting continued on for the rest of the night and well into the next day) that the Accord is a "first step" towards a new era of international action, whilst also acknowledging that much more work will need to be done to secure legally binding measures. In fact, the signals several weeks before the meeting were clear that no binding legal agreement was going to be possible in Copenhagen, given the lack of progress in the preparation of draft text by the two Working Groups assigned this task. It is therefore no surprise that the form of the outcome from Copenhagen is a political "accord" that lacks any formal legal status.

However, the Copenhagen Accord does contain some elements that can be argued to constitute a step forward from the current situation by providing for:

- (i) developed (Annex I) countries to identify by 31st January 2010 new commitments to be made by them with respect to emissions reductions by 2020 (cl.4 and Appendix I);
- (ii) the identification of nationally appropriate mitigation actions (NAMA's) by the non-Annex I (developing) countries other than the LDC's and small-island developing states – to be set out in an Appendix to the agreement that is to be completed at first instance

¹ This assessment was prepared by the author on 19-20 December 2010 in Copenhagen, initially whilst the meetings of the COP and CMP continued into the mid-afternoon of Saturday 19th December. The UNFCCC Secretariat posted on its web-site immediately after the meeting the provisional text (advance unedited versions) of all of the decisions made by the COP and CMP in Copenhagen; these are available at <http://unfccc.int/2860.php> . The Copenhagen Accord is available at: http://unfccc.int/files/meetings/cop_15/application/pdf/cop15_cph_auv.pdf . For a summary of the key decisions of the COP/MCP, see Appendix 1 hereto.

- by 31st January 2010 and which may be subsequently added to (see Cl.5 and Appendix 2);
- (iii) a commitment by developed countries to contribute funding approaching US\$30 billion over the next three years to support both mitigation and adaptation activities in developing countries, with adaptation funding to be focused on the LDC's and small-island states;
 - (iv) a commitment by developed countries to a goal of jointly mobilizing US\$100m per year by 2020 for mitigation action, conditional upon transparency with respect to the implementation of mitigation actions; and
 - (v) the establishment of a High Level Panel to explore potential sources of revenue and the Copenhagen Green Climate Fund to support mitigation and adaptation projects under the Convention.

Two separate decisions of the meeting are also significant. The mandates of the AWG-LCA and the AWG-KP have been extended with requests to present the outcomes of their work to COP 16 and CMP 6 in Mexico City in December 2010². Despite indications by President Obama and others that the intention is to secure legally binding commitments in Mexico City, neither decision contains any reference to a legally binding instrument in the extended mandate granted to each Working Group. Some countries, including China, India and Saudi Arabia, objected to the inclusion of a reference to a "legally binding instrument" in the extended mandate for the AWG-LCA and as a result it was not included.

Despite the positive elements of the Accord and related decisions, a closer examination reveals that many of the key issues that it was hoped would be addressed in Copenhagen have been left unresolved. Indications are that this was due to the refusal of China and India in particular to accept many of the various proposals put forward on these matters³. In this respect, the Copenhagen meeting, which attracted the presence of 119 heads of state and was claimed to be the largest such gathering ever held outside by the United Nations, may have heralded a new global geo-politic in world affairs. It may also have brought into serious question the feasibility of the current consensus model for the negotiation of global agreements of the kind proposed with respect to climate change. An intensive negotiation process over two years, culminating in two weeks of frantic meetings often extending well into the night, managed to produce only an extremely modest outcome. It is therefore questionable whether a repeat of this process over the next 12 months will be any more productive or successful. However, at present, this is the only process open to Parties and it will therefore be likely to continue in the same way.

The following analysis summarizes the situation with respect to the more significant issues that were on the agenda in Copenhagen. It focuses in particular on the Copenhagen Accord and the two, related decisions of the COP/CMP.

² See re AWG-LCA: http://unfccc.int/files/meetings/cop_15/application/pdf/cop15_lca_auv.pdf and re AWG-KP: http://unfccc.int/files/meetings/cop_15/application/pdf/cmp5_awg_auv.pdf

³ This observation is purely "hearsay", and is based on consultations by the author with observers who were close to the negotiations.

(1) The legal status of the Copenhagen Accord

The exact status of the so-called "Copenhagen Accord" is unclear. It was reported to have been negotiated by a small group of parties (USA, China, India, Brazil and South Africa) and was then submitted to the COP with the intention that it would be agreed through a decision of the COP and become operational immediately. However, a small number of Parties (including Tuvalu, Bolivia, Venezuela and Pakistan) indicated that they could not support the Accord. As a result, and in order to avoid having to record dissenting votes, the COP decided simply to "take note" of the Accord. Parties to the Convention will be able to associate with the Accord subsequently (an "opt in" process) by having their names included in a chapeau to the document by the UNFCCC Secretariat. Thus, unlike other soft-law instruments such as the Rio Declaration that emerged from the Earth Summit in 1992, the Parties did not sign or adopt this instrument at the Copenhagen meeting.

This affords the Copenhagen Accord a unique status in international law, having emerged from, but not been adopted by, the conference. It most probably fails to achieve even the status of a "soft-law" instrument and thus constitutes the most minimal outcome conceivably possible from the Copenhagen meeting, short of a complete failure altogether.

This outcome is an indication of the huge challenge that faces negotiators over the next 12 months in pursuing binding legal commitments from the Parties. President Obama, in his remarks before leaving Copenhagen, noted that there is a "fundamental deadlock" in relation to the setting of binding targets, with further, legally-binding commitments from the Annex I countries being made dependent by them on corresponding commitments by the major developing economies, who in turn are unwilling to give such commitments. This issue will now have to be pursued through the further negotiations in the two AWG's⁴, but almost certainly will not be resolved until the Parties reconvene at COP 16/CMP6.

(2) The legal form of future arrangements

The meeting has failed to resolve a core issue concerning the legal form or "architecture" for future arrangements. The United States and many other Annex I countries urged the replacement of the Kyoto Protocol with a new Protocol under the Convention that would include mitigation commitments for the United States and the major developing economies such as China, India and Brazil. This was met with fierce resistance by the G77 plus China, the Gulf countries and AOSIS, who all argued that the Annex I countries should continue to be bound by the Kyoto Protocol and set new targets for themselves under it. They proposed a "two-track" process involving both an amended Kyoto Protocol and a new instrument that would implement the key elements of the Bali Action Plan.

The Copenhagen Accord does not address this issue, simply noting that the undertakings provided in its Appendix I by Annex I parties "will thereby further strengthen the emissions reductions initiated by the Kyoto Protocol" (cl.4). It is therefore inevitable that this issue will have to await fresh consideration at

⁴ At present, the only meetings scheduled for the AWG-LCA and the AWG-KP are in a two week session in mid-2010, with COP 16/CMP 6 scheduled to be held in Mexico City from 29th November to 10th December 2010: see http://unfccc.int/files/meetings/cop_15/application/pdf/cop15_dv_auv.pdf.

COP 16 as it is most unlikely to be resolved through the deliberations of the AWG-KP over the next 12 months.

(3) Shared vision for long-term cooperative action

The Bali Action Plan called for “a shared vision for long-term cooperative action, including a long-term global goal for emissions reduction”. Proposals in the meeting envisaged the establishment of 2050 goals based on a limit in temperature increase (2 ° or 1.5 °C), the stabilization of GHG concentrations (450 ppm CO₂-e or 350 ppm Co₂-e) and aggregate reductions in emissions (both a global goal and one for developed countries). None of these proposals were adopted, apparently due to objections by China and India in particular.

Instead, the Accord recognizes the scientific consensus based on the IPCC's 4th Assessment report for a 2 ° C limit in global warming and calls for deep cuts in global emissions to achieve this goal (cl.2). However, it does not identify a global stabilization goal nor does it identify the desired level of reductions in global emissions by 2050. Thus, the meeting has failed to achieve any consensus on this important element of the Bali Action Plan and thereby leaves nations without the desirable direction required for them to set their own long-term targets.

The final clause of the Accord (cl.12) calls for a review of its implementation by 2015, including “consideration of strengthening the long-term goal referencing various matters presented by the science, including in relation to temperature rises of 1.5 degrees Celsius.” It is interesting to note the inclusion of a reference to the 1.5 degrees goal in the Accord, even if only in the context of a review from years from now.

(4) Mitigation Action – Developed Countries

The Bali Action Plan called for “measurable, reportable and verifiable nationally appropriate mitigation commitments or actions, including quantified emission limitation and reduction objectives, by all developed country Parties”. Proposals before the meeting envisaged the identification of a peaking year for developed country emissions, the setting of an aggregate interim target for emissions reductions (either for 2017 or 2020) and the making of fresh commitments by Annex I countries – either under the Kyoto Protocol or via a new instrument.

The Accord urges cooperation to ensure that emissions peak “as soon as possible”, but does not identify any aggregate interim target for emissions reductions. Thus, once again, the meeting has failed to give much-needed guidance to developed nations with respect to their overall level of ambition in relation to further commitments to emissions reductions. This leaves Annex I parties to formulate voluntary commitments for the period until 2020 by notifying the Secretariat of their targets for inclusion in Appendix 1 of the Accord (cl. 4). Any prospect of fresh, legally-binding commitments by Annex I parties has therefore been deferred to enable further discussion in the AWG's during the next year, leading to a decision whether to amend the Kyoto Protoco at CMP 6 in Mexico City.

(5) Mitigation Action – Developing Countries

The Bali Action Plan calls for nationally appropriate mitigation actions (NAMA's) by developing countries but makes no reference to the need for these to be legally binding. Since its adoption, considerable pressure has been exerted by developed countries on the major developing economies (including China, India and Brazil) to make firm commitments with respect to mitigation – for example, to limit emissions until 2020 to 15-30% below business as usual. This issue proved to be the most significant sticking point in relation to the conclusion of the Copenhagen Accord, and was closely linked to the related call by developed countries for such commitments to be measurable, reportable and verifiable (as called for in the Bali Action Plan).

Clause 5 of the Accord commits developing countries other than the LDC's and small-island states to undertake NAMA's and allows them to submit these for inclusion under Appendix II of the Accord. This may be done by notifying proposed actions to the Conference Secretariat by 31st January 2010, or subsequently through a two-yearly reporting cycle. However, there is no provision in the Accord for any form of aggregate or individual mitigation target for non-Annex I countries.

(6) Transparency re mitigation actions ("measurable, reportable and verifiable")

The Bali Action Plan called for all mitigation commitments by both developed and developing countries to be "measurable, reportable and verifiable". This proved to be a contentious issue for some developing countries, who resisted sternly all efforts by developed countries to impose any international obligations on them in this regard.

Clause 5 of the Accord provides that all mitigation actions undertaken by non-Annex I parties will be subject to "domestic measurement, reporting and verification" but will also be subject to "international consultations and analysis" under guidelines to be developed concerning National Communications on the implementation of NAMA's⁵. In addition, mitigation actions that have "international support" are to be recorded in a register and will be subject to international measurement, reporting and verification under guidelines to be developed by the Conference of the Parties. Thus, two types of accounting requirements will apply to developing country NAMA's, each of which is dependent on the development of new guidelines. There will inevitably be some delay therefore in these provisions coming into operation whilst the relevant guidelines are developed.

It remains to be seen whether developing countries will elect to nominate their voluntary actions to Appendix II of the Accord, either by the January 31st 2010 deadline or subsequently. There is no language in the Accord that suggests any obligation to do so, and it is may be that some developing

⁵ It should be noted in this context that the COP adopted a decision on National Communications by Non-Annex I Parties: see http://unfccc.int/files/meetings/application/pdf/cop15_cge_auv.pdf

countries will decline to do so in order to avoid the proposed "international consultations and analysis" that would then be required.

(7) Finance for mitigation and assessment

In response to the Bali Action Plan calls for enhanced financial resources for mitigation and adaptation, the Copenhagen Accord expresses a collective commitment by developed countries in clause 8 to provide new and additional resources approaching US\$30 billion over the period 2010-2012. In addition, it commits developing countries to jointly mobilizing US\$100 billion per year by 2020 for mitigation action "in the context of meaningful mitigation actions and transparency on implementation". Also, new long-term funding for adaptation is to come from "effective and efficient fund arrangements with a governance structure providing for equal representation for developed and developing countries".

The Accord calls for the establishment of a Copenhagen Green Climate Fund and identifies this Fund as a significant source of long-term adaptation funds; it will also be available to support mitigation, technology transfer and capacity-building. The Fund is to operate under the financial mechanism established under the Convention. In addition, a High Level Panel is to be established under the COP to study potential sources of revenue related to the above goals. Given the failure of the COP/CMP to actually adopt the Accord, and hence authorize these particular decisions within the Accord, it may be necessary to wait another 12 months for appropriate decisions to be taken formally in Mexico City to give effect to these particular proposals.

Japan and the European Union have each made significant commitments recently that will provide over two-thirds of the proposed "short-term" funds, with the USA also committing US\$3.6 billion for this period. The longer term commitment is clearly conditional on transparency re the relevant mitigation actions, which presumably will be sought through the proposed registry of "supported" NAMA's and associated guidelines described above.

Despite some assertions from developing countries that these proposals are still seriously inadequate, they represent an important break-through on the difficult issue of finance. Whether, and how, the relevant funds will be assembled, and whether they will in fact be new and additional to existing sources, are all matters that remain to be seen.

(8) Other matters

The Agenda for COP15/CMP5 contained many other matters of considerable importance – for example, in relation to adaptation; LULUCF (land use, land use change and forestry); REDD (reducing emissions from deforestation and forest degradation); the CDM (Clean Development Mechanism) and the other Flexible Instruments under the Kyoto Protocol; the treatment of emissions from bunker fuels used in aviation and shipping; further development of the carbon market; technology transfer and capacity-building; and the promotion of sectoral approaches to mitigation. Some of these matters were able to

be addressed to varying degrees through decisions of the COP and CMP⁶ and the full effect of these decisions will have to await analysis of the text subsequently. An initial survey of these decisions suggests that the only developments of some note have been in relation to REDD (under the COP) and the CDM and Joint Implementation mechanisms (under the CMP), but that even these decisions are largely of an agenda-setting nature for further work and do not address any of the major issues requiring resolution through the development of new rules (particularly re REDD and the CDM). The reality is that, with only a few exceptions, most of the draft decisions under consideration in the AWG-KP and AWG-LCA on these matters were heavily bracketed or subject to different options and were not ready to be transmitted to the plenary sessions for consideration. This means that there is a very heavy workload over the next 12 months for the two Working Groups under their extended mandates.

The Copenhagen Accord also has dealt with some of these matters, but mostly in a quite general manner, given they were subsidiary in relevance and importance to those which have been analyzed above. The Accord contains a clause on adaptation (cl.3) which commits developed countries to providing adequate, predictable and sustainable resources to developing countries, with a particular focus on LDC's, small-island developing states and Africa. The financial proposals give some further weight to this commitment. There is also an agreement to introduce new mechanisms, including REDD-plus, to address the problem of deforestation (cl. 6) and an endorsement of markets as a mechanism to enhance the cost-effectiveness of, and promote, mitigation (cl.7). However, the necessary guidance on these matters must await further decisions of the COP. In relation to technology transfer, the Accord provides for the establishment of a Technology Mechanism to accelerate technology development and transfer (cl.12). How this Mechanism will operate in practice once again remains to be seen.

This inability of the Copenhagen meeting to fully and adequately address all of the above matters represents a significant set-back for the improvement of the current international climate change legal system, in particular in the related areas of LULUCF, REDD and the CDM. It was hoped that there would be substantial advancement of the often complex measures that need to be developed in relation to these topics, so the failure to achieve this is a significant set-back.

CONCLUSIONS

As noted at the outset of this assessment of the Copenhagen outcomes, any judgment as to their adequacy will be conditioned by the expectations and perspectives of those involved in such an exercise. Given the emerging scientific evidence that urgent and quite radical action is required to avoid dangerous climate change, it is difficult to take much comfort from the results of the Copenhagen meeting. There are some small advances towards new and binding mitigation targets for both developed countries and those with major developing economies, some new commitments and proposals with respect to finance, and some new expectations with respect to transparency. These are all to be welcomed, but the fact that the Accord does not even have the status of having been adopted through a decision of the Parties means that they have absolutely no legal status. Some other elements

⁶ See the list of key decisions presented in Appendix 1.

of the Accord, such as the proposals for guidelines on transparency and to establish the financial and technology transfer institutional arrangements, will depend on further decisions of the COP and therefore are not able to become "immediately operational" in the manner provided for in the preamble to the draft Accord due to the decision of the COP simply to "note" the Accord.

In almost every other respect there has been a failure to achieve consensus in Copenhagen. Core issues such as the future of the Kyoto Protocol, the long-term goal for emissions reduction, and the aggregate and individual goals for emissions reductions by 2020 have not been resolved and an entire additional layer of issues, including LULUCF, REDD, the CDM and bunker fuels have not been able to be fully addressed either.

All of this means that there is now a further, long and arduous road to be travelled over the next 12 months, both for negotiators and those who are engaged in urging effective international action on climate change. Negotiation fatigue is a real danger, as is the risk of a decline in community concern and interest in the issue of climate change. Those countries, such as the USA and Australia, that are seeking to develop new national measures based on a "cap and trade" approach, will face additional opposition from those who will portray Copenhagen as a failure. On the other hand, the widespread disillusionment and disaffection with the international negotiation process felt by many activists, as evidenced vividly in demonstrations during the Copenhagen meeting, might translate into even stronger community pressure on politicians to come up with measures, both nationally and internationally, that will help to avert dangerous climate change. In short, we appear to be destined for much more of the same divisive and intense debate for at least another year in light of the relatively weak outcomes from Copenhagen.

Copenhagen, 20th December 2009.

APPENDIX I: COPENHAGEN DECISIONS AND DOCUMENTS

Note: all decisions of COP 15 and CMP 5 are available on the UNFCCC web-site at: <http://unfccc.int/2860.php> . The following is a listing and brief description of the most significant decisions taken in Copenhagen, including with respect to the "Copenhagen Accord".

Key Decisions of COP 15:

1. To "note" the Copenhagen Accord (as appended to this decision):
http://unfccc.int/files/meetings/cop_15/application/pdf/cop15_cph_auv.pdf
2. To extend mandate of AWG-LCA:
http://unfccc.int/files/meetings/cop_15/application/pdf/cop15_lca_auv.pdf
3. Re REDD (promoting further guidance and guidelines on the estimation of sources and sinks):
http://unfccc.int/files/na/application/pdf/cop15_ddc_auv.pdf
4. Re National Communications by Non-Annex I Parties (extends mandate of Consultative Group of Experts for another 2 years):
http://unfccc.int/files/meetings/application/pdf/cop15_cge_auv.pdf
5. Re capacity-building (Subsidiary Body on Implementation to continue its work):
http://unfccc.int/files/meetings/cop_15/application/pdf/cop15_cb_auv.pdf

Key Decisions of CMP 5:

1. To extend mandate of AWG-KP:
http://unfccc.int/files/meetings/cop_15/application/pdf/cmp5_awg_auv.pdf
2. Re Clean Development Mechanism (no new rules but extended work program for Executive Board of CDM re improving transparency, efficiency and impartiality; development of baseline and measuring methodologies for under-represented activities and regions; further work on guidance re additionality; and also mentions but does not adopt CCS)
http://unfccc.int/files/meetings/cop_15/application/pdf/cmp5_cdm_auv.pdf
3. Re Joint Implementation (Article 6) (adopts revised rules of procedure; urges further work by JI Supervisory Committee on accrediting independent entities, enhancing verification procedures and considering concepts of materiality and level of assurance within the guidelines):
http://unfccc.int/files/meetings/cop_15/application/pdf/cmp5_ji_auv.pdf
4. Re Capacity-building under KP (SBI to continue its work):
http://unfccc.int/files/meetings/cop_15/application/pdf/cmp5_cb_auv.pdf

01268-EPA-503

Arvin Ganesan/DC/USEPA/US To "Richard Windsor"
12/24/2009 07:14 AM cc
bcc
Subject Fw: marcellus comments

Sent from my Blackberry Wireless Device
Judith Enck


----- Original Message -----

From: Judith Enck
Sent: 12/23/2009 06:42 PM EST
To: Bob Sussman; Arvin Ganesan
Subject: Fw: marcellus comments

here are the draft epa r 2 comments on gas drilling

Judith Enck
Regional Administrator
U.S. Environmental Protection Agency
290 Broadway
New York, N.Y. 10007-1866
(212) 637-5000


----- Forwarded by Judith Enck/R2/USEPA/US on 12/23/2009 06:41 PM -----

Barbara Finazzo/R2/USEPA/US To George Pavlou/R2/USEPA/US@EPA
12/23/2009 04:25 PM cc Judith Enck/R2/USEPA/US@EPA
Subject Re: marcellus comments 

Sorry.

(b) (5) Deliberative

Marcellus Shale dSGEIS Comments Enclosure 12-23-09.doc
George Pavlou/R2/USEPA/US


George Pavlou/R2/USEPA/US To Barbara Finazzo/R2/USEPA/US@EPA
12/23/2009 04:22 PM cc Judith Enck/R2/USEPA/US@EPA
Subject Re: marcellus comments 

Barbara,bothe attachments are the same (the transmittal letter). Can you also transmit the comments themselves as well? Thanks.

George Pavlou, Deputy Regional Administrator
EPA-Region 2
Telephone:212-637-5000

Barbara Finazzo/R2/USEPA/US

**Barbara
Finazzo/R2/USEPA/US**
12/23/2009 03:56 PM

To Judith Enck/R2/USEPA/US@EPA
cc George Pavlou/R2/USEPA/US@EPA
Subject Re: marcellus comments 

Here is the latest version of both the transmittal letter and the comments. Will get you a point person in a little bit.

[attachment "Marcellus Shale dSCEIS Transmittal Letter 12-23-09.doc" deleted by Barbara Finazzo/R2/USEPA/US] [attachment "Marcellus Shale dSCEIS Transmittal Letter 12-23-09.doc" deleted by Barbara Finazzo/R2/USEPA/US]

Judith Enck/R2/USEPA/US

Judith Enck/R2/USEPA/US
12/23/2009 03:46 PM

To Barbara Finazzo/R2/USEPA/US@EPA, George Pavlou/R2/USEPA/US@EPA
cc
Subject marcellus comments

Hi barbara: please send me our Marcellus comments. also, who is the point person controlling the document, while you are out - since we may need to make some changes. thanks.

Judith Enck
Regional Administrator
U.S. Environmental Protection Agency
290 Broadway
New York, N.Y. 10007-1866
(212) 637-5000

01268-EPA-524

Scott Fulton/DC/USEPA/US

01/14/2010 08:48 PM

To Lisa Garcia

cc Bob Sussman, Richard Windsor, Diane Thompson, Cynthia Giles-AA, Mathy Stanislaus

bcc

Subject Fw: info re Perry County petition and notice

Fyi. More to come.

----- Forwarded by Scott Fulton/DC/USEPA/US on 01/14/2010 08:47 PM -----

From: Mary-Kay Lynch/DC/USEPA/US
To: Scott Fulton/DC/USEPA/US@EPA
Date: 01/14/2010 08:46 PM
Subject: info re Perry County petition and notice

Attorney Work Product

David Ludder is the attorney and he is representing some residents who live near the landfill. We will analyze and get on your calendar to brief you. If you have questions now give me a call on my cell (b) (6) Privacy . mk

1. Petition to EPA.



EPA CERCLA Petition.pdf

2. Complaint sent to state and EPA re offsite discharge of contaminated water <http://www.enviro-lawyer.com/Complaint.pdf>



3. Notice sent to County-Air PCA CAA NOIS.pdf



4. Notice sent to County -SWDA PCA SWDA NOIS.pdf



December 7, 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John Delvac, Director of Operations
Perry County Associates, LLC
Arrowhead Landfill
Route 2, Box 110A
Uniontown, Alabama 36786

Mr. John Porter, Executive Vice President
Perry County Associates, LLC
3280 Peachtree Road NW
Suite 1400
Atlanta, Georgia 30305

Re: Notice of Intent to File Suit for Violation of State Implementation Plan for Alabama under the Clean Air Act

Dear Messrs. Delvac and Porter:

Pursuant to the Clean Air Act § 304, 42 U.S.C. § 7604, and 40 C.F.R. Part 54, you are hereby notified that after the expiration of 60 days following service of this notice, Maurice Johnson, who resides at Route 2, Box 125, Uniontown, Alabama; Bennie Carter, who resides at Route 2, Box 113A, Uniontown, Alabama; Della Dial, who resides at Route 2, Box 111, Uniontown, Alabama; Jerry Lee and Cynthia Thomas Holmes, who reside at Route 2, Box 113B, Uniontown, Alabama; Ruby Lee Holmes, who resides at Route 2, Box 114A, Uniontown, Alabama; Rev. James R. and Ella White Murdock, who reside at Route 2, Box 122C, Uniontown, Alabama; Dorothy Tucker, who resides at Route 2, Box 114AA, Uniontown, Alabama, intend to file suit against Perry County Associates, LLC for the violations described below.

Violation of State Implementation Plan for Alabama

Pursuant to Clean Air Act § 110, 42 U.S.C. § 7410, the State of Alabama adopted and the U.S. Environmental Protection Agency (EPA) approved, Ala. Admin. Code R. 335-3-1-.02 and 335-3-1-.08 as part of the State Implementation Plan for Alabama. Ala. Admin. Code R. 335-3-1-.08 provides:

No person shall permit or cause air pollution, as defined in Rule 335-3-1-.02(1)(e) of this Chapter by the discharge of any air contaminant for which no ambient air quality standards have been set under Rule 335-3-1-.03(1).

"Air Pollution" means "the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as are, or tend to be, injurious to human health or welfare, animal or plant life, or property, or would interfere with the enjoyment of life or property . . ." Ala. Admin. Code R. 335-3-1-.02(1)(e). "Air Contaminant" means "any solid, liquid, or gaseous matter, any odor, or any combination thereof, from whatever source." Ala. Admin. Code R. 335-3-1-.02(1)(d). "Odor" means "smells or aromas which are unpleasant to persons or which tend to lessen human food and water intake, interfere with sleep, upset appetite, produce irritation of the upper respiratory tract, or cause symptoms or nausea, or which by their inherent chemical or physical nature or method or processing are, or may be, detrimental or dangerous to health. Odor and smell are used interchangeably herein." Ala. Admin. Code R. 335-3-1-.02(1)(ss).

Since July 2009, Perry County Associates, LLC has been operating the Perry County Associates, LLC Landfill in such manner as to permit or cause the presence of one or more contaminants, including odors, in the outdoor atmosphere which are injurious to human health and welfare, interfere with the enjoyment of life and property, are unpleasant to persons, tend to upset appetite, lessen food intake, interfere with sleep, produce irritation of the upper respiratory tract, and cause dizziness, headache, nausea and vomiting. Accordingly, Perry County Associates, LLC is permitting or causing air pollution in violation of Ala. Admin. Code R. 335-3-1-.08, the State Implementation Plan for Alabama, and the Clean Air Act.

Civil penalties of up to \$37,500 per violation per day may be assessed by the court. Suit may be avoided if these violations have been permanently abated before the expiration of 60 days following service of this notice. Please advise the undersigned of any measures that you may undertake which you contend have permanently abated these violations before suit is filed.

Sincerely,



David A. Ludder

cc:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Hon. Lisa P. Jackson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Hon. A. Stanley Meiberg, Acting Regional Administrator
U.S. Environmental Protection Agency-Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-3104

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Hon. Onis "Trey" Glenn, Director
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Corporation Company
Registered Agent for Perry County Associates, LLC
2000 Interstate Park Drive, Suite 204
Montgomery, Alabama 36109

Hon. Bob Riley, Governor
State Capitol
600 Dexter Avenue
Montgomery, Alabama 36130



December 7, 2009

Certified Mail
Return Receipt Requested
& Electronic Mail

Hon. Lisa P. Jackson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Hon. A. Stanley Meiburg, Acting Regional Administrator
U.S. Environmental Protection Agency-Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-3104

Re: **Petition to Rescind Determination that the Perry County Associates, LLC Landfill is Acceptable for the Receipt of CERCLA Waste**

Dear Ms. Jackson and Mr. Meiburg:

This is a Petition to rescind the determination of acceptability for the receipt and disposal of hazardous substances granted by the U.S. Environmental Protection Agency (EPA) to the Perry County Associates, LLC Landfill in Uniontown, Alabama on January 16, 2008. This Petition is submitted on behalf of Maurice Johnson, who resides at Route 2, Box 125, Uniontown, Alabama; Bennie Carter, who resides at Route 2, Box 113A, Uniontown, Alabama; Della Dial, who resides at Route 2, Box 111, Uniontown, Alabama; Jerry Lee and Cynthia Thomas Holmes, who reside at Route 2, Box 113B, Uniontown, Alabama; Ruby Lee Holmes, who resides at Route 2, Box 114A, Uniontown, Alabama; Rev. James R. and Ella White Murdock, who reside at Route 2, Box 122C, Uniontown, Alabama; Dorothy Tucker, who resides at Route 2, Box 114AA, Uniontown, Alabama; Irene Young, who resides at 705 Moore Street, Marion, Alabama; Ernie and Cynthia Bagley, who reside at 706 Moore Street, Marion, Alabama; and Jackie and Katherine Fike, who reside at 707 Moore Street, Marion, Alabama.

On December 22, 2008, approximately 5.4 million cubic yards of coal ash were released into the environment from the TVA Kingston Fossil Fuel Plant in Roane County, Tennessee. Such coal ash contains constituents such as arsenic, cadmium, chromium, copper, lead, mercury, nickel, selenium and zinc which are "hazardous substances" as defined by CERCLA § 101(14), 42 U.S.C. § 9601(14). Pursuant to an Administrative Order and Agreement on Consent issued by the EPA under CERCLA §§ 106(a) and 107, 42 U.S.C. §§ 9606(a) and 9607, on May 11, 2009 to implement removal and remedial actions under CERCLA § 104, 42 U.S.C. § 9604, approximately 3 million

cubic yards of ash being removed from the Emory River in Tennessee will be disposed of in the Perry County Associates, LLC Landfill. Approximately 560,000 tons of coal ash had been disposed of at the Perry County Associates, LLC Landfill by mid-September, 2009. 9,000 cubic yards of coal ash are expected to be disposed of daily for the next 15 months.

CERCLA § 121(d)(3), 42 U.S.C. § 9621(d)(3), requires that “[i]n the case of any removal or remedial action involving the transfer of any hazardous substance or pollutant or contaminant offsite, such hazardous substance or pollutant or contaminant shall only be transferred to a facility which is operating in compliance with . . . all applicable State requirements.” Pursuant to CERCLA § 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440, on January 16, 2008, EPA “made an affirmative determination of acceptability for the receipt of [CERCLA] wastes at the Perry County Associates Landfill (PCA Landfill) located along Cahaba Road at Route 2, Box 110A in Uniontown, Alabama.” This determination was based on representations by the Alabama Department of Environmental Management that the landfill “does not *currently* have any relevant violations . . .” (Emphasis added). EPA noted that this determination is subject to rescission.

The Perry County Associates, LLC Landfill is not operating in compliance with the Alabama Code and Alabama Administrative Code as described below.

Perry County Associates, LLC violation of Alabama Admin. Code Chap. 335-3-1

Ala. Admin. Code R. 335-3-1-.08 provides:

No person shall permit or cause air pollution, as defined in Rule 335-3-1-.02(1)(e) of this Chapter by the discharge of any air contaminant for which no ambient air quality standards have been set under Rule 335-3-1-.03(1).

"Air Pollution" means “the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as are, or tend to be, injurious to human health or welfare, animal or plant life, or property, or would interfere with the enjoyment of life or property . . .” Ala. Admin. Code R. 335-3-1-.02(1)(e). "Air Contaminant" means “any solid, liquid, or gaseous matter, any odor, or any combination thereof, from whatever source.” Ala. Admin. Code R. 335-3-1-.02(1)(d). "Odor" means “smells or aromas which are unpleasant to persons or which tend to lessen human food and water intake, interfere with sleep, upset appetite, produce irritation of the upper respiratory tract, or cause symptoms or nausea, or which by their inherent chemical or physical nature or method or processing are, or may be, detrimental or dangerous to health. Odor and smell are used interchangeably herein.” Ala. Admin. Code R. 335-3-1-.02(1)(ss). Ala. Admin. Code R. 335-3-1-.08 is also included in the EPA-approved State Implementation Plan for Alabama with which the Perry County Associates LLC Landfill is required to comply. *See* 40 C.F.R. § 258.24(a).

Since July 2009, Perry County Associates, LLC has been operating the Perry County Associates, LLC Landfill in such manner as to permit or cause the presence of one or more contaminants, including odors, in the outdoor atmosphere which are injurious to human health and

welfare, interfere with the enjoyment of life and property, are unpleasant to persons, tend to upset appetite, lessen food intake, interfere with sleep, produce irritation of the upper respiratory tract, and cause dizziness, headache, nausea and vomiting. Thus, Perry County Associates, LLC is permitting or causing air pollution in violation of Ala. Admin. Code R. 335-3-1-.08. Accordingly, the Perry County Associates LLC Landfill is not operating in compliance with Ala. Admin. Code R. 335-3-1-.08 and the January 16, 2008 determination of acceptability granted by EPA under CERCLA § 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440 should be rescinded.

Perry County Associates, LLC violation of the Alabama Water Pollution Control Act

Ala. Code § 22-22-9(g) provides:

It shall be the duty of the commission to receive and examine applications, plans, specifications and other data and to issue permits for the discharge of pollutants, industrial wastes entering directly or through a municipal or private treatment facility and other wastes into the waters of the state, stipulating in each permit the conditions under which such discharge may be permitted.

Ala. Code § 22-22-9(i)(3) provides:

Every person, prior to discharging any new or increased pollution into any waters of this state, shall apply to the commission in writing for a permit and must obtain such permit before discharging such pollution.

Since July 14, 2008, Perry County Associates, LLC has been discharging pollutants contained in leachate generated at the Perry County Associates LLC Landfill, through the Marion Wastewater Treatment Plant, into Rice Creek, a water of the State. Perry County Associates, LLC has not obtained a permit from the Alabama Department of Environmental Management as required by the above-referenced statutory provisions to discharge pollutants directly or through a municipal or private treatment facility into waters of the State. Thus, the Perry County Associates LLC Landfill is not operating in compliance with Ala. Code §§ 22-22-9(g) and 22-22-9(i)(3). Accordingly, the January 16, 2008 determination of acceptability granted by EPA under CERCLA § 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440 should be rescinded.

Perry County Associates, LLC violation of Alabama Admin. Code Chap. 335-6-5

Ala. Admin. Code R. 335-6-5-.04(2) provides:

No significant industrial user shall introduce pollutants into publicly owned treatment works without having first obtained a valid State Indirect Discharge (SID) Permit from the Department.

A "significant industrial user" is defined as

1. All "industrial users" subject to Categorical Pretreatment Standards under 40 CFR 403.6 (1994) and 40 CFR Chapter I, Subchapter N (1994);
2. All "industrial users" that "discharge" an average of 25,000 gallons per day or more of process wastewater (excluding sanitary wastewater, noncontact cooling water, and boiler blowdown) to a "publicly owned treatment works";
3. All "industrial users" that "discharge" an average quantity of process wastewater (excluding sanitary wastewater, noncontact cooling water, and boiler blowdown) that makes up five percent or more of the average dry weather organic or hydraulic capacity of the "publicly owned treatment works";
4. All "industrial users" that "discharge" an average organic loading that makes up five percent or more of the design capacity of the "publicly owned treatment works";
5. All "industrial users" that "discharge" to a "privately owned treatment works"; or
6. Any "industrial user" that is determined by the "Director" to have a reasonable potential to adversely affect the operation of the "publicly owned treatment works" or for violating any pretreatment standard or requirement (in accordance with 40 CFR 403.8(f)(6)(1994);

We are of the opinion that Perry County Associates, LLC qualifies as a "significant industrial user" under one or more of the provisions identified above. Since July 14, 2008, Perry County Associates, LLC has been discharging pollutants contained in leachate generated at the Perry County Associates LLC Landfill, through the Marion Wastewater Treatment Plant, into Rice Creek, a water of the State. Perry County Associates, LLC has not obtained a State Indirect Discharge (SID) Permit therefor from the Alabama Department of Environmental Management as required by the above-referenced rules. Thus, the Perry County Associates LLC Landfill is not operating in compliance with Ala. Admin. Code R. 335-6-5-.04(2). Accordingly, the January 16, 2008 determination of acceptability granted by EPA under CERCLA § 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440 should be rescinded.

As discussed above, the Perry County Associates LLC Landfill is not operating in compliance with State law. CERCLA § 121(d)(3), 42 U.S.C. § 9621(d)(3), prohibits the transfer of any hazardous substance or pollutant or contaminant to a facility which is not operating in compliance with all applicable State requirements. Accordingly, the Petitioners request that you rescind the January 16, 2008 determination of acceptability for the receipt and disposal of hazardous substances granted by the EPA to the Perry County Associates, LLC Landfill in Uniontown, Alabama.

Sincerely,



David A. Ludder
Attorney for Petitioners



December 7, 2009

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Mr. John Delvac, Director of Operations
Perry County Associates, LLC
Arrowhead Landfill
Route 2, Box 110A
Uniontown, Alabama 36786

Mr. John Porter, Executive Vice President
Perry County Associates, LLC
3280 Peachtree Road NW
Suite 1400
Atlanta, Georgia 30305

Re: Notice of Intent to File Suit for Violation of Criteria for Municipal Solid Waste Landfills under the Solid Waste Disposal Act

Dear Messrs. Delvac and Porter:

Pursuant to the Solid Waste Disposal Act § 7002, 42 U.S.C. § 6972, and 40 C.F.R. Part 254, you are hereby notified that after the expiration of 60 days following service of this notice, Maurice Johnson, who resides at Route 2, Box 125, Uniontown, Alabama; Bennie Carter, who resides at Route 2, Box 113A, Uniontown, Alabama; Della Dial, who resides at Route 2, Box 111, Uniontown, Alabama; Jerry Lee and Cynthia Thomas Holmes, who reside at Route 2, Box 113B, Uniontown, Alabama; Ruby Lee Holmes, who resides at Route 2, Box 114A, Uniontown, Alabama; Rev. James R. and Ella White Murdock, who reside at Route 2, Box 122C, Uniontown, Alabama; Dorothy Tucker, who resides at Route 2, Box 114AA, Uniontown, Alabama, intend to file suit against Perry County Associates, LLC for the violations described below.

Violation of Criteria for Municipal Solid Waste Landfills

Pursuant to the Solid Waste Disposal Act § 4004(a), 42 U.S.C. § 6944(a), EPA promulgated criteria for the operation of municipal solid waste landfills. Among these criteria is the following:

Owners or operators of all MSWLFs must ensure that the units not violate any applicable requirements developed under a State Implementation Plan (SIP) approved or promulgated by the Administrator pursuant to section 110 of the Clean Air Act, as amended.

40 C.F.R. § 258.24(a). Failure to comply with this criterion makes a landfill a prohibited "open dump." Solid Waste Disposal Act § 4005(a), 42 U.S.C. § 6945(a), and 40 C.F.R. § 258.1(g) and (h).

Pursuant to Clean Air Act § 110, 42 U.S.C. § 7410, the State of Alabama adopted and EPA approved, Ala. Admin. Code R. 335-3-1-.02 and 335-3-1-.08 as part of the State Implementation Plan for Alabama. Ala. Admin. Code R. 335-3-1-.08 provides:

No person shall permit or cause air pollution, as defined in Rule 335-3-1-.02(1)(e) of this Chapter by the discharge of any air contaminant for which no ambient air quality standards have been set under Rule 335-3-1-.03(1).

Ala. Admin. Code R. 335-3-1-.08. "Air Pollution" shall mean the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as are, or tend to be, injurious to human health or welfare, animal or plant life, or property, or would interfere with the enjoyment of life or property throughout the State and in such territories of the State as shall be affected thereby. Ala. Admin. Code R. 335-3-1-.02(1)(e). "Air Contaminant" shall mean any solid, liquid, or gaseous matter, any odor, or any combination thereof, from whatever source. Ala. Admin. Code R. 335-3-1-.02(1)(d). "Odor" shall mean smells or aromas which are unpleasant to persons or which tend to lessen human food and water intake, interfere with sleep, upset appetite, produce irritation of the upper respiratory tract, or cause symptoms or nausea, or which by their inherent chemical or physical nature or method or processing are, or may be, detrimental or dangerous to health. Odor and smell are used interchangeably herein. Ala. Admin. Code R. 335-3-1-.02(1)(ss).

Since July 2009, Perry County Associates, LLC has been operating the Perry County Associates, LLC Landfill in such manner as to permit or cause the presence of one or more contaminants, including odors, in the outdoor atmosphere which are injurious to human health and welfare, interfere with the enjoyment of life and property, are unpleasant to persons, tend to upset appetite, lessen food intake, interfere with sleep, produce irritation of the upper respiratory tract, and cause dizziness, headache, nausea and vomiting. Accordingly, Perry County Associates, LLC is permitting or causing air pollution in violation of the State Implementation Plan for Alabama and in violation of 40 C.F.R. § 258.24(a). Thus, Perry County Associates, LLC is operating a prohibited "open dump" in violation of the Solid Waste Disposal Act.

Civil penalties of up to \$37,500 per violation per day may be assessed by the court. Suit may be avoided if these violations have been permanently abated before the expiration of 60 days following service of this notice. Please advise the undersigned of any measures that you may undertake which you contend have permanently abated these violations before suit is filed.

Sincerely,



David A. Ludder

cc:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Hon. Lisa P. Jackson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Hon. A. Stanley Meiberg, Acting Regional Administrator
U.S. Environmental Protection Agency-Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-3104

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Hon. Onis "Trey" Glenn, Director
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Corporation Company
Registered Agent for Perry County Associates, LLC
2000 Interstate Park Drive, Suite 204
Montgomery, Alabama 36109

01268-EPA-534

**Barbara
Bennett/DC/USEPA/US**
01/29/2010 01:13 PM

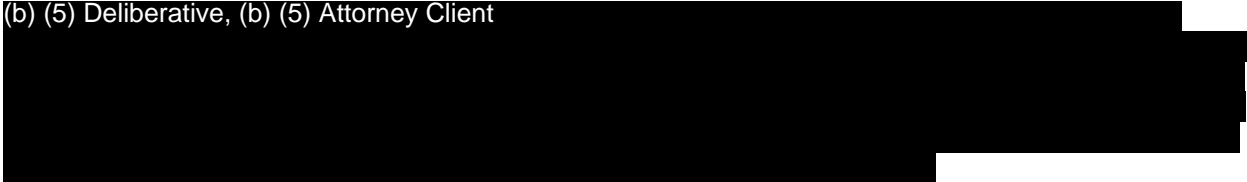
To Richard Windsor, Bob Perciasepe, Diane Thompson, Scott
Fulton

cc

bcc

Subject SEC / Climate Change

(b) (5) Deliberative, (b) (5) Attorney Client



Just as fyi....the subject was also picked up in yesterday's E-Clips....pages 13-15 in case you're curious and have a few moments.



E-Clips - Thursday, January 28, 2010.doc



**U. S. Environmental Protection Agency
E-Clips
Prepared by the Office of Public Affairs**

Tuesday, February 12, 2013



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EDITORIAL/COMMENTARY/OP ED/LETTERS

Mathias: Bay pioneer (*Baltimore Sun*)

Our view: GOP maverick? Perhaps, but also a true champion of the Chesapeake

January 28, 2010

Much has been written in praise of former U.S. Sen. Charles "Mac" Mathias Jr. since his death Monday from complications of Parkinson's disease, and all of it is deserved. As much as anyone who has represented this state in Congress, the Republican from Frederick exhibited a fierce independent streak and a keen disinterest in partisan politics.

The 87-year-old left behind an impressive legacy: three terms in the U.S. Senate and four in the U.S. House of Representatives, a strong record in civil rights, a willingness to buck his party's increasingly influential conservative wing, a place on Richard Nixon's enemies list, opposition to the Vietnam War. Marylanders loved him for his thoughtful statesmanship and pragmatism even as he was ostracized by his own party for daring to harbor so many left-of-center views.

But if there is one accomplishment of Senator Mathias' career that deserves to be highlighted and remembered above all others, it is surely his role in helping the Chesapeake Bay. So much of the "Save the Bay" movement that we take for granted today can be traced to the actions of this one principled man.

After a weeklong fact-finding mission across the bay and its tributaries in the mid-1970s, he championed legislation directing the U.S. Environmental Protection Agency to conduct a five-year study of the nation's largest estuary. The results brought the country's attention to an alarming potential loss - invaluable aquatic habitat gradually being destroyed by development, sewage, storm water runoff and other human activities.

The EPA initially wanted to leave the results on a shelf somewhere, but Senator Mathias insisted that the report would prove a beginning, not an end. Under his watch, the EPA's Chesapeake Bay Program was formed and a partnership among the states in the bay's watershed reached. Over the ensuing three decades, the participants have agreed to increasingly stringent water quality standards - if not always with great success.

It would be nice to then write the words: "and then the Chesapeake Bay was cleaned up." But, of course, the challenge has not been met. Whether the bay will ever be as healthy as it was in Senator Mathias' youth (indeed, whether its decline can even be halted) is uncertain at best.

Today, the Chesapeake Bay Program is at something of a crossroads. President Barack Obama has pledged an enhanced federal involvement in restoration efforts, and the EPA is contemplating a more aggressive watchdog role in enforcing water quality standards. Legislation to enhance (and finance) that mission is pending in Congress.

Can the bay be saved from pollution? It was considered taboo to even ask such a question in the 1970s. Back then, naysayers insisted that the loss of oysters and rockfish was simply part of a natural cycle of ups and downs. They were apt to pooh-pooh man's impact on the resource, much as know-nothing critics today lambaste the notion of man-made global climate change.

But this much is certain: While the bay's recovery remains in doubt, its prospects would be far worse today had the inestimable Senator Mathias not taken up its cause.

Readers respond

If anyone is concerned about the current state of the bay, they should thank Senator Mathias. Without his 40 years of bay advocacy, it would be all but dead today.

Will Baker, Annapolis

The writer is president of the Chesapeake Bay Foundation.

Climate danger: Check the EPA (*Pittsburgh Tribune-Review*)

Thursday, January 28, 2010

Even if today's political climate in Washington chills cap-and-trade legislation and all its economic devastation, the Obama administration still has a trump card in the Environmental Protection Agency.

In the vacuum of federal bureaucracy, the EPA is plowing ahead on regulations that would limit greenhouse gases. In effect, if Congress doesn't act to tax industry emissions, the EPA will apply its own punishing diktats.

And that might force Congress to rush in where reason, *especially now*, is warranted.

A motion by Sen. Lisa Murkowski, R-Alaska, would block EPA climate regulations under a "disapproval" resolution. But even if this wins Senate passage, the resolution still requires House approval *plus* the signature of President Obama, which would be spelled V-E-T-O.

For too long the warmed-over rhetoric in Congress on climate change has been dominated by politics, not *facts*, which increasingly are piling up against man-made influences. Among the more salient: reports of destroyed data at a leading research institution, scientists' e-mails about flagrant data manipulation and United Nations climate findings premised not on scientific scrutiny but on convenient speculation.

Stunted science must not be used to cap the nation's economy. It's time for a fresh perspective on purely punitive emission regulations when the rationale behind them is rapidly falling apart.

AIR

Business Groups Call for Action on Emissions (*Wall Street Journal*)

JANUARY 27, 2010, 12:13 P.M. ET

By **STEPHEN POWER, ELIZABETH WILLIAMSON** And **REBECCA SMITH**

WASHINGTON—The debate over how the U.S. should control emissions of greenhouse gases is heating up again, with some business groups calling for congressional action despite reluctance among many lawmakers to move on a broad climate bill in an election year.

Some lawmakers are floating the possibility of a narrow bill targeted at the utility sector, which is worried about the potential costs if the Environmental Protection Agency follows through on its push to curb carbon-dioxide emissions using the Clean Air Act. But the outlook for even a targeted bill is uncertain.

More than 80 leading businesses, labor unions, faith, national security and environmental organizations launched a national print ad campaign last week calling for swift action by Congress to pass legislation that limits emissions.

[Tony Earley](#), chief executive of [DTE Energy](#) and president of the Institute, is among those who support President Barack Obama's call for an economywide cap-and-trade bill. But he added that if Congress reaches an impasse, "then maybe that's the time to consider other approaches." Those could include a bill that imposes emissions caps and tradeable emissions permits only on utilities.

A broad climate bill is stalled in the Senate amid opposition from Republicans and some Democrats.

Two of Mr. Obama's top advisers—Energy Secretary Steven Chu and Carol Browner, his special assistant on energy and climate issues—are scheduled to headline an event at the Capitol Wednesday that organizers say is aimed at spelling out the economic and national-security benefits of fighting climate change. But lawmakers are skeptical that a broad climate bill can make progress soon.

"If there are not enough votes for an economywide cap-and-trade bill, I believe we should pursue alternative legislation to achieve as much as we can at this time. The utility-sector legislation can be put together quickly and has been worked on. I previously introduced legislation to regulate emissions from the utility sector, so that to me is a very viable step," Sen. Dianne Feinstein (D., Calif.) said Wednesday.

Some electric utilities say they would oppose legislation that demands emissions cuts solely from them, however, saying it would raise electricity prices in the U.S. without making a significant difference in the global battle against climate change.

"It's an extremely ill thought through proposal," said Mike Morris, chief executive of [American Electric Power](#), Columbus, Ohio. Mr. Morris said other measures could help the utility sector, such as creation of a federal requirement that utilities get more electricity from renewable resources.

Many business leaders are concerned that without congressional action, the EPA will keep moving on its plan to use the Clean Air Act to limit greenhouse-gas emissions from automobiles as well as large stationary sources, such as power plants, refineries and cement kilns.

Sen. Lisa Murkowski (R., Alaska) is pushing legislation that would block the EPA effort to regulate greenhouse-gas emissions.

Climate change has also become a top item on the agenda of Mr. Obama's political detractors.

In Arizona earlier this month, dozens of conservative activists—some toting signs with slogans such as "Welcome, Carbon Crooks"—protested for more than two hours outside the annual board of directors meeting of the Edison Electric Institute, a trade group that represents the nation's biggest shareholder-owned utilities. The activists were protesting the industry's efforts to help congressional Democrats design legislation that would cap emissions from various sectors of the economy.

TSCRA SUPPORTS RESOLUTION "DISAPPROVING" OF EPA ENDANGERMENT FINDING (*Anahuac Progress*)

1-27-10

Fort Worth, Texas - The Texas and Southwestern Cattle Raisers Association (TSCRA) strongly supported a resolution, introduced by Senator Lisa Murkowski (R-AK), disapproving of the decision of the U.S. Environmental Protection Agency (EPA) to regulate carbon dioxide and other greenhouse gases (GHG) under the Clean Air Act (CAA). If the resolution passes the House and the Senate, it will overturn the EPA's decision to regulate GHGs. "Texas ranchers take great pride in being responsible stewards of the environment and remain committed to preserving our natural resources," said Dave Scott, rancher and TSCRA president. "The EPA's decision to regulate greenhouse gases will drastically increase the cost of producing safe and affordable American food, putting many ranchers out of business."

TSCRA, along with more than 100 agricultural organizations, sent a letter to Senator Murkowski in support of her resolution. Murkowski filed a disapproval resolution after the EPA released an endangerment finding giving themselves the authority to regulate GHGs, something that would normally happen through legislation in Congress.

If the EPA regulates GHGs under the CAA, the cost would be overwhelming as millions of entities, including Texas ranches, would be subject to burdensome CAA regulations. If ranchers don't comply with the new regulations, they could be subject to fines.

These costly regulations would be based on what the EPA itself claims is a weak and indirect link between GHGs and public health.

The letter states that "the EPA's findings puts the agricultural economy at grave risk based on allegations of a weak, indirect link to public health and welfare despite the lack of any environmental benefit."

The Texas and Southwestern Cattle Raisers Association is a 133-year-old trade organization. As the largest livestock association in Texas, TSCRA represents more than 15,000 beef cattle producers, ranching families and businesses who manage approximately 4 million head of cattle on 51.5 million acres of range and pasture land, primarily in Texas and Oklahoma. TSCRA provides law enforcement and livestock inspection services, legislative and regulatory advocacy, industry news and information, insurance services and educational opportunities for its members and the industry.

EPA Rules Mean Big Challenges Ahead for Dirty Coal (Clean Energy News)

January 27th, 2010 > [Coal](#), [High Risk Energy](#), [Utilities](#) > [Mary Bendeck](#) >

In recent months, the [Environmental Protection Agency](#) (EPA) has taken great strides to improve air quality and protect the environment by proposing stricter standards for ozone and sulfur dioxide, and begin regulation of coal ash waste and greenhouse gases. If these standards and regulations are implemented, they could inhibit the development of new coal-fired power plants by creating such a strict regulatory environment that utility companies will have fewer incentives to push dirty coal and more incentives to pursue clean energy alternatives. The ozone and sulfur dioxide standards are open for public comment and we hope you might take a chance to support stronger rules to protect public health.

Ozone-In early January 2010, the Environmental Protection Agency proposed a stricter air quality standard for ground level ozone, also known as smog, that would bring [health benefits](#) to many Americans. The new ozone proposal would set the primary smog standard at a level between 0.060 and 0.070 parts per million (ppm) measured over an eight hour period. The current level is set at 0.075 ppm over 8 hours. The EPA is also proposing an additional standard that would protect plants and trees from extended exposure levels.

[Ozone](#) is created when Oxides of Nitrogen (NOx) and Volatile Organic Compounds (VOCs) react in the presence of sunlight. NOx and VOCs come primarily from power plants, industrial facilities, vehicle exhaust and gasoline vapors. Hot weather combined with sunlight tends to exacerbate this problem, making smog a more serious pollutant in the summertime. Ozone is known to aggravate asthma and respiratory illness, particularly among the young and elderly and people living with lung and heart disease. Electric power plant emissions contribute one third of the human produced [NOx emissions](#).

The Charlotte, NC [News and Observer reports](#) that:

In proposing the new limits, the Obama administration acknowledged that the tougher rules could cost electric utilities and oil companies as much as \$90 billion in compliance costs. But the federal agency justified the expense by citing the potential savings - between \$13 billion and \$100 billion per year, depending on just where the limit is set, in avoided medical costs and missed workdays from reductions in asthma, bronchitis and other health complications.

Written comments can be submitted [online](#) under Docket No.: EPA-HQ-OAR-2005-0172 until March 22, 2010.

Sulfur Dioxide (SO₂)- In December 2009, the EPA proposed new rules to limit [SO₂ emissions](#). If these new rules are implemented it will be the first time in 38 years that EPA has acted to limit these emissions.

In the United States, coal-fired power plants are the largest single source of SO₂ emissions. Coal naturally contains sulfur that combines with oxygen when burned to produce SO₂. Sulfur dioxide can cause significant upper respiratory health problems and even lead to premature death especially in areas near where coal plants or industrial facilities are located. In addition, sulfur dioxide contributes to acid rain, which can cause damage to fish and other aquatic species, soil and vegetation.

The strictest EPA proposal is to create a 1-hour standard of 50 parts per billion (ppb), which [SACE fully supports](#). According to the American Lung Association, limiting SO₂ emissions to 50 ppb would reduce the pollution by one million tons per year and could save between 4,700 to 12,000 premature deaths each year, by 2020. The current standard is a 24-hour standard at 140ppb. Both the EPA and the [Clean Air Scientific Advisory Committee \(CASAC\)](#), an independent panel of expert scientists, physicians, and researchers, agree that the current standard fails to protect public health.

Written comments may be submitted [online](#) under Docket No.: EPA-HQ-OAR-2007-0352 until February 8, 2010.

In addition to proposing tighter ozone and sulfur dioxide standards, EPA has announced plans to **regulate [coal ash waste](#) and [greenhouse gas emissions](#) for the first time in history**. Considering that neither coal ash waste, nor CO₂ are currently regulated, the imposition of these constraints to utility companies could profoundly affect the ease of developing and operating coal plants in the future.

Coal Ash- In response to the [December 2008](#) coal ash spill in Kingston, TN that devastated the local community, EPA announced plans to develop regulations for coal ash waste by the end of 2009. The coal industry has effectively [lobbied Congress](#) intensively over the years to ensure that coal ash remains an unregulated by product of burning coal and unfortunately to this date continues to be left unmonitored by EPA even though it is filled with a number of highly toxic pollutants and [remains a serious threat to public health, our water, and our ecosystems](#).

The anticipated announcement by EPA of coal ash as a toxic pollutant continues to be postponed leaving many frustrated with EPA for not moving [swiftly enough](#).

For more information please visit [EPA's website](#).

Greenhouse Gases- In the Spring of 2009, EPA issued a proposed endangerment finding to determine whether or not carbon dioxide and other greenhouse gases pose a risk to public health. The [results of the endangerment finding](#), issued in December of 2009, were overwhelmingly conclusive that indeed, carbon dioxide and other global warming pollutants are a significant public health and environmental threat and "it is critical that EPA fulfill its

obligation to respond to the 2007 U.S. Supreme Court ruling that determined that greenhouse gases fit within the Clean Air Act definition of air pollutants”.

Thus, EPA has moved to develop a proposal to control CO2 emissions from major sources. According to a recent [New York Times Article](#):

Ms. [Lisa] Jackson [Administrator of EPA] described the proposal as a common-sense rule tailored to apply to only the largest facilities — those that emit at least 25,000 tons of carbon dioxide a year — which are responsible for nearly 70 percent of greenhouse gas emissions in the United States.

The proposed rules, which could take effect as early as 2011, would place the greatest burden on 400 power plants, new ones and those undergoing substantial renovation, by requiring them to prove that they have applied the best available technology to reduce emissions or face penalties.

Recently there has been [significant backlash from Congress](#), namely Sen. Murkowski of Alaska, at the idea of EPA imposing new CO2 standards. The threat to the coal industry is palatable and eliciting strong responses from those who would be regulated.

[Click here](#) for more information on the proposed “Greenhouse Gas Tailoring Rule”.

All combined, these stricter standards and proposed new rules could have significant impacts on the utility industry plans to build new coal plants. We are hopeful that EPA remains firm in their efforts to truly be the defenders of the environment and air quality, and that misguided projects in the Southeast like [Power4Georgian’s Plant Washington and Plant Ben Hill](#) will be even more unlikely to occur.

Ulla Reeves contributed to the writing and editing of this blog post.

Critics Fault CO2 Lifecycle Problems With States’ Low-Carbon Fuel Rules (*Inside EPA*)

Wednesday, January 27, 2010

A low-carbon fuel standard (LCFS) adopted in California and being developed by Northeast states could have the unintended consequence of increasing carbon dioxide (CO2) emissions because they fail to fully consider the impacts that would occur when shipping fuels from overseas, according to critics of the standard.

The critics argue that the states’ LCFS efforts are biased against Canadian crude from oil sands because the standards penalize the carbon-intensive extraction process without taking into account additional CO2 emissions generated through importing oil from the Middle East and South America.

Industry has already filed suit challenging the constitutionality of California's LCFS, which could test the breadth of states' authority to calculate the lifecycle carbon impact of ethanol and act as a guide for states in the Northeast and elsewhere that are working on similar standards, sources say ([see related story](#)).

The critics -- consumer energy advocates and a North American industry trade group -- are making their case amid growing concerns that states are moving forward with LCFS requirements without considering the broader energy security and emissions implications. The groups say if the final California LCFS is not changed to allow continued use of Canadian oil -- which comprises 18 percent of domestic imports -- and other pending LCFS continue to be based on the California model, that will not only jeopardize U.S. energy security but will cause LCFS efforts to backfire because Canada will send its crude to China and other Asian countries, further boosting CO2 emissions.

During a Jan. 21 conference call, the Consumer Energy Alliance (CEA) and the Council on Hemispheric Affairs (COHA) discussed COHA's new report urging LCFS developers not to structure them so they are biased against Canadian oil sands. A CEA spokesman says the group is "taking every avenue of approach to shed light on that fact" during LCFS development in states and regions that largely appear to be adopting the California approach.

In addition to the California LCFS, which was recently finalized, and the 11-state Northeast/Mid-Atlantic LCFS, which is moving on a fast track to be put in place as early as next year, Whatley noted that the Midwest Governors Association is also seeking to establish a LCFS and is working on an expanded stakeholder effort this year. Additionally, the governors of Washington and Oregon have authorized the development of LCFS in their states, while LCFS bills have been introduced in Michigan, Minnesota and Wisconsin.

On the conference call, Shanel Beach of COHA said California's LCFS would penalize the Canadian oil sands by counting CO2 from extraction but not transport.

Additionally, CEA and COHA note that the government of Alberta, Canada, issued a recent report showing that the total lifecycle CO2 emissions of oil sands are only about 10 percent higher in CO2 emissions than other types of oil, and that if LCFS include transport-generated CO2 that would make Canadian oil sands a better choice.

CEA and COHA warn that failure to change the California LCFS and others under development will dramatically impact domestic energy security while failing to reduce CO2 at all, because Canada will find other markets for its oil farther from home, further boosting transportation-generated emissions.

CLIMATE CHANGE/GLOBAL WARMING

Harsh winter a sign of disruptive climate change, report says (*Washington Post*)

By Juliet Eilperin and David A. Fahrenthold
Washington Post Staff Writer
Thursday, January 28, 2010; A10

This winter's extreme weather -- with heavy snowfall in some places and unusually low temperatures -- is in fact a sign of how climate change disrupts long-standing patterns, according to a new report by the National Wildlife Federation.

It comes at a time when, despite a wealth of scientific evidence, the American public is increasingly skeptical that climate change is happening at all. That disconnect is particularly important this year as the Obama administration and its allies in Congress seek to enact legislation to curb greenhouse gas emissions and revamp the nation's energy supply.

"It's very hard for any of us to grasp how this larger warming trend is happening when we're still having wintry weather," said National Wildlife Federation climate scientist Amanda Staudt, the new report's lead writer.

The study charts how climate change is linked to more heavy precipitation, including intense snowstorms like the one that blanketed the D.C. area last month. The Great Lakes region is also experiencing more snow, the report says, because during warmer winters, "the lakes are less likely to freeze over or are freezing later [and] surface water evaporation is recharging the atmosphere with moisture."

Richard Somerville, who was a lead writer of the Intergovernmental Panel on Climate Change's 2007 report, said the public needs to grasp that it is important to reduce carbon dioxide quickly because it stays in the atmosphere for centuries.

"That's where the scientific urgency comes from, not a particular weather event," Somerville said. "There's a scientific case for rapidly reducing emissions."

While the National Oceanic and Atmospheric Administration reported last week that 2009 tied as the second-warmest year on record, this week two new public opinion polls have confirmed a trend reported last fall: As Washington has focused more on climate change, the American public has come to believe in it less.

On Wednesday, Yale and George Mason universities released a survey showing that just 57 percent of people said global warming "is happening." That was down 14 percentage points, from 71 percent, in October 2008. Fifty percent of people said they were "very" or "somewhat" worried about global warming, down 13 points from 2008.

Edward Maibach, a George Mason professor, said two outside events may have played a role in the change: First came the recession; then Congress took up legislation to limit greenhouse gases, spurring industry groups and politicians to warn that tackling climate change would kick the economy while it was down.

"Global warming is not necessarily a conversation that most Americans want to actively participate in," Maibach said.

A poll released Monday by the Pew Research Center for the People and the Press made a similar point: Respondents were asked to rank 21 issues in terms of their priority. Global warming came in last.

That was not a surprise, as it has been last before.

But this time it was worse than usual: Just 28 percent of respondents listed global warming as a top priority, down from 35 percent in 2008.

SEC to require disclosure of climate change risks (*Washington Post*)

By Zachary A. Goldfarb
Washington Post Staff Writer
Thursday, January 28, 2010; A20

A politically divided Securities and Exchange Commission voted on Wednesday to make clear when companies must provide information to investors about the business risks associated with climate change.

The commission, in a 3 to 2 vote, decided to require that companies disclose in their public filings the impact of climate change on their businesses -- from new regulations or legislation they may face domestically or abroad to potential changes in economic trends or physical risks to a company.

Chairman [Mary L. Schapiro](#) and the two Democrats on the commission supported the new requirements, while the two Republicans vehemently opposed them.

"I can only conclude that the purpose of this release is to place the imprimatur of the commission on the agenda of the social and environmental policy lobby, an agenda that falls outside of our expertise and beyond our fundamental mission of investor protection," Republican commissioner Kathleen L. Casey said.

Democratic commissioner [Elisse B. Walter](#) said the new requirements are "designed to improve the quality of disclosures filed by U.S. public companies for the benefit of investors."

Schapiro said companies already must disclose anything that can have a significant effect on their bottom lines. But she said the SEC's action on Wednesday was intended to provide more guidance on what might be taken into account. "The commission is not making any kind of statement regarding the facts as they relate to the topic of climate change or global warming," Schapiro said.

A number of large institutional investors had been urging the SEC to put more pressure on companies to disclose more details about the effects of climate change on their businesses.

Also on Wednesday, the commission finalized new rules for money market funds. These funds, into which big and small investors often deposit cash with the hope of a bigger return than ordinary savings accounts, faced immense stresses at the height of the financial crisis, when it turned out that the funds had invested in far riskier assets than investors had been told.

The commission's new rules limit the types of assets that the funds can purchase and also require that they maintain larger rainy-day reserves.

S.E.C. Adds Climate Risk to Disclosure List (*New York Times*)

By [JOHN M. BRODER](#)

January 28, 2010

WASHINGTON — The [Securities and Exchange Commission](#) said on Wednesday for the first time that public companies should warn investors of any serious risks that [global warming](#) might pose to their businesses.

Although the agency has long required companies to reveal possible financial or legal impacts from a variety of environmental challenges, it has never specifically cited climate change as bringing potentially significant business risks or rewards.

The S.E.C., on a party-line 3-2 vote, issued "interpretive guidance" to help companies decide when and whether to disclose matters related to climate change. The commission said that companies could be helped or hurt by climate-related lawsuits, business opportunities or legislation and should promptly disclose such potential impacts. Banks or insurance companies

that invest in coastal property that could be affected by storms or rising seas, for example, should disclose such risks, the agency said.

[Mary L. Schapiro](#), the S.E.C. chairwoman, who was appointed by [President Obama](#), said that the commission was not creating new legal requirements for companies, nor did it intend to endorse any particular scientific or policy view of global warming. She said that including climate risks among other disclosures was a logical step.

“It is neither surprising nor especially remarkable for us to conclude that of course a company must consider whether potential legislation — whether that legislation concerns climate change or new licensing requirements — is likely to occur,” Ms. Schapiro said in her opening statement before Wednesday’s vote. “Similarly, a company must disclose the significant risks that it faces, whether those risks are due to increased competition or severe weather. These principles of materiality form the bedrock of our disclosure framework.”

The agency took the action in response to petitions from environmental and investor groups that wanted specific recognition of climate change as an important factor in the present and future business environment.

“We’re glad the S.E.C. is stepping up to the plate to protect investors,” said Anne Stausboll, chief executive of the [California Public Employees Retirement System](#), the nation’s largest public pension fund and one of the parties that petitioned for the guidance. “Ensuring that investors are getting timely, material information on climate-related impacts, including regulatory and physical impacts, is absolutely essential. Investors have a fundamental right to know which companies are well positioned for the future and which are not.”

According to an S.E.C. staff paper, the new guidance urges companies to consider, for example, whether any new law or international treaty limiting carbon dioxide emissions might increase operating costs and prompt a disclosure requirement. A company might also be well positioned to take advantage of a new law mandating increased production of renewable electricity, again requiring disclosure.

The two Republicans on the commission voted against the proposal, while all three Democrats voted for it. Commissioner Kathleen L. Casey, a Republican appointed by former President [George W. Bush](#), called the new guidance unnecessary because the agency already required extensive disclosure of environmental factors. She also said the decision was driven by the political motives of advocacy groups.

“I can only conclude that the purpose of this release is to place the imprimatur of the commission on the agenda of the social and environmental policy lobby, an agenda that falls outside of our expertise and beyond our fundamental mission of investor protection,” she said.

Ms. Casey said it made little sense to issue such guidance “at a time when the state of the science, law and policy relating to climate change appear to be increasingly in flux.”

Ms. Schapiro and the commission staff were careful to avoid expressing an opinion on the issue of global warming itself. Ms. Schapiro emphasized that “we are not opining on whether the world’s climate is changing; at what pace it might be changing; or due to what causes. Nothing that the commission does today should be construed as weighing in on those topics.”

SEC Votes for Corporate Disclosure of Climate Change Risk (*Wall Street Journal*)

JANUARY 27, 2010, 6:59 P.M. ET

By **KARA SCANNELL** And **SIOBHAN HUGHES**

WASHINGTON—Political feuding over global warming reached the Securities and Exchange Commission Wednesday when commissioners, divided on party lines, voted to encourage companies to disclose the effects of climate change on their business.

SEC Chairman [Mary Schapiro](#), an Obama administration appointee, said the agency wasn't weighing in on the global-warming debate and wanted to ensure that investors get reliable information.

The agency's two Republican commissioners voted against issuing the guidance. "I can only conclude that the purpose of this release is to place the imprimatur of the commission on the agenda of the social and environmental policy lobby, an agenda that falls outside of our expertise," said Republican Commissioner Kathleen Casey.

Two Republican lawmakers from the House Energy and Commerce Committee also took a swipe at the SEC in a letter sent Tuesday, calling the move "transparently political and such a breathtaking waste of the commission's resources."

Social investment groups have been urging the SEC for years to require more disclosure on climate matters.

Meredith Cross, director of the SEC's corporation-finance division, defended the move, saying large investors wanted the information.

"Investors have a fundamental right to know which companies are well positioned for the future and which are not," said Anne Stausboll, chief executive of the California Public Employees' Retirement System, of Calpers, the nation's largest public pension fund.

Insurance companies are among those affected by the SEC action. The agency said insurers may want to consider disclosing whether severe weather or changes in sea levels might increase the risk of claims in coastal regions.

The SEC also said companies should weigh disclosure on how pending rules or laws might affect the bottom line. For example, it noted, goods that produce significant greenhouse-gas emissions might see lower demand.

Peter DeSimone, the director of programs at the Social Investment Forum, said his group will ask the SEC "to intervene and enforce...in case where we see there's a clear lack of disclosure." He said insurance companies, oil and gas companies and car makers would be of particular interest to the forum, which focuses on socially responsible investing.

The Environmental Protection Agency is preparing to regulate greenhouse gases and Democrats and Republicans in Congress are sparring over whether to pass new laws to mandate reductions in greenhouse-gas emissions.

Write to Kara Scannell at kara.scannell@wsj.com and Siobhan Hughes at siobhan.hughes@dowjones.com

Legislation Seeks to Halt EPA Climate Change Efforts (*Wisconsin Ag Connection*)

USAgNet - 01/27/2010

Sen. Lisa Murkowski (R-AK) introduced a resolution of disapproval to stop the Environmental Protection Agency from continuing their efforts to regulate greenhouse gases under the Clean Air Act. With nearly all Republican Senators signing on as cosponsors, Sen. Murkowski also found three critical Democrats to join on the resolution.

Senate Agriculture, Nutrition, and Forestry Committee Chairman Blanche Lincoln (D-AR), who is currently engulfed in a tough reelection campaign, Sen. Ben Nelson (D-NE) and Sen. Mary Landrieu (D-LA) are the Democratic Senators to sign on. With the resolution of disapproval ultimately having to be signed by the President, the realities of it becoming law are extremely slim.

President Barack Obama has said he supported attacking climate change through the legislative process, not through regulation. Similar efforts to prohibit further action by the EPA are

underway in the House of Representatives, as Rep. Earl Pomeroy (D-ND) introduced the Save Our Energy Jobs Act earlier this year.

Kerry to cap-and-trade backers -- 'Get angry' (Greenwire)

Darren Samuelsohn, E&E senior reporter

01/27/2010

Sen. John Kerry (D-Mass.) urged climate bill supporters today to strike a populist note in lobbying for a sweeping new environmental law that will reduce traditional air pollutants while also tackling global warming.

"I want you to go out there and start knocking on doors and telling people this has to happen," Kerry said during a conference hosted by labor, farming, military veteran and environmental groups. "You know if the Tea Party folks can go out there and get angry because they think their taxes are too high, for God's sake, a lot of citizens ought to get angry about the fact that they're being killed and our planet is being injured by what's happening on a daily basis by the way we provide our power and our fuel and the old practices we have. That's something worth getting angry about."

Kerry, a lead author of Senate energy and climate legislation, tried to make the case that his efforts would help curtail summertime spikes in hospital visits for childhood asthma. And he also insisted that a cap on greenhouse gases would drive private investments in new clean-energy technologies and help restart the economy.

"We need to recognize that the biggest single stimulus package in the United States of America is the energy climate change legislation," he said.

Asked if he was urging activists to echo the tone of Tea Party activists who have tapped into public anger over the economy and Obama administration policies, Kerry replied, "We just have to take a page from who brought us the Clean Air Act, the Clean Water Act, Safe Drinking Water Act. We've been doing this before, and we just have to get back to basics and make it happen again. It's called being active and not letting up."

Details remain under wraps on the bill that Kerry and Sens. Lindsey Graham (R-S.C.) and Joe Lieberman (I-Conn.) have been working on for several months. The trio are meeting this week and next with moderate Democratic and GOP senators as they look for new ideas on how to cap greenhouse gases while expanding domestic energy production.

All three have acknowledged over the last week that they are looking at a wide range of options for how to curb emissions, from a "hybrid" of caps and taxes to a cap-and-trade program that begins with the electric utility industry and then phases in other sectors of the economy ([E&E Daily](#), Jan. 27).

Still, Kerry blasted *The New York Times* for a [story](#) published today that said the trio would end up drafting a bill that is more modest than their original expectations.

"Nothing could be further from the truth," Kerry said. "We're not scaling back our effort. We haven't changed our goals one bit. We're simply trying to figure out what the magic formula is to be able to get 60 votes. Our goal remains exactly what it was before, to price carbon and to create a target for the reduction of emissions that's real. That's the goal."

"There are any number of ways of skinning this cat, and we're not stuck on one idea, so that's what they're misinterpreting," he added. "We're looking around for a way to come at this that can get the job done."

The *Times* story said Kerry's efforts would be scaled back in the wake of Republican Sen.-elect Scott Brown's surprise special election victory last week in Massachusetts. It also quoted Graham appearing to raise doubts about the cap-and-trade components of the legislation he is working on with Kerry.

"Realistically, the cap-and-trade bills in the House and the Senate are going nowhere," Graham told the newspaper. "They're not business-friendly enough, and they don't lead to meaningful energy independence."

Graham's office today said that while his quote was accurate, it was taken out of context. The senator also released a prepared statement expanding on his comments in the *Times* article to explain that he is not satisfied with the climate and energy bills offered to date.

"The energy legislation that was passed by the Senate Energy and Natural Resources Committee is not strong enough to lead us to energy independence," Graham said. "The climate change legislation passed by the House of Representatives and Senate Environment and Public Works Committee is too onerous on business and does not enjoy bipartisan support. My goal is to continue working with Senators Kerry, Lieberman and my Senate colleagues to create a new pathway forward that focuses on a more robust energy security package and a more business-friendly climate legislation."

Several Senate moderates, including Byron Dorgan (D-N.D.), Blanche Lincoln (D-Ark.), George Voinovich (R-Ohio) and Lisa Murkowski (R-Alaska), have suggested that Congress move first on a pared-down approach that just addresses energy policy, with climate limits perhaps coming later. But there remain questions about what will actually gain momentum on Capitol Hill.

"The economy is the reason we have to focus on clean energy manufacturing, because that's the jobs," said Sen. Debbie Stabenow (D-Mich.). "I think we'll see an energy bill; whether it be the bill coming out of committee or a more comprehensive bill, I'm not sure."

But Stabenow also said a limit on greenhouse gas emissions could benefit agriculture interests by allowing them to participate in a market that pays them for environmentally friendly offset practices. "I think that it's important in some form to have a price on carbon," she said.

White House pushes back

The New York Times also reported that President Obama's State of the Union speech tonight would reaffirm his commitment to a comprehensive bill that includes a cap on greenhouse gases, as well as measures for energy efficiency, incentives for oil and gas drilling and construction of nuclear power plants.

The president will still insist on a bill that gets the United States to a 17 percent cut from 2005 levels by 2020, even though the president remains open to compromise. "At the end of the day, any and all ideas are on the table because the clock is ticking," an Obama official told the newspaper.

Speaking at the same Capitol Hill forum, the top White House climate adviser Carol Browner said the president's speech would touch on the "issues he ran on and the issues that we worked on in the first year of his presidency." But she declined to comment on any of the specifics.

"You will find out when it's delivered," Browner said. "The president, as you probably know, works on these things in the car on the drive up here to the chambers."

Browner joined Kerry in pushing back against media reports suggesting the energy and climate bill was dead.

"I've been in this town, in and out of this town, for a very long time," she said. "I think predicting when something is going to happen in the legislative process are very very hard to make. You have to just continue working at it and making steady progress. We're encouraged by what we're seeing, and we're going to continue to work at it. This is important for our country."

Business-enviro campaign promotes carbon cap as job engine (*Greenwire*)

Michael Burnham, E&E senior reporter

01/27/2010

As President Obama seeks to ensure a recession-battered electorate that creating jobs is his top priority, a coalition of companies and environmental groups is lobbying to ensure that climate and energy legislation remains part of his agenda.

"Our country's economic future depends on American leadership on energy and climate policy," said Duke Energy Corp. CEO Jim Rogers, who spoke on behalf of the U.S. Climate Action Partnership. The 31-member coalition -- which includes companies within the insurance, mining, chemicals, automobile and energy sectors -- launched a multimedia advertising campaign today urging Congress to send Obama legislation that would slash U.S. greenhouse gas emissions while expanding renewable energy generation.

The coalition's campaign begins with a print advertisement in today's edition of the *Politico* newspaper. Additional advertisements will run in the publication's print and online editions during the next month, said Tad Segal, a U.S. CAP spokesman.

"Clean energy and climate legislation can help jump-start our economy, create jobs and make us a more secure nation, if it's designed right," the ad contends. "Major U.S. corporations and leading environmental organizations agree: We can reduce carbon emissions while making the U.S. more energy independent."

Obama is expected to focus on economic challenges -- including a persistent, double-digit national unemployment rate -- in his State of the Union address tonight. The president will outline plans to spur small businesses to hire workers and banks to lend. He will also talk about freezing non-security domestic spending to reduce the deficit.

The House passed a \$174 billion jobs bill ([H.R. 2847](#)) in December, and the Senate is crafting companion legislation. U.S. CAP contends that greenhouse gas emissions cap-and-trade legislation envisioned in its "[blueprint](#)" for Congress would also create jobs.

The House passed climate and energy legislation last summer that would cap U.S. greenhouse gas emissions at 17 percent below 2005 levels by 2020 and 83 percent by 2050. The bill ([H.R. 2454](#)), sponsored by Reps. Henry Waxman (D-Calif.) and Edward Markey (D-Mass.), also would set a 20 percent renewable energy and energy-efficiency standard by 2020.

Sens. John Kerry (D-Mass.), Lindsey Graham (R-S.C.) and Joe Lieberman (I-Conn.) are crafting companion legislation with input from moderate Democrats and Republicans, the U.S. Chamber of Commerce and other stakeholders. The three principal lawmakers say they are considering alternatives to the House bill's economywide emissions cap-and-trade system ([E&E Daily](#), Jan. 27).

"My approach here is we really must do something this year," Lieberman said. "The two problems of American energy dependence and global warming will only get worse. We've just got to do the most we can. I'm not being rigid or ideological about it. So anybody who wants to try to make the problem better, it's worth considering."

More than a dozen U.S. CAP executives, including General Electric Co. CEO Jeff Immelt and NRG Energy Inc. President and CEO David Crane, plan to visit the White House and Capitol on Feb. 9. U.S. CAP spokesman Segal said the meetings could include lawmakers and Cabinet secretaries, but he declined to name names.

"These meetings are of the highest level," added Segal, who declined to say how much money U.S. CAP is investing in its latest lobbying blitz.

U.S. CAP has not endorsed specific legislation, but the group's blueprint supports an economywide program to reduce U.S. emissions of carbon dioxide and other heat-trapping gases to 20 percent of 2005 levels by 2050. The cap-and-trade program would require power plants, oil refineries and other regulated entities to pollute less or buy and sell emissions allowances to meet the federal targets ([Greenwire](#), Jan. 15, 2009).

A separate business coalition called "We Can Lead," whose members include Exelon Corp., Entergy Corp. and Constellation Energy Group Inc., launched a \$1 million advertising campaign last week. A television ad sponsored by the group urges Congress to pass climate and energy legislation this year ([E&ENews PM](#), Jan. 22).

HAZARDOUS WASTES

Radiation Levels Cloud Vermont Reactor's Fate (*New York Times*)

By [MATTHEW L. WALD](#)

January 28, 2010

Levels of radioactive [tritium](#) have risen rapidly in recent weeks in the groundwater surrounding Vermont's sole nuclear power plant, leading both longtime supporters and foes of the reactor to question whether it will be allowed to keep operating.

Owners of the [Vermont Yankee](#) plant, along the Connecticut River just north of the Massachusetts border near Brattleboro, are seeking a 20-year extension of the plant's operating license, which expires in 2012.

But the rising radiation levels, an indication that reactor water is leaking into the soil, have stirred deep concern about the plant's safety and the credibility of its operators.

So far no tritium has been found in any drinking water wells, nor have raised concentrations of radioactive material been found in the river, the source of the plant's cooling water.

Vermont's governor, Jim Douglas, a longtime supporter of the plant, said on Wednesday in a statement that recent events had "raised dark clouds of doubt" about the reactor's safety and management. He suggested that the Legislature put off any decisions on the future of the plant, located in the town of Vernon.

If the nuclear plant were to be denied an extension, it would be the first such move by the public or its representatives since 1989, when residents in Sacramento voted to close the Rancho Seco nuclear plant, owned by their municipal utility. No state legislature has ever voted to close one. Vermont's state [health department](#) has been posting updates almost daily on the monitoring at the plant.

"I'm not defining an immediate public health threat, but it's very concerning when we don't understand the mechanism," the state's health commissioner, Dr. Wendy Davis, said in an interview by telephone.

The plant began searching for tritium, a radioactive form of hydrogen, under a 2007 nuclear industry initiative. The industry began the effort because leaks had been found at reactors in Illinois and New York.

Levels found in the last few days exceed the federal standard for drinking water, although they were found in monitoring wells, not drinking water wells. The state has moved to weekly from monthly testing at the elementary school across the street from the plant, but has not detected anything unusual off the plant site.

The top elected official in the town of Vernon, Michael A. Ball, who has worked at Vermont Yankee since 1985 and is a senior engineer there, went to the state capitol last week with other local officials to urge the Legislature to refrain from taking up the safety issue. They argued that a professional panel should decide whether the reactor was safe.

Mr. Ball said that some legislators had told him that the discovery of the radioactive contamination "gave them pause" and that they wanted more information before voting.

"Others were adamant," he said, telling him flatly that the recent discovery had "pushed them off the fence and they're voting against it."

Other factors cloud the plant's future. A vice president of [Entergy](#), the company that owns the plant, had told state officials he did not believe the plant had underground piping that carried radioactive material, although it does.

And Entergy is seeking permission to spin off Vermont Yankee and five of its other reactors into a new subsidiary, a move that the plant's opponents view as an attempt to limit Entergy's legal liability.

A cooling tower at Vermont Yankee collapsed in 2007. The [Nuclear Regulatory Commission](#) said the tower was not needed to assure safety, but the incident shook public confidence.

“Their problem is that the plant is too old to be reliable or safe,” said James W. Moore, an energy expert at the Montpelier office of the Vermont Public Interest Research Group.

Tritium is usually incorporated into a water molecule, and such molecules behave chemically just as ordinary water does. But it gives off a beta particle that can cause damage inside the body. Like ordinary water molecules, those incorporating tritium pass through the body quickly.

In November, technicians measured tritium at Vermont Yankee at 700 picocuries per liter. But in January the plant notified the state that the level had risen to thousands of picocuries per liter. In one monitoring well, it recently exceeded the [Environmental Protection Agency](#)’s standard for drinking water, which is 20,000 picocuries per liter.

Plant workers also found that water in a concrete trench that holds pipes in one building contained millions of picocuries of tritium per liter, as well as traces of other radioactive materials.

It was not immediately clear if water could find its way from that trench into the groundwater. Under federal rules, the plant does not have to alert the Nuclear Regulatory Commission about the presence of tritium in the groundwater unless the level reaches 30,000 picocuries per liter. At that point it would have 30 days to tell the commission, and specify what it planned to do.

Robert Williams, a spokesman for Vermont Yankee, said the company was working hard to find a leak. “It’s a necessarily slow and methodical process,” he said. The plant is already in touch with federal and state regulators, he added.

Dozens of reactors around the country [have had their 40-year licenses extended](#) by 20 years without much debate. Under the Atomic Energy Act, such decisions are usually the sole purview of the Nuclear Regulatory Commission.

But Vermont struck a deal with Entergy when it bought the plant in 2002 that gave legislators a veto role. An official with the federal nuclear commission noted that if the state blocked a license renewal, Entergy could file a court challenge.

Vermont Yankee is the largest generator of power in Vermont. But New England’s power grid has a surplus of electricity because of the recession.

**EPA to investigate birth defects near Calif. dump
(Associated Press) This story also appeared:
*Washington Post***

The Associated Press
Wednesday, January 27, 2010; 12:29 PM

KETTLEMAN CITY, Calif. -- The U.S. Environmental Protection Agency says it will investigate a cluster of birth defects in a central California town near the largest toxic-waste dump in the West.

Jared Blumenfeld of the EPA says Kettleman City is vulnerable because of the dump and the pesticides used in nearby farming fields. He says his agency wants to investigate whether the town's birth defects can be linked to those factors.

The Kings County Board of Supervisors recently approved expanding the 1,600-acre waste site in the San Joaquin Valley. The proposal still needs state and federal approval.

Residents filed a lawsuit against the board and say they want an investigation into the birth defects and infant deaths.

EPA to review oversight of toxic waste (*Los Angeles Times*)

January 27, 2010 | **2:14 pm**

In a new focus on environmental justice issues, the U.S. Environmental Protection Agency plans to evaluate a Bush-era rule that could remove federal oversight of companies that generate and recycle 1.5 million tons of hazardous waste each year.

Much of that waste, generated by steel, chemical and pharmaceutical plants, ends up in dumps located near low-income, minority communities.

On Tuesday, the EPA launched [a probe of birth defects](#) and other health problems in the San Joaquin Valley farming community of Kettleman City, Calif., located about three miles west of the only chemical waste facility in the state permitted to accept carcinogenic PCBs.

The EPA on Thursday will discuss its planned analysis of the Bush-era exemptions with the National Environmental Justice Advisory Council in New Orleans.

"This is the first time the agency will conduct a comprehensive environmental analysis, although these reviews were first ordered by President Bill Clinton," Abigail Dillen, an attorney with the environmental group Earthjustice, said in a statement.

-- Louis Sahagun

Kettleman landfill to host EPA official (*Fresno Bee*)

Kettleman City residents rally in S.F.

Posted at 10:22 PM on Wednesday, Jan. 27, 2010

By Lewis Griswold / The Fresno Bee

The new head of the federal Environmental Protection Agency's Pacific Southwest region will tour the controversial Kettleman Hills hazardous waste landfill next week, an agency spokeswoman said Wednesday.

EPA regional administrator Jared Blumenfeld also will visit residents in the Kings County community of Kettleman City, who blame cleft-palate birth defects or other disabilities affecting five children on exposure to toxic waste at the site owned and operated by Waste Management Inc.

The company denies that the landfill is causing birth defects or health problems in Kettleman City.

Meanwhile, EPA spokeswoman Mary Simms dismissed as "wrong" a report published Wednesday in the Los Angeles Times that the agency will investigate the birth defect cluster in Kettleman City.

However, a spokesman for Greenaction for Health & Environmental Justice, a San Francisco-based group that has been spearheading advocacy efforts for the Kettleman City residents, said Blumenfeld promised an investigation when he met with residents Wednesday.

About 45 residents traveled to San Francisco by bus to stage a rally in front of the EPA regional headquarters building.

Activist Bradley Angel said Blumenfeld told residents his agency would investigate whether it had checked out complaints that environmental regulations have been ignored at the landfill.

"There will be an internal investigation on how the EPA has handled Kettleman City," Angel said. "They are going to take a deep look at this."

The EPA's investigation will not determine whether hazardous waste at the landfill resulted in birth defects, Angel said.

The state Department of Public Health announced Wednesday that its researchers will present the results of a review of the Kettleman City birth defects to the Kings County Board of Supervisors on Feb. 9, and later that day in Kettleman City.

The mood on the bus returning to the Valley from San Francisco was a mixture of hope and weary suspicion, said Miguel Alatorre, 15, a Kettleman City resident.

"We got our message across to the EPA," he said. "We really want the EPA to study the community before they just blindly give away permits."

Waste Management's permit to dispose of PCBs -- a hazardous chemical used in transformers -- has expired, but the landfill is allowed to continue such disposal while its application for a renewed permit is under consideration by the EPA, company officials have said.

Some in Kettleman City remain skeptical about Blumenfeld's promises of an investigation because "the EPA has never really helped us out before," Alatorre said.

Last week, the Center on Race, Poverty & the Environment sued Kings County and sought a court order to rescind the county's approval of a permit allowing the landfill -- the largest of its kind in the West -- to expand.

Waste Management, which employs 60 people at the site, has said it would close the operation next year if it can't expand.

The county was served notice of the lawsuit Wednesday and will file a legal brief in opposition within 30 days, said Deb West, the county's public information officer.

THE REPORTER CAN BE REACHED AT LGRISWOLD@FRESNOBEE.COM OR (559) 622-2416.

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EPA to visit Kettleman City toxic dump (*Associated Press*) *Fresno Bee*, *Washington Post*

Posted at 01:18 PM on Wednesday, Jan. 27, 2010

The Associated Press

KETTLEMAN CITY, Calif. -- An Environmental Protection Agency official says he will visit a California farm town near the largest toxic waste dump in the West, but the agency has no plans to investigate birth defects there.

Jared Blumenfeld, administrator for the EPA's Pacific Southwest region, said Wednesday he plans to visit families in Kettleman City next week to discuss the situation.

The Los Angeles Times reported Tuesday that the EPA planned to investigate birth defects and other health issues among migrant farmworkers in Kettleman City.

The state is conducting its own health study, which is expected to be released in February.

The Kings County Board of Supervisors recently approved expansion of the waste site operated by Chemical Waste Management Inc.

The dump expansion still needs state and federal approval, and opponents have filed suit to stop it.

Agency to examine Calif. birth defects (*Greenwire*)

01/27/2010

U.S. EPA will examine a small cluster of facial birth defects and health problems among the impoverished residents of Kettleman City, Calif., the new administrator of EPA's Pacific Southwest region, Jared Blumenfeld, said yesterday.

"Kettleman City is a very vulnerable community at the confluence of large agriculture and pesticide use, heavy truck traffic, a chemical waste facility accepting PCBs and a proposed 600-megawatt power plant," Blumenfeld said. "This is also a community trying to be represented in a way to get its voice heard.

"Our job is to make sure that we look under every rock and try to see if there is a causal relationship between all these activities and the health impacts on the ground," he said. "We need to provide real information, based on science, not just from the company proposing a project."

Kettleman City has drawn notice for a recent rash of five cleft palate or lip cases that occurred among 20 births over a 14-month period beginning in September 2007. Residents have targeted a waste facility 3 miles southwest of the city, owned by Chemical Waste Management, as the possible cause of the defects.

Due to the small sample of cases, it will be extremely difficult to pinpoint the cause or causes of the defects, said Michael MacLean, a Kings County health officer.

"Each of these cases is different, and it has been my contention from the beginning that there is no science that will answer the question of why those five events happened within that time period," MacLean said. "No matter what resources you put into it, the problem is that the number of cases is so small."

Blumenfeld said the town's 1,500 mostly Spanish-speaking residents should not have unrealistic expectations of the government study. But the town perfectly reflects the administration's pledge to draw attention to issues of environmental justice, he said.

"We may not find a smoking gun when we do our health analysis, or pinpoint the exact causal relationship between the environment and harm," he said. "But that should not hinder our ability to act" (Louis Sahagun, [Los Angeles Times](#), Jan. 27). -- PV

Blumenfeld promises agency accountability

Blumenfeld vowed yesterday to make "revolutionary" changes that will reconnect EPA with the communities it serves while he oversees the agency's environmental policy in the Southwest.

"There is a level of accountability that is missing when you go up the federal government. I want to bring it back," he said during a news conference yesterday.

The new regional leader outlined his plans to help California regulate its carbon emissions and find sustainable, affordable solutions to global warming. He also pledged to boost funding to help research.

Blumenfeld, who served as San Francisco's environmental czar for nine years before accepting his current post, said economic incentives also must be sought for green development and to help small businesses adapt.

"Small business ... is the backbone of our economy," he said. "If you save them \$100 on their energy bill, that can be the difference between staying in business and going out of business."

Blumenfeld is the EPA administrator for the region that encompasses Arizona, California, Hawaii, Nevada, the Pacific Islands and more than 140 tribal nations (Peter Fimrite, [San Francisco Chronicle](#), Jan. 27). -- **DFM**

Agency opens tipline for 'unusual' drilling activities in Pa. (Greenwire)

01/27/2010

People worried about "unusual or suspicious" activity related to natural gas drilling can call U.S. EPA's new Philadelphia-based tipline.

The agency developed the toll-free tipline in response to reports of illegal waste disposal and concerns about the environmental impacts of Marcellus Shale drilling. The agency is "very concerned about the potential for irresponsible activities that could be impacting human health and the environment, such as contaminating drinking water or impairing surface water," said EPA spokesman David Sternberg.

The information collected may be shared with Pennsylvania's Department of Environmental Protection, which regulates drilling, or used in EPA investigations of the industry (Laura Legere, [Scranton Times-Tribune](#), Jan. 26). -- **EL**

MINING

EPA crackdown on mountaintop coal mining criticized as contradictory (*Washington Post*)

By David A. Fahrenthold
Washington Post Staff Writer
Thursday, January 28, 2010; A03

CHARLESTON, W.VA. -- Here in coal country, President Obama's ambitious Environmental Protection Agency has met its first big mess.

On Inauguration Day, the EPA began a crackdown on "mountaintop" coal mines. The agency has scrutinized about 175 proposed mines, where peaks would be blasted off and valleys filled in with the rubble. It has signed off on only 48.

EPA officials -- repeating a refrain from a fast-marching first year in which they also took on greenhouse gases and the seemingly eternal problems of the Chesapeake Bay -- say they're just following the law. That, they say, means keeping poisonous things from the inside of a mountain out of streams on the surface.

But to many people in Appalachia, the orders coming out of Washington, especially one this month, have appeared contradictory and mysterious, signing off on some mines and blocking others. Environmentalists are unhappy because they fear federal officials are losing their nerve to take on the powerful coal industry. The coal industry is unhappy because it thinks the administration is on the brink of giving in to the green crowd.

To each side, it looks like the EPA hasn't made up its mind. Which would make now the time to yell as loudly as possible.

People have chained themselves to mine equipment and shouted one another down. One scooted past state troopers to slap an environmentalist. The EPA finds itself in the middle of the most bitter in-your-face environmental fight in America today, facing an early test of its resolve and political skills. The agency appears certain to bear much of the weight of carrying out Obama's historic environmental agenda.

"They didn't have a well-thought-out plan whenever they did this. And that's really been the basis of the uproar," said Randy Huffman, secretary of [West Virginia's Department of Environmental Protection](#), which EPA officials say has not been tough enough on mines in the past. Now, he said, confusion over the EPA's intentions "creates fear, and that brings out the worst in people."

A sign of fear

The latest sign of that fear came last Thursday, in an auditorium at the University of Charleston. A debate between a coal-company chief executive and environmentalist [Robert F. Kennedy Jr.](#), which attracted more than 1,000 people split between the two sides, had security reminiscent of a presidential visit or a prison rodeo.

Eight police officers were in the room, and two more with metal detectors guarded the door outside. No purses allowed. No backpacks. No weapons. Just to talk.

"The current EPA, which won't give a permit for anything for any reason . . . they're the ones that's going to cost people their jobs and weaken homeland security," said Don Blankenship, chairman and chief executive of Richmond-based [Massey Energy](#), a major player in mountaintop mining. In the audience, coal miners, wearing uniforms striped with orange-and-silver reflective tape so coal trucks don't run them over, cheered.

On Monday, Gov. Joe Manchin III (D) issued a plea for an end to intimidation of people fighting mountaintop mining. "We will not in any way, shape or form in this state of West Virginia tolerate any violence against anyone on any side. If you're going to have the dialogue, have respect for each other," he said after a meeting with environmentalists and anti-mining activists.

Mountaintop mining, also called "mountaintop removal," is an exclusively Appalachian practice, dating to the 1970s but having gained momentum in the past 20 years. To get at coal seams that are too thin or too close to the surface to reach by tunneling, miners use explosives and huge machinery to remove the peak above the coal.

In most cases, the law requires that companies rebuild the mountain to its original shape. But leftover rubble is usually left in nearby valleys. There, scientists [say](#), rainwater seeps over rocks that had previously been far underground. That can release trace amounts of salt and toxic metals, which can kill life in streams and cause health problems for people who drink the water.

This practice was deemed legal: From 2000 to 2008, federal and state authorities gave permission for 511 valley fills in West Virginia, according to the Government Accountability Office. Put back to back, the GAO [estimated](#), it was the equivalent of filling a single valley at least 176 miles long.

But Obama's EPA signaled a new attitude early on by notifying the U.S. Army Corps of Engineers -- which issues permits to these mines -- of its concerns about a mine in West Virginia. The 175 similar sites it has since scrutinized, including new applications, are spread across West Virginia, Kentucky, Tennessee, Virginia, Pennsylvania and Ohio.

Clarity debated

At the EPA, officials say they're not out to stamp out mountaintop mining altogether -- this month they approved a West Virginia mine permit after the company promised changes to reduce its effect on streams by nearly 50 percent.

But to many environmentalists and coal-industry leaders, the EPA's actions have seemed erratic and uncertain. It has criticized some mines and approved others, both sides say, without drawing a clear line between good and bad. Activists on both sides say the agency hasn't always been clear about what criteria it is using to make the distinction -- making it hard to guess what mines will make the cut in the future.

EPA official Peter Silva said there was no problem with the clarity of the EPA's message.

"The notion of 'clarity' invoked by some West Virginia officials and industry representatives has too often meant letting coal companies do as they please, with little or no consideration for the harmful impacts on Americans living in coal country," Silva said. EPA officials declined to comment on the record beyond this statement.

Adding to the confusion: The Interior Department rejected a Bush-era rule considered friendly to mines, then said it wouldn't have a replacement ready for more than a year. And a Corps of Engineers official rejected an EPA request to revisit a permit given to a particularly large mine, leading the EPA to threaten a first-of-its-kind environmental veto.

"We really don't know where this is going," said Jason Bostic of the [West Virginia Coal Association](#). He said his organization has passed the message to miners that the agency might hamstringing an industry that is still crucial here, though mountaintop mining only accounts for about 10 percent of U.S. coal production. "If there's going to be a change to EPA's attitude, everybody's got to work together."

On the other side, environmentalist Mike Roselle said the EPA's actions were reason to redouble a campaign of civil disobedience. Roselle, a veteran of campaigns against logging in the Northwest, has imported the same tactics and even some of the same people here. In the past year, he said, members of his [Climate Ground Zero](#) group have been arrested 150 times after sitting in trees on mine sites or chaining themselves to company equipment.

"We know for a fact that, when we shut down a mine, that somebody in the White House is aware of it," he said. Mine companies have said the practice is dangerous for both workers and protesters.

What's passed between the two sides has been mild, at least in a state where miners and mine companies used to shoot it out with rifles. But there have been flash points: At a public hearing in the fall, environmentalists say they were shouted down. At a march last year, a woman in a reflective-tape shirt stepped past the troopers standing guard and slapped local activist Julia Bonds. "They don't seem to understand the difference between nonviolence and violence," Bonds said.

At the debate last Thursday, with an unusually high police presence, neither side did anything worse than laugh at the other's speaker. But about an hour away, at a [Massey Energy](#) mine, sirens were in the woods.

Three activists had climbed into trees, Roselle said, and Massey security guards were using loud noises to stop them from sleeping and get them to come down.

On Wednesday, Roselle said a tree-sitter had descended because of gear that had become wet. The other two remained. He said he was pleased that the protest had caused headaches for Massey and the West Virginia government. "It absolutely worked," he said.

PESTICIDES

Atrazine use defended by agriculture groups (*Louisburg Herald*)

WRITTEN BY STAFF

WEDNESDAY, 27 JANUARY 2010 08:00

A broad coalition of agriculture groups have written to Lisa Jackson, Administrator of the Environmental Protection Agency, in defense of the herbicide atrazine, which has become the target of a coordinated attack by environmental groups seeking to eliminate its use, according to a news release.

Atrazine, a critical tool in growing crops as diverse as corn, sorghum, sugar cane and citrus, has been used safely in over 60 countries for 50 years.

Beginning Feb. 2, the EPA will begin a re-re-evaluation of atrazine as part of a series of Scientific Advisory Panels. Recent media events by agenda-driven organizations such as the Natural Resources Defense Council, Land Stewardship Project and Pesticide Action Network North America suggest a coordinated campaign to call atrazine's safety into question and politicize what should be a scientific process. In fact, in an unprecedented move, the EPA itself identified NRDC material as part of its justification to launch the new review.

"We want to set the record straight on the agriculture community's broad support of this very effective herbicide that has been used by farmers for more than 50 years," said Jere White, executive director of the Kansas corn and grain sorghum growers associations.

"Atrazine is used on more than one-half of all U.S. corn and two-thirds of sorghum. It is one of the primary elements that makes American agriculture so phenomenally productive. Every EPA administration since the EPA was founded – Republican and Democrat – has endorsed atrazine's safety and that is why we join together to pledge our support and confidence in this product," White said.

It is estimated that atrazine is used in 90 percent of U.S. sugar cane production, according to the news release.

"The use of atrazine and the triazine family of herbicides in citrus production have dramatically reduced the need for cultivation and water applications, provided protection against freeze

damage, and created a better quality product," said Joel Nelsen, president of California Citrus Mutual. "Their loss would have a devastating impact on our growers."

The coalition of agriculture groups will be actively involved in the EPA re-evaluation of atrazine and will insist that transparent, peer-reviewed science utilizing accepted practices govern regulatory decision-making.

For more information on this coalition or on atrazine, please contact Sue Schulte at sschulte@ksgrains.com or (785) 448-6922.

TOXICS

State regulators may change rules after finding high levels of benzene in Barnett Shale sites (*Fort Worth Star Telegram*)

Posted Wednesday, Jan. 27, 2010

BY MIKE LEE

mikelee@star-telegram.com

FORT WORTH — High levels of cancer-causing benzene were found in the air at 1 in every 5 sites that Texas environmental officials tested in the Barnett Shale gas field, state regulators revealed Wednesday.

The levels at two of the sites were high enough that the agency acted immediately to make sure the companies involved had corrected the problem. The other 19 were above the screening limit for long-term health risks.

"Although the results are complex, it is clear that gas production facilities can, and in some cases do, emit contaminants in amounts that could be deemed unsafe," the Texas Commission on Environmental Quality said in a news release.

Agency officials said they're working with natural gas companies to reduce the pollution levels and are installing new monitors to get better data about oil-and-gas pollution. The agency is also considering changing its rules and permit systems to reduce pollution.

State legislators and the U.S. Environmental Protection Agency are also monitoring the test results and how the state agency responds. The agency is scheduled to undergo a sunset review in the 2011 legislative session.

"EPA takes these concerns seriously and believes that better information will lead to the best decisions for moving forward to prevent pollution," said Al Armendariz, the EPA's regional administrator. "EPA has been working closely with TCEQ to fully understand their aggressive work in this area as well as conducting its own independent inspections to assess compliance with federal law."

State Rep. Lon Burnam, D-Fort Worth, called on the state agency to move quickly on the air pollution results.

"If such a brief snapshot shows benzene levels that threaten our health, we need to take action now to address them," Burnam said. "There are lots of common-sense remedial actions at our disposal, but they require decisive action by TCEQ and industry."

Esther McElfish, a board member of the environmental group North Central Texas Communities Alliance, said, "My feeling is: Keep the testing going."

Test results

The Barnett Shale field lies beneath parts of 23 counties and contains more than 13,000 gas wells, including more than 1,600 drilled or planned inside Fort Worth.

The state agency knew that some of the wells were producing emissions as far back as 2007, when a contractor flew over the area with an infrared camera to look for problems. But the agency didn't start conducting on-the-ground tests until August.

One well site, operated by Devon Energy near the Denton County town of Dish, showed a benzene level of 15,000 parts per billion. A compressor station owned by Targa North Texas showed a level of 1,100 parts per billion.

Long-term exposure over 1.4 parts per billion is considered unhealthful. Both sites have been repaired, said John Sadlier, the state agency's deputy director.

"Even before we presented our findings to Devon, Devon had gone out to the site and made repairs," he said.

However, he couldn't say how long the two sites had been emitting that much pollution.

Mike Honeycutt, the state agency's chief toxicologist, said most of the pollution was localized around the wells and compressors.

"I don't see cause for widespread alarm," he said. "What's important is to learn why we get high levels here and not over here."

The agency hasn't fined any of the operators whose sites were found to be emitting the pollution. In some cases, the emissions may not be a violation of their permits, officials said.

Sadlier also said the agency prefers to use a "find-and-fix" approach, allowing companies to avoid a fine if they voluntarily fix the problem.

"At some point, find-and-fix is going to go away," Sadlier said. But he acknowledged that the agency's fines probably aren't high enough to be a deterrent.

"The size of some of these companies makes it nearly impossible for the state to calculate and assess a penalty that would have a deterrent effect," he said.

Fort Worth controversy

The state agency has been under pressure about the environmental effects of the Barnett Shale since October. The small town of Dish and Fort Worth business owner Deborah Rogers paid for their own tests.

The Dish test found high levels of benzene and other compounds near a complex of pipelines and compressors. Rogers' test found high levels of carbon disulfide, which can cause lung and neurological problems.

Agency officials were already conducting air samples by then and had announced that high levels of benzene were found at some sites.

Yet on Jan. 12, Sadlier told the Fort Worth City Council "the air is safe" after releasing the results of a three-day check at wells and other facilities in Fort Worth.

The agency said in a news release that it tested 126 sites, but it conducted actual tests at only eight of those. The others were screened with infrared cameras and hand-held monitors. And the tests were conducted on a cold day, when it's less likely that fumes would be present.

"We appropriately caveated all the data" presented to the city, Sadlier said.

Also, he said, the agency doesn't control who gets to drill where or when.

"That's really a question for the city of Fort Worth," he said. "TCEQ is absolutely the tail of the dog."

MIKE LEE, 817-390-7539

New Senate bill promotes safety research at FDA (Greenwire)

Sara Goodman, E&E reporter

01/27/2010

A new Senate bill would launch a Food and Drug Administration effort to assess the safety of nanotechnology in consumer products.

Democratic Sens. Mark Pryor of Arkansas and Benjamin Cardin of Maryland last week introduced [S. 2942](#) that would authorize \$25 million each year from 2011 through 2015 for FDA to assess consumer products containing nanomaterials. The program would also develop best practices for companies using nanomaterials in their products.

The program would draw on the expertise of other FDA programs, including the National Center for Toxicological Research, which researches innovative technology and methods development, and provides technical expertise.

"The National Center for Toxicological Research has built a record of excellence in its mission to provide a scientifically sound basis for FDA decisions," Pryor said in a statement. "I view NCTR as an ideal candidate for leading our nation's nanotechnology health and safety studies."

The program would examine the toxicology of nanomaterials in products within FDA's jurisdiction as well as the effects of those materials on biological systems.

There are currently more than 1,000 nanotechnology products on an inventory assembled by the Project on Emerging Nanotechnologies, an initiative by the Woodrow Wilson International Center for Scholars and the Pew Charitable Trusts.

WATER

=====

672-gallon oil spill fouls Huntington Beach channel (*Los Angeles Times*)

The oil traveled 1.8 miles downstream, but did not reach the Talbert wetlands or the ocean. The EPA says the source is unknown. The cleanup is expected to take about three weeks.

By Tony Barboza

January 28, 2010

Crews are working to clean up an oil spill that dumped an estimated 672 gallons of crude oil last week into a Huntington Beach flood-control channel that drains to wetlands and the Pacific Ocean, authorities said Wednesday.

After getting reports of a petroleum odor Jan. 21, Orange County public works crews a day later discovered the spill in the Huntington Beach Channel east of Beach Boulevard and south of Adams Avenue, according to the U.S. Environmental Protection Agency.

"There was oil all the way across the channel from wall to wall," said Robert Wise, the EPA's on-scene coordinator. "As the tide went in and out, it just sloshed the oil up and down the walls of the channel."

The source of the spill is unknown, Wise said. The oil traveled 1.8 miles downstream, but it did not reach the Talbert wetlands or the ocean, he said.

A contractor hired by Orange County is cleaning up the spill by placing containment barriers in the 50-foot-wide, steel-lined channel and using vacuum trucks, absorbent materials and power washers to remove the oil. So far, Wise said, crews have recovered about one-eighth of the oil. The cleanup is expected to take about three weeks.

For updates on the cleanup, check the EPA's website at www.epaossc.org/hboil. To report any oiled animals, call the Oiled Wildlife Care Network Center at (877) 823-6926.

tony.barboza@latimes.com

Deadly VHS fish virus found in Lake Superior (Associated Press) This story also appeared: *Washington Post*

The Associated Press
Wednesday, January 27, 2010; 8:01 PM

TRAVERSE CITY, Mich. -- Researchers say a fatal fish virus has been found in Lake Superior for the first time, meaning it has spread to all the Great Lakes.

Cornell University scientists said Wednesday they detected viral hemorrhagic septicemia, or VHS, while testing fish from seven Lake Superior locations.

VHS has been identified in 28 Great Lakes fish species since 2005. It has caused large fish kills in lakes Ontario, Erie and Huron. It also has turned up in Lake Michigan.

Michigan and Wisconsin officials say there's no evidence of a widespread outbreak in Lake Superior. They say the Cornell findings wouldn't lead to immediate changes in fishing or boating regulations.

Both states limit movement of bait fish to prevent VHS from spreading.

Deadly fish virus found in Lake Superior (*USA Today*)

2010-01-27

TRAVERSE CITY, Mich. (AP) — Researchers say a fatal fish virus has been found in [Lake Superior](#) for the first time, meaning it has spread to all the [Great Lakes](#).

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EPA Launches New Rulemaking To Strengthen Water Quality Standards (*Inside EPA*)

Wednesday, January 27, 2010

EPA is launching a new rulemaking to strengthen its water quality standards program, which serves as the foundation for a major portion of pollution controls under the Clean Water Act (CWA), that will include revisions to the agency's "antidegradation" policies to preserve pristine waters and strict new milestones for reaching permit limits.

But the rule, which EPA's Web site says would be issued as a direct final rule within 12 months, is already drawing concern from state officials who say changes to the water quality standards program have vast implications for EPA's entire system of regulating water pollution and any changes must be carefully considered.

At issue is a regulation governing how EPA and states set water quality standards that drive permit discharge limits. The regulations currently outline how to set risk-based water quality criteria and designated uses for regulating waters, how to address so-called "mixing zones" where pollution enters waterbodies, variances, antidegradation requirements for protecting pristine waters and other topics.

EPA's December Action Initiation List, which is a snapshot of the regulatory actions EPA initiates each month, says the agency "is proposing a few targeted clarifications to the water quality standards regulation to improve its effectiveness in helping restore and maintain the nation's waters," including positioning the water act to address issues such as climate change.

Two sources familiar with the issue say they expect the revisions to be fairly broad, applying to many parts of the water quality standards regulation.

The agency attempted a similar effort to revise the water quality measures during the Clinton administration but the effort was scaled back in the face of opposition from states.

Updating Antidegradation Rules

An EPA spokeswoman said in a statement that "examples" of provisions under review include updating antidegradation regulatory provisions to be more consistent with recent court rulings,

facilitating increased public participation in the development of state water quality standards and improving the accessibility of state standards regulations to the public.

The CWA's antidegradation provisions aim to ensure regulators maintain the condition of high-quality waters that are in better condition than water quality standards require. But the water act does not specify how this must be done, and there is relatively little case law on the subject.

A 2008 ruling from the U.S. Court of Appeals for the 6th Circuit -- *Kentucky Waterways Alliance, et al. v. Stephen Johnson, et al.* -- partially upheld EPA's approval of Kentucky's antidegradation rules. The court generally held that EPA and states have broad discretion to determine which waterbodies merit increased protection from antidegradation rules. "Given this ambiguity in the regulation, we defer to the EPA's interpretation" that either a pollutant-by-pollutant or waterbody-by-waterbody approach is permissible, the court said.

While the 6th Circuit backed EPA's approach for determining when to protect waters, the court nevertheless remanded the issue back to EPA for further consideration, saying the agency failed to measure the individual impacts of exemptions Kentucky had provided from the antidegradation requirements, such as estimating how much pollution a waterbody can receive without harm to water quality and aquatic life.

Over the past few months, environmentalists have stepped up their pressure on EPA to require states to develop antidegradation rules (*see related story*).

Now EPA in its rulemaking will revise its policies to make them consistent with the 6th Circuit's ruling.

A wastewater industry source says the agency is also planning on including a new water quality regulatory tool that would give good actors incremental milestones for attaining water quality standards.

The provision, which EPA included in numeric nutrient criteria the agency set for Florida and refers to as "restoration standards," provides milestones for reducing nutrient discharges over time, but if a discharger misses a milestone, regulators would require the discharger to immediately meet the most stringent discharge limit. "This will enable Florida to set enforceable incremental water quality targets (designated uses and criteria) for nutrients, while at the same time retaining protective criteria for all other parameters, to meet the full aquatic life use," the fact sheet says. The plan "gives you a little bit of flexibility in terms of implementation," the wastewater industry source says.

EPA staff announced the plan in a meeting this fall, the source says.

EPA says in its December notice the agency "does not believe it is necessary to overhaul the current regulation or associated guidance and policy. Rather, the intent of the proposal is to provide clarity and regulatory tools to address the issues described above." The agency, in the notice, says the changes are "urgently needed to help reduce the rate of new water quality impairments and increase the rate of water quality improvements. The clarifications will also help streamline operations and improve public participation in standards processes."

Evaluating Opportunities

The EPA spokeswoman says "EPA staff are reviewing current water quality standards regulations to evaluate opportunities for streamlining and greater consistency with recent court decisions."

One state official says the number of revisions EPA attempts in the rulemaking is important given the complexity of how the regulation impacts other EPA and state regulations and permit limits. "It would be an enormous undertaking that could require all the time they've got," the state official says, because each part of the water quality standards program is "extremely complicated" and "controversial" to revise.

EPA is said to have already hired a contractor for the rulemaking and is contacting relevant stakeholders. The EPA spokeswoman says "We intend to meet with senior EPA managers on options for such provisions and obtain State and public feedback on possible revisions to provisions later in 2010."

EPA's rulemaking follows controversial failed attempts to make similar changes during the Clinton and Bush administrations. In 1998, the Clinton EPA issued an advance notice of proposed rulemaking (ANPR) for broad changes to its water quality standards program, touching on virtually every facet of the water quality standards regulation.

At the time, state water officials questioned the need for dramatic program changes, noting that if the changes were enacted state environmental agencies would have to undertake numerous costly and labor-intensive actions, including reassessing all state waters to determine if they can realistically meet water quality goals.

In 2000, the agency drastically scaled back its plan for the new regulation, focusing on mixing zones and adding requirements for nationwide consistency in how states set beneficial uses, such as "fishable" and "swimmable," for waters. The Bush EPA in 2003 issued a rule banning mixing zones for bioaccumulative chemicals of concern in the Great Lakes but did not follow through on the original intention to extend the policy nationally. EPA also never issued new regulations on "beneficial use."

Another Bush EPA water quality standards policy action also proved controversial with environmentalists. When the agency in 2002 released a draft "Strategy for Water Quality Standards and Criteria," activists feared that actions to improve water quality would be put off while guidance documents are developed.

The state official says environmentalists and others are pushing for broad changes to the water quality standards program because the Bush administration did not pursue new regulatory changes. "There's a pent-up list of desires," the source says.

But state officials worry that too many significant changes could hamper water quality protection efforts because states would not have the resources or ability to implement key CWA programs. "It's very difficult" to amend the water quality standards regulation "because you have to address implementation up front," given the vast impact of the rule, the source says, adding that another potential pitfall would be new avenues for litigation from the rule changes. -- *Jonathan Strong & Erica Martinson*

Industry Revives Challenge Of EPA Authority To Develop Bay Cleanup Plan (*Inside EPA*)

Wednesday, January 27, 2010

A broad coalition of industries is reiterating previously thwarted arguments challenging EPA's statutory authority to develop a cleanup plan, known as a total maximum daily load (TMDL), for the Chesapeake Bay and its tributaries, saying in recent comments that the agency cannot act before states first develop such plans.

EPA's plan to develop and implement a Bay-wide TMDL has been the centerpiece of the Obama administration's protracted strategy to manage nutrient pollution in the Bay and was embodied in a May 2009 executive order.

But in written comments to the agency's Draft Strategy for Protecting and Restoring the Chesapeake Bay, the Federal Water Quality Coalition (FWQC) -- a coalition of municipalities and representatives from the manufacturing, agriculture and mining sectors -- and a separate coalition of poultry producer trade associations argue that EPA's emphasis on taking a leading federal role in the plan to clean up the Bay belies the Clean Water Act's (CWA) plain emphasis on the leading role of states in enforcing and developing pollution reduction plans.

"The federal leadership proposed in the Draft Strategy is not leadership by example, but leadership by mandate," the [Jan. 8 FWQC comments](#) say. "This new authority, which has never been claimed in this manner before, includes a significant expansion of the regulatory scope of the [CWA] . . . by promulgating new regulations that would fundamentally change [CWA] implementation."

The industry groups take aim specifically at the agency's intention to develop a TMDL for nitrogen and phosphorous pollution in the Chesapeake Bay, and then require states to develop watershed implementation plans to show their methods for meeting those reductions.

"The Act is very clear; it is the responsibility of the state to establish TMDLs following its identification of impaired waters," the poultry groups say in [Jan. 8 comments](#). "The statute does not provide authority for EPA to initiate the process of establishing the TMDL. Nor does it provide the authority for EPA to develop the TMDL while forcing the state to develop wasteload allocations with the threat of 'consequences.'"

The arguments echo municipal dischargers' opposition to a 1999 consent decree, *American Canoe Association and the American Littoral Society v. EPA*, that requires EPA to set TMDLs for Virginia's impaired waters, including the Bay, by 2011 -- one of the two settlement agreements on which the agency is relying in its Bay-wide TMDL development effort. The other agreement, *Kingman Park Civic Association, et al. v. EPA*, requires EPA to set a pH TMDL for the Potomac River by 2011 if the District of Columbia does not do one first.

The Virginia Association of Municipal Wastewater Agencies (VAMWA), which was an intervenor in the settlement between EPA and the American Canoe Association, appealed the consent decree to the U.S. Court of Appeals for the 4th Circuit, arguing that CWA section 303(d) only allows EPA to establish a TMDL after it has rejected a state-submitted plan and Virginia had never submitted a TMDL. The dischargers said the settlement is unlawful because the district court judge effectively constructed new authority for EPA under section 303(d) rather than using the actual language contained in the statute.

The 4th Circuit dismissed the appeal in 2000 without addressing industry's arguments, siding with environmentalists and EPA, who said VAMWA did not have standing to challenge the settlement because it had not established injury.

The poultry groups are also criticizing the agency's apparent reliance on its enforcement authority to achieve compliance, specifically in nutrient reductions from concentrated animal feeding operations (CAFOs). The apparent threat against states to rein in CAFOs unless they achieve the desired reductions is a counterproductive and unnecessary tactic, the letter argues.

But one informed source questions industry's ability to challenge EPA's TMDL, noting the agency is developing the cleanup plan because of the consent decrees and not because of a policy decision.

EPA says in a Sept. 17 *Federal Register* notice that it is developing the TMDL for the Bay and all its tidal tributaries "consistent with" the *American Canoe Association* and *Kingman Park Civic Association* settlements and at the request of the six Chesapeake Bay watershed states: Virginia, Maryland, Delaware, West Virginia, Pennsylvania and New York, and the District of Columbia.

Complications To Industry Challenges

The informed source says another potential complication to a potential industry challenge is whether they could litigate without a state also acting as a plaintiff, since the argument is essentially calling for a roll-back of the federal government's role in the Bay cleanup plan.

The source says Virginia's newly-installed Attorney General Ken Cuccinelli (R) may be willing to mount such a challenge, given his general conservative political philosophy. Cuccinelli's campaign Web site does not include an environmental policy position and attempts to contact his campaign office were not successful.

"The new Attorney General is about as conservative as they come," the source says. "I don't know how far [Cuccinelli] will take these challenges but they're pretty ripe . . . with agriculture and home builders rallying against [the draft strategy]."

In a Jan. 5 interview with *Inside EPA*, Maryland Gov. Martin O'Malley (D) said he believes he will be able to work productively with the newly-elected Virginia governor, Bob McDonnell (R), continuing the relationship forged with the state's former governor, Tim Kaine (D). McDonnell and Cuccinelli were sworn into office Jan. 16.

"I spoke to [McDonnell] once by phone," O'Malley told *Inside EPA* Jan. 5. "We talked about the areas where Maryland and Virginia can do things that benefit both of our states, and one of those areas was the Chesapeake Bay. I've only had that one conversation with him, but I look forward to working with him, and continuing the cooperative partnership that Maryland and Virginia have had on this issue for the last four years."

TMDL's Role As Benchmark

The informed source adds that the industry coalition may be willing to mount a serious challenge to the Bay TMDL given its role as a benchmark for other impaired watersheds nationwide. "Other [environmental] groups may insist that their watersheds get the same treatment across the country," the source says. "My guess is that industry may be objecting from the get-go to keep it from spreading."

The National Association of Home Builders, a group that represents the residential housing construction industry, said in their [Jan. 8 comments](#) on the draft strategy that EPA taking on a leadership role in the Chesapeake Bay region could result in a public backlash because of high costs associated with the TMDL in an already flagging economy and dwindling state resources.

"EPA must remain conscious of the real potential for a negative public reaction to the increased federal role in the Chesapeake Bay region," the letter reads. In a separate comment to EPA, the Pennsylvania Builders' Association echoed that sentiment, saying "In short, if the strategy is not affordable, it will not be supported by many residents of the Bay states, no matter how much they may support restoring the Bay."

Environmentalists applauded EPA's federally-led approach to cleaning up the Bay in their comments on the draft strategy, but emphasized that the agency needed to refine certain aspects of its plan to ensure accountability for reductions -- specifically with regard to nonpoint sources -- and to ensure that agricultural interests would continue to be able to thrive while the strategy is enacted. The Nature Conservancy in its [Jan. 8 comments](#) said the need for a more developed nutrient reduction accounting scheme, new regulations to protect pristine watersheds, an increase in technical assistance to the agricultural sector and an adaptive approach to climate change should be central pillars to any nonpoint nutrient reduction plan.

"We believe the federal government has an essential role in the protection and restoration of the Chesapeake Bay and its watershed," the conservancy's comments say. "The Executive Order strategy provides an important mechanism to focus federal resources on actions that are critical to bay health but are additive to those that address existing sources of nutrient and sediment pollution, and have therefore received less focus in the past." -- *John Heltman*

Court rulings stripped protection for key Tenn. tracts - - report (*Greenwire*)

Taryn Luntz, E&E reporter

01/27/2010

At least five important Tennessee wetlands have lost federal protection as the result of Supreme Court decisions that created widespread confusion over Clean Water Act jurisdiction, according to a report from conservation groups.

The court's *Rapanos-Carabell* ruling in 2006 and *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* decision in 2001 removed protections for many isolated waters and non-navigable wetlands and created complicated tests for regulators to use to determine jurisdiction.

Subsequent agency guidance has stripped protections from 20 million acres of isolated wetlands, or 20 percent of the remaining wetlands in the lower 48 states, according to the report by the National Wildlife Federation, Ducks Unlimited and Trout Unlimited.

In Tennessee, protections are in doubt for more than half of the state's approximately 787,000 acres of wetlands and 60 percent of the state's stream miles, the report says.

"One of the things we hear time and time again is because they're small, they're not important," said John McFadden, one of the study's authors. "Well, they make up the majority of our drinking water collection systems, and as a result of that they're incredibly important."

Headwater tributaries, their adjacent wetlands and geographically isolated waters together provide significant habitat for fish and wildlife and are the source of most of the water for Tennessee rivers and streams, the study says.

Small headwater streams make up at least 60 percent of the total length of the state's streams and provide drinking water to almost 3 million Tennesseans, according to the report.

The study authors analyzed Army Corps of Engineers jurisdictional determinations in Tennessee from January 2007 to May 2009, noting 48 cases in which the agency decided a waterway did not warrant federal protection.

The report highlights five such waters, including wetlands associated with a vital tributary to the Tennessee River, a wetland that affects the Reelfoot National Wildlife Refuge and wetlands that are at risk of being lost to development.

"Without the restoration of comprehensive Clean Water Act protections, it is almost certain that the number of waters in Tennessee polluted or destroyed without federal safeguards will grow," the report warns. "It is also equally certain that this will result in the degradation and pollution of the great rivers, lakes, and streams Tennesseans depend on for drinking water, agriculture, hunting, fishing and other forms of recreation."

The groups are pressing Congress to pass [S. 787](#), which would remove the word "navigable" from the Clean Water Act.

Supporters say the measure would restore protections that were in place before the two high court rulings, but opponents, which include powerful farm and industry groups, say it would expand jurisdiction further than ever before and impose burdensome new regulations ([E&E Daily](#), Dec. 9, 2009).

The report is the first of four the conservation groups are planning to release. Subsequent studies will evaluate wetland jurisdictional losses in Montana, South Carolina and Colorado.

\$6.2M settlement reached in Long Beach oil tank dispute (*Greenwire*)

01/27/2010

Long Beach has reached a \$6.2 million settlement with California's water board for the city's failure to monitor and install protective equipment on 40 underground oil tanks.

The State Water Resources Control Board "will not tolerate violations of these important environmental protection laws and will take swift action against all violators, whether public or private," said Reed Sato, director of the board's office of enforcement.

Long Beach did not install leak-prevention equipment on the tanks, many of which are located at police and fire stations. The city did not deny responsibility for the failings, which Bob Shannon, a city attorney, called a "systematic failure" that leaders chose not to invest in.

"Their position was that the city did not have the money to make the necessary repairs, and that if it had spent the money it would have had to come from somewhere else, such as decreasing the level of law enforcement," Shannon said. "So a choice was made, and a mistake was made. Now it's time to move on."

The water board, with support from U.S. EPA, plans to review as many as 500 local, state and federally owned underground storage tank facilities. This was the first case the board has successfully brought against a public agency for storage tank violations (Louis Sahagun, [Los Angeles Times](#), Jan. 27). -- PV

Stormwater runoff reduction effort outlined in Mass. (Greenwire)

01/27/2010

Federal officials released a draft plan yesterday that seeks to reduce Massachusetts stormwater runoff into municipal state drains.

The plan would require 84 communities in the state to remove illegal sewage connections to storm drains, improve street sweeping and increase public education efforts to cut the amount of stormwater entering sewer systems.

At issue are elevated levels of pollutants and disease-causing bacteria that are carried by stormwater into rivers including the Charles, Mystic, Neponset and Shawsheen.

Complying with the new requirements "will have tangible benefits for these communities," said Curt Spalding, regional administrator of U.S. EPA's New England office. "Controlling pollution from stormwater will mean fewer days that beaches and shellfish beds are closed due to high bacteria levels, and a healthier environment for everybody to enjoy."

Municipalities would be required to monitor exactly what flows from their pipes into local water sources, inspect key manholes within five years to ensure they are not spreading pollutants, and draft plans to detect and deal with illicit pollution within a year.

Critics of the plan worry that implementing these changes would be prohibitively expensive, especially as towns and cities struggle with steep budget cuts.

Municipalities now spend an average of \$94,000 a year to comply with existing federal regulations to control stormwater runoff, environment officials said. They estimate the new plan would add about \$20,000 to \$70,000 for municipalities.

A public comment period on the regulations will last until March 31, and the final regulations are expected to be issued later this year (David Abel, [Boston Globe](#), Jan.27). -- **DFM**

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01268-EPA-557

Arvin Ganesan/DC/USEPA/US

To Richard Windsor

02/11/2010 11:58 AM

cc Bob Perciasepe, Bob Sussman, Lawrence Elworth, Allyn Brooks-LaSure, Seth Oster, Peter Silva, Nancy Stoner, "Diane Thompson"

bcc

Subject Re: FL Nutrient Criteria

(b) (5) Deliberative [Redacted]

[Redacted]

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-----Richard Windsor/DC/USEPA/US wrote: -----

To: Arvin Ganesan/DC/USEPA/US@EPA, Bob Perciasepe/DC/USEPA/US@EPA, Bob Sussman/DC/USEPA/US@EPA, Lawrence Elworth/DC/USEPA/US@EPA, Allyn Brooks-LaSure/DC/USEPA/US@EPA, Seth Oster/DC/USEPA/US@EPA, Peter Silva/DC/USEPA/US@EPA, Nancy Stoner/DC/USEPA/US@EPA
From: Richard Windsor/DC/USEPA/US
Date: 02/11/2010 11:52AM
cc: "Diane Thompson" <thompson.diane@epa.gov>
Subject: Re: FL Nutrient Criteria

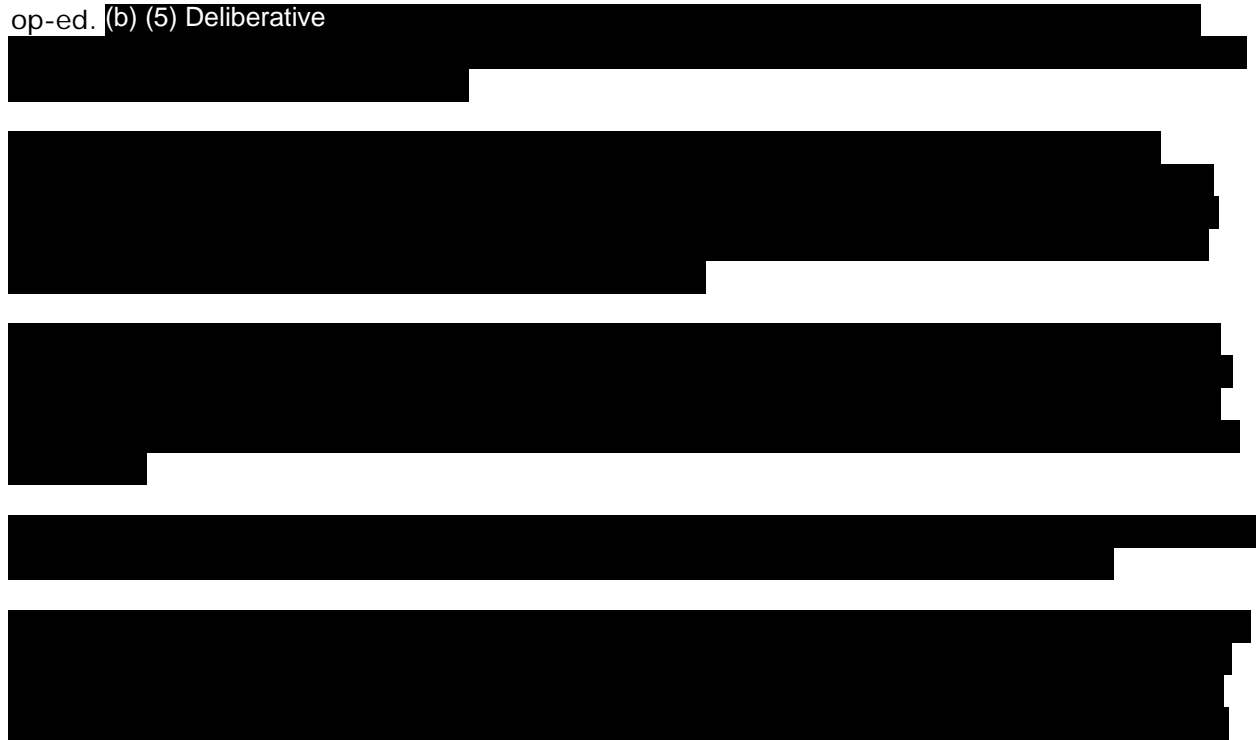
(b) (5) Deliberative [Redacted]

[Redacted] ?

From: Arvin Ganesan
Sent: 02/11/2010 11:47 AM EST
To: Richard Windsor; Bob Perciasepe; Bob Sussman; Lawrence Elworth; Allyn Brooks-LaSure; Seth Oster; Peter Silva; Nancy Stoner
Subject: FL Nutrient Criteria

Morning,
Larry and I had a good conversation with Adora and Betsaida about the FL Nutrient Criteria


op-ed. (b) (5) Deliberative



THoughts?

Thanks - enjoy the day.

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Florida Farm Bureau Issue Brief

Government & Community Affairs

PO Box 147030

Gainesville, FL 32614

(352) 374-1543

Proposed New Water Quality Regulations for the State of Florida

August 25, 2009

Issue

Florida Farm Bureau has been monitoring a proposal that could have catastrophic effects on agriculture if adopted into rule. The U. S. Environmental Protection Agency (EPA) and the Florida Department of Environmental Protection (DEP) are proposing to enact new stringent numeric nutrient water quality standards in lakes, flowing waters and Class III waters by January 2010 and in coastal waters by January 2011.

Florida Farm Bureau members have adopted policy that supports efforts to protect Florida's water quality. We have been instrumental in working with the state's model Total Maximum Daily Loads program and have developed the County Alliance for Responsible Environmental Stewardship (CARES) program to recognize agricultural operations that are actively participating in the program. However, the proposed numeric nutrient criteria that the DEP published in June 2009, and potentially even more restrictive criteria that may be forthcoming from the EPA, are 1) technically and scientifically debatable; 2) economically unattainable, creating major hardships for Florida's agricultural economy; and 3) potentially adverse to the health of flora and fauna (i.e. freshwater and marine-based plant and animal life).

Background

Through the DEP, the Department of Agriculture and Consumer Services and the five water management districts, Florida has established robust standards and programs to support water quality. In many ways it leads the nation. And for a number of years, the DEP has been working with a Technical Advisory Committee (TAC) comprised of water quality experts from many stakeholder groups on the establishment of numeric nutrient criteria. This is a technically complex undertaking given the variability of Florida's water resources and the fact that it is difficult to establish direct causal links between the levels of nutrients (phosphorus and nitrogen, naturally occurring elements that are necessary for biologic well-being) and imbalances of fish and plant communities; especially when many other factors come into play with respect to the health of an ecosystem.

DEP Secretary Mike Sole has pointed out that his agency has spent countless hours researching the different nutrient demands in Florida's thousands of waterways. Likewise, EPA acknowledged the difficulty in establishing numeric standards for nutrients in its 1998 "National Strategy for the

Development of Regional Nutrient Criteria.” Nonetheless, working with its TAC, the DEP produced a Numeric Nutrient Criteria Plan in September 2007 which outlined its approach for doing the necessary research, modeling and methodologies for developing numeric nutrient criteria throughout the state. This plan was then submitted to and generally agreed upon by the EPA.

However, approximately one year ago, several environmental organizations in Florida filed a lawsuit in federal court against the EPA Administrator alleging that the agency had failed to comply with its responsibility under the Clean Water Act to force the state of Florida to expeditiously adopt numeric nutrient criteria. As a result of that lawsuit, in January 2009, EPA issued a determination letter to the Florida DEP basically requiring that it meet a strict deadline for adopting such standards (January 2010 for lakes, streams and Class III waters; January 2011 for coastal waters) or else the EPA would step in and establish federal criteria for the state. **It should be observed that these deadlines are litigation-driven and not based on science or technical procedure. Furthermore, Florida is the only state that has been singled out by the EPA with such deadlines and federal oversight. Water quality, at least in northern Florida, is influenced by surface water flows entering the state from Georgia and Alabama, but neither of these states, nor any other state in the country, is being subjected to the nutrient criteria that Florida is facing.**

Our Concerns

- 1) **We believe the extremely restrictive criteria that the DEP is proposing will be impossible to meet.** To put it simply, the DEP has identified the most pristine lakes and waterways in the state’s six different water regions. The concentrations of phosphorus and nitrogen found in these water bodies are then being applied to all water bodies and discharges of water within these regions. It is difficult to comprehend how waters in more developed areas and discharges from commercial, agricultural and public water utilities could replicate absolutely pristine conditions. For example, in the Panhandle, the newly proposed phosphorus concentration is fourteen times more stringent (69 parts per billion) than the current standard for advanced wastewater treatment. Meanwhile, in south Florida, the DEP has decided that numeric nutrient criteria are “To Be Determined,” insofar as the agency has not developed a plan for dealing with a region whose water regimes are so based upon and influenced by thousands of miles of canal systems.
- 2) Although agricultural water supplies are Class IV waters, this only includes the “secondary and tertiary canals”. **Agriculture still can “cause or contribute” to the pollutants of a downstream water body.**
- 3) **The economic impacts of these regulations are inestimable, resulting in dire consequences for the state’s overall economy.** Every major sector industry will be affected – agriculture, landscaping, power generation, silviculture, mining, seaports, development, small businesses, even tourist attractions and recreational facilities – basically any enterprise which discharges water. As Secretary Sole was recently quoted, “This is going to affect you and I as Floridians.” Clearly, such a regulatory climate will put Florida in a severely disadvantaged position, compared to other states, when it comes to retaining or attracting businesses.
- 4) **Presently, “artificial” water bodies such as drainage facilities, stormwater lakes , agricultural holding ponds, flood protection systems and even reservoirs for alternative water supply and restoration projects could be required to make enormous investments in water quality technologies in order to meet the criteria and continue to operate for public health and safety and food production.** Clearly, it makes no sense to expend enormous amounts

of public or private funds attempting to meet unattainable water quality standards in artificial water bodies where there will be little or no benefit to natural resources when these same scarce dollars could be put to better use in achieving real environmental protection and gains.

5) **The imposition of such infinitesimal nutrient standards could have detrimental environmental consequences:** excessively reducing concentrations of nutrients could damage fisheries in some of Florida's most productive lakes; environmental restoration could become impractically expensive to undertake; reclaimed water projects could be stymied or cost prohibitive to communities and customers.

Conclusions

The DEP has been working diligently with the TAC and interested parties, such as Florida Farm Bureau, throughout the year to promulgate its proposed criteria. Until recently, the TAC had planned to take the numeric nutrient standard to the Environmental Regulatory Commission (ERC – the body which establishes water quality standards for the state) in October to meet EPA guidelines. **However, on August 19, 2009, the EPA entered into a consent decree in the federal lawsuit under which it would proceed to propose federal criteria for the state in January 2010 and adopt such rules by October 2010. With respect to numeric nutrient criteria for coastal waters and estuaries, the EPA would propose criteria by January 2011 and adopt criteria by October 2011.** As Secretary Sole has expressed, this turn of events has left the agency frustrated. “In light of that decision (by the EPA) to independently propose numeric criteria for Florida's waters, the Florida Department of Environmental Protection is considering whether it would be prudent to continue its own rulemaking efforts on this issue.”

The Secretary's frustration is understandable and certainly reflects the concerns and frustrations of Florida's agriculture industry, businesses, counties, cities, and utilities as we try to make sense out of what the state and federal governments will do regarding the establishment of these strict standards. We respectfully request our membership to contact their state leaders in Washington, Tallahassee and at local levels and ask them to intervene in these procedures and demand that statewide numeric nutrient criteria be established through a science-driven process with adequate time to address concerns and questions of regulated communities, and appropriate, realistic procedures and timeframes for achieving compliance.

01268-EPA-560

Scott Fulton/DC/USEPA/US

02/13/2010 01:09 PM

To Richard Windsor, Bob Sussman

cc Diane Thompson, Lisa Heinzerling

bcc

Subject CCR co-proposal issue

Hi Folks: I'm attaching the current draft of the memo on the CCR co-proposal issue. (b) (5)

(b) (5) Deliberative, (b) (5) Attorney Client

But thought you might want to have the benefit of the current draft to inform thoughts about the path forward. Cheers, Scott

(b) (5) Deliberative, (b)

(5) Attorney Client

ccr co-proposal ag sf edit clean.doc

01268-EPA-566

Avi Garbow/DC/USEPA/US

02/16/2010 01:40 PM

To , Richard Windsor

cc Scott Fulton, Heidi Ellis, Aaron Dickerson, Bob Sussman,
Bob Perciasepe, Mathy Stanislaus, Lisa Heinzerling, Cynthia
Giles-AA

bcc

Subject Coal Ash - C vs. D (analysis of co-proposal).xml

Administrator,

Attached is a slightly revised version of the document that Scott sent you earlier today - an analysis of the

(b) (5) Deliberative, (b) (5) Attorney Client

Obviously, we're available to discuss

this further at your convenience. Thanks.

Avi

Avi Garbow
Deputy General Counsel
U.S. Environmental Protection Agency
(202) 564-1917

(b) (5)
Deliberative, (b)
(5) Attorney Client

WRD0125.xml

01268-EPA-582

David
McIntosh/DC/USEPA/US
02/21/2010 10:22 AM

To windsor.richard
cc ganesan.arvin, oster.seth, ellis.heidi, goulding.robort
bcc

Subject Fw: RE: submitting questions for EPW hearing; coordinating

FYI, please see below and attached. Heidi, please include these materials in the Administrator's Monday night book.

-----Forwarded by David McIntosh/DC/USEPA/US on 02/21/2010 10:20AM

To: "Catherine Hazlewood" <chazlewood@tnc.org>, David McIntosh/DC/USEPA/US@EPA
From: "Matzner, Franz" <fmatzner@nrdc.org>
Date: 02/21/2010 08:19AM
cc: "Doniger, David" <ddoniger@nrdc.org>
Subject: RE: submitting questions for EPW hearing; coordinating

<<FINAL_DirtyAirActSENATEleg_FS0210.pdf>> <<CAA FINA Talking Points
011210-1.doc>> Dear David,

Per Catherine's email, please find below and attached a collection of materials the community has pulled together to address the Murkowski resolution. This material has been shared with selected offices on EPW. Also attached is a short set of questions that have been circulated to offices in advance of the EPA Budget hearing. Best, Franz

1) This link leads to a collection of fact sheets, letters, and statements covering the science and Murkowski amendments.
<http://www.usclimatenetwork.org/policy/dirty-air-act-amendment>

a. Please note Environment America's summary background factsheet for good framing.

b. Please note the NRDC David Doniger Blog which provides 7 rebuttal points to the following Murkowski arguments

i. The disapproval resolution "has nothing to do with the science of global climate change."

ii. The Clean Air Act was written by Congress to regulate criteria pollutants, not greenhouse gases."

iii. Senator Murkowski says she doesn't want to block federal clean car standards, but that's what her resolution would do

iv. Contrary to Senator Murkowski, the Clean Air Act will not cover hotels, hospitals, and other small sources.

v. Contrary to the senator, the courts are unlikely to force EPA to cover small sources.

vi. Senator Murkowski's "Lower 48" examples are power plants that broke today's rules for conventional pollutants, not greenhouse gases.

vii. Contrary to Senator Murkowski, the Clean Air Act will not block construction or operation of Alaskan pipelines and oil refineries.

c. Please note the Science tab, which has several UCS provided pieces

2) Attached: Top line talking points on Dirty Air Act

3) Attached: NRDC Fact Sheet on Murkowski Resolution. This covers three key arguments:

a. Overturning the Science

- b. Blocking the Clean Car Standards
- c. The Clean Air Act will only require emission controls that are available and affordable and will require them only on big polluters

Franz A. Matzner
Legislative Director
Climate Center
Natural Resources Defense Council
Office: 202-289-2365
Cell: (b) (6) Privacy

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-----Original Message-----

From: Catherine Hazlewood [<mailto:chazlewood@tnc.org>]
Sent: Friday, February 19, 2010 3:38 PM
To: McIntosh.David@epamail.epa.gov
Cc: Matzner, Franz
Subject: submitting questions for EPW hearing; coordinating

David -

Hope you are well. I'm ccing my colleague Franz Matzner at NRDC, who is currently pulling together some questions from the community at the request of friendly EPW staff in preparation for next week's budget hearing. Admittedly this is a bit late in the game for which I apologize, but I wanted to connect the two of you so that we in the community might ensure the best possible coordination, and get any advice you might have re messaging. If there's someone in leg affairs you suggest we additionally give the heads up to re questions, please let us know.

We're also hoping to sit down with Bettina et al early next week; but it might be too late for the hearing...

Franz's cell is (b) (6) Privacy ; mine is (b) (6) Privacy if you should want to get in touch.

Best,

Cat

█ - questions for EPW EPA budget hearing.doc █ - FINAL_DirtyAirActSENATEleg_FS0210.pdf
█ - CAA FINA Talking Points 011210-1.doc

NRDC Legislative Facts

Vote No on the Senate "Dirty Air Act":

Three Reasons to Maintain the Clean Air Act as a Strong Tool to Protect Us From Global Warming

The Clean Air Act has protected Americans from dangerous air pollution for 40 years. It has saved hundreds of thousands of lives and protected our lakes, forests, and other natural treasures from untold damage.¹ Now it is time to rely on this landmark law to help protect us from global warming. Doing so requires nothing but to do what we have done for other kinds of pollution: follow the science, act when pollution endangers our health and welfare, and use available and affordable technology to clean up the largest pollution sources—vehicles, power plants, and big factories. It's practical, effective, and affordable.

Now Senator Lisa Murkowski (R-AK) is proposing to dismantle the Clean Air Act as a tool to protect us from global warming: Her "resolution of disapproval" (S.J. Res 26), would overturn the Environmental Protection Agency's scientific finding that global warming pollution is dangerous to our health and welfare, and would prohibit the use of the Clean Air Act to protect us from that pollution.

The Murkowski disapproval resolution would harm the health and welfare of millions of Americans by blocking the use of the Clean Air Act to reduce global warming pollution. It would stop long-overdue action to hold the biggest polluters accountable for their global warming pollution and block investments to reduce America's oil dependence and jumpstart a vibrant clean energy economy.

THREE REASONS CONGRESS SHOULD REJECT THIS DIRTY AIR ACT

1. Congress should not veto modern science or block action to protect Americans' health from dangerous air pollution.

When Congress wrote the Clean Air Act, it wisely made science central to decision-making under the law. When science identifies new threats to health and the environment, the law requires that new steps be taken to protect the public. The Congress that wrote this law expected the EPA to act when new dangers arose without waiting for a later Congress to pass new laws.

Science has demonstrated that carbon dioxide and other greenhouse gases harm public health and the environment. In a landmark 2007 decision, the Supreme Court ruled that greenhouse gases are air pollutants under the plain terms of the Clean Air Act. The Court held that the EPA must take action if the administrator finds, based upon the science, that they are dangerous to public health and welfare.

That's the "endangerment finding" that Administrator Lisa Jackson made in December, based on a thorough scientific assessment and after reviewing hundreds of thousands of public comments. Overturning this scientific finding would be like vetoing the Surgeon General's report that smoking causes lung cancer.

Congress should not be denying modern science. And Congress should not cripple the Clean Air Act as a tool to respond to global warming.

2. The disapproval resolution would wreak havoc in the auto industry by blocking federal clean car standards supported by industry, labor, environmentalists and states.

In May 2009 President Obama announced an historic agreement on national clean car standards. These consensus standards set under the Clean Air Act will cut vehicles' carbon pollution by 30 percent, save consumers billions at the gas pump, reduce our dependence on foreign oil, and help the American auto industry rebuild by making cars and trucks that make sense for the 21st century. For the first time, the auto companies, labor, states, and environmentalists all have agreed on a path forward for cleaner, more efficient cars.

For more information,
please contact:
David Doniger
ddoniger@nrdc.org or
Franz Matzner
fmatzner@nrdc.org
(202) 289-6868



www.nrdc.org/policy

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Vote No on the Senate "Dirty Air Act": Three Reasons to Maintain the Clean Air Act as a Strong Tool to Protect Us From Global Warming

NRDC Legislative Facts

Massachusetts v. EPA

Sponsors of these bills wrongly claim that the EPA is acting without Congressional direction. But the Supreme Court ruled in 2007 that Congress wrote the Clean Air Act not only to remedy the air pollution problems known four decades ago, but also to address new dangers as science identifies them. The Court explained that Congress gave the EPA the responsibility to address all kinds of dangerous air pollutants, including greenhouse gases:

Indeed, the Act's sweeping definition of "air pollutant" includes "any air pollution agent or combination of such agents, including any physical, chemical ... substance or matter which is emitted into or otherwise enters the ambient air..." § 7602(g) (emphasis added). Carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons are without a doubt "physical [and] chemical ... substance[s] which [are] emitted into ... the ambient air." The statute is unambiguous.

Because greenhouse gases fit well within the Clean Air Act's capacious definition of "air pollutant," we hold that EPA has the statutory authority to regulate the emission of such gases from new motor vehicles.

If EPA makes a finding of endangerment, the Clean Air Act requires the agency to regulate emissions of the deleterious pollutant from new motor vehicles.

549 U.S. 487 (2007). Quoted passages are from pp. 528-29, 532, and 533.

The Murkowski disapproval resolution would wreak havoc for the automobile industry. Without the endangerment finding and the authority to limit greenhouse gases, the EPA could not issue these national clean car standards. Without those national standards, automakers would have to meet the state-level standards adopted by California and at least 13 other states. The national standards are a win-win, providing more emission reductions for the environment and national uniformity for the industry—benefits that would be lost if these bills succeed. That is why the Alliance of Automobile Manufacturers and the United Auto Workers support the new auto standards and why they opposed a similar effort to tamper with the Clean Air Act in the Senate last September.

3. The Clean Air Act will only require emission controls that are available and affordable and will require them only on big polluters; there will be no impact on hotels, hospitals, and other small sources.

Lobbyists for power plants and other big carbon polluters are peddling two falsehoods: issuing the endangerment finding and the clean car standards will lead to putting new burdens on hotels, hospitals, and homes, and will block big new power plants and industrial projects. Neither claim is true.

For decades, the Clean Air Act has required companies that build or expand big power plants and factories to get a construction permit showing that they will use technology that is available and affordable to limit dangerous pollutants such as sulfur dioxide, particulates, and nitrogen oxide.

When big new pollution sources are built or when big existing ones are expanded, it is just common sense to make sure that they use available and affordable technology to keep their pollution increase as small as reasonably possible. That idea has worked for conventional pollutants for decades, and it will work for greenhouse gases too.

So what will the owners of power plants, refineries, or other big facilities actually have to do?

- First, companies don't need construction permits to continue using current facilities, even if they run them at higher capacity.
- Second, if a company wants to expand its facility, it doesn't need a construction permit unless the facility's pollution levels are going to go up. Many factory improvements—removing process bottlenecks and increasing efficiency, for example—increase output without increasing emissions, and they will be unaffected.
- Third, when a company builds a new plant or an expansion project that *will* increase emissions, it only has to apply emission control measures that are available and affordable. Just as for other pollutants, if there are no feasible measures to cut carbon emissions, or if they are too costly, the permitting agency need not require them.

These are reasonable steps to take. Why would we want big new or expanded facilities to pollute more than they have to when affordable means exist to curb their emissions?

The EPA has no intention to put carbon controls on small sources, and the agency is carefully tailoring its regulations to assure that only the biggest carbon pollution sources—those emitting at least 25,000 tons per year—will be covered. So there will be no impact on schools, homes, hospitals, small businesses, or other small sources.

THE "DIRTY AIR ACT" WOULD PUT OUR HEALTH AND ENVIRONMENT AT RISK

The Murkowski dirty air proposal would deny modern science, wreak havoc in the auto industry, let big carbon polluters off the hook, and leave millions of Americans unprotected from the dangers of global warming. It would dismantle the protections we have and replace them with nothing. Instead of moving backwards, Senator Murkowski should roll up her sleeves and join the bipartisan efforts now underway to craft a comprehensive bill that creates jobs, reduces dependence on foreign oil, cuts the carbon pollution that threatens Americans' health and welfare, and complements the practical, effective, and affordable public health protection provided by the Clean Air Act.

Potential EPA Budget Hearing Questions
February 19, 2010

1. As stated in an EPA document entitled "The Clean Air Act Works" dated September 18, 2009, "Since 1990, emissions of six common pollutants are down 41%, while gross domestic product has grown 64%. Emissions of volatile organic compounds have dropped 31%, carbon monoxide dropped 46% and sulfur dioxide dropped 50%." These sound like dramatic reductions that point to the success of the Clean Air Act in preventing pollution. Can you give us an idea of how these emissions reductions have helped protect the public? Can you give us an idea of whether the benefits of enforcing the Clean Air Act have outweighed the costs?
2. More than a decade ago, on October 20, 1999, the International Center for Technology Assessment along with other environmental and renewable energy organizations petitioned EPA to regulate greenhouse gas emissions from on-road vehicles under the Clean Air Act. EPA and USDOT are expecting to move forward with new rules next month. The rules have the support of major U.S. automakers and other stakeholders. To what extent will EPA rely upon the Endangerment Finding as announced on December 7, 2009 in moving forward on clean cars? How is this regulation helpful financially to the auto industry and to the U.S. economy?
3. There is currently an effort by our friends on the other side of the aisle to stop EPA's Endangerment Finding from taking effect. Many are suggesting that EPA is somehow going to wreak havoc with the U.S. economy. Your answers to questions 1 and 2 above clearly indicate that pollution prevention has occurred without undue economic harm. What can you tell us about the cost/benefit of regulating greenhouse gasses and do those benefits include job creation potential from transitioning to a clean energy economy?
4. Critics of EPA action are also exaggerating the impacts of regulations that have yet to be announced. How has EPA responded to comments from the public, from state and local officials and from members of Congress regarding actions the agency has already taken? What concerns and praise has EPA been hearing from state and local officials and how does EPA intend to address feedback from these entities in forthcoming regulations of greenhouse gasses?
5. As EPA has stated, human activity has produced an overload of heat-trapping gasses in our atmosphere that is causing undeniable warming of the climate. What are the key scientific facts that support EPA's Endangerment Finding and how certain is EPA about the science and how long has EPA been looking at the science?

Core Messages on Murkowski Proposal

THIS LEGISLATION SHOULD BE CALLED THE DIRTY AIR ACT

More Pollution, less Security, No Accountability

- This assault on the Clean Air Act would put public health at risk and reverse efforts to hold polluters accountable, reduce America's oil dependence, and jump-start a vibrant clean energy economy. Murkowski's proposal should be called the Dirty Air Act.
- The Clean Air Act is a law with a nearly 40-year track record of cutting dangerous pollution to protect human health and the environment and spur innovation.

Additional Talking Points

Murkowski's Dirty Air Act protects big polluters by blowing an Alaska-sized hole in the clean air act, letting big oil and coal polluters off the hook by dropping requirements for power plants to use modern technology to reduce pollution and produce cleaner energy.

It keeps the U.S. hooked on and reliant on old, polluting energy technologies and delays investment in new clean energy technology, innovation and jobs, leaving China to lead the clean energy race.

It would delay implementation of a national clean energy and climate policy that would unleash billions of dollars in new investments in clean energy technology and innovation.

The Dirty Air Act will delay investment in clean energy technology and innovation, leaving the U.S. on the sidelines as other nations like China to lead the clean energy race.

A vote for the Dirty Air Act is a vote for more pollution, for protecting polluters, and against clean air. It is a vote that will move America backwards and roll back the progress we have made over the last 40 years.

The Dirty Air Act is being crafted in secret by Washington lobbyists working for the big polluters.

Instead of replacing the Clean Air Act with Murkowski's Dirty Air Act, the Senate needs to pass comprehensive clean energy and climate legislation to create 1.9 million jobs, unleash innovation and create whole new clean energy based industries.

01268-EPA-583

Arvin Ganesan/DC/USEPA/US

To Richard Windsor

02/21/2010 01:56 PM

cc Barbara Bennett

bcc

Subject approps oral testimony

Hope you're enjoying the nice weather.

I've attached our take at the oral testimony for your approps hearings starting on Tuesday. I'll try to find 10 minutes to go through it tomorrow with you.

Thanks.

ARVIN R. GANESAN
Deputy Associate Administrator
Congressional Affairs
Office of the Administrator
United States Environmental Protection Agency
Ganesan.Arvin@epa.gov

(p) 202.564.520 (b) (5)
Deliberative
(f) 202.501.1519 EPA 2011 budget oral final

01268-EPA-584

Arvin Ganesan/DC/USEPA/US

To Richard Windsor

02/21/2010 02:12 PM

cc Barbara Bennett

bcc

Subject dicks meeting

I'll get this into your book tomorrow, but here's a quick one pager for the dicks meeting. We

(b) (5) Deliberative

Thanks.

ARVIN R. GANESAN
Deputy Associate Administrator
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United States Environmental Protection Agency
Ganesan.Arvin@epa.gov

(p) 202.564.5200

(f) 202.501.1519

(b) (5)
Deliberative

meetig with dicks.doc

01268-EPA-587

Arvin Ganesan/DC/USEPA/US

To Richard Windsor

02/22/2010 07:50 PM

cc Barbara Bennett

bcc

Subject updated oral testimony

Hi Administrator,

I've made some changes to the oral as you suggested and it is attached. I've pared it down significantly and I just read through it and got clocked at 5 minutes. I've also bolstered the transitions. If you have some time, can you read through this?

Thanks.

(b) (5) Deliberative

EPA 2011 budget oral final arg.doc

**TESTIMONY OF
LISA P. JACKSON
ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE**

February 23, 2010

(b) (5) Deliberative

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(b) (5) Deliberative

The text "(b) (5) Deliberative" is followed by six large black rectangular redaction boxes of varying lengths, completely obscuring the text underneath.

Thank you for allowing me to briefly go through the highlights of EPA's FY 2011 budget. I'd be happy to answer any questions you may have.

ARVIN R. GANESAN
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(f) 202.501.1519

01268-EPA-595

Seth Oster/DC/USEPA/US

To Richard Windsor

02/26/2010 01:23 PM

cc Diane Thompson, Heidi Ellis, Allyn Brooks-LaSure

bcc

Subject Fw: Invitation for Administrator Jackson

Administrator -- I'm flagging this for you, because Kathleen Rogers of Earth Day Network has invited you to attend an Earth Day-related event in Morocco (which I understand may have come up last week in discussions). (b) (5) Deliberative

[Redacted]

Your decision, of course, and I'll now turn it over to Heid for further processing. But since it's so soon, I wanted to make sure you have this immediately.

(b) (5) Deliberative [Redacted]

[Redacted]

Seth

Seth Oster
Associate Administrator
Office of Public Affairs
Environmental Protection Agency
(202) 564-1918
oster.seth@epa.gov

----- Forwarded by Seth Oster/DC/USEPA/US on 02/26/2010 01:17 PM -----

From: "Kathleen Rogers" <rogers@earthday.net>
To: Seth Oster/DC/USEPA/US@EPA
Date: 02/26/2010 12:16 PM
Subject: Invitation for Administrator Jackson

Seth,

Good afternoon, and greetings from Earth Day Network. I hope this message reaches you well.

I have attached a PDF copy of a letter inviting Administrator Jackson to several of the events we are arranging around Earth Day 2010 - some here in Washington, DC and some in Rabat, Morocco. I thank you for your assistance in ensuring that this letter reaches the right hands.

Have a good day and a wonderful weekend.

Sincerely,
Kathleen Rogers
President

Earth Day Network
1616 P Street, NW, Suite 340

Washington, DC 20036
Tel: (202) 518 0044 x 200
Fax: (202) 518 8794
Register to Vote Here!

"Earth Day: Every Day for Everybody"
Register your Earth Day Event at: www.earthday.net



Lisa Jackson Invitation_Morocco_FINAL.pdf

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Mrs. Gaylord Nelson

Shaquille O'Neal

Dr. Rajendra Kumar Pachauri

John Podesta

Carl Pope

Ambassador Mohamed Sahnoun

U.S. Senator Bernard Sanders

Larry Schweiger

Martin Scorsese

Jigar Shah

James Gustave Speth

Barbra Streisand (Co-Chair)

Ted Turner

Edward O. Wilson

Abdelkbir Zahoud

Earth Day Network
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Washington, D.C. 20036
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www.earthday.net

February 26, 2010

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

Dear Administrator Jackson:

As a leading voice on the environment, we are honored to invite you to join us as featured speaker at three major events that we are organizing to commemorate the 40th anniversary of Earth Day: the "Creating Climate Wealth Conference" in Washington, DC April 20-21st; the Day of Celebration for Earth Day 2010 in Rabat, Morocco on Saturday, April 24th (as well as the press conference announcing the event in Washington, DC on Wednesday, March 10); and our flagship Earth Day on the National Mall event in Washington, DC on Sunday, April 25th.

Earth Day Network is partnering with Sir Richard Branson's Carbon War Room to present the "Creating Climate Wealth" Conference. This two day event will convene 300 top entrepreneurs in DC to identify the policies and market mechanisms and create the roadmap for saving gigatons of carbon while creating jobs. We will be inviting key representatives from the Administration to engage in a dialogue with these entrepreneurs about their ideas. We invite you to present the keynote speech at the gala for this event on the evening of April 20th or to present a keynote address during the conference.

Earth Day Network is especially honored to invite you to participate in the Day of Celebration for Earth Day 2010 in Rabat, Morocco on April 24th and the press conference in Washington, DC on March 10th announcing Earth Day Morocco. The Kingdom of Morocco will be the very first African, Muslim and Arab nation to commit at the highest level of government to carry out a national Earth Day Event. King Mohammed VI of Morocco has made a personal commitment to carry out a national Earth Day event in 2010 and has declared a national campaign for environmental awareness. The King has shown an extraordinary commitment to the Earth's environment by announcing that he is formulating a National Charter on the Environment. He will be signing this Charter on Earth Day April 22, 2010 as part of the 40th anniversary commemoration of Earth Day.

Morocco also has made a commitment to a green economy and renewable energy, evidenced by its recently-announced \$9 billion dollar investment in solar energy that was recognized by Secretary of State Hillary Clinton. Moreover, King Mohammed has launched a project to plant one million palm trees by 2015. The country expects to have renewable energies account for 38% of the country's overall energy production by 2020.

As evidence of the importance Morocco places on these developments, they will be sending the Princess Lalla Hasnaa, President of the Mohammed VI foundation for environment, Mr. Abdelkébir Zahoud, Secretary of State in charge of Water Resources and Environment the Undersecretary of Environment, and H.E. Aziz Mekouar, the Ambassador of Morocco to the United States among other high level dignitaries from the country to participate in the press conference. The Day of Celebration in Rabat will feature top performing talent, prominent political and environmental leaders from around the world.

Finally, we invite you to speak to the nation and the world at our Sunday, April 25th climate rally. This capstone event will follow ten days of exhibits and commemorative activities on the Mall as well as volunteer Days of Service on April 17-18 around the country and a Day of Action on April 22 featuring town halls conducted by local officials on the green economy and sustainability. Top performing artists, prominent politicians and policy makers, as well as key voices in the environmental movement will appear on stage. Major national networks - including CNN - covered our event on the Mall live last year. We expect even wider coverage this year.

We would be deeply honored to have you speak at these events and focus national and global attention on the environmental agenda. We are willing to try to best accommodate your schedule and even arrange transportation so that you could participate in both the Day of Celebration event in Morocco on the April 24th and flagship National Mall event on April 25th. We thank you for your consideration of this invitation and look forward to hearing from you.

Sincerely,

Kathleen Rogers
Kathleen Rogers
President

01268-EPA-598

Arvin Ganesan/DC/USEPA/US

To Richard Windsor

02/28/2010 10:40 AM

cc Barbara Bennett

bcc

Subject Memo for meeting with Senator Feinstein

Administrator, I'll also be putting this in your book tomorrow am for your meeting with Feinstein. The main theme of this meeting will be climate and David has given you a supplemental memo.

Thanks.

ARVIN R. GANESAN
Deputy Associate Administrator
Congressional Affairs
Office of the Administrator
United States Environmental Protection Agency
Ganesan.Arvin@epa.gov

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Deliberat
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meeting with feinstein.doc

01268-EPA-600

David McIntosh/DC/USEPA/US
03/01/2010 04:40 PM

To Richard Windsor
cc
bcc

Subject Fw: climate Q and A and other documents for Administrator's book tonight

FYI

----- Forwarded by David McIntosh/DC/USEPA/US on 03/01/2010 04:40 PM -----

From: David McIntosh/DC/USEPA/US
To: Robert Goulding/DC/USEPA/US@EPA, Heidi Ellis/DC/USEPA/US@EPA
Cc: Arvin Ganesan/DC/USEPA/US@EPA
Date: 03/01/2010 04:40 PM
Subject: climate Q and A and other documents for Administrator's book tonight

Hi Rob and Heidi,

Attached, for the Administrator's book tonight, is the current draft of climate Q&A for Wednesday's hearing. She indicated this morning that she might want to get a head start tonight on reviewing this Q&A. Also attached is another copy (identical to the corrected one that I sent you at 12:46) of the single sheet of key numbers. Finally, I've also attached the Rockefeller letter, the Administrator's response to the Rockefeller letter, and Senator Murkowski's January Senate floor speech. I'd suggest putting all 5 of these documents in the Administrator's book tonight.

Thanks,
David

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(b) (5) Deliberative



Climate Q&A for Senate Approps Hearing.doc Key Numbers 3.doc 2010_0219 Letter to Lisa Jackson.pdf



Rockefeller.pdf Murkowski Jan 2010 Floor Speech.pdf



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 22 2010

THE ADMINISTRATOR

The Honorable Jay D. Rockefeller IV
United States Senate
Washington, D.C. 20510

Dear Senator Rockefeller:

Thank you for your letter of February 19, 2010, concerning the Environmental Protection Agency's (EPA's) work to comply with the Supreme Court's decision in *Massachusetts v. EPA* while providing a manageable path forward for businesses and state governments. I share your goals of ensuring economic recovery at this critical time and of addressing greenhouse-gas emissions in sensible ways that are consistent with the call for comprehensive energy and climate legislation. My full response to your letter appears below and in the enclosed document.

Many of the comments and questions you offer are similar to ones that EPA received during recent public comment periods. As EPA staff works to respond to those comments, I am happy to share information with you here in order to answer the questions in your letter as completely as I can. The decision-making process has moved far enough along that I can make several central points based on modifications I expect to make in finalizing EPA's previous proposals:

- The United States Supreme Court held three years ago in *Massachusetts v. EPA* that greenhouse gases are air pollution and are subject to regulation under the Clean Air Act. EPA must follow the Supreme Court's holding, as you recognize in your letter.
- By April of this year, I expect to take actions to ensure that no stationary source will be required to get a Clean Air Act permit to cover its greenhouse gas emissions in calendar year 2010.
- Based on those anticipated actions, I expect that EPA will phase-in permit requirements and regulation of greenhouse gases for large stationary sources beginning in calendar year 2011. In the first half of 2011, only those facilities that already must apply for Clean Air Act permits as a result of their non-greenhouse gas emissions will need to address their greenhouse gas emissions in their permit applications.
- Further, I am expecting that greenhouse gas emissions from other large sources will phase in starting in the latter half of 2011. Between the latter half of 2011 and 2013, I expect that the threshold for permitting will be substantially higher than the 25,000-ton limit that EPA originally proposed. In any event, EPA does not intend to subject the smallest sources to Clean Air Act permitting for greenhouse-gas emissions any sooner than 2016.

- You asked in your letter what the result would be if Senator Lisa Murkowski's resolution of disapproval of EPA's endangerment finding were enacted. One result would be to prevent EPA from issuing its greenhouse gas standard for light-duty vehicles, because the endangerment finding is a legal prerequisite of that standard. The impacts of that result would be significant. In particular, it would undo an historic agreement among states, automakers, the federal government, and other stakeholders. California and at least thirteen other states that have adopted California's emissions standards likely would enforce those standards within their jurisdictions,¹ leaving the automobile industry without the explicit nationwide uniformity that it has described as important to its business.²

Background

Three years ago, the Supreme Court held in *Massachusetts v. EPA* that the term "air pollutant" in the Clean Air Act includes greenhouse gases.³ The Court also held that the Act requires EPA to consider the science of climate change meaningfully in determining whether greenhouse-gas pollution endangers public health or welfare.⁴ As a result of the Court's decision, EPA became obligated to treat greenhouse-gas emissions as air pollution under the Clean Air Act and to engage with the best available science in determining whether those emissions endanger Americans' health or welfare. After EPA staff conducted a comprehensive survey of the soundest available science and carefully reviewed hundreds of thousands of public comments, I determined last December that greenhouse-gas emissions do endanger Americans' health and welfare.⁵

As you know, I am not alone in having reached that conclusion. The U.S. Global Change Research Program, which consists of thirteen federal departments – including the National Science Foundation, the Department of Health and Human Services, and the Departments of Commerce, Agriculture, Defense, Energy, and the Interior – found last June that risks to human health will increase as a result of human-induced global warming.⁶ The U.S. Senate itself has twice passed, on a bipartisan basis, a resolution finding that greenhouse-gas accumulation from human activity poses a substantial risk of increased frequency and severity of floods and droughts.⁷

EPA's endangerment finding obligates the agency, under Section 202(a) of the Clean Air Act, to issue greenhouse-gas emissions standards for motor vehicles.⁸ EPA will begin to discharge that

¹ <http://www.epa.gov/otaq/climate/regulations/air-resources-board.pdf>.

² See *Patchwork Proven*, National Automobile Dealers Association (January 2009).

³ 549 U.S. 497, 528-29, 532-33 (2007).

⁴ *Id.* at 534-35.

⁵ 74 Fed. Reg. 66495, *et seq.* (December 15, 2009).

⁶ <http://downloads.globalchange.gov/usimpacts/pdfs/climate-impacts-report.pdf>

⁷ See Energy Policy Act of 2005; Energy Independence and Security Act of 2007.

⁸ See Clean Air Act Section (202)(a)(1), 42 U.S.C. § 7521(a)(1).

duty late next month, by issuing greenhouse-gas emissions standards for Model Year 2012-2016 light-duty motor vehicles.⁹

At the same time that EPA issues its light-duty-vehicle emissions standard, the Department of Transportation will issue a rule raising the existing fuel-economy standards for the same vehicles.¹⁰ Together, the EPA and DOT standards will reduce the lifetime oil consumption of the affected vehicles by 1.8 billion barrels while eliminating 950 million metric tons of greenhouse-gas pollution.¹¹ The government of California has agreed to recognize vehicles that comply with the EPA rule as complying with the state's greenhouse-gas emissions standard. As a result, the automakers will be able to operate with the nation-wide regulatory uniformity that they have sought.

The implementation of EPA's light-duty vehicle standard will make greenhouse-gas emissions subject to regulation under the Clean Air Act for the first time. Under the Act's text, air pollutants that are subject to regulation under the statute are subject to the Act's "prevention of significant deterioration" and operating-permit provisions for stationary sources.¹²

Mindful of that legal consequence, and in order to provide clarity for states and businesses, EPA has been working to complete two rulemakings. The agency has received many thoughtful comments on those two rulemakings – from citizens, States, localities, industry representatives, and environmental groups. The agency's upcoming actions will reflect and incorporate valuable information and constructive suggestions that EPA received during the public comment periods, and thus will improve substantially upon the agency's initial proposals.

The first action will conclude EPA's reconsideration of a memorandum that former EPA Administrator Stephen Johnson issued in 2008. I anticipate that the final action on reconsideration will explain that greenhouse-gas emissions will become "subject to regulation" under the Clean Air Act, such as to make them a part of the Act's stationary-source permitting programs, in January of 2011, when Model Year 2012 light-duty vehicles will need to comply with EPA's greenhouse-gas emissions standard. As a result of that final action, no facility will need to address greenhouse-gas emissions in Clean Air Act permitting before 2011.

The second action will promulgate what has become known as the tailoring rule. I describe that action in detail at the outset of this letter.

I have already described the impact of enactment of Senator Lisa Murkowski's resolution of disapproval of EPA's endangerment finding on the light-duty vehicle standard and the historic agreement among states, automakers, the federal government, and other stakeholders. Moreover, a vote to vitiate the greenhouse-gas endangerment finding would be viewed as a vote to reject the

⁹ See 74 Fed. Reg. 49453, *et seq.* (September 28, 2009).

¹⁰ See *id.*

¹¹ <http://yosemite.epa.gov/opa/admpress.nsf/d0cf6618525a9efb85257359003fb69d/522d0a809f6b7f9c8525763200562534!OpenDocument>

¹² See, e.g., Clean Air Act Section 169(3), 42 U.S.C. § 7479(3) ("each pollutant subject to regulation under this chapter").

scientific work of the thirteen U.S. government departments that contribute to the U.S. Global Change Research Program. It also would be viewed by many as a vote to move the United States to a position behind that of China on the issue of climate change, and more in line with the position of Saudi Arabia.

Attached, please find responses to those of your questions that are not addressed above. Thank you again for your letter. I appreciate this opportunity to update you on EPA's work to comply with the Supreme Court's decision in *Massachusetts v. EPA* while providing a manageable path forward for businesses and state governments.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa P. Jackson", with a long horizontal flourish extending to the right.

Lisa P. Jackson

Enclosure

What is your assessment of the likelihood of the tailoring rule surviving already announced legal challenges?

EPA would not have issued its initial tailoring rule proposal if I did not believe that it was lawful. Oddly, certain advocacy organizations that purport to speak for businesses are the only ones who have threatened to challenge the tailoring rule in court. My assessment is that those challenges, if they are filed, will fail. If my assessment were otherwise, I would not promulgate the tailoring rule.

Currently, PSD regulations are applied to fewer than 400 facilities per year for pollutants such as ozone. How many facilities would be required to obtain permits under GHG regulation under the Clean Air Act?

None in 2010. For the first half of 2011, fewer than 400, because only facilities undergoing permitting for other pollutants would need to address greenhouse-gas emissions in permitting.

Large electric generators using domestically produced coal and natural gas are uncertain about potential "Best Available Control Technology" or "BACT" standards for carbon dioxide (CO₂). What does EPA expect coal and natural gas plant operators to do if there is no standard? What process will you use to determine such standards and the range of options for such facilities given the pre-commercial standing of current CO₂ abatement technologies such as carbon capture and storage (CCS)?

EPA continues to review and analyze options for defining Best Available Control Technology (BACT) for greenhouse-gas emissions. The additional time that EPA will have before permitting requirements will take effect will enable the agency and stakeholders to consider this issue carefully and thoughtfully. EPA's goal will be to identify practical, achievable, and cost-effective strategies for minimizing emissions increases from new facilities and major modifications, recognizing the importance of those projects to the economy and job creation. The agency would of course apply the well-developed framework that exists for determining BACT for non-greenhouse-gas pollutants. One of the factors that is applied under that framework is the commercial availability of a given control technology. EPA is closely following efforts to make integrated systems for capturing, transporting, and storing CO₂ from coal-fueled electricity generating facilities commercially available. The agency would expect to carefully consider the state of development of this technology in considering options for BACT.

There is genuine concern from the domestic oil and gas industries, from entities operating at the wellhead to pipeline operators, processing plants, and refiners, that they will be severely disadvantaged in the world marketplace by stationary source regulations. Can you characterize how these regulations will translate into costs for these industries? Has your agency analyzed or will you consider the impacts on competitiveness that these costs could have on these industries?

The feasibility and commercial availability of a technology are certainly analyzed in any BACT process, and both feasibility and commercial availability are relevant to competitiveness.

Comprehensive clean energy legislation must ensure a robust US manufacturing base for clean energy production, invest in US research and development of new clean energy technologies, and mitigate costs to energy-intensive and trade-exposed industries. If EPA regulates GHGs for stationary sources, what are the direct and indirect cost implications for industrial sources of Clean Air Act prevention of significant deterioration (PSD) regulations? Has your agency analyzed or will you consider so-called "carbon leakage" and the competitiveness impacts of these costs on these industries? Will your agency public impact analyses on these critical issues prior to implementing the regulation?

EPA has evaluated the impacts of clean energy legislation on energy-intensive and trade-exposed industries as a part of our larger analysis of the Waxman-Markey bill (H.R. 2454) in June 2009. In addition, EPA participated in the Administration's interagency assessment of the implications of climate policy on U.S. competitiveness, titled "The Effects of H.R. 2454 on International Competitiveness and Emission Leakage in Energy-Intensive Trade-Exposed Industries" (December 2009). The report shows that under the allowance allocations made available in H.R. 2454 for the energy-intensive trade-exposed industries, the impact of comprehensive energy and climate legislation is effectively nil on the production costs for these industries. Even in the absence of the H.R. 2454 allowance allocations, these industries would bear only modest impacts on production costs (less than 3 percent increase) under an allowance price of \$20 per ton. PSD costs would be only a small factor in the cost structure of the industry. Moreover, facilities in these sectors are already subject to PSD for other pollutants.

How would a resolution striking down the endangerment finding affect EPA's ability to provide resources or technical expertise intended to address and adapt to climate change effects, including, but not limited to: Efforts to analyze climate and weather variability and its effects on agriculture, fisheries, species habitats, and coastal development among communities along the Gulf Coast and elsewhere; research programs related to climate change effects on mountain snowpack throughout the Pacific Coast and Mountain West regions; and the infrastructure, energy, and socioeconomic implications of relocating Alaska communities due to historically unprecedented coastal erosion?

You raise a very significant question. EPA has not had time to determine the answer. EPA would certainly try to help those threatened communities even if Congress vitiated the endangerment finding. As of this writing, however, I cannot guarantee that enactment of such a resolution would have no negative impact on those efforts.

United States Senate

WASHINGTON, D.C. 20510

February 19, 2010

The Honorable Lisa P. Jackson
Administrator
Environmental Protection Agency
Washington, DC 20460

Dear Administrator Jackson:

We write with serious economic and energy security concerns relating to the potential regulation of greenhouse gases (GHGs) from stationary sources under the Clean Air Act. Ill-timed or imprudent regulation of GHGs may squander critical opportunities for our nation, impeding the investment necessary to create jobs and position our nation to develop and produce its own clean energy. We need a clear understanding of how you view your agency's responsibilities and the processes by which you intend to carry them out in order to represent the workers, industries, taxpayers, and economic interests of our states.

We understand that in order to comply with the 2007 Supreme Court decision in *Massachusetts v. EPA*, your agency issued a determination that greenhouse gases may reasonably be anticipated to endanger public health and welfare. We also understand that this determination, also known as an endangerment finding, is the first step in the rulemaking process for regulation of greenhouse gas emissions from new motor vehicles, which was the subject of *Massachusetts v. EPA*, and we support moving forward with a single national standard for this purpose.

Nevertheless, we remain concerned about the possible impacts on American workers and businesses in a number of industrial sectors, along with the farmers, miners, and small business owners who could be affected as your agency moves beyond regulations for vehicle greenhouse gas emissions to implement regulations to curtail GHG pollution from stationary sources. We understand that with the endangerment finding in place, the EPA has the obligation to regulate GHG emissions from stationary sources under the Act's prevention of significant deterioration (PSD) provisions related to existing operating permit programs. We have a responsibility to the workers and industries in our states to address both your agency's timetable for the implementation of these stationary source regulations, and what you intend the exact requirements for businesses to be.

As you are undoubtedly aware, there are legislative efforts in the House and Senate seeking to disallow further agency action based on the endangerment finding. As we consider those legislative initiatives and the larger issues of economic stability and carbon regulation, we need clarification from you on a number of key questions to provide certainty to stakeholders in our states who out of necessity must make long-term capital investment decisions. Putting these investments at risk would further destabilize the economy. Therefore, we request that you promptly respond to the following information requests and questions to assist us in taking the proper course of action for our constituents:

- 1) Given the serious nature of potential regulation and businesses' need for certainty, please provide us with a precise understanding of when you plan to proceed with any regulation of greenhouse gas emissions from stationary sources, and when and how the U.S. Congress would be able to review and address these regulations.
- 2) Is it your reading of Senate Joint Resolution 26 (introduced on January 21, 2010) that it would essentially nullify EPA's endangerment finding? If so, how would this affect EPA's ability to regulate both mobile sources as well as stationary sources?
- 3) Please describe what EPA intends to accomplish with the "tailoring rule," which you announced on September 30, 2009. How will this rule affect your implementation of the Clean Air Act on stationary sources of emissions? Do smaller-scale emitters of these gases, from family farms to neighborhood dry cleaners to hospital power plants, need to be concerned with these regulations? What is your assessment of the likelihood of the tailoring rule surviving already announced legal challenges? Currently, PSD regulations are applied to fewer than 400 facilities per year for pollutants such as ozone. How many facilities would be required to obtain permits under GHG regulation under the Clean Air Act?
- 4) In light of the multiple legislative options before Congress related to EPA's endangerment finding, what is EPA's plan to respond to concerns these proposals raise? How would passage of various resolutions affect the agency's ongoing efforts to engage in preparatory work designed to help policymakers understand how future comprehensive climate and energy legislation would affect potentially regulated entities?
- 5) Large electric generators using domestically produced coal and natural gas are uncertain about potential "Best Available Control Technology" or "BACT" standards for carbon dioxide (CO₂). What does EPA expect coal and natural gas plant operators to do if there is no standard? What process will you use to determine such standards and the range of options for such facilities given the pre-commercial standing of current CO₂ abatement technologies such as carbon capture and storage (CCS)?
- 6) There is genuine concern from the domestic oil and gas industries, from entities operating at the wellhead to pipeline operators, processing plants, and refiners, that they will be severely disadvantaged in the world marketplace by stationary source regulations. Can you characterize how these regulations will translate into costs for these industries? Has your agency analyzed or will you consider the impacts on competitiveness that these costs could have on these industries?
- 7) Comprehensive clean energy legislation must ensure a robust US manufacturing base for clean energy production, invest in US research and development of new clean energy technologies, and mitigate costs to energy-intensive and trade-exposed industries. If EPA regulates GHGs for stationary sources, what are the direct and indirect cost implications for industrial sources of Clean Air Act prevention of significant deterioration (PSD) regulations? Has your agency analyzed or will you consider so-called "carbon leakage" and the competitiveness impacts of these costs on these industries? Will your agency publish impact analyses on these critical issues prior to implementing the regulation?
- 8) How would a resolution striking down the endangerment finding affect EPA's ability to provide resources or technical expertise intended to address and adapt to climate change effects, including,

but not limited to: Efforts to analyze climate and weather variability and its effects on agriculture, fisheries, species habitats, and coastal development among communities along the Gulf Coast and elsewhere; research programs related to climate change effects on mountain snowpack throughout the Pacific Coast and Mountain West regions; and the infrastructure, energy, and socioeconomic implications of relocating Alaska communities due to historically unprecedented coastal erosion?

The President and you have been explicit in calling on Congress to pass comprehensive legislation that would enhance our nation's energy and climate security. We strongly believe this is ultimately Congress' responsibility, and if done properly, will create jobs, spur new clean energy industries, and greatly advance the goal of U.S. energy independence. If done improperly, these opportunities could be lost.

Thank you for your attention to this matter. We look forward to your prompt response.

Jay Byrnes

Mark Begich

Shirley Brown

Lou Lomenzo

Bob Casey, Jr.

Robert Byrd

Chris Christie

Myrland Baucus

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Go

United States Senator Lisa Murkowski

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Recent Speeches and Floor Statements

Thursday January 21 2010

Floor Speech: Murkowski Introduces EPA Disapproval Resolution

As Prepared for Delivery

"Mr. President, over the past five months I've repeatedly expressed concern about the Environmental Protection Agency's decision to issue back-door climate regulations under the Clean Air Act. I spoke at length about this issue here on the Senate floor in September, and then again in December. I've also discussed it with dozens of groups, from all across the political spectrum, and found there is remarkably widespread agreement with my views.

"As the EPA moves closer and closer to issuing these regulations, I continue to believe that this command-and-control approach is our worst option for reducing the emissions blamed for climate change. I also believe that with so much at stake, Congress must be given time to develop an appropriate and more responsible solution. And so today, after consultation with the Parliamentarian, I have come to the floor to introduce a resolution of disapproval under the Congressional Review Act that would prevent the EPA from acting on its own. Senator Lincoln of Arkansas, Senator Nelson of Nebraska, and Senator Landrieu of Louisiana have joined me as cosponsors of this bipartisan resolution, as have 35 of my Republican colleagues.

"I've also come to the floor to re-affirm and re-emphasize my previous remarks on this issue. Given what has been alleged about my intentions, I believe this debate needs to be directed back to its substance, and away from the ad hominem attacks and red herrings that have been thrown out in recent weeks. There is a legitimate and substantive debate to be had over whether the EPA should be allowed to issue command-and-control climate regulations, and I welcome that debate. If there are any Senators who support the unprecedented, regulatory intrusion that the EPA is pursuing, then I hope those members will come to the floor and explain why. I strongly oppose that approach, however, and I hope my colleagues will listen to my explanation as to why I feel as strongly about this issue as I do.

"Our bipartisan resolution deals with an incredibly important question: whether or not members of this body are comfortable with the actions EPA will take under its current interpretation of the Clean Air Act. I'm not comfortable with those actions, and neither are the Senators who have already agreed to add their names to this effort. The Clean Air Act was written by Congress to regulate criteria pollutants, not greenhouse gases, and its implementation remains subject to oversight and guidance from elected representatives. We should continue our work to pass meaningful energy and climate legislation, but in the meantime, we cannot turn a blind eye to the EPA's efforts to impose back-door climate regulations with no input from Congress.

"The decision to offer this resolution was brought about by what will happen in the wake of the EPA's decision to issue the endangerment finding. You see, it is not merely a "finding." It's actually a floodgate, and under the guise of protecting the environment, it's set to unleash a wave of damaging new regulations that will wash over and further submerge our struggling economy.

"Make no mistake: if Congress allows this to happen, there will be severe consequences. Businesses will be forced to cut jobs, if not move outside our borders or close their doors for good. Domestic energy production will be severely restricted, increasing our dependence on foreign suppliers and threatening our national security. Housing will become less affordable, and consumer goods more expensive, as the impacts of the EPA's regulations are felt in towns and cities and on farms all across America.

"My home state is a perfect example of why we must proceed with utmost caution. If these regulations are allowed, the consequences for Alaska would be devastating. Hundreds of facilities will be subject to much greater regulation, including large hotels, hospitals, fish processors, and mines. Energy-intensive businesses throughout the state will be forced to acquire, install, and operate new equipment and technologies. In many cases, that will prove impossible because the technologies are too expensive or simply do not exist.

"Because the EPA's proposed regulations are such a blunt tool, they will hit my home state's energy sector particularly hard. The continued operation of existing businesses and future endeavors alike - including Alaska's three refineries, the Trans-Alaska Pipeline System, or TAPS, and the proposed Alaska Natural Gas Pipeline - will all be jeopardized.

"Take for example the Flint Hills refinery, located just south of Fairbanks. This refinery purchases royalty oil out of the pipeline at premium rates, which is critically important to the continued operation of TAPS itself. That 800-mile long pipeline has been challenged by decreasing

throughput, as lower volumes take longer than ever to arrive from the North Slope. Oil is also arriving at Flint Hills at a lower temperature than it used to, which requires more energy to heat and crack the crude oil into the marketable fuels that Alaskans depend on.

"The Flint Hills refinery already struggles to keep its jet fuel output at competitive rates in order to maintain Anchorage's status as a major center for global air cargo. It also faces a relatively inelastic market in Alaska for its other fuel products. The EPA will likely be unable, and in any event unwilling, to address these issues under its command-and-control climate regulations.

"The construction and operation of an Alaska Natural Gas Pipeline would also be significantly hobbled by the EPA. The main reason for this relates to compressor stations, which maintain a pipeline's pressure and enable movement of the gas. There is no known best available control technology, as required under the Clean Air Act, for reducing carbon dioxide emissions from compressors and no good options for compliance.

"I can't overstate how important these facilities and projects are to Alaska and America. Our refineries help ensure the state's status as a transportation hub and a strategic base for military operations. TAPS delivers hundreds of thousands of barrels of oil to Americans each day and most of the revenue for Alaska's state budget. The proposed natural gas pipeline is a pillar of our future economy that will bring Americans billions of cubic feet of clean-burning natural gas. And collectively, these projects mean well-paying jobs for thousands of hard-working Alaskans.

"While the EPA's endangerment finding may be described as an effort to protect the environment, it would actually damage the very foundations of my home state's economy. And Alaska isn't the only state that will face dire economic consequences. I know that some members may not be particularly concerned about what happens in my state, but I hope they will consider the ripple effect of this decision - and the heavy economic burden it will place on those throughout the Lower 48.

"This was foreshadowed in New Mexico in September; in Kentucky, in December; and in Arkansas just last week. The EPA has ordered regulators in each of those states to go back to the drawing board on plans to build new power plants. These decisions were all the result of this EPA's interpretation of the Clean Air Act, and represent a fundamental departure from the permitting process Congress envisioned for this statute.

"The implications are clear. The people who live in those states are already feeling the effects. Construction is being delayed. Jobs are not being created or, more importantly, filled. Commerce is suffering, and depending on what becomes of these proposed plants, local residents may have to brace for a spike in energy prices, as well.

"Seen in this light, the EPA's regulations will not only add a thick new layer of federal bureaucracy, but also serve to depress economic activity - to slow it down, to make it more expensive, to render it less efficient. If you thought the recession made for good environmental policy, I expect you'll love what the EPA has in store. Obtaining federal air permits is already an exercise in administrative agony that can take years and cost millions of dollars - and that's before the existing system is overwhelmed by millions of new applicants.

"Instead of accepting that the Clean Air Act is not appropriate for this task, the EPA has proposed to lift its regulatory thresholds to 25,000 tons per year for greenhouse gases. That represents a clear departure from the statute's explicit requirements, and has opened the agency to litigation - costly, time-consuming, and endlessly frustrating litigation. Lawsuits are already being prepared against the EPA's so-called "tailoring" proposal. When the final rule is issued, it will be challenged. I expect the courts will then reject it, as it has no legal basis, and restore the regulatory thresholds to 100 tons and 250 tons per year. Before long, the agency will find itself mired in the regulatory nightmare it has sought to avoid.

"Again, it's hard not to find this both surreal and deeply disturbing. The national unemployment rate has spiked to 10 percent. Yet, here in Washington federal bureaucrats are contemplating regulations that will destroy jobs, while millions of Americans are doing everything they can just to find one. Moreover, given the amount of time it has taken the Senate to consider health care, and the list of other bills waiting to be considered, it appears that there will not be enough time for Congress to debate energy and climate legislation before the EPA takes action. That means that the people of our states have no voice in this process. They will be subject to rules and regulations that affect their lives and livelihoods without ever having the opportunity to express their concerns through their representatives in Congress.

"Perhaps the most important question that needs to be answered is this: why would the EPA want to pursue these regulations right now, when we should be focused on getting our economy back on track? Environmental advocates, senior Democrats, the Administrator of the EPA, and even the President have repeatedly said they prefer congressional legislation. With such widespread and high-level agreement, you'd think it would be easy to suspend the agency's efforts.

"Unfortunately, that's not been the case, because many of those same individuals are convinced that the threat of EPA regulations is somehow useful and necessary. It's no secret that this is the centerpiece of a highly coercive strategy - it's the administration attempting to force Congress to pass a climate bill more quickly than it otherwise would. For my part, I would simply point out

that the strategy has failed so far. And it will continue to fail in the months ahead, because members of Congress will not enact bad legislation in order to stave off bad regulations.

"What the administration's strategy has done, however, is put Congress in a difficult position. It's apparent to almost all of us that more time is needed to develop a good climate policy that can draw support from a bipartisan majority of the Senate. We are working on it - I have my staff actively developing a wide range of approaches for reducing emissions. Senator Cantwell and Senator Collins recently introduced a new approach, and Senators Graham, Kerry, and Lieberman are hard at work on their "bipartisan" proposal. But as the EPA proceeds with its greenhouse gas regulations, Congress remains far from completing its work, and we're left with no choice but to shift at least part of our focus to halting the EPA's efforts. As I've stated before, my goals here are twofold: to ensure that Congress has sufficient time to work on climate legislation, and to ensure that the worst of our options - a massive expansion of the Clean Air Act - does not occur before that task is finished.

"Now, in addition to the Senators who have signed on as co-sponsors of our bipartisan resolution, a variety of stakeholders have expressed strong support for slowing or stopping the EPA from issuing its greenhouse gas regulations. Many of these comments have focused on the tailoring proposal, while others oppose the endangerment finding. Some at the outer edges of the environmental community obviously disagree, but I think much of the rest of America - including state officials, businesses, farmers, and taxpayer advocates - all share our belief that the Clean Air Act should not be used to regulate emissions.

"Let me provide you with a few examples.

"The Governor of Alaska, Sean Parnell, has written that "The fundamental question posed by the proposed rule is whether greenhouse gases can be effectively regulated under the Clean Air Act. We think not. Attempting to force fit the Clean Air Act to the purpose of regulating greenhouse gases will be ineffective and will negatively impact Alaska ... The proposed rule would bury Alaska's businesses, institutions, and the State's environmental agencies in regulatory burden."

"The Governor of Mississippi, Haley Barbour, has written that "Regulating greenhouse gas emissions under the Clean Air Act will undoubtedly increase the cost of energy, increase the cost of doing business, increase the cost of consumer products, and jeopardize millions of jobs by putting U.S. manufacturers at a disadvantage against foreign competitors."

"The Governor of West Virginia, Joe Manchin, commented that "At a time when our state is fighting to save jobs and stabilize the economy, we cannot afford to act carelessly. EPA has taken a risky and unprecedented step in promulgating this rule. The regulation of GHG emissions is a matter that should be left to Congress, and EPA would be wise to seek Congressional action instead of attempting to regulate GHG under the CAA."

"Even the California Energy Commission, based in the state with the strictest environmental standards, felt compelled to weigh in because, "EPA's proposed PSD tailoring threshold jeopardizes California's renewable energy strategy." Instead of speeding the transition to cleaner energy, California is worried that the EPA's proposals will actually slow their progress.

"Dozens of state governors and attorneys general have submitted comments opposing at least one of the EPA's regulations. But comments from elected officials are not the half of it.

"The National Taxpayers Union has issued a press release that says, in part, "At a time when taxpayers are feeling the biggest squeeze since the Great Depression, it's unconscionable that Congress is responding with regulatory and legislative proposals that will only make matters worse."

"In a letter delivered to me yesterday, the American Farm Bureau Federation wrote that its delegates have unanimously adopted a resolution that "strongly supports any legislative action that would suspend EPA's authority to regulate greenhouse gases under the Clean Air Act." The letter goes on to assert that "How carbon emissions should be regulated is a matter to be decided by elected officials; that debate is now ongoing on Capitol Hill. It is there that these policy questions should be answered."

"Finally, the Small Business Administration's Office of Advocacy has concluded that the EPA's greenhouse gas rules will likely have a "significant economic impact upon a substantial number of small entities... Small businesses, small communities, and small non-profit associations will be affected either immediately or in the near-term."

"As public awareness of our bipartisan disapproval resolution grows in the days ahead, I expect many more statements will be issued in support of its passage. And while there is an extremely vocal minority that does not support it, I hope that my Senate colleagues will look at the broad coalition that does - and join us to oppose the EPA's regulations.

"Before I wrap up, Mr. President, I'd also like to address the criticisms and arguments that have been made by those who oppose my efforts. I'd like to address four of the latest claims in hopes of putting them to rest once and for all.

"First, I would like to reiterate that our bipartisan disapproval resolution deals with the EPA's

current interpretation of the Clean Air Act, and has nothing to do with the science of global climate change. I would also remind my critics that I co-sponsored a cap-and-trade bill in the last Congress, and last year worked with the members of the Senate Energy Committee to craft a bipartisan clean energy bill. That bill has now been languishing on the Senate calendar for nearly eight months, just waiting to be called up and considered. I really think that's a shame, because it would lead to significant emissions reductions and greater energy security for our country.

"Next, I'd like to address a rather creative claim - that I am somehow attempting to "gut" the Clean Air Act or subvert it into a "Dirty Air Act." I have to admit, this one actually made me laugh because it's just so wildly inaccurate. Neither my previous amendment nor this resolution would have any effect on pollution standards and controls - neither would change a single word of the current statute. My resolution will simply prevent the massive, unwarranted expansion of this statute by halting the EPA's efforts to use it to regulate greenhouse gas emissions - a purpose for which it was never intended, and a role that it simply cannot fulfill without serious and detrimental consequences.

"It has also been stated that this resolution will somehow prevent Congress from working constructively on climate legislation this year. Not the case. My resolution will restrain the EPA's ability to issue greenhouse gas regulations, but it will have absolutely no bearing on Congress' ability to debate climate policy. It's especially ironic that those comments were made by the Senator who has complete control of the Senate calendar - if climate legislation doesn't come up this year, it's abundantly clear who will have made that decision.

"The last claim I'd like to address are the allegations about who helped draft my September amendment, which was never offered and is no longer on the table. Not only are the allegations categorically false, they highlight the unwillingness of opponents of this measure to engage in the real policy discussion we should be having. The question that so many of the individuals and groups opposed to my efforts have failed entirely to answer, is if they honestly think that EPA climate regulations under the Clean Air Act would be good or bad for America.

"I hope the debate over this resolution will stay rooted in substance. There is a legitimate and substantive debate to be had about whether the EPA should be allowed to issue these regulations before Congress has had an opportunity to fully debate the issue of climate change. In my mind, the answer is "no." Congress must be given the time it needs to develop a responsible policy that protects both the environment and our economy. We're not incapable or even unwilling to legislate on this topic. So far, this Congress has merely failed to develop a balanced measure that draws enough support to be signed into law. We can remedy that shortcoming, and I remain committed to playing a constructive role in the effort.

"I believe the looming specter of EPA regulations is actually a big part of the reason why we have had difficulty moving forward on climate legislation. Even though we know that some approaches for reducing emissions are greatly inferior to others, there's inexplicable resistance to removing even our worst options from consideration. I haven't heard one member say that he or she prefers regulation over legislation. And yet, that option is not only still around, but also closer than ever to becoming reality. As long as it remains out there, it will be Plan B for those who wish to address climate change at any cost. And if this issue has become so politicized that some members would support EPA regulation instead of a legislative effort aimed at passing a bipartisan bill, that would not only be a tragedy for our constituents, but also a sad day for the Senate.

"If we are serious about fulfilling our duty to our constituents and giving this issue the full debate it deserves, we should take EPA regulations off the table. Without a backstop that says, "emissions will be reduced, one way or another, no matter how painful," supporters of climate legislation would have to get serious about finding common ground and bipartisan cosponsors.

"Major environmental legislation such as the Clean Air Act, the Clean Water Act, and the Safe Drinking Water Act all faced opposition at the outset - that's no secret or surprise. But members worked together to resolve concerns, instead of threatening to take a different and more damaging course. As Senator Ed Muskie would later write, the Clean Air Act "was passed unanimously after just two days on the floor," which prompted Senator Eugene McCarthy to remark that he'd "finally found an issue better than motherhood - and some people are even against motherhood." The Clean Water Act passed by a vote of 86 to zero, and the Safe Drinking Water Act did not even require a roll call - it was passed by voice vote.

"Mr. President, the Senate has a history of coming together to overwhelmingly support common-sense environmental legislation. Today, however, as we seek the best way to reduce greenhouse gas emissions, we're being presented with a false choice between unacceptable legislation and unacceptable regulations. We're being told, threatened really, to "pass a bill now or the economy will suffer." A number of Senators are trying to develop bills that can be signed into law, but even as that work continues, the EPA's endangerment finding has opened the door to further damage. I believe Congress must take that option off the table, and we can do that by approving the bipartisan disapproval resolution that 39 Senators have now introduced. Allowing the EPA to proceed will endanger jobs, and our economy, and our global competitiveness. That should be an outcome we can all agree to avoid.

"If you truly believe that EPA climate regulations are good for the country, then vote to oppose

our resolution. But if you share our concerns, and believe that climate policy should be debated in Congress, then vote with us to support it.

"Thank you, Mr. President, I yield the floor."

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[Remarks to the Business Roundtable CEOs Members Meeting on Climate Change](#)

12/05/09 -

[Floor Speech: Citing ISER Study, Murkowski Says Democrats Health Care Bill Would Be Poor Fit for Alaska](#)

12/02/09 -

[Floor Conversation: Murkowski Introduces Amendment to Keep Government Out of Health Care Coverage Decisions](#)

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[Floor Speech: Sen. Murkowski speaks on her concerns about the Democrat health care proposal currently being debated in the U.S. Senate.](#)

10/26/09 -

[Remarks to the 2009 Alaska Federation of Native Convention](#)

01268-EPA-601

**David
McIntosh/DC/USEPA/US**
03/02/2010 01:38 PM

To Richard Windsor
cc
bcc

Subject I've submitted your final climate prep materials for tomorrow's hearing

Heidi has a tabbed hard copy for your evening book, and Aaron has an additional hard copy. The final Q and A includes the following, to address the bad letter that the National Automobile Dealers Association released this afternoon (attached).

(b) (5) Deliberative [Redacted]

[Redacted]



Murkowski Resolution NADA.pdf



NATIONAL AUTOMOBILE DEALERS ASSOCIATION
8400 Westpark Drive • McLean, VA 22102-3591

March 1, 2010

The Hon. Lisa Murkowski
Ranking Member
U.S. Senate Committee on Energy and Natural Resources
Washington, DC 20510

Dear Senator Murkowski:

We are writing in support of S.J. Res. 26, a resolution you introduced to prohibit the Environmental Protection Agency (EPA) from regulating greenhouse gas (GHG) emissions under the Clean Air Act (CAA). Among other things, passage of your resolution would prevent EPA from instituting its own fuel economy regime in addition to the Department of Transportation's (DOT) Corporate Average Fuel Economy (CAFE) program. The National Automobile Dealers Association (NADA) supports a higher CAFE standard, and enactment of your resolution would not adversely affect the Administration's fuel economy/GHG goals for vehicles. NADA does not support redundant and different fuel economy regimes by EPA and the California Air Resources Board (CARB). In other words, our concerns are over the *structure* of the proposed fuel economy/GHG regulations, not their *stringency*.

Recently, Administration officials have written letters to the Senate opposing S.J.Res. 26, claiming that deleterious impacts on the auto industry would result. As representatives of an important segment of the auto industry, we hold a contrary view. Accordingly, we provide below a rebuttal of the Administration's claims related to the auto industry.

*1. The Murkowski Resolution would leave "the automobile industry without the explicit nationwide uniformity that it has described as important to its business."*¹

Passage of the Murkowski Resolution would be a step towards actual uniformity, as there would be one less redundant fuel economy standard (EPA's) with which the industry must comply.

The industry had "explicit nationwide uniformity" under the CAFE program when this Administration took office. That uniformity was lost when the EPA decided last year to allow states to regulate fuel economy by granting the California waiver, and when EPA elected to regulate fuel economy pursuant to the *Massachusetts v. EPA* decision.²

¹ Letter from EPA Administrator Lisa Jackson to Senator Jay Rockefeller, page 2. (February 22, 2010)

² Please note that nothing in the Supreme Court's *Massachusetts v. EPA* decision required EPA to regulate auto GHG emissions by establishing a fuel economy regime that is independent of and in addition to the CAFE program set by DOT.

The Hon. Lisa Murkowski

March 1, 2010

Page 2

Moreover, the proposed joint DOT/EPA fuel economy rulemaking – which actually consisted of two separate rules, one from each agency – was never uniform to begin with. For example, one key difference between the two programs is that under the proposed EPA rule, certain manufacturers would have compliance standards that are lower than those of their competitors. Under the CAFE program, the law does not permit such favoritism and none exists in the proposed DOT rule.

2. Passage of the Murkowski Resolution would have “profoundly adverse effects on the... economically distressed automobile manufacturing industry.”³

Actually, passage of the Murkowski Resolution would have an immediate salutary effect industry-wide, as Congress lifts a huge and duplicative regulatory burden from the industry. It strains credulity to believe that the “economically distressed automobile manufacturing industry” would be better off regulated by three different fuel economy standards with three different sets of rules administered by three different agencies rather than being subject to one CAFE program.

3. Fuel savings and GHG emission benefits would be “substantially erode[d]” if the Murkowski Resolution passed.⁴

The GHG and fuel economy goals of the Obama Administration can be achieved using existing statutory authority under the CAFE program. We agree with the National Highway Traffic Safety Administration’s (NHTSA) view that passage of S.J. Res. 26 “does not directly impact” the Administration’s authority to raise fuel economy standards (and thus reduce GHG emissions) from vehicles.⁵ These facts make EPA’s separate and different fuel economy standards unnecessary.

4. Passage of the Murkowski Resolution risks California moving forward with its own fuel economy regime.

There is no need for California regulators to continue to insist on their separate and completely different state fuel economy regime, when the entire nation will soon have to meet an Obama standard that is higher than the one California regulators themselves set. Furthermore, the Administration agrees that California’s regime is “inconsistent with Federal standards, thus creating confusion, encouraging renewed litigation, and driving up the cost of compliance to automobile manufacturers and consumers alike.”⁶ If California’s policy goal is to reduce GHG emissions from automobiles, it should defer to the Obama Administration which has the authority to achieve that goal under the CAFE program. If need be, the Administration can use its authority to prevent California from moving forward independently.

³ Letter to Senator Dianne Feinstein’s office from NHTSA, page 1. (February 19, 2010)

⁴ Ibid, page 2.

⁵ Ibid, page 1

⁶ Ibid, page 2.

The Hon. Lisa Murkowski

March 1, 2010

Page 3

5. *"It is unlikely that NHTSA would have sufficient time to decouple its rulemaking from the joint rulemaking effort [with EPA] in time to meet the April 1 deadline."*⁷

We are quite confident that if NHTSA can publish a final rule for the "Cash for Clunkers" program within 30 days from enactment of the law by Congress, it can readily decouple its CAFE rule and easily make the April 1 statutory deadline.

In 2009, NADA publicly pleaded for a "single national fuel economy standard set by the Obama Administration" under CAFE.⁸ Without relief from S.J. Res. 26, what we may have soon instead is EPA regulating fuel economy under the Clean Air Act (a law never designed nor intended to regulate fuel economy) and California regulators effectively picking the fuel economy standard for the entire country by seeking to enforce its own patchwork regime.⁹ Congress should be concerned that this Administration is reducing the restructured and renewed CAFE program, passed by Congress with great bipartisan support just over two years ago, to a near nullity.

America's auto dealers support raising fuel economy standards under the CAFE program. We do not support unnecessary EPA and state regulations. Apart from being duplicative and wasteful, the EPA and California regulations will increase compliance costs, which are eventually passed along to consumers. Enactment of S.J. Res. 26 would not adversely affect the Administration's fuel economy/GHG goals for vehicles. We urge its adoption by the Senate.

Thank you for your consideration.

Sincerely,



Ed Tonkin
Chairman

⁷ Ibid.

⁸ NADA, "Patchwork Proven: Why A Single National Standard is Better for America than a Patchwork of State Fuel Economy Regimes," page 31. (January 2009). See <http://www.nada.org/legislativeaffairs/fuel-economy-environment/california-waiver/>

⁹ Justin Hyde, "California: May pull out of fuel economy standard," Detroit Free Press, January 20, 2010.

01268-EPA-635

**Diane
Thompson/DC/USEPA/US**
03/11/2010 06:11 PM

To David McIntosh, Bob Perciasepe, Richard Windsor
cc
bcc

Subject Re: draft reply to Senator Murkowsky

Nice job, David. Attached is my red-line version. (b) (5) Deliberative dt

(b) (5) Deliberative

March Adm Jackson Reply to Sen Murkowski det redline.doc

Diane E. Thompson
Chief of Staff
U. S. Environmental Protection Agency
202-564-6999

David McIntosh Hi Administrator, Attached, please find... 03/11/2010 12:08:49 PM

From: David McIntosh/DC/USEPA/US
To: Richard Windsor/DC/USEPA/US@EPA
Cc: Diane Thompson/DC/USEPA/US@EPA
Date: 03/11/2010 12:08 PM
Subject: draft reply to Senator Murkowsky

Hi Administrator,
Attached, please find a draft of your reply to Senator Murkowski's March 3 letter. Also attached, for your reference, are her March 3 letter, Senator Rockefeller's earlier letter, and your reply to Senator Rockefeller. (b) (5) Deliberative

[Redacted content]

-David
[attachment "March Adm Jackson Reply to Sen Murkowski.doc" deleted by Diane Thompson/DC/USEPA/US]
[attachment "Murkowski-Jackson Letter.pdf" deleted by Diane Thompson/DC/USEPA/US]
[attachment "2010_0219 Letter to Lisa Jackson.pdf" deleted by Diane Thompson/DC/USEPA/US]
[attachment "Rockefeller.pdf" deleted by Diane Thompson/DC/USEPA/US]

01268-EPA-658

Scott Fulton/DC/USEPA/US
03/31/2010 02:00 PM

To Michelle DePass, Scott Fulton, Al Armendariz, Lisa Garcia,
"Diane Thompson", Bob Perciasepe, "Bob Sussman", "Mathy
Stanislaus", Richard Windsor

cc

bcc

Subject Fw: News Related to Mossville . . .

More from Patrick Chang.

----- Forwarded by Scott Fulton/DC/USEPA/US on 03/31/2010 01:59 PM -----

From: Patrick Chang/DC/USEPA/US
To: Scott Fulton/DC/USEPA/US@EPA
Date: 03/31/2010 01:13 PM
Subject: Fw: News Related to Mossville . . .

(b) (5) Deliberative, (b) (5) Attorney Client
[Redacted]

[Redacted]



Mossville_Amended_Petition_and_Observations_on_US_2008.pdf

----- Forwarded by Patrick Chang/DC/USEPA/US on 03/31/2010 12:31 PM -----

From: Patrick Chang/DC/USEPA/US
To: Scott Fulton/DC/USEPA/US@EPA
Date: 03/31/2010 11:45 AM
Subject: Re: Fw: News Related to Mossville . . .

Attachment is 97 page petition.
Please notify EPA if you would like
complete copy of this attachment.

There's no currently active T6 complaint regarding Mossville. However:

(b) (5) Deliberative, (b) (5) Attorney Client
[Redacted]

I'll update you as soon as I have more info.

01268-EPA-701

Scott Fulton/DC/USEPA/US

To windsor.richard

05/05/2010 09:37 PM

cc

bcc

Subject Fw: CWA 311, 308,309 options for spill

Just noticed that Mary Kay sent this to the other address. Wanted to make sure you saw it.

----- Forwarded by Scott Fulton/DC/USEPA/US on 05/05/2010 09:38 PM -----

From: Mary-Kay Lynch/DC/USEPA/US
To: LisaP Jackson/DC/USEPA/US@EPA, Bob Perciasepe/DC/USEPA/US@EPA, Diane Thompson/DC/USEPA/US@EPA, Mathy Stanislaus/DC/USEPA/US@EPA, Scott Fulton/DC/USEPA/US@EPA, Dana Tulis/DC/USEPA/US@EPA, Debbie Dietrich/DC/USEPA/US@EPA, Seth Oster/DC/USEPA/US@EPA, Mary-Kay Lynch/DC/USEPA/US@EPA
Date: 05/05/2010 08:08 PM
Subject: CWA 311, 308,309 options for spill

Attorney Client Privilege
Attorney Work Product

(b) (5) Deliberative, (b) (5) Atty
Work Prod, (b) (5) Attorney Client

DraftOil Spill Administrative Directive and Order Options 2.doc

Mk 202 564-3162

01268-EPA-703

Adora Andy/DC/USEPA/US

05/06/2010 06:35 PM

To Richard Windsor

cc Aaron Dickerson, Seth Oster

bcc

Subject WAPO BRIEFING

Administrator,

Here is the WAPO briefing for your interview tomorrow. (b) (5) Deliberative

Please let us know if you have any questions.

Thanks and I hope you feel better.

-Adora (b) (5) Deliberative

050710\WAP0 BRIEFING.doc

Adora Andy
Press Secretary
U.S. Environmental Protection Agency
Office of Public Affairs
202-564-2715
andy.adora@epa.gov

01268-EPA-704

Chuck Fox/CBP/USEPA/US

05/08/2010 10:14 AM

To "Richard Windsor", "Bob Perciasepe", "Bob Sussman", "Seth Oster", "Mr. Allyn Brooks-LaSure", "Peter Silva", "Nancy Stoner"

cc

bcc

Subject Fw: final Chesapeake strategy documents

----- Original Message -----

From: Travis Loop [tloop@chesapeakebay.net]

Sent: 05/08/2010 10:01 AM AST

To: Peter Silva; Chuck Fox; Shawn Garvin; Nancy Stoner

Cc: Tom Wall; Jeff Lape; James Edward; Richard Batiuk; Carin Bisland; Jeffrey Corbin; Michael Kulik; Greg Barranco; Brendan Gilfillan

Subject: final Chesapeake strategy documents

I am pleased to present the final Strategy for Protecting and Restoring the Chesapeake Bay Watershed. Attached is the full document (176 pages) and a standalone executive summary. These were finalized and sent to the printer last night. Hard copies will be available late Monday. These documents are obviously embargoed until their public release on Wednesday, May 12. But we should consider transmittal to the FLCD and Chesapeake Federal Office Directors, as well as the high-level communications and congressional liaison staff for the various federal partners.

Regarding May 12, per OPA's direction I am working with the Administrator's advance team and my colleagues on the multi-agency communications team. There are some additional site visits taking place as we speak -- looking at a few venues on the Anacostia River that emphasize the connection between communities and natural resources. The news conference will be officially scheduled for 930am with Administrator Jackson, CEQ Chair Sutley, Secretary Vilsack, and most probably Secretary Salazar and Navy Secretary Mabus. A media advisory will be sent around midday on Monday, May 10. There is a full schedule of state secretary and congressional briefings set for Tuesday, May 11. The strategy will go up on the Executive Order website and the release will be issued at 930 when the event starts. We have a videographer coming to record the news conference and post online afterward. I have received edits and quotes for the news release from our federal partners and will send the latest version today. As requested by her office, I am also drafting talking points for the Administrator, which will be provided to her speechwriter.

Please let me know if you have any questions or direction for me. I look forward to May 12 being a historic day for the Chesapeake. Thank you.

Travis Loop
Public Affairs Director



U.S. EPA Chesapeake Bay Program [Chesapeake EO Strategy Executive Summary.pdf](#)



Chesapeake EO Strategy.pdf

Both files available at:
<http://executiveorder.chesapeakebay.net/file.axd?file=2010%2F5%2FChesapeake+EO+Strategy+Executive+Summary.pdf>
and
<http://executiveorder.chesapeakebay.net/file.axd?file=2010%2F5%2FChesapeake+EO+Strategy%20.pdf>

01268-EPA-705

Chuck Fox/CBP/USEPA/US

To Richard Windsor

05/10/2010 01:27 PM

cc perciasepe.bob, Bob Sussman

bcc

Subject Fw: schedule and materials for EO strategy

Here are the summary materials that we shared with our senior colleagues at EPA (b) (5) Deliberative

[Redacted]

[Redacted]

[Redacted]

I'll keep you posted.

J. Charles Fox
Senior Advisor to the Administrator
Environmental Protection Agency
410 Severn Avenue, Ste 109
410-267-5730
410-267-5777 (f)

----- Forwarded by Chuck Fox/CBP/USEPA/US on 05/10/2010 01:14 PM -----

From: Travis Loop <tloop@chesapeakebay.net>
To: Bob Sussman/DC/USEPA/US@EPA, Heidi Ellis/DC/USEPA/US@EPA, Diane Thompson/DC/USEPA/US@EPA, Bob Perciasepe/DC/USEPA/US@EPA, Chuck Fox/CBP/USEPA/US@EPA, Peter Silva/DC/USEPA/US@EPA, Nancy Stoner/DC/USEPA/US@EPA, Shawn Garvin/R3/USEPA/US@EPA, Seth Oster/DC/USEPA/US@EPA, Sarah Pallone/DC/USEPA/US@EPA, Julie Winters/CBP/USEPA/US@EPA, Allyn Brooks-LaSure/DC/USEPA/US@EPA, Brendan Gilfillan/DC/USEPA/US@EPA, Arvin Ganesan/DC/USEPA/US@EPA, Ann Campbell/DC/USEPA/US@EPA
Cc: James Edward/CBP/USEPA/US@EPA, Tom Wall/DC/USEPA/US@EPA, Jeffrey Corbin/R3/USEPA/US@EPA, Michael Kulik/R3/USEPA/US@EPA, Linda Miller/R3/USEPA/US@EPA
Date: 05/10/2010 01:11 PM
Subject: schedule and materials for EO strategy

Attached are materials for the roll-out of the Chesapeake Executive Order strategy, including the media advisory, news release, overall messaging, suggested talking points for the Administrator, and a detailed breakdown of state, congressional and constituent briefings. Below is an overall summary of the schedule and more details on the event. Also attached are talking points for the Administrator's potential phone calls to Governors O'Malley and McDonnell. The executive summary of the strategy is also attached. Hard copies of this document and the full strategy will be delivered to Ann Campbell this evening.

Please let me know if you need anything else. Thank you.

(b) (5)
Deliberative

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Event details

(b) (5) Deliberative

[Redacted] Kingman Island has undergone a lot of restoration work by many environmental groups, the D.C. government, and with federal agency help. One of the main groups is the Earth Conservation Corps, which puts disadvantaged teenagers through "green job" training (we will have members of this group at the event). A brand new nature center is also under development for Kingman.

The actual news conference will be held on a large wooden deck in the middle of the river that is connected by a boardwalk to the mainland and the island. We would have a tent and chairs for about 75 people. Our speakers would stand around a podium with the river and trees in the backdrop. Aside from standing room on the platform, overflow attendees can just fill in the main boardwalk toward the mainland.

Directions to Kingman (and other info) can be found at <http://www.kingmanisland.org/8301.html>

This is about 10 minutes from the heart of downtown DC. The public (and all of us attending) would park in Lot #6 of RFK Stadium and walk about 1,500 feet to the site. The officials could be dropped off on the east side of the site and only have to walk 200 feet. This is a D.C. park and they are prepared to help in any way.

(b) (5) Deliberative [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

The website is <http://executiveorder.chesapeakebay.net> Updates will also go out via Facebook and Twitter. We will have a videographer at the event who will post the entire news conference on the website that day.

Travis Loop
Public Affairs Director
U.S. EPA Chesapeake Bay Program
office: 410.267.5758
cell: 443-510-1571
www.chesapeakebay.net



MEDIA ADVISORY New Federal Strategy for Chesapeake to be Released 5.10.10.doc

(b) (5) Deliberative [Redacted]

(b) (5) Deliberative [Redacted]

NEWS RELEASE Chesapeake Strategy 5.12.10.doc TALKING POINTS Chesapeake Strategy Release 5.12.10.doc



(b) (5) Deliberative [Redacted]

(b) (5) Deliberative [Redacted]

EO Release Sequence 5-10-10.doc EO messaging.ppt Administrator Talking Points on E.O. Strat and TMDL.doc



Chesapeake EO Strategy Executive Summary.pdf

Attachment available at:
<http://executiveorder.chesapeakebay.net/file.axd?file=2010%2F5%2FChesapeake+EO+Strategy+Executive+Summary.pdf>

NEWS RELEASE

FOR RELEASE
May 12, 2010

CONTACT: Travis Loop
410-267-5758, loop.travis@epa.gov

New Federal Strategy for Chesapeake Launches Major Initiatives and Holds Government Accountable for Progress

The new federal strategy for the Chesapeake region released today focuses on protecting and restoring the environment in communities throughout the 64,000-square-mile watershed and in its thousands of streams, creeks and rivers. The strategy includes using rigorous regulations to restore clean water, implementing new conservation practices on four million acres of farms, conserving two million acres of undeveloped land, and rebuilding oysters in 20 tributaries of the Bay.

The *Strategy for Chesapeake Bay Watershed Restoration and Protection* was developed under the Executive Order issued by President Obama in May 2009, which declared the Chesapeake Bay a national treasure and ushered in a new era of shared federal leadership, action and accountability. The strategy is available at <http://executiveorder.chesapeakebay.net>

The strategy deepens the federal commitment to the Chesapeake region, with agencies dedicating unprecedented resources, targeting actions where they can have the most impact, ensuring that federal lands and facilities lead by example in environmental stewardship, and taking a comprehensive, ecosystem-wide approach to restoration. Many of the federal actions will directly support restoration efforts of local governments, nonprofit groups and citizens, and provide economic benefits across the Chesapeake region. To increase accountability, federal agencies will establish milestones every two years for actions to make progress toward measurable environmental goals. These will support and complement the states' two-year milestones.

"Under President Obama's leadership, this strategy marks the beginning of a new era for the Chesapeake Bay watershed," said U.S. Environmental Protection Agency Administrator Lisa P. Jackson, who chairs the Federal Leadership Committee for the Chesapeake. "I am confident that by working together with our federal, state and local partners, as well as the citizens of the region, we will ultimately be successful in restoring and protecting this national treasure."

To restore clean water, EPA will implement the Chesapeake Total Maximum Daily Load (a pollution diet for the Bay and local waterways), expand regulation of urban and suburban stormwater and concentrated animal feeding operations, and increase enforcement activities and funding for state regulatory programs.

USDA will provide farmers and forest owners throughout the Bay watershed with the resources to prevent soil erosion and keep nitrogen and phosphorous out of local waterways. USDA will target federal funding to the places where it will have the greatest water quality impact, and ensure that agricultural producers' conservation

efforts are accurately reported. USDA will also lead a federal initiative to develop a watershed-wide environmental services market that would allow producers to generate tradable water quality credits in return for installing effective conservation practices.

"A thriving, sustainable agricultural sector is critical to restoration of the Chesapeake Bay," said USDA Secretary Tom Vilsack. "We will help the Bay watershed's farmers and forest owners put new conservation practices on four million acres of agricultural lands so that agriculture can build on the improvements in nutrient and sediment reductions that we have seen over the last 25 years."

Conserving two million acres of natural areas, forests and farmland preserves the environmental, recreational, cultural and economic benefits these lands provide. To protect priority lands, the Department of the Interior will launch a collaborative Chesapeake Treasured Landscape Initiative and expand land conservation by coordinating federal funding and providing community assistance. Interior will also develop a plan for increasing public access to the Bay and its rivers.

"Under the leadership of President Obama, our strategy provides the blueprint for finally restoring the Chesapeake Bay to health – its bountiful wildlife, abundant fish and shellfish, beautiful waterways and rich wetlands," said Secretary of the Interior Ken Salazar. "My department, which has 13 refuges and 51 units of the National Park System throughout the watershed, will play a key role in the plan, working hand-in-hand with other federal agencies, states, local communities and other stakeholders to restore this national treasure cherished by so many."

NOAA and the U.S. Army Corps of Engineers will launch a Bay-wide oyster restoration strategy in close collaboration with Maryland and Virginia that focuses on priority tributaries, expands commercial aquaculture and bolsters research on oyster stock, habitat and restoration progress. Oysters are among the Bay's most struggling species and restoration in 20 tributaries will yield great environmental and economic benefits.

"Oysters are a key species for Chesapeake Bay restoration. Not only are they important to seafood lovers, but they cleanse water and form reef habitat," said Dr. Jane Lubchenco, Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator. "It is critical that we apply our best science toward native oyster restoration and habitat protection, as well as toward development of sustainable aquaculture. Ecosystem-based approaches to management will enable progress toward a healthy, sustainable Chesapeake ecosystem that will include oysters for generations to come."

Several overarching approaches in the strategy are also important:

Short-term action: To accelerate the pace of restoration and protection, many actions occur in the next few years, and many of the actions are "on-the-ground" and "in-the-water" all around the Chesapeake watershed.

Supporting local efforts: The strategy is designed to directly support the restoration activities of local governments, watershed groups, county conservation districts, landowners and citizens.

Benefiting economies and jobs: Many actions will provide economic benefits, including conservation of working farms, expanded oyster aquaculture, support for conservation corps programs and green jobs, and development of an environmental marketplace for selling, buying and trading credits for pollution reductions.

Targeting of resources: Agencies will be aggressively targeting resources where they can have the most impact – areas with the most pollution and potential for runoff, with the highest potential for restoring fish and wildlife, and with habitats and lands most in need of protection.

Executive Order Background

On May 12, 2009 President Barack Obama issued Executive Order 13508 on Chesapeake Bay Protection and Restoration. The purpose of the Executive Order is “to protect and restore the health, heritage, natural resources, and social and economic value of the nation’s largest estuarine ecosystem and the natural sustainability of its watershed.” To bring the full weight of the federal government to address the Chesapeake’s challenges, the Executive Order established the Federal Leadership Committee (FLC) for the Chesapeake Bay, which is chaired by the Administrator of the U.S. Environmental Protection Agency and includes senior representatives from the departments of Agriculture, Commerce, Defense, Homeland Security, Interior and Transportation. The FLC was charged with developing a new strategy for protection and restoration.

Draft reports containing the initial recommendations were completed in September 2009 and refined in updates published in November 2009. The initiatives in the seven reports were blended into a draft strategy that was released in November 2009, and now form the core of the *Strategy for Chesapeake Bay Watershed Protection and Restoration*. The strategy also outlines federal coordination with state activities, identifies goals for the environment, creates a process for reporting on progress, and explains how efforts will be adapted based on science and resources.

###

MEDIA ADVISORY

FOR IMMEDIATE RELEASE
May 10, 2010

CONTACT: Travis Loop
410-267-5758, loop.travis@epa.gov

Federal Officials to Release New Strategy for Chesapeake Bay Watershed Under President Obama's Executive Order

Federal officials will hold a news conference on Kingman Island in Washington, D.C. at 9:30 a.m. on Wednesday, May 12 to release a new federal strategy for protecting and restoring the Chesapeake Bay watershed that was drafted under President Obama's Executive Order. The strategy will be available at <http://executiveorder.chesapeakebay.net>

WHO: Nancy Sutley, Chair, Council on Environmental Quality
Lisa P. Jackson, Administrator, U.S. Environmental Protection Agency
Tom Vilsack, Secretary, U.S. Department of Agriculture
Ray Mabus, Secretary, U.S. Department of the Navy

WHEN: 9:30 a.m., Wednesday, May 12

WHERE: Kingman Island, Washington, D.C.
Directions at <http://www.kingmanisland.org/8301.html>

HOW: Media must RSVP by emailing Loop.Travis@epa.gov.

Executive Order Background

On May 12, 2009 President Obama issued Executive Order 13508 on Chesapeake Bay Protection and Restoration. The purpose of the Executive Order is "to protect and restore the health, heritage, natural resources, and social and economic value of the nation's largest estuarine ecosystem and the natural sustainability of its watershed." To bring the full weight of the federal government to address the Chesapeake's challenges, the Executive Order established the Federal Leadership Committee (FLC) for the Chesapeake Bay, which is chaired by the Administrator of the U.S. Environmental Protection Agency and includes senior representatives from the departments of Agriculture, Commerce, Defense, Homeland Security, Interior and Transportation. The Executive Order charged the FLC with developing a new strategy for protection and restoration of the Chesapeake and required that it be published by May 12, 2010.

###

01268-EPA-713

Clay Diette/DC/USEPA/US

05/16/2010 05:39 AM

To "WINDSOR"

cc

bcc

Subject Fw: Pace for Sunday

Good morning,

I will have these printed out. Please let me know of any edits.

Thanks

Clay

Michael Moats

----- Original Message -----

From: Michael Moats

Sent: 05/14/2010 04:49 PM EDT

To: Robert Goulding; Aaron Dickerson; Veronica Burley; Heidi Ellis; Daniel Gerasimowicz; Clay Diette

Subject: Pace for Sunday

File attached.

(b) (5) Deliberative

20100516 Pace Law (2).doc

Michael Moats

Chief Speechwriter

US EPA | Office of the Administrator

Office: 202-564-1687

Mobile: 202-527-4436

01268-EPA-714

Arvin Ganesan/DC/USEPA/US

To Richard Windsor

cc

05/16/2010 04:03 PM

bcc

Subject Q&A doc

Hi,

I've attached a pretty extensive Q&A document that I've put together with the appropriate folks in the EOC. It will be in print in your book tomorrow. I know that you are more familiar with these issues than nearly anyone at this point, but it could be helpful to have a Q&A doc.

Arvin

ARVIN R. GANESAN
Deputy Associate Administrator
Congressional Affairs
Office of the Administrator
United States Environmental Protection Agency
Ganesan.Arvin@epa.gov

(p) 202.564.5200

(f) 202.501.1511

(b) (5)

Deliberat
ive

and A B Poil spill

01268-EPA-720

Scott Fulton/DC/USEPA/US

06/01/2010 07:53 AM

To Windsor.Richard

cc "Diane Thompson", "Cynthia Giles-AA", "Bob Perciasepe"

bcc

Subject Joint OGC/OECA summary of Federal Removal and Civil Enforcement Authorities Pertaining to BP Cleanup

Per your request, (b) (5) Deliberative, (b) (5) Attorney Client

Let me know if you need amplification of any of the analysis. Scott
Mary-Kay Lynch

----- Original Message -----

From: Mary-Kay Lynch

Sent: 05/31/2010 04:26 PM EDT

To: Scott Fulton; Cynthia Giles-AA

Cc: Johnpc Fogarty; Mary-Kay Lynch

Subject: Jt. OGC.OECA summary of Federal Removal and Civil Enforcement

Authorities

Attorney Client Privilege

For your consideration is the document John and I collaborated on re Federal Removal and Civil Enforcement authorities re the BP Oil Spill

(b) (5) Deliberative, (b) (5)
Attorney Client

Jt. OGC.OECA.Fed.Authorities.final.5.31.doc

01268-EPA-722

**Diane
Thompson/DC/USEPA/US**
06/02/2010 02:04 PM

To Richard Windsor
cc Janet Woodka, busch.christopher
bcc
Subject Fw: NEJAC package

Lisa,
Below is the NEJAC membership package. (b) (5) Deliberative

[REDACTED]
Let me know if we can proceed. I am copying janet in the hope she might have access to a printer and can get you hard copy. Will also send up a copy with Bob P. Thanks, DT

1

**National Environmental Justice Advisory Council (NEJAC)
Summary of Proposed Membership
26 May 2010**

(b) (5) Deliberative

[REDACTED]

[REDACTED]

[REDACTED]

- (b) (5) Deliberative [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

3

- (b) (5) Deliberative [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

(b) (5) Deliberative [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

- (b) (5) Deliberative [Redacted]

Diane E. Thompson
 Chief of Staff
 U. S. Environmental Protection Agency
 202-564-6999

----- Forwarded by Diane Thompson/DC/USEPA/US on 06/02/2010 01:56 PM -----

From: Colleen Flaherty/DC/USEPA/US
 To: Diane Thompson/DC/USEPA/US@EPA
 Cc: Christopher Busch/DC/USEPA/US@EPA
 Date: 06/02/2010 11:44 AM
 Subject: Re: Fw: NEJAC package

The NEJAC meeting is scheduled for July 26. However, the Administrator is participating in a public teleconference with NEJAC on June 15, and it would be ideal if the letters to new members and reappointments were signed before then (i.e. no later than June 14). That doesn't give us much time to work with since OEX needs time to edit and format the letters. Would it be possible to send the materials to the Administrator electronically? If so, see attached.

(b) (5) Deliberative [Redacted] (b) (5) Deliberative [Redacted] (b) (5) Deliberative [Redacted] (b) (5) Deliberative, (b) (6) Privacy [Redacted]

MEMORANDUM to LPJ.doc NEJAC proposal memo for Adm.doc membership grid 5.2010.doc Elizabeth_Yeampierre.pdf

Colleen M. Flaherty
 Special Assistant
 Office of the Administrator
 US EPA (Mail Code 1101A)
 Room 3311 Ariel Rios North
 1200 Pennsylvania Avenue, NW
 Washington, DC 20460
 Phone: 202/564-5939
 FAX: 202/501-1428

01268-EPA-723

Diane
Thompson/DC/USEPA/US
06/02/2010 06:18 PM

To Richard Windsor
cc Janet Woodka, busch.christopher
bcc

Subject Fw: NEJAC package

Lisa,
Not sure my first email with this went thru, so this could be a duplicate. Attached is the NEJAC package for your approval. (b) (5) Deliberative

I am also sending a copy of the full package with Bob, in case you can't get to this before then, and copying Janet in case she might be able to get to a printer. . You are talking to the NEJAC on June 15, (b) (5) Deliberative
DT

(b) (5) Deliberative

[Redacted]

[Redacted]

[Redacted]

[Redacted]

(b) (5) Deliberative

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

(b) (5) Deliberative [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

(b) (5) Deliberative
[Redacted]

[Redacted]

Diane E. Thompson
Chief of Staff
U. S. Environmental Protection Agency
202-564-6999

----- Forwarded by Diane Thompson/DC/USEPA/US on 06/02/2010 06:07 PM -----

From: Colleen Flaherty/DC/USEPA/US
To: Diane Thompson/DC/USEPA/US@EPA
Cc: Christopher Busch/DC/USEPA/US@EPA
Date: 06/02/2010 11:44 AM
Subject: Re: Fw: NEJAC package

The NEJAC meeting is scheduled for July 26. However, the Administrator is participating in a public teleconference with NEJAC on June 15, and it would be ideal if the letters to new members and reappointments were signed before then (i.e. no later than June 14). That doesn't give us much time to work with since OEX needs time to edit and format the letters. Would it be possible to send the materials to the Administrator electronically? If so, see attached.

(b) (5) Deliberative [Redacted] (b) (5) Deliberative,
(b) (6) Privacy [Redacted]

MEMORANDUM to LPJ.doc NEJAC proposal memo for Adm.doc membership grid 5.2010.doc Elizabeth_Yeampierre.pdf

Colleen M. Flaherty
Special Assistant
Office of the Administrator
US EPA (Mail Code 1101A)
Room 3311 Ariel Rios North
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Phone: 202/564-5939
FAX: 202/501-1428

01268-EPA-726

Dana Tulis/DC/USEPA/US
06/04/2010 12:09 PM

To Diane Thompson, Richard Windsor
cc
bcc

Subject Fw: Marsh Technical Forum with Administrator

Information I sent down last nite. I have one more file to send to you.

Dana S. Tulis
National Incident Coordinator
Office of Emergency Management
Environmental Protection Agency
202-564-8600

----- Forwarded by Dana Tulis/DC/USEPA/US on 06/04/2010 12:09 PM -----

From: Dana Tulis/DC/USEPA/US
To: Bob Perciasepe/DC/USEPA/US@EPA
Cc: David Gray/R6/USEPA/US@EPA, Erica Canzler/DC/USEPA/US@EPA, Gilberto Irizarry/DC/USEPA/US@EPA, Janet Woodka/DC/USEPA/US@EPA, Mathy Stanislaus/DC/USEPA/US@EPA, Craig Matthiessen/DC/USEPA/US@EPA
Date: 06/03/2010 05:06 PM
Subject: Re: Fw: Marsh Technical Forum with Administrator

Janet, I have attached 35 technologies that we reviewed and discussed in depth.

(b) (5) Deliberative [Redacted]


[Redacted]

[Redacted]

[Redacted]

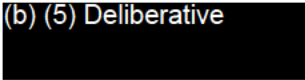
[Redacted]

(b) (5) Deliberative



Dana S. Tulis
National Incident Coordinator
Office of Emergency Management
Environmental Protection Agency
202-564-8600

(b) (5) Deliberative



salt marsh cleanup ideas master.pdf

01268-EPA-727

Dana Tulis/DC/USEPA/US

06/04/2010 12:11 PM

To Diane Thompson, Richard Windsor

cc Bob Perciasepe

bcc

Subject Fw: Marsh Technical Forum with Administrator

More info that we sent for the meeting.

 Dana S. Tulis
 National Incident Coordinator
 Office of Emergency Management
 Environmental Protection Agency
 202-564-8600

----- Forwarded by Dana Tulis/DC/USEPA/US on 06/04/2010 12:10 PM -----

From: Dana Tulis/DC/USEPA/US
 To: Janet Woodka/DC/USEPA/US@EPA, David Gray/R6/USEPA/US@EPA
 Cc: Bob Perciasepe/DC/USEPA/US@EPA, Gilberto Irizarry/DC/USEPA/US@EPA, Erica Canzler/DC/USEPA/US@EPA, Mathy Stanislaus/DC/USEPA/US@EPA
 Date: 06/02/2010 08:17 PM
 Subject: Fw: Marsh Technical Forum with Administrator

Janet, here is a full packet of info for the Saturday forum. The 2 background documents are for our EPA leadership. The agenda and NRT document can be handed out. The list of invitees, you can choose from.

 Dana S. Tulis
 Acting Office Director
 Office of Emergency Management
 Environmental Protection Agency
 202-564-8600

----- Forwarded by Dana Tulis/DC/USEPA/US on 06/02/2010 08:11 PM -----

From: EOC Deputy Manager
 To: Dana Tulis/DC/USEPA/US@EPA
 Cc: Craig Matthiessen/DC/USEPA/US@EPA, EOC Deputy Manager@EPA, Gregory Wilson/DC/USEPA/US@EPA, Joann Eskelsen/LV/USEPA/US@EPA, EOC Planning@EPA, Gilberto Irizarry/DC/USEPA/US@EPA
 Date: 06/02/2010 07:40 PM
 Subject: Marsh Technical Forum with Administrator (latest versions)

Dana;

Following up on our call with Janet this afternoon and per your revisions this evening, here are the draft products.

1. Slightly modified and recommended Agenda for the Saturday event with the Administrator. (b) (5) Deliberat



Coastal Technical Forum Agenda 6-2v2.doc

2. Background document generated based on the review of the response proposals

(b) (5) Deliberative

Evaluation of Salt Marsh Remediation v3.doc

3. Consolidated list of possible invitees based on what we (HQ EOC) have received. (b) (5) Deliberative

Not sure what that is.

(b) (5) Deliberative

Marsh ForumList of Possible Inviteesv2.doc

4. Oil Spill Response Strategies for Coastal Marshes during Deepwater Horizon Spill - Draft Factsheet currently under NRT review



NRT Marsh Cleanup Options D/W/H.06022010.pdf

5. EPA Leadership Brief on EPA Capabilities for Coastal Marsh Response (draft)

(b) (5) Deliberative

EPA Marshland Forum 6_5_10v3.ppt

Sent by the US EPA HQ EOC Deputy Manager

Email Address: EOC_Deputy_Manager@epa.gov
Main Phone: 202.564.3850
Desk Phone: 202.250.8902

June 2, 2010**Alternative Coastal Protection and Clean-up Technical Forum****Location:** Tulane School of Engineering**Date:** June 5, 2010**Time:** 9:30 am – 3:30 pm**Participants:** Proposed Invite List (attached)**Background:**

The Administration has recognized the importance of the Louisiana coastal region to the economic, cultural and environmental integrity of the nation. Even prior to the BP oil spill, President Obama dedicated energy and resources to addressing challenges facing coastal wetlands. This is an extremely fragile and stressed ecosystem. The ongoing oil release is further stressing this system and requires that we take immediate and drastic measures to protect, clean and strengthen it. However, it is imperative that science drive these policy decisions. We cannot simply create engineering decisions and suffer new, unintended consequences. Therefore, EPA wants to hold a discussion on how best to protect, cleanup and restore the coastal marshes with certain key emergency response and local ecosystem technical experts.

The National Incident Command (NIC) has established the Interagency Alternative Technology Assessment Program (IATAP) to provide an orderly and unified mechanism for initial screening, evaluation, and application of promising technologies. EPA, along with the USCG, MMS, and NOAA staff participates in the IATAP. Under the structure established by the NIC, EPA is assigned with evaluating promising Alternative Response Technologies. The overall objective is to deliver the best technological tool box for coastal protection and clean up to the ongoing emergency response efforts.

Many technologies are being supported by various constituencies including: use of natural adsorbents such as sugar cane waste (bagasse), peat, and straw and use of various chemically treated absorbents. These techniques would be compared against conventional technologies such as in-situ bioremediation, burning, and combinations of strategies.

EPA, with input from participating agencies, proposes to identify a list of top academic/federal/non-federal experts to attend a closed workshop to discuss Alternate Response Technologies in light of, and in possible combination with, existing, long-standing approaches for marsh remediation and possible pilot testing. Participants will include professors from Tulane, LSU, UNO and University of Louisiana Lafayette.

The discussion will focus on the technologies and ideas for protection, cleanup and restoration of the coastal marsh systems. Ideas will be examined for the potential for piloting ideas in specific areas. The workshop will also create a mechanism for continued engagement of scientists.

Draft Agenda:

- 9:30 AM Introduction and welcome by US Coast Guard (who?) and EPA Administrator Lisa Jackson
- 9:45 AM Introduction of participants
- 10:15 AM Overview of the National Incident Command (NIC) Interagency Alternative Technology Assessment Program (IATAP) – NIC (?)
- 10:45 AM Overview of typical decision-making processes for Containment, Protection, Response, Clean up and Protection strategies in the field (EPA, USCG, NOAA)
- 11:15 AM Overview of existing strategies for Containment, Protection, Clean-Up of Coastal Marshes – (EPA, USCG, NOAA)
- Current tool box:
- No action/Natural Processes (define conditions where any action exacerbates impacts)
 - Mechanical protection (berms, booms, dams, skimming)
 - Manual oil removal
 - Absorbing (organic/synthetic, issues: sinking, biologically active, removal concerns)
 - Vacuuming/pumping oil
 - Low-pressure flushing with water
 - In-situ bioremediation (nutrient addition mechanisms)
 - Controlled burns (define appropriate marsh and seasonal conditions);
 - Dispersants (define appropriate conditions)
- 12:15 PM Lunch break
- 1:00 PM New Cleanup Strategies and Ideas
- Open discussion of local conditions and concerns:
- Impounded fresh marshes, salt marshes, tidal ranges, etc.
- New technologies or combinations suitable to local conditions:
(e.g., organic sorbents combined with nutrient acceleration of bioremediation)
- 3:00 PM Wrap – Up and Next Steps

Oil Spill Response Strategies for Coastal Marshes during the Deepwater Horizon MC252 Spill

June 2, 2010



Chair



Acknowledgements

The National Response Team (NRT) acknowledges the NRT member agencies, and state and federal agencies participating on the Regional Response Teams (RRTs), for their contributions in preparing this document. We invite comments or concerns on the usefulness of this document in all-hazard planning for responses. Please send comments to:

U.S. National Response Team

NRT Response Committee

U.S. Environmental Protection Agency
(Mail Code 5104A)
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

U.S. National Response Team Member Agencies:

Chair: U.S. Environmental Protection Agency

Vice Chair: U.S. Coast Guard

U.S. Department of Agriculture

U.S. Department of Commerce

U.S. Department of Defense

U.S. Department of Energy

Agency

U.S. Department of Health and Human Services

U.S. Department of the Interior

U.S. Department of Justice

U.S. Department of Labor

U.S. Department of State

U.S. Department of Homeland Security

U.S. Federal Emergency Management

U.S. General Services Administration

U.S. Nuclear Regulatory Commission

U.S. Department of Transportation

For more information on the NRT, please visit www.nrt.org.

Because coastal marshes are biologically productive, ecologically important, and highly sensitive to oiling, they receive high priority for protection during oil spills. When protection fails and marshes are oiled, decision-makers must address the advantages and disadvantages of oil spill cleanup in these sensitive habitats. Past studies show that while appropriate cleanup methods can enhance marsh recovery, the wrong cleanup measures can further damage oiled marshes. Less clearly delineated are conditions when cleanup of an oiled marsh is the right approach, what methods are best to employ, and when cleanup ceases to be useful.

This document outlines the current response plan for marshes and other nearshore and shoreline areas impacted by the Deepwater Horizon MC252 oil spill, describes the relationship between degree of oiling and choice of cleanup strategy, defines levels of oiling of marshes (in terms of heavily-, moderately-, or lightly/very lightly-oiled). It then lists and describes cleanup methods to consider for marshes oiled during this spill event.

Nearshore and Shoreline Response Plan

The Nearshore and Shoreline Response Plan for the Deepwater Horizon spill consists of three Stages, as defined below:

Stage I: On-water recovery of floating oil slicks in nearshore waters. This type of response is included in the plan because it will be conducted in and around extensive areas of broken and fragmented wetlands where the intertidal zone is very narrow. It is likely that the oil will be transported into these nearshore waters and accessible only from the water. On-water recovery will include:

- Oil removal using skimming systems in conjunction with flushing where needed
- Oil removal using vacuum systems (in areas too shallow to use skimmers) in conjunction with flushing where needed
- Booming to temporarily contain mobile slicks
- Other appropriate methods

Stage I activities may be repeated if floating slicks recur during the period of ongoing release from the source.

Stage II: Removal of bulk oil which is defined as: 1) mobile oil in intertidal areas that poses a threat to adjacent habitats or resources, and 2) stranded oil on a segment or zone that is defined by a combination of surface oil thickness, percent distribution, and width. Stage II cleanup would remove stranded oil that is:

- Oil Coat (0.1 – 1.0 cm) or thicker, greater than 10% distribution, and at least 3 ft wide
- Oil Cover (0.01 – 0.1 cm) or thicker, greater than 50% distribution and at least 1 ft wide

Stage III: Once source control has been achieved and the bulk of the remaining oil has come ashore, a detailed shoreline cleanup and assessment technique (SCAT) process will

be fully implemented, involving appropriate agencies to establish for every shoreline segment the following:

- The nature and degree of oiling
- Appropriate cleaning techniques
- Agreed cleanup endpoints
- A formal signoff procedure

Oil Spill Response Strategies for Marshes

To determine whether cleanup is the right choice, decision-makers must assess the severity and nature of the damage (using SCAT survey observations), and they must estimate the time it will take for the marsh to recover in the absence of cleanup (typically considering short-term recovery to be from 1 to 3 years, medium-term from 3 to 5 years, and long-term more than 5 years). Documented recovery times for oiled marshes, range from a few weeks to decades. History suggests that more lightly oiled marshes, especially in warmer locations such as the Gulf of Mexico, will recover more quickly on their own than heavily oiled marshes, especially in colder climates. Therefore, cleanup strategies vary by degree of oiling (though other factors, such as the potential for oil to directly impact wildlife in the short term, can influence decision-making). For the Deepwater Horizon spill, degree of oiling in marshes is characterized as follows:

Heavily Oiled Marshes: Bulk oil present, either floating on the water surface in the marsh fringe or in the marsh interior, or stranded on the intertidal sediment surface. Stems have a coat or stain; in some areas, the leaves are also coated. Wrack, coffee grounds, or other organic debris are often present and mixed with the oil. Below are example photographs of heavily oiled marsh near Pass a Loutre (left) and Blind Bay (right), both located on the southeastern part of the Mississippi Delta birdsfoot.



Moderately Oiled Marshes: A narrow band (less than 3 to 6 ft wide) of oil in the marsh fringe, consisting of patches of mousse trapped in wrack, with coat or stain on the stems. Below are example photographs of moderately oiled marsh.



Lightly or Very Lightly Oiled Marshes: a narrow band (less than 3 ft wide) of oil consisting of coat or stain on the stems. Below are photographs of a lightly oiled marsh (left) and a very lightly oiled marsh (right).



Most of the oiling has occurred, and is expected to occur, along the marsh fringe, except in areas of highly broken marsh. Also, under summer wind patterns, water levels in the marshes are expected to be high, so that most of the time the oil is expected to remain floating on the water surface rather than penetrated into muddy intertidal sediments. Furthermore, the oil is quite viscous, limiting the degree of penetration through dense vegetation and into marsh soils.

Appropriate cleanup methods to consider for marshes oiled during the Deepwater Horizon spill are outlined in the following table, which shows the applicable marsh oiling condition, and the advantages and disadvantages of each method.

Response Method	Oiling Condition	Advantages	Disadvantages
Natural Recovery (allow the oil to degrade in place or be removed by tidal and wave action)	Lightly or very lightly oiled marshes	Minimal impact, avoids physical disturbance from cleanup actions; studies have shown rapid recovery	Potential oiling of birds or wildlife using the marsh during the time it takes the oil to be removed
Vacuumping/Skimming (mostly conducted from boats, in conjunction with flushing to increase recovery rates)	Moderately or heavily oiled marshes	Removes large quantities of oil from the marsh; bulk oil removal will speed natural recovery of remaining oil	Difficult to bring equipment into marsh without causing some impacts such as crushing of vegetation; impacts may be considerable if not conducted properly. Only very shallow-drafted vessels would be able to access some marsh areas. Collected oil and water must be transported and stored (small oil/water separators would reduce volume of oil to be treated).
Low-pressure Flushing (with sea water)	Moderately or heavily oiled marshes	Can assist in oil removal by herding oil to collection points (used with vacuuming/skimming); lifts oil off sediment surface (when marsh is not flooded)	Pressure must be carefully controlled to prevent eroding the marsh soils (erosion would expose vulnerable rhizomes). Must be carefully monitored; can cause physical impacts during placement of hoses and pumps. Can be difficult to achieve without removing above-ground vegetation. Can be difficult to flush oil in desired seaward direction without penetrating into marsh, but foot traffic on oiled marsh greatly compromises recovery prospects.
Manual Removal	Moderately or heavily oiled marshes	Can be best way to access pooled oil in the marsh interior, using boardwalks to minimize soil disturbance	Can result in significant damages to the marsh, including soil compaction; Very slow, with challenging logistics for waste management
Synthetic Organic Sorbents (contained, such as sausage boom, snare, and sweep)	Potentially all oiling conditions	Recovers oil as it is being released from the marsh; used mostly along the outer marsh fringe, so no vegetation disturbance if properly deployed	Improper use creates large volumes of lightly oiled wastes. Must be properly deployed and maintained to be most effective and not cause harm.
Natural Organic Sorbents (loose, such as bagasse, peat moss, and wood fiber products)	Lightly oiled marshes; secondary treatment after bulk oil removal	Reduces risk of residual oil to wildlife from both contact with oiled vegetation and released sheens; speeds the rate of degradation of residual oil	Recovery of loose sorbents is not likely, so use is not appropriate in areas with lots of free-floating bulk oil. Added organic matter causes reducing conditions that slow oil degradation rates
In-situ Burning	Heavily oiled marshes, with large amounts of free-floating oil trapped in the vegetation. Best suited for marsh in intertidal zone, when water	Can remove oil quickly; can minimize impacts from other physical removal methods; conditions of appropriate use are known; only considered once the source is controlled because of the risk of re-oiling	Localized air quality concerns; impacts to birds and wildlife in the burned area; may be difficult to control burn. Burning in areas not covered by water can cause some heated oil to penetrate into sediment. Elevated soil temperatures can destroy rhizomes needed for recovery (not suitable for areas that can't be replanted). Burning

Response Method	Oiling Condition	Advantages	Disadvantages
	covers sediment surface. ¹		in summer or fall is contrary to standard marsh management practice in Louisiana (burning is done in winter when vegetation is dormant). Replanting with plants tall enough that leaves reach above high tide level may facilitate recovery.
Vegetation Cutting (only to provide access to pooled oil in marsh interior)	Moderately or heavily oiled marshes	Increases the recovery rate for pooled oil in otherwise inaccessible interior marshes; has been conducted successfully in roseau cane habitats in the Delta NWR, under close supervision	Cut vegetation may die, particularly if re-oiled or if water levels increase greatly after cutting. Can be difficult to avoid risk of foot traffic mixing oil deeper into sediment. May increase rate of marsh loss. Must be carefully monitored. Difficult to remove large volumes of cut vegetation.
Surface Washing Agents	Where the entire above-ground vegetation is heavily oiled	May increase vegetation survival and reduce contact hazards to wildlife; consider only those products shown to be non-toxic to plants.	Becomes less effective as the oil weathers, therefore, likely a narrow window of opportunity. Requires extensive logistics. Application to interior marshes by foot may result in physical damage to the marsh.
Bioremediation (addition of amendments such as N, P, natural cellulosic materials², or oxygen where they are found to be limiting natural degradation)	Mostly as a secondary treatment after bulk oil removal	The spilled oil is highly biodegradable, thus could proceed quickly and with minimal residuals.	Lots of uncertainty as to what factors may be limiting natural degradation rates, and how to effectively overcome them. Oxygen, rather than nutrients, will be the most limiting in marshes; however, there are no proven methods to add oxygen to muddy, water-saturated marsh soils.
Natural Organic Sorbents – Pre-treatment of unoiled areas	Pre-treatment of unoiled marshes	Can be applied with minimal physical disturbance (by blower from boats); can increase the rate of natural degradation by increasing the surface area of the stranded oil.	Loose materials likely to be eroded by wave and tidal action from marsh fringe, where the oil is most likely to strand. No prior use or information on effectiveness. Increases the amount of oily material to be recovered. Oiled material will be transported to other areas. Heavily oiled material could be more persistent. Non-floating material will cause oil to sink and persist longer. Application to interior marshes by foot will cause damage to substrate, and long-term persistence under reducing conditions.

Table 1: Appropriate oil spill response methods for marshes.

¹ When in-situ burning is conducted in oiled marshes covered by deeper water, vegetation may not recover because rhizomes may not receive enough oxygen.

² According to the US Department of Agriculture/Natural Resources Conservation Service standard, natural cellulosic materials (e.g., harvested, cured vegetation) are preferred over fertilizer, in order to optimize growth requirements for in situ microbes and to increase the surface area on which oil and microbes can interact. This use of natural sorbent materials is supported by research findings.

01268-EPA-733

Dana Tulis/DC/USEPA/US
06/07/2010 11:49 AM

To Janet Woodka, Bob Perciasepe, Richard Windsor, Diane
Thompson, Mathy Stanislaus
cc Al Armendariz, Stan Meiburg

bcc

Subject Notes from Marsh Technology Forum

(b) (5) Deliberative

Who can I
get the notes from to move this forward, we can help assemble the material ? Thanks all.

(b) (5) Deliberative

NRT Marsh Cleanup Options D\WH.20100604.doc

Dana S. Tulis
National Incident Coordinator
Office of Emergency Management
Environmental Protection Agency
202-564-8600

01268-EPA-735

**David
McIntosh/DC/USEPA/US**
06/09/2010 11:00 AM

To: Richard Windsor
cc
bcc

Subject: reply to Senator Klobuchar, for your review

Hi Administrator,

Last night we received from Senator Klobuchar the letter that we have been anticipating (attached). We prepared a reply (also attached), which both OAR and OGC have approved. If you are all right with the reply, I will have it auto-penned -- or, if you prefer, will bring it to you for your signature. Senator Klobuchar's office has asked to receive your reply by COB today.

Thanks,

David



(b) (5) Deliberative

Lisa Jackson 060810.pdf Adm Jackson Reply to Sen Klobuchar.doc

COMMITTEES:
AGRICULTURE, NUTRITION,
AND FORESTRY
COMMERCE, SCIENCE,
AND TRANSPORTATION
ENVIRONMENT AND PUBLIC WORKS
JOINT ECONOMIC COMMITTEE
JUDICIARY

United States Senate
WASHINGTON, DC 20510

June 8, 2010

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

Dear Administrator Jackson:

We write to express our concern about the impact of the EPA's actions to regulate greenhouse gasses from stationary sources under the Clean Air Act. Specifically, we are concerned about the burdens and uncertainty that temporary regulations could place on American agriculture and industry, and our small and large businesses.

While we recognize EPA is subject to a legal directive from the U.S. Supreme Court to regulate greenhouse gasses under the Clean Air Act, there is broad agreement that policies addressing greenhouse gas emissions from stationary sources should be specifically crafted by Congress. You have previously stated that you share this belief and in March you indicated that you do not expect to regulate greenhouse gasses from the smallest sources of greenhouse gasses before 2016.

As we work to pass legislation which would allow Congress an opportunity to set a greenhouse gas emissions policy, we hope you can provide us with further assurance of the EPA's intentions to limit the scope of greenhouse gas regulations and provide an appropriate timeline. Specifically, we seek your commitment that EPA will not finalize any new threshold rule for the regulation of greenhouse gasses before July 1, 2011. Additionally, we request that you commit to ensuring stationary greenhouse gas sources, including agricultural sources, small businesses, and industries that emit fewer than 75,000 tons per year of carbon dioxide (CO₂) equivalent will not be regulated by EPA prior to July 2013. Your commitment to this timeline will increase support for Congress to pass comprehensive legislation that would reduce our dependence on foreign energy and address the climate change threat.

Finally, we are concerned that under current legal standing, EPA could face new legal directives requiring smaller stationary sources, such as farms and small businesses to be burdened by new regulations. We urge you to use all legal means to ensure our farms and small businesses are not burdened by new greenhouse gas emissions regulations. Our farms and small businesses are essential to helping our local communities succeed and adding additional burdens to this already heavily regulated industry has the potential cause undue harm to our rural economies.

Thank you and we appreciate your prompt attention to this matter.

Sincerely,


Amy Klobuchar

01268-EPA-741

Adora Andy/DC/USEPA/US

To "Richard Windsor"

06/20/2010 10:23 PM

cc

bcc

Subject Tomorrow Morning - WWL memo briefing

Here's the most-updated briefing for tomorrow's WWL interview. See you tomorrow!
Alisha Johnson

----- Original Message -----

From: Alisha Johnson

Sent: 06/20/2010 10:17 PM EDT

To: Adora Andy; Aaron Dickerson; Gladys Stroman

Cc: Veronica Burley

Subject: Tomorrow Morning - WWL memo briefing

Attached is the memo for tomorrow morning's WWL interview. Adora will send this to the Administrator tonight.

let me know if you have any questions.

(b) (5)

Deliberative

WRD3098.doc

Alisha

Alisha Johnson
Assistant Press Secretary
Office of Public Affairs
US Environmental Protection Agency
202.564.4373(direct)
202.579.5538 (cell)
johnson.alisha@epa.gov

01268-EPA-749

Janet Woodka/DC/USEPA/US
06/28/2010 12:41 PM

To Diane Thompson, Bob Perciasepe, Seth Oster, Richard Windsor, Arvin Ganesan, Sarah Pallone, Allyn Brooks-LaSure

cc

bcc

Subject Corps project matrix

I don't normally send this report to y'all but did want to make sure that you were aware of its existence. It

(b) (5) Deliberative
[Redacted]

[Redacted]

Again, just wanted to make sure that you were aware of this work - and the fact that we should be able to respond to questions on these related issues fairly rapidly, if needed.

Janet

Janet Woodka
Senior Advisor to the Deputy Administrator
Acting Director of Regional Operations
U.S. EPA
email: woodka.janet@epa.gov
phone: 202-564-7362
cell: 202-360-7465

----- Forwarded by Janet Woodka/DC/USEPA/US on 06/28/2010 12:36 PM -----

From: Brittany Croll/DC/USEPA/US
To: miller.clay@epa.gov, watson.jane@epa.gov, thomas.chris@epa.gov, welborn.tom@epa.gov, giattina.jim@epa.gov, woodka.janet@epa.gov, keehner.denise@epa.gov, gelb.nanci@epa.gov, frazer.brian@epa.gov, eoc_water@epa.gov, cough.paul@epa.gov, ettinger.john@epa.gov, evans.david@epa.gov, hall.rosemary@epa.gov, mccormick.karen@epa.gov, honker.william@epa.gov, parrish.sharon@epa.gov, miedema.ron@epa.gov, r4eocwater@epa.gov, hughes.eric@epa.gov, Hughes.Eric@mintra.epa.gov
Date: 06/27/2010 09:58 PM
Subject: Updated Emergency Authorization Matrix 6/27

Attached is the Emergency Authorization Matrix as of June 27 in order to reflect the activities over the weekend. Thank you for your continued help and coordination.

Brittany Croll
ORISE Intern
U.S. Environmental Protection Agency
Wetlands Division (b) (5) Deliberative

202-566-2887 Matrix_06_27_10.xlsx

01268-EPA-754

Janet McCabe/DC/USEPA/US

07/11/2010 04:45 PM

To mccarthy.gina, fulton.scott, garbow.avi, thompson.diane,
sussman.bob, perciasepe.bob, windsor.richard,
heinzerling.lisa

cc mccabe.janet

bcc

Subject slides for monday's discussion on ozone implementation

Attached are outline slides for tomorrow's discussion on ozone implementation. I'll bring the maps with me to the meeting and try to send them electronically as well.

Janet McCabe
Principal Deputy Assistant Administrator
Office of Air and Radiation, USEPA
Room 5426K, 1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-3206

mccabe.janet@epa.gov

(b) (5)

Deliberati

ve

plementation presentation LPJ 7-10-10.ppt

01268-EPA-765

David McIntosh/DC/USEPA/US
07/20/2010 09:32 AM

To Lisa Heinzerling
cc "Bob Perciasepe", Richard Windsor, "Diane Thompson",
"Lisa Jackson"
bcc
Subject Re: Revised list

(b) (5) Deliberative
[Redacted]

Lisa Heinzerling Here are two items: 1. The list with fou... 07/16/2010 01:05:46|PM

From: Lisa Heinzerling/DC/USEPA/US
To: Richard Windsor/DC/USEPA/US@EPA
Cc: David McIntosh/DC/USEPA/US@EPA, "Bob Perciasepe" <perciasepe.bob@epa.gov>, "Diane Thompson" <thompson.diane@epa.gov>, "Lisa Jackson" <windsor.richard@epa.gov>
Date: 07/16/2010 01:05 PM
Subject: Re: Revised list

Here are two items:

1. The list with four columns. Dan Kanninen is going to fill in the fourth (b) (5) Deliberative column.

(b) (5) Deliberative
[Redacted]

Tier 1 and \$ Sig since January 2009.doc

2. The numbers you requested:

(b) (5) Deliberative
[Redacted]

(b) (5) Deliberative
[Redacted]

Please let me know if you need anything else.

Richard Windsor Need to add 2 columns - 1 - a column... 07/15/2010 12:29:43 PM

From: Richard Windsor/DC/USEPA/US
To: Lisa Heinzerling/DC/USEPA/US@EPA
Cc: "Bob Perciasepe" <perciasepe.bob@epa.gov>, "Diane Thompson" <thompson.diane@epa.gov>, "Lisa Jackson" <windsor.richard@epa.gov>, David McIntosh/DC/USEPA/US@EPA
Date: 07/15/2010 12:29 PM
Subject: Re: Revised list

Need to add 2 columns -

(b) (5) Deliberative
[Redacted]

One more thing - can you ask for (b) (5) Deliberative
[Redacted]
Just curious. I only need the numbers so don't do too much work here.. Tx.

Lisa Heinzerling A fuller list, with four categories of rule... 07/15/2010 10:19:01 AM

From: Lisa Heinzerling/DC/USEPA/US
To: "Lisa Jackson" <windsor.richard@epa.gov>, "Bob Perciasepe" <perciasepe.bob@epa.gov>, "Diane Thompson" <thompson.diane@epa.gov>
Date: 07/15/2010 10:19 AM
Subject: Revised list

A fuller list, with four categories of rules:

(b) (5) Deliberative
[Redacted]

Robin Kime

----- Original Message -----

From: Robin Kime
Sent: 07/15/2010 08:49 AM EDT
To: Lisa Heinzerling

[attachment "Tier 1 and \$ Sig since January 2009.doc" deleted by Lisa Heinzerling/DC/USEPA/US]

01268-EPA-769

Barbara
Bennett/DC/USEPA/US
07/23/2010 09:12 AM

To Richard Windsor, Bob Perciasepe
cc Diane Thompson, David McIntosh, Arvin Ganesan
bcc
Subject Fw: House Subcommittee Markup

(b) (5) Deliberative



- On July 22, 2010, the House Appropriations Subcommittee on Interior, Environment and Related Agencies considered and reported its recommendations for the FY 2011 Appropriations Bill. The mark-up includes \$10.0 billion for the Agency, which is approximately \$2 million *less than* the FY 2011 President's Budget request and \$271 million less than the FY 2010 Enacted budget.
- During the markup there were sixteen amendments debated, with roughly half of those directed at EPA. Each of these with the exception of one was defeated. The one EPA amendment agreed to by the Subcommittee was on the exclusion of milk containers from the Spill Prevention, Control and Countermeasure SPCC rule. A brief description of each amendment follows:

Across-the-Board Reduction: Congressman Lewis (R-CA) offered an amendment to reduce the overall spending in the bill by 1%. This amounted to a \$324 million cut and would have been taken proportionally across every program in the bill. This amendment was defeated by a vote of 9-5.

GHG -2year delay: Congressman LaTourette (R-OH) offered an amendment to prohibit EPA from any GHG work on stationary sources for two years. This amendment is the same language as the proposed Stationary Source Act which was co-sponsored by Congressman Mollohan (D-WVA) on our subcommittee. This amendment was defeated by rule of Chairman Moran on a tied vote 7-7.

Navigable Waters: Congressman Simpson (R-ID) offered an amendment prohibiting EPA from expanding its jurisdiction over navigable waters. This amendment was intended to protect the authority of state and local governments to manage waters under their jurisdiction. This amendment was defeated by a vote of 7-5.

Combined Sewer Overflows: Congressman LaTourette (R-OH) offered an amendment requiring EPA to update the guidance for Combined Sewer Overflow (CSO). This amendment was defeated by a vote of 9-5.

Biomass Exemption: Congressman Cole (R-OK) offered an amendment exempting emissions from biomass combustion from any calculation of greenhouse gas emissions. This amendment was defeated by a vote of 9-5.

Manure Management Systems: Congressman Simpson (R-ID) offered an amendment excluding manure management systems or any other biological processes associated with livestock production from mandatory reporting of Greenhouse Gas. This amendment was defeated by a vote of 9-5.

Ozone: Congressman LaTourette (R-OH) offered an amendment prohibiting EPA from updating its ozone standards. This amendment was defeated by a vote of 8-5.

Pesticide labeling: Congressman LaTourette (R-OH) offered an amendment prohibiting EPA from regulating false or misleading pesticide product brand names. Currently the Agency has a draft rule in the Federal Register on this topic. This amendment was withdrawn.

SPCC: Congressman Simpson (R-ID) offered an amendment to exclude milk containers from the Spill Prevention, Control, and Countermeasure Plan. This amendment was adopted by unanimous voice vote.

- The Bill and Report will not be available until next week, at which time additional details will become available.

Thanks

Ed

Ed Walsh
Appropriations Liaison
Office of the Chief Financial Officer
U.S. EPA



202-564-4594 Interior_SubC_Top_Line_Table-07.22.2010.pdf

Department of the Interior, Environment, and Related Agencies
FY 2011 Appropriations - Chairman's Mark

(discretionary funding in millions of dollars)

	FY 2010 Enacted	FY 2011 President's Request	FY 2011 Committee Mark	Committee vs. FY 2010	Committee vs. Request
Interior, Environment, and Related Agencies	32,240	32,373	32,240	0	-133
Department of Interior:	11,034	11,016	11,038	4	22
Bureau of Land Management	1,133	1,130	1,107	-26	-23
US Fish and Wildlife Service	1,646	1,642	1,641	-5	-1
<i>National Wildlife Refuge System</i>	502	499	502	0	3
National Park Service	2,743	2,728	2,764	21	36
US Geological Survey	1,111	1,133	1,150	39	17
Bureau of Ocean Energy Management, Regulation,	136	148	152	16	4
Office of Surface Mining Reclamation and	163	146	157	-6	11
Bureau of Indian Affairs	2,619	2,566	2,578	-41	12
Office of Insular Affairs	102	87	91	-11	4
Office of Special Trustee for American Indians	186	160	168	-18	-8
Wildland Fire Management	795	763	795	0	32
Environmental Protection Agency:	10,289	10,020	10,018	-271	-2
Science and Technology	846	847	855	9	8
Environmental Programs and Management	2,993	2,891	2,921	-72	30
<i>Great Lakes Restoration Initiative</i>	475	300	300	-175	0
Hazardous Substances Superfund	1,306	1,293	1,293	-13	0
State and Tribal Assistance Grants	4,970	4,782	4,743	-227	-39
<i>Clean Water Fund</i>	2,100	2,000	1,898	-202	-102
<i>Drinking Water Fund</i>	1,387	1,287	1,206	-181	-81
U.S. Forest Service, non-fire	2,780	2,731	2,819	39	88
<i>Forest and Rangeland Research</i>	312	304	312	0	8
<i>NFS Operations</i>	1,551	1,586	1,588	37	2
U.S. Forest Service, Wildland fire mgmt.	2,104	2,072	2,087	-17	15
*Indian Health Service	4,052	4,406	4,406	354	0
Smithsonian Institution	761	798	798	37	0
National Endowment for the Arts	167	161	170	3	9
National Endowment for the Humanities	167	161	170	3	9

Department of the Interior, Environment, and Related Agencies

FY 2011 Appropriations - Chairman's Mark

(discretionary funding in millions of dollars)

	FY 2010 Enacted	FY 2011 President's Request	FY 2011 Committee Mark	Committee vs. FY 2010	Committee vs. Request
National Gallery of Art	167	163	165	-2	2
NIEHS	79	82	82	3	0
ATSDR	77	76	76	-1	0
CEQ	3	3	3	0	0
Chemical Safety Board	11	11	13	2	2
Office of Navajo and Hopi Indian Relocation	8	8	8	0	0
IAIA	8	9	9	1	0
Kennedy Center	40	37	37	-3	0
Woodrow Wilson Center	12	10	12	0	2
Commission of Fine Arts	2	2	2	0	0
National Capital Arts and Cultural Affairs	10	5	12	2	7
Advisory Council on Historic Preservation	6	6	6	0	0
National Capital Planning Commission	9	9	9	0	0
United States Holocaust Memorial Museum	49	50	50	1	0
Presidio Trust	23	15	22	-1	7
Cross-cutting Programs:					
Land Acquisition and Forest Legacy (LWCF)	450	590	518	68	-72
Construction Accounts	678	566	578	-100	12
Wildland Fire, DOI & FS	2,899	2,835	2,881	-18	46
FLAME Fire Suppression Funds	474	387	387	-87	0
Indian Programs	6,873	7,149	7,159	286	10
Climate Change	364	447	455	91	8

*Offset with \$10M unobligated balances

01268-EPA-775

Scott Fulton/DC/USEPA/US

To Diane Thompson

08/04/2010 10:45 AM

cc Richard Windsor

bcc

Subject Fw: Draft Portland Cement subcategorization insert

See missing attachment below.

----- Forwarded by Scott Fulton/DC/USEPA/US on 08/04/2010 10:45 AM -----

From: Patricia Embrey/DC/USEPA/US
To: Scott Fulton/DC/USEPA/US@EPA
Cc: Steven Silverman/DC/USEPA/US@EPA
Date: 08/02/2010 10:42 PM
Subject: Draft Portland Cement subcategorization insert

Scott -- (b) (5) Deliberative, (b) (5) Attorney Client

?

(b) (5)
Deliberative, (b)
(5) Attorney

portland cement early reduction option aug 2 late.doc

01268-EPA-778

Scott Fulton/DC/USEPA/US

08/06/2010 08:34 AM

To Richard Windsor

cc Gina McCarthy, Janet McCabe

bcc

Subject Cement letter

Hi -- I'm attaching the letter that would go to the insurance companies. Thought you might to cast your eyes on it before it is shared with them this morning.

(b) (5) Deliberative, (b)
(5) Attorney Client

Cement letter 8AM clean.doc

01268-EPA-780

Scott Fulton/DC/USEPA/US
08/06/2010 05:58 PM

To Richard Windsor, Diane Thompson, Lisa Heinzerling, Gina
McCarthy, Janet McCabe, Bob Sussman, Bob Perciasepe,
Avi Garbow, Lisa Heinzerling

cc

bcc

Subject NSPS Litigation Activity

Hi Folks -- (b) (5) Deliberative, (b) (5) Attorney Client, I wanted you to have the benefit of the
attached. Will follow with an explanatory note. Scott

(b) (5) Deliberative, (b)
(5) Attorney Client

NSPS litigation summary 8.3.doc

01268-EPA-781

David
McIntosh/DC/USEPA/US
08/09/2010 10:41 AM

To: Richard Windsor, Diane Thompson, Bob Perciasepe, Gina
McCarthy, Seth Oster, Lisa Heinzerling
cc
bcc

Subject: Fw: MJB&A and Analysis Group Report Released Today

(b) (5) Deliberative

----- Forwarded by David McIntosh/DC/USEPA/US on 08/09/2010 10:40 AM -----

From: "Michael Bradley" <mbradley@mjbradley.com>
To: mbradley@mjbradley.com
Cc: cjenks@mjbradley.com, vanatten@mjbradley.com
Date: 08/09/2010 10:29 AM
Subject: MJB&A and Analysis Group Report Released Today

Please find attached a report by M.J. Bradley & Associates and leading experts from the Analysis Group, *Ensuring a Clean, Modern Electric Generating Fleet while Maintaining Electric System Reliability*. The report reviews the impact on power plant operations of proposed Environmental Protection Agency rules to reduce emissions of sulfur dioxide, nitrogen oxides, mercury, and other hazardous air pollutants, and concludes that EPA can move forward without delay on new air quality rules for emissions from power plants to improve public health, without jeopardizing power system reliability.

The report was prepared on behalf of a coalition of electric companies, including: Calpine Corporation, Constellation Energy, Entergy Corporation, Exelon Corporation, NextEra Energy, National Grid, PG&E Corporation, and Public Service Enterprise Group. These eight companies are some of the nation's largest generators of electricity, with over 170,000 megawatts of electric generating capacity (including 110,000 megawatts of fossil generating capacity) throughout the U.S. Together, these companies serve nearly a fifth of all U.S. electric customers.

The report is also available at www.mjbradley.com and www.analysisgroup.com

Please let me know if you have any questions

Thank you,
Michael

Michael Bradley
M.J. Bradley & Associates LLC
47 Junction Square Drive
Concord, MA 01742

Main: (978) 369-5533

Fax: (978) 369-7712

This transmission may contain information that is confidential or legally privileged and is intended solely for the addressee. If you are not the intended recipient, please do not use the information in this e-mail, including any attachment(s) in any way, delete this e-mail, and immediately contact the sender. Thank you for your cooperation.



MJBAandAnalysisGroupReliabilityReportAugust2010.pdf



Press Release for MJBA and Analysis Group Reliability Report August 2010.pdf

Ensuring a Clean, Modern Electric Generating Fleet while Maintaining Electric System Reliability

August 2010



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Executive Summary

In the 20 years since the Clean Air Act (“CAA”) Amendments of 1990, electric power companies throughout the United States have deployed a wide range of pollution-control technologies, new power plants with relatively low emissions, and demand-side measures to reduce air emissions from electricity production. The Environmental Protection Agency (“EPA”) has found, however, that despite this significant progress in reducing emissions, in 2008 about 127 million Americans still lived in counties with unhealthy air—many of which are located along the Ohio River Valley, in the Middle Atlantic, and in the Southeast.^{1,2}

To begin to address these issues, on August 2, 2010, EPA published its draft Clean Air Transport Rule (the “Transport Rule”), regulating emissions in 31 Eastern states and the District of Columbia where controlling emissions will produce the greatest public health benefit.³ EPA plans to implement the Transport Rule on January 1, 2012. Additional rulemakings are also underway to regulate hazardous air pollutants (“HAPs”), with EPA under court order to promulgate its final “Utility MACT” rule by November 2011. According to EPA, compliance would be required by early 2015.⁴

These new rules regulating air emissions from fossil fuel-fired power plants will require certain uncontrolled plants to install pollution control equipment. Third-party analysts have concluded that some coal plant owners may choose to retire units in lieu of such installations. For example, two recent studies suggested that between now and 2015, the combination of low energy prices and EPA air regulations could result in the retirements of between 25 to 40 gigawatts (“GW”)^{5,6} of the nation’s 1,030 GW of electric generating capacity.⁷

Although some of the nation’s less efficient power plants may be retired, many existing coal plants will be retrofit with new pollution controls. Approximately half of the nation’s coal-fired generating capacity (150 GW) has already installed SO₂ scrubbers, another 55 GW plan to install scrubbers, and a significant number of coal units have already announced plans to retire,⁸ leaving approximately one-fourth of the nation’s coal-fired generation to add pollution controls, switch to a cleaner fuel, or retire. Companies may also have the option to purchase allowances or adjust dispatch to comply with certain rules.

¹ U.S. EPA, *Draft FY 2011-2015 EPA Strategic Plan*, at p. 7. Collectively, power plants are responsible for 66 percent of SO₂ emissions, 19 percent of NO_x emissions, and 39 percent of CO₂ emissions in the U.S. Also, in 2002, the EPA cataloged emissions in the United States and concluded that fossil-fuel-fired power plants were responsible for the following percentages of nationwide emissions for the following HAPs (all figures are approximate): hydrochloric acid (60%); mercury compounds (45%); arsenic compounds (35%); and nickel compounds (25%). U.S. EPA, *2002 National Emissions Inventory Booklet*.

² According to the recent National Academy of Sciences, *Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use* (2010), “after ranking all the [power] plants according to their damages, we found that the most damaging 10% of plants produced 43% of aggregate air-pollution damages from all plants, and the least damaging 50% of the plants produce less than 12% of aggregate damages”...(and) the most damaging 10%...account for approximately one quarter of electricity generated at the 406 plants.” (at p. 88).

³ Office of Air and Radiation, U.S. EPA, *Air Transport Rule Factsheet*, at p. 1.

⁴ U.S. EPA, *Proposed Rule: Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone*. August 2, 2010.

⁵ PIRA Energy Group (“PIRA”), *EPA’s upcoming MACT: Strict Non-Hg Can Have Far-Reaching Market Impacts*, April 8, 2010.

⁶ ICF International, *EEl Preliminary Reference Case and Scenario Results*. May 21, 2010.

⁷ Energy Information Administration (“EIA”), *Electric Power Monthly*, July 2010. (Based on preliminary 2009 capacity, capacity additions and retirements up through April 2010.)

⁸ PIRA, *supra* n.5.

Some in the industry have raised concerns about the combined effects over the next five years of anticipated power plant retirements and outages required to install new pollution control equipment. Clearly, the nation must carefully consider how to maintain electric system reliability, while also improving our nation's health and environmental quality.

In this paper, we highlight the impact of EPA's upcoming air regulations, with a focus on the issue of possible power plant retirements on electric reliability. We conclude that, without threatening electric reliability, the industry is well-positioned to respond to EPA's proposed road map to "help millions of Americans breathe easier, live healthier,"⁹ provided that EPA, the industry and other agencies take practical steps to plan for the implementation of these regulations and adopt appropriate regulatory approaches. In particular, we conclude the following:

1. **Even though some units likely will retire in lieu of complying with the new regulations, electric system reliability will not be compromised if the industry and its regulators proactively manage the transition to a cleaner, more efficient generation fleet.**
 - Power system reliability relates not only to generation capacity and availability, but also to consumption levels and patterns, and transmission capacity and use. As such, all these factors must be considered when assessing reliability impacts. Existing power system capacity well in excess of minimum reserve levels, relatively modest projections of load growth over the next several years, a large amount of proposed generating resources, and the availability of load management practices indicate the system can handle the level of projected retirements.
 - Each North American Electric Reliability Corporation ("NERC") reliability region has excess capacity, totaling over 100 GW of excess capacity nationwide. Therefore, considering only the projected level of coal unit attrition relative to existing capacity resources, it appears there will be no capacity shortages even if projected retirement scenarios prove accurate.
 - Further, economic conditions have reduced the demand for electricity in recent years providing an additional capacity cushion to assist in managing any power plant outages required to install pollution controls.
 - The industry has a proven track record of adding new generating capacity and transmission solutions when and where needed and of coordinating effectively to address reliability concerns. In the three years between 2001 and 2003, the electric industry built over 160 GW of new generation—about four times what analysts project will retire over the next five years.
 - Notably, many of the regions of the country with organized wholesale markets, including many parts of the Midwest, Mid-Atlantic, and Northeast, have developed effective tools such as capacity markets and reserve sharing mechanisms enabling electric generators to access other companies' available resources to assure regional reliability.
 - Additionally, the industry is deploying enhanced demand response actions, expanded energy efficiency programs, and new "smart grid" advances to manage consumption during the transition to cleaner, more efficient generation.

⁹ U.S. EPA, *supra* n.1, at p. 2.

2. Industry data counter concerns that it will cost the industry too much to comply with EPA's proposed air regulations, that pollution controls cannot be installed soon enough, or that the EPA regulations will lead to the closure of otherwise economically healthy power plants.

- The proven technologies for controlling air pollution emissions, such as NO_x, SO₂, mercury and acid gases, are commercially available and have already been, or soon will be, installed on the majority of the nation's coal plants (65 percent with scrubbers; 50 percent with advanced NO_x controls), demonstrating that the costs can be managed.
- The industry has a demonstrated ability to schedule and sequence unit outages in an efficient and reliable manner and is capable of installing additional pollution control systems to comply with the Transport Rule and Utility MACT Rule.
- Many of the coal units that are the most likely candidates to shut down are smaller, 40 to 60 year old units, which are nearing the end of their design life expectancy and are already economically challenged.
- Additionally, the retirement of some existing generating capacity will create room on the transmission grid to accommodate additional power flows, or new generating capacity, without requiring attendant upgrades in transmission, thus mitigating reliability concerns while reducing the cost of transitioning to a cleaner, more efficient generation fleet.

3. EPA, the Federal Energy Regulatory Commission ("FERC"), the Department of Energy ("DOE") and State utility regulators, both together and separately, have an array of tools to moderate impacts on the electric industry.

- EPA may, and if needed, should exercise its statutory authority under the CAA to grant, on a case-by-case basis, extensions of time to complete pollution control installations where appropriate.
- To the extent that its legal authority allows, EPA should adopt regulatory approaches that allow for cost-effective compliance, such as the emissions trading mechanism proposed in the Transport Rule.
- In circumstances in which power plant retirements trigger localized reliability concerns, EPA and DOE should follow established precedent, including use of consent decrees, to permit continued operation for reliability purposes only, pending necessary upgrades or generation additions. Additionally, the various federal agencies and offices with responsibility for assuring reliability for the nation's electricity capability should work together to help support the industry and states in complying with EPA's new air regulations.
- Transparent, well-established market rules approved by FERC and overseen by independent market monitors, particularly the forward capacity markets relied on by some Regional Transmission Operators ("RTOs"), as well as state regulatory agency oversight, provide additional safety nets to help ensure adequate capacity.

- Although EPA is under court order to promulgate its air regulations, the Agency can and should coordinate the implementation of anticipated water regulations under Section 316(b) of the Clean Water Act ("CWA") and new waste regulations to avoid possible reliability concerns.¹⁰

¹⁰ EPA should also consider the possible greenhouse gas emissions implications of its 316(b) regulations. In 2007, the U.S. Supreme Court found the EPA has clear statutory authority to regulate greenhouse gases under the CAA. Transitioning to a cleaner generating fleet will help EPA fulfill this obligation.

I. MANAGING ELECTRIC SYSTEM RELIABILITY WHILE IMPLEMENTING NEEDED ENVIRONMENTAL IMPROVEMENTS WITH SIGNIFICANT PUBLIC HEALTH BENEFITS

A. The Electric System Has Substantial Excess Generating Capacity and Appropriate Processes in Place to Assure Reliable Electricity Supply to Consumers

Currently, there are more than 17,000 electric generation units in the United States with a combined nameplate capacity of over 1,030 GW.¹¹ In 2009, coal-fired generation produced 45 percent of the nation's electricity, followed by natural gas (23 percent) and nuclear (20 percent), with the remaining amount produced through a combination of hydroelectric power, oil, wind and other miscellaneous fuel types.¹²

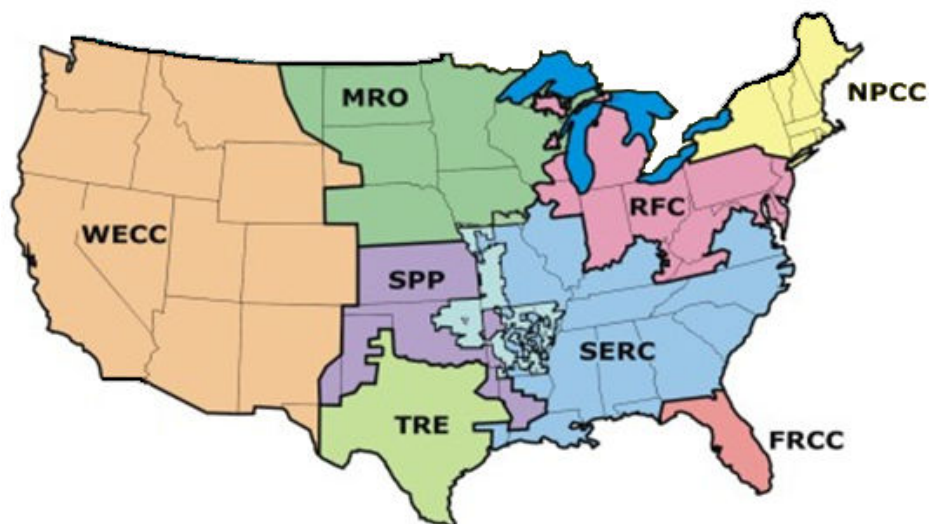
Power plant owners, transmission system owners, and power system operators plan and operate their systems according to numerous federal, state and local regulations, policies and protocols, applying planning requirements designed to ensure electricity suppliers have adequate resources to meet current and future demand, and operational standards to ensure power is available when consumers turn on the lights.

Power system reliability is tied to many things: generation plant capacity and availability, consumption levels and patterns, and transmission capacity and use. As such, electric system planners must consider all of these relevant system infrastructure and demand factors in assessing whether sufficient capacity will be available to maintain reliability. Existing power system capacity well in excess of minimum reserve levels, relatively modest projections of load growth over the next several years, a large amount of proposed generating resources throughout the country, and the availability of load management practices indicate the electric system should be able to handle the transition to a cleaner, more efficient generation fleet.

Under FERC's oversight, NERC sets standards to ensure the reliability of the nation's electric system. NERC comprises eight regional reliability organizations (or "regions," as shown below), whose members include grid operators, utilities, generating companies and others in the electric industry.

¹¹ EIA, *supra* n.7.

¹² EIA, *Net Generation by Energy Source*, http://www.eia.doe.gov/cneaf/electricity/epm/table1_1.html (accessed July 31, 2010).

Figure/Table 1 - NERC Electric Reliability Regions

FRCC – Florida Reliability Coordinating Council	SERC – Southeast Reliability Corporation
MRO – Midwest Reliability Organization	SPP – Southwest Power Pool, RE
NPCC – Northeast Power Coordinating Council	TRE – Texas Regional Entity
RFC – Reliability First Corporation	WECC – Western Electricity Coordinating Council
Note: NERC regional results shown in this presentation include the continental US only	

Most of the nation’s regional reliability organizations cover multiple states and each manages and monitors compliance with NERC’s reliability standards, including maintenance of minimum target reserve margins, a key indicator of resource adequacy. Actual or expected reserve margins measure the extent to which generating capacity exceeds (or falls short of) peak electricity demand. All regions must have capacity above expected demand to accommodate power plant outages, transmission failures, unexpectedly high demand, or other contingencies. Most regions have a minimum target reserve margin at or below 15 percent.¹³ In recent years, actual reserve margins around the country have been well above the minimum target levels, due not only to new power plant additions in most regions, but also to reduced demand attributable to the economic recession and increasingly robust load management programs.¹⁴

Table 2, below, illustrates that, in 2013, all NERC regions expect to have actual capacity levels well in excess of minimum reserve requirements. Although this provides only one metric of reliability, and each region will undertake more granular analysis in the months ahead, these capacity “cushions” indicate there should not be a capacity shortage even if projected retirement scenarios prove accurate. As the table further highlights, on an aggregate basis across all NERC regions, the electric sector is expected to have over 100 GW of surplus generating capacity in 2013, about three times the 30 to 40 GW of retirements projected by PIRA Energy Group.^{15,16} Reliability First Corporation (“RFC”) and the Southeast Reliability Corporation (“SERC”) regions, for example, where most of the uncontrolled coal plants are located, are

¹³ Some regions are below 15%, such as TRE (12.5%), SPP (13.6%), WECC (14.7%). Regions that don’t establish a formal target are assigned one for planning purposes by NERC, with 15% for regions like the Midwest and 10% for regions with substantial hydroelectric power. NERC, *2010 Summer Reliability Assessment*, May 2010.

¹⁴ *Id.*

¹⁵ NERC, *2009 Long-Term Reliability Assessment: 2009-2018*, October 2009.

¹⁶ PIRA, *supra* n.5.

expected to have high reserve margins at 24.3 percent and 26.3 percent, respectively.¹⁷ These regions could retire 17.1 GW (RFC) and 23.9 GW (SERC) of capacity and still maintain the 15 percent NERC reserve margin target.

**Table 2 - Estimated Reserve Margins in All NERC Regions:
Adequate Generating Capacity**

NERC Electric Reliability Region	Projected Reserve Margin ⁽¹⁾ in 2013	Cushion Above NERC Target Reserve Margin ⁽²⁾ In 2013
TRE	23.9%	7.8 GW
FRCC	28.6%	6.1 GW
MRO	22.1%	3.2 GW
NPCC	24.4%	5.9 GW
RFC	24.3%	17.1 GW
SERC	26.3%	23.9 GW
SPP	30.3%	7.7 GW
WECC	42.6%	35.6 GW
Total		107.3 GW

¹ Includes capacity defined by NERC as Adjusted Potential Reserve Margin, which is the sum of deliverable capacity resources, existing resources, confidence factor adjusted future resources and conceptual resources, and net provisional transactions minus all derates and net internal demand expressed as a percent of net internal demand. Source: NERC, *2009 Long-Term Reliability Assessment: 2009-2018*, October 2009, p. 396 (Summer Demand).

² Capacity in excess of what is required to maintain NERC Reference Margin or the regional target reserve levels.

Source: NERC, *2009 Long-Term Reliability Assessment: 2009-2018*, October 2009.

Experience in the RFC region, which encompasses thirteen states in the Midwest and Mid-Atlantic regions, is illustrative of the electric system's ability to tolerate retirements without jeopardizing reliability. Generators in the PJM Interconnection ("PJM") retired about 6,000 MW of capacity between 2004 and 2007, and over 3,000 additional MW of capacity have been announced for retirement in PJM by 2012.¹⁸ Despite almost 10,000 MW of retirements over this seven year period, the RFC region is still forecast to have a reserve margin of over 24 percent in 2013, or an excess of 17,000 MW of generation above the 15 percent NERC target reserve margin target.

Moreover, as a result of the economic recession, NERC projects "significant reductions in projected long-term energy use in North America"¹⁹, which provide an additional capacity cushion. While total demand is still projected to increase in most regions, it will do so at a slower pace and from a lower starting point. See, for example, Figure 2 which shows the decrease in forecast energy use from NERC's 2009 long-term reliability assessment as compared to its 2008 forecast. Additionally, summer peak demand has decreased over 10 GW per year for two consecutive years.²⁰ Furthermore, in all regions of the country, well-established tools exist to analyze potential regional power system impacts, and to facilitate planning, managing and operating the system to ensure ongoing reliability.

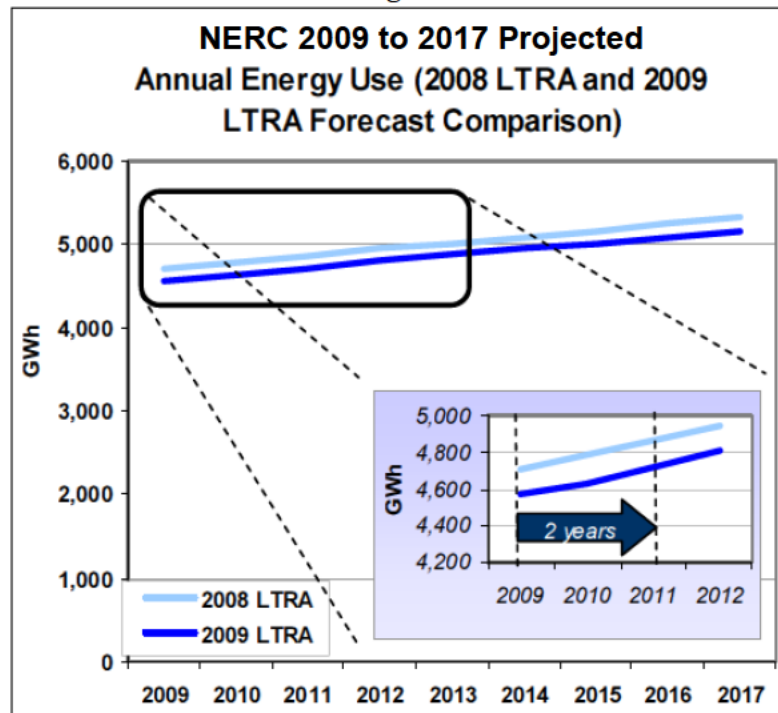
¹⁷ NERC, *supra* n.15.

¹⁸ PJM, *Generation Retirement Summaries*, <http://www.pjm.com/planning/generation-retirements/gr-summaries.aspx> (accessed July 31, 2010).

¹⁹ NERC, *supra* n.15, at p. 13.

²⁰ NERC, *supra* n.13, at p. 1.

Figure 2



Source: NERC, *2009 Long-Term Reliability Assessment: 2009-2018*, October 2009, p. 13.

B. The Electric Industry Has Proven Its Ability to Avoid Capacity Problems in the Past—Through Power Plant Capacity Additions, Fuel Conversions, Transmission Solutions, and Load Management Techniques

1. New Capacity is Already in the Pipeline

Even with the robust reserve margins in all NERC regions, industry participants are pursuing various measures to safely and reliably transition to cleaner, more efficient electric supply resources. Plans are underway for a variety of new plants, even as less efficient ones are retired. While economics remains the major consideration in deciding whether to develop or expand generating capacity or to mothball older plants, other major drivers, including reliability and environmental improvements, are in play. For example, the implementation of forward capacity markets in certain Independent System Operators (ISOs) has provided more price transparency, enabling the industry to see the value of various generation resources.

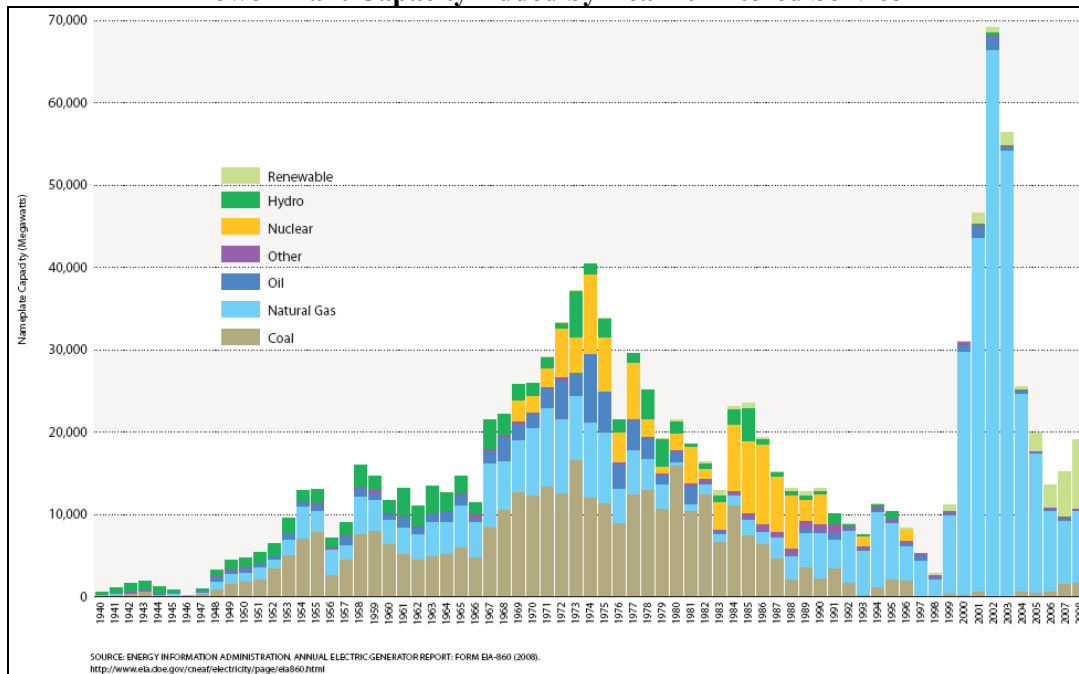
Moreover, the industry has shown previously that it can efficiently add capacity or respond adequately to potential reliability issues. Between 1999 and 2008, for example, in response to a variety of market, regulatory and economic signals, the electric sector added almost 270 GW of natural gas-fired generating capacity, the equivalent of more than 80 percent of the entire existing U.S. coal fleet.²¹ (See Figure 3 below, which shows the significant investment in new gas plants during the past decade.) Indeed, in just three years between 2001 and 2003, the electric industry built over 160 GW of new generation,²² about four times what analysts project will retire over the next five years. Although conditions a decade ago

²¹ EIA, *Annual Electric Generator Report: Form ELA-860*, 2008.

²² *Id.*

differ in several respects, this robust construction cycle suggests that developers and investors will respond to strong signals if new capacity is needed.

Figure 3
Power Plant Capacity Added by Year It Entered Service



Source: Ceres, et al., *Benchmarking Air Emissions of the 100 Largest Electric Power Producers in the United States*, June 2010.

There are also examples in which the industry responded quickly and effectively to resolve looming reliability problems. In the mid-1990s, for example, three large nuclear generating units in Connecticut, totaling almost 3,000 MW, were unexpectedly and simultaneously unavailable during lengthy outages²³, transforming Connecticut from a power exporter to a net importer. To avert any reliability problems over the extended outages, the regional grid operator, along with the region's utilities and public officials, instituted a variety of measures including adjusting unit maintenance schedules, executing additional interruptible contracts with large commercial customers, installing new generation and transmission equipment, and coordinating closely with neighboring power systems to maximize out-of-state power purchases.²⁴ If necessary, the industry could employ similar strategies in response to future coal plant retirements.

Further, as indicated in Table 3 below, substantial new capacity build has been announced, planned or is seeking grid interconnection studies. Across the NERC regions, a recent report identified over 55 GW of proposed generation in advanced stages of development in the queue for 2013. Although, not all of these plants will be built, strong market incentives and signals from regulators that new capacity will be needed will promote generation development proposals beyond those announced to date.

²³ Western Massachusetts Electric Company, *Form 8K*, November 25, 1996, "Other Events."

²⁴ PRNewswire, *NEPOOL: Power Supplies May be Tight in New England This Summer*, June 11, 1996.

Table 3 - Proposed New Build – 2013²⁵

NERC Region	New Generation Proposed to Be Built (in Transmission Queues for 2013)
TRE	4.3 GW
FRCC	2.0 GW
MRO	3.6 GW
NPCC	7.5 GW
RFC	8.7 GW
SERC	10.3 GW
SPP	2.8 GW
WECC	16.3 GW
Total	55.5 GW

Note: There are substantial additional generating facilities in the queue in each region.

Numerous electric companies have already announced substantial new capacity additions, many at the sites of existing coal units that will be retired. Georgia Power, which recently demolished a coal plant in Georgia and stated its intention to retire another, announced it plans to build three 840 MW combined cycle gas turbines (“CCGTs”) in Georgia.²⁶ Oglethorpe Power Corporation has proposed a 605 MW CCGT²⁷ and a 100 MW biomass facility in Georgia.²⁸ Also in the Southeast, Progress Energy plans to build a 950 MW CCGT at the site of three coal units, which will retire when the gas plant comes online.²⁹ In Tennessee, TVA is building an 878 MW CCGT at the site of its John Sevier coal plant, and the City of Vineland New Jersey plans to replace its 25 MW coal plant with a 60 MW gas plant.^{30,31}

Also, although they do not operate in the same base load mode as do nuclear or many coal plants, low emission energy facilities have expanded rapidly over the past several years.³² For example, the total wind power capacity now operating in the U.S. is over 35,600 MW. In 2009 alone, the U.S. wind industry broke all previous records by installing nearly 10,000 MW of new generating capacity, enough to serve over 2.4 million homes. Additionally, over 400 MW of solar was installed throughout the nation in 2009. Solar installations are poised to grow about 50 percent annually in the next three years, reaching 1.5 GW to 2 GW of new installations in 2012.³³

The retirement of inefficient coal units may spur further development of cleaner generating capacity. Regional transmission studies include capacity even if it runs infrequently. Freeing room for new capacity through retirements means some low emission generation resources, including gas plants, can be accommodated without having to invest in new transmission.

²⁵ ICF International, *supra* n.6.

²⁶ Georgia Power, *From Coal to Natural Gas*, <http://www.georgiapower.com/generation/home.asp> (accessed July 31, 2010).

²⁷ Oglethorpe Power, *Oglethorpe Power to Build Gas-Fired Generating Plant*, March 10, 2010.

²⁸ Power-Gen Worldwide, *Oglethorpe plans a biomass plant*, June 29, 2010.

²⁹ Energy Business Review, *Progress Energy Wins Approval To Build 950MW Gas-fired Plant*, October 2, 2009.

³⁰ Marketwire, *TVA Prepares to Begin Construction on 880-Megawatt Combined-Cycle Unit*, March 16, 2010.

³¹ NJ Spotlight, *NJ Coal Plants Face Cleanups and Closures*, July 10, 2010.

³² Wind and solar are intermittent resources; therefore, only part of their output is credited for reliability purposes.

³³ GTM Research, *The United States PV Market Through 2013: Project Economics, Policy, Demand and Strategy*, December 2009.

2. Existing Gas Units Have Untapped Power Production Potential

Given the significant addition of gas-fired capacity in the past decade, as detailed earlier in Figure 3, and the relative price advantage of coal versus natural gas in the period from 2007 to 2008, gas plants were not operated at their full design capability in many parts of the country. As detailed in Table 4 below, gas-fired CCGT power plants in 2008 had an average utilization rate of only 33 percent, as compared to coal's 56 percent. Despite declines in natural gas prices, existing gas units have significant untapped power production potential, which can be expanded during off peak periods without constructing new generation. This excess capacity can assist in managing power plant outages required to install pollution control systems.

Table 4 – Estimated Utilization of U.S. Coal and Gas Plants (CCGT) by Region (2008)

Region	Plant Size (MW)	Coal		Gas	
		Total Installed Capacity (MW)	% Utilization	Total Installed Capacity (MW)	% Utilization
FRCC	> 500	7,981	67%	17,678	46%
	200 - 500	1,628	64%	2,410	26%
	< 200	199	53%	1,389	20%
MRO	> 500	18,113	73%	3,033	15%
	200 - 500	4,915	59%	1,246	15%
	< 200	3,111	42%	506	10%
NPCC	> 500	2,407	79%	13,791	44%
	200 - 500	2,548	70%	4,326	36%
	< 200	1,079	47%	2,843	21%
RFC	> 500	99,474	61%	28,087	19%
	200 - 500	11,479	54%	2,709	13%
	< 200	4,664	48%	1,794	34%
SERC	> 500	91,188	66%	40,529	24%
	200 - 500	10,699	57%	4,995	29%
	< 200	4,109	36%	1,229	33%
SPP	> 500	17,970	71%	12,051	32%
	200 - 500	2,361	72%	2,116	37%
	< 200	647	44%	465	22%
TRE	> 500	15,193	80%	28,869	44%
	200 - 500	1,213	82%	5,025	36%
	< 200			1,020	24%
WECC	> 500	30,081	73%	37,435	47%
	200 - 500	2,992	78%	6,835	40%
	< 200	2,465	60%	5,042	49%
All US Plants	> 500	282,407	67%	181,473	35%
	200 - 500	38,277	60%	30,136	32%
	< 200	16,616	45%	15,966	30%

Source: MJB&A analysis based on U.S. Energy Information Administration's Form EIA-860 (2008) and EIA-923 (2008)

Additionally, many coal plants have the potential to repower their units, by replacing conventional coal-fired steam electric generating units with CCGTs, thus increasing the units' efficiency *and* reducing air emissions—an approach already being used today by the industry. For example, Xcel Energy has replaced a 270 MW coal plant in Saint Paul, Minnesota with a 515 MW CCGT, reducing SO₂ emissions by 99.7 percent, NO_x emissions by 96.9 percent, and eliminating mercury emissions.³⁴ It also repowered

³⁴ Utility Engineering, *Twin Cities to breathe easier thanks to UE*, Value Connection, Issue 2, 2007.

two coal units in Minneapolis.³⁵ In New Jersey, Calpine has announced its intent to convert an 83 MW coal unit to a 158 MW gas unit.³⁶

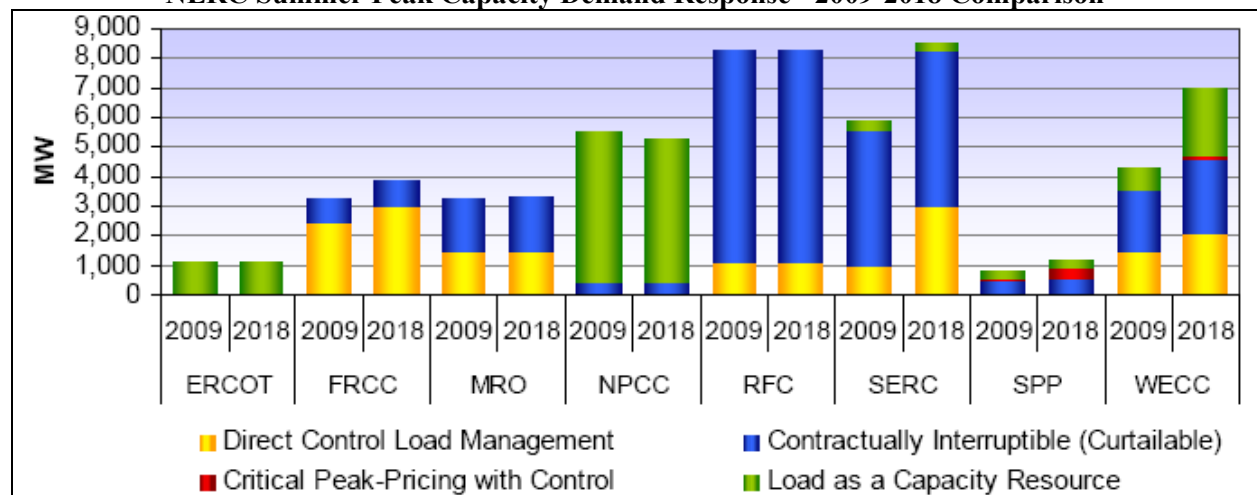
3. Enhanced Load Management Programs Can Be Deployed to Meet System Reliability Needs Economically

Historically, grid operators have dispatched plants to meet customers' electricity requirements. Over the years, the industry has recognized that decreasing load requirements can be more efficient and economical than increasing supply by dispatching generation. As a result, load management tools, such as demand response ("DR") and energy efficiency ("EE") programs have been widely implemented across the nation.

DR programs manage load by temporarily reducing or shifting electricity use by homes or businesses during critical times like hot summer days. EE programs, on the other hand, primarily seek to reduce consumers' energy use on a permanent basis through the installation of energy efficient technologies and conservation measures. Both means of load management provide an additional tool for system operators to manage electric reliability.

DR programs operate in all of the NERC Regions, as shown in Figure 4 below. In some regions, such as RFC, SERC, WECC, and MRO, a substantial fraction of the DR resources are available in the form of "contractually interruptible" or curtailable loads. These typically entail contracts between a utility and an industrial customer, in which the customer agrees to curtail part of its usage when requested for a specified number of times during a certain period, in exchange for electric rate discounts. The other forms of DR—direct control load management, critical peak pricing with control, and load as a capacity resource—are more dynamic forms of supply, in which the grid operator, in effect, dispatches the load to respond with a reduction or shift in load, much like a generating facility.

Figure 4
NERC Summer Peak Capacity Demand Response - 2009-2018 Comparison



Source: NERC, Long-Term Reliability Assessment, 2009, Figure 7 (page 18).

In particular, these other forms of DR have increased steadily in organized wholesale competitive markets. In PJM, for example, DR has increased five-fold in the past five years and continues to grow.³⁷

³⁵ North Dakota Home Town Times, *Xcel Energy Switches Minneapolis Coal Plant to Natural Gas*, October 13, 2009.

³⁶ NJ Spotlight, *supra* n.31.

In the most recent PJM capacity auction, DR offers increased 32 percent over last year and over 9,000 MW cleared, which represents about six percent of total available capacity resources.³⁸ DR is expected to reduce the peak electricity use this summer in PJM by 8,525 MW, the equivalent output of ten large power plants.³⁹

DR is not just increasing in PJM. According to the ISO/RTO Council, competitive markets are “shattering barriers” in terms of attracting DR resources.⁴⁰ In FERC’s recently released *National Action Plan on Demand Response*, it highlighted that DR has tripled in recent years in the New England region⁴¹ and identified strategies to further enhance DR. Already, about half of electric utilities across the nation have some type of DR program. With continued support from regulatory agencies like FERC and the advancement of “smart grid” technologies, DR is expected to continue to grow as a viable supply alternative to traditional generation.

As with DR, EE programs have increased dramatically in the past several years. According to information compiled by the Consortium for Energy Efficiency, and as highlighted in Figure 5, the total budget for all US ratepayer-funded EE and DR programs has increased 80 percent since 2006 to \$4.4 billion in 2009.⁴² These programs resulted in savings of almost 105,000 gigawatt hours (“GWh”) of electricity in 2008—the equivalent of the total electricity consumption in Tennessee in the same year.⁴³ By 2018, new EE programs alone are expected to reduce summer peak demands by almost 20,000 MW (a full year’s growth).⁴⁴

³⁷ PJM, *Demand Response To Play Significant Role In Meeting PJM’s Higher Summer Peak Electricity Use*, <http://pjm.com/~media/about-pjm/newsroom/2010-releases/20100505-summer-2010-outlook.ashx> (accessed August 6, 2010)

³⁸ PJM, *2013/2014 RPM Base Residual Auction Results*, at p. 1.

³⁹ PJM, *supra* n.37.

⁴⁰ ISO/RTO Council, *2009 State of the Markets Report*, September 22, 2009.

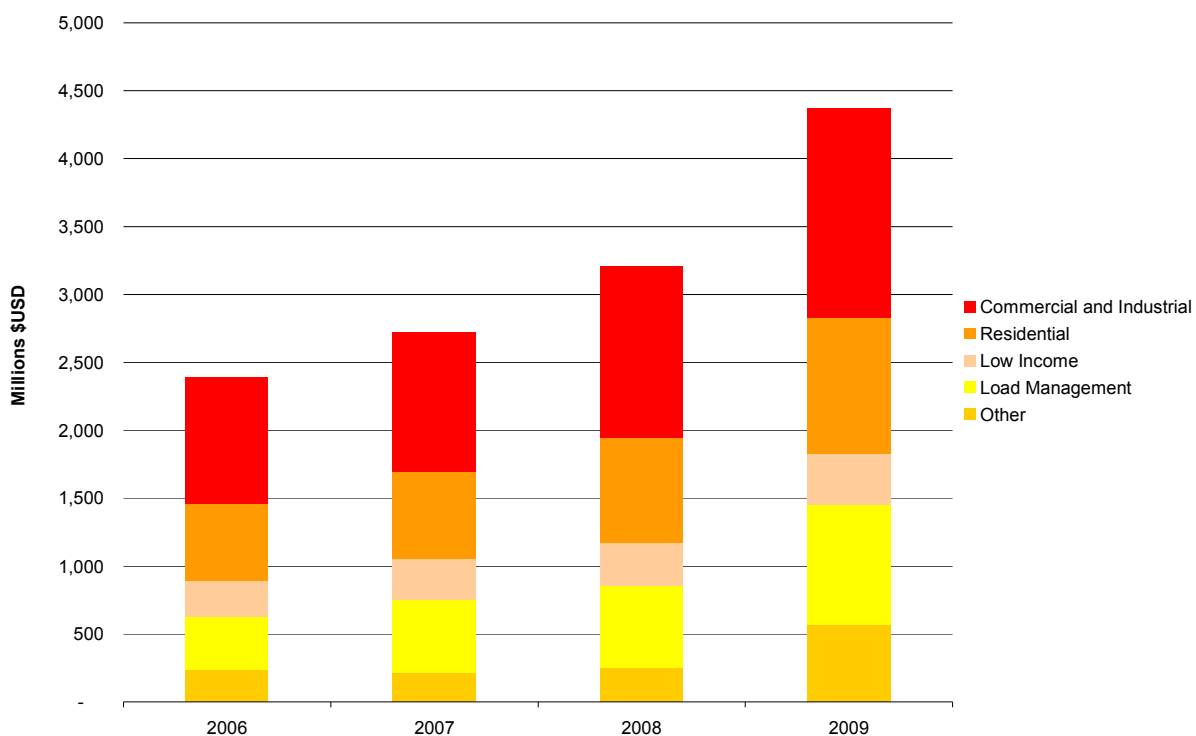
⁴¹ The Federal Energy Regulatory Commission Staff, *National Action Plan on Demand Response*, June 17, 2010, at p. 7.

⁴² Consortium for Energy Efficiency (“CEE”), *The State of the Efficiency Program Industry: Budgets, Expenditures, and Impacts*, 2009, at p. 7.

⁴³ *Id.*

⁴⁴ NERC, *supra* n.15, at p. 12.

Figure 5
Energy Efficiency and Demand Response Program Budgets, 2006-2009



Source: Consortium for Energy Efficiency, *The State of the Efficiency Program Industry: Budgets, Expenditures, and Impacts, 2009*

Although California and the Northeast account for over half of the total, budgets for ratepayer-funded EE programs are expanding in all regions of the country. In 2009, EE budgets for Illinois, Wisconsin, and Iowa increased in 2009, year-on-year, by 60 percent, 40 percent, and 36 percent, respectively.⁴⁵ In the Southeast, Alabama, Mississippi, North Carolina, and Louisiana reported ratepayer-funded EE budgets for the first time in 2009.⁴⁶ EE's use as a capacity resource is increasing in organized wholesale markets as well. For example, EE resources accounted for 757 MW of the resources offered into the most recent PJM RPM auction, an increase of 33 percent over the prior year. Of those resources, 90 percent, or 680 MW cleared the auction to serve as a firm capacity resource.⁴⁷

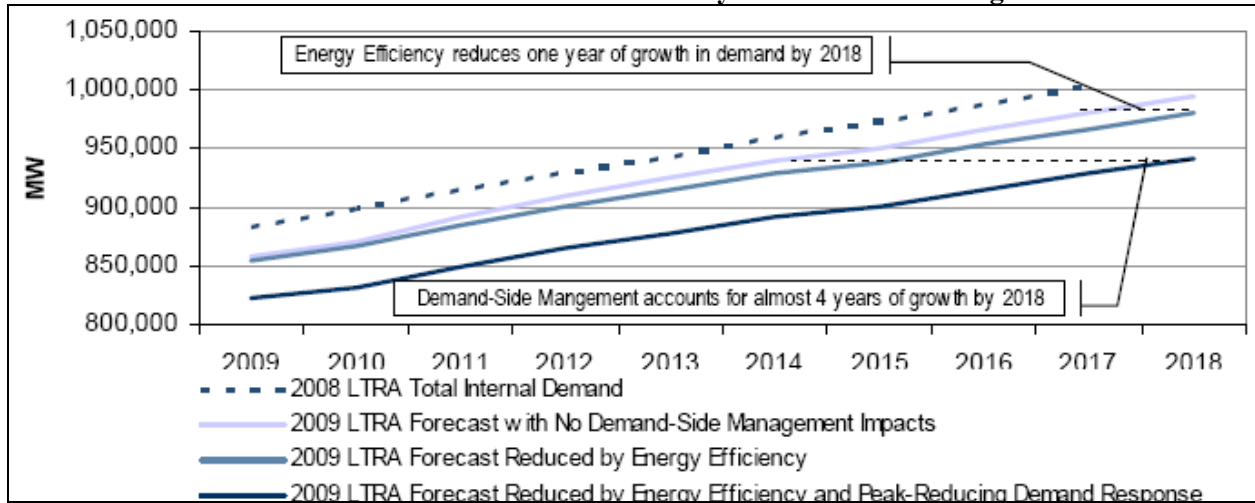
NERC estimates that current levels of EE and DR will shave off certain portions of expected growth in demand, as shown in Figure 6, below, underscoring growing acceptance of these load-management tools.

⁴⁵ CEE, *supra* n.42, at p. 15.

⁴⁶ *Id.* at p. 16.

⁴⁷ PJM, *supra* n.38.

Figure 6
Summer Peak Demand Growth Reduced by Demand-Side Management



Source: NERC, Long-Term Reliability Assessment, 2009, at p. 18.

Based on the experience of states and organized competitive wholesale markets that have implemented EE and DR, it is clear these programs provide yet another cost-effective tool to help maintain reliability in the face of generation retirements.

II. THE INDUSTRY HAS THE CAPACITY TO TIMELY RESPOND TO EPA'S FUTURE AIR REGULATIONS

A. The Majority Of Coal Plants Have Already Installed Air Pollution Controls

Proven pollution control technologies are widely available to dramatically reduce emissions of NO_x, SO₂, mercury, and other HAPs from coal plants, which account for 98 percent of the electric sector's SO₂ emissions, 86 percent of its NO_x emissions, and 98 percent of its mercury emissions.^{48,49}

Over the last 20 years, the industry has deployed a number of different technologies to comply with federal and state SO₂ and NO_x regulations. The three basic options for reducing SO₂ emissions from coal plants include: (1) switching from higher to lower sulfur coal; (2) blending higher sulfur coal with lower sulfur coal; or (3) installing flue gas desulfurization ("FGD") control systems, commonly referred to as scrubbers. Wet scrubbers, which use a sorbent to capture SO₂, can typically achieve at least 95 percent SO₂ removal. Widely available NO_x control technologies for coal generation can be grouped into two broad categories: combustion modifications and post-combustion controls. Post-combustion controls can reduce NO_x emissions by 90 percent or more by removing the NO_x after it has been formed in the boiler. The most common post-combustion control is selective catalytic reduction ("SCR") technology, in which ammonia (NH₃) is injected, combining with the NO_x in the flue gas to form nitrogen and water.

The majority of coal plants have already installed such controls. Of the 310 GW of coal capacity in the United States, 150 GW have installed FGD systems and another 55 GW have FGD controls planned,⁵⁰ representing 65 percent of the existing coal fleet. As detailed in Attachment A, numerous scrubber installations have been recently completed or soon will be completed. Additionally, about 50 percent of coal capacity in the U.S. has installed or soon will be retrofit with advanced NO_x controls (SCR and selective non-catalytic reduction ("SNCR") technologies).⁵¹

To date, most studies put a heavy emphasis on deploying scrubbers to comply with the new EPA air regulations. Retirements occur where the costs of installing scrubbers does not make economic sense based upon the unit's characteristics. However, a number of companies have announced that they will use other less costly technologies in lieu of scrubbers. For example, on August 5, 2010, Edison Mission International, one of the nation's largest merchant coal generators, announced it could achieve compliance without installing scrubbers by using trona injection technology.⁵²

B. With Proper Planning, the Industry Can Install the Necessary Pollution Controls on a Timely Basis

EPA projects that about 14 GW of additional coal-fired generating capacity will need to be retrofit with scrubbers and less than 1 GW with SCR controls by 2014 to comply with the recently proposed Transport Rule.⁵³ This number of retrofits is significantly less than the industry has added in past construction

⁴⁸ EIA, *U.S. Electric Power Industry Estimated Emissions by State (EIA-767 and EIA-906)*, Electric Power Annual 2008, http://www.eia.doe.gov/cneaf/electricity/epa/emission_state.xls (accessed July 30, 2010)

⁴⁹ U.S. EPA Office of Air Quality Planning and Standards, *National Emissions Inventory for Hazardous Air Pollutants*, 1999.

⁵⁰ PIRA, *supra* n5, at p. 7.

⁵¹ U.S. EPA, *National Electric Energy Data System ("NEEDS")*, version 3.02.

⁵² Trona is a naturally occurring sorbent that can be injected directly into boilers to remove harmful air toxics without the use of FGD scrubbers. Given that the PIRA and EEI analyses did not consider trona and other less costly compliance options, the predicted retirement scenarios are very likely overstated. Nonetheless, this report uses the predicted retirements as a conservative input to test all of the reliability considerations.

⁵³ U.S. EPA, *Proposed Rule: Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone*, August 2, 2010.

cycles. For example, during the peak of scrubber construction, between 2008 and 2010, approximately 60 GW of coal capacity was retrofit with scrubber controls,⁵⁴ highlighting the industry's ability to complete a substantial number of retrofits over a short period of time. In 2009 and 2010, the industry completed between 50 and 60 scrubber retrofits each year.⁵⁵

Moreover, the industry's past successful installation of pollution controls on numerous units underscores its ability to schedule and sequence any required unit outages in an efficient and reliable manner. To help ensure reliability, generators and transmission owners provide reasonable advance notice of any planned outages to the respective transmission authorities. In turn, the transmission authorities develop a coordinated outage schedule to prevent any deliverability problems. This illustrates a key benefit of a fully integrated national transmission system.

Further, the CAA allows three years for existing sources to comply with the Utility MACT rule with the possibility of a one-year extension. EPA is under a court-imposed deadline to complete its regulations by November 2011, with compliance required by late 2014. As numerous states have adopted regulations limiting mercury emissions from coal-fired power plants, many companies have already begun to install mercury control technologies. Also, the scrubber and particulate control systems installed to comply with the Transport Rule and other EPA regulations will help companies to comply with future air toxics regulations.

In the event, however, that any required retrofit construction schedules could not be completed within the pre-compliance period, EPA may, and should, exercise its authority under Section 112(i)(3)(B) of the CAA to provide up to one-year extensions to complete pollution control installations. In addition, to protect the national security interest of maintaining adequate electrical grid reliability, the President has the authority under Section 112(i)(4) of the CAA to grant one or more compliance extensions of up to two years each. Any such extensions would be unit-specific and based on clear demonstration that the technology to implement such standards is not available.

These federal tools combined with market rules and signals, industry reliability standards and enforcement mechanisms, and utility regulatory requirements and incentives, provide a robust portfolio of techniques to assure compliance with health-based air regulations while maintaining reliable electricity supply.

C. The Coal Plants Most Likely To Retire Are Nearing The End Of Their Design Life Expectancies And Are Already Economically Challenged

As indicated by Table 5 below, many of the uncontrolled coal units, which are the most likely to retire, are smaller (250 MW and below) and are 40 to 60 years old. Thus, the coal plants most likely to retire are already nearing the end of their design life expectancies, as confirmed in recent coal plant retirement announcements, detailed in Attachment B.

⁵⁴ M. J. Bradley & Associates analysis based on U.S. EPA NEEDS Database v. 3.02.

⁵⁵ *Id.*

Table 5 - Characteristics of U.S. Coal Plants

Unit Age	Units		Capacity		Avg. Unit Size (MW)	Pollution Control Installed (% of units)			
	Count	%	MW	%		SNCR	SCR	Scrubber	Uncontrolled
> 60 years	46	5%	1,762	1%	38	2%	4%	11%	87%
51 - 60 years	313	31%	39,787	13%	127	21%	9%	19%	64%
41 - 50 years	233	23%	58,078	20%	249	15%	19%	33%	53%
31 - 40 years	229	23%	114,090	38%	498	4%	43%	65%	27%
11 - 30 years	163	16%	80,165	27%	492	6%	29%	66%	31%
10 years or younger	7	1%	2,444	1%	349	43%	29%	57%	29%
Total	1,004		297,639			13%	23%	41%	48%

Data Sources: 2007/2008 EPA IPM, ARP, NBP Databases & Commercial Sources, MJB&A Analysis

Information included in the most recent annual *State of the Market Report* prepared by PJM's Independent Market Monitor ("IMM") suggests that fundamental economics, not the EPA regulations, are already challenging those units most likely to retire. In that report, the IMM identified over 11 GW of coal units at risk for retirement, since they "did not recover avoidable costs even with capacity revenues."⁵⁶ Of the 11 GW identified in the report, most operated less than 1,000 of the 8,760 hours in 2009 and tended to be significantly smaller with an average installed capacity of only 73 MW.⁵⁷ Of the 122 coal units in PJM with capacity less than or equal to 200 MW, 35 failed to recover their avoidable costs and another 52 were close to not recovering those costs. Therefore, in PJM, a region covering 13 states and DC, in addition to approximately 10 GW of coal generation that has or will be retired during the seven years from 2004 to 2011, another 11 GW faces a troubling economic outlook. As such, the units' economics already place them at risk of shutdown, regardless of EPA's future air regulations.

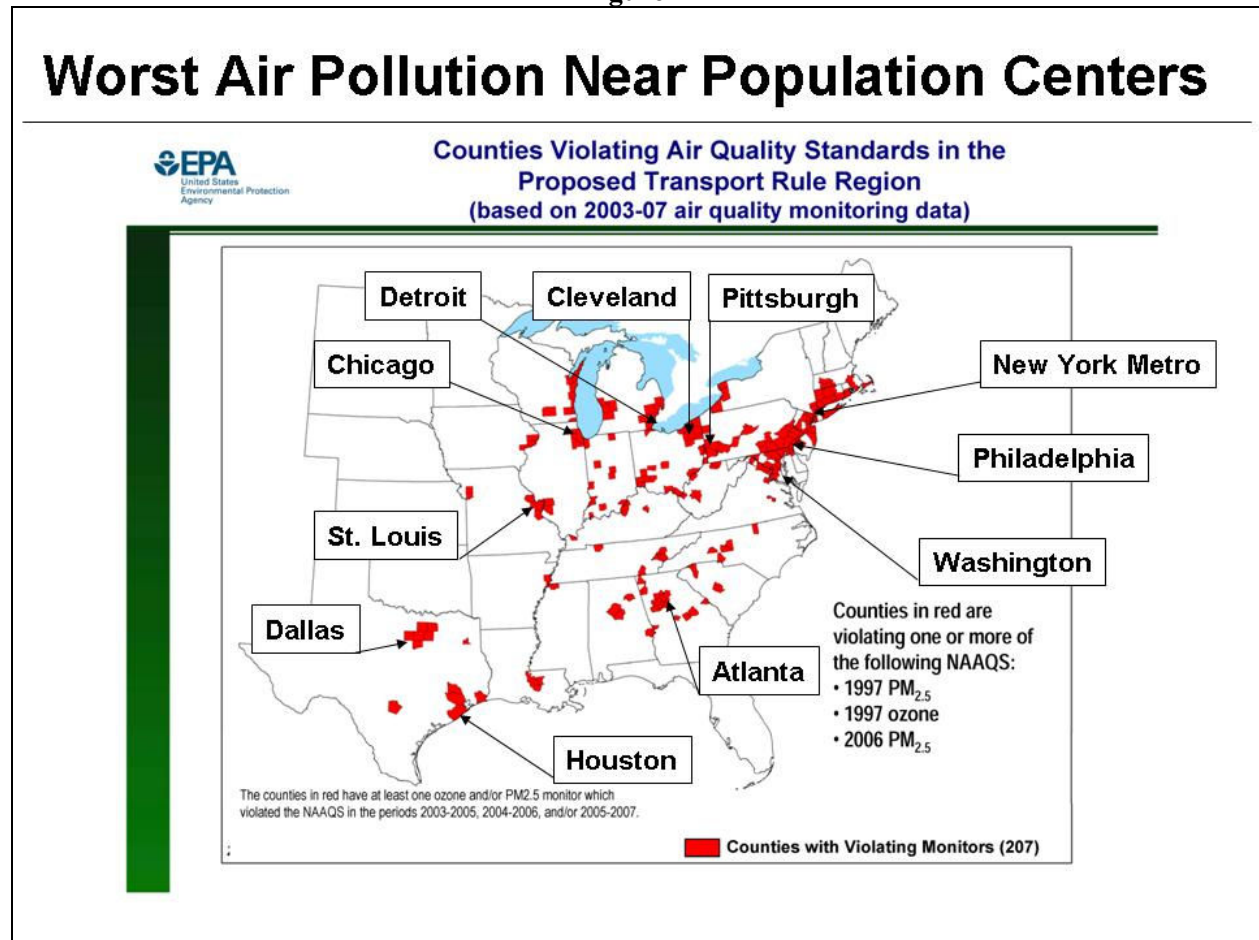
In reducing the air pollution emissions from some of the nation's most inefficient uncontrolled units, EPA will facilitate the development of cleaner, more efficient generation while improving air quality and reducing greenhouse gas emissions. The current levels of air pollution in certain regions of the country require industrial facilities and power plants to obtain emission offsets to expand their operations. This requirement discourages economic development due to the increased permitting and financial obligations compared to areas that meet federal and state air quality standards. Significantly as well, as shown in Figure 7, because these non-attainment areas are concentrated in highly populated areas, reducing emissions there will facilitate the development of cleaner, more efficient generation near electric load centers where it is needed most.

Additionally, the retirement of generating capacity that has been previously supported by transmission investment could create room on the transmission grid to handle power flows both within and outside the regions, or the addition of new generating capacity, without requiring attendant transmission upgrades. These considerations, too, will help mitigate reliability concerns and reduce the cost of upgrading the nation's power system infrastructure.

⁵⁶ PJM, *State of the Market Report*, Vol. 1, March 11, 2010, p. 21.

⁵⁷ *Id.* Vol. 2 at p. 176.

Figure 7



Source: U.S. EPA (with city locations added by M.J. Bradley & Associates)

III. EPA, DOE, FERC AND STATE UTILITY REGULATORS HAVE THE TOOLS TO MODERATE IMPACTS ON THE ELECTRIC INDUSTRY AND MANAGE ELECTRIC SYSTEM RELIABILITY.

A. Statutory, Regulatory and Market Safeguards Exist To Mitigate Risks of Retirement On Reliability

Assorted risk management procedures under the CAA, the Federal Power Act (“FPA”) and other statutes provide EPA, DOE, FERC, and the President tools to moderate potential impacts on electric system reliability. The procedures serve as a bridge, if necessary, to a permanent solution, helping ensure reliability while minimizing exposure to harmful air pollutants. EPA also has the authority to develop cost-effective regulatory approaches, such as the emissions trading mechanism proposed in the Transport Rule, that will enable greater compliance flexibility and flexibility in managing potential reliability issues.

In addition to the EPA’s and President’s authority to extend deadlines for installation of pollution controls described in Section II B, where necessary to maintain electric system reliability, DOE has the power under Section 202(c) of the FPA to override CAA-derived control requirements in limited emergency circumstances. In such emergency situations, including extended periods of insufficient power supply as a result of shortage of electric facilities, DOE has the discretion to issue unit-specific orders designed to maximize CAA compliance and minimize health risks.

Two examples of DOE’s exercise of this authority illustrate the point. In 2003, the Secretary of Energy ordered energizing a new underwater cable connecting New Haven, Connecticut to Long Island, which had previously been constructed but remained inoperable due to legal actions appealing permits. Citing August 2003’s massive electric service outage, the Secretary invoked his authority to alleviate the reliability emergency.⁵⁸

DOE’s actions related to the Potomac River plant serving Washington, DC provide another example. In 2005, the plant’s owner, Mirant, had decided to shut down all five generating units at its Potomac River plant located outside Washington, DC. The DC Public Service Commission requested that DOE issue an emergency order directing Mirant to continue to operate the units, as their shutdown would have “immediate” and “drastic” effects on DC’s electric system reliability. In conjunction with the EPA, which required Mirant to enter into a consent decree, DOE issued an Order⁵⁹ requiring Mirant to operate the plants under specific and limited circumstances tailored to relieve the risk of a DC area blackout, while avoiding to the full extent possible exceedances of federal air quality standards.

The well-established consent decree template, as used to address the Potomac River situation, provides EPA yet another tool to synthesize reliability and environmental concerns. By restricting a unit to operate for reliability purposes only, pending completion of any required transmission upgrades or replacement

⁵⁸ DOE, *Order No. 202-03-2*, August 28, 2003. “I hereby determine that an emergency continues to exist in the Northeast United States due to a shortage of electric energy, a shortage of facilities for [...] the transmission of electric energy and other causes. [...] On August 14, 2003, the Northeast and Upper Midwest areas in the United States, as well as portions of Canada, experienced the largest electric transmission grid failure and electric service outage ever to occur in North America. Tens of millions of people were affected by this outage, and it presented profound risks to the public health and safety throughout the affected areas. [...] Only hours after the outage occurred, and after considering the unanimous recommendation of the North American Electric Reliability Council, the New York Independent System Operator (NYISO), ISO New England, Inc. (ISO-NE), and electric utilities in both New York and Connecticut in support of the issuance of an emergency order, I issued an order directing the NYISO and ISO-NE to require the Cross-Sound Cable Company, LLC (CSC) to operate the Cross-Sound Cable and related facilities as necessary to alleviate the disruptions in electric transmission service. The Cable was energized a short time thereafter.”

⁵⁹ DOE, *Order No. 202-05-03*, December 20, 2005.

generation, such consent decrees can maintain reliability while minimizing adverse environmental impacts to the fullest extent possible.

Many regional wholesale competitive markets also have well-established forward capacity markets such as PJM's Reliability Pricing Model and New England's Forward Capacity Market, which are approved by FERC and overseen by independent market monitors, to facilitate and provide advanced notice of the retirement of inefficient units while maintaining reliability. Reliability impact studies are conducted for units that have announced retirement or fail to clear the forward capacity auctions, and those identified as being needed for reliability may continue to operate past their planned retirement date pursuant to "reliability must run" ("RMR") agreements. To help ensure reliability while minimizing adverse environmental impacts, the RMR agreements can provide the units operate only to maintain reliability. For example, Exelon Generation recently coordinated with PJM and the Pennsylvania Department of Environmental Protection ("PA DEP") to negotiate a consent decree and operating procedures related to an RMR agreement for its two retiring coal units, which require the units operate for reliability purposes only.⁶⁰

In addition to these established ISO/RTO procedures, advance analysis in the long range reliability planning processes should lead to rational and timely investments in new transmission that will mitigate any service reliability issues associated with future generation retirements. The local transmission owners currently play an important supplemental role in accomplishing this objective. For example, Commonwealth Edison ("ComEd"), the local transmission owner in Chicago, proactively filed an application with the Illinois Commerce Commission⁶¹ seeking permission to enhance its transmission system. In its application, ComEd noted the identified upgrades would be required to maintain system reliability in the event that two of Midwest Generation's at-risk coal units, Fisk and Crawford, were to retire.⁶²

Procedures also exist to protect electric system reliability in regions where coal plants are not part of an organized wholesale competitive market, but are owned by vertically-integrated utilities in traditionally regulated monopoly regimes. Generators regulated by state regulatory commissions have a legal obligation to reliably serve their customers, and to conduct long range resource planning. Typically, generators will have many options to meet their statutory obligation to serve including, but not limited to: (1) investing in existing plants; (2) building new plants; (3) decreasing load through DR and EE programs; (4) building transmission; or (5) a prudent combination of all those tools. Too, state regulators may adopt ratemaking policies to encourage such actions, including ones that address utilities' financial disincentives where aggressive EE and DR programs would otherwise produce lower revenues.

As such, FERC and other relevant agencies have a number of tools available to moderate the impacts of air emission regulations, while maintaining reliability and minimizing adverse environmental impacts. Moreover, EPA is also developing new water regulations under Section 316(b) of the Clean Water Act ("CWA"), new waste regulations, and greenhouse gas regulations affecting the electric power sector. EPA should consider efficiently coordinating these rules as it moves forward with its rulemakings to avoid possible reliability concerns.

⁶⁰ *Commonwealth of Pennsylvania Department of Environmental Protection v. Exelon Generation Company, LLC.*, No. 382 MD 2010 (Pa. Cmmw. April 16, 2010) included in *Operating Procedures for Cromby Generating Station Unit No. 2 and Eddystone Generating Station Unit No. 2 as Required for Reliability Purposes* at Appendix 1, <http://pjm.com/planning/generation-retirements/~media/planning/gen-retire/must-run-operating-procedures.ashx> (accessed August 6, 2010).

⁶¹ Commonwealth Edison Company, *Application for authorization under Section 4-101 of the Illinois Public Utilities Act ("Act"), 220 ILCS § 5/4-101, or alternatively, for a Certificate of Public Convenience and Necessity, pursuant to Section 8-406 of the Act, to install, operate and maintain two new 345,000 volt electric transmission lines in Cook County, Illinois*, No. 10-0385 (Ill. Cir. June 11, 2010).

⁶² Direct Testimony of Thomas W. Leeming, p. 2, Lines 25-35.

IV. CONCLUSION

Current industry practice and a review of applicable system data indicate the industry is well-positioned to respond to EPA's mission to "help millions of Americans breathe easier and live healthier" without threatening electric reliability. Generation plant capacity and availability, consumption levels and patterns, and transmission capacity and use must all be considered when judging the reliability impacts of environmental regulatory action.

The existing substantial excess capacity, the industry's proven track record to timely construct new generation and to efficiently coordinate the scheduling of planned outages, together with capacity upgrades, transmission enhancements, "smart grid" investments, fuel conversions, DR, and EE, should mitigate reliability concerns.

The industry has already successfully employed these various strategies to reliably meet customers' energy needs while reducing environmental impacts, and it will continue to do so in response to EPA's new regulations. As a final backstop, existing statutory, market and regulatory safeguards will facilitate the retirement of inefficient units, and an orderly transition to cleaner, more efficient generation.

ATTACHMENT A

Sampling of Recent Announcements of Scrubber Installations

Plant	Unit	State	Size (MW)	Highlights
Brandon Shores	1	MD	643	This significant environmental upgrade supports Constellation Energy's environmental stewardship efforts by: Reducing Maryland's coal-fired power plant's SO ₂ emissions by an estimated 95 percent; Reducing existing mercury emissions by 90 percent; and Significantly reducing acid gases. http://www.constellation.com/portal/site/constellation/menuitem.38d5d085b395c0cb2adedd10d66166a0/
Brandon Shores	2	MD	643	
Kingston	1	TN	135	The two scrubbers added at Kingston will control sulfur dioxide from all nine boilers at the fossil plant, which can generate 10 billion kilowatt-hours of electricity per year. "We now have state-of-the-art control equipment on all of our units at Kingston, allowing us to generate the electricity needed by our customers," Kingston Plant Manager Leslie Nale said. "This translates into cleaner air in the Great Smoky Mountains and across the region." http://www.tva.gov/news/releases/aprjun10/kingston_scrubbers.html
Kingston	2	TN	135	
Kingston	3	TN	135	
Kingston	4	TN	135	
Kingston	5	TN	177	
Kingston	6	TN	177	
Kingston	7	TN	177	
Kingston	8	TN	177	
Kingston	9	TN	178	
Miller	3	AL	750	During peak construction, Alabama Power's \$1.7 billion scrubber initiative was responsible for creating more than 2,300 jobs. "This investment is not only good for the environment, it's also good for Alabama's economy," Charles McCrary, Alabama Power president and CEO, said. http://southerncompany.mediaroom.com/index.php?s=43&item=2074
Miller	4	AL	750	
Gaston	5	AL	861	
Barry	5	AL	750	
Coffeen	1	IL	340	"Our investment in these technologies reflects our commitment to environmental stewardship and our support for the communities we serve," says Chuck Naslund, AER chairman, president and chief executive officer. "Through these projects, we have not only offered continued permanent employment to hundreds of Illinoisans, but we have also provided jobs to contract employees who call Illinois home. Clearly these projects have had a positive impact on the economies of central and southern Illinois – areas hard-hit by tough economic conditions." http://www.bloomberg.com/apps/news?pid=conewsstory&tkr=AEM:SP&sid=a.W8.1491R8g
Coffeen	2	IL	560	
Cardinal	1	OH	600	According to Buckeye Power, one of the owners of the Cardinal Plant, "the addition of these scrubbers means the Cardinal plant is able to reduce emissions while using Ohio coal, meaning jobs and economic benefits for eastern Ohio and the region." The unit 3 scrubber is still under construction. http://www.buckeyepower.com/pages/buckeye-power-2
Cardinal	2	OH	600	
Cardinal	3	OH	630	
Monroe	4	MI	775	DTE Energy will also be installing two additional FGD systems at Monroe units 1 and 2. According to DTE, "the \$600 million project will create 900 jobs and be one of the largest construction projects in Michigan over the next few years." http://www.prnewswire.com/news-releases/dte-energy-environmental-project-will-create-900-jobs-78770632.html
Monroe	3	MI	795	
Cliffside	5	NC	550	According to Duke, the scrubber control installation at Cliffside Unit 5 will be completed by the Fall of 2010. Duke already has emission-control scrubbers on all its large Carolinas coal plants—Allen, Marshall and Belews Creek. According to Duke spokesman Andy Thompson, Duke has reduced its NOx emissions by 80% since 1997 and SO ₂ emissions have fallen 70% since 2005. http://www.bizjournals.com/charlotte/blog/power_city/2010/07/duke_energy_assessing_new_epa_rules.html
Bowen	1	GA	713	Scheduled for completion in early 2010, according to Georgia Power. http://www.georgiapower.com/pluggedin/construction_2009_08.asp
Crist	6	FL	302	According to Gulf Power, since 1992, the company has reduced regulated emissions by more than 70 percent despite increased electricity demand from 120,000 new customers. With the scrubber system fully operational, Gulf Power will have reduced overall regulated emissions by more than 85 percent since 1992. http://www.renewablesbiz.com/article/09/12/gulf-power-begins-scrubber-startup
Crist	7	FL	477	
Clifty Creek	1	IN	217	"The addition of these FGD systems represents a major commitment to environmental quality in southeastern Ohio and southeastern Indiana," said David L. Hart, vice president and assistant to the president of OVEC-IKEC. "The projects will also produce an economic boost to the two regions." The scrubber installations at Clifty Creek and Kyger Creek are scheduled for completion in 2010. http://www.prnewswire.com/news-releases/ovec-ikec-to-invest-820-million-for-environmental-controls-at-kyger-creek-and-clifty-creek-power-plants-56325052.html
Clifty Creek	2	IN	217	
Clifty Creek	3	IN	217	
Clifty Creek	4	IN	217	
Clifty Creek	5	IN	217	
Clifty Creek	6	IN	217	
Kyger Creek	1	OH	217	

Plant	Unit	State	Size (MW)	Highlights
Kyger Creek	2	OH	217	
Kyger Creek	3	OH	217	
Kyger Creek	4	OH	217	
Kyger Creek	5	OH	217	
Cha k Point	1	MD	342	"We are making a major investment in emission reduction technologies," said Edward R. Muller, Mirant chairman and CEO. "This equipment offers an excellent solution for substantially improving air quality while maintaining system reliability and efficient power generation for consumers and businesses." http://investors.mirant.com/releasedetail.cfm?releaseid=351567
Cha k Point	2	MD	341	
Morgantown	1	MD	624	
Morgantown	2	MD	620	
Dickerson	1	MD	182	
Dickerson	2	MD	182	
Dickerson	3	MD	182	
Brunner Island	1	PA	344	According to PPL's website, "[t]he unit's scrubber is now operating as designed, thanks to plant employees who safely made the final connections between the plant and the scrubber during a recent maintenance outage." http://www.pplweb.com/ppl+generation/ppl+brunner+island.htm
Brunner Island	2	PA	397	
Brunner Island	3	PA	754	
Hatfields Ferry	1	PA	530	According to an Allegheny Energy fact sheet, "[t]he 'scrubbers' will remove approximately 95 percent of the sulfur dioxide (SO ₂) emissions and significantly reduce mercury emissions from the station...In addition to improving the environment, the scrubber system will enable Hatfield's Ferry to purchase more local coal, which will preserve regional coal mining and related coal mining support jobs. The project will bring approximately 350 construction jobs to the region for a period of about three years. Additional full-time positions will be added to operate and maintain the scrubbers." http://www.alleghenyenergy.com/Newsroom/Scrubber.Hat.2page.pdf
Hatfields Ferry	2	PA	530	
Hatfields Ferry	3	PA	530	
Hudson	2	NJ	583	According to PSEG Power, advanced emissions controls would be installed at Hudson by 2010. Scrubbers at its Mercer plant are scheduled for completion in late 2010, http://www.reuters.com/article/idUSN1450072120080514
Mercer	1	NJ	315	
Mercer	2	NJ	310	

Source: MJB&A analysis.

ATTACHMENT B**Recent Coal Plant Retirement Announcements**

Name	Owner	State	Installed Capacity (MW)	Age (years)	Advanced SO₂/NO_x Controls
Weatherspoon	Progress Energy	NC	48	60	None
Weatherspoon	Progress Energy	NC	49	59	None
Weatherspoon	Progress Energy	NC	76	57	None
L V Sutton	Progress Energy	NC	93	55	None
L V Sutton	Progress Energy	NC	102	54	None
L V Sutton	Progress Energy	NC	403	37	None
H F Lee	Progress Energy	NC	74	57	None
H F Lee	Progress Energy	NC	77	58	None
H F Lee	Progress Energy	NC	248	47	None
Cape Fear	Progress Energy	NC	172	51	SNCR
Cape Fear	Progress Energy	NC	144	53	SNCR
Cameo	Xcel Energy	CO	54	49	None
Arapahoe	Xcel Energy	CO	47	58	None
Arapahoe	Xcel Energy	CO	121	54	None
Wabash River	Duke Energy	IN	95	53	None
Wabash River	Duke Energy	IN	85	55	None
Wabash River	Duke Energy	IN	85	56	None
Wabash River	Duke Energy	IN	85	54	None
Wabash River	Duke Energy	IN	318	41	None
John Sevier	TVA	TN	176	53	SNCR
John Sevier	TVA	TN	176	52	SNCR
John Sevier	TVA	TN	176	54	SNCR
John Sevier	TVA	TN	176	54	SNCR
Cromby	Exelon	PA	144	55	SNCR + Scrubber
Eddystone	Exelon	PA	309	49	SNCR + Scrubber
Eddystone	Exelon	PA	279	50	SNCR + Scrubber
Richard Gorsuch	American Municipal Power	OH	50	59	None
Richard Gorsuch	American Municipal Power	OH	50	59	None
Richard Gorsuch	American Municipal Power	OH	50	59	None
Richard Gorsuch	American Municipal Power	OH	50	59	None
Indian River	NRG Energy	DE	82	53	None
Indian River	NRG Energy	DE	177	40	None
Jack McDonough	Southern Co	GA	258	46	None
Jack McDonough	Southern Co	GA	259	45	None
Hunlock	UGI	PA	50	51	None
Will County	Midwest Generation	IL	188	55	None
Will County	Midwest Generation	IL	184	55	None
Boardman	Portland General Electric, Others	OR	585	29	None
Howard Down	Vineland Municipal Electric Utility	NJ	25	40	None
TOTAL	-	-	4,939	-	-

Source: MJB&A analysis based on U.S. EPA Acid Rain Program database and U.S. EIA File 860.

FOR IMMEDIATE RELEASE**Electric Power Industry Can Maintain System Reliability While Reducing Air Pollution Emissions**

New study finds the industry is well-positioned to respond to more stringent EPA clean air regulations

Concord, MA - August 9, 2010 – An expert report issued today finds that the U.S. Environmental Protection Agency (EPA) can move forward in a timely way on new air quality rules for power plant emissions to improve public health while maintaining the reliability of the nation's power system.

The report, *Ensuring a Clean, Modern Electric Generating Fleet while Maintaining Electric System Reliability*, is published by M.J. Bradley & Associates and Sue Tierney and Paul Hibbard from the Analysis Group. The report reviews the impact on power plant operations of proposed EPA rules to reduce emissions of sulfur dioxide (SO₂), nitrogen oxides (NO_x), mercury, and other hazardous air pollutants.

“Power companies have already announced a number of coal unit retirements and more are expected,” said Michael Bradley one of the lead authors of the report. “However, these will tend to be older, smaller generating units that are already reaching the end of their design life. We have identified at least 40 units that are scheduled for retirement with an average age of more than 50 years old.”

The report advises that federal and state regulators and the industry must take a proactive approach to managing the transition to a cleaner generating system.

“The energy industry has already successfully employed various strategies to reliably meet customers' energy needs while reducing environmental impacts, and we believe it will continue to do so in response to EPA's new regulations. We're starting from a strong foundation of excess power plant capacity across the regions of the U.S.,” said Tierney.

“Applying the well-established processes for prudent planning, scheduling, and operating of power plants and transmission facilities that are relied upon by utilities and power system operators across the country, the electric industry can meet its obligations under the Clean Air Act, help Americans breathe healthy air, and maintain electric system reliability for our businesses and households,” added Tierney. The EPA recently reported that despite significant progress in reducing emissions, in 2008, about 127 million Americans still lived in counties with unhealthy air.

According to the report, the industry has a robust toolkit available to manage system reliability while at the same time installing pollution control equipment and retiring a portion of the generating fleet. For example:

(1) The industry has a proven and recent track record of adding additional generating capacity and making transmission system upgrades when required – and coordinating effectively to address reliability concerns.

(2) The industry has proven technologies for controlling air pollution emissions, such as NO_x, SO₂, mercury and acid gases – at costs that can be managed.

(3) Industry and federal and state regulators have tools available to ensure reliability within their region (e.g., capacity markets, reserve sharing mechanisms, and outage scheduling procedures).

(4) Targeted demand response and energy efficiency programs can assist in maintaining electric system reliability while reducing customers' bills.

The report was prepared on behalf of a coalition of electric companies, including: Calpine Corporation, Constellation Energy, Entergy Corporation, Exelon Corporation, NextEra Energy, National Grid, PG&E Corporation, and Public Service Enterprise Group. These eight companies are some of the nation's largest generators of electricity, with over 170,000 megawatts of electric generating capacity (including 110,000 megawatts of fossil generating capacity) throughout the U.S. Together, these companies serve nearly a fifth of all U.S. electric customers.

The report is available at www.mjbradley.com and www.analysisgroup.com.

Contact

Michael J. Bradley
M.J. Bradley & Associates LLC
(978) 369-5533

Sue Tierney
Analysis Group
(617) 425-8114

END

01268-EPA-783

Steve Owens/DC/USEPA/US

To Richard Windsor

08/18/2010 02:48 PM

cc Bob Perciasepe, Diane Thompson

bcc

Subject P2 Items

Lisa,

As you may know, this year is the 20th anniversary of the Pollution Prevention Act (PPA) of 1990. We are planning to celebrate the event with various activities during National P2 Week (September 20-24), but we
(b) (5) Deliberative

EPA's original P2 Policy Statement was issued by Administrator Carol Browner in 1993, and it needs to
(b) (5) Deliberative

(b) (5) Deliberative

(b) (5) Deliberative

Please let me know if you are comfortable with us proceeding with this document as well.

Thanks.

Steve

PS I hope your trip to Mexico went well.

(b) (5) Deliberative

P2 Policy Statement (draft)(8-18-10).doc

(b) (5) Deliberative

P2 Presidential Proclamation (draft)(8-18-10).doc

01268-EPA-784

Scott Fulton/DC/USEPA/US

To "Richard Windsor"

08/23/2010 09:17 AM

cc

bcc

Subject Fw: New York v. EPA (DC Cir. 06-1322)

(b) (5) Deliberative, (b) (5) Attorney Client

From: Richard Ossias
Sent: 08/23/2010 07:34 AM EDT
To: Gina McCarthy; Lisa Heinzerling; Bob Sussman; Janet McCabe; Joseph Goffman; David McIntosh; Diane Thompson; Bob Perciasepe
Cc: Scott Fulton; Avi Garbow
Subject: Fw: New York v. EPA (DC Cir. 06-1322)

In case any of you had not seen or heard about this yet ...

Sent by EPA Wireless E-Mail Services

From: Scott Fulton
Sent: 08/21/2010 06:08 PM EDT
To: Richard Ossias
Subject: Fw: New York v. EPA (DC Cir. 06-1322)

From: Joanne Spalding [Joanne.Spalding@sierraclub.org]
Sent: 08/20/2010 03:42 PM MST
To: LisaP Jackson; Scott Fulton
Cc: David Doniger <dondoniger@nrdc.org>; Vickie Patton <vpatton@edf.org>
Subject: New York v. EPA (DC Cir. 06-1322)

Dear Administrator Jackson,

Attached is a letter from Sierra Club, Natural Resources Defense Council, and Environmental Defense Fund. We look forward to your response.

Sincerely,

Joanne Spalding
Managing Attorney
Sierra Club
85 Second Street, Second Floor
San Francisco, CA 94105
415-977-5725
415-977-5793 (Fax)
joanne.spalding@sierraclub.org

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This e-mail may contain privileged and confidential attorney-client communications and/or confidential attorney work product. If you receive this e-mail inadvertently, please reply and notify the sender and delete all versions on your system. Thank you.



EGU NSPS letter to L Jackson 8-20-10.pdf

**SIERRA CLUB
NATURAL RESOURCES DEFENSE COUNCIL
ENVIRONMENTAL DEFENSE FUND**

August 20, 2010

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
United States Environmental Protection Agency 1101A
U.S. EPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: *New York v. EPA* (D.C. Cir. 06-1322)

Dear Administrator Jackson:

The Sierra Club, Natural Resources Defense Council, and Environmental Defense Fund urge the Environmental Protection Agency to act without further delay on the D.C. Circuit's remand in *New York v. EPA* (D.C. Cir. 06-1322). In this action, our organizations joined state and local governments in challenging EPA's failure to issue new source performance standards ("NSPS") under section 111 of the Clean Air Act limiting carbon dioxide emissions from power plants. On September 24, 2007, the D.C. Circuit remanded the case for further proceedings in light of the Supreme Court's ruling in *Massachusetts v. EPA*, 549 U.S. 497 (2007).

In the nearly three years since the D.C. Circuit remanded this case to EPA, the agency has failed to comply with the court's order. In the meantime, EPA has issued its finding that six greenhouse gases endanger human health and the environment, adopted standards regulating greenhouse gas emissions from light duty vehicles, and established a timetable for bringing new and modified stationary sources of greenhouse gases into the Act's preconstruction and operating permit programs. We applaud these important steps toward regulating the pollution that causes climate change. EPA's first national greenhouse gas limits, adopted for light duty vehicles, will reduce air pollution and strengthen our nation's energy security while providing certainty and confidence to spur durable investments in the U.S. auto sector's economic recovery. These encouraging actions, however, do not lessen the need for EPA to comply with its legal obligation and promptly issue a standard under section 111 limiting greenhouse gas emissions from power plants.

Power plants account for one-third of total U.S. greenhouse gas emissions. The category of electric generating units ("EGUs") has already been deemed to "cause[], or contribute[] significantly to, air pollution which may reasonably be

anticipated to endanger public health or welfare," 42 USC § 7411(b)(1)(A), based on emissions of various conventional air pollutants. To the extent that specific findings on endangerment or contribution may be needed when revising a current NSPS to cover additional pollutants:

- EPA has already made the finding that greenhouse gas air pollution endangers public health and welfare. 74 Fed. Reg. 66,496 (Dec. 15, 2009); see also 75 Fed. Reg. 49,556 (Aug. 13, 2010) (denying reconsideration petitions).
- As the source of a third of total U.S. greenhouse gas emissions, EGUs undoubtedly contribute significantly to greenhouse gas air pollution. By comparison, in its endangerment determination, EPA found that the greenhouse gas emissions from new light-duty vehicles contribute to dangerous greenhouse gas air pollution. Collectively, EGUs emit more than 1.5 times more carbon dioxide than all light-duty vehicles, and more than 20 times the amount emitted by each year's fleet of new vehicles. Without question, this constitutes "contribut[ing] significantly" to dangerous greenhouse gas air pollution within the meaning of Section 7411(b)(1)(A).

Demonstrated technologies can significantly reduce greenhouse gas emissions from power plants, and EPA must issue a standard based on the limit achievable by the best of these technologies.

The NSPS program is a central component of the Clean Air Act's strategy for addressing stationary source pollution that complements the Act's new source review ("NSR") program. The NSPS helps guide the case-by-case analysis to determine the best available control technology ("BACT") limit for a pollutant because it serves as the BACT floor. 42 USC § 7479(3). Adopting NSPS will therefore ease the burden on permitting authorities as they begin to establish BACT limits on greenhouse gases in preconstruction permits for the largest stationary sources. By providing a national baseline, the NSPS will help ensure a level playing field and make the BACT process more efficient and predictable.

It has been eight years since a coalition of environmental groups asked EPA to include greenhouse gases in the NSPS for power plants, six years since EPA entered a consent decree requiring it to review the power plant NSPS, five years since our organizations submitted detailed comments addressing these issues during the rulemaking proceeding, and three years since the D.C. Circuit ordered EPA to take action on the power plant NSPS in light of the Supreme Court's decision in *Massachusetts v. EPA*. While the court did not establish a deadline for EPA to act on the remand order, three years is unwarranted, especially since the agency has not even begun to undertake action to comply. *Midwest Gas Users Ass'n v. FERC*, 833 F.2d 341, 359 (D.C. Cir. 1987) (holding that "a reasonable time for an agency decision could encompass 'months, occasionally a year or two, but not several years or a decade.'" (quoting *MCI Telecomms. Corp. v. FCC*, 627 F.2d 322, 340 (D.C. Cir. 1980))). See also, *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008)

(noting that mandamus petition is appropriate if EPA fails to undertake rulemaking consistent with court's remand order).

In light of the extended delay in responding to the D.C. Circuit's remand order, we respectfully ask EPA to agree by no later than September 15, 2010, to include greenhouse gases in its upcoming NSPS and to coordinate these measures with the forthcoming MACT rulemaking for utility boilers. The agency is scheduled to propose the utility NSPS and MACT standards in March 2011 and finalize them in November 2011. In keeping with EPA's multi-pollutant strategy, it makes sense to address greenhouse gases on the same schedule. In addition, we ask that EPA commit to exercising its authority under section 111(d) in that same rulemaking proceeding. This comprehensive approach will provide a framework for integrated air quality planning and management that encourages prudent investments in strengthening our nation's clean energy economy.

The remanded rule also addressed other categories of fossil-fuel-fired boilers (Industrial-Commercial-Institutional Steam Generating Units, 40 CFR part 60, subparts Db and Dc). We request that EPA identify and commit to a reasonable schedule for issuing revised standards that limit greenhouse gas emissions from new and existing sources in these categories as well. We would be happy to discuss with the agency what would constitute a reasonable schedule.

Barring agreement by September 15th, our remaining recourse will need to be seeking a court order compelling EPA action on the 2007 remand order.

We appreciate EPA's leadership in addressing greenhouse gas pollution and look forward to working with the agency as it acts to regulate greenhouse gases through the NSPS program. Please contact us at your earliest convenience regarding our proposed schedule for responding to the D.C. Circuit's remand order.

Sincerely,



Joanne Spalding
Sierra Club
85 Second Street, Second Floor
San Francisco, CA 94105
415-977-5725
joanne.spalding@sierraclub.org

Vickie Patton
Environmental Defense Fund
2334 N. Broadway
Boulder, CO 80304
303-447-7216
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David Doniger
Natural Resources Defense Council
1200 New York Avenue, NW
Suite 400
Washington, DC 20005
202-289-2403
ddoniger@nrdc.org

01268-EPA-786

Steve Owens/DC/USEPA/US

To Richard Windsor

08/24/2010 09:44 AM

cc Bob Perciasepe, Diane Thompson

bcc

Subject Fw: P2 Items

Lisa,

I just wanted to make sure that you received the email below. Thanks.

Steve

----- Forwarded by Steve Owens/DC/USEPA/US on 08/24/2010 09:43 AM -----

From: Steve Owens/DC/USEPA/US
 To: Richard Windsor/DC/USEPA/US@EPA
 Cc: Bob Perciasepe/DC/USEPA/US@EPA, Diane Thompson/DC/USEPA/US@EPA
 Date: 08/18/2010 02:48 PM
 Subject: P2 Items

Lisa,

As you may know, this year is the 20th anniversary of the Pollution Prevention Act (PPA) of 1990. We are (b) (5) Deliberative

[Redacted]

EPA's original P2 Policy Statement was issued by Administrator Carol Browner in 1993, and it needs to (b) (5) Deliberative

[Redacted]

[Redacted]

[Redacted]

Please let me know if you are comfortable with us proceeding with this document as well.

Thanks.

Steve

PS I hope your trip to Mexico went well.

(b) (5) Deliberative

P2 Policy Statement (draft)(8-18-10).doc

(b) (5) Deliberative

P2 Presidential Proclamation (draft)(8-18-10).doc

01268-EPA-790

David McIntosh/DC/USEPA/US
08/30/2010 11:17 AM

To Richard Windsor, Diane Thompson
cc
bcc

Subject Fw: BACT Guidance -- Your schedule

----- Forwarded by David McIntosh/DC/USEPA/US on 08/30/2010 11:17 AM -----

From: David McIntosh/DC/USEPA/US
To: Bob Sussman/DC/USEPA/US@EPA
Cc: Bob Perciasepe/DC/USEPA/US@EPA, Lisa Heinzerling/DC/USEPA/US@EPA, Seth Oster/DC/USEPA/US@EPA
Date: 08/30/2010 11:16 AM
Subject: Re: Fw: BACT Guidance -- Your schedule

In light of Bob's info below, attached is a revised version of the calendar that I circulated earlier.

(b) (5) Deliberative,
(b) (5) Attorney Client

Bob Sussman Hey David -- you probably need to see... 08/30/2010 10:56:39 AM

From: Bob Sussman/DC/USEPA/US
To: David McIntosh/DC/USEPA/US@EPA
Cc: Bob Perciasepe/DC/USEPA/US@EPA, Seth Oster/DC/USEPA/US@EPA, Lisa Heinzerling/DC/USEPA/US@EPA
Date: 08/30/2010 10:56 AM
Subject: Fw: BACT Guidance -- Your schedule

Hey David -- you probably need to see this, if you haven't already.

(b) (5) Deliberative, (b) (5) Attorney Client

(b) (5) Deliberative, (b) (5) Attorney Client

A question is whether (b) (5) Deliberative, (b) (5) Attorney Client

In my mind, there remains a question (1) (b) (5) Deliberative, (b) (5) Attorney Client and (2) (b) (5) Deliberative, (b) (5) Attorney Client

ps -- I'll make sure you have my comments on the draft guidance.

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency

----- Forwarded by Bob Sussman/DC/USEPA/US on 08/30/2010 10:46 AM -----

From: Joseph Goffman/DC/USEPA/US

To: Bob Sussman/DC/USEPA/US@EPA
Cc: Gina McCarthy/DC/USEPA/US@EPA, Janet McCabe/DC/USEPA/US@EPA
Date: 08/20/2010 07:49 PM
Subject: Re: BACT Guidance

Bob -- Please find attached the latest version of our outreach plan for the GHG BACT Guidance.

[attachment "PSD BACT Outreach Game Plan_8-19-10 draft PUBLIC.doc" deleted by David McIntosh/DC/USEPA/US]

Joseph Goffman
Senior Counsel to the Assistant Administrator
Office of Air and Radiation
US Environmental Protection Agency
202 564 3201

Bob Sussman Thanks joe. ----- Original Message ----- 08/20/2010 07:46:23 AM

From: Bob Sussman/DC/USEPA/US
To: Joseph Goffman/DC/USEPA/US@EPA
Date: 08/20/2010 07:46 AM
Subject: Re: BACT Guidance

Thanks joe.

Joseph Goffman

----- Original Message -----

From: Joseph Goffman
Sent: 08/19/2010 04:46 PM EDT
To: Bob Sussman
Subject: Re: BACT Guidance

want to send you a version that we are still in the process of updating.
Bob Sussman

----- Original Message -----

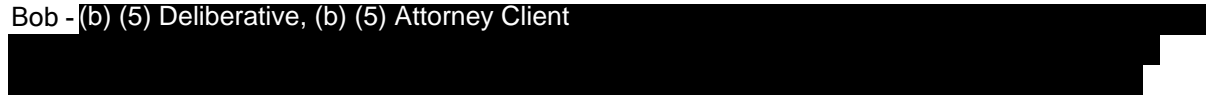
From: Bob Sussman
Sent: 08/19/2010 04:44 PM EDT
Cc: Joseph Goffman
Subject: Re: BACT Guidance

Joe. Don't forget to send this.
Gina McCarthy

----- Original Message -----

From: Gina McCarthy
Sent: 08/18/2010 06:50 PM EDT
To: Bob Sussman
Cc: Joseph Goffman
Subject: Re: BACT Guidance

Bob - (b) (5) Deliberative, (b) (5) Attorney Client



(b) (5) Deliberative, (b) (5) Attorney Client

Bob Sussman

(b) (5) Deliberative, (b) (5) Attorney

08/18/2010 06:41:54 PM

From: Bob Sussman/DC/USEPA/US
To: Gina McCarthy/DC/USEPA/US@EPA
Date: 08/18/2010 06:41 PM
Subject: BACT Guidance

(b) (5) Deliberative, (b) (5) Attorney Client

[Redacted]

Thanks.

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency

01268-EPA-793

Dana Tulis/DC/USEPA/US

09/02/2010 05:45 PM

To Bob Perciasepe, Richard Windsor, Diane Thompson
cc Lisa Feldt, Mathy Stanislaus, Barry Breen, Scott Fulton,
Mary-Kay Lynch, Gilberto Irizarry, Craig Matthiessen
bcc

Subject Revised ACP Memo

Bob, as you requested a revised memo. See attached. Thank you.

(b) (5) Deliberative

ACPInterim Policy Memo Draft 9-2-10 RevB.doc

Dana S. Tulis
National Incident Coordinator
Office of Emergency Management
Environmental Protection Agency
202-564-8600

01268-EPA-796

Dana Tulis/DC/USEPA/US

09/08/2010 12:51 PM

To Bob Perciasepe, Richard Windsor, Diane Thompson

cc Barry Breen, Gilberto Irizarry, Mary-Kay Lynch, Scott Fulton

bcc

Subject Re: Revised ACP Memo

Just checking in, to see if you all had comments to pass on to us. Thank you.

Dana S. Tulis
National Incident Coordinator
Office of Emergency Management
Environmental Protection Agency
202-564-8600

Dana Tulis

Bob, as you requested a revised memo...

09/02/2010 05:45:21 PM

From: Dana Tulis/DC/USEPA/US
To: Bob Perciasepe/DC/USEPA/US@EPA, Richard Windsor/DC/USEPA/US@EPA, Diane Thompson/DC/USEPA/US@EPA
Cc: Lisa Feldt/DC/USEPA/US@EPA, Mathy Stanislaus/DC/USEPA/US@EPA, Barry Breen/DC/USEPA/US@EPA, Scott Fulton/DC/USEPA/US@EPA, Mary-Kay Lynch/DC/USEPA/US@EPA, Gilberto Irizarry/DC/USEPA/US@EPA, Craig Matthiessen/DC/USEPA/US@EPA
Date: 09/02/2010 05:45 PM
Subject: Revised ACP Memo

Bob, as you requested a revised memo. See attached. Thank you.

(b) (5) Deliberative

ACPInterim Policy Memo Draft 9-2-10 RevB.doc

Dana S. Tulis
National Incident Coordinator
Office of Emergency Management
Environmental Protection Agency
202-564-8600

01268-EPA-803

Adora Andy/DC/USEPA/US

09/14/2010 11:41 AM

To Richard Windsor

cc Aaron Dickerson, Michael Moats, Gladys Stroman

bcc

Subject PLEASE REVIEW: OP-ED DUE TODAY

Administrator,

We have drafted an op-ed from you to give to The Hill today for their special spread on the Clean Air Act. The op-ed is based on your remarks at the Clean Air Act Conference today. Other op-ed writers for this section will likely include Senators Kerry, Cardin, Murkowski and Inhofe. Please review and let Mike and I know what changes need to be made.

Thank you,
Adora

----- Forwarded by Adora Andy/DC/USEPA/US on 09/14/2010 11:35 AM -----

Attached and pasted below.

(b) (5) Deliberative

20100915 Hill Climate op-ed (3).doc

(b) (5) Deliberative

By: EPA Administrator Lisa P. Jackson

(b) (5) Deliberative

[Redacted text block]

[Redacted text block]

[REDACTED]

(b) (5) Deliberative [REDACTED]
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(b) (5) Deliberative [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

(b) (5) Deliberative

The text "(b) (5) Deliberative" is followed by two thick black horizontal bars that redact the content of the document. The first bar is long and spans most of the width of the page. The second bar is shorter and positioned below the first one.

01268-EPA-810

Scott Fulton/DC/USEPA/US
09/16/2010 07:25 PM

To Windsor.Richard, Sussman.Bob, "David McIntosh", "Lisa
Heinzerling", "Bob Perciasepe", "Seth Oster", "Diane
Thompson"

cc

bcc

Subject Fw: Industry response to August 20 GHG NSPS letter

Hi Folks - (b) (5) Deliberative, (b) (5) Attorney ? We should discuss how to respond.

(b) (5) Deliberative, (b) (5) Attorney Client

[Redacted]

[Redacted]

Scott
Patricia Embrey

----- Original Message -----

From: Patricia Embrey
Sent: 09/16/2010 09:21 AM EDT
To: Scott Fulton; Avi Garbow
Cc: Richard Ossias <ossias.richard@epa.gov>
Subject: Industry response to August 20 GHG NSPS letter

OAR just shared the attached letter with us. It is the industry response to the environmental groups' August 20 letter. (b) (5) Deliberative, (b) (5) Attorney Client

[Redacted]



100915_Ltr_to_Jackson_GHG_NSPS[1].pdf

September 15, 2010

Hand Delivered

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

Re: New Source Performance Standards and Greenhouse Gases

Dear Administrator Jackson:

We are a broad spectrum of business organizations, listed at the conclusion of this letter, who wish to respond to a letter you received recently from Sierra Club, Natural Resources Defense Council, and Environmental Defense Fund about regulation of greenhouse gas emissions under the Clean Air Act. Their August 20, 2010 letter demands that EPA promulgate New Source Performance Standards (“NSPS”) for greenhouse gas emissions from power plants and other boilers and that EPA invoke Clean Air Act section 111(d) to require state plans to limit greenhouse gases emissions from existing sources, as well. We believe the August 20 demand letter misstates EPA’s legal obligations and that promulgating NSPS and 111(d) regulations for greenhouse gases at this time would be unwise and, ultimately, counterproductive.

No court order requires EPA to promulgate NSPS for GHGs. One might infer incorrectly from the August 20 demand letter that EPA is obligated to promulgate NSPS for boilers limiting GHG emissions, because the U.S. Court of Appeals for the District of Columbia Circuit remanded the boiler NSPS to EPA in 2007, for further consideration in light of the Supreme Court’s *Massachusetts v. EPA* decision. The remand order does not in any way require EPA to promulgate NSPS for GHG emissions from boilers, nor does it limit in any way EPA’s discretion in deciding whether or not to promulgate such new NSPS limitations. In fact, the organizations that sent the August 20 demand letter moved the D.C. Circuit to “reverse and vacate EPA’s determination that it does not presently have authority to regulate CO₂ emissions under Section 111 of the Clean Air Act,” which the Court explicitly denied. EPA opposed that motion, stating that reversal and remand was “neither necessary nor appropriate.”

EPA’s opposition explained that the Supreme Court’s *Massachusetts v. EPA* decision, while pertinent to the question of whether EPA should regulate GHG emissions through NSPS, did not address that question, noting further that to “date neither Massachusetts nor any other judicial decision has specifically addressed either the legal or policy aspects of the potential regulation of greenhouse gas emissions under section 111 of the Act....” That remains true today. Also, as the demand letter admits, the D.C. Circuit’s remand did not set any deadline for EPA to reconsider setting NSPS for GHGs.

The Clean Air Act does not require EPA to promulgate NSPS emission limitations for GHGs. The August 20 demand letter claims that EPA must “comply with its legal obligation and promptly issue a standard under section 111 limiting greenhouse gas emissions from power plants.” But EPA has no such legal obligation. Nothing in CAA section 111 requires that NSPS cover all pollutants emitted by a source, and EPA has never interpreted it that way. See, e.g., 74 Fed. Reg. 51,950, 51,957 (Oct. 8, 2009) (“The statutory scheme thus provides EPA with significant discretion to determine which pollutant(s) should be regulated under the NSPS.”); *National Lime Ass’n v. EPA*, 627 F.2d 416, 426 (D.C. Cir. 1980) (observing that, while “lime plants were determined to be sources of nitrogen oxides, carbon monoxide and sulfur dioxide as well as particulates, standards of performance were proposed and ultimately promulgated only with respect to particulate matter.”); 70 Fed. Reg. 9706, 9711 (Feb. 28, 2005) (declining to set limits for NO_x emitted by boilers smaller than 100 mmBTU/hr. heat input, based on current emission levels, available technologies, and costs).

The August 20 demand letter implies that your finding that emissions of GHGs from new light-duty motor vehicles may endanger health and welfare means that EPA is obligated to include emissions from GHGs in all NSPS. That is incorrect. In contrast to section 202(a)(1), which requires EPA to set standards for emissions of “any air pollutant” from new motor vehicles that, in the Administrator’s judgment, cause or contribute to air pollution that “may reasonably be anticipated to endanger public health or welfare,” section 111 contains no requirement that EPA include emission limitations in NSPS for all air pollutants that are emitted by a given source category, nor even all such pollutants that EPA determines may reasonably be anticipated to endanger public health or welfare. Compare CAA §§ 111(b)(1)(A), (f)(2)(B), (g)(2).

EPA should not be using the Clean Air Act in ways Congress never intended in order to require reductions in greenhouse gas emissions that Congress thus far has declined to impose. As you know, Congress has on numerous occasions failed to enact proposed legislation that would mandate significant reductions in GHG emissions. In the current Congress, it is clear that a majority of Senators are not willing to impose the huge economic burden on society that GHG legislation would produce, at a time when the country is still struggling to recover from the worst economic crisis since the Great Depression. It would be an inappropriate contradiction of that legislative intent for EPA now to impose GHG emission limitations on new and existing stationary sources through NSPS and section 111(d) requirements. (Even if EPA took only the first step dictated by the August 20 demand letter, EPA would be addressing, according to the letter, one-third of total U.S. greenhouse gas emissions, without congressional endorsement.)

Also, EPA and the Administration have in the past emphasized the importance of emission trading as a way to reduce the total cost of achieving a given level of GHG emission reductions. Without commenting on whether emission trading is in fact a desirable or necessary element of climate change legislation, we note that it would be inconsistent with EPA’s prior pronouncements for EPA now to seek wholesale reductions in GHG emissions through a mechanism, NSPS, which addresses individual emission units at a facility and does not have any explicit provision authorizing emission trading.

NSPS and section 111(d) plans have major limitations as a way of reducing GHG emissions. Even if it were appropriate for EPA to embark on a program to impose substantial new limitations on GHG stationary source emissions where Congress has chosen not to, that does not mean that the existing CAA mechanisms are effective tools to achieve that goal. Because climate change mitigation is presumed to require reductions in GHG concentrations in the global atmosphere, there is no greater benefit to reducing GHG emissions from one source than from another, or even from domestic sources versus those in other countries. Virtually everyone agrees that stabilizing GHG concentrations in the global atmosphere would be an enormously costly proposition, and therefore it is particularly important that any GHG reductions be obtained in a cost-effective manner. NSPS, which by statute must be based on an evaluation of the best-performing emission control technology for a particular emission unit, do not incorporate any explicit consideration of whether the same or greater reduction in GHGs could be achieved at lower cost through other measures. Also, NSPS typically are expressed as uniform emission rates for every unit in a particular source category or subcategory, do not provide for consideration of site-specific factors or incorporate the flexibility necessary to minimize the cost of emission reductions on a global scale.

Moreover, since NSPS reflect the capabilities of technology at a given point in time, it may actually be counterproductive for EPA to establish NSPS now, at a time when technologies for reducing GHG emissions are just beginning to be developed. The August 20 demand letter claims that establishing NSPS emission limits for GHGs from boilers will “ease the burden on permitting authorities as they begin to establish BACT limits on greenhouse gases” in Prevention of Significant Deterioration permits. As you know, industry strongly objects to EPA’s application of the PSD program to GHGs, which is currently subject to multiple petitions for review in the D.C. Circuit, and the court will be asked to stay those PSD rules pending a decision. Facilitating PSD permitting therefore is not, in our view, a valid justification for promulgating NSPS at this time. But even aside from that, given that we have just begun to consider ways to reduce GHG emissions, it is not necessarily true that setting new source standards at this time, which may then be relied upon in issuing PSD permits to a greater extent than site-specific considerations of opportunities to control GHGs at a particular source, would actually facilitate EPA’s goal of producing GHG reductions through the PSD permit program. Moreover, since the August 20 demand letter asks that EPA agree to issue NSPS for utility boilers on the same schedule as the pending issuance of MACT standards for hazardous air pollutant emissions from such boilers (currently, proposal in March 2011 and promulgation in November 2011), there would be little opportunity for EPA to evaluate emerging technologies before promulgating the utility boiler NSPS.

The demand that EPA “commit to exercising its authority under section 111(d) in that same rulemaking proceeding” is even more problematic. If EPA were indeed to use its authority under section 111(d) to require states to submit plans to establish standards of performance for GHG emissions from existing utility boilers, and then from all types of boilers, and then from other types of sources subject NSPS, it would impose a huge administrative burden on states that already have told EPA they will be overwhelmed with PSD and Title V permitting obligations EPA is poised to impose for major sources of GHGs (much less responding to EPA’s revision of most of the National Ambient Air Quality Standards and other initiatives).

Far from “leveling the playing field” and providing “a framework for integrated air quality planning and management that encourages prudent investments in strengthening our nation’s clean energy economy,” as the August 20 demand letter claims, embarking on a huge new, ad hoc program to control GHGs at existing sources would be a prescription for permitting deadlock, stifling innovation, burdening businesses with uncertainty, and discouraging investments in energy efficiency and clean energy. Section 111(d), which applies only to pollutants for which there is no National Ambient Air Quality Standard, has been a minor element of EPA’s air pollution control program. But now it would become the primary means of regulating stationary source GHG emissions, with potentially different (and currently unpredictable) approaches being taken by all 50 states. Moreover, it would cement in place a best-technology approach to mitigating GHG emissions from stationary sources, rather than an approach of seeking the most cost-effective measures to achieve a desired reduction. The nation cannot afford such an approach, even if EPA and the states had the resources to implement it.

EPA should reject the demand to embark on a huge new regulatory program that is neither legally required nor capable of being implemented adequately. Both your agency and our industries face tremendous challenges in the next few years. EPA staff already are stretched thin dealing with a vast array of air pollution issues, including numerous other rulemakings that EPA acknowledges will impose tens of billions of annual costs, not to mention initiatives underway to address climate change. State and local regulators are facing unprecedented burdens to try to implement all these new requirements, as we know they have expressed to you. Unemployment remains near 10% and the economy is moving unsteadily towards recovery. Under these circumstances, EPA should not be embarking on a demanding new set of rulemakings, aiming to impose comprehensive, but as yet unpredictable, GHG emission limitations on a vast number of stationary sources, especially when it is under no legal obligation to do so and it would be acting to impose a regulatory program that Congress has declined to adopt.

The August 20 demand letter threatens that, if EPA does not agree, by September 15, 2010, “to include greenhouse gases in its upcoming NSPS and to coordinate these measures with the forthcoming MACT rulemaking for utility boilers,” and also “commit to exercising its authority under section 111(d) in that same rulemaking proceeding,” Sierra Club, NRDC, and Environmental Defense Fund will seek an order from the D.C. Circuit compelling EPA action on the 2007 remand order. The organizations listed below are intervenors in that D.C. Circuit case, and they intend to oppose any such motion, protecting EPA’s right to address potential further regulation of GHG emissions on the schedule and in the manner that EPA, in light of all its other regulatory initiatives and resource demands and its legal and policy considerations, determines.

The business organizations listed below support environmental regulations that protect health and the environment without unnecessarily hobbling industry and the U.S. economy. We plan to seek a meeting with Assistant Administrator McCarthy to discuss further the concerns expressed in this letter. In the meantime, if you or your staff have any questions or wish to discuss the issues addressed in this letter further, please contact our counsel in this matter, Russell S. Frye, at 202-572-8267 or rfrye@fryelaw.com.

Sincerely,

American Chemistry Council
American Forest & Paper Association
American Iron and Steel Institute
Business Roundtable
Corn Refiners Association
Council of Industrial Boiler Owners
National Oilseed Processors Association
National Petrochemical and Refiners Association
Society of Chemical Manufacturers and Affiliates

cc: Asst. Admin. Gina A. McCarthy

01268-EPA-815

Scott Fulton/DC/USEPA/US

To "Richard Windsor"

09/17/2010 11:11 AM

cc

bcc

Subject Fw: updated briefing memo for call with Governor Patrick

Hi - Give me a shout if you want to discuss before the call. (b) (5) Deliberative, (b) (5) Attorney

[Redacted]

Wish us luck!

Scott

Heidi Ellis

----- Original Message -----

From: Heidi Ellis

Sent: 09/17/2010 08:49 AM EDT

To: "Scott Fulton" <fulton.scott@epa.gov>; "Diane Thompson" <thompson.diane@epa.gov>

Subject: Fw: updated briefing memo for call with Governor Patrick

Nancy Grantham

----- Original Message -----

From: Nancy Grantham

Sent: 09/17/2010 07:38 AM EDT

To: Sarah Pallone; Bob Perciasepe; Janet Woodka; Clay Diette; Heidi Ellis

Subject: memo for call with Governor Patrick

(b) (5) Deliberative, (b) (5) Attorney Client

01268-EPA-837

Craig Hooks/DC/USEPA/US

10/05/2010 04:56 PM

To Richard Windsor

cc Diane Thompson, Bob Perciasepe, Aaron Dickerson

bcc

Subject OARM HOT ISSUES TRACKER (HIT LIST)

October 5, 2010

Attached is OARM's Hot Issues Tracker report. Please let me know if you have any questions.

Thanks,
Craig

(b) (5) Deliberative

OARM HIT list final 10-5-10.doc

Craig E. Hooks, Assistant Administrator
Office of Administration and Resources Management
U.S. Environmental Protection Agency
1200 Pennsylvania Ave NW (3101A)
Rm 3330 Ariel Rios North
Phone - 202 564-4600

01268-EPA-843

Cynthia
Giles-AA/DC/USEPA/US
10/17/2010 05:44 PM

To Richard Windsor, Bob Perciasepe
cc Diane Thompson
bcc

Subject OECA policy work

Attached is requested draft of OECA's expected policy work 2010-12. If this is not the type of information or level of detail you want, please let me know and I can revise.

Cynthia

(b) (5) Deliberative

OECA policy work 2010-12.doc

Cynthia Giles
Assistant Administrator
U.S. EPA, Office of Enforcement and Compliance Assurance
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
202-564-2440

THIS MESSAGE IS CONFIDENTIAL and may contain legally privileged information. If you receive it in error, please delete it immediately, do not copy, and notify the sender. Thank you.

01268-EPA-853

Sarah Pallone/DC/USEPA/US

10/22/2010 07:31 PM

To Richard Windsor

cc

bcc

Subject Re: FYI: Gov. Gregoire's statement on dismissal of lawsuit challenging Governor's executive order on climate change

Will do! And yes, she is.

From: Richard Windsor
Sent: 10/22/2010 07:23 PM EDT
To: Sarah Pallone
Subject: Re: FYI: Gov. Gregoire's statement on dismissal of lawsuit challenging Governor's executive order on climate change

Remind me to send her a handwritten note. She is amazing.

From: Sarah Pallone
Sent: 10/22/2010 06:58 PM EDT
To: Richard Windsor; David McIntosh
Subject: Fw: FYI: Gov. Gregoire's statement on dismissal of lawsuit challenging Governor's executive order on climate change

FYI

From: "Rupp, Mark (GOV)" [mark.rupp@gov.wa.gov]
Sent: 10/22/2010 03:50 PM MST
To: "Rupp, Mark (GOV)" <mark.rupp@gov.wa.gov>
Subject: FYI: Gov. Gregoire's statement on dismissal of lawsuit challenging Governor's executive order on climate change

Mark W. Rupp
Director, Washington DC Office
Office of Governor Chris Gregoire (WA)
444 N. Capitol Street NW, Suite 411
Washington, DC 20001
Phone: (202) 624-3691
Fax: (202) 624-5841

Gov. Gregoire's statement on dismissal of lawsuit

challenging Governor's executive order on climate change

OLYMPIA – Gov. Chris Gregoire today issued the following statement on the decision to dismiss a lawsuit challenging the governor's executive order on climate change:

"I was delighted, but not surprised to learn that a lawsuit challenging my May 2009 executive order on climate change has been dismissed.

"The plaintiffs, who were represented by attorneys for the Evergreen Freedom Foundation, dropped the litigation in the wake of a Superior Court ruling on Oct. 8 that Executive Order 09-05 directs agencies to do work that is well within their authority, and mine. It has long been established law that an executive order may be a directive from the governor communicating to state agencies what the governor wants the agency to accomplish. I do not understand why this lawsuit was brought. I also don't understand why they waited more than a year after the order was issued to take action.

"This is a win for Washingtonians. It allows our state agencies to get on with their important work of reducing the very real impact of greenhouse gas emissions. The dismissal also means we will not be forced to spend more taxpayer dollars to defend our agency work against plaintiffs' attempts to obtain a court injunction. Meanwhile, the agencies are nearing completion of the work that I directed them to do through my Executive Order. I couldn't be more pleased with the result of the order and the dismissal of this litigation."

The EO directed several state agencies to:

- **Consult with companies that emit 25,000 metric tons of greenhouse gases or more each year** in developing emission strategies and industry benchmarks to help meet the state's greenhouse gas reduction targets.
- **Work with TransAlta to develop a voluntary agreement to significantly reduce greenhouse gas emissions** from the company's coal-fired power plant near Centralia.
- **Work together with forest landowners to develop recommendations for a forestry offset program** and other financial incentives for the forestry and forest products industry.
- **Recommend whether or not the state should adopt a low-carbon fuel standard** to reduce carbon emissions from the transportation sector.
- **Join with neighboring states** to obtain federal funding to implement a West Coast highway accessible to electric and alternative-fuel vehicles.
- **Develop guidelines to address rising sea levels** and the risks to water supplies.
- **Formulate plans to increase transit options**, such as buses, light rail, and ride-share

programs, and give Washington residents more choices for reducing the effect of transportation emissions.

- **Continue to work with six other Western states and four Canadian provinces** in the Western Climate Initiative to develop a regional emissions reduction program.
- **Work with the Obama Administration** and the state's Congressional delegation to help design a national emission reduction program that is strong and reflects state priorities.

###



image002.png

File does not open

01268-EPA-854

Arvin Ganesan/DC/USEPA/US

To Richard Windsor

cc

10/24/2010 09:16 AM

bcc

Subject TSCA testimony

You're scheduled to testify in Newark for FRL on Tuesday. I'm pasting the text of your testimony. (b) (5) Deliberative Let me know if you have any edits or thoughts on this. It should read about 7-8 minutes, which is OK. There will not be a 5 minute limit on your statement, as usual.

(b) (5) Deliberative [Redacted]

This will go into your book tomorrow. (b) (5) Deliberative [Redacted]

Thanks

(b) (5) Deliberative [Redacted]

[Redacted]

[Redacted]

[Redacted]

(b) (5) Deliberative [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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(b) (5) Deliberative
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[Redacted]

(b) (5) Deliberative [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

(b) (5)
Deliberative
[Redacted]

TSCA field hearing.doc

01268-EPA-876

Janet Woodka/DC/USEPA/US

11/07/2010 04:03 PM

To Richard Windsor

cc Bob Perciasepe, johnhhankinson

bcc

Subject TPs for the TF

Attached are some TPs that we drafted for the TF members for tomorrow. Thought that you might like to have them tonight. I'll also bring a copy on the plane.

I've almost finished your presentation as well. I needs a bit of work still and I'm doing some research to get some additional points included. But I can send the current draft to you now, if you wish.

Janet

(b) (5)
Deliberative

Gulf TPs.doc

01268-EPA-889

**David
McIntosh/DC/USEPA/US**

11/29/2010 06:48 PM

To Richard Windsor, Seth Oster

cc

bcc

Subject *Confidential: Fw: CEO Response to Wall Street Journal
Editorial - Confidential

----- Forwarded by David McIntosh/DC/USEPA/US on 11/29/2010 06:48 PM -----

From: "Michael Bradley" <mbradley@mjbradley.com>
To: David McIntosh/DC/USEPA/US@EPA
Date: 11/29/2010 03:33 PM
Subject: CEO Response to Wall Street Journal Editorial - Confidential

I wanted you to be aware that eight CEOs of the Clean Energy Group companies submitted a response to the Wall Street Journal on Friday regarding the Journal's editorial, The EPA Permitterium. The response explains why the Journal's editorial mischaracterized EPA's air quality regulatory actions for the electric sector and highlights that the time to make greater use of existing modern units and to further modernize our nation's generating fleet is now. We have not yet heard whether the Wall Street Journal will be able to print the CEOs' response so I would ask that you keep this confidential, but we will let you know once we hear back from the editorial board.

The CEOs signing on to the response included: Peter A. Darbee, PG&E Corporation; Jack A. Fusco, Calpine Corporation; Lewis Hay III, NextEra Energy, Inc.; Ralph Izzo, Public Service Enterprise Group, Inc.; Thomas B. King, National Grid USA; John W. Rowe, Exelon Corporation; Mayo A. Shattuck III, Constellation Energy Group; and Larry Weis, Austin Energy.

Please let me know if you have any questions.

Michael

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47 Junction Square Drive
Concord, MA 01742
Main: (978) 369-5533

Fax: (978) 369-7712

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WSJ_The EPA Permitterium.pdf Wall Street Journal Commentary_Clearing the Air on EPA.pdf

The EPA Permitorium

The agency's regulatory onslaught has stopped new power generation.

President Obama is now retrenching after his midterm rebuke, and one of the main ways he'll try to press his agenda is through the alphabet soup of the federal regulators. So a special oversight priority for the new Congress ought to be the Environmental Protection Agency, which has turned a regulatory firehose on U.S. business and the power industry in particular.

The scale of the EPA's current assault is unprecedented, yet it has received almost no public scrutiny. Since Mr. Obama took office, the agency has proposed or finalized 29 major regulations and 172 major policy rules. This surge already outpaces the Clinton Administration's entire first term—when the EPA had just been handed broad new powers under the 1990 revamp of air pollution laws.

Another measure of the EPA's aggressiveness are the six major traditional pollutants that the agency polices, such as ozone or sulfur dioxide. No Administration has ever updated more than two of these rules in a single term, and each individual rule has tended to run through a 15-year cycle on average since the Clean Air Act passed in 1970. Under administrator Lisa Jackson, the EPA is stiffening the regulations for all six at the same time.

The hyperactive Ms. Jackson is also stretching legal limits to satisfy the White House's climate-change goals, now that Senate Democrats have killed cap and trade. The EPA's "endangerment finding" on carbon is most controversial, but other parts of her regulatory ambush may be more destructive by forcing mass retirements of the coal plants that provide half of America's electricity.

A case study in the Jackson method is the EPA's recent tightening of air-quality standards for sulfur dioxide. The draft SO₂ rule was released for the formal period of public comment last December. Yet the final rule published in June suddenly included a "preamble" that rewrote 40-odd years of settled EPA policy.

The EPA has heretofore measured the concentration of pollutants in the ambient air by, well, measuring the concentration of pollutants in the ambient air. The preamble throws out this sampling and ultraviolet testing and substitutes computer estimations of what air quality might be. The EPA favors modelling because it can plug in the data and assumptions of its choosing, like how often a power plant is running at maximum capacity. Gaming the models will allow the agency to punish states and target individual plants, even if actual measurements show that SO₂ is under the new EPA standard.

The EPA is within its legal discretion to reinterpret clean-air laws—but not without any prior warning, and the preamble surprise violates years of case law about federal rule-making. Worse,

the agency hasn't gotten around to detailing how the models should be built or how the analysis must be conducted. Without any ground rules for approval, the permits required for any major energy or construction projects can't be issued.

The uncertainty created by the SO₂ rule and similar rule-makings has resulted in a near-total freeze on EPA permits, imposing a de facto project moratorium that will last for the next 18 months at minimum. North Dakota, Texas, Louisiana, South Dakota and Nevada are already suing the EPA because of the restrictions they now face on their "ability to permit new sources or expand existing sources," and many more states are expected to join them.

The same goes for the EPA plan to require "maximum achievable control technology" on a plant-by-plant basis to nearly every coal- or oil-fired utility in the country to limit pollutants like mercury. The EPA started writing that rule while the data that will supposedly inform its decision were still being collected. Then there's the upcoming "boiler rule," which the EPA's lowball estimate says will impose \$9.5 billion in new capital costs on manufacturers, paper mills, hospitals and the like. There are so many others.

The electric industry in particular is being forced to choose between continuing to operate and facing major capital expenditures to meet the increasingly strict burden, or else shutting down and building replacements that use more expensive sources like natural gas. Either way, the costs will be passed through to business and consumers as higher rates, which is the same as a tax increase. The general consensus is that as much as a third of the U.S. coal-fired fleet will be retired by 2016, costing north of \$100 billion—a consensus that includes an important federal advisory agency, as we wrote last month in "The Unseen Carbon Agenda."

Ms. Jackson responded to that editorial in a letter that waved off any criticism of her industrial policy as merely opposition to "common-sense efforts to reduce harmful pollution." And it's true that some of these costs might be justified if they resulted in real environmental improvements like less acid rain.

Yet return to sulfur dioxide: SO₂ emissions fell by 56% between 1980 and 2008, despite a 70% increase in fossil fuel-based electric generation over the same period. With current levels so low, the EPA's own 168-page analysis estimates that the direct benefits of the new SO₂ regulations will amount to all of \$12 million nationwide in 2020. Liquidating the EPA budget would yield better returns.

At least 56 Senators in next year's Congress are on record supporting bills that would freeze the EPA's carbon regulation for a time or strip the agency of its self-delegated powers. But the EPA is still pursuing the same agenda through other means, harming business expansion, job creation and economic growth. A key task for the next Congress will be to start pushing back.

<http://online.wsj.com/article/SB10001424052748704658204575610924168519824.html>

November 27, 2010

CONFIDENTIAL – Submitted to the Wall Street Journal

Clearing the Air on EPA

By:

Peter A. Darbee, Chairman, President and CEO, PG&E Corporation

Jack A. Fusco, President and CEO, Calpine Corporation

Lewis Hay III, Chairman and CEO, NextEra Energy, Inc.

Ralph Izzo, Chairman of the Board, President and CEO, Public Service Enterprise Group, Inc.

Thomas B. King, President, National Grid USA

John W. Rowe, Chairman and CEO, Exelon Corporation

Mayo A. Shattuck III, Chairman, President and CEO, Constellation Energy Group

Larry Weis, General Manager, Austin Energy

The Wall Street Journal's editorial this week mischaracterizes EPA's air quality regulatory actions for the electric sector. The air pollution regulations EPA is currently working to develop and implement are required under the Clean Air Act, which a bipartisan Congress and Republican President amended in 1990. Many of these rules are in response to court orders requiring Administrator Lisa Jackson to fix regulations that courts ruled invalid under the Clean Air Act. The electric sector has known that these rules were coming. In recognition of the Clean Air Act requirements, many electric generating companies, including ours, have already made investments in modern air pollution control technologies, cleaner and more efficient sources of generation, as well as in renewables. For example, electric generating companies have recognized for over a decade that the electric sector would need to install controls to comply with the Act's "maximum achievable control technology" requirements, and the technology exists to cost effectively control hazardous air pollution emissions, including mercury and acid gases. EPA is now under a court-ordered deadline to finalize that rule before the end of next year because of the delay that has already occurred.

The editorial's suggestion that companies are retiring plants because of EPA's regulations fails to recognize that the market is one of the primary drivers for retirement decisions due to lower natural gas prices. Moreover, many units retiring are those that are more than 40 years old. Generally, these units are small, uncontrolled, and inefficient. Retirement of these units is long overdue. Many measures are in place for the electric sector to respond to these retirements without compromising the reliability of the electric system.

Despite the editorial's claims that EPA's agenda will have negative economic consequences, our companies' experience with complying with air quality regulations demonstrates that regulations can have important economic benefits. At a time when our nation has high levels of unemployment, the jobs that can be created by companies complying with EPA's regulations are very much needed. A recent letter from the President of the Building and Construction Trades Department, Mark Ayers, to Senator Carper explained that "the work involved in improving the air quality impacts of our nation's power generation fleet is a significant source of employment opportunities for a number of our Department's affiliated unions." We understand what the electric sector can do to create jobs. The measures our companies have undertaken to modernize our fleet have led to the creation of thousands of jobs.

The time to make greater use of existing modern units and to further modernize our nation's generating fleet is now. EPA is working to develop reasonable regulations based on the Clean Air Act, and our companies are committed to working with EPA to ensure the regulations are developed and implemented consistent with what Congress required when it originally enacted the Clean Air Act and amended it in 1990.