

01268-EPA-4317

Richard Windsor/DC/USEPA/US
01/03/2011 01:00 PM

To David McIntosh, Diane Thompson, Bob Perciasepe, Bob Sussman, Seth Oster
cc
bcc

Subject Re: From Greenwire -- SENATE: Graham urges bipartisan push for 'rational energy policy'

(b) (5) Deliberative

David McIntosh

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

From: David McIntosh
Sent: 01/03/2011 12:52 PM EST
To: Richard Windsor; Diane Thompson; Bob Perciasepe; Bob Sussman; Seth Oster
Subject: Fw: From Greenwire -- SENATE: Graham urges bipartisan push for 'rational energy policy'

(b) (5) Deliberative

----- Forwarded by David McIntosh/DC/USEPA/US on 01/03/2011 12:50 PM -----

From: David McIntosh/DC/USEPA/US@EPA
To: David McIntosh/DC/USEPA/US@EPA
Date: 01/03/2011 12:45 PM
Subject: From Greenwire -- SENATE: Graham urges bipartisan push for 'rational energy policy'

This Greenwire story was sent to you by: mcintosh.david@epa.gov

Personal message:

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SENATE: Graham urges bipartisan push for 'rational energy policy' *(Monday, January 3, 2011)*

Elana Schor, E&E reporter

On the eve of a GOP ascendance on Capitol Hill, Sen. Lindsey Graham (R-S.C.) warned fellow Republicans yesterday that "we need to be talking about" new action on energy and vowed to "work with the president, Republicans and Democrats" on the issue this year.

In an interview with NBC's "Meet the Press," Graham -- who last year crafted a compromise approach to climate change with Sens. John Kerry (D-Mass.) and Joe Lieberman (I-Conn.) before walking away from the table -- offered a stark message about the perils of avoiding the politically risky energy debate.

"The one issue we haven't talked about that needs to be talked about is, four-dollars-a-gallon gas is coming, and we have done nothing to become energy independent," Graham said, advising his party that "we need to be talking about immigration and energy policy as a party."

Graham did not endear himself to the conservative wing of the GOP by partnering with Kerry and Lieberman on an upper-chamber deal to cut greenhouse gas emissions, though he ultimately declined to support the type of cap-and-trade system that cleared the then-Democratic House in 2009. Two county Republican committees in his home state voted last year to censure the senator, who does not face re-election until 2014,

over his bipartisan efforts on climate change and immigration, among other issues. But the flak did not deter Graham yesterday. "I want to work with the president, Republicans and Democrats to get a rational energy policy," he told NBC, "to break our dependency on foreign oil, to create jobs here in America from the renaissance of nuclear power and try to clean up the air as the noble pursuit of the Republican Party." Graham offered an early hint of his approach to 2011 energy talks last month when he suggested that he could align with Energy Secretary Steven Chu on a "clean energy standard" that would oblige utilities to generate a minimum percentage of their electricity from sources such as solar, wind and nuclear ([Greenwire](#) , Dec. 9, 2010).

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01268-EPA-4318

Richard Windsor/DC/USEPA/US
01/03/2011 03:50 PM

To Janet Woodka
cc
bcc

Subject Re: the next big thing

(b) (5) Deliberative

[Redacted]

Janet Woodka

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

From: Janet Woodka

Sent: 01/03/2011 03:00 PM EST

To: Richard Windsor; Gina McCarthy; Bob Perciasepe; Seth Oster; David McIntosh

Subject: Fw: the next big thing

Some commentary from our NGO friends in Louisiana that I thought you might find interesting.

Doug is the Hypoxia Program Director for the Mississippi River Basin Alliance and Houck is a prof at Tulane Law.

Janet

Janet Woodka
Senior Advisor to the Deputy Administrator
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 01/03/2011 02:58 PM -----

From: "Houck, Oliver A" <ohouck@tulane.edu>
To: Janet Woodka/DC/USEPA/US@EPA
Date: 01/03/2011 02:52 PM
Subject: FW: the next big thing

From: Houck, Oliver A
Sent: Monday, January 03, 2011 1:51 PM
To: johnhhankinson; 'Ettinger.John@epamail.epa.gov'; 'Woodka, Janet'
Subject: FW: the next big thing

Amen. We look kind of ridiculous, no?, trying to save a state that has no intention of saving itself ...

From: Doug Daigle [mailto:(b) (6) Personal Privacy]
Sent: Friday, December 31, 2010 1:53 PM

To: Marylee Orr; paul@lmrk.org; Haywood Martin; Devin Martin; Darryl Malek-Wiley; Aaron Viles; Matt Rota; Casey DeMoss Roberts (b) (6) Personal Privacy; Ben Taylor; Davis, Mark S; Houck, Oliver A; Len Bahr; Nancy Grush; Steve Poss; Kathy Wascom; Irvin Peckham; (b) (6) Personal Privacy; Lizzy Hingle; Jeffrey Dubinsky; Westra, John; (b) (6) Personal Privacy Charlie Fryling
Subject: the next big thing

EPA's greenhouse gas regulation is the only prospect for US climate action for the immediate future (and then maybe only for two years, after which it's dead and we're cooked, depending on 2012 election) -

If La's delegation is allowed to participate in or even lead the coming attack on EPA and climate policy while demanding \$100 billion in federal funds for coastal restoration without being beaten over the head by La NGOs, then we should all pack up and go home.

Happy New Year!

<http://climateprogress.org/2010/12/31/energy-and-global-warming-news-primer-on-federal-greenhouse-gas-regime-chinese-climate-change-extreme-weather/>

<http://www.nytimes.com/2010/12/31/science/earth/31epa.html?emc=eta1>

http://www.nytimes.com/2010/12/25/opinion/25sat1.html?_r=1&emc=eta1

http://www.huffingtonpost.com/steven-cohen/defending-epa-against-the_b_801876.html?ref=email_share

01268-EPA-4326

**David
McIntosh/DC/USEPA/US**

01/07/2011 08:15 AM

To Richard Windsor

cc

bcc

Subject Fw: From E&E Daily -- EPA: Senate Dems gear up to battle
House GOP on climate regs

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(Friday, January 7, 2011)

Elana Schor and Sarah Abruzzese, E&E reporters

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"I never defend -- I always attack," Sen. Tom Harkin (D-Iowa) said in an interview, adding of Republicans: "If they want to repeal EPA [regulations] and stuff like that, I think we ought to go after them. I say, give them rope."

Sen. Frank Lautenberg (D-N.J.), a longtime Environment and Public Works subpanel chairman, likewise sounded a similar note. "People on the other side can talk about costs" of extending EPA authority over industry," he said. "What's the cost of a life? What's the cost of a disability? ... We're not going to cower in a corner."

Lautenberg also underscored the importance of a proactive message that emphasizes the benefits of EPA's limits on emissions from power plants, oil refineries, chemical facilities and other "stationary sources."

Democrats should "make sure the public understands" the negative consequences of undoing Obama administration rules written to protect public health, Lautenberg said. "We're in great danger, and it fails to reach the public's interest because there's a tendency to look at things on a much more short-term basis," as opposed to the long-term footprint of a changing climate, he added.

Senate Democrats' willingness to take on the new House majority represents a notable shift from the previous Congress, when the president's party spent more time calming internal tensions. But the rise of House Speaker John Boehner's (R-Ohio) regime appears to have lit a fire underneath Senate Democrats, who held a press conference yesterday morning dedicated to accusing lower-chamber Republicans of budget gimmickry in their opening-day rules package.

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Echoing concerns raised by fellow conservatives and tea party activists, Bishop painted a broader picture of EPA as a poster child for executive-branch overreach. The agency and others like it, he said, "simply try to go around Congress rather than work with Congress. That has not helped the relationship, which wasn't great to begin."

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01268-EPA-4327

Richard Windsor/DC/USEPA/US
01/07/2011 08:18 AM

To David McIntosh
cc
bcc

Subject Re: From E&E Daily -- EPA: Senate Dems gear up to battle House GOP on climate regs

Yup

David McIntosh

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

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01268-EPA-4328

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01/07/2011 08:20 AM

To David McIntosh
cc
bcc

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(b) (5) Deliberative ?

Richard Windsor

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Lautenberg also underscored the importance of a proactive message that emphasizes the benefits of EPA's limits on emissions from power plants, oil refineries, chemical facilities and other "stationary sources."

Democrats should "make sure the public understands" the negative consequences of undoing Obama administration rules written to protect public health, Lautenberg said. "We're in great danger, and it fails to reach the public's interest because there's a tendency to look at things on a much more short-term basis," as opposed to the long-term footprint of a changing climate, he added.

Senate Democrats' willingness to take on the new House majority represents a notable shift from the previous Congress, when the president's party spent more time calming internal tensions. But the rise of House Speaker John Boehner's (R-Ohio) regime appears to have lit a fire underneath Senate Democrats, who held a press conference yesterday morning dedicated to accusing lower-chamber Republicans of budget gimmickry in their opening-day rules package.

"They're not going to be able to roll back [EPA regulations] without coming through the Senate," Sen. Sheldon Whitehouse (D-R.I.) said in an interview. "There is a case to be made that, in the contest between corporate profits and children's lungs, someone should be standing up for children's lungs."

Of course, Senate Democrats face some enthusiasm for an anti-EPA push within their own ranks. A two-year delay in enforcing greenhouse gas emissions limits offered by Sen. Jay Rockefeller (D-W.Va.) attracted six co-sponsors in his party, and several more Democratic senators from manufacturing-dependent states may yet cross over to support it when an updated version is offered this year.

The Senate's strongest EPA defenders also are aware of the need to bring fellow lawmakers into the discussion as the agency begins applying its complex emissions rules to new and upgraded industrial facilities in several states.

Sen. Ben Cardin (D-Md.) described himself as a strong backer of Boxer's approach, predicting that Democrats would "do everything we can to prevent the taking away of the responsibility of EPA to protect our environment and our health." He promptly pointed out, however, that "it's going to be easier to accomplish those [EPA] goals if Congress helps."

A jab 'in the nose'?

House Republicans hit back yesterday against Boxer's attacks.

Responding to Boxer's comments that the 2007 Supreme Court decision in *Massachusetts v. EPA* gave the agency authority to act on emissions under the Clean Air Act, Upton chastised Boxer for not including language pre-empting that power in a climate bill that she steered through her committee last year. He noted that Reps. Henry Waxman (D-Calif.) and Ed Markey (D-Mass.) did include more pre-emption in their bill, which passed the House in 2009 ([E&ENews PM](#), Jan. 6). One of Upton's colleagues, Rep. Rob Bishop (R-Utah), was more directly critical. "Upton's right," he said. "She's wrong."

Echoing concerns raised by fellow conservatives and tea party activists, Bishop painted a broader picture of EPA as a poster child for executive-branch overreach. The agency and others like it, he said, "simply try to go around Congress rather than work with Congress. That has not helped the relationship, which wasn't great to begin."

Bishop had stronger words still for House Republicans' relationship with Boxer. "With Senator Boxer, there has never been a working relationship," he said. "It probably doesn't do any more

damage than has been done for the last 10 years."

A senior Republican member of Boxer's own panel, Sen. Lamar Alexander of Tennessee, said he had not seen her speech but expressed some frustration in response.

"I think now is the time for cooperation whenever we can find areas on which to cooperate-- I would like to see us cooperate on a clean air bill, for example," Alexander said. "You don't usually make a good start toward that by punching the people you work with in the nose."

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01268-EPA-4331

David
McIntosh/DC/USEPA/US
01/07/2011 06:08 PM

To Richard Windsor, Diane Thompson, Bob Perciasepe, Bob
Sussman, Gina McCarthy, Seth Oster, Scott Fulton
cc
bcc

Subject Sherrod Brown statement today

FYI, please see the Hill article below.

(b) (5) Deliberative

Senate Dem considering bill to delay EPA climate rules by one year

By Andrew Restuccia - 01/07/11 03:03 PM ET

Sen. Sherrod Brown (D-Ohio) is mulling legislation that would block the Environmental Protection Agency (EPA) from regulating greenhouse gas emissions for one year.

The proposal may be more palatable for some on-the-fence lawmakers than the two-year delay proposed by Sen. Jay Rockefeller (D-W.Va.).

But Brown has not yet drafted any legislation and is still reviewing his options, a spokeswoman says. "He is reviewing multiple variations of the Rockefeller bill, such as a one-year delay," Brown spokeswoman Meghan Dubyak told The Hill. "Most importantly, he wants to address this issue soon to provide certainty to the industries in his state that are planning expansions as the economy recovers."

Brown has been discussing the idea of a one-year delay of EPA's climate authority with his fellow lawmakers for months. But the issue is heating up in the 112th Congress, with EPA's climate rules taking effect earlier this month and broader greenhouse gas standards on power plants and refineries slated for 2012.

In the Capitol on Thursday, Rockefeller told reporters that he does not believe a one-year delay is adequate. He said two years is needed to make enough progress on carbon capture and storage technologies. The technology is considered far away from any widespread commercial adoption, but Rockefeller said even waiting two years before regulating would help.

"It is to give that a chance to get going," Rockefeller said, later adding that his goal is "to get the technology accepted in the marketplace sufficiently so it will begin to fund itself."

Rockefeller plans to reintroduce his legislation early this year. Republicans, meanwhile, hope to permanently block EPA's authority to regulate greenhouse gas emissions, or delay it until a number of lawsuits on the issue work their way through the courts. On Thursday, dozens of House lawmakers [introduced a bill](#) to overturn EPA's climate authority.

Ben Geman contributed.

01268-EPA-4332

Richard Windsor/DC/USEPA/US
01/07/2011 06:13 PM

To David McIntosh
cc
bcc
Subject Re: Sherrod Brown statement today

tx

David McIntosh FYI, please see the Hill article below. T... 01/07/2011 06:08:23 PM

From: David McIntosh/DC/USEPA/US
To: Richard Windsor/DC/USEPA/US@EPA, Diane Thompson/DC/USEPA/US@EPA, Bob Perciasepe/DC/USEPA/US@EPA, Bob Sussman/DC/USEPA/US@EPA, Gina McCarthy/DC/USEPA/US@EPA, Seth Oster/DC/USEPA/US@EPA, Scott Fulton/DC/USEPA/US@EPA
Date: 01/07/2011 06:08 PM
Subject: Sherrod Brown statement today

FYI, please see the Hill article below. (b) (5) Deliberative

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Ben Geman contributed.

01268-EPA-4338

**Bob
Perciasepe/DC/USEPA/US**
01/11/2011 03:10 PM

To Richard Windsor
cc Bob Sussman, David McIntosh, Diane Thompson, Gina
McCarthy, Lawrence Elworth, Scott Fulton, Seth Oster
bcc
Subject Re: proposed final biomass letter to Senators and
Representatives, to be sent tomorrow

OK here as well.

Bob Perciasepe
Deputy Administrator

(o) +1 202 564 4711
(c) +1 (b) (6) Personal Privacy

Richard Windsor cool with me 01/11/2011 02:41:38 PM

From: Richard Windsor/DC/USEPA/US
To: David McIntosh/DC/USEPA/US@EPA
Cc: Bob Perciasepe/DC/USEPA/US@EPA, Bob Sussman/DC/USEPA/US@EPA, Diane
Thompson/DC/USEPA/US@EPA, Gina McCarthy/DC/USEPA/US@EPA, Lawrence
Elworth/DC/USEPA/US@EPA, Scott Fulton/DC/USEPA/US@EPA, Seth
Oster/DC/USEPA/US@EPA
Date: 01/11/2011 02:41 PM
Subject: Re: proposed final biomass letter to Senators and Representatives, to be sent tomorrow

cool with me

David McIntosh This reflects OAR's OGS's, and my wor... 01/11/2011 08:47:58 AM

From: David McIntosh/DC/USEPA/US
To: Richard Windsor/DC/USEPA/US@EPA
Cc: Diane Thompson/DC/USEPA/US@EPA, Bob Perciasepe/DC/USEPA/US@EPA, Bob
Sussman/DC/USEPA/US@EPA, Seth Oster/DC/USEPA/US@EPA, Lawrence
Elworth/DC/USEPA/US@EPA, Gina McCarthy/DC/USEPA/US@EPA, Scott
Fulton/DC/USEPA/US@EPA
Date: 01/11/2011 08:47 AM
Subject: proposed final biomass letter to Senators and Representatives, to be sent tomorrow

This reflects OAR's OGS's, and my work.

[attachment "Biomass Reply to Members of Congress.docx" deleted by Bob Perciasepe/DC/USEPA/US]

Dear [Senator/Representative X]:

Thank you for your [month and date] letter about the way that CO₂ emissions from biomass burning will be treated in Clean Air Act pre-construction permitting of large stationary source projects. As you know, biomass can be part of a national strategy to reduce dependence on fossil fuels, and efforts are underway to foster the expansion of renewable resources and promote biomass as a way of addressing climate change and enhancing forest management.

Last July, EPA solicited views from the public on accounting approaches for CO₂ emissions from biomass and other biogenic sources, including whether some or all of a source's biomass CO₂ emissions could be discounted based on a determination that they are canceled out by the CO₂ absorption associated with growing the fuel. EPA received information supporting the conclusion that certain feedstocks – such as waste materials whose inevitable decomposition or possible wildfire burning will result in emissions anyway – have only very limited climate impacts when combusted as fuel. EPA also, however, received information indicating that the use of certain other biomass feedstocks as fuel could have more significant climate impacts.

In November, EPA announced that it was reviewing the public's comments with the goal of deciding whether the Clean Air Act would allow the use of some kind of discounting system or other method reflecting the net impacts of biomass combustion in determining the applicability of the pre-construction permitting requirement to CO₂ emissions from biomass-fired units. Your recent letter urges EPA to make a positive determination and to start a rulemaking promptly.

As of January 2, 2011, only those large stationary sources that trigger the pre-construction permitting requirement for other pollutants need to address greenhouse gases such as CO₂. No source will be subject to the pre-construction permitting requirement solely because of its greenhouse gas emissions until after July 1, 2011. That is the result of the Tailoring Rule that EPA issued last year. With the approach of July 1 in mind, I am announcing today that, by that date, EPA will complete a rulemaking to defer for three years the application of the pre-construction permitting requirement to biomass-fired and other biogenic CO₂ emissions.

The purpose of the deferral is to give EPA time to effectuate a detailed examination of the science associated with biogenic CO₂ emissions and to consider the technical issues that the agency must resolve in order to account for biogenic CO₂ emissions in ways that are scientifically sound and also manageable in practice.

EPA will ensure that partners within the federal government and scientists outside of it with relevant expertise play meaningful roles in the examination of the science. Following the completion of the examination, EPA will use the examination's work product in establishing, by notice-and-comment rulemaking, the system for determining applicability of the Clean Air Act's pre-construction permitting requirement to projects that result in biomass-fired and other biogenic CO₂ emissions. EPA's intent is to ensure that both the scientific examination and the resulting rulemaking are completed within the three-year deferral period mentioned above.

Concurrent with the proposal to defer application of the pre-construction permitting requirement (known as "Prevention of Significant Deterioration," or "PSD") to biomass-fired and other biogenic CO₂ emissions, EPA intends to issue interim guidance to help permitting authorities establish a basis for concluding that the best available control technology (or "BACT," which is one of the statutory conditions for receiving a permit) for greenhouse gas

emissions at such sources is simply combustion of biomass fuels. As noted above, under the Tailoring Rule, as of January 2, 2011, large stationary sources that are already subject to PSD for other pollutants will need to address greenhouse gases such as CO₂. If such permits are issued before July 1, 2011, then existing regulations might require that the permits meet the BACT requirement for greenhouse gas emissions during an interim period of time. In guidance issued last November, EPA explicitly recognized that a permitting authority might determine that certain types of biomass by themselves are BACT for greenhouse gas emissions after considering the environmental, energy, and economic benefits. EPA's supplementary guidance will provide a basis that permitting authorities may use to support the conclusion during this interim period that BACT for CO₂ at such sources is simply the combustion of biomass fuel.

I hope you will see the steps described in this letter as following through on my prior commitment to exercise whatever discretion the Clean Air Act affords to avoid discouraging the use of renewable, domestically-produced fuel in power plants and factories. If you have additional questions, please do not hesitate to contact me or to have your staff contact David McIntosh in EPA's Office of Congressional and Intergovernmental Relations.

Sincerely,

Lisa P. Jackson

01268-EPA-4345

David
McIntosh/DC/USEPA/US
01/12/2011 12:29 PM

To Richard Windsor, Gina McCarthy, Joseph Goffman, Janet McCabe, Scott Fulton, Diane Thompson, Bob Perciasepe, Bob Sussman, Arvin Ganesan, Seth Oster

cc

bcc

Subject Intel's reaction to today's biomass news

FYI

----- Forwarded by David McIntosh/DC/USEPA/US on 01/12/2011 12:28 PM -----

From: "Harper, Stephen" <stephen.harper@intel.com>
To: David McIntosh/DC/USEPA/US@EPA
Date: 01/12/2011 12:18 PM
Subject: FW: EPA to Defer GHG Permitting Requirements for Industries that Use Biomass

David, we are working on our White Paper re long term alternative re T Rule, but the following news does raise the issue of why this approach would not also work, buying us time to get permitting issues/alternative worked out with the Agency...Critical role of semiconductors/IT in virtually all of the energy efficiency and clean energy technologies that experts agree are best near-term climate mitigation approaches provide a link here similar to biomass' role

Thoughts?

From: Claassen, Ann (DC)
Sent: Wednesday, January 12, 2011 12:02 PM
To: #L&W CLIMATE CHANGE PRACTICE
Subject: EPA to Defer GHG Permitting Requirements for Industries that Use Biomass

January 12, 2011

EPA to Defer GHG Permitting Requirements for Industries that Use Biomass

Three-year deferral allows for further examination of scientific and technical issues associated with counting these emissions

WASHINGTON – The U.S. Environmental Protection Agency (EPA) is announcing its plan to defer, for three years, greenhouse gas (GHG) permitting requirements for carbon dioxide (CO₂) emissions from biomass-fired and other biogenic sources. The agency intends to use this time to seek further independent scientific analysis of this complex issue and then to develop a rulemaking on how these emissions should be treated in determining whether a Clean Air Act permit is required.

"We are working to find a way forward that is scientifically sound and manageable for both producers and consumers of biomass energy. In the coming years we will develop a commonsense approach that protects our environment and encourages the use of clean energy," said EPA Administrator Lisa P. Jackson. "Renewable, homegrown power sources are essential to our energy future, and an important

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The agency will also issue guidance shortly that will provide a basis that state or local permitting authorities may use to conclude that the use of biomass as fuel is the best available control technology for GHG emissions until the agency can complete action on the three-year deferral in July.

In a separate but related letter, EPA is notifying the National Alliance of Forest Owners that it will grant its petition to reconsider the portion of the May 2010 tailoring rule that addresses the same issue.

CO2 emissions from biomass-fired and other biogenic sources are generated during the combustion or decomposition of biologically based material. Sources covered by this decision would include facilities that emit CO2 as a result of burning forest or agricultural products for energy, wastewater treatment and livestock management facilities, landfills and fermentation processes for ethanol production.

On January 2, 2011, air permitting requirements began for large GHG emitting industries that are planning to build new facilities or make major modifications to existing ones. These facilities must obtain air permits and implement energy efficiency measures or, where available, cost-effective technology to reduce their GHG emissions. This includes the nation's largest GHG emitters, such as power plants and refineries. Emissions from small sources, such as farms and restaurants, are not covered by these GHG permitting requirements.

More information: <http://www.epa.gov/nsr>

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Latham & Watkins LLP

01268-EPA-4346

Richard Windsor/DC/USEPA/US
01/12/2011 12:43 PM

To David McIntosh, Gina McCarthy, Joseph Goffman, Janet McCabe, Scott Fulton, Diane Thompson, Bob Perciasepe, Bob Sussman, Arvin Ganesan, Seth Oster

cc

bcc

Subject Re: Intel's reaction to today's biomass news

(b) (5) Deliberative

David McIntosh

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

From: David McIntosh

Sent: 01/12/2011 12:29 PM EST

To: Richard Windsor; Gina McCarthy; Joseph Goffman; Janet McCabe; Scott Fulton; Diane Thompson; Bob Perciasepe; Bob Sussman; Arvin Ganesan; Seth Oster

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Sent: Wednesday, January 12, 2011 12:02 PM
To: #L&W CLIMATE CHANGE PRACTICE
Subject: EPA to Defer GHG Permitting Requirements for Industries that Use Biomass

January 12, 2011

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More information: <http://www.epa.gov/nsr>

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Latham & Watkins LLP

01268-EPA-4347

Richard Windsor/DC/USEPA/US
01/12/2011 05:37 PM

To Seth Oster, "Lisa Jackson", "Diane Thompson"
cc
bcc

Subject Re: OGC Personnel Announcement

(b)(6) Privacy

Seth Oster

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

From: Seth Oster
Sent: 01/12/2011 05:36 PM EST
To: "Lisa Jackson" <windsor.richard@epa.gov>; "Diane Thompson" <thompson.diane@epa.gov>
Subject: Fw: OGC Personnel Announcement

(b)(6) Privacy

Scott Fulton

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

From: Scott Fulton
Sent: 01/12/2011 05:34 PM EST
To: Assistant Administrators; Regional Administrators; DRA; DAA; OGC ALL USERS; OGC RCs and DRCs; Associate Administrators
Cc: Diane Thompson; Bob Perciasepe; LisaP Jackson
Subject: OGC Personnel Announcement

(b)(6) Privacy

Please join me in welcoming Joel to his new post in OGC.

01268-EPA-4348

**David
McIntosh/DC/USEPA/US**
01/12/2011 06:59 PM

To: Richard Windsor, Gina McCarthy
cc
bcc
Subject: my reply to Intel

Just FYI. If he writes back, I won't respond.

-----Forwarded by David McIntosh/DC/USEPA/US on 01/12/2011 06:58PM

To: "Harper, Stephen" <stephen.harper@intel.com>
From: David McIntosh/DC/USEPA/US
Date: 01/12/2011 06:58PM
Subject: Re: FW: EPA to Defer GHG Permitting Requirements for Industries that Use Biomass

Hi Stephen. We do very much want to resolve the issues with semiconductor manufacturing for policy reasons, including the strong policy ones that you reference below. But the issues that EPA needs to resolve concerning biomass fuel are scientific and focused on the question of the degree to which the fuel can even be considered emissive to begin with.

-David

-----"Harper, Stephen" <stephen.harper@intel.com> wrote: -----

To: David McIntosh/DC/USEPA/US@EPA
From: "Harper, Stephen" <stephen.harper@intel.com>
Date: 01/12/2011 12:17PM
Subject: FW: EPA to Defer GHG Permitting Requirements for Industries that Use Biomass

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To: #L&W CLIMATE CHANGE PRACTICE
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<http://www.lw.com/docs/irs.pdf>

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01268-EPA-4349

Richard Windsor/DC/USEPA/US
01/12/2011 07:07 PM

To David McIntosh
cc
bcc
Subject Re: my reply to Intel

Tx

From: David McIntosh
Sent: 01/12/2011 06:59 PM EST
To: Richard Windsor; Gina McCarthy
Subject: my reply to Intel

Just FYI. If he writes back, I won't respond.

-----Forwarded by David McIntosh/DC/USEPA/US on 01/12/2011 06:58PM -----

To: "Harper, Stephen" <stephen.harper@intel.com>
From: David McIntosh/DC/USEPA/US
Date: 01/12/2011 06:58PM
Subject: Re: FW: EPA to Defer GHG Permitting Requirements for Industries that Use Biomass

Hi Stephen. We do very much want to resolve the issues with semiconductor manufacturing for policy reasons, including the strong policy ones that you reference below. But the issues that EPA needs to resolve concerning biomass fuel are scientific and focused on the question of the degree to which the fuel can even be considered emissive to begin with.

-David

-----"Harper, Stephen" <stephen.harper@intel.com> wrote: -----

To: David McIntosh/DC/USEPA/US@EPA
From: "Harper, Stephen" <stephen.harper@intel.com>
Date: 01/12/2011 12:17PM
Subject: FW: EPA to Defer GHG Permitting Requirements for Industries that Use Biomass

David, we are working on our White Paper re long term alternative re T Rule, but the following news does raise the issue of why this approach would not also work, buying us time to get permitting issues/alternative worked out with the Agency...Critical role of semiconductors/IT in virtually all of the energy efficiency and clean energy technologies that experts agree are best near-term climate mitigation approaches provide a link here similar to biomass' role

Thoughts?

From: Claassen, Ann (DC)
Sent: Wednesday, January 12, 2011 12:02 PM
To: #L&W CLIMATE CHANGE PRACTICE

Subject: EPA to Defer GHG Permitting Requirements for Industries that Use Biomass

January 12, 2011

EPA to Defer GHG Permitting Requirements for Industries that Use Biomass

Three-year deferral allows for further examination of scientific and technical issues associated with counting these emissions

WASHINGTON – The U.S. Environmental Protection Agency (EPA) is announcing its plan to defer, for three years, greenhouse gas (GHG) permitting requirements for carbon dioxide (CO₂) emissions from biomass-fired and other biogenic sources. The agency intends to use this time to seek further independent scientific analysis of this complex issue and then to develop a rulemaking on how these emissions should be treated in determining whether a Clean Air Act permit is required.

“We are working to find a way forward that is scientifically sound and manageable for both producers and consumers of biomass energy. In the coming years we will develop a commonsense approach that protects our environment and encourages the use of clean energy,” said EPA Administrator Lisa P. Jackson. “Renewable, homegrown power sources are essential to our energy future, and an important step to cutting the pollution responsible for climate change.”

By July 2011, EPA plans to complete a rulemaking that will defer permitting requirements for CO₂ emissions from biomass-fired and other biogenic sources for three years. During the three-year period, the agency will seek input on critical scientific issues from its partners within the federal government and from outside scientists who have relevant expertise. EPA will also further consider the more than 7,000 comments it received from its July 2010 Call for Information, including comments noting that burning certain types of biomass may emit the same amount of CO₂ emissions that would be emitted if they were not burned as fuel, while others may result in a net increase in CO₂ emissions. Before the end of the three-year period, the agency intends to issue a second rulemaking that determines how these emissions should be treated or counted under GHG permitting requirements.

The agency will also issue guidance shortly that will provide a basis that state or local permitting authorities may use to conclude that the use of biomass as fuel is the best available control technology for GHG emissions until the agency can complete action on the three-year deferral in July.

In a separate but related letter, EPA is notifying the National Alliance of Forest Owners that it will grant its petition to reconsider the portion of the May 2010 tailoring rule that addresses the same issue.

CO2 emissions from biomass-fired and other biogenic sources are generated during the combustion or decomposition of biologically based material. Sources covered by this decision would include facilities that emit CO2 as a result of burning forest or agricultural products for energy, wastewater treatment and livestock management facilities, landfills and fermentation processes for ethanol production.

On January 2, 2011, air permitting requirements began for large GHG emitting industries that are planning to build new facilities or make major modifications to existing ones. These facilities must obtain air permits and implement energy efficiency measures or, where available, cost-effective technology to reduce their GHG emissions. This includes the nation's largest GHG emitters, such as power plants and refineries. Emissions from small sources, such as farms and restaurants, are not covered by these GHG permitting requirements.

More information: <http://www.epa.gov/nsr>

R006

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01268-EPA-4350

**Bob
Perciasepe/DC/USEPA/US**
01/13/2011 01:46 PM

To Bob Sussman, Betsaida Alcantara, Seth Oster, Richard Windsor
cc
bcc
Subject Fw: NEWS: U.S. Environmental Protection Agency Vetoes Proposed Spruce Mountaintop Removal Mine in West Virginia

Came in on my e-mail. In case you haven't seen

Bob Perciasepe
Deputy Administrator

(o) +1 202 564 4711
(c) +1 (b) (6) Personal Privacy

----- Forwarded by Bob Perciasepe/DC/USEPA/US on 01/13/2011 01:45 PM -----

From: Joan Mulhern <jmulhern@earthjustice.org>
To: Bob Perciasepe/DC/USEPA/US@EPA
Date: 01/13/2011 11:36 AM
Subject: FW: NEWS: U.S. Environmental Protection Agency Vetoes Proposed Spruce Mountaintop Removal Mine in West Virginia

From: Liz Judge
Sent: Thursday, January 13, 2011 10:52 AM
To: Earthjustice
Subject: NEWS: U.S. Environmental Protection Agency Vetoes Proposed Spruce Mountaintop Removal Mine in West Virginia

FOR IMMEDIATE RELEASE

January 13, 2011

Contacts:

Liz Judge, Earthjustice, (202) 667-4500, ext 237mailto:ljudge@earthjustice.org,
ljudge@earthjustice.org

Joe Lovett, Appalachian Center for the Economy & the Environment, (304) 645-9006,
jlovett@appalachian-center.org

Deborah Mathis, Public Justice, (202)797-8600, dmathis@publicjustice.net

Oliver Bernstein, Sierra Club (512) 477-2152, (512) 289-8618 oliver.bernstein@sierraclub.org

Debbie Jarrell, Coal River Mountain Watch, (304) 854-2182, debbiejarrell@gmail.com

Jerry Hardt, Kentuckians For The Commonwealth, (502) 614-6637, jhardt@kftc.org

Janet Keating, Ohio Valley Environmental Coalition, (304) 360-1979, janet.ovec@gmail.com

Jane Branham, Southern Appalachian Mountain Stewards, (276) 679-7505, jabah2@comcast.net

Christina Honkonen, Statewide Organizing for Community eMpowerment, (615) 260-4595,

christina@socm.org

Cindy Rank, West Virginia Highlands Conservancy, (304) 924-5802, clrank@hughes.net

U.S. Environmental Protection Agency Vetoes Proposed West Virginia Mountaintop Removal Mine

Final action protects Appalachian waters and local community

Washington, D.C. — Today the U.S. Environmental Protection Agency (EPA) took an historic step by vetoing the water pollution permit issued by the Army Corps of Engineers for the Spruce No. 1 Mine project in West Virginia, one of the largest mountaintop removal mines ever proposed in Appalachia. With today's action to enforce the law, EPA Administrator Lisa Jackson stopped a mountaintop mine that would have destroyed more than seven miles of vital streams and more than 2,000 mountain acres in an important part of Appalachia.

Even more significantly, this action shows that while the coal industry and past administrations have denied the impacts of mountaintop removal mining on local communities, the Obama administration and EPA Administrator Lisa Jackson are addressing the importance of environmental justice in Appalachia and taking steps to begin protecting these communities. This action completes the final stage of the EPA's process to veto the Corps' permit, which follows the law of the Clean Water Act.

This is the culmination of a fight to stop the mine that started in 1998 when a resident of Pigeonroost Hollow, one of the hollows that would be destroyed by the mine, sued the United States Army Corps of Engineers to revoke Arch Coal's Clean Water Act permit.

That lawsuit, the first ever brought by citizens to stop a mountaintop removal mine, sparked years of litigation against the Corps to stop the Spruce Mine and other illegal mountaintop removal mines. Remarkably, the Corps persists in trying to permit these mines which destroy the very streams that the Corps is supposed to protect.

"It is a relief after all of these years that at least one agency has shown the will to follow the law and the science by stopping the destruction of Pigeonroost Hollow and Oldhouse Branch," said Joe Lovett, lawyer and executive director of the Appalachian Center for the Economy & the Environment, who has been fighting this mine for more than 12 years. "Today, the EPA has helped to save these beautiful hollows for future generations. Unfortunately, the Spruce Mine's impacts are not unique. Although we are grateful for the EPA's action today, EPA must follow through by vetoing the scores of other Corps permits that violate the Clean Water Act and that would allow mountaintop mines to lay waste to our mountains and streams."

"This veto is fully justified by the enormous harm that the mine would inflict and is the culmination of a 12-year legal battle that began in 1999 when the Corps made the outrageous decision that this huge mine burying over 10 miles of streams would have only 'minimal' effects," said Jim Hecker, a lawyer at Public Justice in Washington, DC, who along with Joe Lovett litigated the first lawsuit against the Spruce mine.

"A full veto of the proposed Spruce No. 1 Mine is a true victory for the communities nearby, and

for all Americans across the country who are fighting to protect our precious natural resources from industrial pollution,” said Joan Mulhern, Earthjustice Senior Legislative Counsel. “While this is only one mine of many, we hope this veto will be the beginning of the end of the devastating practice of mountaintop removal mining by bringing the fundamental legal protection of the Clean Water Act to the whole Appalachian region, once and for all.”

Said Ed Hopkins, Sierra Club’s Environmental Quality Program Director: “In sharp contrast to the previous administration’s policies on mountaintop removal coal mining, EPA Administrator Lisa Jackson is showing a strong commitment to the law, the science and the principles of environmental justice. She deserves enormous credit for changing policies to protect Appalachia’s health, land and water.”

Said Cindy Rank, chair of the Mining Committee of the West Virginia Highlands Conservancy: “Judge Haden had it right back in 1999 when he recognized the irreparable harm that would be done by this mine. It is unfortunate that it’s taken more than a decade for our regulatory agencies to accept the multitude of legal, scientific and moral arguments against this permit, but I’m sure Judge Haden is smiling with us as we gratefully acknowledge EPA’s momentous and justifiable decision at long last.”

“Today’s decision was the right one,” said Cathie Bird, Statewide Organizing for Community eMpowerment’s E3 Committee Chair. “We are pleased to see that Appalachia’s land and water preservation are prioritized before dirty, cheap energy production that threatens our environmental future. This Spruce Mine decision sets an example that represents a healthier and more sustainable Appalachia.”

Said Debbie Jarrell, assistant director of Coal River Mountain Watch: “While our politicians and coal companies grandstand and use fear mongering as a way to justify mountaintop removal, our most precious resource, water, is being contaminated at an alarming rate. It is a huge reassurance to see the EPA use the science that’s available, and to see it take this step to protect our water and our people of the Appalachians.”

“We breathe a huge sigh of relief today, and we thank the EPA and the Obama administration for enforcing the Clean Water Act. We are so pleased that this historic veto of the Spruce No. 1 Mine permit halts the destruction of Pigeonroost Hollow,” said Janet Keating, executive director of the Ohio Valley Environmental Coalition. “The science completely validates what we have been saying for more than a decade: These types of mining operations are destroying our streams and forests and nearby residents’ health, and even driving entire communities to extinction. This type of coal mining is destroying our cultural heritage and our future. We will continue our work to halt other illegal permits, both in-progress and pending.”

“We thank the EPA for standing up against big pressure from the coal industry to protect communities and people who suffer from the devastating impacts of mountain top removal,” said Jane Branham, vice president of Southern Appalachian Mountain Stewards.

ADDITIONAL INFORMATION:

In late March, the EPA released a proposal to veto the Spruce No. 1 Mine permit based on scientific and legal analysis showing that the mine would not adhere to Clean Water Act standards. In September, U.S. Environmental Protection Agency's Regional III Administrator Shawn Garvin recommended that EPA veto the permit. EPA's final decision to veto the permit focused on the science showing the irreparable harm that occurs when mining companies permanently bury and pollute natural headwater streams with mining waste.

In October 1999, the Spruce No. Mine became the subject of the first significant federal court decision on mountaintop removal mining. In this federal court decision, the late Judge Charles Haden ruled that the permits for the Spruce No. 1 Mine violated the surface mining law and the Clean Water Act. Since that decision, this permit has remained in litigation in the Southern District of West Virginia, where environmental and conservation groups, represented by the Appalachian Center for the Economy & the Environment, Public Justice, and Earthjustice, have challenged the initial decision by the Corps to issue the permit as unlawful, arbitrary, and capricious under the Clean Water Act, the National Environmental Policy Act, and the Administrative Procedure Act.

The EPA's announcement on today's action is here:

http://water.epa.gov/lawsregs/guidance/cwa/dredgdis/404c_index.cfm

###

Liz Judge
Campaign Manager, Communications
Earthjustice
1625 Massachusetts Ave. NW Suite 702
Washington, D.C. 20036
T: 202-667-4500, ext. 237
C: 970-710-9002
www.earthjustice.org

Because the earth needs a good lawyer

01268-EPA-4351

Lisa Garcia/DC/USEPA/US

01/13/2011 05:12 PM

To Richard Windsor, Seth Oster

cc

bcc

Subject Fw: Activists Work To Inject 'Environmental Justice' Concept Into All EPA Actions

Not sure you saw this..from a FORBES blog ..

Lisa g

----- Forwarded by Lisa Garcia/DC/USEPA/US on 01/13/2011 05:11 PM -----

From: Mustafa Ali/DC/USEPA/US
To: Lisa Garcia/DC/USEPA/US@EPA, Heather Case/DC/USEPA/US@EPA, Kent Benjamin/DC/USEPA/US@EPA, Arati Tripathi/DC/USEPA/US@EPA, Suzi Ruh/DC/USEPA/US@EPA, Danny Gogal/DC/USEPA/US@EPA, Christine Guitar/DC/USEPA/US@EPA, Charles Lee/DC/USEPA/US@EPA, Carlos Evans/DC/USEPA/US@EPA, Sherri White/DC/USEPA/US@EPA
Date: 01/13/2011 04:20 PM
Subject: Activists Work To Inject 'Environmental Justice' Concept Into All EPA Actions

Hi everyone,

Definitely take a look at the article below:

<http://blogs.forbes.com/docket/2011/01/11/activists-work-to-inject-environmental-justice-concept-into-all-e-pa-actions/>

Activists Work To Inject 'Environmental Justice' Concept Into All EPA Actions

Last April, Washington Legal Foundation's blog [spotlighted](#) signs that the "environmental justice" movement, largely moribund for the past ten years, was mounting a comeback at the Environmental Protection Agency. The issue injects a touchy subject into the controversial realm of environmental law and policy. Invoking the broad and amorphous concept of environmental justice ("EJ") – which equates "disparate impact" (rather than intentional acts) with discrimination – affords activists a highly effective new way to demonize free enterprise and demagogue the building of new business facilities and the award of pollution emission permits.

The movement's comeback advanced further this past December with a barely reported on "White House Forum on Environmental Justice." [The New York Times](#) gave it some attention, as did the consistently spot-on National Association of Manufacturers' [S hopfloor](#) site. A procession of cabinet secretaries spoke including, oddly enough, Homeland Security Secretary Napolitano. She [rambled on](#) about her agency's concerns over climate change, which reflects how every environmental issue can be about environmental justice. The *Times* story

repeated EJ activists' frustrations, expressed at the forum, that federal officials give speeches and push out a lot of paper but have done little more. Administration environmental officials responded by touting that they have a concrete plan to do more – [Plan EJ2014](#).

Why 2014? Because that's the 20th anniversary of President Clinton's Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*. The Plan EJ2014 document describes various activities EPA will pursue including "identify[ing] opportunities to utilize EPA's statutory authorities to advance environmental justice." The agency has a rather sweeping interpretation of the "protecting public health" goals of laws such as the Clean Air Act and the Resource Conservation and Recovery Act, broad enough to sweep in EJ theories. Such an interpretation would likely be vulnerable to legal challenge. EPA has already moved forward on another tool devised for EJ2014 implementation through the July 2010 issuance of an "interim guidance," a policy-setting maneuver EPA and other agencies use to circumvent the legal protections of the Administrative Procedures Act and other laws.

As explained in a [cover memo](#) to EPA employees, the [Interim Guidance on Considering Environmental Justice During the Development of an Action](#) is a "step-by-step guide [to] help EPA staff determine whether actions raise possible environmental justice concerns," which will allow EPA to "explicitly integrate environmental justice considerations into the fabric of EPA's process for developing actions," according to a [memo](#) which accompanied the guidance. Agency "actions" include, "rules, policy statements, risk assessments, guidance documents, models that may be used in future rulemakings, and strategies that are related to regulations." In other words, essentially everything that EPA does on a daily basis. The document's two sections are a thorough roadmap on how EPA bureaucrats can weave a seemingly infinite number of EJ "concerns" into their decisions, moves which can create a great deal of discomfort for regulatory targets challenging EPA future actions.

Through either actual EPA actions or the threat of being accused of discrimination, businesses can be whipsawed into either staying out of "overburdened" (as EPA terms them) communities (where unemployment is high), or forced to invest in the kind of "green" technology which will make EPA and activists happy but limit business growth and job creation. Such overcompliance is exactly what federal officials have in mind with environmental justice. Consider, for instance, what the Assistant Attorney General for environment at the Justice Department [said](#) at the White House EJ forum:

I met with corporate counsel recently. . . . You know what we spent almost the whole time talking about? Environmental justice. . . . We've talked to them about doing more [than just complying with the law]: green technology, green jobs, and retrofitting. . . . [W]hen we're talking about injunctive relief with you, looking forward, we're also going to be talking about *enhanced* injunctive relief. What more can you do so you go *beyond compliance* ?

If elected officials with oversight authority are looking for activity at the Environmental Protection Agency which reduces economic opportunity, environmental justice should be on their list.

Cross-posted at Washington Legal Foundation's [The Legal Pulse](#).

Blessings
Mustafa S. Ali
Associate Director
Office of Environmental Justice
202-564-2606
202-501-0740 F

01268-EPA-4356

Bob Perciasepe/DC/USEPA/US
01/17/2011 11:04 AM

To David McIntosh, Richard Windsor, Diane Thompson, Bob Sussman, Seth Oster, Arvin Ganesan
cc
bcc

Subject Re: Environment: Dear Colleague: EPA - AGENCY GONE WILD

Thanks

(b) (5) Deliberative
[Redacted]

[Redacted]

Bob Perciasepe
Deputy Administrator
(o)202 564 4711
(c) (b) (6) Personal Privacy
David McIntosh

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

From: David McIntosh
Sent: 01/17/2011 10:07 AM EST
To: Richard Windsor; Diane Thompson; Bob Perciasepe; Bob Sussman; Seth Oster; Arvin Ganesan
Subject: Fw: Environment: Dear Colleague: EPA - AGENCY GONE WILD
Just FYI. **Not unexpected.**

From: e-Dear Colleague
Sent: Friday, January 14, 2011 4:52 PM
To: E-DEARCOLL_ISSUES_A-F_0000@ls2.house.gov
Subject: Environment: Dear Colleague: EPA - AGENCY GONE WILD

EPA - AGENCY GONE WILD

From: The Honorable Don Young
Sent By: Jeremy.Price@mail.house.gov
Date: 1/14/2011

Become an original cosponsor to reign in the EPA

Dear Colleague,

On January 13, 2011, the Environmental Protection Agency (EPA) took the unprecedented step of revoking a 404 permit that was issued by the Corps of Engineers in 2007 to stop a coal mine from operating in West Virginia. Never before has the EPA usurped this power and authority. What's worse, this "agency gone wild" is not done. A mine in Kentucky is next on the list for possible permit revocation. The Congress must act now to rein in this radical agency. *BEWARE! A project in your district may be next!*

I invite you to become original cosponsors of my bill (H.R. 5992 from the 111th Congress) to eliminate EPA's veto authority over the Corps of Engineers. Section 404 of the Clean Water Act gives authority to the Army Corps of Engineers to issue permits for discharges of dredged or fill material into navigable waters at specified disposal sites. Permit applicants must meet requirements that have been established by the Corps and the EPA. In turn, the Corps issues these 404 permits for activities including construction, mining, farming, and other purposes.

However, the Clean Water Act also gives EPA the authority to overturn the Corps decision if the discharge of materials will have an unacceptable adverse effect on municipal water supplies, shellfish beds, fishery areas, wildlife, and recreation areas. While this language may have had good intentions, the EPA can stop a project by withholding the permit. And now, it is revoking Corps permits even after they're issued. Giving EPA so much authority over construction projects, mining activities, and energy production projects has become problematic in recent years.

If you would like to become a cosponsor of this legislation, please contact Jeremy Price of my staff at 5-5765.

Sincerely,

DON YOUNG
Member of Congress

Visit the [e-Dear Colleague Service](#) to manage your subscription to the available Issue and Party list(s).

01268-EPA-4358

Richard Windsor/DC/USEPA/US
01/18/2011 08:38 AM

To "Seth Oster"
cc
bcc

Subject Fw: Thank You for a decision well made...

See the last paragraph re Sundance. Lisá
Cynthia Giles-AA

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

From: Cynthia Giles-AA
Sent: 01/18/2011 08:27 AM EST
To: Richard Windsor
Cc: Bob Perciasepe; Bob Sussman
Subject: Fw: Thank You for a decision well made...

I thought you might like to see this -

----- Forwarded by Cynthia Giles-AA/DC/USEPA/US on 01/18/2011 08:24 AM -----

From: Maria Gunnoe <(b) (6) Personal Privacy>
To: Charles Lee/DC/USEPA/US@EPA
Cc: Michele Kelly/DC/USEPA/US@EPA, Lisa Garcia/DC/USEPA/US@EPA, Heather Case/DC/USEPA/US@EPA, Suzi Ruhl/DC/USEPA/US@EPA, Cynthia Giles-AA/DC/USEPA/US@EPA, Samantha Beers/R3/USEPA/US, Carlos Evans/DC/USEPA/US@EPA, Sherri White/DC/USEPA/US@EPA, Catherine McCabe/DC/USEPA/US@EPA, Gregory Peck/DC/USEPA/US@EPA, Alan Walts/R5/USEPA/US@EPA, Stan Meiburg/R4/USEPA/US@EPA, Cynthia Peurifoy/R4/USEPA/US@EPA, Reggie Harris/R3/USEPA/US, Lara Lasky/R5/USEPA/US@EPA, Tayoka Hall/DC/USEPA/US@EPA, Mike Shapiro/DC/USEPA/US@EPA, William Early/R3/USEPA/US, Kent Benjamin/DC/USEPA/US@EPA, Mustafa Ali/DC/USEPA/US@EPA
Date: 01/18/2011 12:14 AM
Subject: Thank You for a decision well made...

No need to reply folks I know you are all really busy.

I just want you all to know that I sincerely appreciate the initiative the EPA has taken to end MTR's impacts on our people and the places they love.

Please see the info below.

It relates to the work you all are doing.

My letter that printed in the Beckley registered herald in reference to the coal rally being held on the 20th.

In respect to all of the families that have to live the trauma known as mountaintop removal our so called state leaders should be ashamed of themselves for their actions against their own people. People throughout Appalachia have been sacrificed for the coal that our state leaders have taken undue ownership of. If coal is so good for us why is it killing us? Some that don't have to live in this terror have no idea what its like. Living and dying underneath the exploding mountains with pollution in our air and water is nothing but violent. Our children are devastated to see their home lands being destroyed forever. The coal industry and our government are so arrogant that they are blatant enough to TRY to brainwash our kids into thinking that coal is good for them.

The EPA's actions are based on science. This science has proven that what the residents of WV have said for many years is true. Coal is killing us! In ignoring the facts, our leaders continue to talk about how cheap it is. All the while more of us suffer and die everyday. All of our state leaders need to take ownership of what they are allowing to happen to their own people. Shame on them! We have a right to be who we are and to live where we are at. The industry and Government has no right to continue to kill us and to rob us of our futures for out of state jobs and out of state profit. Stop the violence against your own people. The world is watching.

Here is another that printed in a couple papers in response to Joe Manchin's attack on EPA wvGazette and coal valley news.

The EPA is not attacking coal. They are only beginning to do their job. The coal industry likes to let on that a ban on MTR (mountaintop removal) is a ban on all coal mining. This is not true. MTR has battered many people in our communities and it must end. The people who lived in Lindytown, WV built Lindytown. Their ancestors were the reason for this town's existence. The community was made up of retired and active underground UMWA miners and their families. This town was bought up and depopulated like so many others throughout the Southern part of WV. Look at Blair WV the town not the spruce permit. What are the benefits of the Spruce permit for the town and the people living down stream and down wind? Let me tell you first hand what MTR does for the people that live in the impacted communities. MTR poisons our water and destroys the land where we belong by constant flooding, blasting, dust, out of state "lawless" coal traffic, and the dirty politics that runs it all. The health impacts of a million pounds of explosives a day chased with poison water is difficult to choke down. People have no choice but to leave their native homes leaving behind their culture and heritage and all that make up who they are. The EPA is not attacking coal they are hopefully going to stop the genocide of MTR. The EPA is finally stepping up to protect communities and people that have been attacked and ignored by an industry that foolishly believes that it's our patriotic duty to give everything up to keep on the lights. Mr Manchin these discussions over MTR permits did not begin in DC. They began when we that live here were ignored by this industry and our government. The people in the state of West Virginia took this to DC and to the EPA. The EPA is only enforcing the laws. Please allow them to do this. Our future depends on it. The Spruce permit would be temporary jobs for permanent destruction. There will be NO benefit in this permit for the community of Blair there for it should be denied and Senator Manchin you should want it to be if you care about your people.

We will continue to support EPA in this tough fight to do the right thing.

Again Thank You from all of us here in these mountains..

One more thing there is a new film coming out {1-21-11} that has been chosen as Sundance 2011 film festivals top selections. Its called The Last Mountain

<http://thelastmountainmovie.com/>

<http://trailers.apple.com/>

Take Care..

Maria Gunnoe

www.ohvec.org

304-245-8481(o)

304-989-9581(C)

for more info see

<http://www.goldmanprize.org/search/node/MAria%20GUnnoe>

www.sludgesafety.org

www.southwings.org

www.goldmanprize.org

www.appalachiarising.org

01268-EPA-4361

Bob Sussman/DC/USEPA/US

01/18/2011 10:06 AM

To Cynthia Giles-AA, Richard Windsor

cc Bob Perciasepe

bcc

Subject Re: Thank You for a decision well made...

I also received a call from Joe Stanley, an ex-miner and activist, who was extraordinarily appreciative and complementary.

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

From: Cynthia Giles-AA

To: Richard Windsor

Cc: Bob Perciasepe

Cc: Bob Sussman

Subject: Fw: Thank You for a decision well made...

Sent: Jan 18, 2011 8:27 AM

I thought you might like to see this -

----- Forwarded by Cynthia Giles-AA/DC/USEPA/US on 01/18/2011 08:24 AM -----

From: Maria Gunnoe <(b) (6) Personal Privacy>

To: Charles Lee/DC/USEPA/US@EPA

Cc: Michele Kelly/DC/USEPA/US@EPA, Lisa Garcia/DC/USEPA/US@EPA, Heather Case/DC/USEPA/US@EPA, Suzi Ruhl/DC/USEPA/US@EPA, Cynthia Giles-AA/DC/USEPA/US@EPA, Samantha Beers/R3/USEPA/US, Carlos Evans/DC/USEPA/US@EPA, Sherri White/DC/USEPA/US@EPA, Catherine McCabe/DC/USEPA/US@EPA, Gregory Peck/DC/USEPA/US@EPA, Alan Walts/R5/USEPA/US@EPA, Stan Meiburg/R4/USEPA/US@EPA, Cynthia Peurifoy/R4/USEPA/US@EPA, Reggie Harris/R3/USEPA/US, Lara Lasky/R5/USEPA/US@EPA, Tayoka Hall/DC/USEPA/US@EPA, Mike Shapiro/DC/USEPA/US@EPA, William Early/R3/USEPA/US, Kent Benjamin/DC/USEPA/US@EPA, Mustafa Ali/DC/USEPA/US@EPA

Date: 01/18/2011 12:14 AM

Subject: Thank You for a decision well made...

No need to reply folks I know you are all really busy.

I just want you all to know that I sincerely appreciate the initiative the EPA has taken to end MTR's impacts on our people and the places they love.

Please see the info below.

It relates to the work you all are doing.

My letter that printed in the Beckley registered herald in reference to the coal rally being held on the 20th.

In respect to all of the families that have to live the trauma known as mountaintop removal our so called state leaders should be ashamed of themselves for their actions against their own people. People throughout Appalachia have been sacrificed for the coal that our state leaders have taken undue ownership of. If coal is so good for us why is it killing us? Some that don't have to live in this terror have no idea what its like. Living and dying underneath the exploding mountains with pollution in our air and water is nothing but violent. Our children are devastated to see their home lands being destroyed forever. The coal industry and our government are so arrogant that they are blatant enough to TRY to brainwash our kids into thinking that coal is goo

-----Original Message Truncated-----

01268-EPA-4373

Bob Perciasepe/DC/USEPA/US
01/20/2011 02:59 PM

To David McIntosh, Gina McCarthy
cc Janet McCabe, Joseph Goffman, Richard Windsor, Scott Fulton, "Diane Thompson"
bcc
Subject Re: Boiler MACT

Yes.

Bob Perciasepe
Deputy Administrator
(o)202 564 4711
(c) (b) (6) Personal Privacy
David McIntosh

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

From: David McIntosh
Sent: 01/20/2011 02:52 PM EST
To: Gina McCarthy
Cc: Bob Perciasepe; Janet McCabe; Joseph Goffman; Richard Windsor; Scott Fulton; "Diane Thompson" <Thompson.Diane@EPA.GOV>
Subject: Re: Boiler MACT

I agree

Gina McCarthy (b) (5) Deliberative, (b)(5) Attorney Client Privilege 01/20/2011 02:46:11 PM

From: Gina McCarthy/DC/USEPA/US
To: David McIntosh/DC/USEPA/US@EPA, Scott Fulton/DC/USEPA/US@EPA
Cc: Bob Perciasepe/DC/USEPA/US@EPA, "Diane Thompson" <Thompson.Diane@EPA.GOV>, Richard Windsor/DC/USEPA/US@EPA, Joseph Goffman/DC/USEPA/US, Janet McCabe/DC/USEPA/US
Date: 01/20/2011 02:46 PM
Subject: Re: Boiler MACT

(b) (5) Deliberative, (b)(5) Attorney Client Privilege
[Redacted]

David McIntosh

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

From: David McIntosh
Sent: 01/20/2011 02:29 PM EST
To: Scott Fulton
Cc: Gina McCarthy; Bob Perciasepe; "Diane Thompson" <thompson.diane@epa.gov>; Richard Windsor
Subject: Re: Boiler MACT

(b) (5) Deliberative, (b)(5) Attorney Client Privilege
[Redacted]

Scott Fulton (b) (5) Deliberative, (b)(5) Attorney Client Privilege... 01/20/2011 02:27:35 PM

From: Scott Fulton/DC/USEPA/US
To: "Richard Windsor" <Windsor.Richard@epamail.epa.gov>, "Bob Perciasepe" <Perciasepe.Bob@epamail.epa.gov>, Gina McCarthy/DC/USEPA/US@EPA, "David McIntosh" <McIntosh.David@epamail.epa.gov>, "Diane Thompson" <thompson.diane@epa.gov>
Date: 01/20/2011 02:27 PM
Subject: Boiler MACT

(b)(5) Deliberative, (b)(5) Attorney-Client, (b)(5) Attorney Work Product



01268-EPA-4374

Gina McCarthy/DC/USEPA/US

To Scott Fulton, Bob Perciasepe, David McIntosh

01/20/2011 03:20 PM

cc Janet McCabe, Joseph Goffman, Richard Windsor, "Diane Thompson", "Avi Garbow"

bcc

Subject Re: Boiler MACT

(b)(5) Deliberative, (b)(5) Attorney-Client, (b)(5) Attorney Work Product

Scott Fulton

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

From: Scott Fulton

Sent: 01/20/2011 03:18 PM EST

To: Bob Perciasepe; David McIntosh; Gina McCarthy

Cc: Janet McCabe; Joseph Goffman; Richard Windsor; "Diane Thompson" <thompson.diane@epa.gov>; "Avi Garbow" <garbow.avi@epa.gov>

Subject: Re: Boiler MACT

(b)(5) Deliberative, (b)(5) Attorney-Client, (b)(5) Attorney Work Product

[Redacted content]

Bob Perciasepe

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

From: Bob Perciasepe

Sent: 01/20/2011 02:59 PM EST

To: David McIntosh; Gina McCarthy

Cc: Janet McCabe; Joseph Goffman; Richard Windsor; Scott Fulton; "Diane Thompson" <Thompson.Diane@EPA.GOV>

Subject: Re: Boiler MACT

Yes.

Bob Perciasepe
Deputy Administrator

(o)202 564 4711

(c) (b) (6) Personal Privacy

David McIntosh

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

From: David McIntosh

Sent: 01/20/2011 02:52 PM EST

To: Gina McCarthy

Cc: Bob Perciasepe; Janet McCabe; Joseph Goffman; Richard Windsor; Scott Fulton; "Diane Thompson" <Thompson.Diane@EPA.GOV>

Subject: Re: Boiler MACT

I agree

Gina McCarthy

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

01/20/2011 02:46:11 PM

From: Gina McCarthy/DC/USEPA/US
To: David McIntosh/DC/USEPA/US@EPA, Scott Fulton/DC/USEPA/US@EPA

Cc: Bob Perciasepe/DC/USEPA/US@EPA, "Diane Thompson" <Thompson.Diane@EPA.GOV>, Richard Windsor/DC/USEPA/US@EPA, Joseph Goffman/DC/USEPA/US, Janet McCabe/DC/USEPA/US
Date: 01/20/2011 02:46 PM
Subject: Re: Boiler MACT

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

David McIntosh

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

From: David McIntosh
Sent: 01/20/2011 02:29 PM EST
To: Scott Fulton
Cc: Gina McCarthy; Bob Perciasepe; "Diane Thompson" <thompson.diane@epa.gov>; Richard Windsor
Subject: Re: Boiler MACT

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

Scott Fulton

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

01/20/2011 02:27:35 PM

From: Scott Fulton/DC/USEPA/US
To: "Richard Windsor" <Windsor.Richard@epamail.epa.gov>, "Bob Perciasepe" <Perciasepe.Bob@epamail.epa.gov>, Gina McCarthy/DC/USEPA/US@EPA, "David McIntosh" <McIntosh.David@epamail.epa.gov>, "Diane Thompson" <thompson.diane@epa.gov>
Date: 01/20/2011 02:27 PM
Subject: Boiler MACT

(b)(5) Deliberative, (b)(5) Attorney-Client, (b)(5) Attorney Work Product

01268-EPA-4375

David McIntosh/DC/USEPA/US
01/20/2011 03:25 PM

To Scott Fulton
cc Bob Perciasepe, "Avi Garbow", Gina McCarthy, Janet McCabe, Joseph Goffman, Richard Windsor, "Diane Thompson"
bcc
Subject Re: Boiler MACT

(b)(5) Deliberative, (b)(5) Attorney-Client, (b)(5) Attorney Work Product

Scott Fulton (b)(5) Deliberative, (b)(5) Attorney Client Privilege 01/20/2011 03:18:36 PM

From: Scott Fulton/DC/USEPA/US
To: Bob Perciasepe/DC/USEPA/US@EPA, David McIntosh/DC/USEPA/US@EPA, Gina McCarthy/DC/USEPA/US@EPA
Cc: Janet McCabe/DC/USEPA/US@EPA, Joseph Goffman/DC/USEPA/US@EPA, Richard Windsor/DC/USEPA/US@EPA, "Diane Thompson" <thompson.diane@epa.gov>, "Avi Garbow" <garbow.avi@epa.gov>
Date: 01/20/2011 03:18 PM
Subject: Re: Boiler MACT

(b)(5) Deliberative, (b)(5) Attorney-Client, (b)(5) Attorney Work Product

Bob Perciasepe

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

From: Bob Perciasepe
Sent: 01/20/2011 02:59 PM EST
To: David McIntosh; Gina McCarthy
Cc: Janet McCabe; Joseph Goffman; Richard Windsor; Scott Fulton; "Diane Thompson" <Thompson.Diane@EPA.GOV>
Subject: Re: Boiler MACT

Yes.

Bob Perciasepe
Deputy Administrator

(o) 202 564 4711
(c) (b)(6) Personal Privacy
David McIntosh

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

From: David McIntosh
Sent: 01/20/2011 02:52 PM EST
To: Gina McCarthy
Cc: Bob Perciasepe; Janet McCabe; Joseph Goffman; Richard Windsor; Scott Fulton; "Diane Thompson" <Thompson.Diane@EPA.GOV>

Subject: Re: Boiler MACT

I agree

Gina McCarthy (b) (5) Deliberative, (b)(5) Attorney Client Privilege 01/20/2011 02:46:11 PM

From: Gina McCarthy/DC/USEPA/US
To: David McIntosh/DC/USEPA/US@EPA, Scott Fulton/DC/USEPA/US@EPA
Cc: Bob Perciasepe/DC/USEPA/US@EPA, "Diane Thompson" <Thompson.Diane@EPA.GOV>, Richard Windsor/DC/USEPA/US@EPA, Joseph Goffman/DC/USEPA/US, Janet McCabe/DC/USEPA/US
Date: 01/20/2011 02:46 PM
Subject: Re: Boiler MACT

(b) (5) Deliberative, (b)(5) Attorney Client Privilege
[Redacted]

David McIntosh

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

From: David McIntosh
Sent: 01/20/2011 02:29 PM EST
To: Scott Fulton
Cc: Gina McCarthy; Bob Perciasepe; "Diane Thompson" <thompson.diane@epa.gov>; Richard Windsor
Subject: Re: Boiler MACT

(b) (5) Deliberative, (b)(5) Attorney Client Privilege
[Redacted]

Scott Fulton (b) (5) Deliberative, (b)(5) Attorney Client Privilege 01/20/2011 02:27:35 PM

From: Scott Fulton/DC/USEPA/US
To: "Richard Windsor" <Windsor.Richard@epamail.epa.gov>, "Bob Perciasepe" <Perciasepe.Bob@epamail.epa.gov>, Gina McCarthy/DC/USEPA/US@EPA, "David McIntosh" <McIntosh.David@epamail.epa.gov>, "Diane Thompson" <thompson.diane@epa.gov>
Date: 01/20/2011 02:27 PM
Subject: Boiler MACT

(b)(5) Deliberative, (b)(5) Attorney-Client, (b)(5) Attorney Work Product
[Redacted]

01268-EPA-4387

Bob Perciasepe/DC/USEPA/US
01/23/2011 06:34 PM

To David McIntosh, Bob Sussman
cc Arvin Ganesan, Bicky Corman, Diane Thompson, Richard Windsor, Seth Oster
bcc

Subject Re: It's January, so it's time for ACCF's annual audition

(b) (5) Deliberative

[Redacted]

Bob Perciasepe
Deputy Administrator
(o)202 564 4711
(c) (b) (6) Personal Privacy
David McIntosh

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

From: David McIntosh
Sent: 01/23/2011 06:23 PM EST
To: Bob Sussman
Cc: Arvin Ganesan; Bicky Corman; Bob Perciasepe; Diane Thompson; Richard Windsor; Seth Oster
Subject: Re: It's January, so it's time for ACCF's annual audition

(b) (5) Deliberative
Bob Sussman

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

From: Bob Sussman
Sent: 01/23/2011 06:21 PM EST
To: David McIntosh
Cc: Arvin Ganesan; Bicky Corman; Bob Perciasepe; Diane Thompson; Richard Windsor; Seth Oster
Subject: Re: It's January, so it's time for ACCF's annual audition

(b) (5) Deliberative

David McIntosh (b) (5) Deliberative 01/23/2011 04:51:52 PM

From: David McIntosh/DC/USEPA/US
To: Richard Windsor/DC/USEPA/US@EPA, Bob Perciasepe/DC/USEPA/US@EPA, Diane Thompson/DC/USEPA/US@EPA, Bob Sussman/DC/USEPA/US@EPA, Bicky Corman/DC/USEPA/US@EPA, Seth Oster/DC/USEPA/US@EPA, Arvin Ganesan/DC/USEPA/US@EPA
Date: 01/23/2011 04:51 PM
Subject: It's January, so it's time for ACCF's annual audition

(b) (5) Deliberative

(b) (5) Deliberative



(b) (5) Deliberative

[Redacted]

[Redacted]

[Redacted]

[Redacted]

01268-EPA-4389

Richard Windsor/DC/USEPA/US
01/24/2011 10:35 AM

To Sarah Pallone
cc "Gladys Stroman"
bcc

Subject Re: Former Gov. Granholm

(b) (6) Personal Privacy

Sarah Pallone

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

From: Sarah Pallone
Sent: 01/24/2011 08:27 AM EST
To: Richard Windsor
Subject: Former Gov. Granholm

FYI:

POLITICO

Granholm heads west to Cal-Berkeley

By: [Molly Ball](#)
January 24, 2011 04:50 AM EST

Now that she's left office, former Michigan Gov. Jennifer Granholm plans to write a book, teach at Berkeley and stay in the public eye as a speaker and commentator.

The 51-year-old two-term Democrat told POLITICO in an interview that her new work will revolve around the interrelated themes she emphasized as governor: creating jobs, reviving American manufacturing and expanding the clean energy economy.

"I'm very much looking forward to this new chapter in what has been and will continue to be a very full life," Granholm said.

Granholm and her husband, Dan Mulhern, are coauthoring a book about "the experience of governing what has been the toughest state in the country," she said. It is set to be published in September by Public Affairs.

Granholm and Mulhern also have a joint two-year academic appointment at the University of California-Berkeley, Granholm's undergraduate alma mater. Together, they will teach a course this coming spring semester at the university's Goldman School of Public Policy. In the fall, they will teach separate courses in the public policy, law and business schools.

The common theme of the courses and book will be the lessons Michigan holds for the rest of the country as "the canary in the coal mine — the state

hardest hit by the loss of traditional manufacturing jobs," she said. "We want to be able to have the nation draw lessons, good and bad, about what can happen if the United States doesn't take a more active role" in job creation.

In addition, Granholm and Mulhern have signed on with the Keppler Speakers Bureau to be represented for speaking engagements; they are fielding offers to serve on the boards of companies and nonprofits; and Granholm will be a paid contributor to NBC's "Meet the Press."

Mulhern, the former "first gentleman," is a radio host, inspirational speaker and leadership coach.

For Granholm, who grew up in California, the Berkeley appointment is a chance to spend more time with her parents, including an ailing father. Granholm and Mulhern plan to split their time between Michigan, California and Washington.

Since leaving the governor's mansion, the family has been renting in the Lansing area while their son finishes middle school. Granholm said they're working with a realtor to buy a permanent Michigan residence.

She was not approached for a job by the Obama administration, and does not plan to reenter politics. "I'm done with that," she said. "I'm ready for a new thing."

Granholm said the president has "taken some really good steps, but additional, aggressive steps need to be taken." The investments in a new clean-energy infrastructure made by the 2009 stimulus should "be put on steroids," she said.

Granholm's popularity was low by the time she left office — one April 2010 poll put her approval rating at 27 percent. She defended her record as having made tough decisions and put in place the changes that will eventually see Michigan recover from its long slump.

Under Granholm, the state's budget shrunk more than any other as declining revenues forced painful cuts. Now, she said, the beginnings of a turnaround can be seen: Michigan unemployment, which peaked at 14.5 percent in December 2009, was down to 11.7 percent in the latest December 2010 statistics.

"It's not like things have been fixed," Granholm said, but "our efforts in the past year and a half have really shown some remarkable progress."

She praised her successor, Republican Rick Snyder, for his bipartisan outreach, noting that the two jointly announced the new board of the Michigan Economic Development Corporation, with 10 appointees each. "He didn't have to do that," she said.

And she said she has no doubt Democrats will recover from their drubbing in the 2010 elections. "The president is obviously starting out well in 2011, with demonstrating that you can get stuff done at the end of last year and with the tone he set in Arizona," she said. "Citizens need to see continual movement. Citizens are impatient for change, understandably. If he can demonstrate continual progress, 2012 will be a good year for Democrats."

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Sarah Hospodor-Pallone
Deputy Associate Administrator
for Intergovernmental Relations
Office of the Administrator
202-564-7178
pallone.sarah@epa.gov

01268-EPA-4390

**Gladys
Stroman/DC/USEPA/US**
01/24/2011 10:38 AM

To Richard Windsor
cc
bcc

Subject Re: Former Gov. Granholm

Will do.

Richard Windsor

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

From: Richard Windsor
Sent: 01/24/2011 10:35 AM EST
To: Sarah Pallone
Cc: "Gladys Stroman" <stroman.gladys@epa.gov>
Subject: Re: Former Gov. Granholm

(b) (6) Personal Privacy

Sarah Pallone

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

From: Sarah Pallone
Sent: 01/24/2011 08:27 AM EST
To: Richard Windsor
Subject: Former Gov. Granholm

FYI:

POLITICO

Granholm heads west to Cal-Berkeley

By: **Molly Ball**

January 24, 2011 04:50 AM EST

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"I'm very much looking forward to this new chapter in what has been and will continue to be a very full life," Granholm said.

Granholm and her husband, Dan Mulhern, are coauthoring a book about "the experience of governing what has been the toughest state in the country," she said. It is set to be published in September by Public Affairs.

Granholm and Mulhern also have a joint two-year academic appointment at

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Sarah Hospodor-Pallone
Deputy Associate Administrator
for Intergovernmental Relations
Office of the Administrator
202-564-7178
pallone.sarah@epa.gov

01268-EPA-4393

David
McIntosh/DC/USEPA/US
01/24/2011 05:46 PM

To Richard Windsor, Gina McCarthy
cc
bcc

Subject Fw: Energy, Environment: Dear Colleague: Oppose EPA
Boiler MACT regulations

Just FYI. Thanks to the Sierra Club, this is now back front-and-center for the House Rs.
----- Forwarded by David McIntosh/DC/USEPA/US on 01/24/2011 05:46 PM -----

From: e-Dear Colleague
Sent: Monday, January 24, 2011 3:30 PM
To: E-DEARCOLL_ISSUES_A-F_0000@ls2.house.gov
Subject: Energy, Environment: Dear Colleague: Oppose EPA Boiler MACT regulations

Oppose EPA Boiler MACT regulations
From: The Honorable F. James Sensenbrenner, Jr.
Sent By: joshua.ledden@mail.house.gov
Date: 1/24/2011

**Oppose EPA Boiler MACT regulations
that will harm our economy**

Dear Colleague:

The Environmental Protection Agency (EPA) is in the final stage of rulemaking to reduce certain toxic air pollutants from industrial boilers, process heaters, and solid waste incinerators. The Boiler Maximum Achievable Control Technology (MACT) regulation would mandate emissions standards that, for many, cannot be met. These new standards would often require the installation of expensive control technologies without sufficient assurance that proposed emission limits would routinely be achieved.

The often large capital costs needed to retrofit many current plants will prove economically difficult for many existing units and could lead to closure of some operations. I will soon be introducing legislation to block the EPA from issuing these heavy-handed regulations. A recent study found that for every \$1 billion spent on upgrade and compliance costs, 16,000 jobs will be put at risk and U.S. GDP will be reduced by as much as \$1.2 billion. Now is not the time to make it more difficult for our manufacturing sector to compete.

The Small Business Administration's Office of Advocacy held two roundtables to discuss the rule's requirements. As Winslow Sargeant, the office's Chief Counsel noted, "There was widespread agreement among the participants representing a large diversity of manufacturing sectors that this proposal has impractical emissions limits that will be exceedingly costly to meet

for almost all facilities.” Additionally, the United Steel Workers union believes the Boiler MACT: “will be sufficient to imperil the operating status of many industrial plants.”

Anytime you have industry and unions come together in agreement, you know you have an argument that transcends politics. Simply put, EPA’s Boiler MACT regulations are too stringent, and the net result of their implementation would be an onerous burden on businesses, which will be forced to either shut down operations or terminate employees in order to survive.

If you have any questions, or would like to be added as an original cosponsor, please contact Joshua Ledden at Joshua.Ledden@mail.house.gov or x55101.

Sincerely,

F. JAMES SENSENBRENNER, JR.
Member of Congress

Visit the [e-Dear Colleague Service](#) to manage your subscription to the available Issue and Party list(s).

01268-EPA-4401

David McIntosh/DC/USEPA/US
01/25/2011 10:15 AM

To Richard Windsor
cc Gina McCarthy
bcc

Subject Re: Energy, Environment: Dear Colleague: Oppose EPA Boiler MACT regulations

(b) (5) Deliberative

Richard Windsor (b) (5) Deliberative 01/25/2011 06:05:35 AM

From: Richard Windsor/DC/USEPA/US
To: David McIntosh/DC/USEPA/US@EPA, Gina McCarthy/DC/USEPA/US@EPA
Date: 01/25/2011 06:05 AM
Subject: Re: Energy, Environment: Dear Colleague: Oppose EPA Boiler MACT regulations

(b) (5) Deliberative

David McIntosh

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

From: David McIntosh
Sent: 01/24/2011 05:46 PM EST
To: Richard Windsor; Gina McCarthy
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Member of Congress

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01268-EPA-4402

Richard Windsor/DC/USEPA/US
01/25/2011 11:57 AM

To: Scott Fulton
cc
bcc

Subject: Action Required

(b) (5) Deliberative, (b)(5) Attorney Work Product

----- Forwarded by Richard Windsor/DC/USEPA/US on 01/25/2011 11:55 AM -----

From: David McIntosh/DC/USEPA/US
To: Richard Windsor/DC/USEPA/US@EPA
Cc: Gina McCarthy/DC/USEPA/US@EPA
Date: 01/25/2011 10:15 AM
Subject: Re: Energy, Environment: Dear Colleague: Oppose EPA Boiler MACT regulations

(b)(5) Deliberative

Richard Windsor (b) (5) Deliberative, (b)(5) Attorney Work Product 01/25/2011 06:05:35 AM

From: Richard Windsor/DC/USEPA/US
To: David McIntosh/DC/USEPA/US@EPA, Gina McCarthy/DC/USEPA/US@EPA
Date: 01/25/2011 06:05 AM
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(b)(5) Deliberative

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Sincerely,

F. JAMES SENSENBRENNER, JR.
Member of Congress

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01268-EPA-4410

Richard Windsor/DC/USEPA/US
01/25/2011 01:23 PM

To Michael Moats, Adora Andy, Seth Oster, Brendan Gilfillan, Vicki Ekstrom
cc
bcc

Subject Re: ACTION ALTERNATE El Paso OpEd

Michael,

Just left you a detailed vmail.

Lisa

Michael Moats

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

From: Michael Moats

Sent: 01/25/2011 01:04 PM EST

To: Richard Windsor; Adora Andy; Seth Oster; Brendan Gilfillan; Vicki Ekstrom

Subject: ACTION ALTERNATE El Paso OpEd

(b) (5) Deliberative

[attachment "20110127 OPED El Paso (alternate).docx" deleted by Richard Windsor/DC/USEPA/US]

DRAFT

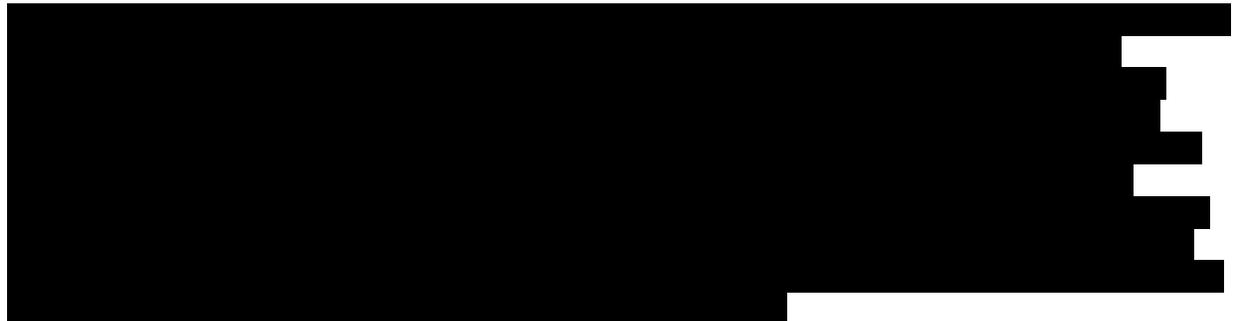
Administrator Lisa P. Jackson

(b) (5) Deliberative

[Redacted]

[Redacted]

(b) (5) Deliberative



Michael Moats
Chief Speechwriter
US EPA | Office of the Administrator
Office: 202-564-1687
Mobile: 202-527-4436

01268-EPA-4411

Michael Moats/DC/USEPA/US

To Richard Windsor

01/25/2011 01:28 PM

cc

bcc

Subject Re: ACTION ALTERNATE El Paso OpEd

Making changes now, thanks!

Michael Moats
Chief Speechwriter
US EPA | Office of the Administrator
Office: 202-564-1687
Mobile: 202-527-4436

Richard Windsor

Michael, Just left you a detailed vmail.

01/25/2011 01:23:20 PM

From: Richard Windsor/DC/USEPA/US
To: Michael Moats/DC/USEPA/US@EPA, Adora Andy/DC/USEPA/US@EPA, Seth Oster/DC/USEPA/US@EPA, Brendan Gilfillan/DC/USEPA/US@EPA, Vicki Ekstrom/DC/USEPA/US@EPA
Date: 01/25/2011 01:23 PM
Subject: Re: ACTION ALTERNATE El Paso OpEd

Michael,

Just left you a detailed vmail.

Lisa

Michael Moats

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

From: Michael Moats

Sent: 01/25/2011 01:04 PM EST

To: Richard Windsor; Adora Andy; Seth Oster; Brendan Gilfillan; Vicki Ekstrom

Subject: ACTION ALTERNATE El Paso OpEd

(b) (5) Deliberative

[attachment "20110127 OPED El Paso (alternate).docx" deleted by Richard Windsor/DC/USEPA/US]

DRAFT

Administrator Lisa P. Jackson
OpEd El Paso

(b) (5) Deliberative

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

(b) (5) Deliberative

Michael Moats
Chief Speechwriter
US EPA | Office of the Administrator
Office: 202-564-1687
Mobile: 202-527-4436

01268-EPA-4414

**David
McIntosh/DC/USEPA/US**
01/25/2011 04:32 PM

To: Brendan Gilfillan
cc: Adora Andy, Arvin Ganesan, Betsaida Alcantara, Bob Perciasepe, Bob Sussman, Daniel Kanninen, Diane Thompson, Dru Ealons, Seth Oster, Richard Windsor, Stephanie Owens

bcc

Subject: Re: AP: Gingrich calls for replacing EPA

(b) (5) Deliberative

Brendan Gilfillan

FYI - as you'll see in the story, AP has...

01/25/2011 04:10:47 PM

From: Brendan Gilfillan/DC/USEPA/US
To: Richard Windsor/DC/USEPA/US@EPA, Bob Perciasepe/DC/USEPA/US@EPA, Diane Thompson/DC/USEPA/US@EPA, Seth Oster <oster.seth@epa.gov>, Adora Andy/DC/USEPA/US@EPA, Betsaida Alcantara/DC/USEPA/US@EPA, Bob Sussman/DC/USEPA/US@EPA, David McIntosh/DC/USEPA/US@EPA, Arvin Ganesan/DC/USEPA/US@EPA, Stephanie Owens/DC/USEPA/US@EPA, Dru Ealons/DC/USEPA/US@EPA, Daniel Kanninen/DC/USEPA/US@EPA
Date: 01/25/2011 04:10 PM
Subject: AP: Gingrich calls for replacing EPA

FYI - as you'll see in the story, AP has asked us for comment on this.

Gingrich calls for replacing EPA

(AP) – 2 hours ago

DES MOINES, Iowa (AP) — Former House Speaker Newt Gingrich called Tuesday for the elimination of the Environmental Protection Agency, which he wants to replace with a new organization that would work more closely with businesses and be more aggressive in using science and technology.

In an interview with The Associated Press, Gingrich said the EPA was rarely innovative and focused only on issuing regulations and litigation.

"What you have is a very expensive bureaucracy that across the board makes it harder to solve problems, slows down the development of new innovations," Gingrich said.

Gingrich, who has acknowledged that he's mulling a run for the Republican presidential nomination, was in Iowa to talk to the Iowa Renewable Fuels Association. He also met privately with Republican legislators, often a sign in Iowa that people are laying the groundwork for a campaign. The state has the nation's first presidential caucuses.

Gingrich, who has made several visits to Iowa recently, said the EPA was founded on sound ideas but has become a traditional Washington bureaucracy. Tuesday was the first time he had proposed eliminating it, Gingrich spokesman R.C. Hammond said.

"We need to have an agency that is first of all limited, but cooperates with the 50 states," Gingrich said. "The EPA is based on bureaucrats centered in Washington issuing regulations and litigation and basically opposing things."

A telephone message left for EPA spokesman Brenden Gilfillan in Washington was not immediately returned.

Gingrich denied his proposal would result in environmental damage, saying he would replace the EPA with what he called the Environmental Solution Agency.

"I think you have an agency which would get up every morning, very much like the National Institutes for Health or the National Science Foundation, and try to figure out what do we need to do today to get a better environment that also gets us a better economy," he said.

Gingrich also said his proposed agency would pursue the development of a clean coal and rewrite regulations governing the development of small nuclear plants.

"There's a whole new emerging technology that allows you to build smaller nuclear plants, but all of our rules were designed for very complex, very expensive systems," he said.

Gingrich's anti-Washington, pro-business theme was designed to appeal to the conservatives who dominate Republican precinct caucuses, which traditionally launch the presidential nominating process. Iowa's next presidential caucus is Feb. 6, 2012.

"The level of control that Washington bureaucrats want to extend over topics they don't understand and communities they don't live in is wrong," he said. "Having an attitude of getting up every morning and trying to stop the economy is just a very destructive attitude."

01268-EPA-4426

Bob Sussman/DC/USEPA/US

01/27/2011 12:00 PM

To Arvin Ganesan

cc Bob Perciasepe, David McIntosh, Diane Thompson, Lawrence Elworth, Nancy Stoner, Richard Windsor, Seth Oster, Steve Owens

bcc

Subject Re: Fw: chambliss/roberts

(b) (5) Deliberative

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
(202)-564-7397
US Environmental Protection Agency

Arvin Ganesan

(b) (5) Deliberative

-...

01/27/2011 09:41:16 AM

From: Arvin Ganesan/DC/USEPA/US
To: Richard Windsor/DC/USEPA/US@EPA, Seth Oster/DC/USEPA/US@EPA, Lawrence Elworth/DC/USEPA/US@EPA, David McIntosh/DC/USEPA/US@EPA, Diane Thompson/DC/USEPA/US@EPA, Steve Owens/DC/USEPA/US@EPA, Bob Sussman/DC/USEPA/US@EPA, Nancy Stoner/DC/USEPA/US@EPA, Bob Perciasepe/DC/USEPA/US@EPA
Date: 01/27/2011 09:41 AM
Subject: Fw: chambliss/roberts

(b) (5) Deliberative

ARVIN R. GANESAN
Deputy Associate Administrator
Office of the Administrator
United States Environmental Protection Agency
Ganesan.Arvin@epa.gov
(p) 202.564.5200
(f) 202.501.1519

----- Forwarded by Arvin Ganesan/DC/USEPA/US on 01/27/2011 09:38 AM -----

From: "Adamo, Chris (Stabenow)" <Chris_Adamo@stabenow.senate.gov>
To: Lawrence Elworth/DC/USEPA/US@EPA, Arvin Ganesan/DC/USEPA/US@EPA
Date: 01/27/2011 09:36 AM
Subject: chambliss/roberts

FYI

Press Releases

[CHAMBLISS, ROBERTS URGE ADMINISTRATION TO REVIEW PENDING REGULATIONS TO EASE COSTLY BURDEN ON AGRICULTURE](#)

Jan 26 2011

Washington – U.S. Senator Saxby Chambliss (R-Ga.), Ranking Member of the Senate Agriculture Committee, and U.S. Senator Pat Roberts (R-Kan.) today sent a letter to Cass Sunstein, Administrator of the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) urging him to reduce burdensome and ineffective regulations impacting farmers, ranchers and rural America. Consistent with President Obama’s January 18th executive order, the Senators include a list of regulations and proposals that OIRA should consider a priority for review given the substantial and unjustifiable cost on stakeholders. In the letter, the Senators said they want assurance that the administration will review the actions by the U.S. Department of Agriculture (USDA) and the Environmental Protection Agency (EPA) and swiftly implement corrective action.

Text of the letter to Administrator Sunstein is below:

January 26, 2011

The Honorable Cass Sunstein

Administrator

Office of Information and Regulatory Affairs

The Office of Management and Budget

725 17th Street, NW

Washington, DC 20503

Dear Administrator Sunstein:

We write as a follow-up to your recent conversation with Senator Chambliss regarding the grave concerns we have about a significant number of regulatory proposals by the Obama Administration. These proposals will impact the U.S. agriculture industry as well as jobs and wealth creation in rural America. We are most interested in the executive order released last week by President Obama and, importantly, the impact of this measure as it is implemented by leadership at the Department of Agriculture and Environmental Protection Agency.

As stated in the executive order, “some sectors and industries face a significant number of regulatory requirements, some of which may be redundant, inconsistent, or overlapping.” Furthermore, the

executive order mandates that "...each agency shall attempt to promote such coordination, simplification and harmonization" across agencies. Agriculture is such an industry under the jurisdiction of multiple agencies where coordination is necessary to ensure the executive order's goal of "economic growth, innovation, competitiveness, and job creation."

We are fully supportive of any effort to reduce burdensome and ineffective regulation.

Therefore, we wish to draw your attention to the following measures which we believe will have a substantial and unjustifiable cost on production agriculture and rural communities across our nation. In addition to expressing our continued concern about these provisions, we hereby request a review and subsequent analysis by your office as to whether each of these proposals is consistent with the essence and requirements of the January 18th executive order. Finally, once such analysis is complete, we ask that your staff be made available to present your findings to our staff and the staff of other Senators concerned about these matters.

Thank you for your prompt attention to this request.

Sincerely,

U.S. Senator Saxby Chambliss

U.S. Senator Pat Roberts

REGULATORY ACTIVITY OF CONCERN FOR AGRICULTURE AND RURAL AMERICA

(A) EPA

(1) PESTICIDES

a. NPDES permits– This is scheduled to go into effect on April 9, 2011. It will require 5.6 million applications of pesticides by 365,000 applicators to have NPDES permits to apply pesticides. It will cost \$50 million and require one million hours per year to implement.

http://cfpub.epa.gov/npdes/home.cfm?program_id=410

b. Atrazine – In the fall of 2009, in response to a New York Times article, EPA announced an unscheduled re-review of atrazine. Atrazine was favorably reviewed by EPA in 2006 and is scheduled to begin registration review in 2013. EPA's decision on atrazine could establish a precedent for other pesticides. <http://www.epa.gov/opp00001/reregistration/atrazine/>

c. Endangered Species Act – Courts are imposing arbitrary limits on pesticide use, mostly by requiring large buffers along streams, in order to protect endangered species. The uncertainty that these actions have created is then greatly exacerbated by the Administration's failure to establish a process through which the U.S. Fish and Wildlife Service and National Marine Fisheries Service can consult with EPA on endangered species issues as they are required to do by statute. Such failure to coordinate is creating serious jeopardy for agriculture as environmental groups recently filed suit against EPA alleging that its pesticide regulatory process does not take into account the effects of pesticides on endangered species.

<http://www.epa.gov/espp/>

http://www.biologicaldiversity.org/news/press_releases/2011/pesticides-01-20-2011.html

d. Risk Assessment Process/Precautionary Principle – In December 2009, EPA proposed to revise its risk assessment methods related to agricultural workers, their children and pesticides with no food uses. This is a significant change to the agency's risk assessment methodology and is not required by FIFRA. It would add an additional ten-fold safety factor for occupational risk.

<http://www.epa.gov/pesticides/health/worker-rsk-assmnt.html>

(2) WATER

a. Clean Water Act Strategy – In 2009, EPA began to develop a series of aggressive Clean Water Act initiatives. Agriculture is the chief focus of the effort. The problem is not that EPA is developing new strategies and plans for improving water quality, but it is how the agency is going about doing it. Agriculture has not been impressed with the promises of openness and transparency. Agriculture groups are routinely not included in meetings and strategy sessions and the groups' concerns about hasty decision making without thorough analysis are frequently dismissed. For example, only a few from the agriculture community were invited to attend EPA's strategy workshop held in August 2010.

<http://blog.epa.gov/waterforum/2010/08/draft-clean-water-strategy-is-released/>

b. Numeric Nutrient Criteria – Under a settlement agreement with an activist group, EPA has taken over the development of numeric nutrient criteria (NNC) for Florida’s waters. NNC are a subset of EPA’s technical water quality standards program. Florida estimates the total capital cost of EPA’s criteria will range from \$47 to \$98 billion over 30 years. At this time, 44 states have criteria under development. <http://yosemite.epa.gov/opei/RuleGate.nsf/6c93b95a7f1614c1852576b70060eb51/355215442d406485852576da0076d5cb!OpenDocument>

c. Water Quality Standards Rulemaking – On July 30, 2010, EPA announced it will propose amendments to the Water Quality Standards program. EPA plans to strengthen anti-degradation standards, adopt a presumption that all U.S. waters should be fishable and swimmable, and require state decisions to be approved by EPA. In effect, this proposal would federalize decisions historically made by the states under the Clean Water Act. http://water.epa.gov/lawsregs/lawsguidance/wqs_index.cfm

d. Chesapeake Bay Total Maximum Daily Load (TMDL) – EPA is seeking expanded authority to implement plans to restore the Bay. Part of this effort is setting a stringent total maximum daily load (TMDL). TMDLs are allocations by sector of allowed discharges to certain water bodies. This will subject producers in the Bay states to more regulation than producers in other states. The Bay TMDL is expected to be used as a model for other water bodies, such as the Mississippi River in the Midwest and the Puget Sound in the Pacific Northwest. <http://www.epa.gov/chesapeakebaytmdl/>

e. CAFOs – A new regulation is planned for summer 2011. It is expected to require small and medium Concentrated Animal Feeding Operations (CAFOs) to obtain permits and the use of more aggressive nutrient management plans. It also will include a presumption that all CAFOs discharge, thus subjecting them to permitting requirements. http://www.epa.gov/npdes/pubs/cafo_implementation_guidance.pdf

(3) AIR

a. PM 10/Dust – EPA is preparing to reconsider its large particulate matter (PM 10) standard. EPA’s Clean Air Advisory Committee has recommended lowering the standard. This is problematic because the current standard is already difficult for many rural counties, especially in the West, to meet. http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_index.html

b. Greenhouse Gas Regulations – EPA is swiftly moving ahead with a suite of regulations concerning greenhouse gas emissions. In the short term, they will affect agriculture by creating additional uncertainty and slowing the recovery of the economy. In the long term, they will raise production costs for producers and agricultural businesses. <http://www.epa.gov/climatechange/initiatives/index.html>

(4) OTHER

a. Dioxin Risk Assessment – EPA is considering a cancer risk factor that will cause nearly all agricultural products to exceed the agency’s level of concern. Since 2000, the incidence of dioxin contamination has dropped 90 percent. <http://cfpub.epa.gov/ncea/CFM/nceaQFind.cfm?keyword=Dioxin>

b. Arsenic Risk Assessment – EPA is considering a cancer risk factor that will cause virtually all soils to exceed the agency’s target risk range. This means rice, wheat, corn meal, peanuts, apples, lettuce, carrots, onions, sugar, and tap water would be considered unsafe. <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=219111>

c. Urea Risk Assessment – Urea is widely used in fertilizers as a source of nitrogen. It also is an important raw material for the chemical industry. In September, EPA announced a 60-day public comment period and a public listening session on November 16 for the external review of the draft human health assessment on urea. http://cfpub.epa.gov/ncea/iris_drafts/recordisplay.cfm?deid=214771

d. Fly Ash Regulation – EPA’s preferred approach for regulation of fly ash is to declare it hazardous waste. This would end all beneficial uses of fly ash, including agricultural uses. Currently, it is used as a soil amendment and research shows it can be used at field borders to better capture phosphorus runoff. <http://yosemite.epa.gov/opa/admpress.nsf/d0cf6618525a9efb85257359003fb69d/4eca022f6f5c501185257719005dfb1b!OpenDocument>

(B) DEPARTMENT OF AGRICULTURE

(1) Biotechnology- Recently, USDA convened a forum of stakeholders to discuss alfalfa co-existence and conflicts between supporters and critics of agriculture biotechnology. In proposing a “partial deregulation” with isolation distances and geographic restrictions based entirely on perceived economic consequences resulting from the commercialization of genetically engineered alfalfa, the Department has introduced political considerations that exceed their statutory authority to regulate the introduction and movement of plant pests. The integration of the co-existence discussion within the regulatory process signals the Department’s willingness to elevate the precautionary principle as a fundamental tenet of decision making rather than established procedures as set forth by years of science based risk assessment. The Department plans to issue a record of decision on GE alfalfa the week of January 24th. http://www.aphis.usda.gov/biotechnology/alfalfa_documents.shtml

(2) Trade- USDA intends to propose modifications to the Foreign Market Development and Market Access Programs that have the potential to reduce their effectiveness in increasing U.S. exports. At present, these programs are operating optimally and fulfilling all of the goals of the President's National Export Initiative by including small and medium-sized enterprises as required by law.

(3) Livestock marketing- In June of last year, the Grain Inspection, Packers and Stockyards Administration (GIPSA) published a proposed rule that would make historic changes in the rules governing production and marketing of livestock. The draft rule has come under significant criticism from industry as well as Congress as to substance and a lack of economic analysis conducted before the proposal was published. <http://archive.gipsa.usda.gov/rulemaking/fr10/06-22-10.pdf>

(4) Crop insurance- In early January, the Risk Management Agency (RMA) unveiled a proposed rule that would reward farmers participating in the federal crop insurance program for good performance. As proposed by RMA, the "Good Performance Refund" Program does not appear to meet the spirit of the new executive order. First, instead of utilizing an electronic delivery mechanism that is already in place, the proposal would require the Treasury or USDA to issue hard copy checks to eligible producers. Secondly, the proposal fails to comply with the statutory requirement that producer performance be based on region. By failing to take geographical differences under consideration, RMA's proposal disproportionately benefits producers in regions with favorable weather conditions. Finally, the agency has allowed only 15 days for public comment. <http://www.rma.usda.gov/regs/2011/gprpr.pdf>

01268-EPA-4427

Al Armendariz/R6/USEPA/US
01/27/2011 12:42 PM

To Adora Andy, Lisa Garcia, Mathy Stanislaus
cc "Richard Windsor"
bcc

Subject Re: ASAP ACTION: ASARCO NPL

Hi (just landed in San A):

(b)(5) Deliberative
[Redacted]

Al

Al Armendariz
Regional Administrator
U.S. EPA
Region 6
armendariz.al@epa.gov
office: 214-665-2100
twitter: @al_armendariz
Adora Andy

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

From: Adora Andy
Sent: 01/27/2011 11:14 AM EST
To: Lisa Garcia; Mathy Stanislaus; Al Armendariz
Cc: "Richard Windsor" <windsor.richard@epa.gov>
Subject: ASAP ACTION: ASARCO NPL

(b) (5) Deliberative
[Redacted]

(b) (5) Deliberative
[Redacted]

Lisa Garcia

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

From: Lisa Garcia
Sent: 01/27/2011 11:05 AM EST
To: Adora Andy; "Richard Windsor" <windsor.richard@epa.gov>
Subject: Re: HEADS UP: ASARCO NPL

(b) (5) Deliberative
[Redacted]

(b) (5) Deliberative

[Redacted]

<

Adora Andy

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

From: Adora Andy
Sent: 01/27/2011 10:17 AM EST
To: "Richard Windsor" <windsor.richard@epa.gov>; Lisa Garcia
Subject: HEADS UP: ASARCO NPL

(b) (5) Deliberative

David Gray

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

From: David Gray
Sent: 01/27/2011 10:14 AM EST
To: Adora Andy
Subject: NPL

(b) (5) Deliberative

[Redacted]

David Gray
Director
External and Government Affairs
US EPA
(214) 665-2200 office
(214) 789-2619 mobile
gray.david@epa.gov

Sent from Blackberry

01268-EPA-4432

Lisa Garcia/DC/USEPA/US

To "Richard Windsor"

01/28/2011 01:22 PM

cc

bcc

Subject Fw: Texas Regulators Approve Air Permit For Power Plant
Near Corpus Christi

(b) (5) Deliberative

Carlos Evans

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

From: Carlos Evans**Sent:** 01/28/2011 01:16 PM EST**To:** Lisa Garcia**Cc:** Sherri White; Dorris Riddick**Subject:** Texas Regulators Approve Air Permit For Power Plant Near Corpus
Christi

Lisa, you've probably seen this, but just making sure.

Texas Regulators Approve Air Permit For Power Plant Near Corpus Christi

HOUSTON—Texas regulators have approved an air permit for a proposed electricity generating plant near Corpus Christi, overriding objections by the Environmental Protection Agency and environmental organizations and the recommendations of two administrative law judges.

The Texas Commission on Environmental Quality Jan. 26 approved the permit for the Las Brisas Energy Center by a 2-1 vote after EPA Deputy Regional Administrator Lawrence E. Starfield sent commissioners a [letter Jan. 24](#) outlining deficiencies in the facility's draft application permit. Starfield cited the lack of proper demonstration that the proposed facility would not cause or contribute to violations of the federal national ambient air quality standard (NAAQS) for ozone, among other concerns about public health and environmental impacts of this project.

The plant would burn petroleum coke, a byproduct of the refining process, as the primary fuel.

Starfield asked the commission to deny the permit until issues are resolved.

He said EPA and the public have not had the opportunity to exercise their rights under the federal Clean Air Act to review the proposed source's demonstrations of compliance for the new nitrogen dioxide and sulfur dioxide standards and applicable requirements following revisions to NAAQS ([25 DEN A-7, 2/9/10](#); [106 DEN A-4, 6/4/10](#)).

The Sierra Club said it would appeal the permit in a state district court after the commission signs the formal order granting the permit in 10 to 15 days.

EPA Region 6 spokesman Dave Bary said the agency did not have a response to the commission's approval of the permit at this time.

The commission's approval of the Las Brisas power plant permit is the latest in the ongoing battle between Texas and the EPA over how to regulate air quality in the state. In late December, EPA announced it would directly issue permits for new and modified sources of greenhouse gas emissions to industrial facilities in Texas after the state refused to comply with federal regulations ([247 DEN A-1, 12/28/10](#)).

Texas, however, was unable to block the EPA's action through the appeals process; state officials say they will continue to challenge the EPA's authority in the state and the federal government's attempt to take over the air permitting program.

EPA Greenhouse Gas Permit Still Needed

Before construction can begin on the \$3.2 billion facility, the plant still needs a greenhouse gas permit from EPA as well as a prevention of significant deterioration (PSD) permit that must show that emissions from construction and operation of the facility will not cause or contribute to a violation of any NAAQS. The commission also must approve a wastewater permit.

Two administrative law judges with the Texas State Office of Administrative Hearings previously recommended that regulators deny the Las Brisas permit because the project developer failed to account for some emissions from the facility among other objections.

Findings of administrative law judges are nonbinding on the commissioners.

In a statement to BNA, commission spokeswoman Andrea Morrow said both the TCEQ executive director and administrative law judges noted that the "evidence on the record proved the permit did not have an increment air pollution problem and was protective of public health and the environment."

Jennifer Powis, regional representative for the Sierra Club and leader of the Beyond Coal Campaign for Texas, told a teleconference that commission Executive Director Bryan Shaw "thumbed his nose at federal oversight, federal law, and protecting the citizens of Texas under those laws like the rest of the nation."

Environmental Groups Decry Move

Environmental groups have warned that the plant will emit mercury, lead, and other pollutants.

"This is not over. It is an absolute failure by state government here to award them this piece of the permit when independent administrative law judges pointed out the absolute deficiencies and failures under the law," Powis said.

The plant's pollution can cause increases in childhood asthma, heart disease, and other medical problems because it does not meet minimum health standards, she said.

"We call on the EPA to do its job here and enforce the Clean Air Act in Texas because we have a governor and a state attorney who are refusing to do so," she added.

Tom "Smitty" Smith, executive director of the Austin-headquartered group Public Citizen, called the Las Brisas permit decision a "tragedy because it has broken the trust between the people of Texas and the TCEQ by ignoring recommendations of the State Office of Administrative Hearings judges."

"It has become clear to us that the laws that govern the TCEQ have become fundamentally broken and the commissioners have become outlaws," Smith said. He called upon the Texas Legislature to "substantially reform" the commission and require commissioners follow recommendations of hearings officers.

Chase Power Development of Houston proposes to construct and operate the 1,320-megawatt Las Brisas facility and upgrade an existing bulk terminal at the Port of Corpus Christi.

Carlos R. Evans
Attorney-Advisor
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Mail Code 2273A
Washington, DC 20460
(202) 564-6331

The preceding message (including any attachments) contains information that may be confidential, be protected by attorney work-product, attorney-client or other applicable privileges and may be exempt from disclosure under applicable law. It is intended to be conveyed only to the named recipient(s). If you received this message in error or if you are not the intended recipient, please notify the sender and delete the message from your system. Any use, dissemination, distribution or reproduction of this message by unintended recipients is not authorized and may be unlawful.

01268-EPA-4433

Richard Windsor/DC/USEPA/US
01/28/2011 01:34 PM

To Lisa Garcia
cc
bcc

Subject Re: Texas Regulators Approve Air Permit For Power Plant Near Corpus Christi

Got it.

Lisa Garcia

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

From: Lisa Garcia**Sent:** 01/28/2011 01:22 PM EST**To:** Richard Windsor

Subject: Fw: Texas Regulators Approve Air Permit For Power Plant Near Corpus Christi

(b) (5) Deliberative

Carlos Evans

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

From: Carlos Evans**Sent:** 01/28/2011 01:16 PM EST**To:** Lisa Garcia**Cc:** Sherri White; Dorris Riddick

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Carlos R. Evans
Attorney-Advisor
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Ariel Rios Building
1200 Pennsylvania Avenue, NW
Mail Code 2273A
Washington, DC 20460
(202) 564-6331

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01268-EPA-4437

David
McIntosh/DC/USEPA/US
01/30/2011 04:09 PM

To Richard Windsor
cc "Seth Oster", Michael Moats
bcc
Subject embargoed summary of the February 8 Ceres jobs analysis of
EPA CAA power plant rules

Administrator: Pasted immediately below is an embargoed summary of the report that Ceres will issue on February 8. That is the day on which you will deliver a speech at the Good Jobs Green Jobs conference.

EPA Air Pollution Regulations: Create New Jobs and Boost the Economy

A new report - "Employment Effects of Planned Changes in the EPA's Air Pollution Regulations," prepared by Dr. James Heintz of the Political Economy Research Institute at the University of Massachusetts, Amherst - released by Ceres demonstrates how new air pollution rules being proposed by the Environmental Protection Agency (EPA) for the electric power sector will bring economic benefits and jobs across much of the United States, with an especially large boost in the next five years.

The report evaluates job impacts in the Eastern Interconnect, 36 states in the eastern half of the U.S., from two Clean Air Act rules expected to be issued in 2011: the Clean Air Transport Rule, focused on sulfur dioxide (SO₂) and nitrogen oxide (NO_x) emissions from targeted states in the East and Midwest; and the utility MACT (maximum achievable control technology) which will put federal limits on hazardous air pollutants including mercury, arsenic, lead, and hydrochloric acid.

Among the report's key findings, from 2010 to 2015:

- The power sector will **invest almost \$200 billion total on capital improvements** over the next five years, including almost \$94 billion on pollution control technologies and over \$100 billion on new or expanded plant construction (about 68,000 megawatts of additional capacity).
- Total employment created by these capital investments is estimated at **1.46 million jobs**
-
- Assuming the construction and retrofitting jobs take place from this year through 2015,

it would generate about **291,577 jobs on average per year** over those five years.

- A wide array of **skilled high-paying construction and professional jobs** would be generated in the construction and installation of these capital projects including engineers, project managers, electricians, boilermakers, pipefitters, millwrights and iron workers.
- There will also be a **4,254 net gain** of more permanent operations and maintenance **(O&M) jobs** created across the 36 states in the Eastern Interconnection.

01268-EPA-4438

Gina McCarthy/DC/USEPA/US

To Richard Windsor

01/30/2011 07:16 PM

cc "Bob Sussman", "Bob Perciasepe", "Scott Fulton", "David McIntosh", Joseph Goffman, "Seth Oster"

bcc

Subject IG report on endangerment

(b) (5) Deliberative



Thanks.

01268-EPA-4440

Richard Windsor/DC/USEPA/US
01/31/2011 04:58 PM

To: Brendan Gilfillan
cc: "Seth Oster", Adora Andy
bcc:
Subject: Re: Statement on Sen. Barrasso bill

Cool
Brendan Gilfillan

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

From: Brendan Gilfillan
Sent: 01/31/2011 04:55 PM EST
To: Richard Windsor
Cc: Seth Oster <oster.seth@epa.gov>; Adora Andy
Subject: Statement on Sen. Barrasso bill

Hey Boss -

Pls see the below release from Sen. Barrasso on legislation he introduced today blocking GHG regs.

(b)(5) Deliberative

[Redacted content]

Barrasso Bill Defends America's Affordable Energy and Jobs

"I will do whatever it takes to ensure that Washington doesn't impose cap and trade policies in any form ."

January 31, 2011

WASHINGTON, DC – Today, U.S. Senator John Barrasso (R-Wyo) introduced the Defending America's Affordable Energy and Jobs Act. The [bill](#) would stop Washington bureaucrats from regulating greenhouse gases for the purpose of addressing climate change without specific Congressional authorization. Barrasso's bill has 7 co-sponsors, including Sen. Mike Enzi (R-Wyo). For a full list of cosponsors click [here](#) .

“It’s time for the Administration to face the facts: Americans rejected cap and trade because they know it means higher energy prices and lost jobs,” said Barrasso. “Washington agencies are now trying a backdoor approach to regulate our climate by abusing existing laws. Congress must step in and stand up for the American people. My bill will shrink Washington’s job crushing agenda and grow America’s economy. I will do whatever it takes to ensure that Washington doesn’t impose cap and trade policies in any form.”

Background

The Defending America’s Affordable Energy and Jobs Act restores the role of the U.S. Congress in the development and implementation of the nation’s climate and energy policy.

The bill pre-empts federal restrictions on greenhouse gasses in the name of addressing climate change, in the absence of explicit Congressional Authorization. This would necessarily include mandatory requirements that may stem from applications of the Clean Air and Clean Water Act, the National Environmental Policy Act and the Endangered Species Act.

The bill also precludes legal action against sources of greenhouse gasses solely based on their possible contribution to climate change.

There are two exceptions:

- 1) Regulations for mobile sources such as cars and trucks will continue, but those regulations will now be managed by the Department of Transportation, not EPA.
- 2) Any greenhouse gas that is a direct threat to human health because of direct exposure to that gas could still be regulated, just not solely based on climate change. This provision would ensure that polluters of health threatening gasses would still be held accountable under the law.

The bill does not preempt states from enacting greenhouse gas or climate change mandates.

The bill has been endorsed by Americans for Tax Reform, Americans for Prosperity, the Western Business Roundtable, the Competitive Enterprise Institute, Freedom Action and the National Cattlemen's Beef Association.

Senator Barrasso is a member of both the Senate Environment and Public Works Committee and the Energy and Natural Resources Committee.

01268-EPA-4444

Richard Windsor/DC/USEPA/US
02/01/2011 03:07 PM

To Arvin Ganesan, David McIntosh
cc Barbara Bennett, Heidi Ellis
bcc
Subject Re: Meeting with incoming Senate Appropriations Subcommittee Chairman Jack Reed

Amen! (b)(6) Privacy
Arvin Ganesan

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

From: Arvin Ganesan
Sent: 02/01/2011 03:05 PM EST
To: David McIntosh
Cc: Barbara Bennett; Heidi Ellis; Richard Windsor
Subject: Re: Meeting with incoming Senate Appropriations Subcommittee Chairman Jack Reed

Chairman Jack Reed

This is tremendous news. Sen. Reed is an outstanding Senator and a Red Sox fan, to boot.

ARVIN R. GANESAN
Deputy Associate Administrator
Office of the Administrator
United States Environmental Protection Agency
Ganesan.Arvin@epa.gov
(p) 202.564.5200
(f) 202.501.1519

David McIntosh Hi Administrator and Heidi. Please see... 02/01/2011 03:04:56 PM

From: David McIntosh/DC/USEPA/US
To: Richard Windsor/DC/USEPA/US@EPA, Heidi Ellis/DC/USEPA/US@EPA
Cc: "Arvin Ganesan" <Ganesan.Arvin@epamail.epa.gov>, Barbara Bennett/DC/USEPA/US@EPA
Date: 02/01/2011 03:04 PM
Subject: Meeting with incoming Senate Appropriations Subcommittee Chairman Jack Reed

Hi Administrator and Heidi. Please see below. We are asked to keep confidential for the time being the good news that Senator Jack Reed of Rhode Island is the new Chairman of the Senate Appropriations Subcommittee on Interior, Environment, and Related Agencies. Senator Reed would like to meet with the Administrator at some point next week. I think it would be for an hour. Heidi, would you be able to reach out to Rachael Taylor (rachael_taylor@appro.senate.gov, 228-3487), who will put you in touch with Chairman Reed's scheduler?

Thanks,
David

-----Forwarded by David McIntosh/DC/USEPA/US on 02/01/2011 03:01PM -----

To: Ed Walsh/DC/USEPA/US@EPA, David McIntosh/DC/USEPA/US@EPA
From: "Taylor, Rachael (Appropriations)" <Rachael_Taylor@appro.senate.gov>
Date: 02/01/2011 01:03PM
Subject: Appt with Administrator Jackson

We met with Senator Reed, soon to be Chairman Reed, this morning -- he

asked us to set up a meeting with the Administrator for next week so I wanted to get the ball rolling with you two.

Can you please let the appropriate folks know this is coming and then please let me know who over there is handling her schedule, so we can put Senator Reed's scheduler, Rosanne Haroian, in touch to hash out details?

David, we should talk about the agenda and what you think she will want to proactively bring up, but I'm sure most of the meeting will be strategy on greenhouse gases and where you guys are vs. where he wants to be. Hopefully she can also give a brief overview of some of the contentious issues that we may have to deal with more immediately – ozone, boiler MACT and your pending air quality regs spring to mind, but there may be others I'm missing. One of his two rules for the office is "no surprises" so I think a lay of the land for the big issues of the next 6 months are so would be appropriate.

Finally, can you do a one pager on the status/schedules of each those issues as of today – GHG regulation, ozone, boiler MACT, pending air regs – and get them to me in the next couple of days?

(Also, we do appreciate your continued discretion on his selection with outside folks until Chairman Inouye has made things public.)

Rachael S. Taylor

Professional Staff Member

U.S. Senate Committee on Appropriations

Subcommittee on the Interior and Related Agencies

Direct: (202) 228-3487

Fax: (202) 228-2345

Rachael_Taylor@appro.senate.gov

01268-EPA-4445

Richard Windsor/DC/USEPA/US
02/01/2011 03:29 PM

To Arvin Ganesan
cc
bcc

Subject Re: Meeting with incoming Senate Appropriations Subcommittee Chairman Jack Reed

(b) (6) Personal Privacy
Arvin Ganesan

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

From: Arvin Ganesan
Sent: 02/01/2011 03:15 PM EST
To: Richard Windsor
Subject: Re: Meeting with incoming Senate Appropriations Subcommittee Chairman Jack Reed

THAT is the best news I've heard all day. You must be feeling better.

ARVIN R. GANESAN
Deputy Associate Administrator
Office of the Administrator
United States Environmental Protection Agency
Ganesan.Arvin@epa.gov
(p) 202.564.5200
(f) 202.501.1519

Richard Windsor (b) (6) Personal Privacy 02/01/2011 03:07:10 PM

From: Richard Windsor/DC/USEPA/US
To: Arvin Ganesan/DC/USEPA/US@EPA, David McIntosh/DC/USEPA/US@EPA
Cc: Barbara Bennett/DC/USEPA/US@EPA, Heidi Ellis/DC/USEPA/US@EPA
Date: 02/01/2011 03:07 PM
Subject: Re: Meeting with incoming Senate Appropriations Subcommittee Chairman Jack Reed

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Arvin Ganesan

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Cc: Barbara Bennett; Heidi Ellis; Richard Windsor
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United States Environmental Protection Agency
Ganesan.Arvin@epa.gov
(p) 202.564.5200

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David McIntosh [Hi Administrator and Heidi. Please see...](#) 02/01/2011 03:04:56 PM

From: David McIntosh/DC/USEPA/US
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U.S. Senate Committee on Appropriations

Subcommittee on the Interior and Related Agencies

Direct: (202) 228-3487

Fax: (202) 228-2345

Rachael_Taylor@appro.senate.gov

01268-EPA-4446

Heidi Ellis/DC/USEPA/US

02/01/2011 03:30 PM

To David McIntosh, Richard Windsor

cc Arvin Ganesan, Barbara Bennett

bcc

Subject Re: Meeting with incoming Senate Appropriations Subcommittee Chairman Jack Reed

Will do.

From: David McIntosh**Sent:** 02/01/2011 03:04 PM EST**To:** Richard Windsor; Heidi Ellis**Cc:** Arvin Ganesan; Barbara Bennett**Subject:** Meeting with incoming Senate Appropriations Subcommittee Chairman Jack Reed

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Subcommittee on the Interior and Related Agencies

Direct: (202) 228-3487

Fax: (202) 228-2345

Rachael_Taylor@appro.senate.gov

01268-EPA-4447

Richard Windsor/DC/USEPA/US
02/01/2011 04:58 PM

To Aaron Dickerson
cc
bcc

Subject Re: Call-in for 5:00 Utility MACT is (b) (6) Personal Privacy code:
(b) (6) Personal Privacy

Tx!

Aaron Dickerson

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

From: Aaron Dickerson
Sent: 02/01/2011 04:57 PM EST
To: Richard Windsor
Subject: Call-in for 5:00 Utility MACT is (b) (6) Personal Privacy code: (b) (6) Personal Privacy

01268-EPA-4450

Heidi Ellis/DC/USEPA/US

02/01/2011 09:22 PM

To Richard Windsor

cc

bcc

Subject Re: Google Alert - lisa jackson epa

Nothing came my way, but I'll check on this tomorrow.

From: Richard Windsor
Sent: 02/01/2011 09:16 PM EST
To: Heidi Ellis
Subject: Fw: Google Alert - lisa jackson epa

See 2nd story

From: Google Alerts [googlealerts-noreply@google.com]
Sent: 02/02/2011 01:58 AM GMT
To: Richard Windsor
Subject: Google Alert - lisa jackson epa

News

2 new results for **lisa jackson epa**

[Coal ash waste tied to cancer-causing chemicals in water supplies](#)

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01268-EPA-4451

Richard Windsor/DC/USEPA/US
02/01/2011 09:25 PM

To Heidi Ellis
cc
bcc

Subject Re: Google Alert - lisa jackson epa

I didn't actually read the story - I just thought the title was funny.

From: Heidi Ellis
Sent: 02/01/2011 09:22 PM EST
To: Richard Windsor
Subject: Re: Google Alert - lisa jackson epa

Nothing came my way, but I'll check on this tomorrow.

From: Richard Windsor
Sent: 02/01/2011 09:16 PM EST
To: Heidi Ellis
Subject: Fw: Google Alert - lisa jackson epa

See 2nd story

From: Google Alerts [googlealerts-noreply@google.com]
Sent: 02/02/2011 01:58 AM GMT
To: Richard Windsor
Subject: Google Alert - lisa jackson epa

News

2 new results for **lisa jackson epa**

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01268-EPA-4452

Heidi Ellis/DC/USEPA/US

To Richard Windsor

02/01/2011 09:27 PM

cc

bcc

Subject Re: Google Alert - lisa jackson epa

Hahaha it was, but supposedly you were invited along with LaHood and Duncan.

"Get on the bus" like Spike said :)

From: Richard Windsor
Sent: 02/01/2011 09:25 PM EST
To: Heidi Ellis
Subject: Re: Google Alert - lisa jackson epa

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01268-EPA-4453

David McIntosh/DC/USEPA/US
02/02/2011 06:21 AM

To "Richard Windsor"
cc
bcc

Subject Fw: Breaking News AP: House GOP readies restrictions on EPA WEDNESDAY

(b) (5) Deliberative
David McIntosh

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

From: David McIntosh
Sent: 02/02/2011 06:20 AM EST
To: Adora Andy; Betsaida Alcantara; Seth Oster; Brendan Gilfillan; Arvin Ganesan
Subject: Re: Breaking News AP: House GOP readies restrictions on EPA WEDNESDAY

(b) (5) Deliberative

Adora Andy

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

From: Adora Andy
Sent: 02/01/2011 11:56 PM EST
To: Betsaida Alcantara; Seth Oster; Brendan Gilfillan; Arvin Ganesan; David McIntosh
Subject: Re: Breaking News AP: House GOP readies restrictions on EPA WEDNESDAY

(b) (5) Deliberative

Betsaida Alcantara

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

From: Betsaida Alcantara
Sent: 02/01/2011 11:33 PM EST
To: Seth Oster; Adora Andy; Brendan Gilfillan; Arvin Ganesan; David McIntosh
Subject: Breaking News AP: House GOP readies restrictions on EPA WEDNESDAY
AP sources: House GOP readies restrictions on EPA

WASHINGTON – In a sharp challenge to the Obama administration, House Republicans intend to unveil legislation Wednesday to ban the Environmental Protection Agency from regulating greenhouse gases under the Clean Air Act and expect to advance the bill quickly, officials disclosed Tuesday night.

In addition, it seeks to strip the agency of its authority to use the law in any future attempts to crack down on the emissions from factories, utilities and other stationary sources.

Many scientists say that carbon dioxide and other heat-trapping pollution contribute to global warming, and attempts at regulating them is a major priority for President Barack Obama as well as environmentalists. Critics argue the evidence is thin and that new rules will drive up the cost of business and cause the loss of jobs.

The officials who described the GOP plans did so on condition of anonymity, saying they were not

authorized to pre-empt the release of a draft measure prepared by the Energy and Commerce Committee, chaired by Rep. Fred Upton of Michigan.

The legislation marks yet another arena in which newly empowered House Republicans are moving quickly to challenge the administration.

Sworn into office less than a month ago, the House has already voted to repeal last year's health care law and is advancing toward a series of expected confrontations with Obama over Republican demands for deep spending cuts. In addition, Speaker John Boehner, R-Ohio, recently announced support for legislation to restrict abortions.

A vote on the greenhouse gases bill would occur first in the Energy and Commerce Committee, and is expected later this winter. The measure would then go to the House floor, where Republicans express confidence they have a strong enough majority to overcome objections by Democrats, many of whom are expected to oppose it on environmental grounds.

Republicans are attempting similar restrictions in the Senate, where the Democrats are in a majority and the political situation is more complicated. Sen. John Barrasso of Wyoming has introduced a more sweeping measure than the one House Republicans are drafting. At the same time, Sen. Jay Rockefeller, D-W.Va., has proposed a two-year moratorium on EPA attempts to regulate greenhouse gases under the Clean Air Act, a plan that already has attracted a handful of Democratic supporters.

The Supreme Court ruled in 2007 that the EPA has authority to regulate greenhouse gases under the Clean Air Act, but it wasn't until the Obama administration took office that the effort began.

Initially, the administration's principal focus in the area was on passage of legislation to impose restrictions, but that attempt failed when the Senate balked at a bill Democrats pushed through the House in 2009.

Since the Republican election gains of last fall, Obama has made several moves to accommodate the concerns of business, including an executive order to weed out proposed new regulations that would hurt job growth. Despite the order, there has been no indication to date that the White House intends to stop plans to regulate greenhouse gases through the Clean Air Act.

In a statement posted on its website late last year, the EPA announced it is moving unilaterally to clamp down on power plant and oil refinery greenhouse emissions, announcing plans for developing new standards over the next year.

EPA administrator Lisa Jackson said the aim was to better cope with pollution contributing to climate change.

"We are following through on our commitment to proceed in a measured and careful way to reduce GHG pollution that threatens the health and welfare of Americans," Jackson said in a statement. She said emissions from power plants and oil refineries constitute about 40 percent of the greenhouse gas pollution in this country.

01268-EPA-4464

Bob Sussman/DC/USEPA/US

To Richard Windsor, Bob Perciasepe

02/07/2011 08:25 AM

cc David McIntosh

bcc

Subject GINA'S COMMENTS ON NSPS

(b) (5) Deliberative

EPA Air Chief Downplays Effect Of Climate NSPS Amidst Power Sector Split

Posted: February 4, 2011

EPA air chief Gina McCarthy is downplaying the impact that the agency's forthcoming new source performance standard (NSPS) for greenhouse gases (GHGs) for the power sector will have, telling industry representatives at the agency's first "listening session" pending rules that the NSPS program is not a "dramatic tool."

She added that she did not see the rules as necessarily requiring a facility that is boosting efficiency to do something different "level the playing field so everybody's doing something." And she suggested that the agency envisions its legal agreement with environmentalists to develop the first-time GHG standards for the power and refining sectors as ways to prevent GHGs from increasing rather than decreasing.

McCarthy was speaking Feb. 4 at agency headquarters to representatives of the utility sector who offered competing advice and concerns about NSPS rules and other looming EPA air and water rules. **She called the NSPS rules a "floor" for best available control technology (BACT) reviews** that new and modified facilities are beginning to undergo for the first time for GHGs under the more-stringent new source review program.

EPA under the draft settlement also agreed to apply NSPS to existing sources, and McCarthy said the agency is keeping an open mind and soliciting input for how to do that. She says the agency will not select a GHG emissions cap for the sector, noting the program is "not cap and trade" and that facilities that can meet the new standards will get a permit. **"This is not about minimizing overall GHGs,"** she said.

McCarthy's senior counsel, Joseph Goffman, delivered a similar message Feb. 3, telling a conference sponsored by the American Law Institute-American Bar Association that the agency was interested in hearing suggestions at the listening sessions. "The agency is going to describe as these listening sessions not as . . . kabuki theater to provide us cover for determining or issuing an approach to the rulemaking that we have already determined should be followed," he said.

"The agency has done a lot of work over the last several years in examining its authorities and identifying a wide range of policy or program options for setting these standards, but we are nowhere close to any kind of decision or any kind of determination as to the shape of the standards or the level of performance requirements that the standards will impose on these two sectors," he added.

EPA late last year signed proposed consent decrees with states and environmentalists that require EPA to issue a proposed power plan by May 26 and finalize it May 26, 2012, and propose a refinery NSPS by Dec. 15 and finalize it Nov. 15, 2012. EPA took comment on the proposals through Jan. 31.

The agency is already facing legal questions over its efforts, with industry and other saying it may need to craft a new endangerment finding to address risks posed by emissions from the sectors before it can craft the standards. And the Small Business Administration is urging EPA to delay the rules to better consider potential harms to small businesses as required by the Regulatory Flexibility Act.

Delay Rejected

But McCarthy, at the listening session, rejected suggestions that the rules be delayed. She said EPA Administrator Lisa Jackson supported the proposed deadlines so she can better align the NSPS requirements with a host of other EPA air and water rules coming down the pike from the Clean Air Act, including an air toxics rule, the clean air transport rule and Clean Water Act cooling water intake rules.

"We do recognize clearly other challenges" that utilities are facing in complying with all the rules, and the agency is seeking to provide regulatory certainty, she said. Jackson's "challenge to us moving forward with the rules necessary to protect public health are not just that they are complex but" that the rulemakings are aligned to make informative decisions, McCarthy explained, adding, "Carbon is a very big missing piece" from the equation.

She said the intent is for companies to only have to make "one decision that will take care of a suite of rules on a sector-based approach." **McCarthy said she does not see an NSPS as "technology forcing" but rather as "a first step."**

McCarthy added that NSPS provisions would not apply to existing sources immediately, and that the agency recognizes that carbon capture and sequestration is not an available technology.

Her comments come as representatives of the power sector advocated for sometimes-competing approaches to the NSPS. For example, some companies called for market-based approaches while others called on EPA to base the standard on a grid-wide approach and to consider a single entity to avoid "unintended consequences." Others asked for a plant-by-plant approach and still others asked for a fleet-wide standard.

industry representatives also pressed for broad subcategorization that recognizes not only different fuels but plants used for different purposes, distinguishing from baseload and peaker plants.

Other industry sources noted that many of the other EPA rules in the works, including the mercury, trading and clean water rules, could result in the installation of new technology that not only could cause plants to lose efficiency but could trigger BACT requirements rather than NSPS. The agency was warned against allowing

The industry representatives stressed that EPA might need to make tradeoffs. "We cannot look at greenhouse gas regulations in isolation," said Hobson of First Energy.

Bill Constantelos of Edison Mission Group noted that his company has initiated small-scale efficiency upgrades resulting in a 2 percent efficiency gain while warning that a cooling tower requirement under the water law could reduce efficiency by 3 percent. He said EPA may need to prioritize values the GHG cuts over reductions in other pollutants. "If [GHG] reductions are this important, should we look at other programs and methods to improve efficiency?"

Some companies that operate in states that already cap carbon emissions asked EPA to ensure that those programs would qualify under the new rule. Industry representatives asked EPA to set a clear standard but allow flexibility for states to operate the programs as best they see fit -- L

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
(202)-564-7397
US Environmental Protection Agency

01268-EPA-4465

Richard
Windsor/DC/USEPA/US
02/07/2011 08:36 AM

To Bob Sussman, Bob Perciasepe
cc David McIntosh
bcc

Subject Re: GINA'S COMMENTS ON NSPS

(b) (5) Deliberative

Bob Sussman

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

From: Bob Sussman
Sent: 02/07/2011 08:25 AM EST
To: Richard Windsor; Bob Perciasepe
Cc: David McIntosh
Subject: GINA'S COMMENTS ON NSPS

(b) (5) Deliberative

EPA Air Chief Downplays Effect Of Climate NSPS Air Power Sector Split

Posted: February 4, 2011

EPA air chief Gina McCarthy is downplaying the impact that the agency's forthcoming new source performance standard (NSPS) limiting greenhouse gases (GHGs) for the power sector will have, telling industry representatives at the agency's first listening session on the pending rules that the NSPS is not a dramatic tool.

She added that she did not see the rules as necessarily requiring a facility that is boosting efficiency to do something different but as one to play on a level playing field so everybody's doing something. And she suggested that the agency envisions its legal agreement with states and environmental groups on the first-time GHG standards for the power and refining sectors as ways to prevent GHGs from increasing rather than decreasing.

McCarthy was speaking Feb. 4 at agency headquarters to representatives of the utility sector who offered competing advice and concerns about the rules and other looming EPA air and water rules. She called the NSPS rules a floor for best available control technology (BACT) reviews that require modified facilities are beginning to undergo for the first time for GHGs under the more-stringent new source review (NSR) program.

EPA under the draft settlement also agreed to apply NSPS to existing sources, and McCarthy said the agency is keeping an open mind and accepting industry input for how to do that. She says the agency will not select a GHG emissions cap for the sector, noting the program is not cap-and-trade, but rather a program where facilities that can meet the new standards will get a permit. This is not about minimizing overall GHGs, she said.

McCarthy's senior counsel, Joseph Goffman, delivered a similar message Feb. 3, telling a conference sponsored by the American Law Institute-Environmental Law Association that the agency was interested in hearing suggestions at the listening sessions. The agency is going to use what I describe as the listening sessions not as kabuki theater to provide us cover for determining or issuing an approach to the rulemakings that we have already determined will be followed, he said.

The agency has done a lot of work over the last several years in examining its authorities and identifying a wide range of policy or program options that we have for setting these standards, but we are nowhere close to any kind of decision or any kind of determination as to the shape of the standards or the level of performance requirements that the standards will impose on these two sectors, he added.

EPA late last year signed proposed consent decrees with states and environmentalists that require EPA to issue a proposed power plant NSPS by Dec. 15, 2012, and propose a refinery NSPS by Dec. 15 and finalize it Nov. 15, 2012. EPA took comment on the proposed decrees through Feb. 15. The agency is already facing legal questions over its efforts, with industry and other saying it may need to craft a new endangerment finding before it can craft the standards. And the Small Business Administration is urging EPA to delay the schedule for rulemaking to consider potential harms to small businesses as required by the Regulatory Flexibility Act.

Delay Rejected

But McCarthy, at the listening session, rejected suggestions that the rules be delayed. She said EPA Administrator Lisa Jackson supports the proposed deadlines so she can better align the NSPS requirements with a host of other EPA air and water rules coming down the pike for utilities, including an air toxics rule, the clean air transport rule and Clean Water Act cooling water intake rules.

We do recognize clearly other challenges that utilities are facing in complying with all the rules, and the agency is seeking to provide regulatory relief, she said. Jackson's challenge to us moving forward with the rules necessary to protect public health are not just that they are cost effective but that the rulemakings are aligned to make informative decisions, McCarthy explained, adding, Carbon is a very big missing piece from the equation.

She said the intent is for companies to only have to make one decision that will take care of a suite of rules on a sector-based approach. McCarthy said she does not see an NSPS as technology forcing, but rather as a first step.

McCarthy added that NSPS provisions would not apply to existing sources immediately, and that the agency recognizes that carbon capture and sequestration is not an available technology.

Her comments come as representatives of the power sector advocated for sometimes-competing approaches to the NSPS. For example, some called for market-based approaches while others called on EPA to base the standard on a grid-wide approach and to consider the grid a single entity to avoid unintended consequences. Others asked for a plant-by-plant approach and still others asked for a fleet-wide standard. Some industry representatives also pressed for broad subcategorization that recognizes not only different fuels but plants used for different purposes, distinguishing between baseload and peaker plants.

Other industry sources noted that many of the other EPA rules in the works, including the mercury, trading and clean water rules, could require the installation of new technology that not only could cause plants to lose efficiency but could trigger BACT requirements rather than NSPS. Some industry representatives were warned against allowing.

The industry representatives stressed that EPA might need to make tradeoffs. We cannot look at greenhouse gas regulations in isolation, said a representative of First Energy.

Bill Constantelos of Edison Mission Group noted that his company has initiated small-scale efficiency upgrades resulting in a 2 percent efficiency gain, warning that a cooling tower requirement under the water law could reduce efficiency by 3 percent. He said EPA may need to prioritize whether to focus on the GHG cuts over reductions in other pollutants. If [GHG] reductions are this important, should we look at other programs and modify them to improve efficiency?

Some companies that operate in states that already cap carbon emissions asked EPA to ensure that those programs would qualify under NSPS. Industry representatives asked EPA to set a clear standard but allow flexibility for states to operate the programs as best they see fit. -- Dawn Reever

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
(202)-564-7397
US Environmental Protection Agency

01268-EPA-4466

Bob Sussman/DC/USEPA/US

To: Richard Windsor

02/07/2011 08:40 AM

cc

bcc

Subject: Re: GINA'S COMMENTS ON NSPS

(b) (5) Deliberative

Robert M. Sussman
 Senior Policy Counsel to the Administrator
 Office of the Administrator
 (202)-564-7397
 US Environmental Protection Agency

Richard Windsor

(b) (5) Deliberative

02/07/2011 08:36:12 AM

From: Richard Windsor/DC/USEPA/US
 To: Bob Sussman/DC/USEPA/US@EPA, Bob Perciasepe/DC/USEPA/US@EPA
 Cc: David McIntosh/DC/USEPA/US@EPA
 Date: 02/07/2011 08:36 AM
 Subject: Re: GINA'S COMMENTS ON NSPS

(b) (5) Deliberative

Bob Sussman

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

From: Bob Sussman
Sent: 02/07/2011 08:25 AM EST
To: Richard Windsor; Bob Perciasepe
Cc: David McIntosh
Subject: GINA'S COMMENTS ON NSPS

(b) (5) Deliberative

EPA Air Chief Downplays Effect Of Climate NSPS Amidst Power Sector Split

Posted: February 4, 2011

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She added that she did not see the rules as necessarily requiring a facility that is boosting efficiency to do something different "level the playing field so everybody's doing something." And she suggested that the agency envisions its legal agreement with environmentalists to develop the first-time GHG standards for the power and refining sectors as ways to prevent GHGs from increasing rather than decreasing.

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EPA under the draft settlement also agreed to apply NSPS to existing sources, and McCarthy said the agency is keeping an open mind about soliciting input for how to do that. She says the agency will not select a GHG emissions cap for the sector, noting the program is "not cap

and that facilities that can meet the new standards will get a permit. **"This is not about minimizing overall GHGs,"** she said.

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"The agency has done a lot of work over the last several years in examining its authorities and identifying a wide range of policy or program options that we have for setting these standards, but we are nowhere close to any kind of decision or any kind of determination as to the shape of the standards or the level of performance requirements that the standards will impose on these two sectors," he added.

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"We do recognize clearly other challenges" that utilities are facing in complying with all the rules, and the agency is seeking to provide more regulatory certainty, she said. Jackson's "challenge to us moving forward with the rules necessary to protect public health are not just that they are complex but" that the rulemakings are aligned to make informative decisions, McCarthy explained, adding, "Carbon is a very big missing piece" from the equation.

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Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
(202)-564-7397
US Environmental Protection Agency

01268-EPA-4475

**Bob
Perciasepe/DC/USEPA/US**
02/07/2011 09:40 PM

To Richard Windsor, "Diane Thompson", Bob Sussman, Arvin Ganesan, David McIntosh, Seth Oster, Betsaida Alcantara
cc
bcc
Subject Murkowski & Begich response to Bristol Bay EPA review positive

All:

Kelly Harrell, Executive Director of the Alaska Marine Conservation Council sent these to me. I trust you have all seen these from our internal sources, but I haven't seen until now. There has also been good response from the conservation folks. I spoke with NWF, Trout, Ducks and Audubon earlier. Good work all around, especially this personal effort from Administrator.

Bob P

February 7, 2011

Begich Responds to EPA Review of Large-Scale Development Projects

Begich Responds to EPA Review of Large-Scale Development Projects

U.S. Sen. Mark Begich today issued the following statement after the Environmental Protection Agency (EPA) announced it will review the suitability of large-scale development projects in the Bristol Bay watershed.

"I've long said that decisions about large-scale development such as the Pebble Mine must be based on sound science and not people's fears. I'm pleased the EPA agreed with me not to use its preemptive 'veto' authority in the Clean Water Act in favor of a process that will inform the debate over this project.

"I still want to see more details about this process and how it will proceed. As I told Administrator Lisa Jackson this morning, I hope for a fully transparent process, that invites all sides to the table and involves all the affected stakeholders including fishing groups, tribes, Alaska Native Corporations and local communities. I also want to ensure this is a thorough and robust vetting of the issues involved and not just a bureaucratic exercise.

"Bristol Bay is one of Alaska's most valuable resources and any proposed development within its watershed deserves no less than a rigorous review."

http://begich.senate.gov/public/index.cfm?p=InNews&ContentRecord_id=963bd403-a9e8-4cea-985f-5ae29ce80773

[Murkowski Welcomes EPA Decision to Study Bristol Bay](#)

Watershed

WASHINGTON, D.C. – U.S. Sen. Lisa Murkowski, R-Alaska, today commended Environmental Protection Agency officials on their decision to assess the potential impacts of mining and other development projects on the Bristol Bay watershed.

“The EPA’s decision to withhold judgment on the potential environmental impact of projects, like the Pebble Mine, until all the scientific information has been collected and analyzed is a prudent decision,” Murkowski said.

Opponents of the Pebble Mine last year petitioned the EPA to preemptively block the development. EPA Administrator Lisa Jackson called Murkowski today to tell her the agency was instead commissioning further study of the region.

Murkowski, the ranking member of the Senate Energy and Natural Resources Committee and the Interior Appropriations Subcommittee, said the agency’s pronouncement is in keeping with President Obama’s pledge to base his administration’s decisions on the best available science.

“I am committed to letting the science decide whether mining is right for the Bristol Bay region, but any attempt to prejudge a project before the environmental work is finished would be a troubling signal, as well as a clear violation of the environmental review process,” Murkowski said.

Pebble, located in Southwest Alaska to the north of Lake Iliamna, is one of the largest prospects for copper, gold, molybdenum and silver in the world. The companies working on the mine proposal have invested more than \$100 million in research, studies and field work in preparation to begin applying for the necessary environmental permits in 2011 or 2012.

Bristol Bay is also home to the world’s largest sockeye salmon fishery, and it is because of the fishery’s importance to the state’s economy and the traditional subsistence activities of local residents that Murkowski has reserved judgment on whether mining should occur until the environmental assessment is completed.

“I remain staunchly committed to protecting the health of the Bristol Bay watershed, but fishing and subsistence alone are not enough to ensure the survival of many of our smallest communities,” Murkowski said. “I will not trade fish for minerals, but I believe that companies willing to invest in our region deserve to be given a fair shake to present their proposals.”

Murkowski told Jackson that she hopes this decision will start the process of improving communication between Alaska officials and the EPA on a host of issues, including Shell’s air permit for its Beaufort Sea exploration plan, Healy coal, ConocoPhillips’ CD-5 oil field and marine air pollution issues.

###

http://murkowski.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=edafaf75-fd32-474a-8da2-9ece1aeb5b3

01268-EPA-4476

Richard Windsor/DC/USEPA/US
02/07/2011 09:43 PM

To Bob Perciasepe, "Diane Thompson", Bob Sussman, Arvin Ganesan, David McIntosh, Seth Oster, Betsaida Alcantara
cc
bcc

Subject Re: Murkowski & Begich response to Bristol Bay EPA review positive

First I'm seeing. Thx Bob.

From: Bob Perciasepe
Sent: 02/07/2011 09:40 PM EST
To: Richard Windsor; "Diane Thompson" <thompson.diane@epa.gov>; Bob Sussman; Arvin Ganesan; David McIntosh; Seth Oster; Betsaida Alcantara
Subject: Murkowski & Begich response to Bristol Bay EPA review positive

All:

Kelly Harrell, Executive Director of the Alaska Marine Conservation Council sent these to me. I trust you have all seen these from our internal sources, but I haven't seen until now. There has also been good response from the conservation folks. I spoke with NWF, Trout, Ducks and Audubon earlier. Good work all around, especially this personal effort from Administrator.

Bob P

February 7, 2011

Begich Responds to EPA Review of Large-Scale Development Projects

Begich Responds to EPA Review of Large -Scale Development Projects

U.S. Sen. Mark Begich today issued the following statement after the Environmental Protection Agency (EPA) announced it will review the suitability of large-scale development projects in the Bristol Bay watershed.

"I've long said that decisions about large-scale development such as the Pebble Mine must be based on sound science and not people's fears. I'm pleased the EPA agreed with me not to use its preemptive 'veto' authority in the Clean Water Act in favor of a process that will inform the debate over this project.

"I still want to see more details about this process and how it will proceed. As I told Administrator Lisa Jackson this morning, I hope for a fully transparent process, that invites all sides to the table and involves all the affected stakeholders including fishing groups, tribes, Alaska Native Corporations and local communities. I also want to ensure this is a thorough and robust vetting of the issues involved and not just a bureaucratic exercise.

"Bristol Bay is one of Alaska's most valuable resources and any proposed development within its watershed deserves no less than a rigorous review."

http://begich.senate.gov/public/index.cfm?p=InNews&ContentRecord_id=963bd403-a9e8-4cea-985f-5ae29ce80773

[Murkowski Welcomes EPA Decision to Study Bristol Bay Watershed](#)

WASHINGTON, D.C. - U.S. Sen. Lisa Murkowski, R-Alaska, today commended Environmental Protection Agency officials on their decision to assess the potential impacts of mining and other development projects on the Bristol Bay watershed.

"The EPA's decision to withhold judgment on the potential environmental impact of projects, like the Pebble Mine, until all the scientific information has been collected and analyzed is a prudent decision," Murkowski said.

Opponents of the Pebble Mine last year petitioned the EPA to preemptively block the development. EPA Administrator Lisa Jackson called Murkowski today to tell her the agency was instead commissioning further study of the region.

Murkowski, the ranking member of the Senate Energy and Natural Resources Committee and the Interior Appropriations Subcommittee, said the agency's pronouncement is in keeping with President Obama's pledge to base his administration's decisions on the best available science.

"I am committed to letting the science decide whether mining is right for the Bristol Bay region, but any attempt to prejudge a project before the environmental work is finished would be a troubling signal, as well as a clear violation of the environmental review process," Murkowski said.

Pebble, located in Southwest Alaska to the north of Lake Iliamna, is one of the largest prospects for copper, gold, molybdenum and silver in the world. The companies working on the mine proposal have invested more than \$100 million in research, studies and field work in preparation to begin applying for the necessary environmental permits in 2011 or 2012.

Bristol Bay is also home to the world's largest sockeye salmon fishery, and it is because of the fishery's importance to the state's economy and the traditional subsistence activities of local residents that Murkowski has reserved judgment on whether mining should occur until the environmental assessment is completed.

"I remain staunchly committed to protecting the health of the Bristol Bay watershed, but fishing and subsistence alone are not enough to ensure the survival of many of our smallest communities," Murkowski said. "I will not trade fish for minerals, but I believe that companies willing to invest in our region deserve to be given a fair shake to present their proposals."

Murkowski told Jackson that she hopes this decision will start the process of improving communication between Alaska officials and the EPA on a host of issues, including Shell's air permit for its Beaufort Sea exploration plan, Healy coal, ConocoPhillips' CD-5 oil field and marine air pollution issues.

###

http://murkowski.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=edafaf75-fd32-474a-8da2-9ece1aebe5b3

[Redacted] (b) (5) Deliberative [Redacted]

[Redacted]

[Redacted]

[Redacted]

Al

Al Armendariz
Regional Administrator
Environmental Protection Agency
Region 6
Dallas, Texas
armendariz.al@epa.gov
office: 214-665-2100
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-----Forwarded by Al Armendariz/R6/USEPA/US on 02/02/2011 02:56PM -----
To: Lawrence Starfield/R6/USEPA/US@EPA, al armendariz, "Suzanne Murray" <murray.suzanne@epa.gov>, "Robinson Jeff" <robinson.jeffrey@epa.gov>, Thomas Diggs/R6/USEPA/US@EPA
From: Carl Edlund/R6/USEPA/US
Date: 02/02/2011 02:26PM
Subject: Fw: Avenal court filing and desk statement

Sent by EPA Wireless E-Mail Services John Millett
----- Original Message -----
From: John Millett
Sent: 01/31/2011 06:30 PM EST
To: Air Division Directors and Deputies
Subject: Avenal court filing and desk statement

Hi All -- Attached below are today's court filing and a desk statement regarding Avenal and the policy for permit applications in similar circumstances. More information and discussion to follow soon.

(See attached file: Avenal Desk Statement 1-31.docx) (See attached file: Avenal 31 Jan 2011.pdf)
Thanks --

John

~~~~~  
John Millett  
Office of Air and Radiation Communications  
U.S. Environmental Protection Agency  
5411 Ariel Rios Building North  
Washington, DC 20460  
Phone: 202/564-2903  
Cell: 202/510-1822

01268-EPA-4494

Gina McCarthy/DC/USEPA/US

02/10/2011 08:52 AM

To Richard Windsor, McIntosh.David, perciasepe.bob

cc Janet McCabe, Joseph Goffman

bcc

Subject Secretary Chu

**(b) (5) Deliberative****Headline:** 'Massive' Closures of U.S. Coal Plants Loom, Chu Says | **Outlet Full Name:** NewsMax - Online**News OCR Text:** Feb. 9 (Bloomberg) -- The U.S. has an aging inventory of coal-fired power plants and many units might be closed before the end of the decade, Energy Secretary Steven Chu said.

"We're going to see massive retirements within the next five, eight years," Chu said today at a renewable-energy conference in Washington. "Much of our fleet of coal plants is 40 to 50 years old."

President Barack Obama said last month the U.S. should eliminate tax subsidies for fossil-fuel production worth \$4 billion a year so it can boost spending on renewable energy and cars that run on alternative fuels, such as electricity.

The U.S. also should require that 80 percent of its electricity comes from "clean" sources, such as wind turbines and nuclear reactors, by 2035, Obama said. Only coal-fired power plants that capture and store their carbon-dioxide emissions would be considered clean under Obama's proposed standard.

"Clean-coal" equipment isn't yet available for large power plants, said Chu, whose Energy Department is funding research into the technology.

The U.S. had 314 gigawatts of coal-fired generating capacity last year, which provided almost half the nation's electricity, according to the Energy Information Administration. One gigawatt of coal-fired capacity can power more than 500,000 average U.S. homes, according to EIA data.

Mercury, Acid Rain

***Regulations targeting mercury pollution and chemicals that cause acid rain and smog would trigger the coal-plant closures, not new rules from the Environmental Protection Agency on carbon dioxide and other greenhouse gases linked to climate change or Obama's proposed clean-energy standard, Chu said. He declined to say how many gigawatts of coal capacity face closure.***

***The EIA predicts plants with 7.7 gigawatts of capacity will close by 2018. Cambridge, Massachusetts-based The Brattle Group, a consulting firm, said in December that 50 to 65 gigawatts of capacity may be closed by 2020 because of environmental regulations. Analysts at Zurich-based bank Credit Suisse Group AG said in September that about 60 gigawatts of***

***coal capacity may be retired.***

If Congress approves Obama's clean-energy standard, coal's share of the U.S. electricity market "will shrink a little bit until we develop those technologies that would use coal in a clean way," Chu said. Nuclear reactors, natural gas-fired plants and renewable sources such as wind turbines and solar panels would expand to make up lost output from coal, he said.

It's likely "smaller, older units" that burn coal "won't be economic under new clean air standards," said Luke Popovich, a spokesman for the Washington-based National Mining Association, which represents coal mining companies such as Consol Energy Inc. and Peabody Energy Corp.

New coal-fired plants with better pollution controls can be built to replace the closed units while carbon-capture technology is developed, Popovich said in an e-mail.

--Editors: Steve Geimann, John Lear

01268-EPA-4495

**Bob Perciasepe/DC/USEPA/US**  
02/13/2011 12:48 PM

To Richard Windsor  
cc David McIntosh, Diane Thompson, Bob Sussman, Seth Oster, Michael Goo, Bicky Corman, Arvin Ganesan  
bcc  
Subject Re: Following Up

(b) (5) Deliberative

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

To: David McIntosh/DC/USEPA/US@EPA, Diane Thompson/DC/USEPA/US@EPA, Bob Perciasepe/DC/USEPA/US@EPA, Bob Sussman/DC/USEPA/US@EPA, Seth Oster/DC/USEPA/US@EPA, Michael Goo/DC/USEPA/US@EPA, Bicky Corman/DC/USEPA/US@EPA, Arvin Ganesan/DC/USEPA/US@EPA  
From: Richard Windsor/DC/USEPA/US  
Date: 02/13/2011 12:03PM  
Subject: Re: Following Up

(b) (5) Deliberative

**From:** David McIntosh  
**Sent:** 02/13/2011 11:57 AM EST  
**To:** Richard Windsor; Diane Thompson; Bob Perciasepe; Bob Sussman; Seth Oster; Michael Goo; Bicky Corman; Arvin Ganesan  
**Subject:** Fw: Following Up

(b) (5) Deliberative

-----Forwarded by David McIntosh/DC/USEPA/US on 02/13/2011 11:53AM-----

To: Gina McCarthy/DC/USEPA/US@EPA  
From: Mary Gade <mary.gade@yahoo.com>  
Date: 02/07/2011 06:04PM  
Cc: Janet McCabe/DC/USEPA/US@EPA, Joseph Goffman/DC/USEPA/US@EPA, Rob Brenner/DC/USEPA/US@EPA, David McIntosh/DC/USEPA/US@EPA, Peter Tsirigotis/RTP/USEPA/US@EPA, Ellen Kurlansky/DC/USEPA/US@EPA, Joe Bryson/DC/USEPA/US@EPA, Sam Napolitano/DC/USEPA/US@EPA, Kevin Culligan/DC/USEPA/US@EPA  
Subject: Following Up

*(See attached file: McCarthy Letter - 020711.pdf)*

Gina-- I wanted to make sure that you and your staff saw a copy of the letter that was mailed to you today by Exelon, Constellation and PSEG which responds to some of the questions that EPA has raised on PJM auctions and Clean Air rulemakings. I thought you would find their perspective interesting as you consider these issues. Best, Mary

Mary A. Gade  
GADE ENVIRONMENTAL GROUP, LLC  
444 N. Michigan Ave., Suite 3600  
Chicago, IL 60611

Phone: 608.669.8040  
email: mary.gade@yahoo.com

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01268-EPA-4513

David  
McIntosh/DC/USEPA/US  
02/16/2011 03:15 PM

To Richard Windsor  
cc  
bcc

Subject Fw: Re: FW: Sen. Carper: Winning the Future' by Not Going Backwards on Clean Air Rules

-----Forwarded by David McIntosh/DC/USEPA/US on 02/16/2011 03:15PM  
-----

To: "Haynes, Laura (Carper)" <Laura\_Haynes@carper.senate.gov>  
From: David McIntosh/DC/USEPA/US  
Date: 02/16/2011 03:15PM  
Subject: Re: FW: Sen. Carper: Winning the Future' by Not Going Backwards on Clean Air Rules

Thank you Laura! This is terrific. We really appreciate it. I'll make sure Administrator Jackson sees it.  
-David

-----"Haynes, Laura (Carper)" <Laura\_Haynes@carper.senate.gov> wrote:  
-----

To: Josh Lewis/DC/USEPA/US@EPA, Patricia Haman/DC/USEPA/US@EPA  
From: "Haynes, Laura (Carper)" <Laura\_Haynes@carper.senate.gov>  
Date: 02/16/2011 02:46PM  
Cc: Joseph Goffman/DC/USEPA/US@EPA, Arvin Ganesan <(b) (6) Personal Privacy>  
David McIntosh/DC/USEPA/US@EPA  
Subject: FW: Sen. Carper: Winning the Future' by Not Going Backwards on Clean Air Rules

Thought you might be interested in the Senator's remarks just posted on The Huffington Post. Link:  
[http://www.huffingtonpost.com/sen-tom-carper/winning-the-future-by-not\\_b\\_824147.html](http://www.huffingtonpost.com/sen-tom-carper/winning-the-future-by-not_b_824147.html)  
. Remarks are also posted below. Please feel free to forward to others. Thanks!



**Sen. Tom Carper**

U.S. Senator from Delaware

Posted: February 16, 2011 02:26 PM

**['Winning the Future' by Not Going Backwards on Clean Air Rules](#)**

Today, I was asked to make some comments on a recent Ceres report, "[New Jobs-Cleaner Air: Employment Effects under Planned Changes to EPA's Air Pollution Rules.](#)" The report demonstrates the enormous job growth potential from investments related to the Environmental Protection Agency's (EPA) efforts to curb air pollution and protect public health. If you haven't had a chance yet to check out this report I would highly recommend giving it a closer look. Here were some of my takeaways.

When I first read the Ceres report, the first thing that came to mind was a quote from Albert Einstein who said, "In adversity lies opportunity." Clearly dealing with the threats posed by air pollution - including climate change and adverse public health effects - represent significant adversity, but it also provides us with an important opportunity. This report shows that working to achieve healthy air will result in a healthy economy. This is not new news, our country has seen 40 years of success and benefits from the Clean Air Act.

In 1970, President Nixon signed into law historic clean air legislation -the Clean Air Act -- that established a clean air regulatory framework to curb our deadly air pollution. This law was so successful that over 200,000 lives were saved from 1970-1990 - over twice as many people than live in my current hometown of Wilmington, Delaware. In 1990, President George Herbert Walker Bush signed into law the Clean Air Act Amendments of 1990 - which built upon the 1970 framework to give us the clean air laws we have today.

Lately opponents of environmental and public health laws have tried to make the claim that the regulations put in place by the Clean Air Act and the Clean Air Act Amendments of 1990 raised costs for consumers and hurt our economy. But the facts tell a different story. Since 1990, electricity rates have stayed constant and national gross domestic product has grown by 60 percent. At the same time, we have saved thousands of lives and ensured that our children can breathe cleaner, healthier air. For 2010 alone, clean air regulations are estimated to have saved over 160,000 lives.

The truth is that there are a number of economic and public health benefits that are a direct result of the Environmental Protection Agency's efforts to curb harmful air pollution. Over the 1990 to 2020 time period, the Environmental Protection Agency estimates that our country will see over \$12 trillion in health and economic benefits- in the form of longer lives, healthier kids, and greater workforce productivity -because of the Clean Air Act. Put another way, the Clean Air Act benefits outweigh the costs of implementing these regulations by a 30 to 1 margin. That strikes me as a great return on our investment.

Over the years we've made great strides in reducing our nation's air pollution, but more can be done, more must be done. Many "downwind" states like my state of Delaware, have led the way in making investments in clean energy and curbing air pollution, but a high percent of our air pollution comes from outside sources that we can't control. As a result, downwind states pay the steep economic and health costs of our upwind neighbor's pollution. Clean air regulations are needed to ensure we are good neighbors so all our children have a healthy future. Clean air regulations also ensure this nation can compete in the emerging global clean energy economy.

Unfortunately, some of my colleagues in the House and the Senate want to halt future clean air regulations. Some would have us believe that we cannot afford these regulations. That is just not true. In fact, these regulations provide opportunities for good paying American

jobs.

According to the Ceres report, upcoming clean air regulations will not only saves lives, but will create much needed jobs every year - some 300,000 jobs annually and as many as one and a half million jobs over five years. These are American jobs in manufacturing, installing, and operating modern pollution control technology and producing clean energy - jobs that come at a crucial time as our nation's economy continues to recover and grow. So my response to my colleagues - is that we cannot afford DELAYS to clean air regulations.

In closing, I'd like to leave you with a quote from President Harry Truman. He said "The only thing new in this world is the history that you don't know." I ask my colleagues, and the American public, to take some time and revisit the facts in regards to the Clean Air Act. I believe once they see the facts, they will realize that moving this country forward cannot mean going backwards on clean air rules.

01268-EPA-4519

David  
McIntosh/DC/USEPA/US  
02/17/2011 08:10 AM

To windsor.richard, thompson.diane, "Bob Perciasepe",  
bennett.barbara, "Bob Sussman", goo.michael, "Bicky  
Corman", "Seth Oster", "Arvin Ganesan", "Lawrence  
Elworth", woodka.janet, "Daniel Kanninen", garcia.lisa  
cc  
bcc  
Subject Fw: From E&E Daily -- EPA: House cuts funding for GHG  
registry

Here is a story about the passage of the amendment to cut the funds for the GHG mandatory reporting rule (an amendment that was redundant considering the prohibition, in the underlying bill, against spending any funds to take any action regarding GHGs).

---

**From:** David McIntosh  
**Sent:** 02/17/2011 08:06 AM EST  
**To:** David McIntosh  
**Subject:** From E&E Daily -- EPA: House cuts funding for GHG registry

**This E&E Daily story was sent to you by:** mcintosh.david@epa.gov

**Personal message:**

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**EPA: House cuts funding for GHG registry** (*Thursday, February 17, 2011*)

**Jean Chemnick, E&E reporter**

The House last night voted to strip funding for U.S. EPA's greenhouse gas registry from a bill that would keep the federal government running through the end of September.

The 239-185 vote broke down generally along party lines.

While most Republicans supported the amendment from Rep. Mike Pompeo (R-Kan.) on the grounds that it would save \$15 million, some had reservations.

One notable "nay" vote was Interior and Environment Appropriations subpanel Chairman Mike Simpson (R-Idaho), who said he initially supported the idea until the business community told him the greenhouse gas registry was a useful compliance tool for them.

"My first reaction was yeah, there we can find 15 million bucks," Simpson said. "But then we started talking not to the agency but to the industry, and they said the unfortunate problem is that there are underlying laws that we have to comply with that you're not changing, so just striking that means when we call, no one is there to answer saying how do we do this."

Some within the industry say the funding resolution's language barring EPA from using any money to regulate greenhouse gases for the next seven months will pose an even more serious threat to industry, causing *de facto* permitting moratoriums in some states because state and federal regulatory agencies will lack the tools to issue permits that comply with the law.

Rep. Henry Waxman (D-Calif.) called the rider a "job loser."

"I think it could stop the permitting by EPA for a lot of projects that people here would want to support," Waxman said.

But Simpson, who chose to include the EPA pre-emption language in his subcommittee's section of the funding bill, said he had run it by industry experts first. "We wanted to make sure the language was narrowly tailored, that it went after just these greenhouse gas regulations, that it didn't stop

construction, that it didn't effect the fuel standards and all that kind of stuff," he said.

Waxman, who serves as ranking member of the House Energy and Commerce Committee, said earlier in the week that he was considering filing an amendment to restore funding for EPA's GHG programs. He said last night that he decided not to do so because "you don't make a bad bill better."

"I think it's a terrible bill, and we should just vote against it," Waxman said. "If the Republicans want to vote for this bill, the EPA provision is just another reason why they'll come to regret it. But I don't think it will become law."

Rep. Jared Polis (D-Colo.) has offered an amendment that would essentially do the same thing -- allowing EPA to regulate greenhouse gas emissions if it determines they pose a threat to public health -- but as of late yesterday evening it was unclear whether it would receive a vote. Debate was expected late into the night.

Another amendment from Texas Republican Reps. Ted Poe, John Carter and Joe Barton might be offered today, as a "back of the book" amendment.

The amendment would defund EPA's GHG programs and is substantially similar to the language already in the underlying bill, though it adds some detail.

"Both structures send an unmistakable message to the EPA that existing Clean Air Act authority should not be used to address climate change issues without the expressed consent of the Congress," said Scott Segal, a lobbyist with the firm Bracewell & Giuliani.

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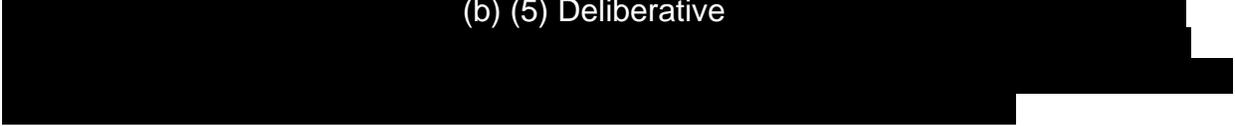
01268-EPA-4520

**Richard Windsor/DC/USEPA/US**  
02/17/2011 04:00 PM

To "Seth Oster", "Brendan Gilfillan"  
cc  
bcc

Subject Fw: Google Alert - lisa jackson epa

(b) (5) Deliberative



---

**From:** Google Alerts [googlealerts-noreply@google.com]  
**Sent:** 02/17/2011 08:33 PM GMT  
**To:** Richard Windsor  
**Subject:** Google Alert - lisa jackson epa

News

1 new result for **lisa jackson epa**

[Does "Contaminated Water" Cause Autism?](#)

The New American

That it is becoming increasingly clear that the allegations of such dangers are often not accompanied with actual evidence is of little importance — at least for **EPA Administrator Lisa Jackson**. First, it was carbon dioxide. ...

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Tip: Use a plus sign (+) to match a term in your query exactly as is. [Learn more](#).

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01268-EPA-4522

**Bob Perciasepe/DC/USEPA/US**  
02/18/2011 08:05 AM

To David McIntosh  
cc bennett.barbara, Corman.Bicky, fulton.scott, Ganesan.Arvin, goo.michael, "Seth Oster", "Bob Sussman", thompson.diane, windsor.richard, woodka.janet  
bcc

Subject Re: House CR update

Thanks David,

(b) (5) Deliberative  
[Redacted]

Bob Perciasepe  
Deputy Administrator

(o) +1 202 564 4711  
(c) +1 (b) (6) Personal Privacy

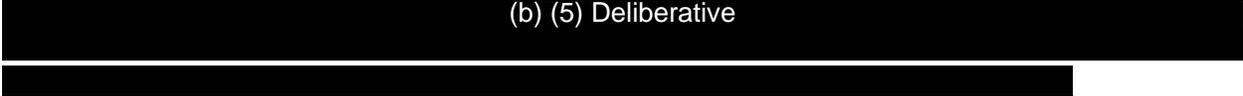
From: David McIntosh/DC/USEPA/US  
To: windsor.richard@epa.gov, thompson.diane@epa.gov, bennett.barbara@epa.gov, "Seth Oster" (b) (6) Personal Privacy, Ganesan.Arvin@epamail.epa.gov, woodka.janet@epa.gov, goo.michael@epa.gov, Corman.Bicky@epamail.epa.gov, "Lawrence Elworth" <Elworth.Lawrence@epamail.epa.gov>, "Daniel Kanninen" <Kanninen.Daniel@epamail.epa.gov>, garcia.lisa@epa.gov, "Eric Wachter" <Wachter.Eric@epamail.epa.gov>, fulton.scott@epa.gov, ellis.heidi@epa.gov, "Bob Perciasepe" <Perciasepe.Bob@epamail.epa.gov>, "Bob Sussman" <Sussman.Bob@epamail.epa.gov>  
Date: 02/18/2011 07:35 AM  
Subject: House CR update

(b) (5) Deliberative  
[Redacted]

[Redacted]

[Redacted]

(b) (5) Deliberative

The text "(b) (5) Deliberative" is centered within a large black rectangular redaction box. Below this box, there is a second, smaller black rectangular redaction box, also centered horizontally. The rest of the page is blank white space.

01268-EPA-4524

**Bob  
Perciasepe/DC/USEPA/US**  
02/19/2011 11:22 AM

To David McIntosh  
cc "Richard Windsor", "Jose Lozano", andy.adora, "Seth Oster",  
bennett.barbara, Ganesan.Arvin, thompson.diane,  
woodka.janet, "Bob Sussman", "Lawrence Elworth",  
goo.michael, "Bicky Corman", "Daniel Kanninen", "Eric  
Wachter", garcia.lisa, fulton.scott  
bcc  
Subject Re: Fw: From E&E Daily -- THE BUDGET: Government  
shutdown looms as House passes CR with huge attacks on  
EPA

Stunning,

-----David McIntosh/DC/USEPA/US wrote: -----

To: "Richard Windsor" <Windsor.Richard@epamail.epa.gov>, "Jose Lozano"  
<Lozano.Jose@epamail.epa.gov>, andy.adora@epa.gov, "Seth Oster"  
<(b) (6) Personal Privacy bennett.barbara@epa.gov, Ganesan.Arvin@epamail.epa.gov,  
"Bob Perciasepe" <Perciasepe.Bob@epamail.epa.gov>, thompson.diane@epa.gov,  
woodka.janet@epa.gov, "Bob Sussman" <Sussman.Bob@epamail.epa.gov>, "Lawrence  
Elworth" <Elworth.Lawrence@epamail.epa.gov>, goo.michael@epa.gov, "Bicky Corman"  
<Corman.Bicky@epamail.epa.gov>, "Daniel Kanninen"  
<Kanninen.Daniel@epamail.epa.gov>, "Eric Wachter" <Wachter.Eric@epamail.epa.gov>,  
garcia.lisa@epa.gov, fulton.scott@epa.gov  
From: David McIntosh/DC/USEPA/US  
Date: 02/19/2011 11:05AM  
Subject: Fw: From E&E Daily -- THE BUDGET: Government shutdown looms as House  
passes CR with huge attacks on EPA

---

**From:** David McIntosh  
**Sent:** 02/19/2011 11:02 AM EST  
**To:** David McIntosh  
**Subject:** From E&E Daily -- THE BUDGET: Government shutdown looms as House passes  
CR with huge attacks on EPA

**This E&E Daily story was sent to you by:** mcintosh.david@epa.gov

**Personal message:**

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## **THE BUDGET: Government shutdown looms as House passes CR with huge attacks on EPA (Saturday, February 19, 2011)**

**Elana Schor, E&E reporter**

The House passed its short-term government funding measure in the last hours before sunrise today, 235-189, after a final lap of debate that saw lawmakers cross party lines to add extra restrictions on high-profile White House energy and environmental policies.

The House's continuing resolution (CR) is now likely to stall on the other side of the Capitol as Senate Democrats assemble a plan of their own to fund the government beyond March 4, when the existing funding measure expires. House Republicans' indefatigable drive to constrain much of the Obama administration's agenda has ratcheted up the prospects of a government shutdown if leaders in both chambers cannot reach even a short-term agreement on funding.

"For the good of our economy and our democracy, I call on Senate Majority Leader [Harry] Reid [D-Nev.] to allow [the CR] to come to an immediate vote," said House Speaker John Boehner (R-Ohio) in a statement following the bill's final approval. "Cutting federal spending is critical to reducing economic uncertainty, encouraging private-sector investment, and creating a better environment for job creation in our country."

Before approving the GOP's CR, which slashes U.S. EPA funding by \$3 billion and the Energy Department by more than \$1 billion for the seven final months of fiscal 2011, the House shot down a Democratic motion to recommit the bill along party lines, 186-238.

The underlying bill prevented EPA from implementing its pending greenhouse gas emissions rule and Clean Water Act regulations, but Republicans added several fresh hits to the agency in the final round of the 90-plus hours of CR debate.

### **Anti-EPA amendments win**

On a 230-195 vote, Rep. Bob Goodlatte (R-Va.) successfully attached a rider to the bill preventing federal funds from being spent on a total maximum daily load for chemicals or a watershed implementation plan for the Chesapeake Bay.

The House also approved, 237-189, an amendment from Rep. Tom Rooney (R-Fla.) that stops EPA from using its funding to implement, administer or enforce new water quality standards for

Florida's lakes and flowing waters, which were issued in November. They have been challenged by the state of Florida ([E&ENews PM](#) , Dec. 7, 2010).

Eight Democrats aligned with Republicans in favor of the Goodlatte proposal while 15 Republicans voted against it. Sixteen Democrats, including a few Floridians, voted with the GOP in favor of Rooney's amendment, while 17 Republicans joined Democrats in opposition.

An attempt from Rep. David McKinley (R-W.Va.) to stop EPA from developing or issuing standards that list coal ash as hazardous waste under the Resource Conservation and Recovery Act passed by a 239-183 vote. Nineteen Democrats joined the GOP in voting "yes" on the amendment, while 18 Republicans crossed over to vote "no."

After issuing a proposal last year, the agency has not signaled when it might make a final decision on coal ash, which was thrust into the public eye after a massive spill at a Tennessee Valley Authority power plant in December 2008 ([E&ENews PM](#) , July 29, 2010).

Rep. Kristi Noem (R-S.D.) also won her attempt to stop EPA from changing the national ambient air quality standards for coarse particulate matter on a 255-168 vote. The agency plans to issue a proposal and final rule this year, and lawmakers have raised concerns that a change to the standards for coarse particulates would push many dusty rural areas out of compliance with the rules ([Greenwire](#) , Jan. 27).

Four Republicans joined Democrats in voting against Noem's amendment, but 21 minority-party members aligned with the GOP -- signaling the potential depth of resistance to the EPA rulemaking.

## **Ethanol restrictions prevail**

Conservative Republicans also won notable bipartisan support last night for two amendments that would force a shift in federal ethanol policy, potentially boding ill for farm-state supporters of the fuel.

Rep. Jeff Flake (R-Ariz.) prevailed, 262-158, on an amendment that prevents federal funds from being used for ethanol storage facilities or the blender pumps that would be used to prepare fuel with a higher ethanol content.

Flake's coalition of backers showed some strange bedfellows linking arms to criticize the ethanol-promotion policies of EPA and other agencies. Among the 78 Democrats voting with Flake were liberal Rep. Raúl Grijalva (D-Ariz.), oil-patch Rep. Gene Green (D-Texas) and Rep.

Xavier Becerra (D-Calif.), a member of the minority leadership.

Fifty-three Republicans joined about twice that number of Democrats to oppose the Flake amendment.

A second ethanol amendment from Rep. John Sullivan (R-Okla.) passed, 285-136, stopping EPA from using its funding to implement its decision to allow the ethanol content of gasoline to be increased from 10 percent to 15 percent. EPA issued a rule in October that said E15 could be used in vehicles made after 2007, and in January, the agency followed up with another rule allowing cars made between 2001 and 2006 to use the fuel ([Greenwire](#) , Jan. 21).

Seventy-nine Democrats voted alongside Sullivan against the E15 move, while 31 Republicans joined more than three times that number of Democrats in a failed attempt to bring down the proposal.

### **Climate-change policy limitations**

Climate change efforts beyond EPA also were constrained for the duration of the House CR in the wee hours of this morning. House Science Chairman Ralph Hall (R-Texas) won his bid to stop the National Oceanic and Atmospheric Administration from putting its funds toward a planned "climate service," 233-187.

Six Democrats voted with Republicans to block NOAA's climate efforts, while nine in the GOP joined Democrats to vote "no" -- including Rep. Mary Bono Mack of California, a senior Energy and Commerce Committee member who recently agreed to block EPA greenhouse gas rules.

On a 244-179 vote, lawmakers also approved Rep. Blaine Luetkemeyer's (R-Mo.) plan to bar federal funding from going to the United Nations' Intergovernmental Panel on Climate Change. The proposal was part of a sprawling spending-cut package offered last month by the conservative Republican Study Committee that helped pressure GOP leaders to double the amount of cuts they initially envisioned for the spending bill.

Nine Democrats endorsed the U.N. climate-funding plan, while three Republicans opposed it.

### **Administration coal-mining rules reined in**

The House also approved three CR amendments aimed at halting administration plans for

stronger environmental protections in the coal-mining hotbed of the Appalachians.

Rep. Morgan Griffith (R-Va.) won, 235-185, in an attempt to stop EPA from using its funding to implement or enforce new guidance for the review of possible water pollution from proposed coal-mining projects. The guidance was challenged last summer by the National Mining Association, which claims EPA has enforced the guidance as if it were a final rule without going through the usual notice-and-comment process.

Eight Democrats voted alongside Griffith, while 10 Republicans opposed the amendment.

Lawmakers voted, 239-186, in favor of Rep. Bill Johnson's (R-Ohio) amendment blocking Obama administration mining regulators from finishing work on rules aimed at protecting streams from coal waste. Joe Pizarchik, director of the Office of Surface Mining Reclamation and Enforcement, told reporters last week that the rule and its impact statement will likely be ready later this year ([E&ENews PM](#) , Feb. 11).

Eleven Democrats joined the GOP in voting to block the mining rules, while nine Republicans voted to preserve federal authority.

And McKinley won his bid to stop EPA from administering or enforcing the sections of the Clean Water Act that govern dredge-and-fill permits. Those are the permits needed by mountaintop-removal operations such as the Spruce No. 1 coal mine, a West Virginia project that had its water quality permit revoked by EPA last month ([Greenwire](#) , Jan. 13).

Seventeen Democrats crossed party lines to vote with McKinley on the amendment, and 14 Republicans broke with their leaders to oppose it.

### **More amendment failures and successes**

Meanwhile, an amendment from Rep. Tom McClintock (R-Calif.) that would stop the use of federal funds for an Interior Department study of removing dams from the Klamath River in southern Oregon and Northern California cleared by a narrow margin, 215-210. State and federal officials signed an agreement yesterday guaranteeing that farmers would get water and power after the removal of hydroelectric dams that block salmon from their spawning grounds.

Rep. David Wu (D-Ore.) lost his attempt to bar the use of federal funding to enforce the section of the Natural Gas Act that governs liquefied natural gas terminals on an 87-338 vote. On a 91-333 vote, the House also shot down Rep. Jim McDermott's (D-Wash.) amendment preventing NOAA from using its funding to move an operations center from Bellingham,

Wash., to Newport, Ore.

Rep. John Carney's (D-Del.) bid to stop DOE from using its funding for the Oil and Gas Research and Development Program also failed, 121-300.

But Democrats were not alone in seeing their environmental proposals defeated during the final hours of CR debate. Rep. Paul Broun's (R-Ga.) bid to stop the Army Corps of Engineers from funding its beach replenishment projects was defeated on a 74-348 vote.

*Reporter Gabriel Nelson contributed.*

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**Richard Windsor/DC/USEPA/US**  
02/24/2011 12:44 AM

To: Brendan Gilfillan  
cc: Arvin Ganesan, Bob Perciasepe, Dru Ealons, Gina McCarthy, Janet McCabe, Joseph Goffman, Mathy Stanislaus, "Seth Oster", Adora Andy  
bcc:  
Subject: Re: Bloomberg: EPA Overhauls Boiler Rules After Complaints About Cost

Good work. The Greenwire story is particularly accurate and well-written.  
Brendan Gilfillan

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

**From:** Brendan Gilfillan  
**Sent:** 02/23/2011 06:51 PM EST  
**To:** Brendan Gilfillan  
**Cc:** Arvin Ganesan; Bob Perciasepe; Dru Ealons; Gina McCarthy; Janet McCabe; Joseph Goffman; Mathy Stanislaus; Seth Oster <oster.seth@epa.gov>; Richard Windsor; Adora Andy  
**Subject:** Re: Bloomberg: EPA Overhauls Boiler Rules After Complaints About Cost  
All -

(b) (5) Deliberative



- Brendan

**EPA trims costs to control toxic air pollution**

By DINA CAPPIELLO, AP

**E.P.A. Scales Back Emissions Rules for Industry**

By [JOHN M. BRODER](#), *NY Times*

**EPA Overhauls Boiler Rules After Complaints About Cost**

By Kim Chipman, *Bloomberg News*

**EPA compromises on industrial pollution rules**

Tim Gardner, Reuters

**EPA issues regulations to cut harmful air pollution from boilers**

By Andrew Restuccia, The Hill

**EPA scales back final boiler rules**

Gabriel Nelson, E&E

## **EPA trims costs to control toxic air pollution**

By DINA CAPPIELLO, AP

Faced with stiff opposition in Congress and a court-ordered deadline, the Environmental Protection Agency on Wednesday said it will make it much cheaper for companies to reduce toxic air pollution from industrial boilers and incinerators.

In an overhaul of air pollution regulations, the EPA said it found ways to control pollution at more than 200,000 industrial boilers, heaters and incinerators nationwide at a 50 percent cost savings to the companies and institutions that run them. Those operating large boilers that burn renewable fuels would not be required to install some expensive technologies, and only maintenance would be required for smaller boilers. That would cost \$1.8 billion less each year than the original proposal, and still avert thousands of heart attacks and asthma cases a year, the agency said.

These rules "are realistic, they are achievable and reasonable and they come at about half the cost to industry to comply," said Gina McCarthy, EPA's top air pollution official in a conference call with reporters Wednesday. "EPA...found we could reduce emissions at a lower cost and still achieve the health benefits required by law."

EPA had said initially that the annual cost would be \$3.9 billion when all the rules took effect. An updated jobs analysis completed by the agency shows the changes will create 2,200 jobs, and that doesn't include employment stemming from purchases of pollution-control technology.

The EPA said the cost reduction for polluting industries is in line with President Barack Obama's Jan. 18 executive order to review regulations that hurt job growth.

Republicans and some Democrats in Congress have harshly criticized the EPA recently over the costs of a whole host of regulations, including the first-ever rules to control the gases blamed for global warming. At least a half-dozen bills have been introduced this year to block or curtail agency regulations, and House Republicans succeeded last week in attaching numerous anti-EPA measures to a bill aimed at funding the government for the rest of this fiscal year.

"If this doesn't satisfy the critics, I don't think they will take yes for an answer. I don't know how you can expect EPA to do any more than cut the cost of a rule in half," said Jim Pew, a staff attorney with Earthjustice, an advocacy group which sued the agency to draft new boiler regulations.

Despite the changes, groups representing industries with boilers said the rule was still inflexible. In a statement, Aric Newhouse, a vice president with the National Association of Manufacturers, said the regulation "would have an immediate, negative impact on manufacturers' bottom lines."

EPA was under a court-ordered deadline to release a final regulation this week after a federal court in 2007 threw out regulations drafted by the Bush administration. The Obama administration had asked the court for a 15-month extension in order to review the more than 4,800 public comments that came in, but the court gave the agency 30 days. The EPA

said Wednesday it would reconsider the rule and take additional public comment, since the regulation included significant changes based on data and information provided by industry.

In a letter sent to administrator Lisa Jackson Friday, six senators expressed concern about whether the EPA had enough time to make improvements to the rule. The four Republicans and two Democrats wrote that the boiler rule could make municipalities, universities, and federal facilities vulnerable to "excessive and expensive regulatory burdens."

Rep. Edward Markey, D-Mass., in contrast, said Wednesday that the regulations "provide another example of how EPA can both curb toxic air pollution and save lives cost-effectively, using industry input and sound science."

Industrial boilers, which burn coal and other fuels to generate steam and hot water for heat and electricity, are used by refineries, chemical plants, hospitals and even churches. They are also the second-largest source of toxic mercury emissions in the United States after coal-fired power plants. Mercury is a metal that even at low levels can cause subtle but serious damage to the brain and senses.

Under the new rule, the bulk of industrial boilers at small facilities would not have to meet certain pollution standards. Instead, they would have to do tune-ups every two years to reduce emissions. The roughly 13,800 large industrial boilers at refineries, chemical plants and other factories would still have to comply with new emissions standards requiring them to install technologies to reduce pollution in three years.

The EPA also reduced compliance costs by exempting clean-burning fuels from meeting the new emissions limits, something that initially applied only to natural gas-fired boilers.

### **E.P.A. Scales Back Emissions Rules for Industry**

By [JOHN M. BRODER](#), *NY Times*

Responding to a changed political climate and a court-ordered deadline, the Obama administration issued significantly revised new [air pollution rules](#) on Wednesday that will make it easier for operators of thousands of industrial boilers and incinerators to meet federal air quality standards.

The new regulations represent a major step back from more demanding and costly rules proposed last spring that provoked an outcry from members of Congress from both parties and from thousands of affected businesses. One industry-financed study said the proposed standard would cost businesses \$20 billion to comply and cause the loss of more than 300,000 jobs.

[E.P.A.](#) officials said on Wednesday that the altered rule would cost half as much as the previous proposal while achieving virtually the same health benefits. The agency pegged compliance costs for the new version of the rule at \$2.1 billion a year and said it would generate more than 2,000 new jobs.

Gina McCarthy, director of the E.P.A.'s air and radiation office, said that the pollution reductions would save from 2,600 to 6,600 lives per year by 2014 and avert 4,100 heart attacks and 42,000 asthma attacks annually.

"These health protections will save between \$23 billion and \$56 billion in health-related costs," Ms. McCarthy said in a conference call for reporters. "They are realistic, they are

achievable, and they are reasonable, and they come at roughly half the cost to comply compared to that in the proposed rule in May 2010."

The E.P.A. withdrew the earlier rule in December, saying it needed another 15 months to refashion the rule to respond to complaints and new data. A federal judge rejected the extension, saying the agency had already spent three years developing the regulation, and ordered it to produce a new rule by this week.

The agency grudgingly met the deadline but said it would remain open to comments and proposals for changes from lawmakers, businesses and citizens.

Agency officials [said the new rule](#) was consistent with [an executive order](#) issued by [President Obama](#) in January calling for a broad review of environmental, health, safety and [financial regulations](#) to ensure that they were not imposing too heavy a cost on the economy. Changes to the boiler rule could foreshadow a less muscular approach to air pollution rules due for power plants next month and a series of regulations of greenhouse gases to be rolled out over the next several years.

The power plant rules are currently being scrubbed by the White House [Office of Management and Budget](#).

The rule issued on Wednesday affects roughly 200,000 boilers, small power plants and incinerators operated by factories, chemical plants, municipalities, universities, churches and commercial buildings.

About 187,000 of these are relatively small sources of the target pollutants — lead, mercury, soot and toxic gases — and will have to do little more than perform routine "tune-ups" every year or two to meet the new standard. They will be allowed to achieve the cuts using readily available control technology at what the E.P.A. said was a reasonable cost. The agency said the earlier version, which would have required boiler operators to apply "maximum achievable control technology," set too high a bar.

"The original standards for these have been dramatically refined and updated to ensure maximum flexibility for these sources," the agency said in a press release.

The 13,800 larger facilities, including refineries, chemical plants and large factories, will have to meet numerical targets for pollution reduction, although the agency said it had narrowed the standards to lower compliance costs. The government will provide technical assistance in meeting the new standards and grant incentives for switching to cleaner-burning fuels such as natural gas and biomass.

Bob Bessette, president of the [Council of Industrial Boiler Owners](#), said it appeared that the E.P.A. had provided some relief for operators of smaller units but nonetheless called it a "terrible disappointment" because it was not clear that its standards could be met at a reasonable cost.

He noted that because the new rule was so different from the previous version, E.P.A. would immediately reopen it to comment.

"This is a good plan given our nation's current economic challenges," Mr. Bessette said. "It makes much more sense for E.P.A. and all stakeholders to revisit key challenges, take additional time and get the rule right."

## **EPA Overhauls Boiler Rules After Complaints About Cost**

*By Kim Chipman, Bloomberg News*

The Obama administration said it issued pollution rules for industrial boilers that are 50 percent less expensive than regulations proposed last year that drew industry opposition.

The Environmental Protection Agency's final rules for boilers and incinerators will provide health benefits comparable to the previous standards while cutting costs, EPA Assistant Administrator Gina McCarthy said today on a conference call with reporters.

The EPA had estimated the earlier rules would cost \$9.5 billion, while the [Council of Industrial Boiler Owners](#) set the cost at \$20 billion and as many as 300,000 lost jobs. The agency's revamping of the rules followed President [Barack Obama](#)'s pledge to review regulations that companies call excessive and a court order to act by this week.

"We've done a great job," and the agency is "pretty comfortable" with the revised rules, McCarthy said.

The regulations remain too costly to business, according to the [National Association of Manufacturers](#).

The rules will have an "immediate, negative impact on manufacturers' bottom lines at a time when they are trying to rebound economically and create jobs," Aric Newhouse, senior vice president for policy and government relations for the Washington-based trade association, said in a statement.

The requirements to cut air pollutants such as mercury and dioxin would set emission limits for boilers used in paper pulp mills, refineries and chemical and manufacturing plants. Existing boilers that exceeded the limits would have to be upgraded or replaced.

### **Federal Judge**

The administration lost a bid last month to postpone the rules by 15 months when a federal judge ordered action within 30 days. The EPA will reconsider parts of the rules issued today, enabling companies to give feedback to the agency, according to McCarthy.

The regulations aimed at cutting toxic air emissions such as mercury and soot will create 2,200 new jobs, not including making or installing pollution controls, according to McCarthy. The reduced emissions will prevent 2,600 to 6,600 premature deaths, the EPA said today in a statement.

For every dollar spent to cut pollutants, the public will get \$10 to \$24 in health benefits, according to the agency.

U.S. Agriculture Secretary [Tom Vilsack](#) praised the EPA for revising the rule to ease requirements for biomass alternative- fuel producers.

The EPA is "retaining important energy choices such as biomass that provide heat and power to rural hospitals and schools," Vilsack said in a statement.

### **Oil Industry**

The [American Petroleum Institute](#), the biggest U.S. lobbying group for the oil and gas industry and a critic of the rules proposed last year, said it welcomed the EPA's efforts to change the regulations.

"API is committed to work with the agency during its reconsideration period to ensure that the final rule protects the environment while allowing businesses to create jobs and get Americans back to work," Howard Feldman, director of science and regulatory policy at the Washington-based group, said in a statement today before release of the rules.

### **EPA compromises on industrial pollution rules**

Tim Gardner, Reuters

WASHINGTON, Feb 23 (Reuters) - The Obama administration scaled back on demands for heavy industrial boilers to cut toxic air emissions, a sign it may be willing to compromise with businesses and Republicans on future air pollution rules.

The Environmental Protection Agency on Wednesday issued final regulations on cutting air pollutants such as mercury and soot at boilers, which are basically on-site power plants at factories, and incinerators.

The EPA said the move would cost companies \$1.8 billion to cut pollution, about half the amount that would have resulted from rules proposed last year.

While the rules are only a minor part of the EPA's agenda this year, they come at a time when the agency is racing to deliver on President Barack Obama's promise to show the world that the United States is taking action on climate change.

Manufacturers and other industries have complained that a slate of looming EPA rules on toxic pollution and greenhouse gases would kill jobs while the economy is fragile. Many lawmakers in the Republican-controlled House of Representatives have said the EPA would unfairly burden business.

EPA Administrator Lisa Jackson is battling fierce legal and legislative challenges in her drive to crack down on greenhouse gas emissions, but Wednesday's decision -- which came after receiving about 4,800 comments from industry and communities -- suggests the agency is able to compromise.

"Because the final standards have been informed by a robust data set and comments we've received following the proposal, they are realistic, they are achievable ... and come at about half the cost to industry," Gina McCarthy, an EPA assistant administrator for air, told reporters in a teleconference.

The final rules were more flexible than the proposed regulation, by allowing, for example, companies to fine-tune their pollution systems rather than add costly new controls.

It was unclear how much more pollution would be emitted as a result of the EPA rules rewrite, but the agency said many health benefits would be achieved.

The standards will avert between 2,600 and 6,600 premature deaths, prevent 4,100 heart attacks and forestall 42,000 asthma attacks per year in 2014, it said. The rules will create a net of about 2,000 jobs, it added.

"In the end it still provides huge health protections, not

as much as before, but enough," considering the pressures on the EPA to compromise, said Bill Becker, executive director of the National Association of Clean Air Agencies.

The somewhat arcane boiler rules aim to reduce emissions with so-called "maximum achievable control technology" or MACT.

Next month the EPA is expected to propose more widely watched MACT rules on toxic emissions from power plants. Those will likely be opposed by some power companies and lawmakers from states with economies that depend heavily on fossil fuels.

The EPA also plans to issue rules on emissions of greenhouse gases from oil refineries and power plants later this year. [ID:nN23440737]

Environmentalists and industry expressed cautious optimism about the rules, though neither group was completely pleased.

Bob Bessette, president of the Council of Industrial Boiler Owners, said the rules still need work but "decrease the economic impacts and achieve greater health benefits".

Shelley Vinyard, a toxics advocate for Environment America, said: "While this rule is modest in comparison to the standard proposed last April, we applaud the EPA for its continued commitment to our health and our environment."

The EPA said because the final rule had been changed substantially from the proposal, it would allow further public review of the standards.

## **EPA issues regulations to cut harmful air pollution from boilers**

By Andrew Restuccia, The Hill

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The Environmental Protection Agency issued final regulations Wednesday that will cut harmful air pollution from industrial boilers and incinerators.

EPA officials touted the rules Wednesday, arguing they will result in significant health benefits at a reasonable cost. The regulations will cost 50 percent, or \$1.8 billion, less than draft rules proposed by the agency last year, EPA said. The draft regulations prompted an outcry from industry groups, who argued that the rules were unrealistic.

"EPA revised the draft standards and found that we could reduce emissions at a lower cost and still meet the requirements under the law," EPA air chief Gina McCarthy said Wednesday.

The final regulations represent one of EPA's first efforts to rework rules based in part on an executive order outlined by President Obama last month that requires all federal agencies to review their regulations to ensure they are not overly burdensome.

Overall, the standards will have significant health benefits, EPA says. They will "avoid between 2,600-6,600 premature deaths, prevent 4,100 heart attacks and avert 42,000 asthma attacks per year in 2014," according to the agency.

McCarthy said the public will see \$10 to \$24 in health benefits for every \$1 dollar spent on the rules. She also said the rules will result in a net increase of 2,200 jobs.

EPA had asked a federal judge for 15 months to issue its final rules, but the judge gave the agency just 30 days. But McCarthy said the final regulations were not affected by the shortened timeframe. "We're pretty comfortable with the rule we put out," she said.

Clean air groups praised the rules Wednesday. Bill Becker, executive director of the National Association of Clean Air Agencies, said in a statement, "NACAA is pleased that EPA has issued its long-awaited rules that will reduce mercury, benzene, acid gases and other hazardous air pollutants from thousands of industrial facilities across the country. The benefits are huge and far outweigh the costs."

But industry groups said the final rules are too stringent. Aric Newhouse, senior vice president for policy and government relations at the National Association of Manufacturers, said the rule is an example of "EPA's aggressive, overreaching agenda."

"This is a harsh, inflexible rule that will cost jobs, hurt global competitiveness and may discourage projects that could otherwise lead to environmental improvements," Newhouse said in a statement.

Industry groups will have an opportunity to weigh in on the proposal. Because the final regulations are so different from the proposed rule, the agency will take public comment on key portions of the rule.

## **EPA scales back final boiler rules**

Gabriel Nelson, E&E

Bound by a court-ordered deadline and facing intense pressure from Congress, U.S. EPA has overhauled its rules for toxic air pollution from industrial boilers to go easier on businesses.

With a set of final [rules](#) released today, EPA claims to have found a more cost-effective way to protect public health by sparing cleaner boilers and small facilities from the strictest limits on chemicals such as mercury, lead and dioxins. Because of those changes, the final rules will cost about \$1.8 billion less per year than the rules that were proposed last spring.

The boiler rules have been labeled as an early test of President Obama's executive order to review the effects of new rules on businesses, and today's announcement seems to reflect a desire to show the administration is serious about balancing public health and the economy.

In a letter to stakeholders that was obtained by *Greenwire*, EPA Administrator Lisa Jackson said the final rule would cut compliance costs in half while greatly reducing exposure to toxic pollution.

"I am proud of the work that the EPA has done to craft protective, sensible standards," Jackson wrote in the letter, which was dated today. "The standards reflect what industry has told the agency about the practical reality of operating these units."

Under the final rules, the roughly 13,800 largest industrial boilers will still need to meet specific limits on toxic emissions. Those limits will force some facilities such as chemical plants and refineries to install new controls, cutting back on air pollution that is linked to

asthma, heart attacks and early death.

Based on updated figures, EPA estimates that the rules would prevent 2,500 to 6,500 premature deaths once the rules take effect in 2014, along with 4,000 heart attacks and 41,000 cases of aggravated asthma.

But smaller boilers that release less pollution will only need tuneups to show they are doing as much as possible to limit their emissions, according to the Associated Press. Boilers powered by cleaner-burning fuels such as natural gas will also need to use certain work practices rather than stay under a hard limit on their pollution.

"We continue to believe that this is the appropriate control measure," said Howard Feldman, director of regulatory and scientific affairs at the American Petroleum Institute, in a statement. He said the group would keep working with the agency to "ensure that the final rule protects the environment while allowing businesses to create jobs and get Americans back to work."

The final rules also create a subcategory for boilers that burn biomass, distinguishing them from coal-fired boilers, and granting a request by the American Forest & Paper Association. The trade group claimed that the rules proposed last year couldn't be achieved by many paper mills that use wood waste to power their operations.

Environmentalists said the rule appears to protect public health despite concessions to industry groups.

Bill Becker, executive director of the National Association of Clean Air Agencies, said he was pleased that the agency didn't allow certain exemptions based on the risk of toxic pollution to public health, which he described as "illegal and inappropriate."

"It appears that EPA has addressed many of the industry complaints while still putting out standards that would bring significant public health benefits," said Frank O'Donnell, president of the advocacy group Clean Air Watch. "Let's hope that EPA stands its ground when industries argue for further changes. "

When the agency analyzed the costs and benefits of the proposed rule last year, it found a bigger bang for the buck in reducing pollution from the largest boilers. Controlling the smaller "area source" boilers would produce \$900 million to \$2.4 billion in benefits per year at an upfront cost of \$2.5 billion and an annual cost of \$1 billion, but controlling the larger "major source" boilers would yield \$17 billion to \$41 billion in benefits per year at an upfront cost of \$9.5 billion and an annual cost of \$2.9 billion.

### Concerns from Congress

While today's announcement drew cautious praise from both industry groups and environmentalists, the final rules might still evolve because EPA has signaled that it will work out more kinks in the months ahead.

Over the next two months, businesses and environmental groups with concerns about the rules will be allowed to file petitions with the agency, which has the option to delay the implementation of the new rules for an extra three months as it reviews the arguments.

It also remains unclear how the changes will be received on Capitol Hill, where hundreds of lawmakers have signed letters urging EPA to ensure that the final rules don't impose

unnecessary costs on businesses.

Among the critics is Sen. Rob Portman, a freshman Republican from Ohio. Last week, he joined three Republican colleagues and two Democrats in signing a letter that asked whether EPA would welcome a congressional assist in reworking the boiler rules.

Yesterday afternoon, while President Obama was stumping for innovative businesses at Cleveland State University, Portman was 200 miles southwest in Chillicothe, Ohio, visiting a specialty paper plant that would be subject to EPA's new air pollution rules.

Portman told *Greenwire* he is worried that the boiler rules could hurt the competitiveness of the P.H. Glatfelter Co. plant, which employs about 1,200 workers at an average salary of more than \$60,000 per year. The company told him the rules proposed last year couldn't be met with existing technology, and that complying could wipe out a whole year's worth of profits for the U.S. printing industry.

The backlash in Congress reflects that the shock waves from the rule would be felt up and down the supply chain, from the producers of wood fiber to the companies that use the finished paper products, Portman said. So, too, with the public sector, because many schools and hospitals use boilers to provide heat and power.

"I can't believe, with the thousands of comments that they've received, that they wouldn't be rethinking the rule," Portman said yesterday. "This is not workable."

The boiler rule is one of the Obama administration's most closely watched efforts under the Clean Air Act. It was prompted, like a similar upcoming rule for coal-fired boilers at power plants, by a court ruling that decided the pollution rules issued by the George W. Bush administration were illegal.

Both environmentalists and industry sources agree that the rules issued today were a particular challenge because so many facilities use boilers in different ways. When EPA issued its proposal last year, businesses hadn't provided enough information, so it was difficult to "calculate standards that fully reflected operational reality," EPA Administrator Lisa Jackson wrote in a letter to members of Congress.

During the public comment period, the agency received a lot of new information, an EPA spokesman said at the time. He said the agency would need to make substantial changes, which is what appears to have happened today.

"The final standards, which are not due until early next year, will reflect all of the relevant new information, and that is exactly how this process is supposed to work," the spokesman said

Brendan Gilfillan EPA Overhauls Boiler Rules After Co... 02/23/2011 02:39:58 PM

From: Brendan Gilfillan/DC/USEPA/US  
To: Brendan Gilfillan/DC/USEPA/US@EPA  
Cc: Arvin Ganesan/DC/USEPA/US@EPA, Bob Perciasepe/DC/USEPA/US@EPA, Dru Ealons/DC/USEPA/US@EPA, Gina McCarthy/DC/USEPA/US@EPA, Janet McCabe/DC/USEPA/US@EPA, Joseph Goffman/DC/USEPA/US@EPA, Mathy Stanislaus/DC/USEPA/US@EPA, Seth Oster <oster.seth@epa.gov>, Richard Windsor/DC/USEPA/US@EPA

Date: 02/23/2011 02:39 PM  
 Subject: Bloomberg: EPA Overhauls Boiler Rules After Complaints About Cost

EPA Overhauls Boiler Rules After Complaints About Cost  
 Bloomberg  
 Kim Chipman  
 Feb 23, 2011

The Obama administration issued pollution rules for industrial boilers that it said are 50 percent less expensive than regulations proposed last year that drew industry opposition.

The Environmental Protection Agency's rules for boilers and incinerators will provide health benefits while reducing costs from last year's proposal, the EPA said today in a statement.

The EPA lost a bid last month to postpone the rules by 15 months when a federal judge ordered action within 30 days. Companies and business groups such as the Council of Industrial Boiler Owners in Burke, Virginia, said the previous version may cost \$20 billion and kill 300,000 jobs. EPA Administrator Lisa Jackson has said the agency will reconsider the rules issued today and make any necessary changes.

The American Petroleum Institute, the biggest U.S. lobbying group for the oil and gas industry and a critic of the 2010 proposed boiler rules, said it welcomes EPA's effort to change the regulations.

"API is committed to work with the agency during its reconsideration period to ensure that the final rule protects the environment while allowing businesses to create jobs and get Americans back to work," Howard Feldman, director of science and regulatory policy at Washington-based API, said in a statement today before release of the rules.

U.S. Agriculture Secretary Tom Vilsack praised the EPA for revising the rule to ease requirements for biomass alternative- fuel producers.

The EPA is "retaining important energy choices such as biomass that provide heat and power to rural hospitals and schools," Vilsack said in a statement.

To contact the reporter on this story: Kim Chipman in Washington at [kchipman@bloomberg.net](mailto:kchipman@bloomberg.net)

|                   |                                                       |                        |
|-------------------|-------------------------------------------------------|------------------------|
| Brendan Gilfillan | <a href="#">WASHINGTON (AP) _ Faced with stiff...</a> | 02/23/2011 10:19:54 AM |
|-------------------|-------------------------------------------------------|------------------------|

From: Brendan Gilfillan/DC/USEPA/US  
 To: Brendan Gilfillan/DC/USEPA/US@EPA  
 Cc: Arvin Ganesan/DC/USEPA/US@EPA, Bob Perciasepe/DC/USEPA/US@EPA, Dru Ealons/DC/USEPA/US@EPA, Gina McCarthy/DC/USEPA/US@EPA, Janet McCabe/DC/USEPA/US@EPA, Joseph Goffman/DC/USEPA/US@EPA, Mathy Stanislaus/DC/USEPA/US@EPA, Seth Oster <[oster.seth@epa.gov](mailto:oster.seth@epa.gov)>, Richard Windsor/DC/USEPA/US@EPA  
 Date: 02/23/2011 10:19 AM  
 Subject: Re: AP boilers - second story

WASHINGTON (AP) \_ Faced with stiff opposition in Congress and a court-ordered deadline, the Environmental Protection Agency on Wednesday will make it much cheaper for companies to reduce toxic air pollution from industrial boilers and incinerators.

¶ In a vastly overhauled regulation obtained by The Associated Press in advance of its release, the EPA says it has found ways to control pollution at more than 200,000 industrial boilers, heaters and incinerators nationwide at 50 percent less cost to the companies and institutions. That would save businesses \$1.8 billion and still avert thousands of heart attacks and asthma cases a year.

¶ These rules "put in place important public health safeguards...at costs

substantially lower than we had estimated under our original proposal," said Gina McCarthy, EPA's top air pollution official, in a news release provided to the AP.

¶ The deep discount for polluting industries will likely send a message to Congress that public health benefits can be achieved more economically, and that the Obama administration is serious about an executive order to review regulations that are onerous for business. The EPA, in its release, says the rules are in line with the review called for by Obama earlier this year.

¶ Republicans and some Democrats have been extremely critical of EPA recently over the costs of a whole host of regulations, including the first-ever rules to control the gases blamed for global warming.

¶ In a letter sent to EPA administrator Lisa Jackson on Monday, six senators expressed concern specifically about the boiler rule, saying that municipalities, universities, and federal facilities could be vulnerable to "excessive and expensive regulatory burdens."

¶ Industrial boilers, which burn coal and other fuels to generate heat and electricity, are used by refineries, chemical plants, hospitals and even churches. They are also the second largest source of toxic mercury emissions in the United States after coal-fired power plants. Mercury is a metal that even at low levels can cause subtle but serious damage to the brain and senses.

¶ Under the new rule, the bulk of industrial boilers at small facilities would not have to meet certain pollution standards. Instead, they would have to do biannual tune ups to reduce emissions. The roughly 13,800 large industrial boilers at refineries, chemical plants and other factories would be subjected to emissions standards requiring them to install technologies to reduce pollution. Facilities already in operation also would not have to comply with the regulation for three years.

Brendan Gilfillan

WASHINGTON (AP) \_ The Environm...

02/23/2011 09:12:14 AM

From: Brendan Gilfillan/DC/USEPA/US  
 To: Bob Perciasepe/DC/USEPA/US@EPA, Gina McCarthy/DC/USEPA/US@EPA, Mathy Stanislaus/DC/USEPA/US@EPA, Seth Oster <oster.seth@epa.gov>, Arvin Ganesan/DC/USEPA/US@EPA, Janet McCabe/DC/USEPA/US@EPA, Joseph Goffman/DC/USEPA/US@EPA  
 Cc: Dru Ealons/DC/USEPA/US@EPA  
 Date: 02/23/2011 09:12 AM  
 Subject: AP boilers - first story

WASHINGTON (AP) \_ The Environmental Protection Agency is making it much cheaper for companies to release toxic air pollution from industrial boilers and incinerators.

¶ In a vastly overhauled regulation obtained by The Associated Press in advance of its release Wednesday, the EPA says it has found ways to control pollution at more than 200,000 industrial boilers, heaters and incinerators nationwide at 50 percent less cost. That would save businesses \$1.8 billion and avert thousands of heart attacks and asthma cases a year.

¶ Republicans and some Democrats in Congress have criticized the EPA over the boiler rule, saying it would be too expensive for industry.

¶ A senior EPA official told the AP that cost wasn't the driving factor, but the changes

made were driven in part by an executive order to review burdensome regulations.

¶

01268-EPA-4535

**Richard Windsor/DC/USEPA/US**  
02/24/2011 04:29 PM

To David McIntosh  
cc  
bcc  
Subject Re: From Greenwire -- Former Wyo. governor joins Arch Coal board

Best wishes to him!

---

**From:** David McIntosh  
**Sent:** 02/24/2011 01:24 PM EST  
**To:** Richard Windsor  
**Subject:** From Greenwire -- Former Wyo. governor joins Arch Coal board  
Former Wyo. governor joins Arch Coal board (Thursday, February 24, 2011)

Former Wyoming Gov. Dave Freudenthal (D) has joined the board of directors of Arch Coal Inc. Hailing from a state that produces about 40 percent of the nation's coal, Freudenthal was elected to the board of the company that mines much of its yearly 160 million tons of coal from the Powder River Basin in Northeast Wyoming. The company announced yesterday that Freudenthal will join the board effective immediately ([API Billings Gazette](#), Feb. 23).

01268-EPA-4536

**Richard Windsor/DC/USEPA/US**  
02/24/2011 04:34 PM

To Brendan Gilfillan, Bob Perciasepe, Diane Thompson, "Seth Oster", Adora Andy, Betsaida Alcantara, Mathy Stanislaus, David McIntosh, Arvin Ganesan, Stephanie Owens, Dru Ealons

cc

bcc

Subject Re: ABC World News Tonight: Deadly Chemical and Dismal Safety Records Put Millions Living Near Refineries at Risk

(b) (5) Deliberative

Brendan Gilfillan

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

**From:** Brendan Gilfillan

**Sent:** 02/24/2011 04:04 PM EST

**To:** Richard Windsor; Bob Perciasepe; Diane Thompson; Seth Oster <oster.seth@epa.gov>; Adora Andy; Betsaida Alcantara; Mathy Stanislaus; David McIntosh; Arvin Ganesan; Stephanie Owens; Dru Ealons

**Subject:** ABC World News Tonight: Deadly Chemical and Dismal Safety Records Put Millions Living Near Refineries at Risk

### **Deadly Chemical and Dismal Safety Records Put Millions Living Near Refineries at Risk**

#### **ABC World News Tonight**

Oil industry documents filed with the federal government reveal that an accidental release of a lethal chemical used in 50 aging refineries across the country could prove devastating, with 16 million Americans living within range of toxic plumes that could spread for miles. Los Angeles, Philadelphia, Minneapolis, New Orleans, and the stretch of Texas coastline known as "Refinery Row" are among the at-risk areas cited in the documents. Citing homeland security concerns, the government keeps the industry filings under close guard in Washington, D.C. They were reviewed as part of a joint investigation by ABC News and the Center for Public Integrity that airs tonight on World News with Diane Sawyer and Nightline.

There are safer alternatives for the chemical hydrofluoric acid, which is used to make high-grade gasoline, but the industry has resisted calls to stop using it. An industry spokesman told ABC News it would not be feasible to retrofit the refineries to use the safer approach. Federal officials tell ABC News, however, that the real impediment may be money-- estimating it would cost about \$50 million for the companies to upgrade each plant.

According to the industry's worst-case scenario documents, a release of the chemical could endanger entire communities.

"Hydrofluoric acid is extremely toxic," said Sen. Patty Murray, D-Washington. "It can be deadly immediately to workers around them, it can affect an entire community."

Murray called the plants "a ticking time bomb."

Even though one-third of the oil refineries in the United States are using the chemical, Murray told ABC News that the industry has long avoided demands from safety advocates

and from the union that represents refinery workers that it explore safer options.

"For three hours of revenue an oil company can change the use of hydrofluoric acid to make it safer for the workers and the community," Murray said. "Certainly that kind of investment assures people are safe when they go to work and the communities, the people who live around those refineries, are protected. It's worth it."

#### Accident at Philadelphia Sunoco Refinery

Industry officials downplayed the risk of a large-scale chemical release as remote. Charles Drevna, president of the National Petrochemical and Refinery Association, told ABC News that over the 70 years the chemical has been in use, "there hasn't been any [hydrofluoric acid] released that has impacted the communities. We've controlled them."

Drevna spoke at length with ABC News, and repeatedly emphasized the industry's commitment to safety. "I think our safety record could be improved," Drevna said. "But it's not a bad safety record."

Officials at the U.S. Chemical Safety Board, however, have warned that while the refinery industry has been painting a rosy picture of the conditions at their facilities, it has compiled a disconcerting track record. As the nation's 150 refineries have aged, there have been an increasing number of fatal, or near-fatal, incidents. In the last two years alone, there have been 29 fires and explosions at refineries that use the deadly chemical, including at least three potentially dangerous releases of hydrofluoric acid. And 32 refineries that use hydrofluoric acid have amassed more than 1,000 willful, serious or repeat safety violations in the last five years.

In 2009, an accident at the Sunoco refinery in Philadelphia caused a hydrofluoric acid release. James Jamison, an ironworker who was working on the acid unit at the time, described to ABC News how he became engulfed in a cloud of the noxious chemical. "It seemed like a rain cloud, and the smell was so intense I could feel it through my eyes, my nose, it was like a heat wave came over me."

Sunoco disputes Jamison's claim that he suffered permanent lung and heart damage in the accident, and the two parties are now in court. Federal investigators found that the company had failed to address leaks in the acid storage unit that had been a recurring problem for decades. In a statement to ABC News, Sunoco said it has since invested \$200 million in improving the safety and reliability of the equipment involved in the use and storage of hydrofluoric acid, "state-of-the-art technology" that it says will help avoid another accident. Corpus Christi Citgo Oil Refinery Explosion

In most places where refineries are running, the surrounding communities are unaware of the risks associated with hydrofluoric acid. But in Corpus Christi, Texas, the fears are as palpable as the warning sirens that come at all times of the day and night.

Citgo says it tests alarms daily, and encourages employees to sound the alarm if they think something has gone awry. "While this approach can result in false alarms, CITGO would rather sound the alarm and not need it, than not sound it if we need to," the company said in a statement.

Few have forgotten what happened the last time, less than two years ago, when something significant did go awry. An explosion at the Citgo refinery released a cloud of hydrofluoric acid that just missed the neighborhood. Citgo said in a statement that the fire and gas leak

were contained, and never reached the surrounding community. But a subsequent investigation by the U.S. Chemical Safety Board found that water systems meant to contain a leak didn't entirely succeed.

Residents of Corpus Christi have tried to learn to live with the risk – some packing bags of clothes by their beds so they can make a quick escape if the plant erupts.

Janie Mumphord, who lives just a few blocks from the refinery, said she fears the worst. "You never know when you go to bed if you're gonna live through the night, or if you have to run through the night," she said.

01268-EPA-4537

**Bob Sussman/DC/USEPA/US**

02/24/2011 07:36 PM

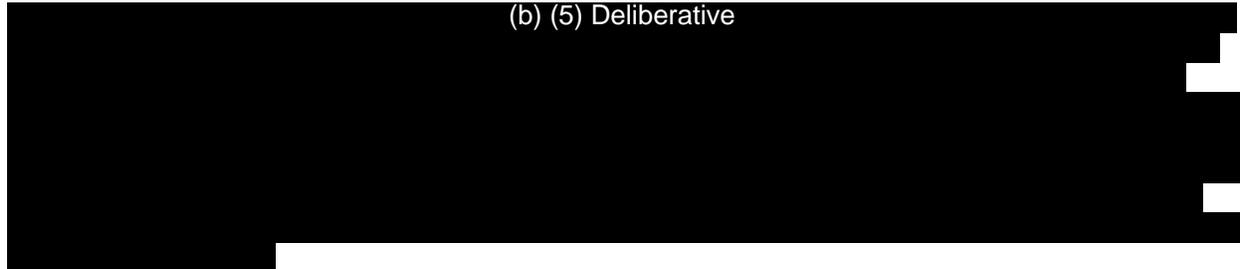
To Richard Windsor

cc Bob Perciasepe, Diane Thompson, Scott Fulton, David McIntosh, Michael Goo, Arvin Ganesan

bcc

Subject Coal Ash Schedule

(b) (5) Deliberative



Robert M. Sussman  
Senior Policy Counsel to the Administrator  
Office of the Administrator  
(202)-564-7397  
US Environmental Protection Agency

01268-EPA-4538

**Richard Windsor/DC/USEPA/US**  
02/25/2011 02:39 PM

To Nancy Stoner, Arvin Ganesan, Barbara Bennett  
cc  
bcc

Subject Fw: From Greenwire -- WATER POLLUTION: EPA loses enthusiasm for swift rollback of Bush 'fill rule'

Need a fact sheet for approps hearing.

----- Forwarded by Richard Windsor/DC/USEPA/US on 02/25/2011 02:39 PM -----

From: David McIntosh/DC/USEPA/US  
To: "Richard Windsor" <Windsor.Richard@epamail.epa.gov>, "Seth Oster" <Oster.Seth@epamail.epa.gov>, "Arvin Ganesan" <Ganesan.Arvin@epamail.epa.gov>, thompson.diane@epa.gov  
Date: 02/25/2011 01:36 PM  
Subject: Fw: From Greenwire -- WATER POLLUTION: EPA loses enthusiasm for swift rollback of Bush 'fill rule'

**From:** David McIntosh  
**Sent:** 02/25/2011 01:22 PM EST  
**To:** David McIntosh  
**Subject:** From Greenwire -- WATER POLLUTION: EPA loses enthusiasm for swift rollback of Bush 'fill rule'

**This Greenwire story was sent to you by:** mcintosh.david@epa.gov

**Personal message:**

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#### **WATER POLLUTION: EPA loses enthusiasm for swift rollback of Bush 'fill rule'** (Friday, February 25, 2011)

**Paul Quinlan, E&E reporter**

After vowing last year to revisit a controversial George W. Bush-era policy that made it easier for mining companies to dump debris into waterways, U.S. EPA may be having second thoughts. The fate of the "fill rule" will largely hinge on the public's reception of another upcoming Clean Water Act regulatory move, the Obama administration's soon-to-be-released reinterpretation of Bush's guidance for federal wetland regulators, according to a senior administration official.

"There is some waiting to see how this guidance goes before we start throwing out new rules or proposed rules on the Clean Water Act," said the official, who was granted anonymity in exchange for speaking candidly on the behind-the-scenes deliberations.

Due for release any day, the Obama White House's wetlands guidance aims to clarify a confusing 2006 Supreme Court ruling in a major Clean Water Act case, *Rapanos v. United States*, by revamping the Bush administration's take on that decision ([Greenwire](#), Feb. 17; [Greenwire](#), Feb. 7). The guidance is anticipated to place more waterways and wetlands under federal protection than currently are under the more narrow Bush administration policy.

But with President Obama vowing to reduce unnecessary federal regulations and the Republican-led House in an anti-regulatory mood, the administration has increasingly downplayed its still-unofficial efforts to draft a rule to replace Bush's 2002 fill rule ([Greenwire](#), Jan. 18).

That was not the case early last year. In a January 2010 interview with *Rolling Stone* magazine, EPA Administrator Lisa Jackson said the agency was considering a revision of the fill rule and that her staff was "working on it now." The intention, she said, was to clean up gold mining operations in

Alaska, adding that the rule would also "curtail" mountaintop-removal coal mining in Appalachian states. Mountaintop removal is a controversial mining technique that involves the dynamiting of mountaintops to expose coal seams and the dumping of debris into adjacent valleys. In a statement issued days after the magazine story to West Virginia's *Charleston Gazette*, EPA said work on the rule was under way, with a goal "to improve the Clean Water Act review of mining related discharges." EPA said it was "eager to move ahead quickly" with that effort and other Clean Water Act improvements.

But EPA backed off yesterday, issuing this statement: "We don't have plans to move forward at this time with guidance or rulemaking on the definition of fill material."

### Top priority for enviro groups

At issue is whether the administration will bar the mining industry's disposal of debris as "fill material" in waterways using dredge-and-fill permits issued by the Army Corps of Engineers under Section 404 of the Clean Water Act.

Critics of the Bush fill rule -- which specifically added "overburden, slurry, or tailings or similar mining-related materials" to the definition of fill -- want mining spoils reclassified as waste, whose disposal would be overseen by U.S. EPA.

Killing the Bush rule topped the list of priorities that environmental groups submitted to the Obama administration transition team in 2008, said Joan Mulhern, senior legislative counsel for Earthjustice. "We've been talking with them about this ever since," said Mulhern. "If the Obama administration and [EPA] administrator [Lisa] Jackson want to take actions to address these waste dump issues, they need to dig in and start now," Mulhern said in an interview. "We'll do what we can to try to support their actions. Taking a wait-and-see attitude is going to run out the clock."

There have been efforts on Capitol Hill to reverse the Bush fill rule, but they have failed to advance ( [E&ENews PM](#), March 4, 2009).

Carol Raulston, spokeswoman for the National Mining Association, said revisiting the rule now would kill jobs.

"This is unfortunate because after many years of litigation, this issue was finally resolved, and now it's thrown up in the air again," said Raulston. "In the end, you have a lot of impact on employment and the ability of mines to operate."

Outrage over the 2002 Bush-era definition of fill peaked in June 2009, when the Supreme Court -- citing ambiguity in the Clean Water Act -- upheld the right of gold miners at the Kensington Mine in Alaska to dump mine tailings -- wastes from the metals-extraction process -- into the Lower Salt Lake under a dredge-and-fill permit issued by the Army Corps.

In the wake of that ruling, EPA said it was "reviewing" the decision "and its potential implications regarding EPA's authority to ensure effective environmental protection under the Clean Water Act" ( [E&ENews PM](#), June 22, 2009).

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01268-EPA-4539

**Richard Windsor/DC/USEPA/US**  
02/25/2011 02:40 PM

To David McIntosh  
cc "Arvin Ganesan", "Seth Oster", thompson.diane, Bob Sussman, Nancy Stoner  
bcc

Subject Re: Fw: From Greenwire -- WATER POLLUTION: EPA loses enthusiasm for swift rollback of Bush 'fill rule'

**(b) (5) Deliberative, (b) (6) Personal Privacy**

David McIntosh ----- Original Message ----- From: David... 02/25/2011 01:36:00 PM

From: David McIntosh/DC/USEPA/US  
To: "Richard Windsor" <Windsor.Richard@epamail.epa.gov>, "Seth Oster" <Oster.Seth@epamail.epa.gov>, "Arvin Ganesan" <Ganesan.Arvin@epamail.epa.gov>, thompson.diane@epa.gov  
Date: 02/25/2011 01:36 PM  
Subject: Fw: From Greenwire -- WATER POLLUTION: EPA loses enthusiasm for swift rollback of Bush 'fill rule'

**From:** David McIntosh  
**Sent:** 02/25/2011 01:22 PM EST  
**To:** David McIntosh  
**Subject:** From Greenwire -- WATER POLLUTION: EPA loses enthusiasm for swift rollback of Bush 'fill rule'

**This Greenwire story was sent to you by:** mcintosh.david@epa.gov

**Personal message:**

**An E&E Publishing Service**

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**Paul Quinlan, E&E reporter**

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her staff was "working on it now." The intention, she said, was to clean up gold mining operations in Alaska, adding that the rule would also "curtail" mountaintop-removal coal mining in Appalachian states. Mountaintop removal is a controversial mining technique that involves the dynamiting of mountaintops to expose coal seams and the dumping of debris into adjacent valleys.

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01268-EPA-4540

**Nancy Stoner/DC/USEPA/US**

To Richard Windsor

02/25/2011 03:13 PM

cc

bcc

Subject Re: From Greenwire -- WATER POLLUTION: EPA loses enthusiasm for swift rollback of Bush 'fill rule'

Will do

Richard Windsor

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

**From:** Richard Windsor**Sent:** 02/25/2011 02:39 PM EST**To:** Nancy Stoner; Arvin Ganesan; Barbara Bennett**Subject:** Fw: From Greenwire -- WATER POLLUTION: EPA loses enthusiasm for swift rollback of Bush 'fill rule'

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To: "Richard Windsor" &lt;Windsor.Richard@epamail.epa.gov&gt;, "Seth Oster" &lt;Oster.Seth@epamail.epa.gov&gt;, "Arvin Ganesan" &lt;Ganesan.Arvin@epamail.epa.gov&gt;, thompson.diane@epa.gov

Date: 02/25/2011 01:36 PM

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**From:** David McIntosh**Sent:** 02/25/2011 01:22 PM EST**To:** David McIntosh**Subject:** From Greenwire -- WATER POLLUTION: EPA loses enthusiasm for swift rollback of Bush 'fill rule'**This Greenwire story was sent to you by:** mcintosh.david@epa.gov**Personal message:****An E&E Publishing Service****WATER POLLUTION: EPA loses enthusiasm for swift rollback of Bush 'fill rule'** *(Friday, February 25, 2011)***Paul Quinlan, E&E reporter**

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01268-EPA-4541

**Nancy Stoner/DC/USEPA/US**

02/25/2011 03:16 PM

To Richard Windsor, David McIntosh

cc Arvin Ganesan, Seth Oster, "thompson diane", Bob Sussman  
bccSubject Re: Fw: From Greenwire -- WATER POLLUTION: EPA loses  
enthusiasm for swift rollback of Bush 'fill rule'**(b) (5) Deliberative, (b) (6) Personal Privacy**

Richard Windsor

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

**From:** Richard Windsor**Sent:** 02/25/2011 02:40 PM EST**To:** David McIntosh**Cc:** Arvin Ganesan; Seth Oster; thompson.diane@epa.gov; Bob Sussman; Nancy Stoner**Subject:** Re: Fw: From Greenwire -- WATER POLLUTION: EPA loses enthusiasm  
for swift rollback of Bush 'fill rule'**(b) (5) Deliberative, (b) (6) Personal Privacy**

David McIntosh

----- Original Message ----- From: David...

02/25/2011 01:36:00 PM

From: David McIntosh/DC/USEPA/US

To: "Richard Windsor" <Windsor.Richard@epamail.epa.gov>, "Seth Oster"  
<Oster.Seth@epamail.epa.gov>, "Arvin Ganesan" <Ganesan.Arvin@epamail.epa.gov>,  
thompson.diane@epa.gov

Date: 02/25/2011 01:36 PM

Subject: Fw: From Greenwire -- WATER POLLUTION: EPA loses enthusiasm for swift rollback of Bush 'fill  
rule'**From:** David McIntosh**Sent:** 02/25/2011 01:22 PM EST**To:** David McIntosh**Subject:** From Greenwire -- WATER POLLUTION: EPA loses enthusiasm for swift rollback of Bush 'fill rule'**This Greenwire story was sent to you by:** mcintosh.david@epa.gov**Personal message:****An E&E Publishing Service****WATER POLLUTION: EPA loses enthusiasm for swift  
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01268-EPA-4542

David McIntosh/DC/USEPA/US  
02/25/2011 03:19 PM

To Nancy Stoner, Richard Windsor  
cc Arvin Ganesan, Seth Oster, "thompson diane", Bob Sussman  
bcc  
Subject Re: Fw: From Greenwire -- WATER POLLUTION: EPA loses enthusiasm for swift rollback of Bush 'fill rule'

(b) (5) Deliberative, (b) (6) Personal Privacy

Nancy Stoner

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

**From:** Nancy Stoner  
**Sent:** 02/25/2011 03:16 PM EST  
**To:** Richard Windsor; David McIntosh  
**Cc:** Arvin Ganesan; Seth Oster; "thompson diane" <thompson.diane@epa.gov>; Bob Sussman  
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**Cc:** Arvin Ganesan; Seth Oster; thompson.diane@epa.gov; Bob Sussman; Nancy Stoner  
**Subject:** Re: Fw: From Greenwire -- WATER POLLUTION: EPA loses enthusiasm for swift rollback of Bush 'fill rule'

(b) (5) Deliberative, (b) (6) Personal Privacy

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**From:** David McIntosh/DC/USEPA/US  
**To:** "Richard Windsor" <Windsor.Richard@epamail.epa.gov>, "Seth Oster" <Oster.Seth@epamail.epa.gov>, "Arvin Ganesan" <Ganesan.Arvin@epamail.epa.gov>, thompson.diane@epa.gov  
**Date:** 02/25/2011 01:36 PM  
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**From:** David McIntosh  
**Sent:** 02/25/2011 01:22 PM EST  
**To:** David McIntosh  
**Subject:** From Greenwire -- WATER POLLUTION: EPA loses enthusiasm for swift rollback of Bush 'fill rule'

This Greenwire story was sent to you by: mcintosh.david@epa.gov

Personal message:

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01268-EPA-4544

Richard Windsor/DC/USEPA/US  
02/25/2011 05:31 PM

To David McIntosh  
cc Arvin Ganesan, Bob Sussman, Nancy Stoner, Seth Oster, "thompson diane"  
bcc

Subject Re: Fw: From Greenwire -- WATER POLLUTION: EPA loses enthusiasm for swift rollback of Bush 'fill rule'

(b) (5) Deliberative

David McIntosh (b) (5) Deliberative, (b) (6) Personal Privacy 02/25/2011 03:19:23 PM

From: David McIntosh/DC/USEPA/US  
To: Nancy Stoner/DC/USEPA/US@EPA, Richard Windsor/DC/USEPA/US@EPA  
Cc: Arvin Ganesan/DC/USEPA/US@EPA, Seth Oster/DC/USEPA/US@EPA, "thompson diane" <thompson.diane@epa.gov>, Bob Sussman/DC/USEPA/US@EPA  
Date: 02/25/2011 03:19 PM  
Subject: Re: Fw: From Greenwire -- WATER POLLUTION: EPA loses enthusiasm for swift rollback of Bush 'fill rule'

(b) (5) Deliberative, (b) (6) Personal Privacy

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From: Nancy Stoner  
Sent: 02/25/2011 03:16 PM EST  
To: Richard Windsor; David McIntosh  
Cc: Arvin Ganesan; Seth Oster; "thompson diane" <thompson.diane@epa.gov>; Bob Sussman  
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Sent: 02/25/2011 02:40 PM EST  
To: David McIntosh  
Cc: Arvin Ganesan; Seth Oster; thompson.diane@epa.gov; Bob Sussman; Nancy Stoner  
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David McIntosh ----- Original Message ----- From: David... 02/25/2011 01:36:00 PM

From: David McIntosh/DC/USEPA/US  
To: "Richard Windsor" <Windsor.Richard@epamail.epa.gov>, "Seth Oster" <Oster.Seth@epamail.epa.gov>, "Arvin Ganesan" <Ganesan.Arvin@epamail.epa.gov>, thompson.diane@epa.gov  
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**This Greenwire story was sent to you by:** mcintosh.david@epa.gov

**Personal message:**

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01268-EPA-4545

**Richard Windsor/DC/USEPA/US**  
02/25/2011 06:11 PM

To "Seth Oster", "Arvin Ganesan"  
cc  
bcc

Subject Fw: 5. CHEMICALS: Wal-Mart bans flame retardant (02/25/2011)

As we said in the speech to the Commonwealth Club, the industry will be forced BY THE MARKETS to address toxics.

Charles Imohiosen

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

**From:** Charles Imohiosen

**Sent:** 02/25/2011 06:03 PM EST

**To:** Richard Windsor; Bob Perciasepe; "Bob Sussman" <sussman.bob@epa.gov>; Steve Owens

**Subject:** 5. CHEMICALS: Wal-Mart bans flame retardant (02/25/2011)



5. CHEMICALS: Wal-Mart bans flame retardant (02/25/2011)

Wal-Mart Stores Inc. has wielded its power as the world's largest retailer to ban a controversial flame retardant used in consumer goods from cameras to child car seats.

The retail giant is bypassing federal regulators by requiring suppliers to conform to certain production standards in an effort to move away from chemicals researchers say endanger human health and the environment.

 "This really shows the market being able to move more decisively than the government," said Andy Igrejas, national campaign director of Safer Chemicals, Healthy Families, a coalition of environmental and public health groups.

Wal-Mart's ban prohibits use of polybrominated diphenyl ethers (PBDEs) and follows the decision of a handful of states to ban the chemicals. A recent notice distributed by the retailer asked suppliers to make sure their products do not contain PBDEs, which have been linked to liver, thyroid, reproductive and brain development problems. Wal-Mart will begin verification testing in June.

Although U.S. EPA identified PBDEs as chemicals of concern last year, attempts to limit new use of them have been mired in a lengthy bureaucratic process. Chemical laws make it difficult for the federal government to place such bans. EPA has been unable to ban even asbestos, widely acknowledged as a likely carcinogen and banned in more than 30 countries.

Suppliers who move away from using PBDEs must find other flame extinguishing methods, whether it involves using alternative chemicals that pose separate health risks or redesigning products so there is no need for flame retardants at all.

Absent federal regulations, states have taken on the responsibility of banning controversial chemicals, creating a patchwork of regulations that poses problems for corporations spanning several states.

Retail regulation might provide a faster route for chemical bans, said Richard Denison, senior scientist at the Environmental Defense Fund.

"The companies producing for Wal-Mart are not going to make a special line for them and another line with those chemicals for everyone else," Denison said. "And this is going to make it easier for other retailers to follow suit" (Lyndsey Layton, Washington Post, Feb. 25). -- PK

E&ENews PM Head

Charles Imohiosen  
Counselor to the Deputy Administrator  
Office of the Administrator  
US Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.

\*\*\*\*\*

Sent via Blackberry

01268-EPA-4548

**Richard Windsor/DC/USEPA/US**  
02/27/2011 05:19 AM

To "Shawn Garvin", "Judith Enck"  
cc "Bob Perciasepe", "Diane Thompson", "Seth Oster", "Heidi Ellis"  
bcc

Subject Fw: NY Times Story -- Must Read

Shawn,

(b) (5) Deliberative

---

**From:** Seth Oster  
**Sent:** 02/26/2011 08:57 PM EST  
**To:** Richard Windsor; Bob Perciasepe; Diane Thompson; Bob Sussman; Brendan Gilfillan; David McIntosh; Arvin Ganesan; Scott Fulton  
**Cc:** Brendan Gilfillan; "Betsaida Alcantara" <alcantara.betsaida@epa.gov>; Adora Andy  
**Subject:** NY Times Story -- Must Read

All,

(b) (5) Deliberative

Seth

Seth Oster  
Associate Administrator  
Office of External Affairs and Environmental Education  
Environmental Protection Agency  
(202) 564-1918  
oster.seth@epa.gov  
February 26, 2011

NEW YORK TIMES

# Regulation Is Lax for Water From Gas Wells

By [IAN URBINA](#)

The American landscape is dotted with hundreds of thousands of new wells and drilling rigs, as the country scrambles to tap into this century's gold rush – for [natural gas](#).

The gas has always been there, of course, trapped deep underground in countless tiny bubbles, like frozen spills of seltzer water between thin layers of shale rock. But drilling companies have only in recent years developed techniques to unlock the enormous reserves, thought to be enough to supply the country with gas for heating buildings, generating electricity and powering vehicles for up to a hundred years.

So energy companies are clamoring to drill. And they are getting rare support from their usual sparring partners. Environmentalists say using natural gas will help slow [climate change](#) because it burns more cleanly than coal and [oil](#). Lawmakers hail the gas as a source of jobs. They also see it as a way to wean the United States from its dependency on other countries for oil.

But the relatively new drilling method – known as high-volume horizontal hydraulic fracturing, or hydrofracking – carries significant environmental risks. It involves injecting huge amounts of water, mixed with sand and chemicals, at high pressures to break up rock formations and release the gas.

With hydrofracking, a well can produce over a million gallons of wastewater that is often laced with highly corrosive salts, carcinogens like benzene and radioactive elements like radium, all of which can occur naturally thousands of feet underground. Other carcinogenic materials can be added to the wastewater by the chemicals used in the hydrofracking itself.

While the existence of the toxic wastes has been reported, thousands of internal documents obtained by The New York Times from the [Environmental Protection Agency](#), state regulators and drillers show that the [dangers](#) to the environment and health are greater than previously understood.

The documents reveal that the wastewater, which is sometimes hauled to sewage plants not designed to treat it and then discharged into rivers that supply drinking water, contains radioactivity at levels higher than previously known, and far higher than the level that federal regulators say is safe for these treatment plants to handle.

Other documents and interviews show that many E.P.A. scientists are alarmed, warning that the drilling waste is a threat to drinking water in Pennsylvania. Their concern is based partly on a 2009 study, never made public, written by an E.P.A. consultant who concluded that some sewage treatment plants were incapable of removing certain drilling waste contaminants and were probably violating the law.

The Times also found never-reported studies by the [E.P.A.](#) and a [confidential study](#) by the drilling industry that all concluded that radioactivity in drilling waste cannot be fully diluted in rivers and other waterways.

But the E.P.A. has not intervened. In fact, federal and state regulators are allowing most sewage treatment plants that accept drilling waste not to test for radioactivity. And most drinking-water intake plants downstream from those sewage treatment plants in Pennsylvania, with the blessing of regulators, have not tested for radioactivity since before 2006, even though the drilling boom began in 2008.

In other words, there is no way of guaranteeing that the drinking water taken in by all these plants is safe.

That has experts worried.

“We’re burning the furniture to heat the house,” said John H. Quigley, who left last month as secretary of

Pennsylvania's Department of Conservation and Natural Resources. "In shifting away from coal and toward natural gas, we're trying for cleaner air, but we're producing massive amounts of toxic wastewater with salts and naturally occurring radioactive materials, and it's not clear we have a plan for properly handling this waste."

The risks are particularly severe in Pennsylvania, which has seen a sharp increase in drilling, with roughly 71,000 active gas wells, up from about 36,000 in 2000. The level of radioactivity in the wastewater has sometimes been hundreds or even thousands of times the maximum allowed by the federal standard for drinking water. While people clearly do not drink drilling wastewater, the reason to use the drinking-water standard for comparison is that there is no comprehensive federal standard for what constitutes safe levels of radioactivity in drilling wastewater.

Drillers trucked at least half of this waste to public sewage treatment plants in Pennsylvania in 2008 and 2009, according to state officials. Some of it has been sent to other states, including [New York](#) and [West Virginia](#).

Yet sewage treatment plant operators say they are far less capable of removing radioactive contaminants than most other toxic substances. Indeed, most of these facilities cannot remove enough of the radioactive material to meet federal drinking-water standards before discharging the wastewater into rivers, sometimes just miles upstream from drinking-water intake plants.

In Pennsylvania, these treatment plants discharged waste into some of the state's major river basins. Greater amounts of the wastewater went to the Monongahela River, which provides drinking water to more than [800,000 people](#) in the western part of the state, including Pittsburgh, and to the Susquehanna River, which feeds into Chesapeake Bay and provides drinking water to more than six million people, including some in Harrisburg and Baltimore.

Lower amounts have been discharged into the Delaware River, which provides drinking water for more than 15 million people in Philadelphia and eastern Pennsylvania.

In [New York](#), the wastewater was sent to two plants that discharge into Southern Cayuga Lake, near Ithaca, and Owasco Outlet, near Auburn. In [West Virginia](#), a plant in Wheeling discharged gas-drilling wastewater into the Ohio River.

"Hydrofracking impacts associated with health problems as well as widespread air and water contamination have been reported in at least a dozen states," said Walter Hang, president of Toxics Targeting, a business in Ithaca, N.Y., that compiles data on gas drilling.

### **Problems in Other Regions**

While Pennsylvania is an extreme case, the [risks](#) posed by hydrofracking extend across the country.

There were more than 493,000 active natural-gas wells in the United States in 2009, almost double the number in 1990. Around 90 percent have used hydrofracking to get more gas flowing, according to the drilling industry.

Gas has seeped into underground drinking-water supplies in at least five states, including Colorado, Ohio, Pennsylvania, Texas and West Virginia, and residents blamed natural-gas drilling.

Air pollution caused by natural-gas drilling is a growing threat, too. Wyoming, for example, failed in 2009 to meet federal standards for air quality for the first time in its history partly because of the fumes containing benzene and toluene from roughly 27,000 wells, the vast majority drilled in the past five years.

In a sparsely populated Sublette County in Wyoming, which has some of the highest concentrations of wells, vapors reacting to sunlight have contributed to levels of ozone higher than those recorded in Houston and Los Angeles.

Industry officials say any dangerous waste from the wells is handled in compliance with state and federal laws, adding that drilling companies are recycling more wastewater now. They also say that hydrofracking is well regulated by the states and that it has been used safely for decades.

But hydrofracking technology has become more powerful and more widely used in recent years, producing far more wastewater. Some of the problems with this drilling, including its environmental impact and the challenge of disposing of waste, have been documented by ProPublica, The Associated Press and other news organizations.

And recent incidents underscore the dangers. In late 2008, drilling and coal-mine waste released during a drought so overwhelmed the Monongahela that local officials advised people in the Pittsburgh area to drink [bottled water](#). E.P.A. officials described the incident in an internal memorandum as "one of the largest failures in U.S. history to supply clean drinking water to the public."

In Texas, which now has about 93,000 natural-gas wells, up from around 58,000 a dozen years ago, a hospital system in six counties with some of the heaviest drilling said in 2010 that it found a 25 percent asthma rate for young children, more than three times the state rate of about 7 percent.

"It's ruining us," said Kelly Gant, whose 14-year-old daughter and 11-year-old son have experienced severe asthma attacks, dizzy spells and headaches since a compressor station and a gas well were set up about two years ago near her house in Bartonville, Tex. The industry and state regulators have said it is not clear what role the gas industry has played in causing such problems, since the area has had high air pollution for a while.

"I'm not an activist, an alarmist, a Democrat, environmentalist or anything like that," Ms. Gant said. "I'm just a person who isn't able to manage the health of my family because of all this drilling."

And yet, for all its problems, natural gas offers some clear environmental advantages over coal, which is used more than any other fuel to generate electricity in the United States. Coal-fired power plants without updated equipment to capture pollutants are a major source of radioactive pollution. Coal mines annually produce millions of tons of toxic waste.

But the hazards [associated](#) with natural-gas production and drilling are far less understood than those associated with other fossil fuels, and the regulations have not kept pace with the natural-gas industry's expansion.

### **Pennsylvania, Ground Zero**

Pennsylvania, which sits atop an enormous reserve called the Marcellus Shale, has been called the Saudi Arabia of natural gas.

This rock formation, roughly the size of Greece, lies more than a mile beneath the Appalachian landscape, from Virginia to the southern half of New York. It is believed to hold enough gas to supply the country's energy needs for heat and electricity, at current consumption rates, for more than 15 years.

Drilling companies were issued roughly 3,300 Marcellus gas-well permits in Pennsylvania last year, up from just 117 in 2007.

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Drilling derricks tower over barns, lining rural roads like feed silos. Drilling sites bustle around the clock with workers, some in yellow hazardous material suits, and 18-wheelers haul equipment, water and waste along back roads.

The rigs announce their presence with the occasional boom and quiver of underground explosions. Smelling like raw sewage mixed with gasoline, drilling-waste pits, some as large as a football field, sit close to homes.

Anywhere from 10 percent to 40 percent of the water sent down the well during hydrofracking returns to the surface, [carrying](#) drilling chemicals, very high levels of salts and, at times, naturally occurring radioactive material.

While most states require drillers to dispose of this water in underground storage wells below impermeable rock layers, Pennsylvania has [few such wells](#). It is the only state that has allowed drillers to discharge much of their waste through sewage treatment plants into rivers.

Regulators have theorized that passing drilling waste through the plants is safe because most toxic material will settle during the treatment process into a sludge that can be trucked to a landfill, and whatever toxic material remains in the wastewater will be diluted when mixed into rivers. But some plants were taking such large amounts of waste with high salt levels in 2008 that downstream utilities started complaining that the river water was eating away at their machines.

Regulators and drilling companies have said that these cases, and others, were isolated.

"The wastewater treatment plants are effective at what they're designed to do – remove material from wastewater," said Jamie Legenos, a spokeswoman for the Pennsylvania Department of Environmental Protection, adding that the radioactive material and the salts were being properly handled.

### **Overwhelmed, Underprepared**

For proof that [radioactive](#) elements in drilling waste are not a concern, industry spokesmen and regulators often point to the results of wastewater tests from a 2009 draft report conducted by New York State and a [1995 report](#) by Pennsylvania that found that radioactivity in drilling waste was not a threat. These two reports were based on samples from roughly 13 gas wells in New York and 29 in Pennsylvania.

But a review by The Times of more than 30,000 pages of federal, state and company records relating to more than 200 gas wells in Pennsylvania, 40 in West Virginia and 20 public and private wastewater treatment plants offers a fuller picture of the wastewater such wells produce and the threat it poses.

Most of the information was drawn from drilling reports from the last three years, obtained by visiting regional offices throughout Pennsylvania, and from [documents](#) or databases provided by state and federal regulators in response to records requests.

Among The Times's findings:

¶ More than 1.3 billion gallons of wastewater was produced by Pennsylvania wells over the past three years, far more than has been previously disclosed. Most of this water – enough to cover Manhattan in three inches – was sent to treatment plants not equipped to remove many of the toxic materials in drilling waste.

¶ At least 12 sewage treatment plants in three states accepted gas industry wastewater and discharged waste that was only partly treated into rivers, lakes and streams.

¶ Of more than 179 wells producing wastewater with high levels of radiation, at least 116 reported levels of radium or other radioactive materials 100 times as high as the levels set by federal drinking-water standards. At least 15 wells produced wastewater carrying more than 1,000 times the amount of radioactive elements considered acceptable.

Results came from [field surveys](#) conducted by state and federal regulators, year-end reports filed by drilling companies and state-ordered tests of some public treatment plants. Most of the tests measured

drilling wastewater for radium or for "gross alpha" radiation, which typically comes from radium, uranium and other elements.

Industry officials say they are not concerned.

"These low levels of radioactivity pose no threat to the public or worker safety and are more a public perception issue than a real health threat," said James E. Grey, chief operating officer of Triana Energy.

In interviews, industry trade groups like the Marcellus Shale Coalition and Energy in Depth, as well as representatives from energy companies like Shell and [Chesapeake Energy](#), said they were producing far less wastewater because they were recycling much of it rather than disposing of it after each job.

But even with recycling, the amount of wastewater produced in Pennsylvania is expected to increase because, according to industry projections, more than 50,000 new wells are likely to be drilled over the next two decades.

The [radioactivity](#) in the wastewater is not necessarily dangerous to people who are near it. It can be blocked by thin barriers, including skin, so exposure is generally harmless.

Rather, E.P.A. and [industry researchers](#) say, the bigger danger of radioactive wastewater is its potential to contaminate drinking water or enter the food chain through fish or farming. Once radium enters a person's body, by eating, drinking or breathing, it can cause cancer and other health problems, many federal studies show.

### Little Testing for Radioactivity

Under federal law, testing for radioactivity in drinking water is required only at drinking-water plants. But federal and state regulators have given nearly all drinking-water intake facilities in Pennsylvania permission to test only once every six or nine years.

The Times reviewed data from more than 65 intake plants downstream from some of the busiest drilling regions in the state. Not one has tested for radioactivity [since 2008](#), and most have not tested since at least 2005, before most of the drilling waste was being produced.

And in 2009 and 2010, public sewage treatment plants directly upstream from some of these drinking-water intake facilities [accepted](#) wastewater that contained radioactivity levels as high as 2,122 times the drinking-water standard. But most sewage plants are not required to monitor for radioactive elements in the water they discharge. So there is virtually no data on such contaminants as water leaves these plants. Regulators and gas producers have repeatedly said that the waste is not a threat because it is so [diluted](#) in rivers or by treatment plants. But industry and federal research cast doubt on those statements.

A confidential industry study from 1990, conducted for the [American Petroleum Institute](#), concluded that "using conservative assumptions," radium in drilling wastewater dumped off the Louisiana coast posed "potentially significant risks" of cancer for people who eat fish from those waters regularly.

The industry [study](#) focused on drilling industry wastewater being dumped into the Gulf of Mexico, where it would be far more diluted than in rivers. It also used estimates of radium levels far below those found in Pennsylvania's drilling waste, according to the study's lead author, Anne F. Meinhold, an environmental risk expert now at [NASA](#).

Other federal, state and academic studies have also found dilution problems with radioactive drilling waste.

In December 2009, these very risks led E.P.A. scientists to advise in a letter to New York that sewage treatment plants not accept drilling waste with radium levels 12 or more times as high as the drinking-water standard. The Times found wastewater containing radium levels that were hundreds of

times this standard. The scientists also said that the plants should never discharge radioactive contaminants at levels higher than the drinking-water standard.

In 2009, E.P.A. scientists studied the matter and also determined that certain Pennsylvania rivers were ineffective at sufficiently diluting the radium-laced drilling wastewater being [discharged into them](#).

Asked about the studies, Pennsylvania regulators said they were not aware of them.

“Concerned? I’m always concerned,” said Dave Allard, director of the Bureau of Radiation Protection. But he added that the threat of this waste is reduced because “the dilutions are so huge going through those treatment plants.”

Three months after The Times began asking questions about radioactive and other toxic material being discharged into specific rivers, state regulators placed monitors for radioactivity near where drilling waste is discharged. Data will not be available until next month, state officials said.

But the monitor in the Monongahela is placed upstream from the two public sewage treatment plants that the state says are still discharging large amounts of drilling waste into the river, leaving the [discharges](#) from these plants unchecked and Pittsburgh exposed.

### **Plant Operators in the Dark**

In interviews, five treatment plant operators said they did not believe that the drilling wastewater posed risks to the public. Several also said they were not sure of the waste’s contents because the limited information drillers provide usually goes to state officials.

“We count on state regulators to make sure that that’s properly done,” said Paul McCurdy, environmental specialist at Ridgway Borough’s public sewage treatment plant, in Elk County, Pa., in the northwest part of the state.

Mr. McCurdy, whose plant discharges into the Clarion River, which flows into the Ohio and Mississippi Rivers, said his plant was taking about 20,000 gallons of drilling waste per day.

Like most of the sewage treatment plant operators interviewed, Mr. McCurdy said his plant was not equipped to remove radioactive material and was not required to test for it.

Documents filed by drillers with the state, though, show that in 2009 his facility was sent water from wells whose wastewater was laced with radium at 275 times the drinking-water standard and with other types of radiation at more than 780 times the standard.

Part of the problem is that industry has outpaced regulators. “We simply can’t keep up,” said one inspector with the Pennsylvania Department of Environmental Protection who was not authorized to speak to reporters. “There’s just too much of the waste.”

“If we’re too hard on them,” the inspector added, “the companies might just stop reporting their mistakes.”

Recently, Pennsylvania has tried to increase its oversight, doubling the number of regulators, improving well-design requirements and sharply decreasing how much drilling waste many treatment plants can accept or release. The state is considering whether to require treatment plants to begin monitoring for radioactivity in wastewater.

Even so, as of last November, 31 inspectors were keeping tabs on more than 125,000 oil and gas wells. The new regulations also allowed at least 18 plants to continue accepting the higher amounts set by their original permits.

Furthermore, environmental researchers from the [University of Pittsburgh](#) tested wastewater late last year that had been discharged by [two treatment plants](#). They say these tests will show, when the results are

publicly released in March, that salt levels were far above the legal limit.

### Lax Oversight

Drilling contamination is [entering the environment](#) in Pennsylvania through spills, too. In the past three years, at least 16 wells whose records showed high levels of radioactivity in their wastewater also [reported spills](#), leaks or failures of pits where hydrofracking fluid or waste is stored, according to state records.

Gas producers are generally left to police themselves when it [comes to spills](#). In Pennsylvania, regulators do not perform unannounced inspections to check for signs of spills. Gas producers report their own spills, write their own [spill response plans](#) and lead their own cleanup efforts.

A review of response plans for drilling projects at four Pennsylvania sites where there have been accidents in the past year found that these state-approved plans often appear to be in violation of the law.

At one well site where several [spills occurred](#) within a week, including one that flowed into a creek, the well's operator filed a [revised spill plan](#) saying there was little chance that waste would ever enter a waterway.

"There are business pressures" on companies to "cut corners," John Hanger, who stepped down as secretary of the Pennsylvania Department of Environmental Protection in January, has said. "It's cheaper to [dump](#) wastewater than to treat it."

Records back up that assertion.

From October 2008 through October 2010, regulators were more than twice as likely to issue a written warning than to levy a fine for environmental and safety violations, according to state data. During this period, 15 companies were fined for drilling-related violations in 2008 and 2009, and the companies paid an average of about \$44,000 each year, according to state data.

This average was less than half of what some of the companies earned in profits in a day and a tiny fraction of the more than \$2 million that some of them paid annually to haul and treat the waste.

And prospects for drillers in Pennsylvania are looking brighter.

In December, the Republican governor-elect, Tom Corbett, who during his campaign took more gas industry contributions than all his competitors combined, said he would reopen state land to new drilling, reversing a decision made by his predecessor, [Edward G. Rendell](#). The change clears the way for as many as 10,000 wells on [public land](#), up from about 25 active wells today.

In arguing against a proposed gas-extraction tax on the industry, Mr. Corbett said regulation of the industry had been too aggressive.

"I will direct the Department of Environmental Protection to serve as a partner with Pennsylvania businesses, communities and local governments," Mr. Corbett says on his Web site. "It should return to its core mission protecting the environment based on sound science."

01268-EPA-4550

Bob Sussman/DC/USEPA/US

To Seth Oster

02/27/2011 06:26 PM

cc Adora Andy, "Betsaida Alcantara", Arvin Ganesan, Bob Perciasepe, Brendan Gilfillan, David McIntosh, Diane Thompson, Richard Windsor, Scott Fulton

bcc

Subject Re: NY Times Story -- Must Read

[Redacted] (b) (5) Deliberative

Seth Oster All, 02/26/2011 08:57:08 PM

From: Seth Oster/DC/USEPA/US  
To: Richard Windsor/DC/USEPA/US@EPA, Bob Perciasepe/DC/USEPA/US@EPA, Diane Thompson/DC/USEPA/US@EPA, Bob Sussman/DC/USEPA/US@EPA, Brendan Gilfillan/DC/USEPA/US@EPA, David McIntosh/DC/USEPA/US@EPA, Arvin Ganesan/DC/USEPA/US@EPA, Scott Fulton/DC/USEPA/US@EPA  
Cc: Brendan Gilfillan/DC/USEPA/US@EPA, "Betsaida Alcantara" <alcantara.betsaida@epa.gov>, Adora Andy/DC/USEPA/US@EPA  
Date: 02/26/2011 08:57 PM  
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All,

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Seth

Seth Oster  
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February 26, 2011

NEW YORK TIMES

# Regulation Is Lax for Water From Gas Wells

By [IAN URBINA](#)

The American landscape is dotted with hundreds of thousands of new wells and drilling rigs, as the country scrambles to tap into this century's gold rush – for [natural gas](#).

The gas has always been there, of course, trapped deep underground in countless tiny bubbles, like frozen spills of seltzer water between thin layers of shale rock. But drilling companies have only in recent years developed techniques to unlock the enormous reserves, thought to be enough to supply the country with gas for heating buildings, generating electricity and powering vehicles for up to a hundred years.

So energy companies are clamoring to drill. And they are getting rare support from their usual sparring partners. Environmentalists say using natural gas will help slow [climate change](#) because it burns more cleanly than coal and [oil](#). Lawmakers hail the gas as a source of jobs. They also see it as a way to wean the United States from its dependency on other countries for oil.

But the relatively new drilling method – known as high-volume horizontal hydraulic fracturing, or hydrofracking – carries significant environmental risks. It involves injecting huge amounts of water, mixed with sand and chemicals, at high pressures to break up rock formations and release the gas.

With hydrofracking, a well can produce over a million gallons of wastewater that is often laced with highly corrosive salts, carcinogens like benzene and radioactive elements like radium, all of which can occur naturally thousands of feet underground. Other carcinogenic materials can be added to the wastewater by the chemicals used in the hydrofracking itself.

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The documents reveal that the wastewater, which is sometimes hauled to sewage plants not designed to treat it and then discharged into rivers that supply drinking water, contains radioactivity at levels higher than previously known, and far higher than the level that federal regulators say is safe for these treatment plants to handle.

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¶ At least 12 sewage treatment plants in three states accepted gas industry wastewater and discharged waste that was only partly treated into rivers, lakes and streams.

¶ Of more than 179 wells producing wastewater with high levels of radiation, at least 116 reported levels of radium or other radioactive materials 100 times as high as the levels set by federal drinking-water standards. At least 15 wells produced wastewater carrying more than 1,000 times the amount of radioactive elements considered acceptable.

Results came from [field surveys](#) conducted by state and federal regulators, year-end reports filed by drilling companies and state-ordered tests of some public treatment plants. Most of the tests measured

drilling wastewater for radium or for "gross alpha" radiation, which typically comes from radium, uranium and other elements.

Industry officials say they are not concerned.

"These low levels of radioactivity pose no threat to the public or worker safety and are more a public perception issue than a real health threat," said James E. Grey, chief operating officer of Triana Energy.

In interviews, industry trade groups like the Marcellus Shale Coalition and Energy in Depth, as well as representatives from energy companies like Shell and [Chesapeake Energy](#), said they were producing far less wastewater because they were recycling much of it rather than disposing of it after each job.

But even with recycling, the amount of wastewater produced in Pennsylvania is expected to increase because, according to industry projections, more than 50,000 new wells are likely to be drilled over the next two decades.

The [radioactivity](#) in the wastewater is not necessarily dangerous to people who are near it. It can be blocked by thin barriers, including skin, so exposure is generally harmless.

Rather, E.P.A. and [industry researchers](#) say, the bigger danger of radioactive wastewater is its potential to contaminate drinking water or enter the food chain through fish or farming. Once radium enters a person's body, by eating, drinking or breathing, it can cause cancer and other health problems, many federal studies show.

### Little Testing for Radioactivity

Under federal law, testing for radioactivity in drinking water is required only at drinking-water plants. But federal and state regulators have given nearly all drinking-water intake facilities in Pennsylvania permission to test only once every six or nine years.

The Times reviewed data from more than 65 intake plants downstream from some of the busiest drilling regions in the state. Not one has tested for radioactivity [since 2008](#), and most have not tested since at least 2005, before most of the drilling waste was being produced.

And in 2009 and 2010, public sewage treatment plants directly upstream from some of these drinking-water intake facilities [accepted](#) wastewater that contained radioactivity levels as high as 2,122 times the drinking-water standard. But most sewage plants are not required to monitor for radioactive elements in the water they discharge. So there is virtually no data on such contaminants as water leaves these plants. Regulators and gas producers have repeatedly said that the waste is not a threat because it is so [diluted](#) in rivers or by treatment plants. But industry and federal research cast doubt on those statements.

A confidential industry study from 1990, conducted for the [American Petroleum Institute](#), concluded that "using conservative assumptions," radium in drilling wastewater dumped off the Louisiana coast posed "potentially significant risks" of cancer for people who eat fish from those waters regularly.

The industry [study](#) focused on drilling industry wastewater being dumped into the Gulf of Mexico, where it would be far more diluted than in rivers. It also used estimates of radium levels far below those found in Pennsylvania's drilling waste, according to the study's lead author, Anne F. Meinhold, an environmental risk expert now at [NASA](#).

Other federal, state and academic studies have also found dilution problems with radioactive drilling waste.

In December 2009, these very risks led E.P.A. scientists to advise in a letter to New York that sewage treatment plants not accept drilling waste with radium levels 12 or more times as high as the drinking-water standard. The Times found wastewater containing radium levels that were hundreds of

times this standard. The scientists also said that the plants should never discharge radioactive contaminants at levels higher than the drinking-water standard.

In 2009, E.P.A. scientists studied the matter and also determined that certain Pennsylvania rivers were ineffective at sufficiently diluting the radium-laced drilling wastewater being [discharged into them](#).

Asked about the studies, Pennsylvania regulators said they were not aware of them.

“Concerned? I’m always concerned,” said Dave Allard, director of the Bureau of Radiation Protection. But he added that the threat of this waste is reduced because “the dilutions are so huge going through those treatment plants.”

Three months after The Times began asking questions about radioactive and other toxic material being discharged into specific rivers, state regulators placed monitors for radioactivity near where drilling waste is discharged. Data will not be available until next month, state officials said.

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In interviews, five treatment plant operators said they did not believe that the drilling wastewater posed risks to the public. Several also said they were not sure of the waste’s contents because the limited information drillers provide usually goes to state officials.

“We count on state regulators to make sure that that’s properly done,” said Paul McCurdy, environmental specialist at Ridgway Borough’s public sewage treatment plant, in Elk County, Pa., in the northwest part of the state.

Mr. McCurdy, whose plant discharges into the Clarion River, which flows into the Ohio and Mississippi Rivers, said his plant was taking about 20,000 gallons of drilling waste per day.

Like most of the sewage treatment plant operators interviewed, Mr. McCurdy said his plant was not equipped to remove radioactive material and was not required to test for it.

Documents filed by drillers with the state, though, show that in 2009 his facility was sent water from wells whose wastewater was laced with radium at 275 times the drinking-water standard and with other types of radiation at more than 780 times the standard.

Part of the problem is that industry has outpaced regulators. “We simply can’t keep up,” said one inspector with the Pennsylvania Department of Environmental Protection who was not authorized to speak to reporters. “There’s just too much of the waste.”

“If we’re too hard on them,” the inspector added, “the companies might just stop reporting their mistakes.”

Recently, Pennsylvania has tried to increase its oversight, doubling the number of regulators, improving well-design requirements and sharply decreasing how much drilling waste many treatment plants can accept or release. The state is considering whether to require treatment plants to begin monitoring for radioactivity in wastewater.

Even so, as of last November, 31 inspectors were keeping tabs on more than 125,000 oil and gas wells. The new regulations also allowed at least 18 plants to continue accepting the higher amounts set by their original permits.

Furthermore, environmental researchers from the [University of Pittsburgh](#) tested wastewater late last year that had been discharged by [two treatment plants](#). They say these tests will show, when the results are

publicly released in March, that salt levels were far above the legal limit.

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Drilling contamination is [entering the environment](#) in Pennsylvania through spills, too. In the past three years, at least 16 wells whose records showed high levels of radioactivity in their wastewater also [reported spills](#), leaks or failures of pits where hydrofracking fluid or waste is stored, according to state records.

Gas producers are generally left to police themselves when it [comes to spills](#). In Pennsylvania, regulators do not perform unannounced inspections to check for signs of spills. Gas producers report their own spills, write their own [spill response plans](#) and lead their own cleanup efforts.

A review of response plans for drilling projects at four Pennsylvania sites where there have been accidents in the past year found that these state-approved plans often appear to be in violation of the law.

At one well site where several [spills occurred](#) within a week, including one that flowed into a creek, the well's operator filed a [revised spill plan](#) saying there was little chance that waste would ever enter a waterway.

"There are business pressures" on companies to "cut corners," John Hanger, who stepped down as secretary of the Pennsylvania Department of Environmental Protection in January, has said. "It's cheaper to [dump](#) wastewater than to treat it."

Records back up that assertion.

From October 2008 through October 2010, regulators were more than twice as likely to issue a written warning than to levy a fine for environmental and safety violations, according to state data. During this period, 15 companies were fined for drilling-related violations in 2008 and 2009, and the companies paid an average of about \$44,000 each year, according to state data.

This average was less than half of what some of the companies earned in profits in a day and a tiny fraction of the more than \$2 million that some of them paid annually to haul and treat the waste.

And prospects for drillers in Pennsylvania are looking brighter.

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In arguing against a proposed gas-extraction tax on the industry, Mr. Corbett said regulation of the industry had been too aggressive.

"I will direct the Department of Environmental Protection to serve as a partner with Pennsylvania businesses, communities and local governments," Mr. Corbett says on his Web site. "It should return to its core mission protecting the environment based on sound science."

01268-EPA-4552

**Richard Windsor/DC/USEPA/US**  
02/28/2011 05:49 AM

To "Lisa At Home"  
cc  
bcc

Subject Fw: NY Times Story -- Must Read

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**From:** Seth Oster  
**Sent:** 02/26/2011 08:57 PM EST  
**To:** Richard Windsor; Bob Perciasepe; Diane Thompson; Bob Sussman; Brendan Gilfillan; David McIntosh; Arvin Ganesan; Scott Fulton  
**Cc:** Brendan Gilfillan; "Betsaida Alcantara" <alcantara.betsaida@epa.gov>; Adora Andy  
**Subject:** NY Times Story -- Must Read

All,

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Seth

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February 26, 2011

NEW YORK TIMES

# Regulation Is Lax for Water From Gas

# Wells

By [IAN URBINA](#)

The American landscape is dotted with hundreds of thousands of new wells and drilling rigs, as the country scrambles to tap into this century's gold rush – for [natural gas](#).

The gas has always been there, of course, trapped deep underground in countless tiny bubbles, like frozen spills of seltzer water between thin layers of shale rock. But drilling companies have only in recent years developed techniques to unlock the enormous reserves, thought to be enough to supply the country with gas for heating buildings, generating electricity and powering vehicles for up to a hundred years.

So energy companies are clamoring to drill. And they are getting rare support from their usual sparring partners. Environmentalists say using natural gas will help slow [climate change](#) because it burns more cleanly than coal and [oil](#). Lawmakers hail the gas as a source of jobs. They also see it as a way to wean the United States from its dependency on other countries for oil.

But the relatively new drilling method – known as high-volume horizontal hydraulic fracturing, or hydrofracking – carries significant environmental risks. It involves injecting huge amounts of water, mixed with sand and chemicals, at high pressures to break up rock formations and release the gas.

With hydrofracking, a well can produce over a million gallons of wastewater that is often laced with highly corrosive salts, carcinogens like benzene and radioactive elements like radium, all of which can occur naturally thousands of feet underground. Other carcinogenic materials can be added to the wastewater by the chemicals used in the hydrofracking itself.

While the existence of the toxic wastes has been reported, thousands of internal documents obtained by The New York Times from the [Environmental Protection Agency](#), state regulators and drillers show that the [dangers](#) to the environment and health are greater than previously understood.

The documents reveal that the wastewater, which is sometimes hauled to sewage plants not designed to treat it and then discharged into rivers that supply drinking water, contains radioactivity at levels higher than previously known, and far higher than the level that federal regulators say is safe for these treatment plants to handle.

Other documents and interviews show that many E.P.A. scientists are alarmed, warning that the drilling waste is a threat to drinking water in Pennsylvania. Their concern is based partly on a 2009 study, never made public, written by an E.P.A. consultant who concluded that some sewage treatment plants were incapable of removing certain drilling waste contaminants and were probably violating the law.

The Times also found never-reported studies by the [E.P.A.](#) and a [confidential study](#) by the drilling industry that all concluded that radioactivity in drilling waste cannot be fully diluted in rivers and other waterways.

But the E.P.A. has not intervened. In fact, federal and state regulators are allowing most sewage treatment plants that accept drilling waste not to test for radioactivity. And most drinking-water intake plants downstream from those sewage treatment plants in Pennsylvania, with the blessing of regulators, have not tested for radioactivity since before 2006, even though the drilling boom began in 2008.

In other words, there is no way of guaranteeing that the drinking water taken in by all these plants is safe.

That has experts worried.

"We're burning the furniture to heat the house," said John H. Quigley, who left last month as secretary of Pennsylvania's Department of Conservation and Natural Resources. "In shifting away from coal and toward natural gas, we're trying for cleaner air, but we're producing massive amounts of toxic wastewater with salts and naturally occurring radioactive materials, and it's not clear we have a plan for properly

handling this waste.”

The risks are particularly severe in Pennsylvania, which has seen a sharp increase in drilling, with roughly 71,000 active gas wells, up from about 36,000 in 2000. The level of radioactivity in the wastewater has sometimes been hundreds or even thousands of times the maximum allowed by the federal standard for drinking water. While people clearly do not drink drilling wastewater, the reason to use the drinking-water standard for comparison is that there is no comprehensive federal standard for what constitutes safe levels of radioactivity in drilling wastewater.

Drillers trucked at least half of this waste to public sewage treatment plants in Pennsylvania in 2008 and 2009, according to state officials. Some of it has been sent to other states, including [New York](#) and [West Virginia](#).

Yet sewage treatment plant operators say they are far less capable of removing radioactive contaminants than most other toxic substances. Indeed, most of these facilities cannot remove enough of the radioactive material to meet federal drinking-water standards before discharging the wastewater into rivers, sometimes just miles upstream from drinking-water intake plants.

In Pennsylvania, these treatment plants discharged waste into some of the state’s major river basins. Greater amounts of the wastewater went to the Monongahela River, which provides drinking water to more than [800,000 people](#) in the western part of the state, including Pittsburgh, and to the Susquehanna River, which feeds into Chesapeake Bay and provides drinking water to more than six million people, including some in Harrisburg and Baltimore.

Lower amounts have been discharged into the Delaware River, which provides drinking water for more than 15 million people in Philadelphia and eastern Pennsylvania.

In [New York](#), the wastewater was sent to two plants that discharge into Southern Cayuga Lake, near Ithaca, and Owasco Outlet, near Auburn. In [West Virginia](#), a plant in Wheeling discharged gas-drilling wastewater into the Ohio River.

“Hydrofracking impacts associated with health problems as well as widespread air and water contamination have been reported in at least a dozen states,” said Walter Hang, president of Toxics Targeting, a business in Ithaca, N.Y., that compiles data on gas drilling.

### **Problems in Other Regions**

While Pennsylvania is an extreme case, the [risks](#) posed by hydrofracking extend across the country.

There were more than 493,000 active natural-gas wells in the United States in 2009, almost double the number in 1990. Around 90 percent have used hydrofracking to get more gas flowing, according to the drilling industry.

Gas has seeped into underground drinking-water supplies in at least five states, including Colorado, Ohio, Pennsylvania, Texas and West Virginia, and residents blamed natural-gas drilling.

Air pollution caused by natural-gas drilling is a growing threat, too. Wyoming, for example, failed in 2009 to meet federal standards for air quality for the first time in its history partly because of the fumes containing benzene and toluene from roughly 27,000 wells, the vast majority drilled in the past five years.

In a sparsely populated Sublette County in Wyoming, which has some of the highest concentrations of wells, vapors reacting to sunlight have contributed to levels of ozone higher than those recorded in Houston and Los Angeles.

Industry officials say any dangerous waste from the wells is handled in compliance with state and federal laws, adding that drilling companies are recycling more wastewater now. They also say that hydrofracking is well regulated by the states and that it has been used safely for decades.

But hydrofracking technology has become more powerful and more widely used in recent years, producing far more wastewater. Some of the problems with this drilling, including its environmental impact and the challenge of disposing of waste, have been documented by ProPublica, The Associated Press and other news organizations.

And recent incidents underscore the dangers. In late 2008, drilling and coal-mine waste released during a drought so overwhelmed the Monongahela that local officials advised people in the Pittsburgh area to drink [bottled water](#). E.P.A. officials described the incident in an internal memorandum as "one of the largest failures in U.S. history to supply clean drinking water to the public."

In Texas, which now has about 93,000 natural-gas wells, up from around 58,000 a dozen years ago, a hospital system in six counties with some of the heaviest drilling said in 2010 that it found a 25 percent asthma rate for young children, more than three times the state rate of about 7 percent.

"It's ruining us," said Kelly Gant, whose 14-year-old daughter and 11-year-old son have experienced severe asthma attacks, dizzy spells and headaches since a compressor station and a gas well were set up about two years ago near her house in Bartonville, Tex. The industry and state regulators have said it is not clear what role the gas industry has played in causing such problems, since the area has had high air pollution for a while.

"I'm not an activist, an alarmist, a Democrat, environmentalist or anything like that," Ms. Gant said. "I'm just a person who isn't able to manage the health of my family because of all this drilling."

And yet, for all its problems, natural gas offers some clear environmental advantages over coal, which is used more than any other fuel to generate electricity in the United States. Coal-fired power plants without updated equipment to capture pollutants are a major source of radioactive pollution. Coal mines annually produce millions of tons of toxic waste.

But the hazards [associated](#) with natural-gas production and drilling are far less understood than those associated with other fossil fuels, and the regulations have not kept pace with the natural-gas industry's expansion.

### **Pennsylvania, Ground Zero**

Pennsylvania, which sits atop an enormous reserve called the Marcellus Shale, has been called the Saudi Arabia of natural gas.

This rock formation, roughly the size of Greece, lies more than a mile beneath the Appalachian landscape, from Virginia to the southern half of New York. It is believed to hold enough gas to supply the country's energy needs for heat and electricity, at current consumption rates, for more than 15 years.

Drilling companies were issued roughly 3,300 Marcellus gas-well permits in Pennsylvania last year, up from just 117 in 2007.

This has brought thousands of jobs, five-figure windfalls for residents who lease their land to the drillers and revenue for a state that has struggled with budget deficits. It has also transformed the landscape of southwestern Pennsylvania and brought heavy burdens.

Drilling derricks tower over barns, lining rural roads like feed silos. Drilling sites bustle around the clock with workers, some in yellow hazardous material suits, and 18-wheelers haul equipment, water and waste along back roads.

The rigs announce their presence with the occasional boom and quiver of underground explosions. Smelling like raw sewage mixed with gasoline, drilling-waste pits, some as large as a football field, sit close to homes.

Anywhere from 10 percent to 40 percent of the water sent down the well during hydrofracking returns to the surface, [carrying](#) drilling chemicals, very high levels of salts and, at times, naturally occurring radioactive material.

While most states require drillers to dispose of this water in underground storage wells below impermeable rock layers, Pennsylvania has [few such wells](#). It is the only state that has allowed drillers to discharge much of their waste through sewage treatment plants into rivers.

Regulators have theorized that passing drilling waste through the plants is safe because most toxic material will settle during the treatment process into a sludge that can be trucked to a landfill, and whatever toxic material remains in the wastewater will be diluted when mixed into rivers. But some plants were taking such large amounts of waste with high salt levels in 2008 that downstream utilities started complaining that the river water was eating away at their machines.

Regulators and drilling companies have said that these cases, and others, were isolated.

“The wastewater treatment plants are effective at what they’re designed to do – remove material from wastewater,” said Jamie Legenos, a spokeswoman for the Pennsylvania Department of Environmental Protection, adding that the radioactive material and the salts were being properly handled.

### **Overwhelmed, Underprepared**

For proof that [radioactive](#) elements in drilling waste are not a concern, industry spokesmen and regulators often point to the results of wastewater tests from a 2009 draft report conducted by New York State and a [1995 report](#) by Pennsylvania that found that radioactivity in drilling waste was not a threat. These two reports were based on samples from roughly 13 gas wells in New York and 29 in Pennsylvania.

But a review by The Times of more than 30,000 pages of federal, state and company records relating to more than 200 gas wells in Pennsylvania, 40 in West Virginia and 20 public and private wastewater treatment plants offers a fuller picture of the wastewater such wells produce and the threat it poses.

Most of the information was drawn from drilling reports from the last three years, obtained by visiting regional offices throughout Pennsylvania, and from [documents](#) or databases provided by state and federal regulators in response to records requests.

Among The Times’s findings:

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01268-EPA-4561

David  
McIntosh/DC/USEPA/US  
03/02/2011 08:49 PM

To Richard Windsor  
cc  
bcc

Subject Fw: From Greenwire -- COAL: Company concessions clear way for federal permit at W.Va. mine

(b) (5) Deliberative

-----Forwarded by David McIntosh/DC/USEPA/US on 03/02/2011 08:48PM

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To: David McIntosh/DC/USEPA/US@EPA  
From: David McIntosh/DC/USEPA/US@EPA  
Date: 03/02/2011 08:46PM  
Subject: From Greenwire -- COAL: Company concessions clear way for federal permit at W.Va. mine

**This Greenwire story was sent to you by:** mcintosh.david@epa.gov

**Personal message:**

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## **COAL: Company concessions clear way for federal permit at W.Va. mine (Wednesday, March 2, 2011)**

**Manuel Quinones, E&E reporter**

The Obama administration has approved a Clean Water Act permit for an underground coal project in Mingo County, W.Va., after the mine owner made several concessions aimed at enhancing water quality protections.

Consol of Kentucky's Spring Branch No. 3 mine was among dozens pulled for enhanced federal environmental reviews of mining projects under a 2009 interagency agreement between U.S. EPA, the Army Corps of Engineers and the Interior Department.

Although Spring Branch No. 3 is an underground mine, the original application called for significant surface disturbances that would result in stream damage.

Facing EPA objections, Consol significantly modified the project.

"It's EPA's position that this project has been substantially improved through significant new avoidance and minimization measures," EPA said in a Feb. 14 letter recommending that the Army Corps issue the permit.

The company agreed to reduce the surface damage from almost 57 acres to a little more than 19 acres. It also committed to lessen the impact on waterways and restore affected streams to

pre-project conditions. The modifications will reduce the amount of coal that Consol will extract to 2.77 million tons from 2.85 million tons.

"EPA appreciates the applicant's significant revisions that further avoid and minimize potential adverse environmental impacts associated with this mining operation," EPA wrote.

There are still 13 West Virginia and 16 Kentucky mining projects pending on the enhanced federal review list. Some companies have withdrawn applications. In Ohio and Tennessee, the permits have either been issued or the applications withdrawn.

Permits have generally been granted to projects in which companies have made concessions or proposed efforts to address EPA concerns.

Permits issued recently include Hobet Mining's Surface Mine No. 45 in Lincoln County, W.Va., and CoalMac's Pine Creek Surface Mine in Logan County, W.Va.

The industry contends the enhanced review procedures and other efforts to safeguard the environment are a serious overreach by the Obama administration ([Greenwire](#) , Jan. 24).

"Our top line view is that all of this activity is illegal," said National Mining Association spokeswoman Carol Raulston in a recent interview.

The trade group is challenging a new federal water pollution guidance, saying it is being enforced as if it were a final rule without going through a required public notice and comment period ([Greenwire](#) , July 20, 2010).

Mining companies are also still reeling from EPA's revocation of a federal permit for a large mountaintop-removal coal project, Arch Coal Inc.'s Spruce No. 1 mine in Logan County. EPA justified that decision, saying talks with the company failed to yield an agreement to substantially reduce environmental damage ([Greenwire](#) , Jan. 13).

St. Louis-based Arch Coal disputes that assertion.

"We undertook extensive and rigorous studies and translated those to our mine permit to ensure that the Spruce No. 1 mining operation will have minimal environmental impacts," the company said in a statement. "The Corps and EPA agreed in 2007 when the permit was first approved. The 13-year permitting process included the preparation of a full environmental impact statement, the first permit in the eastern coal fields to ever undergo such review."

Meanwhile, coal-state lawmakers from both sides of the aisle on Capitol Hill are supporting measures to block current and future enhanced regulatory efforts by federal agencies. They are also pushing to reinstate Arch Coal's permit ([E&E Daily](#) , March 2).

*Reporter Paul Quinlan contributed.*

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01268-EPA-4563

Paul Anastas/DC/USEPA/US  
03/03/2011 06:27 AM

To: Brendan Gilfillan, Richard Windsor, Bob Perciasepe, Diane Thompson, Seth Oster, Adora Andy, Betsaida Alcantara, Bob Sussman, Cynthia Giles-AA, Nancy Stoner, Shawn Garvin, Al Armendariz, Judith Enck, David McIntosh, Arvin Ganesan, "owens stephanie", "ealons dru"

cc

bcc

Subject: Re: NY TIMES: E.P.A. Struggles to Regulate Natural Gas Industry

(b) (5) Deliberative

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**From:** Brendan Gilfillan

**Sent:** 03/03/2011 06:06 AM EST

**To:** Richard Windsor; Bob Perciasepe; Diane Thompson; Seth Oster; Adora Andy; Betsaida Alcantara; Bob Sussman; Paul Anastas; Cynthia Giles-AA; Nancy Stoner; Shawn Garvin; Al Armendariz; Judith Enck; David McIntosh; Arvin Ganesan; owens.stephanie@epa.gov; ealons.dru@epa.gov

**Subject:** NY TIMES: E.P.A. Struggles to Regulate Natural Gas Industry

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**From:** Brendan Gilfillan (b) (6) Personal Privacy

**Sent:** 03/03/2011 05:58 AM EST

**To:** Brendan Gilfillan

## E.P.A. Struggles to Regulate Natural Gas Industry

By **IAN URBINA**

When Congress considered whether to regulate more closely the handling of wastes from oil and gas drilling in the 1980s, it turned to the [Environmental Protection Agency](#) to research the matter. E.P.A. researchers concluded that some of the drillers' waste was hazardous and should be tightly controlled.

But that is not what Congress heard. Some of the recommendations concerning oil and gas waste were eliminated in the final report handed to lawmakers in 1987.

"It was like the science didn't matter," Carla Greathouse, the author of the study, said in a recent interview. "The industry was going to get what it wanted, and we were not supposed to stand in the way."

E.P.A. officials told her, she said, that her findings were altered because of pressure from the Office of Legal Counsel of the White House under [Ronald Reagan](#). A spokesman for the E.P.A. declined to comment.

Ms. Greathouse's experience was not an isolated case. More than a quarter century of efforts by some lawmakers and regulators to force the federal government to police the industry better have been thwarted, as E.P.A. studies have been repeatedly narrowed in scope, and important findings have been removed.

For example, the agency had planned to call last year for a moratorium on the

gas-drilling technique known as hydrofracking in the New York City watershed, according to internal documents, but the advice was removed from the publicly released [letter](#) sent to New York.

Now some scientists and lawyers at the E.P.A. are wondering whether history is about to repeat itself, as the agency undertakes a broad new study of [natural gas](#) drilling and its potential risks, with preliminary results scheduled to be delivered next year.

The documents show that the agency dropped [plans](#) to study radioactivity in drilling wastewater being discharged by treatment plants into rivers upstream from drinking water intake plants. And in Congress, members from drilling states like Oklahoma have [pressured](#) the agency to keep the focus of the new study narrow.

They have been helped in their lobbying efforts by a compelling storyline: Cutting red tape helps these energy companies reduce the nation's dependence on other countries for fuel. Natural gas is also a cleaner-burning alternative to coal and plentiful within United States borders, so it can create jobs.

But interviews with E.P.A. scientists, and confidential documents obtained by The New York Times, show long and deep divisions within the agency over whether and how to increase regulation of oil and gas drillers, and over the enforcement of existing laws that some agency officials say are clearly being violated.

Agency lawyers are in a heated debate over whether to intervene in Pennsylvania, where drilling for gas has increased sharply, to stop what some of those lawyers say is a clear violation of federal pollution laws: drilling waste [discharged](#) into rivers and streams with minimal treatment. The outcome of that dispute has the potential to halt the breakneck growth of drilling in Pennsylvania.

The E.P.A. has taken strong stands in some places, like Texas, where in December it overrode state regulators and intervened after a local driller was suspected of water contamination. Elsewhere, the agency has pulled its punches, as in New York.

Asked why the [letter](#) about hydrofracking in the New York City watershed had been [revised](#), an agency scientist who was involved in writing it offered a one-word explanation: "politics."

Natural gas drilling companies have major exemptions from parts of at least seven of the 15 sweeping federal environmental laws that regulate most other heavy industries and that were written to protect air and drinking water from radioactive and hazardous chemicals.

Coal mine operators that want to inject toxic wastewater into the ground must get permission from the federal authorities. But when natural gas companies want to inject chemical-laced water and sand into the ground during hydrofracking, they do not have to follow the same rules.

The air pollution from a sprawling steel plant with different buildings is added together when regulators decide whether certain strict rules will apply. At a natural gas site, the toxic fumes from various parts of it — a compressor station and a storage tank, for example — are counted separately rather than cumulatively, so many overall gas well operations are subject to looser caps on their emissions.

### **An Earlier Reversal**

The E.P.A. also studied hydrofracking in 2004, when Congress considered whether the process should be fully regulated by the Safe Drinking Water Act.

An early draft of the study discussed potentially dangerous levels of contamination in hydrofracking fluids and mentioned "possible evidence" of contamination of an aquifer.

The final version of the report excluded these points, concluding instead that hydrofracking “poses little or no threat to drinking water.”

Shortly after the study was released, an E.P.A. whistleblower said the agency had been strongly influenced by industry and political pressure. Agency leaders at the time stood by the study’s findings.

“It was shameful,” Weston Wilson, the E.P.A. whistleblower, said in a recent interview about the study. He explained that five of the seven members of that study’s peer review panel were current or former employees of the oil and gas industry.

“The study ended up being the basis for this industry getting yet another exemption from federal law when it should have resulted in greater regulation of this industry,” Mr. Wilson added.

Some E.P.A. scientists say this pattern may be playing out again in the [national study](#) of hydrofracking that Congress will consider as it decides whether drillers will have to operate under stricter rules.

Internal documents from [early](#) meetings, obtained through public-records requests filed by The Times and provided by E.P.A. officials who are frustrated with how research is being handled, show agency field scientists demanding that certain topics be included in the study. And [earlier versions](#) of the research [plan](#) indicate that many of those topics were to be included.

For example, the study was to consider the dangers of toxic fumes released during drilling, the impact of drilling waste on the food chain and the risks of this [radioactive](#) waste to workers.

But many of these concerns, cited by field scientists in earlier documents as high priorities, were cut from the [current study plan](#), according to a version of it made public on Feb. 8.

Earlier planning documents also called for a study of the risks of contaminated runoff from landfills where drilling waste is disposed and included detailed [plans](#) to model whether [rivers](#) can sufficiently dilute hazardous gas-well wastewater discharged from treatment plants.

These topics were cut from the current study plan, even though E.P.A. officials have acknowledged that sewage treatment plants are not able to treat drilling waste fully before it is discharged into rivers, sometimes just miles upstream from drinking water intake plants.

In interviews, several agency scientists and consultants, who declined to be named for fear of reprisals, said the [study](#) was narrowed because of pressure from industry and its allies in Congress, as well as budget and time constraints.

Brendan Gilfillan, an agency spokesman, said that the plan remained broad and that the agency had taken additional steps to investigate the impacts of drilling, including recently issuing a subpoena against the energy services company [Halliburton](#) to force the company to provide fuller disclosure about its drilling operations.

Federal scientists also say the national study is being used to squelch other research by the E.P.A. on hydrofracking. At a January meeting in Washington, Jeanne Briskin of the [E.P.A.’s Office of Research and Development](#) informed regional directors that the national study would be the [only forum](#) for research on hydrofracking.

This meant, these scientists said, that some projects under way in regional offices would probably have to be stopped.

“That may impact our plans to pursue some of the other research,” wrote Ron Landy,

regional science liaison of E.P.A. Region 3, in an e-mail to another agency official in January in which he complained about the new directive.

He suggested that until the directive was lifted, his staff should keep quiet about its continuing hydrofracking research and instead emphasize its work on coal to superiors.

"I think we can go ahead, but keep the focus on mining, and prepare for moving these efforts into hydraulic fracking once these limitations are lifted," Mr. Landy wrote.

Though the E.P.A. has emphasized the importance of openness and public involvement in the study, internal e-mails show agency officials expressing concern about the reaction if the public were to learn of the narrowing scope of the study.

In those e-mails, these officials strongly discourage anyone from putting anything in writing about the national study unless it is vetted by managers.

In one e-mail, forwarded to The Times by David Campbell, director of the E.P.A. Region 3 Office of Environmental Innovation, described the instructions he had been given by the agency's regional administrator, Shawn M. Garvin.

"He could not have been more adamant or clear about the development of any documentation related to our efforts on Marcellus," Mr. Campbell wrote last December, referring to the Marcellus Shale, a gas-rich rock formation that stretches under Pennsylvania and other states. "His concern is that if we spell out what we think we want to do (our grandest visions) that the public may have access to those documents and challenge us to enact those plans."

Mr. Gilfillan, the E.P.A. spokesman, said the e-mail exchange — which was shown to him for comment — did not reflect the agency's efforts to understand the impacts of natural gas extraction better.

But in interviews, agency scientists and lawyers said Mr. Garvin's office had been most resistant to stepping up its regulatory role in Pennsylvania.

These scientists and lawyers said that high-level agency officials in Washington had made it clear in meetings that some of the resistance to more rigorous enforcement was also coming from members of the environmental and energy staff at the White House. Clark Stevens, a spokesman for the White House, rejected these assertions and argued that the Obama administration had taken "unprecedented steps" to study the impacts of natural gas drilling.

### **Support in Washington**

In its efforts to oppose new federal regulations, the oil and gas industry has found strong allies in Congress to lobby the agency about its current research.

"I am confident this study, if truly focused on hydraulic fracturing," wrote Senator Tom Coburn, Republican of Oklahoma, last April to the E.P.A. administrator, Lisa P. Jackson, "will prove the process indisputably safe and acceptable."

Last September, Senator James M. Inhofe, also a Republican from Oklahoma, wrote to agency officials to offer his guidance about who should be allowed to review the research.

"We caution against potential panelists who have been longtime critics of hydraulic fracturing," he wrote in a letter.

Over their careers, the two lawmakers from Oklahoma, a major drilling state, have been among the Senate's top 20 recipients of oil and gas campaign contributions, according to federal data.

The oil and gas industry has not hesitated to convey its views to the agency about the study now under way, frequently quoting the language used in 2010 by a Congressional

committee, which urged the E.P.A. "to carry out a study on the relationship between hydraulic fracturing and drinking water."

In one [comment](#) submitted to the agency, Chad Bradley, a lobbyist for [Chesapeake Energy](#), criticized the E.P.A., saying it was going beyond its "mandate" from Congress, adding new topics resulting in "mission creep."

Virtually all of the companies [echoed](#) his comments.

But Representative [Maurice D. Hinchey](#), Democrat from New York, who wrote the original language, said his words were being taken out of context. He added that the E.P.A. had full jurisdiction to study other risks from hydrofracking, like air quality or toxic waste being discharged into rivers.

"The language I authored does not at all limit the scope of the E.P.A.'s study, rather it sets forth the minimum that Congress expects," he added. "Any assertion otherwise by industry is a blatant attempt to misrepresent Congress's intentions."

The [argument](#) over the scope of the study will affect whether certain exemptions for the oil and gas industry will remain intact.

These exemptions have led to conflicting impulses in Washington for a long time. For example, [Carol M. Browner](#), the E.P.A. administrator in the first Clinton administration, has argued both for and against these sorts of exemptions.

"Whatever comes out of the ground, you don't have to test it, you don't have to understand what's in it, you can dump it anywhere," Ms. Browner, said in a 1997 interview on "60 Minutes," discussing exemptions for toxic wastes from the oil industry, which also apply to natural gas drillers.

"That's how broad the loophole is," she added at the time (her office declined to answer questions about those comments). "There's nothing like it in any environmental statute. Congress should revisit this loophole."

And yet, Ms. Browner, who announced in January that she was stepping down as [President Obama's](#) top adviser on energy and [climate change](#), has also been a strong supporter over the years of natural gas drilling. For example, she helped ensure in 1995 that hydrofracking would not be covered by certain parts of the Safe Drinking Water Act.

### **Exemptions Stymie E.P.A.**

The natural gas drilling boom is forcing the E.P.A. to wrestle with questions of jurisdiction over individual states and how to police the industry despite its extensive exemptions from federal law.

In Wyoming, for example, the agency is investigating water-well contamination in an area of heavy drilling, even though some within the E.P.A. said in interviews that because of industry exemptions, the agency might not have powers to conduct such an investigation.

In Texas, after an aquifer was contaminated, E.P.A. officials in December ordered a drilling company to provide clean drinking water to residents despite strong resistance from state regulators who said the federal action was premature and unfounded.

The stakes are particularly high in Pennsylvania, where gas drilling is expanding quickly, and where E.P.A. officials say [drilling waste](#) is being discharged with inadequate treatment into rivers that provide drinking water to more than 16 million people.

Drillers throughout the country are watching Pennsylvania to see whether the federal agency will overrule the state's decisions on how to dispose of drilling waste.

The central question on this issue: Should drillers in Pennsylvania be allowed to dump

**“mystery liquids” into public waterways?**

Under federal law, certain basic rules govern sewage treatment plants. At their core, these rules say two things: operators have to know what is in the waste they receive, and they have to treat this waste to make it safe before discharging it into waterways.

But in Pennsylvania, these rules are being broken, according to some E.P.A. lawyers.

“Treatment plants are not allowed under federal law to process mystery liquids, regardless of what the state tells them,” explained one E.P.A. lawyer in an internal draft memo obtained by The Times. “Mystery liquids is exactly what this drilling waste is, since its ingredient toxins aren’t known.”

This fact has led to a heated fight within the E.P.A.

Some agency lawyers say the state is not policing treatment plants properly in some instances and is acting beyond its authority in others — allegations that state officials reject.

These lawyers are calling for the E.P.A. to revoke, at least temporarily, Pennsylvania’s right to give treatment plants operating permits to handle drilling waste. Last year, state regulators created their own pretreatment standards for plants handling this waste, even though these regulators lacked federal permission to do so, agency lawyers say.

E.P.A. scientists working on the agency’s national hydrofracking study have also emphasized that sewage treatment plants are not, technically speaking, treating the waste.

For example, when one agency scientist wrote in a draft plan for the national study that wastewater could be “discharged to surface water after treatment to remove contaminants,” another scientist corrected the statement in the margin.

Using the federal definition of treatment, the second scientist wrote, “we really don’t fully treat the waste.”

Nevertheless, the E.P.A. Region 3 office, which oversees Pennsylvania, has staunchly resisted calls from agency lawyers to order the state to stop issuing permits to treatment plants handling drilling waste.

“The bottom line is that under the Clean Water Act, dilution is not the solution to pollution,” the enforcement lawyer wrote. “Sewage treatment plants are legally obligated to treat, not dilute, the waste.”

“These plants are breaking the law,” the lawyer said. “Everyone is looking the other way.”

01268-EPA-4564

**Bob Perciasepe/DC/USEPA/US**  
03/03/2011 07:58 AM

To Bob Sussman  
cc David McIntosh, Michael Goo, Richard Windsor  
bcc

Subject Re: Very Rough "2020" Frame

Bob:

(b) (5) Deliberative  
[Redacted]

[Redacted]

Bob Perciasepe  
Deputy Administrator

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(c) +1 (b) (6) Personal Privacy

Bob Sussman (b) (5) Deliberative 03/03/2011 07:14:32 AM

From: Bob Sussman/DC/USEPA/US  
To: Bob Perciasepe/DC/USEPA/US@EPA  
Cc: David McIntosh/DC/USEPA/US@EPA, Michael Goo/DC/USEPA/US@EPA, Richard Windsor/DC/USEPA/US@EPA  
Date: 03/03/2011 07:14 AM  
Subject: Re: Very Rough "2020" Frame

(b) (5) Deliberative  
[Redacted]

Bob Perciasepe Administrator: 03/02/2011 11:24:03 PM

From: Bob Perciasepe/DC/USEPA/US  
To: Richard Windsor/DC/USEPA/US@EPA, David McIntosh/DC/USEPA/US@EPA, Michael Goo/DC/USEPA/US@EPA, Bob Sussman/DC/USEPA/US@EPA  
Date: 03/02/2011 11:24 PM  
Subject: Very Rough "2020" Frame

Administrator:

(b) (5) Deliberative  
[Redacted]

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01268-EPA-4565

**Bob Sussman/DC/USEPA/US**

To Bob Perciasepe

03/03/2011 08:42 AM

cc David McIntosh, Michael Goo, Richard Windsor

bcc

Subject Re: Very Rough "2020" Frame

**(b) (5) Deliberative**

Robert M. Sussman  
Senior Policy Counsel to the Administrator  
Office of the Administrator  
(202)-564-7397  
US Environmental Protection Agency

Bob Perciasepe

**(b) (5) Deliberative**

03/03/2011 07:58:07 AM

From: Bob Perciasepe/DC/USEPA/US  
To: Bob Sussman/DC/USEPA/US@EPA  
Cc: David McIntosh/DC/USEPA/US@EPA, Michael Goo/DC/USEPA/US@EPA, Richard Windsor/DC/USEPA/US@EPA  
Date: 03/03/2011 07:58 AM  
Subject: Re: Very Rough "2020" Frame

Bob:

**(b) (5) Deliberative**

[Redacted]

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Bob Sussman

**(b) (5) Deliberative**

03/03/2011 07:14:32 AM

From: Bob Sussman/DC/USEPA/US  
To: Bob Perciasepe/DC/USEPA/US@EPA  
Cc: David McIntosh/DC/USEPA/US@EPA, Michael Goo/DC/USEPA/US@EPA, Richard Windsor/DC/USEPA/US@EPA  
Date: 03/03/2011 07:14 AM  
Subject: Re: Very Rough "2020" Frame

**(b) (5) Deliberative**

Bob Perciasepe

Administrator:

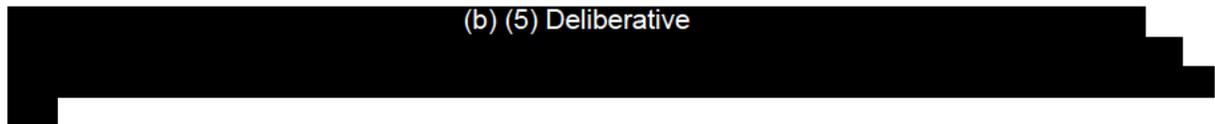
03/02/2011 11:24:03 PM

From: Bob Perciasepe/DC/USEPA/US  
To: Richard Windsor/DC/USEPA/US@EPA, David McIntosh/DC/USEPA/US@EPA, Michael Goo/DC/USEPA/US@EPA, Bob Sussman/DC/USEPA/US@EPA  
Date: 03/02/2011 11:24 PM  
Subject: Very Rough "2020" Frame

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Administrator:

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(c) +1 (b) (6) Personal Privacy attachment "2020.docx" deleted by Bob Sussman/DC/USEPA/US]

01268-EPA-4569

**Richard Windsor/DC/USEPA/US**  
03/03/2011 07:05 PM

To Betsaida Alcantara, Bob Perciasepe, Bob Sussman, Brendan Gilfillan, Adora Andy, Seth Oster, Paul Anastas, Nancy Stoner, Mathy Stanislaus, Steve Owens, Diane Thompson, Arvin Ganesan, David McIntosh, Daniel Kanninen

cc

bcc

Subject Re: Politico: The GOP's secret EPA love

Tx!

Betsaida Alcantara

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

**From:** Betsaida Alcantara  
**Sent:** 03/03/2011 07:04 PM EST  
**To:** Richard Windsor; Bob Perciasepe; Bob Sussman; Brendan Gilfillan; Adora Andy; Seth Oster; Paul Anastas; Nancy Stoner; Mathy Stanislaus; Steve Owens; Diane Thompson; Arvin Ganesan; David McIntosh; Daniel Kanninen  
**Subject:** Politico: The GOP's secret EPA love

The GOP's secret EPA love

[REDACTED]

For all their talk about the 'job-killing' EPA, Republicans have a dirty little secret.

By ROBIN BRAVENDER | 3/3/11 5:32 PM EST

[REDACTED]

Republicans have spent a lot of time this year criticizing the EPA, so one would think that President Barack Obama's proposal to cut \$1.3 billion from its budget would be well-received.

Not quite.

For all their talk about the "job-killing" EPA, Republicans have a dirty little secret: They actually like many of the agency's efforts, particularly bread-and-butter programs aimed at cleaning up drinking water and air pollution in their districts.

It's in those areas where Obama has suggested the most budget pain, putting Republicans in the position of defending EPA and accusing the White House of playing politics.

Sen. Jim Inhofe (R-Okla.), Washington's top climate skeptic and most vocal opponent of EPA regulations, took issue with the proposal to slash nearly \$1 billion from state revolving loan funds – cash that gets doled out to local drinking water and wastewater infrastructure projects.

"You can bet these cuts will be restored, because many of my colleagues believe these are worthwhile programs," Inhofe told EPA Administrator Lisa Jackson at a hearing Wednesday.

Inhofe also accused the administration of performing a "fiscal bait and switch" by proposing cuts to those well-liked programs instead of slashing programs "that don't deserve funding."

Rep. Mike Simpson (R-Idaho), who chairs the House appropriations subcommittee that includes EPA, said Obama is "either playing politics with his budget or this further illustrates that the EPA is simply out of touch."

The White House proposed cutting state revolving funds for clean water and drinking water projects by \$950 million from fiscal 2010 levels, which still would leave the EPA with \$2.5 billion to fund state and tribal infrastructure projects. Republicans proposed to cut nearly twice as much as the Obama administration – about \$2 billion – in the continuing resolution that passed the House last month.

That Obama might seek to dare lawmakers to cut programs they like is no surprise. Previous administrations often called for cuts to water infrastructure programs – which used to be highly earmarked – with confidence Congress wouldn't go along.

"In terms of voting records and public support, investments in water infrastructure are something that is able to rise above the traditional partisan discourse," said John Krohn, manager of legislative affairs at the National Association of Clean Water Agencies. That's in part because lawmakers get a lot of pressure from state regulators, local communities, conservation groups and others to keep the funds flowing home, he added.

Obama also took aim at one of Simpson's favorite programs – calling to cut \$60 million from an initiative that seeks to reduce diesel emissions from older vehicles.

"I question the rationale for some of the 2012 proposals, most notably eliminating diesel emissions reductions grants to retrofit old diesel engines while proposing to start new programs to regulate greenhouse gases," Simpson said at a hearing Thursday with Jackson. The diesel program had "clear, proven, quantifiable benefits" and "broad bipartisan support," Simpson added.

Inhofe, too, had some kind words for the diesel program. "When it comes to real pollution, such as sulfur dioxide and particulate matter, EPA's budget falls short," he said. He added that the diesel program has broad bipartisan support and would help reduce "real" pollutants.

The White House budget would also cut the interagency Great Lakes Restoration Initiative by \$125 million to \$350 million. The program – championed by Great Lakes lawmakers – is aimed at fighting invasive species and reducing pollution in the lakes.

Another one of the EPA's vocal critics in the House, Rep. Steve LaTourette (R-Ohio) lavished praise Thursday upon the agency's cleanup activities in the Great Lakes.

"On the issue of the Great Lakes, I want to commend the president," LaTourette said, going on to applaud the administration's efforts to "put real money behind the Great Lakes cleanup initiatives" through the interagency restoration program aimed at targeting invasive species and cleaning up pollution.

Democrats haven't embraced the cuts either, and Jackson had a tough time this week defending the proposals, telling House and Senate lawmakers the budget is a "tough, tough budget full of tough choices."

She noted that both the water infrastructure programs and the diesel retrofit program received funding under the stimulus program that's still being doled out.

Simpson wasn't thrilled with her response, however, noting that Republicans came under fire for proposing to cut funding to water infrastructure programs back to the 2008 funding level – a cut of about \$2 billion – in the 2011 continuing resolution.

"We were criticized as undermining and destroying the state revolving loan funds," he said, asking Jackson whether the EPA's fiscal 2012 proposal – which aims to cut those funds by about \$1 billion – would "destroy" the programs.

"Half as much as you," she joked, to general laughter in the hearing room.

"Is that your answer, so you are destroying it?" Simpson said.

"Destroying, I don't know what that word means," Jackson said, adding that the cuts were a "tough decision," but that the programs had been bolstered by the economic stimulus bill.

01268-EPA-4572

Michael Goo/DC/USEPA/US  
03/03/2011 11:31 PM

To Bob Perciasepe, Richard Windsor, Diane Thompson, David  
McIntosh, Bob Sussman  
cc  
bcc  
Subject Re: Utilities 2020

(b) (5) Deliberative

Bob Perciasepe

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

**From:** Bob Perciasepe

**Sent:** 03/03/2011 08:15 PM EST

**To:** Richard Windsor; Diane Thompson; David McIntosh; Bob Sussman; Michael

Goo

**Subject:** Utilities 2020

OK:

(b) (5) Deliberative

[attachment "20 2020.docx" deleted by Michael Goo/DC/USEPA/US]

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01268-EPA-4581

**Richard Windsor/DC/USEPA/US**  
03/08/2011 01:12 PM

To Gina McCarthy  
cc  
bcc

Subject Re: Ads on Power Plant Toxics

Tx

Gina McCarthy

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

**From:** Gina McCarthy  
**Sent:** 03/08/2011 10:28 AM EST  
**To:** Richard Windsor  
**Subject:** Fw: Ads on Power Plant Toxics

FYI

----- Forwarded by Gina McCarthy/DC/USEPA/US on 03/08/2011 10:28 AM -----

From: Paul Billings <PBillings@lungusa.org>  
To: Janice Nolen <JNolen@lungusa.org>, Gina McCarthy/DC/USEPA/US@EPA, Janet McCabe/DC/USEPA/US@EPA, Rob Brenner/DC/USEPA/US@EPA  
Cc: Peter Tsirigotis/RTP/USEPA/US@EPA, Michael Goo/DC/USEPA/US@EPA, David McIntosh/DC/USEPA/US@EPA, Lorie Schmidt/DC/USEPA/US@EPA, Peter Iwanowicz <PIwanowicz@lungusa.org>  
Date: 03/08/2011 07:57 AM  
Subject: Ads on Power Plant Toxics

---

Attached find our print ad from today's Roll Call it also running in CQ Daily this week

Below is an online version that is running this week as well



Paul Billings  
202-785-3355

**From:** Janice Nolen  
**Sent:** Monday, March 07, 2011 8:20 PM  
**To:** 'McCarthy.Gina@epamail.epa.gov'; 'mccabe.janet@epa.gov'; 'Brenner.Rob@epamail.epa.gov'  
**Cc:** 'Tsirigotis.Peter@epamail.epa.gov'; 'Goo.Michael@epamail.epa.gov';  
'McIntosh.David@epamail.epa.gov'; 'Schmidt.Lorie@epamail.epa.gov'; Paul Billings; Peter Iwanowicz  
**Subject:** Report on Utility Air Toxics Coming out tomorrow

Gina,

We are releasing tomorrow a report *Toxic Air: The Case for Cleaning Up Coal-fired Power Plants*, to help the public understand the long-overdue need to clean up emissions of hazardous air pollutants from coal-fired power plants in the electric grid. In addition, we are releasing the white paper that formed the basis of that report, *Emissions of Hazardous Air Pollutants from Coal-fired Power Plants*, prepared for us by Environmental Health & Engineering, Inc. in Boston. Both and the press release are attached. They can be accessed after 5 AM tomorrow from our website at [www.LungUSA.org/ToxicAirReport](http://www.LungUSA.org/ToxicAirReport). You will note that by coincidence, the lead researcher in the E H& E team is David MacIntosh, Sc.D. who is in no way related to the current member of EPA's esteemed team.

If you have questions, please let me, Paul Billings or Peter Iwanowicz know.

Thanks,  
Janice

Janice E. Nolen  
Assistant Vice President, National Policy and Advocacy  
American Lung Association  
1301 Pennsylvania Ave NW Suite 800  
Washington, DC 20004-1725  
P 202.785.3355 C 202.486.0285 F 202.452.1805  
jnolen@lungusa.org @lungassociation



[attachment "Toxic Report Ad rollcall 3811.pdf" deleted by Richard Windsor/DC/USEPA/US]

01268-EPA-4582

**Richard Windsor/DC/USEPA/US**  
03/08/2011 05:15 PM

To "Gina (Sheila) McCarthy"  
cc  
bcc

Subject Fw: The Kansas City Star - Former Kansas environmental official hired in Connecticut

Cool

Karl Brooks

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

**From:** Karl Brooks**Sent:** 03/08/2011 05:11 PM EST**To:** Richard Windsor**Subject:** Fw: The Kansas City Star - Former Kansas environmental official hired in Connecticut

Sounds like a good move for Rod, and for Conn.

Cheers

Karl

David Bryan

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

**From:** David Bryan**Sent:** 03/08/2011 12:46 PM CST**To:** Ben Washburn; Chelsey Derks; Christopher Whitley; Emily Barker; Hattie Thomas; Kris Lancaster; Martin Kessler; Rich Hood; Cecilia Tapia; David Cozad; John Smith; Josh Svaty; Karen Flournoy; Karl Brooks; Luetta Flournoy; Rebecca Weber; Rich Hood; Robertw Jackson; Ron Hammerschmidt; William Rice; Debbie Krings; Janette Lambert; Latonya Sanders; Sarah Hatch**Subject:** The Kansas City Star - Former Kansas environmental official hired in Connecticut

## Former Kansas environmental official hired in Connecticut

By **KAREN DILLON**  
The Kansas City Star

Roderick Bremby, the Kansas health and environment secretary who was fired in November by former Gov. Mark Parkinson, has a new job.

Bremby is the new head of Connecticut's Department of Social Services. Gov. Daniel Malloy announced the appointment at about 10 a.m. today, a spokeswoman said.

Bremby will get a raise to \$170,000 from \$107,000 a year.

In 2007, Bremby made national news when he denied Sunflower Electric Power Corp.'s permit application to build a coal-fired plant in western Kansas on grounds that it was a health risk. When Parkinson became governor, however, he made a deal to allow the Hayes-based Sunflower co-op to build a plant.

Late last summer, Sunflower complained that Bremby was slowing down a review of the new permit. On Nov. 2, Bremby was fired.

Gov. Malloy's spokeswoman Colleen Flanagan said Bremby begins his new duties on April 4. He will move to Connecticut.

Read more:

<http://www.kansascity.com/2011/03/08/2707291/former-kansas-environmental-official.html#ixz1G2FCJTM1>

David W. Bryan, APR  
Public Affairs Specialist  
Office of Public Affairs  
EPA Region 7  
901 N. 5th Street  
Kansas City, KS 66101  
913.551.7433, Fax: 913.551.7066  
bryan.david@epa.gov

01268-EPA-4583

**Richard Windsor/DC/USEPA/US**  
03/08/2011 05:15 PM

To Karl Brooks  
cc  
bcc

Subject Re: The Kansas City Star - Former Kansas environmental official hired in Connecticut

Tx!

Karl Brooks

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

**From:** Karl Brooks  
**Sent:** 03/08/2011 05:11 PM EST  
**To:** Richard Windsor

**Subject:** Fw: The Kansas City Star - Former Kansas environmental official hired in Connecticut

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David Bryan

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**From:** David Bryan  
**Sent:** 03/08/2011 12:46 PM CST

**To:** Ben Washburn; Chelsey Derks; Christopher Whitley; Emily Barker; Hattie Thomas; Kris Lancaster; Martin Kessler; Rich Hood; Cecilia Tapia; David Cozad; John Smith; Josh Svaty; Karen Flournoy; Karl Brooks; Luetta Flournoy; Rebecca Weber; Rich Hood; Robertw Jackson; Ron Hammerschmidt; William Rice; Debbie Kring; Janette Lambert; Latonya Sanders; Sarah Hatch

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913.551.7433, Fax: 913.551.7066  
bryan.david@epa.gov

01268-EPA-4584

Gina McCarthy/DC/USEPA/US

To Richard Windsor

03/08/2011 05:31 PM

cc

bcc

Subject Re: The Kansas City Star - Former Kansas environmental official hired in Connecticut

**(b)(6) Privacy**

Richard Windsor

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

**From:** Richard Windsor

**Sent:** 03/08/2011 05:15 PM EST

**To:** "Gina (Sheila) McCarthy" <mccarthy.gina@epa.gov>

**Subject:** Fw: The Kansas City Star - Former Kansas environmental official hired in Connecticut

Cool

Karl Brooks

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

**From:** Karl Brooks

**Sent:** 03/08/2011 05:11 PM EST

**To:** Richard Windsor

**Subject:** Fw: The Kansas City Star - Former Kansas environmental official hired in Connecticut

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bryan.david@epa.gov

01268-EPA-4585

**David  
McIntosh/DC/USEPA/US**  
03/09/2011 02:14 PM

To Richard Windsor, Diane Thompson, Bob Perciasepe, Michael  
Goo, Bicky Corman, Seth Oster, Scott Fulton, Bob Sussman,  
Arvin Ganesan

cc

bcc

Subject Southern Company

(b) (5) Deliberative



01268-EPA-4586

Richard Windsor/DC/USEPA/US  
03/09/2011 03:30 PM

To Stephanie Owens, Dru Ealons  
cc  
bcc

Subject Fw: Google Alert - EPA Lisa jackson

**(b) (5) Deliberative**

----- Forwarded by Richard Windsor/DC/USEPA/US on 03/09/2011 03:30 PM -----

From: **(b) (6) Personal Privacy**  
To: Richard Windsor/DC/USEPA/US@EPA  
Date: 03/09/2011 02:50 PM  
Subject: Fw: Google Alert - EPA Lisa jackson

Sent from my Verizon Wireless BlackBerry

**From:** Google Alerts <googlealerts-noreply@google.com>  
**Date:** Wed, 09 Mar 2011 19:33:04 +0000  
**To:** <**(b) (6) Personal Privacy**>  
**Subject:** Google Alert - EPA Lisa jackson

**Blogs** 1 new result for EPA Lisa jackson

[Why American people of faith support the EPA « Climate Progress](#)

By Guest

EPA Administrator **Lisa Jackson** is a Christian herself and has spoken of the “moral reasons” to be “good stewards of our environment.” She has helped people realize that faith communities and the EPA have more common ground than one ...

[Climate Progress - http://climateprogress.org/](http://climateprogress.org/)

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01268-EPA-4587

**Richard Windsor/DC/USEPA/US**  
03/09/2011 03:38 PM

To Stephanie Owens  
cc  
bcc

Subject Re: Google Alert - EPA Lisa jackson

Great

Stephanie Owens

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

**From:** Stephanie Owens  
**Sent:** 03/09/2011 03:37 PM EST  
**To:** Richard Windsor; Dru Ealons  
**Subject:** Re: Google Alert - EPA Lisa jackson

(b) (5) Deliberative

Richard Windsor

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

**From:** Richard Windsor  
**Sent:** 03/09/2011 03:30 PM EST  
**To:** Stephanie Owens; Dru Ealons  
**Subject:** Fw: Google Alert - EPA Lisa jackson

(b) (5) Deliberative

----- Forwarded by Richard Windsor/DC/USEPA/US on 03/09/2011 03:30 PM -----

**From:** (b) (6) Personal Privacy  
**To:** Richard Windsor/DC/USEPA/US@EPA  
**Date:** 03/09/2011 02:50 PM  
**Subject:** Fw: Google Alert - EPA Lisa jackson

Sent from my Verizon Wireless BlackBerry

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**Date:** Wed, 09 Mar 2011 19:33:04 +0000  
**To:** <(b) (6) Personal Privacy>  
**Subject:** Google Alert - EPA Lisa jackson

**Blogs** 1 new result for EPA Lisa jackson

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site:.edu). [Learn more](#).

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01268-EPA-4591

**Richard Windsor/DC/USEPA/US**  
03/10/2011 09:20 AM

To Seth Oster  
cc  
bcc

Subject Re: Dallas Observer: Toxic Avenger: In the War Between the Feds and Texas, EPA Chief Al Armendariz has Science on His Side. Is That Enough?

Yup

Seth Oster

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

**From:** Seth Oster  
**Sent:** 03/10/2011 09:17 AM EST  
**To:** Richard Windsor; Bob Perciasepe; Diane Thompson  
**Subject:** Fw: Dallas Observer: Toxic Avenger: In the War Between the Feds and Texas, EPA Chief Al Armendariz has Science on His Side. Is That Enough? Another profile on Al. He's going to need a bigger wall.

Seth

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

----- Forwarded by Seth Oster/DC/USEPA/US on 03/10/2011 09:16 AM -----

From: David Gray/R6/USEPA/US  
To: Adora Andy/DC/USEPA/US@EPA, Seth Oster/DC/USEPA/US@EPA, Betsaida Alcantara/DC/USEPA/US@EPA, Brendan Gilfillan/DC/USEPA/US@EPA  
Date: 03/10/2011 09:01 AM  
Subject: Dallas Observer: Toxic Avenger: In the War Between the Feds and Texas, EPA Chief Al Armendariz has Science on His Side. Is That Enough?

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The Dallas Observer profile on Al is out today. Here is a copy of the full story.

David

# Toxic Avenger: In the War Between the Feds and Texas, EPA Chief Al Armendariz has Science on His Side. Is That Enough?

By **Patrick Michels** Thursday, Mar 10 2011

There's a mob of environmentalists in the middle of the room before lunch, and it's not for the vegan seaweed salad.



Mark Graham

Raised in the shadow of Asarco's El Paso copper smelter, former SMU professor Al Armendariz was a long shot to run the EPA's regional office in Dallas. Now he's staring down Republican leadership in Austin in a fight over Texas' air.



Patrick Michels

At an environmental conference in February, Armendariz explains why the EPA stepped in over Governor Rick Perry's authority to regulate greenhouse gases. Texas is the only state that refused to begin regulating greenhouse gases like carbon dioxide this year; its power plants give off far more carbon dioxide than those of any other state.

It's a cool Friday in February, just minutes before this year's State of the Air conference, hosted by the clean-air advocate Air Alliance Houston, in a community center in the group's hometown. Buried in the scrum of suits is Dr. Al Armendariz, in a brown suit and a blue tie, schmoozing and passing business cards around, breaking his thoughtful gaze now and then with a wide, enthusiastic grin.

A little over a year ago Armendariz left his professorship at Southern Methodist University to lead the Environmental Protection Agency's regional office in Dallas. In so doing, he brought hope to hope-starved generations of Texas greens, folks who'd spent years confronting skeptical Texas legislators, watch-dogging regulators at the Texas Railroad Commission and Texas Commission on Environmental Quality, growing accustomed to the sense the state was selling its environmental policy down a hazy, toxic river. Never did they think they'd see so much authority rest with someone they trusted.

In their corner now was a man who'd scrapped over pollution controls with legislators, confirmed that natural gas drilling was a huge contributor to smog in North Texas when nobody else could, and risen, almost miraculously,

through their ranks to a place of federal authority to stand tough against Texas' most powerful global warming skeptics and industry pals.

Earlier this year, *Texas Monthly* named him one of their "25 Most Powerful Texans" and the *Houston Chronicle* called him "the most feared environmentalist in the state." Just before today's talk from the guy these environmentalists still affectionately call "Dr. Al," activist **Allison Silva**—who heads a group fighting a proposed coke-fired coal power plant in **Corpus Christi**—echoes a common sentiment about Armendariz for the crowd: "He's a rock star in my book."

Once he's up at the podium, alone with his slide show, he doesn't make for much of a rock star. His speech is measured. Each sentence starts off slowly until the whole thing is precisely formed in his head, and he can rush through the end of his thought.

Here's the man critics call a slick, power-grabbing bureaucrat, the guy trying to drive business out of the state, stammering and nervously rubbing his hands together. Here's that rock star, kicking off his **PowerPoint** with a nine-line legal disclaimer.

Here's the most feared environmentalist in Texas, telling a story about when he was just a kid in **El Paso**, surrounded by the arsenic-laced cloud of the **Asarco** copper smelter, one of the lucky ones among generations of children who, many studies later showed, were poisoned by the plant.

"You could taste the air," he recalls for the crowd. "Your throat would tingle with all the metals that were put into the air."

Armendariz has relatives who worked at the plant, and in the past, when speaking about his childhood, he's recalled how a few of them developed cancer and asthma after years of exposure, and the frustrating uncertainty about whether the smelter was to blame.

Today, though, he keeps it light for the crowd, recalling how his family moved around the country, back in the days when air quality rules were looser all around, first to Los Angeles when he was in first grade, and then to Houston for a year in the late 1970s before moving back to El Paso, where he graduated from high school.

"I tease my dad, we were doing the **Clean Air Act** tour," Armendariz says—the most he hams it up all afternoon. That "cocktail of exposure to air pollution" he describes stuck with him through his wild and wandering college years—his undergraduate degree in chemical engineering at the Massachusetts Institute of Technology, his master's and doctorate in environmental engineering, and a couple of gigs that followed, at **MIT's Center for Global Change Science and Radian Corp.** in North Carolina's **Research Triangle**.

In 2002, he returned to Texas to join the faculty at **SMU's Lyle School** of Engineering. He moved into a house in Lake Highlands, where he now lives with his wife, Cynthia, a second-grade teacher in **Irving**, and their two boys. He drives a **Ford Taurus** that can run on ethanol. "I always buy American cars," he's quick to point out.

When he moved to Dallas, Asarco's smelter in his hometown had been shuttered for three years. In 2002, though, the company began talking with TCEQ about reopening the facility, without even updating its permits. As Armendariz jokes with the crowd today, that's when he first considered applying to work at the EPA. "My plan was to try to be the regional administrator, shut down the Asarco smelter, quit and go back to SMU."

If only things had been that simple. In the year-plus since Armendariz took over EPA's Region 6—a six-state slice of the country he jokes includes "Texas and the states that border it"—the unassuming engineer has been cast as the enemy in **Governor Rick Perry's** war on Washington, as the long meddling arm of **President Obama's** job-killing federal government, as a tree-hugging arch-nemesis to business and states' rights interests.

In the last year's battle, the EPA has invalidated Texas-issued emissions permits, begun drafting a study of gas drilling operations and started regulating greenhouse gases like carbon dioxide for the first time. Along the way, they've drawn legal challenges from **Texas Attorney General Greg Abbott**—over the EPA's invalidation of Texas' Flexible Permitting Program (which let companies clump emissions from multiple sources into a single cap) and its mandate to regulate greenhouse gases—and from gas drillers targeted by the agency who say the state, through the RRC, ought to regulate them. Wrapped in a states' rights argument, Texas' approach has been lauded by **Republicans** in Congress where some members have suggested doing away with the EPA altogether.

Despite the political warfare raging around him, Armendariz tries to stay out of the headlines, confident that with science on his side, he can remain above the fray. Whether this smacks of naiveté from a political novice or diplomacy from a seasoned academic, the stakes for the environmental and business climate of the state couldn't be higher.



Patrick Michels

A calm, calculating type with an engineer's curious mind, Armendariz has developed a rock-star following among Texas environmentalists.



Zuma Press

Governor Perry says the state's been doing just fine without the federal government messing with Texas' air and industry. While Armendariz's appearance in the anti-drilling documentary Gasland helped raise his profile, it also drew complaints from critics of his close ties to activists.

Whether Armendariz is a regulatory rock star or a job-killing giant, his emergence out of the lab and into the political fray begins in October 2005, with a rare settlement between industry and clean-air groups. The North Texas air quality advocacy group Downwinders At Risk had just agreed to drop its opposition to Holcim Cement's expansion of its plant in **Midlothian**—the old "Cement Capitol of Texas" south of Dallas—so long as the company agreed to emissions controls and to spend \$2.25 million on other pollution-cutting projects outside the plant.

**Holcim** also agreed to pay for a scientist—chosen by Downwinders—to monitor its operation.

The group got about 15 applications for the job, recalls chairman **Jim Schermbeck**, but the one from SMU stood out. "You look at his résumé, and God—graduated from MIT, he's got all the credentials," Schermbeck remembers. "The problem was he had never been involved with anything like this before."

Armendariz had experience in air monitoring from industry, but not with cement kilns. Nevertheless, Schermbeck says, the Downwinders board went with Armendariz hoping he might prove to be someone they could work with in the future. "The discussion revolved around trying to grow local talent," Schermbeck says.

In the end, "It wasn't much of a jump," says **Becky Bornhorst**, another Downwinders chair. "The plant people liked him, they were very open with him; he could go out any time."

After a few months, Schermbeck says Armendariz began talking about all the pollution controls he thought were missing from the cement kiln. "I knew that if he picked up on that right away, that he was our guy," Schermbeck says. "We started leaning on him more." Armendariz joined Downwinders' support for a bill in the 2007 Texas Legislature that would pay for testing an emissions control technology called SCR at a Midlothian cement kiln. Armendariz recalls his first time negotiating his way through the capitol in Austin that spring. "It was interesting to see how difficult it is for common citizens to get meaningful relief, compared to how easy it is for special interests," Armendariz says, looking back. "I've decided that part of my job is to make sure that those people who don't have lobbyists have someone looking out for them."

Of all the possible introductions to Texas politics, there may be none less dignified than to step in front of the House **Committee on Environmental Regulation** to support new environmental regulations. Armendariz did that in mid-May, where the committee's chair **Dennis Bonnen**, an Angleton Republican, first grilled Armendariz over his name—"Armendiz," then "Armendariaz"—and then waltzed him down a tangent about how much Bonnen's car

might pollute if it had been made before 1985.

The bill made it through the Texas Senate, but died in the House at the end of the session. "He got his eyes opened a lot, and I think he got the bug then," Schermbeck recalls. "It was like there was something in him that was waiting to have the right fertilizer applied, and all of a sudden it started to grow."

Meanwhile, all around Midlothian, on the land above the **Barnett Shale** rock formation surrounding **Fort Worth**, the natural gas exploration boom was on. With thousands of new permit applications every year, the number of drilling rigs was skyrocketing, driven by new hydraulic fracturing technology that let drillers draw out pockets of gas tucked in places they couldn't reach before. Along the way, the industry sold natural gas as a domestic clean-energy cure-all, a solution to foreign entanglements over oil and one that burns twice as clean as coal. While the horror stories about flaming water taps, chronic asthma and nosebleeds were just beginning to trickle out from families that lived near drilling sites, it was clear the industry was growing fast—faster than TCEQ could enlist additional regulators to watch it. The commission admitted it didn't even have a firm count on the number of production wells operating in North Texas.

Meanwhile, the Austin office of the **Environmental Defense Fund**, a nationwide environmental group that studies climate change, was searching for a scientist to take a hard look at emissions from those oil and gas drilling operations, and found Armendariz.

"We were trying to find an academic in the **Dallas-Fort Worth** area who could do a real analysis," recalls **Jim Marston**, EDF's regional director for Texas. "We knew he cared about air issues too; we knew he was good at crunching numbers."

Adding up emissions from lots of little sources in the gas production chain—engine exhaust from gas compressors, vents from condensate tanks where the gas is separated at the surface, leaks from valves and pipe connections, and more—Armendariz figured just how much the operations polluted, in terms of smog-forming substances like nitrous oxide and volatile organic compounds, greenhouse gases and other toxins like benzene. They published the study in February 2009.

"I actually was skeptical that there was going to be a lot of emissions there," Marston says. "It was a big, big number. We were kinda shocked."

That number—165 tons of smog-forming compounds per day (TPD) from a five-county area around Fort Worth—is impressive next to the benchmark Armendariz compares it to in the report: All the car and truck traffic in that area including Fort Worth "was 121 TPD, indicating that the oil and gas sector likely has greater emissions than motor vehicles in these counties."

The gas drilling study is what made Armendariz a star—that, and his role in the **Oscar-nominated** documentary *Gasland*. In Dallas alone, anti-drilling activists have circulated copies of the study and the film to the city council while its members consider whether to permit gas drilling on city land. (The council's put off its vote until October, to allow for a study of possible health risks.)

*Gasland* covers director **Josh Fox's** cross-country road trip to gas drilling hot spots, from his home in Pennsylvania, west to **Wyoming** and back—including a stop in Texas where, waiting for Fox in his cluttered lab at SMU with a blue lab coat and a few days' stubble, is Armendariz.

Fox says Armendariz became a "**Wizard of Oz**" figure at the end of his road movie, one of the characters "who had the information, who understood a deeper reality than we could get just from talking to people."

In the film, Armendariz points out the cluster of gas drilling sites dotted on a map of the Fort Worth area, and explains why it's so tough to regulate emissions when each dot comes with a handful of separate tanks, compressors and drill rigs that all contribute to the pollution. "Each of those little sources is exempted from the Clean Air Act," he says.

"TCEQ had no idea how many gas wells were being put in and were in the ground around the city of Fort Worth," Armendariz tells Fox, before offering a warning for places where the industry's spreading next. "We've learned our lesson: You've got to stay on top of this. You've got to look at the issues as it's happening," he says. "Or it's just a big mess."

"It was kind of astounding that no one had done this before, that no one had added it up, and that the state wasn't adding it up," Fox says, and "It wasn't like I'm in some wacko lab in San Francisco. I'm at SMU, with a PhD who used to work for the natural gas industry."

In June, TCEQ announced the results of its own in-house study testing the veracity of Armendariz's numbers. Its results were roughly similar—gas production contributed as much pollution as auto traffic in that five-county area. "I was impressed that the TCEQ, who wanted to say he was wrong, weren't able to," Marston says. "And they've got

some pretty creative scientists."

But unlike Armendariz, TCEQ didn't believe these findings warranted any regulatory changes, because all the oil and gas production pollution was spread across rural areas, not packed in around cities like car exhaust. After it came out, Armendariz's study became as good as scripture for people around Fort Worth who'd been desperate to confirm something was up with their air, who'd grown frustrated that TCEQ and the RRC—which had a way of referring complaints about gas drilling back and forth to each other—weren't doing more to help. **Deborah Rogers**, who runs a goat dairy in north Fort Worth, says she'd been concerned when she learned in 2009 that **Chesapeake Energy** was putting in 12 wells on the land next to hers—one pad site up against her property line—because she'd read about pastures where gas drilling nearby had caused problems for the cattle. After the wells were in, Rogers decided to pay for some baseline testing of the air around her house. But the day they came out to test, one of the **Chesapeake** wells started flaring—burning up gas vented out the top—and the results of the test shocked her: benzene, toluene, sulfur compounds and other chemicals were all well represented. Rogers took the results to the TCEQ. "They told me I was the first person who had any data like that in North Texas near a gas drilling site," she recalls. But because the numbers were from just one site, on just one day, she says TCEQ told her there was nothing the commission could do. And the EPA told her its hands were tied because any enforcement action had to come from the state.

Rogers says she got a nosebleed while the well went on flaring, and on the fifth day of the flare, six of her chicks and a pair of young goats were found dead—likely from asphyxiation, her vet told her. Armendariz, she recalls, "was the only person who had done any kind of work on air emissions in the Barnett Shale." "I think he was very brave because he was one of the early ones too. We were all kind of lone voices in the wilderness."

Rogers arranged for Armendariz to test her air and turn the results over to UNT Health Science researchers to study what the results could mean for people breathing the air. She canvassed business friends in Fort Worth to help pay for the follow-up study, which turned up benzene and sulfur compounds.

"I used to be the most apolitical person you ever met, and now I'm a raging activist about this," Rogers says, but she recognizes it's a tough situation to understand until it happens to you. "If you're going to look at this, you've got to look at it in a cold hard scientific way. I don't see how you can say that there isn't a problem anymore. There's just too much data out there."

In fall 2009, TCEQ entered a new era of brash fed-scoffing, joining the upper ranks of Perry's states' rights PR machine, with the promotion of **TCEQ Commissioner Bryan Shaw** to chairman.

**Larry Soward**, a former commissioner whose six-year term ended at the same time, says he's noticed the shift since then. "It really rumbled below the surface until—well, until the end of my term," Soward says. "I think what you've seen in the last two to three years is a much more visible and vocal commission...consistent with the governor's increased vocalness over the federal government intruding in the state."

As the EPA laid the groundwork for greenhouse gas regulations in every state—a move that Perry, the climate-change skeptic, has fought every step of the way—Shaw, an associate professor in Texas A&M's Biological and Agricultural Engineering department, testified, according to the minutes of his confirmation hearing, that he "does not believe the science is conclusive regarding human contributions to global warming."

A **Sunset Commission** review of the agency last year—one that environmental groups said had turned soft on the agency—called out TCEQ for lacking punitive follow-ups to enforcement orders or taking a long-term look at a polluter's historical compliance.

"It's unfortunate. The agency, for the most part, is a very scientific organization," Soward says, but the rhetoric from the top of the agency echoes down the chain of command. "I could get staff to agree with me privately on particular issues and policies, but when the majority of the commissioners took a different position, staff wasn't about to stick their heads out of the foxholes and get shot at," Soward says. "It sets the parameters in which the staff can operate."

With the EPA squared off against Texas—the only state in the country that refused to start regulating greenhouse gases—the stage was set for a showdown over Texas' air.

While ranks formed in Austin to fight the feds' efforts, the EPA was missing a local leader in Dallas, without a regional chief since January 2009 when the last administrator, Bush-appointed **Richard Greene**—a former mayor of **Arlington**—stepped down.

Armendariz says the job had already been in his sights for a year—since TCEQ commissioners voted unanimously to approve Asarco's permits to reopen its smelter in El Paso. "That was really at that point the motivating factor for me to find out what it would take to be regional administrator," he says.

Weeks before he got the appointment, the EPA threatened to invalidate Asarco's TCEQ-approved permits, and the company backed off reopening the smelter. They started talking about paying for site cleanup instead. Yet, Armendariz still pursued the job.

Schermbeck says when Armendariz first floated the idea past him, "I said, if you do that, I'll support you, thinking he didn't stand a chance in hell."

Typically, the regional administrator job would go to a politician like Greene. Schermbeck says he expected former Dallas Mayor **Laura Miller** to be a prime candidate, but says she wasn't interested. "[Armendariz] was not a member of the Democratic Party at all—that's what people don't understand who don't know him. He is not a party hack at all," Schermbeck says. "He really had no constituency other than us."

Not long after Obama appointed **Lisa Jackson** to the EPA's top job, she came to Dallas' EPA office to talk about the looming possibility that Texas would resist regulating greenhouse gases. Jackson, an engineer, made an off-hand request for suggestions to fill the open administrator job, Schermbeck recalls, "and I pulled out Al's résumé and a packet of stories about him and said, 'This guy right here.'"

Support for Armendariz gathered steam around the state's green activists, and when Armendariz got the nod in November 2009, "It was elation," Schermbeck says.

Folks from EDF and **Public Citizen** came up from Austin to join Downwinders and other Dallas-Fort Worth air quality groups for a party at J. Gilligan's, a brick-and-wood-paneled Irish bar in Arlington. With green balloons up around the neon beer signs, they gave Armendariz a send-off into the wilds of federal policy making. That night Downwinders gave Armendariz its "Agitator of the Year" award: a full-sized washing machine agitator painted gold. "The route to this office for him was so circuitous and so unusual," Schermbeck says, "people just really don't appreciate how rare getting somebody like him is."

At an environmental conference in February, Armendariz explains why the EPA stepped in over Governor Rick Perry's authority to regulate greenhouse gases. Texas is the only state that refused to begin regulating greenhouse gases like carbon dioxide this year; its power plants give off far more carbon dioxide than those of any other state.

A little more than a year since that party, the EPA has followed through on its threats to rule Texas' flexible air permits illegal and to regulate greenhouse gases. Smaller enforcement actions and an upcoming study on hydraulic fracturing's potential impact on water supplies have been further opportunities to raise hackles in Austin.

After the EPA's decision on Texas' flexible permitting program in June, Perry issued a statement calling it an "irresponsible and heavy-handed action," saying it would destroy a program that successfully cleaned the air and fostered business growth. The agency, he said, had been "blinded by its activist agenda."

"When politicians say things that are clearly erroneous and deserve a response, we will go on the record. But I don't see a tremendous amount of value in daily having a back and forth argument," Armendariz says. "I have too many important things to do and a limited period of time."

"When I started the job, I wasn't thinking at the time that we would necessarily be doing any of the greenhouse gas permitting for any of the states," Armendariz says—but last summer, he says, Texas officials made it clear they'd be putting up a fight.

A letter from Abbott and TCEQ Chairman Shaw to Armendariz and Jackson at the EPA spelled out Texas' take on greenhouse gas regulation last August, calling them "regulations that are plainly contrary to United States law," and saying the EPA's move was a threat "to usurp state enforcement authority and to federalize the permitting program of any state that fails to pledge their fealty to the Environmental Protection Agency."

Since then, Perry and his appointees at the TCEQ and RRC have made an organized sport of EPA-bashing, with all the nuances of a good drinking game.

In an e-mail reply to the *Observer*, a TCEQ spokesman says the EPA hasn't proved its decisions will do anything to improve air quality: "Environmental regulations must have some environmental benefit, and not just expand the power of the federal government," he writes. As for Armendariz himself, the TCEQ says "he has been very effective in ensuring that the majority of our differences are resolved in the courts."

On December 30, Abbott filed a legal challenge to the EPA's regulation of greenhouse gases in Texas, saying the agency was "unlawfully commandeering Texas' environmental enforcement program."

That adversarial approach to the EPA has been echoed lately in Congress, where Republican-led committees have brought in Abbott to praise his legal battle while grilling Jackson on the agency's decision—even mocking the concern over carbon dioxide, breathing heavily and suggesting that's what pollution looks like to the EPA. Texas congressmen like **Joe Barton**, **John Carter** and **Ted Poe** have come out strongly in efforts to explicitly remove carbon dioxide from the scope of the Clean Air Act.

Meanwhile, many of the environmentalists who'd been at Armendariz's send-off in Arlington say they haven't

spoken much with him in his new job. Marston, at the Texas EDF office, says he recognizes the irony in it, but partly because of ethics rules, "we never meet with him."

In the past, Armendariz hadn't shied away from calling himself an "activist" in the press, but he avoids the word today. "Activist is a very undefined and loose term. I very much am an environmentalist," he says. "Really how I see myself is really day-to-day as a law enforcement official."

While Armendariz has a new role today, Schermbeck is confident Armendariz is still the same guy. "He's got an inquisitive mind. He's curious," Schermbeck says. "I don't know how many engineers you've ever known, but Al's an *engineer*. He's better dressed lately, I have to give him that. He's not wearing plaid ties with plaid shirts anymore."

"He's the most affable fellow you've ever met....That's a good personality to have when you're right in the middle of the crossfire between Washington and Austin," Schermbeck continues. "When you actually see him, it's very hard to match the rhetoric they're spewing out of Austin with this guy."

Located in the sleek downtown Fountain Place high-rise downtown, EPA's Dallas office is one of 10 regional offices in the country, with 850 people working here under Armendariz. The digs are simple, comfortable, spread out over a few floors, outfitted like a dentist's office waiting room.

In a conference room attached to his office, Armendariz describes the agency's work in Texas with a quiet confidence, a calm, friendly sort of approach backed by his rock-solid trust in science and his authority from the federal government. "I'm not surprised that EPA became part of the states' rights, federalism kind of debate, although I am surprised at the degree to which state officials have taken that argument," he says, "because I think they're on the losing side of history on this issue."

The response out of Austin has been "hyperpolitical, hyperpartisan and very disconnected from the science," he says. "We're not trying to regulate carbon dioxide because it exists. We're trying to regulate it because there's too much of it in the atmosphere."

While Perry and the TCEQ argue that Texas has made huge strides in its air quality since the state took over regulating industry in 1992, Armendariz says that's a smokescreen. It's not state standards, but tighter federal regulations for things like car exhaust that have been responsible for the improvement, he says.

Meanwhile, according to an Environmental Integrity Project report, Texas led the country in carbon dioxide emissions from power plants in 2010—with more than the next two states combined. "It really is cleaning up a mess after it's already been made," Armendariz says.

"It is bizarre, because we have large state agencies which work on a lot of issues with my staff, hand-in-hand, and we do a lot of work together," Armendariz continues, "and yet the political leadership of the state of Texas, and the people who are running these agencies will make statements about climate change and greenhouse gases which are completely ignorant of science, and completely ignorant of the facts, and show absolutely no awareness of just some of the basic principles of physics and chemistry. I sometimes wonder how those people can be managing such large, science-driven agencies.

And yet Armendariz seems to prefer negotiation to confrontation. "When I talk to the plant managers, the chemical engineers, the folks who work in industry, we don't get into debates over the science," he says. "I think they really quickly realized that I wanted to be partners in that effort, and not simply drag them into court."

Armendariz says about 125 flexible permits got thrown out last summer with the EPA's decision, 40 or so from very big companies like **ConocoPhillips**, Eneos and **Chevron**. He says his office could've laid down some "very heavy-handed enforcement actions" they'd fight about in court, and "at the end of a year or two, or three, of fighting and screaming and adversarial relationships, we could have forced them to get new permits."

"For the companies that come in to talk to us, I do think that they need to get over the immediate rhetoric," Armendariz says, running down the list of the usual knocks against him—that he's an "activist" chumming around with radical greens, or a showboater against industry thanks to his turn in *Gasland*. "They come in with the perspective that I'm going to be very difficult to work with, and have a very aggressive agenda that they're not going to be able to manage...but they come and start working with us, and I think they find us to be pretty reasonable and pretty straightforward."

Companies that still rely on the EPA for their permits now are careful to be upbeat when asked for their opinion of Armendariz's tenure. When **Flint Hills Resources**, a Corpus Christi refiner, found itself needing a replacement for its Texas-issued flex permit last year, "all parties took a proactive, constructive approach," says **Jim Mahoney**, executive vice president at Flint Hills' parent company **Koch Industries**, in a permitting process that's still under

way.

In a January *Dallas Business Journal* story headlined "Greenhouse-gas battle proving costly to N. Tx.," **Art Martinez**, a director at Garland Power & Light, says he's been frustrated by the interruption in the permitting process. "It has taken so long to grant a permit for a small power plant that's been running for 50 years. There's been a lot of time and money spent on this," he told the journal.

Reached by phone a month later, though, spokeswoman **Elizabeth Kimbrough** sounds less concerned. "We're just sticking with the process and working with them on it," she says. "We've just been complying and submitting what we need to, and it's up to the TCEQ and the EPA."

One company that has opted to meet the EPA in court is Range Resources, a natural gas producer with operations in the Barnett Shale that prompted a federal suit from the **Department of Justice** after declining to follow an order from EPA to clean up its wells. After a pair of **Parker County** residents complained to Range officials and the RRC about methane-contaminated water—the infamous *Gasland* -style "flaming tap" from the well—they went to the EPA, which issued a 48-hour emergency order in December 2010 for the company to provide the residents clean drinking water and clean up its leaking wells.

Instead, the company has maintained the gas comes from an entirely different rock formation—above the Barnett Shale, where they'd been drilling—and thus couldn't have come from Range. A spokesman said they'd still been working with the **Railroad Commission** to examine the leaks, and that the EPA had jumped out ahead of the science.

Armendariz says the EPA's order was based on "a very rigorous set of data" that confirmed the methane was being produced by Range. Range officials told the *Fort Worth Star-Telegram* that Armendariz was showboating, and showed his bias when he went on TV to announce the order—a claim they've said was bolstered earlier this month, when an e-mail surfaced from Armendariz to a few activists, including Wilson and Schermbeck, letting them know about the "big news" coming up about Range. "Thank you both for helping to educate me on the public's perspective of these issues. And thank you all for your continued support and friendship," Armendariz writes.

Texas Railroad Commissioner and Republican **U.S. Senate** candidate **Michael Williams** piled on to the outcry, calling the EPA's move to step in over the RRC "Washington politics of the worst kind."

Given the opportunity to weigh in on Armendariz, industry groups that lobby for the companies he regulates hold back even less than officials in Texas. In a story for *E&E News*, an environmental and energy policy publication, the Texas Association of Business' **Steve Minick** offered a scathing opinion of Armendariz last August, saying that the administrator "destroys his credibility" when he suggests that industry in the state hasn't been effectively regulated under the TCEQ. "To say that industry has had its own way for decades is just absurd and naive," Minick told the paper.



**Mark Graham**

Raised in the shadow of Asarco's El Paso copper smelter, former SMU professor Al Armendariz was a long shot to run the EPA's regional office in Dallas. Now he's staring down Republican leadership in Austin in a fight over Texas' air.

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David  
McIntosh/DC/USEPA/US  
03/11/2011 08:08 AM

To windsor.richard  
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Subject Fw: From E&E Daily -- POLITICS: Democrats cry foul over  
GOP's attempts to tie fuel prices to EPA

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**Sent:** 03/11/2011 08:06 AM EST  
**To:** David McIntosh  
**Subject:** From E&E Daily -- POLITICS: Democrats cry foul over GOP's attempts to tie fuel prices to EPA

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Speaker John Boehner (R-Ohio) amplified the GOP gambit as he laid out a new project, dubbed the American Energy Initiative, calling for more domestic fossil-fuel production, new nuclear power plants and an end to EPA's authority over greenhouse gases. While the Republican message had percolated all week, Boehner's decision to spotlight the anti-EPA bill now sailing through the House Energy and Commerce Committee gave the gas-price charge a far broader platform.

The administration's offshore oil-production policies and regulation of greenhouse gases, Boehner said yesterday, represent a systematic hit to economic growth. "If the White House has its way -- and the EPA imposes a backdoor national energy tax -- gas prices will only go higher," the Ohioan told reporters.

Energy and Commerce Chairman Fred Upton (R-Mich.) began invoking the effect of EPA emissions rules on fuel prices earlier this week, citing cost estimates from a 2009 study of the now-defunct House climate change bill (*E&E Daily*, March 9). But Democrats were still perplexed by the elevation of that argument, with several accusing the GOP of stretching the boundaries of logic to serve its political goals.

"If they could fool people into believing there's a connection, I think they would gain some political mileage, but it's all deceptive," said Rep. Henry Waxman of California, the Energy and Commerce panel's top Democrat and a chief author of that 2009 climate bill. "There's no connection to EPA regulating greenhouse gases for certain stationary sources by requiring them to be more efficient and the price of gasoline."

In fact, Waxman added, large-scale emitters are more likely to reduce their fuel consumption in response to the EPA regulations, saving industry more money. Another senior Energy and Commerce Democrat, Rep. Jay Inslee of Washington, raised similar points by billing the emissions rules as "incentives for industry to make investments" in efficiency -- with no direct effect on gas

prices.

"We're locked into higher oil prices, and the only way to get off of it is finding efficiencies," Inslee said in an interview.

As for Republicans' chances of scoring politically with their new strategy, Inslee quipped: "You can repeal the Clean Air Act. You can't repeal the First Law of Thermodynamics. You can't repeal the law of supply and demand. ... People realize there are much bigger forces on gas prices than the Republican caucus."

Senate Environment and Public Works Chairwoman Barbara Boxer (D-Calif.) appeared nonplussed upon hearing about the Republican strategy.

"They're ignoring the political upheaval in the Middle East and the fact that we're not moving fast enough to alternative fuels and clean vehicles," she said. Of the 2009 study employed by House Republicans, she added: "It's funny that they're blaming a law that didn't pass for high gas prices." Yet the rhetoric was not confined to the House side of the Capitol. The ranking Republican on Boxer's panel, Sen. James Inhofe of Oklahoma, delivered a floor speech blaming the White House for rising gas prices and dismissing the impact of recent unrest in the Middle East.

"[A] lot of people are saying that the gas prices that are going up are a result partially of what's happening over there," Inhofe said. "That isn't the real problem. The real problem is a political problem."

Several Democrats, however, found problems with the factual basis of the relationship between gas prices and greenhouse gas emissions limits that would apply to refineries and power plants starting in 2012. Rep. Emanuel Cleaver (D-Mo.), for one, termed the argument "bizarre."

"It reminds me of somebody who ate a hamburger and then ends up catching pneumonia and then says, 'Hamburgers cause pneumonia,'" Cleaver said.

EPA did not respond to requests for comment last night.

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In some cases, Whitfield said there is not even technology available to deal with new EPA mandates. "The additional costs that they would have to go through and investments they would have to be making to try to start complying would increase the price of gasoline," he said.

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Rep. Ed Markey (D-Mass.), the co-sponsor of the climate change bill that passed the House two years ago, said flatly, "the EPA has not done anything to increase gas prices."

That's a point Whitfield acknowledged as well.

"I'm not saying it's contributing to it right now, because the regulations haven't been finalized but we're talking down the road," he said.

Markey dismissed the GOP argument as a distraction from larger issues like the unrest in the Middle East, which is influencing American energy prices.

"Instead of focusing on Gaddafi and the other Middle East dictators, they have decided just to use it as a way of engaging in partisan political finger pointing, and I just think they have no credibility," Markey said.

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Subject Re: From E&E Daily -- POLITICS: Democrats cry foul over  
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*Reporters Jean Chemnick, Katie Howell, Jeremy P. Jacobs, Hannah Northey and John McArdle contributed.*

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01268-EPA-4598

Susan Hedman/R5/USEPA/US

To Richard Windsor

05/18/2011 01:06 PM

cc  
bcc

Subject Re: Talking Points for conversation with Chicago Mayor

Will do.

Richard Windsor

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

**From:** Richard Windsor

**Sent:** 05/18/2011 12:59 PM EDT

**To:** hedman.susan@epa.gov

**Subject:** Fw: Talking Points for conversation with Chicago Mayor

(b) (5) Deliberative  
[Redacted]

----- Forwarded by Richard Windsor/DC/USEPA/US on 05/18/2011 12:56 PM -----

**From:** Susan Hedman/R5/USEPA/US  
**To:** Richard Windsor/DC/USEPA/US@EPA  
**Cc:** "Sarah Pallone" <pallone.sarah@epa.gov>, Janet Woodka/DC/USEPA/US@EPA  
**Date:** 05/18/2011 12:53 PM  
**Subject:** Talking Points for conversation with Chicago Mayor

(b) (5) Deliberative  
[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED] (b) (5) Deliberative [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

01268-EPA-4599

**Judith Enck/R2/USEPA/US**

05/26/2011 09:03 AM

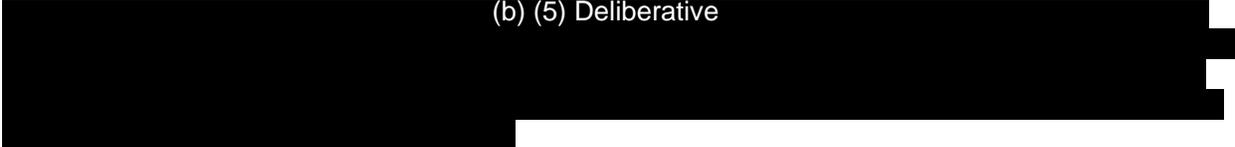
To "Richard Windsor", "Lisa Plevin", thompson.diane, oster.seth

cc

bcc

Subject Nj to leave rggi

(b) (5) Deliberative



Sent by EPA Wireless E-Mail Services

01268-EPA-4600

**Richard Windsor/DC/USEPA/US**  
05/26/2011 09:11 AM

To Seth Oster, Judith Enck, Lisa Plevin, "Diane Thompson", "Brendan Gilfillan"  
cc  
bcc

Subject Re: Nj to leave rggi

(b) (5) Deliberative

Seth Oster

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

**From:** Seth Oster  
**Sent:** 05/26/2011 09:06 AM EDT  
**To:** Judith Enck; Richard Windsor; Lisa Plevin; "Diane Thompson" <thompson.diane@epa.gov>; "Brendan Gilfillan" <gilfillan.brendan@epa.gov>  
**Subject:** Re: Nj to leave rggi

(b) (5) Deliberative

Seth  
Judith Enck

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

**From:** Judith Enck  
**Sent:** 05/26/2011 09:03 AM EDT  
**To:** Richard Windsor; Lisa Plevin; thompson.diane@epa.gov; oster.seth@epa.gov  
**Subject:** Nj to leave rggi

(b) (5) Deliberative

Sent by EPA Wireless E-Mail Services

01268-EPA-4601

Lisa Plevin/R2/USEPA/US  
05/26/2011 09:12 AM

To Seth Oster  
cc "Brendan Gilfillan", Judith Enck, Richard Windsor, "Diane Thompson"  
bcc  
Subject Re: Nj to leave rggi

(b) (5) Deliberative

[Redacted]

Lisa J. Plevin  
Chief of Staff  
US EPA Region 2  
(212) 637-5000

Seth Oster (b) (5) Deliberative 05/26/2011 09:06:01 AM

From: Seth Oster/DC/USEPA/US  
To: Judith Enck/R2/USEPA/US@EPA, Richard Windsor/DC/USEPA/US@EPA, Lisa Plevin/R2/USEPA/US@EPA, "Diane Thompson" <thompson.diane@epa.gov>, "Brendan Gilfillan" <gilfillan.brendan@epa.gov>  
Date: 05/26/2011 09:06 AM  
Subject: Re: Nj to leave rggi

(b) (5) Deliberative

[Redacted]

Seth

Judith Enck

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

**From:** Judith Enck  
**Sent:** 05/26/2011 09:03 AM EDT  
**To:** Richard Windsor; Lisa Plevin; thompson.diane@epa.gov; oster.seth@epa.gov  
**Subject:** Nj to leave rggi

(b) (5) Deliberative

Sent by EPA Wireless E-Mail Services

01268-EPA-4602

**Richard Windsor/DC/USEPA/US**  
05/26/2011 09:13 AM

To Lisa Plevin, Seth Oster  
cc "Brendan Gilfillan", Judith Enck, "Diane Thompson"  
bcc  
Subject Re: Nj to leave rggi

Interesting to watch for you all I'm sure.  
Lisa Plevin

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

**From:** Lisa Plevin  
**Sent:** 05/26/2011 09:12 AM EDT  
**To:** Seth Oster  
**Cc:** "Brendan Gilfillan" <gilfillan.brendan@epa.gov>; Judith Enck; Richard Windsor; "Diane Thompson" <thompson.diane@epa.gov>  
**Subject:** Re: Nj to leave rggi

(b)(5) Deliberative  
[Redacted]

Lisa J. Plevin  
Chief of Staff  
US EPA Region 2  
(212) 637-5000

Seth Oster (b) (5) Deliberative 05/26/2011 09:06:01 AM

**From:** Seth Oster/DC/USEPA/US  
**To:** Judith Enck/R2/USEPA/US@EPA, Richard Windsor/DC/USEPA/US@EPA, Lisa Plevin/R2/USEPA/US@EPA, "Diane Thompson" <thompson.diane@epa.gov>, "Brendan Gilfillan" <gilfillan.brendan@epa.gov>  
**Date:** 05/26/2011 09:06 AM  
**Subject:** Re: Nj to leave rggi

(b) (5) Deliberative  
[Redacted]

Seth

Judith Enck

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

**From:** Judith Enck  
**Sent:** 05/26/2011 09:03 AM EDT  
**To:** Richard Windsor; Lisa Plevin; thompson.diane@epa.gov; oster.seth@epa.gov  
**Subject:** Nj to leave rggi

(b)(5) Deliberative  
[Redacted]

(b) (5) Deliberative

Sent by EPA Wireless E-Mail Services