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Congress of the United States

House of Representatives

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June 6, 2013

The Honorable Robert Perciasepe
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Acting Administrator Perciasepe:

Thank you for appearing before the Subcommittee on Energy and Power and the Subcommittee on Environment and the Economy on Thursday, May 16, 2013, to testify at the hearing entitled "The Fiscal Year 2014 Environmental Protection Agency Budget."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

Also attached are Member requests made during the hearing. The format of your responses to these requests should follow the same format as your responses to the additional questions for the record.

To facilitate the printing of the hearing record, please respond to these questions and requests by the close of business on Thursday, June 19, 2013. Your responses should be e-mailed to the Legislative Clerk in Word format at Nick.Abraham@mail.house.gov and mailed to Nick Abraham, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittees.

Sincerely,

Ed Whitfield
Chairman
Subcommittee on Energy and Power

John Shimkus
Chairman
Subcommittee on Environment
and the Economy

cc: The Honorable Bobby L. Rush, Ranking Member, Subcommittee on Energy and Power
The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment and the Economy

Attachments

Attachment 1—Member Requests for the Record

During the hearing, Members asked you to provide additional information for the record and you indicated that you would provide that information. For your convenience, descriptions of the requested information based on the relevant excerpts from the hearing transcript regarding these requests are provided below.

The Honorable Tim Murphy

1. With respect to EPA and FOIA fee waiver requests, I hope you will submit for the record the value of FOIA fees waived by EPA.

The Honorable Michael C. Burgess

1. Lisa Jackson went to the United Nations Conference on Sustainable Development, referred to as Rio+ 20. How much did we spend to send Lisa Jackson to Rio 20?

The Honorable Bill Cassidy

1. In October of 2011 the EPA Office of Underground Storage Tanks announced a proposed revision to the 1988 Federal Underground Storage Tank regulation, and industry stakeholders along with the Petroleum Marketers Association of America submitted comments. EPA estimated the compliance costs to be about $900 per year per facility while the petroleum marketers and others estimate true costs to be $6,100 per year. Now, of course, this concerns them, and they are requesting that the EPA withdraw the proposed rule, which is to be finalized in October of 2013, this year, and form a small business regulatory advisory panel to determine the true compliance costs. They tell me a letter was received from EPA, and the letter did not agree to the regulatory advisory panel. What are the true compliance costs? Is EPA reluctant to form an advisory or other committee to determine the true compliance costs?

The Honorable H. Morgan Griffith

1. In the case of the Clean Air Act, for consent decrees there is a statutory opportunity to comment before they are entered by the court. Does opportunity for public comment ever result in changes to a settlement? We are aware of only one instance involving technology and residual risk reviews for various sources where that has occurred. Can you get that information?

The Honorable John D. Dingell

1. I see that the President's fiscal year 2014 budget request for CERCLA or Superfund is $33 million less than for fiscal year 2012. Can CERCLA continue to fulfill its duties and its current cleanup responsibilities and obligations without slowing down significantly because of this reduction in funding?
   Would you submit some additional information on that issue, please, so that we may evaluate that more adequately?

Attachment 2—Additional Questions for the Record

The Honorable Ed Whitfield

1. Concerns have recently been raised that the EPA has engaged in a pattern of granting Freedom of Information Act (FOIA) fee waivers to environmental groups while denying fee waivers to conservative groups, and we understand that you have contacted the agency's Inspector General regarding conducting a programmatic audit to address these concerns.

   a. What is the status of this audit?

   b. What will be the scope of the audit?

   c. When will the audit be completed?

2. A FOIA-related situation has recently come to my attention that raises questions about whether the EPA may employ a similar practice when it comes to granting timely access to public records under the FOIA process. A case in point has arisen out of Louisiana, where an advocacy group, the Louisiana Bucket Brigade (LABB), was able to gain access, through FOIA, to an EPA draft RMP inspection report of the Baton Rouge Refining Facility, within 16 days of its original FOIA request of Dec. 14, 2012 (Tracking Number : EPA-R6-2013-002185). Conversely, an industry trade association, the Louisiana Mid-Continent Oil & Gas Association (LMOGA) submitted a FOIA request (Tracking Number : EPA-R6-2013-005253) on April 8, 2013, for information related to the fulfilling of LABB's Dec. 14, 2012, FOIA request, yet as of May 20, 2013 – 42 days later – its request has not yet been answered.

   a. Given the concerns that have been raised about potential bias when it comes to FOIA fee waivers, can the EPA say with certainty that when it comes to the timeliness of processing FOIA requests that there is not a bias in favor of environmental groups over industry organizations, state or local governments?

   b. Will EPA include a review of FOIA response times in the agency's upcoming audit of its FOIA fee-waiver practices?

   c. What protocols does the Agency currently have in place for monitoring and ensuring adequate FOIA response times in accordance with FOIA and case law?

   d. Is the EPA aware of any instances in which it has answered a FOIA request through the unofficial sharing of relevant documents and information in lieu of formally releasing the requested information via a publically accessible database?

3. With respect to the Clean Air Act's regional haze provisions, does EPA agree that the Clean Air Act as written and as amended gives the states, rather than the federal government and the EPA, primacy over visibility and regional haze standards? If not, please explain.

4. EPA has proposed a regional haze regulation for the Navajo Generating Station that could require an investment of more than $1 billion with potentially no perceptible visibility improvements. In particular, a study done by the Department of Energy's National Renewable Energy Laboratory (NREL) last year concluded: "The body of research to date is inconclusive as to whether removing approximately two-thirds of the current NOx emissions from Navajo Generating Station would lead to any perceptible improvement in visibility at the Grand Canyon and other areas of concern." Does EPA reject the NREL's conclusion? If yes, please explain the basis for rejecting this conclusion.

5. The Navajo Generating Station plant is critical to the Arizona economy and jobs, and to the Central Arizona Water Project. In the proposed rule, EPA itself states that "the importance to tribes of continued operation of NGS and affordable water costs cannot be overemphasized." Is it reasonable for EPA to propose requiring the owners to spend hundreds of millions of dollars, or possibly over $1 billion, for potentially no perceptible visibility improvements? Can EPA commit that the agency will not finalize a rule that effectively forces the facility to shut down all or a significant part of its operations?

6. Under the Montreal Protocol and Title VI of the Clean Air Act, EPA has been phasing out the consumption and production of hydrochlorofluorocarbons (HCFCs). What is EPA's timetable for proposing and promulgating rules governing HCFC allowances for the period of 2015-2019? What steps is EPA taking to ensure that the proposed rule can be completed well enough in advance of 2015 so that companies and industries can plan and operate their businesses accordingly?

7. During the FY 2014 budget hearing before the Interior Appropriations Subcommittee, you were asked about EPA's proposed order revoking the food uses for sulfuryl fluoride. As you are aware, EPA had strongly encouraged the agricultural and food production sectors to transition to sulfuryl fluoride as a substitute for methyl bromide. In your testimony, you stated that EPA is "sympathetic to the problem" created by the proposed order and acknowledged the pending legislation that would direct EPA to withdraw it. You also testified that "sulfuryl fluoride is a pretty important fumigant," "a good replacement" for methyl bromide, and an "important tool." Does this mean that EPA is willing to work with Congress to provide certainty to the agricultural and food production sectors that they will be able to continue using sulfuryl fluoride to protect America's food supply from dangerous and destructive pest infestations?

8. EPA publishes hundreds of final rules each year in the Federal Register. Does EPA track the number of rules it issues each year? If yes, please provide the number of final rules published for each of the following years: 2009, 2010, 2011 and 2012.

9. Does EPA track the total new compliance costs of the rules it issues each year? If yes, please provide the estimated total compliance costs for EPA rules published in 2009, 2010, 2011 and 2012.

10. Section 321(a) of the Clean Air Act requires the EPA "conduct continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement of the provision of this Act and app
11. licable implementation plans, including where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement."

    a. Has EPA ever conducted a study or evaluation under Section 321(a)? If yes, please describe each study or evaluation, when it was conducted, and the results of the study or evaluation.

    b. Has EPA ever investigated a threatened plant closure or reduction in employment allegedly resulting from administration or enforcement of the Clean Air Act? If yes, please describe each such investigation, when it was conducted, and the results of the investigation.

12. In its 2010 proposed ozone rule, EPA estimated that the costs to the American manufacturing, agriculture and other sectors could reach $90 billion per year. Many have raised concerns that with such costly rules we are driving manufacturing and agricultural production out of the U.S. to other countries with lax environmental standards.

    a. In analyzing these regulations, does EPA consider the economic and environmental effects of driving manufacturing offshore to countries with little or no environmental controls?

b. If yes, please explain. If not, why not?

13. When President Obama announced Executive Order 13563 in 2011, he promised "to remove outdated regulations that stifle job creation and make our economy less competitive." However, based on review of EPA's most recent retrospective review of regulations, it appears EPA has only completed review of 13 regulations. Most of the revisions appear to be minor, and one of the revisions actually increases regulation.

    a. How many regulations has EPA reviewed as part of this process?

    b. Is the agency continuing to take steps to eliminate outdated or unnecessary regulations? If yes, please describe the steps being taken and the regulations which have been eliminated.

14. EPA is currently undertaking an expensive risk assessment of a hypothetical mine on the Bristol Bay watershed in Alaska.

    a. Why is EPA undertaking such an assessment, before a permit application has even been submitted?

    b. Why is EPA undertaking such an assessment of a hypothetical mine, rather than waiting for an actual permit application to be submitted and reviewed under the National Environmental Policy Act?

    c. Does EPA maintain that it has the legal authority to preemptively veto development projects before a permit application has been submitted? If yes, please explain.

The Honorable John Shimkus

1. Please provide for the record the amount spent by EPA for all testing and any other assessments and other work done by the Agency and related hydraulic fracturing at Dimock, PA; Pavillion, WY; and Parker County, TX.

2. The President's proposed FY14 budget requests $14.1 million for EPA, DOE, and USGS to collaborate on hydraulic fracturing. Last fiscal year, the President made the same request, bringing total proposed spending on this item to around $22 million.

    a. Does this request differ from the FY 2013 request?

    b. How much are DOE and USGS budgeting for this work?

    c. How much of your $14 million fracturing collaboration budget for FY 2014 is for continuing EPA's ongoing study into the potential impacts of hydraulic fracturing on groundwater?

    d. Could you please provide for the record all the detail you have on EPA's proposed specific uses for that $14.1 million request?

3. Battelle, an organization that EPA has used extensively in the past, just issued a report questioning the Agency's ability to reach meaningful conclusions using the Agency's current study plan, particularly its methodology and the retrospective case studies.

    a. Are you aware of or have you seen this new Battelle report?

b. If so, do you share Battelle's concerns about your hydraulic fracturing study's methodology?

c. Are you willing to have EPA re-evaluate the work it have done to date, including the likely scientific merit of any results that may come out of the study?

4. EPA is considering the issuance of Federal guidance on the use of diesel fuel in hydraulic fracturing under its Underground Injection Control program. Yet, EPA has not established that such a federal action is needed to protect underground sources of drinking water as required under section 1421(b) of the Safe Drinking Water Act. The agency has not studied the need for requiring a Class II UIC permit, nor does it appear that EPA is taking into consideration "varying geologic hydrological, or historical conditions in different States and in different areas within a State" as also required by the Act (section 1421(b)). Finally,

   a. What gap in regulation is EPA trying to address with its guidance?

   b. Why does EPA's proposed guidance expand the definition of "diesel fuel?"

      i. What could come under that definition in the future?

      ii. Does EPA have a means or process to add new substances in the future to the definition of "diesel"?

   c. Are you considering revisiting the diesel fuel guidance idea? If so, will you commit to avoid an overly expansive definition?

5. The President's proposed FY14 budget request for Leaking Underground Storage Tanks (LUST) represents a decline of 4.7 percent from the enacted level in FY12. Since LUST is funded from its own Trust Fund, rather than General Treasury monies, does the decline in request mean there is less of a need in this program area?

6. This past April, press reports indicated that EPA confirmed it had released personally identifying information on thousands of farmers and ranchers to environmental activist groups, as part of a Freedom of Information Act request response. Some of the FOIA requesters are in litigation with the Agency to force regulation of the persons identified by the Agency. Please explain this information release.

   a. What has EPA done to shield, or otherwise make whole, these agricultural producers from the harm that release of their information may cause?

   c. Does EPA, outside of a formal discovery process, have a policy or guidance regarding the disclosure of personally identifying information as part of a FOIA request, if the requester is in litigation with EPA regarding a Federal regulation?

   d. Did the EPA release information that was derived from sources other than state regulatory agencies? If so, please provide a list of those sources and a justification for using non-government sources of information.

   e. Does the EPA intend to gather any more personally identifiable information of livestock producers or other potentially regulated entities?

f. Does the EPA intend to make the information provided to the environmental groups or any new personal information available on its website or any other searchable government database?

7. Pesticide registrants are willingly paying more in PRIA fees to cover a much higher percentage of the overall OPP budget. Ironically, rather than focusing on the robust scientific review of pesticides, the current EPA strategic plan suggests that the agency's goal is "to reduce pesticide use" outright -- a goal not stated in any law. Rather than focusing OPP resources on the most significant programmatic challenges and potential risks to human health, EPA is redirecting significant resources and personnel to lower risk issues like school IPM.

   a. Is EPA taxing OPP resources by prioritizing the low risk programs, while underfunding the core mission of the office which is to soundly implement statutory obligations under FIFRA, FQPA and PRIA.

8. Your FY14 budget request includes $60 million for an e-enterprise effort at EPA to reduce the reporting burden on regulated entities and provide easier access to and use of environmental information.

   a. Will statutory changes be needed to effectuate these changes?

   b. Will EPA be building this e-enterprise itself or, like e-manifest, contracting this work out to the private sector?

   c. Does EPA envision a user fee to pay for operation of this system and, if so, who will be asked to pay?

10. The President's proposed FY14 budget request suggests four criteria by which to view Agency operations, including: "fostering better relations with the regulated community." What are some things the Agency has in mind to succeed in this area?

11. One of the Obama Administration's new initiatives at EPA for FY14 is "Next Generation Compliance" and "evidence-based enforcement and compliance."

   a. What is "evidence-based" enforcement and why do you need $4 million dollars for it?

12. As part of "Next Generation Enforcement," EPA is requesting $2.8 million for "targeted, intelligence-based" enforcement activities.

   a. From where or how does EPA intend to gather this information and in what kinds of cases will it be used?

13. The President's proposed FY14 budget requests $62.7 million for the development, peer review, and finalization of risk assessments of additional TSCA work plan chemicals.

   a. How many new work plan chemicals will EPA propose in FY14?

   b. What are they?

14. Regarding the Endocrine Disruptor Screening Program, what percentage of the chemical screens used in the program are not validated?

   a. How many more need to be validated?

b. How many of the tests are validated?

c. What role is EPA ascribing to adverse effects from its screening data versus testing data?

15. EPA's proposed budget for FY14 mentions plans to transform the enforcement and compliance program.

    a. Does this mean that EPA will be restructuring its workforce?

    b. Are national enforcement initiatives or other criminal and civil enforcement being driven by the program offices, DOJ, or Office of Enforcement and Compliance Assurance?

16. Does your proposed Superfund budget, include funds for starting work on any new sites? Are there any you expect to complete?

17. EPA is seeking to justify its costly proposed 316(b) rule, which would affect more than 1,260 power plants and industrial facilities nationwide, on the basis of a public opinion survey asking "how much" a random group of individuals would be willing to pay to reduce fish losses at intakes. This willingness-to-pay approach to determining "benefits" contrasts sharply with the far more traditional approach used by EPA in its earlier 316(b) rulemakings. The earlier analyses relied on actual market prices and costs incurred by individuals, rather than hypothetical questions in a public survey. The "willingness-to-pay" or "stated preference" survey is clearly intended to increase the anticipated benefits of the proposed rule. Yet such stated preference surveys are notoriously difficult to design and implement and often are very unreliable. Using such unreliable benefit estimates will inappropriately lead to cooling water controls that are neither necessary nor cost beneficial and that will not deliver the anticipated benefits but will materially affect compliance and consumer costs. Given all these problems, is EPA going to withdraw the survey and clarify that the survey and its results are inappropriate to use in implementing the final rule?

The Honorable Phil Gingrey

1. Each year since 2003, EPA has issued a notice to receive applications for a Critical Use Exemption (CUE) for methyl bromide under the Montreal Protocol. In announcing the final CUE allocation decisions, the agency has identified the commodities eligible to use methyl bromide under a CUE, as well as the conditions such as the presence of weeds or plant pests that existed that supported the need for the CUE. These uses have included, for example, use by cucurbit growers, eggplant growers, pepper growers, strawberry growers, sweet potato growers, tomato growers, turfgrass producers and users, forest seedling growers and nurseries, stone fruit, table grapes, raisins, walnut and almond growers, ornamental growers, U.S. millers of rice, wheat and corn products, and California handlers of walnuts, beans, dried plums, raisins and pistachios. Since 2011, the EPA has essentially reduced or rejected the CUE applications by these user groups. It has done that despite the fact that the potential tools that EPA maintains are available in lieu of methyl bromide have not increased, but have actually decreased or face significant regulatory challenges of their own, while the weeds or plant pest complexes continue to be a problem.

    a. In view of the significant potential adverse economic and job impacts on those applicants in the agricultural and food production sectors whose applications have been rejected or had their requests substantially reduced, will EPA consider changing its approach and recognize the continuing substantial need for the product under the CUE process?

b. Is EPA open to receiving supplemental requests for methyl bromide, and if so, will the agency fairly and reasonably evaluate such requests?

The Honorable Ralph M. Hall

It is our understanding that EPA has been enforcing the requirements of the NSPS, Subpart UUU for Calciners and Dryers in Mineral Processing Industries against foundries, despite the fact that the agency never intended to include foundries as a source category for this rule. In April 2008, EPA proposed regulatory language to specifically exempt foundries from the requirements of Subpart UUU, but has never taken final action on the proposed regulatory language.

1. Why has EPA failed to promulgate the exemption for foundries from NSPS, Subpart UUU consistent with the original intent of the rule? When can we expect EPA to take final action on its proposal?

2. Why is EPA enforcing the provisions of Subpart UUU against foundries when the agency never intended to include foundries as a source category for Subpart UUU?

The Honorable Joe Barton

1. In your testimony, you indicated that you have contacted the Inspector General regarding a programmatic audit to address the recent allegations of political bias in EPA's awarding of fee waivers for Freedom of Information Act requests.

   a. Has EPA submitted a formal request for an audit?

   b. Has the Inspector General agreed to perform the audit?

   c. What will be the nature and scope of the Inspector General's review and audit?

   d. Will you share the findings of the Inspector General audit with Members of this Committee and the public?

2. Gina McCarthy recently stated in her written responses to the Senate Environment and Public Works committee, "I can conceive of circumstances where EPA has disagreed with State's approach on policy grounds but did not intervene to override the state because the state met the relevant legal criteria."

   a. How do you reconcile her statement with EPA's disapproval of the Texas Commission on Environmental Quality's Flexible Permit Program?

   b. In August, 2012, the Fifth Circuit Court of Appeals vacated EPA's final rule disapproving the Texas Flexible Permit Program, finding that EPA exceeded its statutory authority in rejecting the Texas Flexible Permit Program sixteen years tardy, and had transgressed the Clean Air Act's delineated boundaries of cooperative federalism. What is the status of the remand of EPA's disapproval of the Flexible Permit Program?

3. Gina McCarthy indicated that she believes EPA's Office of Acquisition Management was involved in the decision to force Battelle to drop their contract with the Association of Air Pollution Control Agencies (AAPCA).

a. Did EPA present an ultimatum to Battelle to terminate their contract with AAPCA? If so, please provide justification for EPA's actions. In doing so, please explain the criteria used and list any contracts between Battelle and EPA that may have been judged to present a conflict of interest.

b. What are the larger policy implications of prohibiting a third party contractor from entering into a contract with an environmental, multi-jurisdictional organization for purely administrative and logistical purposes?

The Honorable Lee Terry

1. Is EPA considering replacing the original impingement proposal with a more flexible approach that pre-approves multiple technology options, allows facility owners to propose alternatives to those options, and provides site-specific relief where there are de minimis impingement or entrainment impacts on fishery resources or costs of additional measures would outweigh benefits?

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

The Honorable Tim Murphy

1. At last year's budget hearing (Feb. 2012), Administrator Jackson committed to posting notices of intent to sue and rulemaking petitions on the agency's website, and EPA has recently begun to post such notices on its website. You testified at this year's budget hearing that EPA would also begin posting those rulemaking petitions.

   a. What are EPA's plans with regard to posting rulemaking petitions?

   b. When and where will they be accessible on EPA's website?

   c. Will EPA commit to timely updating the website to ensure public access to the rulemaking petitions received by the agency?

The Honorable Robert E. Latta

1. In your testimony, you highlight the fact that supporting states' efforts as the primary implementers of environmental programs is an EPA priority. Yet, through the EPA's budget, it is very clear that the federal agency intends to have a direct role in the regulation of hydraulic fracturing, despite proven state programs, including the very successful one in my state of Ohio under the direction of the Ohio Department of Natural Resources.

a. Do you believe that state regulatory agencies are not capable of effectively regulating hydraulic fracturing?

b. What evidence exists that would justify EPA interference in state regulated hydraulic fracturing operations?

c. What is EPA's jurisdictional hook, given the Safe Drinking Water Act's exemption to regulate hydraulic fracturing?

2. As you move forward on greenhouse gas emissions regulations for both new and existing sources, how will you assess the costs?

   a. Will you consider the impact these regulations will have on manufacturing jobs in your cost-benefit analysis?

   b. Will you consider how these regulations will impact energy costs?

   c. Do you consider hiring an employee to solely work on compliance with regulations as beneficial as hiring an employee to work within normal business operations?

3. Does EPA keep track of compliance costs once a rule is implemented? If not, please explain why.

4. How much did covered entities spend complying with EPA regulations last year?

5. Many Ohio producers are taking an active role in mitigating nutrient run-off by voluntarily enrolling in the "4R Nutrient Stewardship" program which stands for using the right fertilizer source, at the right rate, at the right time and with the right placement. Ohio's leading industry representatives have developed this working closely with state agencies.

   a. Will the agency defer to voluntary, industry-led programs or will the agency issue formal regulations regarding nutrient management?

   b. Have you engaged stakeholders regarding this issue?

      i. If so, please provide a list of EPA stakeholder outreach efforts.

<u>The Honorable Bill Cassidy</u>

Recently, you stated that EPA is embracing the spirit as well as the letter of the NAS recommendations to improve the IRIS program. Yet, the recently revised IRIS methanol assessment, which was released last week, EPA categorizes 15 of 19 'short term' recommendations as being only partially implemented and only 4 short term recommendations are listed as implemented. EPAs description for implementing the more substantive recommendations, suggests progress that is minimal at best.

1. What can EPA show to provide true evidence that substantive changes are being made?

2. How long will it be before released IRIS assessments have fully, not partially, implemented the important NAS recommendations?

3. How many more assessments will be released that are not consistent with the NAS recommendations?

The Honorable Cory Gardner

1. Do you believe the Colorado Regional Haze State Implementation Plan (SIP) serves as a model for how states and the federal government should collaborate to reduce regional haze in the West? If so, will EPA be working with the Department of Justice to vigorously defend Colorado's Regional Haze SIP in the 10th Circuit?

The Honorable Mike Pompeo

1. Recently, the EPA has undertaken a wide-ranging review of the retailers that offer Lead Renovation, Repair and Painting (LRRP) installation services rather than the contractors on the jobsite, performing the work. The Agency reportedly has asserted that the retailers themselves are responsible for all aspects of compliance with the LRRP Rule – even though the renovation work is actually performed by the independent, third-party contractors and not by the retailers themselves. What are your thoughts on the expansion of the LRRP rule to include a retailer?

2. Shouldn't the goal of the LRRP rule be to reduce lead based hazards during a renovation project? If so, why is the agency more focused on bureaucratic, administrative errors in the paperwork submitted to a retailer by the independent subcontractors rather than focusing on actual performance and compliance with the rule by the subcontractor onsite in the actual workplace?

The Honorable Bill Johnson

1. The Environmental Protection Agency headquarters in Washington, D.C. maintains an open door with manufacturing companies in the United States. However, companies often encounter less transparency and accessibility with the agency at the research level regarding data. What steps will the Agency take to rectify this problem?

2. On multiple occasions EPA has stated the important value of manufacturing companies in the United States to improving job growth and the environment. Yet many manufacturing companies face serious challenges with regulations by the Environmental Protection Agency, which effectively force manufacturing to relocate outside the United States. What will the Agency do to improve cooperation between the Environmental Protection Agency and these companies?

3. The Environmental Protection Agency is criticized for employing data in various programs that is outdated, if that data is at all revealed to the public or businesses. What measures will the Agemcy take to correct the use of inaccurate, outdated data in regulatory compliance?

4. I recognize that there are times when spending additional money on a specific regulation is required in order to develop a proper rule. For example, the EPA is currently in the process of developing a MACT standard for the brick industry to replace the MACT that was vacated by the courts in 2007. Since this industry was in full compliance with the original Brick MACT before it was vacated, much of the emission reduction from the larger sources has already been achieved as most of those controls remain in place. In fact, EPA is using data from those sources who installed controls in good faith to force even more stringent controls on this vital industry. How is the Agency effectively using resources to develop a

rule that acknowledges the emissions reductions already attained and to not blindly follow the "one size fits all" approach used in recent MACTs?

5. For example, the Clean Air Act has a different path that is allowed in situations like this. This path, using a combination of health-based standards for threshold pollutants and work practices for pollutants where it is impracticable to measure and control, could both protect the environment and ensure an important industry is not needlessly threatened. Will EPA commit to fully explore this alternative path?

6. The rulemakings for the Brick industry have been impacted by the EPA's "sue and settle" approach to dealing with third-party lawsuits on both rounds. The now-vacated MACT was rushed in 2003 due to a pending lawsuit from an environmental group, resulting in a rule that was vacated by the courts for its deficiencies. Now, this industry is facing another court-ordered schedule based on a consent decree that you recently accepted. What assurances can the Agency give me and this industry, that the schedule will not be used as justification for yet another rushed, deficient rule? And what can the Agency do to ensure that this rulemaking will include a full consideration of the alternative approach of using a combination of health-based and work practice standards to ensure that the requirements of the CAA are followed and the environment protected without requiring huge burdens on a critical industry that provide limited to no environmental benefit?

7. I recognize that EPA is being asked to do more with less; however, so is industry. The brick industry is relatively small, with more limited resources than some of the source categories that you have recently regulated. What is the Agency doing to ensure that this small industry is not disadvantaged simply because it does not have the financial resources to fund research projects to support the rulemaking process? Please explain in detail how EPA ensures that smaller industries have the same access to a fair and reasonable rule as larger industries.

8. Is the EPA maintaining and saving all forms of mobile communication of political appointees? This includes text messages, blackberry messages, iPhone messages, etc.

9. If you are saving all of these messages are you working to turn over messages that are in the scope of FOIA to parties that have requested them?

<u>The Honorable John D. Dingell</u>

1. I recently joined with my colleagues from the Great Lakes region in signing a letter to the Appropriations Committee requesting $300 million for the Great Lakes Restoration Initiative. I know the Administration requested that level of funding as well. However, I have concerns about what EPA is doing to address water quality in the Great Lakes. On March 15, 2013 I sent you a letter referencing an article in the New York Times which noted that in the 1960s Lake Erie was nicknamed "North America's Dead Sea." I have worked long and hard to pass legislation and funding to protect and preserve the Great Lakes.

    a. I received a response from your office but given current and requested funding levels, does EPA have the resources to combat massive algae blooms such as the one on Lake Erie?

    b. Could you please submit for the record additional information on efforts EPA is taking to address this issue?

2. What is EPA doing to enforce the cost of cleanups and emergency cleanups?

    a. What is EPA dong to hold property owners responsible for the costs related to cleanups?

b. Is EPA going to continue to hold these existing steps to the highest level of importance?

The Honorable Frank Pallone, Jr.

On January 14th of this year I, along with several of my colleagues in the House of Representatives, wrote to the Office of Management and Budget regarding the RICE/NESHAPS rule. Specifically, we expressed concern with effectively allowing basically unregulated diesel generators to get paid to run as so-called "demand response." Senator Lautenberg and others have also written on this issue and it was raised by Chairman Whitfield at a hearing last week in the Energy and Power Subcommittee.

While the decision to allow these diesel-fueled backup generators to participate in the electricity market was FERC's, it was EPA's decision not to hold these units to the same environmental standards as others bidding into the market, even though these dirty diesel units are displacing cleaner sources of generation, including solar and wind. Perhaps that's why the concern over this decision has been raised by a diverse set of concerned stakeholders including environmental groups, New Jersey and other states, and power companies. This very diverse set of stakeholders coming together on the same side has now taken the rule to court to petition the EPA for reconsideration.

1. Given the concerns raised by this unique coalition of stakeholders and members, does EPA plan to reconsider the RICE/NESHAPS rule?

The Honorable Diana DeGette

1. Is it known for certain whether or not shale gas development through hydraulic fracturing poses an increased risk to human health and the environment over the risks associated with conventional oil and gas development?

2. Is it known for certain whether or not shale gas development through hydraulic fracturing poses no risk to the environment or public health?

3. As you know, in 2010 former Congressman Hinchey and I requested an EPA study to determine the potential impacts of hydraulic fracturing on drinking water. In your FY2014 budget request, you ask for $6.1 million for the study. As I understand, the study is currently underway with the final report due in late 2014. Is that still the timeline?

4. Is it correct that the hydraulic fracturing drinking water study has been designated a Highly Influential Scientific Assessment, and that a new Scientific Advisory Board, different from the Scientific Advisory Board that reviewed the scoping for the study, has been selected to review the draft report?

5. Given the designation of the study as a Highly Influential Scientific Assessment and the formation of a new Scientific Advisory Board, do you still have sufficient funding, time and access to information to complete the study by late 2014? Or will it only be released for peer review by that time?

6. One part of the study I am especially interested in is the case studies. You identified five sites for retrospective case studies and directed EPA, the state and industry to be present during sampling to verify and review the samples for quality assurance.

a. What are the statuses of the retrospective studies at the five sites? Have there been any issues with data collection and analysis?

b. There are also supposed to be a number of prospective case studies, where wells are drilled, completed, and then produce, with data collection and measurements each step of the way. What about the sites for prospective case studies? Have they been identified, and do you have the resources and support to proceed?

7. The EPA has also issued requests for existing data concerning spills, water and waste treatment and disposal, identities of chemicals, standard operations at drilling sites, well locations, water use, well files, etc., from state, Federal, and local governments, as well as industry and other stakeholders.

   a. Are there any existing or ongoing requests for information? How much of a response have you received?

8. As you know, the Energy Policy Act of 2005 exempted hydraulic fracturing from EPA regulation under the Safe Drinking Water Act, except when diesel is used. In the EPA's budget justification you mention EPA will ensure proper oversight of hydraulic fracturing operations where diesel fuel is used by implementing permitting guidance under SDWA's Class II UIC program. What is the status of the guidance?

9. The budget justification also mentions that the agency also will work with states and stakeholders on developing and implementing voluntary strategies for encouraging the use of alternatives to diesel in hydraulic fracturing and improving compliance with other Class II regulations, including risks from induced seismic events and radio nuclides in disposal wells. One of the primary factors in America's significant reductions in pollution over the last 40 years has been federal baseline policies for restoring and protecting the environment, including the UIC program. Could you or your staff continue to update us on the guidance and the outreach to improve compliance for this program?

<u>The Honorable John Barrow</u>

1. I understand that you've been working with stakeholders to finalize the rule governing cooling water intake structures under Section 316(b) of the Clean Water Act. Last year, I joined on a letter to EPA urging that the final rule should provide ample compliance flexibility to accommodate a diversity of industrial facilities and allow for multiple pre-approved technologies. Can you provide an update on your progress for finalizing the rule with those goals in mind?

<u>The Honorable Jerry McNerney</u>

1. At the hearing, EPA stated that it plays a role in reviewing the Bay Delta Conservation Plan (BDCP).

   a. What have been and what are the specific actions EPA is involved with during this interagency process?

   b. How has the EPA communicated with other federal agencies that are also working on the BDCP?

2. The EPAs *Action Plan for the Bay-Delta* stated that "Despite much ongoing activity, CWA (Clean Water Act) programs are not adequately protecting Bay Delta Estuary aquatic resources, as evidenced by the

pelagic organism decline." Does EPA believe that the current BDCP proposal adequately addresses the concerns outlined in its report related to protecting the Bay Delta Estuary?

3. How many and what type of EPA resources (e.g. number of staff, hours worked, and total agency funds, etc.) were used on the BDCP in fiscal years 2011-2012?