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ONE HUNDRED THIRTEENTH CONGRESS

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April 30, 2014

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator McCarthy:

Thank you for appearing before the Subcommittee on Energy and Power and the Subcommittee on Environment and the Economy on Wednesday, April 2, 2014, to testify at the hearing entitled "The Fiscal Year 2015 EPA 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 with a transmittal letter by the close of business on Wednesday, May 14, 2014. Your responses should be mailed to Nick Abraham, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed to Nick.Abraham@mail.house.gov.

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—Additional Questions for the Record

The Honorable Ed Whitfield

1. EPA's budget calls for a total of over $234 million to "Address Climate Change." How much of this relates to the President's climate action plan?

2. With respect to EPA's proposed greenhouse gas (GHG) rule entitled "Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units" announced September 20, 2013, we wrote you on November 15, 2013 concerning the statutory provisions of the Energy Policy Act of 2005 ("EPACT 2005"), including provisions codified at 42 U.S.C. §15962(i) and 26 U.S.C. §48A.

   a. Why has EPA still not provided a written response to that letter?

   b. Prior to receipt of that letter, were you aware of those EPACT 2005 provisions? Please provide a yes or no response.

   c. Prior to receipt of that letter, who, if anyone, to your knowledge at EPA was aware of those EPACT 2005 provisions?

   d. Please provide a detailed explanation of why EPA did not address those EPACT 2005 provisions in the proposed rule you signed in September.

3. On February 5, 2014, EPA posted a "Notice of Data Availability" (NODA) in support of the proposed GHG rule for new power plants referenced above. While EPA posted the NODA on its website on February 5, 2014 and solicited extensive comment, EPA failed to issue a press release or other regulatory announcement notifying the public of the posting of the NODA or the fact that the agency was soliciting comments on the EPAct 2005 provisions. Why did EPA fail to issue a press release or make a public regulatory announcement on February 5, 2014 or shortly thereafter?

4. With respect to EPA's proposed GHG rule for new electric generating units referenced above, EPA proposes to require that any new coal-fired power plants install carbon capture and storage (CCS) technologies that EPA maintains have been adequately demonstrated for use at full-scale commercial power plants.

   a. During the interagency review process did Department of Energy (DOE) officials or staff provide any written comments on EPA's proposed rule? Please provide a yes or no response.

   b. During the interagency review process did DOE officials or staff provide written comments on EPA's proposed CCS requirement for new coal-fired power plants? Please provide a yes or no response.

   c. Are all DOE comments during the interagency review process regarding the proposed rule included in the administrative record for the proposed rule?

5. With respect to the GHG regulations EPA plans to propose for modified and reconstructed electric generating units by June 1, 2014:

a. Will the agency propose standards that can be achieved at modified and reconstructed coal-fired units using technologies that are currently in commercial service at operating electric generating units?

b. What emissions levels does the agency believe are achievable by modified and reconstructed coal-fired electric generating units?

c. What technologies currently in commercial service does the agency believe could be used at modified and reconstructed coal-fired units to achieve those reductions?

6. With respect to the GHG regulations EPA plans to propose for existing electric generating units by June 1, 2014:

   a. Does EPA plan to impose statewide numerical GHG emissions reduction requirements?

   b. Does EPA plan to propose emissions levels for existing coal-fired units that can be achieved using technologies and control equipment that are currently in commercial service at operating electric generating units?

   c. What emissions levels does the agency believe are achievable by existing coal-fired electric generating units?

   d. What existing technologies and control equipment in commercial service does the agency believe could be used at existing coal-fired units to achieve those reductions?

7. EPA has advised the Committee that it is working on GHG standards for aircraft. What is EPA's current schedule for issuing such standards?

8. EPA has advised the Committee that it is working on additional GHG standards for trucks. What is EPA's current schedule for issuing such standards?

9. For each of the following source categories, please indicate whether the agency is currently conducting work relating to potential GHG regulations for those sources, and if the agency is conducting work, the agency's current timetable for performing analyses and making determinations:

   a. Petroleum refineries
   b. Pulp and paper facilities
   c. Municipal landfills
   d. Iron and steel production
   e. Animal feeding operations
   f. Portland cement manufacturing

10. On May 15, 2013, EPA provided a list of GHG Prevention of Significant Deterioration (PSD) permits issued by EPA or States that included 87 permits. Please identify all additional GHG PSD permits that have been issued by EPA or States since that list was prepared.

11. Looking across the range of EPA regulations that affect electric power generation, there are sizable cumulative impacts of Clean Air Act rules, Clean Water Act rules, and other rulemakings that risk substantial retirements of electric generating capacity. Has EPA prepared any analyses to identify the worst case scenarios for electricity generation and reliability that could result from the cumulative impact of its rules?

a. If yes, will EPA make those risk assessments available to the Committee?

b. If no, why hasn't EPA performed such risk assessments?

12. The Energy Information Administration (EIA) issued an update on February 14, 2014 regarding its Annual Energy Outlook 2014 projections and indicated there will be more coal-fired power plant retirements by 2016 than have been scheduled. EIA stated:

"Coal-fired power plants are subject to the Mercury and Air Toxics Standards (MATS), which require significant reductions in emissions of mercury, acid gases, and toxic metals. The standards are scheduled to take effect in April 2015, a deadline that is conditionally allowed to be extended by up to one year by state environmental permitting agencies. Projected retirements of coal-fired generating capacity in the AEO2014 include retirements above and beyond those reported to EIA as planned by power plant owners and operators. In these projections, 90% of the coal-fired capacity retirements occur by 2016, coinciding with the first year of enforcement for the Mercury and Air Toxics Standards."

a. Is EPA tracking all of the coal-fired electric generating units that will be retiring by 2016, coinciding with the first year of enforcement for the MATS rule? If yes, how many coal-fired electric generating units in the United States are expected to retire by 2016?

b. Have any coal-fired electric generating units been granted additional time to comply with the MATS rule beyond 2016? If yes, which units have been granted additional time?

13. On March 10th, the *New York Times* published an article entitled: "Coal to the Rescue, but Maybe Not Next Winter" raising concern that there could be significant price increases for electricity because "[s]cores of old coal-fired power plants in the Midwest will close in the next year."

a. Is EPA evaluating the cost and reliability concerns that have been raised regarding the pending shutdowns of coal-fired power plants in the Midwest, or other regions of the United States, that have announced they will close in the next one to two years?

b. What is EPA's current assessment of these concerns?

c. Is EPA taking any steps to postpone the retirement of any of these plants to ensure there will be no risks to electric reliability in the next few years?

d. Is EPA taking any steps to postpone the retirement of any of these plants to ensure there will not be significant electricity price increases over the next few years?

14. On April 6, 2014, the *Chicago Tribune* published an article entitled: "NRG Chief: Utilities need to 'play it straight" in which the chief executive of NRG stated that: "The story that has not really been reported is how close the system came to collapsing in January."

a. Does EPA agree there were serious reliability concerns in January?

b. Since January, has EPA been consulting with DOE, Federal Energy Regulatory Commission and other federal agencies regarding the electric reliability concerns associated with the pending closure of many coal-fired units over the next 1 to 2 years, coinciding with the MATS rule?

i. If yes, which agencies and which EPA officials are consulting with those agencies? In your response, please identify when such consultations have occurred and which EPA officials have engaged in the consultations.

ii. If no, will EPA be consulting with those federal agencies? In your response, if consultations are planned please identify when such consultations will occur and which EPA officials will engage in those consultations.

15. In addition to an unprecedented number of shutdowns of coal-fired electric generating units by 2016, coinciding with the compliance date for the MATS rule, on January 24, 2014, the CEOs of five nuclear companies wrote to EPA to express concern about the agency's "Cooling Towers" or "316(b)" rule. They raised concerns that the rule "could trigger the premature retirement of a significant portion of the nuclear fleet."

    a. Do you have any concerns about the potential "premature retirement of a significant portion of the nuclear fleet" due to EPA rules?

    b. Is preserving the existing nuclear fleet important to the Administration?

    c. What steps, if any, is EPA taking to address the concerns expressed by these nuclear companies and can you provide any assurances that EPA's cooling towers rule will not cause or contribute to the premature retirement of a significant portion of the nuclear fleet?

16. According to a Feb. 5, 2014 *Greenwire* article, DOE is reportedly analyzing a scenario in which **one third** of U.S. nuclear power plants retire and the impact that would have on the president's Climate Action Plan. Is EPA also analyzing this scenario?

    a. Is EPA concerned about the impacts on electric reliability from the premature retirement of nuclear power plants?

    b. What is EPA doing to ensure its actions do not cause or contribute to the premature retirement of nuclear power plants?

17. EPA issues National Ambient Air Quality Standards (NAAQS), but years can pass before it provides guidance about how to implement the new standards, including permitting, to States and stakeholders. Going forward, will EPA commit to providing States and stakeholders with this essential information at the time EPA issues a final NAAQS?

18. While NAAQS State Implementation Plans and attainment can take years, a new NAAQS is effective immediately for new air permits. Any delay in EPA's implementation guidance and updating air quality models makes it more difficult for businesses to expand and create jobs. Will EPA issue clear guidance to regions and States encouraging the use of near-term alternatives in any situation where the issuance of new implementation updates is delayed?

19. Many of our nation's energy infrastructure projects rely on nationwide permits under the Clean Water Act when building new infrastructure or upgrading and maintaining existing infrastructure. On March 25, 2014, EPA and the U.S. Army Corps of Engineers jointly released a proposed rule addressing waters of the United States.

a. Has EPA analyzed the potential impact of the proposed rule on building new energy infrastructure or upgrading and maintaining existing infrastructure? If yes, where in the rulemaking documents is that analysis?

b. What does EPA consider the impacts of the proposed rule to be on building new energy infrastructure or upgrading and maintaining existing infrastructure?

   i. Will there be an increase in the need for individual permits?

   ii. Will there be increases in processing time, cost and manpower to administer and process this increase in individual permits?

   iii. If these costs were not considered in the proposed rule, why not?

c. To the extent that EPA has said in briefings that the agency expects that industry will be able to continue to rely on existing nationwide permits, please explain how the agency arrives at that conclusion and where the analysis is to support that conclusion in the agency's rulemaking documents.

20. The President in executive orders and public statements has said streamlining the permitting process for energy projects – particularly those necessary to support renewable energy projects – is a high priority for this Administration. Individual permits by definition take longer to reach a final decision.

    a. If more individual permits will be necessary for energy projects, can you explain how an increase in the need for individual permits in this proposal is consistent with the President's energy permit streamlining objective?

    b. In addition, can you point to where in the preamble, regulatory text or economic analysis there is any discussion of direct and indirect impacts on energy infrastructure: for example, the time, manpower and administrative oversight necessary to conduct the increased burden of carrying out such federal requirements as NEPA reviews, potential ESA consultations, historic preservation review, tribal consultations, and responses to citizen suit enforcement?

21. With respect to EPA's proposed "Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces, and New Residential Masonry Heaters," published Feb. 3, 2014 in the Federal Register:

    a. The proposed rule contemplates complex regulations on some classes of products that have never before been subject to regulation. As a practical matter, this means that EPA may not have the extent of knowledge or expertise, nor has the agency collected as extensive an amount of data, as with other categories that have been subject to regulation. Further, there are an estimated 97 instances in the proposal where EPA specifically asks for comments on various provisions. Given what is expected to be an expedited review process, and our understanding that EPA has indicated that EPA has no plans to enlist contractor support for comment review, how is it possible for the agency to adequately respond to the large volume of comments it is likely to receive on the proposal?

    b. Given the number of new products which will be covered in the proposed NSPS for residential wood heaters, and the current backlog at OECA, the enforcement and certification arm of EPA, what does the EPA propose to do to protect small businesses who try to certify to the new rule from excessive paperwork backlogs?

22. With respect to the Safe Drinking Water Act and the Clean Air Act, are any of the enhanced oil recovery (EOR) projects referenced in the preamble for the proposed GHG rule for new electric generating units announced on September 20, 2013, complying with anything other than UIC Class II requirements?

    a. With respect to EPA's Subpart RR-Geologic Sequestration of Carbon Dioxide Rule, are there any Monitoring, Reporting and Verification (MRV) plans that have been submitted to EPA for approval under Subpart RR of the GHG Reporting Program?

    b. If yes, how many have been submitted? Also, if yes, how many have been approved under Subpart RR of the GHG Reporting Program?

23. According to EPA, the agency initiated the Bristol Bay Watershed Assessment in response to a petition for EPA to exercise its 404(c) authority. Has the agency received any other similar petitions, and if so what has been requested? Has the agency received any petitions concerning the agency's use of 404(c) on any existing permits?

24. Does EPA have any plans to potentially perform studies on or initiate the 404(c) process on any other waters at this time? If so, where?

25. Does EPA have any plans to potentially reevaluate any existing 404 permits pursuant to its 404(c) authority? If so, which ones?

26. The current definition of fill material, finalized in May, 2002, solidifies decades of regulatory practice by unifying the Corps and EPA's prior conflicting definitions so as to be consistent with each other and the structure of the CWA. However, both EPA and the Corps have stated that they are considering revising the definition of fill material. These changes could mean that certain mining-related activities would be deemed illegal, thereby preventing mining companies from operating. The FY14 Omnibus appropriations bill included language to prevent the Corps form working on any regulation changing the definition of fill material.

    a. Has EPA engaged in discussions with the Corps on revising the rule?

    b. What is EPA's rationale for potentially revisiting the well-established division of the Sec. 402 and Sec. 404 programs?

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

29. Some advanced biofuel developers have proposed that EPA consider a pathway to allow for the generation of RINs under the renewable fuel standard (RFS) when renewable hydrogen is used to displace conventional hydrogen in petroleum refining operations. The pathway, if approved, would create an economic incentive to produce hydrogen from biomass sources, including bio-methane collected from landfill emissions and bio-digesters. Renewable hydrogen, if used in refinery hydro-reactors, would increase the fraction of renewable content in the nation's gasoline and diesel supplies.

    Discussions regarding a pathway application have been underway since September, 2013. EPA has indicated that, in order to properly consider this pathway, it needs additional technical information, which stakeholders have developed and provided earlier this year. However, EPA has indicated that, currently, it is unable to assess this information or meet with industry experts to discuss it due to the overwhelming demands on the Office of Transportation and Air Quality's (OTAQ) time from other regulatory matters.

a. Has OTAQ determined a timetable for resuming consideration of a renewable hydrogen pathway under the RFS?

b. Has OTAQ determined that it cannot devote time to any further processing of RFS pathways at this time, and if so, how long is that expected to last?

The Honorable Joe Barton

1. As set forth on EPA's website, the Agency's Clean Air Scientific Advisory Committee (CASAC) provides advice to the EPA Administrator on the technical bases for EPA's national ambient air quality standards.

   a. Are CASAC advisory committee meetings transcribed?

      i. If yes, are those transcripts made accessible to the public on EPA's website?

      ii. If not, will transcripts be prepared going forward and will EPA make those transcripts accessible to the public on the Agency's website?

   b. Are CASAC advisory committee meetings webcast?

      i. If yes, are those webcasts archived and made accessible to the public on EPA's website?

      ii. If not, will EPA webcast these meeting going forward, archive the webcasts and make the webcasts accessible to the public on the Agency's website?

2. As set forth on EPA's website, EPA's Science Advisory Board (SAB) advises the agency on technical matters, including reviewing the quality and relevance of the scientific and technical information being used or proposed as the basis for EPA regulations.

   a. Are SAB advisory committee meetings transcribed?

      i. If yes, are those transcripts made accessible to the public on EPA's website?

      ii. If not, will transcripts of those meetings be prepared going forward and will EPA make those transcripts accessible to the public on the Agency's website?

   b. Are SAB advisory committee meetings webcast?

      i. If yes, are those webcasts archived and made accessible to the public on EPA's website?

      ii. If not, will EPA webcast these meeting going forward, archive the webcasts and make those webcasts accessible to the public on the Agency's website?

3. As set forth on EPA's website, the Advisory Council on Clean Air Compliance Analysis (COUNCIL) was established to provide advice, information and recommendations on technical and economic aspects of analyses and reports EPA prepares on the impacts of the Clean Air Act on the public health, economy, and environment of the United States.

   a. Are COUNCIL advisory committee meetings transcribed?

i. If yes, are those transcripts made accessible to the public on EPA's website?

ii. If not, will transcripts of those meetings be prepared going forward and will EPA make those transcripts accessible to the public on the Agency's website?

b. Are COUNCIL advisory committee meetings webcast?

i. If yes, are those webcasts archived and made accessible to the public on EPA's website?

ii. If not, will EPA webcast these meeting going forward, archive the webcasts and make those webcasts accessible to the public on the Agency's website?

4. In December 2007 the City of Fort Worth partnered with the EPA on the Alternative Asbestos Control Method (AACM) project performed at the Oak Hollow Apartments in Fort Worth, Texas. Upon completion of the AACM project, the EPA prepared a peer reviewed draft report. However, the final version of that report was never published and as a result, the project has entirely stalled despite repeated attempts by the City for clarity and answers.

a. Why has the EPA repeatedly decided not to publish legitimate scientific research so that the public and broader scientific community may have access to this data?

b. Furthermore, I request copies of all documentation related to the recent "re-review" of documents related to the AACM and the data generated during and after the demolitions as referenced in the April 26, 2013 letter from the EPA to the City of Fort Worth.

The Honorable Joseph R. Pitts

1. In Pennsylvania, we have benefitted greatly from having electric generating units that burn coal refuse (also called waste coal) to create affordable, domestic energy. By processing this coal refuse, these units have had significant positive effects on the surrounding environment as well. In fact, to date, these units have been used to reclaim some 8,200 acres of damaged land and improve hundreds of miles of streams.

The EPA's Mercury and Air Toxics Rule (MATS) takes effect next April, however, and among other things, the rule establishes hydrogen chloride and sulfur dioxide emission limitations that are unattainable for most coal refuse fired units. In anticipation, the industry has approached the EPA seeking reconsideration under the rule and has also met with various members of your staff including Acting Assistant Administrator for the Office of Air and Radiation Janet McCabe.

Would you please provide an update on the status of these discussions and the industry's request for reconsideration? What is your schedule for responding? Will you commit to continuing these discussions with the industry in order to avoid shutting down these facilities and harming both the local environment and economy?

2. In the preambles of various EPA proposed rules, the agency has specifically mentioned and discussed the environmental benefits associated with reclamation of coal refuse to produce electricity. If the EPA's Mercury and Air Toxics Rule (MATS) is enforced as it is currently written, however, a number of these facilities will likely be forced to close as a result of compliance costs. *Does the EPA have an alternative plan to clean up these coal refuse piles if and when these facilities are forced to shut down as a result of MATS?*

3. I know that one of our colleagues from Pennsylvania, Mr. Rothfus, has been actively engaged on the issue of electrical generating units that process coal refuse and has been seeking some sort of solution that will allow these units to continue in operation after the Mercury and Air Toxics Rule (MATS) takes effect next spring.

   As currently written the rule establishes hydrogen chloride and sulfur dioxide emission limitations that are unattainable for most coal refuse fired units. There is significant concern that implementation of the rule will force many plants to shut down and their workers to lose their jobs.

   Mr. Rothfus has asked me to invite you and your staff to tour these facilities and see firsthand the sort of positive impacts that they have had on the surrounding areas. *Will you commit today to making this a priority and ensuring that those on your staff who are responsible for this issue will travel and meet with the coal refuse industry to work to find a mutually-agreeable solution?*

4. The EPA's Mercury and Air Toxics Rule (MATS) takes effect next April, and many in the coal industry have expressed significant concern about the associated compliance costs. *To date, how many utility and non-utility coal fired boilers have announced they are shutting down as a result of MATS? How many requests for reconsiderations has the EPA received, and how many has your agency acted upon? What is your schedule for responding to any and all pending requests for reconsideration so that industry can have certainty about their future costs?*

5. The month of January 2014 saw two historic cold snaps in the Eastern United States. The first, the polar vortex, brought the lowest temperatures in decades across the East and Southeast in early January. The second event brought more record-cold temperatures to the Northeast and Midwest, along with paralyzing snow and ice to the Southeast.

   a. Let me ask some straight-forward yes or no questions:

      i. Does affordable, reliable electricity play a critical role in promoting economic growth?

      ii. Does affordable, reliable electricity play a critical role in protecting public health and safety?

      iii. Does affordable, reliable electricity play a critical role in responding to severe weather and natural disasters, regardless of the causes?

6. Recently, the Chairman of the North Carolina Public Utility Commission and other officials wrote to Acting Assistant Administrator of the EPA, Janet McCabe, about EPA's pending rules for existing power plants. They stated that "It is no secret that the economic recovery across the United States is fragile and many ratepayers struggle to pay their monthly bills, including their utility bills."

   a. Do you agree that the economic recovery across the United States is fragile?

   b. Do you agree that many ratepayers struggle to pay monthly utility bills?

   c. In developing rules, does EPA analyze the impacts on the rates people pay for electricity?

   d. In conducting that analysis, is there a threshold for electricity price increases that EPA finds unacceptable? For example, if rates are going to go up by ten, twenty, fifty dollars a month per household in communities in Pennsylvania?

e. We had testimony just last month about how those kinds of rate increases – even twenty dollars a month -- can be too much for many ratepayers, especially in today's economy.

7. The Natural Resources Defense Council has proposed an cap-and-trade approach to regulating carbon dioxide emissions from power plants. An analysis of that proposal by the National Economic Research Associates concluded that NRDC's proposal could cost consumers $13 billion to $17 billion per year in higher electricity and natural gas prices.

   a. Is an approach that will mean those kind of higher energy costs acceptable to EPA?

The Honorable Lee Terry

1. Are you familiar with the Farmer Identity Protection Act: A bipartisan bill introduced by Crawford, McIntyre, Costa and myself?

   a. Do you support or oppose?

   b. Barring legislation, what assurances can you give the farmers of America that their information is safe?

2. Last week, you testified before the House Interior Appropriations Subcommittee and said farmers would have greater certainty because you now have put out a list of 50 or more exemptions. Experts in the Clean Water Act have indicated that the certainty you talk about comes about only because EPA has decided broadly to assert jurisdiction in spite of the Supreme Court decisions in SWANCC and Rapanos.

   a. Can you tell the committee where you have not asserted jurisdiction where you previously claimed it?

   b. Can you tell the committee how your proposed rule comports with the Court's rulings in SWANCC and Rapanos?

   c. Is it correct that a farmer only qualifies for any one of these exemptions if the farmer follows NRCS standards?

   d. Is it true that any – or all – of these exemptions can be changed, curtailed or even eliminated by NRCS without notice to the public and without public input?

The Honorable Michael C. Burgess

1. Please list the names, titles, salaries, and dates of Title 42 appointments for all EPA employees compensated under the Title 42 program, including current and past recipients.

2. In its response to the GAO's recommendation in 2012 regarding handling of ethics issues under the Title 42 program, EPA wrote that although they disagreed with the recommendation, the agency would soon implement plans that would address issues that arise after appointment under Title 42. GAO stated that these plans may address the concerns documented in the 2012 report and may be the basis for closing the recommendation as implemented. GAO has stated that it is currently reviewing plans issued by EPA and will follow up in December 2013 to understand if additional plans have been released internally to the agency.

a. What plans has the EPA issued in response to the issues raised by the GAO recommendation? Have additional plans been released internally to the agency?

b. Has EPA been in communication with GAO regarding Title 42 issues over the last five months? If so, what is the status and nature of the communications?

3. Does EPA have plans to use authority under Title 42 Section 209 (f)? If so, has EPA developed guidance for implementing such authority?

4. In December 2010, EPA began a pilot of using market salary data to estimate salaries of what Title 42 candidates could earn in positions outside of government given their education, experience, professional standing, and other factors. According to the GAO, this pilot was to conclude in December 2012. What is the status of the market salary pilot? Did EPA analyze the pilot's effect on salary negotiations? If yes, what did the analysis show?

5. EPA's authority to use Title 42 pay scales granted through the annual appropriations process expires in 2015. Does EPA intend to ask for an extension to use this authority? Has EPA had discussions with the Appropriations Committees in the House and/or Senate regarding such an extension? Does EPA intend to request that it be granted Title 42 hiring authority through the authorizing committees, either in the House or Senate?

6. It appears that a number of executive branch agencies are working on methane. EPA is looking to regulate oil wells with associated gas, DOE is holding roundtables, DOI is looking at methane capture for royalties, the WH is issuing white papers and I think I'm probably missing a few. Can you give the committee an update on this issue, who is on point, how is it being coordinated, where is it headed and what are you doing to avoid duplication of effort and overlapping regulatory and budget requirements?

7. Please provide the committee with the research funding EPA has provided to the current ozone CASAC panel members, the research institutions with which the panel members are associated, and the name and amount of each project grant by individual or research institution?

8. EPA's website for tracking regulations used to indicate that EPA planed to propose ozone standards in 2014, but now has no schedule indicated.

   a. What is EPA's current schedule for proposing new ozone standards?

   b. What is EPA's current schedule for finalizing the standards?

9. The most recent ozone standards were published in 2008, and have not yet been implemented. In proposing new standards next year, will EPA propose retaining the current standards set in 2008?

10. EPA estimated that the 2010 ozone NAAQS reconsideration could have cost American manufacturing, agriculture and other sectors up to $90 billion per year. I'm concerned that we are driving manufacturing 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? If not, shouldn't the agency consider that?

11. Regarding the Keystone XL Pipeline, has EPA completed its analysis of SEIS and will EPA try to delay the process again?

12. In this rule, I understand that EPA contends the proposed rule would actually result in fewer federal jurisdictional determinations and provide greater clarity to the regulated community.

    Furthermore, EPA claims that by codifying a specific exclusion for ditches located in uplands and drain only uplands should result in far fewer man made drainage ditches becoming subject to the Clean Water Act's (CWA) regulatory and permitting requirements.

    However, the proposed rule also contains an entirely new and significantly expanded definition of "tributary" that includes any feature (e.g., natural or manmade) that has a bed, bank, ordinary high water mark, and eventually contributes flow (surface or subsurface) to "Traditional Navigable Waters." Furthermore, the proposed rule's definition of tributary specifically includes manmade ditches, pipes, or culverts.

    In my District (Texas 26th), like many other places in the country, there are literally thousands of miles of manmade roadside drainage ditches installed and maintained by county governments for primary purpose road safety. These roadside drainage ditches are located in both uplands and other areas.

    How can these manmade roadside drainage ditches benefit from the proposed rule's exclusion when these ditches also considered a tributary under the proposed rule?

13. I understand that the EPA worked to create a scientific study to illustrate the need for this regulation. This scientific report, entitled "Connectivity of Streams and Wetlands to Downstream Waters" states that all waters require federal protection, regardless of size or significance in connectivity.

    In the *Rapanos* and the *SWANCC* decisions that preceded it, the Supreme Court made clear that there is a limit to federal jurisdiction under the CWA, specifically rejecting the notion that any hydrologic connection is a sufficient basis to trump state jurisdiction. Do you think that the term "significant nexus" should be quantified in order to ensure that it does not extend jurisdiction to waters that have a de minimums connection to jurisdictional waters? Perhaps this is something that the National Academy of Science could look into?

14. Why didn't the EPA wait until the scientific study's Science Advisory Board panel gave their final recommendations (expected in May/June) before proposing the rule?

<u>The Honorable Bill Cassidy</u>

1. My area has many communities who feel particularly strapped by the price tag required for compliance with EPA regulations under the Safe Drinking Water Act. I noticed the President's proposed budget provides that 30 percent of state allocations from the Drinking Water State Revolving Loan Fund would (DWSRF) be used for debt forgiveness.

    a. How does this use of the Drinking Water State Revolving Loan Fund compare to other needs addressed by the DWSRF?
    b. In 2009, the American Recovery and Reinvestment Act doubled the amount made available to DWSRF accounts. How much of the debt forgiveness is meant to cover loans made for the "shovel ready projects" covered by this spending?

c. From a practical perspective, what types of needs ordinarily addressed by the DWSRF will be squeezed out by use of DWSRF money this way?

d. Does the Obama Administration consider the current DWSRF self-sustaining?

2. The Safe Drinking Water Act's funding is meant to assure compliance with the public health-based mandates of the law, not merely build infrastructure. I noticed the President's budget contains a Sustainable Water Infrastructure Policy to "develop sustainable systems that employ effective utility management practices to build and maintain the level of technical, financial, and managerial capacity necessary to ensure long-term sustainability."

   a. Can you assure me, apart from a general desire to provide technical assistance to drinking water systems, that this particular program will not divert precious resources away from compliance and towards construction planning in certain communities?

3. Last week, EPA and the Corps of Engineers jointly released a proposed rule relating to "waters of the United States."

   a. Before issuing the proposed rule, did EPA assess whether the proposed rule could affect the building of new energy infrastructure? For example:

      i. Did EPA analyze whether it may be more difficult to build a new power generating facility, or expand an existing one?

      ii. Did EPA analyze whether it may be harder to lay new pipelines or power lines because of the need to obtain wetlands or other permits?

   b. Has EPA analyzed whether the proposed rule would trigger new permitting requirements relating to maintaining existing energy infrastructure? For example:

      i. Will there be a need for new permits to do routine maintenance on transmission lines or pipelines? Or to obtain individual permits for activities that are currently covered under general or nationwide permits?

4. As you know, EPA issues many regulations that can impose very large compliance costs, many of which are ultimately passed on to consumers. Last year, I introduced the Energy Consumers Relief Act (HR 1582) to provide greater transparency and oversight over EPA's multi-billion dollar energy related-rules.

   a. At the time the House considered that bill, the Congressional Budget Office estimate indicated there would be about 25 more energy-related EPA rules in the next 5 years that would cost $1 billion or more to implement.

      i. Is CBO's estimate accurate? Are there really 25 billion-dollar energy related rules coming out of the EPA in the next five years?

      ii. If you don't know, can you get back to the Committee about whether the estimate is accurate?

   b. Can you provide us a list of all rules EPA is currently working on or plans to work on in the foreseeable future that the agency expects will impose compliance costs of $1 billion or more?

The Honorable Adam Kinzinger

As you know, the most pressing issue facing the biodiesel industry, and indeed all renewable fuels industries, is the EPA's recently proposed rule for volumes under the Renewable Fuel Standard (RFS). Biodiesel companies across the country – based on the clear signals of support sent by this Administration – invested their time and resources to build biodiesel plants that would assist in meeting the targets set by the RFS.

Biodiesel is an unmitigated RFS success story. It is the first EPA-designated Advanced Biofuel being produced on a commercial-scale across the country. The industry, with the help of strong energy policy, has crossed the billion-gallon threshold for three consecutive years, and this year is on pace for a record year of more than 1.7 billion gallons. Gallon for gallon, according to EPA's own calculations, biodiesel is reducing greenhouse gas emissions by 57 to 86 percent. All of this is happening as biodiesel blends at the pump – usually of 5 percent or less – are saving consumer's money.

Under the proposal EPA believes biomass based diesel can compete just as it did in 2013 even though it would dramatically cut production back to 1.28 billion gallons. As proposed, the advanced standard would also be reduced to 2.2 billion gallons. Based on the equivalence value of our fuel and nesting, there would be a maximum on 290 million gallons available for biomass-based diesel, other advanced fuels and cellulosic production. With potential for carryover of excess 2013 volume into 2014, we could see a market closer to 1 billion gallons. Obviously, cutting an industry from a 2 billion gallon production rate down close to 1 billion gallons would cause incredible harm. Plants would close. People would be out of work. Further, EPA has proposed this cut for 2014 and 2015, for two years, sending a terrible signal to investors and entrepreneurs who are poised to continue building this industry.

In this regard, please provide written responses to the following questions:

1. With no feedstock, infrastructure or compatibility issues, what other factors did the administration take into account when not increasing the RVO?

2. What factors has the industry not met in order to have its volume increased to at least 1.7 billion gallons? What information do you still need?

3. Have you taken into consideration how potential Argentinian biodiesel imports will impact the volume of RFS qualifying biodiesel in 2014?

4. When do you anticipate the 2014 RVO being finalized?

5. Are there aspects of biodiesel that make you uncomfortable with it as a replacement to diesel fuel?

The Honorable H. Morgan Griffith

1. In 1972 when the Amendments to the Federal Water Pollution Control Act were being discussed by Congress, Senator Edward Muskie of Maine, in addition to strongly emphasizing the need to protect the nation's waterways, reminded the chamber that there were "three essential elements" to the legislation: "uniformity, finality, and enforceability." How does your interpretation of your authority under the Clean Water Act comport with the notion of permit finality?

2. Do you agree that finality is an important consideration for permits? How does EPA intend to provide certainty to the regulated community that they can receive due process to have their projects fairly

considered, and can rely on their permits once they are issued, in light of the agency's recent actions concerning Pebble and Spruce?

The Honorable Bill Johnson

1. You've said that hydraulic fracturing can be done safely and have agreed with former EPA Administrator Lisa Jackson that there have been no confirmed cases of hydraulic fracturing impacting drinking water. Given that the President's Climate Action Plan relies heavily on the use of natural gas, what is your vision for getting the American public to understand that hydraulic fracturing is safe and that fracking has unlocked an American energy revolution that is lowering all Americans energy prices, creating jobs, helping to lower GHG emissions and revitalizing such industries as the manufacturing, steel and chemical sectors?

2. I am aware that the EPA is considering whether a health-based standard is possible for this industry, and I applaud your consideration of this discretionary approach. I also understand that the brick industry has supplied you with all the information necessary to evaluate a health-based compliance alternative for every major source. Could you please describe in detail: What impediments you see to establish a health-based rule for this small industry comprised of a large number of small businesses and how those impediments could be overcome? It would make sense if you would use this approach, since it seems to be both protective of the environment, achievable, and allow the industry to survive.

3. An emission standard is broadly defined in the Clean Air Act. Why would the EPA look to a single facility to establish the emission level for all facilities to meet, rather than consider a health-based metric as a possible emission standard format?

4. The rule-makings 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 you give the Committee, and this industry, that the schedule will not be used as justification for yet another rushed, deficient rule? What can you do to ensure that new rule will include a full consideration for the alternative approach of using a combination of both health-based and work-practice standards to ensure that the requirements of the Clean Air Act are followed and the environment is protected, without requiring huge burdens on a critical industry that provide limited to no environmental benefit?

5. My office has been coordinating with the Ohio Department of Natural Resources (ODNR), Ohio Environmental Protection Agency and your Agency to clarify what the Ohio Department of Natural Resources would need to include in their Risk Based Data Management System in order to be fully compliant with the Emergency Planning and Community Right-to-Know Act. Can your Agency provide ODNR with the requested 'check list' of all elements, as soon as possible, that would need to be included in their upgraded database to ensure that full compliance is met?

The Honorable Gus Bilirakis

1. Administrator McCarthy, Tampa Electric Company serves my constituents in Hillsborough County, Florida. I understand that they recently completed a ten year, $1.2 billion emissions reduction initiative which reduced CO_2 emissions by 20% compared to 1998 levels. Their most significant CO_2 reductions began in 2005. As 2005 is also the suggested baseline year for reductions under EPA's 111d rule for existing power plants, recognition of these reductions is important to protecting Tampa Electric customers

who are benefiting from and paying for these long-term investments. How does the EPA intend to recognize early reductions, such as Tampa Electric's, in its upcoming 111d proposal?

The Honorable Diana DeGette

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. I understand that the draft report will be available in late 2014. In your FY2015 budget request, you ask for $6.1 million for the study.

1. Are any additional progress reports forthcoming before the draft report is released?

2. When do you expect this paper to be final?

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. At about this time last year, EPA's Tier 2 data quality assurance was underway.

3. What is the status of this effort with respect to these five sites?

An important part of the drinking water study is the inclusion of several prospective case studies. These case studies will document the hydraulic process at each stage including drilling, completion, and production. Measurements will be taken before and after each stage. It was my understanding that pursuant to investigations, there were agreements between industry and EPA to develop these case studies together.

4. At this time last year, EPA was in the process of identifying locations. Have these locations been identified? If not, can you provide specific reasons why the locations have not yet been identified?

5. What are the specific criteria required for choosing these locations? If the locations have not been chosen, what criteria are difficult to satisfy?

6. Are the states and industry collaborating with EPA as planned to develop the prospective studies? If not, what is impeding their participation?

7. Will analysis of the prospective studies be included in the draft report and final report, or will this need to be incorporated into a follow-up report?

For FY2015, the EPA is proposing to spend $1 million to support states and tribes in making permitting decisions and to provide oversight related to implementation of EPA's guidance on hydraulic fracturing with diesel fuels.

8. Can you provide some examples of how you will assist states and tribes in following this guidance?

9. Will states that have primacy for UIC wells get assistance as well?

In collaboration with USGS and DOE, EPA has budgeted about $8 million towards research on the potential impacts of hydraulic fracturing on air, ecosystem, and the water quality.

10. What were the results of this effort from last year?

11. What are your milestones for this project this year?

12. Will you keep the public informed of your progress/findings as the research unfolds?

13. Do you expect this to be an ongoing effort that flows again into the following fiscal year?

14. What are the respective roles of DOI, DOE, and EPA in the effort?

The Honorable Doris O. Matsui

1. In 2010, Congress passed legislation of mine that protects American consumers from the formaldehyde toxin used in common household items. It is my understanding that the EPA is still in the drafting phase for the final rule that the comment period ended last October. What is your anticipated timing for completing your work on formaldehyde emissions in composite wood products?

2. Do you expect to harmonize your regulations with the California Air Resources Board with respect to laminated products as directed by Congress?

Attachment 2—Member Requests for the Record

During the hearing, Members asked you to provide information for the record, and you indicated that you would provide that information. For your convenience, descriptions of the requested information are provided below.

The Honorable Billy Long

1. Administrator McCarthy, during the hearing you stated that there are currently wood stoves available on the market that meet the recently proposed New Source Performance Standards for residential wood heaters. Would you please provide the Committee a list detailing what brands and models of wood stoves are on the market today that meet the proposed standards?

The Honorable Gene Green

1. Under the FY 2015 EPA budget proposal, does the EPA have any money allocated for new Superfund cleanup sites?

2. Was EPA able to begin any new Superfund projects during the FY 2013 – FY 2014 timeframe?