

Questions Submitted for the Record by Representative Whitfield

Whitfield Q1: 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?

Answer: The President's 2013 Climate Action Plan sets forth a broad-based blueprint that encompasses climate mitigation, climate adaptation, and global efforts to address the problem of global climate change, and helps guide the Agency's ongoing work to address climate change.

Whitfield Q2: 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(1) 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.**

Answer: It is my understanding that the agency sent an initial response and has subsequently been involved in productive conversations with your staff on this topic, including multiple meetings and briefings as well as providing documents.

The EPA does not believe that these provisions preclude its determination. The EPA has issued a Notice of Data Availability (NODA) that notes the availability of a Technical Support Document (TSD), in the rulemaking docket that details its position on this issue. It explains, "EPA interprets these provisions to preclude EPA from relying solely on the experience of facilities that received EPAct05 assistance, but not to preclude EPA from relying on the experience of such facilities in conjunction with other information." Moreover, the EPA based its determination on a number of projects and other information including projects that did not receive any assistance under the EPAct05. In addition, the agency extended the public comment period for the January 2014 proposal by 60 days to allow adequate time for the public to review and comment on the contents of the NODA and TSD.

Whitfield Q3: 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?

Answer: The EPA followed the appropriate procedures to make public the Notice of Data Availability (NODA) in support of the proposed Carbon Pollutions Standards for New Power Plants. In addition to publication in the *Federal Register*, the EPA posted the NODA and the accompanying technical support document on its web site at: <http://www2.epa.gov/carbon-pollution-standards/2013-proposed-carbon-pollution-standard-new-power-plants>

Whitfield Q4: 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?**

Answer: Comments reflecting interagency concerns, including those of DOE, were conveyed to the EPA in writing during the interagency review process. All such comments are in the administrative record for the proposed rule.

Whitfield Q5: 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?**

Answer: On June 2, 2014, the EPA proposed Carbon Pollution Standards for Modified and Reconstructed Stationary Sources: Electric Utility Generating Units. This proposal was published in the *Federal Register* (FR) on June 18, 2014. The proposed emission limits for modified or reconstructed sources are based on the performance of available and demonstrated technology. Consistent with the requirements of CAA section 111(b), these proposed standards reflect the degree of emission limitation achievable through the application of the best system of emission reduction (BSER) that the EPA has determined has been adequately demonstrated for

each type of unit. The proposed standards for the affected modified and reconstructed sources are summarized in Table 1 of the proposed rule at: <https://www.federalregister.gov/articles/2014/06/18/2014-13725/carbon-pollution-standards-for-modified-and-reconstructed-stationary-sources-electric-utility>.

Whitfield Q6: 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?**

Answer: On June 2, 2014, the EPA proposed the Clean Power Plan for existing power plants. This proposal was published in the *Federal Register* (FR) on June 18, 2014. The Clean Power Plan has two main parts: state-specific goals to lower carbon pollution from power plants and guidelines to help the states develop their plans for meeting the goals. The EPA is proposing the state goal approach under Section 111(d) of the Clean Air Act, which requires that the EPA identify the "best system of emission reduction ... adequately demonstrated" (BSER) that is available to limit pollution - and set guidelines for states to achieve reductions that reflect that system. States then make plans to get the reductions that would result from that system.

In this case, the EPA analyzed the practical and affordable strategies that states and utilities are already using to lower carbon pollution from the power sector. The EPA identified four sets of measures - or "building blocks" - that are in use by many states and utilities and that together make up the best system for reducing carbon pollution. These building blocks recognize the interconnected nature of the power sector and include improving energy efficiency, improving power plant operations, and encouraging reliance on low-carbon energy. The EPA analyzed historical data about emissions and the power sector to create a consistent national formula for reductions that reflects the building blocks.

The Clean Power Plan works by setting state goals that gradually reduce each state's carbon intensity rate or "pollution-to-power ratio." These state goals are not requirements on individual electric generating units. The state goals are determined by using a formula that takes the amount of CO₂ emitted and divides it by the megawatt-hours of electricity generated (lbs/MWh). Each state will choose how to meet the goal through whatever combination of measures reflects its particular circumstances and policy objectives. A state does not have to put in place the same mix of strategies that EPA used to set the goal and there are no specific requirements for specific plants; these may be established if states choose to include those plants in their specific 111(d) implementation plans. States can choose to rely on measures EPA used to calculate the goal as well as on other measures that were not part of the goal-setting analysis.

Whitfield Q7: EPA has advised the Committee that it is working on GHG standards for aircraft. What is EPA's current schedule for issuing such standards?

Answer: In response to a petition and related litigation, the EPA is currently initiating an analysis of whether greenhouse gas emissions from aircraft cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. When this analysis is complete, the EPA expects to propose findings regarding this question. The EPA previously estimated that, upon receipt of a final court ruling upholding our prior greenhouse gas findings regarding motor vehicles in December 2012, a minimum of 22 months would be needed to conduct the analysis, develop a proposal, publish it for comment, review and analyze comments, and issue final findings regarding aircraft engine greenhouse gas emissions. A more specific time table for rulemaking can be provided after such a determination is made.

Whitfield Q8: 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?

Answer: The EPA and NHTSA are jointly developing a proposal for the second round of heavy-duty GHG and fuel efficiency standards (Phase 2). On February 18, 2014, the President announced the timeline for issuing the heavy-duty Phase 2 standards, with a proposed rule by March 31, 2015, and a final rule by March 31, 2016.

Whitfield Q9: 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

Answer: The EPA is not actively developing national standards to specifically regulate greenhouse gas (GHG) emissions from any of the source categories identified. The EPA is continuing to study the issue, and to the extent we work toward developing such rules, the EPA would reach out to and engage all interested stakeholders. For example, the EPA recently issued an Advance Notice of Proposed Rulemaking (ANPR) seeking broad public feedback on options for further reducing landfill gas emissions from existing municipal solid waste (MSW) landfills – including taking comment on whether to regulate methane.

Whitfield Q10: 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.

Answer: The EPA is aware of 189 Prevention of Significant Deterioration (PSD) Greenhouse Gas (GHG) Permits that were issued between April 21, 2011, and July 2014. The complete list is included below.

A total of 189 Prevention of Significant Deterioration (PSD) Greenhouse Gas (GHG) Permits have been issued since April 21, 2011. This breakdown includes:

61 EPA permits

10 Permits issued by Delegated states

118 Permits issued by states

Full Listing of 189 Permits:

1. NUCOR Corporation, St. James Parish, LA
2. We Energies, Rothschild, WI (biomass co-gen boiler at a paper mill)
3. PacifiCorp Lake Side Power Plant, Utah County, UT
4. Mid-American Energy, George Neal South, Salix, IA (installation of pollution controls at a coal-fired power plant)

5. Mid-American Energy, George Neal South, Salix, IA (same as #4 but at different unit)
6. Wolverine Power Co-op, Rogers City, MI (biomass boilers)
7. Lafarge Cement, Ravena, NY
8. Abengoa BioRefinery, Hugoton, KS
9. Sumpter Energy, Carleton Farms, MI
10. US Steel Keetac Iron & Taconite Plant, Keewatin, MN [*Delegated State Permit*]
11. Mid-American Energy, George Neal North, Sergeant Bluff, IA (same as #4)
12. Palmdale Hybrid Energy Center, Antelope Valley, CA [**EPA PERMIT**]
13. Crawford Renewable Energy, Greenwood Township, PA
14. Eni Holy Cross Drilling Project, OCS Eastern GOM [**EPA PERMIT**]
15. Hyperion Refinery and Energy Center, Union County, SD
16. Lower Colorado River Authority - Ferguson, Horseshoe Bend, TX [**EPA PERMIT**]
17. Wolverine Power, Sumpter Power Plant, Belleville, Michigan
18. Hoosier Energy - Merom Station, Sullivan, IN
19. Port Dolphin Energy LNG Port, OCS Eastern GOM [**EPA PERMIT**]
20. IPL Ottumwa Generating, Ottumwa, IA
21. Kennecott Utah Copper- Repowering, South Jordan, UT
22. US Nitrogen - Midway, Green County, TN
23. Beaver Wood Energy, Fairhaven, VT
24. University of Wisconsin - Charter Street, Madison, WI

25. Universal Cement, Chicago, IL [*Delegated State Permit*]
26. Carolina Cement, Castle Hayne, NC
27. PyraMax Ceramics, Allendale, SC
28. PyraMax Ceramics, Wrens, GA
29. NRG Energy, Dover, DE
30. York Plant Holding, Springettsbury, PA
31. Pioneer Valley Energy Center, Westfield, MA [**EPA PERMIT**]
32. Tenaska Christian County Generation IGCC, Taylorville, IL [*Delegated State Permit*]
33. Entergy Louisiana LLC - Ninemile Point Plant, LA
34. Sabine Pass LNG LP, LA
35. Westlake Vinyls, LA
36. CF Industries Nitrogen Complex, LA
37. Pryor Chemical Company, OK
38. Atlas Pipeline Mid-Continent West OK, LLC (WESTOK), OK
39. ETC Texas Pipeline, Natural Gas Processing Plant, Jackson County, TX [**EPA PERMIT**]
40. Indiana Gasification, Spencer County, IN
41. BHP Billiton Petroleum, Sake Exploratory Project, OCS Eastern GOM [**EPA PERMIT**]
42. Milwaukee Metropolitan Sewerage District, Milwaukee, WI
43. Essar Steel, Nashwauk, MN [*Delegated State Permit*]
44. CARBO Ceramics, Millen, GA
45. Effingham Power, Rincon, GA
46. Showa Denko Carbon, Dorchester County, SC
47. Woodbridge Energy, NJ [*Delegated State Permit*]
48. Phillips 66 Alliance, LA
49. Williams Olefins, Geismar, LA
50. JM Huber, Huber Engineered Woods, GA
51. BASF FINA Petrochemical LP (BFLP), Port Arthur, TX [**EPA PERMIT**]
52. Black Hills Power – Cheyenne Prairie Generating Station, Cheyenne, WY [**EPA PERMIT**]
53. Cricket Valley Energy Center, Dover, NY
54. Newark Energy Center, Newark, NJ [*Delegated State Permit*]
55. Exxon Mobil Point Thomson, North Slope, AK
56. Sevier Power Project, UT
57. INEOS Olefins and Polymers, Alvin, TX [**EPA PERMIT**]
58. Enterprise Products – Eagleford Fractionation/DIB, Mont Belvieu, TX [**EPA PERMIT**]
59. Energy Transfer Partners - Lone Star, Mont Belvieu, TX [**EPA PERMIT**]
60. Next Generation Processing, LLC - Haven Gas Plant, KS
61. Pio Pico Energy Center, San Diego, CA [**EPA PERMIT**]
62. Moxie Liberty, Asylum Township, PA

63. Graymont Limestone - Pleasant Gap, Spring Township, Center County, PA
64. GSA Federal Research Center (White Oak), MD
65. CPV Energy, St. Charles, MD
66. Iowa Fertilizer Company, Wever, IA
67. Klausner Holding, Enfield, NC
68. North Springfield Sustainable Energy, North Springfield, VT
69. Gateway Cogeneration, Prince George, VA
70. Calpine, Deer Park, TX **[EPA PERMIT]**
71. WE Energies Elm Road, Milwaukee, WI
72. Energy Answers (permit revision to include GHG), MD
73. Chevron Phillips Chemical Co., Cedar Bayou Plant, Baytown, TX **[EPA PERMIT]**
74. Capitol Power (PAL), Washington, DC **[EPA PERMIT]**
75. Moxie Patriot, Clinton Township, Lycoming County, PA
76. Calpine, Channel Energy Center, Pasadena, TX **[EPA PERMIT]**
77. St. Joseph Energy Center, New Carlisle, IN
78. RockTenn-Solvay LLC, NY
79. Gerdau MACSTEEL, MI
80. Equistar Chemicals, Methanol Unit, Channelview, TX **[EPA PERMIT]**
81. Mid-Kansas Electric Co. – Rubart Station, KS
82. Copano Energy, Sheridan, Colorado County, TX **[EPA PERMIT]**
83. Sinclair Wyoming Refining, Sinclair, WY **[EPA PERMIT]**
84. WBI Energy, Dakota Prairie, ND
85. Montana-Dakota Utilities, Heskett Station, Mandan, ND
86. Equistar Chemicals, La Porte, TX **[EPA PERMIT]**
87. Gibson County Generating, Rutherford, TN
88. Magnetation, Reynolds, IN
89. INVISTA, Victoria, TX **[EPA PERMIT]**
90. Copano Gas Processing, Houston TX **[EPA PERMIT]**
91. Cargill Ethanol Plant, Fort Dodge, IA
92. Alcoa, Davenport Works, IA
93. Rio Grande Cement, Pueblo, CO
94. LADWP Scattergood Generating Station, CA
95. Roxul USA, MS
96. KM Liquids Terminals, Galena Park, TX **[EPA PERMIT]**
97. PL Propylene LLC, Houston, TX **[EPA PERMIT]**
98. Targa Gas Processing, Longhorn, Wise County, TX **[EPA PERMIT]**
99. Energy Answers, Arecibo, PR **[EPA PERMIT]**
100. Equistar Chemicals, Olefins 1 Expansion, Channelview, TX **[EPA PERMIT]**
101. Equistar Chemicals, Olefins 2 Expansion, Channelview, TX **[EPA PERMIT]**
102. Oregon Clean Energy Center, Oregon, OH

103. Green Bay Packaging, WI
104. Empire District Electric, KS
105. Hydrogen Electric California, Kern County, CA
106. Basin Electric Pioneer Generating Station, ND
107. Kerr-McGee Gathering, CO
108. ONEOK Hydrocarbon, Mont Belvieu NGL Fractionation, TX [**EPA PERMIT**]
109. Consumers Energy, MI
110. Midland Cogen Venture, Midland, MI
111. Southern Minnesota Beet Sugar, MN [*Delegated State Permit*]
112. Flint Hills Resources draft PSD permit- Rosemount, MN [*Delegated State Permit*]
113. IPL Eagle Valley Generating Station, Martinsville, IN
114. Diamond Shamrock, Valero McKee Refinery, Sunray, TX [**EPA PERMIT**]
115. DCP Midstream NGL Fractionation, Jefferson County, TX [**EPA PERMIT**]
116. Exxon Mobil Chemical, Mont Belvieu Plastics, TX
117. Virginia Power and Light, Brunswick Plant, VA
118. Green Energy Partners – Stonewall Energy, VA
119. EN-Tire, White Deer Energy, PA
120. DSM Chemicals, GA
121. Klausner Holding, SC
122. FPL Port Everglades, Broward County, FL [**EPA PERMIT**]
123. Carroll County Energy, OH
124. Big River Steel, AR
125. La Paloma Energy Center, Cameron, TX [**EPA PERMIT**]
126. Cargill –Blair, NE
127. Nucor Steel, NE
128. Anchorage Municipal Power and Light, Sullivan Plant Two, AK
129. Puget Sound Energy, Fredonia, WA
130. ExxonMobil Chemical, Olefins Plant Baytown TX [**EPA PERMIT**]
131. Air Liquide Large Industries, Bayou Generation Plant, TX [**EPA PERMIT**]
132. Crosstex Processing Services, Eunice Gas Extraction Plant, LA
133. Shintech Louisiana, LLC., Hydrochloric Acid Production Furnace, LA
134. Shintech Louisiana, LLC, Plaquemine PVC Plant, LA
135. Crosstex Processing Services, Plaquemine NGL Fractionation Plant, LA
136. Basin Electric Power, Lonesome Creek Generating, ND
137. Kraton Polymers U.S. LLC, OH
138. BP-Husky Refining, LLC, OH
139. TECO Polk Station, FL [**EPA PERMIT**]
140. Frontier El Dorado Refining, LLC, KS
141. Holly Corporation SLC Refinery, UT
142. CPV Valley, NJ [*Delegated State*]

143. Texas Eastern Transmission, PA
144. Garrison Energy Center, DE
145. Berks Hollow Energy, PA
146. Hickory Run Energy, PA
147. Frederick County Waste to Energy, MD
148. Future Power of PA, PA
149. Progress Energy Carolinas, NC
150. DuPont Johnsonville, TN
151. Ohio Valley Resources, IN
152. Nucor Steel, IN
153. Renaissance Power, MI
154. Lima Refinery, OH
155. PCS Nitrogen Ohio, OH
156. Holly Tulsa Refinery, OK
157. Mid America Midstream, Rose Valley, OK
158. Targa Midstream Services, Mont Belvieu, TX *[EPA Issued Permit]*
159. Apex Bethel Energy Center, TX *[EPA Issued Permit]*
160. Rohm and Haas, Deer Park, TX *[EPA Issued Permit]*
161. Occidental Chemical, Ingleside, TX *[EPA Issued Permit]*
162. Celanese Clear Lake, TX *[EPA Issued Permit]*
163. CF Industries Nitrogen, Port Neal, IA
164. TradeWind Energy, Lacey Randall Station, KS
165. Dyno Nobel Ammonia Plant, LA
166. Sunbury Generation LLC, Sunbury, PA
167. APEX Matagorda Energy Center, LLC, TX *[EPA Issued Permit]*
168. Chamisa CAES at Tulia, LLC, TX *[EPA Issued Permit]*
169. El Paso Electric Company, TX *[EPA Issued Permit]*
170. Enterprise Products Mont Belvieu Propane Dehy., TX *[EPA Issued Permit]*
171. Equistar Chemical, Olefins, Corpus Christi, TX *[EPA Issued Permit]*
172. Lone Star NGL Mont Belvieu Gas Plant, TX *[EPA Issued Permit]*
173. FGE Power, Westbrook, TX *[EPA Issued Permit]*
174. Lenzig Fibers, Alabama
175. University of Alaska, Fairbanks, Alaska
176. Troutdale Energy Center, OR
177. EFS Shady Hills Generating Station, FL *[EPA Issued Permit]*
178. New Hope Power Company Okeelanta Cogeneration *[EPA Issued Permit]*
179. Dow Chemical Freeport, TX *[EPA Issued Permit]*
180. Flint Hills Resources, Corpus Christi, TX *[EPA Issued Permit]*
181. Golden Spread Electric Cooperative, Antelope, TX *[EPA Issued Permit]*
182. Indeck Wharton Energy Center, TX *[EPA Issued Permit]*

183. Occidental Chemical Corporation, Ingleside Ethylene Plant [*EPA Issued Permit*]
184. PSEG Sewaren Generating, NJ [*Delegated State*]
185. Global Foundries, NY
186. Novelis Corporation, NY
187. C3 Petrochemicals, TX [*EPA Issued Permit*]
188. ONOEK Hydrocarbon, Baytown, TX [*EPA Issued Permit*]
189. Voestelpine, Portland, TX [*EPA Issued Permit*]

Whitfield Q11: 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?

Answer: The EPA performs detailed regulatory impact analyses of its power sector rules, including estimates of potential impacts on the mix of generation resources as well as electricity prices. The modeling approaches EPA uses take into account other regulations. For example, when the EPA modeled the proposed Clean Power Plan using the integrated planning model, the existing air rules already were coded into the model. These models capture the investment decisions of plant owners as they look at all of the investments they will have to make over the modeled timeline. The result is that the model captures the combined impact of all of these requirements on both electricity prices and electricity generating margins.

Our Regulatory Impact Analyses (RIAs) follow peer-reviewed EPA guidelines, relevant Executive Orders, and adhere to OMB requirements and the requirements of relevant statutes. These documents are publicly available and subject to notice and comment.

Whitfield Q12: 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 AE02014 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?**

Answer: MATS has put in motion planning and investment that is leading to the installation of pollution control technologies and adoption of emissions reduction measures across the existing fleet of power plants. Although generation owners, in some instances, publically have attributed retirements exclusively to MATS, most analysts agree that these plants already have been facing decreasing utilization rates due to market factors, including historically low natural gas prices and slowing electricity demand growth. This is demonstrated by the fact that many units are being retired well in advance of MATS compliance dates.

The preamble to MATS provided guidance on which states and other permitting authorities could rely on granting an additional, 4th year for compliance. States report that they have received 4th year extension requests and have granted some.

In addition, the EPA issued an enforcement policy that provides a clear pathway for reliability-critical units to receive an administrative order that includes a schedule of up to an additional year, if it is needed to ensure electricity reliability. The EPA has not received any formal requests for use of this authority. The enforcement policy recommends, however, that facility operators notify planning authorities if they may need to seek an administrative order in the future. The EPA is aware that, to date, a very small number of sources have notified those entities that they may ultimately request an administrative order. The EPA is monitoring these cases closely.

Whitfield Q13: 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?**

Answer: Utilities are making substantial progress in complying with MATS. All of the information that the EPA has seen shows that this progress is occurring without threats to

reliability or other insurmountable challenges that some had predicted. The EPA's extensive engagement with grid planners, undertaken in coordination with the Department of Energy (DOE) and the Federal Energy Regulatory Commission (FERC), and frequent communications with utilities, state regulators, regional transmission organizations, and other key stakeholders indicates that these entities are proactively managing potential issues to ensure reliability is maintained and are adopting cost-effective solutions to MATS compliance requirements.

Whitfield Q14: 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.

Answer: The EPA, DOE, and FERC have been working together, since early 2012, to identify and, as needed, respond to any potential reliability concerns related to MATS. The mechanisms for this coordination have been memorialized in a document developed by staff from the three agencies. The three agencies meet jointly on a regular basis with RTOs in the regions with substantial capacity subject to MATS: Electric Reliability Council of Texas (ERCOT), Midwest Independent System Operator (MISO), the PJM Interconnection (PJM), and the Southwest Power Pool (SPP). The agencies also have had regular interaction with other planning authorities, including several large vertically integrated utilities that serve as transmission operators in these and other regions of the country, as well as NERC and key NERC-affiliated regional entities. In addition, the EPA is in regular contact with key industry trade associations (EEI, APPA, NRECA, CEG); labor unions (boilermakers, utility workers, electrical workers, and others); and state regulatory agencies to monitor MATS implementation.

Whitfield Q15: 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?

Answer: EPA analyzed the possibility that plants would close due to increased costs of compliance with the final Clean Water Act 316(b) rule; this analysis is not confined to just nuclear power plants. EPA analyzed impacts of the rule, along with the impacts of Clean Air Act rules for power plants [Mercury and Air Toxics Standards (MATS), and Cross-State Air Pollution Rule (CSAPR)]. Based on this analysis, described in the supporting documentation for the final 316(b) rule, using the Integrated Planning Model for the electricity generating sector, EPA found that no electric generating facilities would close due to the final rule.

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

Answer: The Administration supports the safe and secure use of nuclear power.

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?

Answer: EPA took into account public comments prior to finalizing the rule. EPA does not expect that generating facilities would close due to the 316(b) rule.

Whitfield Q16: 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?

Answer: The EPA has not modeled this scenario in any recent Regulatory Impact Analysis (RIA). The EPA's extensive engagement with grid planners, undertaken in coordination with the Department of Energy (DOE) and the Federal Energy Regulatory Commission (FERC) and frequent communications with utilities, state regulators, regional transmission organizations, and other key stakeholders indicates that these entities are proactively managing electric reliability. Nuclear power is part of an all-of-the-above diverse energy mix and provides a low-cost, emissions-free source of power. Nuclear power can help the U.S. meet its goals to reduce carbon pollution and meet clean air standards.

Whitfield Q17: 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?

Answer: The national ambient air quality standard is a health-based standard which the Clean Air Act directs the EPA to set at a level requisite to protect public health and public welfare. That said, it is important that States, regulated parties, and the general public have the information they need to achieve and maintain these health-based standards. The EPA has worked and will continue to work with state, local, and tribal air agencies to provide appropriate implementation guidance in a timely manner.

Whitfield Q18: 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?

Answer: The EPA recognizes the importance of providing implementation guidance to air agencies and affected stakeholders for new or revised NAAQS standards. When the need for such guidance is identified, we strive to provide that guidance as soon as possible. Because Prevention of Significant Deterioration (PSD) program requirements are applicable to a new or revised NAAQS when it becomes effective, providing timely guidance related to changes in permitting requirements is especially important for PSD major sources. For example, to address this need by states and industry, the EPA recently proposed and finalized transitional PSD requirements (including grandfathering of pending PSD permit applications) at the same time it promulgated the 2012 PM_{2.5} NAAQS. Similarly, the EPA intends to issue necessary PSD transition guidance along with future new or revised NAAQS.

Whitfield Q19: 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?

Answer: As part of its analysis, the EPA found that the proposed rule would not have a significant adverse effect on the supply, distribution, or use of energy. This statement is found in the preamble to the proposed rule in Section IV.H. Executive order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

b. What does EPA consider the impacts of the proposed rule to be on building new energy

infrastructure or upgrading and maintaining existing infrastructure?

Answer: As described above, the EPA found that the proposed rule would not have a significant adverse effect on the supply, distribution, or use of energy. This statement is found in the preamble to the proposed rule in Section IV.H. Executive order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. As a general matter, the agencies believe that clarifying the scope of Clean Water Act jurisdiction will help make the permitting process more straightforward for energy infrastructure.

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

Answer: As a general matter, the agencies believe that their proposed rule would not add significant Clean Water Act permitting burden. Section 7 of the agencies' economic analysis includes an estimate of CWA Section 404 program costs, and estimates that a slight 3.2 percent increase in permitting would occur as a result of the proposed rule. The agencies welcome comments on this issue during the public comment period to ensure that their rulemaking efforts provide additional clarity while increasing efficiency in determining coverage of the Clean Water Act.

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

Answer: As noted above, the agencies' economic analysis estimates that a slight 3.2 percent increase in permitting would occur as a result of the proposed rule. Applying the estimated incremental 3.2 percent increase in CWA Section 404 permits, the Corps estimates that their additional administrative costs will range from \$7.4 million to \$11.2 million annually. Overall, the agencies estimate that the proposed rule would provide more benefits to the public (\$388 million to \$514 million) than costs (\$162 million to \$278 million).

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

Answer: Such costs were considered in the agencies' analysis, as described above.

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.

Answer: The industry will be able to continue to rely on existing nationwide permits because the proposed rule will not impact existing nationwide permits. The proposed rule does not alter the Clean Water Act Section 404 permitting process administered by the U.S. Army Corps of Engineers and two authorized states. The proposed rule does not alter the Corps' existing nationwide permits (NWPs) that currently streamline the permitting process for many energy projects, such as NWPs 8, 12, 17, 44, 51, and 52.

Whitfield Q20: 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?

Answer: The proposed rule does not alter the Clean Water Act Section 404 permitting process administered by the U.S. Army Corps of Engineers and two authorized states. The proposed rule does not alter the Corps’ existing nationwide permits (NWP) that currently streamline the permitting process for many energy projects, such as NWPs 8, 12, 17, 44, 51, and 52. In general, the agencies believe the proposed rule will expedite the permit review process in the long-term by clarifying jurisdictional matters that have been time-consuming and cumbersome for field staff and the regulated community for certain waters in light of the 2001 and 2006 Supreme Court cases.

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?

Answer: Because the proposed rule does not change the Clean Water Act Sections 402 and 404 use of general permits, the EPA found that the proposed rule would not have a significant adverse effect on the supply, distribution, or use of energy. This statement is found in the preamble to the proposed rule in Section IV.H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

The agencies’ economic analysis, which was made publicly available concurrently with the proposed rule, further describes the agencies’ estimates about the overall benefits and costs of the proposed rule. The agencies’ analysis reflects estimated costs related to all CWA programs, and with respect to CWA Section 404, the agencies’ analysis includes an estimate of all financial costs to finalize a permit application that the Corps deems to be complete, including any actions needed to comply with other Federal laws before a permit can be issued (e.g. Endangered Species Act, National Historic Preservation Act, etc.). For the purposes of this analysis, these application costs were applied to a permit impacting an average number of acres, as calculated from the FY 2010 data in the Corps’ Operation and Maintenance Business Information Link, Regulatory Module (ORM2) database. Thus, these estimated permit costs apply to an “average” project and, as recognized in the analysis, costs for projects could vary widely based on the size, complexity, or other elements of the project. The agencies welcome public comment on the approaches used in their economic analysis to ensure that the analysis adequately captures the benefits and costs of the proposed rule.

Whitfield Q21: 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?**

Answer: The proposed rule is an update of a standard originally promulgated in 1988. The 1988 NSPS requires manufacturers to design new residential wood heaters to meet particulate emission (PM) limits, have representative heaters (per model line) tested by an EPA-accredited lab, and attach the EPA label after the EPA approval. The proposal would update the 1988 NSPS to reflect today's best systems of emission reduction, considering costs. These systems are ~80% cleaner and more efficient. The EPA is reviewing every comment and preparing appropriate responses for the final rulemaking. We are also reviewing all data that has been submitted to help inform our decisions on the final rule. We are currently on schedule and expect to sign a final rule by February 3, 2015, consistent with a proposed consent decree deadline.

A proposed consent decree was published in the Federal Register on May 9th (79 FR 26752), with a 30 day comment period that runs through June 9th.

Once the EPA reviews the comments, as provided in Clean Air Act (CAA 113(g)), the Agency will determine whether the comments disclose facts or information that indicate that the consent decree is "inappropriate, improper, inadequate or inconsistent with [the CAA]." If there are no such facts or information, we will move the court to enter the consent decree. Upon entry by the court, the consent decree will be a binding court order.

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?**

Answer: Under the current NSPS for residential wood heaters, the Office of Enforcement and Compliance Assurance (OECA) issues certificates of compliance for wood heater manufacturers. The certificates of compliance are valid for five years from the date of issuance (40 CFR 60.533 (j) (1) (ii)). After the five year term, OECA checks to make sure that no changes have been made to the design of the stove that would increase particulate matter emissions.

OECA works directly with wood heater manufacturers and their representative laboratories to obtain all engineering data that is necessary for EPA to expedite review and avoid backlogs in the certification process. OECA typically reviews (both initial and renewal) certification requests in 30-90 days. We currently do not have a backlog of pending requests, and will continue to work with the wood heating industry to review certifications as expeditiously as possible.

Should the final rule be finalized in its proposed state, the third party certification program described in section III.A should facilitate the development of improved wood heater designs by providing a faster approval process and reducing redundancies in quality assurance for emissions testing and safety testing. The proposed third-party certification program should also improve enforcement by providing for more frequent on-site inspections of manufacturing facilities and laboratories.

Whitfield Q22: 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?**

Answer: U.S. EOR projects with traditional risk profiles, such as current projects referenced in the preamble of the proposed rule, are permitted as UIC Class II. EOR projects also are subject to the Greenhouse Gas Reporting Program under Subpart UU – Injection of Carbon Dioxide (if not reporting under Subpart RR) and potentially other source categories including Subpart W – Petroleum and Natural Gas Systems. As of May 2014, the EPA has not received any Subpart RR MRV plans.

Whitfield Q23: 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?**

Answer: The agency received petitions from Wisconsin tribes requesting EPA use section 404(c) to prohibit a proposed mine in northern Wisconsin. EPA has not received any petitions regarding an existing permit.

Whitfield Q24: **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?**

Answer: No, the EPA does not have plans to perform studies on or initiate the 404(c) process on any other waters at this time

Whitfield Q25: Does EPA have any plans to potentially reevaluate any existing 404 permits pursuant to its 404(c) authority? If so, which ones?

Answer: No, the agency does not have any such plans.

Whitfield Q26: 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 from working on any regulation changing the definition of fill material.

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

Answer: During past years, the Corps and the EPA have discussed actions for the definition of "fill material" that could provide additional clarity. However, the EPA has no active discussions with the Corps in FY 2014 on revising the agencies' definition of "fill material."

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

Answer: The EPA has no active discussions with the Corps in FY 2014 on revising the agencies' definition of "fill material."

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?

Answer: The EPA has no active discussions with the Corps in FY 2014 on revising the agencies' definition of "fill material."

Whitfield Q27: 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?

Answer: The EPA has spent a significant amount of time with these stakeholders in the spirit of trying to understand their proposed approach. Since the renewable hydrogen only makes up a small portion of the gasoline or diesel transportation fuel in which it is used, it is not clear that the fuel would meet the GHG emission reduction thresholds required by the Clean Air Act. Furthermore, the EPA has already approved other pathways that allow for the use of biogas, so the proposed pathway would not necessarily result in more biogas being used as a transportation fuel. We have also determined that this pathway may give rise to some unique technical, regulatory, and implementation issues. For example, new recordkeeping and reporting requirements for refiners might be necessary to ensure that RINs were appropriately generated for the fuel derived from the biogas. Given these concerns and resource constraints, the EPA does not currently have an anticipated timeline for further consideration of this pathway.

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?

Answer: The EPA already has approved a significant list of advanced and cellulosic biofuels under the RFS program. However, the RFS program is facing new and different issues on an ongoing basis as the renewable fuels market continues to evolve and grow. In order to carry out its responsibilities, the agency has shifted resources from other program areas, to the extent possible, but limited agency resources has made this difficult.

To address some of these challenges, on March 13, the EPA posted a program announcement about activities that we are undertaking to improve the petition process for new fuel pathways. During the improvement process, the EPA intends to continue reviewing pending petitions that are high priority and pending petitions for which substantial modeling has already been done. Considering resource limitations, we will be setting priorities with respect to petition reviews, such as focusing on pathways that can contribute to meeting the cellulosic biofuel volumes. We expect this improvement process to take approximately six months.

Questions Submitted for the Record by Representative Barton

Barton Q1: 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?**

Answer: The SAB Staff Office (SABSO) does not transcribe CASAC meetings. The EPA's National Center for Environmental Assessment and the EPA's Office of Air Quality Planning and Standards sometimes have transcribers at CASAC meetings. The SABSO has no plans to prepare transcripts of CASAC meetings. To meet our legal requirements for Federal Advisory Committee Act (FACA) records keeping, the SABSO develops meeting minutes which are certified as accurate by the chair of the committee in question and makes those meeting minutes available to the public. These meeting minutes document the actions taken and decisions made by the panel during its public deliberations.

The SABSO does live webcast some CASAC meetings. The CASAC webcasts are live events designed to share the real time public meeting with all interested parties who wish to watch. The webcasts are not archived and the EPA has no plans to do so going forward.

Barton Q2: 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 the 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?

Answer: The SAB Staff Office does live webcast some SAB meetings. The SAB webcasts are live events designed to share the real time public meeting with all interested parties who wish to watch. The webcasts are not archived and the EPA has no plans to do so going forward. The SAB Staff Office (SABSO) does not transcribe SAB meetings. The SABSO has no plans to prepare transcripts of SAB meetings.

Barton Q3: 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?**

Answer: The EPA's SAB Staff Office (SABSO) does not transcribe COUNCIL meetings. The SABSO has no plans to develop transcripts of COUNCIL meetings. To meet our legal requirements for Federal Advisory Committee Act (FACA) records keeping, the SABSO develops meeting minutes which are certified as accurate by the chair of the committee in question. These meeting minutes document the actions taken and decisions made by the panel during its public deliberations. It should be noted that the work of the COUNCIL is complete and the EPA is working to administratively retire the COUNCIL as a peer review body in FY 2014.

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?**

Answer: The SABSO does not webcast COUNCIL meetings and has no plans to do so going forward.

Barton Q4. 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?

Answer: As your inquiry indicated, you are aware that there was an initial peer review

of the draft reports for the AACM2 and AACM3 projects. Following that initial review, revised reports were prepared. These revised drafts went through an extensive review process involving multiple EPA program and regional offices. This subsequent peer review identified technical issues that did not meet the Agency's scientific standards and could not be resolved.

The EPA Office of Inspector General has recently completed an investigation of the AACM experiments and methods used to demolish buildings at additional locations. The final report is currently available at:

<http://www.epa.gov/oig/reports/2014/20140925-14-P-0359.pdf>

We share your desire to protect the health and safety of the citizens in Texas. In light of the Inspector General investigation, the unresolved technical issues, and because the agency is not considering modifying the Asbestos National Emissions Standards for Hazardous Air Pollutants (NESHAP), EPA has decided not to publish the reports for AACM2 and AACM3.

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.

Answer: If you continue to desire the described documents, please make such a request through a separate letter to the Agency. EPA's longstanding protocol is to process document requests through separate letters and we will be happy to work with you or your staff to provide an appropriate response.

Questions Submitted for the Record by Representative Pitts

Pitts Q1: 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 also has 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?

Answer: Discussions are ongoing. The EPA continues to review the petitions for reconsideration and how they may be affected by the U.S. Court of Appeals for the District of Columbia Circuit decision on the final MATS rule on April 15, 2014. The court specifically spoke to some issues raised by ARIPPA, saying: "EPA's decision not to create a CFB subcategory in the Final Rule is reasonable and well-supported by the record." However, at this time, the EPA has not made any final decisions regarding the ARIPPA petition or the remaining petitions on the final MATS rulemaking.

Pitts Q2: 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?

Answer: EPA believes that a number of the coal refuse electric generating units are already meeting the finalized MATS standards without the use of any additional controls. Coal refuse units needing additional time to comply with the final MATS may seek an extension of up to one year to install controls necessary to comply with the final standards.

Pitts Q3: 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?

Answer: We will continue to work with Congressman Rothfus and other interested parties on these issues.

Pitts Q4: 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?

Answer: Utilities are making substantial progress in complying with MATS. All of the information that the EPA has seen shows that this progress is occurring without threats to reliability or other insurmountable challenges. EPA's extensive engagement with grid planners, undertaken in coordination with the Department of Energy (DOE) and the Federal Energy Regulatory Commission (FERC) and frequent communications with utilities, state regulators, regional transmission organizations, and other key stakeholders indicates that these entities are proactively managing potential issues to ensure reliability is maintained and are adopting cost-effective solutions to MATS compliance requirements.

MATS has put in motion planning and investment that is leading to the installation of pollution control technologies and adoption of emissions reduction measures across the existing fleet of power plants. Although generation owners in some instances publically have attributed retirements exclusively to MATS, at least one study found that these plants already have been facing decreasing utilization rates due to market factors, including historically low natural gas prices and slowing electricity demand growth.¹ This is demonstrated by the fact that many units are being retired well in advance of MATS compliance dates.

The EPA received 20 petitions for reconsideration of the MATS NESHAP and 4 petitions for reconsideration of the MATS NSPS. Many, if not all, of these petitions contained

¹ http://www.analysisgroup.com/uploadedFiles/News_and_Events/News/2012_Tierney_WhyCoalPlantsRetire.pdf.

multiple issues. We granted reconsideration on two of the issues raised – the new-source emission limits and the startup/shutdown provisions. To date, we have finalized responses to the new-source limits issue. We are in the process of finalizing the startup/shutdown provisions issue. The EPA continues to review the remaining petitions for reconsideration and how they may be affected by the U.S. Court of Appeals for the District of Columbia Circuit decision on the final MATS rule on April 15, 2014.

Pitts Q5: 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?**

Answer: Affordable, reliable electricity is among the many factors that affect the public health and welfare, economic growth, and resiliency against disasters.

Pitts Q6: 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.**

Answer: The EPA evaluates the costs and benefits of its rules in our Regulatory Impact Analyses (RIAs), including analyses of electricity rates and electricity bills. In our illustrative modeling, conducted for the proposed Clean Power Plan, the EPA estimated that small changes in electricity prices would be within normal, historical fluctuations and any short-term increase

in what we pay every month on our electric bill—think the price of a gallon of milk—will still keep our bills lower than they were in 2010. In fact, if states choose to take advantage of available opportunities to increase efficiency, we expect by 2030 average residential electricity bills will be 8 percent lower than they would be without the Clean Power Plan, saving the average American family almost \$9 on their electric bill every month.

Pitts Q7: The Natural Resources Defense Council (NRDC) has proposed a 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.

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

Answer: States, cities, businesses, and homeowners have been working for years to increase energy efficiency and reduce demand for electricity. The EPA projects that the Clean Power Plan will continue—and accelerate—this downward trend. This means that, in 2030, nationally, electricity bills would be expected to be roughly 8 percent lower than they would have been without the plan. That would save \$9 on the average American’s monthly electricity bill.

Questions Submitted for the Record by Representative Terry

Terry Q1: 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?

Answer: The EPA has not taken a position on the Farmers Identity Protection Act. The EPA understands the need to protect personal information. The EPA has a Privacy Policy which establishes agency requirements for safeguarding the collection, access, use, dissemination, and storage of personally identifiable information and Privacy Act information in accordance with the Privacy Act of 1974, the E-Government Act of 2002, the Federal Information Security Management Act (FISMA), and policy and guidance issued by the President and the Office of Management and Budget. The EPA also has a Privacy Act Manual, which establishes policy and procedures for protecting the privacy of individuals who are identified in EPA's information systems. The EPA will continue to work with our federal partners, industry, and other stakeholders to ensure the agency addresses the privacy interests of farmers.

Terry Q2: 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?

Answer: The proposed rule in paragraphs (b)(3) through (b)(5) identifies waters that are proposed to not be considered waters of the United States. Specifically, the agencies propose that the following are not waters of the United States notwithstanding whether they would otherwise be jurisdictional under section (a):

- Ditches that are excavated wholly in uplands, drain only uplands, and have less than perennial flow;
- Ditches that do not contribute flow, either directly or through another water, to a traditional navigable water, interstate water, the territorial seas, or impoundment;
- Artificially irrigated areas that would revert to upland should application of irrigation water to that area cease;

- Artificial lakes or ponds created by excavating and/or diking dry land and used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing;
- Artificial reflecting pools or swimming pools created by excavating and/or diking dry land;
- Small ornamental waters created by excavating and/or diking dry land for primarily aesthetic reasons;
- Water-filled depressions created incidental to construction activity;
- Groundwater, including groundwater drained through subsurface drainage systems; and
- Gullies and rills and non-wetland swales.

Most of these features and waters have been identified by the agencies as generally not waters of the United States in previous preambles or guidance documents, but the agencies have always preserved the authority to determine in a particular case that any of these waters are a water of the United States. One goal in this proposed rule is to increase certainty about the scope of waters of the United States. To that end, the agencies propose that these features and waters are expressly not waters of the United States by rule. Thus, the agencies would not retain the authority to determine that any of these waters was a water of the United States because it would otherwise be jurisdictional under section (a).

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

Answer: Determining Clean Water Act protection for streams and wetlands became confusing and complex following Supreme Court decisions in 2001 and 2006. For nearly a decade, members of Congress, state and local officials, industry, agriculture, environmental groups, and the public asked for a rulemaking to provide clarity. The proposed rule is consistent with the Supreme Court's more narrow reading of Clean Water Act jurisdiction.

As Justice Kennedy stated in his *Rapanos* opinion, “In *Solid Waste Agency of Northern Cook Cty. v. Army Corps of Engineers*, [cites omitted] the Court held, under the circumstances presented there, that to constitute navigable waters under the Act, a water or wetland must possess a significant nexus to waters that are or were navigable in fact or that could reasonably be so made. [cites omitted].” Justice Kennedy then indicated that a water has a significant nexus when, either alone in combination with similarly situated waters in the region, the water significantly affects the chemical, physical, or biological integrity of a navigable water.

When developing the proposed definition of “waters of the United States,” the agencies carefully considered available scientific literature and proposed a rule consistent with their conclusions that a particular category of waters, either alone or in combination with similarly situated waters in the region, significantly affects the chemical, physical, or biological integrity

of traditional navigable waters, interstate waters, or the territorial seas.

The proposed rule identifies tributaries and adjacent waters as “waters of the United States.” As discussed in the proposal preamble and its Appendix A, tributaries as proposed to be defined perform the requisite functions for them to be considered “waters of the United States” by rule. Tributary streams exert a strong influence on the character and functioning of downstream traditional navigable waters, interstate waters, and the territorial seas, either individually or cumulatively. With respect to adjacent waters, the agencies similarly conclude that adjacent waters as defined in the proposal perform the requisite functions for them to be considered “waters of the United States” by rule, and these conclusions and their scientific basis are discussed at length in the proposal preamble and Appendix A.

For an “other water” to be jurisdictional, the proposed rule expressly requires a case-specific evaluation whether a significant nexus is present between the “other water” and a navigable water, interstate water, or territorial sea. As discussed in the proposal preamble, the agencies conclude that “other waters” may affect downstream traditional navigable waters, interstate waters, and the territorial seas, depending on the characteristics of the connection to the river network. However, currently available science suggests this connectivity varies within a watershed and over time, making it difficult to generalize about whether such waters have a significant nexus as a category. As a result, the proposal indicates that these waters require a case-specific significant nexus analysis.

This approach is fully consistent with the *Rapanos* and *SWANCC* decisions. The agencies further explain the legal issues outlined in these cases in the preamble of the agencies’ proposed rule and in Appendix B: Legal Analysis.

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

Answer: Clean Water Act Section 404(f)(1)(A) identifies “normal” farming practices as exempt from Section 404 permitting, and gives as examples plowing, seeding, cultivating, minor drainage, harvesting, and upland soil and water conservation practices. Under the interpretive rule, the EPA and Corps of Engineers, with assistance from the Natural Resources Conservation Service (NRCS), identified 56 additional specific agricultural conservation practices that are “normal farming” and thus exempt from permitting under Section 404(f)(1)(A). These practices are defined by the accompanying NRCS technical standards, which is why the interpretative rule relies on agriculture producers to follow the NRCS technical 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?

Answer: The EPA, the Army, and the U.S. Department of Agriculture have signed a Memorandum of Agreement that describes how the agencies will revisit the conservation practices considered exempt from permitting under Clean Water Act Section 404(f)(1)(A). The agencies have agreed to annually review and update, as necessary, the Natural Resources Conservation Service’s agricultural conservation practices that may include discharges to waters of the United States. Note also that the Section 404(f) exemptions are established by the Clean Water Act itself, and the agriculture interpretive rule merely clarifies that the statutory exemption for “normal farming” extends to cover the 56 identified NRCS conservation practice standards.

Questions for the Record Submitted by Representative Burgess

Burgess Q1: 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.

Answer: The table below provides EPA’s current on-board Title 42 employees. Currently, the average salary for Title 42 employees is \$192,000.

FY Hired	OPM Position Classification	EPA/ORD Organization	Science Expertise
2006	Research Chemist (Bioinformatics)	National Center for Computational Toxicology (NCCT), Research Triangle Park, NC	<ul style="list-style-type: none"> • Leads cutting-edge research in systems models of cellular behavior. • International expertise in bioinformatics and predictive biochemical pathways.
	Research Physicist (Computational Systems Biology)	NCCT, Research Triangle Park, NC	<ul style="list-style-type: none"> • Heads innovative research in developing complex computational solutions to use models to characterize chemical exposure, hazard, or risk, such as ToxCast. • International leadership in creating informatics teams and in the area of genomics.
	Research Biologist (Systems Biology)	National Health and Environmental Effects Research Laboratory (NHEERL), Integrated Systems Toxicology Lab, Research Triangle Park, NC	<ul style="list-style-type: none"> • Leads the lab in initiating systems approaches in developing molecular biology methodologies. • International leadership in combining experimental and computational approaches to health effects of environmental contaminants.
2007	Research Biologist (Developmental Systems Biology)	NCCT, Research Triangle Park, NC	<ul style="list-style-type: none"> • Heads ORD’s research to develop complex systems level models of biological processes and tissues. • Provides international expertise in developmental biology, systems biology, genomics, and computational modeling.

FY Hired	OPM Position Classification	EPA/ORD Organization	Science Expertise
2007	Supervisory Research Biologist (Director)	NHEERL/Environmental Public Health Lab/Clinical Research Center, Research Triangle Park, NC	<ul style="list-style-type: none"> • Leads ORD's research on pulmonary effects related to air pollution and sensitivity factors. • Brings international experience in the area of assessment and characterization of immunological and allergic diseases in response to air pollution.
2008	Supervisory Research Biologist (Director)	National Center for Environmental Assessment (NCEA), Research Triangle Park Center, NC	<ul style="list-style-type: none"> • Directs ORD assessment of the health and environmental effects of single environmental pollutants and combinations of pollutants. • Provides international expertise in health risk assessment and air pollutants research.
2010	Supervisory Chemist (Director)	National Risk Management Research Laboratory (NRMRL), Sustainable Technology Lab, Cincinnati, OH	<ul style="list-style-type: none"> • Leads ORD's development and application of models and tools to prevent, mitigate, and control environmental risks. • International expertise in green chemistry, engineering, and sustainability science.
2011	Supervisory Health Scientist (Director)	NHEERL, Environmental Public Health Lab, Research Triangle Park, NC	<ul style="list-style-type: none"> • Heads ORD's integrated, clinical, epidemiological, and laboratory animal based research program. • Brings international leadership in cardiac effects of air pollution on environmental exposure and risk identification and characterization.
2011	Supervisory Research Biologist (Director)	NHEERL Integrated Systems Toxicology Lab, Research Triangle Park, NC	<ul style="list-style-type: none"> • Leads ORD's research in using systems biology approaches to describe normal biological, homeostatic processes and to identify key events that signal departure from those processes leading to adverse health outcomes.

FY Hired	OPM Position Classification	EPA/ORD Organization	Science Expertise
			<ul style="list-style-type: none"> •International leadership in toxicology, molecular biology, pharmacology, and genetics.
	Supervisory Biologist (Director)	NHEERL, Toxicity Assessment Lab, Research Triangle Park, NC	<ul style="list-style-type: none"> • Directs ORD's integrated toxicology assessment research that incorporates developmental biology, reproductive biology, endocrinology, and neurosciences. •Provides international expertise in in vivo toxicology, neurological biology, reproductive and developmental biology, and source to effects models.
	Supervisory Physical Scientist (Director)	National Exposure Research Laboratory (NERL), Ecosystems Research Lab, Athens, GA	<ul style="list-style-type: none"> • Heads ORD's research into fate and transport of environmental stressors, including studies of the behavior of contaminants, nutrients, and biota in environmental systems. • Provides international expertise in working with ecologists, chemists, fisheries biologists, geologists, and engineers.
	Supervisory Biologist (Director)	NERL, Microbiological and Chemical Exposure Assessment Research Lab, Cincinnati, OH	<ul style="list-style-type: none"> • Leads ORD's research on microbial ecology and the potential risk factors in natural and engineered water systems. • International leader in microbial ecology, chemistry, and physiology.
2012	Supervisory Biologist (Deputy Assistant Administrator for Science)	Office of the Assistant Administrator, Immediate Office, Washington, DC	<ul style="list-style-type: none"> • Leads all science and research in ORD. • Provides scientific foundation and leadership across ORD research programs. • International leader in the areas of developmental toxicology, endocrine disruption, benchmark dose analysis, and computational toxicology.
	Supervisory	Air, Climate, and Energy	<ul style="list-style-type: none"> • Provides the critical science to

FY Hired	OPM Position Classification	EPA/ORD Organization	Science Expertise
	Biologist (National Program Director)	National Research Program, Research Triangle Park, NC	<p>develop and implement the National Ambient Air Quality Standards under the Clean Air Act. The research program fosters innovative approaches to ensure clean air in the context of a changing climate and energy options.</p> <ul style="list-style-type: none"> • Internationally recognized expert in the area of public health effects of air pollution, including inhalation and cardiovascular toxicology.
	Supervisory Biologist (National Program Director)	Safe and Sustainable Water Resources Research Program, Washington, DC	<ul style="list-style-type: none"> • Heads ORD's research on developing new approaches for evaluating groups of contaminants for the protection of human health and the environment; developing innovative tools, technologies, and strategies for managing water resources; and supporting a systems approach for protecting and restoring aquatic systems. • Provides internationally recognized expertise in the areas of environmental sciences, toxicology, human health, and wetland restoration.
2012	Supervisory Environmental Engineer (Director)	National Center for Environmental Research, Washington, DC	<p>Leads and conducts highly recognized, leading edge, extramural research in the areas of exposure, risk assessment, and risk management. This includes supporting high-quality research by the nation's leading scientists and engineers that will improve the scientific basis for national environmental decisions.</p> <ul style="list-style-type: none"> • Internationally recognized leader and expert in the area of environmental engineering, including hazardous waste management, treatment, and disposal.

FY Hired	OPM Position Classification	EPA/ORD Organization	Science Expertise
	Supervisory Physical Scientist (National Program Director)	Chemical Safety for Sustainability, Washington, DC	<ul style="list-style-type: none"> • Provides the scientific foundation for the chemical safety for sustainability program in order to advance environmental sustainability. • Leads international innovation in areas of chemical design and chemical impacts to human health and the environment.
2012	Supervisory Biologist (Director)	NCEA, Washington, DC	<ul style="list-style-type: none"> • Leads ORD's health and ecological assessment program to determine how pollutants may impact human health and the environment. • Internationally recognized leader and expert in toxicology and environmental health sciences.
	Supervisory Environmental Health Scientist (Director)	NERL, Human Exposure and Atmospheric Sciences Lab, Research Triangle Park, NC	<ul style="list-style-type: none"> • Heads ORD's research effort to develop innovative approaches for assessing the fate, transport, and exposure to air pollutants from different sources and develop and apply tools for assessing aggregate exposures and cumulative risk to all stressors from all sources. • Internationally recognized expert in the area of human exposure and atmospheric sciences.
2013	Associate Director for Health	NHEERL, Research Triangle Park, NC	<ul style="list-style-type: none"> • Leads NHEERL's health effects research program to assess the impact of chemical and other environmental stressors on human health that builds on systems biology thinking employing a variety of approaches such as in vivo, in vitro, and in silica technologies. • International recognition in the areas of gene regulation, toxicokinetics and toxicogenomics, and developmental toxicology.

FY Hired	OPM Position Classification	EPA/ORD Organization	Science Expertise
	Supervisory Toxicologist (Director)	NCCT, Research Triangle Park, NC	<ul style="list-style-type: none"> • Heads ORD’s research into the application of mathematical and computer models to technologies derived from computational chemistry, molecular biology, and systems biology. • Brings international leadership and experience in the areas of genomic biology, bioinformatics and chemical safety sciences.
FY 2014	Supervisory Biologist (Director)	NRMRL, Kerr Lab, Ada, OK	<ul style="list-style-type: none"> • Leads NRMRL’s research into the interactions of technical, economic, and social factors which affect current and future demands on water resources. • International recognition on subsurface resources, water quality, nutrient cycling, and ecosystems research and management.

Burgess Q2: 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?

Answer: At EPA, the ethics review for all Title 42 candidates is undertaken by the EPA Ethics Office. That office adheres to the following procedure: for every new Title 42 candidate proposed by the Office of Research and Development (ORD) for hire, EPA’s Ethics Office reviews his or her public financial disclosure form (OGE 278) and confers directly with the candidate to ensure complete reporting of necessary information. EPA Ethics discusses potential ethics issues with the candidate and with the appropriate Deputy Ethics Official. If necessary, EPA Ethics drafts a recusal statement/screening arrangement for the candidate to be issued upon

entry to employment. EPA Ethics follows up to ensure that it receives a signed copy of the recusal statement. At EPA, only the EPA Ethics Office is responsible for collection, review, and certification of public financial disclosure reports, so there is no need to release any additional plans to the rest of 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?

Answer: EPA has not had direct communication with GAO specific to the Title 42 recommendation issued from this report. However, as part of a routine, annual process, GAO has recently requested an update of all open GAO recommendations at the Agency, which includes the Title 42 recommendation.

Burgess Q3: Does EPA have plans to use authority under Title 42 Section 209 (f)? If so, has EPA developed guidance for implementing such authority?

Answer: At this time, EPA does not have plans to implement Title 42 Section 209 (f).

Burgess Q4: 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?

Answer: EPA uses market salary data to inform decision-making on when to use the Title 42 authority and in salary negotiations. The 2010 pilot emphasized the importance of the critical information market salary data provides to EPA in decision-making. EPA completed the pilot and continues to use the market data in its decision-making process. Guidance on the use of the data is currently being incorporated into EPA's Title 42 policy and guidance.

Burgess Q5: 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?

Answer: The FY 2015 President's Budget included language to extend EPA's Title 42 authority through FY 2017 and to remove the 50 person cap.

Burgess Q6: 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?

Answer: In June 2013, the President's Climate Action Plan called on the EPA and the Departments of Agriculture, Energy, Interior, Labor, and Transportation to develop a comprehensive methane strategy. This strategy, which was released at the end of March 2014, builds on progress to date and takes steps to further cut methane emissions from a number of key sources including: landfills, coal mines, agriculture, and oil and gas.

For the oil and gas sector activities noted above, the methane strategy outlines the EPA activities including the development of technical white papers. On April 15, 2014, the EPA released, for external peer review, five technical white papers on potentially significant sources of emissions in the oil and gas sector, including emissions from completions and ongoing production of hydraulically fractured oil wells. The white papers focus on technical issues covering emissions and mitigation techniques that target methane and volatile organic compounds (VOCs). The EPA will use the papers, along with the input we receive from the peer reviewers and the public, to determine how to best pursue additional reductions from these sources. Additional details on the white papers can be found at - <http://www.epa.gov/airquality/oilandgas/whitepapers.html>.

The EPA will continue to coordinate closely with DOI, DOE, and other Federal agencies to ensure all activities related to methane emissions are complementary and support the overall goals of the Climate Action Plan: Strategy to Reduce Methane Emissions.

Burgess Q7: 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?

Answer: When evaluating the research funding of CASAC members who are to serve on specific panels, like the Ozone panel, the Science Advisory Board (SAB) Staff Office will look at research (awarded or active) in a two-year time frame (in this case 2012 - 2014). That analysis shows that seven of the CASAC ozone panelists have research funded by the EPA. Attached is a table breaking down the individuals, the research institutes, and the project name and dollar amounts. In each case the individual panel members were part of a multi-individual, multi-institution list of recipients. That information is also presented and the project amount provided represents the aggregate funding for all of the principal investigators and institutions listed.

Please note the excel attachment provides a separate tab for each CASAC member

participating in EPA-funded projects.

Burgess Q8: EPA's website for tracking regulations used to indicate that EPA planned to propose ozone standards in 2014, but now has no schedule indicated.

a and b: What is EPA's current schedule for proposing new ozone standards? What is EPA's current schedule for finalizing the standards?

Answer: On April 30th, 2014, the U.S. District Court for Northern California ordered the EPA to propose revisions to the National Ambient Air Quality Standards for ozone by December 1, 2014, and to finalize any such revisions by October 1, 2015.

Burgess Q9: 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?

Answer: The EPA has not yet reached a decision about what revisions, if any, to the ozone standards may be appropriate in light of the current scientific evidence.

Burgess Q10: 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?

Answer: The EPA is prohibited by law from considering costs of implementation in setting the health-based NAAQS. The U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), that the EPA may not consider the costs of implementation in setting standards that are requisite to protect public health and welfare, as provided in section 109(b) of the Clean Air Act. However, the Clean Air Act gives state and local officials, in nonattainment areas, the ability to consider several factors, including employment impacts and costs of controls, when designing their state implementation plans to implement the NAAQS.

Burgess Q11: Regarding the Keystone XL Pipeline, has EPA completed its analysis of SEIS and will EPA try to delay the process again?

Answer: EPA is required under Section 309 of the Clean Air Act to "review and comment in writing" on other Agency's Environmental Impact Statements. Pursuant to that mandate, EPA has provided comments to the Department of State on its draft and draft supplemental EIS's for the Keystone XL pipeline. EPA must provide these comments within the

timeframes established by the lead Agency. On April 18, 2014, the Department of State notified eight Agencies, including EPA that State was providing more time for submission of views on the proposed Keystone Pipeline Project. As noted by the State Department, “Agencies need additional time based on the uncertainty created by the on-going litigation in the Nebraska Supreme Court which could ultimately affect the pipeline route in that state.” As a result, EPA’s analysis is on-going.

Burgess Q12: 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 man-made roadside drainage ditches benefit from the proposed rule's exclusion when these ditches also are considered a tributary under the proposed rule?

Answer: The proposed waters of the U.S. rule proposes to reduce jurisdiction over ditches by excluding certain intermittent ditches which are considered to be jurisdictional under existing regulations and the December 2008 guidance which the Agencies currently use. The proposed rule does this in section (b) of the regulatory language which states: “The following are not waters of the United States notwithstanding whether they meet the terms of paragraphs (a)(1) through (7) of this section.” This language means that if a ditch qualifies as being exempt under paragraph (b), then it is exempt regardless of whether the ditch meets the definition of a tributary.

Burgess Q13: 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 minimis connection to jurisdictional waters? Perhaps this is something that the National Academy of Sciences could look into?

Answer: The draft EPA report, "Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence," provides a synopsis of the science relevant to connections between waters. The draft report does not draw any policy conclusions and therefore does not suggest that all waters require federal protection. The EPA and the Corps considered the information in this scientific report, along with other information cited in the docket to the proposed rule, to develop the definition of "waters of the U.S." included in the proposed rule, which reflects Supreme Court decisions on this issue. The agencies' proposed definition for "significant nexus" within the proposed rule includes consideration of significant effects to the chemical, physical, or biological integrity of a navigable or interstate water or the territorial seas. For an effect to be significant, it must be more than speculative or insubstantial.

The EPA believes it is critical for its rulemaking efforts to reflect the best science. To help do this, the agency developed the draft report described above, which synthesizes available peer-reviewed literature and is receiving extensive independent peer review by the agency's Science Advisory Board (SAB). The agency believes that the SAB review process will provide sufficient independent external review of the agency's scientific work, and thus the agency has not specifically considered any additional process for obtaining such review with an outside body such as the National Academy of Sciences.

Burgess Q14: 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?

Answer: We agree that it is essential for the Agency's regulatory promulgation to reflect the most current relevant science. In the case of the proposed rulemaking for the definition of "waters of the U.S." under the Clean Water Act (CWA), the EPA's Draft Connectivity Report ("Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence") provides a review and synthesis of over 1,000 pieces of published, peer-reviewed scientific literature regarding the effects that streams, wetlands, and open waters have on larger downstream waters such as rivers, lakes, estuaries, and oceans. The draft report does not reflect new information or new science. The draft report already has undergone both internal and independent external peer review, and is now being reviewed by the EPA's independent Science Advisory Board (SAB). The peer review report from the first peer review is available in the docket for the proposed rule, and the draft Connectivity Report reflects comments from that first peer review. The SAB published its draft peer review report on April 1, 2014 and held public teleconferences to discuss its draft report on April 28 and May 2. The SAB expects to issue a final peer review report later in 2014. The EPA has committed that the rule will not be finalized until the SAB review and the final Connectivity Report are complete.

Questions Submitted for the Record by Representative Cassidy

Cassidy Q1: 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 (DWSRF) would 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?

Answer: The Safe Drinking Water Act allows for up to 30% of a state's capitalization grant to be used for additional subsidy. Funds provided for subsidy greatly assist with the affordability of DWSRF lending. However, the more subsidy a State provides, the fewer funds that are loaned to generate interest and principal repayments, impacting future growth of the program and the states' ability to leverage funds in the short-term. States have discretion in how to manage their funds, including how to balance their needs for subsidy and maintaining the overall revolving corpus of their funds.

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?

Answer: All DWSRF funds are intended to lend to projects that are ready to proceed. Where a project that was considered ready to proceed fails to do so, the state is able to by-pass that project for another. For projects that received financial assistance under ARRA, 71% of the funds were for principal forgiveness.

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?

Answer: Increased subsidy reduces the amount of financial assistance repaid to the states that revolves in the loan portion of the fund, decreasing principal and interest that would maintain and grow the fund. This means slower growth for the program due to a reduced repayment stream.

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

Answer: The President's FY 2015 budget request of \$757 million supports the continued work of the DWSRF in ensuring that small and underserved communities have access to funding

that helps address their water infrastructure needs and that states have adequate resources to manage their programs.

Cassidy Q2: 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?

Answer: Public health protection is enhanced through the assistance given to strengthen the technical, managerial, and financial capacity of drinking water systems. Improved capabilities and effective management help systems to sustainably provide safe drinking water to consumers. This is a key component to EPA's sustainable water infrastructure policy. In addition, through the FY 2014-2015 Small Systems Agency Priority Goal, EPA is working closely with state programs to improve public water system sustainability and compliance for persons served by small water systems. These activities consist of direct technical assistance needed to assure compliance with current and future public health-based mandates of the Safe Drinking Water Act. While sustainable planning is necessary for both managerial and capital decisions, the EPA's activities are not primarily infrastructure-based.

Funds used for sustainable infrastructure efforts result in better compliance with the Safe Drinking Water Act through:

- Improved long-term planning
- Improved life-span of assets
- Decreased rate-payer costs to replace infrastructure before necessary
- Better trained operators and more informed boards

Cassidy Q3: 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?**

Answer: As part of its analysis regarding the proposed rule, the EPA found that the proposed rule would not have a significant adverse effect on the supply, distribution, or use of energy. This statement is found in the preamble to the proposed rule in section IV.H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

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?**

Answer: The proposed rule does not alter the Clean Water Act Section 404 permitting process administered by the U.S. Army Corps of Engineers and two authorized states. The proposed rule does not alter the Corps' existing nationwide permits (NWP) that currently streamline the permitting process for many energy projects, such as NWPs 8, 12, 17, 44, 51, and 52. The proposed rule may require additional permits than under current practice, but will expedite the permit review process in the long-term by clarifying jurisdictional matters that have been time-consuming and cumbersome for field staff and the regulated community for certain waters in light of Supreme Court decisions in 2001 and 2006.

Cassidy Q4: 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?**

Answer: This question refers to a recent CBO estimate that "there would be about 25 more energy-related EPA rules in the next 5 years that would cost \$1 billion or more to implement." We are unfamiliar with the CBO study that is referenced, and are therefore unable to evaluate it.

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?

Answer: According to EPA's spring 2014 [Semi-Annual Regulatory Agenda](#), there are 13 regulatory actions currently under development at EPA that the Office of Management and Budget has deemed "economically significant." Economically significant actions are those that are projected to have economic impacts of greater than \$100 million in a single year. Some subset of these actions could be considered "energy-related."

It should be noted that throughout the rule development process, EPA works closely with regulated industries, all levels of government, and the public, to develop sensible, cost-effective rules that can be cost-effectively implemented and fulfill the Agency's statutory obligations to protect public health and the environment, while providing regulated entities with as much compliance flexibility as possible. Hence, the estimated costs of some of the rules that are currently identified as economically significant in the Semi-Annual Regulatory Agenda may be revised downward prior to their final promulgation, and may ultimately fall below the \$100 million threshold.

It also should be noted that in addition to compliance costs, EPA's rules bring economic benefits to the American public and provide a necessary underpinning for a strong and sustainable economy. Studies have shown that EPA's rules yield economic benefits that exceed their costs. For example, EPA's peer-reviewed study, released in 2011, of the benefits and costs of Clean Air Act programs adopted since 1990 found that the monetized benefits of those programs exceed the costs by a factor of more than 30 to one.

Questions Submitted for the Record by Representative 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 consumers' 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 of 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:

Kinzinger Q1: With no feedstock, infrastructure, or compatibility issues, what other factors did the administration take into account when not increasing the RVO?

Answer: While the applicable biomass-based diesel (BBD) standard in 2013 was 1.28 billion gallons, the biodiesel industry produced significantly more than the 1.28 billion gallon standard because it was profitable for them to do so. There are a number of factors that influenced this production level, such as the biodiesel tax credit and high ethanol prices, which allowed biodiesel to be competitive in meeting the advanced and total standards in the context of the E10 blendwall. There also was strong demand for biodiesel in other countries in 2013, leading to high levels of export that are not reflected in the use of production volumes alone. To the extent that these or other favorable market conditions exist in 2014, the biodiesel industry would again benefit from production in excess of 1.28 billion gallons.

The proposed BBD standard was set at a level intended to balance the many different factors the EPA is required to consider when setting this standard, which includes the roles of the advanced and total standards, and a review of implementation of the program to date.

Furthermore, even though we proposed to maintain the BBD standard at 1.28 billion gallons, we also proposed to use a range of biodiesel volume from 1.28 to 1.6 billion gallons in setting the advanced biofuel standard. It is important to understand that the 1.28 billion gallon standard is a minimum – it is a floor, rather than a cap. Biodiesel could continue to compete with other advanced biofuels in meeting the advanced biofuel standard, just as it successfully did in 2013. The EPA is in the process of reviewing the comments received on the proposal and gathering additional data and information. This will be reflected in the standards for the final rule.

Kinzinger Q2: 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?

Answer: Since the proposal was released, we have met with multiple stakeholders to listen to their input on the proposed rule and to solicit any new and relevant data that should be factored into setting the volume standards for 2014. We are currently evaluating the over 300,000 comments which we received on the 2014 RFS proposal and we will take any of this new input on biomass-based diesel and advanced biofuels into account in our final rule.

Kinzinger Q3: Have you taken into consideration how potential Argentinian biodiesel imports will impact the volume of RFS qualifying biodiesel in 2014?

Answer: In our proposed rule for the 2014 RFS volumes, we noted that there was uncertainty in the amount of biodiesel which could be imported in 2014 and, as a result, did not include any imported volumes in our analysis of available supply. We will take any new data and information regarding imported biodiesel into account, as appropriate, in establishing the 2014 volumes in our final rule.

Kinzinger Q4: When do you anticipate the 2014 RVO being finalized?

Answer: We anticipate issuing a final rule as soon as possible.

Kinzinger Q5: Are there aspects of biodiesel that make you uncomfortable with it as a replacement to diesel fuel?

Answer: Biodiesel is registered with the EPA as a motor vehicle diesel fuel and motor vehicle diesel fuel additive under Title 40, Part 79, of the U.S. Code of Federal Regulations (CFR). It is registered for use at any blend level up to B100 in highway diesel vehicles. Under the RFS program, biodiesel qualifies as an advanced biofuel, provided that it is produced from approved feedstock, meets the lifecycle greenhouse gas (GHG) emissions requirements as defined by the Clean Air Act, and is used to replace or reduce the quantity of fossil fuel present in a transportation fuel, heating oil, or jet fuel. Biodiesel currently satisfies a significantly large portion of the RFS advanced volume standard.

Questions Submitted for the Record by Representative Griffith

Griffith Q1: 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?

Answer: The EPA takes very seriously the authority provided to the agency by Congress, pursuant to Section 404(c) of the Clean Water Act (CWA), to determine whether discharges of dredged or fill material into a specified site in waters of the U.S. would result in an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas.

The EPA's careful use of this authority is indicated by the fact that the agency has completed 13 Final Determinations since 1972 pursuant to CWA Section 404(c). To put this in perspective, over the same period of time, the Corps of Engineers is estimated to have authorized more than two million activities in waters of the U.S. under the CWA Section 404 regulatory program.

As these numbers demonstrate, the EPA has worked successfully with the Corps and permit applicants to resolve concerns without exercising its Section 404(c) authority in all but a miniscule fraction of cases.

Griffith Q2: 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?

Answer: The EPA takes very seriously the authority provided to the agency by Congress, pursuant to Section 404(c) of the Clean Water Act (CWA), to determine whether discharges of dredged or fill material into a specified site in waters of the U.S. would result in an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas.

The EPA's careful use of this authority is indicated by the fact that the agency has completed 13 Final Determinations since 1972 pursuant to CWA Section 404(c). To put this in perspective, over the same period of time, the Corps of Engineers is estimated to have authorized more than two million activities in waters of the U.S. under the CWA Section 404 regulatory program.

As these numbers demonstrate, the EPA has worked successfully with the Corps and permit applicants to resolve concerns without exercising its Section 404(c) authority in all but a miniscule fraction of cases.

Questions Submitted for the Record by Representative Johnson

Johnson Q1: 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?

Answer: We are committed to working with states and other stakeholders to understand and address potential concerns with hydraulic fracturing so the public has confidence that unconventional oil and gas production will proceed in a safe and responsible manner. In so doing, we will continue to follow a transparent, science-driven approach, with significant stakeholder involvement.

Johnson Q2: 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.

Answer: The EPA is currently considering health-based standards and other regulatory flexibilities for proposed requirements to address the Hazardous Air Pollutants emitted by the brick industry in a reasonable way. The EPA has not yet reached a decision about what form of standard will best protect the public health and welfare while imposing the least burden on the brick industry and the general public.

Johnson Q3: **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?**

Answer: The EPA is considering all options that are legally permissible under the Clean Air Act. In addition, the EPA has had numerous meetings and discussions with brick manufacturers and representatives of the Brick Industry Association. We also have had separate meetings with the Brick Industry Association to exchange data and ensure that we have all of the information available and necessary to establish legally permissible standards.

Johnson Q4: 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 the 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?

Answer: The EPA has a court-ordered proposal deadline of August 28, 2014 and a promulgation deadline of June 30, 2015. We are considering all options that are legally permissible under the Clean Air Act in order to propose a rule grounded in the best science and data available. The Clean Air Act directs us to address emissions of all Hazardous Air Pollutants (HAP) emitted by the brick industry. We will provide as much flexibility as possible as we develop proposal requirements for the brick industry to address their HAP emissions in a way that minimizes economic burden while protecting the public health and welfare.

Johnson Q5: 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?

Answer: EPA has worked with your office to address the concerns of ODNR regarding data and reporting requirements under the Emergency Planning and Community Right-to-Know Act (EPCRA). By letter dated May 21, 2014, EPA provided your office with the information needed for ODNR's Data Management System to meet EPCRA reporting requirements. The EPCRA Federal Emergency and Hazardous Chemical Inventory (Tier II Form) requires the following data elements:

- 1) Certification by owner or operator or the officially designated representative of the owner or operator that all information included in the Tier II submission is true, accurate and complete.
- 2) The calendar year of the reporting period.

- 3) An indication whether the information being reported on page one of the form is identical to that submitted last year.
- 4) The complete name and address of the location of the facility (including the full street address or state road, city, county, state and zip code), latitude and longitude.
- 5) An indication if the location of the facility is manned or unmanned.
- 6) An estimate of the maximum number of occupants present at any one time.
- 7) The phone number of the facility (this is an optional data element).
- 8) The North American Industry Classification System (NAICS) code of the facility.
- 9) The Dun & Bradstreet number of the facility.
- 10) Facility identification numbers assigned under the Toxic Release Inventory (TRI) and Risk Management Program (including the possibility of N/A in the event that the facility has not been assigned an identification number under these programs or if the facility is not subject to reporting under these programs).
- 11) An indication if the facility is subject to the emergency planning notification requirement under section 302 of EPCRA, codified in 40 CFR part 355.
- 12) An indication if the facility is subject to the chemical accident prevention requirements under section 112(r) of the Clean Air Act (CAA), codified in 40 CFR part 68.
- 13) The name, mailing address, phone number and email address of the owner or operator of the facility.
- 14) The name, mailing address, phone number, Dun & Bradstreet number and email address of the facility's parent company (these are optional data elements).
- 15) The name, title, phone number, 24-hour phone number and email address of the facility emergency coordinator, if the facility is subject to reporting under the emergency planning notification of EPCRA Section 302, codified in 40 CFR part 355.
- 16) The name, title, phone number, and email address of the person to contact regarding information contained in the Tier II form.
- 17) The name, title, phone number and email address of at least one local individual that can act as a referral if emergency responders need assistance in responding to a chemical accident at the facility. The emergency phone number should be available 24 hours a day, every day.
- 18) An indication whether the information being reported on page two of the form is identical to that submitted last year.
- 19) For each hazardous chemical, the following information should be provided:
 - (a) *Pure chemical*: Provide the chemical name (or the common name of the chemical) as provided on the Material Safety Data Sheet (MSDS) and the Chemical Abstract Service (CAS) registry number of the chemical provided on the MSDS. (*Note: The facility has the option of withholding the specific name of the hazardous chemical as trade secret, if the facility submits substantiation to EPA as provided in the regulations at 40 CFR part 350.*)

- (b) *Form of Chemical*: Indicate whether the chemical is a solid, liquid, or gas; and whether the chemical is an extremely hazardous substance (EHS).
- (c) *Mixture*: If a mixture is reported, provide the mixture name, product name or trade name as provided on the MSDS and provide the CAS registry number of the mixture provided on the MSDS (including the availability of an N/A option if there is no CAS number provided or it is not known.)
- (d) *EHS Content in Mixture*: If the mixture reported contains any EHS, provide the name(s) of EHS in the mixture.
- (e) *Hazard Categories*: Indicate which hazard categories apply to the chemical or the mixture. The five hazard categories are defined in 40 CFR 370.66.
- (f) *Maximum Volume*: Provide an estimate (in ranges) of the maximum amount of the hazardous chemical present at the facility on any single day during the preceding calendar year.
- (g) *Average Volume*: Provide an estimate (in ranges) of the average daily amount of the hazardous chemical present at the facility during the preceding calendar year.
- (h) *Maximum Presence*: Provide the maximum number of days that the hazardous chemical or mixture was present at your facility during the preceding calendar year.
- (i) *Type of Storage*: Provide the type of storage for the hazardous chemical or the mixture containing the hazardous chemical at the facility.
- (j) *Storage Conditions*: Provide the storage conditions for the hazardous chemical or the mixture containing hazardous chemical at the facility.
- (k) *Location*: Provide a brief description of the precise location(s) of the hazardous chemical(s) or the mixture(s) at the facility.

The instructions to the Tier II form contain a detailed description of these data elements which is available on EPA's website at www.epa.gov/emergencies. The data elements required on the Tier II form are codified in the Code of Federal Regulations at 40 CFR 370.42.

Questions Submitted for the Record by Representative Bilirakis

Bilirakis Q1: 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 CO₂ emissions by 20% compared to 1998 levels. Their most significant CO₂ reductions began in 2005. As 2005 also is the suggested baseline year for reductions under EPA's 111(d) 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 111(d) proposal?

Answer: The EPA has proposed to set forward-looking state goals based on a determination of what the best system of emission reduction would achieve in 2030, and based on what the fleet looked like in 2012 – the most recent set of complete data we had available. We want to hear from states, utilities, and others about how reductions prior to 2012 are addressed in both setting the goals and meeting the goals, and all other issues related to goal-setting and compliance planning.

Questions for the Record Submitted by Representative 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 FY 2015 budget request, you ask for \$6.1 million for the study.

DeGette Q1: Are any additional progress reports forthcoming before the draft report is released?

Answer: No, EPA does not plan to release any progress reports in addition to the one released in 2012. We are now working hard on completing the work necessary for the draft assessment, which includes producing individual scientific papers that will undergo peer review and feed into the draft assessment. To date, six research papers stemming from the study have been published and are available on EPA's website, which is updated as papers and reports are published. The website also contains summaries from technical roundtables and workshops. As additional research papers are published, they also will be posted on EPA's website.

DeGette Q2: When do you expect this paper to be final?

Answer: We have recently intensified our state outreach efforts as part of the study. These efforts will ensure that states understand the data sources we used and will provide them further opportunity to recommend additional sources of information. The careful and intensive review and synthesis of literature, research results, and stakeholder input, along with the recently intensified state outreach effort, will ensure that EPA's draft science assessment is as robust and complete as possible. The EPA's current timeline for release of the study for public comment and a formal SAB peer review is early 2015.

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.

DeGette Q3: What is the status of this effort with respect to these five sites?

Answer: All sampling through Tier II, as described in the site-specific quality assurance project plans, has been completed for the five retrospective case studies, and audits of data quality for all samples have been completed.

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.

DeGette Q4: 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?

Answer: We have worked closely with industry partners to try to identify suitable locations for prospective case studies that meet the scientific needs of the study and industry's business needs. Unfortunately, so far, we have not identified a suitable location. For a location to be suitable, it is necessary to gather a minimum of one year of characterization data for ground water and surface water prior to and following unconventional exploration activities in the study area, and for there to be no other hydraulic fracturing activities on adjacent properties, currently or potentially leased, during the entire study period, which could last several years.

DeGette Q5: What are the specific criteria required for choosing these locations? If the locations have not been chosen, what criteria are difficult to satisfy?

Answer: We have worked closely with industry partners to try to identify suitable locations for prospective case studies that meet the scientific needs of the study and industry's needs. For a location to be suitable, it is necessary to gather one year minimum of characterization data for ground water and surface water prior to and following unconventional exploration activities in the study area, and for there to be no other hydraulic fracturing activities on adjacent properties, currently or potentially leased, during the entire study period, which could last several years. We have not yet been able to identify a location that meets all of these criteria and the business needs of potential partners.

DeGette Q6: Are the states and industry collaborating with EPA, as planned, to develop the prospective studies? If not, what is impeding their participation?

Answer: Yes.

DeGette Q7: 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?

Answer: As mentioned in the 2012 Progress report, the prospective case studies would be completed after the assessment report and the results would be part of a follow-up report.

For FY 2015, 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.

DeGette Q8: Can you provide some examples of how you will assist states and tribes in following this guidance?

Answer: The EPA released guidance on hydraulic fracturing to help ensure the benefit of

energy development while not jeopardizing precious drinking water resources and environmental quality. To aid states and tribes in implementing the guidance, the EPA will provide additional resources to build new capability for permitting hydraulic fracturing activities using diesel fuels. These funds will help states and tribes review complex data typically contained in underground injection control applications for hydraulic fracturing using diesel fuels. Funding also will be used to conduct inspections of permitted wells to ensure ongoing compliance with regulatory safeguards and to inform the public of permitted activities occurring in their communities. Implementation support will ensure that authorized agencies are effectively managing and overseeing the rapidly growing energy sector while preventing endangerment of underground sources of drinking water.

DeGette Q9: Will states that have primacy for UIC wells get assistance as well?

Answer: Yes, states with primacy will receive this assistance.

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 water quality.

DeGette Q10: What were the results of this effort from last year?

Answer: In April 2012, DOE, DOI, and EPA signed a memorandum agreeing to coordinate and collaborate on research devoted to UOG production and the three agencies are working together to conduct timely scientific and technology research. The results of this research will inform the policymaking of Federal agencies; State, Tribal, and local governments; the oil and gas industry; and others.

To date, Congress has appropriated funding for EPA's Drinking Water Study. EPA has not begun research in the areas of air quality and ecosystem research because the requested increase in resources for this research was not appropriated as part of the FY 2014 Congressional Appropriation.

DeGette Q11: What are your milestones for this project this year?

Answer: The EPA expects to provide the draft assessment report of the *Study of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources* for public comment and peer review by early 2015. The EPA then expects to provide a final report that is responsive to comments received from the public and the peer review.

Beyond the milestones already described above for the EPA Drinking Water Study, no additional milestones have been developed for EPA research related to the potential impacts of UOG development on air quality and ecosystems, as resources were not appropriated for this research in FY 2014. Resources have been requested for FY 2015. Milestones will be developed consistent with appropriated levels.

DeGette Q12: Will you keep the public informed of your progress/findings as the research unfolds?

Answer: If funds are appropriated in FY 2015, EPA plans to inform the public of the planned activities that will be undertaken as part of its additional water quality research as well as its air quality and ecosystem research.

In addition, EPA is planning to inform the public about the release of the draft assessment of the potential impacts of hydraulic fracturing from oil and gas on drinking water resources for public comment and peer review through a number of mechanisms. The Science Advisory Board (SAB) is planning to hold a public meeting to hear public comments. EPA is planning to post the report on the website, send out listserv messages and tweets, and hold public webinars.

DeGette Q13: Do you expect this to be an ongoing effort that flows again into the following fiscal year?

Answer: Since UOG development is likely to continue, EPA anticipates that research devoted to safely and prudently developing these resources will continue to be needed. That said, these research needs will be compared with others when future budgets are developed to optimize the impact of Federal research resources.

DeGette Q14: What are the respective roles of DOI, DOE, and EPA in the effort?

Answer: Under the DOE, DOI, and EPA joint memorandum, the agencies are coordinating their research planning efforts, recognizing each agency's areas of core competency, and collaborating on research with each other and others as much as possible. For example, EPA's areas of core competency are: water quality assessment, air monitoring and assessment, and human health and environmental risk.

Questions Submitted for the Record by Representative Matsui

Matsui Q1: 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?

Answer: Since proposing the rules to implement the Formaldehyde Standards for Composite Wood Products Act (TSCA Title VI) on June 10, 2013 (78 FR 34795 and 78 FR 34820), the EPA has twice granted extensions to public comment periods for both proposals, as requested by numerous commenters. In addition, the EPA, on April 8, 2014 (79 FR 19305) reopened until May 8, 2014, the comment period for the proposed rule to implement TSCA Title VI emission standards (78 FR 34820) to seek additional public input regarding potential modifications to the Agency's proposed treatment of laminated products. The EPA also announced a public meeting, held April 28, 2014, to provide opportunity for further public comment on this set of issues. Based on input from public meeting participants, the EPA extended the comment period related to the treatment of laminated products under the regulation until May 26, 2014.

The Agency will consider all information received from commenters in developing the final rule, which is expected to be made final late this calendar year.

Matsui Q2: Do you expect to harmonize your regulations with the California Air Resources Board with respect to laminated products as directed by Congress?

Answer: The EPA is in regular communication with the California Air Resources Board (CARB) and is striving to ensure that provisions in EPA's final rule(s) are compliant with the Formaldehyde Standards for Composite Wood Products Act (TSCA Title VI) formaldehyde emission standards while aligning, to the extent possible and practical, with the regulatory requirements in California. It is important to note that TSCA Title VI departs from CARB's Airborne Toxic Control Measure in several ways that have required careful harmonization.

The Act establishes formaldehyde emission standards for hardwood plywood, particleboard, and medium-density fiberboard that are identical to the emission standards in CARB's regulation. The Act also includes laminated products on the list of composite wood products to be regulated under TSCA Title VI, while CARB has an exemption for these products. With respect to these laminated products, Congress did provide the EPA with the authority to modify the definition of laminated product and exempt some or all laminated products from the definition of hardwood plywood pursuant to a rulemaking under TSCA Title VI, which shall be promulgated "in a manner that ensures compliance with the [statutory]

emission standards.”

The information available to the EPA at the time the initial proposal was issued did not indicate that laminated products would be in compliance with the emission standards, and therefore the Agency did not propose an exemption for all laminated products from the proposed regulations. The EPA did, however, propose to exempt laminated products that are made with compliant cores and laminated with “no-added-formaldehyde” resins because the Agency concluded that such exemptions would be consistent with the statutory directive.

On April 8, 2014, the EPA re-opened the comment period for the proposed implementation rule to seek additional public input regarding potential modifications to the EPA’s proposed treatment of laminated products. On April 28, 2014, the Agency held a public meeting at the EPA Headquarters in Washington, D.C. Based on a request from the public, the EPA extended the comment period for comments related to the treatment of laminated products under the regulation until May 26, 2014. The EPA will consider all information received from commenters as the Agency makes decisions on how to proceed on laminated products when preparing the final regulations.