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ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115  
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March 30, 2015

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

Dear Administrator McCarthy:

Thank you for appearing before the Subcommittee on Energy and Power and the Subcommittee on Environment and the Economy on Wednesday, February 25, 2015, to testify at the hearing entitled "The Fiscal Year 2016 EPA Budget."

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

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

To facilitate the printing of the hearing record, please respond to these questions and requests with a transmittal letter by the close of business on Monday, April 13, 2015. Your responses should be mailed to Nick Abraham, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed to [Nick.Abraham@mail.house.gov](mailto:Nick.Abraham@mail.house.gov).

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



Ed Whitfield  
Chairman  
Subcommittee on Energy and Power

Sincerely,



John Shimkus  
Chairman  
Subcommittee on Environment and the Economy

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

Attachments

## Attachment 1—Additional Questions for the Record

### The Honorable Ed Whitfield

1. The EPA’s Congressional Justification for the FY 2016 budget states that “EPA is striving to meet the demands of delivering the Clean Power Plan, President Obama’s top priority for EPA and the central element of the U.S. domestic climate mitigation agenda.”
  - a. Is EPA delaying any of the agency’s non-discretionary duties in order to deliver the “Clean Power Plan”?
  - b. If yes, please describe the agency actions that are being delayed in order to deliver the “Clean Power Plan.”
2. The EPA’s Congressional Justification for the FY 2016 budget states that the agency has a “backlog” relating to the processing of state implementation plans (SIPs) under the National Ambient Air Quality Standards program.
  - a. How many backlogged SIPs are there across the agency?
  - b. Please provide a list of each pending state implementation plan, including the date when it was submitted, the date of any amendments to the plan, and EPA’s projected date for completing review of the plan.
3. EPA’s Congressional Justification for the budget states that EPA also has incoming state implementation plans which will need to be processed by the agency.
  - a. For each State, please identify each state implementation plan that is required to be submitted to EPA under existing federal regulations, the due date for the submittal of those state plans, and EPA’s estimated date for completing the agency’s review of those plans.
4. What is the total amount of climate related spending in the agency’s FY 2016 budget?
5. What is the total amount of climate related spending in the Administration’s FY 2016 budget?
6. In addition to EPA, how many other federal agencies are engaged in climate related activities? Please provide a list of all federal agencies engaged in climate related activities.
7. EPA’s budget documents state that EPA will finalize rules for new, modified and existing power plants “in the latter part of 2015.” The agency has said that it plans to finalize these rules “Midsummer.”
  - a. What is the agency’s current schedule for each of these rulemakings?
  - b. Does EPA plan to finalize rules for new power plants and existing power plants at the same time?
8. Section 111(b) of the Clean Air Act (CAA) expressly requires that EPA finalize new source performance standards “within one year” after publishing a proposal. EPA proposed standards for new fossil fuel-fired power plants on January 8, 2014, but failed to finalize the proposal by January 8, 2015.
  - a. Does section 111(b) of the CAA require that EPA finalize new source performance standards “within one year” after publishing a proposal?

- b. Didn't EPA have an obligation to finalize its proposed rule under section 111(d) for new plants by January 8, 2015? If not, please explain.
  - c. Will EPA withdraw and reissue its proposal in order to comply with section 111(b)? If not, why not?
9. EPA's docket for the "Clean Power Plan" rulemaking for power plants under section 111(d) of the CAA indicates that the agency has received over 4.3 million comments.
- a. How many comments has the agency received?
  - b. Is this the largest number of comments received on any rulemaking?
  - c. How many of these comments raise questions or concerns relating to the rulemaking?
  - d. How is it feasible for the agency to fully review, analyze and respond to those comments by "Midsummer" of 2015?
10. EPA's budget documents state that: "The Clean Power Plan will be implemented through state compliance plans that are submitted to the EPA for review and approval, with initial submittals beginning in 2016."
- a. Does EPA plan to require initial State plans in 2016?
  - b. Under the Unfunded Mandates Reform Act, EPA is required to estimate the burden on States to develop state plans.
    - i. What does EPA estimate it will cost States to prepare State Plans?
    - ii. Can EPA supply those estimates and the basis for those estimates? Are those estimates and any supporting analysis publically available?
  - c. In light of all the comments that have been submitted regarding the proposed "Clean Power Plan," is EPA going to reevaluate these estimates?
11. EPA has announced that as part of its Clean Power Plan, it will be proposing a federal plan later this year for states that do not want to submit State plans.
- a. What is the agency's timetable for proposing and finalizing a federal plan?
  - b. How much time would there be between when the federal plan was finalized and the initial State plans would be due?
  - c. Given EPA's delay in developing a federal plan, if States were to request an extension of time to submit initial state plans so that they could evaluate EPA's final federal plan, would EPA grant such an extension?
12. In June of last year, Assistant Administrator McCabe testified that any proposed federal plan "[would be squarely within our authority.](#)"
- a. Does EPA believe that it has legal authority to impose a cap-and-trade program on States or electric utility generating units through a Federal plan?

- b. Does EPA believe that it has legal authority to require States to meet renewable energy and energy efficiency targets through a Federal plan?
13. In the proposed “Clean Power Plan,” there are no “off-ramps” to protect against rate increases or reliability risks.
- a. If EPA finalizes its 111(d) rule for existing fossil fuel-fired electric generating units, and a State determines that compliance with the carbon dioxide emissions goals set by EPA will impose cost increases that are too high for its ratepayers, will the State still be required to comply with the goals?
  - b. If EPA finalizes its 111(d) rule for existing fossil fuel-fired electric generating units, and a State determines that compliance with the carbon dioxide emissions goals set by EPA will put the reliability of the State’s electricity system at risk, will the State still be required to comply with the goals?
14. Section 111(d) of the Clean Air Act has been used five times in the past to regulate existing sources (landfills, municipal waste combustors, sulfuric acid plants, aluminum reduction plants, and phosphate fertilizer facilities).
- a. Can you explain how the scope of any of these previous programs compares to the EPA’s proposal for carbon dioxide emissions from existing power plants? Specifically, do any of these programs provide a precedent of including “demand side” reduction provisions or emissions reductions provisions requiring that the products being manufactured be used less by consumers?
15. The EPA’s section 111(d) proposal for existing power plants includes changes to retail power markets and dispatch order as a central part of the “building blocks” that EPA says that States can use to accomplish carbon dioxide reductions. However, the Federal Power Act narrowly restricts federal regulatory authority over retail energy markets, and the Appeals Court for the D.C. Circuit ruled that federal demand-response regulations are prohibited by the Federal Power Act.
- a. Please identify the specific statutory authority, if any, that EPA believes provides that agency with authority to approve or reject State policies regarding retail energy markets and demand-response policies.
16. For the Clean Power Plan, your agency recently responded to Committee questions for the record from a June 19, 2014 hearing asking what, if any impact, the rule would have on global temperatures or sea rise levels. EPA’s response stated: “Although the EPA has not explicitly modeled the temperature impacts of this rule, the Clean Power Plan is an important and significant contribution to emission reductions, thereby slowing the rate of global warming and associated impacts.”
- a. Why hasn’t EPA done the modeling? Is it a matter of budgeting?
  - b. Will there be detectable changes to weather or climate from the “Clean Power Plan,” and if so, when are they projected to occur?
17. As part of the Clean Power Plan rulemaking, EPA has announced that it will convene a Small Business Advocacy Review (SBAR) Panel on its Federal Plan for Regulating Greenhouse Gas Emissions from Electric Generating Units.
- a. When does EPA plan to convene this panel?

- b. How does the EPA plan to ensure that impacts from the EPA’s Federal Plan for Regulating Greenhouse Gas Emissions from Electric Generating Units are minimized for small entities and municipalities?
18. Under EPA’s proposed change to the ozone standards, EPA estimates that 358 counties with monitors would violate a 70 parts per billion standard and 558 counties would violate a 65 parts per billion standard. This estimate does not include counties without monitors.
- a. How many counties are there nationwide that have ozone monitors?
  - b. How many counties are there that don’t have monitors?
  - c. Has EPA prepared any estimate of the number of counties that don’t have monitors but are likely to violate a 70 parts per billion standard? Would you supply that for the record?
  - d. Has EPA prepared any estimate of the number of counties that don’t have monitors but are likely to violate a 65 parts per billion standard? Would you supply that for the record?
19. In its proposal to revise the ozone standards, EPA identifies a number of tools that the agency is developing to make it possible to implement the standards, including updates to modeling and “Appendix W,” as well as the “Exceptional Events Rule”.
- a. Will the modeling updates to Appendix W be finalized by Oct. 1?
  - b. Will the Exceptional Events Rule be finalized by Oct. 1?
  - c. Will guidance to states on designations be finalized by Oct. 1?
20. In the proposed rule, the agency states that it is going to take a series of actions in the next year to implement the standards. For example, EPA says it will: i) issue guidance for State designations within 4 months of finalizing a rule; ii) provide updated guidance for infrastructure state implementation plans; and iii) propose any needed implementation rules within 1 year.
- a. Can you provide an estimate of the money, resources and staff that will be required to complete this work in FY 2016?
  - b. Has EPA requested the resources needed to complete all of this work?
  - c. Can you identify for the record where those resources are identified in the budget?
  - d. If EPA fails to issue timely guidance for States, will EPA extend the deadlines for States to submit designations or otherwise comply with the standards?
21. EPA recently weighed in against the Keystone XL pipeline, asserting that the recent drop in oil prices makes the pipeline more of a global warming threat. But at the same time, you have stated that lower oil prices will not affect your agency’s upcoming CAFE/GHG rulemaking for heavy duty vehicles.
- a. Why is it that lower oil prices are relevant in one regulatory context but irrelevant in another?
  - b. With regard to CAFE/GHG standards for cars and light trucks, you said that lower oil and gasoline prices are unlikely to affect buying habits. But between July and December of 2014, gasoline prices nationwide fell 30 percent from \$3.61 to \$2.54. Over that period the sales of hybrids fell over 7 percent,

while sales of gasoline-powered vehicles rose 6.6 percent. Isn't it clear that lower gasoline prices do change consumer buying habits, and that they do so very quickly? Assuming these relatively low prices continue, what is EPA planning to do to address the gap between what consumers want and what CAFE/GHG standards allow?

22. With regard to Title V permits:

- a. In what instances has the EPA objected to issuance by a State, local or Tribal permitting authority of a Title V permit? Please identify all such instances in the past four years.
- b. In the instances where the EPA has objected to a Title V permit, if any, has the EPA been petitioned by non-governmental entities to do so?

23. Under the New Source Review program, it is my understanding that EPA has developed a "reactivation policy" relating to situations where a facility has stopped operating for a period of time and is seeking to start up again.

- a. To the extent that EPA has such a policy, please describe the policy.
- b. Is this reactivation policy reflected in EPA's regulations or in statute?

24. In 2010, EPA took the position that States with approved PSD programs have "independent discretion and are not necessarily required to follow all EPA policies or interpretations." (*See* Letter from Carl E. Edlund, Director, Multi-Media Planning and Permitting Division, EPA Region 6, to Richard Hyde, Deputy Director, Office of Permitting and Registration, Texas Commission on Environmental Quality (Feb. 10, 2010).)

- a. Are States, local or Tribal permitting authorities required to follow EPA's reactivation policy, or do you agree with EPA's view in 2010 that States are not bound by these EPA policies?
- b. Please provide the number of times that EPA has objected to the start-up of a power plant based on its reactivation policy, along with a brief description of each of those situations.

25. In promulgating its 2014 efficiency standards for the commercial refrigeration industry, DOE appeared to discount the possibility of an immediate mandated change in refrigerants. On the contrary, DOE attempted to be consistent with an HFC phasedown pursuant to the Montreal Protocol. Specifically, the Department found as follows:

"While DOE appreciates the input from stakeholders at the public meeting and in subsequent written comment, DOE does not believe that there is sufficient specific, actionable data presented at this juncture to warrant a change in its analysis and assumptions regarding the refrigerants used in commercial refrigeration applications. As of now, there is inadequate publicly-available data on the design, construction, and operation of equipment featuring alternative refrigerants to facilitate the level of analysis of equipment performance which would be needed for standard-setting purposes. DOE is aware that many low-GWP refrigerants are being introduced to the market, and wishes to ensure that this rule is consistent with the phase-down of HFCs proposed by the United States under the Montreal Protocol. DOE continues to welcome comments on experience within the industry with the use of low-GWP alternative refrigerants. Moreover, there are currently no mandatory initiatives such as refrigerant phase-outs driving a change to alternative refrigerants. Absent such action, DOE will continue to analyze the most commonly-used, industry-standard refrigerants in its analysis." 79 Fed. Reg. 17,726, 17,754 (March 28, 2014) (cols. 2-3).

- a. How might EPA's SNAP proposal affect DOE's conclusions about the technological feasibility of its commercial refrigeration efficiency standards, the resulting expected energy savings, the economic impact on manufacturers and customers, the effect on operating costs, the lessening of utility or performance, the cumulative burden on the regulated community, and the time needed to comply with the standards?
26. Describe the coordination between EPA and DOE with respect to the SNAP proposal.
- a. Please list each meeting between EPA and DOE with respect to the SNAP proposal, the attendees, and the topics discussed.
  - b. Did EPA ask DOE for information about the cost and timing of re-designing refrigeration equipment? Did DOE provide such information?
  - c. Are the materials that DOE provided to EPA in connection with the SNAP proposal publically available? If yes, please where can they be located?
  - d. Is any consultation between DOE and EPA still ongoing with respect to the EPA SNAP proposal? If yes, please list and describe all such consultations.
  - e. Is EPA consulting with DOE regarding any additional SNAP proposals for other industrial sectors? If yes, please list the sectors and describe all such consultations.
27. Please explain in detail how the SNAP proposal will prevent climate change or the effects of climate change (e.g., cooling of the global mean surface temperature, time until global mean surface temperature is 2°C greater than preindustrial levels, extent of sea level rise, increase in ocean pH).
28. Has EPA calculated the effect on energy efficiency of food equipment if refrigerants are changed as set out in the SNAP proposal? If so, please provide the estimates.
29. Has EPA calculated, in light of all constraints on design and usage, the effect on energy efficiency of insulated products if foam blowing agents are changed as set out in the SNAP proposal? If so, please provide the estimates.
30. Considering that the SNAP proposal could affect many energy efficiency decisions for equipment manufacturers and other users with respect to the change of status of certain materials, has EPA consulted with DOE to ensure that energy efficiency issues are properly addressed in the EPA SNAP proposal?
31. Considering that the extruded polystyrene industry switched to HFC-134a as a foam blowing agent in 2009, is it reasonable to expect the industry to restrict the use of this material so soon after this recent market switch?
32. What is EPA's cost estimate (including both direct and indirect costs) for a foam blowing operation to switch blowing agents?
33. What is EPA's cost estimate (including both direct and indirect costs) for a producer of reach-in coolers to switch refrigerants?
34. Did EPA consider the effect of its SNAP proposal on chemical plants in the U.S., the level of employment in U.S. chemical plants, and any related economic effect on nearby communities? If so, please provide the results of EPA's assessment.

35. For purposes of SNAP, what standard does EPA use in weighing the climate risk of products to be used in buildings that have a higher global warming potential (GWP) and are nonflammable against products to be used in buildings that have a lower GWP but are flammable?
36. What impacts will the EPA SNAP proposal have on companies in terms of compliance with state and local building codes? Please included in your response a description of the actions, if any, EPA has taken to review and analyze what impacts the EPA SNAP proposal will have on state and local building code requirements.
37. The EPA asserted that “a number of the coal refuse electric generating units are already meeting the finalized the EPA’s Mercury and Air Toxics Rule (MATS) standards without the use of any additional controls” in a past response to a question for the record (for the April 2, 2014 budget hearing) on the impact of regulations on coal refuse electric generating units. Our understanding is that the industry, however, has unequivocally expressed concerns about the future viability of these units under the new standards, including in a meeting between Acting Assistant Administrator Janet McCabe and industry leaders on October 18, 2013.
- a. On what evidence does the EPA base its assertion that coal refuse electric generating units may already be in compliance or will otherwise be able to comply with MATS?
38. In Pennsylvania, the State has benefited 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, it is my understanding that to date, these units have been used to reclaim over 8,200 acres of damaged land and improve hundreds of miles of streams. This remediation has also helped to protect the health and safety of nearby residents. According to industry stakeholders, however, the MATS rule threatens to force many of these facilities to cease operations. This would leave large quantities of coal refuse in place, which would threaten nearby communities with adverse environmental and public health effects.
- a. In light of the industry’s position that it will be unable to continue operating electric generating units that use coal refuse under MATS, what does the EPA plan to do to reduce the environmental and health risks associated with the large quantities of coal refuse that may remain unused in Pennsylvania communities if these units are forced to shut down?
- b. Does the agency believe that the environment and public health and safety would be better safeguarded by forcing coal refuse electric generating units to close through regulatory action?
39. Electric generating units that burn coal refuse face a growing regulatory burden. MATS, the Cross-State Air Pollution Rule (CSAPR), and the Clean Power Plan all threaten to place added limitations on emissions from the electric generating units.
- a. What does the EPA estimate to be the cumulative effect of these regulations on the power generation sector, and specifically on units that burn coal refuse?
40. The Combined number mandated on new vehicle labels assumes that drivers spend 55% of their miles traveled below 45 miles per hour and 45% over 45 miles per hour. This weighting was first used on labels 40 years ago. In 2005, Congress specifically asked EPA to examine, among other things, if the city weighting was being overused when determining a combined number for vehicle labels. In its proposed rule in 2006, EPA cited eight (8) studies that indicated the weighting had changed from the assumed 55/45 split to 43% City and 57% Highway. Using these eight studies, EPA proposed changing the weighting to

43/57 on future vehicle labels. EPA, however, reversed its own decision and continued using the 1975 weighting. Nine years later, consumers continue to complain about inaccurate fuel economy estimates displayed on labels.

- a. With regard to the labels for new vehicles, why is EPA still using 1975 fuel economy calculations as the basis for the “Combined” number that consumers see when they go into a showroom?
  - b. Does EPA believe that the 55/45 split is still accurate? If so, what recent data does EPA have that supports continued use of the 55/45 split?
  - c. Why is EPA still mandating that automakers use 1975 calculations on the windows of new vehicles when data suggests it is no longer accurate? How does the inaccurate information help educate purchasers on fuel economy when purchasing a new car?
  - d. Do the studies cited in the 2006 proposed rule still provide the most up-to-date information available?
  - e. Why does EPA use the more updated 43/57 weighting for its Fuel Economy Trends Report but insists on using 55/45 on the label?
41. Considering the amount of investment auto makers have been making to improve fuel economy across their fleets, wouldn't you agree that EPA study the manner in which Americans are driving in 2015 instead of relying on data from 1975?
42. What resources would EPA need to determine if the studies cited in 2006 continue to accurately represent today's driving habits?

### **The Honorable Pete Olson**

1. Many refiners—especially independent refiners—lack the ability to generate their own RINs. Rather, they must purchase RINS from blenders, who capture all of the value. Has EPA discussed shifting the obligated party to those that actually generate RINs? What authority would the Agency have to do this, and what is the timeline for any decisions on this issue?

### **The Honorable Joe Barton**

1. My understanding is that EPA was charged with lead development agency responsibilities with respect to three climate assessments, also known as Synthesis and Assessment Products (SAPs) under the interagency U.S. Global Change Research Program/Climate Change Science Program (USGCRP/CCSP) that the Administrator ultimately relied upon as support for its Clean Air Act Section 202(a) Findings.
  - a. Is this correct?
  - b. If not, what was EPA's role in development of these SAPs?
2. Did the EPA arrange for the external peer review of SAPs 4.1, 4.6 and 4.4, which were designated as Highly Influential Scientific Assessments (HISAs), in conformance with EPA's IQA Peer Review Bulletin guidelines?

3. If no, please explain what internal agency peer review processes EPA employed to validate such HISAs.
  - a. Which parties served as the peer reviewers?
  - b. Which parties oversaw/managed the peer reviews?
4. What role(s) did EPA-established federal advisory committees play in the development and/or peer review of USGCRP/CCSP SAPs 4.1, 4.6 and 4.4?
  - a. Who were the members of each such federal advisory committee, since terminated? (Please provide a detailed explanation).
  - b. What were the professional and institutional affiliations of each member of each such federal advisory committee? (Please provide a detailed explanation).
  - c. What roles did each member of each federal advisory committee play in the development and/or peer review of these HISAs? (Please provide a detailed explanation).
5. Did the EPA conducted independence and conflict-of-interest screenings and reviews of each member of each such federal advisory committee?
  - a. What did such independence and conflicts of interest screenings and reviews show? (Please provide a detailed explanation).

### **The Honorable Robert E. Latta**

1. The bipartisan “Formaldehyde Standards for Composite Wood Products Act,” which was signed into law in July of 2010, required the EPA to promulgate implementing regulations not later than January 1, 2013. It is now over two years beyond the statutory deadline. What is the reason for this inordinate delay, and when will the final rule be submitted to the Office of Management and Budget for review?
2. The press reported after your appearance before the Committee that the EPA is reconsidering whether CCS can form the basis for a 111(b) rule, given that some of the projects on which EPA based the rule have not even begun construction, and all but one received CCPI funding, notwithstanding that the Energy Policy Act of 2005 prohibits a standard of performance from being based on projects funded by that program (the lone exception being a facility funded by the Canadian government).
3. Is it true that EPA is reconsidering whether to base the 111(b) rule on technology other than CCS, and if so, what would be the technological basis for a 111(b) rule?
4. How might this affect the timing of the proposed 111(b) rule?
5. How might this affect, either in the substance of its requirements or in the timing of its issuance, the proposed 111(d) rule, particularly given that a 111(d) rule may not be put in place for a source category before a valid 111(b) rule is adopted?
6. I’m very concerned that the Clean Power Plan will effectively penalize certain power plants for reducing pollution at their facilities. What do I mean by that? EPA over the last four years has promulgated several major clean air rules affecting coal-fired power plants, including the Cross-State Air Pollution rule and the Mercury Air Toxics Standards, or MATS. Some coal plants have spent billions of dollars to install

scrubbers to comply with these rules. Yet the Clean Power Plan is going to force them to shut down, before investments can be recovered. EPA is therefore at risk of creating billions of dollars in stranded assets. These plants will close because there is no commercially available technology to reduce carbon emissions from coal plants, and remember, these plants don't operate in a fleet of other power sources, such as wind, solar, or nuclear, to help offset their emissions. Understand that I'm not talking about big utilities, because many of these plants are owned by small municipalities, others by power cooperatives in rural areas. Some of these plants are independent power producers, meaning they don't have the ability to get cost recovery from public service commissions. How is EPA going to deal with the very real prospect that your rule will result in stranding assets, at plants that tried to do the right thing by complying with EPA's own rules? How will you avoid stranding assets at these plants, which many communities rely on not just for reliable power, but for jobs and economic opportunity?

### **The Honorable Renee Ellmers**

1. Through the Energy Star Program's "final draft" test method for medical imaging equipment, EPA is now proposing to exert a new kind of influence on decision-making within hospitals and clinics. What studies has EPA completed to demonstrate that the impact on decision-making within hospitals and clinics will cause patients no harm – whether in the form of pain, anxiety, inconvenience, risk to safety, or reduction in diagnostic success?
2. The inclusion of medical imaging equipment would represent the Energy Star Program's first entrance into the realm of medical technology. In fact, it would represent the most significant departure in the Program's twenty-three year history from a focus on consumer appliances, consumer electronics, office electronics, HVAC equipment, and building materials. Please articulate the public-policy justification for this expansion in scope.
3. With whom at the Food and Drug Administration, which regulates medical devices, has EPA discussed this proposal in detail?

### **The Honorable Michael C. Burgess**

1. In an opinion issued on March 2, 2015 by the U.S. District Court for the District of Columbia in *Landmark Legal Foundation v. EPA*, Civil No. 12-1726, the court raised serious concerns regarding the EPA's handling of a Freedom of Information Act (FOIA) request, including the failure to properly search the files of senior officials, and the filing of erroneous affidavits and declarations with the Court. The Court stated that "[e]ither EPA intentionally sought to evade Landmark's lawful FOIA request so the agency could destroy responsive documents, or EPA demonstrated apathy and carelessness toward Landmark's request. Either scenario reflects poorly upon EPA and surely serves to diminish the public's trust in the agency."
  - a. What actions is the agency taking in response to this decision to ensure that records of senior EPA officials, including the Administrator, Deputy Administrator, Chief of Staff, and other senior officials are searched in response to FOIA requests?
  - b. What action, if any, is the agency taking to ensure that text messages, personal email accounts, and other devices or repositories are properly preserved?
  - c. What additional actions, if any, is the agency taking to ensure that EPA does not file erroneous affidavits and declarations with the court in the future?

- d. If the agency has not yet taken action to respond to the concerns raised in the Court's decision, please explain why the agency has failed to take any action.
2. The Court in *Landmark Legal Foundation v. EPA* further raised concerns that "EPA continues to demonstrate a lack of respect for the FOIA process." The Court stated: "Despite all of the obvious errors made by EPA in its original search, which spanned the course of seven months, neither EPA nor its counsel has offered Landmark or this Court any indication of regret. The closest EPA has come to admitting the shoddy nature of its initial search is when its counsel conceded at the motion hearing, in the context of potentially owing attorney fees to the plaintiff, that Landmark has 'prevailed' . . . The Court is left wondering whether EPA has learned from its mistakes, or if it will merely continue to address FOIA requests in the clumsy manner that has seemingly become its custom. Given the offensively unapologetic nature of EPA's recent withdrawal notice, ECF No. 66, the Court is not optimistic that the agency has learned anything."
    - a. What actions is the agency taking to address the concerns that there is a continuing lack of respect for the FOIA process?
  3. In the *Landmark Legal Foundation v. EPA* decision, the Court specifically addressed the use of personal email accounts by employees of the agency. The Court urged EPA "to consider a policy instructing employees who conduct any agency business using personal accounts to (1) forward such emails to their EPA accounts *and* (2) preserve the emails in their personal accounts."
    - a. Has EPA sent such an instruction to EPA employees?
    - b. If so, what are the specific instructions?
    - c. If not, will EPA take such action? If not, why not?

### **The Honorable Jerry McNerney**

1. How many staff and how much funding has EPA designated for review of the Bay Delta Conservation Plan?
2. Does EPA currently have a strategic plan for assessing and managing the risks of drought to drinking water provided by public water systems?
  - a. If no, would creating a strategic plan be beneficial for use by other federal, state, and local entities?

### **The Honorable Diana DeGette**

As you know, in 2010, former Congressman Hinchey and I requested an EPA study to determine the potential impacts of hydraulic fracturing on drinking water. I understand that the draft report was expected to be available for public comment in early 2015.

1. What is the current status of the draft report?
2. When do you expect this paper to be final?

An important part of the drinking water study plan was the inclusion of several prospective case studies. These case studies were designed to document the hydraulic fracturing process at each stage including drilling, completion, and production. Measurements were to be taken before and after each stage. At this time last year, EPA had not yet identified suitable locations for these case studies

3. Have suitable case study locations been identified in the last year?
  - a. If not, can you provide specific reasons why the locations have not yet been identified?
  - b. If locations still have not been identified, do EPA and its partners have a plan for an alternative approach to conducting these case studies?
4. Are the states and industry collaborating with EPA, as planned, to develop the prospective studies? If not, what is impeding their participation?
5. Do the preliminary findings of the report indicate if shale gas development through hydraulic fracturing poses a risk to the environment or public health?

The Energy Policy Act of 2005 exempted hydraulic fracturing from EPA regulation under the Safe Drinking Water Act, except when diesel is used. EPA issued its Permitting Guidance for Oil and Gas Hydraulic Fracturing Activities Using Diesel Fuels in February 2014. A recent study by the Environmental Integrity Project titled, "Fracking Beyond the Law," uses self-reported data from drilling companies and federal records to document at least 33 companies fracking at least 351 wells across 12 states with fluids containing diesel from 2010 through early August 2014. These companies self-reported that they used diesel fuels to frack wells without required Safe Drinking Water Act permits. In a follow-up investigation, the Environmental Integrity Project identified an additional 243 wells that 35 companies fracked with products containing diesel fuels in the last three years.

6. Has EPA received any applications for or issued any permits under the Underground Injection Control program to use diesel in hydraulic fracturing?
7. Has EPA issued any Notices of Violation or taken any other enforcement measures against operators who used diesel in hydraulic fracturing?
8. What is EPA doing to ensure that companies that use diesel fuels in their hydraulic fracturing fluids are obtaining the proper permits before undertaking these activities?
9. Can you provide some examples of how EPA assisted states and tribes in following the diesel guidance?
10. Have any states with delegated EPA authority for the Underground Injection Control Program received applications for or issued any permits to use diesel in hydraulic fracturing?
11. Have any states with delegated EPA authority for the Underground Injection Control Program issued any Notices of Violation or taken any other enforcement measures against operators who used diesel in hydraulic fracturing?
12. Does EPA plan to expand the list of what constitutes diesel fuels under the Safe Drinking Water Act beyond the five CAS numbers identified in the Permitting Guidance for Oil and Gas Hydraulic Fracturing Activities Using Diesel Fuels issued in February 2014?

## **Attachment 2—Member Requests for the Record**

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

### **The Honorable Pete Olson**

1. Please provide for the record specific information regarding on how EPA's FY 2016 budget request addresses foreign sources of ozone.

### **The Honorable Robert E. Latta**

1. Under the proposed Clean Power Plan, if a state does not file a state plan, does EPA claim authority to mandate that coal fired generators run less, and that existing gas fired generators run more under a Federal plan?
  - a. If a state does not file a state plan, does EPA claim authority to mandate that fossil fuel generators run less, and that renewable generators run more under a Federal plan?
2. Coal fuels well over half the net electricity generation in my state of Ohio. Under the Clean Power Plan, will EPA grant a waiver of exception if there is a grid reliability risk or a high cost to the rate payer issue?
  - a. During the hearing, you stated "we would be able to work through the issues. Whether it is a waiver or another process, the tools are available to us." Other than waivers of exception, please explain what tools, specifically, are available to you.
3. To date, what states have complied with the 2008 standards for ozone?

### **The Honorable Larry Bucshon**

1. How many fully compliant medical waste incinerators are in the United States capable of handling Ebola-contaminated waste?