

## Questions Submitted for the Record by Representative Whitfield

### CLEAN POWER PLAN

**Question 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."

1. Is EPA delaying any of the agency's non-discretionary duties in order to deliver the "Clean Power Plan"?
2. If yes, please describe the agency actions that are being delayed in order to deliver the "Clean Power Plan."

**Answer:** In FY 2016, the EPA is requesting increases for regulatory reviews that are currently behind their statutorily mandated dates under the Clean Air Act (CAA). This investment will enable the program to better address the growing number of court ordered deadlines.

With these and other investments, the EPA will continually be looking for opportunities to meet CAA requirements for stationary sources in more integrated ways in FY 2016. For example, where the CAA requires the agency to take multiple regulatory actions that affect the same industry, the EPA will align the timing of these rulemaking actions to take advantage of synergies between the multiple rules, where feasible.

## STATE IMPLEMENTATION PLANS (SIP)

**Question 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.

1. How many backlogged SIPs are there across the agency?
2. 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.

**Question 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.

1. 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.

**Answer:** As of April 1, 2015, there were 655 SIP submissions considered backlogged.

In FY 2014, the EPA acted on 408 SIP submissions. As of April 1, 2015, there were 334 recently submitted SIP submissions or revisions pending EPA action.

The table below reflects, by EPA Region, the SIP submittals currently at EPA and notes whether the SIPs have been pending for more than 12 months after the administrative completeness determination. Some Regions have states with multiple local air agencies that each submit separate SIPs creating a high volume of SIPs to be reviewed and acted on in those Regions.

Region	Backlogged SIPs (pending more than 12 months from completeness date)	Recently submitted SIPs (pending less than 12 months from completeness date)	Total SIPs
1	70	20	90
2	3	12	15
3	16	38	54
4	112	45	157
5	18	32	50
6	100	24	124
7	28	22	50
8	60	33	93
9	234	98	332
10	14	10	24
Total	655	334	989

The EPA received 354 new SIP submissions in FY 2014, but that annual number can vary widely from as low as 200 to as high as 500 depending upon whether new regulations or air quality standards have been issued recently by the EPA and whether states have made other changes to their state laws, regulations, and/or permits that they would like to be reflected in their SIPs. The EPA expects to take action on 450 – 500 SIPs in FY 2015 and expects a similar number of actions in FY 2016. Some Regions have states with multiple local air agencies that each submit separate SIPs, creating a high volume of SIPs to be reviewed and acted on in those Regions.

## CLIMATE

**Question 4:** What is the total amount of climate related spending in the agency's FY 2016 budget?

**Question 5:** What is the total amount of climate related spending in the Administration's FY 2016 budget?

**Answer:** In FY 2016, the agency is requesting \$239 million in climate change-related funding.

The Administration has already made significant investments to tackle our emissions and prepare our communities for the effects of climate change. The FY 2016 budget continues to invest in cutting carbon pollution and in preparedness and resilience — providing necessary tools, technical assistance, and on-the-ground partnership to communities that are dealing with the effects of climate change today.

The FY 2016 budget provides approximately \$7.4 billion for clean energy technology programs across the Federal government. These programs conduct research, development, and deployment efforts that stimulation the evolution and use of clean energy sources such as solar, wind, and low-carbon fossil fuels, as well as energy-efficient technologies, products, and process improvements.

In addition, the budget also provides \$355 million for a range of clean energy technology programs including research related to biomass feedstock, biofuels and biobased product development, as well as demonstration and deployment of renewable energy systems, biomass feedstock production, and energy efficiency improvements. To cut carbon pollution and promote renewable and clean energy as well as energy efficiency improvements in electric generation, transmission, and distribution sites in rural communities, the budget also supports \$6 billion in lending to rural electric cooperatives and utilities to support the transition to clean-energy and increased energy efficiency, as well as an additional \$50 million in loan guarantees to improve the retail infrastructure to deliver higher-blended biofuels.

To enhance energy security and create jobs in new industries, the budget provides roughly \$100 million to review and permit renewable energy projects on Federal lands and waters, helping to continue progress toward a goal of permitting 20 gigawatts of renewable energy capacity and related transmission infrastructure by 2020 as part of the President's Climate Action Plan.

The Administration will continue to promote these programs, and others, alongside goals that encourage energy efficiency across not only Federal agencies, but the rest of the United States as well. The President's energy savings Performance Contracting Challenge was expanded and extended to deploy \$4 billion in energy-saving and renewable energy projects at government facilities through 2016 and the Administration is also committed to increasing the Federal Government's goal for reducing its greenhouse gas emissions and will ask agencies to establish a new more aggressive targets for 2025 - saving taxpayers up to \$18 billion in avoided energy costs - and increase the share of electricity the Federal Government consumes from renewable sources to 30 percent.

## CLIMATE – RELATED ACTIVITIES

**Question 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.

**Answer:** In order to secure America's energy future, cut carbon pollution, and prepare the Nation for the unavoidable impacts of climate change we are already beginning to experience, the FY 2016 budget supports a wide array of programs across numerous Federal agencies that promote advances in clean energy, improve energy security, and enhance preparedness and resilience to climate change. In addition to the EPA, some other Federal agencies assisting in these efforts include; The Departments of Energy (DOE), State (DOS), Defense (DOD), Interior (DOI), Treasury (UST), Commerce (DOC), and Agriculture (USDA), as well as the National Science Foundation (NSF) and National Aeronautics and Space Administration (NASA). The United States Agency for International Development (USAID) and Department of Homeland Security also provide resources for both foreign and domestic extreme weather-related disaster response efforts related to the effects of climate change.

## POWER PLANTS

**Question 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."

1. What is the agency's current schedule for each of these rulemakings?
2. Does EPA plan to finalize rules for new power plants and existing power plants at the same time?

**Answer:** The EPA plans to finalize the Clean Power Plan for Existing Power Plants in States, Indian Country and U.S. Territories and the Carbon Pollution Standards for New, Modified and Reconstructed Power Plants this summer. Additional information concerning regulatory actions for proposed commonsense approaches to reduce carbon pollution from new and existing power plants can be found at <http://www2.epa.gov/carbon-pollution-standards/regulatory-actions>.

## CLEAN AIR ACT

**Question 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.

1. Does section 111(b) of the CAA require that EPA finalize new source performance standards "within one year" after publishing a proposal?
2. 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.
3. Will EPA withdraw and reissue its proposal in order to comply with section 111(b)? If not, why not?

**Answer:** The EPA has proposed rules affecting newly constructed, modified, reconstructed, and existing fossil fuel-fired EGUs under CAA sections 111(b) and 111(d). Because there are a number of overlapping issues that are common to all of those proposals, the EPA believes that it is prudent to issue final rules in a coordinated way. Since we are proposing a suite of rules affecting an industry, we wanted to address the rules at the same time because there are common issues that need to be addressed.

## CLEAN POWER PLAN

**Question 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.

1. How many comments has the agency received?
2. Is this the largest number of comments received on any rulemaking?
3. How many of these comments raise questions or concerns relating to the rulemaking?
4. How is it feasible for the agency to fully review, analyze and respond to those comments by "Midsummer" of 2015?

**Question 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."

1. Does EPA plan to require initial State plans in 2016?
2. 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?
  - iii. In light of all the comments that have been submitted regarding the proposed "Clean Power Plan," is EPA going to reevaluate these estimates?

**Question 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.

1. What is the agency's timetable for proposing and finalizing a federal plan?
2. How much time would there be between when the federal plan was finalized and the initial State plans would be due?
3. 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?

**Answer:** The agency has received approximately 4.3 million comments on the proposed rulemaking: Standards of Performance for Greenhouse Gas Emissions from Existing Sources: Electric Utility Generating Units (See: <http://www.regulations.gov/#!docketDetail;D=EPA-HQ-OAR-2013-0602>). This rulemaking docket has received the most comments since the combined docket center was created in 2007.

We are in the process of reviewing and considering all timely comments. The vast majority are mass email or petition campaigns, supporting the proposed Clean Power Plan by a 4 to 1. Approximately 34,000 comments are individual comment submittals addressing some aspect of

the rule, of those about 1700 comments are more in-depth, ranging in size from a several to over a thousand pages. These comments cover over 100 topic areas. As with any EPA rulemaking proposal, these comments offer a range of insights that are supportive, critical and in a many instances suggest or echo support for alternative approaches for EPA to consider.

The agency is currently reviewing and writing responses for comments on the proposal. While this is a major task, a team of technical and legal experts within the EPA are reviewing and analyzing comments to inform the decision making process for the final rule. Many of these staff are also working on the final rule and, as such, are best positioned to coordinate the work on both the rule and the response to comments. This also enables close coordination on the timing of both efforts.

In the proposal, the EPA proposed that states either submit complete plans on June 30, 2016, or submit an initial plan requesting an extension of one to two years. More details on this and on the estimates under the Unfunded Mandates Reform Act can be found in the preamble to the proposal. The EPA solicited comment on both of these aspects of the proposed rule, and all issues raised by the proposal, and is currently evaluating those comments as it develops final emissions guidelines.

In response to requests from states and stakeholders since the proposed Clean Power Plan was issued, the EPA announced in January 2015 that we will be starting the regulatory process to develop a rule that would set forth a proposed federal plan and could provide an example for states as they develop their own plans. In summer 2015, the EPA plans to propose a federal plan for meeting Clean Power Plan goals for public review and comment. In summer 2016 EPA will be in a position to issue a final federal plan for meeting Clean Power Plan goals in areas that do not submit plans. The Clean Air Act provides for EPA to write a federal plan if a state does not put an approvable state plan in place. The EPA's strong preference remains for states to submit their own plans that are tailored to their specific needs and priorities.

## PROPOSED FEDERAL PLAN

**Question 12:** In June of last year, Assistant Administrator McCabe testified that any proposed federal plan "would be squarely within our authority."

1. 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?
2. Does EPA believe that it has legal authority to require States to meet renewable energy and energy efficiency targets through a Federal plan?

**Answer:** The Clean Air Act provides for the EPA to write a federal plan if a state does not put an approvable state plan in place. In response to requests from states and stakeholders since the proposed Clean Power Plan was issued, the EPA announced in January 2015 that we will be starting the regulatory process to develop a rule that would set forth a proposed federal plan and could provide an example for states as they develop their own plans. The EPA's strong preference remains for states to submit their own plans that are tailored to their specific needs and priorities. The agency expects to issue the proposed federal plan for public review and comment in summer 2015.

## CLEAN AIR ACT – SECTION 111(D)

**Question 13:** In the proposed "Clean Power Plan," there are no "off-ramps" to protect against rate increases or reliability risks.

1. 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?
2. 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?

**Question 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).

1. 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?

**Question 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.

1. 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.

**Answer: 1.)** States, cities, businesses, and homeowners have been working for years to increase energy efficiency and reduce growth in demand for electricity. The EPA projects that the Clean Power Plan will continue and accelerate this trend. Nationally, this means that, in 2030 when the plan is fully implemented, electricity bill would be expected to be roughly 8 percent lower than they would have been without the actions in state plans. That would save American about \$8 on an average monthly residential electricity bill, savings they would not see without the states' efforts under this rule.

For 40 years, the EPA has been able to both implement the Clean Air Act and keep the lights on. The EPA's proposed Clean Power Plan will not change that. Our analysis of the Clean Power Plan concluded that the rule is unlikely to have any significant effect on electricity reliability. If a

local reliability concern arises, the EPA is confident that it can be managed with existing tools and processes – especially taking into consideration the timing and compliance flexibilities in the guidelines.

2.) Over the last forty years, under CAA section 111(d), the agency has regulated four pollutants from five source categories (i.e., sulfuric acid plants (acid mist), phosphate fertilizer plants (fluorides), primary aluminum plants (fluorides), Kraft pulp plants (total reduced sulfur), and municipal solid waste landfills (landfill gases)). In addition, the agency has regulated additional pollutants under CAA section 111(d) in conjunction with CAA section 129. The agency has not previously regulated CO<sub>2</sub> or any other greenhouse gas under CAA section 111(d). The EPA's previous CAA section 111(d) actions were necessarily geared toward the pollutants and industries regulated. Similarly, in this proposed rulemaking, in defining CAA section 111(d) emission guidelines for the states and determining the BSER, the EPA believes that taking into account the particular characteristics of carbon pollution, the interconnected nature of the power sector and the manner in which EGUs are currently operated is warranted. Specifically, the operators themselves treat increments of generation as interchangeable between and among sources in a way that creates options for relying on varying utilization levels, lowering carbon generation, and reducing demand as components of the overall method for reducing CO<sub>2</sub> emissions. Doing so results in a broader, forward-thinking approach to the design of programs to yield critical CO<sub>2</sub> reductions that improve the overall power system by lowering the carbon intensity of power generation, while offering continued reliability and cost-effectiveness. These opportunities exist in the power sector in ways that were not relevant or available for other industries for which the EPA has established CAA section 111(d) emission guidelines.

3.) Under the proposed rulemaking states will choose how to meet their Clean Power Plan goals through whatever measures reflect their particular circumstances and policy objectives. They can:

- o Look broadly across the power sector for strategies that get reductions
- o Invest in existing energy efficiency programs – or create new ones
- o Consider market trends toward improved energy efficiency and a greater reliance on lower-emitting power sources
- o Expand renewable energy generation capacity
- o Tap into investments already being made to upgrade aging infrastructure
- o Integrate their plans into existing power sector planning processes
- o Design plans that use innovative, cost-effective regulatory strategies
- o Develop a state-only plan or collaborate with each other to develop plans on a multi-state basis

## CLEAN POWER PLAN - MODELING

**Question 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.

1. Why hasn't EPA done the modeling? Is it a matter of budgeting?
2. Will there be detectable changes to weather or climate from the "Clean Power Plan," and if so, when are they projected to occur?

**Answer:** Consistent with statute, Executive Order, and OMB guidance, the EPA conducted a Regulatory Impact Analysis that shows illustrative benefits and costs of compliance with the proposed Clean Power Plan. The actual benefits and costs will depend on what measures the states choose to implement their goals.

## CLEAN POWER PLAN – SBAR PANEL

**Question 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.

1. When does EPA plan to convene this panel?
2. 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?

**Answer:** In January 2015, the EPA launched the Small Business Advocacy Review process to seek advice and recommendations from small entities to ensure that the agency carefully considers the possible impacts a potential rule could have on these businesses. On April 30, 2015, the EPA convened the Small Business Advocacy Review Panel. The Panel process offers an opportunity for small businesses, small governments and small not-for-profit organizations (collectively referred to as small entities) to provide advice and recommendations to ensure that the EPA carefully considers small entity concerns regarding the impact of the potential rule on their organizations.

## OZONE STANDARDS

**Question 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.

1. How many counties are there nationwide that have ozone monitors?
2. How many counties are there that don't have monitors?
3. 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?
4. 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?

**Answer:** In order to continuously assess ozone (O<sub>3</sub>) air pollution levels, state and local environmental agencies operate O<sub>3</sub> monitors at various locations and subsequently submit the data to the EPA. At present, there are approximately 1,400 monitors across the U.S. reporting hourly O<sub>3</sub> averages during the times of the year when concentrations can be high, such as in the hot summer months, when notification of local O<sub>3</sub> pollution can be an important resource. Approximately 800 O<sub>3</sub> monitors are currently operated year-round, representing greater than 50% of the total O<sub>3</sub> monitoring network. Additional information concerning locations of the O<sub>3</sub> monitors can be found at [http://www.epa.gov/airdata/ad\\_maps.html](http://www.epa.gov/airdata/ad_maps.html).

## OZONE STANDARDS – IMPLEMENTATION

**Question 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".

1. Will the modeling updates to Appendix W be finalized by Oct. 1?
2. Will the Exceptional Events Rule be finalized by Oct. 1?
3. Will guidance to states on designations be finalized by Oct. 1?

**Answer:** Consistent with its commitment to engage in a rulemaking process to determine whether updates to Appendix W in 40 CFR part 51 are warranted, the EPA is planning to propose a rulemaking in summer of 2015 to consider whether to update Appendix W. If the EPA concludes that it is technically and scientifically appropriate, it will propose appropriate regulatory updates to Appendix W as part of that rulemaking and may also make related updates to technical guidance, as appropriate. In the meantime, in order to demonstrate that a proposed source or modification does not cause or contribute to a violation of the applicable O<sub>3</sub> NAAQS, PSD permit applicants would follow the current provisions in Appendix W until any revisions to them are in effect.

Because of previously expressed stakeholder feedback regarding implementation of the Exceptional Events Rule and specific stakeholder concerns regarding the analyses that can be used to support O<sub>3</sub>-related exceptional event demonstrations, the EPA intends to propose revisions to the Exceptional Events Rule in the fall of 2015 in a notice and comment rulemaking effort. At that time, we will also issue a draft exceptional events implementation guidance for wildfires that influence ozone concentrations and will solicit public comment. The EPA intends to assess comments and finalize the rulemaking in the summer of 2016 in advance of when Governors' recommendations would be due under a new or revised O<sub>3</sub> NAAQS (expected in October 2016).

The EPA intends to issue additional guidance on ozone designations (if the standard is revised) soon after the promulgation of a new standard.

## OZONE STANDARDS – RESOURCES

**Question 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 months of finalizing a rule; ii) provide updated guidance for infrastructure state implementation plans; and iii) propose any needed implementation rules within 1 year.

1. Can you provide an estimate of the money, resources and staff that will be required to complete this work in FY 2016?
2. Has EPA requested the resources needed to complete all of this work?
3. Can you identify for the record where those resources are identified in the budget?
4. 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?

**Answer:** Within the levels in the FY 2016 President's Budget, the agency requests the resources and FTE necessary to continue its Clean Air Act-prescribed responsibilities to administer and implement the NAAQS. This includes funding for review of the ozone NAAQS and for implementation of a potentially revised ozone standard, including development of state guidance on revisions to infrastructure state implementation plans and area designations, within current statutory and resource limitations. The agency also will continue consulting with states to determine additional methods to improve the SIP development and implementation process that are within current statutory limitations.

## KEYSTONE XL PIPELINE

**Question 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.

1. Why is it that lower oil prices are relevant in one regulatory context but irrelevant in another?
2. 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?

**Answer:** The EPA considers all relevant information when evaluating costs and benefits of its proposed regulations. The Department of State's Final Supplemental Environmental Impact Statement (SEIS) identified the price of oil as a key and critical determinant of the effect of the pipeline on Canadian oil sand development and thus the environmental impacts of the project. Our comments only recommended that they more fully consider the low oil price scenario when evaluating the environmental impacts of the project. With respect to the EPA/DOT proposed phase 2 standards for medium- and heavy-duty vehicles, our supporting analysis looked at both the low and high oil price scenarios in addition to the reference case scenario. In selecting the proposed Phase 2 standards, we found the stringency was constrained by technological feasibility rather than costs or cost effectiveness, irrespective of which projected fuel price was used.

The focus of the light-duty GHG program is on reducing GHG emissions and improving fuel economy over the long run. Standards that improve fuel economy for all types of cars and light trucks are good for consumers. The national program standards were designed to accommodate consumer choice, as automakers' standards adjust with changes in fleet mix. Whether a consumer purchases a car, an SUV, or a pickup truck, the fuel economy of all types of vehicles will improve over time, saving people money.

With respect to changing gasoline prices, one way people can insulate themselves from gas price volatility is to consider fuel economy when purchasing vehicles that they will drive for years in the future. This is why EPA works hard to provide the best fuel economy label information to the consumer.

## TITLE V PERMITS

**Question 22:** With regard to Title V permits:

1. 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.
2. 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?

**Answer:** Since April 2011, EPA regional offices reported two instances of an objection letter during EPA's 45-day review period, and, in the same time frame, the EPA has issued fifteen objections as part of granting a Title V petition.

## NEW SOURCE REVIEW PROGRAM

**Question 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.

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

**Answer:** The EPA has a well-established policy that reactivation of a permanently shut down facility will be treated as operation of a new source for purposes of PSD review. The key determination to be made under this policy is whether the facility to be reactivated has been "permanently shut down." In general, the EPA has explained that whether or not a shutdown should be treated as permanent depends on the intention of the owner or operator at the time of shutdown based on all facts and circumstances. No single factor is likely to be conclusive in the agency's assessment of the relevant factors, and the final determination will often involve a judgment as to whether the owner's or operator's actions at the facility during shutdown support or refute any express statements regarding the owner's or operator's intentions.

## REACTIVATION POLICY

**Question 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).)

1. 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?
2. 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.

**Answer:** Owners and operators of major stationary sources and the state, local, and tribal governments that administer PSD programs are required to comply with the Clean Air Act and applicable regulations under the EPA-approved permitting programs. While states with approved PSD programs have independent discretion within the parameters of those regulations, as the EPA explained immediately after the statement quoted in your question, states have an obligation to exercise that discretion in a manner that is reasoned and consistent with the requirements of the CAA. Furthermore, the statement quoted in your letter was made in the context of a state's determination of emissions limitation based on Best Available Technology for a source seeking a PSD permit. While states have some discretion in establishing these emissions limitations, states do not have the discretion to disregard the statutory prohibition against constructing or modifying a major stationary source without a PSD permit.

## SNAP PROPOSAL

**Question 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).

1. 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?

**Answer:** Section 612(c) of the Clean Air Act directs the EPA to publish lists of acceptable substitutes for specific uses. The EPA considers whether other substitutes that are currently or potentially available pose less risk to human health and the environment than the substitute under review. The EPA also considers whether the substitute under review poses lower overall risk to human health and the environment as compared to the ozone depleting substances historically used in the end-use. The criteria we use for this review are listed at 40 CFR 82.180(a)(7). These criteria are: (i) atmospheric effects and related health and environmental impacts; (ii) general population risks from ambient exposure to compounds with direct toxicity and to increased ground-level ozone; (iii) ecosystem risks; (iv) occupational risks; (v) consumer risks; (vi) flammability; and (vii) cost and availability of the substitute.

The EPA's proposal to change the status of certain substitutes previously listed as acceptable under the Significant New Alternatives Policy program addresses end-uses where multiple alternatives are available. We anticipate that multiple alternatives that have been commercialized for many years will continue to be acceptable and used in the same applications and end-uses. Further, the EPA continues to add new alternatives to the list, most recently in a notice of acceptability (October 21, 2014, 79 FR 62,863) and in a final regulation (April 10, 2015, 80 FR

19,453). These added additional low-GWP alternatives, several of which industry claims offer improved energy efficiency.

## SNAP PROPOSAL – DOE COORDINATION

**Question 26:** Describe the coordination between EPA and DOE with respect to the SNAP proposal.

1. Please list each meeting between EPA and DOE with respect to the SNAP proposal, the attendees, and the topics discussed.
2. Did EPA ask DOE for information about the cost and timing of re-designing refrigeration equipment? Did DOE provide such information?
3. Are the materials that DOE provided to EPA in connection with the SNAP proposal publically available? If yes, please where can they be located?
4. 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.
5. 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.

**Answer:** DOE participated in the interagency review process for the proposed SNAP change of listing rule. DOE and the EPA held face-to-face meetings and conference calls prior to the issuance of the proposal. The consultation between the two agencies continues as the EPA works on developing the final rule. Discussions on the proposed rule include information on the timing for the DOE energy efficiency standards and the two sectors under the SNAP status change proposal, foams and commercial refrigeration, where there are relevant DOE energy efficiency standards. For a few end uses, such as vending machines, very low temperature refrigeration, and icemakers, we had additional, more detailed discussions.

The EPA fully anticipates that DOE will participate in the interagency review of the draft final rule and that we will continue to discuss issues of interest to stakeholders affected by ongoing regulatory development at both DOE and EPA. More broadly, the EPA and DOE are in regular and routine discussions on a range of relevant topics. To review the public docket concerning this rulemaking, visit [www.regulations.gov](http://www.regulations.gov) and search for docket number EPA-HQ-OAR-2014-0198.

## SNAP PROPOSAL – ENERGY EFFICIENCY

**Question 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 2C greater than preindustrial levels, extent of sea level rise, increase in ocean pH).

**Question 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.

**Question 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.

**Question 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?

**Answer:** Like the ozone-depleting substances they replace, hydrofluorocarbons (HFCs) are potent greenhouse gases. Today, HFCs make up a small portion of greenhouse gas emissions, but their use is growing fast. HFC emissions increased by about 8% per year from 2004 to 2008. Left unabated, HFC emissions could rise to 9-19% percent of total equivalent carbon dioxide emissions by 2050. We can stem the growth of HFC use where alternatives that have less risk to human health and the environment can be used instead.

The Montreal Protocol's Science Assessment Panel notes that "with regard to future trends, use and emissions of all HFCs are projected to grow rapidly. Indeed, if the current mix of HFCs remains unchanged, the 2014 scientific assessment report predicts that by 2050 GWP-weighted emissions of HFCs will be roughly comparable to the peak emissions of CFCs in the late 1980s." (UNEP/OzL.Pro.WG.1/35/2) "Replacing the current mix of high-GWP HFCs with low-GWP compounds could lead to a decrease in radiative forcing of the climate over the coming decades, possibly by as much as 0.07 W m<sup>-2</sup> by 2030, relative to baseline scenarios. By 2050, radiative forcing from low-GWP replacement compounds, if used in place of the currently used high-GWP HFCs, would be negligibly small" (UNEP/OzL.Pro.WG.1/35/2)

While the EPA has not undertaken a comprehensive assessment of all sources of GHG emissions associated with substituting ODS and other commonly used refrigerants with the refrigerants in the SNAP change of listing status proposed rule, the agency notes that energy efficiency standards exist for most of the types of equipment covered. Thus, total energy use with the substitute refrigerants we are finding acceptable in this action can be expected to be no higher than that required by the standards for those classes of equipment. Further, testing data, peer-reviewed journal articles, and other information provided by the submitters for these substitute refrigerants indicate that equipment using these refrigerants is likely to have a higher coefficient of performance and use less energy than equipment currently being manufactured that uses the most commonly used refrigerants that are listed as acceptable under SNAP.

The EPA has not undertaken a comprehensive assessment of energy efficiency. However, industry stakeholders have shared information indicating that many of the newly developed low-GWP foam blowing agents were developed and are gaining market share because their use results in improved energy efficiency.

DOE participated in the interagency review process for the proposed SNAP change of listing rule. DOE and EPA held face-to-face meetings and conference calls prior to the issuance of the proposal. The consultation between the two agencies continues as the EPA works on developing the final rule. Discussions on the proposed rule include information on the timing for the DOE energy efficiency standards and the two sectors under the SNAP status change proposal, foams and commercial refrigeration, where there are relevant DOE energy efficiency standards. For a few end uses, such as vending machines, very low temperature refrigeration, and icemakers, we had additional, more detailed discussions. The EPA did not ask DOE for information about the cost and timing of re-designing equipment.

The EPA fully anticipates that DOE will participate in the interagency review of the draft final rule and that we will continue to discuss issues of interest to stakeholders affected by ongoing regulatory development at both DOE and EPA. More broadly, the EPA and DOE are in regular and routine discussions on a range of relevant topics.

## FOAM REFRIGERANTS

**Question 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?

**Question 32:** What is EPA's cost estimate (including both direct and indirect costs) for a foam blowing operation to switch blowing agents?

**Question 33:** What is EPA's cost estimate (including both direct and indirect costs) for a producer of reach-in coolers to switch refrigerants?

**Answer:** The EPA's proposed rule was based on information the EPA had at the time concerning available and potentially available alternatives. The EPA received additional information during the comment period and in several cases that information included technical challenges associated with the uptake of alternatives by the dates proposed. The EPA is reviewing this information as it develops a final rule.

Under its SNAP regulations, the EPA does not consider the costs of transition to other alternatives as part of our analysis of the comparative risk to human health and the environment. However, accompanying the proposal and included in the docket were the *Economic Impact Screening Analysis for Regulatory Options to Change Listing Status of High-GWP Alternatives* (June 2014) and *Revised Preliminary Cost Analysis for Regulatory Options to Change Listing Status of High-GWP Alternatives* (June 2014). The EPA will update these to reflect decisions in the final rule.

## SNAP PROPOSAL – CHEMICAL PLANTS

**Question 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.

**Answer:** Since the SNAP proposal deals with a menu of available alternatives for specific end-uses and does not ban production of any chemical, the EPA did not examine effects on U.S. chemical plants. The proposed rule covers specific hydrofluorocarbons (HFCs) for certain applications only. In some cases, depending on decisions taken in the final rule that the EPA is now developing, there may be additional use of some of the lower-GWP HFCs or blends that include HFCs as components.

## SNAP PROPOSAL – BUILDING CODE REQUIREMENTS

**Question 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?

**Question 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.

**Answer:** The EPA applies the same comparative risk framework to all SNAP decisions.

It is not unusual that industry standards-setting bodies such as the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE), made up of specialists from manufacturing and other sectors with important perspectives on such questions, will undertake a process to revise national standards to reflect changes in technologies, and that such revisions may be influential ultimately in changing relevant state and local building code requirements. However, we do not anticipate that the EPA's SNAP change of listing status proposal will have direct impacts on such requirements, since our proposal and earlier expansions of the SNAP lists refer to end uses in which a variety of alternatives are available, and does not mandate the use of any particular technology option.

## MATS – COAL UNITS

**Question 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.

1. 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?

**Answer:** During the final rulemaking process, the EPA identified several electric generating units (EGUs) that provided data used to fulfill Part III (emissions testing) requirements of the 2010 Information Collection Request (OMB Control Number 2060-0631). This data indicated the ability to comply with all the existing-source standards (i.e., Hg, PM, and HCl), and can be accessed publically at <http://www.epa.gov/ttn/chief/ert/ert/index.html>. Among those sources are both pulverized coal (PC) and circulating fluidized-bed (CFB) EGUs, and EGUs burning bituminous coal, subbituminous coal, lignite, and coal refuse. The EPA has also noted that there are coal refuse units that have installed add-on control technology that will allow them to be in compliance with MATS requirements.

## MATS – PENNSYLVANIA COMMUNITIES

**Question 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.

1. 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?
2. 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?

**Answer:** The EPA did not address or assess the environmental hazards or potential hazards from these units closing and not continuing to remove the coal refuse piles in these areas. The environmental risk for MATS was assessed nationwide and not on a plant-by-plant basis.

During the final rulemaking process, the EPA identified several EGUs that, based on the data available, indicated the ability to comply with all the existing-source standards (i.e., Hg, PM, and HCl). Among those sources are both PC and CFB EGUs, and EGUs burning bituminous coal, subbituminous coal, lignite, and coal refuse. The EPA has also noted that there are coal refuse units that have installed add-on control technology that will allow them to be in compliance with MATS requirements

## MATS – ELECTRIC UNITS

**Question 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.

1. 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?

**Answer:** The EPA carefully considers the interrelatedness and potential impacts various rulemakings can have on the power generation sector and other stakeholders. When we analyze the benefits and costs of a regulation, we take into account existing rules, including the market and technology conditions created by those prior rules. Further, we recognize the importance of assuring that each rule can achieve its intended environmental objectives in a commonsense, cost-effective manner, consistent with underlying statutory requirements, and while assuring a reliable power system.

## VEHICLE LABELS

**Question 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.

1. 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?
2. 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?
3. 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?
4. Do the studies cited in the 2006 proposed rule still provide the most up-to-date information available?
5. 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?

**Answer:** After reviewing public comments during the 2006 rulemaking, EPA retained the 55% city/45% highway ratio that had been used in the past in order to maintain year-to-year consistency. In addition, this approach maintained alignment with the Gas Guzzler tax calculations, which must use the 55% city/45% highway ratio per statute. We also received comments that the 43/57 ratio (which is based on distance or miles traveled) was not intuitive to most drivers and that many consumers may think more in terms of the percent of time they spend in city or highway conditions, rather than in percent of distance traveled in city or highway conditions (i.e., 55% of time in city driving yields less than 55% of miles in city driving, so a higher city/highway ratio may be more intuitive for consumers in estimating their combined fuel economy value).

Every individual has his or her own city/highway weighting, and no single weighting is representative for each consumer. The individual city and highway fuel economy values are provided on the label for those drivers who want to calculate a customized combined fuel economy value, and we have provided a tool for personalizing the city/highway ratio on [fueleconomy.gov](http://fueleconomy.gov).

The individual city and highway fuel economy values on the label are accurate and allow drivers to calculate a customized combined fuel economy value. EPA has provided a tool for personalizing the city/highway ratio on [www.fueleconomy.gov](http://www.fueleconomy.gov). EPA determined to retain the

55% city/45% highway weighting for the reasons stated above, while recognizing that its accuracy for any given driver will depend on that driver's personal ratio. There is no ratio that would make all labels accurate for all drivers. Of course, the combined fuel economy value provides a single value that allows consumers to compare across individual vehicles.

The EPA currently is not aware of any new data that would indicate a change in consumers' average city/highway driving is warranted for label comparison purposes.

The EPA Fuel Economy Trends data is used by analysts to calibrate models to fleet wide, sales-weighted average, fuel economy and greenhouse gas emissions and a 43% city/57% highway weighting is the best value for this purpose as discussed in the 2006 rulemaking. Because every consumer has a unique city/highway ratio, there is no single best value to use on labels. In addition, consumers can calculate a customized combined fuel economy value based on their ratio and the individual city and highway fuel economy values.

## FUEL ECONOMY

**Question 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?

**Question 42:** What resources would EPA need to determine if the studies cited in 2006 continue to accurately represent today's driving habits?

**Answer:** Automaker investments in improved fuel economy are clearly reflected on fuel economy labels. Based on data from the EPA Fuel Economy Trends report, we estimate that average label values have increased by about 3.1 mpg, or about 15%, in the five years between model year 2008 and model year 2013.

As discussed in the 2006 rulemaking, the EPA chose to retain the 55% city/45% highway ratio that had been used in the past in order to maintain year-to-year consistency. Because every individual has his or her own city/highway weighting, no single weighting is representative for each consumer's driving habits. The individual city and highway fuel economy values on the label are accurate and allow drivers to calculate a customized combined fuel economy value. The EPA has provided a tool for personalizing the city/highway ratio on [www.fueleconomy.gov](http://www.fueleconomy.gov).

## Questions Submitted for the Record by Representative Olson

### RINS

**Question 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?

**Answer:** In recognition of the fact that different obligated parties are in different markets with different business plans, EPA provided in the RFS regulations a range of compliance options to all obligated parties. The RIN system itself was designed specifically to allow all obligated parties to take advantage of the flexibility of the marketplace to ease compliance and minimize overall compliance costs.

The statute provides that the RFS percentage standards are to be applicable to "refineries, blenders and importers, as appropriate." CAA 211(o)(3)(B)(ii)(I). We considered how to implement this provision during the initial development of the RFS program. The end result was informed by a full notice-and-comment process during the rulemaking. A detailed discussion of this can be found in the rulemaking itself (72 FR 23900, May 1, 2007), and in the Summary and Analysis of Comments document located in the rulemaking docket (Docket ID No. EPA-HQ-OAR-2005-0161). We also reconsidered the matter in the context of the 2009-2010 rulemaking implementing the 2007 Energy Independence and Security Act amendments. After once again considering comments on the issue, we decided to retain the current approach (74 FR 24963-64, May 26, 2009; 75 FR 14721-22, March 26, 2010).

## Questions Submitted for the Record by Representative Barton

### SYNTHESIS AND ASSESSMENT PRODUCTS (SAPS)

**Question 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.

1. Is this correct?
2. If not, what was EPA's role in development of these SAPs?

**Answer:** Yes, beginning in 2002, the U.S. Global Change Research Program/Climate Change Science Program (CCSP) integrated federal research on climate and global change, as sponsored by thirteen federal agencies and overseen by the Office of Science and Technology Policy, the Council on Environmental Quality, the National Economic Council and the Office of Management and Budget. CCSP completed 21 Synthesis and Assessment Products (SAPs) to address high priority U.S. climate change research, observation and decision support needs. Different agencies were designated the lead for different SAPs. The EPA was designated the coordinating lead for three of the SAPs including SAP 4.1 Coastal Sensitivity to Sea Level Rise, SAP 4.4 Preliminary Review of Adaptation Options for Climate-Sensitive Ecosystems and Resources, and SAP 4.6 Analyses of the Effects of Global Change on Human Health. The EPA relied on the major climate change assessments from the USGCRP, previously the USCCSP, the Intergovernmental Panel on Climate Change (IPCC) and the National Research Council to inform the 2009 GHG Endangerment Finding.

## **SAPS PEER REVIEW**

**Question 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?

**Answer:** Yes, as Highly Influential Scientific Assessments (HISA), and in accordance with EPA's IQA Guidance, each SAP underwent external peer review. In addition, first, a prospectus was developed for each SAP that provided the public with a general outline, proposed authors, and described the process for completing the SAP. Then, the draft reports went through two stages of expert, interagency, and public review. Finally, each SAP was submitted for approval by the National Science and Technology Council (NSTC), a cabinet-level council that coordinates science and technology research across the federal government.

## **SAPS PEER REVIEW**

**Question 3:** If no, please explain what internal agency peer review processes EPA employed to validate such HISAs.

1. Which parties served as the peer reviewers?
2. Which parties oversaw/managed the peer reviews?

**Answer:** See response above.

## SAPS - FEDERAL ADVISORY COMMITTEES

**Question 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?

1. Who were the members of each such federal advisory committee, since terminated? (Please provide a detailed explanation).
2. What were the professional and institutional affiliations of each member of each such federal advisory committee? (Please provide a detailed explanation).
3. 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).

**Answer:** The Coastal Elevations and Sea Level Rise Advisory Committee (CESLAC) was established to review and comment on SAP 4.1. "Within the context of the basic study plan, CESLAC will advise on the specific issues to be addressed, appropriate technical approaches, the nature of information relevant to decision makers, the content of the final report, and other matters important to the successful achievement of the objectives of the study." CESLAC held open meetings during which individual members expressed opinions about the draft SAP4.1. CESLAC also provided a final report, which is publicly available.

The Adaptation for Climate Sensitive Ecosystems and Resources Advisory Committee (ACSERAC) was established to review and comment on SAP 4.4: "The primary responsibility of this Committee is to conduct an expert peer review of the first external review draft report entitled: "Preliminary Review of Adaptation Options for Climate-Sensitive Ecosystems and Resources." The ACSERAC will provide advice to the EPA Administrator on the conduct of this study, and within the context of the basic study plan, ACSERAC will advise on the specific issues to be addressed, appropriate technical approaches, the usefulness of information to the decision makers, the quality and accurateness of the content of the final report, compliance with the Information Quality Act, and other matters important to the successful achievement of the objectives of the study." ACSERAC held open meetings during which individual members expressed opinions about the draft SAP4.4. ACSERAC also provided a final report, which is publicly available.

The Human Impacts of Climate Change Advisory Committee (HICCAC) was established to provide an expert peer review of the draft report SAP 4.6: "The primary responsibility of this committee is to conduct an expert's peer review of the first external review draft of the report entitled: *Analysis of the Effects of Global Change on Human Health and Welfare and Human Systems*. Based on the Committee's review of this first draft, a final draft will be prepared and submitted to the Committee for peer review. The major objectives of this FACA Committee are to provide advice and recommendations on the scope of the report, the methods used to synthesize the results and conclusions, the veracity of the literature cited, and the conclusions supported by the literature." HICCAC held open meetings during which individual members expressed opinions about the draft SAP4.6. HICCAC also provided a final report, which is publicly available.

Please see attached spreadsheet for additional information regarding the make-up of the Committees.

## **SAPS – CONFLICT-OF-INTEREST**

**Question 5:** Did the EPA conducted independence and conflict-of-interest screenings and reviews of each member of each such federal advisory committee?

1. What did such independence and conflicts of interest screenings and reviews show?  
(Please provide a detailed explanation).

**Answer:** Yes, in accordance with Federal Advisory Committee standard procedures, any potential member of a FAC is required to submit conflict of interest information and statements. All members of the FAC provided such information and were considered to have no conflict of interest.

## Questions Submitted for the Record by Representative Latta

### FORMALDEHYDE STANDARDS FOR COMPOSITE WOOD PRODUCTS ACT

**Question 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?

**Answer:** 1) The agency agrees that a national formaldehyde standard for composite wood products is important for American consumers and the wood products industry, and is working diligently to complete the regulations that will implement the Act.

Prior to proposing the rules to implement the Formaldehyde Standards for Composite Wood Products Act, two complementary proposals were submitted to the Office of Management and Budget on May 5, 2012 for review under Executive Order 12866. After more than a year of review and consultation with OMB, the rules were proposed on June 10, 2013 (78 FR 34795 and 78 FR 34820). The EPA 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. At this time, the agency continues to address the technical and legal complexities of this issue, including the harmonization of its proposed program as much as possible with the current California Air Resources Board's Airborne Toxics Control Measure, while accommodating thousands of comments submitted by a diverse cast of stakeholders.

The EPA is very sensitive to the potential impact of these requirements on the American manufacturing sector and engaged numerous stakeholders, including small businesses, many of which provided input to the Small Business Advocacy Review Panel (SBAR) for these proposed regulations. The EPA took their input, and the SBAR Panel deliberations, into account in designing the proposals. In an ongoing effort to reach out to potentially affected stakeholders, the EPA met and continues to meet with companies and trade associations that represent, among other members, producers of laminated products. The EPA received a wide variety of public comments on the proposals, including comments from individuals, companies, trade associations, and environmental advocacy groups. The agency will consider all information received from commenters in developing the final rule, which is expected to be submitted to the Office of Management and Budget this fall and issued by the end of this year.

## CCPI FUNDING

**Question 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).

**Answer: 1.)** 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?

The proposed Carbon Pollution Standards for New Power Plants rely on a wide range of data, information and experience well beyond that generated by projects receiving financial assistance under the Energy Policy Act of 2005 and thus do not depend solely on those projects. The EPA received public comments on the proposed standards under CAA 111(b) suggesting a range of changes – from issuing final standards that are more stringent than those proposed to issuing final standards that are less stringent, including less stringent options that would not require any implementation of CCS technology.

**2.)** How might this affect the timing of the proposed 111(b) rule?

The EPA has proposed rules affecting newly constructed, modified, reconstructed, and existing fossil fuel-fired EGUs under CAA sections 111(b) and 111(d). Because there are a number of overlapping issues that are common to all of those proposals, the EPA believes that it is prudent to issue final rules in a coordinated way. Since we are proposing a suite of rules affecting an industry, we wanted to address the rules at the same time because there are common issues that need to be addressed.

**3.)** 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?

The EPA has proposed rules affecting newly constructed, modified, reconstructed, and existing fossil fuel-fired EGUs under CAA sections 111(b) and 111(d). Because there are a number of overlapping issues that are common to all of those proposals, the EPA believes that it is prudent to issue final rules in a coordinated way. Since we are proposing a suite of rules affecting an industry, we wanted to address the rules at the same time because there are common issues that need to be addressed.

## 111(B) RULE

**Question 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?

**Question 4:** How might this affect the timing of the proposed 111(b) rule?

**Question 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?

**Answer:** The proposed Carbon Pollution Standards for New Power Plants rely on a wide range of data, information and experience well beyond that generated by projects receiving financial assistance under the Energy Policy Act of 2005 and thus do not depend solely on those projects. The EPA received public comments on the proposed standards under CAA 111(b) suggesting a range of changes from issuing final standards that are more stringent than those proposed to issuing final standards that are less stringent, including less stringent options that would not require any implementation of CCS technology.

The EPA has proposed rules affecting newly constructed, modified, reconstructed, and existing fossil fuel-fired EGUs under CAA sections 111(b) and 111(d). Because there are a number of overlapping issues that are common to all of those proposals, the EPA believes that it is prudent to issue final rules in a coordinated way. Since we are proposing a suite of rules affecting an industry, we wanted to address the rules at the same time because there are common issues that need to be addressed.

## CLEAN POWER PLAN

**Question 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?

**Answer:** As proposed, all states will have the opportunity to shape their plans for meeting the Clean Power Plan as they believe appropriate for meeting the proposed CO<sub>2</sub> goals. States would be able to address the economic interests of their utilities and ratepayers by using the flexibilities in this proposed action to: (1) Reduce costs to consumers, minimize stranded assets, and spur private investments in renewable energy and energy efficiency technologies and businesses; and (2) if they choose, work with other states on multi-state approaches that reflect the regional structure of electricity operating systems that exists in most parts of the country and is critical to ensuring a reliable supply of affordable energy.

## Questions Submitted for the Record by Representative Burgess

### FOIA REQUEST

**Question 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."

1. 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?
2. What action, if any, is the agency taking to ensure that text messages, personal email accounts, and other devices or repositories are properly preserved?
3. 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?
4. 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.

**Answer:** The EPA is committed to maintaining the records of its senior officials and searching these whenever required by a FOIA or other request, and has always understood that its obligation is to do so, including in the *Landmark* FOIA. The EPA has recently finalized the update of agency-wide and office-level FOIA procedures to clarify roles and responsibilities for responding to requests. The EPA has also deployed new technology tools, such as centralized searching to search for and collect email records from EPA employees in order to respond to large and complex requests.

The EPA takes compliance with the Federal Records Act of 1950, *as amended, codified at* 44 U.S.C. chapters 29, 31 and 33, and other preservation requirements extremely seriously. In February, the EPA finalized a new Records Management Policy that updates policies for records created or received on non-EPA messaging systems (e.g., personal email accounts or personal mobile devices), text messages, and instant messages. The EPA also updated existing guidance relating to mobile devices and records, including detailed FAQs and step-by-step instructions for saving text message records that require preservation. This updated guidance was highlighted for the EPA's staff on the agency's intranet page and all EPA employees were notified through email on March 17, 2015. In accordance with the Presidential and Federal Records Act Amendments of 2014, H.R. 1233 (November 26, 2014) the EPA's revised Records Management Policy strongly discourages the use of personal email or other personal electronic messaging systems, including text messaging on a personal mobile device, for sending or receiving agency records. However, to the extent such use occurs, the individual creating or sending the record from a non-EPA electronic messaging system must copy their EPA email account at the time of transmission or forward that record to their EPA email account within 20 days of creation or sending. The EPA

also discourages the use of text messages for transmitting agency records on any device, regardless of whether the device is agency-issued or not. Nevertheless, our Policy does recognize that some staff perform time-sensitive work that may, at times, require the creation of a substantive record in the form of text messages for emergency or environmental notification purposes. In those limited instances, staff must continue to save and manage any text message records by forwarding them to the EPA email system.

The EPA's withdrawal of a filed declaration in the *Landmark* litigation was because the EPA acknowledged that there was some ambiguity in the language of the declaration that was creating unnecessary confusion with the Court. The EPA maintains that the declaration at issue was not submitted for an improper purpose nor prepared or filed in bad faith. The EPA is committed to careful drafting and review of any submission to a court of law.

As an agency that receives over 10,000 FOIA requests per year, transparency is a high priority for the EPA; a key component of which is continual improvements in our FOIA processing. Since the 2012 request at issue in *Landmark*, the EPA has prioritized improvements in our process for responding to FOIA requests. Specifically, we have improved our records management policies and procedures, including recent updates to our Records Policies and new procedures to assist employees in management of various types of electronic records. New technology tools have also been deployed for centralized searching and electronic review and we have instituted quarterly records management days. In addition to these improvements, the EPA has established the FOIA Expert Assistance Team, or "FEAT," a multi-disciplinary unit within the Office of General Counsel that is responsible for increasing the availability of expert assistance to program staff processing FOIA responses. Their charge is to ensure more rapid, higher quality responses to complex FOIA requests.

## FOIA – LACK OF RESPECT

**Question 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."

1. What actions is the agency taking to address the concerns that there is a continuing lack of respect for the FOIA process?

**Answer:** The EPA takes its FOIA responsibilities very seriously, and is focused on creating more efficient work processes to ensure FOIA responses are prepared more effectively and at lower cost. This includes adopting standard industry practices and best practices for the delivery of information technology services in areas such as cloud computing, mobile technology and workplace standards. The EPA received in excess of 10,400 new FOIA requests in FY 2014 and successfully processed over 10,000 requests (both new and backlogged).

The EPA also has improved our records management policies and procedures, including recent updates to the Records Management Policy<sup>1</sup> and new procedures to assist employees in the management of various types of electronic records. The EPA has established the FOIA Expert Assistance Team, or "FEAT," a multi-disciplinary unit within the Office of General Counsel that is responsible for increasing the availability of expert assistance to program staff processing FOIA responses. Their charge is to ensure more rapid, higher quality responses to complex FOIA requests. The EPA has also deployed new technology tools, such as centralized searching and electronic review, to efficiently process large or complex requests.

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<sup>1</sup> Link to Records Management Policy: [http://www.epa.gov/records/policy/2155/rm\\_policy\\_cio\\_2155-3.pdf](http://www.epa.gov/records/policy/2155/rm_policy_cio_2155-3.pdf)

## PERSONAL E-MAIL ACCOUNTS

**Question 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."

1. Has EPA sent such an instruction to EPA employees?
2. If so, what are the specific instructions?
3. If not, will EPA take such action? If not, why not?

**Answer:** The EPA has made it clear to employees that they are strongly discouraged from using non-EPA information systems to conduct agency business. This stance is reflected in the EPA's Records Management Policy,<sup>2</sup> guidance, mandatory training, and communications to all EPA employees. However, in the rare situation where an employee may be need to use a personal account, per the November 2014 amendments to the Federal Records Act (FRA), 44 U.S.C. chapters 29, 31 and 33, employees are required to either copy their official agency email address at the time of the creation or transmission of the record, or forward a copy of the record to their official agency email address within 20 days. Prior to the amendments to the FRA, employees were required to copy or forward any record created from their personal accounts to their official email address. This was documented in the EPA's Interim Records Management Policy (superseded by the current Records Management Policy), and was communicated to employees via mandatory records management training. As a normal course of business, the EPA has not instructed staff to preserve work related emails in their personal accounts after forwarding to the EPA account. However, the agency recognizes that in the case of a litigation hold, its policy may be superseded to ensure that no information responsive to current or potential litigation is destroyed.

Per the EPA's 2015 Records Management Policy, official agency business should first and foremost be done on official EPA information systems. The FRA now prohibits the creation or sending of a federal record using a non- EPA electronic messaging account unless the individual creating or sending the record either: (1) copies their EPA email account at the time of initial creation or transmission of the record, or (2) forwards a complete copy of the record to their EPA email account within 20 days of the original creation or transmission of the record. These FRA requirements are designed to ensure that any use of a non-EPA information system does not affect the preservation of federal records for FRA purposes, or the ability to identify and process those records if requested under the Freedom of Information Act (FOIA), Privacy Act or for other official business (e.g., litigation, congressional oversight requests, etc.). The EPA strongly discourages the use of personal email or other personal electronic messaging systems, including text messaging on a personal mobile device, for sending or receiving agency records, but to the extent such use occurs, the individual creating or sending the record from a non-EPA electronic

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<sup>2</sup> Link to the EPA's Records Management Policy:  
[http://www.epa.gov/records/policy/2155/rm\\_policy\\_cio\\_2155-3.pdf](http://www.epa.gov/records/policy/2155/rm_policy_cio_2155-3.pdf)

messaging system must copy their EPA email account at the time of transmission or forward that record to their EPA email account within 20 days of creation or sending.

The EPA has instructed its employees regarding their responsibilities to manage content in personal emails accounts in accordance with the FRA, including the November 2014 amendments to the FRA, which require that employees either copy their official agency email address at the time of the creation or transmission of the record, or forward a copy of the record to their official agency email address within 20 days. Specific litigation holds or other preservation orders may be more stringent on a case-by-case basis.

## Questions Submitted for the Record by Representative Ellmers

### MEDICAL IMAGING EQUIPMENT

**Question 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?

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.

With whom at the Food and Drug Administration, which regulates medical devices, has EPA discussed this proposal in detail?

**Answer:** The EPA is laying the groundwork for establishing a completely voluntary ENERGY STAR specification for medical imaging equipment. Voluntary performance specifications would be established through a stakeholder process consistent with ENERGY STAR guiding principles which ensure, among other things, that product performance is maintained or enhanced with the increased efficiency that results.

The voluntary ENERGY STAR program has a long history and enjoys considerable success with commercial products. In fact, the program currently covers a range of office products, 8 different categories of commercial food service (CFS) products, light commercial HVAC, as well as large data center/IT equipment. Potential expansion into medical imaging equipment is in keeping with the ENERGY STAR program's mission to deliver energy and cost savings to American consumers and businesses while reducing greenhouse gas emissions.

Large hospitals in the United States account for less than 1 percent of all commercial buildings but consume 4.3 percent of the total delivered energy used in the commercial sector. In the U.S., approximately 12 percent of hospital electricity consumption is used to operate medical equipment, according to the U.S. Energy Information Administration.

In a recent study, 91 percent of hospitals surveyed reported higher energy costs over the previous year, and more than half cited double-digit increases. As hospitals are continuously operating and consuming power, a significant opportunity exists to reduce facility energy consumption and improve efficiency.

Initial analysis suggests that most medical imaging equipment products use significant energy, even when in Ready to Scan or Low Power mode. Considerable savings can be gained from avoiding unnecessary energy use in these modes.

The EPA is in the very early phase of developing an ENERGY STAR medical imaging specification. The agency intends to work closely with equipment manufacturers, hospitals, medical group purchasing organizations, and relevant government agencies, consistent with our well-established stakeholder process. Many ENERGY STAR products are regulated by other agencies and the EPA has a strong record of consulting with them (including DOE, FTC, FCC, OSHA).

**Questions Submitted for the Record by Representative McNerney**

**BAY DELTA CONSERVATION PLAN**

**Question 1:** How many staff and how much funding has EPA designated for review of the Bay Delta Conservation Plan?

**Answer:** There are 2.5 FTE. The review of comprehensive environmental plans are part of EPA's programmatic work and is factored in as part of our base budget.

## PUBLIC WATER SYSTEMS RISKS

**Question 2:** Does EPA currently have a strategic plan for assessing and managing the risks of drought to drinking water provided by public water systems?

1. If no, would creating a strategic plan be beneficial for use by other federal, state, and local entities?

**Answer:** EPA has programs (e.g. WaterSense) and tools (emergency drought checklist) that are very helpful for EPA, federal agencies, states, tribes and utilities and others to plan and manage the risks of drought. For example, <http://www.drought.gov> provides crucial forecasting data for drought and acts as a gateway to many tools, information, and resources to manage drought. Moreover, each federal agency has developed a Climate Adaptation Plan that includes many actions that are specifically tailored to their agency's mission, authorities, and funding that could be beneficial for assessing and managing the risks of drought to drinking water. EPA will continue to work across the federal family (including through the National Drought Resilience Partnership) to help states, tribes, and communities become more resilient for drought.

## **Questions Submitted for the Record by Representative DeGette**

### **HYDRAULIC FRACTURING REPORT**

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.

**Question 1:** What is the current status of the draft report?

**Answer:** On June 4, 2015, the EPA released nine reports produced as part of the hydraulic fracturing study, bringing to 25 the total number of publications completed to date. Also released on June 4, 2015 was the draft hydraulic fracturing drinking water assessment report. This assessment provides a state-of-the-science review and synthesis of publications and data concerning the potential impacts of hydraulic fracturing on drinking water resources in the United States. The draft assessment was released for public comment and delivered to the Agency's Science Advisory Board for independent, expert peer review.

**Question 2:** When do you expect this paper to be final?

**Answer:** The hydraulic fracturing drinking water assessment report was released on June 4, 2015. As a draft report, the assessment is now available for public comment and has been submitted to the EPA Science Advisory Board (SAB) for external, independent peer review. The SAB ad hoc panel formed to complete the external review of draft assessment will hold several public teleconferences in fall 2015. Additionally, the SAB ad hoc panel plans a public meeting in Washington, DC, October 28-30, 2015. The SAB anticipates delivery of the final peer review report to the EPA Administrator in spring 2016. After receipt of the SAB's peer review report, EPA will finalize the hydraulic fracturing drinking water assessment report. The final report will reflect SAB input and the input of submitted public comments. EPA anticipates completing the final assessment report in 2016.

## HYDRAULIC FRACTURING PROCESS – CASE STUDY

**Question 3:** 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

Have suitable case study locations been identified in the last year?

1. If not, can you provide specific reasons why the locations have not yet been identified?
2. If locations still have not been identified, do EPA and its partners have a plan for an alternative approach to conducting these case studies?

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

**Question 4:** Are the states and industry collaborating with the EPA, as planned, to develop the prospective studies? If not, what is impeding their participation?

**Answer:** 1) No. We have been unable to find suitable locations that meet both the scientific criteria of a rigorous prospective study and the business needs of potential industry partners.

a. 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 during the entire study period, which could last several years.

b. We worked with states and industry to find suitable locations for prospective case studies, but were not able to identify an suitable locations within the timeframe of the hydraulic fracturing study. The hydraulic fracturing drinking water assessment report was released on June 4, 2015. The FY 2016 President's Budget Request does not include resources to conduct prospective studies.

2) No because we have been unable to find suitable locations that meet both the scientific criteria of a rigorous prospective study and the business needs of potential industry partners.

## HYDRAULIC FRACTURING – SHALE GAS

**Question 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?

**Answer:** The hydraulic fracturing drinking water assessment report identified potential vulnerabilities to drinking water resources due to hydraulic fracturing activities. The draft assessment concluded that there are both above and below ground mechanisms by which hydraulic fracturing activities have the potential to impact drinking water resources. These mechanisms include water withdrawals in times of, or in areas with, low water availability; spills of hydraulic fracturing fluids and produced water; fracturing directly into underground drinking water resources; below ground migration of liquids and gases; and inadequate treatment and discharge of wastewater.

The draft assessment report did not find evidence that these mechanisms have led to widespread, systemic impacts on drinking water resources in the United States. Of the potential mechanisms identified in the assessment, specific instances were found where one or more mechanisms led to impacts on drinking water resources, including contamination of drinking water wells. The number of identified cases, however, was small compared to the number of hydraulically fractured wells.

This finding could reflect a rarity of effects on drinking water resources, but may also be due to other limiting factors. These factors include: insufficient pre- and post-fracturing data on the quality of drinking water resources; the paucity of long term systematic studies; the presence of other sources of contamination precluding a definitive link between hydraulic fracturing activities and an impact; and the inaccessibility of some information on hydraulic fracturing activities and potential impacts.

## HYDRAULIC FRACTURING - DIESEL

**Question 6:** 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 company's fracked with products containing diesel fuels in the last three years.

Has EPA received any applications for or issued any permits under the Underground Injection Control program to use diesel in hydraulic fracturing?

**Answer:** No. Where the EPA is the permitting authority, it has not received applications or issued any permits for the use of diesel fuels in hydraulic fracturing.

## HYDRAULIC FRACTURING – ENFORCEMENT

**Question 7:** Has EPA issued any Notices of Violation or taken any other enforcement measures against operators who used diesel in hydraulic fracturing?

**Answer:** Based on information in the EPA's data systems as of April 1, 2015, the agency has not issued any enforcement actions against operators who used diesel in hydraulic fracturing.

## HYDRAULIC FRACTURING – ENFORCEMENT

**Question 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?

**Answer:** The EPA and our state and tribal partners with permitting authority stand ready to assist any company seeking a permit for the use of diesel fuels in hydraulic fracturing. To date, neither the EPA, nor any states or tribes with permitting authority for the UIC Class II program have received applications for or issued any permits for the use of diesel fuels in hydraulic fracturing. Therefore, no actions have been required.

## HYDRAULIC FRACTURING – DIESEL GUIDANCE

**Question 9:** Can you provide some examples of how EPA assisted states and tribes in following the diesel guidance?

**Answer:** In the development of the Underground Injection Control (UIC) Program Permitting Guidance for Oil and Gas Hydraulic Fracturing Activities Using Diesel Fuels, the EPA engaged state and tribal governments on the requirements of the Safe Drinking Water Act (SDWA) with regard to hydraulic fracturing using diesel fuels. Technical webinars were conducted for states and tribes, federal partners, industry, and environmental organizations. The EPA UIC program also hosted several general webinars and listening sessions with tribal representatives and public stakeholders to review the guidance recommendations and the SDWA requirements for diesel fuels hydraulic fracturing. In the regional offices, the EPA UIC program has continued the conversation with state and tribal oil and gas programs through regular official UIC oversight meetings and in less formal discussions.

One of the requirements for oversight is that the primacy agency (approved state or tribal program) must submit an annual program report to EPA. In the development of the report, the primacy agency and the EPA Regional office discuss the primacy agency's activities.

In addition to the annual activity, EPA conducts state program reviews on average every three to five years. These state program reviews include an onsite review, consisting of conversations with state staff and management as well as permit and enforcement file reviews. After the review, EPA writes a report that describes the findings from the onsite visit as well as other evaluations that were conducted by the regional office. Once the report is finalized, EPA sends it to the state and then makes it available to the public.

Most recently, the EPA UIC program has coordinated with states on a case-by-case basis where use of diesel fuels in hydraulic fracturing has been reported. For example, the Environmental Integrity Project (EIP) found in late 2014 that diesel fuels usage had been reported in multiple states (no tribes were listed) through the disclosure website, [www.fracfocus.org](http://www.fracfocus.org), without acquiring a UIC Class II permit. The EPA UIC programs in the regional offices held meetings with states where unpermitted diesel fuels usage was reported, which resulted in the initiation of investigations by the state programs. Upon review of the wells' final stimulation plans, the states found that the reports of diesel fuels usage were either filing mistakes or were reported as part of initial plans, but not actually used in the hydraulic fracturing process. With assistance from the EPA, state and tribal governments have worked to inform well service companies and operators of the UIC permit implications of using diesel fuels for hydraulic fracturing and have steered them away from its use.

## **UNDERGROUND INJECTION CONTROL PROGRAM – DELEGATED AUTHORITY**

**Question 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?

**Answer:** Currently, no states or tribes with permitting authority for the UIC Class II program have received applications for or issued any permits for the use of diesel fuels in hydraulic fracturing.

## **UNDERGROUND INJECTION CONTROL PROGRAM – DELEGATED AUTHORITY**

**Question 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?

**Answer:** Based on information in the EPA's data systems as of April 1, 2015, states with delegated authority (34 states and 3 territories) have not informed the EPA of state enforcement actions against operators who used diesel in hydraulic fracturing.

## CAS NUMBERS

**Question 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?

**Answer:** The EPA specified in a February memo<sup>3</sup> to the Regional Administrators and State and Tribal UIC program directors that the EPA may periodically update its list of Chemical Abstract Service Registry Numbers (CASRN)s subject to UIC Class II permitting requirements under the SDWA if new products are identified as diesel fuels. Thus far, the EPA has not been made aware of any new products and does not currently have plans to update its list beyond the 5 CASRN)s.

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<sup>3</sup><http://water.epa.gov/type/groundwater/uic/class2/hydraulicfracturing/upload/signedmemohactivitiesusingdiesel fuels.pdf>

**Questions Submitted for the Record by Representative Bucshon**

**MEDICAL WASTE INCINERATORS - HEC INSERT**

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

**Answer:** Hospital, medical and infections waste incinerators (HMIWIs) are generally subject to state-issued permits.

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