



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Ed Whitfield
Chairman
Subcommittee on Energy and Power
Committee on Environment and Public Works
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of November 2, 2015, to Acting Assistant Administrator Janet McCabe requesting responses to Questions for the Record following the October 7, 2015, hearing before the Subcommittee on Energy and Power titled, "EPA's CO2 Regulations for New and Existing Power Plants."

The responses to the questions are provided as an enclosure to this letter. If you have any further questions please contact me, or your staff may contact Kevin Bailey at bailey.kevinj@epa.gov or (202) 564 2998.

Sincerely,

A black rectangular box redacting the signature of Nichole Distefano.

Nichole Distefano
Associate Administrator

Questions for the Record
House Energy and Commerce, Subcommittee on Energy and Power
Hearing Titled: EPA's CO2 Regulations for New and Existing Power Plants
October 7, 2015

Janet McCabe, Acting Assistant Administrator

The Honorable Ed Whitfield

1. Under the 111 (d) Rule for existing power plants, States must file a State Plan by September 6, 2016 unless it submits an extension request that is approved by EPA. What specifically must be included in such an extension request in order to be approved by the agency?

In a memorandum dated October 22, 2015, the EPA outlined the modest requirements for such an extension request; the memorandum is available at <http://www3.epa.gov/airquality/cpptoolbox/cpp-initial-subm-memo.pdf>. However, on February 9 2016, the Supreme Court granted a motion to stay the Clean Power Plan. As a result of that action, states are not currently required to submit a state plan or a request for extension by September 6, 2016.

The Honorable John Shimkus

1. Do you agree that if EPA is underestimating coal power capacity in the baseline of its 111 (d) rule for existing power plants, the agency may be under-reporting the impacts of its rule on coal generation?

A. If so, why and if not, why not?

The EPA uses the best available science and information to understand and estimate the effects of its significant rules. The Regulatory Impact Analysis (RIA) accompanying the Clean Power Plan includes an extensive discussion of the baseline on which the EPA relied in developing the RIA, as well as of the effects of implementation of the CPP on coal-fired generation. More information about these effects is available in the final Regulatory Impact Analysis available at <http://www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis>.

2. In the final 111 (d) rule, EPA dramatically increased its estimates for renewable energy development under Building Block 3, and the final renewable energy generation level in 2030 is more than twice the level in the proposed rule.

A. Please provide a detailed explanation for the record of the assumptions that EPA used to support its projections in the final rule of such a large scale growth of renewables.

B. Please provide a detailed explanation of why EPA projects such a large scale increase while the U.S. Energy Information Administration's estimates for the same time period are significantly lower.

The EPA discussed the quantification of Building Block 3, including changes from the proposed Clean Power Plan and projections from the Energy Information Administration, the National Renewable Energy Laboratory, and other sources in Chapter V of the final Clean Power Plan (80 Fed. Reg. 64,717 et seq.) and Chapter 4 of the Greenhouse Gas Mitigation Measures Technical Support Document (available at <http://www.epa.gov/sites/production/files/2015-11/documents/tsd-cpp-ghg-mitigation-measures.pdf>).

The Honorable Joe Barton

1. Is there anything stopping the EPA from taking a progressively even broader view of its authority under the Clean Air Act if the Supreme Court does not strike down your "outside the fence" approach when the various challenges ultimately make their way to the Court? For example, if this approach is validated, couldn't the EPA seek to reduce emissions from oil and gas refineries by taking steps to artificially deflate the demand for gasoline?

The EPA explained in section XVIII(B)(2) of the Legal Memorandum Accompanying Clean Power Plan for Certain Issues why the rationale for the Best System of Emission Reduction (BSER) in the final Clean Power Plan would not apply broadly to other industries, such as refineries, due to certain unique characteristics of the power supply industry. It specifically discusses measures to reduce consumer gasoline consumption. The Legal Memorandum is available at <http://www.epa.gov/sites/production/files/2015-11/documents/cpp-legal-memo.pdf>.

2. Am I correct in reading your RIA that approximately half of the economic benefits you claim come from this rule do not even come from reducing CO₂, but from reducing other pollutants below levels required by the NAAQS? In other words, if the NAAQS are supposedly set at levels that are the absolute minimum necessary to protect human health, how can you then turn around and claim a health benefit from reducing them even further? If you are claiming benefits for reductions below NAAQS levels, shouldn't you be lowering the NAAQS proportionately?

The EPA discussed in Chapter 4 of the Regulatory Impact Analysis accompanying the final Clean Power Plan (available at <http://www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis>) as well as in the most recent RIAs accompanying the PM NAAQS (available at http://www3.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_ria.html) and ozone NAAQS (available at <http://www3.epa.gov/ozonepollution/pdfs/20151001ria.pdf>) the way in which the best available science demonstrates that reductions in air pollution bring health benefits, even when those reductions result in ambient concentrations of NAAQS pollutants below the National Ambient Air Quality Standards themselves. The NAAQS are not set to a zero-risk level, but rather at a level that, in the judgment of the Administrator, is requisite to protect public health and welfare with an adequate margin of safety. Fine particle pollution is not a threshold pollutant, and we anticipate health benefits for reductions even at concentrations below the NAAQS.

3. How does it make sense to set an emission standard that is lower for an existing plant than the one you are setting for new plants?

This question is discussed in Section XI of the 111(b) preamble and in the "Legal Memorandum Accompanying Clean Power Plan for Certain Issues" (<https://www.epa.gov/sites/production/files/2015-11/documents/cpp-legal-memo.pdf>). This question is the subject of pending litigation in the D.C. Circuit and EPA will be addressing the question in the brief that EPA is currently scheduled to file on March 28, 2016.

The Honorable Renee Ellmers

1. By EPA's signing of the final 111 (d) rule, are we to assume that disagreement with the Natural Resources Defense Council and Earthjustice who submitted legal briefs to the federal court stating that "the text of § 111 (d)(1)(A) makes clear that EPA may not set standards for a pollutant that is 'emitted from a source category which is regulated under section 112'?"

The EPA discussed its legal authority for the final Clean Power Plan, including the meaning of Clean Air Act Section 111(d)(1)(A), in Chapter 4 of the preamble to the final Clean Power Plan (80 Fed. Reg. 64,710 et seq.). Further, EPA's legal authority for the CPP is the topic of pending litigation in the D.C. Circuit and EPA will be addressing that issue in the brief that EPA is currently scheduled to file on March 28, 2016.

2. Do you agree with the Natural Resources Defense Council and Earthjustice who submitted legal briefs to the federal court stating that Chevron deference should not be afforded to the EPA in applying 111(d) because there is no statutory ambiguity? More specifically, on January 12, 2007 these groups submitted legal briefs to the DC Circuit Court of Appeals and stated that the EPA of "manufacture[d]" ambiguity in Section 111 (d) in order to claim Chevron deference.

The EPA discussed its legal authority for the final Clean Power Plan, including ambiguity in Clean Air Act Section 111(d), in Chapter 4 of the preamble to the final Clean Power Plan (80 Fed. Reg. 64,710 et seq.). Further, EPA's legal authority for the CPP is the topic of pending litigation in the D.C. Circuit and EPA will be addressing that issue in the brief that EPA is currently scheduled to file on March 28, 2016.

3. Why has your agency consistently opposed attempts to seek judicial review prior to forcing states to develop complex rules in light of Administrator McCarthy's admission that this federalized power plan will not have any significant impact on global warming?

The final Clean Power Plan would reduce power sector carbon pollution by 32 percent below 2005 levels in 2030 – that's 870 million tons less carbon pollution. The EPA firmly believes the Clean Power Plan will be upheld in court when the merits are considered because the rule rests on strong scientific and legal foundations.

4. Your agency has routinely opposed states from intervening in lawsuits filed by environmental groups against the EPA - in effect blocking the states from having any input into the sue-and -settle strategies employed by special interest groups. Many states have already committed to challenging this rule in federal court when the final rule is published in the federal register. Will your agency oppose the states' legal standing despite the fundamental impact this rule will have on states?

The EPA does not routinely oppose states' intervention in lawsuits filed by environmental groups against the agency. The EPA did not oppose states' standing in their challenge to the CPP. On February 9, 2016, the Supreme Court stayed implementation of the Clean Power Plan pending judicial review. The Court's decision was not on the merits of the rule. The EPA firmly believes the Clean Power Plan will be upheld when the merits are considered because the rule rests on strong scientific and legal foundations.

5. Many states will be filing a challenge to this rule and will be asking for stay of this rule. The final rule acknowledges that 1) GHG reductions have already occurred - in fact North Carolina has seen a reduction in GHG emissions of almost 25%, 2) thanks to the natural gas revolution GHG emissions reductions will continue to occur, and 3) this rule will have no significant impact on climate change I will assume that you agree with your staff and therefore will not oppose the state's request to stay the rule until judicial review is completed.

On February 9, 2016, the Supreme Court stayed implementation of the Clean Power Plan pending judicial review. The Court's decision was not on the merits of the rule. The EPA firmly believes the Clean Power Plan will be upheld when the merits are considered because the rule rests on strong scientific and legal foundations.

The Honorable Adam Kinzinger

1. In its Clean Power Plan, the EPA is imposing mandatory reductions in carbon dioxide emissions for certain states, 42% in Illinois, for example. What happens if a state determines that energy prices for ratepayers are going to significantly increase because of these reductions? Is the emissions goal fixed or are they are circumstances in which a state can adjust its goals?

The final Clean Power Plan sets strong but reasonable and achievable benchmarks for power plant carbon emissions, thus providing national consistency, accountability and fair goals for emissions reductions. The final Clean Power Plan provides guidelines for the development, submittal and implementation of state plans that implement the interim and final CO2 emission performance rates. The flexibility of the rule allows states to reduce costs to consumers, minimize stranded assets and spur private investments in renewable energy and energy efficiency technologies and businesses. States can tailor their plans to meet their respective energy, environmental and economic needs and goals, and those of their local communities.

2. Existing plants will need to be shut down in many states to meet the mandatory carbon dioxide emissions reductions. What happens if a state determines these reductions and shutting down existing plants is going to threaten reliability?

A. The EPA has developed a "safety valve" that can apply in emergency situations; does this safety valve relieve a state of its requirement to meet certain carbon dioxide emissions?

The final Clean Power Plan sets strong but reasonable and achievable benchmarks for power plant carbon emissions, thus providing national consistency, accountability and fair goals for emissions reductions. As discussed in Chapter 8 of the final Clean Power Plan (80 Fed. Reg. 64,874 et seq.), both the extensive flexibility built into the final Clean Power Plan and multiple reliability-focused tools provided to states will ensure the continued reliability of the electricity system. Chapter 8 includes a detailed discussion of reliability-focused tools, including the reliability safety valve.

3. The final rule includes revisions regarding nuclear power compared to the proposed rule. For example, the new rule clarifies that states can use "power uprates" at existing nuclear power plants as a way to meet these target CO₂ emission reductions. There were other changes to the final rule regarding nuclear power as well; however, at a September Subcommittee hearing NRC Chairman Burns told the Subcommittee that EPA had not consulted with the NRC on nuclear components of the Clean Power Plan. To your knowledge, did the EPA consult with the NRC about the nuclear aspects of this plan before the rule was finalized?

A. Do you know how many requests for power uprates are pending before the Commission, how long it normally takes to get those approved, or the total megawatts that are technically or economically feasible with our existing nuclear plants?

B. Does the EPA plan to consult the NRC going forward on these issues? Especially since applications for new reactors, power uprates, and license renewals all must be reviewed and approved by the NRC?

The NRC participated in interagency review of the final Clean Power Plan. All comments were considered and many changes and improvements were made as a result of the process. We defer questions regarding the Commission's operations to the NRC.

4. During the formulation of this plan, what kind of research or consideration was put into the number of indirect jobs that will be lost as a result of plant closure and increased electricity prices for small businesses and manufacturers? For example, a recent study in Illinois found that if three existing plants were to close it would result in 2,500 direct jobs, 4,431 indirect jobs, and \$1.8 billion in reduced economic activity.

The EPA used the best available science and information, as well as the information provided in the more than 4.3 million public comments, to estimate the economic effects and shifts in employment that could result from implementation of the final Clean Power Plan. More discussion of that is available in Chapter 9 of the final Clean Power Plan (80 Fed. Reg. 64,928) and in the Regulatory Impact Analysis accompanying the final Clean Power Plan (available at <http://www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis>).

The Honorable John Shimkus

1. Please provide a detailed explanation for the record why, for its 111 (d) rule, EPA estimated 244 gigawatts of coal generation capacity by 2020 in its June 2014 RIA baseline and an estimated 208 gigawatts of coal generation capacity by 2020 in the August 2015 RIA baseline.
2. Please provide a detailed explanation for the record why, for its 11 l(d) rule, EPA projects 214 gigawatts of coal capacity in 2016, while the Department of Energy's Energy Information Administration projections are about 261 gigawatts for 2016.
3. Please provide a detailed explanation for the record why in March of 2015 EPA estimated 238 gigawatts of coal generation in its baseline for 2016 and why in August 2015 the agency reported 214 gigawatts in 2016 for baseline coal generation.

The EPA discussed the assumptions underlying each of these projections in the Regulatory Impact Analysis accompanying the final Clean Power Plan, available at <http://www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis>. This Regulatory Impact Analysis was developed after carefully considering the more than 4.3 million public comments received on the proposed Clean Power Plan, including many which urged changes to our projections of coal capacity and generation as well as additional information from a variety of sources, including the Energy Information Administration.

The Honorable Mike Pompeo

1. The EPA's response to my June 2014 question for the record asking for specific information relating to meetings between EPA and White House personnel concerning the agency's proposed rule for existing power plants, referred to by the agency as its "Clean Power Plan," was completely unsatisfactory and failed to provide any of the information requested. (See Feb. 11, 2015 EPA Response to Questions for the Record available at http://docs.house.gov/meetings/IF/IF03/20140619/102346/HHRG-113-IF03-W_stateMcCabeJ-20140619-SD003.pdf, at p. 14). You promised to take our request back and get specific answers. For each meeting between EPA and White House personnel concerning the "Clean Power Plan," please provide the following information:
 - A. Date;
 - B. Location;
 - C. Attendees;
 - D. Specific subject matter of the meeting;
 - E. Whether there were any associated letters or memoranda prepared in connection with the meeting; and
 - F. Whether John Podesta attended the meeting, and if so, his role in connection with the Meeting

Consistent with E.O. 12866, the proposed rule and final rule underwent interagency review prior to their releases. And as part of the interagency review process, EPA staff met with other agencies and the Office of Management and Budget to discuss the draft proposed and

draft final Clean Power Plan.

Since the President has made addressing climate change a priority, the Clean Power Plan might have come up at a variety of meetings, involving staff from multiple agencies. Locations, attendees, and other details of the meetings in question varied, in part depending on whether the meetings were initiated by the EPA or by others. There is no comprehensive list of all those who participated in these meetings.

The Honorable Bill Flores

I. The Clean Power Plan will be fully implemented by 2030 according to your present plan. What will be the emissions reduction across the nation for Carbon Dioxide in the year 2050 versus today?

The EPA did not project reductions in carbon pollution due to the Clean Power Plan in 2050.

The Honorable Billy Long

1. In Missouri, we rely on coal for 83 percent of our energy generation. The Clean Power Plan places a huge burden on coal-fired power plants, and this rule also restricts the construction of new natural gas plants as a compliance measure. Could you explain why the EPA restricts the construction of new natural gas-fired power plants as a compliance measure?

The final Clean Power Plan sets strong but reasonable and achievable emissions guidelines for power plant carbon dioxide emissions, thus providing national consistency, accountability and fair goals for emissions reductions. The final Clean Power Plan, which addresses existing sources, gives states the option of allowing new natural gas plants to help towards compliance, but does not require that states do so. This option is further discussed in Chapter 8 of the final Clean Power Plan (80 Fed. Reg. 64,826 et seq.).

