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Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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April 12, 2016

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

Dear Administrator McCarthy:

Thank you for appearing before the Subcommittee on Energy and Power and the Subcommittee on Environment and the Economy on Tuesday, March 22, 2016, to testify at the joint hearing entitled "Fiscal Year 2017 EPA Budget."

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

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

To facilitate the printing of the hearing record, please respond to these questions and requests with a transmittal letter by the close of business on April 26, 2016. Your responses should be mailed to Will Batson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to Will.Batson@mail.house.gov.

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

Sincerely,



Ed Whitfield
Chairman
Subcommittee on Energy and Power



John Shimkus
Chairman
Subcommittee on Environment
and the Economy

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

Attachments

Attachment 1—Additional Questions for the Record

The Honorable Ed Whitfield

1. According to EPA's website, the agency had 15,408 employees in FY 2014. According to EPA's website, as of February 23, 2016, the agency also has 601 active contracts with outside entities.
 - A. What is the total number of employees working for the agency?
 - B. What is the total number of contractors working for the agency?
 - C. Please provide a breakdown of the number of employees by program office, and also the number of contractors by program office.
2. The President's budget proposal was developed and released before the Supreme Court issued its stay relating to the Clean Power Plan.
 - A. What direction have you given your staff regarding the impact of the stay on EPA's activities and spending?
 - B. Has EPA discontinued any Clean Power Plan related activities or spending following the stay?
3. What direction has EPA given states regarding the effect of the stay on their obligations under the Clean Power Plan?
 - A. What is EPA advising states regarding compliance dates, including the 2022 compliance date?
4. At the budget hearing, you testified that there were 25 states either continuing to work with EPA or that have sent signals that they may keep working.
 - A. What is the nature of the assistance that EPA is providing to states following the stay?
 - B. Which states are continuing to work with EPA on the Clean Power Plan?
 - C. How much is EPA projecting it will spend in FY 2016 to provide this assistance to states?
 - D. How much funding is EPA requesting for FY 2017 to provide assistance to states?
5. At the budget hearing, you indicated that notwithstanding the stay of the Clean Power Plan, EPA was continuing to expend resources relating to the Clean Power Plan and that no staff had been reassigned to other matters.
 - A. How much does EPA project it will spend in FY 2016 relating to the Clean Power Plan?
 - B. How much funding is EPA requesting for FY 2017 relating to the Clean Power Plan?

6. EPA's budget lists various rulemakings it planned to work on relating to the Clean Power Plan.
 - A. Is EPA continuing to work on any Clean Power Plan related rulemakings? If yes, which rulemakings?
 - B. Does the agency plan to finalize any additional regulations relating to the Clean Power Plan before the end of this Administration? If yes, what regulations?
7. Your written testimony relating to the Clean Power Plan also states that "[d]uring the stay, EPA will continue to assist states that voluntarily decide to move forward . . ."
 - A. Is EPA in any way reaching out to states or other organizations to encourage states to move forward with "voluntary" actions?
 - B. Is EPA in any way coordinating with, assisting, or funding nonprofits or other organizations to encourage states to move forward with "voluntary" compliance?
 - C. If a state voluntarily submits a "plan" pursuant to the Clean Power Plan rule, will EPA approve it?
8. Approximately one year ago, the Administration submitted an "Intended Nationally Determined Contribution" (INDC) to the United Nations setting a 2025 target for reducing domestic greenhouse gas emissions by 26-28 percent below 2005 levels. The EPA's Clean Power Plan was identified by the Administration as a major component of its "INDC," and EPA's more recently issued FY 2017 budget documents expressly refer to the Clean Power Plan as "the President's highest priority for the EPA and is central element of the US domestic climate mitigation agenda."
 - A. Is the Obama Administration's INDC target contingent on the Clean Power Plan?
 - B. Will the Administration's INDC target be achievable if the Clean Power Plan is not upheld by federal courts?
9. On December 12, 2015, President Obama referenced the EPA's carbon dioxide power plant standards in his statement regarding the "Paris Climate Agreement."
 - A. What direction have you or your staff given to State Department officials regarding the impact of the stay on the Administration's INDC or the Paris Climate Agreement?
 - B. What direction have you or your staff given to foreign countries or other foreign entities, if any, regarding the impact of the stay on the Administration's INDC target or the Paris Climate Agreement?
10. In the Congressional Justification (CJ at 228), EPA states that "In FY 2017, the EPA will continue work to address [New Source Performance Standards] for sources of air pollutants and as appropriate, GHGs, consistent with the requirements of the CAA."

- A. What sources is EPA currently considering for regulation of greenhouse gases under Section 111(b) or 111(d), or both, of the Clean Air Act? Please provide a list of all such sources.
 - B. Are there any additional sources EPA anticipates it may consider in FY 2017 for regulation of greenhouse gases under Section 111(b) or 111(d), or both, of the Clean Air Act? Please provide a list of all such additional sources.
11. The agency has a number of petitions pending seeking additional regulation of greenhouse gases under other sections of the CAA, including Sections 108-110, 115, 211, 231, and other sections.
 - A. What is the status of each of these pending petitions?
 - B. Is the agency actively involved in settlement discussions relating to any these petitions? If yes, which petitions?
12. Is EPA considering regulation of greenhouse gases under Sections 108-110 of the CAA? If yes, please explain what potential regulation the agency is considering and for which greenhouse gases such regulation would apply.
13. Is EPA considering regulation of greenhouse gases under Section 115 of the CAA? If yes, please explain what potential regulation the agency is considering and for which greenhouse gases such regulation would apply.
14. EPA's budget documents indicate that at the end of FY 2015, EPA had 557 backlogged state implementation plans, the agency will have 300-400 at the end of FY 2016, and will still have 100-200 by the end of FY 2017 (*see* CJ at p. 903).
 - A. Could staff assigned to the Clean Power Plan be shifted over to work on reducing the SIP backlog? If not, why not?
15. In its budget documents, EPA states that regional implementation of the National Ambient Air Quality Standards (NAAQS) is becoming "increasingly complex."
 - A. Does EPA have sufficient staff and expertise to fully implement the 2008 ozone standards, and also implement the 2015 ozone standards at the same time?
 - B. Does EPA have the resources to timely process all of the new state implementation plans that will have to be submitted by states or counties under these standards?
16. Under Section 109 of the Clean Air Act, the Clean Air Scientific Advisory Committee is supposed to advise EPA of "any adverse public health, welfare, social, economic or energy effects which may result from various strategies for attainment of national ambient air quality standards." Last May, the Government Accountability Office (GAO) issued a report ([see http://gao.gov/assets/680/670288.pdf](http://gao.gov/assets/680/670288.pdf)) indicating that CASAC has never provided advice on adverse social, economic or energy effects related to NAAQS because EPA has never requested such advice from CASAC.

- A. Please explain why EPA has not requested CASAC to perform its statutory duty and advice on adverse effects relating to implementing NAAQS?
 - B. What is EPA's estimate of budgetary and personnel resources that would be necessary to support CASAC in this particular work?
17. Recently the White House released a Joint Statement between the United States and Canada which indicated EPA "will begin developing regulations for methane emissions from existing oil and gas sources immediately and will move as expeditiously as possible to complete this process."
- A. Given EPA's work on voluntary programs for existing oil and gas sector sources, when did the agency begin discussion of possible mandatory programs for these sources?
 - B. Please provide the timeline for development of these regulations, including any information collection requests.
 - C. Under what statutory authority does EPA plan to develop these regulations?
 - D. What is the status of development of these regulations?
 - E. Does EPA plan to propose or finalize regulations before the end of the Administration?
 - F. Is EPA considering establishing cap-and-trade standards for methane similar to what the agency has done in the Clean Power Plan for the power sector?
 - G. Is EPA considering setting individual state methane targets or budgets similar to what the agency has done in the Clean Power Plan for the power sector?
 - H. Does EPA envision that it will be imposing "federal plans" on state oil and gas sectors to impose methane or greenhouse gas emissions trading like the Clean Power Plan?
18. The EPA's budget documents refer to the agency's defense of the litigation in the U.S. Supreme court relating to the "Mercury and Air Toxics Standards." In that case, the Court held EPA erred in failing to consider costs when deciding it was "necessary and appropriate" to issue the rule. EPA has stated in a proposed supplemental finding in response to the Supreme Court's ruling said that the *annual costs* of the rule are \$9.6 billion in 2015, \$8.6 billion in 2020, and \$7.4 billion in 2030.
- A. EPA provides annual costs for just 3 years over a 15 year period. What is the total cost of that rule over this period?
 - B. Does EPA agree that, based on the three points in time estimates, the total estimated costs would exceed more than \$100 billion?
19. In the Congressional Justification (CJ at 888), EPA states that "The Agency obtained more than \$404 million in combined federal administrative, civil judicial penalties and criminal fines—more than double the penalties and fines assessed in FY 2014."

- A. Can EPA quantify how much its enforcement actions have actually improved the environment? For example, does more than doubling the penalties equate to more than doubling the environmental benefits?
 - B. Under EPA's National Enforcement Initiatives, one of those initiatives is "Ensuring Energy Extraction Activities Comply with Environmental Laws." Is obtaining significant monetary fines and penalties from the oil and gas sector an important part of this initiative?
 - C. Before threatening significant penalties under this initiative and other enforcement actions, does EPA consult with the relevant State authorities with primary jurisdiction over the regulated entities? If not, why not?
 - D. Does EPA have any protocol it follows with the Department of Justice before threatening significant penalties? If yes, how does the agency ensure the protocol is consistently followed?
20. We understand that EPA may be conducting an enforcement campaign imposing significant civil penalties on oil and natural gas operators based on alleged violations of *State* clean air regulations.
- A. Is this correct?
 - B. If yes, can you explain? What statutory authority does EPA have to usurp a state's authority to enforce its own state law?
21. How much is EPA budgeting for its enforcement initiative focused on the oil and gas sector?
22. The Administration has been seeking to amend the Montreal Protocol to expand the treaty to cover hydrofluorocarbons or HFCs (a widely used class of chemicals that had been previously approved by EPA as substitutes for the compounds that were banned in the 1990 Clean Air Act because of their contribution to ozone depletion). In addition, EPA has recently finalized a rule restricting the use of HFCs in specific applications, and has stated that it will propose others in the near future.
- A. The EPA led the negotiating team with respect to the international discussion last year, correct?
 - B. If the treaty is amended, it would need ratification by the U.S. Senate, correct?
23. Are current substitutes for HFCs more expensive and less safe?
- A. What are estimates of the costs to consumers of phasing out HFCs?
 - B. One trade association, in a meeting with the White House, pledged to spend \$5 billion dollars to replace HFCs in the years ahead. Isn't this an indication that the task will be very expensive?

- C. What provisions are being made to avoid the premature obsolescence of HFC-using equipment such as refrigerators and air-conditioners so as to reduce the burden on small businesses and consumers?
 - D. Is EPA weighing the risks of HFCs against the risks of substitutes, some of which are known to be flammable or pose other dangers?
24. Why is the administration pursuing international provisions under the Montreal Protocol while simultaneously promulgating U.S.-only restrictions on HFCs?
- A. Aren't the U.S. only- provisions unnecessary and duplicative, especially since climate change is a global issue?
 - B. Won't the U.S.-only provisions disproportionately burden American consumers and businesses?
25. EPA's first rule restricting HFCs failed to calculate the expected reduction in temperatures and sea levels as the agency has done for other greenhouse gas rules.
- A. Why did EPA not estimate these reductions?
 - B. Is there some threshold impact on temperatures and sea levels below which EPA will not take action, or is the agency committed to HFC regulations no matter how small the estimated benefits?
26. EPA's first rule regulating HFCs conflicted with Department of Energy efficiency standards that apply to some of the same types of equipment. HFCs are very energy efficient but some of their substitutes are not, so EPA restrictions on their use may complicate compliance with DOE efficiency standards.
- A. Will EPA commit to better coordination with DOE on HFC-related rulemakings?
 - B. Does EPA plan to take the efficiency of substitutes into account before it bans HFCs in additional equipment?
 - C. If EPA plans to restrict HFCs in home appliances such as refrigerators and air-conditioners, will it consider the impacts on consumer costs and on household safety?
27. Congressional intent seems clear that HFCs cannot be regulated on the basis of the global warming potential. In fact, the Clean Air Act explicitly states that the global warming potential of a compound cannot be used as the basis of any regulation. Furthermore, legislative attempts to amend the Clean Air Act to restrict HFCs have repeatedly failed to become law. What statutory language are you relying upon that leads you to the opposite conclusion?
- A. HFCs were previously approved by the agency as safe replacements for the ozone depleting compounds that were being banned under the Clean Air Act. They are now in widespread use as a consequence of EPA's actions. Even assuming EPA can ban

chemicals on the basis of their global warming potential, does the agency have the authority to do so to previously-approved compounds?

28. EPA's CAFE/GHG standards for cars and light trucks were issued in 2012 and will get more and more stringent every year through 2025. However, much has changed since 2012, and in particular gasoline prices are much lower today than EPA had anticipated. As a result, we see that consumer demand for larger vehicles like pickups and SUVs is growing, while sales of hybrids have dropped to levels so low as to call into question whether EPA's stringent targets can be met in the years ahead.
- A. EPA is in the beginning stages of conducting its mid-term review of the standards for Model Years 2022 – 2025. In that review, will you look into the possibility that the standards may need to be adjusted downwards to take consumer interests into account?
 - B. According to one study, the sticker price of new vehicles had been declining through 2008 but has been on the rise since 2009. The average price of a new car has risen to \$32,000. Is the agency considering adjusting the standards to reduce the burden on consumers?
29. EPA's CAFE/GHG standards for cars and trucks are now several years old, and some of the assumptions that went into them are no longer valid. This is particularly true about gasoline prices, which have experienced an unexpectedly sharp decline. Has EPA updated its analysis to reflect this change?
- A. EPA claimed that car buyers would be net economic winners as a result of these rules because the money saved from reduced fuel use would more than offset the higher sticker price of compliant vehicles. But according to EIA, gas prices are more than a dollar per gallon cheaper than was projected in 2012 when the car rule was finalized. What is EPA's position on the economic benefits to consumers now? Is it possible that some car owners won't earn back the higher sticker price in the form of gasoline savings?
 - B. EPA's latest rule for heavy duty vehicles was proposed last July and will be finalized this summer. Will EPA's final rule reflect the latest data on gasoline prices, which are considerably lower than the data used in the proposed rule?
30. Due in part to lower gasoline prices, consumer preferences have also changed, leading some to worry about the feasibility of EPA's standards. In fact, sales of hybrids and electric vehicles have been much lower than predicted, and truck sales are now outpacing car sales.
- A. Explain how EPA's assumptions about vehicle purchases are in line with actual consumer preferences?
 - B. Are EPA's rising targets in the years ahead still achievable if gasoline prices do not rise significantly?
31. While the estimated fuel savings from these rules may be less than expected, the boost in sticker prices may be much more than expected. EPA's original analysis estimated an increase of nearly \$3,000 per vehicle by 2025, which is significant enough. But other estimates are considerably higher. Does EPA stand by its original analysis?

- A. Average car prices were declining through 2008, but starting in 2009 they have been rising and in fact are now \$6,200 higher than if the downward trend had continued. The average price of a new vehicle today has risen to \$32,000. How much of this increase is attributable to the cost of EPA's GHG standards?
 - B. A recent study by the Heritage Foundation finds that the increase in vehicle prices from EPA's rule is thousands of dollars higher than EPA has estimated. What has EPA done to validate its original cost estimates?
 - C. According to a study from the National Association of Auto Dealers, up to 14.9 million low income households may not be able to qualify for a car loan by 2025 as a result of the EPA- induced rise in car and truck prices. Has the agency looked at the regressive impacts of higher vehicle prices?
32. EPA will soon embark on its mid-term review of these rules. Will consumer concerns be a part of the evaluation?
- A. Will EPA consider relaxing these standards due to lower fuel savings and high sticker shock than was originally predicted?
 - B. EPA conceded in its final rules that their car and truck standards would have a very minor impact on the climate, estimated at perhaps a few hundredths of a degree C reduction in temperature and a few millimeters in sea level rise by 2100. Have these estimates changed since they were included in the final rules?
33. These CAFE/GHG standards are really two overlapping programs, one from EPA and the other from NHTSA. And regulated automakers are finding that the two programs are not always harmonized. For example, the credits earned by automakers for exceeding the standard are subject to differing rules. For EPA, these credits have duration of up to 10 years, but for NHTSA they only last for 5 years. And while EPA has no limits on the amount of credits that can be transferred between the car and the truck fleet, NHTSA only allows such transfers up to 2 mpg worth of credits. Is EPA working with NHTSA to try to harmonize these rules?

The July 13, 2015, Notice of Proposed Rulemaking for medium and heavy-duty trucks would, for the first time, also regulate the trailer portion of a tractor-trailer. However, trailers do not come within the statutory definition of a motor vehicle (they are not self-propelled), nor are they an integral part of a motor vehicle (trailers are separately manufactured and completely detachable from the motor vehicles designed to pull them). Also relevant to this proposed rule targeting vehicle emissions is the fact that trailers are not a source of emissions. In light of this, on what basis does EPA claim authority to regulate trailers?

The Honorable Pete Olson

- 1. Has EPA prepared any recent, comprehensive studies on the current and projected contribution of foreign emissions to current and projected ozone levels in the US?
 - A. If yes, please identify the studies and where copies can be located by the public.

- B. If yes, have the studies been subject to peer review?
2. In a December 30, 2015 White Paper entitled “Implementation of the 2015 Primary Ozone NAAQS: Issues Associated with Background Ozone,” EPA states that “Ambient data analyses have shown that mid-tropospheric [ozone] concentrations in remote areas, within the U.S. and globally, have been increasing over the past two decades at a rate of approximately 0.4 ppb/year within an overall uncertainty range of 0.1 to 0.7 ppb/year.” The paper also notes that while “NO_x emissions are expected to decline in North America and Europe out to 2030 and then stabilize,” that “NO_x emissions in East and South Asia are expected to continue to increase.” (See White Paper available at <https://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2016-0097-0004>, p. 8).
- A. What assumptions did EPA include in its analysis regarding the contribution of ozone from non-U.S. sources in projecting future nonattainment areas in 2025 and in assessing the cost and benefits of the 2015 ozone standard?
- B. How many more nonattainment areas could occur in 2025 if the foreign contribution and transport of ozone continue at the same pace as it has done over the past two decades?
- C. How many more nonattainment areas could occur in 2025 if the projected mid-tropospheric ozone increases at 0.7ppb/year, the upper end of the uncertainty range?
- D. How would this affect the overall costs of meeting the 2015 ozone standard?
- E. If EPA did not conduct this analysis prior to finalizing the 2015 ozone standard, why not?
3. EPA’s White Paper on ozone background also states that Section 179B of the Clean Air Act provides EPA with the authority to approve an area’s attainment plan if the state can show that the plan would achieve attainment by the relevant attainment date “but for” the influence of international emissions.
- A. How many Section 179B petitions have been submitted since 1990? How many of these petitions has EPA approved or disapproved?
- B. What was the average time period for EPA action on a submitted petition?
4. EPA’s White Paper states that EPA “will assist states with conducting the analyses necessary to demonstrate “but for” attainment, including estimating the extent of international contribution on high ozone days.
- A. Please specify the extent and nature of this assistance and whether EPA will conduct the required modeling.
- B. If not, what type of modeling does EPA expect will be necessary for a state to submit to make the required showing?
- C. How will a successful petition under Section 179B affect an area’s control obligations as a nonattainment area? Will it still have to meet all other requirements applicable to the area based on its classification?

5. Has EPA prepared any recent, comprehensive studies regarding the science of wintertime ozone formation, photochemical modeling of wintertime ozone formation, and the ability of western states to cost-effectively reduce wintertime ozone levels? If yes, please identify the studies and where copies can be located by the public.
6. EPA's Regulatory Impact Analysis for the 2015 ozone standards states that seven monitoring sites for which design values were influenced by wintertime ozone episodes were not included in the analysis because "modeling tools are not currently sufficient to properly characterize ozone formation during wintertime ozone episodes". In Appendix 2A of the RIA, EPA elaborates on these key modeling uncertainties:

Current modeling tools are not sufficient to properly characterize ozone formation for these winter ozone episodes due to (1) the challenging task of capturing complex local "cold pool" meteorology using a model resolution that is optimized to capture regional and synoptic scale process, (2) uncertainties in quantifying the local emissions from oil and gas operations, and (3) uncertainties in the chemistry that occurs both in the atmosphere and on snow surfaces during these episodes. Therefore, it was not appropriate to project ozone design values at monitors impacted by winter events.

- A. Given the inadequacy of existing tools, how does EPA expect areas affected by wintertime ozone to develop appropriate compliance plans?
 - B. Does EPA expect states to resolve these significant uncertainties on their own, or is EPA planning to study the issue further and hopefully develop appropriate modeling tools that states can use?
 - C. Does EPA have a plan to resolve these technical uncertainties, and what assistance, if any, does the agency anticipate it will provide states to address these issues?
7. Has EPA prepared any recent, comprehensive studies regarding the relative contribution of human-made and naturally occurring nitrogen oxides, volatile organic compounds, and other pollutants in ozone formation to ensure air pollution control policies focus on the most cost-effective control strategies to reduce ozone? If yes, please identify the studies and where copies can be located by the public.
 8. At a November 18, 2015 meeting of EPA's Clean Air Act Advisory Committee (CAAAC) I understand that the agency received a recommendation to ask the National Research Council (NRC) to update its 1991 study, "Rethinking the Ozone Problem in Urban and Regional Air Pollution." My understanding is that there are new and continuing challenges to further reducing NOx emissions, and it was recommended that the EPA conduct an updated review of the science, considering that the science has evolved since the original determination.
 - A. Given that the original study is now 25 years old and that the science has evolved since its publication, does EPA have plans to ask the NRC to update this study?
 - B. If the agency has not yet made a decision, when does the agency expect to make a decision?

- C. If EPA has decided to go forward with updating the 1991 NRC study, what is the schedule for when the study will be initiated and completed?
 - D. If EPA has decided against an update of the NRC's 1991 study, what is the basis for that decision, especially given the significant cost and technical challenges facing states and areas in complying with the new ozone standards?
9. Section 109(d) of the Clean Air Act requires the Administrator to review National Ambient Air Quality Standards (NAAQS) at "five-year intervals".
- A. How many NAAQS reviews since 1980 have been completed within five years?
 - B. What is the range of time that the agency has taken since 1980 for EPA to conduct a review and promulgate a final decision on an existing standard?
 - C. How often has EPA met year the five-year interval deadline, and how often has EPA not met the deadline?

The Honorable Tim Murphy

1. With the demonstrated link between poverty and increased incidences of chronic illnesses such as cancer, depression and illicit drug use, what consideration, if any, does your agency give to the societal cost of poverty before it issues regulations?
2. Given the Supreme Court's February decision to stay the Clean Power Plan, does EPA plan to extend all of the rules' compliance deadlines in the event that the regulations are ultimately upheld by the courts?
3. At the time of EPA's final rule this past August, there were no commercial scale power-projects that demonstrated carbon capture technology could be integrated successfully into *power generation* and would be commercially viable, is that correct? If not, what commercial scale power project had successfully demonstrated carbon capture could be successfully integrated into power generation and would be commercially viable?
4. The only operational power project deploying Carbon Capture and Storage cited by EPA in its rule was the Boundary Dam project in Canada (SaskPower Boundary Dam 3 unit), which, according to Department of Energy and other analyses is not large enough to be considered demonstration scale. Moreover, as reported recently by the New York Times, the small \$1.1 billion unit has expended tens of millions in new equipment and repairs and "has been plagued by multiple shutdowns, has fallen way short of its emissions targets, and faces an unresolved problem with its core technology." There remain serious questions whether the Canadian government will even pursue the financial investment to develop a full-scale demonstration project as follow-on to the Boundary Dam 3 unit work. Administrator McCarthy, how much money in the EPA's proposed budget is being dedicated for the following activities related to the Gold King Mine blow out?

- A. Given this, does EPA continue to maintain that it is reasonable to project that carbon capture technology used by SaskPower can be scaled up and that this technology will be economically feasible for companies in the United States?
 - B. If so, what is the evidence to support this position? And how has EPA validated this evidence?
5. This past November the Committee wrote to EPA seeking information related to the Agency's involvement in the codification of the Clean Air Act into a new Title 55 of the United States Code. In its initial November 18 response to the Committee's request, EPA's General Counsel, in attempting to justify why the Agency chose not to provide technical assistance to Congress's independent Office of Law Revision Counsel, seemed to indicate EPA actually has no intention of participating in the positive law codification process. Pursuant to title two, section 285b of the United States Code, the Office of Law Revision Counsel is required to prepare a restatement of all laws passed by Congress; there are no exceptions. Therefore, is it EPA's position that the statutory requirements for positive law codification do not apply to the Clean Air Act and other environmental statutes administered by the Agency?

The Honorable Robert Latta

1. In response to my question at the March 22nd hearing regarding the number of counties EPA expects will be designated to be in nonattainment with the 2015 standards, you testified that the number would be potentially only a dozen areas outside of California. EPA's website, however, indicates that there are 241 counties in 33 states that would not meet the 2015 ozone standards based on 2012-2014 data.
(<https://www.epa.gov/sites/production/files/201603/documents/20151001datatable20122014.pdf>).

You indicated that you would go back and verify the numbers of areas expected to be in nonattainment with the new standards.

- A. Could you clarify your response? How many counties does EPA expect will be designated to be in nonattainment with the 2015 standards?
2. In the current fiscal year, how much of its budget had EPA planned to spend on implementation of the Clean Power Plan?
 - A. Given the stay, how much will your spending go down in the current fiscal year?
 - B. Given the stay, how much will it go down in the proposed budget for Fiscal Year 2017?
 3. EPA's budget request indicates EPA had intended in 2017 to work on "developing federal plans on a state specific basis as needed."
 - A. Following the Supreme Court's stay of the Clean Power Plan, is EPA continuing any work to develop "federal plans" for potential imposition on states?

- B. Does EPA intend to finalize a “federal plan” before judicial review is complete?
- 4. You have said that EPA “will keep moving the Clean Power Plan forward...we’ll keep moving forward with things like the model rule and [Clean Energy Incentive Program].”
 - A. Following the Supreme Court’s stay of the Clean Power Plan, what work is EPA doing with respect to the “model rule”? Does EPA plan to finalize the “model rule” before judicial review is completed?
 - B. Following the Supreme Court’s stay of the Clean Power Plan, what work is EPA doing with respect to the “Clean Energy Incentive Program”? Does EPA plan to implement this program before judicial review is completed?
 - C. How much is EPA requesting to spend on these activities in FY 2017?

The Honorable Adam Kinzinger

- 1. EPA established new ozone standards in 2008. How many counties have been designated as being in nonattainment with the 2008 standards?
- 2. Last October, the EPA revised the 2008 standards. How many counties does the EPA expect will be in nonattainment with the new standards?
 - A. Based on 2011-2013 air quality data, four counties in my district will be in nonattainment for the first time under these new standards, has EPA done any analysis of the impacts of either the 2008 or 2015 standards on manufacturing in areas designated as being in nonattainment?
- 3. I am very concerned about areas, like Rochelle, Illinois, that is doing everything it can to attract new manufacturing and good jobs, but has never had to deal with these regulations before. Is it correct that one designated as “nonattainment” a county remains designated as nonattainment until EPA approves a maintenance plan – even if the area’s air quality data shows the area meets the standards?
 - A. How long can it take for EPA to approve a maintenance plan?
 - B. Do counties have to submit multiple maintenance plans?
 - C. How long do areas have to be subject to maintenance plans?
 - D. What does this mean for areas, like Rochelle, that want to attract new manufacturing?

The Honorable Morgan Griffith

The EPA’s regulation of carbon dioxide emissions from existing coal-fired power plants under Section 111(d) of the Clean Air Act is illegal in my opinion, for numerous reasons, because they are already regulated under Section 112. Should the Supreme Court disagree, however, EPA’s

regulation of new coal-fired power plants under Section 111(b) is also subject to legal challenges and has implications for the legality of the 111(d) rule as well.

1. EPA's final rule under Section 111(b) for new coal-fired power plants sets a standard that is based on use of carbon capture and storage (CCS) technology.
 - A. Is the 111(b) rule for new and modified power plants the predicate for the "Clean Power Plan"?
 - B. If the 111(b) rule is struck down, what is the impact on EPA's 111(d) rule for existing power plants?
 - C. EPA can point only to a single commercial electric generating unit using carbon capture—the Boundary Dam Project in Saskatchewan, Canada—as demonstrating its new source standards, is that correct?
2. EPA states in its final rule "The Boundary Dam facility has been operating full CCS successfully at commercial scale since October 2014." (80 Federal Register at 64573 (October 23, 2015))
 - A. This is the one and only operating project at a power generation facility that EPA can point to, correct?
 - B. Did EPA, before it issued the new plant rule, verify that the Boundary Dam facility had actually demonstrated that it was meeting EPA's performance standard for new plants?
 - C. Are you aware of the numerous Canadian press reports since this past fall that this facility has **not** been operating "successfully"?
 - D. Are you aware that this facility had been turned on only about 40% of the time during the period EPA was issuing its final standards?
 - E. Are you concerned EPA may not have done its due diligence when relying about Boundary Dam to make its judgement that CCS was adequately demonstrated in its rulemaking? If not, why not?
3. Is it correct that EPA has determined that partial carbon capture technology has been demonstrated in full scale power production, in commercial service?
 - A. At page 5 of the New Source Performance Standards Rule (80 Fed. Reg. 64510, 64513 (Oct. 23, 2015)), it states that CCS is the "best system of emissions reduction" because it is "technically feasible" and used in industrial applications. But it does not say it has been fully demonstrated in commercial service for power plants, why is that?
 - B. Why is mere feasibility a basis for setting performance standards in something as vital as power generation?
 - C. Would you agree that "feasibility" is different than "demonstrated" and "commercially viable"? Will EPA be applying this "feasibility" standard to other 111 (b) rulemakings?

The Honorable Bill Flores

1. In a May 29, 2015 letter to EPA, I raised several questions regarding the Regional Haze Program and impacts on Texas. On July 13, 2015, EPA Region 6 Administrator Ron Curry responded and declined to answer any of my questions because the rulemaking was pending. The rulemaking has now been finalized. Please respond to the following questions from my letter:
 - A. Do the averaged 2009 to 2013 results from EPA's IMPROVE monitoring system indicate that visibility at Wichita Mountains currently exceeds the federal plan's 2018 goals?
 - B. The modeling in EPA's federal plan does not align with real-world data from EPA's IMPROVE monitoring system. What steps is EPA taking to improve that modeling before finalizing the plan?
 - C. EPA has been told that the federal plan's modeling likely overpredicts visibility impacts by 300%. Why, then, did EPA not conduct a full performance evaluation of the model before relying on the results in the federal plan?
 - D. Why is EPA mandating that Texas install expensive controls to achieve modeled visibility improvements that the Agency has told other states are "relatively small" and an "unreasonable" basis for regulation?
 - E. Does EPA believe that it is reasonable to impose \$2 billion of new energy costs on Texas in order to improve modeled visibility by less than half a mile, at a cost of about \$2.8 million per yard?
 - F. Could the human eye detect the visibility improvements resulting from the controls sought in EPA's federal plan?
2. In the November 30, 2015 RFS final rule, EPA recognized the E10 blendwall as a market constraint and utilized its waiver authority to reduce the volumes obligated parties would have to blend in 2016. EPA also stated, however, that they do not accept the blendwall as a policy constraint and intend to require obligated parties to blend increasing volumes in the coming years.
 - A. Does EPA plan to force obligated parties to blend more?
 - B. What is EPA proposing to change to overcome the constraints of the market?
 - C. How would this impact consumers overall?
 - D. What contingency plans does EPA have should the blendwall pose serious problems?
3. Administrator McCarthy, as you may know the Dallas/Fort Worth Metroplex is a very fast growing area of Texas which is threatened with substantial water supply shortages if we cannot develop additional water supplies soon. One of the regional water providers, the North Texas Municipal Water District, serves over 1.6 million people with water, and its service population is projected to double in the next 20 years. The District has been working

on a new reservoir, the Lower Bois d'Arc Creek Reservoir, for well over a decade. That project has been the subject of a Clean Water Act Section 404 permit application and NEPA review before the U.S. Army Corps of Engineers, with EPA involvement, for almost 10 years. Given the potential for over 1.6 million people to have insufficient water supplies in North Texas beginning in 2020, and the public safety issues and economic ramifications of having insufficient water supplies, will EPA commit to taking every action it can take to help ensure that the Final Environmental Impact Statement and Record of Decision for the Lower Bois d'Arc Creek Reservoir are completed timely, so as to allow issuance of the Clean Water Act Section 404 permit for the Reservoir no later than June 1, 2017?

The Honorable Markwayne Mullin

1. As you are aware on February 9, 2016 the U.S. Supreme Court granted five separate motions to stay the CPP. One of these granted motions specifically requested the court to extend "all" compliance dates by the number of days between the rule's publication and a final decision by the courts, including the Supreme Court, relating to the rule's validity.

In view of these granted stay motions, does EPA have a different legal opinion regarding the delaying of "all" compliance dates contained in the CPP including the delaying of the emission compliance deadlines by the amount described above? If so please cite legal authorities and relevant case holdings supporting this position.

The Honorable Michael Burgess

1. As you are aware, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) mandates that when a site is added to the National Priorities List (NPL) for Superfund remediation, due diligence must be taken to identify a Potentially Responsible Party (PRP) to help offset the cost of remediation.

On August 5, 2015, the EPA breached the Gold King Mine adit and spilled more than 3 million gallons of acid mine drainage into the Cement Creek which flows into the Animas River that extends into New Mexico and Utah. While the consequences may have been unintended, the fact remains that the EPA is the de facto PRP for the subsequent listing of the Bonita Peak Mining District National Priorities List Site.

Administrator McCarthy, how much money in the EPA's proposed budget is being dedicated for the following activities related to the Gold King Mine blow out?

- A. Water monitoring for downstream communities in Colorado and New Mexico, as well as Southern Ute and Navajo tribal lands.
- B. Ensuring that the emergency water treatment plant at Gladstone remains in place prior to and during Superfund remediation.

The Honorable Frank Pallone, Jr.

Administrator McCarthy, I've been hearing quite a bit from my colleagues on both sides of the aisle in the Missouri Delegation about the Westlake Landfill Superfund site near the St. Louis airport in Bridgeton, Missouri. In fact, I've been hearing quite regularly from them along with from residents living near the site, firefighters, environmental activists and many others. The site, which is contaminated with tons of radioactive waste left over from the Manhattan Project, as well as industrial solid waste and other refuse, was added to the NPL in 1990. Today, more than 25 years later, not only is the site still sitting there, but there is also an underground fire that has been burning there for six years --since 2010!

No one in Congress understands better than I do the strain the Superfund program has been under since the funding authority lapsed in the mid-1990s. But even accounting for that, it is unconscionable that a toxic site of this nature, this close to a residential neighborhood, continues to sit there waiting for cleanup to really begin.

The Missouri Delegation is so frustrated with EPA that it has joined together to push legislation that would take the Westlake site out of the Superfund program and hand it over to the Army Corps of Engineers by moving the site into the Formerly Utilized Sites Remedial Action Program or FUSRAP for cleanup.

Now, I have a number of concerns about that legislation, its drafting, the precedent it sets, and the potential for actually slowing down cleanup of the site. So, I hope that we will soon be having a hearing on that legislation in this Committee because I think we need to get a better understanding of what the bill actually does and whether it comports with what the people living in the area really want.

That said, it is the lack of progress that has brought us to the point where one chamber of Congress has taken the extraordinary step of passing legislation to take control of this cleanup away from the Agency. As I said, it is an unconscionable situation, regardless of the merits of the legislation.

Madam Administrator, your agency has said publicly that it intends to come forward with a new remedy proposal for operable unit one by this fall and a final proposed remedy by December. I understand that you inherited a poor remedy selection and had to revisit that decision.

1. What kind of assurances can you give to the people of Bridgeton that they will see a cleanup occur in short order and that the cleanup will actually be fully protective of public health?
2. How can you restore the confidence of those people and, frankly, those that would have us pass legislation to take the site away from EPA?

The Honorable Mike Doyle

1. Administrator McCarthy, the EPA proposed revised Phase II Ozone Season NOx budgets under CSAPR at the very end of last year. From my understanding, this is a significant reduction and represents an over 70% cut in my home state of Pennsylvania – a particularly severe revision compared to other states.
Could you explain the EPA’s reasoning behind such a dramatic reduction?
2. Administrator McCarthy, are you at all concerned this could jeopardize particular sources of baseload power in Pennsylvania?
3. In your testimony you highlighted the agency’s efforts to leverage technology and improve data quality. Could you expand on your work in that area?
4. Are there opportunities for universities or private companies to work with the EPA to achieve these goals?
5. In your testimony you highlight the importance of the Clean Power Plan to the administration, and explain that the EPA will continue to assist states that voluntarily decide to move forward with planning and implementation.

What kind of assistance will the EPA be providing, and are there any limitations as to who could receive such assistance?

The Honorable Gene Green

In April 2012, the EPA released New Source Performance Standards (NSPS) for Volatile Organic Compounds (VOC) from the oil and gas industry.

The rule targeted VOC emission reductions through “green completion” and expected a yield of 95 percent reduction, including an estimated 1.7 million tons of methane.

In August 2015, EPA issued NSPS for new and existing wells.

EPA estimated the rule would achieve 400,000 metric tons of methane reductions.

1. Administrator McCarthy, are methane reductions from the NSPS above and beyond the 1.7 million achieved through the VOC rule?
2. EPA also estimates that 220,000 metric tons of methane reductions can be achieved by issuing Control Technique Guidelines.

Are these additional reductions beyond the VOC and NSPS rules?

In January 2016, the Bureau of Land Management proposed a methane reduction rule. BLM estimates this rule will reduce methane emissions on federal lands by 165,000 tons. This suite of rules will supposedly reduce methane emissions by 2.3 million tons.

EPA's stated goal is to reduce methane emissions by 40 percent by 2025. According to EPA, a 40 percent reduction from the oil and gas sector would equate to approximately 3.6 million tons. Earlier this month, EPA issued an Information Collection Request for existing sources.

3. Administrator, is it EPA's hope that the existing source rule will yield a reduction of 1.3 million tons?
4. Do you have a sense as to how much these rules will cost in the aggregate?

Attachment 2—Member Requests for the Record

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

The Honorable Pete Olson

1. The Federal Highway Administration (FHA) has concerns that an EPA proposal to change transportation and air modeling for highway projects. States have concerns that this “AERMOD Model” is more complex and less accurate than current models, and may result in delays and additional costs to highway projects.
 - A. Please provide a detailed explanation for the record of any changes to transportation and air modeling.
 - B. Did the EPA know of FHA’s concerns? If so, how has the EPA responded to FHA’s concerns?