

**HEARING TO REVIEW THE IMPACT OF EPA  
REGULATION ON AGRICULTURE**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON AGRICULTURE**  
**HOUSE OF REPRESENTATIVES**  
ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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## HEARING TO REVIEW THE IMPACT OF EPA REGULATION ON AGRICULTURE

THURSDAY, MARCH 10, 2011

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON AGRICULTURE,  
*Washington, D.C.*

The Committee met, pursuant to call, at 2:03 p.m., in Room 1300, Longworth House Office Building, Hon. Frank D. Lucas [Chairman of the Committee] presiding.

Members present: Representatives Lucas, Goodlatte, Johnson, King, Neugebauer, Conaway, Fortenberry, Schmidt, Thompson, Rooney, Stutzman, Gibbs, Austin Scott of Georgia, Fincher, Tipton, Southerland, Crawford, Huelskamp, DesJarlais, Gibson, Hultgren, Hartzler, Schilling, Ribble, Peterson, Holden, McIntyre, Boswell, Baca, Cardoza, David Scott of Georgia, Cuellar, Costa, Walz, Schrader, Kissell, Owens, Courtney, Welch, Fudge, Sablan, Sewell, and McGovern.

Staff present: Nicole Scott, Joshua Mathis, Patricia Barr, John Goldberg, Josh Maxwell, Tamara Hinton, Matt Perin, John Konya, Mary Nowak, Debbie Smith, Nathan Fretz, Clark Ogilvie, Nona Darrell, Liz Friedlander, Faye Smith, and Jamie W. Mitchell.

### **OPENING STATEMENT OF HON. FRANK D. LUCAS, A REPRESENTATIVE IN CONGRESS FROM OKLAHOMA**

The CHAIRMAN. This hearing of the Committee on Agriculture, To review the impact of the EPA regulation on agriculture will come to order.

Good afternoon. I want to thank the Administrator for being here today. I know there are quite a few committees in the Congress that have invited you to appear before them, and I expect your popularity as a witness will not diminish any time soon, Administrator. There is a reason the top priority for nearly every Member of the Agriculture Committee is related to the regulatory agenda of the Environmental Protection Agency. The reason is simple: Many Members of this Committee believe over the last 2 years, the EPA has pursued an agenda seemingly absent of the consequences for rural America and production agriculture. Your Agency is creating regulations and policies that are burdensome, over-reaching, and that negatively affect jobs and rural economies.

Just a few examples: EPA's proposed zero tolerance standard for pesticides spray drift, initiating action to stiffen the current regulatory standard on farm dust, which would make tilling a field, operating a feed lot, driving a farm vehicle nearly impossible, and an unprecedented re-evaluation of the popular weed control product

atrazine. The EPA, in 2006, completed a 12 year review involving 6,000 studies and 80,000 public comments.

Yet one of the first orders of business of the Obama Administration was to start over after an article appeared in *The New York Times*. In many instances, the Agency is ignoring Congressional intent and looks almost to be trying to bully Congress. Instead of simply administering the law, EPA challenges Congress to pass more legislation that gives it more authority. And if Congress does not, it will regulate anyway.

Farmers, ranchers, foresters alike, take great pride in their stewardship of the land. When a family's livelihood depends on caring for natural resources, there is an undeniable economic incentive to adopt practices that enhance long-term viability. While it may be popular among urbanites and suburbanites to blame farmers and ranchers for environmental concerns, I think that you can acknowledge that nobody cares more about the environment than those who derive their livelihood from it.

Rural America's economy is dependent on agriculture. The EPA's regulatory approach has unjustifiably increased the cost of doing business for America's farmers and ranchers. If the EPA continues down this path, the only choice for many farmers and ranchers will be simply to stop farming altogether.

Now, while there are many government regulations that are seemingly good for the country, those regulations must be developed in a manner that is mindful of the science and economic consequences. There has been some recognition of that phenomena as President Obama recently issued an Executive Order ensuring that all regulations should have public participation based on science and not prohibit growth, competitiveness, and job creation. I look forward to finding out how the most recent EPA actions meet this criteria.

And on the positive note, I would like to take this time to acknowledge that there are recent examples of where the EPA and this Committee have been able to work cooperatively in an effort to remove unnecessary regulatory burdens. In particular, I would like to commend you for the technical assistance you have provided the Committee in our efforts to clarify the regulatory authority for pesticide applications in or near the *Waters of the United States* under FIFRA and not the Clean Water Act.

I would like to call your attention to our shared concerns regarding the seemingly dysfunctional consultation process for pesticides under the Endangered Species Act. This is an issue of great concern to the Committee and that we would hope to be able to be work cooperatively with the EPA to address.

I anticipate that nearly every Member will wish to engage you in a discussion of a specific area of concern. It is my hope that this hearing will serve to open the door to a more cooperative working relationship with the EPA generally, and you specifically, Administrator.

I want to end this opening statement with one last perception. Farmers and ranchers believe your Agency is attacking them. They believe little credit is given to them for all the voluntary conservation activities that they have engaged in for years. This Committee is going to be an advocate for those farmers and ranchers, and I

will tell you the Committee will look at every proposed rule from your Agency and ask essentially three very basic questions: Is the EPA following the law? Are you making regulatory decisions based on sound science and data? And are you conducting adequate cost-benefit analyses?

I thank you again for being here. I look forward to the dialogue that develops today and into the future.

With that, I turn to the Ranking Member for his opening statement.

**OPENING STATEMENT OF HON. COLLIN C. PETERSON, A  
REPRESENTATIVE IN CONGRESS FROM MINNESOTA**

Mr. PETERSON. Thank you, Mr. Chairman. Good afternoon. And thank you for holding today's hearing. And I thank the Administrator for being with us. I, too, am hearing a lot from folks back in my district that are worried about what the EPA is up to. I have met with producer groups from across the country. And EPA regulations are nearly always on the top of their agenda. With all due respect to the Administrator and her testimony regarding EPA's commitment to science, transparency, and the rule of law, farmers in the countryside just don't see that. They see an out-of-control agency that doesn't understand agriculture and doesn't seem to want to understand it. Today's hearing gives the Agency a chance to respond to this perspective.

For me, I keep hearing that EPA is only doing what the courts are telling them to do. And I see that in some lawsuits. The problem is that many cases aren't litigated to the point where the court makes a ruling. Instead, there seems to be a pattern of a lawsuit followed by an EPA settlement followed by a policy change to comply with that settlement. This has been going on far too often and many times without adequate public disclosure. We have watched organizations use the courts to twist laws against American farmers and agriculture production. More and more we are seeing important policy decisions that impact agriculture arise, not out of legislative process, but from a litigation process where court decisions or secret lawsuit settlement negotiations result in poor public policy decisions.

If we don't work together to find a solution, producers will likely continue being told how to operate by bureaucrats, lawyers, and judges who don't understand agriculture. And, in my opinion, this is not any way to make agriculture policy. Policy should be developed in an open, transparent manner. This is what we did in the 2008 Farm Bill. Unfortunately, this sue-and-settle strategy keeps the process in the dark.

I started looking into this, and it is almost impossible to find copies of settlement agreements that have been negotiated by the EPA and their Justice Department counterparts. These agreements frequently contain provisions that are critical to agriculture and rural communities, but they are only coming to light after the fact. This needs to be a transparent process. The agreements need to be easily accessible to the public at one location on the EPA's website. Any damages or costs included in that settlement agreement must also be readily available.

I think there is an opportunity for Congress to address some of these problems. The challenge from the Agriculture Committee's perspective, though, is that we have very little jurisdiction over the regulatory issues that are the most concern to our producers. I am hopeful today that there are some areas such as the legislation we passed yesterday where we can work with other committees to straighten out some of the things that are going on.

I have already told Chairman Lucas that he has my commitment that on this side of the aisle we will work with the Republicans to make sure that we do things right. American agriculture has traditionally led the way to recovery when we have been in periods of economic stress—and we are seeing that now. The last thing we need is a new set of regulations on the segment of the economy that is actually working and producing jobs and leading this recovery.

There are many issues under EPA purview that could have direct impact on both agriculture producers and rural communities. And so I look forward to the Administrator updating us on what is and what is not happening on these issues.

And, again, I want to thank the Chairman for holding today's hearing and hope that we will be able to continue these discussions—not just exploring EPA regulations, but regulations coming from other Federal agencies—at future hearings.

I yield back.

[The prepared statement of Mr. Peterson follows:]

PREPARED STATEMENT OF HON. COLLIN C. PETERSON, A REPRESENTATIVE IN  
CONGRESS FROM MINNESOTA

Good afternoon and thank you Chairman Lucas for holding today's hearing. I'm hearing a lot from the guys in my district and they are really worried about what the EPA is up to. I've met with producer groups from across the country and EPA regulations are nearly always on the top of their agenda.

With all due respect to the Administrator and her testimony regarding EPA's commitment to science, transparency and the rule of law, farmers in the countryside don't see that. They see an out-of-control agency that doesn't understand agriculture and doesn't want to understand. Today's hearing gives the Agency a chance to respond to this perspective.

For me, I keep hearing that EPA is only doing what the courts are telling them to do, and I see that in some lawsuits. The problem is that many cases aren't litigated to the point where a court makes a ruling. Instead, there seems to be a pattern of a lawsuit, followed by an EPA settlement, resulting in policy changes to comply with the settlement. This has been going on far too often and many times without adequate public disclosure.

We've watched organizations use the courts to twist laws against American farmers and agricultural production. More and more we are seeing important policy decisions that impact agriculture arise not from the legislative process, but from a litigation process where court decisions or secret lawsuit settlement negotiations result in poor policy decisions. If we don't work together to find a solution, producers will likely continue being told how to operate by bureaucrats, lawyers and judges who don't understand agriculture. This is not the way to make agriculture policy.

Policy should be developed in an open and transparent manner; unfortunately this "sue-and-settle" strategy keeps the process in the dark. I've started looking into this and it's almost impossible to find copies of settlement agreements that have been negotiated by EPA and their Department of Justice counterparts. These agreements frequently contain provisions that are critical to agriculture and rural communities but they're only coming to light after the fact. This needs to be a transparent process; the agreements need to be easily accessible to the public at one location on EPA's website, and any damages or costs included in the settlement agreements must also be readily available.

I think there's an opportunity for Congress to address some of these problems. The challenge from the Agriculture Committee's perspective though is that we have very little jurisdiction over the regulatory issues of concern to producers. I'm hopeful that there are some areas, such as the legislation we passed yesterday, where we can work with other Committees to straighten out some of the things that are going on. I've already told Chairman Lucas that he has my commitment that this side of the aisle will work with Republicans to make sure that we do things right.

American agriculture has traditionally led the way to recovery during periods of economic stress; and we are seeing that now. The last thing we need is a new set of regulations on the segment of the economy that is leading the recovery. There are many issues under EPA's purview that could have a direct impact on both agriculture producers and rural communities. I look forward to Administrator Jackson updating us on what is and what is not happening on these issues.

Again, I thank the Chairman for holding today's hearing. I hope we will be able to continue these discussions, not just exploring EPA regulations but regulations coming from other Federal agencies, at future hearings.

The CHAIRMAN. The Ranking Member yields back. The chair would request that other Members' submit their opening statements for the record so that the witness may begin her testimony and ensure that there is ample time for all questions.

[The prepared statements of Messers. Schilling, Tipton, and Walz follow:]

PREPARED STATEMENT OF HON. ROBERT T. SCHILLING, A REPRESENTATIVE IN  
CONGRESS FROM ILLINOIS

Chairman Lucas, Ranking Member Peterson, I want to thank you for holding this hearing today to review the impact of EPA regulation on agriculture. I'm proud to sit on the House Committee on Agriculture, because it provides rural America with a voice that I believe is being shut out more and more when it comes to the policies that affect America's future.

As a small businessman I know that unnecessary and burdensome over-regulations will not lead to job creation, but will put people out of business.

It is often said that American farmers help feed a growing world population and are constantly being asked to produce more on less land. Farmers are also stewards of our land and soil. I believe that proposed ideas and regulations by the EPA to regulate greenhouse gases, farm dust, and even milk are the equivalent of asking farmers to produce while having both hands tied behind their back.

In her testimony, EPA Administrator Jackson notes her "profound respect" for the contributions of farmers. I believe that actions speak louder than testimony. Mr. Chairman, the producers I talk to back in Illinois believe the guidance and decisions coming out of EPA here in Washington, D.C. represent an affront to middle-American and agriculture as a whole. These farmers are left asking what EPA will regulate next.

I hope that we make some progress today. I am especially interested in hearing EPA's plans involving its jurisdiction under the Clean Water Act. It is my belief that EPA should not be give total control to regulate all *Waters of the United States*. EPA has no business regulating ditches, farm ponds or puddles.

Again, I thank Chairman Lucas for holding this hearing and look forward to hearing more about EPA's plans for U.S. agriculture, but more importantly what U.S. agriculture has to say to EPA.



Hon. ROBERT T. SCHILLING,  
Member of Congress.

PREPARED STATEMENT OF HON. SCOTT R. TIPTON, A REPRESENTATIVE IN CONGRESS  
FROM COLORADO

Thank you, Chairman Lucas, for convening this hearing on the impact of EPA regulation on agriculture. Thank you also to EPA Administrator Jackson for coming today to speak before us and take our questions.

I've heard from many farmers and ranchers in Colorado and in the third Congressional District that I represent, and I have real concerns about the adverse effect that new government regulations will have on agricultural producers in the coming years. The EPA is releasing excessive, onerous rules one after another, which will increase production costs, open up farmers to frivolous lawsuits, and make it more difficult for producers to maintain their livelihoods. Further, as rules are proposed and go through rulemaking processes that stretch out for months or even years, they create uncertainty for farmers and ranchers about how government regulations will impact their future ability to operate their businesses. This uncertainty discourages capital investment, which is critical for creating jobs and growing the economy.

This Administration is slowly but surely creating a regulatory nightmare for the agricultural community. Agriculture may be a bright spot in our struggling economy right now, but it will not remain so if farmers and ranchers continue to be barraged from every direction with these new rules. Farmers do more with less every day, and with a growing world population, they face ever-increasing pressure to expand production. Our country depends on agriculture, and if we make it impossible for farmers to make a living growing foods and fibers, we will all be adversely affected.

I doubt any of us here want to see American farmers pushed out of business by onerous government regulations, so it's important that continue to hold these hearings and examine the effect of regulation on agriculture. Thank you again, Chairman Lucas and Ms. Jackson, for providing us with this opportunity to discuss EPA regulations.

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PREPARED STATEMENT OF HON. TIMOTHY J. WALZ, A REPRESENTATIVE IN CONGRESS  
FROM MINNESOTA

Chairman Lucas, Ranking Member Peterson, thank you for calling this hearing to look at how our environmental protections intersect with our agriculture industry. This is a very important matter to consider, and I want to thank Administrator Lisa Jackson for taking the time today to testify.

We have a commitment to feed the nation and feed the world. At the same time, keeping our waterways and the air we breathe free of pollutants so that we can drink clean water and live longer, healthier lives for our generation and the generations to come is just as important a commitment.

These two commitments do not have to be competing. I know our farmers, with their children using the same pesticides, drinking the same water, and breathing the same air, are just as concerned about the environmental impacts of our farming techniques as any environmental advocate. However, I have heard from a number of my farmers of the concern they have trying to comply with many EPA regulations. They wonder whether it will even be feasible to comply with such regulations as proposed changes to coarse particulate matter (PM<sub>10</sub>) under the Clean Air Act or if some of these regulations would be too costly to a small family farm.

What we need to look at today is how our agriculture producers can help and assist with keeping our environment safe while still ensuring that our family farming businesses remain viable and productive. I would like to have a constructive discussion and find ways we can work with EPA's current policies without scrapping its ability to keep us safe.

The CHAIRMAN. With that, I would like to welcome our witness to the table, the Honorable Lisa Jackson, the Administrator, U.S. Environmental Protection Agency, Washington, D.C.

Administrator Jackson, please begin whenever you are ready.

**STATEMENT OF HON. LISA P. JACKSON, ADMINISTRATOR, U.S.  
ENVIRONMENTAL PROTECTION AGENCY, WASHINGTON, D.C.**

Ms. JACKSON. Thank you. Good afternoon, Chairman Lucas. Good afternoon, Ranking Member Peterson. Good afternoon, Members of this Committee. Thank you for inviting me to testify. I am pleased to be here today.

I have great respect for the oversight role of Congress and believe that this ongoing dialogue is central to the commitment I have made to the American people to conduct EPA's business transparently and with accountability. I also believe an important part of that commitment is to dispel certain myths about EPA's

work and its impacts on agriculture. These mischaracterizations are more than simple distractions. They prevent real dialogue to address our greatest problems. And so today I would like to spend a few minutes addressing some of them directly.

Let me begin with one simple fact that I proudly embrace, farmers and ranchers are an essential part of our economy. They give us food, fiber, and fuel. The innovators in American agriculture deserve great credit for significant steps they have taken to protect the environment while feeding millions of people. With that recognition in my mind, my direction at EPA has been to establish a consistent dialogue with the agriculture community, which is crucial to our work. This is why I would like to take a moment to address some of the mischaracterizations that have been at times unaddressed or that need to be addressed again. As I am sure you would agree, Mr. Chairman, facts matter. And we all have a responsibility to ensure that the American people have facts and the truth in front of them, particularly when fictions are pushed by special interests with an investment in the outcome. Let me give you just five examples.

One, is the notion that EPA intends to regulate the emissions from cows, which is commonly referred to as a cow tax. This myth was started in 2008 by a lobbyist and quickly debunked by the non-partisan independent group *FactCheck.org*. And yet it still lives on. The truth is EPA is proposing to reduce greenhouse gas emission in a responsible, careful manner, and we have initially exempted agricultural sources for regulations.

Another mischaracterization is the claim that EPA is attempting to expand regulation of dust from farms. We have no plans to do so. But let me also be clear: The Clean Air Act passed by Congress mandates that the Agency routinely review the science of various pollutants, including particulate matter, which is directly responsible for heart attacks and premature deaths. EPA's independent science panel is currently reviewing that science, and at my direction, EPA staff is conducting meetings to engage with and listen to farmers and ranchers well before we even propose any rule.

Another example involves spray drift. While no one supports pesticides wafting into our schools and communities, EPA does not support a no-spray drift policy. EPA has been on the record numerous times saying this, but the incorrect belief that EPA is promulgating a no-drift policy persists. We have reached out to the National Association of State Departments of Agriculture and other key stakeholders. Working with them, we have been able to identify critical issues, and we will continue our efforts to resolve them.

Yet another mischaracterization is the false notion that EPA is planning on mandating Federal numeric nutrient limits on various states. Again, please let me be clear. EPA is not working on any Federal numeric nutrient limits. We will soon be releasing a framework memo to our regional offices that makes it clear that addressing nitrogen and phosphorous pollution—which is a major problem—is best addressed by the states through numerous tools, including proven conservation practices. The case of Florida is unique. The last Administration made a determination that Federal numeric nutrient standards were necessary in Florida. That required EPA to develop such standards.

And finally is the notion that EPA intends to treat spilled milk in the same way as spilled oil. This is simply incorrect. Rather, EPA has proposed and is on the verge of finalizing an exemption for milk and dairy containers. This exemption needed to be finalized because the law passed by Congress was written broadly enough to cover milk containers. It was our work with the dairy industry that prompted EPA to develop an exemption and make sure the standards of the law are met in a commonsense way. All of EPA's actions have been to exempt these containers. And we expect this to become final very shortly.

Now, contrary to the myths is the reality I spoke of earlier. EPA is in close consultation with America's farmers and ranchers. We have listened to their concern and made them a part of the work we do. Let me give you one positive example that I know is very important to this Committee. When EPA proposed higher renewable fuels production mandates under RFS2, we heard, again, through extensive public comments and direct conversations the ethanol industry's concerns with the analysis of greenhouse gas impacts, which EPA was conducting under a requirement from Congress. We addressed their concerns and we now have a rule that encourages vast innovation, respects the needs of agricultural communities, and is expected to create jobs and increase farmers' incomes by \$13 billion annually by 2022.

Mr. Chairman, everyone in this room has the same desire—to have safe water, air, and land for our children, and to do so in away that maintains our economic strength. EPA will continue to work with this Committee, as well as our partners in the states and the agricultural community to achieve the goals we have set together, and to serve the values we all share.

Thank you very much.

[The prepared statement of Ms. Jackson follows:]

PREPARED STATEMENT OF HON. LISA P. JACKSON, ADMINISTRATOR, U.S.  
ENVIRONMENTAL PROTECTION AGENCY, WASHINGTON, D.C.

Good afternoon, Chairman Lucas, Ranking Member Peterson, and Members of the Committee. I am pleased to appear before you today to discuss EPA's mission to protect human health and the environment and our interaction with the agriculture community.

In my meetings with leaders in the agriculture community and in my meetings with Secretary Vilsack, I have indicated my profound respect for the invaluable contribution that farmers make to our economy by producing food, fiber, and fuel for our country and the world. I have also noted the critical work that farmers are doing to protect our soil, air, and water resources. At the same time, I am very much aware that farmers operate under unique and challenging circumstances—small margins, international competition, and the difficulties of operating a small business—that complicate the task of making a living on the land.

As a result of our meetings with the agriculture community—with me, our senior leadership team and our regional staff—we appreciate the extent of EPA's interaction with agriculture and the concerns of farmers across the country.

When I became EPA Administrator, I made a commitment to using the best available, peer-reviewed science, transparency, and the rule of law as hallmarks for EPA's work under my tenure. In no other area of EPA's work are those principles more important than in our work with agriculture.

On issue after issue, we have seen the value of early and substantial engagement with the agriculture community to ensure that we fully understand the impacts of our actions. We seek opportunities for communication, as we are doing currently on particulate matter (PM<sub>10</sub>) and as we have previously done with public engagement in development of the National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit. Our commitment to science has enabled EPA to make

strong decisions on issues ranging from the decision on the Renewable Fuel Standard (RFS2) to the extensive work with the livestock and poultry industries on the National Air Emissions Monitoring Study (NAEMS). Finally, carefully following the laws that Congress has enacted has enabled EPA to ensure public confidence in the nation's food supply through implementation of the pesticide laws.

My testimony further illustrates how the Agency has followed these key principles with specific examples from our pesticides, water, and air programs.

### **Pesticide Regulation**

EPA's Office of Pesticide Programs is charged with regulating pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). EPA's regulatory programs for pesticides under both laws rest on the same two fundamental principles—basing decisions on best available, peer-reviewed science and making our decisions through a process that is transparent and open to everyone.

Under FIFRA, we must ensure that use of pesticides does not cause “unreasonable adverse effects on the environment.” When used properly, pesticides provide significant benefits to society, such as controlling disease causing organisms, protecting the environment from invasive species, and fostering a safe and abundant food supply. FIFRA's safety standard requires EPA to weigh these types of benefits against any potential harm to human health and the environment that might result from using a pesticide.

FIFRA generally requires that before any pesticide may be sold or distributed in the United States, EPA must license its sale through a process called “registration.” During registration, EPA examines every pesticide product that is being lawfully marketed in our country. In addition, FIFRA also requires EPA to reexamine previously approved pesticides against current scientific and safety standards through a program called “registration review.” Any changes to the use of a pesticide identified through registration or registration review as necessary for safe use appear on product labels.

In addition, under FFDCA, EPA sets “tolerances” (maximum residue limits) for pesticides used on food or animal feed. EPA may establish a tolerance for a pesticide residue in food or feed only if EPA finds that there is a “reasonable certainty of no harm” from consumption of the pesticide treated food and from other nonoccupational sources of exposure.

EPA makes more than 10,000 different regulatory decisions about pesticides every year. In 2010, EPA registered more than 700 new pesticide products, approved products for 277 new uses, and registered pesticides containing 24 new active ingredients (more than half were low risk biopesticides or low risk conventional chemicals). In addition, we approved hundreds of registration amendments, opened dockets for scores of pesticides in registration review, and reviewed thousands of notifications of other minor changes.

Over the past 30 years, EPA has developed a highly regarded program for evaluating pesticide safety and making regulatory decisions. EPA's reputation rests on our world renowned expertise in pesticide risk assessment. Our approach to decision making is also widely considered to be a model for transparency and openness. Using this approach, the Agency makes decisions consistent with scientific information and protective of human health and the environment.

Safe pesticide use makes an enormous contribution to our society, particularly in the production of food and fiber. Innovation in pesticide use has greatly increased agricultural productivity and contributed to a predictable food supply and stable food prices. EPA estimates that pesticides used to control various pests such as insects, weeds, and fungus contribute billions of dollars per year to agricultural production. In addition, maintaining a robust pesticide regulatory system provides a high level of consumer confidence by effectively policing the safety of pesticide residues in food.

Pesticides provide direct and indirect benefits for the millions of people who use pesticides or purchase items on which pesticides have been used. Some of the most dramatic examples occur under Section 18 of FIFRA, where EPA may issue an “emergency exemption” to authorize the temporary use of an unregistered pesticide to address an unusual pest outbreak. For example, among other decisions last year, EPA approved emergency exemptions to control zebra and quagga mussels in Arizona, California, and Nevada; authorized 20 states to use two pesticides to control varroa mites in honey beehives, a pest hypothesized to contribute to colony collapse disorder; and allowed the emergency use of the fungicide, propiconazole, on Florida avocados to address an emerging disease that kills the tree and severely hurts the industry.

I want to discuss three topics concerning pesticide regulation in greater detail. These topics—the Pesticide Registration and Improvement Act, atrazine, and international cooperation—illustrate the breadth of EPA’s pesticide activities and how the Agency takes a leadership role in working with stakeholders to find science based solutions to contentious issues.

*Pesticide Registration Improvement Act*

The Pesticide Registration Improvement Renewal Act (PRIA 2) provides an example for how user fees paid by the private sector can help support vital regulatory activities. EPA’s pesticide regulatory programs are funded by a combination of appropriations and user fees. Under PRIA 2, the 2007 reauthorization of PRIA which is in effect from October 1, 2007 to September 30, 2012, entities seeking EPA approval to sell or distribute pesticide products must, in most cases, pay a fee before the Agency will process their applications. The amount of the fee depends on the type of application and the type of entity. For example, EPA charges lower fees for “me too products” than for entirely new pesticides. Small businesses pay reduced fees, and PRIA 2 exempts government and government-supported organizations like the Interregional Research Project No. 4 (IR-4), from application fees.

PRIA 2 was developed by a group of representatives from the pesticide industry, their trade associations, and public interest groups, provides benefits for interested stakeholders. For the pesticide industry, PRIA 2 requires EPA to make decisions on applications within a mandated timeframes. Before PRIA, because of limited resources, the Agency could not process all of the applications it received in a timely fashion. Large backlogs developed, and applicants could not predict when the Agency would make a decision. Pesticide companies had to establish priorities for which of their applications EPA would review first. With the additional resources provided by PRIA, however, the Agency can now process new applications in a timelier manner. In fact, since the start of the PRIA user fee program, EPA has met the timeframes for more than 99% of PRIA applications. With this kind of consistency in EPA’s review of registrations, pesticide companies can develop more accurate business plans for marketing their products.

Pesticide users also benefit from the more rapid approval of more new pesticide products. Since PRIA became law, EPA has seen an increase in the number of new pesticides being submitted, indicating that PRIA may have encouraged increased research and development. Under PRIA, the Agency has also seen an increase in the approval of pesticides for “minor uses” to meet the pest control needs of farmers who grow minor crops—primarily fruits, vegetables, and nut crops. Further, by law some of the PRIA 2 fees go to support improved safety standards for agricultural workers and to provide pesticide safety education for farm workers and farm worker families. Finally, PRIA 2 sets aside a portion of the fees to increase funding for grants that improve understanding of Integrated Pest Management and develop new tools to reduce pesticide use.

Society and the environment also benefit from PRIA 2. A number of the new pesticides receiving approval under PRIA 2 are safer than the previously approved products which they can replace. In addition, PRIA 2 reauthorized maintenance fees to support EPA’s registration review program. Under FIFRA, the Agency must re-evaluate all previously registered pesticides at least every 15 years to make sure that products in the marketplace can still be used safely. The registration review program makes sure that, as the ability to assess risk evolves and as public policy and pesticide use practices change, all registered pesticides continue to meet the FIFRA statutory standard of no unreasonable adverse effects.

*Atrazine*

The current scientific review of the human health and environmental effects of atrazine, a widely used herbicide, shows EPA’s commitment to basing our regulatory decisions on the best available scientific information. In 2003, EPA conducted a review of atrazine and determined that, based on the science available at that time, atrazine was not likely to adversely impact human health or cause unreasonable impacts on the environment when used consistent with new labeling restrictions. As a condition for continued registration, the Agency required the registrants of atrazine to confirm the effectiveness of risk mitigation measures for protecting drinking water resources and aquatic life. Specifically, we required the registrants to conduct extensive monitoring of community drinking water systems and vulnerable waterways.

In the nearly 8 years since that decision, nearly 150 new scientific studies have been conducted on the human health effects of atrazine. In addition, monitoring data from a variety of sources, including the registrants’ studies discussed above, of atrazine in both drinking water sources and other bodies of water. EPA deter-

mined it is appropriate to look closely at this new research and to ensure that our regulatory decisions about atrazine reflect the best available science and continue to be protective.

To ensure our assessment continues to be thorough, scientifically based, and fully transparent, we are consulting the FIFRA Scientific Advisory Panel (SAP), a Federal advisory committee charged with providing independent, expert peer-review of scientific issues involving pesticides. We have held four public SAP meetings over the last year related to our review of atrazine:

- November 3, 2009—EPA presented its plan for the atrazine re-evaluation to the SAP;
- February 2–4, 2010—EPA presented and sought scientific peer-review of its proposed plan for incorporating epidemiology studies into the atrazine risk assessment;
- April 26–29, 2010—EPA presented and sought scientific peer-review of its evaluation of atrazine’s effects based on experimental laboratory studies, and the sampling design currently used to monitor drinking water in community water systems; and
- September 14–17, 2010—EPA presented and sought peer-review of its evaluation of atrazine’s non-cancer effects based on experimental laboratory studies and epidemiology studies. This review included new experimental laboratory data since the April 2010 SAP meeting.

Our examination of new health effects studies will still need to consider the upcoming results from the National Cancer Institute’s epidemiological Agricultural Health Study (AHS) evaluating the potential association between atrazine and cancer risk. We expect to take these results, along with other epidemiological and laboratory animal studies, to the SAP later this year. At the conclusion of EPA’s assessment of atrazine’s human health effects, the Agency will ask the SAP to review atrazine’s potential effects on amphibians and aquatic ecosystems.

#### *EPA’s International Cooperation in Pesticide Regulation*

Our international activities show how EPA’s leadership role seeks to efficiently use resources and contributes to a predictable and protective global regulatory framework that facilitates trade while improving environmental protection. The ability to work effectively in an increasingly complex environment is a key to maintaining U.S. competitiveness in agricultural production, biotechnology, and development of needed means of pest control, as well as in promoting and enhancing food safety and environmental protection. The field of pesticide regulation is a striking example. In recent years, we have all experienced the globalization of our food supply due to the expansion of world agricultural trade. Trade in pesticides is also increasing at a rapid pace.

As a major exporter and importer, the U.S. seeks to promote economic growth through its work with other countries and international organizations to encourage greater harmonization of pesticide requirements. These efforts strengthen public health and environmental protection at home and abroad, promote the wider availability of pest control technologies that U.S. agricultural producers rely on to maintain high levels of productivity, and help ensure the availability of a safe, varied, abundant and affordable food supply for U.S. consumers, and its partners in trade in agricultural and food products.

For example, we will not realize expected benefits from registering new, often safer pesticides for use in the U.S. unless the necessary clearances are in place in countries that are important export markets for U.S. growers. Therefore, we work through the *Codex Alimentarius* (a joint food standards program of the Food and Agriculture Organization of the United Nations and the World Health Organization) to expedite the establishment and review of internationally recognized residue limits for pesticides in food. Many countries rely on the *Codex* maximum residue limits (MRLs) as their own national standards, and others (including the U.S.) strive to harmonize with *Codex* whenever possible.

Harmonized MRLs facilitate compliance, reduce the likelihood that food with illegal residues will be imported into the U.S., and promote trade in safe agricultural products. We also work with other U.S. agencies to educate trading partners about the requirements of the U.S. food safety system and to work toward greater harmonization of pesticide regulation in ways that enhance the scientific basis of regulatory decision-making and improve efficiency, thereby saving government and private sector resources.

Other areas where international cooperation has been important to our pesticides program include:

- Working with partners in the Organisation for Economic Co-operation and Development to harmonize test guidelines, data requirements and application formats to conserve scientific and regulatory resources;
- Harmonization of risk assessment and risk management approaches, *e.g.*, development of an MRL calculator tool that makes it more likely that countries working from the same data will reach similar regulatory results; and
- Work sharing and joint reviews. When we work together on pesticide issues, we benefit from sharing scientific expertise and review burdens with our regulatory counterparts and decrease the likelihood that pesticide regulations will become trade irritants.

Collectively, these efforts are leading to ever more efficient use of scarce public and private sector resources to ensure that pesticides are being used safely, while at the same time providing businesses a more predictable and stable regulatory environment worldwide so they can expand economic opportunities.

### **Water Quality**

EPA recognizes that collaboration with states, farmers, rural communities and USDA can be particularly effective in achieving important improvements in water quality. Our work on the Chesapeake Bay and on the Mississippi and Atchafalaya River Basin are two examples of how those collaborations can work.

#### *Chesapeake Bay*

One of EPA's major efforts on water quality protection in the past 25 years is the development of a comprehensive, integrated plan for restoring the Chesapeake Bay. We developed this plan in consultation with the agriculture community, close collaboration with the Chesapeake Bay jurisdictions (the six Bay states and the District of Columbia), and with assistance from Federal agency partners. With the support of an Executive Order, EPA worked with other Federal agencies, particularly USDA, to develop a Federal strategy for protecting and restoring the Chesapeake Bay watershed. The strategy reinforced EPA's and USDA's recognition that maintaining the viability of agriculture is an essential component to sustaining ecosystems in the Bay. It also emphasized the agencies' commitment to strong partnerships and collaboration with states and local governments, urban, suburban and rural communities, and the private sector to achieve environmental objectives for the Bay. In this strategy, and in the actions EPA and USDA are pursuing under the strategy, the agencies acknowledge the enormous contribution that farmers are making to improve Bay water quality.

Developing the Chesapeake Bay Total Maximum Daily Load (TMDL) was truly a collaborative effort. EPA worked closely with the Bay jurisdictions during 2009 and 2010 to help them develop and improve Watershed Implementation Plans (WIPs) to inform and support the Chesapeake Bay TMDL. In those plans, the states identified how they can best achieve the nutrient and sediment reductions called for under the TMDL. In developing the Executive Order strategy and the WIPs, EPA and its partners held nearly 400 public meetings with the agricultural community and other interested stakeholders. Using input from those meetings, the state developed WIPs recognize that suburban and urban communities as well as the agriculture sector will all need to achieve pollution reductions to restore the Bay and rivers. As a result of the hard work and commitments of the individual jurisdictions, there are now feasible and credible WIPs established to implement the nitrogen, phosphorus, and sediment reductions necessary to attain state water quality standards and restore water quality in the Bay.

To help achieve pollutant load reductions, EPA combined resources with USDA to award more than \$5 million in grants this past fall to assist farmers in adopting conservation practices in the region.

#### *Mississippi and Atchafalaya River Basin*

In the Mississippi and Atchafalaya River Basin, EPA and USDA are working together to demonstrate success in water quality improvement. We are jointly collaborating to provide monitoring support for USDA's Mississippi River Basin Initiative (MRBI) as well as broader efforts to use EPA section 319 funds (and other available funds) in coordination with USDA programs to engage creatively in work with communities and watersheds to achieve improvements in water quality.

EPA, USDA and USGS are collectively working together to focus on Mississippi River water quality goals. For example, the agencies are working to identify where NRCS MRBI projects can be funded and implemented in a way that supports the implementation strategies set forth in existing section 319 watershed plans, TMDLs, and other state plans. The agencies are also targeting their monitoring investments to best assess water quality trends and demonstrate water quality improvements.

In these targeted areas, EPA Regions are coordinating with the state NRCS offices, agencies, and USGS at the local level to ensure meaningful stakeholder involvement and commitment to full implementation.

### **Air Quality**

National air quality issues are integrally related to agricultural activities. Particular areas of focus include coarse particulate matter, boiler standards, animal feeding operations, and the allowable level of ethanol in gasoline. EPA's actions in these and other areas are described below.

#### *Coarse Particulate Matter*

The Agency recognizes that the review of the air pollution standards for coarse particles—called PM<sub>10</sub>—has prompted a great deal of concern in the agriculture community in recent months. EPA's national air quality standards, including our PM standards, are not focused on any particular industry or activity; rather, they set the level of a pollutant allowed in the outdoor air nationwide. EPA has not issued a proposal on PM<sub>10</sub> and has not made any decisions about what to propose.

EPA has reached out to rural communities to hear their perspectives on PM<sub>10</sub> standards. EPA has held five meetings with stakeholders in several regions of the country. Initial reports indicate that these have been very well attended and much appreciated—they have increased understanding about EPA's work and the farm community has provided useful insights that will help inform our deliberations. That information, along with EPA's scientific and technical assessments and the recommendations of our independent science advisors—the Clean Air Scientific Advisory Committee—will be considered as EPA begins the process of assessing what standards to propose to ensure that we provide the public health protection that the law requires.

#### *Boiler MACT Rules*

On February 21, 2011, EPA issued final standards for boilers and certain incinerators that will achieve significant public health protections through reductions in toxic air emissions, including mercury and particulate pollution, while cutting the cost of implementation of these standards by about 50 percent from the proposed rules issued last year. EPA estimates that for every dollar spent to cut these pollutants, the public will see between \$10 to \$24 in health benefits, including avoiding between 2,600 and 6,600 premature deaths, preventing 4,100 heart attacks and averting 42,000 asthma attacks per year once they are fully implemented.

The Agency's handling of this rule is a compelling example of how public comment and new information are used and can be especially valuable in crafting a sound regulation. EPA received more than 4,800 comments from businesses and communities across the country in response to the proposed rules, including the agricultural community. As a result of this feedback, EPA revised the draft standards to allow additional flexibility and cost effective compliance. Among other things, we believe the final standards are sensitive to the needs of rural America, particularly given the role that biomass plays as fuel in rural areas. Furthermore, EPA is working with the Departments of Energy and Agriculture to provide facilities affected by the standards with technical assistance. In particular, together with USDA, we will be reaching out to facilities that have boilers that burn biomass to make sure that they understand the regulation, its cost- and energy-saving features, and the benefits that can accrue to boiler owners as a result.

#### *Animal Feeding Operations Monitoring Study*

In 2005, EPA and the animal feeding operations industry signed a voluntary compliance agreement that resulted in the first nationwide study of its kind for animal feeding operations. That study, the National Air Emissions Monitoring Study, was funded by industry and conducted by Purdue University with EPA oversight. The monitoring conducted under the study has been completed, and the data are available to the public via the web. EPA will use the data to develop improved methodologies for estimating emissions from animal feeding operations. Twenty four facilities in nine states made their operations available for monitoring and worked closely with researchers, industry experts and EPA throughout the study period. EPA will also use information it has received in response to a "Call for Information" issued in January 2011 seeking data from other monitoring studies of animal feeding operation emissions. We will make the draft methodologies available for public review and comment on a rolling basis in the near future.

#### *E15*

Another important issue to the agricultural community has been action on the request by more than 50 ethanol producers and other supportive groups to allow E15

to be sold for use in gasoline powered vehicles and equipment. Under the Clean Air Act, a fuel that is not substantially similar to the fuel used to determine compliance with emissions standards must obtain a waiver before it can be sold. EPA may grant a waiver if there is sufficient information to show that the fuel will not cause or contribute to failures to meet applicable emission standards. In acting on the waiver request for E15, we provided an extended period for public comment and timely access to Department of Energy (DOE) test results on the impact of E15 on exhaust emissions of model year 2001 and newer cars and light trucks.

After considering all of the available information, we granted partial waivers that allow E15 to be sold for use in model year (MY) 2001 and newer cars and light trucks. In 2011, there are more than 150 million MY2001 and newer vehicles that could use E15. These vehicles represent more than 74 percent of gasoline consumption. By 2014, we project E15 could be used in more than 187.3 million vehicles, representing 85% of fuel consumption.

We are now in the process of completing a rule that will establish national labeling, transfer document and survey requirements for E15 as it enters the market. As part of the rulemaking process, we held a public hearing and provided a 60 day public comment period. We expect to issue a final rule in the next few months. Under the Clean Air Act, E15 must also be registered before it can be sold. We recently received emissions and health effects information to support a registration application. We expect to complete our review of that information in 2 to 3 months.

#### **Additional EPA Involvement With the Agricultural Community**

In addition to the examples highlighting EPA's pesticide, water, and air programs, there are many other EPA actions underway substantively addressing agricultural issues, including:

- Conducting outreach to livestock farmers in agricultural areas such as the Shenandoah Valley to improve their understanding of EPA requirements and programs;
- Planning to issue a final rule amending the Spill Prevention, Control, and Countermeasures (SPCC) rule to exclude milk and milk product containers from the SPCC regulatory program, which has been transmitted to the Office of Management and Budget for review;
- Listening to producer concerns and as a result, extending the compliance period to provide time for educational and outreach efforts to be carried out for farmers who are affected by SPCC; and
- Providing significant assistance in the development of watershed plans through the 319 program and in the renovation of rural water systems through the State Revolving Fund (SRF) program.

#### **Conclusion**

I am fully aware that there are complex and difficult issues that we need to work on with the agriculture community and this Committee. You have my commitment that we will continue to rely on science, transparency, and the rule of law as we work together. And you have my commitment to engage in discussion early and often to increase understanding, improve our knowledge and create a stronger working relationship in support of a strong farm and rural economy and a healthy environment—I believe that they can and should go hand in hand.

I appreciate the opportunity to be here today. I look forward to continuing our work with you and I am pleased to answer any questions you might have.

The CHAIRMAN. Last Wednesday, the Fourth Circuit Court of Appeals ruled on a Biological Opinion—a BioOp—issued by the National Marine Fisheries Service relating to pesticide re-regulation decisions in a final Agency action and therefore reviewable in district court. In light of this decision, what options are available to the EPA regarding your timeframe for implementing the reasonable and prudent alternatives under the three Biological Opinions you have received?

Ms. JACKSON. Thank you, Chairman. Yes, we are analyzing that decision with the Department of Justice because we do believe it may have some impact on our options, moving forward, on Biological Opinions. That issue, as you mentioned in your opening statement, is a significant one for agriculture, and for our pesticide pro-

gram, which relies on Biological Opinions to make its registration and labeling decision, so important in rural America and in agriculture.

Just today, I signed a letter charging the National Academy of Sciences to review certain technical and scientific issues in Biological Opinions, because they have come to be of great import in future decisions, moving forward.

The CHAIRMAN. Administrator, you mentioned that you are very much aware that farmers and ranchers operate under unique and challenging circumstances. Apart from having outreach meetings, how has that awareness been incorporated into the decision-making process at your Agency?

Ms. JACKSON. Well, outreach means certainly the beginning, and of course, the public comment process, which is open to anyone when we put out a rule, is very significant as well. I gave one example in my opening testimony, which is probably the most dramatic one. The original proposal under the RFS2 for ethanol did not find that as a biofuel which would qualify for the credit under EISA. Through public comment, through hard work with USDA, through working with modelers, those numbers changed significantly enough that on adoption of that rule EPA essentially reversed that opinion. Our work on the pesticides general permit is another example of significant outreach to deal with a mandate that we received from the courts.

The CHAIRMAN. Administrator, you mentioned dust and spray drift and nutrients. Do you believe that your Agency has the authority—you say you are not going to—but do you believe your Agency has the authority to regulate those issues?

Ms. JACKSON. Yes, dust via the Clean Air Act under the particulate matter standards. You mentioned nutrients under the Clean Water Act, certainly. And I forgot the third one.

The CHAIRMAN. Spray drift issue.

Ms. JACKSON. Certainly through FIFRA labeling, which is where this issue was raised, EPA's decision on what to put on the label has a tremendous impact on that sector.

The CHAIRMAN. But you acknowledge you believe in your role that you have existing Federal authority to regulate those things. Even though you say at the present time you are not in the process of preparing rules to regulate them, you do say you have the authority, you believe.

Ms. JACKSON. We regulate dust now under the Clean Air Act, under the 2004 standards. Nutrient pollution is certainly regulated under the Clean Water Act, generally by the states. But EPA standards and the total maximum daily load process has a lot to do with that.

The CHAIRMAN. I think, Administrator, you put your thumb right there on the issue. The folks out in the countryside believe that you believe you have the authority. Their concern, more or less, is it is just when and to what degree will you regulate. And that is what they brought to our attention, along with the concerns about sound science and economic impact, and whether the results of these decisions will—the effect on them will be factored into the decision-making process.

With that, I turn to my colleague, the Ranking Member, for his questions.

Mr. PETERSON. Thank you, Mr. Chairman. I am interested in learning more about how the EPA handles legal action brought against it. What factors do you use in determining whether or not to settle with a litigant or petitioner?

Ms. JACKSON. EPA makes a case-by-case judgment, sir. We have to look at several factors. The requirements of the law, most importantly. Legal risk is always a big factor in determining whether to continue the litigation or to settle a case. And the appropriateness of rulemaking or other action to address the party's claims. Sometimes we don't have the authority or our rulemaking is not an efficient method of addressing a claim.

Mr. PETERSON. At what point does the Department of Justice get involved in this? Do you disagree with them sometimes? And if you do, how do you proceed and who has the final say?

Ms. JACKSON. Well, certainly we work in concert with the Department of Justice. And the Department of Justice acts as a check, if you will. We cannot move forth on settlement without concurrence and consultation with the Department of Justice.

Mr. PETERSON. Do you recommend to them to settle or do they recommend to you or how does that work?

Ms. JACKSON. Oftentimes, it is a result of staff making some recommendations. I can get for you, sir, individual examples. But I would imagine that oftentimes, EPA lawyers meet with Justice Department, look at the merits of a case, and would recommend a settlement and ask for their concurrence.

Mr. PETERSON. Well, I have a number of questions that I am going to send you about trying to understand this. I would like to know what settlements have been made since you took over as Administrator and whether there has been any rulemaking that has taken part in that.

One of the things, maybe, with the limited time, I would like to focus on this *Waterkeeper* settlement. Last May, you announced a settlement with the Waterkeeper Alliance, which I think is some kind of outgrowth out of the Sierra Club, Defense Fund. And I have some other questions about how some of these groups qualify to get the government to pay their legal fees and whether we need to look at that in the future, if they legally can do this.

But in this case they apparently sued and then some livestock groups sued and there was a settlement made. But apparently, you guys negotiated with the Waterkeepers but you didn't negotiate with the agriculture groups. And then there was a settlement. Again, who made the decision not to include those ag groups? The settlement included an agreement to pay \$95,000 in attorneys fees and costs. Do all of the EPA settlement agreements contain provisions for payment of attorney fees and how do you determine that?

Ms. JACKSON. Mr. Peterson, we are happy to get you specific answers for the record to all those questions. In general, I will simply say that Congress has imposed a vast array of requirements on EPA and we are frequently sued by environmental and also other organizations under statutes claiming that EPA has failed to take an action in a timely manner or that we have been unreasonably

delayed. And in many cases, the remedy that we are demanded under that lawsuit is to undertake rulemaking.

Mr. PETERSON. What about if the lawsuit is not litigated and you just settle? Then all of a sudden you are basically doing a settlement that is requiring you to do rulemaking. We didn't authorize it or probably agree with it.

Ms. JACKSON. Well, we look at what the law requires us to do. One of the questions is whether you would lose if you went to court and whether we would be best served by settlement early and trying to agree on a schedule for rulemaking. Oftentimes, that rulemaking is overdue that we can live with rather than have the courts impose one on us. And we still have to pay court fees that would be much higher at the end of being on the losing end of a lawsuit. So the litigation risk is a very important consideration.

Mr. PETERSON. Do you make that decision or does the Department of Justice?

The CHAIRMAN. By unanimous consent, I ask that the Ranking Member have 2 additional minutes. Seeing no objection, 2 additional minutes.

Ms. JACKSON. We would make that together. Depending on the nature of the lawsuit, that can be a quick decision because oftentimes in these lawsuits it is fairly easy to know whether or not they would prevail.

Mr. PETERSON. I have this area that floods every year. We are going to flood again this year. And I don't know how many hundreds of millions of dollars this has cost us. The reason we haven't been able to ever do anything about this is environmental groups have basically stopped us. These are folks that are not from the area. They bring nothing to the table. And they have cost the taxpayers I don't know how many hundreds of millions of dollars.

So maybe the problem is that we have just let these laws—we don't know what we are doing; and that we have given these folks too many tools to muck up the whole system. Maybe we need to go in and review those things. But you say that we are requiring you to do this. Well, I have seen this firsthand in my district. That is the kind of thing they say to me there. Frankly, in the case of the legislature back in Minnesota that I used to serve in, I mean some of this stuff was foisted upon us and we didn't know what was going on.

So this Committee maybe needs to look at reviewing some of this stuff, or some of these other committees as well, so that we don't set up a system that allows this to go on.

Last, I can't find on your website these settlements. I can find it on some other organization's websites. But do you make this information public? I have heard some complaints that they can't find the information on these settlements. They can't find out how much it was and who got paid what for attorney fees and so forth. Is that something that you are making public immediately when you do this settlement?

Ms. JACKSON. Well, most of our settlements are required by law to go through public comment. But to your specific question, sir, if it is in one place, I would like to get back to you for the record, because I don't know the answer off the top of my head.

The CHAIRMAN. Would the gentleman yield?

Mr. PETERSON. I will yield.

The CHAIRMAN. I think the Ranking Member has a very good point here. With his agreement, I think the Committee should ask in writing today for a list of all these.

Mr. PETERSON. Mr. Chairman, I have another list of a couple of pages of things that I would like to submit with that.

The CHAIRMAN. We are going to send you a wonderful letter, Administrator.

The gentleman's time has expired.

I now turn to the gentleman from Virginia for this questions.

Mr. GOODLATTE. Thank you, Mr. Chairman. Thank you for holding this important hearing. Ms. Jackson, thank you for participating. As you may know, I have an interest in the EPA's regulations related to the Chesapeake Bay. As you may also know, the overwhelming majority of the Members of this Committee voted to cut off the funding for the EPA's implementation of the TMDL.

I would like to ask you for some clarification regarding your testimony. In your testimony you stated: "The EPA worked closely with the Bay jurisdictions to help them develop and improve watershed implementation plans." You also call these plans "state developed." I would like you to clarify a few points for the Committee.

First, in November of 2009, the EPA sent a letter to the watershed states requiring them to draft watershed implementation plans, is that correct?

Ms. JACKSON. That sounds right, sir, yes.

Mr. GOODLATTE. If the plans were not developed, the letter stated that the EPA would take "appropriate independent action or consequences." Is that correct?

Ms. JACKSON. I believe the letter you are referring to does probably say that. I don't have it in front of me.

Mr. GOODLATTE. I have a copy here. We will share that with you if you would like to see it after the hearing. If that is correct, then there was not an independent decision by the state to write the plans as they were written, but it was a requirement by the EPA that they write them. Is that not correct?

Ms. JACKSON. Yes, sir, in response to a lawsuit from the Chesapeake Bay Foundation because the cleanup of the Bay was not proceeding as it should under Federal law.

Mr. GOODLATTE. The fact of the matter is there are also lawsuits now brought by the Farm Bureau because they have contended the EPA has exceeded its authority. And there is a group of 16 communities in the eastern part of Virginia, not in my district, that are contemplating a lawsuit as well because they believe the EPA has exceeded their authority.

But what I would like to follow up on is the notion that these plans are state developed. I know my state and others did a lot of work to draft these plans to fulfill this requirement. But isn't it true that the EPA used the threat of a "Federal backstop" or "consequences" to compel the states to include certain provisions in their plan?

Ms. JACKSON. It is true that EPA had the authority we believe to backstop any state plan that didn't make meaningful steps to reduce pollution such that we would see improvements in the Bay.

Mr. GOODLATTE. We could debate how much improvement has taken place already. Farmers would tell you that they have reduced the amount of nitrogen and phosphorus very, very substantially, some say by as much as 50 percent, under the voluntary state-managed programs of the past. But in fact, to your point, the first time the plans were submitted to the EPA, the EPA rejected all of the states' plans. Can they really be called state-developed plans when the EPA rejected every states' plans at one point in this process?

Ms. JACKSON. Sir, I had several conversations with the Governor of Virginia, and I know my staff was in constant contact with him. One of the folks working on this worked for the Commonwealth of Virginia on the Chesapeake Bay. And, yes, the plans were developed by the state. It was EPA's role in looking at this regional problem that touches many states.

Mr. GOODLATTE. EPA rejected the state's plan and said the EPA would backstop or take Federal action if the state did not alter the plan.

Ms. JACKSON. EPA pointed out realistically where it thought the plan would not achieve the reductions necessary to be able to really reduce pollution and restore Chesapeake Bay.

Mr. GOODLATTE. As part of the EPA's actions in the Bay, in February of last year the EPA sent five poultry processors in my district information requests, citing section 308 of the Clean Water Act. The letter stated that it was mandatory for the processors to respond and supply the EPA with specific information about the individual independently owned farms that the processors contract with.

Can you explain the authority EPA has to request information about individual small farmers who have contract arrangements with processors, but are not owned or operated by the processors? While the processors may be a permitted facility under the Clean Water Act, independent small farms that processors contract with are not.

Should this Committee conclude that the issuance of the 308 letters is an attempt by the EPA to try to use a processor's permit to regulate independent small farms?

Ms. JACKSON. No, you shouldn't conclude that, sir. But what you should conclude is that we have heard over and over from small farms that feed into these big processors that they are working under contract. And if they need more money—

Mr. GOODLATTE. There is no question they are working—

Ms. JACKSON. It is actually an attempt—

Mr. GOODLATTE. What authority does the EPA have to request information about individual small farms? They are not the processor.

Ms. JACKSON. EPA is trying to work with the processors to make them understand that their relationship—

Mr. GOODLATTE. The impression, I guess, from the processors is not that they are being told to work with. They were issued subpoenas to provide the information.

Ms. JACKSON. I don't believe they were subpoenaed, sir. I believe they were sent 308 letters.

Mr. GOODLATTE. What's your authority under section 308 to require processors to give you information about small individual farms?

Ms. JACKSON. We would like processors to realize that how they treat the small farmer—

Mr. GOODLATTE. That is not the question.

Mr. Chairman, I would ask the Administrator be asked to answer the question.

What is your authority under section 308 to require processors to give you information about farms that are not owned by the processors?

Ms. JACKSON. Section 308 of the Clean Water Act gives EPA fairly broad information-gathering authority which can be used for regulatory purposes.

The CHAIRMAN. I think you have your answer, sort of.

Mr. GOODLATTE. Sort of, Mr. Chairman. And I would strongly dispute the authority of the EPA to do that. I will have more on that later. Thank you.

The CHAIRMAN. The chair turns to the gentleman from Pennsylvania, Mr. Holden.

Mr. HOLDEN. Thank you, Mr. Chairman.

Ms. Jackson, following up on Mr. Goodlatte's discussion about the Chesapeake Bay, as you are aware, in the last farm bill, this Committee had a \$500 million investment in conservation practices for the Bay region. That was not easy to do. It was a carve-out for the region of the country. I remember Mr. Conaway asking a question about the validity of that program. And when we explained, Mr. Goodlatte and I, that we needed to do this because agriculture wanted to be part of the solution to the Bay problems, Mr. Conaway supported it, as did everyone else on this Committee, and it became the law of the land.

The ink was not dry on the farm bill. USDA had no time at all to implement any of these programs and we get hit with this Executive Order. I think you understand the frustration that Mr. Goodlatte and myself and our producers feel. And we don't know how they are going to comply with this. And you talked in your opening statement about transparency in the EPA's process. And I understand that the load allocations outlined in the Executive Order are based upon assumptions that EPA kept very internalized. And we need to shed some light in this process. Do you intend to make public the process EPA used to determine the load allocations? And can you tell us who was involved in determining the allocations? And why did you choose to keep this internalized instead of publicly released in a peer-reviewed process, as usual?

Ms. JACKSON. The watershed models that EPA uses to determine load allocations to the Bay are not secret. We have worked on those models for quite some time. The Department of Agriculture has their own assessment project and models that they use for their CREP program, sir.

Mr. HOLDEN. So you are telling me when you were enforcing or administering the Executive Order, you had consultation with producers?

Ms. JACKSON. We had consultations with the state regulatory authorities because that is who has to implement the TMDLs—the pollution diet numbers and load allocations.

Mr. HOLDEN. Don't you think you should talk to people who are going to have to live by those rules?

Ms. JACKSON. Well, certainly. That is part of our work if we are establishing a regulation. But the model for the Bay is simple. It gives an allotment to each state and then states come up with plans, watershed implementation plans, that they develop, and they say how we are going to meet their diet, how they are going to meet their allotment. And EPA's job and our best purpose, respectfully, is to try to work with states, to let states be in the lead, but to make clear we have an obligation under law as well to ensure that they make reasonable efforts.

We have also worked very hard with USDA and support putting resources into agricultural sectors in the Bay region to try to continue to help them. I would agree that agriculture has made some real strides in reducing nutrient pollution. I would also respectfully state there is more work to do.

Mr. HOLDEN. I don't think anyone in the process would describe it as simple—that I have talked to. You said you have examined the lawsuits case by case, Ms. Jackson. If you can tell me, what is the status of the American Farm Bureau and the Pennsylvania Farm Bureau suit for implementation of the Bay program?

Ms. JACKSON. I know that the American Farm Bureau has sued us to stop implementation of the program. In terms of the exact status of the suit, I don't know if we have entered discovery yet.

Mr. HOLDEN. Moving on to another subject. We all hear from our rural co-ops that they are concerned about EPA regulation on their coal-fired plants. I would just like to remind you as you move forward that we have made a lot of progress in coal country since the implementation of the Clean Air Act, and we can make further progress. But I caution you about going too far. I would say the same thing about fly ash. And I would like to invite you to come to the anthracite coal fields of Pennsylvania and see the progress that we have made in an environmentally sound way.

Prior to 1968 or 1969 before we had reclamation laws we had 100 years of dumping waste coal, raw coal, that was dumped there. They were eyesores. Terrible. After the reclamation laws, we were able to find ways to use that waste coal and we are turning it into electricity, while cleaning up our environment.

As a result of that, we have created hundreds of jobs. I would also caution as you move forward with regulation of fly ash to take into consideration that we are cleaning up the environment. We have job creation in the coal fields. And I would invite you to come to Pennsylvania and look at it.

I yield back, Mr. Chairman.

The CHAIRMAN. The gentleman yields back his time.

The chair now turns to the gentleman from Illinois, Mr. Johnson, for his questions.

Mr. JOHNSON. Thank you, Administrator, for being willing to be here with us. Just by way of quick background, I have a lot of pride as a Member of Congress in my record on the environment. I have a great deal of pride in the agricultural district that I represent.

But what I have a great deal more pride in, I think every other Member of this Committee does too, is our commitment to separation of powers. I would suggest to you, Madam Administrator, that your Agency in particular, not you particularly, but your Agency in particular, has grossly violated and overstepped any reasonable limitations with respect to the Executive Branch of the government.

Before we let your, I hope unintentional comments in your opening remarks go un-responded to, let me just specifically mention those three that you did, as well as some others. You talk about the urban myth with respect to the SPCC and milk as oil.

The fact of the matter is that you recognize that as soon as you took office in January of 2009, that your Agency specifically withdrew the proposed exemption that the previous Administrator would have exempted milk from the Spill Prevention, Control, and Countermeasure rule. You mentioned spray drift. I would specifically bring your attention to the fact that the EPA draft guidelines specifically provide or would have provided for a zero tolerance level.

You mentioned dust and the “exaggeration” with respect to dust. I would bring your attention to the fact that EPA staff recommended having a reduction of 100 percent of coarse particulate matter with respect to routine—if you want to call it routine—agricultural dust. I would also point out that over the course of your Administration and this Administration in effect—you can call it a cow tax—but the effect of many of your policies specifically by rule—not those of us who are elected to Congress, but by rule—to enact what amounts to a quasi cap-and-trade rule simply through your Agency.

I would also point out to you that with respect to atrazine, to backyard ponds and application of the Clean Water Act, your Agency has, time after time after time, intruded on the legislation authority. I am not suggesting that you have any ill intention. I am suggesting, however, Madam Administrator, that your Agency has been absolutely the poster child, if you will, for usurpation of legislative authority. I can only speak for myself. I know the Chairman, the Ranking Member, and other Members of this Committee are gravely concerned about what EPA is doing, and specifically, as it relates to agriculture.

In the agricultural sector, I don’t think I am over-speaking the case when I say that agriculture has been for the history of this country the backbone of our economy. It is the foundation of America. I think sometimes people from urban areas recognize that maybe a little belatedly. I think we all do, urban and rural both.

We are asked as a farm economy in a burgeoning world population that is projected to triple at some reasonable time here to feed the world, to feed America, at the very same, Madam Administrator, that your Agency and USDA and others, are conducting in a contravening manner regulations, economic burdens, settlement of lawsuit is a systematic attack on American farmers.

We are asked on the one hand—we asked our farmers: Feed the world. Become more productive. And at the same time, we have an Agency that is doing everything in its power to limit the tools that American agriculture has to do its job. I would suggest to you that

that is counterintuitive and something we on this Committee, and most Americans, don't like. I am not putting the blame specifically on you. I am simply indicating, Madam Administrator, that there are clearly some mixed messages that we are getting from your Agency and the Administration generally.

Let me ask you one question: I realize I am down to 45 seconds. I assume you are concerned about agriculture. I am interested to know in the 30 seconds you have left what your agricultural background is and what you believe the relationship is between EPA, and an agriculture economy that is being absolutely bombed by the entreaties of your Agency. Do you have agricultural background, for example?

Ms. JACKSON. No, sir. I eat food and I eat meat and I drink milk.

Mr. JOHNSON. Congratulations on being aware of that. Because, quite frankly, a lot of people aren't. I hope your subordinates would follow your example, realizing that we all eat. But go ahead.

Ms. JACKSON. Certainly, growing up—I am a city girl. I grew up in New Orleans, Louisiana. I had cousins who grew up—what we would call up the river—who did farm and keep animals. My great aunt did. And I visited her many times in the summer. I think those connections are important. And I have a tremendous respect for the agricultural sector. And as I said in my opening remarks, I believe that stewardship of the land and strides made in stewarding the land have led to not just improvements in our environment but incredible productivity in our economy.

Mr. JOHNSON. Well, thank you for your answers. Thank you for your patience. I hope you will stay around for a second round of questioning because a lot of people on both sides of the aisle are gravely concerned about what your Agency is doing specifically to our agricultural sector.

Thank you.

The CHAIRMAN. The gentleman's time has expired. The chair now turns to the gentleman from California, Mr. Cardoza.

Mr. CARDOZA. Thank you for being here today. I have to tell you that I agree with the sentiments that all my colleagues prior to me have shared. I would tell you that I believe that your Agency is the most unpopular agency in farm country from sea to shining sea, bar none. My first question to you is, have you heard of the term judicial activism?

Ms. JACKSON. Certainly.

Mr. CARDOZA. I would submit that your Agency often pursues a course of agency activism; where you want to have jurisdiction over an issue but the law may not quite say so. And so what Mr. Peterson and others are talking about here is that you settle suits that allow you to then go and pursue a course of action that you may not the right to do within a law. Do you have a comment with regard to that?

Ms. JACKSON. Yes, sir, I answered that question earlier but I am happy to repeat. What we do in settling lawsuits is consult with lawyers to determine whether or not we think there is significant risks; what the law requires.

Mr. CARDOZA. I did hear that previous explanation. You said as part of that explanation that you settle suits based on the grounds that you believe you can live with, if I recall your quote correctly.

Madam Administrator, you may be able to live with them, but the farmers in farm country can't, oftentimes. The realities are that you are making it much more difficult every day to do exactly what my colleagues here, Mr. Johnson and others, have talked about—providing the food, fiber, and benefits of farming to our constituents.

I would like to ask you a specific question regarding recently proposed rules to withdraw food tolerances of sulfur dioxide, a product critical to the protection of U.S. agriculture and especially specialty crops in California. This move is puzzling to me because it will negatively impact public health by increasing the potential for contamination and diminish producers' ability to export goods to foreign markets. Why is EPA issuing this proposal now? Can you tell me who are the actual beneficiaries of this EPA proposal? And why is the Agency taking such action, given the importance of this product to agriculture and public safety?

Ms. JACKSON. Yes, sir. The EPA's Office of Pesticides Programs found through their analysis that the tolerance of sulfur dioxide in food did not meet the Federal Food Safety Act, the child safety standards that we are authorized by Congress to employ. Those tolerances became an issue because we were sued. On the plain facts of the law, we could not make an argument that the tolerances were acceptable. This issue is also related to sulfur dioxide in drinking water. We have, for quite some time, been working with the agriculture sector, within the confines of the law, to give them time to phase out use of sulfur dioxide. A person's intake of sulfur dioxide is determined by many things, including, in a very small way, sulfur dioxide.

Mr. CARDOZA. Madam Administrator, are you aware of any member of your Agency, including yourself, who has ever requested an outside group, environmental organization or other group, to sue your Agency?

Have you ever sought out a suit?

Ms. JACKSON. If you are asking me if I have personally sought out a suit—

Mr. CARDOZA. Anyone from your Agency.

Ms. JACKSON. Not that I am aware of, sir. That would be highly inappropriate.

Mr. CARDOZA. I agree with you about that. Every year USDA and EPA works in conjunction to release the Pesticide Data Program Report. This report is an important tool for EPA in setting those tolerances that you just talked about for pesticide residues of various commodities. The report demonstrates a robust reporting process, and year after year shows the vast majority of fruits and vegetables fall overwhelmingly below the tolerances set by EPA.

Yet every year there are groups which misconstrue this data to suggest conventionally-grown commodities are unsafe for consumption. Can your office begin defending both the robust process which generates the reports, and the findings which demonstrate that the safety of the food supply is, in fact, safe?

Ms. JACKSON. Sir, the Agency is committed to doing its job. It is required to do that report. I committed to using the best science possible in that report. I will simply say this. Our Office of Pesticides Program has been working for decades now under FIFRA,

under the law, reviewing pesticides, making registration decisions, making tolerance decisions, making labeling decisions, oftentimes with very little controversy. We review hundreds of those a year. So, yes, we are committed to doing our job and not—it is not our job to opine on the report but simply to produce it for the public.

The *Pesticides Data Program Annual Summary* is produced by USDA, and the data is used by EPA in developing risk assessments for pesticides.

Mr. CARDOZA. Mr. Chairman, may I ask a follow-up on that?

The CHAIRMAN. Seeing no objection, 1 additional minute.

Mr. CARDOZA. My point is, Madam Administrator, that if you generate a report that is generating controversy and is being erroneously misconstrued, if the report indicates the food is in fact safe, but others are saying it is not, based on your report, don't you have an obligation to defend the food safety of this country and the misinformation that is being put out there about the food supply?

Ms. JACKSON. I believe our obligation is to present the facts based on good science. And obviously what other people say or do in our democracy is up to them.

The CHAIRMAN. The gentleman yields back his time. The chair would like to remind Members that they will be recognized for questioning in the order of seniority for Members who were here at the start of the hearing. After that, Members will be recognized in the order of arrival. I appreciate my colleagues' understanding.

With that, the chair turns to the gentleman from Texas, Mr. Conaway, for his questions.

Mr. CONAWAY. Thank you, Mr. Chairman. Madam Administrator, thank you for coming. As the Chairman said, I am from Texas. We have a particular angst about your Agency and the way that you have treated the entire state with respect to the Clean Air Act and the partnerships that we previously had and we are working on it. But that is not my question.

As I talk to farmers and ranchers in my district, much like Mr. Cardoza, I get some of the angriest, harshest comments about your Agency from them. And they are mad. But underlying that mad is a fear of your Agency. And it is quite unbecoming of an American Agency like yours to be feared by the folks that they believe you are putting them out of business, almost intentionally. You have a wonderful opening statement that you didn't read. You say the perfect things: At the same time, I am very aware farmers operate under unique and challenging circumstances, small margins, international competition. Perfect. Couldn't have said it better myself. I may plagiarize it and use it at some point in time. But when you put out regulations that, specifically and on purpose, raise their cost of doing business and make them less competitive, or put them at a disadvantage to the rest of the world, then they begin to fear your reach into their quiet lives.

I live in Midland, Texas. I was driving to Garden City, Texas, which is a beautiful spot, the other day, and the wind was blowing 40 to 50 miles an hour. It wasn't farm country, it was just pasture. The coarse particulate was so thick across the road, we had to drive very slowly because we couldn't see through it. Your statement at page 15 says you will issue standards on coarse particulate matter. That puts—the folks at west Texas, who are used to a way

of life in which coarse particulate matter is a way of life, don't quite understand how you could put standards in place of whatever level that they could abide by. And so that creates this disdain for your Agency because of the way it looks under their watch.

With respect to the EPA and the Administration—the Federal Government is about to regulate waterways. Is it the intent of the EPA and the Administration to have the Federal Government regulate waterways and to regulate and enforce how farmers will operate their farms, or will it respect the Congressionally-mandated partnership between EPA and the states established under the Clean Water Act, particularly in light of how Texas has been treated recently with respect to the Clean Air Act?

Ms. JACKSON. Well, sir, I think you are getting at nutrient pollution, is that right? It is our intent, with the exception of the State of Florida, where we were required under an agreement reached by the previous Administration—

Mr. CONAWAY. I understand that. Would you compare that then to what you did under the Clean Air Act with respect to stripping Texas of the opportunity to continue to run a permitting process that has demonstrably improved clean air in Texas. And yet you and your Administrator in Dallas apparently, in what appeared to be to us in a pretty arbitrary way—

Ms. JACKSON. There is one very clear similarity, which is the decision that the Texas permitting program did not meet the Clean Air Act was also made by the Bush Administration.

The permits in Texas do not meet the legal Federal requirements under the Clean Air Act, and we have been working in Texas to bring that program into compliance with Federal law. That determination was made in the last Administration. The work is certainly being done and joined here. And we work with several companies in Texas to get their permits up to speed.

Mr. CONAWAY. But you took it away from the state.

Ms. JACKSON. We have not taken it away from the state. Although, in those cases where people need permits—for example, greenhouse gas permitting, where the state has sued us and has indicated they have no intention of amending their state implementation plan to deal with greenhouse gases, EPA is running the program in the state, because otherwise sources in Texas would have no way to comply with the law.

Mr. CONAWAY. Well, I will wait until a second round. Thank you.

The CHAIRMAN. The gentleman yields back the balance of his time.

The chair recognizes the gentleman from California, Mr. Costa, for 5 minutes.

Mr. COSTA. Thank you very much, Mr. Chairman.

Administrator Jackson, I appreciate the fact that you are here. I want to try to cover quite a bit of ground here in the 5 minutes allotted. I want to talk about, obviously, the registration process for restricted materials, both herbicides and pesticides. I want to talk about the issue on dust, although that has been covered quite a bit. And I would also like to touch upon water.

Before I do that, though, I want to get a clear understanding. I have dealt with these issues at the state level and now at the Federal level for many years; and you, as an Administrator, and all

those who work under you, as those in California, first begin their task at looking at risk assessment *versus* risk management, right?

Ms. JACKSON. That is a framework we use quite often.

Mr. COSTA. And so when you are trying to assess the risk on the potential health and safety to folks, whether it is consuming food or folks just in everyday walks of life in rural America or everywhere else, you have to make an assessment in where you can do the most good to protecting that health and safety, right?

Ms. JACKSON. Certainly, sir.

Mr. COSTA. It just seems to me that all too often, all too often, as the science has gotten better, as we look at parts per million, which was the initial ability to test 20, 30 years ago, to parts per billion, which we were able to do in the last 15, 20 years, to now parts per trillion, that we do ourselves a great disservice, whether it is at the Federal level or the state level, at attempting to chase down every part per trillion in making those assessments on risk management. Would you agree or disagree?

Ms. JACKSON. I would certainly agree and have testified before that as science has gotten better, it makes those decisions harder, because we can see pollution we couldn't see before.

Mr. COSTA. But you make an assessment as to where the quantifiable risk is going to be. I mean, how many gallons of water do you have to consume per day at parts per trillion, as we have in naturally occurring arsenic underground that has been there for millions of years *versus* other protections that you could provide on something that is parts per billion or parts per million that you can have far more impact?

I submit to you, you don't do a very good job of that—not you, personally, but the Agency—nor have we done a very good job of that for the last 20 years. We are out there chasing anything that is detectable. How do you make a quantifiable judgment on that basis?

Ms. JACKSON. When I got to EPA, one of the things I said was that we had to use sound science, the best science. And one of the other things that has happened is we have initiated numerous scientific studies to get facts so that people aren't operating from a precautionary approach as much as a knowledge-based approach.

Mr. COSTA. We can talk about this a lot more. Let me get a little further into the weeds here, because I want to pursue that later on at a separate time.

Why did your Agency decide to re-review the study with regards to atrazine?

Ms. JACKSON. There has been a lot of data, I believe the number is over 150.

Mr. COSTA. Everybody agrees, there has been a lot of data, and there has been review. Why did you decide to re-review it?

Ms. JACKSON. I would just like to answer the question.

Mr. COSTA. No, I know. But there—

Ms. JACKSON. So there was a review. It was based on data as late as 2003. Since 2003 up to 2009, there has been lots of data, including data from the registrant, on impacts from drinking water. So rather than have that data sit there and scare people, we decided to do a scientific review.

Mr. COSTA. Well, I don't think that it has been portrayed that way. Let me move on.

It was talked earlier about—my colleague from Texas—I have to call them dust. We can call it PM<sub>10</sub>, or we can call it PM<sub>2.5</sub> or coarse materials, but in Fresno, California, we just call it dust.

What are you going to do to ensure that normal farming operations will not be considered noncompliant under any new large particulate matter regulations? I mean, we have made tremendous strides, as you know, in dealing with this issue in nonattainment areas.

Ms. JACKSON. I absolutely agree. And I also think there is a general acknowledgment that coarse particle matter is a health hazard, and that agricultural and rural areas have worked with their states and counties to minimize that where they can. The law requires a 5 year review.

And I want to clear up another myth, because it was repeated again. EPA has not proposed a new rule on dust. We have not proposed tightening it. The review by the Scientific Advisory Committee, which is listed in the statute, says that it is equally possible to retain the current dust standard as to change it.

Mr. COSTA. Well, very quickly. We didn't get a chance to touch upon fumigants, soil fumigants, which are a critical situation. Notwithstanding the Montreal Protocols, the efforts to provide new tools for soil fumigants for a host of commodity crops is leaving little tools in the toolbox to allow us to compete when many of these fumigants are being used all over the world. And I for one believe—and, Mr. Chairman, thank you for your indulgence here—that the Agency has to do a far better job in allowing us to reregister and provide alternatives on soil fumigants than you have done thus far.

Thank you very much. And I will wait for the second round of questions.

The CHAIRMAN. The gentleman yields back his time.

The chair now turns to the gentleman from Florida, Mr. Rooney, for his 5 minutes.

Mr. ROONEY. Thank you, Mr. Chairman.

Ms. Jackson, my questioning is much along the lines of Mr. Goodlatte's in that I also sponsored an amendment to the recent continuing resolution to defund the EPA with regard to a numeric nutrient rule in Florida.

As you may recall, last spring I, along with a bipartisan group from the Florida Delegation, met with you over at your building to discuss the numeric nutrient rule for Florida, and at that time we basically asked you for two things, and that was a true, independent, complete third-party review of the science, a third party agreed upon by yourself as well as the Florida DEP, Department of Environmental Protection. We also asked for a complete economic analysis of the rule, including a cost-benefit analysis. And the reason for that is there is a huge gap between the EPA and Florida's DEP and DACS estimate, what the estimate costs to be would be. The EPA says it is about \$100 million a year, but Florida DEP and DACS estimates over \$1 billion a year. So obviously there is a huge gap there, and there is a lot of unanswered questions here, which is the reason for the request.

Additionally, you may remember that in our meeting you continued to refer to the needs of the plaintiffs in the lawsuit, and that you needed to be sensitive to the plaintiffs in this lawsuit, which I believe is Earth Justice. But you may also remember us pushing back, and I can say that over 21 Members of the Florida Delegation out of 25 voted in favor of my amendment to defund your efforts, as well as our freshman Senator Marco Rubio, who entered similar language over in the Senate; our Senator Bill Nelson, who was successful in getting certain delays, a Democratic; our Governor; our Agriculture Commissioner Adam Putnam, who was then a Congressman, at that meeting. The State Attorney General, the Chamber of Commerce of Florida, the Rural Water Association, the League of Cities, and the Farm Bureau all vocally opposed this rule.

So while I understand that you need to be sensitive to plaintiffs, I again remind you that we need to be sensitive to our constituents. And the fact that we don't have an agreement between all these parties—they are at least willing to try through some kind of third-party independent review—leaves us in the situation where it is us against you. And I kind of find it interesting that, so far, all the line of questionings between Members of this side of the aisle and that side of the aisle all seem to be us against you. And I have never seen that before as a Member of Congress, and I think that that should tell you something.

My question is, where are we going? Where are we now? I mean, in the Senate the CR was voted down, so we are kind of in limbo. And I guess I just want to ask you, will you commit, moving forward, so that we can try to bring—I want to be the environmental Congressman from my district. I would love to have that feather in my cap, but I also represent a lot of farmers.

I just want us to get to the point where the farmers, the Chamber of Commerce, Earth Justice can all sit down and try to come to a number that it is not just EPA's number, rather than, you guys are just going to have to deal with it, and I don't care if you don't think that you can get there.

So as we move forward, can we get some kind of commitment that EPA and Florida DEP at least can come up with some kind of agreement to have a third-party review and try to make people a little bit happier even if they are not going to get everything that they want?

Ms. JACKSON. Sir, I am happy to continue our work. We have been working very hard with Florida DEP. There is a 15 month delay in implementation of the rule, as you know. Florida's DEP has set numeric standards and nutrient criteria around the state. We are working to review those to see where they can be used basically in place of the numeric standards we were required to do as part of the Bush Administration's settlement. So I am happy to continue to work—and also on the costs.

I do want to point out that when we had that meeting, we did agree to do cost-benefit analysis. We did do it. There is still concern over it, and I am happy to continue those conversations. We agreed to do independent scientific review of the coastal standards. That is being done. That is why there are no estuarine standards proposed. And I am happy to continue to work on this issue.

I just have to point out that, as you say, there is severe water quality degradation in Florida from nutrients, so I would like nothing better than to find a solution that works for everyone.

Mr. ROONEY. If I just may, I appreciate that. And the fact that we are looking for independent third-party review for the coastal, I think it is just as vital when we talk about the rivers, lakes, and streams as well.

With that, Mr. Chairman, I yield back.

The CHAIRMAN. The gentleman yields back.

The chair recognizes the gentleman from Minnesota, Mr. Walz, for 5 minutes.

Mr. WALZ. Thank you, Chairman Lucas, for your time.

And, Administrator Jackson, thank you for coming here today. Mr. Rooney kind of hit on what I hit on. I am not sure that we could get a unanimous vote that today was Thursday, but we seem to be getting along the same lines here.

And while I agree with that, I hope it doesn't come to an "us *versus* you" type of thing, because I come from a proud district, one of the leading agricultural-producing districts in the country, but also leaders in environmental standards, leaders of keeping that clean. And I know, as a father of young children, just like my agricultural producers that are fathers of young children, I want them to breathe healthy air, drink clean water, and enjoy the fruits that, again, as is often said, we didn't inherit this from our ancestors; we are borrowing this land from our children.

So I don't think it is mutually exclusive to get and recognize our producers as also good stewards of the land and also those of us who want to see that continue on to get right. And if you will, I kind of take a "don't throw the baby out with the bath water" approach. Especially if the bath water is contaminated, we have to do that. But if it is not, get it straight.

And I say this because as a young man I lived in the People's Republic of China for a few years, and I know when you have environmental degradation what it does. There are areas that have catastrophic problems.

But what my colleagues are saying is true, Ms. Jackson. Our producers are deeply concerned. These are good folks that feel like they are being overwhelmed. They feel like their livelihoods are under attack. And, I think, quite honestly, that they feel a lack of respect that they are actually right on, that they are trying to make a positive difference.

So I share that with you in understanding how difficult your job is, but my colleagues are right when they are saying this.

I have a couple questions for you. I think one of the things for me, how do you go about cost-benefit analysis of different sectors of the environmental impact of changes? What would happen? And I agree, and I am glad you put to rest some of the myth from milk spills or things like that. But when we hear the dust issues—and you said, again, putting that to a myth—but when a rule, a real rule, is put into place, how is that economic impact assessed?

Ms. JACKSON. Well, we are required, as part of the administrative procedures, to look at the cost of the rule, how it affects the sector, and what benefits there might be, either public health bene-

fits, especially in an air rule, or benefits to, say, fishing or other industries from clean water, drinking water benefits as well.

Mr. WALZ. Do you think Mr. Rooney's point, though, on the third party, the good point on this, a third-party analysis, and some of those things? Whether it is fair or not, people's perceived reality is their reality. My producers are very skeptical of EPA and their analysis on this. How do we get around that? How do we make science and data the driving factor?

Ms. JACKSON. And that is my goal as well, sir. I think that there are times when independent analyses are very important, like the National Academies independent analysis on Biological Opinions, like the work we are doing on atrazine. I know that is controversial, but that has been a very open, scientific process with a scientific advisory board who are looking at these questions. I actually think, at the end of the day, it will cause people to have the same level of information, if you will, because it is not EPA, it is not the other side.

Mr. WALZ. It is an important part. And this is not new to your tenure in this. I went back and I spent a lot of time, because it is a fascinating discussion. I think there is something to be learned on the banning of DDT and the implications. You know that. There is a whole stream of thought that goes from the far edge to some fairly mainstream science, but there was a cost-benefit analysis in how that was implemented, and we are at the point again where people are questioning that. So I thank you for where you are at on this.

My question is, is there something better we can do from EPA to get out to the stakeholders? Can you do field hearings in our districts and things like that? I think it is important. I appreciate you coming, and I appreciate your trying to be candid, and there are great questions here. I would love to see my constituents have that ability to hear, to ask, to interact. I know my job is to represent them because you can't be everywhere, but is that something EPA would try and do? And it is not a PR tour. It is an informational tour, and it is the stakeholders believing they are being heard. I think these concerns on both sides of the aisle that producers don't feel like they are being listened to, those are valid from them.

Ms. JACKSON. Yes, sir. And anything I can do either personally or through the Agency to increase the amount of communication, I am happy to. We tried to count up. I know we have done hundreds of meetings with various folks just in the 2 years since I have been Administrator at the political level, but I also think listening sessions are good. We have offices out in the various regions who do a lot of work as well, and I am personally committed to increasing the amount of time I spend on communication with this sector because it can only help.

Mr. WALZ. I certainly appreciate that.

I yield back, Mr. Chairman.

The CHAIRMAN. The gentleman yields back the balance of his time.

The chair now turns to the gentleman from Ohio, Mr. Gibbs, for his 5 minutes.

Mr. GIBBS. Thank you, Mr. Chairman.

I want to pursue a little bit—I heard you say in your testimony, I appreciate if you said this—that the numeric nutrient standard, that it would not apply to other areas. Because I have heard rumors that there was thinking about the whole Mississippi River Basin. Is that true that that is not the plan and the intent of the EPA to move that way?

Ms. JACKSON. That is not the plan of EPA, sir. And I do want to be clear on that, because I know there is a lot of fear out there that other areas are next.

We believe that states—and many states in the Basin have already done a great job of starting to cut down on nutrient pollution into the Mississippi River Basin. And we would like to—

Mr. GIBBS. Okay. I got the answer.

I want to follow up. I am a little concerned in the Florida situation, I am learning about that, and as you know, Florida is where all the phosphorus as a major crop nutrient comes from. And if we don't get it from Florida, I guess the other sources would be Morocco, Saudi Arabia and China, which would severely increase the cost to our producers across the United States.

My understanding, there are some permits that have been lingering for several years to increase the mining capacity in Florida for that. So I have a general concern about permits not—I guess it would probably be section 404 permits or whatever they are, to move forward with those operations. And then, of course, I follow that a little bit more with the unprecedented action of the EPA here recently of revoking a permit after there was final approval done after 3 years. I know the EPA, you will probably say it was a veto, but it was a revocation, and I think that is unprecedented.

So I would like a comment on what is happening in our phosphorus-mining operations in Florida that supply nutrients to our American farmers.

Ms. JACKSON. Sir, I would have to get that answer for you because I don't know the status of any permit cases down there. I haven't had any personal involvement.

Mr. GIBBS. Well, we need to look into that, because I know there is one substantial permit that has been lingering since 2006 or 2007, and it is key to keep those operations going down there.

Also, what would be your definition of *navigable waters*?

Ms. JACKSON. That is a much debated and discussed topic. So I think I will—suffice it to say that I recognize in my job that the jurisdiction of the Clean Water Act and its limitations to navigable waters and the two Supreme Court cases that spoke to that issue are all very important and have created quite a bit of uncertainty out there in terms of jurisdiction.

Mr. GIBBS. I am concerned about that. I know that your Agency will be putting out guidance to move forward to that, and I am just concerned that there is a broad expansion of your Agency's jurisdiction on that that is going to have an impact on our economy and agriculture in general. Wouldn't some of that be better left up to states; waters that go beyond what most people would consider navigable?

Ms. JACKSON. Right now, as a result of the two Supreme Court cases, there is great variation and confusion about what waters are covered under the Clean Water Act. So EPA has been developing—

has not yet released, but if we do release, it will be with full public comment guidance that is intended to relieve some of that clarity. We have heard from the regulated community that they need certainty.

I do want to point out that we are very well aware of the exemptions that agriculture currently holds from the Clean Water Act, and very respectful of the fact that those exemptions are statutory. And I don't see any way, nor, of course, any reason, to deal with that matter.

Mr. GIBBS. On pesticides, would requiring pesticide users to obtain NPDES permits under the Clean Water Act—would that increase the environmental protection?

Ms. JACKSON. EPA took the position that there would not be a need to get a separate permit, but the courts found otherwise, sir. So the courts have ruled that if you apply pesticides to waters—not on land, not terrestrial applications, directly to water—then you need a Clean Water Act permit.

EPA has been working with the states, and just recently requested from the court another delay to continue working with states, on what we call a general permit. General permits are, I will say, the least burdensome—I don't know any other way to say it—permit.

Mr. GIBBS. I appreciate that. For the applicators, under the general permit, is there any protections in the Act that would protect the citizens from lawsuits? Is there any legal protections—when they are applying chemicals under a FIFRA-compliant label, is there any protections?

Ms. JACKSON. That is exactly the problem. The court decision—if someone right now applies without a Clean Water Act permit, they could be subject to lawsuit, citizen suit. So the general permit would provide protection. It would require registration and protection. But it wouldn't—what we have been working on, it would not apply to people, it would only apply to land. And it doesn't apply to runoff or irrigation return flows. It applies if you apply pesticides to water on purpose.

Mr. GIBBS. Thank you.

The CHAIRMAN. The gentleman's time has expired.

The chair now recognizes the gentleman from Oregon for 5 minutes. Mr. Schrader.

Mr. SCHRADER. Thank you, Mr. Chairman.

Switching to forestry, if we may, for a minute, Madam Administrator. On January 12, you announced EPA would promulgate a rule deferring the regulation of biomass carbon emissions under the current greenhouse gas tailoring rule for 3 years while the Agency reviews the impacts. I appreciate that actually. This is a case where a lot of scientists and community came together and there was bipartisan questioning. It seemed like a fairly sudden reversal of the old feeling that biomass fuel is carbon-neutral over its life cycle. So I appreciate you taking a longer view of it.

Some particular questions just so I understand more exactly where we might be going. I think that one of the big concerns that I am hearing about, and have myself, is that the actual initial rule, the tailoring rule, introduced a little bias into the regulation of biomass carbon emissions. Can you assure us that that won't be the

case, and that the proposed rule will be neutral on whether biomass carbon emissions ultimately require regulation?

Ms. JACKSON. The time frame that we announced, Mr. Schrader, was intended to make sure we could get the scientific data and information necessary to be able to look at the carbon emissions for various forms of biomass and be—and determine where we have carbon neutrality, where we might even have a benefit, and where there may be concerns.

Mr. SCHRADER. But the interim rule itself will be neutral and not bias the ultimate outcome?

Ms. JACKSON. Yes, sir. I think I understand the question. Yes. The intention was to give us a full 3 years and to make another rulemaking before that expires so that biomass facilities wouldn't be subject to uncertainty in the meantime.

Mr. SCHRADER. I really appreciate that. What certainty can I have that rulemaking will be finalized by July 1?

Ms. JACKSON. Well, EPA has committed to it. And I think that, again, it was intentional that we have the study and then commit to the rulemaking for the exemption. And, of course, that will go through public comment as well so people will get a chance to see it.

Mr. SCHRADER. Very good.

In that January 12 letter, you also committed to the scientific review of the biomass combustion, and you ensured, I guess the quote would be, "will ensure that partners within the Federal Government and scientists outside of it with relevant expertise, claiming equal roles in the examination," kind of getting at some of the background questions we have had here, the third-party issues. This scientific review will later be followed up by the rulemaking.

When can we expect to see an explanation how you are going to reach out to outside parties and when the scientific process will start?

Ms. JACKSON. Sir, let me get you a schedule through the chair for the record. But I will commit that we are looking at an independent process, and we have standards for peer-review and scientists. So that will be a very public process as well.

Mr. SCHRADER. Very good.

I guess another question that has been discussed a little bit is the Federal appeals court in Seattle has questioned the authority of EPA to establish by rule nonpoint source status of forest roads. I am a little concerned about that. Most of the roads are relatively indistinguishable between local county roads and farming roads. And I think, again, it has been brought out today in the hearing—does EPA plan, I guess, at this point to stand behind its long-standing regulation to avoid imposing additional burdens on forest owners and farmers and local governments by declaring what has been nonpoint source problems to be point source?

Ms. JACKSON. Please let me get an answer for you for the record, because I don't know off the top of my head where we stand with analyzing that court case and what it might mean for our Section 319 Program, our Nonpoint Source Program.

Mr. SCHRADER. I appreciate that for the record. That would be great if that is possible.

Mr. SCHRADER. Just a last editorial comment. I am concerned about the Agency. The tenor of the conversation here is pretty tough, and I have become more concerned. This is a tough, tough time for this great country of ours. The President has called out for a little less onerous regulation. And, I mean, I understand there are good people trying to do good work, but this isn't the time to beef up stuff in addition to what people are struggling to deal with already, whether it is a local community or a forester or a farmer.

I am concerned at this point that we are looking a little bit like the Department of Education under No Child Left Behind. There is this artificial standard; the benchmarks keep getting moved. And even though you make progress, you fail. And I think that is where a lot of the rural communities and a lot of the farmers and, frankly, a lot of Americans are feeling the hurt right now. So just as a word.

Thank you for your testimony. I yield back.

The CHAIRMAN. The chair now recognizes the gentleman from Georgia, Mr. Scott.

Mr. AUSTIN SCOTT of Georgia. Thank you, Mr. Chairman.

Ms. Jackson, I understand that we have a mutual friend in Dr. David C. Bridges, the President of Abraham Baldwin Agricultural College. You made a statement when you were in Georgia that, as the EPA Administrator, there was no more important agenda for the EPA than keeping farmers on the farms. And I think, as we have gone around this room, you can pretty much tell that it seems to us and those of us who want to support agriculture that we can either have the EPA on the farm or the farmer on the farm. And the farmer is certainly the one that I am in favor of. I certainly want my child to be able to swim in the same rivers I did I and understand that.

But I want to ask just a couple of quick questions. Cost-benefit analysis on environmental impact studies on your regulations, are they done? And how good of a job do you think that the EPA does in determining the loss of private-sector jobs by the new regulations that are proposed?

Ms. JACKSON. They are done, sir. And we certainly do the best job we can. We have recently stepped up our jobs analysis to try to make it more robust. EPA's history on the cost of regulations is that usually our estimates are much higher than compliance costs tend to be, and I think that is an effort to err on the side of the services.

Mr. AUSTIN SCOTT of Georgia. With that said, can you tell me what a self-contained breathing apparatus costs?

Ms. JACKSON. I don't know off the top of my head.

Mr. AUSTIN SCOTT of Georgia. Well, ma'am, your department, as I understand it, has said that every farmer must have that when they are spraying their field. And if you don't know what it costs, I mean, that is an additional cost to the farmer. Every time you say the farmer has to have something, it is an additional cost to that farmer. It means that they are less profitable and less likely to be able to stay in business.

So who will be administering the registration and the fitting for the self-contained breathing apparatus?

Ms. JACKSON. Sir, can you give me a little bit more information? What regulation you are referring to?

Mr. AUSTIN SCOTT of Georgia. I will be happy to confer off the record. I don't want to waste the rest of my time here.

I would point this out, and then, Mr. Chairman, I want to yield the rest of my time to Representative Fincher as we are about to go vote.

I hear what you are saying about compliance-related issues. I would appreciate a meeting with you to discuss an issue in my district, where one of your—this was a paperwork violation where a constituent was fined \$50,000 per house for not having lead-based paint disclosure forms signed. It was a paperwork violation. They were told if they paid it within 30 days, it would be reduced from \$150,000 to \$50,000. That is the approximate numbers on the case. That really is, for a paperwork violation—my personal belief is that that is very abusive, not from you, but from the individual member that works for you that did that.

And with that said, Mr. Chairman, I would like to yield the rest of my time to Representative Fincher.

Mr. FINCHER. I thank you.

Thank you, Ms. Jackson, for coming today and spending some time.

As an active farmer, seven generations, I am very familiar with the procedures and taking care of the land, taking care of the air, taking care of the water. My family is committed to leaving the world a better place now for our children and in the future. But at the same time, Chairman Lucas, hit on this when we started the day. Where is the end? Where does the jurisdiction stop for the EPA? Is it just an end-around all the time? Don't you think we would be better off making these regulations at a state level more than the Federal Government?

The image that the American people have, and especially the farmers at home—I mean, my district is very rural and very ag-related—is that Washington doesn't know best, and the EPA is out of control. And basing so much information on science is where we should be, not just theory. And it is a real problem, and we just—we have to move forward. And we are going to do that, I think.

But there is a divide now between home and here. And it just seems like every piece of legislation from the Clean Water Act and going down the line to spray drift—I mean, I have handled more pesticides probably than all of this room put together over my lifetime, and I am pretty healthy.

Nobody wants to protect the environment any more than the farmers, but the states and local governments and the farmers can see after it and do a good job of it, I feel, without Federal bureaucrats breathing down our throats.

The CHAIRMAN. The gentleman's time has expired. The witness may answer.

Ms. JACKSON. Well, all I can say, sir, is that I appreciate your position and admit to you that I ran a state program. The vast majority of EPA's programs of the Federal laws in this country are implemented through the states, as you must know, from the pesticide world and others. So thank you.

The CHAIRMAN. The chair would note to the Members and the witness that we have four votes on the floor. These are the last recorded votes of the day. I would suggest that we will turn to the gentleman from North Carolina for his questions, Mr. Kissell, then we will stand in recess until the conclusion of votes and will return. We appreciate the cooperation of the Administrator. But I would ask Members to return promptly after the votes so that we may finish in the spirit of officially easing everyone's time.

The gentleman from North Carolina, Mr. Kissell, for 5 minutes.  
Mr. KISSELL. Thank you, Mr. Chairman.

Thank you, Madam Administrator, for being with us today. And I will move quickly, knowing that votes are coming up.

Madam Administrator, perception is reality, and I think what you have heard today that there is a strong perception that the EPA does not fully understand, or is not ready to work as closely with the ag community in a lot of ways. You had five examples of myths earlier on. I am sure that, after having debunked those myths, we could fill that ledger up with many, many more. And that is part of the problem is that there is so much uncertainty that is involved.

I would like to, as the Chairman did earlier, compliment the Agency and our Committee, too, of working together to counter the court ruling to come up with legislation that, in effect, does what we intended in Congress to do. And I think that, as an example, we probably should need to do that more; that you talked about and the Ranking Member talked about some of the court decisions that we accept or some of the lawsuits that we settle without perhaps having the Committee's input. And it is kind of like we just say, "Okay, this is the best we can do." But is that the intent of what we want to do? And I think we need more communication.

There is the idea of the law of marginal returns, that the additional requirements, what do they produce in terms of actually improving the environment? And I move into a question here, and it is along the lines of uncertainty.

There is an industry that is a heavy industry, high-energy industry, located well out of my district that is interested in moving to my district. They are concerned about the particulates, the PM rulings. They can meet the EPA's standards now of 15 parts per billion, but there is that rumor out there that it is going to be changed to 12 to 14, which they could not meet even in a new facility. So they are kind of at the point of saying, why should we even try? Why should we improve if we can't meet what is going to be a new regulation?

A large percentage of our farming income, we know, comes from off the farm, because farmers and their families just can't make enough money just simply farming. When we have industries that help provide those jobs in rural areas, but yet they can't come to those rural areas because of uncertainty, then that 12 to 14 parts per billion is almost down to the natural levels.

What can we tell these companies that will help them feel more certain that they are going to have input and ideas that the EPA is working with them, as my colleague Mr. Schrader said, that this is not the time to really be looking for those extra ounces of regula-

tion when they won't produce that much in terms of improving the environment?

Ms. JACKSON. Well, sir, any regulation EPA does is going to be subject to full public comment. There is quite a bit of stakeholder input on the development of Clean Air Act regulations. The particulate matter regulations, both fine particles and coarse particles particulate matter, saves lives. And so what the Clean Air Act says EPA must do is every 5 years review the science to determine how best to protect human health, how best to—

Mr. KISSELL. And I hate to interrupt, but I know my time is about up. But within the every 5 years, if there is uncertainty, what is it going to be next time, what is it going to be next time, how can industry plan, and how can our farmers plan and know with certainty?

And I am going to yield back on that because I know everybody best to go vote. So I appreciate it, and I yield back.

The CHAIRMAN. We probably have 6 minutes before the conclusion of this first vote. I appreciate the Administrator's indulgence of our time and voting requirements. The Committee will stand in recess subject to the call of the chair.

[Recess.]

The CHAIRMAN. The House Agriculture Committee will reconvene to continue hearing from our witness, the Administrator of the Environmental Protection Agency. With that, I would now turn to Mr. Tipton for his 5 minutes.

Mr. TIPTON. Thank you, Mr. Chairman.

Thank you, Ms. Jackson, for being with us this afternoon. I have a couple of concerns, obviously, as I think you probably heard throughout this afternoon, and it is really getting back to the costs that are being borne by the American people.

I agree with your earlier statement, as I believe everyone does, that we all want clean air, we all want clean water, but there is a general sense that the EPA is over-reaching. As I toured throughout the Third Congressional District of Colorado, it was remarkable to me. We have held better than 27 town hall meetings, and within no more than 5 minutes, at each one of these meetings, the EPA and over-regulation impact on communities comes up.

I think the primary concern ultimately is not necessarily with the goal. It is overreaching. And we are by *de facto* actions having regulatory tax increases on the backs of struggling American families right now, families, senior citizens who are on fixed incomes that simply can't afford any more. And the EPA continues to regulate and to pass those costs on in the forms of ultimate cost to the consumers. All of this regulatory activity does cost money. It is not only to the farmers and small businesses, but, as I noted, to the taxpayers.

Concerning the budgetary pressures that we currently find ourselves under, the EPA and all Federal agencies, I would like to know how are you prioritizing your expenditures? Specifically, since that was part of the topic in today's conversation with you, was the reevaluation of the atrazine a high-priority project for you to spend funds on, or do you believe that the appropriations that you are going to have for this are simply going to be limitless? When you are going to be going into the evaluation, are there going

to be any of the other chemicals that you are just going to perform unscheduled reviews?

Ms. JACKSON. Thank you, sir.

The reevaluation of the new science that has emerged on atrazine is part of our base budget, and we are intending to continue funding it so that we can complete it. It will actually be quite helpful because we know we are having a National Cancer Institute study that we have been expecting, I believe, next year. So there will be a need to continue to evaluate these studies that have been commissioned on atrazine and to continue our work.

I see that very much as part of our commitment to sound science; that when new data are put before us, we try to make a priority of evaluating it, especially as studies start to build up.

Mr. TIPTON. I understand that.

Would you care to comment in terms of some of the impacts? And I know you have to recognize it goes probably beyond the scope of this hearing, but into the broader EPA as well, the unfunded mandates that you are putting on communities, which ultimately go on the backs of hardworking people having a tough time paying their bills.

Ms. JACKSON. Every rule we do, every regulation, is subject to an analysis of its costs, an analysis of its benefit. That is no more true than the pesticide program, so important to this Committee, where we were required even in our registration decisions to look at cost-benefit. It is actually sort of the basis of how we evaluate a pesticide.

So rather than unfunded mandates, what I have said is that our job is to implement the environmental laws. That is what EPA was created to do, and it is our job to do that, and to do it in a way that I hope is innovative, and that, consistent with the President's new Executive Order, gives value to the American people, gives benefit that outweighs cost.

Mr. TIPTON. When we are talking about value to the American people, have you ever considered having a pilot program rather than just establishing a new regulation? We take part of your \$10.3 billion budget and actually spend it on fixing the problem rather than creating just more regulations and hiring more people?

Ms. JACKSON. A significant part of our budget goes out the door in grants to states, to community groups, to the State Revolving Fund, all of which are about funding programs that fix the problem. Our 319 Program, where we are spending so much money on nonpoint source pollution, there is funding, authorized, of course, by Congress, and appropriated to us for those purposes.

Mr. TIPTON. Mr. Chairman, may I submit a few more questions to the Administrator? I am just about to run out of time. I would be happy to submit those to you.

The CHAIRMAN. Seeing no objection, so ordered.

The chair now turns to the gentleman from Vermont for his 5 minutes. Mr. Welch.

Mr. WELCH. Thank you very much, Mr. Chairman, Administrator Jackson. Thanks, by the way, for hanging in here. This is a long and contentious hearing in some ways.

Many of the people who are affected by initiatives that are either legislation passed by Congress or regulations that are promulgated

by the EPA under the authority granted by Congress are under some pressure to make adjustments, and we are hearing a lot of Members speak about that.

I am from Vermont, and we have a significant dairy farm community. They have expressed to me some of the same frustrations. But I know some of the frustrations people express have more to do with what they think is in the legislation or they think what is being done *versus* what actually is being done.

I just want to give you an opportunity to address a couple of the things that I hear commonly stated. Number one, a cow tax. A lot of my farmers literally were of the belief that Congress, with the EPA, passed legislation that would, in effect, put a tax on every cow. Do you want to speak to that?

Ms. JACKSON. Yes, sir. As I said in my opening statement, EPA has absolutely no intention, has never proposed a cow tax. That rumor was really started by lobbyists, and it was, what if EPA did it, and it became a *fait accompli*. We are not going to do it. We do not intend to do it. In fact, agriculture is exempt from greenhouse gas regulation.

Mr. WELCH. Thank you.

Another major concern that all of us in Vermont have—and Senator Leahy has been working on this all the time he has been in the Senate—is to have a clean lake. Of course, that is affected by phosphorus and nitrogen levels. What is the policy of the EPA with respect to working with the state to try to establish a sensible plan that protects, in the case of Vermont, Lake Champlain?

Ms. JACKSON. I have made it clear that EPA is not in the business of taking over State Nutrient Programs. Phosphorus nitrogen pollution is significant. It is impacting our areas. But EPA's job is to review state work and work in partnership, collaborate as much as we can, because although we have an oversight role, we simply don't have the resources and are not nimble enough to do what a state can do.

Mr. WELCH. Another issue brought up to me by farmers, and this is a real practical problem, is the one of spray drift. If someone sprays, they are apprehensive—a neighboring farm that is, say, organic is apprehensive about what the effect will be on them. That is just a very difficult practical problem. How does the EPA see itself proceeding in that area?

Ms. JACKSON. It came to my attention that words that had been discussed for possible inclusion on a label would set a standard of no-spray drift. I have made it clear, and we have been working since as an Agency, to make sure that that is not the impact. To change the words, to work with state ag departments. Listen, nobody wants spray drift. No one wants pesticides anywhere except where they are supposed to go. So, of course, we want to see it minimized, but we don't want to set a standard people can't meet.

Mr. WELCH. Thank you.

I want to step back just a minute to get your advice. Tom Davis, who is the former Chairman—Republican Chairman of the Oversight and Government Committee, and someone who testified before that committee just the other day—and who is an extremely capable legislator—suggested that when it came to saving money in consolidating programs, there is a lot of things Congress could

do. But one of his recommendations was that we look in the mirror, because he pointed out that there are many different committees of jurisdiction that pass a bill, in this case on, say, job training, and write it so that the committee thereon has jurisdiction. As a result, you get duplication.

One of the questions I have for you is would there be a better way for us in Congress to pass legislation on a given topic that would actually at the end of the day make it easier for the Administrator to administer, and for those who are going to be subject to the legislation we pass to deal with the regulatory and legal process?

Ms. JACKSON. Well, certainly I know that myself and some of my fellow Cabinet members are subject to jurisdiction of numerous, numerous committees. I would not comment on Congress doing its business except to say I actually welcome oversight even from committees that don't have direct jurisdiction on issues because, as we heard here today, it is an opportunity to talk about facts; to really, instead of talk past each other, to speak to each other.

So jurisdiction is one thing. And I know that is going to be a very important issue when you look at trying to make government efficient. But it is also important that we find opportunities to talk to each other.

Mr. WELCH. Thank you. And I yield back.

The CHAIRMAN. The gentleman's time has expired.

I would serve notice to my colleagues in the speaking query, we have Mr. Southerland, Mr. Crawford, Mrs. Schmidt. We have Mr. Neugebauer, Mr. Ribble, and Mr. Thompson.

With that, I turn to Mr. Southerland.

Mr. SOUTHERLAND. Thank you, Mr. Chairman. I appreciate it.

Administrator, thank you for being here today. I know it has been a long day with our votes. I wanted to ask and inquire a little bit more.

I am from Florida. I represent Florida's Second Congressional District. There is great concern. I understand—I was not here for the testimony—but I understand that Congressman Rooney had some questions regarding the numeric standards that we are struggling with in trying to prepare for what is coming. I am curious because I am hearing from our constituents, farmers as well as municipalities around the district.

As far as the science, I know that the Chairman had a three-step requirement as far as the position that this Committee would take regarding rules that—things we are looking for. One of those was science. Another was economics and was it legal. But as far as the Science Advisory Board, I understand that the EPA Science Advisory Board has your blessing to explore deeper into these requirements regarding canals, coastal waters, and estuaries. And I wanted to get your thoughts, a little bit more definitive statement by you, about flowing waters and having the SAB expand their examination of these requirements in the area of flowing waters.

Ms. JACKSON. Can you be a little bit more specific?

Mr. SOUTHERLAND. Does the Science Advisory Board have your blessing to be able to examine deeper and further into the effects of these standards in the areas of flowing waters?

Ms. JACKSON. I believe our charge to the independent process, the Science Advisory Board, has been related to estuaries. It is what I committed to when I met with the delegation, that we would take a look at the science of estuaries, because there was still concern about setting those standards.

Mr. SOUTHERLAND. But as far as flowing waters—and I know that canals, coastal waters, and estuaries—but as far as any—do they have your blessing to examine all waters affected by this standard?

Ms. JACKSON. No. The charge didn't include the inland waters. Those are the standards that have been promulgated and now have been delayed for 15 months. I think there is about 13 months left on that.

Mr. SOUTHERLAND. So if they wanted to go into the flowing water issue, they would be allowed to do that.

Ms. JACKSON. They have a charge. We charge the Science Advisory Board. We ask them to look at certain scientific questions. Their charge has been for estuaries, coastal waters.

Mr. SOUTHERLAND. Right. I guess my question is: Would you charge them then to examine flowing waters?

Ms. JACKSON. If you mean by that inland waters, then those standards have already been done. They were based on the science of the Florida Department of Environmental Protection. And what we are doing right now is working with them not on the science, but on issues around implementation. What happens when Florida has already made a standard like in the lower St. Johns; does that take the place of the nutrient standard? Those kinds of issues.

Mr. SOUTHERLAND. I want to ask, second, and I know I am running out of time here, I want to ask regarding the economic impacts of these standards. I am concerned because I hear various facts. First of all, has EPA done, in your opinion, the proper economic effects to agriculture in the State of Florida with these standards being implemented?

Ms. JACKSON. We have done an economic analysis. We have come up with our cost estimates. In fact, the impact to agriculture is not particularly great. Much of the high costs we are seeing in some estimates are based on the need for reverse osmosis for every single effluent from every single municipality. We do not see a need for reverse osmosis. That is a very expensive technology, and we do not believe the science nor the standards will require that.

Mr. SOUTHERLAND. So as far as the studies that we are getting from the Department of Agriculture that talk about the cost, the total initial cost, of Florida agriculture that go up to as high as \$3 billion, you challenge that?

Ms. JACKSON. I would say I don't think we are in a place where we agree. But I also believe that by continuing to talk—and we have been working pretty hard with the Florida DEP on this—I think we can get to a place where we can all look at the numbers and agree on the assumptions that are made. It depends on the assumptions.

But I will say this: I do not agree that reverse osmosis is needed to meet these standards. And that is what is driving the high cost estimates that I have seen.

Mr. SOUTHERLAND. But would you agree that the implementation of this rule without knowing the economic ramifications is reckless at best, and we would hurt people that—and these same studies suggest that upwards to 14,000, 15,000 agriculture jobs affected in the State of Florida. Clearly, that has to provide some concern on your part.

Ms. JACKSON. Absolutely. I do not want the people of Florida, agriculture, anyone in Florida to see these standards as onerous to that degree where it would harm the economy. I do think the 15 month delay, part of that was intended so that we could work with the Florida Department of Environmental Protection. They have done excellent work to show on the ground how these will really play out. The idea of allowing people to substitute in other standards that they have already worked on to the extent that they are equivalent makes great sense.

The CHAIRMAN. The gentleman's time has expired.

The chair now turns to the gentleman from Massachusetts for 5 minutes.

Mr. MCGOVERN. Thank you, Mr. Chairman. I want to thank Administrator Jackson for being here; and her staff.

This feels like an episode of *Survivor*. It has been a long hearing so far. But I am new to this Committee, and I guess I would be considered an urbanite because I live in the City of Worcester, Massachusetts. I have heard and dealt with EPA in a number of areas. I have heard from a lot of farmers in the Commonwealth of Massachusetts and across the country about their concern about regulation and, more specifically, about the cost of implementing regulation and change. I guess there is this kind of natural tension between putting a mandate forward and then the cost that is associated with people complying with that.

I just think it is important the record reflect that these aren't just kind of arbitrary mandates or regulations. We could question whether they are necessary, but the intent of this is to basically improve our environment and better protect our citizens.

Some of my colleagues have raised their concern about the potential costs of air quality or clean water standards. But, it is important to note that peer-reviewed science shows that dirty air and water have significant health costs to Americans across the country.

While we need to figure out a way to help farmers and small businesses comply with some of these regulations, I have an issue with phosphorus standards in one of my communities. It is very, very costly. People don't dispute the science, but in this economy how do you comply, and how do you comply in a way we don't put farmers out of business? So that is a concern that we are going to have to try to figure out. Maybe we can have some suggestions on how to help people make the transitions and comply better.

I would like to have you discuss the public health benefits of ensuring that we have reasonable clean air and water standards, because, to me, that is what all this is about. I think every one of us here is dedicated to clean water and clean air; the challenge is how do we comply. But, it is important that the record reflect why we are doing all this stuff.

Ms. JACKSON. Right. Thank you, Mr. McGovern.

EPA's mission is to protect human health and the environment. I think we all have agreed several times in this Committee that everyone is for a clean environment. I think most Americans see it as part of our citizenship that we have clean air and clean water.

We just released a study last week. It was a required study looking at the Clean Air Act amendments just since 1990. By 2020, I think it is \$20 trillion in health benefits, those are avoided; hospitalizations avoided, asthma attacks, fewer premature deaths, hundreds of thousands of fewer premature deaths, because of our work under the Clean Air Act. And it is important to remember that all that happened while our GDP was going up, up, up. So, in general, not only do we pay for ourselves \$30-\$40 to \$1, but we are an investment. It is almost like preventive medicine.

The Clean Water Act, I have done a bit of international traveling. One of the Members mentioned it earlier. I think we should not underestimate the strategic opportunity for our country in clean water. We are blessed in this country to have an abundant supply of clean water. We just have to be good stewards of it. Although EPA does a lot of regulation, we also do a lot of investment through the State Revolving Funds, our 319 Program, the U.S. Department of Agriculture's conservation programs, and water programs, in trying to help communities comply. But I also want to align myself. I understand that cost is very important, especially in small communities. It is something that we work very hard on the ground to try to work with those communities, and I am certainly not saying our work is done.

Mr. MCGOVERN. I appreciate that. I wanted to ask the question because sometimes there is this impression that there are bureaucrats who have nothing to do who come up with regulations and mandates just because they can. It is important that people know that there is a science there. We can dispute the science, and we can argue about whether or not the regulation is the right regulation, or the cost-benefit, but there is a reason why EPA moves forward on this stuff, and that is basically to try to protect the health and well-being of our citizens and protect our environment. I appreciate that.

On the cost stuff, that is something we are going to have to grapple with, because the State Revolving Funds aren't big enough to deal with all the projects. In small communities there is a need for grants. Small farms asking to comply with some of this stuff, they don't have the money, they go out of business. So that is something that we are going to have to deal with as well.

Anyway, I appreciate you being here, and I appreciate the work that you do, and I appreciate the work of your staff, too. Thank you.

The CHAIRMAN. The gentleman's time has expired.

The chair now recognizes the gentleman from Arkansas for 5 minutes. Mr. Crawford.

Mr. CRAWFORD. Thank you, Mr. Chairman.

Administrator Jackson, I will be brief due to the lateness of the hour. I will be quick.

I represent a district that is the number one rice-producing district in the United States. We have more rice acres in my district than any other place in the United States. You may or may not

know rice is produced in standing water for a period of 45–60 days, 6–8 inches of standing water. Are rice fields subject to regulation under the Clean Water Act?

Ms. JACKSON. Active agriculture is not. Discharges from those fields could be, sir. I would have to double-check that. Agriculture in that way is not, although the new pesticide requirements could affect rice farming.

Mr. CRAWFORD. If I may, could you submit those for the record in the future? It would be a big help.

I want to address a question I addressed to the Secretary of Agriculture a few weeks back in a hearing. I didn't receive a satisfactory answer from him. I am hoping you can help me on this. At the last minute I asked Secretary Vilsack about the specific means of communication in place between the Department of Agriculture and your department. Unfortunately, he was not able to provide this Committee with a satisfactory answer, and I am hoping you can. Can you speak to my concerns? Is there any kind of a protocol or liaison that exists between EPA and USDA?

Ms. JACKSON. Yes, sir. He is sitting right over my left shoulder. That's my ag adviser, Larry Elworth.

Mr. CRAWFORD. That is a big help, because I couldn't get that answer from the Agriculture Secretary.

What dialogue are you having right now with ag producers before developing a new regulation or guidance?

Ms. JACKSON. Our dialogue is significant, and it has increased, thanks in part to Larry's relationship. I have a good personal relationship with Secretary Vilsack, with Tom, and it is my belief that we are partners in trying to do many of the same things. And oftentimes they have resources and understanding that really makes a difference. I think the ethanol rule was a perfect example of that. Without the USDA's input on crop yields, we would have come to a very different result.

Mr. CRAWFORD. So in the role of liaison, your colleague behind you there, he basically facilitates dialogue between not only USDA and your Agency, but also with farmers?

Ms. JACKSON. Yes, sir, with grower groups. I have met with several. Tom and I have done joint meetings with many of the commodities groups where I am going to be going out as I committed to earlier and doing a lot more direct communication myself. My staff does. He is out all the time. We also have an advisory group—an agricultural advisory group—that Larry works with. They are a Federal FACA that advises us on agriculture policy as well.

Mr. CRAWFORD. And what is the tone from the farm population? Because I have to tell you, every farmer that I have talked to in the last year and a half has been very, very upset at the nature of the regulatory burden they are facing with respect to EPA. Can you gauge a tone from the farm community?

Ms. JACKSON. Well, I take the expertise of this Committee in representing its constituents very seriously, and we need to improve. I think we are going to, because when we talk about what is really happening and get out there and establish lines of communication, it is always better than not.

So, yes, there is fear and concern. Some of it is grounded; some of it is perception. Some of it might be based in a real case. And you have to deal with those on the ground where you find them.

Mr. CRAWFORD. Thank you. Nothing further. I yield back.

Ms. JACKSON. Sir, I just got an answer on the rice question. Rice water is considered irrigation return flow and is exempt from the new pesticide water permit.

Mr. CRAWFORD. Thank you.

Can we count on that for the foreseeable future.

Ms. JACKSON. Yes, sir. But if you want to submit those questions for the record.

Mr. CRAWFORD. I appreciate that. Thank you.

The CHAIRMAN. The chair now recognizes the gentlelady from Ohio, Mrs. Schmidt, for 5 minutes.

Mrs. SCHMIDT. Thank you, Mr. Chairman.

And thank you, Administrator, for being here.

My first question is a follow-up to Chairman Lucas' regarding the Biological Opinions under the Endangered Species Act. Could you clarify for us what your plans are regarding external review?

Ms. JACKSON. Yes, I am happy to.

Just today I signed a letter to ensure good science in the consultation process. So EPA, USDA, DOI and Department of Commerce has asked the National Research Council, which is part of the National Academy of Sciences, to provide us with independent advice on certain scientific and technical issues that arise as we work to meet our responsibilities on endangered species.

We are asking the NRC, the National Research Council, to address questions such as what constitutes best available scientific data, best scientific methods for evaluating pesticides' exposures and effects, and other issues.

Mrs. SCHMIDT. Thank you.

A follow-up question to Congressman Gibbs regarding the *NCC v. EPA*, the April 9 deadline, and your asking for an extension. Have you received that extension?

Ms. JACKSON. Not to my knowledge, no, ma'am.

Mrs. SCHMIDT. If we don't receive that extension, what are the farmers to do by April 9?

Ms. JACKSON. Well, if we don't receive an extension, then we are under order to get a permit out, and certainly this is not our preferred path because we think we have some more work to do on not only Biological Opinions on endangered species, but with the states.

Mrs. SCHMIDT. Okay. I would like to turn to another issue, one that greatly concerns greater Cincinnati and has for some time, and it is bed bugs. It is not a comfortable issue. Administrator Jackson, the EPA held a national bed bug summit in April 2009 and again in February 2011 with the goal of reviewing the current bed bug problem and identifying actions to address it. While I agree with the intent of the summit and to some of the proposals, it seems as though the EPA is almost exclusively focused on outreach and prevention. Outreach and prevention are worthy and laudable goals, but it does nothing for people who actually have the problem now. Many of these people are living on fixed or lower incomes.

For an example, I had an individual in my district who had bed bugs in his couch. He couldn't afford what it is going to cost, about \$5,000, to eradicate them now, and so he used rubbing alcohol on the couch, and then he lit a cigarette. He no longer has a problem. He no longer has a couch. This is a real story.

So what we had was a section 18 exemption, which allowed a product to be used in those cases and for bed bugs that were resistant to other issues. Now that extension seems to be off the table.

My question to you is: What do we do with this growing problem? It is not just in Cincinnati, but New York City, Washington, D.C., and throughout the United States.

Ms. JACKSON. It is a growing problem, Mrs. Schmidt. EPA's position—what we were asked to do was review a section 18 emergency exemption for Propoxur. EPA scientists reviewed it; reviewed it against the law, especially the Federal Food Quality Protection Act, which is about children's health, and determined that we could not make a finding of safety for general use of Propoxur to deal with bed bugs. We did offer to the state that if there with limited uses, places like senior citizens homes or nursing homes where there weren't children residing, that might be an appropriate use.

Mrs. SCHMIDT. That is good to know. But, again, let me follow up. The way we can now eradicate bed bugs is take a home, tent it, make sure that we don't have any air flowing through, and then heat that home between 130°–150°, interrupted for 15 minutes. I dare say that is not safe to an infant. So what we are doing now isn't safe for children either.

Ms. JACKSON. They wouldn't be in the residence at the time.

Mrs. SCHMIDT. How do we know? There is no guarantee.

I will go on to another question.

My other question has to do with a letter that my colleagues and I sent you regarding the EPA's draft pesticide registration notice, 2010-X, entitled, *False or Misleading Pesticide Product Brand Names*. The proposal would require registrants of consumer pesticide products to change trademark brand names if they contain words that EPA considers to be misleading, such as "pro" or "green," even though the Agency has previously approved these names. These products have been thoroughly evaluated through the EPA's rigorous pesticide registration process, and many of these products have now been on the markets for decades.

What evidence does the EPA have to suggest that consumers are confused by pesticide product brand names? Many of the potentially affected products are decades old and familiar to consumers.

In his response to the letter, Assistant Administrator Owens stated: The EPA believes that only a very small number of products will be affected by a final PR notice. And the EPA, "believes that there are very few registrants, if any, that would actually need to change their product names, and that no significant adverse impacts should occur to the marketplace."

However, an industry estimate suggests that proposals would impact more than 5,000 currently registered pesticide products and result in a potential loss of approximately \$2.5 billion in brand equity.

What analysis did EPA conduct to support the conclusion that only a very small number of products would be affected? Can you

explain the discrepancy between the EPA's prediction of the proposal's affect and that of the industry?

The CHAIRMAN. The lady's time has expired. The witness may answer the question.

Ms. JACKSON. I did commit at a hearing, I believe, last week to Mr. LaTourette, who asked a similar question, to review the question again. He didn't ask as detailed a question as you, ma'am. So I will get you an answer for the record to a very long question. But I understand the issue, and I am happy to take a look at it in general, especially any economic ramification.

Mrs. SCHMIDT. Thank you.

The CHAIRMAN. The gentelady's time has expired.

Mr. Neugebauer, who is recognized for 5 minutes.

Mr. NEUGEBAUER. Thank you, Mr. Chairman. Thanks for holding this hearing.

Ms. Jackson, thank you for being here.

A little secret here. The reason I came to Congress is because of EPA. I have been a land developer, small home builder, and what happened during my tenure in home building is I watched the EPA in the Clean Air and Clean Water Act be stretched from its original intent to way beyond what I think the original intent of that legislation was. We were out spending thousands of dollars stringing silt fence up to keep water from running off into bar ditches in west Texas; that what used to be a definition of the *Waters of the United States* went from rivers and streams and lakes to a bar ditch in west Texas or a casual water indention in a pothole.

I am very concerned, and I appreciate the fact that you mention that you want to make scientific-based decisions. And I believe you said you do cost-benefit analysis. I assume you do that for every rule that you put out, and I assume that you put out the findings and the supporting data and all of the models that are behind the analysis; is that correct?

Ms. JACKSON. Yes, sir, to the best of my knowledge. Different statutes require different amounts and kinds of analysis, but we do do them.

Mr. NEUGEBAUER. For the last 50 rules that you put out, I would like to see the supporting data that you put behind there. Was that data available for comment as well on the studies, or did you just report the results of the findings?

Ms. JACKSON. I am happy to make that available. I am sure it was publicly available.

Mr. NEUGEBAUER. I would like to see that, because one of the things that I think what you heard today—and one of the things about speaking last is everything that has been said has pretty much been said. But, what you hear today is a grave concern that the Clean Water Act and the Clean Air Act have been expanded way beyond what their initial intent is, and that there has become a huge drain on the economy in our country because a lot of us believe that these rules and regulations have gone way beyond their intent, but also that the cost-benefit analysis is not there.

Particularly I have a concern with this Administration when the Congress has decided not to take up greenhouse gases that all of a sudden EPA decided that they would interpret the Clean Air Act as giving them jurisdiction over there.

So what has happened is that the court system, both from some very judicially active judges and some very active environmental groups, have taken these two Acts to levels that no one ever anticipated. So what I have finally come to the conclusion is that it is time to repeal both of those bills, both of those Acts, and start over, because evidently the definitions within those Acts were so vague that they have been over-interpreted so many times that I am not sure that we can fix it by going back and doing something piecemeal.

Now, I am for clean air. I am for clean water. Everybody on this panel is. But we are at a tipping point in this country where I believe that the environmental enforcement, the environmental laws, have superceded the rights of—many individual property rights of individuals in this country; that it is a huge drain on our economy in that—I know there is no telling how many—it is probably trillions of dollars that a lot of these policies are costing us. And yet I am not sure that all of the decisions that have been made have been done on a scientific basis. What a lot of my colleagues, including myself, feel like is that we decide what we want the policy to look like, and we go find the science to back it up.

So what would be your opinion on let us start off with a clean piece of paper, start off with the technology that is available today that wasn't available when these two Acts were put in place? Because when you look at what we have done with the environment, we have made huge advancements in the control of water pollution and air pollution since those two Acts were enacted.

Ms. JACKSON. I believe that both of those Acts—the Clean Air Act; the benefits of the Clean Air Act for Americans' health is projected to reach \$2 trillion in 2020.

Mr. NEUGEBAUER. Where did that data come from?

Ms. JACKSON. That is an EPA report that was required to be produced.

Mr. NEUGEBAUER. Was this internally, or is there external verification of that study?

Ms. JACKSON. That study was up for public comment for almost a year.

Mr. NEUGEBAUER. That wasn't the question. Was it an internal or third party?

Ms. JACKSON. It is an EPA study, sir, but it was up for comment.

Mr. NEUGEBAUER. I think that is what we are seeing as part of the problem.

Ms. JACKSON. Over time and time again, the benefits of the Clean Air Act are \$30:\$1—average \$30 to \$1 for every dollar spent.

Mr. NEUGEBAUER. That \$30 to \$1, is that a study based on an internal study done by EPA, or is there external verification?

Ms. JACKSON. They are not EPA studies alone, sir.

Let me just simply say in answer to your question, I believe fervently that the reason this country enjoys the air quality that it does, and the clean water, the plentiful, clean water that it does, is because we as a country have strong environmental laws. We lead the world in insisting that, yes, we can have economic growth, but that we want to protect the health of our citizens and the legacy of clean air and clean water. Those Acts are priceless, in my mind.

The CHAIRMAN. The gentleman's time has expired.

The chair now recognizes the gentleman from Wisconsin for 5 minutes. Mr. Ribble.

Mr. RIBBLE. It has been a long day. I am sure it has been equally long for you. I have never been in a Committee hearing quite like this where everybody agrees that you have problems. Typically there is a lot of debate and discussion.

But, anyway, you said earlier when Mr. McGovern was questioning you that the mission of the EPA is to protect human health and the environment. I think that is consistent with your website. But alongside that very nice picture of you by your bio, it also says: She and a staff of more than 17,000 professionals are working across the nation to usher in a green economy.

When did your mission change from protecting human health to economics?

Ms. JACKSON. Our mission hasn't changed, sir. The website says many things, but it says, as you mentioned, that our mission is for protection of human health and the environment.

Mr. RIBBLE. So how much time are you spending on a green economy then?

Ms. JACKSON. We believe that our work enables a green economy.

Mr. RIBBLE. That is interesting, because many of the people that I talk to back in Wisconsin would very much disagree.

It also says here that part of it is to renew the public's trust in the EPA's work. Based on what you have heard today from both sides of the aisle, Republicans and Democrats, how do you think you are doing there?

Ms. JACKSON. I think we can always do better. But I think that communication of facts, not myths, is an important part of that equation, sir.

Mr. RIBBLE. I can tell you, as someone who has never done this before—and I appreciated Mr. Tipton's comments, because the EPA came up on almost every single campaign event I was at. It got to the point where I had staff members timing how long it would take before some citizen would start to talk to us about the EPA. The American people don't trust you. And you need to hear that, and you need to take that back, because they don't.

Let us talk a little bit about boiler MACT. Is the boiler MACT rules that were just promulgated on February 21, are they a revision of the 2004 Act?

Ms. JACKSON. They are not a revision of the Act. They are regulations, sir.

Mr. RIBBLE. Revision of the regulations.

Ms. JACKSON. I don't believe there were air toxic standards in place for boilers before we proposed and finalized them in February.

Mr. RIBBLE. I am wondering, what assurances can I give the paper manufacturers and those using coal-fired boilers in my district that in 2 years or 3 years, after they invest hundreds of millions dollars and the industry sheds thousands and thousands of jobs, that you are not going to change the rules again?

Ms. JACKSON. That is a loaded question, sir.

Mr. RIBBLE. It is an honest question. They are afraid you are going to do that.

Ms. JACKSON. If we hadn't done the regulations—those regulations have been required since the 1990 Clean Air Act. They are long overdue. We have finally, in 2011, finalized regulations that were called for decades ago.

Mr. RIBBLE. Are you prepared for the loss of jobs that are going to result?

Ms. JACKSON. We have done economic analysis as well as jobs analysis of that rule, and I am sure you have seen our numbers. They show that the rule might be neutral or even create jobs, because they require investments here to deal with toxic air pollution.

Mr. RIBBLE. I guess what I am hearing from manufacturers in Wisconsin is that they may prefer to invest elsewhere, that they may prefer to invest in other countries because of this regulation.

Does the air in China ever get over here?

Ms. JACKSON. Certainly.

Mr. RIBBLE. It does, doesn't it? India, same thing. It shows up over here, doesn't it? And so does it make sense to promulgate rules that are so difficult to comply with that it actually incentivizes, encourages businesses to go to countries where the rules are less stringent?

Ms. JACKSON. The boiler toxics rules that we came out with address mercury, acid gases, particulate matter. They are called for by the Clean Air Act as a public health intervention. Even with that, I have to say that the final rules are—we cut the cost on the final rules by half and still protect as many or more people under the standards we just promulgated, sir.

Mr. RIBBLE. Given what you have heard here today from virtually everybody in the room, save one, what are you going to do with this? What is going to change at the EPA to give any hope back home?

Ms. JACKSON. Yes, sir, you can. You can tell them that I listen. You can tell them that we are going to redouble our efforts to speak and communicate with people about what is really going on; to talk about our rules, to reach out. We think we reach out now, but clearly we can do better. Please, I welcome any Member of this Committee in helping us get the facts of what is happening out back in your districts. We welcome that.

Mr. RIBBLE. Thank you for being here today.

Ms. JACKSON. Thank you.

The CHAIRMAN. The chair would note to the Members present, I still have Mr. Thompson, Mr. Huelskamp, and Mr. Gibson in line.

Mr. Thompson.

Mr. THOMPSON. Thank you, Mr. Chairman.

Administrator Jackson, thanks for your time and patience here this afternoon. I want to go back to earlier at the beginning of the session, and Mr. Goodlatte and Mr. Holden and some others were talking about Chesapeake Bay. That is an important issue for agriculture within my Congressional district, certainly within the Commonwealth of Pennsylvania. Pennsylvania, by all indications, has made great progress in reducing our nitrogen, phosphorus and sediment loads into the Chesapeake Bay in recent decades. I strongly believe we are on a path to achieving our reduction goals through, frankly, conservation practices without the TMDLs. How-

ever, it is very clear to me that the EPA is ignoring this progress and is arbitrarily moving forward with these new mandates.

New information on the current health of the Bay, frankly, would be very beneficial to our long-term success and our process, going forward. Has the EPA done any analysis on what this progress that we have already made in the Chesapeake Bay—now, I am talking since we began to invest probably hundreds of millions of dollars over 30 years; investments all along that watershed. I guess that is my first question: Is there a current analysis on that progress, a longitudinal study over the course of those 30 years?

Ms. JACKSON. Sir, one of EPA's—EPA is required to monitor the health of the Bay and to monitor progress towards agreed-upon clean-up measures for the Bay. So, yes, we are constantly doing that. The states are a large part of that. Different states do it in different ways. But, yes, absolutely.

Mr. THOMPSON. That is great. I have not seen that data. It would be very helpful for me.

In fact, I also want to thank you. I know that the Deputy Administrator will be joining my Subcommittee on Conservation, Energy, and Forestry, on Wednesday, which includes watershed jurisdiction. So if he could bring that data, that would be wonderful to see that longitudinal study just in terms of the status of the Bay's health over the course of those 30 years.

In your written testimony you strongly suggest that developing TMDLs for the Chesapeake Bay watershed was, "a truly collaborative effort." I recognize that the states had input in crafting the WIPs. The agriculture producers and associations, it seems to me, were left out of this discussion. If the creation of the TMDL truly was a collaborative effort, why are so many farmers, ranchers, and agricultural groups in the watershed so staunchly against it?

Ms. JACKSON. Well, sir, I don't want to speak for them. I think that they are concerned because they are concerned about the impacts on their businesses. What EPA's job to do is to implement the law. We are required—and we were sued—to implement a pollution diet for the Bay. So what we do is this is a regional problem. We give each state an allocation and we say, you figure out the best way to meet your allocation. If everybody lives by their allocation, the Bay—

Mr. THOMPSON. And I understand that part. I just would like to get some clarification. When I say, "live by the law," as I have spent time with the Constitution, I understand that. I put myself out there, as 434 other Members, to write law, but it seems like what you are implementing came out of an Executive Order. As I look at the separation of powers, we pass the laws. The Administration is required to implement what we pass. Much of what came out of the Executive Order in February 2009 regarding this didn't come from the lawmakers, it came from the Administration.

Has there been a cost analysis done yet in terms of the impact of this? I know this question has been asked a number of times, and you have kind of affirmed every time. So I am assuming that in terms of the cost analysis, cost-benefit analysis, on agriculture and the impacts on the agriculture community, that the answer is yes, that this cost-benefit analysis has been done.

Ms. JACKSON. Are you asking about the TMDLs specifically, sir? They are not regulation, so they do not have a cost-benefit analysis—

Mr. THOMPSON. Don't the implementation of TMDLs have a cost?

Ms. JACKSON. The watershed implementation plans, the states deal a lot with what the costs are and how they are going to finance the improvements. Many of the costs are actually borne by municipal treatment works.

Mr. THOMPSON. I have had township supervisors ask me who they turn the keys over to on this issue alone. I know it is outside the jurisdiction of this Committee. And I am sure the Members on the Transportation and Infrastructure Committee may have some questions for you on that. But specifically, for agriculture, to implement a policy that didn't come out of—frankly, you didn't really answer the question, that the agriculture community really were not consulted with in contributing to this. And the state plans—the state had their plans, and they were rejected. And so TMDLs really are coming from the EPA. So I would hope that—there needs to be, in fact, a cost analysis done. What is the cost to agriculture?

You know, we live in a country where we are blessed. We have the most affordable, highest quality food in the world. And anything that threatens that is just absolutely wrong. And as everyone knows, we don't just feed this country, we feed the world. We are looking at almost seven billion stomachs, going forward, in the future.

So I am looking forward to meeting the Deputy Director. We had a very nice conversation today, He seems like a very nice man, originally came off of a dairy farm in northern New York, and so I appreciate your time.

The CHAIRMAN. Would the gentleman yield before he yields back his time?

Mr. THOMPSON. Yes. I certainly yield to the Chairman.

The CHAIRMAN. The point about the TMDLs, and I direct this wherever the appropriate answer comes from. If it is not a regulation, then what is the enforcement mechanism? If it is not a requirement, then what does it matter?

Ms. JACKSON. The TMDLs are implemented through the Watershed Implementation Plans developed by the states, sir. So if you want to think of it as that TMDLs basically allocate an amount of pollution that is allowable, and then states go back and live within their means. And the ultimate goal is, to remind everyone, is a cleaner Chesapeake Bay, which is so important to so many people who live around here.

The CHAIRMAN. But still ultimately it is a regulation that is in force, that participation is required wherever it came from, whoever compelled the creation of it, it is a standard has to be met by your people. Correct, Congressman?

Mr. THOMPSON. It seems that way. And if I could reclaim my time. And my question is, if it is not a regulation that comes from the EPA, if this truly goes back to the states Watershed Implementation Plans, then the state could choose, without consequence, not to implement it if the ownership is strictly on the state, as you have indicated.

Ms. JACKSON. No. I don't want to be misunderstood, sir, and I don't want to mislead you in any way. EPA has a role under the Clean Water Act to play in cleaning up the Bay. There have been longstanding goals that have been set and met repeatedly for Bay cleanup and Bay pollution. The Bay has gotten better on some indicators, but we still have a long way to go. And the primary problem is nitrogen and phosphorus, nutrient pollution. And it comes from all sources, not just agriculture.

The CHAIRMAN. Do you direct local governments to produce these standards that then you compel obligation to follow?

Ms. JACKSON. Mr. Chairman, EPA developed the TMDL for the Chesapeake Bay, it was required to do so, and then turned to state government to then develop plans to achieve those limits.

The CHAIRMAN. So, Director, you develop the standards. And then you direct the states to implement the standards in regard to the TMDLs?

Ms. JACKSON. In the case of the Chesapeake Bay, yes.

The CHAIRMAN. How can we say it is not a Federal requirement—

Ms. JACKSON. It is a requirement that stems from the Clean Water Act, sir. But what I want to be clear about is that the Chesapeake Bay is special. It actually has legislative language about it in particular. So how we handle the Bay is a bit different. In many states, when you are dealing with nitrogen or phosphorus pollution, the states are developing those standards under the Clean Water Act as delegated authority.

The CHAIRMAN. The gentleman has, by unanimous consent, 1 more minute.

Mr. THOMPSON. Thank you.

So with that being the case, then I come back to the fact that actually I am just shocked that this has been proposed, it is going to be mandated on the states. It will be imposed on the agricultural community, let alone other parts of the communities outside the jurisdiction of this community. And yet the EPA is not—where I have heard the fact that the EPA has conducted cost-benefit analysis time and time again this afternoon, that is not being done with this, with TMDLs. That is so wrong. I think it is something we need to correct.

Ms. JACKSON. It is not entirely accurate, sir. There are cost-benefit analyses done as part of rulemaking. And I want to clear up one other—perhaps I am giving you a misperception. The TMDLs were published in draft. They were subject to public comment. This is not something that was done behind closed doors. It wasn't something that was a secret. EPA has been on the hook for well over a decade to develop these total maximum daily loads. And it has been a long scientific process, and there has been a lots of back and forth.

Mr. THOMPSON. And I look forward to continuing this conversation with your deputy director again.

And I would ask, in addition to the first documents of the longitudinal study of improvement on the Chesapeake Bay, that he also bring those cost-benefit analysis that you referenced this time that you said have been done. Thank you.

Ms. JACKSON. Please, just if I can just make sure that the record is not incorrect. I did not represent to you that there are cost-benefit analysis done as we would for regulation.

Mr. THOMPSON. You said—

Ms. JACKSON. I said costs were looked at as part of this process and as part of the whip process.

Mr. THOMPSON. But you specifically said there were cost-benefit analysis as part of the rulemaking.

Ms. JACKSON. Yes, sir. But you asked me if I did cost-benefit. And I pointed out that the TMDLs are different because they are not a full rulemaking. So I don't want you to leave with the impression—

Mr. THOMPSON. Well, they have full impact on rural communities.

The CHAIRMAN. The chair now turns to the gentleman from the big first district of Kansas for 5 minutes.

Mr. HUELSKAMP. Thank you, Mr. Chairman.

Madam Administrator, thank you for being here, first. A couple questions. I do appreciate the other answers, and many of my questions have been answered but I have one in particular.

In Parsons, Kansas, there is an ammunitions dump that was closed during the BRAC closure process in 2005. While the Army is attempting to close the base and turn it over to local redevelopment authority, you have attempted to require the Army and the community to make environmental improvements to the facility above and beyond those that are statutorily mandated. From where does the EPA believe their statutory authority governing these particular demands come?

Ms. JACKSON. Sir, let me get you an answer for the record. I believe that base is part of the Base Realignment and Closure process, and therefore EPA has been asked to review cleanup standards as we often do under the BRAC closure.

Mr. HUELSKAMP. And I appreciate that. It was closed over 5½–6 years ago. It is my understanding that other Members of the Kansas Delegation have asked you and your assistants similar questions on this matter since November and they have never received a response. And if such authority exists, I find it difficult to believe that you wouldn't have a response in 3 months. Have you been asked this question before?

Ms. JACKSON. I believe we have correspondence on it, sir. But I don't have my notes here with me.

Mr. HUELSKAMP. Well, I appreciate that, and we and other Members of the delegation look forward to an answer after 3 months.

Additionally, I would like to ask one more question about greenhouse gas regulation. I am sure you understand that agriculture is certainly an energy intensive business. Whether it is fuel in the tractor, fertilizer for our crops, or delivery of the products, agriculture uses a great deal of energy throughout production. It is my understanding you have proposed regulations and suggested we need to provide additional greenhouse gas regulation particularly relating to CO<sub>2</sub>.

How do I explain to my farmers that they are expected to have these additional energy costs that would come out through a cap-

and-trade proposal or such and somehow compete on the international market?

Ms. JACKSON. Sir, please explain to your constituents that there is no cap-and-trade proposal. There is no proposal that impacts agriculture. Agriculture is not subject to EPA's mandatory greenhouse gas reporting rule.

Mr. HUELSKAMP. No, Madam Administrator. I appreciate that answer; however, agriculture is an energy consumer. We actually have a permit for an electrical generation plant in my district that suddenly the EPA has inserted themselves in the process. Indeed, your regional administrator put an editorial in the paper in the middle of that process and demands more restrictions on climate changing emissions. That impacts agricultural and our cost of production.

Is it normal for regional Administrators to send out editorials to newspapers, inserting themselves in the local permitting process?

Ms. JACKSON. I believe that the regional Administrator, Karl Brooks, was opining on whether or not the permit would comply with greenhouse gas reductions that might be anticipated by future rulemaking or by future lawmaking.

Mr. HUELSKAMP. And who is anticipating those? I presume those are coming from EPA, and that is what Mr. Brooks had indicated. So are you telling me there that he was wrong in his opining that this plant would be impacted by these proposed regulations?

Ms. JACKSON. No, sir. I did not say that. What I said is that there are currently regulations on the book that govern construction of new power generating facilities for greenhouse gas.

Mr. HUELSKAMP. Exactly. And do you not think that impacts the cost of production of agriculture?

Ms. JACKSON. I do not believe that regulation does not come without cost. What I have submitted to over and over again in all regulations, especially greenhouse gases, is that we can make moderate reductions, mainly through investments in energy efficiency, that will allow us to start to deal with greenhouse gas pollution.

Mr. HUELSKAMP. Earlier in your comments, though, you indicated those regulations would not impact agriculture. I am here to tell you they do. Farmers are smart enough to recognize, if you raise the price of their electricity, it is going to raise their cost of production. And when America is the only country seriously considering greenhouse gas regulations, considering CO<sub>2</sub> regulations, and actually implementing them in this process, as Karl Brooks has threatened in a letter to the State of Kansas, the newspapers—I just want you to know, I just can't believe as a regulator that you would allow a regional administrator to opine in the middle of permitting process and become a political agent of the Administration. I mean, did he approve that letter ahead of time?

Ms. JACKSON. Did he? He wrote it, sir, so I assume.

Mr. HUELSKAMP. Were you aware ahead of time that he was going to submit this letter to every major newspaper across the state and insert himself in what is a state process? And you know it is a state process.

If I might have an additional minute, Mr. Chairman.

The CHAIRMAN. Without objection, 1 additional minute.

Ms. JACKSON. My understanding of the letter as you are describing it is it dealt with Federal regulation of greenhouse gases, and whether the state permit, which is issued under the delegated authority of the Clean Air Act, was subject to forthcoming regulations.

Mr. HUELSKAMP. And, Madam Chair, that permit had not been issued yet. That had not been issued yet. And I would ask that the EPA let that permit go forward. It was issued before January, and I am very concerned for my producers because that permit is for agriculture-based co-op and covers 66 out of my 69 counties. And most of those owners of that co-op are farmers and ranchers. And what you do at the EPA, whether or not you think the cost of electricity impacts the cost of production, it seriously does and makes us to noncompetitive. Because Mexico is not going to do this, China is certainly not doing this, or other competitors in terms of the ag production will not do this. So thank you, Mr. Chairman.

The CHAIRMAN. The gentleman's time has expired. We now turn to our final Member to be recognized for 5 minutes, the gentleman from New York.

Mr. GIBSON. Thank you, Mr. Chairman.

Madam Administrator, thank you for being here today and your responses throughout the afternoon. I represent upstate New York. And the issue that I want to talk to you about is actually one that has been well trodden throughout the afternoon. It is the Chesapeake Bay watershed. Just south of New York State, we have a USGS monitoring site. And from the reports I have, the water supply that comes from New York from the origins and the watershed is basically clean, with healthy levels of nutrient and sediment, below pollution levels.

Therefore, the perception of our farmers—not only in my district, but I am the only one in New York on the Agriculture Committee, so I will also speak for those farmers that are beyond New York's 20th District.

The perception is is that including them in this program is really not necessary and onerous. And my question to you is, what research do you have that our agricultural community is contributing to the problem in the Bay? I will wait for your response on that before I continue.

Ms. JACKSON. Parts of New York are in the Chesapeake Bay watershed. I don't think that is disputed as a fact. And what I would like you to know, sir, is that during the process of looking at this pollution diet and figuring out loads, there was a lot of discussion with New York State, and particularly driven by agriculture about their concerns that they not get loads that were too onerous, especially for agriculture.

Mr. GIBSON. And the perception right now, though, is that the program that is going to go forward is one that is going to have extensive costs for our state and for what is viewed as not extensive benefits. So this goes back to the conversation that you have heard several times from Members, but also is tied to what an earlier Member talked about, about another look at these TMDL levels. So, I guess, I pass it back for your response to that.

Ms. JACKSON. Yes. Certainly I know that perception is out there. I guess what I would like to just simply say is a lot of work was

done to try to adjust New York's load to account for the fact that you are the furthest away from the watershed. And simply put, it is sort of human nature. Of course, the benefits for the Chesapeake Bay are hard for New Yorkers, especially upstaters, to appreciate because you are far away. And I certainly respect that and appreciate that.

Mr. GIBSON. But the other piece of this is when you look at the cleanliness, the healthiness of the water as it moves from New York, we think we are doing darned well when you look at nitrogen levels. So to include us in this program from the perspective of our farmers, they don't get this. They view it as yet another attempt from the United States Government to step on them and to really be an impediment to their profitability.

Ms. JACKSON. So some of the adjustments to New York's load was in recognition of the reductions that are coming from the agricultural sector already, in some part, due to economic conditions and in other parts, due to work that is being done. So there is an appreciation that New York's contribution here is discounted, if you will.

Mr. GIBSON. Well, I look forward to staying engaged with your office. I also thank you for what you are going to do and what you are doing for Nassau and Rensselaer County. I yield back.

The CHAIRMAN. It appears all Members of the Committee have had an opportunity to be recognized for 5 minutes. Before we would adjourn, I would be remiss if I did not thank Administrator Jackson for 3+ hours of her time and her insights in what probably is going to be an ongoing dialogue for some time. Thank you, Administrator.

Under the rules of the Committee, the record of today's hearing will be remain open for 10 calendar days to receive additional material and supplemental written responses from the witness to any questions posed by the Member.

This hearing of the Committee on Agriculture is adjourned.

[Whereupon, at 5:52 p.m., the Committee was adjourned.]

[Material submitted for inclusion in the record follows:]

SUPPLEMENTARY INFORMATION BY HON. LISA P. JACKSON, ADMINISTRATOR, U.S.  
ENVIRONMENTAL PROTECTION AGENCY

During the March 10, 2011 hearing entitled, *Hearing To Review the Impact of EPA Regulation on Agriculture*, requests for information were made to EPA. The following are their information submissions for the record.

**Insert 1**

Mr. GIBBS. . . . I want to follow up. I am a little concerned in the Florida situation, I am learning about that, and as you know, Florida is where all the phosphorus as a major crop nutrient comes from. And if we don't get it from Florida, I guess the other sources would be Morocco, Saudi Arabia and China, which would severely increase the cost to our producers across the United States.

My understanding, there are some permits that have been lingering for several years to increase the mining capacity in Florida for that. So I have a general concern about permits not—I guess it would probably be section 404 permits or whatever they are, to move forward with those operations. And then, of course, I follow that a little bit more with the unprecedented action of the EPA here recently of revoking a permit after there was final approval done after 3 years. I know the EPA, you will probably say it was a veto, but it was a revocation, and I think that is unprecedented.

So I would like a comment on what is happening in our phosphorus-mining operations in Florida that supply nutrients to our American farmers.

Ms. JACKSON. Sir, I would have to get that answer for you because I don't know the status of any permit cases down there. I haven't had any personal involvement.

EPA and other Federal agencies recognize the importance of phosphate mining in sustaining American farmers. We are working closely with the U.S. Army Corps of Engineers and the State of Florida to ensure that permitting decisions for proposed operations in Florida are made in a coordinated, timely, and environmentally protective manner.

Several permit applications have been submitted to the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act for phosphate mining operations in central and southwest Florida. The three specific relevant permit applications (and their Department of the Army file numbers) are CF Industries' South Pasture Extension (SAJ-1993-01395), Mosaic Fertilizer LLC's Four Corners Surface Tract (SAJ-1995-00794), and Mosaic Fertilizer LLC's Ona Mine (SAJ-1998-02067). To help coordinate the environmental evaluation of these permit applications consistent with the National Environmental Policy Act, the Corps began formal development of an areawide Environmental Impact Statement (EIS) in February 2011, in coordination with Federal agencies and the State of Florida. The EIS will help assess the human health and environmental impacts of these proposed operations, identify possible alternatives, and provide significant opportunities for public involvement. EPA is actively participating in the Corps-managed effort as a cooperating agency. EPA's contributions to the EIS will focus largely on water quality and other environmental effects within EPA's areas of expertise and responsibility. The Florida Department of Environmental Protection is also participating in the effort.

The agencies anticipate completing the draft EIS by October 2011 and the final EIS by August 2012. When complete, the EIS will provide the Corps, other Federal and State agencies, and the public with a better sense of the environmental effects of the proposed phosphate mining operations. This will enable permit decision-making to move forward on these applications.

Additional information on the EIS effort is available at <http://www.phosphateeis.org/index.html>.

**Insert 2**

Mr. SCHRADER. . . . In that January 12 letter, you also committed to the scientific review of the biomass combustion, and you ensured, I guess the quote would be, "will ensure that partners within the Federal Government and scientists outside of it with relevant expertise, claiming equal roles in the examination," kind of getting at some of the background questions we have had here, the third-party issues. This scientific review will later be followed up by the rulemaking.

When can we expect to see an explanation how you are going to reach out to outside parties and when the scientific process will start?

Ms. JACKSON. Sir, let me get you a schedule through the chair for the record. But I will commit that we are looking at an independent process, and we have

standards for peer-review and scientists. So that will be a very public process as well.

EPA is in the process of conducting a study of the scientific and technical issues associated with accounting for biogenic carbon dioxide (CO<sub>2</sub>) from stationary sources. That study will include both a review of the technical information, and the description and development of specific accounting options for biogenic CO<sub>2</sub> emissions from stationary sources.

We have requested that the EPA Science Advisory Board (SAB) conduct an independent peer review of the study. Thus, the SAB will serve as the "independent scientific panel" cited in the January 2011 letters from the Administrator to Members of Congress announcing our plans to address biogenic CO<sub>2</sub> from stationary sources and the March 2011 proposed rule to defer biogenic CO<sub>2</sub> emissions from the PSD and Title V programs (76 FR 15249). Members of the public are invited to provide input in the process by: (a) nominating candidates to the SAB panel; (b) commenting on the list of SAB candidates; and (c) providing written and oral comments on the EPA technical document that is submitted for the SAB's consideration.

#### *Schedule*

On April 27, 2011, the SAB published a "Request for Nominations of Candidates for a SAB Panel on Accounting for Carbon Dioxide (CO<sub>2</sub>) Emissions from Biogenic Sources" (76 FR 23587). Nominations for inclusion on this panel are solicited from members of the public and are due by May 18, 2011. From the nominees identified by respondents to this Federal Register notice (termed the "Widecast") and other sources, the SAB Staff Office will develop a smaller subset (known as the "Short List") for more detailed consideration. The Short List will be posted on the SAB website at <http://www.epa.gov/sab> and will include, for each candidate, the nominee's name and biosketch. Public comments on the Short List will be accepted for 21 calendar days. During this comment period, the public will be requested to provide information, analysis, or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates for the Panel.

#### **Insert 3**

Mr. NEUGEBAUER. For the last 50 rules that you put out, I would like to see the supporting data that you put behind there. Was that data available for comment as well on the studies, or did you just report the results of the findings?

Ms. JACKSON. I am happy to make that available. I am sure it was publicly available.

Please see attached chart including links to each rule's docket where the requested supporting data can be found.

**EPA's 50 Most Recent Final Rules, up to and including March 10, 2011**  
 [This list includes the fifty most recent final rules published prior to or including March 10, 2011, that were signed by EPA's Administrator and include regulatory text.]

No.	Publication Date	Docket ID	RIN	Title	Link to Docket on Regulations.gov
1	March 9, 2011	EPA-HQ-OAR-2008-0708	RIN 2060-AQ78	National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines	<a href="http://www.regulations.gov/#/docketDetail.dcl=FR+PR+N+O+SR;rup=10;po=0;D=EPA-HQ-OAR-2008-0708">http://www.regulations.gov/#/docketDetail.dcl=FR+PR+N+O+SR;rup=10;po=0;D=EPA-HQ-OAR-2008-0708</a>
2	March 4, 2011	EPA-HQ-OAR-2009-0517	RIN 2060-AQ77	Updating Cross-References for the Oklahoma State Implementation Plan	<a href="http://www.regulations.gov/#/docketDetail.dcl=FR+PR+N+O+SR;rup=10;po=0;D=EPA-HQ-OAR-2009-0517">http://www.regulations.gov/#/docketDetail.dcl=FR+PR+N+O+SR;rup=10;po=0;D=EPA-HQ-OAR-2009-0517</a>
3	February 22, 2011	EPA-R07-OAR-2010-0932	Not Assigned	Approval and Promulgation of Implementation Plans, Kansas: Prevention of Significant Deterioration, Greenhouse Gas (GHG) Permitting Authority and Tailoring Rule Revision, Withdrawal of Federal GHG Implementation Plan for Kansas	<a href="http://www.regulations.gov/#/docketDetail.dcl=FR+PR+N+O+SR;rup=10;po=0;D=EPA-R07-OAR-2010-0932">http://www.regulations.gov/#/docketDetail.dcl=FR+PR+N+O+SR;rup=10;po=0;D=EPA-R07-OAR-2010-0932</a>
4	February 17, 2011	EPA-HQ-OAR-2010-0239	RIN 2060-AP48	National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category, and Addition to Source Category List for Standards	<a href="http://www.regulations.gov/#/docketDetail.dcl=FR+PR+N+O+SR;rup=10;po=0;D=EPA-HQ-OAR-2010-0239">http://www.regulations.gov/#/docketDetail.dcl=FR+PR+N+O+SR;rup=10;po=0;D=EPA-HQ-OAR-2010-0239</a>
5	February 3, 2011	EPA-HQ-OAR-2007-0562	RIN 2060-AQ30	Additional Air Quality Designations for the 2006 24-Hour Fine Particle National Ambient Air Quality Standards, 110(k)(6) Correction and Technical Correction Related to Prior Designation, and Deterioration Related to 1997 Air Quality Designations and Classifications for the Annual Fine Particles National Ambient Air Quality Standards	<a href="http://www.regulations.gov/#/docketDetail.dcl=FR+PR+N+O+SR;rup=10;po=0;D=EPA-HQ-OAR-2007-0562">http://www.regulations.gov/#/docketDetail.dcl=FR+PR+N+O+SR;rup=10;po=0;D=EPA-HQ-OAR-2007-0562</a>
6	January 24, 2011	EPA-HQ-OAR-2006-0406	RIN 2060-AP16	National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities, and Gasoline Dispensing Facilities	<a href="http://www.regulations.gov/#/docketDetail.dcl=FR+PR+N+O+SR;rup=10;po=0;D=EPA-HQ-OAR-2006-0406">http://www.regulations.gov/#/docketDetail.dcl=FR+PR+N+O+SR;rup=10;po=0;D=EPA-HQ-OAR-2006-0406</a>
7	January 20, 2011	EPA-HQ-OAR-2005-0031	RIN 2060-AQ46	Standards of Performance for Fossil-Fuel-Fired Electric Utility Industrial-Commercial-Institutional and Small Industrial-Commercial-Institutional Steam Generating Units	<a href="http://www.regulations.gov/#/docketDetail.dcl=FR+PR+N+O+SR;rup=10;po=0;D=EPA-HQ-OAR-2005-0031">http://www.regulations.gov/#/docketDetail.dcl=FR+PR+N+O+SR;rup=10;po=0;D=EPA-HQ-OAR-2005-0031</a>
8	January 18, 2011	EPA-HQ-OAR-2002-0051	RIN 2060-AQ59	National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants	<a href="http://www.regulations.gov/#/docketDetail.dcl=FR+PR+N+O+SR;rup=10;po=0;D=EPA-HQ-OAR-2002-0051">http://www.regulations.gov/#/docketDetail.dcl=FR+PR+N+O+SR;rup=10;po=0;D=EPA-HQ-OAR-2002-0051</a>
9	December 30, 2010	EPA-HQ-OAR-2010-0107	RIN 2060-AQ45	Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan	<a href="http://www.regulations.gov/#/docketDetail.dcl=FR+PR+N+O+SR;rup=10;po=0;D=EPA-HQ-OAR-2010-0107">http://www.regulations.gov/#/docketDetail.dcl=FR+PR+N+O+SR;rup=10;po=0;D=EPA-HQ-OAR-2010-0107</a>
10	December 30, 2010	EPA-HQ-OAR-2009-0517	RIN 2060-AQ63	Action To Ensure Authority To Implement Title V Permitting Programs Under the Greenhouse Gas Tailoring Rule	<a href="http://www.regulations.gov/#/docketDetail.dcl=FR+PR+N+O+SR;rup=10;po=0;D=EPA-HQ-OAR-2009-0517">http://www.regulations.gov/#/docketDetail.dcl=FR+PR+N+O+SR;rup=10;po=0;D=EPA-HQ-OAR-2009-0517</a>
11	December 30, 2010	EPA-HQ-OAR-2010-1033	RIN 2060-AQ67	Determinations Concerning Need for Error Correction, Partial Approval and Partial Disapproval and Federal Implementation Plan Regarding Texas Prevention of Significant Deterioration Program	<a href="http://www.regulations.gov/#/docketDetail.dcl=FR+PR+N+O+SR;rup=10;po=0;D=EPA-HQ-OAR-2010-1033">http://www.regulations.gov/#/docketDetail.dcl=FR+PR+N+O+SR;rup=10;po=0;D=EPA-HQ-OAR-2010-1033</a>

**EPA's 50 Most Recent Final Rules, up to and including March 10, 2011—Continued**  
 [This list includes the fifty most recent final rules published prior to or including March 10, 2011, that were signed by EPA's Administrator and include regulatory text.]

No.	Publication Date	Docket ID	RIN	Title	Link to Docket on Regulations.gov
12	December 30, 2010	EPA-HQ-OAR-2009-0517	RIN 2060-AQ62	Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans	<a href="http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-OAR-2009-0517">http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-OAR-2009-0517</a>
13	December 27, 2010	EPA-HQ-OAR-2006-0735	RIN 2060-AP77	Revisions to Lead Ambient Air Monitoring Requirements	<a href="http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-OAR-2006-0735">http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-OAR-2006-0735</a>
14	December 27, 2010	EPA-HQ-OAR-2010-0929	RIN 2060-AQ80	Interim Final Regulation Deferring the Reporting Data for Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule	<a href="http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-OAR-2010-0929">http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-OAR-2010-0929</a>
15	December 21, 2010	EPA-HQ-OAR-2005-0161	RIN 2060-AQ31	Regulation of Fuels and Fuel Additives: Modifications to Renewable Fuel Standard Program	<a href="http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-OAR-2005-0161">http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-OAR-2005-0161</a>
16	December 21, 2010	EPA-HQ-OAR-2008-0348	RIN 2060-AO58	Methods for Measurement of Filterable PM <sub>10</sub> and PM <sub>2.5</sub> and Measurement of Condensable PM Emissions from Stationary Sources	<a href="http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-OAR-2008-0348">http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-OAR-2008-0348</a>
17	December 17, 2010	EPA-HQ-RCRA-2009-0310	RIN 2060-AG55	Hazardous Waste Management System Identification and Listing of Hazardous Waste, Removal of Substances and Its Status From the Lists of Hazardous Constituents & Hazardous Wastes & Hazardous Substances	<a href="http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-RCRA-2009-0310">http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-RCRA-2009-0310</a>
18	December 17, 2010	EPA-HQ-OAR-2008-0508	RIN 2060-AQ33	Mandatory Reporting of Greenhouse Gases	<a href="http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-OAR-2008-0508">http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-OAR-2008-0508</a>
19	December 14, 2010	EPA-HQ-OAR-2008-0324	RIN 2060-AQ89	National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources	<a href="http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-OAR-2008-0324">http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-OAR-2008-0324</a>
20	December 10, 2010	EPA-HQ-OW-2008-0390	RIN 2040-AE98	Federal Requirements Under the Underground Injection Control Program for Carbon Dioxide (CO <sub>2</sub> ) Geologic Sequestration (GS) Wells	<a href="http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-OW-2008-0390">http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-OW-2008-0390</a>
21	December 9, 2010	EPA-HQ-OAR-2010-0133	RIN 2060-AQ16	Regulation of Fuels and Fuel Additives: 2011 Renewable Fuel Standards for the State of Florida's Lakes and Flowing Waters	<a href="http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-OAR-2010-0133">http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-OAR-2010-0133</a>
22	December 6, 2010	EPA-HQ-OW-2009-0596	RIN 2040-AF11	Water Quality Standards for Greenhouse Gases: Addition of Fluorinated GHGs	<a href="http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-OW-2009-0596">http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-OW-2009-0596</a>
23	December 1, 2010	EPA-HQ-OAR-2009-0927	RIN 2060-AQ00	Mandatory Reporting of Greenhouse Gases: Additional Sources of Fluorinated GHGs	<a href="http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-OAR-2009-0927">http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-OAR-2009-0927</a>
24	December 1, 2010	EPA-HQ-OAR-2009-0926	RIN 2060-AP88	Mandatory Reporting of Greenhouse Gases: Injection and Geologic Sequestration of Carbon Dioxide	<a href="http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-OAR-2009-0926">http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-OAR-2009-0926</a>
25	November 30, 2010	EPA-HQ-OAR-2009-0923	RIN 2060-AP99	Mandatory Reporting of Greenhouse Gases: Petroleum and Natural Gas Systems	<a href="http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-OAR-2009-0923">http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-OAR-2009-0923</a>
26	November 26, 2010	EPA-HQ-TRI-2010-0006	RIN 2025-AA28	Addition of National Toxicology Program Carcinogens Community Right-to-Know Toxic Chemical Release Reporting	<a href="http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-TRI-2010-0006">http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-TRI-2010-0006</a>
27	November 22, 2010	EPA-HQ-OAR-2009-0443	RIN 2060-AP78	Air Quality Designations for the 2008 Lead (Pb) National Ambient Air Quality Standards	<a href="http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-OAR-2009-0443">http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-OAR-2009-0443</a>
28	November 8, 2010	EPA-HQ-OAR-2010-0142	RIN 2060-AO89	Revisions to In-Use Testing for Heavy-Duty Diesel Engines and Vehicles, Emissions Measurement and Instrumentation, Not-to-Exceed Emission Standards, and Technical Amendments for Off-Highway Engines	<a href="http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-OAR-2010-0142">http://www.regulations.gov/#docheatDetail.xdt=FR+PR+N+O+SR;ryp=10;po=0;D=EPA-HQ-OAR-2010-0142</a>

29	November 5, 2010	EPA-HQ-OW-2010-0884	Not Assigned	Direct Final Rule Staying Numeric Limitation for the Construction and Development Point Source Category Reporting of Greenhouse Gases	<a href="http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OW-2010-0884">http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OW-2010-0884</a>
30	October 28, 2010	EPA-HQ-OAR-2010-0109	RIN 2060-A079	Mandatory Reporting of Greenhouse Gases	<a href="http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OAR-2010-0109">http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OAR-2010-0109</a>
31	October 20, 2010	EPA-HQ-OAR-2006-0605	RIN 2060-A024	Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM <sub>2.5</sub> )—Increments Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)	<a href="http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OAR-2006-0605">http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OAR-2006-0605</a>
32	October 14, 2010	EPA-HQ-OPA-2009-0880	RIN 2060-AG59	Oil Pollution Prevention, Spill Prevention, Control, and Countermeasure (SPCC) Rule—Compliance Date Amendment	<a href="http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OPA-2009-0880">http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OPA-2009-0880</a>
33	October 8, 2010	EPA-HQ-OPP-2005-0327	RIN 2070-AJ74	Pesticide Management and Disposal, Standards for Pesticide Containers and Containment, Change to Labeling Compliance Date	<a href="http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OPP-2005-0327">http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OPP-2005-0327</a>
34	September 28, 2010	EPA-HQ-OAR-2010-0133	RIN 2060-AQ35	Supplemental Determination for Renewable Fuels Produced Under the Final RFS2 Program From Canada Oil	<a href="http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OAR-2010-0133">http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OAR-2010-0133</a>
35	September 22, 2010	EPA-HQ-OAR-2009-0925	RIN 2060-AQ02	Mandatory Reporting of Greenhouse Gases	<a href="http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OAR-2009-0925">http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OAR-2009-0925</a>
36	September 16, 2010	EPA-HQ-OAR-2010-0270	RIN 2060-AQ18	Technical Amendments for Marine Spark-Ignition Engines and Vessels	<a href="http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OAR-2010-0270">http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OAR-2010-0270</a>
37	September 13, 2010	EPA-HQ-OAR-2008-0531	RIN 2060-AP23	Restructuring of the Stationary Source Audit Program	<a href="http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OAR-2008-0531">http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OAR-2008-0531</a>
38	September 9, 2010	EPA-HQ-OAR-2002-0051	RIN 2060-A015	National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants	<a href="http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OAR-2002-0051">http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OAR-2002-0051</a>
39	August 20, 2010	EPA-HQ-OAR-2007-0877	RIN 2060-A042	National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines	<a href="http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OAR-2007-0877">http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OAR-2007-0877</a>
40	August 13, 2010	EPA-HQ-SFUND-2010-0085	RIN 2060-AP36	Cooperative Agreements and Superfund State Contracts for Superfund Response Actions	<a href="http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-SFUND-2010-0085">http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-SFUND-2010-0085</a>
41	July 20, 2010	EPA-HQ-OAR-2008-0080	RIN 2060-AQ26	Hazardous Air Pollutants: Area Source Standards for Prepared Feeds Manufacturing	<a href="http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OAR-2008-0080">http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OAR-2008-0080</a>
42	July 12, 2010	EPA-HQ-OAR-2008-0508	RIN 2060-AQ03	Mandatory Reporting of Greenhouse Gases From Magnesium Production, Underground Coal Mines, Industrial Wastewater Treatment, and Industrial Waste Landfills	<a href="http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OAR-2008-0508">http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OAR-2008-0508</a>
43	June 30, 2010	EPA-HQ-OAR-2003-0146	RIN 2060-A055	National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries	<a href="http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OAR-2003-0146">http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OAR-2003-0146</a>
44	June 30, 2010	EPA-HQ-OAR-2008-0708	RIN 2060-AP36	National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines	<a href="http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OAR-2008-0708">http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OAR-2008-0708</a>
45	June 22, 2010	EPA-HQ-OAR-2007-0352	RIN 2060-A048	Primary National Ambient Air Quality Standard for Sulfur Dioxide	<a href="http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OAR-2007-0352">http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OAR-2007-0352</a>
46	June 15, 2010	EPA-HQ-OPP-2005-0327	RIN 2070-AJ74	Pesticide Management and Disposal Standards for Pesticide Containers and Containment, Change to Labeling Compliance Date	<a href="http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OPP-2005-0327">http://www.regulations.gov/#docheckDetail?dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OPP-2005-0327</a>

**EPA's 50 Most Recent Final Rules, up to and including March 10, 2011—Continued**

[This list includes the fifty most recent final rules published prior to or including March 10, 2011, that were signed by EPA's Administrator and include regulatory text.]

No.	Publication Date	Docket ID	RIN	Title	Link to Docket on Regulations.gov
47	June 15, 2010	EPA-HQ-RCRA-2005-0017	RIN 2050-AG57	Withdrawal of the Emission-Comparable Fuel Exclusion Under RCRA	<a href="https://www.regulations.gov/#docketDetail;dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-RCRA-2005-0017">https://www.regulations.gov/#docketDetail;dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-RCRA-2005-0017</a>
48	June 4, 2010	EPA-HQ-OA-2004-0002	RIN 2090-AA37	Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency	<a href="http://www.regulations.gov/#docketDetail;dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OA-2004-0002">http://www.regulations.gov/#docketDetail;dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OA-2004-0002</a>
49	June 3, 2010	EPA-HQ-OAR-2008-0053	RIN 2060-AN47	National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Paints and Allied Products Manufacturing Amendments	<a href="http://www.regulations.gov/#docketDetail;dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OAR-2008-0053">http://www.regulations.gov/#docketDetail;dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OAR-2008-0053</a>
50	June 3, 2010	EPA-HQ-OAR-2009-0517	RIN 2060-AP86	Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule Part II	<a href="http://www.regulations.gov/#docketDetail;dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OAR-2009-0517">http://www.regulations.gov/#docketDetail;dt=FR+PR+N+O+SR;pp=10;po=0;D=EPA-HQ-OAR-2009-0517</a>

SUBMITTED QUESTIONS

**Letters and Response from U.S. Environmental Protection Agency**

October 28, 2011

Hon. FRANK D. LUCAS,  
*Chairman,*  
House Committee on Agriculture,  
Washington, D.C.

Dear Chairman Lucas:

Thank you for the opportunity to respond to your September 8, 2011 letter and the questions for the record following the March 10, 2011, hearing on the impact of EPA regulation on agriculture. The attached document has responses for more than 80 percent of the questions. I am sending this set of approved responses rather than delay the entire package for the small number of responses still outstanding. The remaining responses are nearing approval and will be forwarded to you as soon as possible. I hope that this information is useful to you and the Members of the Committee.

If you have any further questions, please contact me or your staff may call Sven-Erik Kaiser in my office at [Redacted].

Sincerely,



ARVIN GANESAN,  
*Associate Administrator.*

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November 30, 2011

Hon. FRANK D. LUCAS,  
*Chairman,*  
House Committee on Agriculture,  
Washington, D.C.

Dear Chairman Lucas:

I am completing the response to your September 8, 2011 letter and the questions for the record following the March 10, 2011, hearing on the impact of EPA regulation on agriculture. On October 28, 2011 I responded to your letter with responses for a large portion of the questions. The attached document has responses for the remaining questions. Thank you for your patience and again, I hope that this information is useful to you and the Members of the Committee.

If you have any further questions, please contact me or your staff may call Sven-Erik Kaiser in my office at [Redacted].

Sincerely,



ARVIN GANESAN,  
*Associate Administrator.*

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December 15, 2011

Hon. FRANK D. LUCAS,  
*Chairman,*  
House Committee on Agriculture,  
Washington, D.C.

I am completing the response to the questions for the record following a hearing before the House Committee on Agriculture earlier this year. Questions from Congressman Peterson forwarded by the Committee requested that the EPA provide the Committee with copies of all documents meeting the following criteria:

- (1) A settlement agreement entered into by the EPA;

- (2) In response to any civil action, administrative adjudication or petition for review brought against the EPA or the Administrator of EPA; and  
 (3) During the period of January 1, 2006 through March 10, 2011.

On the enclosed CD,\* the EPA is providing settlement agreements and consent decrees entered during this time frame under the environmental statutes administered by the EPA. In addition, I am attaching a response to your question for the record in reference to publication of proposed settlements in the *Federal Register* for public comment.

Thank you for your interest in this important subject matter. I hope that you will find these responses informative. If you have further questions, please contact me or your staff may call Sven-Erik Kaiser in my office at [Redacted].

Sincerely,



ARVIN GANESAN,  
Associate Administrator.

December 28, 2011

Hon. FRANK D. LUCAS,  
Chairman,  
House Committee on Agriculture,  
Washington, D.C.

I am responding to questions for the record following the March 10, 2011, hearing on the impact of EPA regulation on agriculture. The attached document includes responses to questions from Congressman Schilling that were received after the questions that were responded to previously. I hope that this information is useful to you and the members of the committee.

If you have any further questions, please contact me or your staff may call Sven-Erik Kaiser in my office at [Redacted].

Sincerely,



ARVIN GANESAN,  
Associate Administrator.

ATTACHED RESPONSES

*Questions Submitted by Hon. Frank D. Lucas, a Representative in Congress from Oklahoma*

*Question 1.* Are you aware that synthetic gypsum from power plants is not “coal ash” at all—but rather a byproduct of flue gas desulfurization (FGD) during the “scrubbing” process? If it’s not coal ash, why are you including it in the regulations you are developing?

*Answer.* The EPA’s proposed rule addresses the management of coal combustion residuals (CCRs) from electric utilities. CCRs and “coal ash” are broad terms that refer to a range of residuals produced from the combustion of coal, including fly ash, bottom ash, slag, and flue gas emission control wastes. We are aware of the processes used to produce synthetic gypsum from FGD materials, and are carefully considering the comments regarding whether synthetic gypsum derived from coal combustion residuals warrants regulation.

*Question 2.* The people who use synthetic gypsum for agriculture now face a huge regulatory uncertainty because of the coal ash rulemaking. When do you plan to complete this rule? As you work to determine if this material should be classified as a “hazardous waste”, how should we address parties who are interested in recycling it, but are stuck in limbo?

*Answer.* The agency is in the process of reviewing and addressing more than 450,000 comments received on the proposed coal ash rule. In addition, the EPA and

\*The documents referred to are retained in Committee files.

the U.S. Department of Agriculture (USDA) are conducting a joint study on the use of flue gas desulfurization (FGD) gypsum in agriculture. In the preamble of the proposed rule, the EPA indicated that study should be completed at the end of 2012.

Users of coal combustion residuals (CCR) in agriculture are encouraged to review the basic guidance provided in the interim report (Agricultural Uses for Flue Gas Desulfurization (FGD) Gypsum, March 2008, EPA530-F08-009)<sup>1</sup> pending completion of the study. The report references several resources for responding to questions including: the EPA's Industrial Waste Management Evaluation Model (IWEM) and the chapter on land application (Chapter 7) in the associated *Guide for Industrial Waste Management* <http://www.epa.gov/epawaste/nonhaz/industrial/guide/index.htm>, the State's department of environmental protection, department of agriculture, and agricultural extension service, and the USDA Natural Resources Conservation Service.

*Question 3.* Are there ways that the EPA might encourage flue gas desulfurization (FGD) gypsum use in agriculture to help address water quality problems caused by degraded soils and excess nutrient loadings?

*Answer.* The EPA's proposed rulemaking on the management of coal combustion residuals (CCRs) acknowledges that there are significant benefits that can be derived from the use of CCRs in agricultural applications and that the EPA and the U.S. Department of Agriculture's Agricultural Research Service are engaged in field studies, expected to conclude in late 2012. The agency did request comments, information, and data on CCRs that are beneficially used in agriculture, but did not propose to regulate the beneficial use of CCRs in agricultural applications. The EPA continues to support the beneficial use of coal combustion residuals in an environmentally sound manner because of the important benefits to the economy and the environment.

*Question 4.* Can you comment on the use of synthetic gypsum to protect the Chesapeake Bay from nutrient runoff funded by the USDA Conservation Innovation Grants Program and the projects and studies underway and planned in the Great Lakes Region for the same effect.

*Answer.* We support the use of this technology as one approach for reducing nutrient runoff from agricultural operations through soil amendments that increase phosphorus adsorption capacity of farmland soils and buffer treatment to adsorb phosphorus before field runoff enters the streams and the Chesapeake Bay. Note that this is only one of many approaches that farmers can take to reduce nutrient losses from their operations. We have highlighted this approach along with other cost-effective, proven practices for reducing nutrients from agricultural operations in the Guidance for Federal Land Management in the Chesapeake Bay Watershed (<http://www.epa.gov/nps/chesbay502/>). Although this document was developed for Federal lands, it acknowledges that a majority of land in the Chesapeake Bay watershed is non-Federal land, and also recognizes that the same set of tools and practices are appropriate for both Federal and non-Federal land managers to restore and protect the Chesapeake Bay.

*Question 5.* Ms. Jackson, you testified before the House Agriculture Committee. If I could, let me read from your statement. You said: "As I'm sure you would agree, Mr. Chairman, facts matter and we all have a responsibility to ensure that the American people have facts and the truth in front of them, particularly when fictions are pushed by special interests with an investment in the outcome. Let me give you five examples: 'One is the notion that EPA intends to regulate the emissions from cows—what is commonly referred to as a 'Cow Tax.' This myth was started in 2008 by a lobbyist and quickly de-bunked by the non-partisan, independent group [factcheck.org](http://factcheck.org)—it still lives on. The truth is—EPA is proposing to reduce greenhouse gas emissions in a responsible, careful manner and we have even exempted agricultural sources from regulation.'"

Your statement raises several questions:

What is the basis of your statement that EPA has "even exempted agricultural sources from regulation"? Can you cite the place in the regulation that "exempts" agricultural sources?

<sup>1</sup> <http://nepis.epa.gov/Exe/ZyNET.exe/P1001119.TXT?ZyActionD=ZyDocument&Client=EPA&Index=2006+Thru+2010&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIndex%20Data%5C06thru10%5Ctxt%5C00000004%5CP1001119.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=p%7C&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL#>

*Question 5a.* Are you exempting all agricultural sources or just some?

*Question 5b.* Have you exempted any other sectors from the regulation?

*Question 6.* What authority does EPA to exempt certain sectors from the greenhouse gas rule? Where in the Clean Air Act is that authority?

*Question 7.* The Clean Air Act explicitly states that “major sources”—which is any entity that emits or has the potential to emit more than 100 tons of a regulated pollutant per year—must obtain a Title V operating permit. Is it your testimony that EPA is exempting all agricultural sources, regardless of their level of emissions, from the greenhouse gas regulation?

*Question 8.* EPA’s own figures state that 37,000 farms are above the threshold of a major source. How can they be exempt under the law?

*Question 9.* If the basis of your statement is the tailoring rule, is it not correct to say that this approach only delays—it does not exempt—certain sources?

*Question 10.* Do you believe you have the authority to disregard the 100 ton and 250 thresholds in the law that defines major sources for the Title V and PSD programs?

*Answer 5–10.* The EPA has established, by rule, a common sense approach to regulating greenhouse gas (GHG) emissions under the Clean Air Act (CAA) permitting programs. The rule, known as the “Tailoring Rule,” phases in CAA permitting requirements for GHGs, with only the largest GHG emitters covered in the initial phases. In these initial phases, which are intended to last until at least 2016, the EPA does not expect that agricultural sources are large enough that they will be subject to GHG permitting under the CAA.

The Tailoring Rule does not take a sector based approach to exempting sectors from Prevention of Significant Deterioration (PSD) or Title V permitting requirements. Rather, we set emission thresholds in the Tailoring Rule that are applicable to all sectors. Sources below the thresholds have no GHG PSD or Title V permitting obligations regardless of what sector they are in. Although we did not take a sector based approach in the Tailoring Rule, our information is that some sectors have no sources above the thresholds, and thus effectively are exempted from GHG permitting obligations.

With respect to agricultural sources, the question indicates that the EPA’s own figures state that 37,000 farms have GHG emissions above the statutory major source threshold. According to our best information, none of these farms have GHG emissions above the thresholds of the Tailoring Rule that would trigger GHG permitting requirements, or even above the 50,000 tpy CO<sub>2</sub>e level.

The legal basis for the phased-in approach adopted in the Tailoring Rule is set forth in the preamble to that rule. The purpose of the Tailoring Rule was to relieve the overwhelming permitting burdens that would, in the absence of the rule, fall on permitting authorities and sources. The EPA accomplished this by tailoring the applicability criteria that determine which GHG-emitting sources become subject to the PSD and Title V permitting programs. Both the PSD and Title V provisions establish clear numerical thresholds for applying the permitting requirements—in general, the Title V permitting requirements apply to sources emitting 100 tpy and PSD applies to sources emitting 100 or 250 tpy, depending on the source category. But under the Supreme Court’s directive for how to interpret statutory provisions (described in the *Chevron* case),<sup>2</sup> the EPA must interpret these thresholds based on what Congress intended them to mean when applied to the case at hand (*i.e.*, when applied to GHG-emitting sources), and not necessarily on their literal meaning. The courts have established three legal doctrines that each make clear that the EPA is authorized to interpret the permitting thresholds for GHG-emitting by adopting the phased-in approach of the Tailoring Rule, and not by adhering to those 100/250 tpy thresholds literally, at least at the present time. The legal basis for the tailoring rule rests on the legal doctrines of absurd results, administrative necessity, and one step at a time due to events.

*Question Submitted by Hon. Collin C. Peterson, a Representative in Congress from Minnesota*

*Question 1.* According to OPM’s website, the “Intergovernmental Personnel Act Mobility Program provides for the temporary assignment of personnel between the Federal Government and state and local governments, colleges and universities, Indian tribal governments, federally funded research and development centers, and other eligible organizations.” The Committee became aware of a situation where EPA had entered into an Interpersonnel Agreement with a nonprofit, and the

<sup>2</sup> *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

shared employee was lobbying on Capitol Hill for a piece of legislation involving EPA. How many IPA's are currently active? Is it possible to determine where EPA employees are currently working?

*Answer.* As of August 18, 2011, the EPA has 23 employees serving under the Intergovernmental Personnel Act mobility program. They serve at the following organizations:

- Mississippi Department of Marine Resources
- The Nature Conservancy
- The Environmental Council of the States
- Navajo Nation EPA Superfund Program
- The Oregon Extension of Eastern University
- California Environmental Protection Agency
- Environmental Law Institute
- World Resources Institute
- Florida Department of Environmental Protection
- Puget Sound Partnership (2)
- DePaul University
- National Wildlife Federation
- Lincoln University Graduate Center
- Pennsylvania Department of Environmental Protection
- Commonwealth of Puerto Rico—Environmental Quality Board (2)
- Florida Department of Agriculture and Consumer Services
- City of New Haven Office of Sustainability
- North Carolina Agricultural and Technical State University
- The Clean Air Institute
- Navajo Nation Department of Justice
- Western States Water Council

*Question 2.* Recent court decisions have concluded that EPA's assertion that it has authority under FIFRA to bring a misbranding or other enforcement action prior to completing administrative procedures under FIFRA Section 6 based on the failure of the chemistry or compound to satisfy the requirements of risk mitigation decisions is arbitrary, capricious, an abuse of discretion, and contrary to law. Please provide Committee with an expected timeline for completing the administrative procedures required under FIFRA section 6 for registrants with chemistries or compounds under risk mitigation review.

*Answer.* In May 2008, the EPA issued its Risk Mitigation Decision for Ten Rodenticides (RMD), specifying rodenticide product changes that must be made to allow for continued use that does not present unreasonable adverse effects to human health or the environment. On June 7, 2011, the EPA finalized the RMD, moving to ban the sale to residential consumers of the most toxic rat and mouse poisons, as well as most loose bait and pellet products. The agency is also requiring that all newly registered rat and mouse poisons marketed to residential consumers be enclosed in bait stations that will render the pesticide inaccessible to children and pets. The EPA intends to initiate cancellation proceedings under FIFRA against certain noncompliant products.

*Question 3.* We appreciate EPA working with the livestock industry to collect information about current emissions on today's animal feeding operations. It was our understanding that the methodology for collecting the information was approved by EPA is that correct? Is there a timeline for analyzing this information? How are you engaging the scientific community to analyze and digest the information collected by the livestock industry? How will EPA go about using this information down the road?

*Answer.* The monitoring methodologies used in the National Air Emissions Monitoring Study were identified and selected by a broad group of stakeholders that included representatives from the EPA, the U.S. Department of Agriculture, the animal feeding operation (AFO) industry, state and local air agencies, and environmental groups. All stakeholders had a part in the development process, and the EPA approved the final methodologies. On January 19, 2011, the EPA issued a Call for Information seeking additional peer reviewed monitoring data on AFO emissions, along with information on how animals and waste are managed at specific sites. The deadline for submitting these data to the agency was March 7, 2011.

The analysis of the data will be conducted by the EPA, with the assistance of their contractor, ERG, in a stepwise manner beginning with the broiler industry, followed by the swine and egg layers, and finishing with the dairy. As the analyses for each industry are developed, the drafts will be released on a rolling basis. Methodologies for the other species are scheduled to be completed and finalized by June 2012.

All stakeholders, including interested members of the scientific community, will be provided with an opportunity to review and comment on the draft methodologies. The EPA will announce the availability of the draft methodologies for review in the *Federal Register*. In addition to the *Federal Register* notice, the EPA will inform representatives of the major AFO trade organizations and other stakeholders that the draft methodologies are available for review and comment. Additionally, the EPA plans to hold informational webinars, informal meetings, and outreach sessions with all interested stakeholders to discuss the data, processes, and information gathered from the study. Other information submitted to the agency will also be included for review.

The EPA has made the National Air Emissions Monitoring Study reports and associated data available to all stakeholders at [www.epa.gov/airquality/agmonitoring/](http://www.epa.gov/airquality/agmonitoring/).

The agency will be using the data and information collected from the study, as well as other submitted data, to develop better tools for estimating AFO emissions.

*Question 4.* EPA recently released its latest draft report on biofuels and the environment. There seem to be inconsistencies in this report, as compared to outcomes from the RFS rulemaking. To what extent did the drafters of this report collaborate with USDA and other Federal agencies, and with other departments within EPA?

The draft report focuses on the potential negative environmental impacts of biofuels, but makes only the briefest comparison to the impacts from continued reliance on petroleum-derived baseline fuels. Will the final report attempt to correct this omission and go into further detail on both the potentially positive effects of biofuels on the environment, as well as the comparison to the environmental impacts of increasing dependence on marginal sources of foreign oil?

*Answer.* The EPA does not believe there are inconsistencies with this report to Congress and the Renewable Fuel Standard (RFS) rulemaking. The basis for the Report to Congress was the RFS2 Regulatory Impact Analysis. This first Report to Congress reviews impacts and mitigation tools across the entire biofuel supply chain from feedstock production and logistics to biofuel production, distribution, and use with an emphasis on six different feedstocks and two biofuels. The two feedstocks most predominantly used currently are corn starch to produce ethanol and soybeans to produce biodiesel. Four other feedstocks (corn stover, perennial grasses, woody biomass, and algae) have been reviewed for purposes of comparative evaluation. These represent the range of feedstocks currently under development. The two biofuels considered are ethanol (both conventional and cellulosic) and biomass-based diesel, because they are the most commercially viable in 2010 and are projected to be the most commercially available by 2022.

In preparing the draft report, the EPA assembled a large team of scientists from across the agency's research laboratories and program offices, including close cooperation with the Office of Air and Radiation. In addition, the EPA received input from U.S. Department of Agriculture (USDA) and Department of Energy (DOE) staff scientists and held a series of briefings with each of these agencies to apprise their leadership of the approach and scope of the report. Before a draft was released for public comment, it was reviewed by each of these agencies and the Office of Management and Budget (OMB).

Regarding the consideration of environmental impacts of biofuels, section 204 of the Energy Independence and Security Act (EISA) calls for the EPA to report to Congress on the environmental and resource conservation impacts of increased biofuel production and use, including air and water quality, soil quality and conservation, water availability, ecosystem health and biodiversity, invasive species, and international impacts. This report is the first of the triennial reports to Congress required under EISA.

The EPA has done an extensive review and analysis of the published peer reviewed scientific literature relevant to the environmental and resource conservation impacts of increased biofuel production and use. The published literature on comparing the environmental impact of biofuels with petroleum based fuels is quite limited and would have required the authors to draw conclusions not supported by the literature to address this important issue. It is anticipated that the next report to Congress, due in 2013, will likely include analyses that compare biofuel production with production of petroleum based fuels.

*Question 5.* There is much criticism about the EPA's Florida proposal and this involves disputes about the underlying data, potential costs of complying with numeric standards when they are incorporated into discharge permit limitations, and disputes over the administrative flexibility. Also, some fear EPA's action in Florida will be a precedent for actions elsewhere. Are you aware of the EPA Region 5 letter to

Illinois EPA on numeric nutrient standards? Do you intend to take the same actions in the states served by Region 5 that you have taken in Florida?

*Answer.* Nitrogen and phosphorus pollution is a widespread, serious, and growing problem. This pollution threatens our waters used for drinking, fishing, swimming and other recreational purposes. It can hurt the tourism industry, reduce home and property values, and impact public health. To help states address this pollution, on March 16, 2011, the EPA sent a memo to its regional offices that builds on our commitment to strengthen partnerships with states and promote collaboration with stakeholders on this issue. The agency will use this memorandum as the basis for discussions with interested and willing states about how to move forward on tackling this issue, recognizing that there is no one-size-fits-all solution. The agency strongly believes states should address phosphorus and nitrogen pollution through standards they develop and supports these critical state efforts. At this time, the EPA is not working on any Federal standards for phosphorus and nitrogen for any states other than ongoing efforts in Florida, but we are ready to provide support and technical assistance as states work to tackle this serious water pollution problem.

*Question 6.* We have been made aware of a memo dated March 16th which echoes the January 21st letter sent by Region 5 to Illinois EPA. The memo encourages Regional Administrators to work with states on reducing nitrogen and phosphorus loadings. Can you elaborate on what is meant by the sentence “EPA will support states that follow the framework but, at the same time, will retain all its authorities under the Clean Water Act.”?

*Answer.* The EPA has oversight responsibility for many state activities under the Clean Water Act (CWA) including, for example, state adoption of water quality standards and state implementation of the National Pollutant Discharge Elimination System (NPDES) permit program where that program is delegated to a state. As the memorandum notes, the EPA encourages states to follow the recommended elements in the EPA’s framework for state nutrient reductions and develop effective programs for reducing nitrogen and phosphorus loads in the near-term while they continue to develop state numeric water quality standards for nitrogen and phosphorus. As the memorandum notes, it is intended to stimulate a conversation. States retain broad discretion to design programs that meet their specific needs in addressing nutrient pollution, and these programs do not have to adopt the recommendations in the memorandum. We look forward to working with states to assure effective protection of public health and water quality, consistent with the best-available science and the requirements of the CWA. We also recognize under the Clean Water Act that the EPA is accountable for effective implementation of the law.

Question 7. Have your staffing numbers been going up or down over the last 5 years? And how do the FTE levels compare in your program staff *versus* the enforcement and compliance staff over that same period?  
 Answer. See following table:

**Programmatic NPMs and OECA FTE Utilization Trends**  
 FY 2006-FY 2010

NPM	Actual FTEs					2006-2010 Delta	2006-2010 % Change
	2006	2007	2008	2009	2010		
Office of Air & Radiation	1,830.2	1,807.6	1,807.5	1,843.3	1,852.9	22.2	1.2%
Office of Water	2,131.9	2,097.6	2,088.9	2,124.7	2,207.0	75.1	3.5%
Office of Chemical Safety and Pollution Prevention*	1,445.8	1,394.1	1,369.1	1,381.2	1,376.6	(69.2)	-4.8%
Office of Solid Waste & Emergency Response	2,719.2	2,664.7	2,678.7	2,684.9	2,738.5	19.3	0.7%
Office of Research And Development	1,936.9	1,924.8	1,899.1	1,916.7	1,903.1	(33.8)	-1.7%
Office of International Affairs**	91.7	81.2	75.3	78.4	124.6	32.9	35.9%
<b>Programmatic NPM Total</b>	<b>10,155.7</b>	<b>9,970.0</b>	<b>9,918.6</b>	<b>10,029.2</b>	<b>10,202.7</b>	<b>47</b>	<b>0.5%</b>
Year-to-Year Delta		(186.2)	(51.4)	110.6	173.5		
Year-to-Year % Change		-1.83%	-0.52%	1.12%	1.73%		
<b>AA Enforcement</b>	<b>3,316.2</b>	<b>3,293.7</b>	<b>3,264.9</b>	<b>3,260.0</b>	<b>3,284.5</b>	<b>(31.7)</b>	<b>-1.0%</b>
Year-to-Year Delta		(22.5)	(28.8)	(4.9)	24.5		
Year-to-Year % Change		-0.68%	-0.87%	-0.15%	0.75%		

**Note:** Data excludes enabling and support offices including: OARM, OCFO, OEI, OA, OIG, OGC. Utilization in support offices declined by 0.24%.

\* The utilization of FIFRA fees has declined over the years, but is largely offset by an increase in PRIA fees FTE. Reduction is in line with re-structured fees over this period.

\*\* Increases in the Office of International Affairs in FY 2010 are due to the transfer of the Office of Tribal Affairs from the Office of Water to the Office of International Affairs.

*Question 8.* There have been guidance documents seeking clarification of both the *SWANCC* and *Rapanos* court decisions, but the uncertainties about the Federal jurisdiction over wetlands and other waters remains in limbo and highly controversial. A new guidance document was recently released to *Inside EPA*. What are the similarities/differences of this guidance related to the ones previously released? What stage in the process is the document?

*Answer.* The EPA and the U.S. Army Corps of Engineers (Corps) have drafted guidance that clarifies those waters over which the agencies will assert jurisdiction consistent with the Clean Water Act (CWA), implementing regulations, and Supreme Court interpretations. The draft guidance cannot and does not alter existing requirements of the law; it merely explains how the agencies think existing law should be applied in general, and emphasizes that it may not be applicable in particular cases. The scope of waters that would be protected under the interpretations in the draft guidance would remain significantly narrower than under the agencies' interpretations prior to the Supreme Court's decisions in *SWANCC* and *Rapanos*. All exemptions for agriculture in the CWA and regulations would be completely unchanged by the draft guidance. Also, the draft guidance should have no effect on USDA and NRCS agreements, including those undertaken under the auspices of the Food Security Act. The EPA and the Corps released the draft guidance for public notice and comment on May 2, 2011 with a 60 day comment period; this comment period was later extended until July 31, 2011. The agencies are now reviewing the comments received and will make decisions regarding any final guidance after carefully evaluating comments provided by the public. The agencies also expect to proceed with notice and comment rulemaking to further clarify the regulatory definition of the term "waters of the United States."

*Question 9.* Can you explain how and/or what other Clean Air Act (CAA) authorities are triggered because of the emission standards for light duty trucks? For example, how did this trigger permitting provisions under Title V and the New Source Review?

*Answer.* The EPA promulgated the emissions standards for light duty vehicles under Clean Air Act (CAA) section 202(a). "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule," 75 *Fed. Reg.* 25324 (May 7, 2010) (Vehicle Rule). The standards applied to cars and light trucks for model years 2012–2016, and were applicable to greenhouse gases (GHG).

The promulgation of the Vehicle Rule triggered the application of the New Source Review Prevention of Significant Deterioration (PSD) permitting program and Title V permitting program. The PSD program is found in Title I, Part C of the CAA, and those provisions apply to any "major emitting facility," defined as a stationary source that emits or has the potential to emit 100 or 250 tons per year (depending on the type of source) of "any air pollutant." CAA section 169(1) (emphasis added). Such a facility may not initiate construction or major modification of its facility in such an area without first obtaining a PSD permit. See CAA sections 165(a), 169(1), 169(2)(C). For the last thirty years, the EPA has interpreted these provisions to require that PSD permits address "any air pollutant" that is "subject to regulation under the CAA" (except for a "criteria" pollutant for which an area has been designated non-attainment under an applicable National Ambient Air Quality Standard).

The applicability provisions for the Title V permit program are found in CAA sections 502(a), 501(2)(B), and 302(j). These provisions provide that it is unlawful for any person to operate a "major source" without a title V permit and define a "major source" to include "any major stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant." Taken together and in accordance with long standing EPA interpretation, these provisions provide that stationary sources are subject to Title V if they emit air pollutants that are subject to EPA regulation.

Thus, both PSD and Title V permitting requirements are triggered when pollutants become subject to EPA regulation. The Vehicle Rule made GHGs subject to EPA regulation for the first time, thus triggering the application of both PSD and Title V to GHG emissions from stationary sources. In a separate action, "Reconsideration of Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs," 75 *Fed. Reg.* 17004 (April 2, 2010), the EPA determined that GHGs would become "subject to regulation under the Act," within the meaning of the CAA and the agency's longstanding PSD regulations and Title V interpretation, as of January 2, 2011, when the first new motor vehicles subject to the Vehicle Rule would enter the market. Likewise, the EPA explained that on the same date greenhouse gas emitting sources would become subject to the Title V permitting program.

*Question 10.* Following up on the previous question, I understand that in May 2010, EPA issued a rule on thresholds for GHG emissions that define when Title V and New Source Review permits would be required. This rule, the tailoring rule, establishes a threshold of 100,000 tons per year to those required to get a permit. Is there an agriculture exemption in this rule? Why not? If the goal is not to get small farms, why not include a straight exemption? You indicated in your response to Congressman Welch during questioning that “agriculture is exempted from greenhouse gas regulation.” Can you explain what you meant by that?

*Answer.* The purpose of the tailoring rule is to address the overwhelming burdens on permitting authorities that would otherwise occur if the existing statutory thresholds of 100 and 250 tons per year were applied to greenhouse gasses (GHGs) on January 2, 2011. Hence the final tailoring rule does not specifically exclude agricultural operations, or any industrial sector, from the New Source Review (NSR) or Title V permitting. Rather, the rule focuses on across the board thresholds and distinctions. The rule accomplishes this by establishing 100,000 tons per year (tpy) of carbon dioxide equivalent (CO<sub>2</sub>e) as a threshold for new facilities and 75,000 tpy CO<sub>2</sub>e increases for modifications at existing facilities that already emit 100,000 tpy CO<sub>2</sub>e (in addition to a threshold 75,000 CO<sub>2</sub>e for new and existing sources that are subject to NSR permitting for other pollutants). Given the thresholds that are in place for Steps 1 and 2 of the tailoring rule, farms, as well as other small businesses (e.g., restaurants, dry cleaners, etc.) are not covered at this time.

*Question 11.* With regards to the tailoring rule, exactly what happens to whom after July 1, 2011?

*Answer.* For Step 2 of the tailoring rule, which began on July 1, 2011, Prevention of Significant Deterioration (PSD) permitting requirements cover, for the first time, new construction projects that emit large amounts of greenhouse gas (GHG) emissions (i.e., emissions of at least 100,000 tons per year (tpy)) even if they do not exceed the permitting thresholds for any other pollutant. Modifications at existing facilities that increase GHG emissions by at least 75,000 tpy (equivalent to CO<sub>2</sub> emissions from burning 370 railcars worth of coal) will be subject to PSD permitting requirements, even if they do not significantly increase emissions of any other pollutant. Despite this change for Step 2, permitting requirements would still only apply to large sources of emissions.

*Question 12.* EPA has been sued by a number of parties who argue that the Tailoring Rule is illegal. What is the status of these lawsuits? What is your best estimate as to when we will have a final outcome to these lawsuits? If the Tailoring Rule is struck down in court, how will you change your approach to regulating greenhouse gas emissions from stationary sources?

*Answer.* The lawsuits have been brought in the United States Court of Appeals for the District of Columbia Circuit, and have been consolidated. The parties are in the process of filing their briefs on the merits. According to the briefing schedule set by the Court, merits briefing will be completed on December 14, 2011. Although the Court has not set a date for the oral argument, we expect that the Court will set the date for early in 2012. If it does so, then the EPA would expect, consistent with the Court’s past practice, a decision in the summer or fall of 2012. For the reasons that the EPA explained at length in the Tailoring Rule preamble and in our successful defense of the rule against the motions for stay, we believe we have a solid legal basis for the rule.

*Question 13.* Since the publication of the greenhouse gas “Tailoring Rule” in June 2010, has EPA been petitioned to lower the threshold level of air pollutants that requires a Title V permit? If so, how is EPA responding to any such petition?

*Answer.* The EPA has not received any petitions to lower the threshold level of air pollutants that requires a Title V permit.

*Question 14.* Recent court decisions have concluded that EPA’s assertion that it has authority under FIFRA to bring a misbranding or other enforcement action based upon the failure of a chemistry or compound to satisfy certain risk mitigation decisions is arbitrary, capricious, an abuse of discretion, and contrary to law. Given these court decisions, please provide the Committee with timeline of the steps EPA intends to undertake to complete the administrative procedures required by FIFRA Section 6 for chemistries or compounds that have failed to satisfy the risk mitigation decision process.

*Answer.* Repeated question. Please see response to *Question 2* submitted by Mr. Peterson.

*Question 15.* EPA staff has indicated that it is considering revising its approach to making a “public interest” finding for USDA’s IR-4 Project applications under the Pesticide Registration Improvement Reauthorization Act (PRIA2). IR-4 sets its research priorities in an open public setting with significant input from the affected

agricultural sector and uses government funds to develop data accordingly. How would the new approach for a “public interest” finding affect IR-4 applications?

Please describe any financial impacts that may result from a change under the new approach for a “public interest” finding as it relates to IR-4 applications? Would such a change potentially increase the costs for IR-4 applications and thereby serve to reduce IR-4’s applications for new pesticide uses on specialty crops/minor uses? Has EPA examined how this action might impact on certain crops, the significant new costs to IR-4 in and the unintended consequences to some Federal Government priorities associated with such a change? Has EPA discussed this issue with USDA and, if so, does USDA support the approach being considered? In view of the vital and important role that IR-4 serves, does the Agency believe that it needs additional clarification from Congress regarding why IR-4 applications are in the public interest and therefore should continue to be exempt from PRIA fees?

*Answer.* Earlier this year, the EPA developed and made available for discussion a draft proposal to explain how the Agency would make the “public interest” finding under the Pesticide Registration Improvement Renewal Act (PRIA 2) [FIFRA Section 33(b)(7)(E)]. This provision states that “the Administrator shall exempt an application from the registration service fee if the Administrator determines that—(i) the application is solely associated with a tolerance petition submitted in connection with the Inter-Regional Project Number 4 (IR-4) . . . ; and, (ii) the exemption is in the public interest.” The Agency’s draft proposal reflects the experience that the EPA has gained in making case by case decisions over the last few years, and captures the criteria the EPA has developed through this experience.

The EPA does not expect the articulation of the criteria to change significantly how it would process IR-4 submissions. Because the draft document is based on past experience, if it were adopted, existing policies and practices would continue and would not change. Currently, IR-4 applications remain the same. The draft document would not lead to additional application requirements, and, therefore, the costs for IR-4 applications would not increase and there would be no financial impacts to IR-4.

More generally, the types of applications that the EPA has found to be in the public interest in the past would continue to be in the public interest. Growers should see no difference and will continue to receive the same benefits from the IR-4 program. A common understanding of the approach will benefit and increase the efficiency of the collaboration between IR-4, the U.S. Department of Agriculture, the EPA, and the agricultural community.

*Question 16.* Can you please provide the Committee with copies of all documents that meet all the following criteria?

- (1) A settlement agreement entered into by the EPA;
- (2) In response to any civil action, administrative adjudication or petition for review brought against the EPA or the Administrator of EPA;
- (3) During the period of January 1, 2006 through March 10, 2011.

*Answer.* The EPA will need more time to respond to this request. The EPA plans to treat this request, together with *Question 17* below, as it would a letter to the agency and will respond in writing to the request and *Question 17* in a separate communication.

**[Editor’s note:** The EPA delivered to the Committee a CD containing copies of the requested information. The documents listed are retained in Committee files:]

Agreed Order:

September 28, 2010 Northwest Environmental Advocates

Consent Decree:

February 1, 2006 Sierra Club (Proposed CD)

February 15, 2006 Environmental Defense

February 24, 2006 Sierra Club and American Bottom Conservancy

August 22, 2006 Our Children’s Earth Foundation and Sierra Club

October 16, 2006 Kentuckians For The Commonwealth, *et al.*

December 8, 2006 Sierra Club

February 13, 2007 Sierra Club and Coosa River Basin Initiative

May 10, 2007 Sierra Club

May 18, 2007 Rocky Mountain Clean Air Action, *et al.*

May 31, 2007 Sierra Club (Notice of Withdrawal)

June 14, 2007	American Lung Association of Metropolitan Chicago, <i>et al.</i>
November 30, 2007	National Wildlife Federation and the Lone Tree Council
September 17, 2007	Citizens Against Ruining the Environment
September 17, 2007	Respiratory Health Association of Metropolitan Chicago, <i>et al.</i>
September 17, 2007	People of the State of Illinois, <i>ex rel.</i>
May 29, 2008	Northwest Environmental Advocates
September 4, 2008	Natural Resources Defense Council, Inc., <i>et al.</i>
December 17, 2009	Florida Clean Water Network and Linda Young
December 30, 2009	Florida Wildlife Federation, Inc., <i>et al.</i>
June 8, 2010	Northwest Environmental Defense Center, <i>et al.</i>
November 4, 2010	Defenders of Wildlife and Sierra Club
Dismissal:	
March 22, 2007	Pasadena Refining Systems, Inc.
April 18, 2008	Ingersoll-Rand Company
May 11, 2009	North Coast Rivers Alliance, <i>et al.</i>
Joint Motion:	
October 17, 2006	Center for Biological Diversity
Partial Settlement Agreement:	
August 20, 2007	Ohio Valley Environmental Coalition Inc and West Virginia Highlands Conservancy Inc.
Settlement Agreement:	
January 27, 2006	Sierra Club
January 31, 2006	United Farm Workers of America, <i>et al.</i>
March 1, 2006	St. Johns Riverkeeper, <i>et al.</i>
March 28, 2006	Natural Resources Defense Council, Inc.
April 19, 2006	Utility Air Regulatory Group
June 20, 2006	Oxy Vinyls, LP
August 2, 2006	Iowa Environmental Council, <i>et al.</i>
September 26, 2006	Natural Resources Defense Council, Inc., <i>et al.</i>
January 5, 2007	American Foundry Society
February 6, 2007	Miami-Dade County, <i>et al.</i>
	Exhibit A—Proposed Revision to Florida Administrative Code Section
	Exhibit B—Program Guidance Memo
	Exhibit C—Implementation of the New Federal Regulations for Class I Injection Wells in Florida
February 13, 2007	Center for Biological Diversity
March 17, 2007	Our Children's Earth Foundation
April 13, 2007	Sierra Club, <i>et al.</i>
May 10, 2007	New Jersey Department of Environmental Protection
May 19, 2007	Natural Resources Defense Council, Inc., <i>et al.</i>
July 9, 2007	American Iron and Steel Institute, <i>et al.</i>
September 8, 2007	Rocky Mountain Clean Air Action (Notice of Lodging SA)
September 8, 2007	Rocky Mountain Clean Air Action
January 22, 2008	Friends of the Earth
January 25, 2008	Public Employees for Environmental Responsibility, <i>et al.</i>
August 8, 2008	Natural Resources Defense Council, Inc., <i>et al.</i>
August 21, 2008	Union Oil Company of California, <i>et al.</i>
December 29, 2008	Sierra Club, <i>et al.</i>
April 1, 2009	Idaho Conservation League
August 21, 2009	Sierra Club, <i>et al.</i>
March 10, 2010	Center for Biological Diversity
April 28, 2010	Conservation Law Foundation, Amendment
May 10, 2010	Chesapeake Bay Foundation
May 25, 2010	Natural Resources Defense Council, Inc., <i>et al.</i>
June 4, 2010	Northwest Environmental Defense Center, <i>et al.</i>

July 2, 2010	Environmental Geo-Technologies, LLC, <i>et al.</i> Exhibit A—Stipulated Motion for Voluntary Dismissal to be filed in the Sixth Circuit Action, Case No. 09-4090 Exhibit B—Joint Motion for Stay of Proceedings to be filed in the Federal District Court Action
July 12, 2010	Wild Fish Conservancy
August 25, 2010	Sierra Club
November 22, 2010	Riverkeeper, Inc., <i>et al.</i>
November 3, 2010	Natural Resources Defense Council, Inc., <i>et al.</i> Second Amended SA
December 20, 2010	Alfred J. Davis and Cindy Davis
February 16, 2011	Sierra Club, <i>et al.</i> Amendment
March 3, 2011	Idaho Conservation League
Settlement Agreement and Order:	
February 19, 2008	Natural Resources Defense Council, Inc.
May 17, 2010	Center for Biological Diversity
Settlement Agreement and Release:	
August 15, 2007	Friends of the Earth
December 3, 2010	Anacostia Riverkeeper, <i>et al.</i>
Stipulation and Order:	
June 1, 2006	Washington Toxics Coalition, <i>et al.</i>
October 20, 2006	Center for Biological Diversity
September 11, 2007	Natural Resources Defense Council, Inc.
May 11, 2009	North Coast Rivers Alliance, <i>et al.</i>
January 12, 2010	Center for Biological Diversity
December 22, 2010	Natural Resources Defense Council, Inc. and pesticide Action Network North America

*Question 17.* At the hearing, in response to a question about whether EPA's settlement agreements are made public, Administrator Jackson stated, ". . . most of our settlements are required by law to go through public comment."

Since 2006, which proposed settlement agreements, other than those related to cases in which EPA took enforcement action against an individual or entity, were published in the *Federal Register* for public comment?

If some, but not all, settlement agreements are published for public comment, explain how EPA and the Department of Justice determine which to open for public comment. Have the criteria for these determinations changed since January 1, 2006, and, if so, how? Please distinguish between civil actions or petitions for review brought against the agency from civil or criminal enforcement actions taken by the agency against an individual or entity.

Please explain in detail, how, since January 1, 2006, EPA has amended settlement agreements, other than those related to cases in which EPA took enforcement action against an individual or entity, after such agreements have been open for public comment.

*Answer.* This question is related to the document request in *Question 16* and the EPA will need further time to respond. The EPA will respond to the document request under *Question 16* and to this question in a separate communication, as explained above.

**Settlement Agreements and Consent Decrees Published in *Federal Register* for Comment Prior to Finalization 1/1/06 to 3/10/11**

SACD Entry Date	Plaintiff/Petitioner	Defendant	Case No.	Court	Adverse comment?	Modified as a result of adverse comment
02/22/2011	Sierra Club	EPA	1:10-cv-859	D. D.C.		
02/14/2011	WildEarth Guardians	EPA	6:10-cv-877	D. NM		
02/08/2011	Natural Resources Defense Council, <i>et al.</i>	EPA	2:10-cv-6029	N.D. CA		
01/31/2011	WildEarth Guardians	EPA	1:10-cv-01218-REB	D. CO		
01/14/2011	Sierra Club, <i>et al.</i>	EPA	1:10-cv-889	D. D.C.		
01/12/2011	Association of Irrigated Residents	EPA	3:10-cv-3051	N.D. CA		
01/11/2011	Sierra Club, <i>et al.</i>	EPA	3:10-cv-1954	N.D. CA		
01/10/2011	WildEarth Guardians	EPA	1:10-cv-1672	D. CO		
12/22/2010	Natural Resources Defense Council	EPA	1:10-cv-05580-CM	S.D. N.Y.	X	
12/21/2010	American Petroleum Institute, <i>et al.</i>	EPA	08-12777	D.C. Circuit	X	
12/21/2010	State of New York	EPA	06-1322	D.C. Circuit	X	
12/20/2010	Center for Biological Diversity	EPA	3:10-cv-1846	N.D. CA		
12/13/2010	Comite Civico Del Valle, Inc.	EPA	4:10-cv-2859	N.D. CA		
11/23/2010	Louisiana Environmental Action Network	EPA	1:09-cv-01333	D. D.C.		
09/08/2010	Sandra L. Bahr, <i>et al.</i>	EPA	2:09-cv-2511	D. AZ	X	
08/31/2010	Comite Civico Del Valle, Inc.	EPA	10-00946	N.D. CA		
07/15/2010	American Bottom Conservancy	EPA	3:10-cv-292	S.D. IL		
07/14/2010	Sierra Club, <i>et al.</i>	EPA	1:10-cv-133	D. D.C.		
07/07/2010	American Chemistry Council	EPA	09-1325	D.C. Circuit	X	
07/06/2010	Sierra Club	EPA	4:09-cv-152	N.D. CA	X	Modified two of the deadlines for proposed and final actions with regard to technology and residual risk review for source categories.
06/21/2010	Navistar, Inc.	EPA	09-1113	D.C. Circuit		
06/21/2010	Navistar, Inc	EPA	09-1317	D.C. Circuit		
06/08/2010	Sierra Club	EPA	3:09-cv-751	W.D. WI		
06/04/2010	Sierra Club	EPA	3:10-cv-127	W.D. WI		
05/17/2010	Center for Biological Diversity	EPA	3:07-cv-02794-JCS	N.D. CA	X	Terms of the injunction were amended to exempt public health uses and reduce use limitations on certain termiticide and rodenticide applications.
04/19/2010	Louisiana Environmental Action Network	EPA	1:09-cv-1943	D. D.C.		
04/15/2010	American Nurses Association, <i>et al.</i>	Stephen L. Johnson	1:08-cv-2198	D. D.C.	X	
04/14/2010	Environmental Integrity Project, <i>et al.</i>	EPA	1:10-cv-165	D. D.C.		
03/22/2010	WildEarth Guardians	EPA	1:09-cv-01964	D. CO	X	
03/09/2010	WildEarth Guardians	EPA	09-cv-02109-MSK-KLM	D. CO		
03/01/2010	State of New Jersey, <i>et al.</i>	EPA	08-4818	3rd Circuit		
02/23/2010	WildEarth Guardians	EPA	4:09-cv-2453	N.D. CA		
02/05/2010	Environmental Integrity Project, <i>et al.</i>	EPA	1:09-cv-00218	D. D.C.		

02/04/2010	WildEarth Guardians, <i>et al.</i>	EPA	1:09-cv-00089	D.C. Circuit	X
02/02/2010	WildEarth Guardians	EPA	1:09-cv-2148	D. CO	
01/29/2010	Comite Civico Del Valle, Inc.	EPA	4:09-cv-04095	N.D. CA	
12/30/2009	Association of Irrigated Residents	EPA	4:09-cv-1890	N.D. CA	
11/24/2009	Environmental Integrity Project, <i>et al.</i>	EPA	1:09-cv-1025	D. D.C.	
11/14/2009	Sierra Club	EPA	1:09-cv-1028	D. D.C.	
11/03/2009	Sierra Club, <i>et al.</i>	EPA	1:09-cv-08312	D. D.C.	
10/30/2009	Mossville Environmental Action	EPA	1:08-cv-1803	D. D.C.	
10/16/2009	Sierra Club	EPA	3:09-cv-00855-WOB	E.D. KY	
09/22/2009	Sierra Club	EPA	3:09-cv-00122	W.D. WI	
09/08/2009	Association of Irrigated Residents	EPA	4:08-cv-5650	N.D. CA	
09/08/2009	WildEarth Guardians	EPA	1:08-cv-2253	D. D.C.	
08/21/2009	Colorado Citizens Against Toxic Waste, Inc, <i>et al.</i>	EPA	1:08-cv-1787	D. CO	
06/18/2009	Alliance of Automobile Manufacturers	EPA	08-1109	D.C. Circuit	
06/02/2009	Sierra Club	EPA	08-c-664	W.D. WI	
06/01/2009	Sierra Club, <i>et al.</i>	EPA	1:08-cv-1999	D. D.C.	
05/22/2009	American Petroleum Institute	EPA	06-1321	D.C. Circuit	
05/21/2009	BCCA Appael Group, <i>et al.</i>	EPA	3:08-cv-1491	N.D. TX	
03/19/2009	Environmental Integrity Project	EPA	1:09-cv-00087	D. D.C.	
03/16/2009	Environmental Integrity Project, <i>et al.</i>	EPA	1:09-cv-00088	D. D.C.	
03/03/2009	Rocky Mountain Clean Air Action, <i>et al.</i>	EPA	07-1046	D. D.C.	
01/06/2009	Portland Cement Association	EPA	08-0227	D. D.C.	
09/12/2008	Association of Irrigated Residents, <i>et al.</i>	EPA	07-1046	D.C. Circuit	X
06/09/2008	Desert Rock Energy Company, LLC, <i>et al.</i>	EPA	4:08-cv-00872	N.D. CA	
06/04/2008	Sierra Club, <i>et al.</i>	EPA	06-CV-4000	S.D. TX	
05/14/2008	National Environmental Development Association's Clean Air Project	EPA	06-1428	N.D. IL	
03/25/2008	Coke Oven Environmental Task Force	EPA	06-1131	D.C. Circuit	
01/17/2008	Battery Council International	EPA	07-1364	D.C. Circuit	
11/19/2007	Center for Biological Diversity, <i>et al.</i>	EPA	05-1814	D. D.C.	
11/06/2007	Sierra Club	EPA	1:07-cv-01040	D. D.C.	
10/24/2007	Sierra Club	EPA	1:07-CV-00414	D. D.C.	
09/17/2007	Citizens Against Ruining the Environment	EPA	06-CV-6915	N.D. IL	
09/13/2007	Rocky Mountain Clean Air Action	EPA	07-1012	D.C. Circuit	
09/07/2007	American Iron and Steel Institute, <i>et al.</i>	EPA	00-1434	D.C. Circuit	
08/23/2007	Sierra Club	EPA	07-C-0154-S	W.D. WI	
08/20/2007	Ingersoll-Rand Company	EPA	98-1597	D.C. Circuit	
07/19/2007	People of the State of Illinois <i>ex rel.</i> Madigan	EPA	1:06-CV-06909	N.D. IL	
07/09/2007	Steel Manufacturers Association, <i>et al.</i>	EPA	05-1135	D.C. Circuit	
06/14/2007	American Lung Association of Metropolitan Chicago, <i>et al.</i>	EPA	06-CV-6933	N.D. IL	
05/22/2007	Environmental Defense, Inc., <i>et al.</i>	EPA	06-1164	D.C. Circuit	
05/17/2007	Rocky Mountain Clean Air Action, <i>et al.</i>	EPA	1:06-CV-01992	D. D.C.	
05/14/2007	New Jersey Department of EPA	EPA	07-3746	3rd Circuit	
05/14/2007	State of New Jersey	EPA	07-612	D. NJ	

**Settlement Agreements and Consent Decrees Published in *Federal Register* for Comment Prior to Finalization 1/1/06 to 3/10/11—  
Continued**

SA/CD Entry Date	Plaintiff/Petitioner	Defendant	Case No.	Court	Adverse comment?	Modified as a result of adverse comment
05/04/2007	Sierra Club	EPA	06-5288	N.D. CA		
03/22/2007	Pasadena Refining Systems, Inc.	EPA	04-60982	5th Circuit		
03/22/2007	Pasadena Refining Systems, Inc.	EPA	05-60551	5th Circuit		
03/20/2007	Our Children's Earth Foundation	EPA	05-73130	9th Circuit		
02/14/2007	Center for Biological Diversity, <i>et al.</i>	EPA	1:06-CV-01350	D.C. Circuit		
02/12/2007	Sierra Club, <i>et al.</i>	EPA	1:06-CV-1523	N.D. GA		
01/05/2007	American Founders' Society	EPA	04-1191	D.C. Circuit		
12/13/2006	Sierra Club	EPA	06-0663 BB/LFG	D. NM		
10/20/2006	Center for Biological Diversity	Stephen L. Johnson	02-1580-JSW	N.D. Cal.	X	Changes made to definition of "upland habitat"; flood control and rights-of-way fire protection uses were exempted from coverage under the injunction; and a few minor wording changes were made.
10/16/2006	Kentuckians For The Commonwealth, <i>et al.</i>	EPA	1:06-CV-00184	D. D.C.		
10/02/2006	Natural Resources Defense Council	EPA	06-1059	D.C. Circuit		
08/21/2006	Our Children's Earth Foundation, <i>et al.</i>	EPA	05-05184 WHA	N.D. CA		
04/19/2006	Utility Air Regulatory Group	EPA	06-1056	D.C. Circuit		
03/28/2006	Natural Resources Defense Council	EPA	03-CV-02444 RDB	D. MD		
02/01/2006	Sierra Club	EPA	05-CV-02177	D. D.C.		
01/31/2006	United Farm Workers	EPA	2:04-cv-00099-RSM	W.D. WA		
01/27/2006	Sierra Club	EPA	05-1045	D.C. Circuit		

*Question 18.* The following questions relate to the settlement agreement that EPA signed with the Waterkeeper Alliance, Natural Resources Defense Council, Inc., and Sierra Club on May 25, 2010:

When was the proposed settlement agreement published for public comment?

*Answer.* The settlement agreement was not published in proposed form for public comment. The Clean Water Act, unlike the Clean Air Act, does not require settlement agreements entered into under the statute to be published for public comment before being finalized. Under the settlement agreement, the EPA committed to propose collecting certain identifying information from concentrated animal feeding operations (CAFOs), or if the agency does not propose collecting this information, to explain why it is not proposing to do so. The agency will publish that proposal for public notice and comment and will seek stakeholder input on it before taking any final action. The EPA did not commit in the settlement agreement to take any specific final action. The specific provisions of the settlement agreement addressed a proposed rule only.

*Question 18a.* Is the final settlement agreement posted on either EPA's or the Department of Justice's website?

*Answer.* The final settlement agreement is publicly available. With some exceptions, neither the Environment and Natural Resources Division of the Department of Justice nor the EPA generally posts final settlement agreements in petition for review cases on its website. The EPA will post on its website any guidance or proposals which it undertakes to issue pursuant to such a settlement agreement.

*Question 18b.* EPA has stated that its determinations on whether or not to settle with a petitioner are based on case-by-case determinations of legal risk and the requirements of the law. Please explain in detail why EPA determined that it was necessary to settle with the environmental petitioners (Waterkeeper Alliance, Natural Resources Defense Council, Inc., and Sierra Club).

*Answer.* The environmental petitioners filed petitions for review raising two challenges to the EPA's final rule entitled "Revised National Pollutant Discharge Elimination System Permit (NPDES) Regulation and Effluent Limitations Guidelines for Concentrated Animal Feeding Operations (CAFOs) in Response to the Waterkeeper Decision." 73 *Fed. Reg.* 70418 (Nov. 20, 2008). First, they challenged the EPA's failure to require CAFOs that are known to discharge to apply for NPDES permits. Second, they challenged the EPA's analysis of "best conventional pollutant control technology" for fecal coliform. After weighing the legal risks of litigating these issues, the EPA, with the Department of Justice's concurrence, determined that settling this case was the most effective way of resolving the controversy in furtherance of the goals of the Clean Water Act.

*Question 18c.* Why were the agricultural petitioners (National Pork Producers Council, National Chicken Council, and American Farm Bureau Federation) not included in the settlement negotiations? Did the Department of Justice or EPA make the decision not to include the agricultural petitioners in the settlement negotiations?

*Answer.* The EPA prefers, where possible, to reach agreement with all stakeholders to avoid further litigation. In this case, the EPA had conversations with the agricultural petitioners in an effort to reach settlement but was unable to reach agreement with them. The EPA and the Department of Justice generally include only the party or parties with which they are settling in settlement negotiations.

*Question 18d.* Since the settlement agreement was reached with the environmental petitioners, has EPA conducted settlement negotiations with the agricultural petitioners?

*Answer.* No. No. Prior to reaching a settlement with the environmental petitioners, the EPA had conversations with the agricultural petitioners in an effort to reach settlement. However, as indicated above, the EPA and the agricultural petitioners were unable to reach settlement.

*Question 18e.* In negotiating and entering into this settlement agreement, what considerations did EPA make regarding the increased regulatory burden that would be placed on the owners or operators of concentrated animal feeding operations (CAFOs)?

*Answer.* The EPA did not commit in the settlement agreement to take any final actions that would affect CAFOs. The EPA committed to propose collecting certain identifying information from CAFOs, or if the agency does not propose collecting this information, to explain why it is not proposing to do so. The EPA's proposal will be subject to public notice and comment before the agency takes any final action on it. Further, the agency believes that reaching out to agricultural stakeholders to discuss their views on such a collection would be an essential part of its decision making process. Minimizing any burden on the regulated community is a priority

for the EPA and the agency will welcome CAFO owners and operators' views as to how best to achieve that goal.

*Question 18f.* EPA will soon be publishing a proposed rule to effectuate the policy changes that EPA agreed to implement in the settlement agreement. If there is a public comment period for the proposed rule, does EPA have the flexibility to make substantive changes to the proposed rule following the comment period, or is EPA legally bound to adhere to the settlement agreement? If EPA were to make substantive changes to the proposed rule, what legal effect would such changes have on the settlement agreement?

*Answer.* The settlement agreement does not bind the EPA to any specific final action. It requires the EPA to propose collecting certain identifying information from concentrated animal feeding operations (CAFOs), or, if the agency does not propose to collect that information, to explain why it is not proposing to do so. The EPA will solicit public comment on the proposal. After considering comments, the EPA has the flexibility to make substantive changes to the proposed rule and will have the option to determine, in its final action, how much, if any, of the information it will collect. Further, the settlement agreement specifically states that it does not in any way limit the EPA's discretion under the Clean Water Act or general principles of administrative law.

*Question 18g.* The settlement agreement requires EPA to collect detailed information from CAFO owners or operators. The information will be made public unless there is a showing that the information is a confidential trade secret, pursuant to 33 U.S.C. § 1318(b). What does EPA consider to be a confidential trade secret? For instance, would owner/operator names, locations, numbers of animals, whether a CAFO has a nutrient management plan, or whether a CAFO has applied for an NPDES permit be made public?

*Answer.* As stated above, the settlement agreement does not require the EPA to collect any information. It requires the EPA to propose collecting certain information, or, if the agency does not propose to collect that information, to explain why it is not proposing to do so. The EPA will solicit public comment on the proposal before taking final action. The EPA did not commit in the settlement agreement to the content of its final action.

If the EPA decides, in a final rule, to collect information from concentrated animal feeding operations (CAFOs), it would collect that information pursuant to section 308 of the Clean Water Act, the Act's information-gathering authority. Section 308 requires the EPA to make public any information the EPA collects under the rule unless that information is confidential business information (CBI). CBI is defined and discussed in the EPA's regulations codified at 40 CFR part 2, subpart B. For any information collection requirement that EPA finalized, CAFOs would be given the opportunity to identify what information they believe qualifies as CBI. EPA would treat any such claimed CBI in accordance with its regulations, which generally require that the submitter of the information have the opportunity to substantiate their claim. EPA would then determine whether the claimed information meets the definition of CBI, and not release the information if it did.

*Question 18h.* How does EPA plan to use the information that it collects?

*Answer.* If the EPA were, in a final action, to determine to collect any information from concentrated animal feeding operations (CAFOs), the EPA would use the information to further its statutory duties to restore and maintain the quality of this nation's waters. In support of these responsibilities, the EPA develops and enforces regulations, assesses the effectiveness of its programs, awards grants, researches environmental issues, sponsors partnerships, educates the public, and publishes information. A basic inventory of CAFOs, which is generally what the settlement agreement addresses, could be useful for any of these purposes.

*Question 18i.* On March 16, the U.S. Court of Appeals for the 5th Circuit ruled that EPA could not mandate that a CAFO that "proposes" to discharge obtain a National Pollutant Discharge Elimination System permit. How will this ruling impact the settlement agreement and the expected proposed rule?

*Answer.* The Court of Appeals' decision in *National Pork Producers Council et al., v. EPA* does not address EPA's authority to collect information pursuant to section 308 of the Clean Water Act. The decision therefore would not affect the EPA's data collection proposal.

*Question 19.* When EPA is negotiating a settlement, and it becomes clear that the agency will propose a rule as a result of the settlement, does EPA conduct an economic analysis of the impact of the impending regulation during settlement negotiations? If not, does EPA conduct an economic analysis of the impact during the rule-making process? If the economic analysis shows problems with the proposed rule,

does EPA have the authority to change the rule, or would that negate the settlement agreement?

*Answer.* Where the EPA agrees under a settlement to propose a rule, it does not conduct an economic analysis. Whether the EPA conducts economic analysis of the impact of any given proposed rule depends on the nature of the rule in question. The EPA does not commit in settlement agreements to final, substantive outcomes of rulemaking and retains adequate discretion under its settlement agreements to address the results of any economic analysis undertaken in connection with a proposed rule. For this particular proposal related to the settlement agreement described above, the EPA is required to determine information collection costs pursuant to the Paperwork Reduction Act. EPA expects that the costs of collecting the basic inventory information addressed in the settlement agreement would generally be low and unlikely to pose a significant regulatory burden.

*Question Submitted by Hon. Timothy V. Johnson, a Representative in Congress from Illinois*

*Question.* Ms. Jackson, one of the greatest challenges in rural America right now is addressing urgent water and wastewater needs for small rural communities. At the same time, the EPA continues to add layers of stringent regulations on these communities, requiring billions of dollars in new investments throughout each state. When developing a TMDL does the EPA consider the impact the implementation of the TMDL may have on water and sewer rates, especially across small rural communities? What remedies do you offer if the community is unable to finance changes to their system or build a new system?

*Answer.* The EPA recognizes the particular needs faced by rural communities in maintaining their water and wastewater infrastructure, and the EPA seeks to ensure that its programs are implemented in ways that recognize these specific challenges. In the context of a total maximum daily load (TMDL), most TMDLs are completed by the states, and this is the EPA's preference. TMDLs are approved by the EPA, and to receive approval, they must identify pollutant reductions adequate to meet water quality standards, including a margin of safety. This evaluation does not specifically consider costs. However, the EPA encourages states to take into consideration implementation issues, such as the cost of implementation, when they develop TMDLs, although implementation plans for TMDLs are not required by Federal law. The TMDL development process also provides opportunities for stakeholder input on how the TMDL would be implemented. States may also have the opportunity, should they wish to do so consistent with the Clean Water Act, to adopt temporary variances from their water quality standards, or they can set lower water quality goals to avoid widespread social or economic impacts. These changes would also require EPA approval.

Additionally, the Clean Water State Revolving Fund (SRF) is one mechanism available to communities for financing upgrades to publicly owned treatment works. The Clean Water SRF offers below market interest rates that can make financing treatment plant upgrades more affordable for many communities. In addition, the FY 2010 and FY 2011 appropriations allowed the SRF programs to use a portion of their capitalization grant to provide additional subsidy in the form of principal forgiveness, negative interest loans, and grants. States are encouraged to use this additional subsidy to provide financing to rural communities that could not otherwise afford a loan.

*Questions Submitted by Hon. Martha Roby, a Representative in Congress from Alabama*

*Question 1.* First, I like to ask you about the EPA guidance document that would broaden the reach of the Clean Water Act. Many stakeholders in Alabama are concerned with how EPA is going to redefine "Waters of the U.S." and how this will impact agriculture and the jurisdiction USDA and NRCS has through a MOU on wetland/stream issues?

Also, can you please explain why this determination is being done through an internal guidance document as opposed to a formal rulemaking that would provide for public comment? It seems that a change to the definition of water in the U.S. will have far reaching effects and should be an open and transparent process.

*Answer.* The EPA and the U.S. Army Corps of Engineers (Corps) have drafted guidance that clarifies those waters over which the agencies will assert jurisdiction consistent with the CWA, implementing regulations, and Supreme Court interpretations. The draft guidance cannot and does not alter existing requirement of the law, it merely explains how the agencies think existing law should be applied in general, and emphasizes that it may not be applicable in particular cases. The scope of waters that would be protected under the interpretations in the draft guidance would

remain significantly narrower than under the agencies' interpretations prior to the Supreme Court's decisions in *SWANCC* and *Rapanos*. All exemptions for agriculture in the CWA and regulations would be completely unchanged by the draft guidance. Also, the draft guidance should have no effect on U.S. Department of Agriculture and the Natural Resources Conservation Service agreements, including those undertaken under the auspices of the Food Security Act. The EPA and the Corps released the draft guidance for public notice and comment on May 2, 2011 with a 60 day comment period; this comment period was later extended until July 31, 2011. The agencies are now reviewing the comments received and will make decisions regarding any final guidance after carefully evaluating comments provided by the public. The agencies also expect to proceed with notice and comment rulemaking to further clarify the regulatory definition of the term "waters of the United States."

*Question 2.* In your testimony you refer to the EPA's latest actions in your review of the National Ambient Air Quality Standards as required every 5 years under the Clean Air Act. The Second Draft Policy Assessment for Particulate Matter released on July 8, 2010 would establish the most stringent and unparalleled regulation of dust in our nation's history. If this ruling goes into effect, it appears that this would be impossible for farmers in Alabama to attain. Whether it is livestock kicking up dust, tractors going through a field or merely a car driving down a gravel road, farmers are going to be in noncompliance. And in times that Alabama faces extreme drought like a few years ago, it will only make it more impossible. What options are available to you regarding modifications to air quality standards regulations for farm dust?

*Answer.* I committed in an October 17, 2011 letter that the EPA will send to the Office of Management and Budget a proposal to keep the PM<sub>10</sub> national ambient air quality standard as it is, with no change. This existing standard has been in effect since 1987. I am hopeful that this announcement ends the myth that the agency has plans to tighten regulation of farm dust.

*Question 3.* In response to questions about treating milk as oil under the SPCC regulations, you have repeatedly stated that the EPA does not intend to regulate milk. I suppose you recognize that these questions would not keep coming up had the EPA not withdrawn the proposed exemption issued by your predecessor in January of 2009. It is now 26 months later and the EPA has yet to issue a final rule exempting milk from the SPCC regulations. What are you planning to change in the proposed exemption that has taken you over 2 years to draft?

*Answer.* On April 12, 2011, the EPA issued its final rule exempting milk and milk product containers from the Oil Spill Prevention, Control, and Countermeasure (SPCC) rule. The final rule was published in the *Federal Register* on April 18, 2011 and became effective on June 17, 2011.

*Question 3a.* Does EPA plan to regulate other low capacity on-farm storage? What kind of guidance and implementation time-frames will you consider for on-farm storage?

*Answer.* The Oil Spill Prevention, Control, and Countermeasure (SPCC) rule is not directed toward low capacity oil storage. It applies to farms that store more than 1,320 U.S. gallons in total of all aboveground containers or more than 42,000 gallons in completely buried containers.

Regarding the implementation time frames, the SPCC program requires the preparation and implementation of an SPCC Plan. Farms in operation on or before August 16, 2002, must maintain or amend their existing Plan by November 10, 2011. Any farm that started operation after August 16, 2002, but before November 10, 2011, must prepare and use a Plan on or before November 10, 2011. On October 18, 2011, the EPA amended the date by which farms must prepare or amend and implement their SPCC Plans, to May 10, 2013. If the EPA receives no adverse comment by November 2, 2011, then the rule will become effective on November 7, 2011. Assistance for farms is available through the EPA regional offices and at: [http://www.epa.gov/emergencies/content/spcc/spcc\\_ag.htm](http://www.epa.gov/emergencies/content/spcc/spcc_ag.htm).

*Question 4.* I am extremely concern over the proposed Boiler MACT rule to reduce pollution from industrial boilers. In Alabama, we have over 61 boilers with 51 of them in the wood products industry. I have heard from constituents that if it goes into effect that it would result in a loss of 17,000 jobs in mills plus nearly 55,000 jobs in the surrounding communities. New Air Regulations could total about \$4 billion annually, which is over 4 times the entire industries profit for 2008. I do appreciate the response in February that your office gave me and my fellow freshman colleagues who wrote to you in the beginning of this Congress on this issue. In that letter you mention that you will be accepting more comments on the rule—Could you discuss what we should expect from the Agency in the next few months in how

they will be collecting and reviewing these additional comments and when we expect you to take the next step on the final ruling?

*Answer.* Based on public comment and additional data provided during the comment period, the EPA made significant changes to the rules. The rules still achieve significant public health protections through reductions in toxic air emissions, including mercury and soot, but the cost of implementation was cut by about 50 percent from a version of the proposals issued last year. One of the changes made in the final rule was to combine coal and biomass fired boilers into a single subcategory, with the effect that owners and operators of biomass boilers will be able to comply more easily and at lower cost than was envisioned in the proposed rule. Also, as the result of the final rule defining nonhazardous solid waste, boilers burning clean biomass, or secondary biomass material generated through other processes that nonetheless is similar to clean biomass will not be reclassified as solid waste combustors. In addition, wood residuals were removed from the definition of nonhazardous solid waste, which provides additional fuel flexibility for biomass boilers. Finally, owners of biomass boilers may submit case by case requests for other types of materials to qualify as fuels (and, if they qualify, be permitted to be combusted by units subject to the boiler major or area source standards rather than the incinerator standards).

Many biomass boilers are located at area sources of hazardous air pollutants. Area sources are typically smaller industrial or commercial operations/facilities. Significant changes were made to the area source requirements for biomass units. Under the final rule, existing area source biomass boilers are subject to a periodic tune-up requirement rather than the emission limits that were proposed. New biomass boilers are subject to emission limits for particulate matter that are reflective of readily available, proven, cost effective technologies that will not harm the economics of new projects at area sources.

The EPA believes further public review is required because the final standards significantly differ from the proposals. Therefore, the EPA has announced that it intends to reconsider certain aspects of the final standards under the Clean Air Act process for reconsideration, which allows the agency to seek additional public review and comment to ensure full transparency. This process will enable us to conduct further analysis of issues presented during and after the public comment period for the recently adopted rule, including any further information that the public and affected source owners choose to provide to the EPA. As part of the reconsideration process, the EPA will issue a stay postponing the effective date of the standards for major source boilers and commercial and industrial solid waste incinerators. EPA also announced that the agency would accept additional data and information regarding potential reconsideration of these standards until July 15, 2011. We intend to issue a proposed reconsideration decision by the end of October 2011 and to finalize a decision by the end of April 2012. This schedule will allow the agency to base the final standards on the best available data and provides the public with ample opportunity to submit additional information and input.

*Questions Submitted by Hon. Jean Schmidt, a Representative in Congress from Ohio*

*Question 1.* In your response to Chairman Lucas regarding biological opinions under the Endangered Species Act, could you clarify for us what your plans are regarding external review?

*Answer.* In March 2011, on behalf of the Departments of Agriculture, Commerce, and Interior, the EPA requested that the National Academy of Sciences (NAS) convene a committee of independent experts to review scientific and technical issues that have arisen as a result of collective responsibilities under the Endangered Species Act (ESA) and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The recent experience of completing consultations under the ESA for FIFRA related actions affecting Pacific salmon has illustrated a number of scientific issues. The scientific and technical topics on which we seek advice pertain to the approaches utilized by the EPA, the Fish and Wildlife Service of the Department of the Interior, and the National Marine Fisheries Service of the Department of Commerce's National Oceanic and Atmospheric Administration in assessing the effects of proposed FIFRA actions on endangered species and their habitats. These topics include the identification of best available scientific data and information; consideration of sublethal, indirect and cumulative effects; the effects of chemical mixtures and inert ingredients; the use of models to assist in analyzing the effects of pesticide use; incorporating uncertainties into the evaluations effectively; and the use of geospatial information and datasets that can be employed by the departments and agencies in the course of these assessments. Two Biological Opinions developed by the National Marine Fisheries Service evaluating the impacts of six pesticides (carbaryl, carbofuran, chlorpyrifos, diazinon, malathion, and methomyl) on Pacific salmon will

serve as examples to illustrate the scientific complexity of these issues. A concerted, closely coordinated effort to address these issues openly and actively will assist in the proper execution of the statutory responsibilities under the ESA, FIFRA and other applicable laws.

The Executive Branch is formulating the specific charge to the NAS panel. Based upon preliminary discussions with the NAS, we believe that the external review could be completed in approximately 18 months, once the panel is convened. The first meeting of the NAS panel is scheduled for November 3, 2011.

*Question 2.* Last week, the EPA filed for an extension of the court order in the case *NCC v. EPA* to give additional time to complete consultations under the Endangered Species Act. Is the EPA *guaranteed* to receive the extension you requested?

*Answer.* On March 28, 2011, the United States Court of Appeals for the Sixth Circuit granted the EPA's 2nd Motion to Stay the Mandate until October 31, 2011 in the *National Cotton Council of America v. EPA* case.

*Question 2a.* If an extension is not granted, would EPA and the states be able to finalize a Pesticide General Permit by April 9th?

*Answer.* As discussed in the response above, on March 28, 2011, the United States Court of Appeals for the Sixth Circuit granted the EPA's 2nd Motion to Stay the Mandate until October 31, 2011 in the *National Cotton Council of America v. EPA* case.

*Question 2b.* In the absence of a Pesticide General Permit, could pesticide applicators be subject to citizen suits under the Clean Water Act for failure to obtain an NPDES permit?

*Answer.* As indicated in the responses above, pesticide applicators are not required to obtain an NPDES permit prior to October 31, 2011. After that date, an operator who does not have a permit and who discharges could be subject to enforcement under the Clean Water Act, including enforcement under the citizen suit provisions, where applicable.

*Question 3.* I want to turn attention to an issue pertaining to environmental justice and an issue that is very important to me and southern Ohio, bed bugs. Administrator Jackson, the EPA held a National Bed Bug summit in April of 2009 and again in February of 2011 with the goal of reviewing the current bed bug problem and identifying actions to address the problem. While I agree with the intent of the summit and some of the proposals, it seems as though EPA is almost exclusively focused on outreach and prevention. Outreach and prevention are worthy and laudable goals, but it does nothing for people who actually have bed bug infestations, especially those living on fixed and lower incomes. Do you think that proper consideration was given to Section 18 exemption requests from states like Ohio for pesticide permits to eradicate this pest?

*Answer.* The EPA's approach, as supported by CDC, DOD, HUD, NIH, and USDA, is not focused solely on outreach and prevention, but rather these efforts are part of a more comprehensive and multifaceted strategy that includes a variety of educational, non-chemical, and chemical approaches for bed bug management and control. Many involved in addressing bed bug infestations are now recognizing that no chemical is a silver bullet and that effectively managing bed bugs requires a comprehensive, collaborative approach.

The EPA's role is to carry out the Congressional mandate in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to ensure that pesticides are (1) safe and (2) effective. We carry out that responsibility through rigorous scientific screening of pesticides and imposing limits on the use of registered pesticides to ensure that they do not harm people or the environment when used according to the label.

The EPA's assessment of Ohio's request for an emergency exemption allowing use of propoxur for bedbug infestation suggests the likely exposures to propoxur are not adequately protective of the public. Propoxur, along with other members of its chemical class, is known to cause nervous system effects. The agency's health review for its use on bed bugs suggests that children entering and using rooms that have been treated may be at risk of experiencing nervous system effects. Inhalation and hand-to-mouth exposure routes pose the most concern for children. A safety evaluation must support all emergency use patterns, and the current risk assessment does not support a general approval, as had been sought in Ohio's section 18 request.

*Question 3a.* Has the EPA reached a final decision on Ohio's Section 18 request? If not, what mitigation measures is EPA presently considering? If EPA's decision to refuse the Section 18 request is final, is the Agency considering an alternative approach that Ohio and the other should pursue?

*Answer.* The EPA is open to working with Ohio and others to determine whether propoxur can be used in some capacity for the control of bed bugs. As you are aware,

the EPA's review found the requested use presents an unacceptable risk because children exposed to propoxur in treated rooms may experience nervous system effects (cholinesterase suppression). Inhalation and hand-to-mouth exposure routes pose the most concern for children. In addition, during the propoxur product reregistration process (2007 to 2009), all indoor residential spray uses were deleted from product labels due to risks to children.

The EPA has communicated these results to the officials in Ohio. The EPA has offered Ohio the possibility of allowing the use of propoxur in locations where children would not be present, such as senior centers or other managed facilities with the ability to protect children from exposure. At this time, Ohio state officials have not proposed to modify their propoxur request in that manner.

The EPA has also been in discussions with Ohio, and others, about the possibility of conducting additional toxicity testing that could assist the EPA in refining the risk assessment for propoxur.

*Question 4.* In December, several of my colleagues and I sent you a letter expressing our concerns about EPA's draft Pesticide Registration Notice (PR Notice) 2010-X entitled *False or Misleading Pesticide Product Brand Names*. The proposal would require registrants of consumer pesticide products to change trademarked brand names if they contain words that EPA now considers to be misleading such as "pro" or "green" even though the agency has previously approved these names. These products have been thoroughly evaluated through EPA's rigorous pesticide registration process and many of these products have been on the market for decades.

What evidence does EPA have to suggest that consumers are confused by pesticide product brand names? Many of the potentially affected products are decades old and familiar to consumers.

*Answer.* The EPA is aware of registrants' concerns about the draft PR Notice 2010-X concerning false or misleading pesticide product brand names. As background, for a registrant to lawfully sell and distribute a pesticide in the United States, the product cannot be "misbranded" as defined in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) [see FIFRA § 12(a)(1)(E)]. FIFRA defines "misbranded," in part, as having labeling that "bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular" [see FIFRA § 2(q)(1)(A)]. Therefore, if a brand name or product name that appears on a product's labeling is false or misleading, it would be a violation of FIFRA to sell or distribute the product. In addition, the EPA could not grant a registration to a product that would be misbranded [see FIFRA § 3(c)(5)(B)].

The draft PR Notice 2010-X does not require registrants to change pesticide product brand names; rather, it provides examples of brand names that may be considered to be false or misleading and describes a process for ensuring that brand names are not false or misleading by making changes such as replacing them or including qualifiers or disclaimers. Even though the PR Notice is still in draft, the FIFRA requirements apply to all pesticides, and when making decisions on registration applications or amendments, the EPA must determine whether labeling is false or misleading.

Regarding your question about consumers, the EPA does not make decisions about the acceptability of pesticide product brand names solely based on complaints from consumers. The basis for evaluating a product's brand name is initially the EPA's judgment as to whether that name appears to be "false or misleading in any particular" along with any evidence the EPA may possess indicating a name is false or misleading, consistent with the statute. The agency reviews a pesticide product's labeling and informs applicants or registrants if the agency finds specific statements, claims, product brand names, logos, pictures or other aspects of the labeling to be potentially false or misleading. For example, a product name containing the term "green" could mislead the consumer into believing that a product is totally safe for the environment and thereby cause consumers to ignore the safety warnings and precautions on the label.

When labeling is potentially false or misleading, the EPA may work with the applicant or registrant to modify the labeling so that it is not false or misleading before the labeling is approved. Occasionally, some applicants, registrants and distributors have considered or adopted product brand names (or placed company names or trademarks within or in close proximity to product brand names) that run counter to agency regulations and FIFRA concerning false or misleading claims. It is for this reason that the EPA believes that guidance issued in the form of a PR Notice is needed to clarify its current interpretation of what product names may be false or misleading. Again, the PR Notice does not require any brand name to be changed, instead it provides guidance to registrants on what terms may be false or

misleading as well as options for modifying labeling so that it is not false or misleading.

Finally, you may be interested to know that the EPA is considering narrowing the scope of the notice so that it focuses solely on safety- and composition-related terms, which would reduce the number of potentially affected products by roughly  $\frac{2}{3}$  (66%). For example, the term “pro” and other efficacy-related terms would be removed from the PR Notice.

*Question 4a.* In his response to the letter from my colleagues and I, Assistant Administrator Owens states that “EPA believes that only a very small number of products will be affected by the final PR Notice,” and “EPA believes that very few registrants, if any, would actually need to change their product brand names and that no significant adverse impacts should occur in the marketplace.” However, an industry estimate suggests that the proposal could impact more than 5,000 currently registered pesticide products and result in a potential loss of approximately \$2.5 billion in brand equity. What analysis did EPA conduct to support the conclusion that only a very small number of products will be affected? Can you explain the discrepancy between EPA’s prediction of the proposal’s affect and that of the industry?

*Answer.* In evaluating the public comments received on the draft PR Notice, the EPA has counted the products bearing brand names for federally registered pesticide products that contain the 21 terms listed in the draft notice as potentially false or misleading. The EPA has found a total of 1,322 federally registered product brand names (not including distributor products) containing those listed terms. As mentioned in the previous answer, the EPA is currently contemplating narrowing the scope of the notice so that it focuses solely on safety- and composition-related terms, which would reduce by about  $\frac{2}{3}$  (66%) the number of potentially affected products. Moreover, the draft guidance neither bans product names containing the example terms, nor does it require brand names to be revised. Rather, it clarifies that product names containing certain terms could potentially be false or misleading and provides options available to registrants for addressing such issues with the agency.

*Question 4b.* What type of economic analysis has EPA done on the economic impacts to pesticide manufacturers, garden centers, retail stores and other businesses that sell pesticide products?

*Answer.* The Agency is not required to conduct, and has not prepared, a formal economic analysis of proposed policies such as this. Nonetheless, the EPA works with pesticide companies and others on PR notices and takes into account the economic impacts. As mentioned in the previous two answers, the EPA is considering narrowing the scope of the notice, which would decrease the number of products that might be affected by about  $\frac{2}{3}$  (66 percent). Therefore, the EPA estimates that only a very small percentage of all pesticide product brand names for current federally registered products would be likely to take any action in response to the PR Notice. Further, the PR Notice offers registrants simple and workable alternatives to changing or removing names such as by using disclaimers, qualifying statements, changing font type and size, and other methods short of removal or changes of trademarked names.

*Question 4c.* Can EPA provide the Committee with assurances that it will refrain from requiring registrants to change existing product brand names through the registration process until a formal policy is finalized?

*Answer.* The EPA agrees that the draft PR Notice should not be implemented until we have duly considered all public comments received and have issued a final and effective PR Notice. However, in the absence of a final PR Notice, the EPA must continue to respond to potentially false or misleading terms in product brand names in a manner that is consistent with the law.

*Question 5.* Administrator Jackson, On January 7th your Agency declared that the purposeful introduction of fluoride, at significant levels, into drinking water is a critical public health practice that needs to continue. As you know, the Centers for Disease Control have called community water fluoridation one of the “ten greatest public health achievements of the 20th century”. However, 3 days later, your agency proposed to prohibit the use of a vital food protection product—a product necessary to protect the US food supply—because it results in a small amount of fluoride to be introduced to the diet of some individuals.

Administrator Jackson—your agency is saying “Because we’re worried about your health . . . we need to put it in your drinking water. *BUT*, because we’re worried about your health . . . we need to take it out of your food.”

Don’t you agree that this is approach to public health, protection of the food supply and the environment is absurd? Wouldn’t you agree that there HAS to be a better solution than this?

*Answer.* The EPA, the Centers for Disease Control and Protection (CDC), and the U.S. Food and Drug Administration (FDA) worked closely to reach a shared understanding of the latest science on fluoride, in order to ensure a consistent, comprehensive approach. The agencies have concluded that the amount of fluoride to which people in the United States are exposed has increased over the last several decades since the introduction of drinking water fluoridation and consumer dental products (such as fluoride toothpaste and mouth rinses). This has led to a large decline in the prevalence of tooth decay, but has also been accompanied by a modest increase in the prevalence of dental fluorosis, a condition caused by fluoride over exposure that can cause dental effects ranging from barely visible lacey white markings, to more severe staining or pitting of the tooth's enamel. The proper levels of fluoride provide important benefits to dental health, and the majority of the United States population is not exposed to excessive levels. However, fluoride exposure is too high for some children, particularly those who live in areas with high levels of naturally occurring fluoride in drinking water.

The EPA is currently examining the fluoride drinking water standard and considering whether to lower the maximum amount of fluoride allowed in drinking water, which is set to prevent adverse health effects. In addition, the EPA is proposing to withdraw the fluoride tolerances for the fumigant sulfuryl fluoride because Section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA) prohibits the EPA from establishing tolerances for pesticides if aggregate exposure (exposure from all non-occupational sources, including drinking water and dental products) is not safe. Based on the recommendation of the National Academies of Science, as well as the EPA risk assessments, the EPA has determined that, in areas where drinking water contains naturally high fluoride levels, aggregate exposures to fluoride for infants and children under the age of seven years old can exceed a level that can cause severe dental fluorosis. The EPA recognizes that in most such cases, pesticide residues would not be a primary source of exposure and removing such residues would generally not have a significant impact on risk or public health. EPA also recognizes the significant benefits that several uses of sulfuryl fluoride provide, but considerations such as these are not relevant under FFDCA Section 408 which requires the EPA to base its tolerance decisions on risk alone, even when the incremental risk is small. As explained in the *Federal Register* notice announcing its proposal in response to objections to the sulfuryl fluoride tolerances, EPA thinks that this action is required by Section 408 of the FFDCA. The *Federal Register* notice containing EPA's proposal discusses the possible adverse impacts on public health and other consequences from a final decision to revoke the sulfuryl fluoride tolerances.

The EPA's proposed decision on sulfuryl fluoride was published in the *Federal Register* on January 19, 2011. The Agency accepted comments through July 5, 2011, and anticipates issuing a final decision in 2012. The EPA has proposed a three year phase out for most sulfuryl fluoride uses in order to provide time for users to transition to alternative treatments; the phase out time would not begin until 60 days after the EPA publishes the final order in the *Federal Register*, likely in 2012.

*Questions Submitted by Hon. Dennis A. Cardoza, a Representative in Congress from California*

*Question 1.* Administrator Jackson, the EPA recently announced an advance notice of proposed rulemaking seeking public input on the effectiveness of current water quality programs influencing the health of the San Francisco Bay Delta Estuary. The ANPR solicits comment on topics, such as potential site-specific water quality standards and site-specific changes to pesticide regulation. Can you explain the EPA's intent with this recent announcement? How do you intend to coordinate and work within the current BDCP process without causing more harm than good?

*Answer.* The EPA committed to complete this advance notice of proposed rulemaking (ANPR) and public solicitation process in the Interim Federal Action Plan (IFAP) for the California Bay Delta Estuary developed in 2009 by six Federal agencies. The IFAP describes various actions Federal agencies committed to undertake, with the State of California, to investigate and mitigate the impacts of all stressors on the imperiled native species and the Bay-Delta Estuary aquatic ecosystem; to encourage smarter water use; to help deliver drought relief services; and to ensure integrated flood risk management. Water quality in the Bay Delta Estuary and its tributaries is impaired, contributing to the current ecological and water supply crisis. Specifically, the EPA's role in this initiative is to "assess the effectiveness of the current regulatory mechanisms designed to protect water quality in the Delta and its tributaries." This ANPR is the start of this assessment.

The comment period for the ANPR closed on April 25, 2011. The EPA will review the public responses to the ANPR, along with the significant scientific information developed about Bay Delta Estuary aquatic resources. We will synthesize all avail-

able information and develop a strategic proposal on how to use the EPA's authorities and resources to achieve water quality and aquatic resource protection goals in the Bay Delta. We will collaborate with the state and regional water boards, as well as with other agencies and stakeholders, to assure that our collective efforts are effective and efficient.

At the same time, the Bay Delta Conservation Plan (BDCP) is being developed as a habitat conservation plan under the Federal Endangered Species Act and the state Natural Community Conservation Plan Act and is targeted to address primarily the impacts of the state and Federal water export facilities on endangered and threatened species. The BDCP is expected to include proposals for changing how water is diverted and conveyed through the Bay Delta Estuary to the state and Federal water export pumping facilities in the south Delta. The EPA's responsibilities under the Clean Water Act to protect designated uses of waterbodies, that may include estuarine habitat, fish migration, and threatened and endangered species, overlap with ESA requirements being addressed in the BDCP. Some actions taken pursuant to the BDCP will need to comply with both the ESA and Clean Water Act. To that end, the EPA will ensure that any action it might take as a result of this ANPR will be closely coordinated with other Federal and state actions related to the BDCP, any biological opinions on water operations affecting the Bay Delta Estuary, and any other actions requiring ESA compliance.

*Question 2.* Administrator Jackson, EPA recently proposed to withdraw food tolerances of sulfuryl fluoride, a product critical to the protection of U.S. agriculture and especially specialty crops in California. This move is puzzling to me because it will negatively impact public health by increasing the potential for contamination and diminish producers' ability to export goods to foreign markets. Why is EPA issuing this proposal now? Can you tell me who are the actual beneficiaries of this proposed EPA action? And why is the Agency taking such an action given the importance of this product to agriculture and public safety?

*Answer.* As explained in the *Federal Register* notice announcing its proposal in response to objections to the sulfuryl fluoride tolerances, EPA thinks that this action is required by Section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA). The *Federal Register* notice containing EPA's proposal discusses the possible adverse impacts on public health and other consequences from a final decision to revoke the sulfuryl fluoride tolerances.

The EPA, the Centers for Disease Control and Protection (CDC), and the U.S. Food and Drug Administration (FDA) worked closely to reach a shared understanding of the latest science on fluoride, in order to ensure a consistent, comprehensive approach. The agencies have concluded that the amount of fluoride to which people in the United States are exposed has increased over the last several decades since the introduction of drinking water fluoridation and consumer dental products (such as fluoride toothpaste and mouth rinses). The EPA's fluoride risk assessment showed that children—particularly those living in those areas with naturally occurring high levels of fluoride in the drinking water supply—are exposed to fluoride levels that can cause severe dental fluorosis. Withdrawal of the sulfuryl fluoride tolerances will reduce these children's level of fluoride exposure. The EPA is also currently examining the fluoride drinking water standard and considering whether to lower the maximum amount of fluoride allowed in drinking water.

The EPA is proposing this action on sulfuryl fluoride because the governing statutory provision, Section 408 of the FFDCA, bars the EPA from establishing tolerances for pesticides if aggregate exposure (exposure from all nonoccupational sources, including drinking water and dental products) is not safe. Based on the recommendation of the National Academies of Science as well as the EPA risk assessments, the EPA has determined that aggregate exposure to fluoride exceeds levels that can cause severe dental fluorosis in areas where drinking water contains naturally high fluoride levels. The EPA recognizes the significant benefits that several uses of sulfuryl fluoride provide and also the key role the availability of sulfuryl fluoride serves in helping the EPA meet its obligations under the Montreal Protocol to reduce the use of the stratospheric depleting pesticide, methyl bromide. Nonetheless, considerations such as these are not relevant under FFDCA Section 408 which requires the EPA to base its tolerance decisions on risk alone. EPA believes it has no discretion in this area; we are required by Section 408 to remove tolerances when aggregate exposure exceeds the safe level, even if only by a small amount for highly exposed populations, and even where the exposure from pesticide residues is insignificant compared with other sources of exposure, as in the case of fluoride.

The EPA's proposed decision on sulfuryl fluoride was published in the *Federal Register* on January 19, 2011. The agency accepted comments through July 5, 2011, and anticipates issuing a final decision in 2012. The EPA has proposed a three year phase out for most sulfuryl fluoride uses in order to provide time for users to transi-

tion to alternative treatments; the phase out time would not begin until 60 days after the EPA publishes the final order in the *Federal Register*, likely in 2012.

*Question 3.* Every year the USDA and EPA work in conjunction to release the Pesticide Data Program report. This report is an important tool for EPA in setting tolerance levels for pesticide residues for various commodities. The report demonstrates a robust reporting process and year after year shows that the vast majority of fruits and vegetables fall overwhelmingly below the tolerances set by EPA. Yet, every year there are groups which misconstrue this data to suggest certain conventionally grown commodities are unsafe for consumption. Can your office begin defending both the robust process which generates this report and the findings which demonstrate that safety of the food supply?

*Answer.* The U.S. Department of Agriculture's (USDA) Pesticide Data Program (PDP) provides high quality, indispensable pesticide monitoring data that is invaluable to the EPA in producing realistic pesticide dietary exposure assessments as part of its effort to implement the 1996 Food Quality Protection Act. The EPA works with USDA to ensure the information released through the PDP program is accurately described to the public.

PDP monitoring activities are a Federal-state partnership. Samples of fruit, vegetables, and other commodities are collected from 10 participating states from all regions of the country representing 50 percent of the U.S. population. Samples are apportioned according to each state's population and the commodities selected are chosen, in part, for their significance in the diet. Specific emphasis is placed on sampling fruits and vegetables commonly consumed by children. The samples are collected close to the point of consumption—at terminal markets and large chain store distribution centers—immediately prior to distribution to supermarkets and grocery stores. Samples are collected based on a sampling design method that ensures that monitoring data are nationally representative of the U.S. food supply. They represent food that is typically available to the consumer for purchase throughout the year to provide the best available realistic estimate of exposure to pesticide residues in foods.

The data collected under this program is ideal in many respects for use in the EPA's exposure assessment for pesticides: samples are collected as close to the point of consumption as possible (while still retaining the identity of product origin) and sampling is based on statistically reliable protocols. Over the last 15 years, PDP has collected tens of thousands of samples of 85 different commodities, analyzing for over 440 pesticides. During this time, only a small percentage of these samples found (1) pesticide concentrations above the legal limit allowed (referred to as a tolerance) or (2) pesticide residue on commodities that do not have a tolerance established for that chemical (while the presence of such residue may be illegal, it is not necessarily unsafe). The EPA routinely uses USDA's PDP data as a component of its risk assessments to ensure that risk estimates for the U.S. population and various subgroups are safe—that is, there a reasonable certainty of no harm.

*Question Submitted by Hon. Reid J. Ribble, a Representative in Congress from Wisconsin*

*Question.* I appreciate that EPA intends to finalize an exemption for dairy under the Spill Prevention, Control, and Countermeasure rule. However, I have heard increasing concern from Wisconsin farmers about regulatory uncertainty because the Agency has yet to do so. When does EPA plan to finalize this exemption? This process is cause for concern about EPA's overall methodology, seeing as milk is already regulated for quality and safety.

*Answer.* On April 12, 2011, the EPA issued its final rule exempting milk and milk product containers from the Oil Spill Prevention, Control, and Countermeasure (SPCC) rule. The final rule was published in the *Federal Register* on April 18, 2011 and became effective on June 17, 2011.

*Questions Submitted by Hon. Mike McIntyre, a Representative in Congress from North Carolina*

*Question 1.* Administrator Jackson, 2 weeks ago, the Secretary of Agriculture gave testimony before this Committee on the current state of the agriculture industry. I don't think that anyone on this Committee would disagree with me that your Agency, the EPA, was the most talked about topic by Members of this Committee. Whether you realize it or not, my constituents and many American farmers are very worried and upset over the number of regulations coming out of EPA that negatively impact farmers and ranchers. Given that perception can become reality, how do you intend to improve the EPA's record in the future? What fundamental changes in EPA's relationship with the agricultural community are you willing to commit to today?

*Answer.* The EPA is committed to providing an effective opportunity for input from all stakeholders in shaping environmental protection strategies including input from the agricultural community. We have established a Federal advisory committee, The Farm, Ranch, and Rural Communities Committee, to provide advice to the agency. My office is directly engaged in facilitating the work of the Committee which is currently deliberating the most effective approaches to protecting water quality in agriculture.

Each of our Regional Administrators has an agriculture advisor who interacts directly with the agriculture community, including state and local agricultural organizations. The EPA is currently engaged in a series of intensive listening sessions with agricultural and other stakeholders to solicit their views on the issues surrounding emissions of particulate matter. The EPA Office of Pesticide Programs also conducts an active Federal advisory committee to solicit input from a wide range of stakeholders on pesticide issues, particularly those that affect agriculture.

In addition, I will continue to travel to farm communities to talk directly with farmers and will continue to join Secretary Vilsack in meeting with commodity groups and farm organizations. The EPA finds these discussions a valuable opportunity to keep agricultural stakeholders informed about agency initiatives and to get feedback from them on these issues. The agency often solicits agriculture community views on the EPA's efforts to promote environmental quality and willingly accepts invitations to meet. The EPA will continue to promote opportunities to engage and inform all stakeholder groups, including those representing agriculture.

*Question 2.* Administrator Jackson, with regard to the national ambient air quality standards (NAAQS) for ozone? What are the parts per billion the EPA is considering?

What would be the economic impact of lowering the standard to between 60 and 70 ppb?

How does the EPA, or how will the EPA, work with communities that it designates as in nonattainment if there is a disagreement about the designation? For instance—if there are objections about the location of air monitors or if a community is already under an existing plan to improve air quality. Will the EPA work with them in a positive and collaborative manner?

*Answer.* On September 2, 2011, the Administration withdrew the final rule for the reconsidered 2008 ozone National Ambient Air Quality Standards (NAAQS) from interagency review and is now proceeding with implementation of the current ozone NAAQS of 0.075 ppm (or 75 parts per billion).

When implementing a new or revised NAAQS, the EPA and states work together in a collaborative manner prior to final designations. The Clean Air Act outlines the process for initial area designations following the establishment of new or revised NAAQS (see section 107(d)). This includes: (1) the EPA guidance to states on the designation process, including the factors the EPA intends to use to evaluate appropriate boundaries for nonattainment areas; and, (2) a process for states to submit designation recommendations, which the EPA carefully considers. If the EPA intends to promulgate a designation different from a state recommendation, the EPA must notify the state at least 120 days prior to promulgating the final designation. The EPA must also provide the state an opportunity to demonstrate why the potential modification is inappropriate.

For the ozone NAAQS, the EPA recently announced that it will be proceeding with initial area designations under the 2008 standard, starting with the recommendations states made in 2009 and updating them with the most current, certified air quality data. Because the agency has these recommendations from the states and quality assured data for 2008–2010, there is nothing that state or local agencies need to do until the EPA issues any proposed changes to the states' recommendations (the "120-day letters") later this fall, though of course, states are welcome to contact the EPA to discuss specific issues at any time.

*Question 3.* Administrator, there have been guidance documents seeking clarification of both the *Solid Waste Agency of Northern Cook County (SWANCC)* and *Rapanos* court decisions, but the uncertainties about the Federal jurisdiction over wetlands and other waters remains highly controversial. The new draft guidance document was recently released to *Inside EPA*.

What are the differences between this guidance and the ones previously released? What stage in the process is the document?

In North Carolina, many farmers are worried that many new water bodies are going to fall under EPA and Army Corps regulation and require Federal permits. Under the draft guidance currently at OMB, how broadly do you expect the impacts to be on agriculture? Does the EPA envision regulating farm ponds and other water bodies located on farms?

*Answer.* The EPA and the U.S. Army Corps of Engineers (Corps) have drafted guidance that clarifies those waters over which the agencies will assert jurisdiction consistent with the Clean Water Act (CWA), implementing regulations, and Supreme Court interpretations. The draft guidance cannot and does not alter existing requirements of the law; it merely explains how the agencies think existing law should be applied in general, and emphasizes that it may not be applicable in particular cases. The agencies have worked carefully to assure that the draft guidance is consistent with the law and would not impact any of the existing statutory or regulatory exemptions for the nation's farmers. The agencies understand the important role played by farmers in conserving and protecting clean water and the environment. The EPA and the Corps released the draft guidance for public notice and comment on May 2, 2011 with a 60 day comment period; this comment period was later extended until July 31, 2011. The agencies are now reviewing the comments received and will make decisions regarding any final guidance after carefully evaluating comments provided by the public. The agencies also expect to proceed with notice and comment rulemaking to further clarify the regulatory definition of the term "waters of the United States," and to provide the public with an opportunity to participate in decisions regarding changes to the agencies' regulations. All exemptions for agriculture in the CWA and its implementing regulations would remain unchanged by the guidance, including the EPA's longstanding interpretation of 404(f)(1)(c) exempting farm ponds from CWA section 404 permitting requirements.

*Questions Submitted by Hon. Tim Huelskamp, a Representative in Congress from Kansas*

*Question 1.* In Parsons, KS, there is an ammunition depot that was closed during the latest round of the BRAC (Base Realignments and Closures) process in 2005. While the Army is attempting to close the base and turn it over to a redevelopment authority organized by the local community, you have attempted to require the Army and the community to make environmental improvements to the facility above and beyond those that are statutorily mandated. From where does the EPA believe their statutory authority governing these particular demands come? Further, I request the EPA provide documentation of this authority.

*Answer.* EPA believes that its authority to address environmental conditions at the Kansas Army Ammunition Site (KSAAP) site comes primarily from the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). A RCRA permit was issued for the KSAAP site in 1989, which pursuant to requirements of RCRA section 3004(u) included a provision for "corrective action"—the requirement to clean up releases of both hazardous wastes and hazardous constituents.

The Army is expected to finalize its transfer to the developer in the November/December 2011 timeframe. EPA and the state initiated the 30 day public notification process on September 28, 2011, to modify the existing RCRA corrective action permit that will ultimately facilitate the transfer of the KSAAP facility to the developer and the operating contractor after the land transfer occurs. The details of remediation requirements are being negotiated between EPA, DOD, the state, and the developer.

*Question 2.* Do you intend to conduct a comprehensive cost-benefit analysis prior to proposing any changes to regulations concerning farm dust? What mitigation steps would you propose to ensure compliance with dust-related air quality standards?

*Answer.* I committed in an October 17, 2011 letter that the EPA will send to the Office of Management and Budget a proposal to keep the PM<sub>10</sub> national ambient air quality standard as it is, with no change. This existing standard has been in effect since 1987. I am hopeful that this announcement ends the myth that the agency has plans to tighten regulation of farm dust.

*Questions Submitted by Hon. Larry Kissell, a Representative in Congress from North Carolina*

*Question 1.* Administrator Jackson, while I am concerned with the impact of coarse particulate matter or PM<sub>10</sub> standards pertaining to farm equipment and rural roads, I am also troubled by the impact that the EPA's PM<sub>2.5</sub> standard may also have on rural America. PM<sub>2.5</sub> limits are currently set at 15 parts per billion (ppb), and now EPA is looking to make the PM<sub>2.5</sub> rule even stricter. New levels being considered are between 12–14 ppb—which are approaching naturally occurring background levels. For example, naturally occurring levels in rural North Carolina are at 12.8 ppb. Concerns over these new levels have prevented Charlotte Pipe from building a new green foundry in a rural area of my district. This rule could impact hundreds of other manufacturers that want to expand their capacity or build

a new facility, and potentially not allow new jobs to enter rural America where they are surely needed.

Should, in the case of a new greener foundry replacing an older facility or the greener retrofitting of an old foundry be judged by the lessening of the particulate matter emitted relative to the old facility, rather than the aggregate particulate matter present in the location where the new facility is located?

*Answer.* The National Ambient Air Quality Standards (NAAQS) are set to protect public health and the environment. It is not the intent of the Clean Air Act (CAA) to prohibit the development of cleaner sources. If the new foundry is built at the same location as the older facility, then the greener facility likely would not increase emissions in the area, and therefore not trigger additional requirements for evaluating emissions increases. If the new foundry is built at a different location, the CAA requires that the surrounding area will still remain within acceptable air quality levels. The source will need to assess its air quality impacts and can work with the state and the EPA regional office to determine any appropriate steps to address impacts that exceed CAA levels. In North Carolina, the state is the permitting authority, and the CAA provides them the flexibility to determine what, if any, additional controls are needed in an area to ensure local air quality is protected.

*Question 2.* Agribusiness retailers form the heart of fertilizer distribution in the U.S. and provide precision application that targets nutrients where they are needed. There are 6,800 agribusiness retailers in the country, almost a third of which are small businesses.

The EPCRA statute contains several exemptions from the definition of a hazardous chemical, including “fertilizer held for sale by a retailer to the ultimate customer” (hereinafter the “fertilizer retail exemption”).

After 20 years of EPA upholding this exemption, Region 6 has reversed course and began enforcement and HQ staff are asserting that it no longer applies to simple mixing of fertilizers (with no chemical reaction)? Can you please explain to the Committee why the Agency has chosen to side-step Congressional intent as it relates to the “fertilizer retail exemption” and what further action do you plan to take as it relates to this issue?

*Answer.* The EPA’s Region 6 has not taken any enforcement actions under section 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA) for fertilizers and there has not been any policy change regarding the fertilizer exemption.

Sections 311 and 312 of EPCRA apply to owners and operators of facilities that are required to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical defined under the Occupational Safety and Health Act (OSHA) Hazard Communication Standard (HCS). If the hazardous chemical is present at or above the reporting thresholds specified in 40 CFR part 370, the facility owner or operator is required to submit a material safety data sheet (MSDS) or a list that contains the hazardous chemical under section 311 of EPCRA. Under section 312 of EPCRA, if a hazardous chemical is present at or above the reporting threshold specified in 40 CFR part 370, the facility owner or operator is required to submit an emergency and hazardous chemical inventory form (Tier I or Tier II) to the State Emergency Response Commission (SERC), Local Emergency Planning Committee (LEPC) and the local fire department annually by March 1. This information is made available to the public by the LEPCs so they have information on the chemicals in process or being used in their community.

Section 311(e)(5) of EPCRA exempts from the definition of a hazardous chemical “any substance to the extent it is used in routine agricultural operations or a fertilizer held for sale by a retailer to the ultimate customer.” Thus, if a retail facility sells fertilizer to a farmer, those fertilizers are exempt from reporting under Section 311 and 312 of EPCRA. However, there are examples where these retail facilities also blend various fertilizers to create a unique fertilizer. We are currently evaluating this scenario to determine how the retailer fertilizer exemption in EPCRA applies and engaging with industry to better understand the situation. The agency will keep the Committee and the agricultural community informed of any results from the evaluation.

*Questions Submitted by Hon. Jeff Fortenberry, a Representative in Congress from Nebraska*

*Question 1.* Does the EPA plan to regulate low capacity on-farm fuel storage?

*Answer.* The Oil Spill Prevention, Control, and Countermeasure (SPCC) rule is not directed toward low capacity oil storage. It applies to farms that store more than 1,320 U.S. gallons in total of all aboveground containers or more than 42,000 gallons in completely buried containers.

*Question 2.* Does the EPA plan to regulate livestock emissions?

*Answer.* Under the Mandatory Reporting of Greenhouse Gases (GHG) rule, certain livestock facilities with manure management systems with emissions equal to or greater than 25,000 metric tons of carbon dioxide equivalent (CO<sub>2</sub>e) per year from a manure management system are required to report. No other GHG emission sources associated with agriculture are covered. However, the EPA is not currently implementing this part of the rule (subpart JJ) due to a Congressional restriction prohibiting the expenditure of funds in fiscal year 2011 for this purpose.

*Questions Submitted by Hon. Randy Hultgren, a Representative in Congress from Illinois*

*Question 1.* If EPA and the Corps were to adopt the Draft 2010 Clean Water Protection Guidance as a final document, is there any water body or wetland that lies within the same watershed as a navigable or interstate water that would not have a “significant nexus” to that navigable or interstate water?

Under the Guidance, a “significant nexus” is sufficient to establish jurisdiction, so doesn’t that mean that EPA or the Corps could assert jurisdiction over any water body or wetland?

*Answer.* The agencies do not believe that all water bodies and wetlands would be determined to be jurisdictional under the draft guidance. For example, most water bodies and wetlands historically regulated under the “other waters” provision of our regulations would not be found jurisdictional under the draft guidance. As stated in the guidance, while each situation must be evaluated on a case-by-case basis, the agencies believe that most streams that flow into a traditional navigable or interstate water, as well as their neighboring wetlands, would be found to have a significant nexus to such downstream waters. We believe this is fully consistent with the *SWANCC* and *Rapanos* decisions and generally reflects the agencies’ current interpretation of the scope of Clean Water Act jurisdiction. As a result, the agencies do not believe that the guidance, if finalized, would result in a significant change in Clean Water Act jurisdiction.

The agencies released the draft guidance for public notice and comment on May 2, 2011 with a 60 day comment period; this comment period was later extended until July 31, 2011. The agencies are now reviewing the comments received and will make decisions regarding any final guidance after carefully evaluating comments provided by the public.

*Question 2.* The draft guidance provides no exceptions that are not in the statute or in existing regulations. Isn’t it true that under the draft guidance EPA and the Corps could regulate almost any water body or wetland on a case-by-case basis, even if the guidance says they are “**generally** not jurisdictional?”

These water bodies include ditches constructed wholly in dry land, artificial lakes and ponds used for stock watering or irrigation, rice fields, even water filled depressions from construction activity. Nothing in the guidance stops EPA or the Corps from arguing that a “significant nexus” exists between those water bodies and downstream navigable or interstate waters.

*Answer.* No. Past guidance issued by the agencies in 2008 also identified specific types of water as “generally not jurisdictional” such as swales or erosional features and upland ditches. Since that guidance was issued, the agencies have asserted jurisdiction over few, if any, of these waters. The draft guidance will not change this position.

*Question 3.* In the *SWANCC* case, the court addressed an old quarry that was proposed to be filled in as a landfill. The Corps asserted jurisdiction because the quarry was used by migratory birds. The Supreme Court said no. Under the draft guidance, couldn’t EPA and the Corps assert jurisdiction over that quarry because it holds water and lies within in a watershed, even though it is isolated?

*Answer.* No, the guidance will not result in jurisdiction over the waters at issue in *SWANCC*.

*Question 4.* Why are EPA and the Corps trying to change the policies of their agencies through a guidance document? The courts have said that an agency cannot do that without going through notice and comment rulemaking.

*Answer.* Guidance was previously issued by the agencies on this important issue in 2008. The agencies believe that farmers, homeowners, businesses, and others deserve additional transparency, consistency, and predictability in the process for identifying which waters are, or are not, subject to the requirements of the Clean Water Act. We do not believe that the 2008 guidance provides the necessary clarity and are therefore working to develop replacement guidance. The EPA and the U.S. Army Corps of Engineers (Corps) released the draft guidance for public notice and comment on May 2, 2011 with a 60 day comment period; this comment period was later extended until July 31, 2011. The agencies are now reviewing the comments

received and will make decisions regarding any final guidance after carefully evaluating comments provided by the public. The agencies also expect to proceed with notice and comment rulemaking to further clarify the regulatory definition of the term “waters of the United States.”

*Question 5.* Why is EPA taking a single opinion and making it the law of the land? Courts have said that you can’t turn a dissent into a majority opinion by combining it with a concurring opinion to argue that the position of the dissent and the concurrence constitute the opinion of the court—but isn’t that what EPA and the Corps is proposing to do in the draft guidance?

*Answer.* It is the position of the United States that in the wake of *Rapanos*, Clean Water Act (CWA) jurisdiction may be established using the standard set forth in either the plurality or Justice Kennedy’s opinion. The U.S. established this position in the previous administration. This position is consistent with Supreme Court case law governing interpretation of the opinions of a divided court. Indeed, the four dissenting Justices in *Rapanos*, who would have affirmed the court of appeals’ application of the Corps’s regulations, stated explicitly that either the plurality test authored by Justice Scalia or the significant nexus test authored by Justice Kennedy could be used to determine CWA jurisdiction because they would uphold jurisdiction under either test.

*Question 6.* The draft guidance goes far beyond even Justice Kennedy’s opinion in the *Rapanos* case. In *Rapanos*, Justice Kennedy suggested that in some cases Justice Scalia’s test would be broader than Justice Kennedy’s “significant nexus” test. Justice Kennedy said that a surface water connection may not constitute a significant nexus if it was small and remote. In contrast, the draft guidance takes a very broad view of what is a tributary (and includes ephemeral streams) and then presumes that anything that can be considered a tributary has a significant nexus even if it has a small or no impact on downstream waters.

The draft guidance also says it does not matter how remote the waterbody is.

So, even if it is valid for EPA and the Corps to rely on the Justice Kennedy’s significant nexus test, how can it go beyond it and assume jurisdiction over remote water bodies that have little or no impact on downstream waters?

*Answer.* The agencies do not believe that all water bodies and wetlands would be determined to be jurisdictional under the draft guidance. For example, most water bodies and wetlands historically regulated under the “other waters” provision of our regulations would not be found jurisdictional under the draft guidance. As stated in the guidance, while each situation must be evaluated on a case-by-case basis, the agencies believe that most streams that flow into a traditional navigable or interstate water, as well as their neighboring wetlands, would likely be found to have a significant nexus to such downstream waters. We believe this is fully consistent with the *SWANCC* and *Rapanos* decisions and generally reflects the agencies’ current interpretation of the scope of Clean Water Act jurisdiction. As a result, the agencies do not believe the guidance, if finalized, would result in a significant change in Clean Water Act jurisdiction.

*Question 7.* EPA has proposed regulations for coal ash disposal that include a possible “hazardous waste” designation. One of the materials included in that category is synthetic gypsum produced by power plants that can be safely and effectively used in agricultural applications.

Doesn’t it create a serious regulatory barrier to productively using a product when you label it a “hazardous waste” on the property of the person who makes it? If you were a farmer, would you want to place a material on your fields that the government considers hazardous waste on the property of the person who makes it?

*Answer.* The EPA’s proposed rulemaking on the management of coal combustion residuals (CCRs) addresses CCRs that are being disposed. The proposed rule acknowledges that there are significant benefits that can be derived from the use of CCRs in agricultural applications and that the EPA and the U.S. Department of Agriculture’s Agricultural Research Service are engaged in field studies, expected to conclude in late 2012. The agency did request comments, information, and data on CCRs that are beneficially used in agriculture, but did not propose to regulate the beneficial use of CCRs in agricultural applications. As for the potential stigma that hazardous waste disposal requirements could have on beneficial use, the EPA recognized that issue in the proposal, solicited comment, and will carefully evaluate the information received prior to any final regulatory decision.

*Question 7a.* Are you aware that synthetic gypsum from power plants is not “coal ash” at all—but rather a byproduct of another process at the power plants? If it’s not coal ash, why are you including it in the regulations you are developing?

*Answer.* The EPA’s proposed rule addresses the management of coal combustion residuals (CCRs) from electric utilities. CCRs and “coal ash” are broad terms that

refer to a range of residuals produced from the combustion of coal, including fly ash, bottom ash, slag, and flue gas emission control wastes. We are aware of the processes used to produce synthetic gypsum from flue gas desulphurization materials, and are carefully considering the comments regarding whether synthetic gypsum derived from coal combustion residuals warrant regulation.

*Question 7b.* Does synthetic gypsum qualify as a “hazardous waste” based on its toxicity? Then why do you want to label it as hazardous and create all of this confusion?

*Answer.* Wastes may be deemed hazardous in two possible ways: (1) because the waste is ignitable, corrosive, reactive, or exceeds certain clearly hazardous toxicity characteristics; or, (2) the EPA lists (through rulemaking and with consideration of public comment) a particular waste or category of wastes as hazardous, if it is determined that the waste poses substantial present or potential hazard to human health and the environment when managed in certain ways such as land disposal.<sup>3</sup> With regard to coal combustion residuals (CCRs), they are not ignitable, corrosive, or reactive, and rarely exceed the toxicity characteristic, and thus the issue in the proposed rule centers around whether the waste poses a hazard to human health and the environment when managed in certain ways such as land disposal. In a listing determination, the EPA will evaluate factors such as the toxicity and concentration of constituents in a waste, the volume of waste and how it is managed, the potential for the constituents to migrate, and damage cases resulting from exposure to and release of CCRs. The EPA will also conduct extensive risk modeling for various disposal scenarios. The EPA relied upon its analysis of these factors in drafting its proposed CCR rule and will carefully evaluate the information and comments it received in response to the proposed rule, prior to issuing any final rule regarding the classification of CCRs being disposed.

*Question 7c.* EPA previously supported the use of synthetic gypsum in agriculture, but canceled the C2P2 program that provided that support. Is there a reason you did not notify your partner, the Department of Agriculture, before you terminated that program? Do you have any plans to resume active support for recycling coal ash and synthetic gypsum?

*Answer.* While the EPA is engaged in the rulemaking process for coal combustion residuals, the agency has suspended active participation in the Coal Combustion Products Partnership. The EPA continues to believe that the beneficial use of residuals from coal combustion, when performed properly and in an environmentally safe manner, is beneficial to the environment and the EPA is not proposing to modify the existing exemption for coal ash when beneficially used. The EPA is interested in broadening the dialogue on beneficial uses and encourages all interested parties to review and provide comments and any relevant information and data on the proposed rule.

*Question 7d.* The people who use synthetic gypsum for agriculture now face a huge regulatory uncertainty because of the coal ash rulemaking. When do you plan to complete this rule? Do you think it is fair to tell the world that you might decide to call this material a “hazardous waste” and then let people who want to recycle it just hang there for years while you think about it?

*Answer.* The agency is in the process of reviewing and addressing more than 450,000 comments received on the proposed coal ash rule. In addition, the EPA and the U.S. Department of Agriculture are conducting a joint study on the use of flue gas desulphurization (FGD) gypsum in agriculture. In the preamble of the proposed rule, the EPA indicated that study should be completed at the end of 2012. Users of CCR in agriculture are encouraged to review the basic guidance provided in the interim report (Agricultural Uses for Flue Gas Desulfurization (FGD) Gypsum, March 2008, EPA530-F08-009)<sup>4</sup> pending completion of the study. The report references several resources for responding to questions including: the EPA’s Industrial Waste Management Evaluation Model (IWEM) and the chapter on land application (Chapter 7) in the associated *Guide for Industrial Waste Management* <http://>

<sup>3</sup>For additional information about designating hazardous wastes, see <http://www.epa.gov/osw/hazard/dsw/index.htm>.

<sup>4</sup><http://nepis.epa.gov/Exe/ZyNET.exe/P1001119.TXT?ZyActionD=ZyDocument&Client=EPA&Index=2006+Thru+2010&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIndex%20Data%5C06thru10%5Ctxt%5C00000004%5CP1001119.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=p%7Cj&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL#>

[www.epa.gov/epawaste/nonhaz/industrial/guide/index.htm](http://www.epa.gov/epawaste/nonhaz/industrial/guide/index.htm), the state's department of environmental protection, department of agriculture, and agricultural extension service, and the USDA Natural Resources Conservation Service.

*Questions Submitted by Hon. Scott R. Tipton, a Representative in Congress from Colorado*

**Question 1.** Many of EPA's recent regulatory activities are in areas where there is a significant component of state delegated authorities and responsibilities (NPDES permitting, soil fumigant label changes, contemplated changes to PM<sub>10</sub> standards, etc.). State budgets aren't growing. Additional resources are difficult to come by. How will states pay for these activities? If additional resources are not available, what regulatory or enforcement activities should states NOT do in order to take on these new responsibilities?

**Answer.** The EPA and states share responsibility and accountability for assuring compliance with environmental laws and regulations to protect human health and the environment. Congress envisioned cooperative implementation of its laws by the EPA and authorized or delegated states to do the majority of the day to day work to implement our environmental programs by developing standards, issuing permits, conducting inspections and taking enforcement actions. The EPA develops national standards, programs, policies and guidance, conducts inspections and takes enforcement actions in situations of national interest, and oversees state programs.

There are a number of flexibilities afforded the EPA regions and states as they plan compliance and enforcement activities. For example, the Compliance Monitoring Strategies (CMS) are important tools for targeting inspection resources on the most important sources of pollution. The CMS provide flexibilities for the EPA regions, states, and territories in establishing inspection coverage over a range of sources. Through the annual planning process, the EPA regions, states, and territories are encouraged to establish specific commitments and targets for inspection coverage across sources and to strategically target their inspection programs, and limited inspection resources, to give priority to those sectors determined to be most important in terms of adversely impacting public health and the environment.

The agency intends to meet the challenges of improving compliance while reducing burden on states. To ensure compliance across the country, in these times of tight Federal and state budgets, the agency can no longer rely solely on traditional inspection and enforcement approaches to address the many regulated facilities and increasing numbers of smaller sources contributing to environmental problems.

The EPA is looking at new ways to improve compliance with agency regulations, including increased monitoring, better targeting of enforcement, the expansion of electronic reporting, and enhanced transparency by publishing greater amounts of emissions data to the Internet. A key element of this approach is using technology to allow the agency to be more effective and efficient at compliance. This includes electronic reporting; monitoring pollution releases and ambient conditions in a more efficient and effective way by using modern equipment and advanced training for inspectors; continuing to provide more complete, timely and accurate information to the public, where it can be used to drive better environmental performance from regulated facilities and government; and using new approaches to compliance, such as self-certification programs, and third party reviews, to create stronger incentives for compliance.

In August 2011, the EPA issued its *Final Plan for Periodic Retrospective Reviews of Existing Regulations*.<sup>5</sup> The plan includes 35 priority reviews which are intended to improve the overall effectiveness of our regulatory program, including reducing burden and costs. Several of these reforms have the potential to reduce permitting, enforcement and compliance burden on states. Below is a list of priority actions that most directly address state burden:

**Electronic Reporting—Item #1.1.1 in the plan:** The EPA intends to replace key outdated paper reporting requirements with electronic reporting as soon as practicable. Agency reporting requirements are still largely paper based for all media programs, which is inefficient and unnecessarily resource intensive for reporting entities and states, and ineffective for compliance monitoring and assurance. Among other things, the EPA intends to conduct a targeted review to convert key existing paper reporting requirements to electronic reporting, and develop a strategy for ensuring that new rules incorporate the most efficient electronic reporting techniques.

**National primary drinking water regulations—Long Term 2 Enhanced Surface Water Treatment (LT2)—2.1.9:** The EPA intends to evaluate effective and practical approaches that may maintain, or provide greater protection of, the

<sup>5</sup> <http://www.epa.gov/regdarrt/retrospective>.

water treated by public water systems and stored prior to distribution to consumers. Among other things, the EPA intends to assess and analyze new data/information to evaluate whether there are new or additional ways to manage risk while assuring equivalent or improved protection, including with respect to the covering of “finished water” reservoirs (*i.e.*, drinking water that has already been treated and is intended to be distributed directly to consumers without further treatment).

**Combined Sewer Overflows (CSOs) and integrated planning for wet weather infrastructure investments—2.1.10:** The EPA intends to gather additional information on how we can better promote Green Infrastructure (GI), ensure practical and affordable remedies to CSO violations, and identify additional approaches to ensure that communities can see noticeable improvements to their water quality and reduced risks to human health through prioritizing infrastructure investments.

**CAA Title V Permit programs—2.1.14:** A Title V permit lists all of the air quality related rules and requirements that apply to the particular air pollution source, and specifies how compliance will be monitored. States are required to give public notice of the draft permits and some permit revisions, and typically post permits on their websites. The EPA intends to review the Title V implementation process to determine whether changes can be made to help all permitting participants understand the program better, and to help streamline the process to make more efficient use of industry, public, and government resources.

**Sanitary Sewer Overflow (SSO) and peak flow wet weather discharges—2.2.3:** The EPA intends to gather additional information about the most effective way to manage wastewater that flows through municipal sewage treatment plants during heavy rains or other wet weather periods that cause an increase in the flow of water (these are collectively known as “peak flows”). The EPA intends to evaluate options that are appropriate for addressing SSOs and peak flow wet weather discharges and determine if a regulatory approach, voluntary approach, or other approach is the best path forward.

**Consumer confidence reports for primary drinking water regulations—2.2.6:** The Consumer Confidence Report is an annual water quality report that a community water system is required to provide to its customer. The EPA will consider reviewing the Consumer Confidence Report Rule to look for opportunities to improve the effectiveness of communicating drinking water information to the public, while lowering the burden on water systems.

**Reporting requirements under Section 303(d) of the Clean Water Act (CWA)—2.2.7:** The EPA intends to explore ways to reduce the burden on state governments when reporting on the quality of the nation’s water bodies. The requirement for states to report on the condition of their waters every 2 years under Section 305(b) is statutory. However, the requirement for states to identify impaired waters that need a Total Maximum Daily Load (TMDL) every 2 years under Section 303(d) is regulatory. States have raised concerns that reporting this information every 2 years is a significant administrative burden. The EPA intends to work with the public and states to identify alternative approaches for reducing associated burden and evaluating the impact of changes under either or both CWA Sections 303(d) and 305(b).

**Water quality standard (WQS) regulations—2.2.10:** Since the current WQS regulation was last revised in 1983, a number of issues have been raised by states and other stakeholders, or identified by the EPA, that could benefit from clarification and greater specificity. Among other things, the EPA intends to provide regulatory flexibility to allow states and tribes to achieve water quality improvements before resorting to a use change.

**State Implementation Plan (SIP) Process—2.2.11:** EPA and states are working together to review the administrative steps states must follow when they adopt and submit SIPs. SIPs describe how areas with air quality problems will attain and maintain the National Ambient Air Quality Standards. A number of simplifying changes to the SIP development process have been implemented or are under consideration, including reducing hard copies, eliminating hearings on matters of no public interest, minimizing the number of expensive newspaper advertisements providing public notice, and determining whether and how the process for making minor plan revisions might be simplified.

*Question 2.* How much of state budgets go toward “fixing” the problem, *i.e.*, complying with EPA regulations? You mentioned grants to states. How much does a state or community have to contribute to receive these grants or other sources of funding to assist with compliance costs?

*Answer.* The EPA does not collect detailed data on environmental spending for compliance in the context of overall state budgets. The Environmental Council of States (ECOS) collected data on 27 state budgets and found that an average state

in their study met over 80 percent of their state environmental agency's budget with a combination of Federal Government support and fees, with only about 20 percent of projected budgets coming from state general revenues. This represents all activities at the state environmental agency, not just those related to enforcement of the EPA regulations.<sup>6</sup>

*Questions Submitted by Hon. Robert T. Schilling, a Representative in Congress from Illinois*

*Question 1.* In your testimony, you note your "profound respect" for the contribution that farmers make the whole world over. However, farmers and producers in the 17th District of Illinois feel threatened by EPA's over-regulation. How can you claim to respect the contributions of farmers when it has been suggested that your EPA may regulate everything from farm dust to milk?

*Answer.* The EPA is committed to providing an effective opportunity for input from all stakeholders in shaping environmental protection strategies including input from the agricultural community. We have established a Federal advisory committee, The Farm, Ranch, and Rural Communities Committee, to provide advice to the agency. My office is directly engaged in facilitating the work of the committee.

Each of our Regional Administrators has an agriculture advisor who interacts directly with the agriculture community, including state and local agricultural organizations. The EPA is currently engaged in a series of intensive listening sessions with agricultural and other stakeholders to solicit their views on the issues surrounding emissions of particulate matter. The EPA Office of Pesticide Programs also conducts an active Federal advisory committee to solicit input from a wide range of stakeholders on pesticide issues, particularly those that affect agriculture.

In addition, I will continue to travel to farm communities to talk directly with farmers and will continue to join Secretary Vilsack in meeting with commodity groups and farm organizations. The EPA finds these discussions a valuable opportunity to keep agricultural stakeholders informed about agency initiatives and to get feedback from them on these issues. The agency often solicits agriculture community views on the EPA's efforts to promote environmental quality and willingly accepts invitations to meet. The EPA will continue to promote opportunities to engage and inform all stakeholder groups, including those representing agriculture.

Regarding the regulation of farm dust, I committed in an October 17, 2011 letter that the EPA will send to the Office of Management and Budget a proposal to keep the PM<sub>10</sub> national ambient air quality standard as it is, with no change. This existing standard has been in effect since 1987. I am hopeful that this announcement ends the myth that the agency has plans to tighten regulation of farm dust.

Similarly, regarding the regulation of milk, on April 12, 2011, the EPA issued its final rule exempting milk and milk product containers from the Oil Spill Prevention, Control, and Countermeasure (SPCC) rule. The final rule was published in the *Federal Register* on April 18, 2011 and became effective on June 17, 2011.

*Question 2.* I have very strong concerns about the word "navigable" being removed from the Clean Water Act. Will EPA be developing new guidance that opens up all waters of the United States to regulation? Why is EPA trying to change policies through a guidance document?

*Answer.* The EPA and the U.S. Army Corps of Engineers (Corps) have drafted guidance that clarifies those waters over which the agencies will assert jurisdiction consistent with the CWA, implementing regulations, and Supreme Court interpretations. The draft guidance cannot and does not alter existing requirement of the law, it merely explains how the agencies think existing law should be applied in general, and emphasizes that it may not be applicable in particular cases. The scope of waters that would be protected under the interpretations in the draft guidance would remain significantly narrower than under the agencies' interpretations prior to the Supreme Court's decisions in *SWANCC* and *Rapanos*. All exemptions for agriculture in the CWA and regulations would be completely unchanged by the draft guidance.

The EPA and the Corps released the draft guidance for public notice and comment on May 2, 2011 with a 60 day comment period; this comment period was later extended until July 31, 2011. The agencies are now reviewing the comments received and will make decisions regarding any final guidance after carefully evaluating comments provided by the public. The agencies also expect to proceed with notice and comment rulemaking to further clarify the regulatory definition of the term "waters of the United States."

<sup>6</sup>Brown, R.S., and Fishman, A. *Status of State Environmental Agency Budgets, 2009-2011*, ECOS. [http://www.ecos.org/files/4157\\_file\\_August\\_2010\\_Green\\_Report.pdf](http://www.ecos.org/files/4157_file_August_2010_Green_Report.pdf).

*Question 3.* Atrazine was last re-registered as a herbicide in 2006 after 12 years of review and 6,000 scientific studies reaffirming the safety of the product. In October of 2010, the World Health Organization increased its guidelines for atrazine (as it pertains to drinking water) from 2 parts per billion to 100 parts per billion. What prompted you to open up the re-registration of atrazine and do you expect the 6,001st study to produce a different conclusion? I would like the record to reflect that University of Chicago Economist, Don Coursey, recently announced that banning atrazine would cost us 21,000 to 48,000 jobs from lost production in corn alone.

*Answer.* The EPA's current scientific evaluation of atrazine is based on our commitment to using the best available science and follows regular open and transparent processes, including our process to obtain independent, external peer review of important science issues. The agency will decide whether any steps are necessary to better protect health and the environment, based on this scientific evaluation. The EPA reregistered atrazine in 2003, which was the last major regulatory decision specifically for this herbicide. Given the substantial new scientific information generated since the 2003 reregistration decision and improved data on the documented presence of atrazine in both drinking water sources and other bodies of water collected as a condition of reregistration, the agency is reviewing the new research to ensure that our regulatory decisions regarding atrazine are based on the best available science and protect public health and the environment. Since the EPA concluded its last evaluation of atrazine in 2003, the agency has evaluated close to 150 newly published studies investigating a wide array of effects potentially relevant to human health risk assessment.

The EPA is committed to an open, transparent, and science based review process that relies on rigorous examination of the relevant scientific data. As part of this process, to be certain that the best available science is used to inform its atrazine human health risk assessment, and to ensure transparency, the agency is seeking advice on key aspects of the science evaluation from the independent FIFRA Scientific Advisory Panel (SAP). The EPA presented its plan for the atrazine reevaluation to the SAP in November 2009, and the agency held three SAP meetings in 2010 to address new atrazine studies and related issues. An SAP meeting was held in July 2011 to obtain scientific peer review of new data that the EPA received from the epidemiological Agricultural Health Study (AHS) conducted by the National Cancer Institute at the National Institutes of Health. The EPA recently received the final report from that meeting of the SAP and plans to take the recommendations from this SAP report as well as all previous SAPs on atrazine and human health into account as it updates the state of the science for the atrazine registration review. Atrazine's registration review process is scheduled to begin in 2013.

*Letter and Questions Submitted by Hon. Thomas J. Rooney, a Representative in Congress from Florida; Hon. Steve Southerland II, a Representative in Congress from Florida*

March 11, 2011

Hon. LISA P. JACKSON,  
Administrator,  
United States Environmental Protection Agency,  
Washington, D.C.

Dear Administrator Jackson,

During yesterday's House Agriculture Committee hearing to review the impact of EPA regulation on agriculture, we discussed the recently finalized EPA mandate regulating numeric nutrient levels in Florida's rivers, lakes and streams.

Like you, we want clean water for Florida. We appreciate your stated willingness to work with the Florida Department of Environmental Protection (DEP) to consider alternatives to the EPA mandate, which will go into effect in March 2012, in order to achieve the goal of cleaner water.

Over the last year, we have worked with a bipartisan coalition from Florida's Congressional Delegation on this matter. We have repeatedly requested that EPA allow a thorough, third-party review of the science used in the final EPA mandate. We have also repeatedly asked for a complete economic analysis to determine the cost the new regulation would impose on our state. By some accounts, the mandate would impose approximately \$1 billion in direct economic costs, and approximately \$2 billion in indirect costs, on Florida each year.

Florida's statewide unemployment remains near 12 percent, and our businesses and families struggling to stay afloat during difficult economic times. As Senator Bill Nelson (D-FL) noted in his letter to you yesterday requesting a delay in the implementation of this regulation, the EPA should not spend money enforcing the rule until we have more precise estimates of the cost of compliance. We echo his

request to quote “. . . to suspend application and enforcement of the rule, while providing for an independent analysis of the cost of compliance and continuing to help cities and counties prepare . . .”

We are very grateful to you for committing during yesterday's hearing to work with DEP toward a solution that can be agreed to by all parties. We also appreciate your indication that you will be willing to allow a third-party review of the science and to complete an economic analysis of EPA's proposed regulation. Thank you very much for meeting these reasonable requests.

As your agency begins this process, will you please provide us with the following information:

1. When will EPA begin to produce a complete economic analysis of the impact of the proposed regulation, and when does EPA expect that analysis to be complete?
2. What methodology will EPA use in its economic analysis?
3. Which third-party organization will EPA task with conducting a thorough review of the proposed rule?
4. When will that third-party review commence, and when does EPA expect it to conclude?
5. How will EPA adjust the proposed regulation to accommodate the findings of the third-party review and economic analysis?

We look forward to working with your agency; Florida Agriculture Commissioner Adam Putnam; DEP; other concerned state and Federal agencies; as well as interested environmental, agriculture and business groups to develop an agreeable compromise.

Thank you for your appearance before the House Agriculture Committee yesterday and for your stated commitment to work with the State of Florida and our Congressional delegation on this important issue. We appreciate your prompt consideration of these questions. If you have any questions, please contact Congressman Rooney's office at (202) 225-5792.

Sincerely,




Hon. THOMAS J. ROONEY,  
Member of Congress;

Hon. STEVE SOUTHERLAND II,  
Member of Congress.

*Response from Environmental Protection Agency*  
April 21, 2011

Hon. THOMAS J. ROONEY,  
Member of Congress,  
U.S. House of Representatives,  
Washington, D.C.

Dear Congressman Rooney:

Thank you for your letter of March 11, 2011, to Administrator Lisa P. Jackson, regarding the Environmental Protection Agency's (EPA) final rule establishing limits on nitrogen and phosphorus for Florida's lakes, springs and flowing waters (Inland Rule). As the senior policy manager of EPA's national water program, I appreciate the opportunity to respond to your letter. In the letter of April 6, 2011, to Senator Nelson, Administrator Jackson indicated that the Agency has begun the process of working with the National Academy of Sciences (NAS), a highly reputable and independent organization, to conduct a third party review of EPA's cost estimate for the rule in comparison with those of other stakeholders. EPA's rule, with the exception of the site-specific alternative criteria provision, will not take effect until March of 2012.

In addition to the concerns raised about the independent cost review of the Inland Rule, you requested specific information about the Agency's plans for a third-party

review of the science and the economic analysis for the proposed rule EPA is developing for Florida estuaries, coastal waters, and southern inland flowing waters.

EPA is presently collecting and evaluating available information and data to use in developing an economic analysis for the proposed rule. When it is completed, the analysis will be made available, along with the proposed rule for Florida estuaries, coastal waters, and southern inland flowing waters, in November 2011. In developing the economic analysis, EPA will follow the Agency Guidelines for Preparing Economic Analyses and the White House Office of Management and Budget's Circular A-4, guidance to Federal agencies on the development of regulatory analysis, which define the best practices in conducting analyses of environmental regulation. As appropriate, any recommendations resulting from the NAS review of the Inland Rule economic analysis that are applicable to the analysis for the proposed coastal-estuary rule will be factored into the analysis for the proposed rule.

For the proposal itself, EPA has requested the Agency's Science Advisory Board (SAB) to review and provide input and recommendations on the underlying scientific methodology and related data that will be used to develop numeric nutrient criteria for estuarine and coastal waters, as well as flowing waters in south Florida. The SAB is comprised of independent nationally recognized experts and is expected to issue a final report in June 2011. As part of their review, the SAB has requested and received expert scientific and technical input from interested parties and organizations in Florida. We plan to use the findings and recommendations of the SAB report to strengthen the scientific basis of the numeric nutrient criteria that will be proposed in November 2011. In addition to this SAB review, we will be conducting our own internal analytic and data quality review of the information and analysis supporting the rule. Further, the Agency will request scientific, technical, and policy review from the Florida public, interested stakeholders and additional experts as part of the formal comment period following proposal. Finally, prior to finalizing the proposal, EPA is planning a series of technical meetings in Florida early this summer with local scientific experts to request their perspectives on the approaches being considered for development of the criteria.

Once the proposal is published and we have received additional technical and scientific input as part of the comment period, we will carefully review and consider that input, build upon it where possible, and provide responses to the comments received. This additional feedback, analysis and information we receive is an important part of the Agency's considerations and will help shape the final rule for Florida estuaries, coastal waters, and southern inland flowing waters. That final rule is presently scheduled to be issued in August 2012.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Denis Borum in EPA's Office of Congressional and Intergovernmental Relations at [Redacted].

Sincerely,



NANCY K. STONER,  
*Acting Assistant Administrator.*

**Editor's note:** An identical letter was sent to Hon. Steve Southerland II, a Representative in Congress from Florida.