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RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115

Majority (202) 225–2927
Minority (202) 225–3641

May 18, 2011

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

Dear Administrator Jackson:

Pursuant to Rule X and XI of the Rules of the U.S. House of Representatives, the Committee on Energy and Commerce seeks information relating to recent and pending new rules promulgated by your agency under the Clean Air Act relating to greenhouse gas (GHG) regulation. In connection with this oversight, we write today specifically to request information to assist the Committee in evaluating EPA's planned establishment and implementation of New Source Performance Standards (NSPS) for sources that emit GHGs, including such standards for power plants and petroleum refineries.

Accordingly, please find attached to this letter questions and document requests as well as instructions relating to the requests for documents. Please provide the written responses and documents requested by no later than three weeks from the date of this letter. Thank you for your prompt attention to this request. Should you have any questions, please contact Mary Neumayr of the Majority staff of the Committee at (202) 225-2927.

Sincerely,

Fred Upton
Chairman

Ed Whitfield
Chairman
Subcommittee on Energy and Power

Cliff Stearns
Chairman
Subcommittee on Oversight and Investigations

Attachments

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Bobby L. Rush, Ranking Member
Subcommittee on Energy and Power

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations

INFORMATION & DOCUMENT REQUESTS

Greenhouse Gas (GHG) New Source Performance Standards

1. On December 23, 2010, EPA announced that it had entered into settlement agreements committing EPA to issue New Source Performance Standards (NSPS) to address GHG emissions from fossil fuel power plants and petroleum refineries. Provide all EPA analyses relating to considering and implementing NSPS requirements for GHG emissions for these source categories.

2. Do the December 23, 2010 agreements commit the EPA to establishing GHGs NSPS for utilities and refineries or just to make a decision on whether such regulation is appropriate?

3. If EPA proceeds to set NSPS and regulate GHGs for these sources, what will be the likely schedule for when existing sources may be required to impose controls?

4. If EPA proceeds with the regulation of utilities and refineries under Section 111 of the Clean Air Act (CAA) in accordance with the schedules in the settlements, will these regulatory programs have any bearing on EPA's potential response to a petition seeking to establish new National Ambient Air Quality Standards (NAAQS) for GHGs? Could EPA issue a GHG NAAQS after it has finalized a number of NSPS standards?

5. Could sources covered by the NSPS standards also be subject to additional requirements as a result of GHG NAAQS?

6. Before entering into the settlement agreements announced on December 23, 2010, did EPA perform any analysis of the cost to businesses of complying with the standards that EPA committed to promulgate, including the impact of the standards on U.S. jobs, economic growth and competitiveness in global markets? If yes, provide such analyses. If not, explain why not.

7. Before entering into the settlement agreements announced on December 23, 2010, did EPA perform any analysis of the benefits to the public health and welfare that would result from the standards that EPA committed to promulgate, including the impact of the standards on global atmospheric GHG concentrations and global or domestic climate conditions?

    a. If yes, provide such analyses. If not, explain why not.

    b. What portion of the projected benefits will come from reducing GHGs versus other traditional pollutants covered by the CAA?

8. Does EPA maintain that it must make a finding that GHG emissions from fossil fuel power plants and petroleum refineries endanger the public health or welfare before it adopts NSPS requirements for such emissions? Explain the basis for your response.

9. Does EPA believe it is legally compelled to regulate GHGs every time it revises the NSPS for source categories for non-GHG pollutants?

10. What was the basis for EPA's decision to commit itself in the settlement agreement for fossil fuel power plants to provide for regulation of GHG emissions from existing facilities under section 111(d) of the Clean Air Act?

    a. Does EPA believe that it is legally obligated to provide for regulation of GHG emissions from existing facilities under section 111(d) of the CAA and that EPA has no discretion not to provide for such regulation now or in the future?

    b. If it is EPA's position that it is legally obligated to provide for regulation of GHG emissions from existing facilities under section 111(d) of the CAA no later than the timeframe to which EPA has committed in the settlement agreement, explain the basis for this position.

    c. If EPA believes it has discretion not to provide for regulation of GHG emissions from existing facilities under section 111(d) of the Clean Air Act at all or on a different time line, explain why EPA decided to proceed at this time.

11. Does EPA's promulgation of the Endangerment Finding for GHG emissions from new motor vehicles play any role in whether EPA sees itself as legally required to issue NSPS requirements for GHG emissions from fossil fuel power plants and petroleum refineries? Explain the basis of your answer.

12. Has EPA conducted any analysis of the benefits and costs of providing for regulation of GHG emissions from existing fossil fuel power plants under section 111(d)? If so, provide such analyses.

13. According to press reports, Assistant Administrator Gina McCarthy said when EPA was announcing the settlement agreements that EPA does not expect existing facilities would be affected until the 2015-2016 timeframe.

    a. Is it EPA's view that it is likely that existing facilities will be affected in the 2015-2016 timeframe? If so, what was EPA's basis for determining that timeframe?

14. Does EPA maintain the Agency currently has statutory authority to pursue a cap-and-trade program for GHGs as a NSPS for new or existing sources?

a. If yes, state whether EPA intends to adopt, or is evaluating, such a program for GHGs.

   i. If yes, what is EPA's timetable for pursuing such a program and what are the likely requirements of such a program?

   ii. If no, can EPA provide any assurances that it will not pursue such a program for GHGs?

b. If EPA does maintain it has the authority to implement a cap-and-trade program under 111(d), what basis will EPA use to set the emissions reductions requirements for the source category?

15. Does EPA intend to issue, or is EPA considering issuing, NSPS for GHG emissions from source categories other than fossil fuel power plants and petroleum refineries? If yes, for each such source category state the currently anticipated timetable for issuing such NSPS, whether the standards would be issued for existing facilities, and the anticipated timelines for compliance.

16. In EPA's FY 2012 Budget, EPA requests $7.6 million relating to "New Source Performance Standards" in order to support the assessment, and potential development, of GHG limits for "several categories of major sources through means that are flexible and manageable for businesses" (*see* FY 2012 EPA Budget in Brief).

    a. Identify each category of sources for which EPA is considering additional GHG limits.

    b. For each category of sources, describe the "means that are flexible and manageable for businesses" under consideration.

    c. For each category of sources, explain the reason(s) EPA is considering this category of sources.

17. When EPA was considering the Endangerment Finding for greenhouse gases finalized in December 2009, what analysis did EPA undertake concerning potential establishment and implementation of NSPS for GHGs?

    a. List the source categories for which EPA considered NSPS as part of this analysis.

18. In EPA's "Mandatory Reporting of Greenhouse Gases; Final Rule," 74 Fed. Reg. 56259 (October 30, 2009), EPA states: "As discussed in the proposal, emissions from direct emitters should inform decisions about whether and how to use CAA section 111 to establish new source performance standards (NSPS) for various source

categories emitting GHGs." In connection with the Mandatory Reporting Rule, what analysis did EPA undertake concerning the potential establishment of NSPS for source categories emitting GHGs?

a. List the source categories for which EPA considered NSPS as part of this analysis.

19. Provide all documents generated since November 2008 relating to the potential establishment and implementation by EPA of NSPS for source categories that emit GHGs, including any documents relating to EPA's budget planning, resources and/or the potential schedule for establishing such standards for power plants, refineries or other source categories.

Settlements

20. Under section 113(g) of the CAA, EPA is required to publish a proposed settlement agreement setting timelines to issue new rulemakings in the Federal Register and take comment before the agreement becomes final and binding. List all settlement agreements over the past two years into which EPA has entered that set timelines for the issuance of regulations under the CAA. For each such agreement, please specify:

    a. Whether the timeline was altered as a result of comments received on the Federal Register notice, and how it was altered.

    b. Whether EPA consulted with any intervenors in the underlying litigation prior to committing to a rulemaking schedule and, if not, explain why not.

    c. Whether EPA consulted with any other federal agencies. Please state the agencies with which EPA consulted.

21. When entering settlement agreements of the type set forth in those announced December 23, 2010, what is EPA's policy concerning consulting intervenors?

    a. For the settlements announced December 23, 2010, did EPA consult with intervenors or other federal agencies?

    b. If yes, please provide all documents reflecting such consultations.

RESPONDING TO COMMITTEE DOCUMENT REQUESTS

In responding to the document request, please apply the instructions and definitions set forth below:

INSTRUCTIONS

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control or otherwise available to you, regardless of whether the documents are possessed directly by you.

2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.

3. In the event that any entity, organization, or individual named in the request has been, or is currently, known by any other name, the request should be read also to include such other names under that alternative identification.

4. Each document should be produced in a form that may be copied by standard copying machines.

5. When you produce documents, you should identify the paragraph(s) and/or clause(s) in the Committee's request to which the document responds.

6. Documents produced pursuant to this request should be produced in the order in which they appear in your files and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should not be separated. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. Indicate the office or division and person from whose files each document was produced.

7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph(s) and/or clause(s) of the request to which the documents are responsive, should be provided in an accompanying index.

8. Responsive documents must be produced regardless of whether any other person or entity possesses non-identical or identical copies of the same document.

9. The Committee requests electronic documents in addition to paper productions when possible. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, back up tape, or removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), you should consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above.

10. If any document responsive to this request was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this request, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party.

11. If a date or other descriptive detail set forth in this request referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

12. The request is continuing in nature and applies to any newly discovered document, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.

13. All documents should be bates-stamped sequentially and produced sequentially. In a cover letter to accompany your response, you should include a total page count for the entire production, including both hard copy and electronic documents.

14. Two sets of the documents should be delivered to the Committee, one set to the majority staff in Room 316 of the Ford House Office Building and one set to the minority staff in Room 564 of the Ford House Office Building. You should consult with Committee staff regarding the method of delivery prior to sending any materials.

15. In the event that a responsive document is withheld on any basis, you should provide the following information concerning any such document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; (e) the relationship of the author and addressee to each other; and (f) any other description necessary to identify the document and to explain the basis for not producing the document.

16. If the request cannot be complied with in full, it should be complied with to the extent possible, which should include an explanation of why full compliance is not possible.

17. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (2) documents responsive to the request have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee since the date of receiving the Committee's request or in anticipation of receiving the Committee's request, and (3) all documents identified during the search that are responsive have been produced to

the Committee, identified in a privilege log provided to the Committee, as described in (15) above, or identified as provided in (10) above.

DEFINITIONS

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail ("e-mail"), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and work sheets. The term "document" includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. The term "document" also means any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back up tape, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape or otherwise. A document bearing any notation not part of the original text is considered to be a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "documents in your possession, custody or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party.

3. The term "communication" means each manner or means of disclosure, transmission, or exchange of information, in the form of facts, ideas, opinions, inquiries, or otherwise, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, instant message, discussion, release, personal delivery, or otherwise.

4. The terms "and" and "or" should be construed broadly and either conjunctively or disjunctively as necessary to bring within the scope of this request any information which

might otherwise be construed to be outside its scope. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.

5. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, limited liability corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal, business or government entities, or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms "referring" or "relating," with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

7. The terms "you" or "your" means and refers to you as a natural person and the United States Environmental Protection Agency (the "EPA") and any of its offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on behalf or under the control or direction of the EPA; and includes any other person(s) defined in the document request letter.

8. The term "EPA" refers to the United States Environmental Protection Agency and any of its offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on behalf or under the control or direction of the EPA.