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

AUG 0 3 2011

OFFICE OF
AIR AND RADIATION

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your May 18, 2011 letter, co-signed by two of your colleagues, regarding the U.S. Environmental Protection Agency's consideration of regulations under section 111 of the Clean Air Act for emissions of greenhouse gases (GHGs).

As you know, the U.S. Supreme Court in April 2007 ruled that greenhouse gases are air pollutants under the Clean Air Act. In response to the Court's decision, the EPA issued a final determination in December 2009 that atmospheric concentrations of greenhouse gases endanger public health and welfare, and that emissions from new motor vehicles contribute to this air pollution. Additionally, in May 2010, the EPA issued a final rule limiting greenhouse gas emissions from light duty motor vehicles. The EPA is committed to continuing to make common-sense decisions regarding regulation of greenhouse gas emissions under the Clean Air Act and has focused its efforts on reduction of emissions from the largest emitters: motor vehicles and large stationary sources.

Your letter focuses on the potential use of section 111 of the Clean Air Act to reduce greenhouse gas emissions from stationary sources. Section 111 calls for emissions performance standards that are achievable considering costs, and offers flexibility to design reasonable requirements appropriate for the source category.

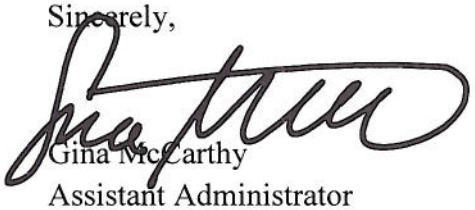
The EPA in December 2010 entered into settlement agreements under which the agency agreed to issue regulations under section 111 for the two largest categories of stationary sources of greenhouse gas emissions in the United States, power plants and refineries. For other stationary source categories, the EPA has not made any decisions regarding the development of greenhouse gas regulations under section 111 for purposes of addressing climate change.

The EPA has actively sought stakeholder input early in the process for the two planned section 111 proposals involving greenhouse gas emissions from power plants and refineries. The EPA held five public listening sessions in the spring and received extensive stakeholder input. Each proposal also will go through the formal public notice-and-comment process.

Enclosed are detailed answers to the questions set forth in your letter. Responsive documents are provided on the enclosed CD. The EPA will continue to work with your staff to accommodate your interest in this subject matter.

Thank you for your interest in this important subject matter. If you have any questions, please contact me or have your staff contact Tom Dickerson in the EPA's Office of Congressional and Intergovernmental Affairs at (202) 564-3638.

Sincerely,



Gina McCarthy
Assistant Administrator

Enclosures

cc: The Honorable Harry A. Waxman
Ranking Member

Responses to Questions

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.

The EPA has already found that greenhouse gas emissions endanger public health and welfare. 74 Fed. Reg. 66,496 (Dec. 15, 2009). EGUs and refineries are the two largest categories of stationary source greenhouse gas emissions in the United States. They account for 60% and 5%, respectively, of U.S. stationary source greenhouse gas emissions, and 32% and 3% respectively, of total U.S. greenhouse gas emissions, based on 2006 data. In fact, many of the EGUs are the largest individual sources of GHG emissions in the United States. On the enclosed CD are two EPA reports relating to the share of GHG emissions emitted by fossil-fuel-fired power plants and refineries: the "Inventory of US GHG Emissions and Sinks" published in April 2011, and the September 2009 "Regulatory Impact Analysis for the Mandatory Reporting of Greenhouse Gas Emissions Final Rule (GHG Reporting)." In addition, aligning the timing of these GHG NSPS with regulations that the EPA is issuing to limit other pollutants from these sources, gives businesses more regulatory certainty and should inform their decisions on how to comply with the other regulations. A rational GHG policy focuses first on identifying cost-effective opportunities for reducing emissions from the largest emitters. Administrator Jackson has repeatedly stated that in considering regulation of GHG emissions, the EPA will focus first on the largest emitters and use common sense approaches.

Because the EPA is still in the process of developing the proposals in question, the agency is not yet able to provide the Committee on Energy and Commerce with the analyses that will accompany the proposed GHG rules under section 111 when they are issued. On the enclosed CD, the EPA is providing the Committee with several EPA background analyses that relate to considering or developing the proposed rules, including portions of the Advance Notice of Proposed Rulemaking (ANPR) entitled "Regulating Greenhouse Gas Emissions under the Clean Air Act," 73 Fed. Reg. 44,396-44,516 (July 30, 2008) (sections I-V and VII); the early technical documents supporting that ANPR that address emissions and potential emission reduction methods for power plants and refineries; two white papers from October 2010 on available and emerging technologies for reducing greenhouse gases from coal-fired electricity generating units and the petroleum refining industry; and documents developed in connection with the Small Business Regulatory Flexibility Act (SBREFA) process for the rulemakings.

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?

The settlement agreements provide that the EPA will (in the case of power plants) sign a final rule that "takes final action" on a proposed rule that includes standards for GHGs and (in the case of refineries) sign a final rule "that includes final determinations with regard to each of these elements, including all proposed standards and guidelines." The agreements require the agency to take an action that is final, not merely to make a decision as to whether the regulation is appropriate. However, the agreements both provide that nothing in the terms of the agreements limits or modifies the discretion accorded to the EPA by the Clean Air Act or by general principles of administrative law. This includes the EPA's discretion to determine the appropriate standards and provisions included in the actions covered by the settlement agreements.

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?

The timeline for existing sources to be controlled is a category-specific issue that will be addressed as part of the process of developing the section 111(d) guidelines for electric generating units (EGUs) and refineries. The statute does not mandate particular compliance dates for existing sources. The appropriate time frame for requirements will depend in part on what those requirements are.

Based on the structure of section 111(d), it is clear that compliance dates for existing sources will be several years later than that for new sources. The section 111(d) guidelines that the EPA will issue will initiate a process for state adoption of plans containing existing source performance standards. The EPA's guidelines will allow states time to go through notice-and-comment rulemakings to develop and adopt those existing source standards and additional time for regulated sources to comply with the state standards.

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.

The promulgation of regulations under section 111 is based on different determinations and criteria from those required under sections 108 and 109 for establishing a NAAQS. Thus, as a legal matter, regulation of GHG emissions from power plants and refineries under section 111 neither leads to nor precludes the establishment of GHG NAAQS under sections 108 and 109.

That said, Administrator Jackson has stated that she has never believed, and this agency has never believed, that setting a national ambient air quality standard for greenhouse gases was advisable.

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

Because this is a hypothetical question, it is difficult to respond in an informative way. Answering it would require the EPA to compare NSPSs that have not yet been proposed let alone promulgated, (with the result that the actual requirements are unknown), with what might happen at some theoretical future time, if the EPA took an action (establishing a NAAQS for GHGs) that neither the Agency nor the Administrator believe is advisable.

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.

Please see the response to question 7 below.

7. Before entering into the settlement 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.

Please see the combined response below.

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

At the time that the EPA signed the settlement agreements setting schedules for proposed and final rules involving the EGU and refinery source categories, the agency did not know the form or the stringency of the standards it would propose or finalize. Therefore, there was no draft standard upon which to conduct an economic analysis or an analysis of benefits to public health and welfare. The EPA will conduct economic analyses, including analyses of costs and benefits, as part of the rulemaking process under section 111 for EGUs and refineries. As with other rules, these analyses will be made available for public comment along with the proposed rules.

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.

Section 111(b)(1)(A) of the Clean Air Act requires the EPA to make endangerment and cause or contribute findings in order to list a source category under that provision. If a source category is listed under this provision, then the EPA can establish NSPSs for pollutants emitted from that source category. This provision does not state that the EPA must make an endangerment or cause or contribute determination for emissions of each pollutant from the source category before the

EPA can set an NSPS for that pollutant for that category. The EPA has already found that greenhouse gas emissions endanger public health and welfare. 74 Fed. Reg. 66,496 (Dec. 15, 2009). EGUs and refineries are the two largest categories of stationary source greenhouse gas emissions in the United States. They account for 60% and 5%, respectively, of all U.S. stationary source greenhouse gas emissions, and 32% and 3% respectively, of total U.S. greenhouse gas emissions, based on 2006 data.

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

The EPA does not believe that it must regulate every pollutant emitted from a source category. See, e.g., *National Lime Assoc. v. EPA*, 627 F.2d 416, 426 & n.27 (D.C. Cir. 1980) (discussing EPA's decision not to regulate NOx, CO and SO2 emissions from lime manufacturing plants for various reasons, including lack of effective controls, low impact of emissions and energy considerations). Whether the EPA regulates GHGs for a given source category must be determined based on the specifics of that source category. With regard to timing, the EPA does not read section 111(b)(1)(B) of the Clean Air Act to require the agency to always establish GHG standards at the same time that it conducts the eight-year review of previously promulgated standards for other 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?

Under section 111(d) and existing EPA regulations, promulgation of a GHG NSPS for a source category such as EGUs under section 111(b) obligates the EPA to issue a guideline for state regulation of existing sources in the same source category.

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.

Whether the statute requires the EPA to promulgate the section 111(d) guidelines simultaneously with the section 111(b) NSPS is a question on which the EPA has not reached a final conclusion.

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.

As explained in response to question 10(a) above, promulgation of a GHG NSPS for a source category such as EGUs under section 111(b) obligates the EPA to issue a guideline for state regulation of existing sources in the same source category. As explained in response to question 10(b) above, whether the EPA has discretion to promulgate such guidelines on a different time line than the NSPS under section 111(b) is a question on which the agency has not reached a final conclusion. Regardless, the settlement agreement obligates the EPA to promulgate proposed and final rules under section 111(d) on the same time frame as the proposed and final rules under section 111(b). Furthermore, the EPA believes that this timing is appropriate for several reasons.

First, as the settlement agreement notes, existing fossil-fueled EGUs are the largest source category of GHG emissions in the United States. In addition, many of these plants are the largest individual sources of GHG emissions in the United States. A rational GHG policy focuses first on identifying cost-effective opportunities for reducing emissions from the largest emitters. Administrator Jackson has repeatedly stated that in considering regulation of GHG emissions, the EPA will focus first on the largest emitters and use common sense approaches.

Second, as explained in the response to question 3, although the EPA is proceeding with the existing source guideline at the same time as the NSPS, existing sources will not have a compliance date until years after the new source compliance date. Specific timelines for existing sources will be proposed in the EPA guideline for states to regulate each source category.

Third, providing information about regulatory obligations for new and existing sources at the same time will reduce regulatory uncertainty and help the power sector make smarter investment decisions. At the same time, it will support the transition toward a cleaner power sector of the future. The electric generation system is an interconnected grid system. Decisions on regulation of new sources could affect dispatch and investment decisions involving existing sources, and vice versa. As a result, there are advantages to minimizing the time difference in addressing new and existing sources.

Fourth, it has been several years since the Supreme Court decided in April 2007 that GHGs are air pollutants under the Clean Air Act. As a result of that decision, the EPA took a voluntary remand of a lawsuit challenging the EPA's 2006 decision not to regulate GHG emissions from steam generating electric generating units when the agency conducted the periodic review of the NSPS as required by section 111. Given that section

111(d) requires promulgation of existing source guidelines for any category for which the EPA issues a greenhouse gas NSPS, the EPA does not believe that an additional delay is warranted in implementing the act's requirement to consider existing sources.

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.

The Endangerment Finding under section 202(a) for motor vehicles does not, as a legal matter, compel the EPA to regulate GHG emissions under section 111. Nonetheless, the EPA's finding that atmospheric concentrations of GHGs endanger public health and welfare, and the scientific basis for that finding, is relevant to the EPA's decisions under section 111 on whether to regulate GHGs from EGUs and petroleum refineries.

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

The EPA has not yet reached the stage in the rulemaking process at which cost-benefit analysis is conducted and therefore does not have such an analysis at this time. However, a cost-benefit analysis will be conducted and a draft will be made available to the public for review and comment when the EPA issues the proposed section 111(d) guidelines.

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. 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?

No final decisions have been made at this time. As explained in the response to question 3 above, based on the structure of section 111(d), it is clear that compliance dates for existing sources will be years later than for new sources.

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 emission reduction requirements for the source category?

Administrator Jackson and Assistant Administrator Gina McCarthy have stated publicly that the agency has no intention of pursuing a cap-and-trade program for GHGs under the Clean Air Act. The agency reaffirms those statements here.

As to the legal authority question, the EPA took the position in the Clean Air Mercury Rule, issued under the Bush Administration, that a cap-and-trade approach is permissible for a source category under section 111(d). The potential authority for such a program is also discussed in the Advance Notice of Proposed Rulemaking entitled "Regulating Greenhouse Gas Emissions under the Clean Air Act," 73 Fed. Reg. 44,490 (July 30, 2008), also issued under the Bush Administration.

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.

No decisions have been made at this time regarding development of proposed limits on GHG emissions to address climate change for additional source categories. Section 111 requires the EPA, at least every eight years, to review and, if appropriate, revise new source performance standards for each source category for which such standards have been established under section 111(b). Concurrently with this ongoing review for listed source categories, the EPA anticipates that it will need to address whether regulation of GHG emissions from such listed source categories is warranted. No specific time frame has been established for reaching a determination for any of these source categories.

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.

The EPA's FY 2012 Budget Justification document states that in 2012, the EPA will develop NSPSs for GHG emissions for power plants and refineries, consistent with the requirements of the Clean Air Act. The regulatory development process will include developing emission estimates, evaluating costs of control, and, to the extent possible, quantifying economic, environmental and energy impacts.

The EPA in February and March of 2011 held a series of public listening sessions with stakeholders to receive input on design of these NSPS, including ways to make them flexible and manageable for business. The EPA is considering stakeholder suggestions and, once decisions are made, will publish proposed rules and provide opportunity for public comment.

As discussed previously, the EPA is considering GHG limits for these two source categories under settlement agreements stemming from years of litigation and from petitions challenging earlier EPA decisions not to set GHG limits for EGUs or refineries. As noted in the settlement agreements and the response to question 8 above, EGUs are collectively the largest stationary source category of GHG emissions in the United States, according to a recent EPA analysis. See 74 Fed. Reg. 56,260, 56,363 (Oct. 30, 2009). Many of these existing EGUs are the largest individual sources of GHG emissions in the United States. Refineries are estimated to be the second largest direct stationary source category of GHGs in the United States, according to a recent EPA analysis (based on data in Table 5-1, Regulatory Impact Analysis for the Mandatory Reporting of Greenhouse Gas Emissions, Final Report, September 2009). The EPA's initial evaluation of available GHG control strategies indicates that there are cost-effective control strategies for reducing GHGs from both EGUs and refineries.

These standards are part of the EPA's common-sense approach to addressing GHGs from the largest industrial emissions sources. A rational GHG policy focuses first on identifying cost effective opportunities for reducing emissions from the largest emitters.

The referenced language from the 2012 Budget in Brief refers to the fact that the EPA will be continuing to evaluate pending petitions for rulemaking now before the agency. As noted previously, section 111 requires the EPA, at least every eight years, to review and, if appropriate, revise new source performance standards for each source category for which such standards have been established under section 111(b). Concurrently with this ongoing review for listed source categories, the EPA anticipates that it will need to address whether regulation of GHG emissions from such listed source categories is warranted. No decisions have been made at this time regarding development of proposed limits on GHG emissions for climate change purposes for additional source categories. The EPA will make determinations, as appropriate for each category, on whether such regulation is warranted. No time frame has been established with regard to making such determinations for these source categories.

Finally, the quoted language in question 16(b) above regarding making requirements "manageable for business" is a general statement that indicates the EPA's intent to design and propose regulations that are practical and appropriate for the subject source category. Section 111 requires the EPA to set standards that reflect the "degree of emission limitation achievable

through the application of the best system of emission reduction which . . . the Administrator determines has been adequately demonstrated." Section 111 specifically requires the EPA to take cost into account in setting performance standards. This gives the EPA flexibility to design standards that are manageable for business.

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.

The endangerment finding action under section 202 of the Clean Air Act, finalized in December 2009, addressed a single set of issues in response to the U.S. Supreme Court's 2007 opinion in *Massachusetts v. EPA*, 549 U.S. 497, 533 (2007): whether GHGs endanger public health or welfare, and if so, whether emissions of that air pollutant from new motor vehicles contribute to the GHG air pollution that endangers public health or welfare. Consistent with the court's opinion, the EPA based the endangerment finding exclusively on scientific evidence.
The findings under section 202 did not require or implicate an assessment of which stationary source categories warrant GHG limits under the NSPS program under section 111 of the Clean Air Act, so no such assessment was conducted in connection with these findings.

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 decision 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.

The Mandatory Reporting Rule is an emissions reporting rule that will provide additional data on GHG emissions in the United States. The EPA was directed to issue this rule by the FY2008 Consolidated Appropriations Act (Public Law 110–161). No analysis of potential uses of section 111 to regulate greenhouse gases was needed or required to develop and promulgate this emissions reporting rule, so no such analyses were conducted in connection with that rule.

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.

On the enclosed CD, the EPA is providing documents responsive to this request that the agency is able to make available at this time. In addition, the EPA has received more than ten thousand comments on the GHG NSPS rulemakings for power plants and refineries. These comments can be accessed at www.regulations.gov under Docket Nos. EPA-HQ-OAR-2011-0090 (power plants) and EPA-HQ-OAR-2011-0089 (refineries). The EPA also received comments on the proposed settlement agreements relating to GHG NSPS rulemakings for power plants and refineries. These comments can be accessed at www.regulations.gov. See EPA-HQ-OGC-2010-1057 (utility settlement agreement) and EPA-HQ-OGC-2010-1045 (refineries settlement agreement). The EPA will continue to work with your staff to accommodate your interest in this subject matter.

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 of 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.

The information requested in this question for each of the responsive settlement agreements is provided in the attached spreadsheet. Although the question refers only to "settlement agreements," the EPA is providing information on both settlement agreements and consent decrees. To put this information in context, the EPA notes the following general points:

a. In all instances, the EPA considered the comments submitted in light of the criteria specified in section 113(g) of the Clean Air Act. In most cases, the EPA concluded that the comments did not disclose facts or considerations which indicated that the timeline or other terms of the settlement agreement or consent decree were inappropriate, improper, inadequate or inconsistent with the requirements of the Clean Air Act. The attached spreadsheet identifies the instances in which the EPA concluded that a change to the timeline was appropriate based on comments.

b. In most instances, the EPA did not consult with intervenors during the negotiation of the settlement agreement or consent decree because intervenors were not parties to the settlement. This is consistent with the Department of Justice's (DOJ) standard practice. The attached spreadsheet identifies the instances in which the EPA consulted with intervenors. Where intervenors were not consulted during the negotiation of the settlement, intervenors had the

opportunity to submit comments on the settlement to the EPA during the comment period before the EPA committed to the rulemaking schedule. To the extent intervenors submitted comments, the EPA considered those comments before the settlement agreement or consent decree was final.

c. Because the settlement agreements and consent decrees settled actual or potential litigation, the EPA worked with DOJ to negotiate the settlement. In addition, the Office of Management and Budget reviewed many of the agreements prior to the EPA committing to the schedule.

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.

Where intervenors are parties to a settlement agreement, they are involved in the negotiations that lead up to the agreement. For the settlements announced on December 23, 2010, intervernors were not parties to the agreement. With respect to intervenors who are not parties to a settlement agreement, when the EPA enters into settlement agreements of the type announced on December 23, 2010, intervenors may submit comments on the settlements during the public comment period provided in section 113(g), and the EPA will consider any such comments before finalizing the settlement agreement. The comments provided by intervenors on the settlements announced on December 23 are available in the dockets for these two settlements, which can be accessed on www.regulations.gov. See EPA-HQ-OGC-2010-1057 (utility settlement agreement) and EPA-HQ-OGC-2010-1045 (refineries settlement agreement).

With respect to federal agencies, as an initial point, the authority to conduct and compromise litigation generally resides with DOJ pursuant to statute and executive order. See, e.g, 28 U.S.C. 516 (providing that the conduct of litigation is reserved to officers of the Department of Justice), and Executive Order No. 6166 (1933) (providing that any authority residing within a federal agency to, among other things, compromise litigation is transferred to the Department of Justice). Consistent with this authority, the EPA worked with DOJ to negotiate and enter into the settlements announced on December 23, 2010. In addition, the EPA consulted with OMB during the negotiations of the agreement. The EPA will work with your staff to accommodate any further interest in this subject matter.

SETTLEMENT AGREEMENTS AND CONSENT DECREES SINCE MAY 18, 2009 THAT SET TIMELINES FOR THE ISSUANCE OF REGULATIONS

Note: This list does not include settlement agreements and consent decrees that only set timelines for Title V permit-related actions or actions to review SIP submissions because we do not read the phase "the issuance of regulations" in Question 20 as including such actions.

Date	Petitoner/Plaintiff	Defendant	Case No.
12/21/2010	American Petroleum Institute, et al.	EPA	08-1277

12/21/2010	State of New York	EPA	06-1322
7/6/2010	Sierra Club	EPA	4:09cv152
4/15/2010	American Nurses Association, et al.	Stephen L. Johnson	1:08cv2198
2/5/2010	Environmental Integrity Project, et al.	EPA	1:09cv00218
2/4/2010	Wildearth Guardians, et al.	EPA	1:09cv00089
10/30/2009	Mossville Environmental Action Now, et al.	EPA	1:08cv1803

5/22/2009	American Petroleum Institute	EPA	06-1321
11/23/2009	WildEarth Guardians	EPA	09-cv-02109-MSK
2/23/2010	WildEarth Guardians	EPA	4:09-CV-02453-CW

Court	Description	Whether the settlement was in the form of a consent decree or a settlement agreement.
D.C. Circuit	EPA will sign a proposed rule by December 10, 2011, and sign a final rule by November 10, 2012, that addresses the following: (A) standards of performance for GHGs for affected facilities at refineries that are subject to the following NSPS: (1) subparts J and Ja, (2) subpart Db, (3) subpart Dc, (4) subpart GGG, and (5) subpart QQQ, and emissions guidelines for GHGs from existing afected facilities at refineries in the source categories covered by those NSPS; (B) a review of the emission standards set forth in 40 C.F.R. Part 63, subpart UU; and (C) a proposed resolution of all other issues raised in Environmental Petitioners' August 25, 2008 petition for administrative reconsideration. EPA will also make itself available at least monthly to update Petitioners on the progress of its actions and file a status report with the court every 90 days which includes an affirmative statement regarding whether EPA will timely complete its duties described above.	Settlement Agreement

D.C. Circuit	EPA will sign a proposed Electric Generating Unit GHG NSPS rule for new and existing EGUs by July 26, 2011 (subsequently extended to September 30, 2011) and sign a final rule by May 26, 2012	Settlement Agreement
N.D. CA	EPA has agreed to take proposed action and final action on technology and residual risk review for 28 source categories by the deadlines specified in the CD.	Consent Decree
D. D.C.	EPA agreed to sign proposed section 112(d) standards for coal- and oil-fired electric utility steam generating units by March 16, 2011, and sign final section 112(d) standards for such by November 16, 2011.	Consent Decree
D. D.C.	EPA will sign a proposed rule to revise NSPS Subpart G (Nitric Acid Plants) by November 15, 2010 (subsequently extended to September 30, 2011) and sign a final rule by November 15, 2011 (negotiations to extend this date are in progress).	Consent Decree
D. D.C.	EPA agreed to issue a proposed action on oil and gas NSPS/MACT review by April 29, 2011 and take final action by November 30, 2011.	Consent Decree
D. D.C.	Propose NESHAP for major PVC production facilities (PVC MACT standards) by Oct. 29, 2010 (subsequently extended to Apr 15, 2011) and finalize standards by July 29, 2011 (subsequently extended to Jan. 13, 2012.	Settlement Agreement

D.C. Circuit	EPA committed to propose a rule making edits to certain compliance provisions of the NSPS for Compression-Ignition stationary engines by May 22, 2010 (this has been done) and to take final action on the proposal by one year after the publication of the proposal, which is June 8, 2011.	Settlement Agreement
D. Colo	EPA will take final action on SIP Call for Utah breakdown rule by March 31, 2011	Consent decree
N.D. CA	EPA has agreed to take final action on the Section 110(a)(2)(D)(i) SIP submissions of seven states for the 1997 8 Hour Ozone NAAQS and 1997 PM2.5 NAAQS on various dates. These actions can be approval of a SIP, promulgation of a FIP, or a combination of those actions, as appropriate.	Consent Decree

Whether the deadlines were altered as a result of comments received in response to the FR notice and, if so, how it was altered.	Whether EPA consulted with any intervenors in the underlying litigation prior to committing to a rulemaking schedule, and if not, why not.
No	Intervenors were not a party to the agreement, and so were not involved in the negotiations. Intervenors submitted comments on the proposed agreement during the 113(g) process, and EPA considered those comments before finalizing the agreement.

No	Intervenors were not a party to the agreement, and so were not involved in the negotiations. Intervenors submitted comments on the proposed agreement during the 113(g) process, and EPA considered those comments before finalizing the agreement.
Yes. A couple of the deadlines were extended in response to comments	Yes. Intevenors provided their views on the consent decree through the required alternative dispute resolution process administered by the court.
No	Intervenors were not a party to the agreement, and so were not involved in the negotiations. Intervenors submitted comments on the proposed agreement during the 113(g) process, and EPA considered those comments before finalizing the agreement.
No	No. There were no intervenors in this case.
No	No. There were no intervenors in this case.
No	Intervenors were not a party to the agreement, and so were not involved in the negotiations. Intervenors submitted comments on the proposed agreement during the 113(g) process, and EPA considered those comments before finalizing the agreement.

No.	No. There were no intervenors in this case.
No	No. There were no intervenors in this case.
No	No. There were no intervenors in this case.

Whether EPA consulted with any other federal agencies with respect to the agreement and, if so, which agencies and what was the form of consultation.

We consulted with DOJ during the negotiations and through the CAA 113(g) process. OMB reviewed the agreement prior to EPA committing to the schedule.

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