

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

November 30, 2012

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

Dear Administrator Jackson:

Pursuant to Rules X and XI of the Rules of the U.S. House of Representatives, we write to follow up on our earlier request that the Environmental Protection Agency (EPA) make available to the public important information concerning rulemaking petitions and notices of intent to sue.

On January 21, 2009, President Obama addressed his Cabinet Secretaries and senior staff and set the following expectation: "Let me say it as simply as I can: Transparency and the rule of law will be the touchstones of this presidency." You echoed this commitment to the rule of law and transparency in both your confirmation hearing¹ and an April 23, 2009, memorandum to EPA employees.² Providing the public with timely access to information about the rulemaking petitions and notices of intent to sue received by the Office of the Administrator and/or Office of General Counsel would significantly increase the transparency of EPA's regulatory process.

At a joint hearing of this Committee's Subcommittee on Energy and Power and Subcommittee on Environment and the Economy, held February 28, 2012, you testified regarding petitions for rulemakings and notices of intent submitted to the agency. Specifically, you committed to making such information available on the agency's website.

On March 30, 2012, we wrote to ask that the agency promptly make such information available, including all rulemaking petitions and notices of intent to sue to compel a rulemaking, and specifically asked that there be a single place on the agency's website where EPA compiles

¹ http://http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=12e77e2f-a4c6-408f-9f66-7ebc5d5fe278http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=12e77e2f-a4c6-408f-9f66-7ebc5d5fe278

² <http://www.epa.gov/Administrator/operationsmemo.html?src=QSA2>.

such petitions, notices and requests for agency action and makes them accessible to the public upon receipt.

On June 12, 2012, however, EPA's Associate Administrator for the Office of Congressional and Intergovernmental Affairs, Arvin Ganesan, responded on your behalf indicating EPA was unable to accommodate this request because the agency does not currently have centralized processes for managing all of the rulemaking petitions and notices of intent to sue received by the agency. For petitions for rulemaking, the response stated that "[t]he EPA does not currently have a centralized process to collect, characterize and sort all the petitions for rulemaking that the agency receives." For notices of intent to sue to compel a rulemaking, the response stated that "the EPA does not currently have a centralized process to individually characterize and sort all the different types of notices of intent that the agency receives." Copies of our original request and EPA's response are attached.

Shortly after receiving Mr. Ganesan's reply, EPA's Assistant Administrator for the Office of Air and Radiation, Gina McCarthy, testified at a June 29, 2012, hearing before the Subcommittee on Energy and Power. Assistant Administrator McCarthy acknowledged that notices of intent to sue are tracked by EPA's General Counsel. She further testified that she received copies of certain notices of intent to sue and petitions relating to the air program; she noted that information tracked by EPA's General Counsel is provided to relevant individuals within the agency, and that the agency meets its obligations under the law. Her explanation of the role and processes of the Office of General Counsel in tracking and disseminating information regarding notices of intent to sue and rulemaking petitions addresses the concerns raised by Mr. Ganesan and makes clear that a mechanism does exist for centralized management of at least the most significant notices of intent to sue and rulemaking petitions.

Following up on the agency's response and hearing testimony, we ask that EPA make available (i) a list of all petitions for rulemaking received by the Office of the Administrator and/or by the Office of General Counsel; and (ii) a list of all notices of intent to sue received by the Office of the Administrator and/or by the Office of General Counsel. As stated in our prior request, we ask that those petitions, notices, and requests for agency action, including copies of the documents themselves, be made available in a single place on the agency's website. To ensure the usefulness of the information, we also ask that you commit to updating the list and posting any new requests for agency action on a timely basis going forward.

Thank you for your prompt attention to this request. Should you have any questions, please contact Mary Neumayr of the Majority Committee staff at (202) 225-2927.

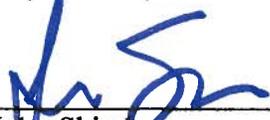
Sincerely,



Fred Upton
Chairman



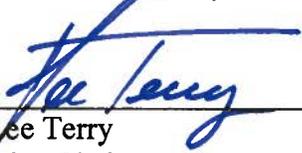
Ed Whitfield
Chairman
Subcommittee on Energy and Power



John Shimkus
Chairman
Subcommittee on Environment
and the Economy



Greg Walden
Chairman
Subcommittee on Communications
and Technology



Lee Terry
Vice Chairman
Subcommittee on Communications
and Technology



Michael C. Burgess
Vice Chairman
Subcommittee on Health



Robert E. Latta
Member



Cory Gardner
Member

cc: The Honorable Henry A. Waxman, Ranking Member

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

The Honorable Gene Green, Ranking Member
Subcommittee on Environment and the Economy

Attachments

FRED UP1 ON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

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House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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March 30, 2012

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

Dear Administrator Jackson:

We write to follow up on your testimony before the joint hearing of the Energy and Power and Environment and the Economy Subcommittees of the Committee on Energy and Commerce on February 28, 2012. During that hearing, Committee members raised several questions concerning information the Environmental Protection Agency (EPA) provides the public with regard to potential rulemaking activities, Tier 3 gasoline regulations, and the agency's budgetary resources.

First, during the hearing you were asked by Representatives Terry and Walden whether EPA would make available in one publicly accessible place on its website the following information: (a) a list of all petitions for rulemakings submitted to the agency; and (b) a list of all notices of intent to sue to compel a rulemaking submitted to the agency. You testified that posting such information would require minimal resources and you committed to making it publicly available.

We write to ask that the agency promptly make this information publicly accessible. In making this information available, we specifically ask that there be a single place on the agency's website where EPA compiles these petitions, notices and requests for agency action, including copies of the documents themselves, and makes them accessible to the public upon receipt. To ensure the usefulness of the information, we also ask that you commit to updating the list and posting any new requests for agency action on a timely basis going forward. We appreciate your commitment to increasing the transparency of EPA's rulemaking process.

Second, as with many other proposed and recently-promulgated EPA rules, new gasoline specifications threaten to increase transportation and other costs for businesses and households, cause job losses, and weaken America's overall global competitiveness – and do so in the midst of a struggling economy. At the hearing, you were asked to confirm the expected scope of the Tier 3 gasoline regulations which we understand you are seeking to propose in early 2012. Specifically, you were asked whether the Tier 3 gasoline regulations would include Reid Vapor Pressure or octane components. You testified that it would not and that the Tier 3 rule would be limited to reducing sulfur. We ask that you confirm in writing that the final rule for Tier 3 gasoline regulations will not include Reid Vapor Pressure or octane components together with your response to the requests that follow.

Third, during the hearing Representatives Burgess, Latta and Gardner inquired of you about EPA's timely reporting of details on its unexpended obligations. The Subcommittee on Oversight and Investigations received testimony this past October that EPA does not report in its annual budget justification information about use of recoveries of unpaid obligations. According to Government Accountability Office (GAO) data, EPA over the past six fiscal years recovered an average of \$200 million per year for use in various accounts. Such information about EPA resources would be useful for Congress as it considers EPA's proposed budget requests.

You testified that such information is provided in EPA's annual financial statements, and that you would look into the matter. We write to ask for a more detailed analysis of recoveries of prior year unpaid obligations, and specifically request that you respond to the following by April 13, 2012:

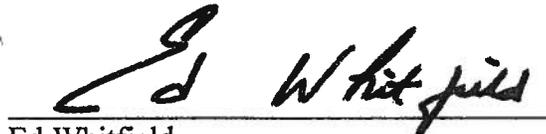
1. For each of the past ten years, beginning with FY 2002, please provide the annual amount of funding recovered from deobligated balances.
2. Please explain why EPA has not implemented the suggestions of GAO to report in EPA's annual budget justifications information about the portion of prior year funding that was from recoveries of unpaid obligations.
 - a. Can EPA bring forward the information of recovered deobligations in the agency's financial statements and place that information in Congressional budget justifications? If not, why not?
 - b. Will you report this information, by program area, in future EPA Congressional budget justifications?

Thank you for promptly attending to our requests. Should you have any questions, please do not hesitate to contact Peter Spencer of the Majority Committee staff at 202-225-2927.

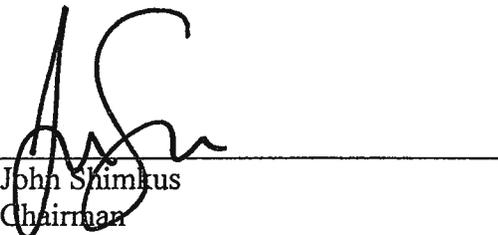
Sincerely,



Fred Upton
Chairman



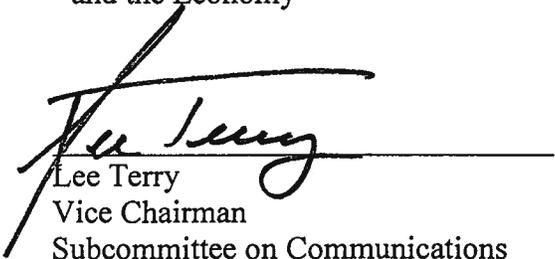
Ed Whitfield
Chairman
Subcommittee on Energy and Power



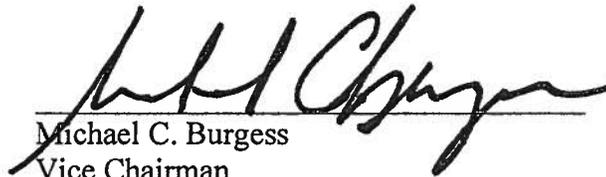
John Shimkus
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Subcommittee on Environment
and the Economy



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and Technology



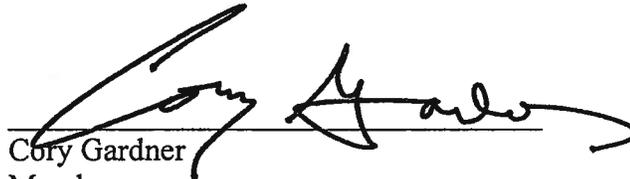
Lee Terry
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Michael C. Burgess
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Subcommittee on Health



Robert E. Latta
Member



Cory Gardner
Member

cc: The Honorable Henry A. Waxman, Ranking Member

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

The Honorable Gene Green, Ranking Member
Subcommittee on Environment and the Economy



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

JUN 12 2012

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

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

Dear Mr. Chairman:

Thank you for your letter dated March 30, 2012, co-signed by seven of your colleagues, to the U.S. Environmental Protection Agency Administrator Lisa P. Jackson requesting additional information on her testimony presented before the joint hearing of the Energy and Power and Environment and the Economy Subcommittees of the Committee on Energy and Commerce on February 28, 2012. I am pleased to respond on her behalf and have addressed each of the questions raised by you and your colleagues in the enclosed documents.

Again, thank you for your letter. If you have any further questions, please contact me at (202) 564-5200 or your staff may contact Ms. Christina J. Moody at (202) 564-0260.

Sincerely,

A handwritten signature in black ink, appearing to read "Arvin Ganesan".

Arvin Ganesan
Associate Administrator

Enclosures

cc: The Honorable Henry A. Waxman, Ranking Member

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

The Honorable Gene Green, Ranking Member
Subcommittee on Environment and the Economy

Response to request for additional information from the Administrator's testimony on February 28, 2012

First, in response to questions posed by Representatives Terry and Walden, the EPA has evaluated its resources and options regarding publicly accessible information to include: (a) a list of all petitions for rulemakings submitted to the agency; and (b) a list of all notices of intent to sue to compel a rulemaking submitted to the agency. Following this evaluation, we have determined that the EPA is unable to accommodate this request to make all petitions, notices, and requests for agency action publicly accessible in one location on the internet.

With respect to petitions for rulemaking, the Administrative Procedure Act (APA) and environmental statutes such as the Clean Water Act (CWA) and the Clean Air Act (CAA) provide the public with the ability to petition the agency to issue, amend, or repeal a rule. Petitions are submitted to multiple different offices within the agency and vary considerably with regard to formality, clarity and format; many, for example, come in as letters or emails. Accordingly, it would be challenging for the agency to identify, compile, format for public posting, and make centrally available in a timely manner all petitions for rulemaking. Although the EPA does not centrally track all submissions that may be characterized as petitions for rulemaking, the Agency believes the number is very large. The EPA does not currently have a centralized process to collect, characterize and sort all the petitions for rulemaking that the agency receives.

With respect to notices of intent to sue to compel a rulemaking, the agency is constrained by practical and resource challenges similar to those discussed above. The agency receives thousands of notices of intent to sue per year pursuant to the APA and citizen suit provisions provided in environmental statutes such as the CWA and CAA. Many of these notices of intent to sue do not seek to compel the agency to commence a rulemaking or in some cases even to challenge an agency action. As stated previously, the EPA does not currently have a centralized process to individually characterize and sort all the different types of notices of intent that the agency receives.

Second, in response to your question regarding the scope of Tier 3 gasoline regulations, the EPA is able to confirm that the Tier 3 standards under consideration take a systems approach. They are more stringent vehicle emissions standards enabled by more stringent gasoline sulfur control. Thus, the Tier 3 standards under consideration focus on controlling the sulfur content of gasoline, and do not include any other fuel quality changes.

Third, please refer to the attached spreadsheet for detailed information regarding the analysis of recoveries of prior year unpaid obligations. According to OMB Circular A-11, Line 1021 of the SF-133 includes more than just recovered amounts obligated against borrowing authority: it includes all cancellations, downward adjustments of obligations, and deobligations. Therefore, the Enclosure provides the total annual balances for the past ten years, beginning with FY 2002. In addition, with regard to the suggestions made by GAO that the EPA include in the annual budget justifications information about the portion of prior year funding that was from recoveries of

unpaid obligations, the EPA is not able to include these figures in annual budget justifications. Future deobligations are not known or predictable. Deobligations are a line item in the financial statements, which are historical accounting documents and no indication of future trends. These deobligations are common and can occur as a result of many factors. Some reasons include:

Technical

- A state or local agency cannot effectively use its incremental award because it occurs too late in its grant period and the work it would be directed to cannot be started or completed within the approved grant period. This can happen when there is a significant delay in the EPA receiving its full appropriation.
- Due in part to the still recovering economy and its impact on state budgets, a state or local agency may have to decline its award or return funds because it cannot meet the cost sharing requirements of the Clean Air Act.
- A state may be directed by its legislature to spend available state dollars first. A delay in the arrival of additional available federal funds means that these funds cannot be spent within the approved budget period.

Programmatic

- A deobligation can occur in any given fiscal year when a grant project ends up expending less than the original amount. If resources are remaining when a grant closes out, the resources are deobligated.
- In Tribal grants, staff turnover and loss of capacity to perform the work plan can impact the grant. If new staff cannot be hired in a timely manner, the funding may be deobligated. Also, funds can be deobligated due to lack of performance on the part of a recipient.

Since the agency does not know the amount of deobligations in advance, EPA would only be able to report on past history.

paid Obligations

	Fiscal Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	Grand Total
me												
ment		1,654,249.87	96,798.78	1,668,465.45	2,259,392.81	1,458,564.24	2,688,274.36	2,874,527.55	-	882,010.27	4,391,615.30	17,984,088.63
1		15,315,465.34	11,436,788.95	12,544,681.33	14,879,909.90	19,087,966.48	100,744,877.53	40,491.02	16,604,978.10	32,782,572.66	3,457.68	43,948.70
nd - Recovery Act		6,000.23	53.36		225,481.68			10,000.00			18,183,080.97	270,108,637.53
		231,504,213.62	126,164,116.33	100,413,388.65	105,479,156.10	121,663,675.93	123,144,204.00	168,316,467.70	118,280,000.00	171,422,724.93	155,244,344.49	1,421,632,291.75
Tanks		1,090,596.55	230,514.51	224,972.00	376,927.53	9,015,892.15	2,659,339.73	3,423,779.42	1,498,613.04	2,591,145.20	3,324,039.72	485,380.34
Tanks												24,373,819.85
Tanks - Recovery Act		355,900.76	386,713.16	820,881.42	64,149.19	772,222.37	919,320.59	1,475,259.32	248,400.38	215,868.29	8,912.99	3,405,290.86
		3,848,313.98	1,135,076.33	1,466,288.57	1,902,064.05	1,988,783.85	2,847,293.91	2,008,783.18	2,114,228.58	1,035,804.19	4,308,147.45	22,655,784.09
ilities			33,000.00			6,055.19	28,631.10			791.61	900,000.00	968,477.90
IFRA)						28,609.58			319,398.88			349,008.28
ec Fund (PRIA)		2,072,221.48	3,475,057.29	6,381,937.50	4,984,088.31	6,743,103.33	11,987,758.65	884,913.64	314,805.80	5,154,898.78	6,046,593.99	3,331,805.23
		62,744,025.80	97,226,990.02	71,427,195.19	42,733,563.00	102,574,289.01	136,882,889.87	6,048,958.69	8,844,389.57	55,778,823.78	65,179,398.27	61,748,785.59
rsable		2,414,846.81	238,579.84	1,352,611.34	2,252,478.82	495,681.53	763,806.05	86,164,635.87	62,560,466.79		2,679,807.01	2,679,807.01
		320,845,834.44	240,601,711.46	186,340,654.75	175,288,521.93	264,710,182.17	383,504,364.02	280,986,969.63	214,813,129.02	3,380,320.09	7,035,733.27	23,038,472.70
								277,770,105.82			271,550,679.06	2,626,491,852.30