



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.

Unpaid Obligations

	Fiscal Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	Grand Total
Equipment		1,654,249.87	96,798.78	1,668,465.45	2,259,392.81	1,458,564.24	2,698,274.36	2,874,527.55	-	882,010.27	4,391,815.30	17,984,098.63
Land - Recovery Act		15,315,465.34	11,436,788.65	12,544,661.33	14,879,909.90	19,067,986.48	100,744,877.53	28,568,316.57	16,604,978.10	32,762,572.66	18,183,080.97	270,108,637.53
Land - Recovery Act		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
Land - Recovery Act		1,030,596.55	230,514.51	224,972.00	376,927.53	9,015,892.15	2,669,339.73	3,423,779.42	1,496,613.04	2,591,145.20	3,324,039.72	24,373,819.85
Land - Recovery Act		355,900.76	396,713.16	820,681.42	64,149.19	772,222.37	919,320.59	1,475,259.32	248,400.38	215,966.29	459,967.58	5,728,581.06
Land - Recovery Act		3,848,313.98	1,135,076.33	1,466,288.57	1,902,064.05	1,989,763.85	2,847,293.91	2,008,783.18	2,114,228.58	1,035,804.19	4,308,147.45	22,655,764.09
Land - Recovery Act			33,000.00			6,055.19	28,631.10			791.61	900,000.00	968,477.90
Land - Recovery Act			168,023.19	40,453.30	101,332.56	894,308.51	827,968.23	984,913.64	314,805.80			3,331,805.23
Land - Recovery Act		2,072,221.48	3,475,057.29	6,381,937.50	4,994,086.31	6,743,103.33	11,987,758.65	6,046,956.69	8,844,369.57	5,154,698.78	6,046,593.99	61,746,785.59
Land - Recovery Act		62,744,025.80	97,226,990.02	71,427,195.19	42,733,563.00	102,574,289.01	136,882,889.87	66,164,635.67	62,560,466.79	55,778,623.78	65,179,398.27	763,272,077.40
Land - Recovery Act		2,414,846.81	238,579.84	1,352,611.34	2,252,478.82	495,691.53	763,806.05	1,072,536.87	4,029,868.08	3,380,320.09	7,035,733.27	23,036,472.70
Land - Recovery Act		320,945,834.44	240,601,711.46	196,340,654.75	175,268,521.93	264,710,182.17	383,504,364.02	280,986,669.63	214,813,129.02	277,770,105.82	271,550,679.06	2,626,491,832.30