



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

MAY 15 2013

OFFICE OF
AIR AND RADIATION

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515-6115

Dear Chairman Upton:

Thank you for your letter dated March 14, 2013, co-signed by thirteen of your colleagues, requesting information related to potential actions to address greenhouse gas emissions under the Clean Air Act. The enclosure, prepared by EPA staff, provides detailed answers to the questions set forth in your letter.

As President Obama has made clear, we must take meaningful steps to combat climate change, which poses a serious danger to the health and welfare of the American people. The EPA is committed to pursuing such steps, consistent with the requirements of the Clean Air Act, in a common sense manner. As we have seen with the greenhouse gas and fuel economy standards established under this Administration for cars and other light duty vehicles, we can achieve substantial reductions in greenhouse gas emissions while at the same time saving American consumers money and creating markets for emerging and new technologies.

Thank you for your interest in this important subject matter. If you have any questions, please contact me or have your staff contact Cheryl Mackay in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2023.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gina McCarthy".

Gina McCarthy
Assistant Administrator

Enclosures

ENCLOSURE

Draft Responses to March 14, 2013 Upton et al letter

- 1. Former Environmental Protection Agency (EPA) Administrator Jackson has testified that the agency has no intent to pursue a cap-and-trade program to regulate greenhouse gas (GHG) emissions. On August 3, 2011, Assistant Administrator Gina McCarthy also wrote the Committee and provided a response that stated: “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.”**

Combined response to a-d below.

- a. Has the agency’s position changed? If yes, please explain.**
- b. Can you confirm that EPA is not working on potential regulations to establish a cap-and-trade program to regulate GHG emissions?**
- c. Can you confirm that the agency will not pursue a cap-and-trade program to regulate GHG emissions during the President’s second term?**
- d. Can you confirm that the agency will not pursue other market-based programs to regulate GHG emissions during the President’s second term?**

Both former Administrator Jackson and I have said in the past that the EPA has no intention of pursuing a cap and trade program for greenhouse gases and I continue to stand by those statements.

The terms “market-based programs” or “market mechanisms” may refer to any number of tools other than cap and trade that provide meaningful, cost-saving flexibility for businesses in meeting environmental standards. For example, the fuel economy and greenhouse gas standards that the EPA and the Department of Transportation issued for cars and other light duty vehicles allow manufactures to use averaging and banking to meet the requirements of the program. Tools like these are often advocated by industries, and EPA will continue to include such flexibilities as appropriate in our programs and standards.

- 2. Attached is a chart that lists over 2,900 pages of GHG regulations issued or proposed by EPA in the Federal Register since January 2009. The chart includes 68 rules, ranging from the Endangerment Finding, to 3 rules setting GHG standards for cars and trucks, 1 rule proposing GHG standards for new power plants, 34 rules establishing and implementing GHG permitting implementation requirements, and 29 rules relating to**

GHG reporting. The chart also includes over 500 pages of GHG guidance and white papers relating to specific sectors.

- a. Are there additional GHG regulations or guidance documents issued by EPA that are not listed in the chart? If yes, please identify each such regulation or guidance document.**

The EPA has concerns about the way the chart arrays information on GHG-related rules. Many of the numerous actions involving GHG permitting requirements are deregulatory in nature, and others were designed to ensure that companies could receive GHG permits and be constructed. These actions were designed to make it possible to administer the GHG permitting requirements in a common sense manner in each state. Other rules amend existing rules to clarify them, correct technical errors or address problems to assist their implementation. For example, EPA and the National Highway Traffic Safety Administration (NHTSA) recently made minor technical amendments to the agencies' heavy-duty greenhouse gas emissions and fuel efficiency regulations to streamline the regulations by eliminating duplicative reporting requirements, reducing inadvertent minor differences between the EPA and NHTSA programs, better aligning testing procedures to market realities, and further reducing testing burdens. Simply listing and counting the rules and numbers of pages therefore is misleading.

The EPA identified the following GHG regulations and guidance documents issued by the Agency not listed in the chart. Most of these actions are permitting-related rules that are deregulatory or enable companies to get permits:

- “Approval and Promulgation of Air Quality Implementation Plans; Arkansas; Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule Revisions,” 78 FR 19596 (April 2 2013); Final Rule (3 pages)
- “Approval and Promulgation of Implementation Plans; Idaho: Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standard; Prevention of Significant Deterioration Greenhouse Gas Permitting authority and Tailoring Rule,” 77 FR 41916 (July 17, 2012); Final Rule (4 pages)
- “Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule Revisions,” 76 FR 43149 (July 20,2011); Final Rule (5 pages)
- “Approval and Promulgation of Implementation Plans: Oregon: New Source Review/Prevention of Significant Deterioration Rule Revisions and Air Quality Permit Streamlining Rule Revisions,” 76 FR 80747 (December 27, 2011); Final Rule (8 pages)

- “Revisions to the California State Implementation Plan, Northern Sonoma County Air Pollution Control District (NSCAPCD) and Mendocino County Air Quality Management District (MCAQMD),” 76 FR 26192 (May 6, 2011); Direct Final Rule (3 pages)
- “Approval of Air Quality Implementation Plans; California; South Coast Air Quality Management District; Prevention of Significant Deterioration; Greenhouse Gases,” 77 FR 73320 (December 10, 2012); Final Rule (3 pages)
- “Approval and Promulgation of Implementation Plans; Kentucky: Prevention of Significant Deterioration; Greenhouse Gas Permitting Authority and Tailoring Rule Revision,” 75 FR 81868 (December 29, 2010); Final Rule (6 pages)
- “Approval and Promulgation of Air Quality Implementation Plans; Maryland; Preconstruction Requirements-Prevention of Significant Deterioration and Nonattainment New Source Review,” 77 FR 45949 (August 2, 2012); Final Rule (5 pages)
- “Approval and Promulgation of Implementation Plans; Kentucky; Approval of Revisions to the Jefferson County Portion of the Kentucky SIP; New Source Review; Prevention of Significant Deterioration,” 77 FR 62150 (October 12, 2012); Final Rule (7 pages)
- “Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Prevention of Significant Deterioration,” 77 FR 63736 (October 17, 2012); Final Rule (8 pages)
- “Limited Approval and Disapproval of Air Quality Implementation Plans; Nevada; Clark County; Stationary Source Permits,” 77 FR 64039 (October 18, 2012); Final Rule (12 pages)
- “Approval and Promulgation of air Quality Implementation Plans; Wisconsin; Prevention of Significant Deterioration Greenhouse Gas Tailoring and Biomass Deferral Rule,” 77 FR 76430 (December 28, 2012); Proposed Rule (5 pages)
- “Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program,” 75 FR 14670 (March 26, 2010); Final Rule (235 pages)
- “Mandatory Reporting of Greenhouse Gases: Minor Harmonizing Changes to the General Provisions; Direct Final Rule” 75 Fed Reg. 12451 (March 16, 2010); Direct Final Rule (7 pages)

- “2013 Revisions to the Greenhouse Gas Reporting Rule and Proposed Confidentiality Determinations for New or Substantially Revised Data Elements,” 78 FR 19802 (April 2, 2013); Proposed Rule
- “Revision to Best Available Monitoring Method Request Submission Deadline for Petroleum and Natural Gas Systems Source Category; Final Rule,” 78 FR 25392 (May 1, 2013); Final Rule
- “Notice of Proposed Rulemaking and Direct Final Rule - Heavy-Duty Engine and Vehicle, and Nonroad Technical Amendments,” RIN A2060-AR48 (signed May 9, 2013); Direct Final Rule and Proposed Rule. See <http://www.epa.gov/otaq/climate/documents/420f13001.pdf>.
- “Draft Guidance for E85 Flexible Fuel Vehicle Weighting Factor for Model Years 2016–2019 Vehicles Under the Light-Duty Greenhouse Gas Emissions Program,” 78 FR 17660 (March 22, 2013); Draft Guidance (2 pages)

b. What additional GHG regulations or guidance documents are currently being developed by EPA? Please identify each such regulation or guidance document.

The EPA is currently developing the following Greenhouse Gas Reporting Program rules to address technical errors, make clarifying amendments, or otherwise address implementation issues raised by facilities subject to the program:

- Amendments and Confidentiality Determinations for Subpart I; Final Rule
- 2013 Revisions to the Greenhouse Gas Reporting Rule and Proposed Confidentiality Determinations for New or Substantially Revised Data Elements; Final Rule
- Revisions to Reporting and Recordkeeping Requirements, and Proposed Confidentiality Determinations under the Greenhouse Gas Reporting Program; Proposed Rule
- Subpart L (Fluorinated Gas Propagation) Amendments; Proposed Rule
- Technical Revisions to the Petroleum and Natural Gas Systems Source Category of the Greenhouse Gas Reporting Rule; Proposed Rule

The EPA is developing a proposal regarding whether greenhouse gas emissions from aircraft engines cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare, consistent with the EPA’s response to an administrative petition and a related District Court decision. See responses to Questions 3 and 10b.

c. Please identify all provisions of the Clean Air Act that EPA is considering as the basis for any future GHG regulations.

Clean Air Act section 114, section 202(a), section 231(a). For more information see response to Question 10. The EPA has a pending proposal for Carbon Pollution Standards for New Power Plants under section 111.

3. At EPA, how many petitions to regulate GHG emissions are currently before the agency? Please list and provide copies of all such petitions. If EPA has already taken action on the petitions, please indicate the action taken and the current status.

Since the Supreme Court's decision in *Massachusetts v. EPA*, the EPA received eleven petitions requesting that the agency make endangerment and contribution findings and undertake rulemaking procedures using our authority under Clean Air Act sections 202, 211, 213, and 231, related to emissions of greenhouse gases from mobile sources. Below we list the petitions (which are provided on a CD and labeled consistent with the numbers in the descriptions below), dates of the petitions, and the sectors at issue in the petition. A full discussion of many of these petitions can be found in the July 20, 2008, ANPR issued by EPA (73 Federal Register 44354). To date EPA has responded to three of the petitions, as detailed below.

- Marine vessels: (1) A petition dated October 3, 2007, from the State of California; (2) a petition dated October 3, 2007, from various organizations; and (3) a petition dated January 10, 2008, from South Coast Air Quality Management District, concerning emissions from marine vessels.
- New nonroad vehicles/engines and rebuilt heavy-duty engines (HDEs): (4) A petition dated January 29, 2008, from the State of California and other states; and (5) a petition dated January 29, 2008, from various organizations, concerning emissions from new nonroad vehicles and engines, other marine categories, and rebuilt HDEs.
- Aircraft: (6) A petition dated December 4, 2007, from the State of California and other states; and (7) a petition dated December 31, 2007, from various organizations, concerning emissions from aircraft.
- Aircraft and Mobile Source fuels: (8) A petition dated July 29, 2009, from the Institute for Policy Integrity concerning emissions from motor vehicles, nonroad vehicles and engines, aircraft and their fuels.
- Locomotives: (9) A petition dated September 21, 2010, from various organizations concerning emissions from locomotives.

- Mobile and stationary sources: (10) A petition dated November 25, 2008, from various villages, cities, States, and organizations concerning the Arctic and emissions from motor vehicles, nonroad vehicles and engines, aircraft, and stationary sources, and (11) a petition dated February 19, 2013, from the Institute for Policy Integrity requesting rulemakings and a call for information under section 115, Title VI, section 111, and Title II.

On June 11, 2010, various organizations filed a complaint in the U.S. District Court for the District of Columbia claiming that the EPA had unreasonably delayed in responding to three of the petitions noted above (see petitions 2, 5 and 7), and that the EPA had unreasonably delayed making the requested determinations on endangerment and contribution concerning greenhouse gas emissions from aircraft engines, nonroad vehicles and engines, and marine engines, and rebuilt HDEs.

After ruling on the parties' various motions to dismiss and summary judgment, the U.S. District Court ordered the EPA to respond to the Petitions within 90 days of the order. With respect to aircraft, the Court found that the EPA had a nondiscretionary duty to make determinations on endangerment and contribution concerning greenhouse gas emissions from aircraft, but had not unreasonably delayed in making the determinations. *Center for Biological Diversity, et al. v. EPA* 794 F. Supp. 2d 151 (D.D.C., July 5, 2011); *Center for Biological Diversity, et al. v. EPA*, No. 1:10-985 (D.D.C., March 20, 2012).

On June 14, 2012, EPA responded to all three petitions. With respect to the nonroad vehicle and engine, marine vessel, and rebuilt HDE petitions, EPA stated that it "is not prepared at this time to initiate the rulemaking requested" With regard to the aircraft petition EPA stated, as it had indicated to the District Court, that the "EPA believes it is appropriate to wait for the decision of the U.S. Court of Appeals before proceeding with developing a proposal regarding endangerment and contribution for aircraft greenhouse gas emissions. ... we estimate that it would take a minimum of 22 months to develop a proposal, publish it for comment, review and analyze comments and issue a final determination with regard to endangerment and contribution from greenhouse gas emissions of aircraft engines."

With regard to stationary sources, in addition to the petitions covering both mobile and stationary sources discussed above, the EPA has received four petitions. In two, petitioners ask EPA to list new source categories and promulgate new source performance standards for a number of pollutants including GHGs.

- (12) September 2009 rulemaking petition from the Humane Society and other groups – This petition seeks listing of Concentrated Animal Feeding Operations (CAFOs) as a new source performance standard (NSPS) category under section 111 of the Clean Air Act, as well as standards and emission guidelines for GHGs and other pollutants from CAFOs.

- (13) June 2010 rulemaking petition from the Sierra Club and other groups – This petition seeks NSPS listing, standards and emissions guidelines for GHGs from coal mines. The EPA denied the petition on April 30, 2013.

In the other two petitions, groups have asked the EPA to regulate GHGs from source categories already covered by NSPS for other pollutants.

- (14) Reconsideration of oil/gas NSPS – A number of nongovernmental organizations (NGOs) sent a combined request for reconsideration of these standards. In part the petition asks the agency to reconsider the standards to regulate GHGs.
- (15) Reconsideration of Refinery NSPS – A number of NGOs requested that EPA reconsider standards promulgated in 2008. In part the petition asks the agency to reconsider the standards to regulate GHGs.

4. Is EPA staff engaged in discussions with any States or non-governmental organizations about potential timelines for the agency to take action on pending petitions to regulate GHG emissions, or possible regulatory approaches to such regulations? If yes, please identify the States or organizations, and describe the timelines and analytical approaches under discussion.

As mentioned above, the EPA received ten mobile-source-related GHG petitions and four stationary-source related GHG petitions. To date, the agency has responded to three mobile source related petitions and one stationary source related petition. The EPA does not have a timeline for when it will take final action on any of the pending petitions nor is EPA staff engaged in discussions with any petitioner regarding the date on which the EPA will issue a final response to the pending petitions.

The agency is having discussions with oil/gas petitioners to better understand the underlying information that is the basis for their petition for reconsideration of several aspects of the final oil and gas NSPS.

5. In December 2010, EPA announced it had entered into settlements to issue GHG New Source Performance Standards (NSPS) for power plants and refineries.

Combined response to a, b and c below.

- EPA has proposed GHG standards for *new* power plants. Does EPA plan to finalize those standards? If yes, what is the current schedule?**
- Does EPA plan to propose GHG standards for *existing* power plants? If yes, what is the current schedule for proposing and finalizing those standards?**

- c. Does EPA plan to propose GHG standards for new or existing refineries? If yes, what is the current schedule for proposing and finalizing those standards?**

At this time, the EPA is working to finalize the proposed carbon pollution standard for new power plants. The EPA is currently focused on reviewing the more than 2 million comments received on the proposal. The timing of completion of this rulemaking is uncertain. The EPA is not currently developing any existing source GHG guideline for state regulation of power plants, and does not have a schedule for such an action. While the Agency acknowledged that it is appropriate to regulate greenhouse gas emissions from refineries, we do not have a current plan for issuing such regulations.

- 6. EPA has proposed to set GHG NSPS standards that would apply to new coal-fired plants and that could only be achieved by installing carbon capture and storage (CCS) technology that has never been demonstrated on a commercial scale. Will EPA finalize standards for new coal-fired plants for which the only identified technology is CCS?**

The agency is still actively considering a wide range of comments on these issues, and any final decision will reflect careful consideration of these issues. While the EPA did not propose that CCS represented the best system of emission reduction under the law, the EPA stated in the preamble of the proposed NSPS rule that “CCS is technologically feasible for implementation at new coal-fired power plants and its core components (CO₂ capture, compression, transportation and storage) have already been implemented at commercial scale.” [77 FR 22414]. Several commercial-scale coal-fired power plants with CCS are currently in development, and the EPA’s view is that coal-fired units can meet the proposed limit.

- 7. Section 111(d) of the Clean Air Act provides: “The Administrator shall prescribe regulations which shall establish a procedure similar to that provided by section 7410 of this title under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) of this title or emitted from a source category which is regulated under section 7412 of this title but (ii) to which a standard of performance would apply...” 42 U.S.C. § 7411.**

Combined response to a and b below.

- a. Given EPA has issued standards under section 112 (42 U.S.C. § 7412) to regulate existing power plants, which is the agency’s legal basis for concluding it can also set standards under section 111(d) for existing power plants?**

- b. Has EPA prepared an analysis of whether it had the authority to set standards under section 111(d) for existing plants? If yes, please state when it was prepared, and please provide a copy of the analysis or analyses that were prepared.**

In a 2005 rulemaking that concerned the regulation, under Clean Air Act sections 111 and 112, of mercury emissions from existing fossil-fuel-fired power plants, the EPA concluded, based on a detailed legal analysis, that section 111(d) authorizes the regulation of existing power plants. Much of this analysis remains valid. See “Revision of December 2000 Regulatory Finding on the Emissions of Hazardous Air Pollutants from Electric Utility Steam Generating Units and the Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units From the Section 112(c) List; Final Rule,” 70 Fed. Reg. 15,994, 16,029/2 – 16,032/2 (March 29, 2005).

- 8. Can EPA provide any assurances that it will not propose GHG NSPS standards for existing coal-fired plants that can only be met by shutting down or operating less?**

The EPA does not have sufficient information to respond to this question as the agency is not currently developing any existing source GHG regulations for power plants. It should be noted that under section 111(d), unlike under section 111(b), the EPA does not issue national emissions standards that are applicable to sources. Instead, the EPA issues guidelines (through notice and comment procedures) under which states develop plans that contain standards of performance for existing sources.

- 9. Recently, a “2013 Car Affordability Study” was published that concluded median-income households in 25 major cities in America could not, with the exception of households in Washington, D.C., afford the average cost of a new car or truck.**

- a. Has EPA prepared any analyses of the impacts of its GHG car and truck rules on the affordability of vehicles for median-income or low-income households? If yes, please provide copies of all such analyses.**

Yes, the EPA analyzed the impacts of its model year 2017-2025 light-duty GHG standards on the affordability of vehicles. These analyses are discussed in two excerpts from the final rulemaking preamble (77 FR 62950-62952; October 15, 2012) and from the EPA’s Regulatory Impact Analysis (Chapter 8.1.3), which are provided in two PDF files. The EPA’s analysis found that low- or median-income households account for a very small portion of new car buyers, since such households primarily buy used cars. Buyers of used vehicles are expected to benefit even more than new car buyers from the significant fuel savings of vehicles subject to the GHG standards, since the fuel savings far outweigh the depreciated cost of the used vehicles.

As the EPA pointed out in the 2017-2025 rulemaking excerpts provided, the Federal Reserve Board’s Survey of Consumer Finances indicates that low-and median-income households account for a small fraction of new car buyers; these households typically are in the used car

market. However, the standards will provide significant savings for consumers at the pump. Those consumers who purchase a new MY 2025 vehicle with a standard 5-year loan will immediately benefit as the monthly fuel savings offset the higher monthly payment by about \$12, or about \$140 per year. In addition, a number of financial institutions currently give interest rate discounts for more fuel-efficient vehicles, in recognition that more fuel-efficient vehicles cost less to operate. As a result, the standards received the strong support of thirteen auto manufacturers and the United Auto Workers, as well as consumer groups.

10. In addition to GHG standards for light-duty cars and trucks for Model Years 2012-2016 and Model Years 2017-2025, EPA has issued GHG standards for medium- and heavy-duty trucks for Model Years 2014-2018.

- a. Is EPA planning additional GHG standards for medium and heavy-duty trucks? If yes, what is the agency’s current schedule for proposing and finalizing those standards?**

The preamble to the final rule establishing MY 2014-2018 GHG standards for medium and heavy-duty trucks included a section on potential “Future HD GHG and Fuel Consumption Rulemakings” (76 FR at 57133). In that section, the EPA and the National Highway Traffic Safety Administration discussed several areas that would be considered in a future rulemaking, such as technology advancements and a range of regulatory approaches. The EPA has not announced any specific schedule for a proposal or final rule for additional standards for medium- and heavy-duty vehicles.

- b. Is EPA planning additional GHG emissions standards over the next four years for any other types of mobile sources? If yes, which mobile sources is EPA considering setting standards for and what is the agency’s current schedule for proposing and finalizing those standards?**

Aircraft

Consistent with the EPA’s response to the administrative petition and the related District Court decision in *Center for Biological Diversity, et al. v. EPA*, 794 F. Supp. 2d 151 (D.D.C., July 5, 2011), the EPA is developing a proposed determination regarding endangerment and contribution concerning greenhouse gas emissions from aircraft. As the EPA indicated to the District Court and in its response to the petition, the “EPA believes it is appropriate to wait for the decision of the U.S. Court of Appeals before proceeding with developing a proposal regarding endangerment and contribution for aircraft greenhouse gas emissions. ... we estimate that it would take a minimum of 22 months to develop a proposal, publish it for comment, review and analyze comments and issue a final determination with regard to endangerment and contribution from greenhouse gas emissions of aircraft engines.”

With respect to emissions standards for aircraft, the EPA stated in the response to the petition that “[a]t this point it is premature to address potential pathways or options for greenhouse gas emission standards or any related requirements with regard to aviation. EPA intends to make the endangerment and cause and contribute finding as discussed above prior to engaging in any standards-setting rulemakings. If such endangerment and contribution finding are made, EPA would then commence the rulemaking process and in that setting consider all approaches to reducing greenhouse gases from aircraft available and within its statutory authority.”

Light-Duty Vehicles

As part of the light-duty greenhouse gas rulemaking for model years 2017-2025, the EPA made a regulatory commitment to conduct, in coordination with the Department of Transportation (DOT) and the California Air Resources Board (CARB), a midterm review of the GHG standards for the 2022-2025 model years. See 40 CFR section 86.1818-12 (h) and 77 FR at 62652, 62784-88 (Oct. 15, 2012). By November 15, 2017, the EPA, DOT and CARB will jointly issue for public comment a draft Technical Assessment Report to inform the EPA’s determination of the appropriateness of the model year 2022-2025 GHG standards. The EPA will make a final determination by April 1, 2018, on whether the model year 2022-2025 standards are appropriate under section 202(a) of the Clean Air Act, after considering public comment. If the EPA determines that the standards are not appropriate, the EPA will initiate a rulemaking to adopt standards that are appropriate under the Act, which could result in amended GHG standards for those model years that are either more or less stringent than those already promulgated.

11. EPA has established GHG preconstruction and operating permitting requirements that apply to facilities that EPA projects are responsible for 70 percent of U.S. GHG emissions from stationary sources.

Combined response to a and b below.

- a. Is EPA considering lowering the thresholds to expand the number of facilities and projects subject to permitting requirements?**
- b. If yes, please describe the options currently being considered by the agency.**

The EPA established a common sense, phased-in approach to GHG permitting under the Clean Air Act (CAA) in the Tailoring Rule. In that rule, the EPA established the GHG emission thresholds and timing (Steps 1 and 2) for determining whether new or modified major sources would trigger preconstruction permitting requirements under the CAA. In addition, the Tailoring Rule also established a schedule of actions the Agency would undertake as part of the phased approach to addressing permitting. These included the issuance of a rulemaking to establish Step 3 regulatory thresholds (completed on July 12, 2012; emissions thresholds were not lowered), completion of a five-year study of GHG permitting implementation by April 2015, and a rule to establish the thresholds for the next step (Step 4) by April 2016. The EPA currently is gathering

the information necessary to complete the five-year study, and any decisions on where the future thresholds would be established will depend on the results of the study.

12. Assistant Administrator McCarthy recently is reported to have stated that “we now have a very successful [greenhouse gas] permitting program.”

- a. How many GHG Prevention of Significant Deterioration (PSD) permits have been issued by EPA or States since the program commenced? Please provide a list of the permits that have been issued.**

As of April 1, 2013, 87 GHG PSD permits have been issued since the program commenced (January 2, 2011). See attachment.

- b. For States in which EPA is the permitting authority for GHG PSD permits, how many permits have been issued and how many are pending consideration?**

The EPA has issued 22 GHG PSD permits, and 66 GHG PSD permit applications are currently being processed by the EPA.

- c. What is the range of time it takes EPA to process a GHG PSD permit application? Have all such applications submitted to EPA been processed within one year of submission of the application?**

The EPA generally issues PSD permits within 12 months following the date of complete application. However, in the case of two applications, the processing of the permit required additional analyses and resulted in the EPA issuing the permit shortly after 12 months.

13. On June 29, 2012, Assistant Administrator Gina McCarthy testified that she could not rule out GHG NSPS standards for any of the approximately 70 types of sources regulated under the NSPS program.

Combined response to a and b below.

- a. Are all those sources potentially subject to GHG regulation?**

- b. Can EPA rule out any of those sources as exempt from GHG regulation?**

The EPA has taken the position that Clean Air Act section 111 does not require the EPA to establish standards of performance for every type of pollutant for every type of source in every source category, but rather that the EPA has broad discretion under section 111 to determine whether or not to regulate certain types of sources that emit particular pollutants. See “Oil and Natural Gas Sector: New Source Performance Standards and national Emission Standards for Hazardous Air Pollutant Reviews; Final Rule,” 77 Fed. Reg. 49,490 (Aug. 16, 2012) (establishing section 111 standards of performance for certain, but not all, types of oil and

natural gas sources); 77 Fed. Reg. 48,433, 48,441/2 (Aug. 14, 2012) (establishing section 111 standards of performance for certain pollutant emissions from nitric acid plants, but not for GHG emissions); “Standards of Performance for Petroleum Refineries; Final Rule,” 73 Fed. Reg. 35,838, 35,858/2 – 35,860/3 (June 24, 2008) (establishing section 111 standards of performance for certain pollutant emissions from petroleum refineries, but not for GHG emissions).

14. Press reports indicate EPA’s Office of Enforcement and Compliance Assurance may undertake a compliance initiative in 2013 to enforce the agency’s GHG regulations.

Combined response to a and b below.

- a. **Does EPA intend to proceed with such an enforcement initiative? If yes, please describe the nature and scope of the initiative.**
- b. **Does EPA intend in any such enforcement initiative to target certain sectors. If yes, please identify the sectors.**

The EPA establishes National Enforcement Initiatives (NEIs) on a three-year cycle to address areas where federal enforcement is the most appropriate response to substantial noncompliance that contributes to significant environmental damage. The EPA currently has six NEIs for the period 2011-2013, and GHG reporting or other GHG regulations enforcement is not one of them. Every three years, the Agency solicits input from states, tribes and the public on whether new initiatives should be added or to replace any of the existing ones. On January 28, 2013, the EPA published a notice in the *Federal Register* inviting comment on the existing NEIs and soliciting input on potential new ones for the Fiscal Years 2014-2016. In addition to our work on the NEIs, the EPA is charged with enforcing hundreds of regulations, including those on GHG reporting.

Attachment

List of GHG Prevention of Significant Deterioration (PSD) permits Issued by EPA or States

1. NUCOR Corporation, St. James Parish, LA
2. We Energies, Rothschild, WI. (biomass co-gen boiler at a paper mill)
3. PacifiCorp Lake Side Power Plant, Utah County, UT
4. Mid-American Energy, George Neal South, Salix, IA (installation of pollution controls at a coal-fired power plant)
5. Mid-American Energy, George Neal South, Salix, IA (same as #4 but at different unit)
6. Wolverine Power Co-op, Rogers City, MI (biomass boilers)
7. Lafarge Cement, Ravena, NY
8. Abengoa BioRefinery, Hugoton, KS
9. Sumpter Energy, Carleton Farms, MI
10. US Steel Keetac Iron & Taconite Plant, Keewatin, MN [*Delegated State Permit*]
11. Mid-American Energy, George Neal North, Sergeant Bluff, IA (same as #4)
12. Palmdale Hybrid Energy Center, Antelope Valley, CA [EPA PERMIT]
13. Crawford Renewable Energy, Greenwood Township, PA
14. Eni Holy Cross Drilling Project, OCS Eastern GOM [EPA PERMIT]
15. Hyperion Refinery and Energy Center, Union County, SD
16. Lower Colorado River Authority - Ferguson, Horseshoe Bend, TX [EPA PERMIT]
17. Wolverine Power, Sumpter Power Plant, Belleville, Michigan
18. Hoosier Energy - Merom Station, Sullivan, IN
19. Port Dolphin Energy LNG Port, OCS Eastern GOM [EPA PERMIT]
20. IPL Ottumwa Generating, Ottumwa, IA
21. Kennecott Utah Copper- Repowering, South Jordan, UT
22. US Nitrogen - Midway, Green County, TN
23. Beaver Wood Energy, Fairhaven, VT
24. University of Wisconsin - Charter Street, Madison, WI
25. Universal Cement, Chicago, IL
26. Carolina Cement, Castle Hayne, NC
27. PyraMax Ceramics, Allendale, SC
28. PyraMax Ceramics, Wrens, GA
29. NRG Energy, Dover, DE
30. York Plant Holding, Springettsbury, PA
31. Pioneer Valley Energy Center, Westfield, MA [EPA PERMIT]
32. Tenaska Christian County Generation IGCC, Taylorville, IL [*Delegated State Permit*]
33. Entergy Louisiana LLC - Ninemile Point Plant, LA
34. Sabine Pass LNG LP, LA
35. Westlake Vinyls, LA
36. CF Industries Nitrogen Complex, LA
37. Pryor Chemical Company, OK
38. Atlas Pipeline Mid-Continent West OK, L.L.C. (WESTOK), OK
39. ETC Texas Pipeline, Natural Gas Processing Plant, Jackson County, TX [EPA PERMIT]

40. Indiana Gasification, Spencer County, IN
41. BHP Billiton Petroleum, Sake Exploratory Project, OCS Eastern GOM [EPA PERMIT]
42. Milwaukee Metropolitan Sewerage District, Milwaukee, WI
43. Essar Steel, Nashwauk, MN [*Delegated State Permit*]
44. CARBO Ceramics, Millen, GA
45. Effingham Power, Rincon, GA
46. Showa Denko Carbon, Dorchester County, SC
47. Woodbridge Energy, NJ [*Delegated State Permit*]
48. Phillips 66 Alliance, LA
49. Williams Olefins, Geismar, LA
50. JM Huber, Huber Engineered Woods, GA
51. BASF FINA Petrochemical LP (BFLP), Port Arthur, TX [EPA PERMIT]
52. Black Hills Power – Cheyenne Prairie Generating Station, Cheyenne, WY [EPA PERMIT]
53. Cricket Valley Energy Center, Dover, NY
54. Newark Energy Center, Newark, NJ [*Delegated State Permit*]
55. Exxon Mobil Point Thomson, North Slope, AK
56. Sevier Power Project, UT
57. INEOS Olefins and Polymers, Alvin, TX [EPA PERMIT]
58. Enterprise Products – Eagleford Fractionation/DIB, Mont Belvieu, TX [EPA PERMIT]
59. Energy Transfer Partners - Lone Star, Mont Belvieu, TX [EPA PERMIT]
60. Next Generation Processing, LLC - Haven Gas Plant, KS
61. Pio Pico Energy Center, San Diego, CA [EPA PERMIT]
62. Moxie Liberty, Asylum Township, PA
63. Graymont Limestone - Pleasant Gap, Spring Township, Center County, PA
64. GSA Federal Research Center (White Oak), MD
65. CPV Energy, St. Charles, MD
66. Iowa Fertilizer Company, Wever, IA
67. Klausner Holding, Enfield, NC
68. North Springfield Sustainable Energy, North Springfield, VT
69. Gateway Cogeneration, Prince George, VA
70. Calpine, Deer Park, TX [EPA PERMIT]
71. WE Energies Elm Road, Milwaukee, WI
72. Energy Answers (permit revision to include GHG), MD
73. Chevron Phillips Chemical Co., Cedar Bayou Plant, Baytown, TX [EPA PERMIT]
74. Capitol Power (PAL), Washington, DC [EPA PERMIT]
75. Moxie Patriot, Clinton Township, Lycoming County, PA
76. Calpine, Channel Energy Center, Pasadena, TX [EPA PERMIT]
77. St. Joseph Energy Center, New Carlisle, IN
78. RockTenn-Solvay LLC, NY
79. Gerdau MACSTEEL, MI
80. Equistar Chemicals, Methanol Unit, Channelview, TX [EPA PERMIT]
81. Mid-Kansas Electric Co. – Rubart Station, KS
82. Sierra Pacific Industries (SPI)- Anderson, CA [EPA PERMIT]
83. Copano Energy, Sheridan, Colorado County, TX [EPA PERMIT]

- 84. Sinclair Wyoming Refining, Sinclair, WY [EPA PERMIT]
- 85. WBI Energy, Dakota Prairie, ND
- 86. Montana-Dakota Utilities Heskett Station, Mandan, ND
- 87. Equistar Chemicals, La Porte, TX [EPA PERMIT]

40	Indiana Gasification, Spencer County, IN [EPA PERMIT]
41	BHP Billiton Petroleum, Lake Exploration Project, CCS, Lake Charles, LA [EPA PERMIT]
42	Milwaukee Metropolitan Sewerage District, Milwaukee, WI [EPA PERMIT]
43	Essar Steel, Nashua, MN [EPA PERMIT]
44	CARBO Ceramics, Millen, GA
45	Edgingham Power, Kinross, GA
46	Shaw Energy Carbon, Dorchester County, SC
47	Woodbridge Energy, NJ [EPA PERMIT]
48	Phillips 66 Alliance, LA
49	William O'Brien, Gaston, LA
50	JM Huber, Huber Engineered Woods, GA
51	BASE FINE Petrochemical LP (BFLP), Fort Arthur, TX [EPA PERMIT]
52	Black Hills Power - Cheyenne Prairie Generating Station, Cheyenne, WY [EPA PERMIT]
53	Coker Valley Energy Center, Dover, NY
54	Nowak Energy Center, Newark, NJ [EPA PERMIT]
55	Exxon Mobil Point Thomson, North Slope, AK
56	Seyler Power Project, UT
57	NEOS Olefins and Polymers, Alvin, TX [EPA PERMIT]
58	Enterprise Products - Eschfeld Fractionation/DIB, Mont Belvieu, TX [EPA PERMIT]
59	Energy Transfer Partners - Lone Star, Mont Belvieu, TX [EPA PERMIT]
60	Nex Generation Processing, LLC - Haven Gas Plant, KS
61	Pio Pico Energy Center, San Diego, CA [EPA PERMIT]
62	Moxic Liberty, Asylum Township, PA
63	Gwynedd Limestone - Pleasant Gap, Spring Township, Center County, PA
64	GSA Federal Research Center (White Oak), MD
65	CPV Energy, St Charles, MD
66	Low Fertilizer Company, Weaver, IA
67	Klanauer Holding, Enfield, NC
68	North Springfield Sustainable Energy, North Springfield, VT
69	Gateway-Corcoran, Prince George, VA
70	Alpine Deer Park, TX [EPA PERMIT]
71	WE Energy Elm Road, Milwaukee, WI
72	Energy Answers (permit revision to include GHG), MD
73	Chevron Phillips Chemical Co., Cedar Bayou Plant, Baytown, TX [EPA PERMIT]
74	Capitol Power (PA), Washington, DC [EPA PERMIT]
75	Moxic Patriot, Clinton Township, Leicestershire County, PA
76	Calpine Channel Energy Center, Pasadena, TX [EPA PERMIT]
77	St. Joseph Energy Center, New Carlisle, IN
78	Rock-Tenn-Solvay LLC, NY
79	Gerda MACSTERL, MI
80	Equistar Chemicals, Methanol Unit, Channelview, TX [EPA PERMIT]
81	Mid-Kansas Electric Co. - Rubin Station, KS
82	Sierra Pacific Industries (SPI)-Anderson, CA [EPA PERMIT]
83	Opano Energy, Sheridan, Colorado County, TX [EPA PERMIT]