

To: ddoniger@nrdc.org;CN=Ellen Kurlansky/OU=DC/O=USEPA/C=US@EPA;CN=Howard Hoffman/OU=DC/O=USEPA/C=US@EPA;CN=Janet McCabe/OU=DC/O=USEPA/C=US@EPA;CN=Joseph Goffman/OU=DC/O=USEPA/C=US@EPA;CN=Peter Tsirigotis/OU=RTP/O=USEPA/C=US@EPA;CN=Rob Brenner/OU=DC/O=USEPA/C=US@EPA;CN=Sam Napolitano/OU=DC/O=USEPA/C=US@EPA[]; N=Ellen Kurlansky/OU=DC/O=USEPA/C=US@EPA;CN=Howard Hoffman/OU=DC/O=USEPA/C=US@EPA;CN=Janet McCabe/OU=DC/O=USEPA/C=US@EPA;CN=Joseph Goffman/OU=DC/O=USEPA/C=US@EPA;CN=Peter Tsirigotis/OU=RTP/O=USEPA/C=US@EPA;CN=Rob Brenner/OU=DC/O=USEPA/C=US@EPA;CN=Sam Napolitano/OU=DC/O=USEPA/C=US@EPA[]; N=Howard Hoffman/OU=DC/O=USEPA/C=US@EPA;CN=Janet McCabe/OU=DC/O=USEPA/C=US@EPA;CN=Joseph Goffman/OU=DC/O=USEPA/C=US@EPA;CN=Peter Tsirigotis/OU=RTP/O=USEPA/C=US@EPA;CN=Rob Brenner/OU=DC/O=USEPA/C=US@EPA;CN=Sam Napolitano/OU=DC/O=USEPA/C=US@EPA[]; N=Janet McCabe/OU=DC/O=USEPA/C=US@EPA;CN=Joseph Goffman/OU=DC/O=USEPA/C=US@EPA;CN=Peter Tsirigotis/OU=RTP/O=USEPA/C=US@EPA;CN=Rob Brenner/OU=DC/O=USEPA/C=US@EPA;CN=Sam Napolitano/OU=DC/O=USEPA/C=US@EPA[]; N=Joseph Goffman/OU=DC/O=USEPA/C=US@EPA;CN=Peter Tsirigotis/OU=RTP/O=USEPA/C=US@EPA;CN=Rob Brenner/OU=DC/O=USEPA/C=US@EPA;CN=Sam Napolitano/OU=DC/O=USEPA/C=US@EPA[]; N=Peter Tsirigotis/OU=RTP/O=USEPA/C=US@EPA;CN=Rob Brenner/OU=DC/O=USEPA/C=US@EPA;CN=Sam Napolitano/OU=DC/O=USEPA/C=US@EPA[]; N=Rob Brenner/OU=DC/O=USEPA/C=US@EPA;CN=Sam Napolitano/OU=DC/O=USEPA/C=US@EPA[]; N=Sam Napolitano/OU=DC/O=USEPA/C=US@EPA[]

Cc: CN=Addie Johnson/OU=DC/O=USEPA/C=US@EPA;CN=Amit Srivastava/OU=DC/O=USEPA/C=US@EPA;CN=Barbara Morris/OU=DC/O=USEPA/C=US@EPA;CN=Cynthia Browne/OU=DC/O=USEPA/C=US@EPA;CN=Don Zinger/OU=DC/O=USEPA/C=US@EPA;CN=Julia Miller/OU=DC/O=USEPA/C=US@EPA;radhar@nrdc.org[]; N=Amit Srivastava/OU=DC/O=USEPA/C=US@EPA;CN=Barbara Morris/OU=DC/O=USEPA/C=US@EPA;CN=Cynthia Browne/OU=DC/O=USEPA/C=US@EPA;CN=Don Zinger/OU=DC/O=USEPA/C=US@EPA;CN=Julia Miller/OU=DC/O=USEPA/C=US@EPA;radhar@nrdc.org[]; N=Barbara Morris/OU=DC/O=USEPA/C=US@EPA;CN=Cynthia Browne/OU=DC/O=USEPA/C=US@EPA;CN=Don Zinger/OU=DC/O=USEPA/C=US@EPA;CN=Julia Miller/OU=DC/O=USEPA/C=US@EPA;radhar@nrdc.org[]; N=Cynthia Browne/OU=DC/O=USEPA/C=US@EPA;CN=Don Zinger/OU=DC/O=USEPA/C=US@EPA;CN=Julia Miller/OU=DC/O=USEPA/C=US@EPA;radhar@nrdc.org[]; N=Don Zinger/OU=DC/O=USEPA/C=US@EPA;CN=Julia Miller/OU=DC/O=USEPA/C=US@EPA;radhar@nrdc.org[]; N=Julia Miller/OU=DC/O=USEPA/C=US@EPA;radhar@nrdc.org[]; adhar@nrdc.org[]

From: CN=Cindy Huang/OU=DC/O=USEPA/C=US
Sent: Tue 3/22/2011 8:50:36 PM
Subject: Meeting with NRDC on Section 111 Standards for Power Plants

From: "Doniger, David" [ddoniger@nrdc.org]
Sent: 03/21/2011 06:40 PM AST
To: <hwang.cindy@epa.gov>
Cc: Joseph Goffman; "Adhar, Radha" <radhar@nrdc.org>
Subject: Meeting request

Cindy,

I am following up a conversation with Joe Goffman to ask for a meeting as soon as feasible with Gina McCarthy, Joe, and whomever they want to include, on the subject of the Section 111 standards for power plants.

Attendees on our side would include David Hawkins, Dan Lashof, Meleah Geertsma, and myself.

You could be in touch with me or (probably more productively) with our assistant, Radha Adhar, who is copied above. Radha's number is 202

Ex. 6 - Personal Privacy

David D. Doniger
Policy Director, Climate Center
Natural Resources Defense Council
1200 New York Ave., NW
Washington, DC 20005
Phone: (202) 289-2403
Cell: (202) 321-3435
Fax: (202) 789-0859
ddoniger@nrdc.org
on the web at www.nrdc.org
read my blog: <http://switchboard.nrdc.org/blogs/ddoniger/>

To: ddoniger@nrdc.org;CN=Ellen Kurlansky/OU=DC/O=USEPA/C=US@EPA;CN=Howard Hoffman/OU=DC/O=USEPA/C=US@EPA;CN=Janet McCabe/OU=DC/O=USEPA/C=US@EPA;CN=Jim Ketcham-Colwill/OU=DC/O=USEPA/C=US@EPA;CN=Joseph Goffman/OU=DC/O=USEPA/C=US@EPA;CN=Peter Tsirigotis/OU=RTP/O=USEPA/C=US@EPA;CN=Rob Brenner/OU=DC/O=USEPA/C=US@EPA;CN=Sam Napolitano/OU=DC/O=USEPA/C=US@EPA[]; N=Ellen Kurlansky/OU=DC/O=USEPA/C=US@EPA;CN=Howard Hoffman/OU=DC/O=USEPA/C=US@EPA;CN=Janet McCabe/OU=DC/O=USEPA/C=US@EPA;CN=Jim Ketcham-Colwill/OU=DC/O=USEPA/C=US@EPA;CN=Joseph Goffman/OU=DC/O=USEPA/C=US@EPA;CN=Peter Tsirigotis/OU=RTP/O=USEPA/C=US@EPA;CN=Rob Brenner/OU=DC/O=USEPA/C=US@EPA;CN=Sam Napolitano/OU=DC/O=USEPA/C=US@EPA[]; N=Howard Hoffman/OU=DC/O=USEPA/C=US@EPA;CN=Janet McCabe/OU=DC/O=USEPA/C=US@EPA;CN=Jim Ketcham-Colwill/OU=DC/O=USEPA/C=US@EPA;CN=Joseph Goffman/OU=DC/O=USEPA/C=US@EPA;CN=Peter Tsirigotis/OU=RTP/O=USEPA/C=US@EPA;CN=Rob Brenner/OU=DC/O=USEPA/C=US@EPA;CN=Sam Napolitano/OU=DC/O=USEPA/C=US@EPA[]; N=Janet McCabe/OU=DC/O=USEPA/C=US@EPA;CN=Jim Ketcham-Colwill/OU=DC/O=USEPA/C=US@EPA;CN=Joseph Goffman/OU=DC/O=USEPA/C=US@EPA;CN=Peter Tsirigotis/OU=RTP/O=USEPA/C=US@EPA;CN=Rob Brenner/OU=DC/O=USEPA/C=US@EPA;CN=Sam Napolitano/OU=DC/O=USEPA/C=US@EPA[]; N=Jim Ketcham-Colwill/OU=DC/O=USEPA/C=US@EPA;CN=Joseph Goffman/OU=DC/O=USEPA/C=US@EPA;CN=Peter Tsirigotis/OU=RTP/O=USEPA/C=US@EPA;CN=Rob Brenner/OU=DC/O=USEPA/C=US@EPA;CN=Sam Napolitano/OU=DC/O=USEPA/C=US@EPA[]; N=Joseph Goffman/OU=DC/O=USEPA/C=US@EPA;CN=Peter Tsirigotis/OU=RTP/O=USEPA/C=US@EPA;CN=Rob Brenner/OU=DC/O=USEPA/C=US@EPA;CN=Sam Napolitano/OU=DC/O=USEPA/C=US@EPA[]; N=Peter Tsirigotis/OU=RTP/O=USEPA/C=US@EPA;CN=Rob Brenner/OU=DC/O=USEPA/C=US@EPA;CN=Sam Napolitano/OU=DC/O=USEPA/C=US@EPA[]; N=Rob Brenner/OU=DC/O=USEPA/C=US@EPA;CN=Sam Napolitano/OU=DC/O=USEPA/C=US@EPA[]; N=Sam Napolitano/OU=DC/O=USEPA/C=US@EPA[]

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Miller/OU=DC/O=USEPA/C=US@EPA;radhar@nrdc.org[]; adhar@nrdc.org[]
From: CN=Cindy Huang/OU=DC/O=USEPA/C=US
Sent: Thur 3/24/2011 8:59:34 PM
Subject: Rescheduled: Meeting with NRDC on Section 111 Standards for Power Plants (Apr 1 02:45 PM EDT in Ariel Rios North room 5400, 1200 Pennsylvania Ave. NW Conference: 1-866-

Ex. 6 - Personal Privacy Access: Ex. 6 - Personal Privacy

From: "Doniger, David" [ddoniger@nrdc.org]
Sent: 03/21/2011 06:40 PM AST
To: <hwang.cindy@epa.gov>
Cc: Joseph Goffman; "Adhar, Radha" <radhar@nrdc.org>
Subject: Meeting request

Cindy,

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Attendees on our side would include David Hawkins, Dan Lashof, Meleah Geertsma, and myself.

You could be in touch with me or (probably more productively) with our assistant, Radha Adhar, who is copied above. Radha's number is 202

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Policy Director, Climate Center
Natural Resources Defense Council
1200 New York Ave., NW
Washington, DC 20005
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Fax: (202) 789-0859
ddoniger@nrdc.org
on the web at www.nrdc.org
read my blog: <http://switchboard.nrdc.org/blogs/ddoniger/>

To: ddoniger@nrdc.org; dhawkins@nrdc.org; dlashof@nrdc.org; CN=Ellen
 Kurlansky/OU=DC/O=USEPA/C=US@EPA; CN=Elliott
 Zenick/OU=DC/O=USEPA/C=US@EPA; CN=Howard
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 Colwill/OU=DC/O=USEPA/C=US@EPA; CN=Joseph
 Goffman/OU=DC/O=USEPA/C=US@EPA; CN=Patricia
 Embrey/OU=DC/O=USEPA/C=US@EPA; CN=Peter
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 Napolitano/OU=DC/O=USEPA/C=US@EPA[]; hawkins@nrdc.org; dlashof@nrdc.org; CN=Ellen
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Cc: CN=Addie Johnson/OU=DC/O=USEPA/C=US@EPA;CN=Amit
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 Miller/OU=DC/O=USEPA/C=US@EPA;radhar@nrdc.org[]; adhar@nrdc.org[]
From: CN=Cindy Huang/OU=DC/O=USEPA/C=US
Sent: Fri 4/1/2011 1:46:29 PM
Subject: Rescheduled: Meeting with NRDC on Section 111 Standards for Power Plants (Apr 1
 04:30 PM EDT in Ariel Rios North room 5400, 1200 Pennsylvania Ave. NW Conference: 1-866-

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Sent: 03/21/2011 06:40 PM AST
To: <hwang.cindy@epa.gov>
Cc: Joseph Goffman; "Adhar, Radha" <radhar@nrdc.org>
Subject: Meeting request

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To: "Doniger, David" [ddoniger@nrdc.org]
Cc: "Michael Myers" [Michael.Myers@ag.ny.gov]; atricia Embrey/DC/USEPA/US@EPA;"Vickie Patton" [Vickie_Patton@environmentaldefense.org]; Vickie Patton" [Vickie_Patton@environmentaldefense.org]; lliott Zenick/DC/USEPA/US@EPA[]
From: Joanne Spalding
Sent: Fri 9/24/2010 6:42:42 PM
Subject: RE: Resend: Combined state/environmental edits on draft
ddoniger@nrdc.org
www.nrdc.org
<http://switchboard.nrdc.org/blogs/ddoniger/>

Any time Monday afternoon ET works for me.

-----"Doniger, David" <ddoniger@nrdc.org> wrote: -----

To: "Michael Myers" <Michael.Myers@ag.ny.gov>, <Embrey.Patricia@epamail.epa.gov>, "Joanne Spalding" <Joanne.Spalding@sierraclub.org>
From: "Doniger, David" <ddoniger@nrdc.org>
Date: 09/24/2010 11:39AM
Cc: "Vickie Patton" <Vickie_Patton@environmentaldefense.org>, "Elliott Zenick" <Zenick.Elliott@epamail.epa.gov>
Subject: RE: Resend: Combined state/environmental edits on draft

I am free from 12:30 on, except 3-4:30.

David D. Doniger

Policy Director, Climate Center

Natural Resources Defense Council

1200 New York Ave., NW

Washington, DC 20005

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Cell: (202) 321-3435

Fax: (202) 789-0859

ddoniger@nrdc.org

on the web at www.nrdc.org

read my blog: <http://switchboard.nrdc.org/blogs/ddoniger/>

From: Michael Myers [mailto:Michael.Myers@ag.ny.gov]
Sent: Friday, September 24, 2010 2:37 PM

To: Embrey.Patricia@epamail.epa.gov; Joanne Spalding
Cc: Vickie Patton; Elliott Zenick; Doniger, David
Subject: Re: Resend: Combined state/environmental edits on draft

I'm available Monday afternoon.

>>> <Embrey.Patricia@epamail.epa.gov> 9/24/2010 2:34 PM >>>

We are hoping to get back to you on Monday. Can you hold some time Monday afternoon eastern time?

From: Joseph Goffman
Sent: 09/24/2010 11:14 AM EDT
To: "Joanne Spalding" <Joanne.Spalding@sierraclub.org>; "Gunter, David (ENRD)" <David.Gunter2@usdoj.gov>
Cc: Patricia Embrey; "Vickie_Patton" <Vickie_Patton@environmentaldefense.org>; "ddoniger"
<ddoniger@nrdc.org>; "Michael Myers" <Michael.Myers@ag.ny.gov>; Avi Garbow; Elliott Zenick; Eric Ginsburg;
Peter Tsirigotis
Subject: Re: Resend: Combined state/environmental edits on draft

Joanne, Vickie, David and Mike - Thank you very much for getting this to us promptly. We will be conferring internally and getting in touch. Thanks, again.

From: Joanne Spalding [Joanne.Spalding@sierraclub.org]
Sent: 09/24/2010 01:17 AM MST
To: "Gunter, David (ENRD)" <David.Gunter2@usdoj.gov>
Cc: Patricia Embrey; Vickie_Patton@environmentaldefense.org; ddoniger@nrdc.org; Michael.Myers@ag.ny.gov;
Avi Garbow; Elliott Zenick; Eric Ginsburg; Joseph Goffman; Peter Tsirigotis
Subject: Resend: Combined state/environmental edits on draft

Resending because delivery to David Gunter failed the first time.

-----Joanne Spalding/Sierraclub wrote: -----

To: Embrey.Patricia@epamail.epa.gov
From: Joanne Spalding/Sierraclub
Date: 09/24/2010 01:12AM
Cc: Vickie_Patton@environmentaldefense.org, ddoniger@nrdc.org, Michael.Myers@ag.ny.gov,
DGunter@ENRD.USDOJ.GOV, Garbow.Avi@epamail.epa.gov, Zenick.Elliott@epamail.epa.gov,
Ginsburg.Eric@epamail.epa.gov, Goffman.Joseph@epamail.epa.gov, Tsirigotis.Peter@epamail.epa.gov
Subject: Combined state/environmental edits on draft

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Thank you for offering the draft settlement agreement. It is a meaningful step toward resolving our claims. The attached version includes the combined proposed edits of the state and environmental petitioners. We have not made any changes to the schedule. We have, however, changed "addresses" to "includes" in paragraphs 1 and 2, as we discussed in our last call. We think it is very important that EPA commit to proposing performance standards for greenhouse gas emissions from EGUs. EPA has already found that GHGs endanger health and welfare, and both individually and as a category, EGUs are the largest GHG emitters. Over the past year, EPA has examined a variety of effective methods to limit GHG emissions from EGUs, along with other stationary sources. We do not see any legal or technical obstacle that would preclude a commitment to including GHG performance standards in a proposed rule.

Our very cursory review of prior settlements has yielded several instances in which EPA has agreed to include specific content in proposed rules. In a number of situations, the settlement has recited at length the exact language that would appear in the proposed rule. A few sample settlements are attached. The circumstances of this case do not warrant a different treatment.

The attached draft also contains other edits, which we can explain further in our next conversation. We are available Friday to discuss these proposed changes and work together to resolve any remaining differences.

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[attachment "Draft EGU settlement Sept 21 NRDC-State-EDF comments 9-23 3pm - Circulate.doc" removed by Joanne Spalding/Sierraclub]

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[attachment "DENVER-#292635-v2-PANNA_amended_settlement_agmt_7_30.DOC" removed by Joanne Spalding/Sierraclub]

To: Howard Hoffman/DC/USEPA/US@EPA[]
From: Megan Ceronsky
Sent: Tue 6/28/2011 9:32:38 PM
Subject: GHG NSPS 111(d) design
[Section 111\(d\) GHG NSPS Design Framework \(6.28.2011, detailed\).docx](#)

Hello Howard—

We wanted to send you the latest version of our thinking for the design of the power plant GHG NSPS under Sec. 111(d). We would welcome an opportunity to discuss this with you and get your thoughts.

Best,
Megan

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Section 111(d) of the Clean Air Act

This short paper outlines a 111(d) GHG NSPS structure for existing fossil-fired EGUs, including: (1) the establishment of the 111(d) standard on the basis of available efficiency improvements at power plants and reductions in utilization from demand-side efficiency improvements; (2) an alternative compliance pathway for the GHG NSPS for plants that commit to retire by 2020; (3) a regulatory design that incorporates all fossil fuel fired EGUs; and (4) implementation flexibility for State programs. The Addendum considers implementation of the suggested framework in more detail. By relying on energy efficiency this framework mobilizes a highly cost-effective and widely available resource across the nation that secures multi-pollutant benefits in protecting human health and the environment.

1. Establishment of the default 111(d) standard:

EPA establishes an emission rate standard that gradually declines over time to achieve substantial near-term emission reductions and to guide efficient utility investment decisions to secure long-term pollution reductions protective of human health and the environment. We believe the analyses outlined below would support a reduction in the sector's overall emission rate on the order of 10-15% by 2020. This standard would serve as the default regulatory framework provided in the emission guidelines, and establish the level of emission reductions that a State program must meet in an equivalency determination (even though presumably the State programs will utilize different regulatory frameworks with additional flexible compliance mechanisms.) The standard would be based on:

(a) An average [x%] onsite efficiency improvement requirement, where on-site efficiency improvements are found to be an adequately demonstrated component of the best system of emission reduction. Note that the percentage improvement required could be higher for certain subcategories and lower for others if the technological analysis found that the capacity for improvement varied. The design of the standard and subcategories would reflect differences in utilization that affect efficiency and would ensure that units that have already made significant investments in efficiency would not be penalized. The design of the standard also could spur significant improvement in the most inefficient units currently operating given the potential for near-term progress in reducing pollution at these units.

(b) Reductions in utilization achieved via demand side management and demand side energy efficiency investments that achieve quantifiable, surplus, enforceable, and permanent emission reductions. Reducing electricity demand via energy efficiency and demand side management—with available technologies—has been demonstrated to be one of the most cost-effective means of reducing GHG emissions from the power sector. Because reductions in demand lead to reductions in utilization within the regulated sector, there is a close legal connection between the regulated source and the system of emission reduction that is relied upon. The framework assumes that each plant can meet the applicable emission rate standard through a combination of on-site efficiency improvements and investments in demand-side energy efficiency and demand side

management. Reductions in emissions due to the demand-side interventions would be credited in the responsible unit's emission rate. There are a number of different ways that demand reduction and associated emission reduction could be quantified, credited, and verified, which are explored further in the Addendum. Note, however, that the proposal assumes that any generator selling electricity into a State could invest in demand-side efficiency improvements or demand management that would reduce demand and emissions, and be able to take credit for those reductions. For example, the Forward Capacity Market operated by the New England ISO establishes an enforceable framework for States to bid demand-side efficiency investments into the market as capacity resources. We also assume that third parties would offer demand reduction and demand management services to generators. Available utility-scale studies on the potential for energy efficiency could help inform the default emission rate including the pace of reductions as some new efficiency measures may require a phase in period.

2. *Alternative compliance pathway:*

Any source that elects to commit to a near term retirement (by 2020) is placed in a separate subcategory with an alternate NSPS compliance pathway that entails making the commitment to retire enforceable under the law. Sources in this subcategory would be exempted from the emission rate reduction requirements outlined under section 1 above, with reliance on § 111(d)'s directive to consider the "remaining useful life" of a source when designing the NSPS. (This is similar to the approach used in EPA's regional haze BART guidelines.) Note, however, that these units would still be required to meet the emission reduction requirements established by separate Clean Air Act regulatory programs and to reduce GHG emissions through available, low cost efficiency adjustments at the unit even though exempted from the default emission rate reduction requirements.

3. *Implementation flexibility:*

The structure described above could form the backstop, default § 111(d) standards. States could then choose to demonstrate that they would achieve equal or greater emission reductions via an alternate framework utilizing flexible compliance mechanisms. EPA could also propose an opt-in regulatory framework utilizing emissions trading or averaging with an appropriate concomitant increase in required emission reductions, as the Agency did under the MWC NO_x emission guidelines. Under these frameworks utilities would have considerable flexibility in how they would achieve the standard including plant efficiency improvements, demand side efficiency, retirement of aging inefficient units and replacement with modern infrastructure, co-firing with renewables, and other solutions. The declining emission rate standard established in the emission guidelines, however, would provide a long-term price signal to guide utility investment decisions and compliance strategies.

4. *Incorporating all fossil fuel fired EGUs:*

It will be important for the GHG NSPS regulatory framework to incorporate all fossil fuel fired EGUs (either through one overarching sector category or through linked sectors) in order to allow states and utilities to optimize utilization of different plants and fuels to achieve cost-effective emission reductions.

Addendum: Implementation Considerations

Calculation of Energy Efficiency Potential:

From EPA's 2007 Guide for Conducting Energy Efficiency Potential Studies:

In general, a potential analysis involves the following steps:⁴

- Identify the baseline energy consumption forecast, including a specific understanding of what it does and does not include in terms of future changes to codes and standards, natural efficiency adoption, planned efficiency programs, etc. (Presumably this is already done through the IPM modeling.)
- Disaggregate the baseline forecast into customer and other segments (e.g., end uses) appropriate for the analysis.
- Characterize efficiency measures:
 - Identify energy, demand, and other savings (e.g., operations and maintenance) of each measure, including changes over time.⁵
 - Identify costs associated with each measure, including changes over time, such as prices coming down because of greater volume sold and technology improvements.
- Screen measures for economic effects, cost-effectiveness, and other resource effects.
- Develop program designs, in terms of bundled measures targeting particular customer groups and/or end-uses.
- Estimate measure penetrations for baseline and efficient scenarios for each program year using program design information, available studies, past program results, understanding of the specific markets, etc.
- Calculate total savings for all efficiency measures.
- The quantity of emission reductions available via demand-side energy efficiency investments that would be incorporated into the NSPS as “adequately demonstrated” could be established based on a subset of the total potential savings (similar to the way in which not all reasonably available control measures are presumed to be implemented in a nonattainment area even if available or in which the Agency accounts for the NAS

⁴ See also ICF International, Energy Efficiency Potential Model, <http://www.icfi.com/insights/products-and-tools/eepm>; Federal Energy Regulatory Commission, *A National Assessment of Demand Response Potential* (June 2009), <http://www.ferc.gov/legal/staff-reports/06-09-demand-response.pdf>; McKinsey & Company, *Reducing U.S. Greenhouse Gas Emissions: How Much at What Cost?* (December 2007), http://www.edf.org/documents/9665_McKinsey%20GHG%20Report.pdf; Energy Center of Wisconsin, *A Review and Analysis of Existing Studies of the Energy Efficiency Resource Potential in the Midwest* (August 2009), <http://www.midwesterngovernors.org/Energy/EEResourcePotential.pdf>; Georgia Institute of Technology, *Meta-Review of Efficiency Potential Studies and Their Implications for the South* (August 2009), <http://www.spp.gatech.edu/faculty/workingpapers/wp51.pdf>.

analysis on available greenhouse gas mitigation from a new heavy-duty diesel truck even while setting a standard that could be achieved based on a subset of the available technologies).

Quantification of avoided emissions (lbs CO₂):

One method of quantifying the emissions avoided due to a demand-side energy efficiency intervention would be to follow the approach recommended in the 2004 guidance to States and local areas on crediting emission reductions from energy efficiency and renewable energy measures in State Implementation Plans.² This guidance recommends using dispatch and emission reduction models to calculate the reduction in emissions that occurs based on demand reductions in a specific service territory. Note that other proxies can be used to conservatively estimate the reductions in emissions that would result from a reduction in demand, including reliance on data indicating which units are marginal and likely to be displaced. Under the SIP guidance, states can only take credit for emission reductions that are projected to occur within the non-attainment area, unless reductions outside the non-attainment area can be shown to affect air quality within the non-attainment. In the latter case, the amount of potential credit is determined by the extent to which reductions will improve air quality in the nonattainment area.³ In the context of GHG emissions, any reduction improves atmospheric GHG concentrations equally, so all emission reductions achieved by these programs should be counted. This approach aligns with the § 111 legal framework, which (unlike § 110) does not require emission reductions to occur within a specific geographic area.

Distributing credit for achieved emission reductions:

One approach to allocate credit for reductions in emissions from reductions in energy demand or demand side management would be to allow whichever entity funds a demand-based emission reduction to claim credit for reduced emissions (e.g. to subtract the lbs CO₂ from the numerator in its emissions rate). Only generators that sell power into the state in which the demand reduction was achieved would be eligible to claim the reduced emissions, in order to retain a nexus between the reduction in utilization and the demand reduction or demand management intervention. Because power generation and electricity grids cross state boundaries, note that any state equivalency framework must be capable of distinguishing between reductions in utilization due to demand side efficiency and demand side management investments and reductions in utilization due to other factors, and attribute credit accordingly.

Another approach would be to use the modeling quantification approach described above but only to allow those plants projected to reduce utilization to claim credit, and to do so proportionately to dispatch reduction projections. This will make the design of the emission reduction requirements (and the incentive structure for investment in these improvements) more complex.

² EPA, Office of Air and Radiation, “Guidance on State Implementation Plan (SIP) Credits for Emission Reductions from Electric-Sector Energy Efficiency and Renewable Energy Measures,” (August 2004).

³ *Id.* at 21 (No. 27).

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From: CN=Cindy Huang/OU=DC/O=USEPA/C=US
Sent: Tue 3/22/2011 8:50:36 PM
Subject: Meeting with NRDC on Section 111 Standards for Power Plants

From: "Doniger, David" [ddoniger@nrdc.org]
Sent: 03/21/2011 06:40 PM AST
To: <hwang.cindy@epa.gov>
Cc: Joseph Goffman; "Adhar, Radha" <radhar@nrdc.org>
Subject: Meeting request

Cindy,

I am following up a conversation with Joe Goffman to ask for a meeting as soon as feasible with Gina McCarthy, Joe, and whomever they want to include, on the subject of the Section 111 standards for power plants.

Attendees on our side would include David Hawkins, Dan Lashof, Meleah Geertsma, and myself.

You could be in touch with me or (probably more productively) with our assistant, Radha Adhar, who is copied above. Radha's number is 202

Ex. 6 - Personal Privacy

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Sent: Fri 4/1/2011 1:46:29 PM
Subject: Rescheduled: Meeting with NRDC on Section 111 Standards for Power Plants (Apr 1
 04:30 PM EDT in Ariel Rios North room 5400, 1200 Pennsylvania Ave. NW Conference: 1-866-

Ex. 6 - Personal Privacy Access: Ex. 6 - Personal Privacy

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STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
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DIVISION OF SOCIAL
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October 28, 2011

BY ELECTRONIC MAIL

David Gunter
U.S. Department of Justice
Environment and Natural Resources Division
Appellate Section
P.O. Box 23795
Washington, D.C. 20024

RE: *New York v. EPA* (D.C. Cir. 06-1322)/Negotiations to Revise Settlement
Agreement

Dear Mr. Gunter:

On behalf of State Petitioners and Environmental Petitioners (collectively, "Petitioners") in the above-referenced case, this letter is to memorialize the parties' understanding of the terms allowing for additional time needed to negotiate a revised Settlement Agreement. This letter supplements my letter to you dated October 14, 2011.

In light of the progress made to date, Petitioners are amenable to extend the time for negotiations until November 30, 2011. Petitioners agree not to invoke their remedies under ¶ 7 of the Settlement Agreement through that date. Please let me know if anything in this letter does not accurately reflect our discussions.

Sincerely,

Michael J. Myers
Assistant Attorney General
(518) 402-2594

To: Patricia Embrey/DC/USEPA/US@EPA[]
From: Vickie Patton
Sent: Thur 10/13/2011 2:47:32 PM
Subject: NSPS Draft Settlement Agreement Revisions

Hi Patricia - Do you have a moment to talk before the call? Best wishes, Vickie

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EPA Office of Air and Radiation Excerpts of Priorities from the FY 2012 NPM Guidance

Compiled on June 27, 2011

CRITERIA POLLUTANTS & REGIONAL HAZE

Criteria Pollutants

Headquarters

- Provide annual air quality reports to Regions by June 1, 2012, and work with Regions to develop appropriate actions to bring new violating attainment areas into compliance with the NAAQS.
- Work with Regions on a consistent approach for making final clean air determinations for 2008 lead nonattainment areas, 1997 and 2006 PM_{2.5} nonattainment areas and 1997 8-hour ozone NAAQS nonattainment areas that attained based on the Clean Data Policy.
- Work with Regions on a consistent approach for taking action to approve attainment date extensions and making findings of failure to attain as necessary for 1997 PM_{2.5} nonattainment areas and 1997 8-hour ozone NAAQS nonattainment areas.
- Provide support to Regions and states on local ozone reduction programs to help achieve attainment of 2011 8-hr ozone NAAQS prior to designations process.
- Issue final implementation rule for 2011 ozone NAAQS.
- Work with Regions on a consistent approach for designating areas for the 2011 ozone NAAQS.
- Develop designations guidance for 2011 NO₂, and SO₂ NAAQS and 2012/2013 PM_{2.5} NAAQS state recommendations.
- Complete initial designations for NO₂ and SO₂ primary NAAQS.
- Continue to encourage and implement programs that result in cleaner burning appliances, provide information to the public on how to burn biomass more cleanly, and identify tools and resources for innovative financing approaches.
- Continue to coordinate and provide technical and policy guidance to the Regions on the implementation programs for the 1997 8-hour ozone and PM_{2.5} NAAQS.
- Issue revised implementation guidance for 2006 PM_{2.5} NAAQS.
- Work with federal, state, and tribal partners to address fire emissions impact on attainment of the NAAQS and the regional haze progress goals.
- Provide technical and policy guidance to Regions on implementing the lead, NO₂, and SO₂ NAAQS.
- Provide guidance for the Lead infrastructure SIPs due October 2011, the NO₂ §110(a)(2) infrastructure SIPs due January 2013 and the SO₂ §110(a)(2) infrastructure SIPs due June 2013.
- Finalize CAFO emission estimation methodologies.
- Coordinate best management practice (BMP) studies with USDA for CAFO minimizing emissions.
- Continue outreach and education of public and animal industry on CAFO air emission issues.

- Explore/evaluate potential tools to develop the CAFO process-based model for emission estimates.
- Provide support on integrated and multi-pollutant air pollution planning activities.
- Work with Regions on development and review of fee programs to satisfy CAA §185.
- Issue final NO_x /SO_x secondary NAAQS.
- Provide guidance for the implementation of the Exceptional Events Rule.
- Develop baselines for measuring air quality in areas with potential environmental justice concerns.
- Improve analytical tools to assess environmental justice impacts of rulemakings.
- Improve communication and outreach to environmental justice communities to promote meaningful involvement in the rulemaking process.
- Develop a web-based SIP resource center and SIP best practices.
- Promote and provide technical assistance to States, local agencies and Tribes to conduct air quality reporting and forecasting, especially in potential new nonattainment areas.
- Administer a wood smoke reduction program.
- Work with regional offices to improve timeliness of taking action on SIPs.
- Engage state/local agencies in guidance and regulation development process.

Regions

- Act on State Implementation Plan (SIP) submissions and redesignation requests including any remaining unsubmitted regional haze SIPs, and assist in the designations process for the revised NO₂, SO₂, PM_{2.5}, and ozone standards.
- Support multi-pollutant planning and efforts to reduce emissions of all air pollutants, while addressing other considerations such as land use, transportation, and energy.
- Review air quality reports and work with states to develop appropriate actions to bring new violating attainment areas into compliance with the NAAQS.
- Take final rulemaking action within 18 months of receipt of any redesignation request that is not impacted by national policy developments.
- Track allowable and actual processing times for SIPs processed during the fiscal year and submit midyear and end-of-year reports to the National SIP Processing Workgroup.
- Manage the processing of SIP revisions to ensure final rulemaking actions on all ozone and PM_{2.5} SIPs are completed consistent with the annual SIP processing goal.
- Process voluntary and mandatory reclassifications for 8-hour ozone areas.
- Take final rulemaking actions on remaining 1997 PM_{2.5} and 1997 8-hr ozone NAAQS SIP submittals (e.g., RFP, attainment demonstrations).
- Work with state to submit SIPs due for the 1997 8-hr ozone moderate nonattainment areas that were reclassified to serious.
- Assist states to develop and submit SIPs due for the 1997 8-hr ozone Subpart 1 nonattainment areas that were reclassified to Subpart 2.
- Issue clean air determination actions and grant attainment date extensions, as appropriate, for 1997 PM_{2.5} nonattainment areas with an April 5, 2010 attainment date.
- Issue attainment determination actions for 1997 8-hour ozone nonattainment areas including mandatory reclassifications, clean air data findings, or one-year attainment extensions.

- Coordinate with states and tribes on areas designated nonattainment for the 2006 PM_{2.5} NAAQS and assist them to develop plans due December 2012 to attain the 2006 PM_{2.5} NAAQS.
- Work with HQ and states to finalize initial designations for the NO₂ and SO₂ NAAQS.
- Assist states with developing 2011 CO, 2012/2013 PM_{2.5}, and ozone NAAQS state recommendations for designations.
- Assist states to develop and implement local ozone reductions programs to help achieve attainment of 2011 8-hr ozone NAAQS prior to designations process.
- Assist states on developing timely 110(a)(2) infrastructure SIPs for NO₂ due January 2013 and SO₂ due June 2013.
- Assist states to develop timely §110(a)(2) infrastructure SIP submittals due October 2011 and for the 2008 lead NAAQS and attainment demonstration SIPs due June 2012 for states with nonattainment areas designated in December 2010.
- Coordinate with states, tribes, and local governments on developing air quality forecasting for ozone and PM_{2.5} and in enhancing public reporting (<http://enviroflash.info>).
- Work with and assist regional enforcement staff.
- Work with states to recognize and address environmental justice issues that can be addressed in SIPs.
- Actively promote and assist states, tribes, and local governments in implementing wood smoke reduction programs (e.g., woodstove changeouts and Burnwise education campaigns).
- Assist with outreach and capacity building for minority, low-income and indigenous communities to improve understanding of and engagement in regulatory and permitting processes.

States should:

- As appropriate, submit redesignation requests including maintenance plans for areas with clean air quality data.
- Continue to implement SIPs for 1997 PM_{2.5} and ozone NAAQS.
- Develop and submit 2006 PM_{2.5} NAAQS SIPs due no later than December 2012.
- Submit any outstanding 1997 PM_{2.5} and ozone SIP elements including SIPs due for the 1997 8-hr ozone Subpart 1 nonattainment areas that were reclassified to Subpart 2 and SIPs due for the 1997 8-hr ozone moderate nonattainment areas that were reclassified to serious.
- Work with Regions to develop and implement local ozone reductions programs to help achieve attainment of 2011 8-hr ozone NAAQS prior to designations process.
- Submit §110(a)(2) infrastructure SIPs for Lead due October 2011. For Lead nonattainment areas designated in December 2010, submit attainment demonstration SIPs that are due June 30, 2012.
- Consult with EPA as necessary to finalize area designations for the NO₂ primary and SO₂ primary NAAQS.
- Begin evaluating technical information used to support 2011 CO and ozone NAAQS state recommendations for designations.
- Air Quality Management Plans (AQMPs) for the States of New York and North Carolina, and for the city of St. Louis (Missouri and Illinois) were available in spring 2010 (see

www.epa.gov/oar/aqmp). States should refer to this information and should begin to integrate activities affecting or affected by air quality (e.g. land use, transportation, energy, climate, environmental justice, and ecosystem impacts) into their planning efforts.

- Conduct public notification and education efforts, including reporting air quality forecasts and current conditions for ozone and particle pollution.
- Submit NAAQS pollutant data, PAMS, and QA data to AQS directly or indirectly through another organization according to schedule in 40 CFR Part 58 (applies to all state/local primary quality assurance organizations).
- Implement strategies for controlling emissions from wood smoke where it is a primary contribution to air quality problems, including woodstove changeout and Burnwise education campaigns.

Regional Haze

Headquarters

- Continue to coordinate with Federal Land Managers on regional haze issues.
- Continue to coordinate with Regions and provide technical and policy assistance to ensure submission of any remaining unsubmitted regional haze SIPs and review of submitted SIPs
- Assist Regions with completing any remaining Federal Implementation Plans (FIPs) needed to fulfill statutory obligations.

Regions

- Manage the processing of SIP revisions to ensure that final rulemaking actions on all regional haze SIPs are completed consistent with legal deadlines and the annual SIP processing goal.
- Complete any remaining Federal Implementation Plans (FIPs) needed to fulfill statutory obligations.

States should:

- Continue to work with Regions on any remaining issues related to submitted regional haze SIPs.
- Implement BART requirements.
- Submit any outstanding regional haze SIP elements.

AMBIENT MONITORING

NAAQS Monitoring

Headquarters

- Provide technical monitoring support and training for revised NAAQS and NAAQS reviews.

- Manage the national contracts for filter purchases, and the national contracts for laboratory analysis of filters for speciation and analysis of filters for lead TSP, including providing data for review by states and submitting data to AQS.
- Monitor timeliness and completeness on the national scale for EPA-supported monitoring and flag still-unresolved issues for Regional Office resolution.
- Review data certification documentation and set certification flags on AQS data where certification/QA requirements have been met.
- Complete Management System Reviews of at least two regional monitoring programs.
- Publish/Prepare National report on precision and bias performance by September 30, 2011.
- Coordinate with Regions to ensure the independent QA of NAAQS monitoring sites.
- Publish/prepare National report on 2011 Performance Evaluation Program (PEP) and National Performance Audit Program (NPAP) findings within two months of each audit and overall by July 1, 2012.
- Award/manage interagency agreement with National Park Service for operation of IMPROVE monitors for regional visibility. Allow states and tribes to use this mechanism for IMPROVE-protocol sampling at other locations.
- Review and approve/disapprove requests for Federal Equivalent Methods (FEM) for continuous PM_{2.5} methods within 120 days of completed application, and similarly act on each first request for each Approved Regional Method (ARM).
- Develop ambient monitoring portion of the FY 2013 national program and grant guidance consistent with NAAQS final monitoring rules, the national strategy, in collaboration with state, tribal, and local leadership, and Regions by April 2012.

Regions

- Work with state and local agencies to implement the second phase of the near-source lead monitoring network; develop NO₂ monitoring plans; provide assistance for changes in 2012 ozone monitoring season, if required; communicate required changes to each state's ozone monitoring network for non-urban and lower-population areas for inclusion in annual monitoring network plans; and ensure certification of 2011 data submitted to the Air Quality System database by May 1, 2012. Also, work with HQ and state and local agencies to expand community-based air toxics monitoring, particularly in communities disproportionately impacted by air pollution.
- Work with states to ensure that state monitoring networks for NAAQS, NCore, PM_{2.5} speciation, and PAMS meet applicable regulatory and guidance requirements.
- Identify and resolve completeness and timeliness issues with regard to quarterly data submission by monitoring agencies.
- Evaluate submitters' annual data certification requests and documentation and forward to HQ when adequate.
- Review the evidence that state/local monitoring programs meet 40 CFR Part 58 appendices A, C, D, and E as applicable (evidence is a required element in annual monitoring plans due July 1) and seek corrective action by monitoring agencies where needed.
- Review requests for changes in state monitoring plans and act on them within 120 days.

- Manage contracts for independent performance audits of state/local monitor networks (PEP and NPAP), for those states choosing that approach to independent audits (some Regions only).
- Perform Technical Systems Audits on 1/3 of reporting organizations, or as required to achieve an audit of each agency within a 3-year period.
- Support state monitoring network and tribal implementation of lead and rural ozone monitors.
- Transfer State and Tribal Air Grant (STAG) funds to OAQPS for any additional state/tribal IMPROVE-protocol sites requested by state, tribal, or local agencies by May 2012 for monitoring to begin/continue in July 2012.

States should:

- Implement second phase lead monitoring at near-source locations.
- Implement lead monitoring at non near-source locations as part of each state's annual monitoring network plan due to EPA by July 1, 2011.
- Submit 2013 annual network plan required by 40 CFR § 58.10, by July 1, 2012, unless another schedule has been approved (state/local only, unless tribal work plan requirement). The plan should provide for the movement or start-up of additional ozone monitoring stations associated with smaller urban areas and non-urban areas, if required.
- Operate monitors for other NAAQS pollutants, NCore, PM_{2.5} speciation, and PAMS according to 40 CFR Part 58, approved monitoring plans, and/or grant agreements including QMPs and QAPPs.
- Submit NAAQS pollutant data, PAMS, NCore and QA data to AQS according to schedule in 40 CFR Part 58.
- Certify 2011 NAAQS pollutant data in AQS and provide supporting documentation by May 1, 2012 (state/local only, unless tribal work plan requirement).
- Ensure adequate, independent QA audits of NAAQS monitors, including PEP and NPAP or equivalent (state/local only, unless tribal work plan requirement).
- Conduct monthly QA checks for flow rates of PM_{2.5} speciation monitors and submit data quarterly to AQS. Target is for 75% completeness. (state/local only, unless tribal work plan requirement).
- Report real time ozone and PM_{2.5} data to AirNOW for cities required to report the AQI (state/local only).

Air Toxics Monitoring

Headquarters

- Transfer 103 funds for NATTS grants to affected Regional Offices.
- Manage national contract for NATTS lab analysis.
- Conduct Proficiency Testing and Technical System Audits for national contract lab and state/local labs servicing NATTS, and report results within 60 days of audit after opportunity for state/local lab review of draft audit report.
- Provide national/regional-scale analysis of currently available air toxics data by September 2012, with conclusions relevant to air quality management and to establishing future goals for the NATTS program and other monitoring initiatives.
- Monitor NATTS data submissions for completeness and timeliness.

- Conduct a grant competition for community-scale air toxics ambient monitoring projects. Provide guidance to Regions for negotiating individual grants to ensure that data meet risk screening, risk characterization, and/or risk assessment requirements where appropriate given study objectives that were material in selecting the project for funding.
- Provide mechanism for optional participation in Proficiency Testing and Technical System Audits by labs which are not direct NATTS participants. (Cost would be borne by the approved state/local lab.)
- Provide tools and guidance for analyzing local air toxics data.
- Review Technical Assistance Document and update if appropriate.

Regions

- Work with states to ensure NATTS sites are operated according to EPA's technical guidance and the QAPP and QMP.
- Ensure NATTS work plans are consistent with program office template guidance.
- Ensure NATTS QAPP is adequate to provide quality data for submission to AQS.
- Participate in at least 50% of NATTS TSA lab and field site audits.
- Track status and coordinate needed follow-up actions between the program office and states, tribes, and local agencies in support of the NATTS QA program (e.g., TSA and PT activities).
- Identify and resolve completeness and timeliness issues with regard to quarterly data submission by monitoring agencies.
- Award the community-scale air toxics ambient monitoring grants, as applicable.
- Assist states, tribes, and local governments in siting, installing, and operating new and upgraded toxic monitoring equipment for community-scale grant projects.
- Review QA programs and ensure compatibility of community-scale air toxics measurements across projects and with NATTS, where appropriate.
- Assess and review existing air toxics networks, and assist states, tribes, and local agencies in the siting, installation, and operation of new and upgraded toxic monitoring equipment.

States should:

- Operate NATTS sites according to national technical guidance and the QAPP and QMP.
- Participate in inter-laboratory Proficiency Testing and Technical System Audit programs according to national guidance and the approved QAPP and QMP (state/local only).
- Submit NATTS data to AQS quarterly, within 120 days of end of each quarter. The data objective for completeness rate is 85% of the potential concentration values for each quarter (state/local only).
- Conduct federally-funded community assessment projects consistent with grant terms (including schedule), technical guidance, and QAPP and QMP (state/local/tribal).
- Submit data from federally-funded community monitoring projects to AQS quarterly, within 120 days of end of each quarter. The data objective for completeness rate is 85% of the potential concentration values for the study period (state/local/tribal).
- Operate study sites based on the terms of QAPP and QMP (state/local/tribal).

Use of the Exchange Network for Reporting Air Quality Monitoring Results

HQ Actions

As part of preparing this guidance, EPA has examined the current process for submitting Air Quality data, and will do the following in FY 2012 to address potential obstacles to increased use of the exchange network:

- Fund enhancements to AQS to allow automatic loading of data submitted via the Exchange Network;
- Continue efforts (e.g., coordination with the Network Governance and ECOS and air quality data management software vendors to facilitate deployment of upgraded software that produces compatible XML formatted files) to make available information, tools, and guidance needed to help states and other partners transition from “flat files” to the EN XML standard;
- Develop and conduct necessary training sessions for staff submitting air quality measurement results in conjunction with the Regions and ECOS;
- Stop accepting “flat file” submissions from states by the end of 2013; and
- Stop accepting “flat file” submissions from tribal, territorial, and locally delegated programs by the end of 2015.

Regional Actions

Using the resources developed in FY 2011, Regions should work with states to:

- Obtain commitments in the grant workplans from all or all but one state in each Region to submit XML-formatted AQS data by the end of 2012;
- Obtain commitments in the grant workplans from the remaining state in each Region to submit XML formatted AQS data by the end of 2013; and
- Increase the use of the exchange network by non-state submitters of air quality information by making the EN client, XML tools and the necessary training available to them with the goal of 100 percent reporting using the Exchange Network by the end of 2015.

Title V and NSR

Headquarters

- Support Regions in issuing permits and evaluating Title V and NSR permit programs.
- Support and maintain Title V permit activity database (TOPS).
- Support tribal efforts in developing Title V and NSR permitting programs and delegation requests.

- Continue to assist Regions on NSR regulatory revisions and proposed regulations.
- Continue to assist Regions in implementing the final regulations for permitting new and modified sources in Indian country.
- Continue to modify existing NSR permit regulations, as necessary, to be consistent with revised NAAQS.
- Prepare and issue final orders on Title V citizen petitions based on drafts from Regions.
- Provide training and technical guidance to Regions and states.
- Develop sector- and source-specific guidance that will help permitting authorities and affected sources better understand program requirements for GHGs, GHG emissions for the selected source categories, methods for estimating those emissions, control strategies for GHG emissions, and available GHG measurement and monitoring techniques.
- Develop the Tailoring Step 3 rule.
- Incorporate environmental justice considerations into permitting guidance, including meaningful public involvement.

Regions

- Work on overseeing state permitting activities, issuing PSD and Part 71 permits in Indian Country and on the Outer Continental Shelf, permitting the pollution sources that remain to be addressed, and completing permit renewals. Improve public involvement opportunities in permitting process.
- Work with states to assist them in developing the technical capacity to address GHG emissions in the permitting of large sources.
- Review proposed initial, significant modifications and renewal operating permits, as necessary, to ensure consistent implementation of the Title V program.
- Report active Title V permits via the Title V Operating Permits database (TOPS) and update all applicable TOPS data.
- For purposes of updating TOPs, report outstanding renewals of Title V permits (permits older than 5 years that have not been renewed).
- Issue Title V permits to respond to objections when permitting authority fails to act.
- Continue working on Title V program evaluations pursuant to March 2002 Office of Inspector General (OIG) report.
- Prepare draft orders to citizen (public) petitions based upon OAQPS' petition handling process.
- Perform at least one Title V program evaluation for programs with at least 20 permits pursuant to February 2005 OIG report and set target to issue evaluation report within the fiscal year.
- Issue PSD and Part 71 permits in Indian country. Regions will issue PSD permits within one year of receipt of a complete application.
- Continue to assist permitting authorities on NSR regulatory revisions and proposed regulations.
- Evaluate NSR permit programs, as warranted and set target to issue reports within 120 days of evaluation.
- Provide training and technical guidance and support to permitting authorities and the public, as necessary.
- Take action on all NSR SIPs/TIPs.
- Continue issuance of Title V permits on tribal and other federal lands, as necessary.

- Review major NSR/PSD permits for new and modified sources, as necessary, to ensure consistent implementation of the NSR program.
- Provide End-of-Year Regional Progress Report for status of EPA review of NSR permits.
- Support efforts to build capacity of communities to engage in permit process in a meaningful manner.

States should:

- Ensure sources submit Title V applications for renewal.
- Provide timeliness data on new Title V permits and significant permit modifications to EPA Regional Offices for entry into TOPS.
- Continue to issue initial permits, significant modifications, and renewal Title V permits and reduce backlog of renewal permits.
- Participate with EPA in Title V permit program evaluations, set targets to respond within 90 days to EPA's evaluation report and implement recommendations as warranted.
- Issue new Title V permits and significant permit modifications within 18 months of application completeness determined by permitting authority.
- Issue 78% of major NSR permits within one year of receiving a complete permit application.
- Issue NSR permits consistent with CAA requirements and enter BACT/LAER determinations in the RACT/BACT/LAER Clearinghouse (RBLC).
- Provide timeliness data on NSR permits issued for new major sources and major modifications by entering data including "the application accepted date" and "the permit issuance date" in to the RBLC national database.

Air Toxics Implementation

Headquarters

- Continue to support the EIS and finalize the 2008 Inventory.
- Continue development of the 2008 NATA/NAPA assessment.
- Work with Regions, states, tribes, and local governments to develop and implement community-based air toxics programs that address outdoor, indoor, and mobile sources, including areas near schools and areas with potential environmental justice concerns. This includes efforts that support the Urban Air Toxics Strategy, CARE program, and OAR-OECA toxics effort.
- Develop implementation assistance tools (e.g., education and outreach materials, technical support) for states, tribes, and local governments for section 111, 112, and 129 standards, as needed.
- Continue developing tools and guidance for communities and support a learning center or institute for minority, low-income and indigenous communities to build capacity to engage in air quality programs, including air toxics programs, in a meaningful way.
- Continue to pilot development of enhanced public outreach and involvement activities both before and after rule proposal to promote meaningful involvement of communities that may be disproportionately impacted.
- Continue to develop baselines for measuring air quality in areas with potential environmental justice concerns.

- Undertake biannual assessments of the environmental benefits being achieved in environmental justice areas as a result of diesel emission reduction programs.
- Continue to oversee and approve qualification of Phase 2 for outdoor hydronic heaters.
- Continue to implement partnership programs for biomass fueled appliances, e.g., hydronic heaters, fireplaces including evaluation of retrofits for existing fireplaces.
- Continue to redesign our emission factors program.

Regions

- Delegate and provide assistance to co-regulators for section 111, section 112, and section 129 standards; increase emphasis on implementing programs and activities that contribute to reducing exposure to air toxics in areas that are experiencing disproportionate impacts. Support the ongoing OAR/Office of Enforcement and Compliance Assurance (OECA) effort to reduce toxic air pollution through standards, permitting, compliance monitoring and assistance activities, and enforcement, especially in communities that are disproportionately affected by pollution. Improve opportunities for meaningful involvement of the public in the rulemaking process, particularly minority, low-income and indigenous communities through enhanced outreach, training, and opportunities for dialog with rule development teams.
- Work with states, tribes, and local governments on reviewing the draft 2008 NATA/NAPA.
- Review the 2008 NEI and assist states, tribes, and local governments with similar reviews.
- Provide feedback to HQ on the 2008 NEI.
- Work with HQ on developing risk-based programs and assist in developing area source standards.
- Work with states, tribes, and local governments to: (1) implement a residual risk program, and (2) assess and address the combined impact of multiple sources of air toxics, encouraging voluntary reductions of air toxics from indoor and outdoor sources including residential woodsmoke.
- Assist states, tribes, and local governments, where appropriate, in conducting data analysis and assessment for air quality management implications in general. (Applies to states conducting air toxics monitoring regardless of funding source.)
- Work with states, tribes, and local governments to develop and implement area source programs.
- Delegate and provide implementation assistance to states, tribes, and local governments for section 111, 112, and 129 standards, as needed.
- Work with HQ to implement section 111, 112 and 129 standards, including Federal 111(d)/129 plans, in areas where states do not.
- As appropriate, provide assistance, data, and information to HQ in order to help facilitate revisions/amendments to section 111, 111(d), 112 and 129 rules, and associated Federal Plans.
- Work with HQ, states, tribes, and local governments to develop and implement community-based air toxics programs that address outdoor, indoor, and mobile sources, including areas near schools and areas with potential environmental justice concerns. This includes efforts that support the Urban Air Toxics Strategy, CARE program, and the OAR-OECA toxics effort.

- As appropriate, participate in residual risk analyses for MACT and/or GACT standard source categories, and standard setting process.
- Provide training to states, tribes, and local governments on air toxics program requirements.
- Work with HQ to support development of enhanced public outreach and involvement activities both before and after rule proposal to promote meaningful involvement of EJ communities.
- CARE Program: Regions should:
 - Provide multi-media regional support needed to ensure the success of the Regions' CARE cooperative agreements.
 - Identify experienced project officers/leaders for each of the CARE projects and provide training and support to them, as needed.
 - Strengthen cross-program regional teams organized to support CARE project leaders and CARE community needs with dedicated technical and programmatic support.
 - During CARE Level I projects, provide the technical support needed for communities to identify and rank their risks and build long-term, viable partnerships.
 - During CARE Level II projects, help communities' access EPA programs and expertise to create and implement local solutions and measure and track their results.
 - Encourage staff participation in training new project leaders and at sessions during the national CARE workshop.
 - Ensure required reporting of progress and results through the Quarterly and End of Year Reports and assist in other efforts to aggregate program results on a national level.
 - Support work to capture best practices and lessons learned to help other communities replicate these approaches.
 - Support CARE national teams that have been organized to manage the CARE program and provide support to Regional Office teams and projects.

States should:

- Quality assure, validate, and revise NEI facility data using EIS.
- Submit data for the integrated 2008 HAP emissions inventory.
- Develop 111(d)/129 plans and implement delegated or approved section 112, 111(d) and 129 standards, as appropriate, for major sources and area sources.
- Implement delegated residual risk standards.
- Work with communities to develop and implement voluntary air toxics programs that address outdoor, indoor, and mobile sources with emphasis on areas with potential environmental justice concerns.

CAIR/Transport Rule-Ozone (Seasonal NO_x) Program

- HQ (Clean Air Markets Division (CAMD)), Regions, and states assist sources with monitor certifications and recertifications, emissions monitoring and reporting.

- CAMD assists sources and other allowance account holders with allowance transfers and recordation.
- CAMD performs end-of-season reconciliation of emissions against allowances held in source accounts, determines program compliance, and deducts penalty allowances for any source not in compliance.
- CAMD and states perform electronic and field audits of monitor certifications, Part 75 continuous emissions monitoring systems (CEMS), and emissions reporting by sources. Part 75 CEMS field audits will be performed in accordance with EPA 430-B-96-038. States will provide electronic or hard copy reports of the audits and any corrective actions needed to the appropriate EPA Regional Office and CAMD. EPA encourages states to submit the Part 75 CEMS field audit reports using the Field Audit Checking Tool (FACT) developed by EPA to simplify and streamline the field audit process. CAMD will store FACT reports in a database where they will be available for states to access and track. EPA will issue a quarterly report listing the number of field audits performed by each state.
- CAMD assesses program, tracks performance against baselines and objectives, and reports on emissions, compliance, market analyses, program performance, and environmental results.
- Working with Regions, CAMD assists states and sources with transition to Transport Rule-ozone program implementation.

CAIR/Transport Rule-PM_{2.5} (SO₂ and Annual NO_x Control) Program

- CAMD assists states and sources with monitor certifications and re-certifications, emissions monitoring, and reporting.
- CAMD assists sources and other allowance account holders with allowance transfers and recordation.
- CAMD performs end-of-year reconciliation of SO₂ and NO_x emissions against allowances held in source accounts for the SO₂ and annual NO_x control programs, determines program compliance, and deducts penalty allowances for any source not in compliance.
- CAMD and states perform electronic and field audits of monitor certifications, Part 75 continuous emissions monitoring systems (CEMS), and emissions reporting by sources. Part 75 CEMS field audits will be performed in accordance with EPA 430-B-96-038. States will provide electronic or hard copy reports of the audits and any corrective actions needed to the appropriate EPA Regional Office and CAMD. EPA encourages states to submit the Part 75 CEMS field audit reports using the Field Audit Checking Tool (FACT) developed by EPA to simplify and streamline the field audit process. CAMD will store FACT reports in a database where they will be available for states to access and

track. EPA will issue a quarterly report listing the number of field audits performed by each state.

- CAMD assesses program, tracks performance against baselines and objectives, and reports on emissions, compliance, market analyses, program performance, and environmental results.
- Working with Regions, CAMD assists states and sources with transition to Transport Rule-PM_{2.5} program implementation.

Acid Rain Program

- CAMD performs end-of-year reconciliation of SO₂ emissions against allowances held in facility accounts, determines compliance for annual NO_x emission rates, and performs electronic and field audits of monitor certifications, Part 75 continuous emissions monitoring systems (CEMS), and emissions reporting by sources. Part 75 CEMS field audits will be performed in accordance with EPA 430-B-96-038. States will provide electronic or hard copy reports of the audits and any corrective actions needed to the appropriate EPA Regional Office and CAMD. EPA encourages states to submit the Part 75 CEMS field audit reports using the Field Audit Checking Tool (FACT) developed by EPA to simplify and streamline the field audit process. CAMD will store FACT reports in a database where they will be available for states to access and track. EPA will issue a quarterly report listing the number of field audits performed by each state. Working with states, tribes, local agencies, Regional Planning Organizations, and other partners in CASTNET, CAMD develops and continues implementation of an operations plan that will assure supportability over the next five years.
- CAMD reports progress in reducing sulfur and nitrogen deposition and in reducing the number of chronically-acidic water bodies in acid-sensitive regions, and SO₂ emissions reduced.
- CAMD disseminates information from the TIME/LTM program cooperators on surface water quality on monitored lakes and streams to states and sources in the Acid Rain Program.

FEDERAL STATIONARY SOURCE REGULATIONS

HQ Priorities

- Propose and promulgate area source standards and residual risk standards according to court ordered schedules.
- Promulgate National Emission Standards for Hazardous Air Pollutants (NESHAP) for Brick and Structural Clay.
- Promulgate NESHAP for Polyvinyl Chloride and Copolymers.
- Propose and promulgate additional amendments to prior NESHAP/MACT standards.
- Develop Response to Remand for Large Municipal Waste Combustion Units (MWCs).
- Develop Response to Remand for Small Municipal Waste Combustion Units (MWCs).

- Promulgate MACT for Utilities.
- Develop revisions to NSPS for residential wood heaters.
- NSPS Review Strategy – Promulgation.
- NSPS for Nitric Acid – Final.
- Finalize the reconsideration of NSPS Electric, Utility, and Industrial Steam Generating Units.
- Propose Other Solid Waste Incineration Units.
- Develop sector information for the Iron and Steel Industry MACT & NSPS.
- Develop sector information for the Chemical Industry, MACT, NSPS, RTR.
- Proposal for the Petroleum Refinery Industry, MACT, NSPS, RTR (sector).
- Develop NSPS that consider greenhouse gases for utilities and refineries.
- Engage communities in rulemakings by expanding outreach and capacity building, improving accessibility of decision makers, and improving transparency.

FEDERAL VEHICLE AND FUELS STANDARDS AND CERTIFICATION

Headquarters

- Propose Tier 3 vehicle and fuel standards in response to the May, 2010 Presidential Directive.
- Develop program to further reduce criteria pollutant emissions from light-duty vehicles, including program for cleaner fuel.
- Participate in international forums for ocean-going vessels and aircraft to coordinate and advance emission controls from these sources.
- Begin development of proposal to control lead in aviation gasoline.
- Continue to develop and implement the Verify information management system that centralizes emission-related and fuel economy data for all mobile source industries.
- Model fuel pathways not yet modeled and continue to develop and update lifecycle models to allow assessment of new biofuel technologies and to evaluate feedstocks and fuel pathways for future fuels and processes.
- Continue testing activities for fuel economy, Tier II testing, reformulated gasoline, future fleets, alternative fuel vehicle conversion certifications, onboard diagnostics (OBD) evaluations, certification audits, and recall programs.
- Review and approve approximately 5,000 vehicle and engine emissions certification requests, including light-duty vehicles, heavy-duty diesel engines, nonroad engines, marine engines, locomotives, and others.
- Ensure compliance with certification as well as in-use requirements for foreign-built engines and equipment.
- Develop a rule establishing OBD requirements for nonroad engines.
- Continue to support implementation of existing vehicle, engine, and fuel regulations including the Tier II light-duty (LD) vehicle program, the Mobile Sources Air Toxics (MSAT) programs, the 2007-2010 Heavy-Duty (HD) Diesel standards, and the Non-Road Diesel Tier 4 standards (and earlier non-road standards) in order to ensure the successful delivery of cleaner vehicles, equipment, and fuel.
- Continue to evaluate and develop the new fuel economy labelling program and ongoing assessment and analysis of emissions and fuel economy compliance data.

- Conduct follow-up implementation work related to the mobile source air toxics rulemaking (work includes the assessment of refineries' pre-compliance reports and early credit generation, in order to monitor the viability of the benzene credit market).
- Continue implementation activities for the Locomotives/Marine rule finalized in 2008 and for small gasoline engine standards that began with model year 2009.
- Continue expansion and improvement of OTAQ's transportation emission model, MOVES, by incorporating new emission data collected under EPCRA/EISA.
- Work with Regions to assist states in developing, implementing, and transitioning I/M, OBD, and fuel programs.
- As necessary, assist Regions in processing conformity determinations made by metropolitan planning organizations or state agencies.
- As necessary, assist Regions in making adequacy determinations for identified mobile source budgets in control strategy SIPs and maintenance plans submitted by states.
- Work with OAQPS on implementation and other guidance related to revisions of NAAQS, especially with respect to I/M, Stage 2, and conformity.

Regions

- Manage clean diesel grants and loans awarded in prior years, assist with and comment on conformity determinations, process conformity-related SIP revisions, and make determinations and act on mobile budgets at time of SIP processing.
- Assist states in preparing SIPs and developing, implementing, and transitioning mobile source control strategies such as I/M, OBD, and state fuel programs.
- Assist states and local air quality and transportation agencies in future conformity determinations as needed.
- Review and comment on transportation conformity determinations made by metropolitan planning organizations or state agencies.
- Complete processing of transportation conformity SIPs submitted by states in FY 2012 as necessary.
- Make adequacy/inadequacy determinations, as necessary, for identified mobile source budgets included in control strategy SIPs and maintenance plans submitted by states and/or approve/disapprove such budgets at the time of SIP processing.
- Work with OTAQ to provide training in the use of the MOVES model, and review modeling results for state and local agencies.
- Work with states to develop creditable mobile source programs.
- Continue to manage Diesel Emission Reduction grants and loans issued in prior years.

MANDATORY GREENHOUSE GAS REPORTING PROGRAM

Headquarters

- Continue a comprehensive outreach and training effort with covered facilities, including the identification of facilities that are likely to meet the applicability thresholds.
- Complete the development, testing, dissemination, and training on the electronic reporting system.

- Work with states on ways to leverage data reported to multiple jurisdictions for the development and implementation of programs
- Carry out a comprehensive QA/QC and verification program on the data reported March 31, 2012.
- Provide support to the Regions in identifying and listing reporting facilities, and in outreach to facilities that are priorities within specific Regions.

Regions

Assist in implementing the GHG Reporting Program, and work with states and local agencies to build their capacity to implement the Prevention of Significant Deterioration (PSD) and Title V programs for GHGs. Continue to promote and expand awareness and encourage participation in non-regulatory GHG reduction programs and activities.

Outreach, training, and facility identification

- Assist HQ in developing and implementing a strategy to notify covered facilities of reporting requirements and reporting deadlines. Approximately 13,000 facilities meet the applicability requirements of the GHG reporting rule and will need to report emissions by March 31, 2012.
- Participate in EPA-sponsored training sessions and present on the GHG reporting rule in other meetings, conferences, etc., in order to reach important targeted audiences (e.g., industry associations, multi-state meetings, GHG conferences). Since different industries may be prominent in specific Regions (e.g., pulp and paper in Region 4), the regional emphases for training and outreach should reflect these differences.

Electronic Reporting System

- EPA will conduct training sessions and operate a help desk for its electronic reporting tool. To supplement this effort, Regions should develop familiarity with the reporting tool so that they can assist and direct reporters to appropriate Help resources. This effort will be greatest during the second quarter of FY 2012.
- Work with HQ in the verification process to follow up with specific facilities on questions raised during the early stages of review, and potentially with site visits later in the process. The reporting rule will use centralized EPA verification of reported data, taking advantage of electronic reporting and automated checks, in combination with direct follow up to a subset of facilities and site visits when needed to support verification. EPA will need to coordinate with certain states at various steps in the verification process in order to leverage all available information for specific facilities. Again, the Regions should consider the prominent industries in their parts of the country in developing expertise for verification.

PSD AND TITLE V GHG TAILORING RULE

Headquarters: Headquarters priorities for this program are in the Federal Support for Air Quality Management section.

Regions: Implement GHG PSD FIPs in some states.

VEHICLE GHG STANDARDS

Headquarters

- Begin implementing the GHG standards for light-duty vehicles (model years 2012 through 2016) and heavy-duty vehicles.
- Finalize second-phase of GHG standards for light-duty vehicles for model years 2017 through 2025.
- Investigate the need to regulate GHG emissions from additional categories of mobile sources.

RENEWABLE FUEL STANDARD PROGRAM

Headquarters

- Continue implementing the new Renewable Fuel Standards (RFS2) program and take other actions required by the Energy Policy Act (EPAAct) of 2005 and the Energy Independence and Security Act (EISA) of 2007, including outreach to stakeholders and a National Academy of Sciences review of the final lifecycle methodology.
- Promulgate the annual RFS2 standard for 2012, as required by EISA.
- Finalize a rule to address the impacts of renewable fuels on emissions (Anti-backsliding rule).
- Continue to implement a real-time reporting system to ensure compliance with the RFS2 program.
- Continue our on-going conversations with states, local governments, and other groups on our ongoing analyses and rule developments related to the Renewable Fuel Standard.

CLEAN AUTOMOTIVE TECHNOLOGY

Headquarters

- Continue technology transfer of EPA's advances in hydraulic hybrid technologies (promote adoption of technology and technical assistance), providing continuity in EPA's commitments to the truck and fleet industry for development and deployment. In FY 2012, EPA will be focusing on its newest industry partners desiring to commercialize hydraulic hybrids in high volume for large light-duty vehicles such as minivans, and for medium commercial on-road trucks through retrofits.

- The program will also continue the technology transfer of EPA's advances in clean combustion technologies, and promote the adoption of technology and technical assistance by providing continuity in EPA's commitments to the automotive and truck industry for development and deployment.
- Field test various hydraulic-hybrid and clean engine technologies that are achieving better fuel economy than the typical baseline vehicles.
- Partner with commercial fleets to evaluate the real-world effectiveness of the CAT Program's high-efficiency, low GHG, clean combustion E-85/M-85 alcohol engine for use in conventional and hydraulic hybrid vehicles.
- Begin working with the Department of Transportation on our hydraulic hybrid/clean engine demonstration partnership vehicle that came out of EPA's work with the California South Coast Air Quality Management District. The new work with DOT will demonstrate the low GHG potential possible from a shuttle bus suitable for Bus Rapid Transit systems equipped with series hydraulic hybrid technology and powered by the world's first gasoline homogeneous-charge, compression-ignition (HCCI) engine which gets diesel efficiency from gasoline fuel without the need for costly diesel aftertreatment. The partnership will also begin its initial work on ways to demonstrate the use of clean low GHG renewable fuel with hydraulic hybrid vehicles.

NON-REGULATORY CLIMATE PROTECTION PROGRAMS

Priorities for Regions

Promote GHG reduction programs and activities to stakeholders. This may include but is not limited to the following:

- Participate in implementation of the Climate Showcase Communities grant program.
- Make commitments to procure ENERGY STAR-qualified products and encourage other organizations to do the same.
- Encourage tribal governments and communities to be partners in GHG activities and participate in and benefit from ongoing coordinated efforts and outreach programs, including ENERGY STAR.
- Rate the energy performance of buildings using EPA's national energy performance rating system, apply for the ENERGY STAR label for the qualifying buildings, and determine improvement plans for those that do not currently qualify; and encourage other organizations to do the same.
- Encourage organizations to join the ENERGY STAR Buildings Challenge and promote a 10% or more reduction in energy use in buildings, and assist local governments that have already joined to implement the Challenge.

- Ensure that new building designs are “Designed to Earn the ENERGY STAR” where applicable, and encourage others to do the same.
- Promote the use of the ENERGY STAR@Home, ENERGY STAR Yard Stick, and Home Energy Advisor web-tools to help homeowners make informed decisions about energy efficiency for their homes.
- Engage in the ENERGY STAR Awards.
- Educate trucking companies and shippers about the SmartWay Partnership program and encourage them to join the program.
- Encourage major companies and organizations headquartered in the Region to join the Green Power Partnership and the Combined Heat and Power Partnership.
- Promote the integration of integrate energy efficiency and clean energy into air quality plans (i.e., SIPs).
- Promote the recovery and use of methane as a clean energy source through EPA’s methane partnership programs (e.g., landfills, agricultural waste, coal mines, and oil/gas operations).
- Operate pilot programs to use commercially-available advanced technology in fleets (such as state/municipal vehicles, school buses, or refuse vehicles) to produce cost-effective emissions and fuel consumption reductions.

ADDRESSING ASTHMA, RADON, AND OTHER INDOOR AIR POLLUTANTS IN HOMES, SCHOOLS, AND OTHER BUILDING TYPES

EPA’s top priorities for improving indoor air quality in buildings are to:

- 1) Emphasize holistic approaches for integrating exposure reduction strategies for multiple indoor contaminants in homes, schools and other indoor environments
- 2) Within this holistic framework, emphasize high risk contaminants, including radon and environmental asthma triggers :
 - a. increase testing for and mitigation of radon;
 - b. reduce exposure to environmental asthma triggers (e.g., secondhand smoke, dust mites, pests, molds, nitrogen dioxide, and pet dander);
- 3) Increase participation in the Indoor airPLUS new home construction labeling program and promote adoption of the new Health and Safety Protocols for Home Energy Upgrades

Priorities for the Regions

- Improve indoor air quality and increase the number of people breathing healthier indoor air by working with state, local, tribal, and other stakeholders to build community capacity to reduce exposure to asthma triggers and radon in homes, schools, and workplaces.

- Increase the number of homes and schools mitigated for radon. Increase the number of new homes built with radon-reducing features;
- Promote the use of radon measurement and mitigation consensus standards in schools;
- Encourage the timely expenditure of SIRG funds (older funds first);
- Design and run regional radon stakeholder meetings that involve states and industry;
- Support the Radon Leaders Saving Lives campaign; and
- Use Radon Action Month as a way to drive action throughout the year.
- Negotiate yearly radon workplans with states and tribes and track progress throughout the year through quarterly reports and frequent communication;
- Report on SIRG and ORIA IAQ indicators at the end of the FY (as described in Appendix A) using the ACS system.
- Work with national partner affiliates, state, tribal, and local partners, and coalitions to reduce risks from indoor pollutants, including radon and asthma triggers in homes and schools
- Support the expansion of the Communities in Action asthma campaign through increased support for at-risk communities, bringing these communities into the Communities in Action Network, providing targeted training and outreach to underserved communities and schools;
- Work with local communities to foster integration and collaboration between asthma programs and local housing, school, weatherization/energy efficiency or other community development initiatives;
- Work with internal EPA programs and external state, regional and local energy programs to educate them about the new Health and Safety Protocols for Home Energy Upgrades and encourage their adoption and integration into existing energy programs (eg Weatherization programs).
- Serve as a local, community-based point of contact to disseminate information about Healthy Homes and Indoor airPLUS and support implementation of the program by active stakeholders in the community.
- Work with Healthy Home and green home programs, EPA's ENERGY STAR and Water Sense programs to promote adoption of Indoor airPLUS in target markets.
- Participate in national program meetings.

RADIATION

- Continue to prepare for and respond to radiological emergencies. Continue to provide technical assistance, outreach, and education related to radioactive mine wastes that contaminate tribal lands and water resources with radionuclides and heavy metals.
- Additional quantities of radioactive waste certified by EPA as properly disposed will be deposited at the WIPP in 2012;
- EPA radiation laboratories will improve analytical capacity through updated technology and methods;
- EPA will improve state radiation laboratory capabilities and capacity through training and evaluation;
- EPA will respond to issues related to the resurgence of nuclear power, including the development of new nuclear power plants;

- EPA will respond to increased uranium extraction and processing, including Regional review of extraction facility Environmental Impact Statements and permits;
- EPA will publish a proposed regulation implementing the Uranium Mill Tailings Radiation Control Act at 40 CFR 192;
- EPA will determine if its review of 40 CFR Part 61, Subpart W will result in a revised regulation; a positive determination will result in a proposed regulation;
- EPA will continue to provide technical assistance to states and Regions on decommissioning and other issues related to nuclear power facility operations;
- Laboratories will support Regional remediation projects;
- Regions will continue to serve as the local, community-based point of contact to disseminate information on EPA's radiation protection program;
- Regions will continue to coordinate regional radiation issues among Regional Offices;
- Regions will continue to implement regulatory programs (e.g., radiological NESHAPs);
- Regions will continue as requested, to provide technical support to state radiation, solid waste, environmental and health programs and Headquarters radiation regulatory, policy and technical workgroups;
- Regions will continue to provide technical support to Superfund;
- Regions will continue to work with states on issues involving TENORM that include issues associated with mining legacy waste disposal and water treatment residuals.
- EPA's Radiological Emergency Response Team (RERT) will maintain its high level of team readiness;
- Laboratories will support urgent regional removal operations;
- RERT staff will support Regions with training and at exercises;
- Regions will continue to serve as the local, community-based point of contact to disseminate information on EPA's radiation response and preparedness program, activities, and capabilities. As appropriate, Regions should:
 - Provide technical support to state radiation control programs;
 - Support EPA's radiation emergency response operations, including the assignment of personnel to serve as Regional Radiation Advisor and RERT Liaison;
 - Participate in state and national radiological response exercises including Amber Waves; and
 - Support radiological response training to increase the capacity of the Agency's Response Support Corps.
- Regions will continue to provide leadership in coordinating inquiries from RadNet monitor site personnel and station operators and serve as the local, community-based point of contact to disseminate information on EPA's national radiation monitoring system; and
- The Agency will continue its pilot project to improve state radiological laboratory capacity through provision of additional laboratory instruments, training, proficiency testing and audits of the selected state laboratories.

++ End ++

To: Megan Ceronsky [mceronsky@edf.org]
Cc: CN=Joel Beauvais/OU=DC/O=USEPA/C=US@EPA;CN=Joseph Goffman/OU=DC/O=USEPA/C=US@EPA;CN=Kevin Culligan/OU=DC/O=USEPA/C=US@EPA;CN=Lorie Schmidt/OU=DC/O=USEPA/C=US@EPA;Mark MacLeod [mmacleod@edf.org]; N=Joseph Goffman/OU=DC/O=USEPA/C=US@EPA;CN=Kevin Culligan/OU=DC/O=USEPA/C=US@EPA;CN=Lorie Schmidt/OU=DC/O=USEPA/C=US@EPA;Mark MacLeod [mmacleod@edf.org]; N=Kevin Culligan/OU=DC/O=USEPA/C=US@EPA;CN=Lorie Schmidt/OU=DC/O=USEPA/C=US@EPA;Mark MacLeod [mmacleod@edf.org]; N=Lorie Schmidt/OU=DC/O=USEPA/C=US@EPA;Mark MacLeod [mmacleod@edf.org]; ark MacLeod [mmacleod@edf.org]; ickie Patton [vpatton@edf.org]
Bcc: []
From: CN=Howard Hoffman/OU=DC/O=USEPA/C=US
Sent: Wed 5/18/2011 9:53:08 PM
Subject: Re: GHG NSPS
[Environmental Defense Fund, NSPS as a Stimulus for Innovation, Docket No. EPA-HQ-OAR-2011-0090.pdf](#)

Thanks very much.

Howard J. Hoffman EPA-OGC-ARLO
(202) 564-5582 (v); -5603 (fax); (240) 401-9721 (cell)
The contents of this e-mail and any attachments to it may be attorney-client or deliberative-process privileged.

From: Megan Ceronsky <mceronsky@edf.org>
To: Joseph Goffman/DC/USEPA/US@EPA, Lorie Schmidt/DC/USEPA/US@EPA, Howard Hoffman/DC/USEPA/US@EPA, Joel Beauvais/DC/USEPA/US@EPA, Kevin Culligan/DC/USEPA/US@EPA
Cc: Mark MacLeod <mmacleod@edf.org>, Vickie Patton <vpatton@edf.org>
Date: 05/18/2011 04:59 PM
Subject: Re: GHG NSPS

All:

We have further developed the GHG NSPS regulatory design concepts we discussed on April 22nd in the hope that it might be helpful to you. Please let us know if you have any questions.

Best regards,
Megan

Megan Ceronsky
Attorney
Environmental Defense Fund
(303) 447-7224 (P)
(303) 440-8052 (F)

2060 Broadway
Suite 300
Boulder, CO 80302

From: Vickie Patton
Sent: Sunday, April 24, 2011 10:51 PM
To: Joseph Goffman/DC/USEPA/US; Lorie Schmidt/DC/USEPA/US; Howard Hoffman/DC/USEPA/US;
beauvais.joel@epa.gov; culligan.kevin@epa.gov
Cc: Megan Ceronsky; Mark MacLeod
Subject: CRS Report, NSPS Case Study, Adequately Demonstrated

Here are some additional materials for your consideration.

The CRS report on the regulation of stationary source greenhouse gases that includes an examination of NSPS issues.

The CRS report draws from the attached Carnegie Mellon PhD dissertation by Margaret Taylor (The Influence of Government Actions on Innovative Activities in the Development of Environmental Technologies to Control Sulfur Dioxide Emissions from Stationary Sources). Taylor examines in detail the convergence of policy and technological innovation associated with Agency's 1971 SO₂ NSPS, 1978 SO₂ NSPS and 1990 CAAA Title IV program for SO₂ including the policy genesis of the SO₂ controls, the nascent stages of FGD technology, and the acceleration of technological progress resulting from EPA's policies. One note is her explanation that the German acid rain protection requirements adopted in 1983 resulted in the installation of 35,000 MW of FGD in four years -- 33 percent of which were licensed from US companies (see ps. 56 & 223, n. 108).

<< File: CRS - Potential Regulation of Stationary Greenhouse Gas Sources Under the CAA - May 14 - 2009 (parker, mccarthy).pdf >> << File: Margaret Taylor - Government Actions, Technology Innovation, SO₂ Controls - Carnegie Mellon Dissertation - Jan 2001.pdf >>

We have also attached Judge Leventhal's 1973 opinion in Portland Cement re the contours of "adequately demonstrated" under the NSPS (as well as the DC Circuit decision affirming the standards on remand).

<< File: Portland Cement Assn v. EPA 486 F.2d 375 (DC Cir 1973).pdf >> << File: Portland Cement Assn v. Train 513 F2d 506 (DC Cir 75) (aff'd on remand).pdf >>

Thank you again for your precious time.

Sincerely yours,
Vickie

From: Mark MacLeod
Sent: Friday, April 22, 2011 12:51 PM
To: Joseph Goffman/DC/USEPA/US; Lorie Schmidt/DC/USEPA/US; Howard Hoffman/DC/USEPA/US;
beauvais.joel@epa.gov; culligan.kevin@epa.gov
Cc: Vickie Patton; Megan Ceronsky
Subject: WRI facilitated 111(d) Principles

All,

Thanks again for your valuable time today. Here is the WRI facilitated document we discussed. The membership is listed in #2. We will follow up with some of the other references cited in today's call.

Have a great weekend.

Mark

<< File: WRI Dialogue Comments Final 4 18 2011.pdf >>

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18 May 2011

Re: Docket ID No. EPA-HQ-OAR-2011-0090; Greenhouse Gas New Source Performance Standards for Fossil Fuel Fired Power Plants

NSPS as a Stimulus for American Technological Innovation

Judicial explications of Clean Air Act § 111 as well as the relevant regulatory precedents and legislative history establish New Source Performance Standards as an innovation-focused regulatory framework. This memo briefly outlines this aspect of the NSPS legal framework and history for the Agency's consideration in promulgating standards under § 111(b).

Legal Foundation

The Senate Report issued prior to passage of the Clean Air Act in 1970 stated that "[s]tandards of performance should provide an incentive for industries to work toward constant improvement in techniques for preventing and controlling emissions from stationary sources."¹ The Senate Report also clarified that an emergent control technology used as the basis for standards of performance need not "be in actual routine use somewhere."² Consistent with this Congressional intent, the courts have held that NSPS are to be based on innovative, cutting-edge technologies that will be available when the standards apply to new and modified sources. In *Portland Cement Association v. Ruckelshaus*, the D.C. Circuit stated plainly:

We begin by rejecting the suggestion of the cement manufacturers that the Act's requirement that emission limitations be "adequately demonstrated" necessarily implies that any cement plant now in existence be able to meet the proposed standards. Section 111 looks toward what may fairly be projected for the regulated future, rather than the state of the art at present, since it is addressed to standards for new plants.³

The court went on to hold that:

¹ S.Rep. No. 91-1196, 91st Cong., 2d Sess. 17 (1970). The D.C. Circuit interpreted the Senate's intent to provide that "[t]he essential question was [] whether the technology would be available for installation in new plants." *Portland Cement Ass'n v. Ruckelshaus*, 486 F.2d 375, 391 (D.C. Cir. 1973).

² S.Rep. No. 91-1196, 91st Cong., 2d Sess. 16 (1970).

³ 486 F.2d 375, 391 (D.C. Cir. 1973) (emphasis added).

The resultant standard is analogous to the one examined in *International Harvester, supra*. The Administrator may make a projection based on existing technology, though that projection is subject to the restraints of reasonableness and cannot be based on "crystal ball" inquiry. 478 F.2d at 629. As there, the question of availability is partially dependent on "lead time", the time in which the technology will have to be available. Since the standards here put into effect will control new plants immediately, as opposed to one or two years in the future, the latitude of projection is correspondingly narrowed. If actual tests are not relied on, but instead a prediction is made, "its validity as applied to this case rests on the reliability of [the] prediction and the nature of [the] assumptions." *International Harvester* at 45.⁴

Therefore under this legal standard, if EPA issues NSPS regulations that apply one standard to facilities built within the next few years and apply a more restrictive standard to facilities built five or nine years in the future, the latter standard and the "adequately demonstrated" projection upon which it is based are to be given relatively wide latitude by reviewing courts. A standard that will be effective some years into the future that is based on emergent technologies is acceptable provided the Agency's assumptions about technology availability at that future date are reasonable.

The court in *Portland Cement* also provided guidance on what such an innovation-focused determination could rely upon: "It would have been entirely appropriate if the Administrator had justified the standards, not on the basis of tests on existing sources or old test data in the literature, but on extrapolations from this data, on a reasoned basis responsive to comments, and on testimony from experts and vendors made part of the record."⁵ The standards at issue in *Portland Cement* were finalized after the Agency conducted testing at seven plants, which the D.C. Circuit found sufficient.⁶

Historical Precedent

The Congressional Research Service (CRS) Report on the potential regulation of GHG sources under the Clean Air Act notes that the flexibility inherent in the Administrator's authority to determine which technologies have been adequately demonstrated "has been used to authorize control regimes that extended beyond the merely commercially available to those technologies that have only been demonstrated, and thus are considered by many to have been 'technology-forcing.'"⁷

The CRS report focuses on the 1971 and the 1978 NSPS for SO₂ emitted by coal-fired electric generating units as a prime example of the Agency incentivizing technology development and thereby facilitating ambitious emission reductions through NSPS. The 1971 NSPS required a 70% reduction in new power plant emissions, on average, and could be met initially only by burning low-sulfur coal or by using an emergent technology known as flue gas desulfurization (FGD). When the 1971 utility SO₂ NSPS was promulgated, there

⁴ *Id.* at 391-92 (emphasis added).

⁵ *Id.* at 401-402.

⁶ *Portland Cement Association v. Train*, 513 F.2d 506, 509 (D.C. Cir. 1975).

⁷ Larry Parker and James E. McCarthy, "Climate Change: Potential Regulation of Stationary Greenhouse Gas Sources Under the Clean Air Act," Congressional Research Service, R40585, at 12 (May 14, 2009).