

01268-EPA-2509

Richard Windsor/DC/USEPA/US
06/02/2009 05:23 PM

To "Lisa At Home"
cc
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Subject Fw: Google Alert - lisa jackson epa

From: Google Alerts [googlealerts-noreply@google.com]
Sent: 06/02/2009 09:17 PM GMT
To: Richard Windsor
Subject: Google Alert - lisa jackson epa

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[EPA will push clean diesel grant money in Ohio on Wednesday](#)

By admin

WASHINGTON – EPA Guardian **Lisa A. Jackson** generosity refuse suture information conferences angry Ohio humans officials paper Columbus wood Cincinnati other Wednesday, June BAKSHEESH write interpret grants fan these American Refreshment ...

carsnet.net - <http://carsnet.net/>

[Top Air Pollution Official Finally Confirmed: Scientific American](#)

ranking member of the Senate Environment and Public Works Committee, offered his support for McCarthy's confirmation and said he expected EPA Administrator **Lisa Jackson** to support legislative efforts to limit the scope of EPA climate ...

[Scientific American - Technology](http://www.scientificamerican.com/) - <http://www.scientificamerican.com/>

[Controversial Coal Mining Method Gets Obama's OK « Chrisy58's Weblog](#)

By chrisy58

And EPA Administrator **Lisa Jackson** said this year that the agency had “considerable concern” about the projects. She pledged that her agency would “use the best science and follow the letter of the law in ensuring we are protecting our ...

[Chrisy58's Weblog](http://chrisy58.wordpress.com/) - <http://chrisy58.wordpress.com/>

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Arvin Ganesan/DC/USEPA/US

To Richard Windsor

cc

06/05/2009 06:56 PM

bcc

Subject coal ash

FYI - [REDACTED] (b) (5) Deliberative

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United States Environmental Protection Agency
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(f) 202.501.1519

01268-EPA-2529

Richard Windsor/DC/USEPA/US
06/15/2009 06:55 AM

To "Lisa At Home"
cc
bcc

Subject Fw: washingtonpost.com News

From: "washingtonpost.com" [newsletters@email.washingtonpost.com]
Sent: 06/15/2009 05:56 AM AST
To: Richard Windsor
Subject: washingtonpost.com News

Monday
15

TODAY'S HIGHLIGHTS

Muted Response Reflects U.S. Diplomatic Dilemma

The confused aftermath of Iran's presidential election is complicating the Obama administration's planned outreach to the Islamic republic and underscoring the challenges facing the president's new approach to the Middle East based on shared values and common interests.

(By Scott Wilson, The Washington Post)

Back Atop the Mountain

Lakers' Title Is Jackson's 10th, Bryant's First as the Main Star: Lakers 99, Magic 86

(By Michael Lee, The Washington Post)

Iranian Candidate Exhorts Protesters

Mousavi Asks That Vote Be Nullified; President Calls Demonstrators 'Weeds'

(By Thomas Erdbrink, The Washington Post)

Obama Is Pressed to Tax Health Benefits

Seeking GOP Votes, Democrats Split Over Plan for New Levy

(By Lori Montgomery and Ceci Connolly, The Washington Post)

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POLITICS

Obama Is Pressed to Tax Health Benefits

The White House is caught in a battle within its own party over how to finance a comprehensive overhaul of America's health-care system , as key Democrats advocate a tax plan that could require President Obama to break his campaign pledge not to raise taxes on the middle class .

(By Lori Montgomery and Ceci Connolly, The Washington Post)

ANALYSIS: [Muted Response Reflects U.S. Diplomatic Dilemma](#)

(By Scott Wilson, The Washington Post)

[Riding Herd on the Message](#)

White House Guides Fervent Sotomayor Supporters

(By Michael D. Shear, The Washington Post)

[Democrats Struggling for Consensus on Climate Bills](#)

(By Steven Mufson, The Washington Post)

[Justice Dept. Focusing On Indian Country Crime](#)

(By Carrie Johnson, The Washington Post)

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NATION

[CIA Fired Firms Aiding Questioning](#)

Weeks after President Obama took office, the CIA extended its contract with a firm run by two psychologists who helped introduce waterboarding and other harsh methods to the agency's interrogation techniques, according to a news report.

(By Walter Pincus, The Washington Post)

[Justice Dept. Focusing On Indian Country Crime](#)

(By Carrie Johnson, The Washington Post)

[Robot on a Tether Targets The Mysteries of the Deep](#)

(By Kari Lydersen, The Washington Post)

[Obama Is Pressed to Tax Health Benefits](#)

Seeking GOP Votes, Democrats Split Over Plan for New Levy

(By Lori Montgomery and Ceci Connolly, The Washington Post)

[U.S. to Spend Up to \\$350 Million For Uniform Tests in Reading, Math](#)

(The Washington Post)

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WORLD

[Iranian Candidate Exhorts Protesters](#)

TEHRAN, June 14 -- A defiant Mir Hossein Mousavi, leading an opposition movement against President Mahmoud Ahmadinejad, called on his supporters Sunday to continue protesting the outcome of the election in which the incumbent was proclaimed the landslide winner. Mousavi asked the influential...

(By Thomas Erdbrink, The Washington Post)

[Netanyahu Backs 2-State Goal](#)

Endorsement Comes With Prerequisites for Palestinians

(By Howard Schneider, The Washington Post)

[Iraq's Foreign Laborers: Disillusioned and Disliked](#)

(By Ernesto Londoño, The Washington Post)

[Pakistan To Pursue Taliban Leader](#)

Militant Suspected In Bhutto Killing

(By Pamela Constable, The Washington Post)

[In Juarez, A Trail of Drugs and Violence](#)

(By William Booth, The Washington Post)

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METRO

[Fire Kills 2 at Bethesda Townhouse](#)

A man in his 70s and a woman in her 60s died last night in a blaze in a townhouse in the Bethesda area of Montgomery County, the county fire department said.

(By Martin Weil, The Washington Post)

[Agency Is Still Seeking A Man Who's Still Dead](#)

AWOL Parolee Who Fell Through the Cracks Died Last Year, but Case Remains Open in D.C.

(By Brigid Schulte, The Washington Post)

[Keeping Discipline In-House](#)

Proposal Tackles Pr. George's Schools' High Rate of Suspensions

(By Nelson Hernandez, The Washington Post)

[Making New Memories in the Old Homestead](#)

(By Nikita Stewart, The Washington Post)

[Recession's Pains Dull Attention to Campaigns](#)

(By Sandhya Somashekhar, The Washington Post)

[More Metro](#)

BUSINESS

Carlyle Sets Its Sights on Battered Banks

With the leveraged-buyout business on life support, major private-equity firms such as the Carlyle Group are taking a closer look at the battered banking sector as a way to make money for their clients.

(By Thomas Heath, The Washington Post)

Democrats Struggling for Consensus on Climate Bills

(By Steven Mufson, The Washington Post)

Demand for Vegetable Seeds Is Rooted in Recession

(By Adrian Higgins, The Washington Post)

Tech Groups Find New Networking Territory

(By Kim Hart, The Washington Post)

Obama Is Pressed to Tax Health Benefits

Seeking GOP Votes, Democrats Split Over Plan for New Levy
(By Lori Montgomery and Ceci Connolly, The Washington Post)

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TECHNOLOGY

Robot on a Tether Targets The Mysteries of the Deep

Skimming past otherworldly tube worms and bizarre crustaceans as they traversed primordial sediments in inky darkness seven miles below the surface, an unmanned yellow robot two weeks ago became the world's deepest-diving unmanned submersible.

(By Kari Lydersen, The Washington Post)

[More Technology](#)

SPORTS

Yankees' Bruney, Mets' Rodriguez Have a Few Words

The Subway Series got awfully testy yesterday. Mets closer Francisco Rodriguez shouted at Yankees reliever Brian Bruney during batting practice and the two were separated by teammates. That came one day after Bruney called Rodriguez's exuberant celebrations on the mound a "tired act," and K-Rod said...

(The Washington Post)

[Back Atop the Mountain](#)

Lakers' Title Is Jackson's 10th, Bryant's First as the Main Star: Lakers 99, Magic 86
(By Michael Lee, The Washington Post)

[Acta, Nationals Suffer Through Another Loss](#)

Rays 5, Nationals 4
(By Chico Harlan, The Washington Post)

[Wigginton, Andino Power Orioles Past Braves](#)

Orioles 11, Braves 2
(By Dan Connolly, The Washington Post)

[Another Lost Day For Nats](#)

Acta's Job Status Still Uncertain: Rays 5, Nationals 4
(By Chico Harlan, The Washington Post)

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STYLE

[Demand for Vegetable Seeds Is Rooted in Recession](#)

In 1784, an Englishman named David Landreth opened a seed store in downtown Philadelphia, confident that newly independent Americans would also want the freedom of growing their own food.

(By Adrian Higgins, The Washington Post)

[On D.C. Walk, Fans Aim to Share Overweight Star's Burden](#)

(By Kate Kilpatrick, The Washington Post)

[Mao & Again: Chinese Warm To Distant Echo](#)

(By Anne Midgette, The Washington Post)

[News Finds Fresh Niche On Twitter](#)

Site's Users Spread The Word in Real Time
(By Howard Kurtz, The Washington Post)

[In Online Music Era, Country Fans Lack a Connection](#)

(By Melinda Newman, The Washington Post)

[More Style](#)

LIVE DISCUSSIONS

[The Chat House With Michael Wilbon](#)

Post columnist Michael Wilbon discusses the latest sports news, his columns and anything else that's topical.

(Michael Wilbon, washingtonpost.com)

[Pundit Glenn Beck on 'Common Sense,' More](#)

(Glenn Beck, washingtonpost.com)

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[Dr. Gridlock Tackles Your Traffic and Transit Issues](#)

(Robert Thomson, washingtonpost.com)

[Ask the Post: Executive Editor Takes Your Questions](#)

(Marcus Brauchli, washingtonpost.com)

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[Neither Free nor Fair](#)

NO ONE outside the inner precincts of Iran's power structure knows who won that country's presidential election Friday. It's possible that a majority voted to reelect Mahmoud Ahmadinejad, as he claims. It's also possible, as much of his opposition fervently believes, that the election was stolen....

(The Washington Post)

[Deadlocked in Regulation](#)

Mr. Obama can restore an active Federal Election Commission.

(The Washington Post)

[D.C. Crime Tools](#)

The Council should approve a handful of measures against violence.

(The Washington Post)

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Richard Windsor/DC/USEPA/US
06/19/2009 09:33 AM

To "Lisa At Home"
cc
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Subject Fw: Google Alert - lisa jackson epa

From: Google Alerts [googlealerts-noreply@google.com]
Sent: 06/19/2009 12:44 PM GMT
To: Richard Windsor
Subject: Google Alert - lisa jackson epa

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[Farm Interests Use EPA Spending Bill to Fight Climate Regs](#)

New York Times - United States

EPA Administrator Lisa Jackson has repeatedly said the agency has no intention to pursue such regulations. But the amendment would prohibit **EPA** from ...

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01268-EPA-2551

Bob Sussman/DC/USEPA/US

To Richard Windsor

06/23/2009 08:18 AM

cc Scott Fulton, Charles Imohiosen

bcc

Subject supreme ct CWA decision

(b) (5) Attorney Client, (b) (5) Deliberative

Activists Seek EPA 'Fixes' To Limit Effect Of High Court Mine Waste Ruling

Environmentalists are urging the Obama EPA to rescind a Bush-era memo that the Supreme Court relied on in its just-issued decision granting EPA and the Army Corps of Engineers deference to categorize mining tailings and other pollutants as “fill material” exempt from strict discharge limits under the Clean Water Act (CWA).

They are also urging EPA to veto the CWA section 404 “dredge and fill” permit for the mining project in question and rescind a pivotal Bush administration rulemaking that they say expanded the definition of fill material.

The court's decision could also provide new momentum for a bill introduced by Rep. Frank Pallone (D-NJ) that would overturn the Bush administration's definition of fill material and effectively subject mining tailings and other pollutants “primarily to dispose of waste” to EPA discharge limits, the activists say.

The [high court ruled](#) 6-3 June 22 in *Coeur Alaska v. Southeast Alaska Conservation Council (SEACC)* that slurry discharges from an Alaska gold mine clearly fit the definition of “fill” material and therefore are to be solely permitted by the Corps under its section 404 authority governing “dredge-and-fill” operations because section 402 prohibits EPA from issuing permits for fill material.

The court rejected environmentalists' argument that section 404 contains an implicit exception requiring a section 402 permit when fill material discharges contain material that is subject to EPA's new source performance standards. Such an approach would create a “confusing division of permitting authority” that Congress did not intend, the court says.

The 6-3 decision further finds that the Corps acted in accordance with the law when issuing the section 404 permit to Coeur Alaska, relying on a May 2004 [EPA memorandum](#) because both the CWA and the agencies' regulations are ambiguous as to whether section 306 new source performance standards apply to section 404 permits.

Justice Anthony Kennedy wrote the majority opinion and was joined by Chief Justice John Roberts and Justices Clarence Thomas, Stephen Breyer, and Samuel Alito. Justice Antonin Scalia concurred with the judgment but only partially concurred with the reasoning. Justice Ruth Bader Ginsburg wrote the dissenting opinion, joined by Justices John Paul Stevens and

David Souter.

In response to the ruling, environmentalists are urging the Obama administration to quickly rescind the 2004 Bush administration memo that gave preeminence to the Corps' section 404 permit and issue a new interpretation of the regulations to require the strict discharge requirements for mining tailings at the so-called Kensington mine site. Because the high court merely granted deference to an agency interpretation, the activists argue, the decision would allow the Obama EPA to quickly repeal the Bush administration's stance and limit the precedent set by the ruling.

But the agency has other options as well. EPA should veto the mine's "dredge and fill" permit under section 404 of the CWA because "any discharge that's going to kill all the fish in a lake has an 'unacceptable adverse impact' on its face," Earthjustice attorney Tom Waldo said on a June 22 conference call with reporters.

Environmentalists are also urging the Obama administration to issue a new regulatory definition of "fill material," which they say was broadened by the Bush administration to pave the way for mountaintop coal mining projects but was stretched even further for the froth-flotation mill discharges from the Alaska gold mine.

Although the activists say the ruling could provoke a response from Congress, they admit a legislative fix would take longer and is more difficult.

The Obama administration "has the ability to act more quickly," Earthjustice senior attorney Joan Mulhern said on the conference call. However, Mulhern noted Pallone's bill has over 150 cosponsors in the House, a sign of significant support.

Before the Supreme Court, environmentalists argued that EPA new source performance standards under section 306 should apply to the slurry discharges, which would subject the releases to a zero-discharge standard, requiring technology controls and a section 402 permit. But the mining company and the federal government countered that section 404 grants the Corps authority to determine whether to issue a permit allowing the slurry discharge without regard to the section 306 standard.

Industry and the federal government relied in part on a 2004 memorandum from Diane Regas, then-head of EPA's Wetlands, Oceans & Watersheds Office, to a key official in EPA Region X overseeing CWA permitting issues at the gold mine. Because the mining tailings were regulated under a section 404 permit, "the regulatory regime applicable to discharges under section 402, including effluent limitations guidelines and standards, such as those applicable to gold ore mining . . . do not apply," Regas wrote.

Environmentalists argued the memorandum is not entitled to deference because it contradicts the agencies' published statements and prior practice. But the court rejects this contention, saying SEACC's arguments are not convincing.

Although the memo, as an internal document, does not merit full deference under the

Supreme Court's holdings in *Chevron v. Natural Resources Defense Council* , “the Court defers to it because it is not 'plainly erroneous or inconsistent with the regulations[s],’ the just-issued ruling says, going on to outline several factors that inform this conclusion. These include the memo's limited application to closed bodies of water, which guards against the possibility of evasion of the section 306 new source performance standards, the court says.

Chevron sets forth the legal test for determining whether to grant deference to a government agency's interpretation of its own statutory mandate, and Scalia in his concurrence says the court's deference to the Regas memo should be considered *Chevron* deference.

The only reason the court is not calling it *Chevron* deference is because of the high court's 2001 “misguided opinion” in *United States v. Mead Corp.* , which held that *Chevron* deference generally only applies to notice-and-comment rulemakings. *Mead* 's “incomprehensible criteria for *Chevron* deference have produced so much confusion in the lower courts that there now has appeared the phenomenon of *Chevron* avoidance . . . ,” Scalia says. Scalia favors overruling *Mead* , but failing that, is “pleased to join an opinion that effectively ignores it.”

The dissent echoes environmentalists' concerns that the ruling could lead to section 404 permits authorizing discharges of other solids that are now restricted by EPA standards -- a position the majority dismisses by saying those “extreme instances” are not present in the case and if they are to arise, environmentalists can challenge those permits.

And Breyer in his opinion concurring with the majority says he recognizes the danger Ginsburg warns against, “namely that '[w]hole categories of regulated industries' might 'gain immunity from a variety of pollution-control standards.’” But he says there are safeguards against that occurring, including EPA's ability to veto section 404 permits and the fact EPA “has never suggested that it would interpret the regulations so as to turn section 404 into a loophole, permitting evasion of a 'performance standard' simply because a polluter discharges enough pollutant to raise the bottom elevation of the body of water.”

6222009_fixes Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency

01268-EPA-2561

Bob Sussman/DC/USEPA/US
06/23/2009 07:59 PM

To Richard Windsor
cc Charles Imohiosen, Scott Fulton, Diane Thompson
bcc
Subject Re: supreme ct CWA decision/ 11th Circuit decision on water transfers

Lisa -- (b) (5) Attorney Client, (b) (5) Deliberative
[Redacted]

[Redacted]

[Redacted]

[Redacted]

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency

Bob Sussman (b) (5) Attorney Client, (b) (5) Deliberative 06/23/2009 08:18:31 AM

From: Bob Sussman/DC/USEPA/US
To: Richard Windsor/DC/USEPA/US@EPA
Cc: Scott Fulton/DC/USEPA/US@EPA, Charles Imohiosen/DC/USEPA/US@EPA
Date: 06/23/2009 08:18 AM
Subject: supreme ct CWA decision

(b) (5) Attorney Client, (b) (5) Deliberative
[Redacted]

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The court rejected environmentalists' argument that section 404 contains an implicit exception requiring a section 402 permit when fill material discharges contain material that is subject to EPA's new source performance standards. Such an approach would create a “confusing division of permitting authority” that Congress did not intend, the court says.

The 6-3 decision further finds that the Corps acted in accordance with the law when issuing the section 404 permit to Coeur Alaska, relying on a May 2004 [EPA memorandum](#) because both the CWA and the agencies' regulations are ambiguous as to whether section 306 new source performance standards apply to section 404 permits.

Justice Anthony Kennedy wrote the majority opinion and was joined by Chief Justice John Roberts and Justices Clarence Thomas, Stephen Breyer, and Samuel Alito. Justice Antonin Scalia concurred with the judgment but only partially concurred with the reasoning. Justice Ruth Bader Ginsburg wrote the dissenting opinion, joined by Justices John Paul Stevens and David Souter.

In response to the ruling, environmentalists are urging the Obama administration to quickly rescind the 2004 Bush administration memo that gave preeminence to the Corps' section 404 permit and issue a new interpretation of the regulations to require the strict discharge requirements for mining tailings at the so-called Kensington mine site. Because the high court merely granted deference to an agency interpretation, the activists argue, the decision would allow the Obama EPA to quickly repeal the Bush administration's stance and limit the precedent set by the ruling.

But the agency has other options as well. EPA should veto the mine's “dredge and fill” permit under section 404 of the CWA because “any discharge that's going to kill all the fish in a lake has an 'unacceptable adverse impact' on its face,” Earthjustice attorney Tom Waldo said on a June 22 conference call with reporters.

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Industry and the federal government relied in part on a 2004 memorandum from Diane Regas, then-head of EPA's Wetlands, Oceans & Watersheds Office, to a key official in EPA Region X overseeing CWA permitting issues at the gold mine. Because the mining tailings were regulated under a section 404 permit, “the regulatory regime applicable to discharges under section 402, including effluent limitations guidelines and standards, such as those applicable to gold ore mining . . . do not apply,” Regas wrote.

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6222009_fixes Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency

01268-EPA-2562

Richard Windsor/DC/USEPA/US
06/24/2009 07:48 AM

To Bob Sussman
cc Charles Imohiosen, Scott Fulton, Diane Thompson, "Lisa Heinzerling"
bcc

Subject Re: supreme ct CWA decision/ 11th Circuit decision on water transfers

Thanks Bob. (b) (5) Attorney Client, (b) (5) Deliberative
[Redacted]

Bob Sussman

----- Original Message -----

From: Bob Sussman
Sent: 06/23/2009 07:59 PM EDT
To: Richard Windsor
Cc: Charles Imohiosen; Scott Fulton; Diane Thompson
Subject: Re: supreme ct CWA decision/ 11th Circuit decision on water transfers

Lisa -- (b) (5) Attorney Client, (b) (5) Deliberative
[Redacted]

[Redacted]

[Redacted]

[Redacted]

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency

Bob Sussman (b) (5) Attorney Client, (b) (5) Deliberative 06/23/2009 08:18:31 AM

From: Bob Sussman/DC/USEPA/US
To: Richard Windsor/DC/USEPA/US@EPA
Cc: Scott Fulton/DC/USEPA/US@EPA, Charles Imohiosen/DC/USEPA/US@EPA
Date: 06/23/2009 08:18 AM
Subject: supreme ct CWA decision

(b) (5) Attorney Client, (b) (5) Deliberative

(b) (5) Deliberative

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Industry and the federal government relied in part on a 2004 memorandum from Diane Regas, then-head of EPA's Wetlands, Oceans & Watersheds Office, to a key official in EPA Region X overseeing CWA permitting issues at the gold mine. Because the mining tailings were regulated under a section 404 permit, "the regulatory regime applicable to discharges under section 402, including effluent limitations guidelines and standards, such as those applicable to gold ore mining . . . do not apply," Regas wrote.

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The dissent echoes environmentalists' concerns that the ruling could lead to section 404 permits authorizing discharges of other solids that are now restricted by EPA standards -- a position the majority dismisses by saying those "extreme instances" are not present in the case and if they are to arise, environmentalists can challenge those permits.

And Breyer in his opinion concurring with the majority says he recognizes the danger Ginsburg warns against, "namely that '[w]hole categories of regulated industries' might 'gain immunity from a variety of pollution-control standards.'" But he says there are safeguards against that occurring, including EPA's ability to veto section 404 permits and the fact EPA "has never suggested that it would interpret the regulations so as to turn section 404 into a loophole, permitting evasion of a 'performance standard' simply because a polluter discharges enough pollutant to raise the bottom elevation of the body of water."

6222009_fixes Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency

01268-EPA-2563

Bob Sussman/DC/USEPA/US

To Richard Windsor

06/24/2009 08:19 AM

cc Charles Imohiosen, Diane Thompson, "Lisa Heinzerling",
Scott Fulton

bcc

Subject Re: supreme ct CWA decision/ 11th Circuit decision on water
transfers

(b) (5) Attorney Client, (b) (5) Deliberative

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency

Richard Windsor (b) (5) Attorney Client, (b) (5) Deliberative 06/24/2009 07:48:01 AM

From: Richard Windsor/DC/USEPA/US
To: Bob Sussman/DC/USEPA/US@EPA
Cc: Charles Imohiosen/DC/USEPA/US@EPA, Scott Fulton/DC/USEPA/US@EPA, Diane
Thompson/DC/USEPA/US@EPA, "Lisa Heinzerling" <heinzerling.lisa@epa.gov>
Date: 06/24/2009 07:48 AM
Subject: Re: supreme ct CWA decision/ 11th Circuit decision on water transfers

Thanks Bob. (b) (5) Attorney Client, (b) (5) Deliberative

Bob Sussman

----- Original Message -----

From: Bob Sussman
Sent: 06/23/2009 07:59 PM EDT
To: Richard Windsor
Cc: Charles Imohiosen; Scott Fulton; Diane Thompson
Subject: Re: supreme ct CWA decision/ 11th Circuit decision on water

transfers

Lisa -- (b) (5) Attorney Client, (b) (5) Deliberative

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency

Bob Sussman

(b) (5) Attorney Client, (b) (5) Deliberative

06/23/2009 08:18:31 AM

From: Bob Sussman/DC/USEPA/US
To: Richard Windsor/DC/USEPA/US@EPA
Cc: Scott Fulton/DC/USEPA/US@EPA, Charles Imohiosen/DC/USEPA/US@EPA
Date: 06/23/2009 08:18 AM
Subject: supreme ct CWA decision

(b) (5) Attorney Client, (b) (5) Deliberative

Activists Seek EPA 'Fixes' To Limit Effect Of High Court Mine Waste Ruling

Environmentalists are urging the Obama EPA to rescind a Bush-era memo that the Supreme Court relied on in its just-issued decision granting EPA and the Army Corps of Engineers deference to categorize mining tailings and other pollutants as “fill material” exempt from strict discharge limits under the Clean Water Act (CWA).

They are also urging EPA to veto the CWA section 404 “dredge and fill” permit for the mining project in question and rescind a pivotal Bush administration rulemaking that they say expanded the definition of fill material.

The court's decision could also provide new momentum for a bill introduced by Rep. Frank Pallone (D-NJ) that would overturn the Bush administration's definition of fill material and effectively subject mining tailings and other pollutants “primarily to dispose of waste” to EPA discharge limits, the activists say.

The [high court ruled](#) 6-3 June 22 in *Coeur Alaska v. Southeast Alaska Conservation Council (SEACC)* that slurry discharges from an Alaska gold mine clearly fit the definition of “fill” material and therefore are to be solely permitted by the Corps under its section 404 authority governing “dredge-and-fill” operations because section 402 prohibits EPA from issuing permits for fill material.

The court rejected environmentalists' argument that section 404 contains an implicit exception requiring a section 402 permit when fill material discharges contain material that is subject to EPA's new source performance standards. Such an approach would create a “confusing division of permitting authority” that Congress did not intend, the court says.

The 6-3 decision further finds that the Corps acted in accordance with the law when issuing the section 404 permit to Coeur Alaska, relying on a May 2004 [EPA memorandum](#) because

both the CWA and the agencies' regulations are ambiguous as to whether section 306 new source performance standards apply to section 404 permits.

Justice Anthony Kennedy wrote the majority opinion and was joined by Chief Justice John Roberts and Justices Clarence Thomas, Stephen Breyer, and Samuel Alito. Justice Antonin Scalia concurred with the judgment but only partially concurred with the reasoning. Justice Ruth Bader Ginsburg wrote the dissenting opinion, joined by Justices John Paul Stevens and David Souter.

In response to the ruling, environmentalists are urging the Obama administration to quickly rescind the 2004 Bush administration memo that gave preeminence to the Corps' section 404 permit and issue a new interpretation of the regulations to require the strict discharge requirements for mining tailings at the so-called Kensington mine site. Because the high court merely granted deference to an agency interpretation, the activists argue, the decision would allow the Obama EPA to quickly repeal the Bush administration's stance and limit the precedent set by the ruling.

But the agency has other options as well. EPA should veto the mine's "dredge and fill" permit under section 404 of the CWA because "any discharge that's going to kill all the fish in a lake has an 'unacceptable adverse impact' on its face," Earthjustice attorney Tom Waldo said on a June 22 conference call with reporters.

Environmentalists are also urging the Obama administration to issue a new regulatory definition of "fill material," which they say was broadened by the Bush administration to pave the way for mountaintop coal mining projects but was stretched even further for the froth-flotation mill discharges from the Alaska gold mine.

Although the activists say the ruling could provoke a response from Congress, they admit a legislative fix would take longer and is more difficult.

The Obama administration "has the ability to act more quickly," Earthjustice senior attorney Joan Mulhern said on the conference call. However, Mulhern noted Pallone's bill has over 150 cosponsors in the House, a sign of significant support.

Before the Supreme Court, environmentalists argued that EPA new source performance standards under section 306 should apply to the slurry discharges, which would subject the releases to a zero-discharge standard, requiring technology controls and a section 402 permit. But the mining company and the federal government countered that section 404 grants the Corps authority to determine whether to issue a permit allowing the slurry discharge without regard to the section 306 standard.

Industry and the federal government relied in part on a 2004 memorandum from Diane Regas, then-head of EPA's Wetlands, Oceans & Watersheds Office, to a key official in EPA Region X overseeing CWA permitting issues at the gold mine. Because the mining tailings were regulated under a section 404 permit, "the regulatory regime applicable to discharges under section 402, including effluent limitations guidelines and standards, such as those

applicable to gold ore mining . . . do not apply,” Regas wrote.

Environmentalists argued the memorandum is not entitled to deference because it contradicts the agencies' published statements and prior practice. But the court rejects this contention, saying SEACC's arguments are not convincing.

Although the memo, as an internal document, does not merit full deference under the Supreme Court's holdings in *Chevron v. Natural Resources Defense Council* , “the Court defers to it because it is not 'plainly erroneous or inconsistent with the regulations[s],’” the just-issued ruling says, going on to outline several factors that inform this conclusion. These include the memo's limited application to closed bodies of water, which guards against the possibility of evasion of the section 306 new source performance standards, the court says.

Chevron sets forth the legal test for determining whether to grant deference to a government agency's interpretation of its own statutory mandate, and Scalia in his concurrence says the court's deference to the Regas memo should be considered *Chevron* deference.

The only reason the court is not calling it *Chevron* deference is because of the high court's 2001 “misguided opinion” in *United States v. Mead Corp.* , which held that *Chevron* deference generally only applies to notice-and-comment rulemakings. *Mead* 's “incomprehensible criteria for *Chevron* deference have produced so much confusion in the lower courts that there now has appeared the phenomenon of *Chevron* avoidance . . . ,” Scalia says. Scalia favors overruling *Mead* , but failing that, is “pleased to join an opinion that effectively ignores it.”

The dissent echoes environmentalists' concerns that the ruling could lead to section 404 permits authorizing discharges of other solids that are now restricted by EPA standards -- a position the majority dismisses by saying those “extreme instances” are not present in the case and if they are to arise, environmentalists can challenge those permits.

And Breyer in his opinion concurring with the majority says he recognizes the danger Ginsburg warns against, “namely that '[w]hole categories of regulated industries' might 'gain immunity from a variety of pollution-control standards.’” But he says there are safeguards against that occurring, including EPA's ability to veto section 404 permits and the fact EPA “has never suggested that it would interpret the regulations so as to turn section 404 into a loophole, permitting evasion of a 'performance standard' simply because a polluter discharges enough pollutant to raise the bottom elevation of the body of water.”

6222009_fixes Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency

ogc pulling for review

Re: -F-12-8- Administrative copy -rd/ir/vire -EP-adminstr/sa/ck/or

ogc pulling for review

Re: -F-12-8- Administrative copy -rd/ir/vire -EP-adminstr/sa/ck/or

01268-EPA-2565

Richard Windsor/DC/USEPA/US
06/24/2009 08:56 AM

To Scott Fulton, Bob Sussman
cc Charles Imohiosen, Diane Thompson, "Lisa Heinzerling"
bcc
Subject Re: supreme ct CWA decision/ 11th Circuit decision on water transfers

See editorial in todays USA Today.
Scott Fulton

----- Original Message -----

From: Scott Fulton
Sent: 06/24/2009 08:40 AM EDT
To: Bob Sussman; Richard Windsor
Cc: Charles Imohiosen; Diane Thompson; "Lisa Heinzerling" <heinzerling.lisa@epa.gov>
Subject: Re: supreme ct CWA decision/ 11th Circuit decision on water transfers

(b) (5) Deliberative, (b)(5) Attorney Client Privilege

Bob Sussman

----- Original Message -----

From: Bob Sussman
Sent: 06/24/2009 08:19 AM EDT
To: Richard Windsor
Cc: Charles Imohiosen; Diane Thompson; "Lisa Heinzerling" <heinzerling.lisa@epa.gov>; Scott Fulton
Subject: Re: supreme ct CWA decision/ 11th Circuit decision on water transfers

(b) (5) Attorney Client, (b) (5) Deliberative

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency

Richard Windsor (b) (5) Attorney Client, (b) (5) Deliberative 06/24/2009 07:48:01 AM

From: Richard Windsor/DC/USEPA/US
To: Bob Sussman/DC/USEPA/US@EPA
Cc: Charles Imohiosen/DC/USEPA/US@EPA, Scott Fulton/DC/USEPA/US@EPA, Diane Thompson/DC/USEPA/US@EPA, "Lisa Heinzerling" <heinzerling.lisa@epa.gov>
Date: 06/24/2009 07:48 AM
Subject: Re: supreme ct CWA decision/ 11th Circuit decision on water transfers

Thanks Bob. (b) (5) Attorney Client, (b) (5) Deliberative

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----- Original Message -----

From: Bob Sussman

Sent: 06/23/2009 07:59 PM EDT

To: Richard Windsor

Cc: Charles Imohiosen; Scott Fulton; Diane Thompson

Subject: Re: supreme ct CWA decision/ 11th Circuit decision on water transfers

Lisa -- (b) (5) Deliberative, (b)(5) Attorney Client Privilege
[Redacted]

[Redacted]

[Redacted]

[Redacted]

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency

Bob Sussman (b) (5) Deliberative 06/23/2009 08:18:31 AM

From: Bob Sussman/DC/USEPA/US
To: Richard Windsor/DC/USEPA/US@EPA
Cc: Scott Fulton/DC/USEPA/US@EPA, Charles Imohiosen/DC/USEPA/US@EPA
Date: 06/23/2009 08:18 AM
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(b) (5) Deliberative
[Redacted]

Activists Seek EPA 'Fixes' To Limit Effect Of High Court Mine Waste Ruling

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The court rejected environmentalists' argument that section 404 contains an implicit exception requiring a section 402 permit when fill material discharges contain material that is subject to EPA's new source performance standards. Such an approach would create a "confusing division of permitting authority" that Congress did not intend, the court says.

The 6-3 decision further finds that the Corps acted in accordance with the law when issuing the section 404 permit to Coeur Alaska, relying on a May 2004 [EPA memorandum](#) because both the CWA and the agencies' regulations are ambiguous as to whether section 306 new source performance standards apply to section 404 permits.

Justice Anthony Kennedy wrote the majority opinion and was joined by Chief Justice John Roberts and Justices Clarence Thomas, Stephen Breyer, and Samuel Alito. Justice Antonin Scalia concurred with the judgment but only partially concurred with the reasoning. Justice Ruth Bader Ginsburg wrote the dissenting opinion, joined by Justices John Paul Stevens and David Souter.

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But the agency has other options as well. EPA should veto the mine's "dredge and fill" permit under section 404 of the CWA because "any discharge that's going to kill all the fish in a lake has an 'unacceptable adverse impact' on its face," Earthjustice attorney Tom Waldo said on a June 22 conference call with reporters.

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Office of the Administrator
US Environmental Protection Agency

01268-EPA-2567

Richard Windsor/DC/USEPA/US
06/24/2009 12:37 PM

To Megan Cryan
cc
bcc
Subject Re: Denver Post: EPA Chief uses Denver as growth role model

Fuhgeddaboutit. Funny.
Megan Cryan

----- Original Message -----

From: Megan Cryan
Sent: 06/24/2009 11:27 AM EDT
To: windsor.richard@epa.gov
Subject: Fw: Denver Post: EPA Chief uses Denver as growth role model

Sure u already saw this, but wanted to make sure. And apologize. It will never happen again. I'm really sorry.

Wendy Chipp

----- Original Message -----

From: Wendy Chipp
Sent: 06/24/2009 08:19 AM MDT
To: Lawrence Grandison; Richard Mylott
Cc: Sandy Fells; Mike Gaydosh; Carol Rushin; Betsaida Alcantara; Megan Cryan; Laura Niles
Subject: Denver Post: EPA Chief uses Denver as growth role model

denver and the west

EPA chief uses Denver as growth role model

Garden Village is called just what Obama wants

By Claire Trageser

The Denver Post

Posted: 06/24/2009 01:00:00 AM MDT

Updated: 06/24/2009 01:05:55 AM MDT

and environmental efficiency from the U.S. Green Building Council.

A quarter of the development's apartments are for Denver residents who make less than half of the city's median income. Another quarter of the apartments are for residents who make less than 60 percent of the median income.

Jackson said the development's combination of economic stimulation and environmental innovation is what the project is all about.

This week, top White House administrators are visiting other environmental projects across the country to highlight the benefits of green building. Last month, the House's Energy and Commerce Committee passed the Waxman-Markey American Clean Energy and Security Act, which focuses on renewable-energy creation and emissions cuts.

The EPA has teamed with the Transportation and Housing and Urban Development departments to encourage more green building in the Garden Village area.

"Colorado has been a leader in growing the green economy," Jackson said. "We want more communities just like Garden Village."

Claire Trageser: 303-954-1638 or ctrageser@denverpost.com

01268-EPA-2568

Richard Windsor/DC/USEPA/US
06/24/2009 12:54 PM

To Seth Oster
cc
bcc

Subject Re: BREAKING: EPA Suppresses Internal Global Warming Study; CEI Calls for Agency to Release Concealed Report

Silly

Seth Oster

----- Original Message -----

From: Seth Oster
Sent: 06/24/2009 12:46 PM EDT
To: Richard Windsor; Diane Thompson; Lisa Heinzerling; Marcia Mulkey; Bob Sussman; Arvin Ganesan; Scott Fulton
Cc: Allyn Brooks-LaSure; Adora Andy
Subject: BREAKING: EPA Suppresses Internal Global Warming Study; CEI Calls for Agency to Release Concealed Report

The senior economist from OPEI has also apparently gone to a public policy group, which as issued the press release below.

(b) (5) Deliberative

We are issuing our statement (amended with a bit more information we received this morning) and will be working this with reporters the rest of the day.

Seth

Competitive Enterprise Institute

contact: Audrey Mullen at 703-548-1160

www.cei.org

EPA Suppresses Internal Global Warming Study

CEI Calls for Agency to Release Concealed Report

Washington, D.C. -- The Competitive Enterprise Institute today charged that a senior official of the U.S. Environment Protection Agency actively suppressed a scientific analysis of climate change because of political pressure to support the Administration's policy agenda of regulating carbon dioxide.

As part of a just-ended public comment period, CEI submitted a set of four EPA emails, dated March 12-17, 2009, which indicate that a significant internal critique of the agency's global warming position was put under wraps and concealed.

The study the emails refer to, which ran counter to the administration's views on carbon dioxide and climate change, was kept from circulating within the agency, was never disclosed to the public, and was not added to the body of materials relevant to EPA's current "endangerment" proceeding. The emails further show that the study was treated in this manner not because of any problem with its quality, but for political reasons.

The emails may be seen here: http://cei.org/cei_files/fm/active/0/Endangerment%20Comments%206-23-09.pdf

"This suppression of valid science for political reasons is beyond belief," said CEI General Counsel Sam Kazman. "EPA's conduct is even more outlandish because it flies in the face of the President's widely-touted claim that 'the days of science taking a back seat to ideology are over.'"

CEI's filing requests that EPA make the suppressed study public, place it into the endangerment docket, and extend the comment period to allow public response to the new information. CEI is also requesting that EPA publicly declare that it will engage in no reprisals against the study's author, a senior analyst who has worked at EPA for over 35 years.

CEI is a non-profit, non-partisan public policy group dedicated to the principles of free enterprise and limited government. For more information about CEI, please visit our website at www.cei.org.

-30-

Audrey Mullen
Advocacy Ink
815 King Street – Suite 302
Alexandria, VA 22314
Ph. 703-548-1160
Cell 202-270-2772

www.advocacyink.com

01268-EPA-2569

Richard Windsor/DC/USEPA/US
06/24/2009 12:58 PM

To Seth Oster, Diane Thompson, Lisa Heinzerling, Marcia Mulkey, Bob Sussman, Arvin Ganesan, Scott Fulton
cc Allyn Brooks-LaSure, Adora Andy
bcc

Subject Re: BREAKING: EPA Suppresses Internal Global Warming Study; CEI Calls for Agency to Release Concealed Report

[Redacted] (b) (5) Deliberative

Seth Oster

----- Original Message -----

From: Seth Oster
Sent: 06/24/2009 12:46 PM EDT
To: Richard Windsor; Diane Thompson; Lisa Heinzerling; Marcia Mulkey; Bob Sussman; Arvin Ganesan; Scott Fulton
Cc: Allyn Brooks-LaSure; Adora Andy
Subject: BREAKING: EPA Suppresses Internal Global Warming Study; CEI Calls for Agency to Release Concealed Report

[Redacted] (b) (5) Deliberative

[Redacted]

[Redacted]

Seth

Competitive Enterprise Institute

contact: Audrey Mullen at 703-548-1160

www.cei.org

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-30-

Audrey Mullen
Advocacy Ink
815 King Street – Suite 302
Alexandria, VA 22314
Ph. 703-548-1160
Cell 202-270-2772

www.advocacyink.com

01268-EPA-2570

Richard Windsor/DC/USEPA/US
06/24/2009 01:56 PM

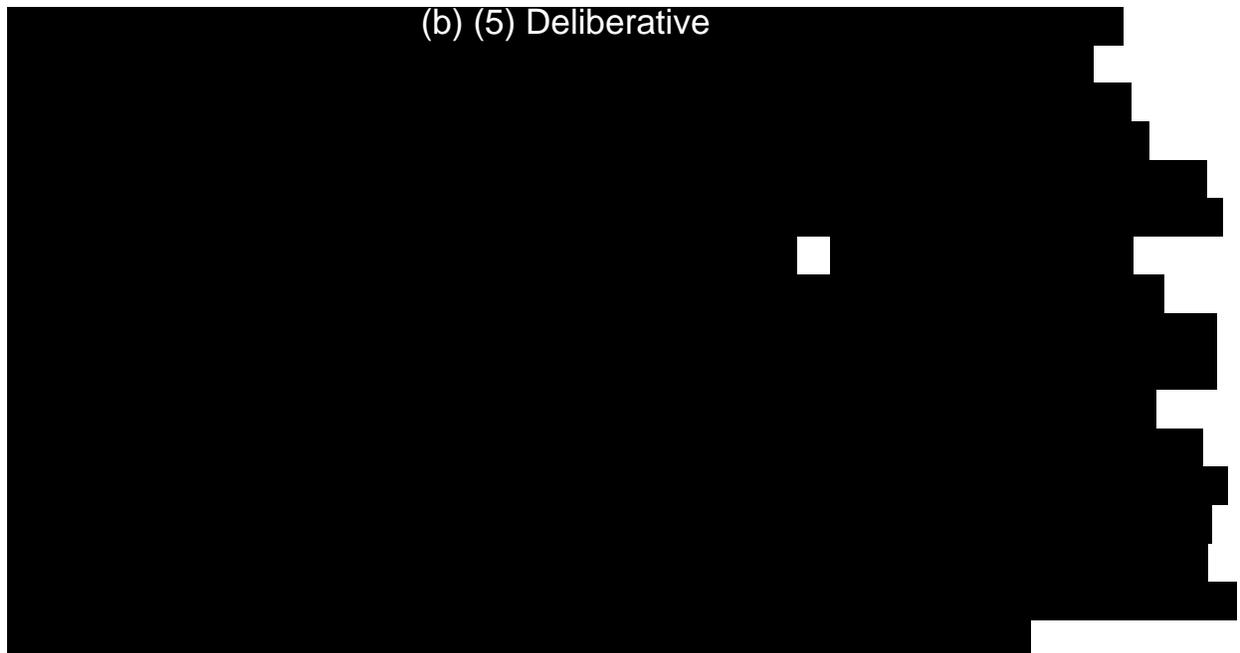
To Seth Oster
cc
bcc
Subject Re: Official Quote

Perfect.
Seth Oster

----- Original Message -----

From: Seth Oster
Sent: 06/24/2009 01:38 PM EDT
To: Richard Windsor
Cc: Diane Thompson
Subject: Official Quote

(b) (5) Deliberative



Seth Oster
Associate Administrator
Office of Public Affairs
Environmental Protection Agency
(202) 564-1918
oster.seth@epa.gov

01268-EPA-2571

Richard Windsor/DC/USEPA/US
06/24/2009 02:00 PM

To Scott Fulton
cc
bcc

Subject Re: BREAKING: EPA Suppresses Internal Global Warming Study; CEI Calls for Agency to Release Concealed Report

(b) (5) Deliberative, (b) (6) Privacy
Scott Fulton

----- Original Message -----

From: Scott Fulton
Sent: 06/24/2009 01:25 PM EDT
To: Richard Windsor
Subject: Re: BREAKING: EPA Suppresses Internal Global Warming Study; CEI Calls for Agency to Release Concealed Report

(b) (5) Deliberative, (b) (6) Privacy
[Redacted]

Richard Windsor

----- Original Message -----

From: Richard Windsor
Sent: 06/24/2009 12:58 PM EDT
To: Seth Oster; Diane Thompson; Lisa Heinzerling; Marcia Mulkey; Bob Sussman; Arvin Ganesan; Scott Fulton
Cc: Allyn Brooks-LaSure; Adora Andy
Subject: Re: BREAKING: EPA Suppresses Internal Global Warming Study; CEI Calls for Agency to Release Concealed Report

(b) (5) Deliberative
[Redacted]

Seth Oster

----- Original Message -----

From: Seth Oster
Sent: 06/24/2009 12:46 PM EDT
To: Richard Windsor; Diane Thompson; Lisa Heinzerling; Marcia Mulkey; Bob Sussman; Arvin Ganesan; Scott Fulton
Cc: Allyn Brooks-LaSure; Adora Andy
Subject: BREAKING: EPA Suppresses Internal Global Warming Study; CEI Calls for Agency to Release Concealed Report

(b) (5) Deliberative
[Redacted]

[Redacted]

[Redacted]

Seth

Competitive Enterprise Institute

contact: Audrey Mullen at 703-548-1160

www.cei.org

EPA Suppresses Internal Global Warming Study***CEI Calls for Agency to Release Concealed Report***

Washington, D.C. -- The Competitive Enterprise Institute today charged that a senior official of the U.S. Environment Protection Agency actively suppressed a scientific analysis of climate change because of political pressure to support the Administration's policy agenda of regulating carbon dioxide.

As part of a just-ended public comment period, CEI submitted a set of four EPA emails, dated March 12-17, 2009, which indicate that a significant internal critique of the agency's global warming position was put under wraps and concealed.

The study the emails refer to, which ran counter to the administration's views on carbon dioxide and climate change, was kept from circulating within the agency, was never disclosed to the public, and was not added to the body of materials relevant to EPA's current "endangerment" proceeding. The emails further show that the study was treated in this manner not because of any problem with its quality, but for political reasons.

The emails may be seen here: http://cei.org/cei_files/fm/active/0/Endangerment%20Comments%206-23-09.pdf

"This suppression of valid science for political reasons is beyond belief," said CEI General Counsel Sam Kazman. "EPA's conduct is even more outlandish because it flies in the face of the President's widely-touted claim that 'the days of science taking a back seat to ideology are over.'"

CEI's filing requests that EPA make the suppressed study public, place it into the endangerment docket, and extend the comment period to allow public response to the new information. CEI is also requesting that EPA publicly declare that it will engage in no reprisals against the study's author, a senior analyst who has worked at EPA for over 35 years.

CEI is a non-profit, non-partisan public policy group dedicated to the principles of free enterprise and limited government. For more information about CEI, please visit our website at www.cei.org.

-30-

Audrey Mullen
Advocacy Ink
815 King Street - Suite 302
Alexandria, VA 22314
Ph. 703-548-1160
Cell 202-270-2772

www.advocacyink.com

01268-EPA-2572

Richard Windsor/DC/USEPA/US
06/24/2009 04:26 PM

To Seth Oster
cc
bcc

Subject Re: FINAL Statement on Endangerment Issue

Ok. [REDACTED] (b) (5) Deliberative

Seth Oster

----- Original Message -----

From: Seth Oster
Sent: 06/24/2009 04:02 PM EDT
To: Diane Thompson; Richard Windsor; Marcia Mulkey
Cc: Adora Andy; Allyn Brooks-LaSure; Bob Sussman; Lisa Heinzerling
Subject: FINAL Statement on Endangerment Issue

Below is the final statement that is now going out.

Lisa -- [REDACTED] (b) (5) Deliberative

[REDACTED]

Seth

This Administration and this EPA Administrator are fully committed to openness, transparency and science-based decision making. These principles were reflected throughout the development of the proposed Endangerment finding, a process in which a broad array of voices were heard and an inter agency review was conducted. In this instance, certain opinions were expressed by an individual who is not a scientist and was not part of the working group dealing with this issue. Nevertheless, several of the opinions and ideas proposed by this individual were submitted to those responsible for developing the proposed endangerment finding. Additionally, his manager allowed his general views on the subject of climate change to be heard and considered inside and outside the EPA and presented at conferences and at an agency seminar. The individual was also granted a request to join a committee that organizes an ongoing climate seminar series, open to both agency and outside experts, where he has been able to invite speakers with a full range of views on climate science. The claims that his opinions were not considered or studied are entirely false.

Seth Oster
Associate Administrator
Office of Public Affairs
Environmental Protection Agency

(202) 564-1918
oster.seth@epa.gov

01268-EPA-2583

Richard Windsor/DC/USEPA/US
06/25/2009 09:40 AM

To Bob Sussman
cc Diane Thompson, Arvin Ganesan, Allyn Brooks-LaSure, Scott Fulton, Adora Andy
bcc

Subject Re: Call with Jon Carson re Coal Ash -- Call w boxer

Arvin - Please send me the best number for Boxer. I will try her before 10.
Bob Sussman

----- Original Message -----

From: Bob Sussman
Sent: 06/25/2009 09:37 AM EDT
To: Richard Windsor
Cc: Diane Thompson; Arvin Ganesan; Allyn Brooks-LaSure; Scott Fulton; Adora Andy
Subject: Call with Jon Carson re Coal Ash -- Call w boxer

(b) (5) Deliberative

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency

01268-EPA-2585

Richard Windsor/DC/USEPA/US
06/25/2009 05:19 PM

To Eric Wachter
cc
bcc
Subject Re: Pew Center urges yes vote for Waxman-Markey Clean Energy Bill (H.R.2454)

(b)(5)

rative

Eric Wachter

----- Original Message -----

From: Eric Wachter
Sent: 06/25/2009 12:28 PM EDT
To: Richard Windsor
Subject: Fw: Pew Center urges yes vote for Waxman-Markey Clean Energy Bill (H.R.2454)

Message Information

Date 06/24/2009 04:41 PM06/25/2009 05:19:17 PM
From Eileen Claussen <ClaussenE@pewclimate.org>
To LisaP Jackson/DC/USEPA/US@EPA
cc
Subject FW: Pew Center urges yes vote for Waxman-Markey Clean Energy Bill (H.R.2454)

Message Body

Lisa,

I thought you might like to see this.

Eileen Claussen
President
Pew Center on Global Climate Change
2101 Wilson Blvd., Suite 550
Arlington, VA 22201

www.pewclimate.org



[Sign up for the Pew Center E-Newsletter](#)

From: Pew Center on Global Climate Change [mailto:pewclimate@pewclimate.org]

OEX Processing Information

Processed Date:	06/24/2009 12:00 AM
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Sent to 3rd Floor	Sent to 3rd Floor
Message Count	1

01268-EPA-2590

Richard Windsor/DC/USEPA/US
06/26/2009 09:26 PM

To Allyn Brooks-LaSure
cc
bcc

Subject Re: UPDATED and FINAL: EMBARGOED: WEEKLY ADDRESS: President Obama Calls Energy Bill Passage Critical to Stronger American Economy

Good speech.

From: Allyn Brooks-LaSure
Sent: 06/26/2009 08:38 PM EDT
To: "Windsor, Richard" <Windsor.richard@epa.gov>; "Mcintosh, David" <mcintosh.david@epa.gov>; Lisa Heinzerling; Arvin Ganesan; "Thompson, Diane" <thompson.diane@epa.gov>; "Andy, Adora" <andy.adora@epa.gov>; "Oster, Seth" <oster.seth@epa.gov>
Subject: Fw: UPDATED and FINAL: EMBARGOED: WEEKLY ADDRESS: President Obama Calls Energy Bill Passage Critical to Stronger American Economy

And this...

MABL.

M. Allyn Brooks-LaSure
Office of the Administrator
U.S. Environmental Protection Agency
Cell: 202-631-0415

From: "White House Press Office" [whitehouse-lists-noreply@list.whitehouse.gov]
Sent: 06/26/2009 08:28 PM AST
To: Allyn Brooks-LaSure
Subject: UPDATED and FINAL: EMBARGOED: WEEKLY ADDRESS: President Obama Calls Energy Bill Passage Critical to Stronger American Economy

***Please Note: This is the updated and final version of the President's weekly address. ***

THE WHITE HOUSE

Office of the Press Secretary

EMBARGOED UNTIL 6:00 AM ET, SATURDAY, June 27, 2009

WEEKLY ADDRESS: President Obama Calls Energy Bill Passage Critical to Stronger American Economy

WASHINGTON - In his weekly address, President Barack Obama praised the House of Representatives for passing the energy bill on Friday evening. This historic piece of legislation will not just lessen our dependence on foreign oil, but also spark a clean energy

transformation in our economy that will create millions of new American jobs that pay well and cannot be outsourced. Clean energy and the jobs it creates are critical to building a new foundation for our economy.

The audio and video will be available at 6:00am Saturday, June 27, 2009 at www.whitehouse.gov.

**Prepared Remarks of President Barack Obama
Weekly Address
The White House
June 27, 2009**

Yesterday, the House of Representatives passed a historic piece of legislation that will open the door to a clean energy economy and a better future for America.

For more than three decades, we have talked about our dependence on foreign oil. And for more than three decades, we have seen that dependence grow. We have seen our reliance on fossil fuels jeopardize our national security. We have seen it pollute the air we breathe and endanger our planet. And most of all, we have seen other countries realize a critical truth: the nation that leads in the creation of a clean energy economy will be the nation that leads the 21st century global economy.

Now is the time for the United States of America to realize this too. Now is the time for us to lead.

The energy bill that passed the House will finally create a set of incentives that will spark a clean energy transformation in our economy. It will spur the development of low carbon sources of energy - everything from wind, solar, and geothermal power to safer nuclear energy and cleaner coal. It will spur new energy savings, like the efficient windows and other materials that reduce heating costs in the winter and cooling costs in the summer. And most importantly, it will make possible the creation of millions of new jobs.

Make no mistake: this is a jobs bill. We're already seeing why this is true in the clean energy investments we're making through the Recovery Act. In California, 3000 people will be employed to build a new solar plant that will create 1000 permanent jobs. In Michigan, investment in wind turbines and wind technology is expected to create over 2,600 jobs. In Florida, three new solar projects are expected to employ 1400 people.

The list goes on and on, but the point is this: this legislation will finally make clean energy the profitable kind of energy. That will lead to the creation of new businesses and entire new industries. And that will lead to American jobs that pay well and cannot be outsourced. I have often talked about the need to build a new foundation for economic growth so that we do not return to the endless cycle of bubble and bust that led us to this recession. Clean energy and the jobs it creates will be absolutely critical to this new

foundation.

This legislation has also been written carefully to address the concerns that many have expressed in the past. Instead of increasing the deficit, it is paid for by the polluters who currently emit dangerous carbon emissions. It provides assistance to businesses and families as they make the gradual transition to clean energy technologies. It gives rural communities and farmers the opportunity to participate in climate solutions and generate new income. And above all, it will protect consumers from the costs of this transition, so that in a decade, the price to the average American will be just about a postage stamp a day. Because this legislation is so balanced and sensible, it has already attracted a remarkable coalition of consumer and environmental groups; labor and business leaders; Democrats and Republicans. And I want to thank every Member of Congress who put politics aside to support this bill on Friday.

Now my call to every Senator, as well as to every American, is this: We cannot be afraid of the future. And we must not be prisoners of the past. Don't believe the misinformation out there that suggests there is somehow a contradiction between investing in clean energy and economic growth. It's just not true.

We have been talking about energy for decades. But there is no longer a disagreement over whether our dependence on foreign oil is endangering our security. It is. There is no longer a debate about whether carbon pollution is placing our planet in jeopardy. It's happening. And there is no longer a question about whether the jobs and industries of the 21st century will be centered around clean, renewable energy. The question is, which country will create these jobs and these industries? I want that answer to be the United States of America. And I believe that the American people and the men and women they sent to Congress share that view. So I want to congratulate the House for passing this bill, and I want to urge the Senate to take this opportunity to come together and meet our obligations - to our constituents, to our children, to God's creation, and to future generations.

Thanks for listening.

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01268-EPA-2639

Richard Windsor/DC/USEPA/US
07/06/2009 08:37 PM

To Arvin Ganesan
cc
bcc

Subject Re: an article from an Oklahoma newspaper

I saw it. Whatever... ;)
Arvin Ganesan

----- Original Message -----

From: Arvin Ganesan
Sent: 07/06/2009 08:19 PM EDT
To: Richard Windsor
Subject: an article from an Oklahoma newspaper

Senator: 'We're going to expose it'

Clint Sloan Staff Writer

WASHINGTON — An Oklahoma Senator has called for an investigation into a suppressed Environmental Protection Agency report that questioned the relationship between greenhouse gases and increased global temperatures.

Sen. Jim Inhofe, R-Okla. and ranking member of the Senate Environment and Public Works Committee, said he is disappointed in the EPA's lack of "transparency and openness" regarding a report written by Alan Carlin, a 38-year EPA employee.

"Making scientific decisions while ignoring key data politicizes the scientific process and shows that important policy decisions are being made in a black box," Inhofe said.

Inhofe, along with Sen. John Barrasso, R-Wy., authored a letter dated June 30 addressed to EPA Administrator Lisa Jackson. It stated that "the director of EPA's National Center for Environmental Economics refused to consider the report, and rejected a request to forward the report to agency officials tasked with analyzing the science behind the endangerment (report) finding."

"We believe this and many other issues and complexities involved in the endangerment finding were either ignored or given short shrift in EPA's proposal," Inhofe and Barrasso stated in the letter. "In our view, this lack of transparency seriously undermines the integrity of EPA's actions."

Barrasso said the letter was necessary because lawmakers have an obligation to look after their constituents, and hold those in power accountable.

"The Agency's commitment to transparency must be more than just words," Barrasso said. "The EPA cannot put a gag order on sound science."

Inhofe and Barrasso provide specific questions they want Jackson to answer near the end of the letter. These questions ask if the EPA's suppressing of Carlin's report "reflects the Agency's, and this Administration's, commitments to transparency and scientific integrity."

Inhofe and Barrasso asks in the letter for Jackson to respond to these questions by Friday, July 10. The public may provide their view of this matter by phoning Sen. Jim Inhofe at 202-224-4721 or Sen. John Barrasso at 202-224-6441. The public may also phone EPA Administrator Lisa Jackson at 202-564-4700.

Sen. Tom Coburn, R-Okla., was asked to respond to Inhofe's call for an investigation but refused to comment.

ARVIN R. GANESAN
Deputy Associate Administrator
Congressional Affairs

Office of the Administrator
United States Environmental Protection Agency
Ganesan.Arvin@epa.gov
(p) 202.564.5200
(f) 202.501.1519

01268-EPA-2643

Richard
Windsor/DC/USEPA/US
07/13/2009 10:49 AM

To David McIntosh
cc "Seth Oster", "Allyn Brooks-Lasure"
bcc

Subject Re: Just FYI: Governor Freudenthal opposes House climate bill (but not cap-and-trade generally)

(b) (5) Deliberative

David McIntosh

----- Original Message -----

From: David McIntosh

Sent: 07/13/2009 08:31 AM EDT

To: Richard Windsor

Subject: Just FYI: Governor Freudenthal opposes House climate bill (but not cap-and-trade generally)

WYOMING: Governor comes out against climate bill (07/13/2009)

Wyoming Gov. Dave Freudenthal (D) announced his opposition to the climate bill making its way through the U.S. Congress, saying Friday that the legislation would increase energy costs for the residents of his state, the nation's top coal producer.

"This bill has some real biases built in that interestingly enough, from my point of view, are negative for fossil energy," he told reporters.

The governor's opposition mirrors that of the state's congressional delegation, including Rep. Cynthia Lummis (R), who voted against the bill in the House, and GOP Sens. Mike Enzi and John Barrasso.

Freudenthal said a cap on carbon emissions would be more efficient than the more comprehensive bill.

"Just come up with a standard and say people have to meet it," he said. "I think there's the opportunity here for some more creative thought. I haven't heard it from the delegation, but I'm sure they're thinking about it, about ways to make this work" (Mead Gruver, [Associated Press](#), July 10). -- JK

01268-EPA-2657

Richard Windsor/DC/USEPA/US
07/16/2009 07:09 PM

To Bob Sussman
cc
bcc
Subject Re: Mining

Ignore
Bob Sussman

----- Original Message -----

From: Bob Sussman
Sent: 07/16/2009 06:53 PM EDT
To: Gregory Peck
Cc: Arvin Ganesan; Mike Shapiro
Subject: Re: Mining

[REDACTED] (b) (5) Deliberative [REDACTED]

[REDACTED]

[REDACTED]

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency

Gregory Peck July 17, 2009 07/16/2009 10:13:52 AM

From: Gregory Peck/DC/USEPA/US
To: Bob Sussman/DC/USEPA/US@EPA, Mike Shapiro/DC/USEPA/US@EPA, Arvin Ganesan/DC/USEPA/US@EPA
Date: 07/16/2009 10:13 AM
Subject: Mining

July 17, 2009

Inside EPA

INDUSTRY SKEPTICAL OF PLANNED EPA MOUNTAINTOP MINING AGREEMENTS

SECTION: Vol. 30 No. 28

LENGTH: 652 words

The [Obama administration](#) Obama administration

is planning to reach agreements with industry about mountaintop mining practices as the culmination of its enhanced review process for permit applications, but industry is skeptical of the effort, saying it appears to be an attempt to win concessions outside of the normal regulatory process.

The plans for agreements with industry is the latest development in the administration's efforts to step up scrutiny of mining permits -- including mountaintop mining permits -- that result in mining waste being dumped in streams in so-called valley fills. The plan for agreements follows a June 11 interagency memorandum of understanding where the administration announced its plans for enhanced review.

EPA and other administration officials met recently with environmental groups and industry to explain how the agency plans to set a threshold for determining which pending mining permits must undergo enhanced review, an industry source says. The officials also outlined the timeline for the agency's review, which likely will not be completed before next year, and parameters that will be used to determine the threshold, such as land-use efficiency and the coal ratio, which measures the thickness of the coal seam.

The officials also said that after EPA completes the reviews, the agency plans to sit down with companies to try to reach agreements on the issue, the source says.

But industry sources are expressing concern about the effort, saying EPA's process to reach agreements on mountaintop mining appears to be intended to obscure and delay the process in an effort to get industry to agree to conditions in the permits that they normally would not agree to.

It is unclear what the administration hopes to achieve with the agreements since there is no precedent for them, and it is unclear why the agency is pursuing the agreements since the Army Corps of Engineers has primary oversight of the Clean Water Act section 404 permits that govern valley fills, the source says.

Among industry's concerns over the review process is a lack of transparency. An administration official told stakeholders at the meeting that they would not be given the inputs to the model the agency plans to use to set the threshold for enhanced review, the source says. The official said that sharing the information with stakeholders would further slow the process, the source says.

Industry argues that inputs to models that are used in the regulatory context should be made public and peer-reviewed. And due to the lack of transparency and delay of permits into next year, industry may be tempted to agree to conditions on the permits that may not be legally required. The agreements could then turn into a standard for future permits, effectively setting new standards for the industry outside of the regulatory process, the source says.

Industry's concern about the process is compounded by its concern that the model, called the multi-criteria integrated resource assessment, is too subjective. The model weighs the importance of criteria that EPA must consider in making decisions, including stakeholder input, and industry is concerned that it could be easily tipped against industry's interests, the source says. In addition, the model was developed to help the agency make policy

decisions, not regulatory decisions, which should instead be based on science, the source says.

Some of the parameters EPA plans to use in the model involve issues that are better left to states or industry to decide, the source says. For example, land-use efficiency should be a state decision and the viability of a coal seam should be a business decision, the source says.

EPA plans to gather information until the beginning of August, then spend 45 days reviewing the information and determining which permits need further review, and finally spend 60 days reviewing the permits with the Corps, the source says.

Gregory E. Peck
Chief of Staff
Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

202-564-5778

01268-EPA-2677

Richard Windsor/DC/USEPA/US
07/22/2009 09:56 AM

To "David McIntosh", "Arvin Ganesan", "Lawrence Elworth"
cc "Seth Oster", "Allyn Brooks-Lasure"
bcc
Subject Fw: Google Alert - lisa jackson epa

(b) (5) Deliberative

From: Google Alerts [googlealerts-noreply@google.com]
Sent: 07/21/2009 10:48 PM GMT
To: Richard Windsor
Subject: Google Alert - lisa jackson epa

Google News Alert for: **lisa jackson epa**

[Climate bill impact on US farms bearable: Lawmaker](#)

Reuters - USA

Agriculture Secretary Tom Vilsack and **EPA** chief **Lisa Jackson** were scheduled to testify on the matter on Wednesday before the Senate Agriculture Committee. ...

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U.S. EPA.gov (press release) - Washington,DC,USA

... competitive companies in manufacturing, finance, information technology and other major sectors of the economy," said **EPA** Administrator **Lisa P. Jackson**. ...

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01268-EPA-2678

David
McIntosh/DC/USEPA/US
07/22/2009 10:01 AM

To Richard Windsor
cc "Allyn Brooks-Lasure", "Lawrence Elworth", "Arvin Ganesan",
"David McIntosh", "Seth Oster"
bcc

Subject Re: Fw: Google Alert - lisa jackson epa

(b) (5) Deliberative

Richard Windsor (b) (5) Deliberative 07/22/2009 09:57:00 AM

From: Richard Windsor/DC/USEPA/US
To: "David McIntosh" <mcintosh.david@epa.gov>, "Arvin Ganesan" <ganesan.arvin@epa.gov>, "Lawrence Elworth" <Elworth.Lawrence@epamail.epa.gov>
Cc: "Seth Oster" <oster.seth@epa.gov>, "Allyn Brooks-Lasure" <Brooks-lasure.allyn@epa.gov>
Date: 07/22/2009 09:57 AM
Subject: Fw: Google Alert - lisa jackson epa

(b) (5) Deliberative

From: Google Alerts [googlealerts-noreply@google.com]
Sent: 07/21/2009 10:48 PM GMT
To: Richard Windsor
Subject: Google Alert - lisa jackson epa

Google News Alert for: **lisa jackson epa**

[Climate bill impact on US farms bearable: Lawmaker](#)

Reuters - USA

Agriculture Secretary Tom Vilsack and **EPA** chief **Lisa Jackson** were scheduled to testify on the matter on Wednesday before the Senate Agriculture Committee. ...

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[epa's Climate Leaders Program Recognizes Partners for](#)

U.S. EPA.gov (press release) - Washington,DC,USA

... competitive companies in manufacturing, finance, information technology and other major sectors of the economy," said **EPA** Administrator **Lisa P. Jackson**. ...

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01268-EPA-2679

Bob Sussman/DC/USEPA/US

To Richard Windsor, Diane Thompson

07/22/2009 10:42 AM

cc

bcc

Subject Fw: EnergyStar/watersense

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency

----- Forwarded by Bob Sussman/DC/USEPA/US on 07/22/2009 10:42 AM -----

From: Kathleen Hogan/DC/USEPA/US
To: Bob Sussman/DC/USEPA/US@EPA
Cc: Gina McCarthy/DC/USEPA/US@EPA, Mike Shapiro/DC/USEPA/US@EPA
Date: 07/22/2009 08:52 AM
Subject: Re: EnergyStar/watersense

(b) (5) Deliberative

[Redacted]

[Redacted]

Bob Sussman

(b) (5) Deliberative

07/22/2009 08:12:43 AM

From: Bob Sussman/DC/USEPA/US
To: Gina McCarthy/DC/USEPA/US@EPA, Mike Shapiro/DC/USEPA/US@EPA
Cc: Kathleen Hogan/DC/USEPA/US@EPA
Date: 07/22/2009 08:12 AM
Subject: EnergyStar/watersense

(b) (5) Deliberative

[Redacted]

Key EPA Programs In Turf Battle Over Water Efficiency Standards

EPA's programs that develop efficiency standards for labeling consumer and other products -- WaterSense and Energy Star -- are developing competing and possibly incompatible water efficiency standards for new homes, a move that observers say marks the latest turf battle between the two programs to lead EPA water efficiency efforts.

But the move is prompting concern from a water efficiency group which is calling on the agency to clarify the issue and ensure consistent standards between the two programs.

"Regarding the awkward process of concurrent, but inconsistent, draft proposals from the same agency addressing the same subject matter and same stakeholders, we believe that EPA should provide the public with an explanation as to how this happened and what steps will be taken to ensure that it does not happen again," the Alliance for Water Efficiency (AWE) says in [July 10 comments](#) on the draft the Energy Star water efficiency guideline for new homes. AWE represents a broad array of cities, industry and environmentalists.

The group's criticism is directed at Energy Star's draft update to its existing "Qualified Homes" specifications, which is slated for implementation in 2011, and WaterSense's May 8 draft "Water-Efficient Single-Family New Home Specification."

Critics say the discrepancies in the new homes guidelines could cause confusion for builders trying to meet the standards. For instance, the draft Energy Star new home guidelines include rules for showerheads, but WaterSense issued in 2007 a notice of intent to issue specifications for showerheads.

An EPA spokeswoman says the two programs will issue separate standards but they will be "coordinated and consistent."

"These coordinated final specifications will make it easy for builders to meet both specifications. Additionally, the inspection and certification systems complement each other and will enable a builder to have one inspector complete inspections for both programs," she said.

An Energy Star source says the showerhead flow rate requirement included in the rule was a "strawman placeholder" floated to get reaction from stakeholders.

The competing water efficiency standards for new homes are part of a long-running feud between the two programs, though sources following the issue say, for now, Energy Star may have the upper hand because Congress has authorized the program.

But Congress may be moving closer to authorizing WaterSense, a move that would put the program on an equal footing with Energy Star, sources say. Congressional authorization "would make all the difference," one source close to the situation says, because it "would indicate congressional direction for the program."

The Waxman-Markey climate bill, which recently passed the House, includes language authorizing WaterSense, while the Senate environment committee recently approved S.1005, a bill funding EPA water programs that includes an authorization for WaterSense.

While Energy Star has been authorized, EPA and DOE -- the two agencies that administer the program -- have also been at odds over the program's direction. EPA, for example, has been seeking to reserve the Energy Star label for already-proven products to preserve the program's brand while DOE is seeking to allow Energy Star to help commercialize emerging technologies.

To address this, the Senate energy committee earlier this year approved legislation requiring the agencies to update their interagency agreement by laying out each agency's jurisdiction and expertise, but the agencies opposed the mandate.

The dispute between the EPA programs focuses on their efforts to set water efficiency standards for new homes, though both are also being criticized by outside groups.

WaterSense's May 8 proposal, which includes criteria for scores of indoor and outdoor water fixtures, revises a proposal released last year that drew widespread criticism over its specification for lawn turf.

The WaterSense standards generally prohibit "turf" from comprising more than 40 percent of the landscapable area of a site unless the new home will meet a strict water budget for outdoor water use, an approach that drew widespread criticism from homebuilders, outdoor equipment, pesticide and other groups for being too limited.

The new proposal generally maintains the same strict approach the agency proposed last year, prompting continued criticisms.

The 40 percent limit on turfgrass is "inappropriate and not based on best available science," July 6 comments from the Irrigation Association say, adding that the "arbitrary limit" does not account for "local geographies, climates and markets."

The source close to the situation, who supports the turf standards, says the issue is "highly controversial" and fears opposition from industry will torpedo the rules. The standard "might not survive" in the face of a coming "full court press" from industry, the source says.

Environmentalists, meanwhile are pressing EPA to keep the rules. "We are aware that a number of organizations are urging EPA to weaken elements of the outdoor criteria. We strongly urge EPA to resist this suggestion. To the contrary . . . we believe the criteria should be strengthened significantly," the Natural Resources Defense Council and American Rivers say in July 7 comments.

The activists are also seeking stormwater guidelines in the standard that EPA has not

included, which the source close to the situation attributes to a dispute about WaterSense's authority to include stormwater requirements in the specification.

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According to the AWE's comments, Energy Star's showerhead flow standard of a maximum of two gallons per minute (gpm) could lead to customer dissatisfaction because there is not yet evidence showerheads are effective at such a low flow rate.

"[W]e believe that it is premature to specify a maximum flow rate for showerheads of 2.0 gpm until additional performance metrics are developed to ensure customer satisfaction is maintained while water efficiency is improved," the group's comments say.

The group's comments also argue the WaterSense approach on water heaters is "far preferable" to the Energy Star standard because WaterSense has a volume-based performance metric while Energy Star specifies particular configurations for the device.

"[W]e fail to see how the Energy Star specification as proposed can be expected to achieve the very specific hot water energy savings claimed for this provision in the Energy Star Homes savings methodology document," the comments say. -- *Jonathan Strong*

7212009_turf

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency

01268-EPA-2680

Lawrence Elworth/DC/USEPA/US
07/22/2009 11:24 AM

To David McIntosh
cc "Allyn Brooks-Lasure", "Arvin Ganesan", "David McIntosh", "Seth Oster", Richard Windsor
bcc
Subject Re: Fw: Google Alert - lisa jackson epa

(b) (5) Deliberative

Lawrence Elworth
Agricultural Counselor to the Administrator
U. S. Environmental Protection Agency
2415 Ariel Rios North
202 564-1530

David McIntosh (b) (5) Deliberative 07/22/2009 10:02:00 AM

From: David McIntosh/DC/USEPA/US
To: Richard Windsor/DC/USEPA/US@EPA
Cc: "Allyn Brooks-Lasure" <Brooks-lasure.allyn@epa.gov>, "Lawrence Elworth" <Elworth.Lawrence@epamail.epa.gov>, "Arvin Ganesan" <ganesan.arvin@epa.gov>, "David McIntosh" <mcintosh.david@epa.gov>, "Seth Oster" <oster.seth@epa.gov>
Date: 07/22/2009 10:02 AM
Subject: Re: Fw: Google Alert - lisa jackson epa

(b) (5) Deliberative

Richard Windsor (b) (5) Deliberative 07/22/2009 09:57:00 AM

From: Richard Windsor/DC/USEPA/US
To: "David McIntosh" <mcintosh.david@epa.gov>, "Arvin Ganesan" <ganesan.arvin@epa.gov>, "Lawrence Elworth" <Elworth.Lawrence@epamail.epa.gov>
Cc: "Seth Oster" <oster.seth@epa.gov>, "Allyn Brooks-Lasure" <Brooks-lasure.allyn@epa.gov>
Date: 07/22/2009 09:57 AM
Subject: Fw: Google Alert - lisa jackson epa

(b) (5) Deliberative

From: Google Alerts [googlealerts-noreply@google.com]
Sent: 07/21/2009 10:48 PM GMT
To: Richard Windsor
Subject: Google Alert - lisa jackson epa

Google News Alert for: **lisa jackson epa**
[Climate bill impact on US farms bearable: Lawmaker](#)

Reuters - USA

Agriculture Secretary Tom Vilsack and **EPA** chief **Lisa Jackson** were scheduled to testify on the matter on Wednesday before the Senate Agriculture Committee. ...

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[epa's Climate Leaders Program Recognizes Partners for ...](#)

U.S. EPA.gov (press release) - Washington,DC,USA

... competitive companies in manufacturing, finance, information technology and other major sectors of the economy," said **EPA** Administrator **Lisa P. Jackson**. ...

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01268-EPA-2682

Mike Shapiro/DC/USEPA/US To Richard Windsor
07/22/2009 08:09 PM cc
bcc
Subject Fw: EnergyStar/watersense

Lisa,

[Redacted] (b) (5) Deliberative

Mike
Kathleen Hogan

----- Original Message -----

From: Kathleen Hogan
Sent: 07/22/2009 08:52 AM EDT
To: Bob Sussman
Cc: Gina McCarthy; Mike Shapiro
Subject: Re: EnergyStar/watersense

Indeed.

[Redacted] (b) (5) Deliberative

[Redacted]

Bob Sussman

[Redacted] (b) (5) Deliberative

07/22/2009 08:12:43 AM

From: Bob Sussman/DC/USEPA/US
To: Gina McCarthy/DC/USEPA/US@EPA, Mike Shapiro/DC/USEPA/US@EPA
Cc: Kathleen Hogan/DC/USEPA/US@EPA
Date: 07/22/2009 08:12 AM
Subject: EnergyStar/watersense

[Redacted] (b) (5) Deliberative

Key EPA Programs In Turf Battle Over Water Efficiency Standards

EPA's programs that develop efficiency standards for labeling consumer and other products -- WaterSense and Energy Star -- are developing competing and possibly incompatible water efficiency standards for new homes, a move that observers say marks the latest turf battle between the two programs to lead EPA water efficiency efforts.

But the move is prompting concern from a water efficiency group which is calling on the agency to clarify the issue and ensure consistent standards between the two programs.

"Regarding the awkward process of concurrent, but inconsistent, draft proposals from the same agency addressing the same subject matter and same stakeholders, we believe that EPA should provide the public with an explanation as to how this happened and what steps will be taken to ensure that it does not happen again," the Alliance for Water Efficiency (AWE) says in [July 10 comments](#) on the draft the Energy Star water efficiency guideline for new homes. AWE represents a broad array of cities, industry and environmentalists.

The group's criticism is directed at Energy Star's draft update to its existing "Qualified Homes" specifications, which is slated for implementation in 2011, and WaterSense's May 8 draft "Water-Efficient Single-Family New Home Specification."

Critics say the discrepancies in the new homes guidelines could cause confusion for builders trying to meet the standards. For instance, the draft Energy Star new home guidelines include rules for showerheads, but WaterSense issued in 2007 a notice of intent to issue specifications for showerheads.

An EPA spokeswoman says the two programs will issue separate standards but they will be "coordinated and consistent."

"These coordinated final specifications will make it easy for builders to meet both specifications. Additionally, the inspection and certification systems complement each other and will enable a builder to have one inspector complete inspections for both programs," she said.

An Energy Star source says the showerhead flow rate requirement

included in the rule was a "strawman placeholder" floated to get reaction from stakeholders.

The competing water efficiency standards for new homes are part of a long-running feud between the two programs, though sources following the issue say, for now, Energy Star may have the upper hand because Congress has authorized the program.

But Congress may be moving closer to authorizing WaterSense, a move that would put the program on an equal footing with Energy Star, sources say. Congressional authorization "would make all the difference," one source close to the situation says, because it "would indicate congressional direction for the program."

The Waxman-Markey climate bill, which recently passed the House, includes language authorizing WaterSense, while the Senate environment committee recently approved S.1005, a bill funding EPA water programs that includes an authorization for WaterSense.

While Energy Star has been authorized, EPA and DOE -- the two agencies that administer the program -- have also been at odds over the program's direction. EPA, for example, has been seeking to reserve the Energy Star label for already-proven products to preserve the program's brand while DOE is seeking to allow Energy Star to help commercialize emerging technologies.

To address this, the Senate energy committee earlier this year approved legislation requiring the agencies to update their interagency agreement by laying out each agency's jurisdiction and expertise, but the agencies opposed the mandate.

The dispute between the EPA programs focuses on their efforts to set water efficiency standards for new homes, though both are also being criticized by outside groups.

WaterSense's May 8 proposal, which includes criteria for scores of indoor and outdoor water fixtures, revises a proposal released last year that drew widespread criticism over its specification for lawn turf.

The WaterSense standards generally prohibit "turf" from comprising more than 40 percent of the landscapable area of a site unless the new home will meet a strict water budget for outdoor water use, an approach that drew widespread criticism from homebuilders, outdoor equipment, pesticide and other groups for being too limited.

The new proposal generally maintains the same strict approach the agency proposed last year, prompting continued criticisms.

The 40 percent limit on turfgrass is "inappropriate and not based on best available science," July 6 comments from the Irrigation Association say, adding that the "arbitrary limit" does not account for "local geographies, climates and markets."

The source close to the situation, who supports the turf standards, says the issue is "highly controversial" and fears opposition from industry will torpedo the rules. The standard "might not survive" in the face of a coming "full court press" from industry, the source says.

Environmentalists, meanwhile are pressing EPA to keep the rules. "We are aware that a number of organizations are urging EPA to weaken elements of the outdoor criteria. We strongly urge EPA to resist this suggestion. To the contrary . . . we believe the criteria should be strengthened significantly," the Natural Resources Defense Council and American Rivers say in July 7 comments.

The activists are also seeking stormwater guidelines in the standard that EPA has not included, which the source close to the situation attributes to a dispute about WaterSense's authority to include stormwater requirements in the specification.

But the pending authorization bills could clarify the situation. The Waxman-Markey WaterSense authorization language includes a clear designation that the program's labeling standards should include stormwater treatment. The Senate bill passed by EPW is silent on the issue.

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7212009_turf

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency

01268-EPA-2702

Richard Windsor/DC/USEPA/US
07/29/2009 06:47 AM

To Seth Oster
cc
bcc
Subject Re: Interesting....

(b) (5) Deliberative, (b) (6) Personal Privacy

Seth Oster

----- Original Message -----

From: Seth Oster
Sent: 07/28/2009 10:49 PM EDT
To: Richard Windsor
Subject: Re: Interesting....

(b) (5) Deliberative, (b) (6) Personal Privacy

[Redacted]

[Redacted]

Seth

Richard Windsor

----- Original Message -----

From: Richard Windsor
Sent: 07/28/2009 08:17 PM EDT
To: Seth Oster
Subject: Re: Interesting....

Agreed.

Seth Oster

----- Original Message -----

From: Seth Oster
Sent: 07/28/2009 06:40 PM EDT
To: Richard Windsor
Subject: Interesting....

July 27, 2009

CDC Tops Agency Ratings; Federal Reserve

Board Lowest

NASA ratings remain high, while Federal Reserve has lost ground

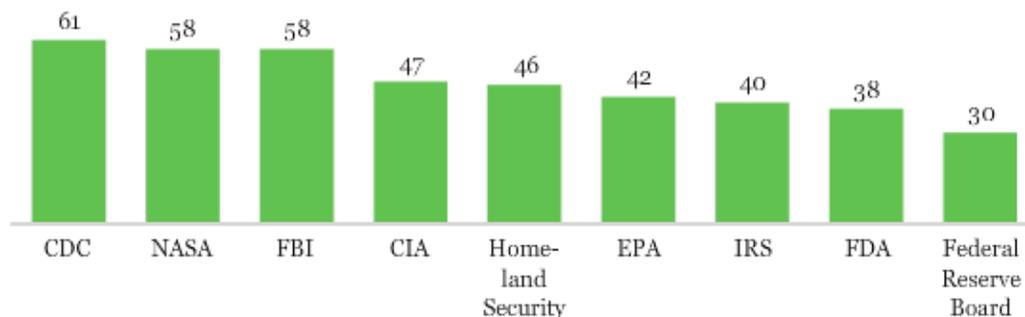
by Lydia Saad

Page: [12](#)

PRINCETON, NJ -- At a time when Americans are discouraged about [the direction of the country](#) and hesitant about the scope of President Barack Obama's [federal budget plans](#), the U.S. Centers for Disease Control and Prevention, NASA, and the FBI earn credit for a job well done from a majority of Americans. The 61% who say the CDC is doing an excellent or good job can be contrasted with the 30% who say this of the Federal Reserve Board, making the latter the worst reviewed of nine agencies and departments rated in the July 10-12 Gallup Poll.

How would you rate the job being done by [agency/department]? Would you say it is doing an excellent, good, only fair, or poor job?

■ % Excellent/Good



July 10-12, 2009

GALLUP POLL

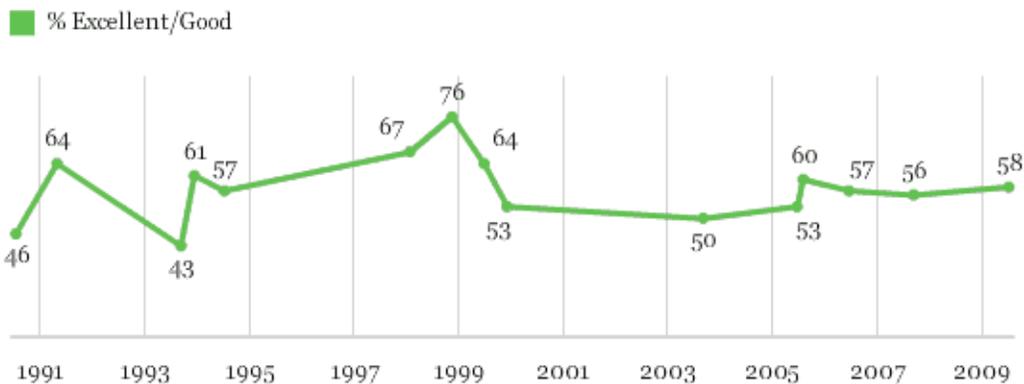
The two national security-oriented groups included in the recent poll -- the CIA and the Department of Homeland Security -- receive moderate performance ratings, with just under half of Americans saying each is doing an excellent or good job.

The Environmental Protection Agency, Internal Revenue Service, and Food and Drug Administration fall a notch lower in the rankings, as close to 40% of Americans give each of them credit for doing an excellent or good job. The relatively low ranking of the FDA is of particular note with regard to the scrutiny the agency has been under, given recent attention to U.S. food safety.

The new poll, conducted just prior to the 40th anniversary of the July 20, 1969, moon landing by Apollo 11 -- perhaps the most celebrated of all NASA achievements -- finds NASA's rating about where it has been in recent years. While not nearly as high as it was in late 1998 (a month

after John Glenn's successful return to space), NASA's current excellent/good score falls within the upper half of ratings it has received over the past two decades.

Job Ratings for NASA, the U.S. Space Agency

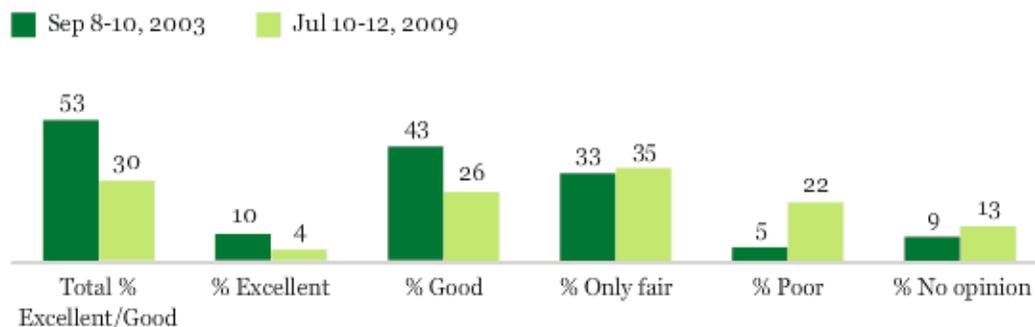


GALLUP POLL

Today's rating of the FDA is the first measured by Gallup, but all other agencies on the list were previously rated in September 2003 (NASA, as shown, has been rated multiple times). The only significant changes since that time are a sharp deterioration in perceptions about the Federal Reserve, and a decline in highly positive views toward the CDC.

In 2003, the slight majority of Americans, 53%, said the Federal Reserve was doing an excellent or good job and 5% called it poor. Today, 30% of Americans praise the job the Fed is doing, while nearly as many, 22%, call it poor. While this ratings downturn coincides with a substantial drop in consumer confidence toward the U.S. economy over the same period, it is unclear how much of the Fed's image decline is due to the general decline in the country's economic climate, as opposed to specific perceptions about the agency's performance in carrying out its monetary responsibilities and possibly its role in the crisis surrounding U.S. financial markets. The Fed's low excellent/good rating may also reflect the higher-than-average percentage of Americans having "no opinion" about this arm of the government, relative to the other agencies rated.

Job Ratings for Federal Reserve Board

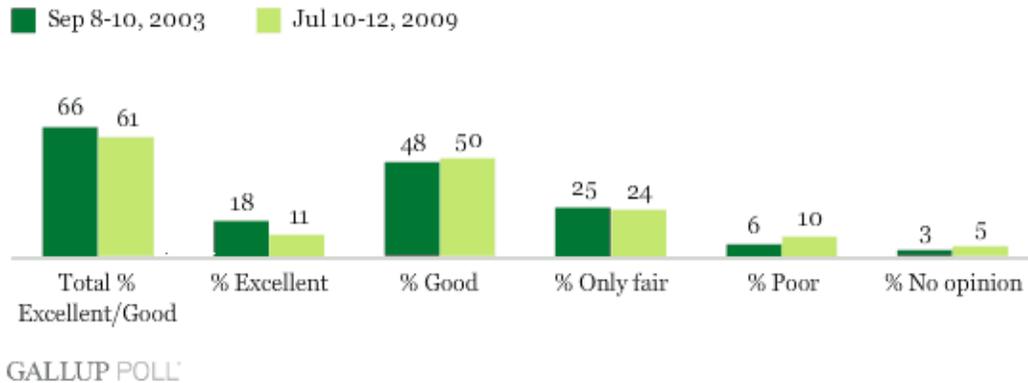


GALLUP POLL

The CDC has had a particularly high public profile since April, when cases of the H1N1 virus,

also known as swine flu, were first detected in the United States. Whether its role in tracking the disease and informing Americans about the illness has elevated or hurt the agency's image is not clear. However, compared with six years ago, fewer Americans believe the agency is doing an "excellent" job -- now 11%, down from 18%. Overall, the percentage saying it is doing an excellent or good job is now 61%, down from 66%.

Job Ratings for the Centers for Disease Control and Prevention, or the CDC



Bottom Line

Americans are broadly satisfied with the work the CDC, NASA, and the FBI are doing. The CIA and the Department of Homeland Security are also fairly well reviewed; however, the current job ratings of the EPA, IRS, FDA, and Federal Reserve Board all have significant room for improvement.

Survey Methods

Results are based on telephone interviews with 1,018 national adults, aged 18 and older, conducted July 10-12, 2009. For results based on the total sample of national adults, one can say with 95% confidence that the maximum margin of sampling error is ± 3 percentage points.

Interviews are conducted with respondents on land-line telephones (for respondents with a land-line telephone) and cellular phones (for respondents who are cell-phone only).

In addition to sampling error, question wording and practical difficulties in conducting surveys can introduce error or bias into the findings of public opinion polls.

10. How would you rate the job being done by -- [agency/department]? Would you say it is doing an excellent, good, only fair, or poor job?

Ranked by % excellent/good

	Excellent/ Good	Only fair	Poor	No opinion
	%	%	%	
The Centers for Disease Control and Prevention, or the CDC	61	24	10	5
NASA , the U.S. space agency	58	26	7	10
The Federal Bureau of Investigation, or the FBI	58	27	7	8
The Central Intelligence Agency, or the CIA	47	29	13	12
The Department of Homeland Security	46	31	18	4
The Environmental Protection Agency, or EPA	42	33	21	4
The Internal Revenue Service, or the IRS	40	36	20	5
The Food and Drug Administration, or FDA	38	37	22	3
The Federal Reserve Board	30	35	22	13

July 10-12, 2009

GALLUP POLL

Federal Agency/Department Ratings -- Full Results With Trends

	Excellent	Good	Only fair	Poor	No opinion
	%	%	%	%	%
A. NASA, the U.S. space agency					
2009 Jul 10-12	13	45	26	7	10
2007 Sep 14-16	16	40	29	8	6
2006 Jun 23-25	17	40	30	7	6
2005 Aug 5-7	16	44	29	8	3
2005 Jun 24-26	11	42	34	6	7
2003 Sep 8-10	12	38	36	10	4
1999 Dec 9-12	13	40	31	12	4
1999 Jul 13-4	20	44	20	5	11
1998 Nov 20-22	26	50	17	4	3
1998 Jan 30-Feb 1	21	46	21	4	8
1994 Jul 15-17	14	43	29	6	8
1993 Dec 17-19	18	43	30	7	2
1993 Sept 13-15	7	36	35	11	11
1991 May 2-5	16	48	24	6	6
1990 July 19-22	10	36	34	15	5
B. The Department of Homeland Security					
2009 Jul 10-12	8	38	31	18	4
2003 Sep 8-10	10	38	33	15	4
C. The Federal Reserve Board					
2009 Jul 10-12	4	26	35	22	13
2003 Sep 8-10	10	43	33	5	9
D. The Federal Bureau of Investigation, or the FBI					
2009 Jul 10-12	10	48	27	7	8
2003 Sep 8-10	10	43	31	12	4
E. The Central Intelligence Agency, or the CIA					
2009 Jul 10-12	10	37	29	13	12
2003 Sep 8-10	9	36	35	13	7
F. The Internal Revenue Service, or the IRS					
2009 Jul 10-12	5	35	36	20	5
2003 Sep 8-10	6	38	38	15	3

	2009 Jul 10-12	2003 Sep 8-10	2009 Jul 10-12	2003 Sep 8-10	2009 Jul 10-12	2003 Sep 8-10
G. The Environmental Protection Agency, or EPA						
2009 Jul 10-12	5	37	33	21	4	
2003 Sep 8-10	6	33	38	20	3	
H. The Centers for Disease Control and Prevention, or the CDC						
2009 Jul 10-12	11	50	24	10	5	
2003 Sep 8-10	18	48	25	6	3	
I. The Food and Drug Administration, or FDA						
2009 Jul 10-12	5	33	37	22	3	

GALLUP POLL

01268-EPA-2709

Bob Sussman/DC/USEPA/US

To Richard Windsor, Diane Thompson, Arvin Ganesan

08/04/2009 08:25 AM

cc

bcc

Subject Mines/404

(b) (5) Deliberative

EPA's Alaska Mine Plan Suggests Bid To Limit 'Fill' Disposal In Waters

EPA's plan to require land disposal of mine tailings from a controversial Alaska mining project suggests the Obama administration is seeking to move away from allowing disposal of waste as "fill" into jurisdictional waters and could pave the way for a stricter EPA policy on what constitutes "fill material" under the water law.

Should EPA move forward with a new approach, it could prevent other industries from placing wastes in waterbodies, including power plants, chemical and cement manufacturers, solid waste landfills and others, environmentalists say.

It could also clear the way for environmentalists to push for revisions to the definition of "fill material," which activists say eases industries' ability to dispose of waste in jurisdictional waters. The Bush administration promulgated the current definition after a series of court rulings during the Clinton administration that struck down the prior definition.

Acting EPA Region X Administrator Mike Gearheard in [a July 14 letter](#) asked the Army Corps of Engineers to delay its Clean Water Act (CWA) section 404 dredge-and-fill permit for a massive Coeur Alaska gold mine so the agency can move forward with an alternative disposal plan that would require the tailings to be disposed on land.

The letter argues EPA believes the alternative disposal method at the mine site would have a smaller environmental impact, but environmentalists and congressional sources say avoiding the precedent of a recent Supreme Court decision is also at stake.

At issue in the high court's recent decision in *Coeur Alaska v. Southeast Alaska Conservation Council* is whether mines may dump tailings and other waste into a jurisdictional water under the terms of a 404 permit.

The court upheld the 404 permit the Corps had issued for the facility, rejecting arguments from environmentalists that the facility should instead be regulated under a strict EPA discharge permit issued under section 402.

The high court granted EPA and the Corps deference to categorize mining tailings and other pollutants as "fill material" exempt from strict discharge limits under the CWA. In Justice

Anthony Kennedy's majority decision, he argued the CWA and EPA's regulations over which section of the law was controlling -- the strict discharge standards under section 402 or the more lenient "dredge and fill" requirements under section 404 -- were ambiguous and thus granted the agencies deference to issue the more lenient permit.

The case was a key test for environmentalists who have sought to limit disposal of fill material in jurisdictional waters after a 2002 Bush rule expanded the Corps' definition of what constitutes "fill," which is exempted from the water act's definition of "pollutants" subject to regulation under EPA's section 402 discharge permit requirements.

The Bush administration altered the Corps' regulatory definition of "fill material" to include "material . . . changing the bottom elevation of any portion of the water" in line with EPA's long-held definition. Previously, "fill material" was required by the Corps to be intended to create dry land. Bush administration officials said the purpose of the change was to ensure CWA authority over landfills located in wetlands after a 1998 appellate decision ruled only federal solid waste rules -- not the CWA -- applied to landfills.

Since the high court's ruling was issued, however, environmentalists have urged the administration to reverse any precedent the ruling may have set that allows using waste as the actual "fill material" to be discharged into the waters.

A national coalition of environmentalists -- called the "green group" -- July 17 sent President Obama a letter asking him to direct EPA to rescind the agency's memo withdrawing any claims the agency may have had on regulating the Alaska mine under section 402 and to "initiate a process" for revising the regulatory definition of "fill material" under the CWA. The coalition says in the letter it is "pleased" EPA is demanding the Corps further review the mining permit, but the move is only a first step for the environmentalists.

According to the letter, the precedent set by proceeding under the terms of the Corps permit for the Alaska mine would allow "innumerable manufacturing industries that, like ore mills, generate pollution containing significant levels of suspended solids" to avoid strict discharge standards promulgated under section 402 of the CWA.

The letter lists coal-fired power plants, aluminum and copper smelters, cement manufacturing plants, beef cattle feedlots and chemical manufacturers as among the industries that could benefit from the looser rules governing "fill material" under dredge-and-fill permits under section 404 of the CWA.

They say miners and other industries have long dumped waste into manmade settling ponds and other "waste treatment systems," which are not considered CWA jurisdictional waters.

Industry sources, however, say mines have long discharged tailings as "fill material" subject to section 404 of the water law. They say 402 restrictions are intended for protecting downstream waters, whereas discharges as "fill" material must be within a contained system. Any discharges that escape the system, they say, are subject to the strict 402 requirements.

Industry sources argue the standards under section 404 are already strict and note projects must choose the “best” environmental alternative that is practical. They also argue it would be illogical to apply all section 402 standards to section 404 permits. One industry source notes that “total suspended solids,” a term for sediment, carries a relatively strict discharge standard under section 402.

How could you fill a waterbody with sediment, a traditional purpose of dredge-and-fill permits, under that strict discharge standard? the source asks.

But by forcing the Corps to adopt an alternative disposal plan at the Alaska mine, EPA could in practice avoid a precedent set by the the high court’s decision in *Coeur* that dumping tailings as “fill material” is within the bounds of the water law.

In fact, Justice Stephen Breyer in a concurrence to the majority’s decision said EPA had numerous administrative options, such as vetoing Corps-issued permits, to stop section 404 from becoming a loophole.

Key EPA officials have also indicated the agency’s effort at the Alaska mine could have broader policy impacts. Gearheard, for example, told the *Juneau Empire* that EPA’s demands the Corps review the alternative disposal method was “vetted at high levels and part of a ‘national conversation’ within the agency before it was sent.”

And EPA Administrator Lisa Jackson told Sens. Lisa Murkowski (R-AK) and Mark Begich (D-AK) during a July 23 meeting on the permit delay that EPA is concerned about the implications of the earlier Corps permit, according to a source familiar with the meeting.

EPA’s stance on the Kensington mine also matches congressional efforts to rein-in the Bush administration interpretation of fill to avoid its use for the dumping of wastes.

Both a House bill introduced by Rep. Frank Pallone, H.R. 1310, and a Senate bill introduced by Sen. Ben Cardin (D-MD) would ban the use of dredge-and-fill permits for the dumping of waste, including mining tailings.

Cardin’s bill is aimed specifically at surface mining tailings as defined under federal mining law, but also includes a prohibition for “trash or garbage.”

Pallone’s bill, which is much broader, prohibits dredge-and-fill permits when the material dumped is “discharged into the water primarily to dispose of waste.” The bill’s language has led to concerns that it would impact a much broader set of activities than mining, including highway construction, in which sediment and other materials end up in waters but not for the purpose of filling in those waters.

832009_alaska Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator

US Environmental Protection Agency

01268-EPA-2711

Richard Windsor/DC/USEPA/US
08/04/2009 08:29 PM

To Diane Thompson, Gina McCarthy, "Lisa Heinzerling"
cc "David McIntosh", "Allyn Brooks-Lasure", "Seth Oster"
bcc
Subject Re: Heard today.

(b) (5) Deliberative

Lj

----- Original Message -----

From: Diane Thompson
Sent: 08/04/2009 08:17 PM EDT
To: Richard Windsor; Gina McCarthy; "Lisa Heinzerling"
<heinzerling.lisa@epa.gov>
Subject: Fw: Heard today.

FYI on EIA rpt

----- Original Message -----

From: "PERCIASEPE, Bob" [(b) (6) Personal Privacy]
Sent: 08/04/2009 07:27 PM AST
To: Arvin Ganesan; Diane Thompson; David McIntosh
Subject: RE: Heard today.

Here are the details

Preview of Tomorrow's U.S. EIA Report on House ACES Bill
Tomorrow the U.S. Energy Information Agency (EIA) is scheduled to release its analysis of the House climate bill, HR 2454, passed in June by the U.S. House of Representatives. EIA developed 6 market scenarios that apply different levels of market penetration by carbon capture and sequestration technologies, offset availability and electricity generation costs. One limitation of EIA's scenario analysis is that their model can't model prices beyond 2030. Key findings of the report include:

- Carbon allowances will be \$32 per metric tonne in 2020 and \$65 per metric tonne in 2030 under the base case scenario.
- 61% of reductions will come from offsets and 39% will come from US abatement under the base scenario.
- Electricity prices will range from 11 to 17.6 cents per kWh in 2030 under 6 market scenarios developed by EIA.
- Electricity prices would rise 20% over 2009 prices by 2030 to 12 cents per kilowatt hour in 2030 in 2007 dollars at 10 cents per kWh. Before 2025, the price would increase approximately 9.5 cents per kWh in 2020, about 3% to 4% above business as usual (BAU). Price increases would ramp up more steeply after 2025 due to free carbon allowances being phased out for investor-owned utilities. This is under the EIA scenario of unconstrained carbon offsets and fast-paced low-carbon technology penetration.

- Gross domestic product will fall by \$492 billion from 2012 to 2030, or 0.2% in 2000 dollars.
 - Most companies would initially meet their greenhouse gas (GHG) reduction targets by purchasing offsets from forestry and agriculture projects instead of reducing on-site emissions.
 - In 2030, electricity generators will represent 79% to 88% of GHG reductions and gasoline-fueled vehicles will account for 3% to 9% of GHG reductions.
 - Natural gas, renewables and nuclear power generation will increase market share over coal. Coal combustion will drop 7% to 39% by 2030, down from its current 50% level despite carbon capture and sequestration technologies penetrating the market and generous free allowances under HR 2454.
 - EIA predicts that the bill will result in a large increase in coal power plant retirements and that coal plants that don't capture and sequester carbon are almost all eliminated. At the same time EIA says its model isn't capable of modeling allowance distribution to merchant coal plants.
 - Renewable electricity generation will increase by 28% by 2030; advanced carbon capture and storage technology will lead to 69 gigawatts of new CCS-coal-fired generation by 2030. 83% of new electricity generating capacity will be low or zero carbon.
 - Household energy costs of an average family will increase by \$142 a year in 2020 and by \$583 in 2030 (in 2007 dollars) under the base scenario. The CBO recently estimated HR 2454 would increase household energy costs \$175 a year by 2020.
 - Gasoline prices will increase 23 cents a gallon in 2020 and 36 cents more in 2030
 - The draft EIA report identifies a number of uncertainties and limitations:
 - no analysis of the impact of financing of advanced low-emission technology
 - no analysis of the impact of the strategic allowance reserve
 - no analysis of the effects of increased investment in energy research and development.
 - uncertainty about the cost and public acceptance of low- and no-carbon technologies
 - uncertainty over the volume availability of offsets based on decisions by EPA and international agreements.
- CBO Releases Reports on Offsets
- In preparation for today's Senate Finance Committee hearing, today the Congressional Budget Office (CBO) released a study outlining the potential limitations and benefits of offsets. The study is more of a primer on the basics of offsets instead of an analysis. Key highlights of the primer include:

- Benefits of offsets: cost savings to companies. The analysis indicates that in 2030 with offsets, the cost range to reduce a ton of carbon is approximately \$10 to \$50; without offsets, the cost range in 2030 to reduce a ton of carbon is approximately \$10 to \$120 per ton.
- Limitation of offsets: difficulty in verifying some type of projects such as afforestation or avoided deforestation due to additionality, quantification, permanence, leakage and verification costs.
- Impacts of offsets on ACES HR 2454:
 - Costs: With offsets, the net cost to the economy in 2030 would be \$101 billion (in 2007 dollars) compared to \$248 billion without offsets - a 60% difference. With offsets, government revenues would be \$136 billion in 2030; without offsets, government revenues would be \$474 billion.
 - Allowance Price: with offsets, the 2030 price would be \$40 per ton; without offsets, the 2030 price would be \$138 per tonne.
 - Emission reductions:
 - With offsets: in 2030 sources subject to the cap would emit 5 billion

tonnes and purchase offsets for 1.8 billion tonnes - mostly from agriculture, forestry and landfill methane. Net emissions would be 3.2 billion tonnes. The sources would use 3.2 billion allowances with a 186 million tonnes being banked.

□ Without offsets: in 2030 sources subject to the cap would emit 3.5 billion tonnes which would be equal to the number of free allowances distributed that year plus 128 million allowances that capped sources had banked in the previous years and used that year.

- Impact to U.S. economy: ACES offsets could save the economy 70% annually between 2012 and 2050.

Bob

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Cell +1-(b) (6) Personal Privacy

Audubon

Conservation with People

-----Original Message-----

From: Ganesan.Arvin@epamail.epa.gov [mailto:Ganesan.Arvin@epamail.epa.gov]

Sent: Tuesday, August 04, 2009 7:01 PM

To: PERCIASEPE, Bob; Thompson.Diane@epamail.epa.gov;

McIntosh.David@epamail.epa.gov

Subject: Re: Heard today.

Hi bob,

Don't know for sure if its slated for tomorrow or later in the week, but regardless, will respond to gv appropriately.

Thanks.

Sent from my Blackberry Wireless Device

----- Original Message -----

From: "PERCIASEPE, Bob" [(b) (6) Personal Privacy]

Sent: 08/04/2009 06:56 PM AST

To: Arvin Ganesan; Diane Thompson; David McIntosh

Subject: Heard today.

Hey

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Are we ready with the letter for Voinovich?

Bob

Cell (b) (6) Personal Privacy

01268-EPA-2712

David McIntosh/DC/USEPA/US
08/04/2009 08:31 PM

To Richard Windsor
cc "Allyn Brooks-Lasure", Diane Thompson, Gina McCarthy, "Lisa Heinzerling", "David McIntosh", "Seth Oster"
bcc

Subject Re: Heard today.

I'll get that to you by 8:30 tomorrow morning.

Richard Windsor (b) (5) Deliberative 08/04/2009 08:29:53 PM

From: Richard Windsor/DC/USEPA/US
To: Diane Thompson/DC/USEPA/US@EPA, Gina McCarthy/DC/USEPA/US@EPA, "Lisa Heinzerling" <heinzerling.lisa@epa.gov>
Cc: "David McIntosh" <mcintosh.david@epa.gov>, "Allyn Brooks-Lasure" <Brooks-lasure.allyn@epa.gov>, "Seth Oster" <oster.seth@epa.gov>
Date: 08/04/2009 08:29 PM
Subject: Re: Heard today.

(b) (5) Deliberative

----- Original Message -----

From: Diane Thompson
Sent: 08/04/2009 08:17 PM EDT
To: Richard Windsor; Gina McCarthy; "Lisa Heinzerling" <heinzerling.lisa@epa.gov>
Subject: Fw: Heard today.

FYI on EIA rpt

----- Original Message -----

From: "PERCIASEPE, Bob" [(b) (6) Personal Privacy]
Sent: 08/04/2009 07:27 PM AST
To: Arvin Ganesan; Diane Thompson; David McIntosh
Subject: RE: Heard today.

Here are the details

Preview of Tomorrow's U.S. EIA Report on House ACES Bill
Tomorrow the U.S. Energy Information Agency (EIA) is scheduled to release its analysis of the House climate bill, HR 2454, passed in June by the U.S. House of Representatives. EIA developed 6 market scenarios that apply different levels of market penetration by carbon capture and sequestration technologies, offset availability and electricity generation costs. One limitation of EIA's scenario analysis is that their model can't model prices beyond 2030. Key findings of the report include:

- Carbon allowances will be \$32 per metric tonne in 2020 and \$65 per metric tonne in 2030 under the base case scenario.
 - 61% of reductions will come from offsets and 39% will come from US abatement under the base scenario.
 - Electricity prices will range from 11 to 17.6 cents per kWh in 2030 under 6 market scenarios developed by EIA.
 - Electricity prices would rise 20% over 2009 prices by 2030 to 12 cents per kilowatt hour in 2030 in 2007 dollars at 10 cents per kWh. Before 2025, the price would increase approximately 9.5 cents per kWh in 2020, about 3% to 4% above business as usual (BAU). Price increases would ramp up more steeply after 2025 due to free carbon allowances being phased out for investor-owned utilities. This is under the EIA scenario of unconstrained carbon offsets and fast-paced low-carbon technology penetration.
 - Gross domestic product will fall by \$492 billion from 2012 to 2030, or 0.2% in 2000 dollars.
 - Most companies would initially meet their greenhouse gas (GHG) reduction targets by purchasing offsets from forestry and agriculture projects instead of reducing on-site emissions.
 - In 2030, electricity generators will represent 79% to 88% of GHG reductions and gasoline-fueled vehicles will account for 3% to 9% of GHG reductions.
 - Natural gas, renewables and nuclear power generation will increase market share over coal. Coal combustion will drop 7% to 39% by 2030, down from its current 50% level despite carbon capture and sequestration technologies penetrating the market and generous free allowances under HR 2454.
 - EIA predicts that the bill will result in a large increase in coal power plant retirements and that coal plants that don't capture and sequester carbon are almost all eliminated. At the same time EIA says its model isn't capable of modeling allowance distribution to merchant coal plants.
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- Impact to U.S. economy: ACES offsets could save the economy 70% annually between 2012 and 2050.

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Cell (b) (6) Personal Privacy

01268-EPA-2716

Richard Windsor/DC/USEPA/US
08/07/2009 08:20 AM

To Arvin Ganesan
cc "David McIntosh"
bcc
Subject Re: fyi

Just great
Arvin Ganesan

----- Original Message -----

From: Arvin Ganesan
Sent: 08/07/2009 08:11 AM EDT
To: Richard Windsor
Cc: Diane Thompson
Subject: fyi

3. CLIMATE: EPA denies GOP request to redo Waxman-Markey analysis (08/07/2009)

Robin Bravender, E&E reporter

U.S. EPA Administrator Lisa Jackson yesterday denied GOP requests to perform a new economic analysis of the House-passed climate and energy bill, saying the Energy Department has essentially answered any outstanding questions.

Sens. James Inhofe (R-Okla.) and George Voinovich (R-Ohio) asked EPA last month to revise its study of the House bill, because it "offers an incomplete account of the bill's major provisions, how they overlap, and how they impact consumers, households, and the economy."

In a [letter](#) to EPA, the top two Republicans on the Environment and Public Works Committee asked the agency to use a reference case including the most recent data from the Energy Information Administration's April 2009 Annual Energy Outlook; insert the economic projections from President Obama's fiscal 2010 budget proposal; and include analysis of a variety of situations in which low-carbon energy sources are constrained.

The EPA [analysis](#) of the House bill found it would cost U.S. households \$80 to \$111 a year ([E&ENews PM](#) , June 23).

Jackson yesterday said EPA won't do a new study because a new [analysis](#) of the bill from the Energy Information Administration -- the statistical arm of the Energy Department -- contains many of the attributes the senators requested, including scenarios where low-carbon energy sources prove to be very expensive.

EPA is prepared to conduct an objective and thorough analysis of the climate and energy bill expected from EPW Chairwoman Barbara Boxer (D-Calif.) next month, Jackson wrote in her [response](#), adding the senators should discuss the parameters of the analysis with the chairwoman.

But Inhofe said that EIA's analysis does not cover some of the key issues they raised in their letter, including the availability of international offsets and the effects of the bill on states like Ohio, which rely on manufacturing for jobs and coal for electricity.

"In effect, EPA has refused to provide members of Congress, as they prepare for meetings and events with their constituents over the August recess, with critical information on the Waxman-Markey energy tax and how it will affect jobs in the Midwest, South, and Great Plains, as well as food, gasoline, and electricity prices for all American consumers," Inhofe said in a statement.

Inhofe added that additional analysis of the House bill was needed despite EPA's plans to analyze future legislation.

"We asked for an analysis of the Waxman-Markey bill, which would be the House position in a potential conference committee," Inhofe said. "Thus the economic consequences of the bill are critical for senators to understand."

Senior EPA official 'held'

Voinovich said yesterday that he will not release a procedural "hold" on the EPA deputy administrator nominee until EPA completes a new analysis of the House bill. Voinovich has been blocking Robert Perciasepe's confirmation since last month over concerns about EPA's analysis.

"My attitude is that I want them to do another evaluation, because the real issue here is what's the economic impact that all of this is going to have and the potential because it's going to really color the judgment of people on whether they can support the bill," he said.

ARVIN R. GANESAN
Deputy Associate Administrator
Congressional Affairs
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United States Environmental Protection Agency
Ganesan.Arvin@epa.gov
(p) 202.564.5200
(f) 202.501.1519

01268-EPA-2717

Richard Windsor/DC/USEPA/US
08/07/2009 08:29 AM

To Arvin Ganesan
cc
bcc
Subject Re: fyi

(b) (5) Deliberative, (b) (6) Personal Privacy

Arvin Ganesan

----- Original Message -----

From: Arvin Ganesan
Sent: 08/07/2009 08:25 AM EDT
To: Richard Windsor
Cc: "David McIntosh" <mcintosh.david@epa.gov>
Subject: Re: fyi

(b) (5) Deliberative

[Redacted]

ARVIN R. GANESAN
Deputy Associate Administrator
Congressional Affairs
Office of the Administrator
United States Environmental Protection Agency
Ganesan.Arvin@epa.gov
(p) 202.564.5200
(f) 202.501.1519

Richard Windsor Just great ----- Original Message ----- 08/07/2009 08:20:59 AM

From: Richard Windsor/DC/USEPA/US
To: Arvin Ganesan/DC/USEPA/US@EPA
Cc: "David McIntosh" <mcintosh.david@epa.gov>
Date: 08/07/2009 08:20 AM
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Just great

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(p) 202.564.5200
(f) 202.501.1519

01268-EPA-2725

Bob Sussman/DC/USEPA/US

To Richard Windsor

08/11/2009 02:07 PM

cc Diane Thompson, Peter Silva, Seth Oster, Arvin Ganesan
bcc

Subject Peg Fork Permit -- Enviro Press Release

Here's the press release issued by the environmental community on the Peg Fork permit, which the Corps has now issued. (b) (5) Deliberative



Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency

Army Corps of Engineers Approves Permit for Controversial WV Mountaintop Removal Coal Mine; Decision opens the door for more destruction in Appalachia

Charleston, West Virginia – Today the public learned that the U.S. Army Corps of Engineers issued a Clean Water Act permit last week for Consol Energy's Peg Fork mountaintop removal coal mine in Mingo County, West Virginia. This controversial decision marks the first time during the Obama administration that the Army Corps approved a mine permit to which the U.S. Environmental Protection Agency (EPA) had previously objected, opening the door for many new mountaintop removal coal mines in Appalachia. The decision to allow this operation to proceed also demonstrates the Department of Interior's lack of will to enforce the clear mandates of a critical Surface Mining Act regulation.

“We are disappointed that the administration has approved a new mountaintop removal mine without making any commitment to adopt new regulations or policies that would end this destructive practice,” said Ed Hopkins, Director of Sierra Club's Environmental Quality Program. “While we appreciate that the Obama administration is taking a harder look at mountaintop removal coal mining, unless that results in decisions that end the irreversible destruction of streams, the harder look isn't going to do the job.”

“We are not willing to sacrifice our homes to the potential of flooding from a mountaintop removal coal mine,” said Mingo County resident Wilma Steele. “The Army Corps should protect our homes from being washed away.”

The permit would violate the Surface Mining Act as well as the Clean Water Act. This mining operation would be impermissible under the Surface Mining Act's buffer zone rule, which protects intermittent and perennial streams. The Department of Interior, therefore, has the duty to use the buffer zone rule to prevent giant stream destruction projects like those at the Peg Fork mine from going forward.

"The Department of Interior's continuing failure to force the mining industry to comply with the buffer zone rule is a reminder that it is business as usual at Interior," said Joe Lovett, of the Appalachian Center for the Economy and the Environment. Lovett called for Secretary Ken Salazar to "reverse the Bush Administration's refusal to enforce the

Surface Mining Act and to protect our irreplaceable streams."

Earlier this year, the EPA conducted a review of 48 applications then pending before the Army Corps for Clean Water Act permits to fill streams. At the end of its review, the EPA identified the Peg Fork mine and five other mines as projects of high concern, and instructed the Army Corps to not issue those permits.

Following the EPA's review, the Army Corps revised Consol Energy's permit for this mountaintop removal mine and issued the permit on Friday, August 7. But the revised permit still fails to satisfy the requirements for permits issued under the Clean Water Act. The original permit application proposed mining over 800 acres of mountainous terrain and dumping mining waste into eight valley fills and over 3 miles of streams. The revised permit that received EPA approval still allows two valley fills immediately, with the potential for up to six additional valley fills if EPA is satisfied with the results of downstream water quality monitoring from the initial fills. Even with these alterations, the Peg Fork mine would still have unacceptable adverse impacts on local waterways and therefore violates the Clean Water Act.

The Peg Fork permit decision comes just as the EPA begins the process of reviewing more than 80 applications for Clean Water Act permits for mountaintop removal mining under the coordinated review process announced by the Obama administration in June. Mining companies have already buried close to 2,000 miles of Appalachian streams beneath piles of toxic waste and debris. Entire communities have been permanently displaced by mines the size of Manhattan.

"The Obama administration needs to commit to ending the devastation caused to our communities by mountaintop removal. The time to make that commitment is now," said Judy Bonds of Coal River Mountain Watch. "We can not live through another generation of permits that will bury hundreds more miles of streams and blast apart our mountains."

"Science and the law are at odds with this permit decision," said Janet Keating of the Ohio Valley Environmental Coalition. "In my opinion, the Corps' decision to issue this and other permits boils down to political pressure from coal-friendly legislators."

"A big part of the problem is that the Obama administration is still operating under the failed and broken regulations adopted during the Bush administration," said Joan Mulhern of the environmental law firm Earthjustice. "The White House and the agencies can and should immediately initiate the process for changing those regulations and restoring the environmental protections that existed prior to 2001."

"This week, newly appointed Assistant Secretary of the Army (Civil Works) Jo-Ellen Darcy begins to oversee the Army Corps' permitting divisions, and she has the opportunity to take bold action on mountaintop removal coal mining," said Cindy Rank of the West Virginia Highlands Conservancy. "The Corps has shown an inexplicable eagerness to permit new mountaintop removal mining, but we hope that Assistant Secretary Darcy's leadership will mean more protections for the communities, streams and mountains of Appalachia."

###

01268-EPA-2726

Richard Windsor/DC/USEPA/US
08/11/2009 11:01 PM

To Bob Sussman
cc Diane Thompson, Peter Silva, Seth Oster, Arvin Ganesan
bcc
Subject Re: Peg Fork Permit -- Enviro Press Release

(b) (5) Deliberative [Redacted]

Bob Sussman

----- Original Message -----

From: Bob Sussman
Sent: 08/11/2009 02:07 PM EDT
To: Richard Windsor
Cc: Diane Thompson; Peter Silva; Seth Oster; Arvin Ganesan
Subject: Peg Fork Permit -- Enviro Press Release

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[Redacted]

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###

01268-EPA-2731

**Robert
Goulding/DC/USEPA/US**
08/14/2009 02:13 PM

To "Richard Windsor"
cc
bcc

Subject Fw: MEDIA ADVISORY: Obama Officials to Hold Ocean Policy Public Meeting in Anchorage August 21, 2009

Did you see this?
Amy Dewey

----- Original Message -----

From: Amy Dewey
Sent: 08/14/2009 02:11 PM EDT
To: Alison Davis; John Millett; Michael Thiem; Robert Goulding; Cathy Milbourn; Allyn Brooks-LaSure; David Cohen; Joyce Frank; Adora Andy; Seth Oster; JamesL Stewart
Cc: Doretta Reaves; Lina Younes; Bonnie Piper; Jean Harding; Sarah Auerbach; Roger Campbell; John Larmett
Subject: Fw: MEDIA ADVISORY: Obama Officials to Hold Ocean Policy Public Meeting in Anchorage August 21, 2009

Amy H. Dewey

**EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503**

**FOR IMMEDIATE RELEASE:
August 7, 2009
202-456-3469**

Contact: Christine Glunz

Obama Administration Officials to Hold Ocean Policy Task Force Public Meeting in Anchorage August 21, 2009

ANCHORAGE, AK – Obama Administration officials will hold their first Ocean Policy Task Force Public Meeting in Anchorage, Alaska on August 21, 2009. The Interagency Ocean Policy Task Force, led by White House Council on Environmental Quality Chair Nancy Sutley, consists of senior-level officials from Administration agencies, departments, and offices.

The Task Force is charged with developing a recommendation for a national policy that ensures protection, maintenance, and restoration of oceans, our coasts and the Great Lakes. It will also recommend a framework for improved stewardship, and effective coastal and marine spatial planning. The public is encouraged to attend and an opportunity for public comment will be provided.

Who: White House Council on Environmental Quality Chair Nancy Sutley
National Oceanic and Atmospheric Administration Administrator Dr. Jane
Lubchenco
Deputy Secretary of the Department of Interior David Hayes
Coast Guard Commandant Admiral Thad Allen
Deputy Assistant to the President on Energy and Climate Change
Heather Zichal

What: Ocean Policy Task Force Public Meeting

When: Friday, August 21, 1:30 – 4:30 p.m.

Where: The Dena'ina Civic & Convention Center
555 W 5th Ave
Anchorage, AK

Note: Public comment can also be submitted online at:
<http://www.whitehouse.gov/administration/eop/ceq/initiatives/oceans/>

01268-EPA-2735

Bob Sussman/DC/USEPA/US

08/16/2009 12:05 PM

To Mathy Stanislaus, Barry Breen

cc Seth Oster, Adora Andy, Allyn Brooks-LaSure, Diane Thompson

bcc Richard Windsor

Subject Fw: FYI: UPDATE: Coal Ash brief

Mathy and Barry -- looping you in on this e-mail dialogue.

(b) (5) Deliberative
[Redacted]

[Redacted]

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency

----- Forwarded by Bob Sussman/DC/USEPA/US on 08/16/2009 11:57 AM -----

From: Adora Andy/DC/USEPA/US
To: "Seth Oster" <oster.seth@epa.gov>, "Allyn Brooks-LaSure" <brooks-lasure.allyn@epa.gov>, "Bob Sussman" <sussman.bob@epa.gov>
Date: 08/14/2009 10:12 PM
Subject: FYI: UPDATE: Coal Ash brief

(b) (5) Deliberative, (b)(5) Attorney Client Privilege
[Redacted]

George Hull

----- Original Message -----

From: George Hull
Sent: 08/14/2009 05:21 PM EDT
To: Adora Andy
Cc: Marsha Minter
Subject: Re: UPDATE: Coal Ash brief

(b) (5) Deliberative, (b)(5) Attorney Client Privilege
[Redacted]

[Redacted]

George Hull
Office of Solid Waste and Emergency Response
U.S. EPA
Tel. 202-566-2604

Adora Andy (b) (5) Deliberative, (b)(5) Attorney Client Privilege 08/14/2009 03:07:03 PM

From: Adora Andy/DC/USEPA/US
To: George Hull/DC/USEPA/US@EPA
Cc: Marsha Minter/DC/USEPA/US@EPA
Date: 08/14/2009 03:07 PM
Subject: Re: UPDATE: Coal Ash brief

(b) (5) Deliberative, (b)(5) Attorney Client Privilege

Adora Andy
Press Secretary
U.S. Environmental Protection Agency
Office of Public Affairs
202-564-2715
andy.adora@epa.gov

George Hull

(b) (5) Deliberative

08/14/2009 03:02:14 PM

From: George Hull/DC/USEPA/US
To: Adora Andy/DC/USEPA/US@EPA
Cc: Marsha Minter/DC/USEPA/US@EPA
Date: 08/14/2009 03:02 PM
Subject: Re: UPDATE: Coal Ash brief

Adora,

(b) (5) Deliberative, (b)(5) Attorney Client Privilege

George Hull
Office of Solid Waste and Emergency Response
U.S. EPA
Tel. 202-566-2604

Adora Andy

(b) (5) Deliberative

08/14/2009 02:15:12 PM

From: Adora Andy/DC/USEPA/US
To: Roxanne Smith/DC/USEPA/US@EPA, Marsha Minter/DC/USEPA/US@EPA, George Hull/DC/USEPA/US@EPA, Latisha Petteway/DC/USEPA/US@EPA
Cc: Seth Oster/DC/USEPA/US@EPA, Allyn Brooks-LaSure/DC/USEPA/US@EPA, Betsaida Alcantara/DC/USEPA/US@EPA
Date: 08/14/2009 02:15 PM
Subject: UPDATE: Coal Ash brief

Hey folks,

(b) (5) Deliberative

Thanks,
Adora

Adora Andy
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Office of Public Affairs
202-564-2715
andy.adora@epa.gov

01268-EPA-2739

Richard Windsor/DC/USEPA/US
08/17/2009 05:54 PM

To Seth Oster
cc Diane Thompson
bcc

Subject Re: TRI Release -- Tomorrow -- FYI

I prefer to change the quote as follows. [REDACTED] (b) (5) Deliberative

[REDACTED]

Seth Oster

----- Original Message -----

From: Seth Oster
Sent: 08/17/2009 04:07 PM EDT
To: Richard Windsor
Cc: Diane Thompson
Subject: TRI Release -- Tomorrow -- FYI

Hi. Just FYI -- this is going out tomorrow after being reworked, per our previous conversations. We have [REDACTED] (b) (5) Deliberative

[REDACTED]

[REDACTED]

Seth

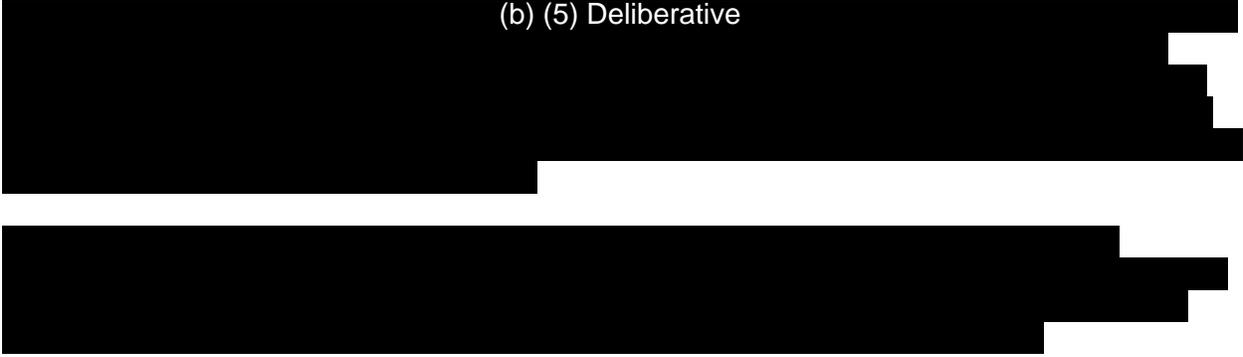
EPA Makes Preliminary Toxics Release Data Available to the Public

[REDACTED] (b) (5) Deliberative

[REDACTED]

[REDACTED]

(b) (5) Deliberative



More information on the data: <http://www.epa.gov/tri>

Seth Oster
Associate Administrator
Office of Public Affairs
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(202) 564-1918
oster.seth@epa.gov

01268-EPA-2745

Bob Sussman/DC/USEPA/US

To: Gregory Peck, Peter Silva

08/20/2009 10:13 AM

cc

bcc: Richard Windsor

Subject: Re: Article about NMA Letter on MIRA

(b) (5) Deliberative

Gregory Peck

----- Original Message -----

From: Gregory Peck**Sent:** 08/20/2009 09:58 AM EDT**To:** Peter Silva; Bob Sussman**Subject:** Article about NMA Letter on MIRA

(b) (5) Deliberative

Inside EPA - 8/21/2009

[- Adjust Text Size +](#)

EPA DRAWS LEGAL WARNING OVER MODEL FOR SCORING PENDING MINE PERMITS

EPA is using a novel decision-making tool to score planned mountaintop mines according to scientific and policy criteria to help determine which Army Corps of Engineers discharge permits it will flag for increased scrutiny, but industry says the process preempts the Corps' statutory role and circumvents its permitting process.

"Our concerns arise from how the new EPA process changes the procedures established under applicable regulations and effectively commandeers the Corps' statutory role for permitting discharges governed by [section 404 of the Clean Water Act]," the National Mining Association says in a July 30 letter to Robert Sussman, a senior advisor at EPA. An industry source says the group is sending a similar letter to the agency this week.

The industry is concerned that EPA's review process will further delay scores of pending permits, though the exact number is not clear. Industry officials have previously raised concerns that the models form part of an EPA effort intended to reach agreements on permit conditions outside of the normal permitting process (*Inside EPA*, June 19).

They have also threatened to sue the administration over key planks in its mountaintop mining agenda, though it is unclear whether courts will look kindly on industry challenges to new EPA guidance documents and other non-regulatory measures (*Inside EPA*, July 10).

According to documents obtained by *Inside EPA* under the Freedom of Information Act (FOIA), EPA has completed a draft ranking of the relative importance of the different factors it is using to determine mining permits' environmental impacts. The ranking will then be plugged into the decision tool, also known as the Multi-Criteria Integrated Resource Assessment (MIRA), to determine whether pending permits should be subject to enhanced review. The documents were presented to mining industry officials and environmentalists during separate meetings in July. *Relevant documents are available on InsideEPA.com.*

EPA is using the model to determine which Corps permits issued under section 404 should undergo enhanced review, one of several items in the administration agenda intended to limit the environmental effects of mountaintop mining.

The practice allows mine operators to blast the tops off of mountains with heavy explosives to get at coal seams underneath. The practice has prompted considerable concern from environmentalists, some lawmakers and others, because the waste rock is then "discharged" in so-called valley fills using 404 permits, obliterating streams and harming water quality. Local communities surrounding valley fills have also faced property damage due to the practice.

Key portions of the administration's agenda are already facing setbacks. Last week, a federal district court denied an administration request to vacate and remand a Bush-era rule easing stream protections to allow increased disposal of mining waste in nearby streams (*Inside EPA*, July 14).

In addition, the Corps has twice in the past month rejected EPA concerns about pending permits, including a high-profile permit for the planned Kensington gold mine in Alaska (*see related story*).

In one of several measures to address the concern, EPA and the Corps vowed to improve coordination on permit reviews. As part of that effort, EPA reiterated provisions in the two agencies' joint guidelines it is using to conduct the reviews. The guidelines, issued under section 404(b)(1) of the water act, generally require the agencies to limit discharges' harmful effects, including ensuring that permitted discharges do not result in water quality violations.

In addition to the 404(b) guidelines, EPA is also using the MIRA tool, which involves a number of steps, including: deciding which

environmental, human health or other impacts influence the decision; a scientific ranking of the severity of the impacts; and a values-driven ranking of the importance of these impacts, according to a February 2009 paper that describes the tool.

According to the FOIA documents, EPA has completed a draft ranking of the importance of mining impacts, which will then be plugged into the tool to determine which permits should undergo heightened review. EPA places the most emphasis -- around 64 percent -- on the environmental condition of the area prior to the planned mine, including the cumulative impacts of existing activities, and places less emphasis -- about 36 percent -- on the impact of the planned mine.

These two categories are each split into several sub-categories, with stream conditions, forest conditions and existing mining impacts consuming percentages of the environmental conditions category and mine footprint and mine mitigation consuming percentages of the mine impact category.

Under the draft, valley "fills" only account for 0.6 percent of the overall impact, although it is unclear whether the effects of the valley fills are accounted for in other categories as well.

The ranking, or hierarchy, is then combined with a scientific rating of severity of the impact to the criteria, also called indexes. For example, scientists assign a score between one and eight to the severity of a particular impact, with eight being the worst and one being the best. For instance, under a hypothetical dissolved oxygen category, which measures water quality, scientists would determine what amount of dissolved oxygen correlates to each score between one and eight.

The permit's score on each of these indexes is then weighted according to the ranking in the hierarchy and then added together to create a score. The process is similar to scores on tests in a class, where indexes determine the grades on exams, the ranking determines that the final exam is worth more than the mid-term exam, and the scores are then weighed and combined to create an overall grade.

The MIRA process is intended to blend science and value judgments to show the impact of each on regulatory decisions, according to the paper about the model, *Toward Sustainability: The Integration of Science and Other Stakeholder Values, One Decision at a Time*, which was written by EPA Region III staff and submitted to the Journal of Environmental Management earlier this year. "Sustainability is about human values, so

the process of establishing sustainable environmental policies must include a means of integrating the values of scientists with the values of non-scientists," the paper says.

The approach is necessary because stakeholders often seek science to back up their policy preference, even when their arguments are not scientific, the paper says. "In advocacy situations, science alone appears to be especially inadequate (or appears to have failed) for making policy decisions because, for the stakeholders, science does not clearly point to a particular solution or option. . . . As a result, science is no longer relied on to inform policy making and contributes to the further divide between and among scientists of different expertise and between scientists and non-scientists," the paper says.

The tool is useful because decision makers can run different hierarchies through the tool to see how big of an impact different values actually have on the policy decision, the paper says. For example, the tool may show that different value judgments have very little impact on the outcome. In an example in the paper, which measured the environmental condition of different regions in the Mid-Atlantic, the same regions ranked lowest in environmental quality regardless of whether health impacts or ecological impacts were emphasized.

However, it is unclear precisely how the tool will be used in the mountaintop mining context. For example, the tool could theoretically assess the values judgments of a range of stakeholders, including the mining industry and environmentalists, but it is unclear whether their points of view have been integrated into the hierarchy. EPA's presentation to the mining industry only says that the "regions have devised [the] hierarchy and assigned data acquisition responsibilities."

In addition, the hierarchy in the presentation may be just one of many EPA will use to test the impact of different mining projects. It is also unclear if or when EPA will release more detail about the scientific ratings for the indexes used in screening mining permits. The presentations say the data will come from the Corps, EPA, U.S. Fish and Wildlife Service and the U.S. Geological survey. The mining presentation says the environmental criteria are based "primarily on information necessary to apply the Section 404(b)(1) guidelines."

EPA's press office did not return a request for comment by press time.

In their July 30 letter to Sussman, NMA's Watzman says the industry has "grave" concerns about the administration's process and EPA's reliance

on the MIRA tool.

Watzman says EPA's use of MIRA has "unilaterally" establishes a new standard for mining permits, under which applications that clear the MIRA review can go forward and if applications fail, industry must reach "agreements" with EPA that will be incorporated into the permit, the letter says.

The process circumvents the Corps role in permitting the discharge of dredged or fill material, in which the Corps alone makes decisions about the applications, the letter says. "Now, EPA will be the first point of decision making, determining whether, when and how permit applications can be evaluated by the Corps -- and, in many instances, what the final permit decision must look like before the Corps commences its evaluation. This is not the process established under the statute and implementing regulations," the letter says.

Industry also opposes EPA's use of the MIRA tool as the "centerpiece" of the new process. The tool is meant to spur discussion and consensus-building, and is not designed for discrete permitting decisions. "NMA objects to using the 235 pending coal mine permit applications as the agency's laboratory for contorting a consensus-building tool into the discrete process and decision making required for [Clean Water Act section 404] permit applications," the letter says. -- *Kate Winston*

Gregory E. Peck
Chief of Staff
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1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

202-564-5778

01268-EPA-2746

Gina McCarthy/DC/USEPA/US

08/21/2009 09:32 AM

To Richard Windsor, Diane Thompson

cc Seth Oster, Lisa Heinzerling, Bob Sussman

bcc

Subject Fw: BNA: EPA Said to Be Nearing Proposal to Limit
Stationary Sources' Carbon Dioxide Emissions

(b) (5) Deliberative

---- Forwarded by Gina McCarthy/DC/USEPA/US on 08/21/2009 09:24 AM ----

From: John Millett/DC/USEPA/US
To: Gina McCarthy/DC/USEPA/US@EPA, Don Zinger/DC/USEPA/US@EPA, Beth
Craig/DC/USEPA/US@EPA, Jeffrey Clark/RTP/USEPA/US@EPA, rob brenner@EPA, Seth
Oster/DC/USEPA/US@EPA, Adora Andy/DC/USEPA/US@EPA
Cc: Andrea Drinkard/DC/USEPA/US@EPA, Erika Wilson/DC/USEPA/US@EPA, Cathy
Milbourn/DC/USEPA/US@EPA, Dave Ryan/DC/USEPA/US@EPA
Date: 08/21/2009 08:55 AM
Subject: BNA: EPA Said to Be Nearing Proposal to Limit Stationary Sources' Carbon Dioxide Emissions

http://news.bna.com/deln/DELNWB/split_display.adp?fedfid=14768018&vname=denotallissues&fn=14768018&jd=a0b9n9c3u8&split=0

Climate Change

EPA Said to Be Nearing Proposal to Limit Stationary Sources' Carbon Dioxide Emissions

The Environmental Protection Agency is close to approving a proposal to limit carbon dioxide emissions from stationary sources, according to environmental and industry sources.

David Bookbinder, chief climate counsel for the Sierra Club, told BNA Aug. 19 that EPA plans to propose in September a rule that would apply limits to sources that emit more than 25,000 tons per year of carbon dioxide.

A 25,000-ton emissions threshold would be designed to prevent the application of strict carbon dioxide emissions limits and permitting requirements on a vast number of currently unregulated small emissions sources.

Richard Alonso, an attorney for Bracewell & Giuliani LLP, told BNA Aug. 20 that EPA could issue a rulemaking or a guidance.

The proposal would govern the application of prevention-of-significant-deterioration provisions of the Clean Air Act to carbon dioxide. Like new source review, PSD requires new and modified major pollution sources to have modern pollution controls. The program is intended to prevent large emissions increases from facilities in areas that meet air quality standards.

The proposal would not impose specific emissions limits for facilities. But by applying PSD to carbon dioxide, it would require companies to have best available control technology to curb emissions of the most prominent greenhouse gas.

EPA did not immediately respond to a request for comment.

Agency Position Reconsidered

Currently, the official EPA position is codified in a memorandum issued Dec. 18, by former EPA Administrator Stephen Johnson. That memo said carbon dioxide is not a regulated pollutant under the Clean Air Act, and that PSD does not apply to it. Under the law, PSD applies only to pollutants regulated under other Clean Air Act programs.

Environmental groups maintain that carbon dioxide is a regulated pollutant and is subject to PSD requirements, but EPA under Johnson disagreed.

EPA Administrator Lisa Jackson informed Bookbinder Feb. 17 that the agency will reconsider the Johnson memo in response to a petition filed by the Sierra Club. Bookbinder said the forthcoming proposal would follow up on that reconsideration ([30 DEN A-5, 2/18/09](#)).

In addition, President Obama in May directed EPA to propose, in concert with the Department of Transportation, limits on emissions of carbon dioxide and other greenhouse gases from cars and light trucks for model years 2012 through 2016. To meet this goal, EPA will have to finalize regulations by April 2010 ([95 DEN A-10, 5/20/09](#)).

Vehicle Emissions Rule to Affect PSD

Once EPA finalizes these vehicle emissions limits, carbon dioxide will become a regulated pollutant, subject to PSD.

Bookbinder said a rule on applying PSD to carbon dioxide must be finalized by then to implement a 25,000-ton emissions threshold and to prevent a lower threshold from taking effect. Under the Clean Air Act, PSD applies to major sources, which are defined as those that emit more than 250 tons per year of a regulated pollutant. For certain specified sources, the threshold is 100 tons per year. Unless EPA takes action, this would mean that PSD would apply to sources with these levels of emissions.

According to the U.S. Chamber of Commerce and other industry groups, this would apply PSD requirements to hundreds of thousands of new sources, including schools, hospitals, and small businesses, not just power plants, refineries, and other large sources. This is because carbon dioxide is emitted in far greater amounts than other air pollutants ([119 DEN A-2, 6/24/09](#)).

The Chamber of Commerce has released figures saying that applying PSD to carbon dioxide would expand the number of facilities subject to PSD from around 30,000 to 1.2 million. A 25,000-ton emissions threshold for PSD would address this problem, but Alonso said EPA cannot just say it will not regulate emissions below 25,000 tons per year, when the Clean Air Act applies the requirements to emissions above 250 or 100 tons per year.

Alonso said EPA would have to get that interpretation past the U.S. Court of Appeals for the District of Columbia Circuit, which in recent rulings has overturned EPA interpretations of the Clean Air Act that it said were not justified by the text of the act.

EPA in 2008 suggested that it could raise the threshold for “significant” emissions under PSD to 25,000 tons per year, but Alonso said this would be a novel interpretation not supported by the Clean Air Act.

A 25,000-ton threshold “is the only sane thing they can do,” Bookbinder said.

Bookbinder has said previously that no environmental group would sue to challenge a 25,000 ton emissions threshold for PSD.

But Alonso said other parties could challenge the threshold as a means of stopping projects that they oppose for other reasons. Alonso used a hypothetical example of a labor union using PSD to challenge a construction project using non-union labor.

‘They Will be Sued.’

“If someone thinks EPA is not going to get sued over this, they're not living in the environmental world of the last 10 years,” Alonso said. “They will be sued.”

EPA in 2008 also suggested that it could address the 250-ton threshold by issuing general permits, under which small sources would not have to go through the often-arduous PSD permitting process.

Alonso said stormwater permits under the Clean Water Act are often issued after an entity sends in a postcard saying it is in compliance with generic requirements issued by EPA.

Similar requirements could apply to small sources under a general PSD permit, Alonso said, with more stringent requirements applying to sources above 25,000 tons. A general permit could impose “broad-based” requirements, such as energy-efficient appliances, he said.

Some have suggested that once EPA applies PSD to greenhouse gases, the program will be so stringent and costly that industry will prefer an emissions cap-and-trade system, such as the system that would be imposed under H.R. 2454, which passed the House June 26 ([122 DEN A-10, 6/29/09](#)).

Alonso said, however, that technology to reduce carbon dioxide emissions significantly, other than to improve energy efficiency, does not exist, so EPA would not be able to impose costly requirements under PSD for at least 10 years. In the short term, he said, industry may prefer PSD to a cap-and-trade system.

By Steven D. Cook

~~~~~  
John Millett  
Office of Air and Radiation Communications  
U.S. Environmental Protection Agency  
5411 Ariel Rios Building North  
Washington, DC 20460  
Phone: 202/564-2903  
Cell: 202/510-1822

01268-EPA-2747

**Richard Windsor/DC/USEPA/US**  
08/21/2009 10:03 AM

To Gina McCarthy, Diane Thompson  
cc Seth Oster, Lisa Heinzerling, Bob Sussman  
bcc

Subject Re: BNA: EPA Said to Be Nearing Proposal to Limit Stationary Sources' Carbon Dioxide Emissions

(b) (5) Deliberative

[Redacted]

[Redacted]

Gina McCarthy

----- Original Message -----

**From:** Gina McCarthy  
**Sent:** 08/21/2009 09:32 AM EDT  
**To:** Richard Windsor; Diane Thompson  
**Cc:** Seth Oster; Lisa Heinzerling; Bob Sussman  
**Subject:** Fw: BNA: EPA Said to Be Nearing Proposal to Limit Stationary Sources' Carbon Dioxide Emissions

(b) (5) Deliberative

---- Forwarded by Gina McCarthy/DC/USEPA/US on 08/21/2009 09:24 AM ----

From: John Millett/DC/USEPA/US  
To: Gina McCarthy/DC/USEPA/US@EPA, Don Zinger/DC/USEPA/US@EPA, Beth Craig/DC/USEPA/US@EPA, Jeffrey Clark/RTP/USEPA/US@EPA, rob brenner@EPA, Seth Oster/DC/USEPA/US@EPA, Adora Andy/DC/USEPA/US@EPA  
Cc: Andrea Drinkard/DC/USEPA/US@EPA, Erika Wilson/DC/USEPA/US@EPA, Cathy Milbourn/DC/USEPA/US@EPA, Dave Ryan/DC/USEPA/US@EPA  
Date: 08/21/2009 08:55 AM  
Subject: BNA: EPA Said to Be Nearing Proposal to Limit Stationary Sources' Carbon Dioxide Emissions

[http://news.bna.com/deln/DELNWB/split\\_display.adp?fedfid=14768018&vname=dennotallissues&fn=14768018&jd=a0b9n9c3u8&split=0](http://news.bna.com/deln/DELNWB/split_display.adp?fedfid=14768018&vname=dennotallissues&fn=14768018&jd=a0b9n9c3u8&split=0)

Climate Change  
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#### **‘They Will be Sued.’**

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than to improve energy efficiency, does not exist, so EPA would not be able to impose costly requirements under PSD for at least 10 years. In the short term, he said, industry may prefer PSD to a cap-and-trade system.

By Steven D. Cook

~~~~~

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Phone: 202/564-2903
Cell: 202/510-1822

01268-EPA-2749

Bob Sussman/DC/USEPA/US

08/22/2009 09:34 AM

To Richard Windsor

cc Seth Oster, Arvin Ganesan, Diane Thompson

bcc

Subject Fw: WVDEP dissent from within --MUST READING

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency

----- Forwarded by Bob Sussman/DC/USEPA/US on 08/22/2009 09:33 AM -----

From: Gregory Peck/DC/USEPA/US
To: "Peter Silva" <Silva.Peter@epamail.epa.gov>, "Bob Sussman" <Sussman.Bob@epamail.epa.gov>, "Suzanne Schwartz" <Schwartz.Suzanne@epamail.epa.gov>, "Kevin Minoli" <Minoli.Kevin@epamail.epa.gov>
Date: 08/21/2009 07:44 PM
Subject: Fw: WVDEP dissent from within

Significant news from WV.

Gregory E. Peck
Chief of Staff
Office of Water
U.S. E.P.A.

From: "cindyrank" (b) (6) Personal Privacy
Sent: 08/21/2009 07:21 PM AST
To: John Pomponio; "Hoffman.William@epamail.epa.gov" (b) (6) Personal Privacy John Forren; Gregory Peck; David Rider
Subject: WVDEP dissent from within

(b) (6) Personal Privacy

<http://blogs.wvgazette.com:80/coalattoo/2009/08/21/wvdep-dissent-biologist-says-huffman-wrong-on-mtr/>

WVDEP Dissent: Biologist says Huffman wrong on MTR

by Ken Ward Jr.



Photo by Vivian Stockman



West Virginia Environmental Protection Secretary Randy Huffmans [testimony in June](#) at a congressional hearing on mountaintop removal has drawn a lot of comment, and even helped [fuel a protest calling for his resignation](#).

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For example, Wood writes:

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01268-EPA-2750

Richard Windsor/DC/USEPA/US
08/22/2009 11:01 AM

To Bob Sussman
cc
bcc

Subject Re: WVDEP dissent from within --MUST READING

(b) (6) Personal Privacy

Bob Sussman

----- Original Message -----

From: Bob Sussman
Sent: 08/22/2009 09:34 AM EDT
To: Richard Windsor
Cc: Seth Oster; Arvin Ganesan; Diane Thompson
Subject: Fw: WVDEP dissent from within --MUST READING

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency

----- Forwarded by Bob Sussman/DC/USEPA/US on 08/22/2009 09:33 AM -----

From: Gregory Peck/DC/USEPA/US
To: "Peter Silva" <Silva.Peter@epamail.epa.gov>, "Bob Sussman" <Sussman.Bob@epamail.epa.gov>, "Suzanne Schwartz" <Schwartz.Suzanne@epamail.epa.gov>, "Kevin Minoli" <Minoli.Kevin@epamail.epa.gov>
Date: 08/21/2009 07:44 PM
Subject: Fw: WVDEP dissent from within

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01268-EPA-2751

Bob Sussman/DC/USEPA/US

To Richard Windsor

08/22/2009 11:16 AM

cc

bcc

Subject Re: WVDEP dissent from within --MUST READING

Yes -- impressive.

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency

Richard Windsor

(b) (6) Personal Privacy

08/22/2009 11:01:20 AM

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To: Bob Sussman/DC/USEPA/US@EPA
Date: 08/22/2009 11:01 AM
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01268-EPA-2762

Richard Windsor/DC/USEPA/US
08/27/2009 02:13 PM

To Seth Oster
cc "Diane Thompson"
bcc
Subject Re: Reuters Story

(b) (5) Deliberative

Seth Oster

----- Original Message -----

From: Seth Oster
Sent: 08/27/2009 01:48 PM EDT
To: Richard Windsor
Cc: Diane Thompson
Subject: Reuters Story

(b) (5) Deliberative

U.S. finds water polluted near gas-drilling sites

Thu Aug 27, 2009 12:56pm EDT

By [Jon Hurdle](#)

PHILADELPHIA (Reuters) - U.S. government scientists have for the first time found chemical contaminants in drinking water wells near natural gas drilling operations, fueling concern that a gas-extraction technique is endangering the health of people who live close to drilling rigs.

The Environmental Protection Agency found chemicals that researchers say may cause illnesses including cancer, kidney failure, anemia and fertility problems in water from 11 of 39 wells tested around the Wyoming town of Pavillion in March and May this year.

The report issued this month did not reach a conclusion about the cause of contamination but named gas drilling as a potential source.

Gas drilling companies say the gas drilling technique called hydraulic fracturing, or "fracking," is safe, but opponents contend it pollutes groundwater with dangerous substances.

Evidence of a link between gas drilling and water contamination would set back development of a clean-burning fuel promoted by the Obama administration as crucial to the future of U.S. energy production.

Some experts believe the United States holds more than 100 years worth of natural gas reserves. The new findings may raise questions about the process companies such as EnCana Corp, Halliburton Co and others commonly use to pump the gas from deep geological formations. Encana, Canada's biggest energy company, is drilling in Pavillion.

"There may be an indication of groundwater contamination by oil and gas activities," said the 44-page report, which received little public attention when released on August 11. "Many activities in gas well drilling (and) hydraulic fracturing ... involve injecting water and other fluids into the well and have the potential to create cross-contamination of aquifers."

Among the contaminants found in some of the wells was 2-butoyethanol, or 2-BE, a solvent used in natural gas extraction, which researchers say causes the breakdown of red blood cells, leading to blood in the urine and feces, and can damage the kidneys, liver, spleen and bone marrow.

Greg Oberley, an EPA scientist who has been testing the water samples, said the agency did not set out to prove that hydraulic fracturing caused groundwater contamination, but was responding to complaints from local residents that their well water had become discolored or foul-smelling or tasted bad.

The investigation was the EPA's first in response to claims that gas drilling is polluting water supplies, he said. Testing will continue.

LINK TO GAS INDUSTRY?

While the EPA team has not determined how the chemicals got into the water, many are associated with gas drilling, Oberley said in a telephone interview.

"The preponderance of those compounds in the area would be attributable to the oil and gas industry," he said.

In hydraulic fracturing, energy companies inject a mixture of water, sand and chemicals a mile or more underground at high pressure, causing rock to fracture and release natural gas.

Drillers such as EnCana are not required to disclose the chemicals they use because of an exemption to the federal Safe Drinking Water Act, granted to the oil and gas industry in 2005.

In the U.S. Congress, concern about the safety of fracking led to the introduction in June this year of a bill that would require disclosure of fracking chemicals.

Industry representatives say fracking chemicals are heavily diluted and are injected thousands of feet below drinking-water aquifers through steel and concrete shafts that prevent the escape of toxic substances into water supplies.

Randy Teeuwen, a spokesman for EnCana, said the substances found by the EPA had been "tentatively identified." He said many were naturally occurring and some are commonly found in

household products and agricultural degreasers.

He said EnCana was working with the agency to identify possible sources of the contamination. "One of those sources could be oil and gas development," Teeuwen said.

Teeuwen said EnCana, which operates 248 wells in the area, stopped using 2-BE in spring 2009 because of concerns about its health effects.

"It's a banned substance as far as EnCana is concerned," Teeuwen said.

John Fenton, a farmer in Pavillion, a rural community of about 150 people, said residents blame gas drilling for a range of illnesses including rare cancers, miscarriages and nervous system disorders.

Families with contaminated water wells have been advised by the U.S. Centers for Disease Control and Prevention not to drink the water, which in some cases was black and oily, with a petroleum-like sheen, and a smell of gas, Fenton said.

"The stress is incredible," Fenton told Reuters. "People have built their lives and businesses here. What's it all worth now?"

Seth Oster
Associate Administrator
Office of Public Affairs
Environmental Protection Agency
(202) 564-1918
oster.seth@epa.gov

01268-EPA-2782

Gina McCarthy/DC/USEPA/US

To Seth Oster, "windsor richard"

09/02/2009 08:16 AM

cc Diane Thompson, David McIntosh, Lisa Heinzerling, "Allyn Brooks-Lasure", Bob Sussman
bcc

Subject Re: Greenwire on PSD at OMB: EPA Draft Greenhouse Gas Rule Focuses on Large Emitters

Excellent.

Seth Oster

----- Original Message -----

From: Seth Oster**Sent:** 09/02/2009 08:04 AM EDT**To:** windsor.richard@epa.gov**Cc:** Diane Thompson; David McIntosh; Lisa Heinzerling; "Allyn Brooks-LaSure" <brooks-lasure.allyn@epa.gov>; Bob Sussman; Gina McCarthy**Subject:** Fw: Greenwire on PSD at OMB: EPA Draft Greenhouse Gas Rule Focuses on Large Emitters

See below. It's a good story.

(b) (5) Deliberative

John Millett

----- Original Message -----

From: John Millett**Sent:** 09/02/2009 06:35 AM EDT**To:** Gina McCarthy; Don Zinger; oster.seth@epa.gov**Cc:** David Cohen; Andrea Drinkard; "Alison Davis" <davis.alison@epa.gov>**Subject:** Greenwire on PSD at OMB: EPA Draft Greenhouse Gas Rule Focuses on Large Emitters

EPA Draft Greenhouse Gas Rule Focuses on Large Emitters

Proposed rule would shield small sources of the greenhouse gases contributing to climate change By Robin Bravender

The EPA has drafted new rules aimed at large emitters of greenhouse gases, and sparing small sources.

U.S. EPA has sent a draft rule to the White House that could limit regulations on greenhouse gas emissions to cover only very large industrial sources. The agency yesterday submitted a rule to the White House Office of Management and Budget that experts say will likely limit strict permitting requirements to industrial sources of more than 25,000 tons a year of carbon dioxide equivalent. The rule is aimed at shielding smaller sources of emissions from being subject to any new regulatory regime. The Clean Air Act now requires new and modified industrial sources to install "best available control technologies" when they emit 250 tons or more of a pollutant per year. Although the submission to OMB does not include details of the proposed rule, experts say the threshold is likely to be set at 25,000 tons because that's the stated limit in both EPA's proposed greenhouse gas reporting rule and the climate legislation passed by the House in June. The draft "Prevention of Significant Deterioration/Title V Greenhouse Gas Tailoring Rule" is seen as a critical regulation that would work in conjunction with several other climate-change rules expected from EPA. EPA and the Transportation Department last week sent draft rules to the White House for review that would boost automobile and light truck efficiency standards for model years 2012 to 2016, and impose first-ever federal tailpipe standards for greenhouse gases. Those rules hinge on the finalization of EPA's proposed "endangerment finding," which would establish greenhouse gases as pollutants under the Clean Air Act. Once it begins to regulate greenhouse gases from cars and trucks, EPA will be legally required to regulate all new or modified facilities that emit more than 250 tons per year

of carbon dioxide. By moving that threshold to 25,000 tons per year, the permitting rule would cover roughly 13,000 facilities from all sectors of the economy that account for 85 to 90 percent of U.S. emissions, the agency said. "What they're trying to do is protect the innocent bystanders from being impacted by the finalization of the car rule," said Roger Martella, who was EPA general counsel under President George W. Bush. David Bookbinder, chief climate counsel at the Sierra Club, said the rule would also deflect claims from Republican lawmakers and industry groups that the Obama administration is seeking to regulate small emission sources such as doughnut shops, schools and nursing homes. "Putting this rule in place deflates a lot of the political rhetoric about regulating CO₂," he said. The Obama EPA is moving forward on greenhouse gas regulations despite the administration's stated preference for legislation over agency regulations. Sens. Barbara Boxer (D-Calif.) and John Kerry (D-Mass.) -- the lead authors of the Senate climate bill -- announced yesterday that they would delay plans to introduce climate legislation until later this month. Bookbinder predicted EPA's proposed endangerment finding will be finalized soon, followed by the threshold rule and finally the tailpipe standards, which are expected to be finalized by March 2010. "You can't go final with the car rule until you have a final endangerment finding and you don't want to go final with the car rule until you have [the threshold rule] in place," he said. Bookbinder said environmentalists are comfortable with the 25,000 ton threshold, but Martella and others have expressed concerns that EPA may face questions about its legal authority to raise the threshold from the 250 tons stipulated in the Clean Air Act.

John Millett

EPA Office of Air and Radiation Communications

Desk: 202/564-2903

Cell: 202/510-1822

01268-EPA-2783

**Lisa
Heinzerling/DC/USEPA/US**
09/02/2009 08:33 AM

To Seth Oster
cc "Allyn Brooks-LaSure", David McIntosh, "Gina McCarthy",
"Bob Sussman", "Diane Thompson", windsor.richard
bcc

Subject Re: Fw: Greenwire on PSD at OMB: EPA Draft Greenhouse
Gas Rule Focuses on Large Emitters

Nicely done.

Seth Oster

See below. It's a good story. (b) (5) Deliberative

09/02/2009 08:04:06 AM

From: Seth Oster/DC/USEPA/US
windsor.richard@epa.gov
To: "Diane Thompson" <Thompson.Diane@epamail.epa.gov>, David McIntosh/DC/USEPA/US, "Lisa
Heinzerling" <Heinzerling.Lisa@epamail.epa.gov>, "Allyn Brooks-LaSure"
Cc: <brooks-lasure.allyn@epa.gov>, "Bob Sussman" <Sussman.Bob@epamail.epa.gov>, "Gina
McCarthy" <McCarthy.Gina@epamail.epa.gov>
Date: 09/02/2009 08:04 AM
Subject: Fw: Greenwire on PSD at OMB: EPA Draft Greenhouse Gas Rule Focuses on Large Emitters

See below. It's a good story.

(b) (5) Deliberative

John Millett

----- Original Message -----

From: John Millett
Sent: 09/02/2009 06:35 AM EDT
To: Gina McCarthy; Don Zinger; oster.seth@epa.gov
Cc: David Cohen; Andrea Drinkard; "Alison Davis" <davis.alison@epa.gov>
Subject: Greenwire on PSD at OMB: EPA Draft Greenhouse Gas Rule Focuses on
Large Emitters

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EPA will be legally required to regulate all new or modified facilities that emit more than 250 tons per year of carbon dioxide. By moving that threshold to 25,000 tons per year, the permitting rule would cover roughly 13,000 facilities from all sectors of the economy that account for 85 to 90 percent of U.S. emissions, the agency said. "What they're trying to do is protect the innocent bystanders from being impacted by the finalization of the car rule," said Roger Martella, who was EPA general counsel under President George W. Bush. David Bookbinder, chief climate counsel at the Sierra Club, said the rule would also deflect claims from Republican lawmakers and industry groups that the Obama administration is seeking to regulate small emission sources such as doughnut shops, schools and nursing homes. "Putting this rule in place deflates a lot of the political rhetoric about regulating CO₂," he said. The Obama EPA is moving forward on greenhouse gas regulations despite the administration's stated preference for legislation over agency regulations. Sens. Barbara Boxer (D-Calif.) and John Kerry (D-Mass.) -- the lead authors of the Senate climate bill -- announced yesterday that they would delay plans to introduce climate legislation until later this month. Bookbinder predicted EPA's proposed endangerment finding will be finalized soon, followed by the threshold rule and finally the tailpipe standards, which are expected to be finalized by March 2010. "You can't go final with the car rule until you have a final endangerment finding and you don't want to go final with the car rule until you have [the threshold rule] in place," he said. Bookbinder said environmentalists are comfortable with the 25,000 ton threshold, but Martella and others have expressed concerns that EPA may face questions about its legal authority to raise the threshold from the 250 tons stipulated in the Clean Air Act.

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01268-EPA-2784

Richard Windsor/DC/USEPA/US
09/02/2009 08:35 AM

To Seth Oster, "Lisa Jackson"
cc Diane Thompson, David McIntosh, Lisa Heinzerling, "Allyn Brooks-Lasure", Bob Sussman, Gina McCarthy
bcc
Subject Re: Greenwire on PSD at OMB: EPA Draft Greenhouse Gas Rule Focuses on Large Emitters

Congrats all, particularly Seth. Don't you love it when you are allowed to do your job and you are right?
Seth Oster

----- Original Message -----

From: Seth Oster
Sent: 09/02/2009 08:04 AM EDT
To: windsor.richard@epa.gov
Cc: Diane Thompson; David McIntosh; Lisa Heinzerling; "Allyn Brooks-LaSure" <brooks-lasure.allyn@epa.gov>; Bob Sussman; Gina McCarthy
Subject: Fw: Greenwire on PSD at OMB: EPA Draft Greenhouse Gas Rule Focuses on Large Emitters

See below. It's a good story. We knew it was coming and chose to let it go without comment -- a good decision.

John Millett

----- Original Message -----

From: John Millett
Sent: 09/02/2009 06:35 AM EDT
To: Gina McCarthy; Don Zinger; oster.seth@epa.gov
Cc: David Cohen; Andrea Drinkard; "Alison Davis" <davis.alison@epa.gov>
Subject: Greenwire on PSD at OMB: EPA Draft Greenhouse Gas Rule Focuses on Large Emitters
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John Millett

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01268-EPA-2791

David
McIntosh/DC/USEPA/US
09/02/2009 10:09 PM

To windsor.richard
cc goulding.robert
bcc

Subject proposed talking points for your Tom Donahue call tomorrow morning

(b) (5) Deliberative

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Here is the full Kovacs August 31 submission to the National Journal:

Responded on August 31, 2009 8:23 AM

**Bill Kovacs, Vice President for the Environment, Technology & Regulatory Affairs
Commerce**

Well it certainly seems like the Chamber's supplemental petition for an "on the record" hearing on endangerment. Before responding to the National Journal's question, let me clarify a few things. The U.S. Chamber of Commerce is challenging the science behind global climate change. Many of the news articles on our petition the past few days are correct.

The anti-business lobby quickly jumped on these news articles without actually reading the substance of the Chamber's petition.

“deniers.” That is certainly unfortunate, but not unexpected. For many of these special interest groups, dogma us deniers for years, even though the Chamber supports sensible and ambitious congressional and international. “Scopes monkey” analogy was inappropriate and detracted from my ability to effectively convey the Chamber’s. With that said, what the Chamber is doing is re...

[Read More](#)

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The anti-business lobby quickly jumped on these news articles without actually reading the substance of the Chamber’s petition. “deniers.” That is certainly unfortunate, but not unexpected. For many of these special interest groups, dogma us deniers for years, even though the Chamber supports sensible and ambitious congressional and international.

My “Scopes monkey” analogy was inappropriate and detracted from my ability to effectively convey the Chamber’s position. With that said, what the Chamber *is* doing is requesting that EPA conduct a formal on-the-record hearing on the endangerment finding. EPA wants to use the Clean Air Act to regulate CO2 emissions from cars. Before it can do this, it must find that U.S. greenhouse gas emissions from new motor vehicles endanger U.S. public health and welfare. Because the science is clear that greenhouse gas emissions cause or contribute to rising global temperatures, to make the endangerment finding, EPA must show that rising temperatures threaten public health and welfare—that is their burden of proof. EPA is, by all accounts, on the wrong side of the law. We don’t think the evidence EPA set forth meets the legal criteria to support such a finding, and we think it is wrong. Normally, such issues could be worked out through an ordinary informal rulemaking process (i.e., notice and comment rulemaking), but this has been anything but ordinary.

First, the proposed endangerment finding acknowledges that the Administrator’s decision must be based on scientific evidence. EPA proceeds to run through a laundry-list of “uncertainties” that not only undermine its finding but also that the Administrator’s decision has been anything but ordinary. Examples include:

- “[T]he scientific literature does not provide definitive data or conclusions on how climate change might impact the prevalence of allergenic illnesses in the U.S.” (74 Fed. Reg. at 18,901.)
- “[I]t is currently difficult to ascertain the balance between increased heat-related mortality and decreased mortality from heat-related illnesses.” (Technical Support Document (TSD) at ES-3.)
- “[C]learly attributing specific regional changes in climate to emissions of greenhouse gases from human activities is uncertain.” (TSD at ES-3.)
- Increased hurricane intensity is “likely,” but changes in frequency of hurricanes “are currently too uncertain to quantify.” (TSD at ES-4.)
- “Carbon dioxide can have stimulatory or fertilization effects on plant growth. There is debate and uncertainty about the direct effects of elevated CO2 levels.” (*Id.* at 17.)
- “Several yet unresolved questions prevent a definitive assessment of the effect of elevated CO2 on other components of ecosystems.” *Id.* at 90.
- Finally, EPA states that “there are many inherent uncertainties associated with characterizing both the overall impact of climate change on public health and welfare due to current and projected greenhouse gas concentrations.” (74 Fed. Reg. at 18,901.)

Is it unreasonable to think that these uncertainties should be resolved before moving ahead with the sweeping regulations under the Clean Air Act would compel?

Second, and equally troubling, is EPA’s ignorance of any evidence that calls into question its conclusions on endangerment. In the saga of Alan Carlin, the EPA whistleblower whose internal report criticizing the data behind the endangerment finding was leaked to Dr. Carlin’s boss, it does “not help the legal or policy case” for endangerment. It now appears EPA officials at Carlin’s office has in scientific analysis of agency rulemakings. Dr. Carlin is learning first-hand that the word “uncertainty” is on EPA’s docket also shows that other federal agencies recognized shortcomings in the proposed endangerment finding. EPA’s task for “applying a dramatically expanded precautionary principle,” noting that “the impact of climate-sensitive ecosystems on a country like the U.S.” Further, OMB questioned why EPA focused so heavily on ozone effects from climate change. EPA’s Clean Air Act regulations in place designed to regulate ozone.

The facts listed above, when considered in their entirety, point to an inescapable conclusion: the informal rulemaking process to date has not been open and transparent, nor has it been conducted with scientific integrity, free of political influence, or with meaningful consultations. *That* is why the U.S. Chamber is asking for a formal on-the-record hearing: to bring into the open the

The Chamber has been sharply criticized by EPA and environmental groups for making such a request. I am at beyond debate that this endangerment finding will have serious economic consequences for the U.S., as the final Clean Air Act programs for stationary and mobile sources alike, and apply them to greenhouse gases. Shouldn't this to be decided on the basis of all the available science, in an open and transparent way? This is especially significant because the President himself issued an Executive Memorandum on his second day in office calling for transparency in government action. I am sure at least one of the respondents to today's blog question will assert that, because the Chamber is again arguing that we don't support the environmental objectives behind reducing greenhouse gas emissions. This once again means "climate change." Endangerment in the Clean Air Act context is a bureaucratic turn of a phrase; one can be again supportive of strong, effective action to reduce carbon emissions. Indeed, the Chamber's platform of technology-based approach would actually do more to reduce global greenhouse gas emissions than a finding of "endangerment" by EPA using the current approach, we could achieve these benefits while creating American jobs and avoiding severe economic disruption. As to the question of whether this is merely a delay tactic, I assure you it is most certainly not. In fact, we combated the comments filed, before filing our supplemental petition this week. Less than 3 percent of the 5600 public comments included scientific data or a significant discussion of scientific data, and fewer than 100 parties provided extensive scientific questions. Such a small number of potential witnesses could be dealt with in a short timeframe. The Chamber's request to mandate a "term of reference" for completion of the hearing—say, 100 days—and set real, binding time limits on an issue.

The EPA should welcome the opportunity to convert this massively important regulatory decision to one based on a thorough and public examination of the entire record, rather than hide from doing so. The Chamber's petition is being pushed forward.

Finally, for those who plan to respond to this blog post, I ask that you first read the Chamber's petition. You can find a summary, if that is all you have time for. But please do everyone reading this blog the favor of knowing what you are responding, whether the response is for or against the Chamber's petition.

01268-EPA-2804

Richard Windsor/DC/USEPA/US
09/08/2009 01:54 PM

To Seth Oster
cc
bcc

Subject Re: Mountain Mining Announcement -- News Is Out

They all knew the schedule said this would happen today. No biggie.
Seth Oster

----- Original Message -----

From: Seth Oster
Sent: 09/08/2009 01:24 PM EDT
To: Richard Windsor; Diane Thompson; Bob Sussman; Peter Silva; Arvin Ganesan; David McIntosh
Cc: Adora Andy
Subject: Mountain Mining Announcement -- News Is Out

The news of the upcoming mountain mining announcement has leaked out. Below is a press advisory from Appalachian Voices. We are now receiving many calls.

(b) (5) Deliberative

Seth

Press Advisory

EPA To Announce Decisions on 86 Mountaintop Removal Mining Valley Fill Permits

Today the US Environmental Protection Agency will announce preliminary decisions on more than 80 valley fill permits associated with mountaintop removal coal mining. During the announcement, the agency will differentiate between permit applications they have determined deserve extended consideration over environmental concerns, and which permit applications may proceed directly to the Army Corps of Engineers for implementation.

The lists of permits slated for the extended review and "enhanced coordination process" will be made public on the websites of EPA Regions 3, 4, and 5, and will become final with approval of the EPA regional offices within 14 days of this announcement. Any permits allowed to proceed past this preliminary review to the Army Corps will mean more headwater streams buried and more Appalachian mountains literally blasted off the map.

In response, Appalachian Voices has created an "EPA Shortlist" section on iLoveMountains.org,

which includes an interactive map and more information to help citizens and the media track the real-time progress of these permits and identify communities and people at risk should these permits be allowed to move ahead. Preview the map at www.ilovemountains.org/epa-short-list/

Early in the Obama Administration, the EPA announced implementation of a stricter review process for mountaintop removal coal mining permits, a move that left coalfield communities hopeful that this would be the beginning of the end for this destructive practice. Today's announcement will reveal if President Obama's EPA is serious about stopping the damage that mountaintop removal wreaks on the mountains, water and communities of Appalachia.

A press release and photographs and b-roll footage of mountaintop removal coal mining will be available, as well as interviews with impacted residents and experts on the environmental impacts of mountaintop removal mining.

For more information, please contact:

Dr. Matthew Wasson, Director of Programs, Appalachian Voices... 828-262-1500

Stephanie Pistello, National Field Coordinator, Appalachian Voices... 917-664-5511

Appalachian Voices

*Bringing People Together To Protect the Land, Air, Water
and Communities of the Central and Southern Appalachians*

Seth Oster
Associate Administrator
Office of Public Affairs
Environmental Protection Agency
(202) 564-1918
oster.seth@epa.gov

01268-EPA-2807

Richard Windsor/DC/USEPA/US
09/09/2009 04:08 PM

To: Betsaida Alcantara
cc
bcc
Subject: Re: Cap and Trade in Senate Limbo as Obama Makes All-Out Push on Health Care

Yikes
Betsaida Alcantara

----- Original Message -----

From: Betsaida Alcantara
Sent: 09/09/2009 03:29 PM EDT
To: Richard Windsor
Subject: Re: Cap and Trade in Senate Limbo as Obama Makes All-Out Push on Health Care

yes. you are very much on message. (b) (5) Deliberative

breaking news: plane hijacked in mexico - hijackers are demanding to speak to president Calderon (just watching on CNN)

Richard Windsor | I like it. You? | ----- Original Message... | 09/09/2009 03:17:33 PM

From: Richard Windsor/DC/USEPA/US
To: Betsaida Alcantara/DC/USEPA/US@EPA
Date: 09/09/2009 03:17 PM
Subject: Re: Cap and Trade in Senate Limbo as Obama Makes All-Out Push on Health Care

I like it. You?

Betsaida Alcantara

----- Original Message -----

From: Betsaida Alcantara
Sent: 09/09/2009 02:30 PM EDT
To: Richard Windsor
Subject: Cap and Trade in Senate Limbo as Obama Makes All-Out Push on Health Care

long article that gives an overview of where we are with climate bill. this was published on nytimes.com through climatewire. mentions you and quotes some of your stuff from Diane Rehm show....

September 8, 2009

Cap and Trade in Senate Limbo as Obama Makes All-Out Push on Health Care

By DARREN SAMUELSON of [ClimateWire](#)

President Obama's energy and global warming agenda stands at a major crossroads as lawmakers

return today from their monthlong summer break amid an all-out push to pass health care legislation.

Senate Democrats originally intended to roll out their version of a cap-and-trade climate bill this week, but they have since delayed that schedule until later this month in part because of the brewing battle over health care.

Gone is the immediacy for action on global warming, and there is even talk that passing a climate bill this year has faded to third place on the administration's agenda behind financial reform legislation that responds to last year's Wall Street meltdown.

Asked last week about prospects for the Senate climate bill, White House spokesman Robert Gibbs changed the subject and instead predicted a "major push" from Obama and Congress to pass a bill that heads off any future financial crisis.

"I think that will be a very important part of the legislative agenda moving forward in the fall in strong hopes that by the end of the year we have new rules of the road going forward so that something like this doesn't happen under the same circumstances again," Gibbs told reporters Aug. 31.

Yet significant questions remain about just how much success can be had on financial reform, let alone the health care bill that gets center stage tomorrow night when Obama delivers a nationally televised speech before a joint session of Congress.

All sides of the global warming debate will be watching Obama close to see if their issue even merits a mention.

"If I were betting, he'll probably slip in a line about climate change," said Jeff Holmstead, a former U.S. EPA air pollution chief for President George W. Bush. "Because there'll be some people who are core constituents who will want to see that. The political calculus is the president will need to show he's still interested."

Democrats have been juggling health care and climate change since Obama took office. Earlier this year, House Speaker Nancy Pelosi (D-Calif.) and White House chief of staff Rahm Emanuel agreed to take on both issues simultaneously, which helped result in a House-passed climate bill just before the July 4 recess.

But many moderate Democrats complained about that strategy, and sources tracking the debate say Obama's political advisers are now in agreement that the climate issue now belongs on the back burner.

Several Capitol Hill aides said last week that they were confused about their mission -- especially as they continue to get a push to act by some Obama Cabinet members and White House energy adviser Carol Browner.

"It seems like there's a little bit of a gap somewhere," said one Democratic staffer who is

working on the climate bill.

U.S. EPA Administrator Lisa Jackson said last week that she did not have a problem with Congress putting its emphasis this fall on health care.

"Certainly, the Senate rightfully is spending an awful lot of time looking at that issue," Jackson said in an appearance Thursday on NPR's "The Diane Rehm Show." "Clean energy is no less important. But rightfully, they want to finish their work on health care.

"All along, we've understood that for something on the order of clean energy, but also health care, they probably needed to be done in sequence," Jackson added.

Environmentalists insist that Democrats and the White House should keep pushing for a climate bill given scientific warnings about irreversible global warming, as well as mounting international pressure headed into U.N. negotiations this December in Copenhagen.

"Congress is capable of and staffed to do more than two important things at once," said David Doniger, policy director of the Natural Resources Defense Council's climate center.

But Manik Roy of the Pew Center on Global Climate Change said that Obama and Congress need to resolve health care before anything else can get traction.

"They can't disengage on health care," Roy said. "Win, lose or draw, they have to see it through. And only once that has played out can we turn to other issues."

EPA chief 'not concerned yet'

All that said, climate change legislation remains on the radar for some important committees and lawmakers.

The Senate Agriculture Committee holds a hearing tomorrow on the regulation of carbon markets, with a panel of witnesses dedicated to the views of farmers and agriculture groups. The House Select Committee on Energy Independence and Global Warming also plans a hearing Thursday with Obama's State Department climate envoy, Todd Stern, on preparations for the summit in Copenhagen, Denmark.

And later today, Senate Environment and Public Works Chairwoman Barbara Boxer (D-Calif.) and Foreign Relations Chairman John Kerry (D-Mass.) are scheduled to meet for the first time in person since the recess -- with an eye on mapping out the legislative road ahead.

The senators gave several reasons last week for why they delayed release of their legislation: Kerry's hip surgery, the death of Sen. Ted Kennedy (D-Mass.) and ongoing action in the Finance Committee to pass health care legislation.

Boxer and Kerry said they would use the extra time to "work on the final details of our bill, and to reach out to colleagues and important stakeholders."

Senate Majority Leader Harry Reid (D-Nev.) has scratched a Sept. 28 deadline that he had originally set out for work to be done on the climate bill in the EPW Committee and five other panels.

Reid spokesman Jim Manley said there is no new deadline for the committees to finish their work, only a call to pass climate legislation "as quickly as possible."

"They are working diligently to craft a well-balanced bill, and Senator Reid fully expects the Senate to have ample time to consider this comprehensive clean energy and climate legislation before the end of the year," Manley said.

Senate Democrats have twice this year pushed back their schedule for acting on a climate bill. Boxer had told reporters during the House climate debate that she would introduce a bill before the August recess. But she punted on that goal shortly after the 219-212 House vote.

Reid and other Senate Democratic leaders have also publicly acknowledged they are shy of the 60 votes needed to pass a bill -- with some of the pushback coming from within their own caucus.

Off Capitol Hill, perspectives vary on the significance of the latest Senate schedule change.

"I'm not concerned yet," EPA's Jackson said on NPR. "I think the delay announced this week is understandable. It is a piece of legislation that's very complex. ... I just think it needs a little bit more time."

"You can introduce a losing bill anytime you want," added Jeremy Symons, vice president of the National Wildlife Federation. "Introducing a winning bill, however, needs to be done at the right time after the right consultations. So the new schedule doesn't change the fact that all signs are pointing to Senate action this fall."

By contrast, EPW Committee ranking member James Inhofe (R-Okla.) predicted the climate bill's demise as Democrats battle amongst themselves over a costly new program.

"The delay is emblematic of the division and disarray in the Democratic party over cap-and-trade and health care legislation, both of which are big government schemes for which the public has expressed overwhelming opposition," Inhofe said.

Seeking cover for Copenhagen

Absent additional progress on Capitol Hill, Obama will need to turn to other aspects of his environmental agenda as he prepares for the U.N. climate negotiations. Sources tracking the issue say the administration has several obvious choices, starting with the clean energy components included in the \$787 billion economic stimulus package.

Also coming soon: U.S. EPA rules to control greenhouse gas emissions from motor vehicles and

power plants -- regulations that are more than a decade in the making and premised on the 2007 Supreme Court decision in *Massachusetts v. EPA* .

"You can take a big bite out of the U.S. global warming pollution under the existing law," Doniger said, who added that it would not be too difficult to quantify the emission reductions from combining the new federal rules.

Obama's diplomatic portfolio also may get a boost when he visits China in November as administration officials work behind the scenes to reach a bilateral agreement on global warming with Beijing.

Sen. Maria Cantwell (D-Wash.), touring China last week, told reporters she would put "higher odds" on a bilateral agreement than she would on a deal in Copenhagen, or on the Senate passing a climate bill.

"If you are producing 40 percent of emissions -- which is what China and the United States are together -- what a legacy, and what a great relationship you could create by saying that's what these two great countries stepped up to do," Cantwell said, according to Reuters.

EPA's Jackson said Obama would also prefer action by the Senate on cap-and-trade legislation before Copenhagen. But she also indicated that a law was not necessary.

"What we need to do is also keep our eye on the president's position," Jackson said. "Climate discussions have been part of the agenda on clean energy from the very beginning."

Most environmental groups would prefer a new U.S. cap-and-trade law before Copenhagen. But there is also significant apprehension that a losing vote in the Senate could be a huge blow to the international talks given the stock already placed in the United States returning to the negotiation table after eight years battling President George W. Bush.

"The real issue is showing progress and momentum," Doniger said. So while it is better if Obama has more concrete actions, Doniger explained that "a bad vote probably hurts the most."

He added, "And there's a lot of space in between."

Leave it to Reid

Boxer's Environment and Public Works Committee remains a key battleground as the climate debate advances. But there is now no clear timetable for when she will mark up a bill.

To date, Boxer has revealed a select number of details about what her bill will look like. She has said she is interested in setting a 20 percent limit on greenhouse gases for 2020 -- a more aggressive level than the House bill. And Boxer is also under pressure from environmental groups to keep EPA's authority for regulating power plant emissions -- something the House legislation surrendered.

From the other direction, Boxer before the August break said she would yield to an industry-driven demand for some type of price collar on greenhouse gas allowances.

Still, without legislative text, many different conclusions are being drawn about the direction Boxer wants to take the climate debate.

"On the issues most important to environmentalists, they'll go to the left," Holmstead said. "And on issues more important to business, she'll go to the right. People are interpreting that in different ways."

Andrew Wheeler, former Republican staff director for the Environment and Public Works Committee, said Boxer will need to make some tough decisions in the weeks and months ahead.

"You can't make it better for both sides," he said. "Somebody has to be told it's not getting better for you."

There are also number of unresolved issues still ahead.

Boxer and Finance Chairman Max Baucus (D-Mont.), for example, remain at loggerheads over who writes the allocation of hundreds of billions of dollars in emission allowances.

Reid is expected to play a key role in resolving the committee dispute, as well as other battles over nuclear power, international trade with developing countries and agriculture.

So with plenty of time still to go, few are showing all of their cards.

"This is at least a three-stage process," said Roy. "There's the EPW process. There's the majority leader's process. And there's what happens on the floor. People are planning with each of these events in mind."

01268-EPA-2815

Richard Windsor/DC/USEPA/US
09/14/2009 02:06 PM

To Eric Wachter, Peter Grevatt
cc
bcc

Subject Fw: Google Alert - lisa jackson epa

FYI - ensuring you are working together on this.

----- Forwarded by Richard Windsor/DC/USEPA/US on 09/14/2009 02:06 PM -----

From: Google Alerts <googlealerts-noreply@google.com>
To: Richard Windsor/DC/USEPA/US@EPA
Date: 09/14/2009 11:39 AM
Subject: Google Alert - lisa jackson epa

Google News Alert for: **lisa jackson epa**

[Groups vow to sue EPA over coal ash delays](#)

Chattanooga Times Free Press

In the wake of TVA's coal ash spill at the Kingston Fossil Plant in December, **EPA Administrator Lisa Jackson** has pledged to issue federal regulations by the ...

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[EPA Punts on Risks to Children From Playground Tire Crumb](#)

Common Dreams (press release)

On May 29, 2009, PEER wrote **EPA Administrator Lisa Jackson** asking her to 1) revoke her agency's endorsement of tire crumb until research shows it is safe ...

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01268-EPA-2818

Bob Sussman/DC/USEPA/US

To Richard Windsor

09/14/2009 03:06 PM

cc Allyn Brooks-LaSure, Peter Silva, Seth Oster

bcc

Subject Re: Fw: Google Alert - lisa jackson epa

(b) (5) Deliberative

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency

Richard Windsor (b) (5) Deliberative 09/14/2009 02:03:51 PM

From: Richard Windsor/DC/USEPA/US
To: Seth Oster/DC/USEPA/US@EPA, Allyn Brooks-LaSure/DC/USEPA/US@EPA, Peter Silva/DC/USEPA/US@EPA, Bob Sussman/DC/USEPA/US@EPA
Date: 09/14/2009 02:03 PM
Subject: Fw: Google Alert - lisa jackson epa

(b) (5) Deliberative

----- Forwarded by Richard Windsor/DC/USEPA/US on 09/14/2009 02:02 PM -----

From: Google Alerts <googlealerts-noreply@google.com>
To: Richard Windsor/DC/USEPA/US@EPA
Date: 09/14/2009 01:45 PM
Subject: Google Alert - lisa jackson epa

Google News Alert for: **lisa jackson epa**

[Enviro Groups Threaten to Sue EPA Over Coal Plant Discharge Regs](#)

New York Times

"EPA needs to stop kicking the can down the road and set a date for regulation. We are confident that **Lisa Jackson** will do the right thing. ...

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01268-EPA-2819

Richard Windsor/DC/USEPA/US
09/14/2009 05:08 PM

To Allyn Brooks-LaSure
cc
bcc

Subject Re: Rockefeller questions latest EPA mining actions

(b) (5) Deliberative

Allyn Brooks-LaSure

----- Original Message -----

From: Allyn Brooks-LaSure
Sent: 09/14/2009 05:05 PM EDT
To: "Windsor, Richard" <Windsor.richard@epa.gov>; "Sussman, Bob" <sussman.bob@epa.gov>; "Thompson, Diane" <thompson.diane@epa.gov>; "Mcintosh, David" <mcintosh.david@epa.gov>; Arvin Ganesan
Cc: "Oster, Seth" <oster.seth@epa.gov>
Subject: Rockefeller questions latest EPA mining actions

Rockefeller questions EPA's latest mining action

The Associated Press

CHARLESTON, W.Va. (AP) - West Virginia Sen. Jay Rockefeller is asking the U.S. Environmental Protection Agency to retract its latest efforts to review mountaintop removal permits in the state. In a letter to EPA Administrator Lisa Jackson, Rockefeller said he feels strongly about the agency's request that the U.S. Army Corps of Engineers suspend, revoke or modify a permit it issued in 2007. That permit for Mingo Logan Coal's Spruce No. 1 mine would allow the company to fill valleys at the site with material removed to expose coal, a practice widely opposed by environmentalists. Rockefeller says EPA's action creates uncertainty in the coalfields and goes against an agreement the agency signed in May. That agreement spelled out how federal agencies would review mining permits

MABL.

M. Allyn Brooks-LaSure
Office of the Administrator
U.S. Environmental Protection Agency
Cell: 202-631-0415

01268-EPA-2820

Peter Grevatt/DC/USEPA/US

To Richard Windsor, Eric Wachter

09/14/2009 05:58 PM

cc

bcc

Subject Re: Google Alert - lisa jackson epa

Thanks and sorry for the delay in getting back. (I'm in Idaho with R10 tribes discussing children's health issues on tribal lands).

(b) (5) Deliberative

Peter Grevatt, Ph.D.
Director, Office of Children's Health
Protection and Environmental Education
U.S. EPA
1200 PA Ave., NW
Mail Code 1107-A
Washington, DC 20460
202-564-8954

Please pardon typos from Blackberry device!

Sent by EPA Wireless E-Mail Services.
Richard Windsor

----- Original Message -----

From: Richard Windsor
Sent: 09/14/2009 02:06 PM EDT
To: Eric Wachter; Peter Grevatt
Subject: Fw: Google Alert - lisa jackson epa

FYI - ensuring you are working together on this.

----- Forwarded by Richard Windsor/DC/USEPA/US on 09/14/2009 02:06 PM -----

From: Google Alerts <googlealerts-noreply@google.com>
To: Richard Windsor/DC/USEPA/US@EPA
Date: 09/14/2009 11:39 AM
Subject: Google Alert - lisa jackson epa

Google News Alert for: **lisa jackson epa**

[Groups vow to sue EPA over coal ash delays](#)

Chattanooga Times Free Press

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Common Dreams (press release)

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01268-EPA-2821

Richard Windsor/DC/USEPA/US
09/14/2009 05:59 PM

To "Seth Oster"
cc
bcc

Subject Fw: Google Alert - lisa jackson epa

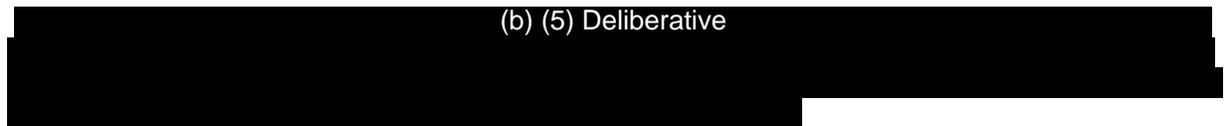
Peter Grevatt

----- Original Message -----

From: Peter Grevatt
Sent: 09/14/2009 05:58 PM EDT
To: Richard Windsor; Eric Wachter
Subject: Re: Google Alert - lisa jackson epa

Thanks and sorry for the delay in getting back. (I'm in Idaho with R10 tribes discussing children's health issues on tribal lands).

(b) (5) Deliberative



Peter Grevatt, Ph.D.
Director, Office of Children's Health
Protection and Environmental Education
U.S. EPA
1200 PA Ave., NW
Mail Code 1107-A
Washington, DC 20460
202-564-8954

Please pardon typos from Blackberry device!

Sent by EPA Wireless E-Mail Services.
Richard Windsor

----- Original Message -----

From: Richard Windsor
Sent: 09/14/2009 02:06 PM EDT
To: Eric Wachter; Peter Grevatt
Subject: Fw: Google Alert - lisa jackson epa

FYI - ensuring you are working together on this.

----- Forwarded by Richard Windsor/DC/USEPA/US on 09/14/2009 02:06 PM -----

From: Google Alerts <googlealerts-noreply@google.com>
To: Richard Windsor/DC/USEPA/US@EPA
Date: 09/14/2009 11:39 AM
Subject: Google Alert - lisa jackson epa

Google News Alert for: **lisa jackson epa**

[Groups vow to sue EPA over coal ash delays](#)

Chattanooga Times Free Press

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[EPA Punts on Risks to Children From Playground Tire Crumb](#)

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01268-EPA-2832

Richard Windsor/DC/USEPA/US
09/15/2009 09:20 AM

To Adora Andy
cc Seth Oster, Allyn Brooks-LaSure, "Bob Perciasepe", "Bob Sussman"
bcc

Subject Re: FYI: GOING OUT @ 10am: Wastewater Discharges release

(b) (5) Deliberative

Adora Andy

----- Original Message -----

From: Adora Andy
Sent: 09/15/2009 09:15 AM EDT
To: Richard Windsor
Cc: Seth Oster; Allyn Brooks-LaSure
Subject: FYI: GOING OUT @ 10am: Wastewater Discharges release

FOR IMMEDIATE RELEASE

September 15, 2009

EPA Expects to Revise Rules for Wastewater Discharges from Power Plants

Discharges from power plants can have major adverse effects on water quality and wildlife

WASHINGTON – The U.S. Environmental Protection Agency plans to revise the existing standards for water discharges from coal-fired power plants to reduce pollution and better protect America's water. Wastewater discharged from coal ash ponds, air pollution control equipment, and other equipment at power plants can contaminate drinking water sources, cause fish and other wildlife to die and create other detrimental environmental effects.

Earlier this year, EPA completed a multi-year study of power plant wastewater discharges and concluded that current regulations, which were issued in 1982, have not kept pace with changes that have occurred in the electric power industry over the last three decades. Air pollution controls installed to remove pollution from smokestacks have made great strides in cleaning the air people breathe, saving lives and reducing respiratory and other illnesses. However, some of the equipment used to clean air emissions does so by "scrubbing" the boiler exhaust with water, and when the water is not properly managed it sends the pollution to rivers and other waterbodies. Treatment technologies are available to remove these pollutants before they are discharged to waterways, but these systems have been installed at only a fraction of the power plants.

As part of the multi-year study, EPA measured the pollutants present in the wastewater and reviewed treatment technologies, focusing mostly on coal-fired power plants. Many of the

toxic pollutants discharged from these power plants come from coal ash ponds and the flue gas desulfurization systems used to scrub sulfur dioxide from air emissions.

Once the new rule for electric power plants is finalized, EPA and states would incorporate the new standards into wastewater discharge permits.

More information about EPA's study is provided in an interim report published in August 2008. A final study will be published later this year.

More information on wastewater discharges from power plants:

###

01268-EPA-2834

Richard Windsor/DC/USEPA/US
09/15/2009 02:27 PM

To Adora Andy
cc
bcc

Subject Re: FYI - new letter on Carlin from Sensenbrenner

(b) (5) Deliberative

Adora Andy

----- Original Message -----

From: Adora Andy
Sent: 09/15/2009 02:22 PM EDT
To: Arvin Ganesan
Cc: Allyn Brooks-LaSure; David McIntosh; Diane Thompson; Gina McCarthy; Lisa Heinzerling; Richard Windsor; Scott Fulton; Seth Oster
Subject: Re: FYI - new letter on Carlin from Sensenbrenner

(b) (5) Deliberative

Adora Andy
Press Secretary
U.S. Environmental Protection Agency
Office of Public Affairs
202-564-2715
andy.adora@epa.gov

Arvin Ganesan

Below is a new letter from Sensenbren...

09/15/2009 02:18:59 PM

From: Arvin Ganesan/DC/USEPA/US
To: Richard Windsor/DC/USEPA/US@EPA
Cc: Diane Thompson/DC/USEPA/US@EPA, Seth Oster/DC/USEPA/US@EPA, Adora Andy/DC/USEPA/US@EPA, Allyn Brooks-LaSure/DC/USEPA/US@EPA, David McIntosh/DC/USEPA/US@EPA, Lisa Heinzerling/DC/USEPA/US@EPA, Scott Fulton/DC/USEPA/US@EPA, Gina McCarthy/DC/USEPA/US@EPA
Date: 09/15/2009 02:18 PM
Subject: FYI - new letter on Carlin from Sensenbrenner

Below is a new letter from Sensenbrenner and Issa on Carlin. He focuses on two things - 1) the reports of NCEE's re-organization and 2) the fact that we withheld documents as deliberative. Not unexpected.

ARVIN R. GANESAN
Deputy Associate Administrator
Congressional Affairs
Office of the Administrator
United States Environmental Protection Agency
Ganesan.Arvin@epa.gov
(p) 202.564.5200
(f) 202.501.1519

----- Forwarded by Arvin Ganesan/DC/USEPA/US on 09/15/2009 02:12 PM -----

From: "Freedhoff, Michal" <Michal.Freedhoff@mail.house.gov>
To: Arvin Ganesan/DC/USEPA/US@EPA
Date: 09/15/2009 02:02 PM
Subject: FW: EPA Reorganization Renews Concerns about Suppression of Opposing Views

Michal Ilana Freedhoff, Ph.D.
Policy Director
Office of Representative Edward J. Markey (D-MA)
2108 Rayburn House Office Building
Washington, DC 20515
202-225-2836

Sign-up to receive e-updates from Rep. Markey at
<http://markey.house.gov/signup>

From: Burnham-Snyder, Eben
Sent: Tuesday, September 15, 2009 1:58 PM
To: Bausch, Camilla; Baussan, Danielle; Beauvais, Joel; Brodsky, Aliya;
CadenasMolina, Alma; Chenault, Jacqueline; Connell, Ellen; Duncan, Jeff;
Freedhoff, Michal; Gray, Morgan; Intern1GW; Intern2GW; Intern3GW;
Intern4GW; Intern5GW; Kenny, Shannon; Malvadkar, Partha; Phillips,
Jonathan; Reilly, Daniel; Sharp, Jeff; Unruh-Cohen, Ana; Waldron, Gerry
Subject: FW: EPA Reorganization Renews Concerns about Suppression of
Opposing Views

FYI

From: Global Warming-GOPNews
Sent: Tuesday, September 15, 2009 1:57 PM
To: Global Warming-GOPNews
Subject: EPA Reorganization Renews Concerns about Suppression of
Opposing Views

U.S. House of Representatives

Select Committee on Energy Independence and Global Warming

F. James Sensenbrenner, Jr., Ranking Republican

<http://republicans.globalwarming.house.gov/>

News Advisory

For Immediate Release
Contact: Terry Lane

September 15, 2009
(202) 225-0110

EPA Reorganization Renews Concerns about Suppression of Opposing Views
Sensenbrenner, Issa Ask EPA's Jackson for Critical Information

Washington, D.C.- If the Environmental Protection Agency enacts a reported restructuring plan, the agency will weaken its ability to weigh the economic impact of its regulatory proposals and raise more concerns that it is trying to suppress internal opposition to proposed climate rules, Rep. Jim Sensenbrenner, R-Wis., and Rep. Darrell Issa, R-Calif., wrote in a letter to EPA Administrator Lisa Jackson.

Recent news reports show EPA is working to remove all scientists from the agency's National Center for Environmental Economics (NCEE), which provides EPA with economic analysis of proposed rules and regulations. Sensenbrenner and Issa said the news reports confirmed the concerns about reorganizing NCEE they raised with Jackson in a July 17 letter that requested documents and interviews with key EPA staff.

"Separating science from economic analysis will be bad news for taxpayers and for the economy," said Sensenbrenner, Ranking Republican on the House Select Committee on Energy Independence and Global Warming. "Regulation is a balancing act. What is the potential harm and what are the potential costs of action? By removing scientists from its economic office, EPA destroys this balance. Without scientific expertise, the economists cannot credibly analyze costs. The result will be more regulation and more costs to taxpayers without any idea whether these costs are justified."

Sensenbrenner and Issa have said they are alarmed that a report from NCEE economist Dr. Alan Carlin, which raised questions about some of the science EPA was using to bolster its proposed climate regulations, was kept out of EPA's record because it failed to support Administration policy. They said the proposed restructure could be part of an effort to retaliate against Dr. Carlin and others who raise scientific challenges to Administrative policy goals.

"EPA is moving swiftly to consolidate its power over U.S. energy production through regulation of CO2 and other GHGs under the Clean Air Act. The NCEE was an internal stumbling block that raised concerns about an ideologically driven agenda. Now EPA is taking actions to dismantle the office," said Issa, the Ranking Republican on the Oversight and Government Reform Committee. "This proposal reeks of Chicago style politics - eliminating voices that dared to question."

"This action sends a message to Dr. Carlin and scientists at EPA, 'Get behind the Administration's political goals or suffer the consequences,'" Sensenbrenner said.

Internal EPA e-mails show Dr. Carlin's report was excluded from EPA's record after the NCEE director said that the agency had decided to move forward on its climate regulations and that his report did not help "the legal or policy case for the decision." In the July 17 letter to EPA, Sensenbrenner and Issa said interviews with EPA staff showed that submitting the report may have negatively impacted NCEE and undermined its role in the agency.

EPA has supplied some documents to committee staff, but withheld others. "EPA has proposed the largest regulatory effort in history. Our committees have uncovered irregularities with the process and it is imperative that these issues are fully investigated and resolved before the deliberative process is complete," Sensenbrenner and Issa wrote.

"This isn't about one director excluding the work of one employee," Sensenbrenner said. "This is about a culture within EPA where economic analysis is unwelcome. Several studies show that regulating greenhouse gas emissions will raise energy prices and negatively impact our economy, so it's critical that policy makers have useful scientific and economic analysis. Economic considerations not only help policy makers determine when to act, but also, how best to act when it becomes clear that regulation is necessary. If EPA weakens NCEE, taxpayers will pay a very heavy price."

The letter is attached:

September 14, 2009

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

Dear Administrator Jackson:

On two prior occasions we have expressed concern about questionable activities at the Environmental Protection Agency (EPA) with respect to the proposed endangerment finding to regulate greenhouse gasses (GHGs) under the Clean Air Act (CAA). According to recent media reports, EPA is working to remove all scientists from the National Center for Environmental Economics (NCEE), decoupling the science from the economics and therefore marginalizing the office. As you are aware, NCEE is also at the center of our investigation into EPA's treatment of Dr. Alan Carlin and his work on the proposed endangerment finding.

In a letter dated July 17, 2009, we expressed concern that EPA was proceeding on a predetermined course to propose and finalize an endangerment finding for GHGs and was erecting hurdles to limit opposing viewpoints. We also expressed alarm over treatment of Dr. Alan Carlin, a 37 year career civil servant. Dr. Carlin has a long history of working on climate change policy and was considered a valuable resource by his peers. As a participant in the internal agency review process, he drafted a report critical of the Technical Support Document (TSD), which provides the scientific basis for the endangerment finding. However, Dr. Carlin's supervisor, Dr. Al McGartland, suppressed his report, in part, because Dr. McGartland feared that "submitting it for the record would have negatively impacted NCEE and undermined its role within EPA."

Substantial evidence suggests that EPA has in fact taken retaliatory actions against Dr. Carlin. Dr. Carlin has been prohibited from working on climate change issues and has been reassigned to menial tasks. With the proposed "reorganization" of NCEE, it now appears that Dr. McGartland's concerns for retaliation against NCEE were also well founded.

In the July 17 letter, we requested that EPA produce specific documents that would help us develop a more informed understanding of whether officials at EPA behaved inappropriately. We received delivery of select documents on September 3, 2009. EPA, however, expressly withheld certain responsive documents, citing both privacy concerns of personnel and deliberative process.

We are sensitive to privacy concerns and are willing to make reasonable accommodations. Sensitive information not relevant to our investigation could be redacted. Alternatively, our staff could review certain sensitive documents in camera.

Withholding responsive documents because of EPA's deliberative process is simply unacceptable. EPA has proposed the largest regulatory effort in history. Our committees have uncovered irregularities with that process, and it is imperative that these issues are fully investigated and resolved before the deliberative process is complete. For this reason, Congress has never recognized a deliberative process exemption from the executive branch.

Moreover, recent media reports have renewed our concerns that EPA plans to dismantle NCEE by removing all scientific staff, decoupling the science from the economics and therefore marginalizing the office. As a recent editorial in the Washington Times pointed out, such a move would "undermine the entire reason for its existence namely 'researching environmental health issues to improve risk assessment data used in economic analyses for [new regulatory] rules.'"

If NCEE cannot weigh scientific evidence, it will not have a basis for advising the Administrator on the economic impact of proposed regulations. Such a move would impair the Administrator's ability to determine if the cost of a regulation exceeded its benefits. This concern was first articulated in our July 17, 2009 letter.

At a time when American families and businesses are facing unparalleled financial challenges, EPA should not deliberately impair its ability to analyze the economy-wide impact of its regulatory actions. This is especially true in light of the negative impacts that regulation of GHGs under the CAA will have on our economy.

The Obama Administration has repeatedly lauded the need for transparency in government and sound science, but gutting NCEE leaves the unmistakable impression that EPA is silencing the only office that raised serious and legitimate concerns over the proposed endangerment finding. When combined with the marginalization of Dr. Carlin, we have no choice but to remain deeply concerned that EPA is acting to eliminate all internal opposition to its political agenda of regulating GHGs under the CAA. Given these serious concerns, we request again that all responsive documents be produced and the requested briefings provided.

Please contact Kristina Moore, Senior Counsel, House Oversight and Government Reform Committee or Bart Forsyth, Staff Director, House Select Committee on Energy Independence and Global Warming to set up a briefing regarding the reorganization of the NCEE. Please deliver documents requested in our July 17 letter no later than September 24, 2009.

Sincerely,

Darrell Issa
James Sensenbrenner, Jr.

F.

Ranking Member
Member

Ranking

Committee on Oversight
Committee on Energy Independence

Select

and Government Reform
Warming

and Global

cc: The Honorable Edolphus Towns, Chairman
The Honorable Ed Markey, Chairman

#

[attachment "winmail.dat" deleted by Adora Andy/DC/USEPA/US] [attachment
"message_body.rtf" deleted by Adora Andy/DC/USEPA/US] [attachment
"image001.png" deleted by Adora Andy/DC/USEPA/US]

01268-EPA-2837

Richard Windsor/DC/USEPA/US
09/16/2009 07:15 AM

To Seth Oster
cc
bcc
Subject Re:

V cool!
Seth Oster

----- Original Message -----

From: Seth Oster
Sent: 09/16/2009 06:47 AM EDT
To: windsor.richard@epa.gov; Diane Thompson; Lisa Heinzerling; Bob Sussman; David McIntosh; Gina McCarthy; Bob Perciasepe; Arvin Ganesan
Cc: "Allyn Brooks-LaSure" <brooks-lasure.allyn@epa.gov>; Adora Andy

Below is an editorial in today's NY Times.

(b) (5) Deliberative

Seth

NEW YORK TIMES

Editorial

Some Bad Climate News and Some Good Senators Barbara Boxer and John Kerry have delayed the introduction of their long-awaited climate change bill until the end of this month – one more sign that Congress will be hard pressed to get a bill to President Obama’s desk before the international summit on global warming in Stockholm in December. The chances of action this year, never all that good, are even slimmer now that the White House and the Senate leadership have pretty much agreed to keep controversial issues – and a bill limiting greenhouse gas emissions certainly falls into that category – on the back burner until the health care debate is resolved. Though smart politics, it is a disappointment to everyone who hoped that the United States would be able to go to Stockholm with a clear strategy in hand. All is not lost. The Environmental Protection Agency is rolling out rules that, when fully effective, could place limits on at least half the greenhouse gas emissions emitted in this country. On Tuesday, the E.P.A. and the Department of Transportation jointly proposed standards to improve fuel economy and reduce carbon dioxide and other greenhouse gas emissions in all new cars and light trucks beginning with the model year 2012. The E.P.A. has already sent the White House preliminary proposals involving the regulation of carbon dioxide from large stationary sources, including refineries and power plants. The agency also continues to fine-tune its finding formally declaring that carbon dioxide and other greenhouse gases constitute a danger to human health and welfare. Under the Clean Air Act, an “endangerment finding” must be made before final rules limiting emissions can take effect. Nobody, including the E.P.A. administrator, Lisa Jackson, believes that one agency can address the complex problem of climate change. Ultimately, Congress will have to produce robust legislation authorizing major public investments in alternative energy sources and putting a price on carbon to unlock private investment. That is just what the climate change bill approved by the House aims to do and what Senators Boxer and Kerry eventually hope to do with their bill. In the meantime, however, smart regulation can get the ball rolling and, we hope, goad Congress into action

01268-EPA-2841

**Bob
Perciasepe/DC/USEPA/US**
09/16/2009 08:17 AM

To Seth Oster
cc Adora Andy, Arvin Ganesan, "Allyn Brooks-LaSure", David
McIntosh, Gina McCarthy, "Lisa Heinzerling", "Bob
Sussman", "Diane Thompson", windsor.richard
bcc
Subject Re:

Very well stated !!

Bob Perciasepe
Office of the Administrator
1200 Pennsylvania Ave., ARN
202 564 2410

Fr om Seth Oster/DC/USEPA/US
:
To: windsor.richard@epa.gov, "Diane Thompson" <Thompson.Diane@epamail.epa.gov>, "Lisa Heinzerling"
<Heinzerling.Lisa@epamail.epa.gov>, "Bob Sussman" <Sussman.Bob@epamail.epa.gov>, David McIntosh/DC/USEPA/US, Gina
McCarthy/DC/USEPA/US, "Bob Perciasepe" <Perciasepe.Bob@epamail.epa.gov>, Arvin Ganesan/DC/USEPA/US
Cc : "Allyn Brooks-LaSure" <brooks-lasure.allyn@epa.gov>, Adora Andy/DC/USEPA/US
Da te: 09/16/2009 06:47 AM
Su Re:
bjc
ct:

(b) (5) Deliberative

Seth

NEW YORK TIMES

Editorial

Some Bad Climate News and Some Good Senators Barbara Boxer and John Kerry have delayed the introduction of their long-awaited climate change bill until the end of this month – one more sign that Congress will be hard pressed to get a bill to President Obama’s desk before the international summit on global warming in Stockholm in December. The chances of action this year, never all that good, are even slimmer now that the White House and the Senate leadership have pretty much agreed to keep controversial issues – and a bill limiting greenhouse gas emissions certainly falls into that category – on the back burner until the health care debate is resolved. Though smart politics, it is a disappointment to everyone who hoped that the United States would be able to go to Stockholm with a clear strategy in hand. All is not lost. The Environmental Protection Agency is rolling out rules that, when fully effective, could place limits on at least half the greenhouse gas emissions emitted in this country. On Tuesday, the E.P.A. and the Department of Transportation jointly proposed standards to improve fuel economy and reduce carbon dioxide and other greenhouse gas emissions in all new cars and light trucks beginning with the model year 2012. The E.P.A. has already sent the White House preliminary proposals involving the regulation of carbon dioxide from large stationary sources, including refineries and power plants. The agency also continues to fine-tune its finding formally declaring that carbon dioxide and other greenhouse gases constitute a danger to human health and welfare. Under the Clean Air Act, an “endangerment finding” must be made before final rules limiting emissions can take effect. Nobody, including the E.P.A. administrator, Lisa Jackson, believes that one agency can address the complex problem of climate change. Ultimately, Congress will have to produce robust legislation authorizing major public investments in alternative energy sources and putting a price on carbon to unlock private investment. That is just what the climate change bill approved by the House aims to do and what Senators Boxer and Kerry eventually hope to do with their bill. In the meantime, however, smart regulation can get the ball rolling and, we hope, goad Congress into action

01268-EPA-2847

Richard Windsor/DC/USEPA/US
09/16/2009 03:08 PM

To Seth Oster
cc
bcc

Subject Re: Cap and Trade Estimates from Treasury

Tx

Seth Oster

----- Original Message -----

From: Seth Oster**Sent:** 09/16/2009 03:04 PM EDT**To:** Richard Windsor; Arvin Ganesan; David McIntosh; Diane Thompson; Allyn Brooks-LaSure; Bob Perciasepe; Bob Sussman; Lisa Heinzerling; Gina McCarthy**Subject:** Cap and Trade Estimates from Treasury

This is a CBS news story being pumped now by Drudge...you should read

The Obama administration has privately concluded that a cap and trade law would cost American taxpayers up to \$200 billion a year, the equivalent of hiking personal income taxes by about 15 percent.

A previously unreleased analysis prepared by the U.S. Department of Treasury says the total in new taxes would be between \$100 billion to \$200 billion a year. At the upper end of the administration's estimate, the cost per American household would be an extra \$1,761 a year.

A second memorandum, which was prepared for Obama's transition team after the November election, says this about climate change policies: "Economic costs will likely be on the order of 1 percent of GDP, making them equal in scale to all existing environmental regulation."

The documents (PDF) were obtained under the Freedom of Information Act by the free-market Competitive Enterprise Institute and released on Tuesday.

These disclosures will probably not aid the political prospects of the Democrats' cap and trade bill. The House of Representatives approved it by a remarkably narrow margin in June -- the bill would have failed if only six House members had switched their votes to "no" -- and it faces significant opposition in the Senate.

One reason the bill faces an uncertain future is concern about its cost. House Republican Leader John Boehner has estimated the additional tax bill would be at \$366 billion a year, or \$3,100 a year per family. Democrats have pointed to estimates from MIT's John Reilly, who put the cost at \$800 a year per family, and noted that tax credits to low income households could offset part of the bite. The Heritage Foundation says that, by 2035, "the typical family of four will see its direct energy costs rise by over \$1,500 per year."

One difference is that while Heritage's numbers are talking about 26 years in the future, the Treasury Department's figures don't have a time limit.

"Heritage is saying publicly what the administration is saying to itself privately," says Christopher Horner, a senior fellow at the Competitive Enterprise Institute who filed the FOIA request. "It's nice to see they're not spinning each other behind closed doors."

"They're not telling you the cost -- they're not telling you the benefit," says Horner, who wrote the Politically Incorrect Guide to Global Warming. "If they don't tell you the cost, and they don't tell you the benefit, what are they telling you? They're just talking about global salvation."

The FOIA'd document written by Judson Jaffe, who joined the Treasury Department's Office of Environment and Energy in January 2009, says: "Given the administration's proposal to auction all emission allowances, a cap-and-trade program could generate federal receipts on the order of \$100 to \$200 billion annually." (Obviously, any final cap-and-trade system may be different from what Obama had proposed, and could yield higher or lower taxes.)

Because personal income tax revenues bring in around \$1.37 trillion a year, a \$200 billion additional tax would be the equivalent of a 15 percent increase a year. A \$100 billion additional tax would represent a 7 or 8 percent increase a year.

Update 9/16/2009: The Environmental Defense Fund has responded to the documents' release with a statement saying, in part:

Even if a 100 percent auction was a live legislative proposal, which it's not, that math ignores the redistribution of revenue back to consumers. It only looks at one side of the balance sheet. It would only be true if you think the

Administration was going to pile all the cash on the White House lawn and set it on fire.

The bill passed by the House sends the value of pollution permits to consumers, and it contains robust cost-containment provisions. Every credible and independent economic analysis of the American Clean Energy and Security Act (such as those done by the non-partisan Congressional Budget Office, the Energy Information Administration, and the Environmental Protection Agency) says the costs will be small and affordable -- and that the U.S. economy will grow with a cap on carbon.

Seth Oster
Associate Administrator
Office of Public Affairs
Environmental Protection Agency
(202) 564-1918
oster.seth@epa.gov

01268-EPA-2851

Richard Windsor/DC/USEPA/US
09/17/2009 02:50 PM

To Seth Oster
cc
bcc

Subject Re: Quote in CES Oceans Policy Release

Perfect. Tx.
Seth Oster

----- Original Message -----

From: Seth Oster
Sent: 09/17/2009 01:22 PM EDT
To: Richard Windsor
Cc: Diane Thompson
Subject: Quote in CES Oceans Policy Release

[REDACTED] (b) (5) Deliberative

[REDACTED]

[REDACTED]

Seth

[REDACTED] (b) (5) Deliberative

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b) (5) Deliberative

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

(b) (5) Deliberative

[Redacted]

[Redacted]

[Redacted]

[Redacted]

###

Seth Oster
Associate Administrator
Office of Public Affairs
Environmental Protection Agency
(202) 564-1918
oster.seth@epa.gov

01268-EPA-2852

Richard Windsor/DC/USEPA/US
09/17/2009 03:10 PM

To Seth Oster
cc
bcc

Subject Re: Op-ed -- WH Version

(b) (5) Deliberative
[Redacted]

[Redacted]

Seth Oster

----- Original Message -----

From: Seth Oster
Sent: 09/17/2009 02:52 PM EDT
To: Richard Windsor
Subject: Op-ed -- WH Version

Hi. We got edits back from the WH on the oped.

(b) (5) Deliberative
[Redacted]

[Redacted]

Let me know what you think of this direction.

Seth

(b) (5) Deliberative
[Redacted]

[Redacted]

[Redacted]

[Redacted]

(b) (5) Deliberative

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

(b) (5) Deliberative

[Redacted]

[Redacted]

(b) (5) Deliberative

[Redacted text block]

(b) (5) Deliberative



01268-EPA-2856

David
McIntosh/DC/USEPA/US
09/18/2009 10:08 AM

To Seth Oster
cc Allyn Brooks-LaSure, Arvin Ganesan, Bob Perciasepe, Diane Thompson, Gina McCarthy, Lisa Heinzerling, Richard Windsor
bcc

Subject Re: Report on Murkowski Rider

(b) (5) Deliberative

The

text of her amendment is as follows:

"None of the funds made available for the Environmental Protection Agency under this or any other Act may be expended by the Administrator of the Environmental Protection Agency to regulate pollutants covered by the final version of the proposed rule entitled 'Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gasses Under Section 202(a) of the Clean Air Act' (74 Fed. Reg. 18886 (April 24, 2009)) from any sources other than a mobile source."

Seth Oster

GOP Senator Considering Rider to Limi...

09/18/2009 10:03:55 AM

From: Seth Oster/DC/USEPA/US
To: Richard Windsor/DC/USEPA/US@EPA, David McIntosh/DC/USEPA/US@EPA, Lisa Heinzerling/DC/USEPA/US@EPA, Diane Thompson/DC/USEPA/US@EPA, Bob Perciasepe/DC/USEPA/US@EPA, Gina McCarthy/DC/USEPA/US@EPA, Arvin Ganesan/DC/USEPA/US@EPA
Cc: Allyn Brooks-LaSure/DC/USEPA/US@EPA
Date: 09/18/2009 10:03 AM
Subject: Report on Murkowski Rider

GOP Senator Considering Rider to Limit EPA Authority on Greenhouse Gases

By ROBIN BRAVENDER AND NOELLE STRAUB of [ClimateWire](#)

Sen. Lisa Murkowski (R-Alaska) may attempt to handcuff U.S. EPA's ability to regulate stationary sources of greenhouse gases with an amendment to the agency's annual spending bill.

Murkowski, ranking member of the Energy and Natural Resources Committee, may introduce an [amendment](#) (pdf) to the fiscal 2010 Interior and environment appropriations bill that would allow EPA to regulate greenhouse gas emissions only from mobile sources, and prohibit the agency from regulating heat-trapping emissions from stationary sources like power plants and industrial facilities.

"Senator Murkowski is concerned about the economic consequences of EPA command-and-control regulation of emissions," said spokesman Robert Dillon. The senator plans to file the amendment, Dillon said, adding that he did not know whether a decision has been made to press for a vote.

The Senate began debate yesterday on the \$32.1 billion spending bill for the Interior Department, EPA and Forest Service. The chamber is expected to resume consideration of the measure Monday.

Murkowski's amendment comes as EPA works to finalize its "endangerment finding," which would trigger broad regulations of greenhouse gas emissions. The endangerment finding comes in response to the 2007 *Massachusetts v. EPA* Supreme Court decision that ordered EPA to reconsider whether greenhouse gases are pollutants subject to regulation under the Clean Air Act.

Murkowski wants to fully respect the court's decision on mobile sources, Dillon said, which is why the amendment would "request a one-year timeout on money that would be spent on regulation of nonmobile sources." The moratorium would give Congress a year to come up with a legislative solution, he said.

Environmentalists assailed the amendment, saying it would basically instruct EPA to ignore the law.

"This amendment suggests that if global warming pollution comes from a power plant, it is safe, but if it comes from a car, it is harmful," said David Moulton, director of climate policy and conservation funding at the Wilderness Society. "That is a preposterous distinction that cannot be supported in either law or fact."

Frank O'Donnell, president of Clean Air Watch called the amendment "an outrageous assault on EPA's ability to interpret the Supreme Court decision."

Opponents said the amendment was particularly troubling given that it comes from a senator whose state is among the areas that could be hardest hit by climate change.

"From a senator who has talked about how her state is ground zero for climate change impacts, it is disappointing to see a move like this," said David Doniger, policy director of the Natural Resources Defense Council's climate center.

Doniger also said he feared that the amendment could wind up handcuffing EPA for more than one year. "These riders have a way of repeating themselves and becoming long-term," he said.

The tactic is not a new one. Republicans, led by then-Rep. Joseph Knollenberg (R-Mich.), successfully included language in several EPA spending bills in the late 1990s that blocked the agency from implementing any part of the Kyoto Protocol.

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01268-EPA-2866

Richard Windsor/DC/USEPA/US
09/21/2009 08:28 PM

To Bob Sussman
cc
bcc

Subject Re: Fw: DMN Editorial

Well done.

Bob Sussman	Robert M. Sussman Senior Policy Cou...	09/21/2009 08:16:48 PM
-------------	--	------------------------

From: Bob Sussman/DC/USEPA/US
To: Richard Windsor/DC/USEPA/US@EPA
Date: 09/21/2009 08:16 PM
Subject: Fw: DMN Editorial

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency

----- Forwarded by Bob Sussman/DC/USEPA/US on 09/21/2009 08:15 PM -----

From: Lawrence Starfield/R6/USEPA/US
To: Gina McCarthy/DC/USEPA/US@EPA, Bob Sussman/DC/USEPA/US@EPA
Cc: Don Zinger/DC/USEPA/US@EPA, Charles Imohiosen/DC/USEPA/US
Date: 09/21/2009 08:14 PM
Subject: Fw: DMN Editorial

Gina and Bob,

Attached is a very favorable editorial from today's Dallas Morning News, applauding EPA's strong action on the Texas permitting SIPs.

FYI.

Larry
Sent by EPA Wireless E-Mail Services
David Gray

----- Original Message -----

From: David Gray
Sent: 09/21/2009 07:45 PM EDT
To: Lawrence Starfield; Carl Edlund; "Myron Knudson"
<knudson.myron@epa.gov>; John Blevins; Suzanne Murray; David Gray
Subject: DMN Editorial

Editorial: EPA right to get tough with Texas

The Dallas Morning Star
04:55 PM CDT on Monday, September 21, 2009

The Texas Commission on Environmental Quality has long been a reliable protector of polluters. In the interest of fostering a pro-business climate, the commission has eased up on clean-air regulations and has made it awfully hard for the public to have a voice in the permitting process.

For most of this decade, the TCEQ's modus operandi has had the tacit approval of the Environmental Protection Agency. But with a new administration at the helm, the rules are changing.

Put simply, the new EPA actually expects Texas to abide by the Clean Air Act.

Federal officials have moved quickly to take a hard look at how our state issues air pollution permits. So far, the EPA doesn't like what it sees.

The agency rightly has raised questions about Texas' implementation of the Clean Air Act, signaling that the EPA plans to reject three of the state's permitting programs that regulate emissions.

Specifically, the federal government suggests that the state's environmental commission has allowed companies to make major changes to plants and categorize them as minor ones that are subjected to less scrutiny. And EPA Administrator Lisa Jackson has questioned the openness of the state's permitting process.

For Texas, these shots across the bow signal the end of an era. And that's good news.

No longer will the EPA offer a wink and a nod when our regulators rubber-stamp industries' plans to pollute. The state that spews more greenhouse gases than any other now must get serious about adhering to environmental regulations.

If the TCEQ continues to pass out pollution permits without asking tough questions, the EPA could take away Texas' regulatory authority. That threat should be enough to scare the state straight when it comes to clearing the our dirty air.

But Texas officials are unmoved. Gov. Rick Perry appears defiant, deeming intensified federal enforcement an overreach. And the TCEQ remains stacked with appointees who share the governor's pro-business, let-the-environment-be-darned views. Larry Soward, the only commissioner to regularly take up the cause of environmental quality, recently retired, only to be replaced by a Perry-approved bureaucrat from within the TCEQ.

Stepping up efforts to enforce clean-air laws is in Texas' best interest - both for the sake of the environment and in the interest of retaining our authority.

This EPA expects the state to do better. But so far, it seems that Texas didn't get the memo.

Sent from Blackberry

01268-EPA-2871

David McIntosh/DC/USEPA/US
09/22/2009 10:12 AM

To Adora Andy
cc Allyn Brooks-LaSure, Arvin Ganesan, Bob Perciasepe, Diane Thompson, Gina McCarthy, Lisa Heinzerling, Richard Windsor, Seth Oster
bcc

Subject Re: Murkowski Holding Press Conference on Amendment

(b) (5) Deliberative

Adora Andy **(b) (5) Deliberative** . Adora Andy... 09/22/2009 10:11:01 AM

From: Adora Andy/DC/USEPA/US
To: David McIntosh/DC/USEPA/US@EPA
Cc: Allyn Brooks-LaSure/DC/USEPA/US@EPA, Arvin Ganesan/DC/USEPA/US@EPA, Bob Perciasepe/DC/USEPA/US@EPA, Diane Thompson/DC/USEPA/US@EPA, Gina McCarthy/DC/USEPA/US@EPA, Lisa Heinzerling/DC/USEPA/US@EPA, Richard Windsor/DC/USEPA/US@EPA, Seth Oster/DC/USEPA/US@EPA
Date: 09/22/2009 10:11 AM
Subject: Re: Murkowski Holding Press Conference on Amendment

(b) (5) Deliberative

Adora Andy
Press Secretary
U.S. Environmental Protection Agency
Office of Public Affairs
202-564-2715
andy.adora@epa.gov

David McIntosh **(b) (5) Deliberative** 09/22/2009 10:09:27 AM

From: David McIntosh/DC/USEPA/US
To: Seth Oster/DC/USEPA/US@EPA
Cc: Adora Andy/DC/USEPA/US@EPA, Allyn Brooks-LaSure/DC/USEPA/US@EPA, Arvin Ganesan/DC/USEPA/US@EPA, Bob Perciasepe/DC/USEPA/US@EPA, Diane Thompson/DC/USEPA/US@EPA, Gina McCarthy/DC/USEPA/US@EPA, Lisa Heinzerling/DC/USEPA/US@EPA, Richard Windsor/DC/USEPA/US@EPA
Date: 09/22/2009 10:09 AM
Subject: Re: Murkowski Holding Press Conference on Amendment

(b) (5) Deliberative

Seth Oster **FOR IMMEDIATE RELEASE** ... 09/22/2009 10:08:08 AM

From: Seth Oster/DC/USEPA/US
To: Richard Windsor/DC/USEPA/US@EPA, Diane Thompson/DC/USEPA/US@EPA, David McIntosh/DC/USEPA/US@EPA, Arvin Ganesan/DC/USEPA/US@EPA, Allyn Brooks-LaSure/DC/USEPA/US@EPA, Adora Andy/DC/USEPA/US@EPA, Lisa Heinzerling/DC/USEPA/US@EPA, Gina McCarthy/DC/USEPA/US@EPA, Bob Perciasepe/DC/USEPA/US@EPA
Date: 09/22/2009 10:08 AM
Subject: Murkowski Holding Press Conference on Amendment

FOR IMMEDIATE RELEASE

CONTACT: Press

Office

September 22, 2009

202-863-8614

*****MEDIA ADVISORY*****

**U.S. SENATOR LISA MURKOWSKI TO HOLD PRESS
CONFERENCE CALL ON CLIMATE CHANGE**

WASHINGTON – Alaska Senator Lisa Murkowski will hold a press conference call today at 3:00 p.m. EDT to discuss the president’s speech on climate change in New York. Details of the press conference call are as follows:

Tuesday, September 22, 2009

WHAT: Press Conference Call

WHO: Senator Lisa Murkowski (R-AK)

WHEN: 3:00 p.m. EDT

CALL-IN 1-800-369-2045
Pass Code: RNC Communications

Seth Oster
Associate Administrator
Office of Public Affairs
Environmental Protection Agency
(202) 564-1918
oster.seth@epa.gov

01268-EPA-2884

Richard Windsor/DC/USEPA/US
09/24/2009 04:13 PM

To Adora Andy
cc
bcc

Subject Re: WSJ blog: Less Awkward: Senators Backtrack on Plans to Rein in EPA

Til they try again next week.
Adora Andy

----- Original Message -----

From: Adora Andy
Sent: 09/24/2009 04:09 PM EDT
To: Richard Windsor
Subject: Re: WSJ blog: Less Awkward: Senators Backtrack on Plans to Rein

in EPA

And we all lived happily ever after
Richard Windsor

----- Original Message -----

From: Richard Windsor
Sent: 09/24/2009 04:02 PM EDT
To: Adora Andy
Subject: Re: WSJ blog: Less Awkward: Senators Backtrack on Plans to Rein

in EPA

Yeah - like that.
Adora Andy

----- Original Message -----

From: Adora Andy
Sent: 09/24/2009 03:58 PM EDT
To: Richard Windsor; David McIntosh; Arvin Ganesan; Allyn Brooks-LaSure; Seth Oster
Subject: WSJ blog: Less Awkward: Senators Backtrack on Plans to Rein in

EPA

Less Awkward: Senators Backtrack on Plans to Rein in EPA

By Stephen Power

Yesterday, we wrote about how members of the U.S. Senate were trying to strip the Environmental Protection Agency's powers to fight climate change – even though the U.N., was trying to persuade other countries to take action.

We noted that both Sens. Tom Harkin and Lisa Murkowski, he an Iowa Democrat and she a Republican, were offering different legislative maneuvers that would both strip the EPA's powers. Well, a lot has changed since yesterday. (See the original post [here](#).)

Turns out Sen. Murkowski won't be offering her amendment after all. The EPA Administrator, Lisa Jackson and the [Alliance of Automobile Manufacturers](#) sent letters

Sen. Murkowski's amendment would prevent the EPA from finalizing its automobile greenhouse gas emissions. If that had happened, the industry conflicting state and federal regulations," the Alliance warned in its letter. A spokesman for Sen. Murkowski says Senate Democratic leaders prevented the amendment and that the senator disputes the EPA administrator's view to prevent the EPA from finalizing its vehicle proposal. "They've gone out to debate the merits of this bill," the spokesman said.

Environmentalists are **crowing** at the turn of events - a rare case where they are with auto makers in favor of regulation.

"The good news is that a major effort failed to pull the rug out from under the nation's most successful environmental laws. But now, rather than just the Senate must take a leap forward to repower America with clean energy, making America more energy independent, and creating millions of clean jobs. Environment America Federal Global Warming Program Director Emily Harkin. Meanwhile, it seems Sen. Harkin has decided to shelve his amendment to the rules that attempt to measure the global-warming impact of biofuels such as corn. A spokesman for the senator says he's been assured by the EPA administrator that "recognizes the uncertainty in calculating the indirect effects on land use from biofuels production" and will "carefully quantify and consider these uncertainties in the rules. In light of these assurances, outlined in a [letter dated Sept. 23](#), the senator will not press the amendment today," his spokesman added.

"All the withdrawal of the amendment means is that the EPA can do what it is to make sure that biofuels won't do harm to the climate," says Franz A. Hurn, director of the Natural Resources Defense Council.

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andy.adora@epa.gov

01268-EPA-2885

David McIntosh/DC/USEPA/US
09/24/2009 04:20 PM

To Adora Andy
cc "Betsaida Alcantara", "Allyn Brooks-LaSure", "Brendan Gilfillan", "Michael Moats", "Seth Oster", "Richard Windsor"
bcc

Subject Re: Farm Forum: "Cow Tax" Prohibition is a Victory for South Dakota Producers

(b) (5) Deliberative

Adora Andy

Farm Forum Thune: "Cow Tax" Prohibit...

09/24/2009 04:17:29 PM

From: Adora Andy/DC/USEPA/US
To: "Richard Windsor" <windsor.richard@epa.gov>, "Allyn Brooks-LaSure" <brooks-lasure.allyn@epa.gov>, "Seth Oster" <oster.seth@epa.gov>, "David McIntosh" <McIntosh.David@epamail.epa.gov>
Cc: "Betsaida Alcantara" <alcantara.betsaida@epa.gov>, "Brendan Gilfillan" <gilfillan.brendan@epa.gov>, "Michael Moats" <Moats.Michael@epamail.epa.gov>
Date: 09/24/2009 04:17 PM
Subject: Farm Forum: "Cow Tax" Prohibition is a Victory for South Dakota Producers

Farm Forum

Thune: "Cow Tax" Prohibition is a Victory for South Dakota Producers

Published: Sep 24, 2009 12:00 am - 0

WASHINGTON, DC –Senator John Thune today hailed a provision in the Fiscal Year 2010 Interior and Environment Appropriations Bill that prohibits the Environmental Protection Agency (EPA) from taxing producers for naturally occurring livestock emissions. Senator Thune has worked in a bipartisan manner to prevent the imposition of a so-called "cow tax."

"This is a great victory for South Dakota's livestock producers and our rural economy. In recent months the EPA has taken steps that would open the door to strict regulation of emissions from multiple sources without Congressional approval," said Thune. "Both the Senate and the House Interior Appropriations bills would prevent the EPA from regulating livestock emissions, which is a victory for South Dakota livestock producers as well as all American consumers. The Clean Air Act is an essential tool in regulating smokestack industry emissions, but it was not designed to target South Dakota farmers and ranchers."

Earlier this year, Senator Thune introduced a bill (S. 527) with Senator Charles Schumer (D-NY) that would amend the Clean Air Act to prevent the EPA from creating an emissions permit system for naturally occurring livestock emissions. Senator Thune's concerns about the cow tax issue result from rules proposed by the EPA after the Supreme Court ordered it to decide whether to regulate greenhouse gases, including methane and carbon dioxide, as pollutants under the Clean Air Act. Earlier this year, the Obama administration made the decision to move forward with an Endangerment Finding that would pave the way for the regulation of these greenhouse gases.

Senator Thune has closely monitored the EPA's rule writing process on this issue and has frequently spoken out about steps taken that could lead to a cow tax. Late last year, the EPA discussed regulating greenhouse gases in its Advanced Notice of Proposed Rulemaking under the 1990 amendments to the Clean Air Act, which could include requiring farmers to purchase expensive permits. The "cow tax" would cost South Dakota farmers an estimated \$367 million -- or \$175 per dairy cow, \$87.50 per beef cow, and \$20 per hog -- fees that would be extremely detrimental to the livestock industry and family farmers.

Although Senator Thune strongly supports the provision prohibiting the EPA from creating a livestock emissions permit system, he expressed disappointment at the overall cost of the Interior and Environment Appropriations Bill.

"This year's Interior and Environment appropriations bill is roughly 15 percent more costly than last year's, not counting the billions more in stimulus funding. The Democrat-led Congress continues to disregard our growing national debt with out-of-control spending. While I am very supportive of the cow

tax ban, I cannot support spending that irresponsibly adds to our exploding national debt and deficits.”

P

01268-EPA-2886

Richard Windsor/DC/USEPA/US
09/24/2009 06:04 PM

To Adora Andy, "Allyn Brooks-Lasure", "Seth Oster"
cc
bcc

Subject Re: WSJ blog: Less Awkward: Senators Backtrack on Plans to Rein in EPA

[Redacted] (b) (5) Deliberative [Redacted]

[Redacted]

Adora Andy

----- Original Message -----

From: Adora Andy
Sent: 09/24/2009 05:02 PM EDT
To: Allyn Brooks-LaSure; Arvin Ganesan; David McIntosh; Richard Windsor; Seth Oster
Cc: Betsaida Alcantara; Brendan Gilfillan; Michael Moats
Subject: Re: WSJ blog: Less Awkward: Senators Backtrack on Plans to Rein in EPA
WSJ's Stephen Power changed the headline. It now reads...

Lisa Versus Lisa: EPA's Jackson Murkowski

Awesome.

Adora Andy
Press Secretary
U.S. Environmental Protection Agency
Office of Public Affairs
202-564-2715
andy.adora@epa.gov

Adora Andy	Less Awkward: Senators Backtrack on...	09/24/2009 03:58:10 PM
From:	Adora Andy/DC/USEPA/US	
To:	Richard Windsor/DC/USEPA/US@EPA, David McIntosh/DC/USEPA/US@EPA, Arvin Ganesan/DC/USEPA/US@EPA, Allyn Brooks-LaSure/DC/USEPA/US@EPA, Seth Oster/DC/USEPA/US@EPA	
Date:	09/24/2009 03:58 PM	
Subject:	WSJ blog: Less Awkward: Senators Backtrack on Plans to Rein in EPA	

Less Awkward: Senators Backtrack on Plans to Rein in EPA

By Stephen Power

Yesterday, we wrote about how members of the U.S. Senate were trying to limit the Environmental Protection Agency's powers to fight climate change – even though the U.N., was trying to persuade other countries to take action.

We noted that both Sens. Tom Harkin and Lisa Murkowski, he an Iowa Republican, were offering different legislative maneuvers that would both limit the EPA's powers. Well, a lot has changed since yesterday. (See the original post [here](#).)

Turns out Sen. Murkowski won't be offering her amendment after all. The Environmental Protection Agency and the [Alliance of Automobile Manufacturers](#) sent letters to Sen. Murkowski's amendment would prevent the EPA from finalizing its proposal to limit automobile greenhouse gas emissions. If that had happened, the industry would have "conflicting state and federal regulations," the Alliance warned in its letter. A spokesman for Sen. Murkowski says Senate Democratic leaders prevented the amendment and that the senator disputes the EPA administrator's view that the amendment would prevent the EPA from finalizing its vehicle proposal. "They've gone out to debate the merits of this bill," the spokesman said.

Environmentalists are [crowing](#) at the turn of events - a rare case where environmentalists are with auto makers in favor of regulation.

"The good news is that a major effort failed to pull the rug out from under the nation's most successful environmental laws. But now, rather than just waiting for the Senate must take a leap forward to repower America with clean energy, making America more energy independent, and creating millions of clean energy jobs. Environment America Federal Global Warming Program Director Emily Weiss. Meanwhile, it seems Sen. Harkin has decided to shelve his amendment to the rules that attempt to measure the global-warming impact of biofuels such as ethanol. A spokesman for the senator says he's been assured by the EPA administrator that the rules "recognizes the uncertainty in calculating the indirect effects on land use from biofuels production" and will "carefully quantify and consider these uncertainties in the rules. In light of these assurances, outlined in a [letter dated Sept. 23](#), the senator will press the amendment today," his spokesman added.

"All the withdrawal of the amendment means is that the EPA can do what it is supposed to do, which is to make sure that biofuels won't do harm to the climate," says Franz A. Haverkamp, director of the Natural Resources Defense Council.

Adora Andy
Press Secretary
U.S. Environmental Protection Agency
Office of Public Affairs
202-564-2715
andy.adora@epa.gov

01268-EPA-2888

Richard Windsor/DC/USEPA/US
09/25/2009 04:24 AM

To Adora Andy, "Allyn Brooks-Lasure", "Lisa Jackson", "Seth Oster", David McIntosh, "Arvin Ganesan"
cc
bcc

Subject Re: MUST READ: NYT on Carlin

(b) (5) Deliberative

Tx all!

From: Adora Andy
Sent: 09/24/2009 11:49 PM EDT
To: "Allyn Brooks-LaSure" <brooks-lasure.allyn@epa.gov>; "Richard Windsor" <windsor.richard@epa.gov>; "Seth Oster" <oster.seth@epa.gov>; David McIntosh
Subject: MUST READ: NYT on Carlin

I'm trying to get the text sent but try to access the link. (b) (5) Deliberative

From: Google Alerts [googlealerts-noreply@google.com]
Sent: 09/25/2009 02:48 AM GMT
To: Adora Andy
Subject: Google Alert - McGartland

Google News Alert for: **McGartland**

[Behind the Furor Over a Climate Change Skeptic](#)

New York Times - New York, NY, USA

Further, his supervisor, Al **McGartland**, also a career employee of the agency, ... Dr. **McGartland**, also an economist, declined to comment on the matter. ...

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01268-EPA-2891

Mathy
Stanislaus/DC/USEPA/US
09/25/2009 12:10 PM

To Richard Windsor
cc Lisa Heinzerling, "Sussman, Bob", Diane Thompson
bcc
Subject FAR CCR Rule, Inside EPA Article

Here is where we are in FAR:

(b) (5) Deliberative

(b) (5) Deliberative

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[REDACTED]

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(b) (5) Deliberative

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[Redacted]

EPA LAWYERS STYMIE STATE, INDUSTRY BID FOR 'SOLID' WASTE COAL ASH RULES (*Inside EPA*)

9/25/2009

WHITEFISH, MT -- EPA lawyers have determined that solid waste rules for coal ash would be unenforceable at the federal level and create major permitting uncertainty, a key EPA official says, bolstering activists' long-running assertion that the agency's pending first-time waste rules for coal ash should regulate it more stringently as a hazardous waste.

At the Environmental Council of the States' (ECOS) annual meeting here Sept. 22, Matt Hale, director of the Office of Resource Conservation & Recovery, said the agency would be legally barred from using the existing Resource Conservation & Recovery Act (RCRA) subtitle D process to develop a solid waste program for coal combustion waste. States and industry generally would prefer that EPA's proposed rules -- due by December -- regulate coal ash as a solid waste.

Hale said that while he believes subtitle D solid waste rules would be sufficiently protective of safety and the environment, EPA would have no authority under federal law to enforce such requirements.

In a presentation at the meeting Hale said that solid waste rules could be modeled on the existing subtitle D regulations for municipal solid waste, under which states issue permits and inspect solid waste landfills. But while this approach would be protective, "unfortunately our lawyers are telling us that under the statute we don't have the authority to write a subtitle D program that looks like the national solid waste program," he added.

Hale said that any agency attempt to regulate coal waste under subtitle D other than including it in the municipal solid waste program would be fraught with problems in enforceability and permitting. And the municipal waste program is designed to handle household garbage, not coal waste from power plants, meaning it would be unlikely for EPA to simply include coal waste in the existing municipal waste program.

In contrast, if EPA develops more stringent hazardous waste rules for coal ash under subtitle C, states would be obliged to apply for federally enforceable permits from EPA. The agency would inspect the landfills, which activists say is vital to ensure a nationally consistent level of protection at coal ash disposal sites. EPA is slated to send its proposed RCRA rules for coal waste to the White House for review in the coming weeks.

One environmentalist says Hale's comments support their claims that subtitle D rules would fail to address contamination from coal ash sites because it would leave inspection and permitting to states, which could result in inconsistent approaches to regulating coal ash, and make it impossible for EPA to enforce the rules.

But one electric utility source says Hale's comments echo industry's claims that subtitle D rules would be sufficiently protective to manage coal ash as a solid waste. The source adds that RCRA allows the agency to take emergency actions against any subtitle D site if it poses an "imminent and substantial endangerment" (ISE) to the environment or population, which could serve as a mechanism to enforce such regulations.

However, an attorney who works on RCRA issues rejects the industry argument, countering that the enforcement clause is used to force offenders into court but is not a regulatory enforcement tool like the authority EPA would have under subtitle C to override states and enforce hazardous waste rules. "[The ISE clause] allows EPA to issue orders or go to court . . . but it's not a regulatory thing," the source says.

"It's like night and day," the attorney says.

The environmentalist agrees and says the ISE clause is for emergencies whereas subtitle C enforcement authority is designed to prevent such emergencies from occurring. RCRA is "meant to be a preventative statute. You don't want inspections only to be done when EPA has reason to believe there's a threat of ISE," the source says.

Agency ISE actions are also taken very sparingly, the source says, and given the extent of the potential problem posed by coal waste pollution nationwide, it would be a poor substitute for national subtitle C regulations. "I don't think [EPA has] ever brought an action for coal ash contamination and they have probably brought actions very few times for solid waste problems entirely," the source says. "It is just not a workable suggestion."

Hale has previously floated the idea of a "hybrid" approach to coal waste rules that would regulate it as a RCRA subtitle D solid waste with less stringent guidelines, but if those guidelines are not followed then stricter subtitle C hazardous waste rules would apply. However, activists and industry strongly criticized that idea as legally dubious, difficult to implement and hard to enforce (*Inside EPA*, May 15).

Environmentalists who support hazardous waste rules for coal waste say that the agency could craft subtitle C rules that may be more similar to the level of control expected from a subtitle D regulation, but with the added benefit of having the enforcement mechanism available to EPA under the hazardous waste designation.

Under subtitle D, landfills that handle municipal solid waste -- household garbage -- are subject to provisions to protect groundwater, air and surrounding communities, including liners to prevent leaching, location restrictions, closure and post-closure requirements, financial assurance rules and operating guidelines. RCRA lets states choose to follow EPA's guidelines or "equivalent state guidelines," according to the agency's Web site.

Subtitle C requires hazardous waste landfills to install a "double liner; double leachate collection and removal systems; leak detection system; run on, runoff, and wind dispersal controls; [and a] construction quality assurance program" -- provisions that are considerably more expensive to industry than a solid waste landfill would be.

Coal waste is exempted from subtitle C under the 1980 so-called Bevill exclusion to RCRA, which exempts "solid waste from the extraction, beneficiation, and processing of ores and minerals" from subtitle C designation pending a determination by the EPA administrator on the properties of each. The substances that were subject to the Bevill exclusion -- including coal combustion waste, coal slurry, cement kiln dust, and others -- can be afforded a certain flexibility in their disposal requirements, sources say, if EPA chooses to issue such parameters.

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"EPA can develop a scheme under subtitle C that looks a lot like subtitle D, but has federal enforcement ability and requires consistent rules nationwide," the source says. Nevertheless, the source adds, "I think [activists and industry] are pretty close in what we believe is necessary for engineering a safe landfill."

Industry and state officials continue to resist regulation of coal waste as hazardous, with the industry source warning it could make it impossible for utilities to sell the ash for beneficial reuse -- for example as a component in cement and landscaping fill -- because of the stigma of a hazardous waste designation.

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is real, and those state regulations on beneficial reuse are real. Adverse impacts are what you'll be getting with subtitle C" designation, the source says, adding that it would increase overall levels of waste nationwide.

State officials are also mounting resistance to a subtitle C listing, with Peggy Harris, president of the Association of State & Territorial Solid Waste Management Officials (ASTSWMO), telling members at the ECOS meeting that hazardous waste rules could cost states millions of dollars due to increased personnel necessary to manage the landfills. She also said 96 percent of states surveyed by ASTSWMO do not have enough landfill capacity for handling coal combustion waste if it were classified as hazardous waste, and 86 percent of states surveyed were already issuing permits for the disposal of coal combustion waste.

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Press Officer

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01268-EPA-2892

Richard Windsor/DC/USEPA/US
09/25/2009 12:59 PM

To "Diane Thompson"
cc
bcc

Subject Fw: FAR CCR Rule, Inside EPA Article

[Redacted] (b) (5) Deliberative

Mathy Stanislaus

----- Original Message -----

From: Mathy Stanislaus
Sent: 09/25/2009 12:10 PM EDT
To: Richard Windsor
Cc: Lisa Heinzerling; "Sussman, Bob" <sussman.bob@epa.gov>; Diane Thompson
Subject: FAR CCR Rule, Inside EPA Article

Here is where we are in FAR:

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9/25/2009

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Tisha Petteway
Press Officer

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1200 Pennsylvania Ave. NW
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01268-EPA-2895

Richard Windsor/DC/USEPA/US
09/26/2009 08:33 AM

To Seth Oster
cc
bcc
Subject Re: Bill Maher - today's Huff Post Article

Already read it. V well done too.
Seth Oster

----- Original Message -----

From: Seth Oster
Sent: 09/26/2009 08:23 AM EDT
To: windsor.richard@epa.gov
Subject: Fw: Bill Maher - today's Huff Post Article

Good morning.

I haven't watched last night's show yet, but I think this post was his editorial/closing (Paul Krugman and Michael Moore were on -- Tom Friedman is supposed to be on the panel following your interview next week).

(b) (5) Deliberative

We also have time on your schedule next week before we head to the show to do full prep.

Seth
Betsaida Alcantara

----- Original Message -----

From: Betsaida Alcantara
Sent: 09/25/2009 08:13 PM EDT
To: Seth Oster
Subject: Bill Maher - today's Huff Post Article

This is Bill Maher's post on Huffpo -

New Rule: If America can't get its act together, it must lose the bald eagle as our symbol
September 25, 2009

New Rule: If America can't get its act together, it must lose the bald eagle as our symbol and replace it with the YouTube video of the puppy that can't get up. As long as we're pathetic, we might as well act like it's cute. I don't care about the president's birth certificate, I do want to know what happened to "Yes we can." Can we get out of Iraq? No. Afghanistan? No. Fix health care? No. Close Gitmo? No. Cap-and-trade carbon emissions? No. The Obamas have been in Washington for ten months and it seems like the only thing they've gotten is a dog.

Well, I hate to be a nudge, but why *has* America become a nation that can't make anything bad end, like wars, farm subsidies, our oil addiction, the drug war, useless weapons programs - oh,

and there's still 60,000 troops in Germany - and can't make anything good start, like health care reform, immigration reform, rebuilding infrastructure. Even when we address something, the plan can never start until years down the road. Congress's climate change bill mandates a 17% cut in greenhouse gas emissions... *by 2020* ! Fellas, slow down, where's the fire? Oh yeah, it's where I live, engulfing the entire western part of the United States!

We might pass new mileage standards, but even if we do, they wouldn't start until 2016. In that year, our cars of the future will glide along at a breathtaking 35 miles-per-gallon. My goodness, is that even humanly possible? Cars that get 35 miles-per-gallon in just six years? Get your head out of the clouds, you socialist dreamer! "What do we want!? A small improvement! When do we want it!? 2016!"

When it's something for us personally, like a laxative, it has to start working now. My TV remote has a button on it now called "On Demand". *You get your ass on my TV screen right now, Jon Cryer, and make me laugh. Now!* But when it's something for the survival of the species as a whole, we phase that in slowly.

Folks, we don't need more efficient cars. We need something to replace cars. That's what's wrong with these piddly, too-little-too-late half-measures that pass for "reform" these days. They're not reform, they're just putting off actually solving anything to a later day, when we might by some miracle have, a) leaders with balls, and b) a general populace who can think again. Barack Obama has said, "If we were starting from scratch, then a single-payer system would probably make sense." *So let's start from scratch.*

Even if they pass the shitty Max Baucus health care bill, it doesn't kick in for 4 years, during which time 175,000 people will die because they're not covered, and about three million will go bankrupt from hospital bills. We have a pretty good idea of the Republican plan for the next three years: Don't let Obama do anything. What kills me is that that's the Democrats' plan, too.

We weren't always like this. Inert. In 1965, Lyndon Johnson signed Medicare into law and 11 months later seniors were receiving benefits. During World War II, virtually overnight FDR had auto companies making tanks and planes only. In one eight year period, America went from JFK's ridiculous dream of landing a man on the moon, to *actually landing a man on the moon.*

This generation has had eight years to build something at Ground Zero. An office building, a museum, an outlet mall, I don't care anymore. I'm tempted to say that, symbolically, all America can do lately is keep digging a hole, but Ground Zero doesn't represent a hole. It is a hole. America: Home of the Freedom Pit. Ironically, it's spitting distance from Wall Street, where they knock down buildings a different way - through foreclosure.

That's the ultimate sign of our lethargy: millions thrown out of their homes, tossed out of work, lost their life savings, retirements postponed - and they just take it. 30% interest on credit cards? It's a good thing the Supreme Court legalized sodomy a few years ago.

Why can't we get off our back? Is it something in the food? Actually, yes. I found out something interesting researching last week's editorial on how we should be taxing the unhealthy things Americans put into their bodies, like sodas and junk foods and gerbils. Did you know that we eat the same high-fat, high-carb, sugar-laden shit that's served in prisons and in religious cults to keep the subjects in a zombie-like state of lethargic compliance? Why haven't Americans arisen en masse to demand a strong public option? Because "The Bachelor" is on. We're tired and our brain stems hurt from washing down French fries with McDonald's orange drink.

The research is in: high-fat diets makes you lazy and stupid. Rats on an American diet weren't motivated to navigate their maze and once in the maze they made more mistakes. And, instead of exercising on their wheel, they just used it to hang clothes on. Of course we can't ban assault rifles - we're the first generation too lazy to make its own coffee. We're the generation that invented the soft chocolate chip cookie: like a cookie, only not so exhausting to chew. I ask you, if the food we're eating in America isn't making us stupid, how come the people in Carl's Jr. ads never think to put a napkin over their pants?

Read more at:

http://www.huffingtonpost.com/bill-maher/new-rule-if-america-cant_b_299383.html

01268-EPA-2903

Bob Sussman/DC/USEPA/US

To "Lisa P. Jackson"

09/28/2009 09:30 PM

cc "Peter Silva", "Bob Perciasepe", "Arvin Ganesan"

bcc

Subject Fw: NAS Study on WOUS Jurisdictional Determinations

(b) (5) Deliberative

Bob Sussman

----- Original Message -----

From: Bob Sussman

Sent: 09/28/2009 06:30 PM EDT

To: Peter Silva; Mike Shapiro; Suzanne Schwartz; Gregory Peck

Cc: Cynthia Giles; Catherine McCabe; Arvin Ganesan; Bob Perciasepe

Subject: NAS Study on WOUS Jurisdictional Determinations

(b) (5) Deliberative

?

Eying Backup To Hill, EPA Plans NAS Study To Speed CWA Determinations

EPA is planning to ask the National Academy of Sciences (NAS) to recommend ways to speed determinations on whether waterbodies are subject to the Clean Water Act (CWA), a plan that is meant as an administrative backup to stalled legislation but which is drawing concern from activists who fear critics may cite it as a reason not to pass the bill.

Agency officials say EPA and the Army Corps of Engineers are preparing to request a study from the NAS on ways the agencies could speed jurisdictional determinations in the wake of two Supreme Court decisions that have complicated determinations for regulators trying to determine whether marginal waters, such as isolated wetlands, are subject to federal protections.

The study would focus on how EPA could define certain categories of waterbodies as always jurisdictional, which could greatly reduce the amount of site-specific research currently needed to declare a water subject to regulation under the water law.

One agency source says this could enhance EPA regulation of mountaintop coal mining and other surface mining activities because it would improve their understanding of headwater streams. The agency is also conducting a new study on the environmental impacts of the mining operations, which could help strengthen EPA's effort to require strict mitigation and oversight of the projects.

The clean water legislation, S. 787, aims to codify the scope of the CWA that EPA and the Corps had been using before two key Supreme Court decisions ruled the agencies had stretched the law too far.

In 2001 in *Solid Waste Agency of Northern Cook County (SWANCC) v. Army Corps of Engineers* the high court limited the basis for asserting jurisdiction over solely intrastate waters; in 2006 in *Rapanos v. United States* the court set two competing standards for determining jurisdiction.

EPA officials, environmentalists and others have said the legal uncertainty created by the rulings has stymied enforcement of the law, undermining water quality. To address this, the Obama administration and environmentalists are calling on Congress to pass legislation clarifying the law's scope.

But moving the legislation is proving difficult amid growing concerns from rural Democrats who fear it will expand EPA's oversight of farms and other private lands.

In the Senate, Sen. Russ Feingold (D-WI) introduced S. 787, which generally sought to make all waters subject to the law rather than just "navigable" waters as current law requires. But moderate Democrats on the Senate environment committee successfully pushed for it to be significantly narrowed before that panel reported it out in June, with the panel's final measure restoring EPA authority to how it stood on the day prior to the *SWANCC* ruling.

GOP senators have since vowed to block the measure from being considered on the floor and Sen. Amy Klobuchar (D-MN) has said the bill would need to be narrowed even further to pass the Senate.

In the House, Rep. James Oberstar (D-MN), chair of the Transportation & Infrastructure Committee, has yet to introduce his version of the bill, but the Small Business Committee has already held a hearing where the bill drew critical comments from industry witnesses and Democratic and GOP

members of the panel.

Environmentalists were not invited to testify before the panel and filed subsequent testimony for the record defending the bill against claims it would be too broad, impose costly regulations, and various other criticisms.

One senior EPA official says prudence, not legislative odds making, is driving the administrative backup plan. "Working with NAS should not be interpreted as an expression that legislation is unlikely to pass," the source says. "Our preference and priority is to support legislation and to see it succeed -- only legislation can truly address the problems created by *SWANCC* and *Rapanos* . However, in any situation of such crucial importance, like protecting America's waters from harmful pollution, it would be unwise for EPA to put all of its eggs in one basket."

Another EPA official cautions that the effort is still preliminary. Describing the move as at its "very early stages," the official says, "It's too soon to say what we'll get, whether it will speed things up, whether it will require rulemaking -- I just don't know yet."

The effort is indeed at an early stage -- EPA water chief Peter Silva said in a Sept. 21 interview he had not been appraised of the plan.

However, environmentalists are concerned the effort will weaken the push for legislation in part because it dovetails with long-running calls of industry and others that EPA should add certainty through further regulations.

Industry officials have called for EPA to issue a rulemaking defining in detail many of the types of waterbodies that EPA considers jurisdictional. The officials argue industry was plagued by uncertainty before *SWANCC* and *Rapanos* because the agencies tended to informally broaden jurisdiction over time.

If NAS conducts the study, it could provide an important scientific basis for additional regulatory certainty, potentially bolstering their calls for rulemakings rather than legislation.

One environmentalist is particularly worried that the NAS study might be used by industry critics as a reason for delay because the studies typically take at least one year. "In the meantime, we're losing jurisdictional waters every day," the activist says.

However, one potential benefit of the NAS study for activists is that it could enhance EPA's scientific basis for strictly regulating mountaintop removal and other surface mining. The first EPA official says the study would enhance the agency's scientific understanding of the ecological importance of headwater streams.

EPA has been relying in part on an award-winning Region III study which found significant downstream water quality impacts from mountaintop mining projects to push for stricter reviews of the projects, including focusing on the ecological "function" of streams buried under mining tailings.

But the Region III study is under fire from industry critics who say the EPA scientists "cherry picked" data to support their policies. These critics also say the matter has already been studied thoroughly and point to a 2005 programmatic environmental impact statement (PEIS) conducted by EPA and other agencies on the matter. The PEIS, conducted by EPA, the Army Corps of Engineers, the Interior Department, the Fish & Wildlife Service and West Virginia's Department of Environmental Protection, found some impacts from the projects but largely allowed the projects to proceed.

An EPA source criticizes the programmatic EIS, saying it "did not provide a comprehensive evaluation of the environmental and water quality impacts associated with surface coal mining" because it "focused more on the nature of the regulatory programs that are responsible for the environmental review of proposed mining programs."

The EPA Region III study finding adverse impacts "supplements" the EIS because the EIS "fails to effectively assess the potential water quality and associated biological impacts associated with these pollutants. The [Region III] study provides that additional detail," the source says.

Now EPA's Office of Research & Development (ORD) -- at the request of Region III -- is conducting a new assessment of "the ecological impacts related to mountaintop mining and valley-fill operations," according to a [Federal Register notice](#) slated for publication Sept. 25. The notice says the agency will ask its Science Advisory Board to review its study once it is completed.

The ORD study will focus on the "loss of headwater streams, downstream water quality and subsequent effects on in-stream biota and cumulative ecological impacts." It will also evaluate "restoration and recovery

methods used by mining companies to address these ecological impacts associated with mountaintop mining and valley-fill operations," according to the notice. -- *Jonathan Strong*

9242009_nas

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency

01268-EPA-2904

Bob Perciasepe/DC/USEPA/US
09/28/2009 10:35 PM

To Bob Sussman, Richard Windsor
cc Peter Silva, Arvin Ganesan
bcc
Subject Re: NAS Study on WOUS Jurisdictional Determinations

Thanks Bob

I would like to be at this discussion.

(b) (5) Deliberative

Bob Perciasepe
Office of the Administrator
(o) 202 564 2410
(c) **(b) (6) Personal Privacy**
Bob Sussman

----- Original Message -----

From: Bob Sussman
Sent: 09/28/2009 09:30 PM EDT
To: Richard Windsor
Cc: Peter Silva; Bob Perciasepe; Arvin Ganesan
Subject: Fw: NAS Study on WOUS Jurisdictional Determinations

(b) (5) Deliberative

Bob Sussman

----- Original Message -----

From: Bob Sussman
Sent: 09/28/2009 06:30 PM EDT
To: Peter Silva; Mike Shapiro; Suzanne Schwartz; Gregory Peck
Cc: Cynthia Giles; Catherine McCabe; Arvin Ganesan; Bob Perciasepe
Subject: NAS Study on WOUS Jurisdictional Determinations

(b) (5) Deliberative

Eying Backup To Hill, EPA Plans NAS Study To Speed CWA Determinations

EPA is planning to ask the National Academy of Sciences (NAS) to recommend ways to speed determinations on whether waterbodies are subject to the Clean Water Act (CWA), a plan that is meant as an administrative backup to stalled legislation but which is drawing concern

from activists who fear critics may cite it as a reason not to pass the bill.

Agency officials say EPA and the Army Corps of Engineers are preparing to request a study from the NAS on ways the agencies could speed jurisdictional determinations in the wake of two Supreme Court decisions that have complicated determinations for regulators trying to determine whether marginal waters, such as isolated wetlands, are subject to federal protections.

The study would focus on how EPA could define certain categories of waterbodies as always jurisdictional, which could greatly reduce the amount of site-specific research currently needed to declare a water subject to regulation under the water law.

One agency source says this could enhance EPA regulation of mountaintop coal mining and other surface mining activities because it would improve their understanding of headwater streams. The agency is also conducting a new study on the environmental impacts of the mining operations, which could help strengthen EPA's effort to require strict mitigation and oversight of the projects.

The clean water legislation, S. 787, aims to codify the scope of the CWA that EPA and the Corps had been using before two key Supreme Court decisions ruled the agencies had stretched the law too far.

In 2001 in *Solid Waste Agency of Northern Cook County (SWANCC) v. Army Corps of Engineers* the high court limited the basis for asserting jurisdiction over solely intrastate waters; in 2006 in *Rapanos v. United States* the court set two competing standards for determining jurisdiction.

EPA officials, environmentalists and others have said the legal uncertainty created by the rulings has stymied enforcement of the law, undermining water quality. To address this, the Obama administration and environmentalists are calling on Congress to pass legislation clarifying the law's scope.

But moving the legislation is proving difficult amid growing concerns from rural Democrats who fear it will expand EPA's oversight of farms and other private lands.

In the Senate, Sen. Russ Feingold (D-WI) introduced S. 787, which generally sought to make all waters subject to the law rather than just "navigable" waters as current law requires. But moderate Democrats on

the Senate environment committee successfully pushed for it to be significantly narrowed before that panel reported it out in June, with the panel's final measure restoring EPA authority to how it stood on the day prior to the *SWANCC* ruling.

GOP senators have since vowed to block the measure from being considered on the floor and Sen. Amy Klobuchar (D-MN) has said the bill would need to be narrowed even further to pass the Senate.

In the House, Rep. James Oberstar (D-MN), chair of the Transportation & Infrastructure Committee, has yet to introduce his version of the bill, but the Small Business Committee has already held a hearing where the bill drew critical comments from industry witnesses and Democratic and GOP members of the panel.

Environmentalists were not invited to testify before the panel and filed subsequent testimony for the record defending the bill against claims it would be too broad, impose costly regulations, and various other criticisms.

One senior EPA official says prudence, not legislative odds making, is driving the administrative backup plan. "Working with NAS should not be interpreted as an expression that legislation is unlikely to pass," the source says. "Our preference and priority is to support legislation and to see it succeed -- only legislation can truly address the problems created by *SWANCC* and *Rapanos*. However, in any situation of such crucial importance, like protecting America's waters from harmful pollution, it would be unwise for EPA to put all of its eggs in one basket."

Another EPA official cautions that the effort is still preliminary. Describing the move as at its "very early stages," the official says, "It's too soon to say what we'll get, whether it will speed things up, whether it will require rulemaking -- I just don't know yet."

The effort is indeed at an early stage -- EPA water chief Peter Silva said in a Sept. 21 interview he had not been apprised of the plan.

However, environmentalists are concerned the effort will weaken the push for legislation in part because it dovetails with long-running calls of industry and others that EPA should add certainty through further regulations.

Industry officials have called for EPA to issue a rulemaking defining in detail many of the types of waterbodies that EPA considers jurisdictional.

The officials argue industry was plagued by uncertainty before *SWANCC* and *Rapanos* because the agencies tended to informally broaden jurisdiction over time.

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9242009_nas

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency

01268-EPA-2905

Richard Windsor/DC/USEPA/US
09/28/2009 11:45 PM

To Bob Sussman
cc Peter Silva, Bob Perciasepe, Arvin Ganesan
bcc
Subject Re: NAS Study on WOUS Jurisdictional Determinations

(b) (5) Deliberative . Just need to discuss once you get info. Lisa
Bob Sussman

----- Original Message -----

From: Bob Sussman
Sent: 09/28/2009 09:30 PM EDT
To: Richard Windsor
Cc: Peter Silva; Bob Perciasepe; Arvin Ganesan
Subject: Fw: NAS Study on WOUS Jurisdictional Determinations

(b) (5) Deliberative

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9242009_nas

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency

01268-EPA-2912

Marcus McClendon/DC/USEPA/US
09/30/2009 11:15 AM

To David McIntosh, Richard Windsor
cc Seth Oster, Allyn Brooks-LaSure, Arvin Ganesan, Diane Thompson, Lisa Heinzerling, Robert Goulding, Katharine Gage, Eric Wachter
bcc

Subject Re: Q&A stemming from Boxer-Kerry bill introduction

This has been printed and will be added to the Brief book. FYI

Marcus McClendon
Director of Advance | U.S EPA
Office of the Administrator
202 564 0452 Office
202 501 1480 Fax
202 590 0333 Cell
mcclendon.marcus@epa.gov
David McIntosh

----- Original Message -----

From: David McIntosh
Sent: 09/30/2009 10:42 AM EDT
To: Richard Windsor
Cc: Marcus McClendon; Seth Oster; Allyn Brooks-LaSure; Arvin Ganesan; Diane Thompson; Lisa Heinzerling; Robert Goulding; Katharine Gage; Eric Wachter

Subject: Q&A stemming from Boxer-Kerry bill introduction
Administrator: Proposed Q&A are pasted below (an identical document is attached). (b) (5) Deliberative

[Redacted]

[Redacted]

[Redacted]

[Redacted]

(b) (5) Deliberative

[Redacted]

[Redacted]

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(b) (5) Deliberative

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[Redacted]

[Redacted]

[Redacted]

[Redacted]

(b) (5) Deliberative

01268-EPA-2913

Richard Windsor/DC/USEPA/US
09/30/2009 11:23 AM

To Marcus McClendon
cc
bcc

Subject Re: Q&A stemming from Boxer-Kerry bill introduction

Tx
Marcus McClendon

----- Original Message -----

From: Marcus McClendon
Sent: 09/30/2009 11:15 AM EDT
To: David McIntosh; Richard Windsor
Cc: Seth Oster; Allyn Brooks-LaSure; Arvin Ganesan; Diane Thompson; Lisa Heinzerling; Robert Goulding; Katharine Gage; Eric Wachter
Subject: Re: Q&A stemming from Boxer-Kerry bill introduction

This has been printed and will be added to the Brief book. FYI

Marcus McClendon
Director of Advance | U.S EPA
Office of the Administrator
202 564 0452 Office
202 501 1480 Fax
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mcclendon.marcus@epa.gov
David McIntosh

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Sent: 09/30/2009 10:42 AM EDT
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Cc: Marcus McClendon; Seth Oster; Allyn Brooks-LaSure; Arvin Ganesan; Diane Thompson; Lisa Heinzerling; Robert Goulding; Katharine Gage; Eric Wachter

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[Redacted]

[Redacted]

[Redacted]

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arket in
clean-energy technologies, and that in the process reduces the

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[Redacted]

[Redacted]

01268-EPA-2919

Richard Windsor/DC/USEPA/US
10/01/2009 08:43 AM

To David McIntosh
cc
bcc

Subject Re: Doniger on Chamber's Hostage-Taking Attempt

V good. [Redacted] (b) (5) Deliberative

[Redacted] (b) (5) Deliberative

[Redacted]

[Redacted]

David McIntosh

----- Original Message -----

From: David McIntosh
Sent: 10/01/2009 08:23 AM EDT
To: Richard Windsor
Subject: Doniger on Chamber's Hostage-Taking Attempt

It's Hard To Hide An Oil Refinery Behind a Donut Shop



David Doniger
Policy Director, NRDC Climate Center, Washington, D.C.
[Blog](#) | [About](#)
Posted September 30, 2009 in [Solving Global Warming](#)

Today the Environmental Protection Agency [announced plans](#) to curb carbon pollution from big power plants and other big polluters under the Clean Air Act, while at the same time assuring the millions of mom and pop businesses across the country that they have nothing to worry about.

"By using the power and authority of the Clean Air Act," [said](#) EPA administrator Lisa Jackson, speaking at the Governors Climate Summit in Los Angeles, "we can begin reducing emissions from the nation's largest greenhouse gas emitting facilities without placing an undue burden on the businesses that make up the vast majority of our economy." She added: "The corner coffee shop is not a meaningful place to look for carbon reductions."

What's going on here? Well, two years ago, the Supreme Court issued a [landmark ruling](#) that EPA has the authority and responsibility to use the existing Clean Air Act to cut dangerous

global warming pollution. And under President Obama, EPA is starting act. Under the [clean car peace treaty](#) unveiled in the Rose Garden last March, Administrator Jackson has proposed nationwide global warming pollution standards for new cars and trucks, modeled on California's path-breaking standards. And EPA is working on carbon limits for big power plants, oil refineries, cement plants, and other big factories responsible for most of our heat-trapping pollution.

In a fairly desperate reaction, some of America's biggest polluters - led by the U.S. Chamber of Commerce, the National Petroleum Refiners Association (NPRA), and others - are trying to scare America's small businesses owners into thinking it's them that the EPA is after.

If they force me to curb my pollution, the [big boys say](#), they'll come after schools, homes, and hot dog stands. No one is safe, they shout. Be afraid. Be very afraid.

But it's hard to hide an oil refinery behind a donut shop.

So what is EPA really doing?

Well, when EPA issues its final clean car standards next March, certain other things happen automatically under the Clean Air Act. The most important is that when companies build or expand big pollution sources -- power plants, oil refineries, or cement kilns, for example -- they will have to install the "best available control technology" (BACT) for carbon dioxide and the other global warming pollutants. This is nothing fancy. It's what they've done for years for other dangerous pollutants like sulfur dioxide.

EPA is proposing to set "thresholds" - carbon pollution levels that separate big sources that will have to meet these requirements from small ones that will not.

This is a common sense concept that NRDC and other environmental groups proposed a more than a year ago.

But along come lawyers and spokesmen for the big boys arguing that EPA can't do that. If you regulate any of us, you have to regulate all of us, down to the donut shop.

It's hostage taking. We're gonna take everyone down with us. Listen to Charles Drevna, of the National Petroleum Refiners Association:

"This proposal *incorrectly assumes that one industry's greenhouse gas emissions are worse than another's* ," [Drevna said](#). "Greenhouse gas emissions are global in nature, and are not isolated to a few select industries. The Clean Air Act stipulates unequivocally that the threshold to permit major sources is 250 tons for criteria pollutants. EPA lacks the legal authority to categorically exempt sources that exceed the Clean Air Act's major source threshold from permitting requirements, and this creates a troubling precedent for any agency actions in the future."

EPA argues that it can set a different threshold - it has proposed 25,000 tons of carbon dioxide -

to recognize that each power plant or other big source emits roughly 100 times more carbon dioxide than conventional pollutants like sulfur dioxide. Accordingly, EPA says the proposed 25,000 ton threshold respects Congress's decisions about which big plants should have to install the best available control technology, and which small ones should not. Congress, EPA contends, never wanted to treat mom and pop shops the same as the big boys. In short, EPA argues that its new thresholds avoid absurd results and administrative nightmares.

The big boys' lawyers are getting ready to argue that EPA can't do this, that only Congress can change these threshold numbers. They claim the courts will strike EPA's rule down. But who'll bring that suit? It won't be NRDC or any of the other environmental groups active in this fight. And it's not clear that the big boys have "standing" - the kind of legal injury needed to take to take this complaint to court. And the courts themselves have recognized the doctrines of avoiding absurd results and administrative nightmares.

So I'm betting on EPA. And then, with small businesses safely shielded, the Chamber and NPRA will have no one to hide behind.

What's more likely is that Congress will clear this up well before the courts weigh in, by writing the EPA's thresholds into new comprehensive climate and energy legislation. That's an idea with support from both environmental organizations and responsible companies.

Maybe I'm a dreamer, but it's never too late for the Chamber and its allies to stop the scare-mongering and join the effort to pass this new legislation.

01268-EPA-2920

David McIntosh/DC/USEPA/US
10/01/2009 08:46 AM

To Richard Windsor
cc
bcc

Subject Re: Doniger on Chamber's Hostage-Taking Attempt

(b) (5) Deliberative

Richard Windsor V good. (b) (5) Deliberative 10/01/2009 08:43:51 AM

From: Richard Windsor/DC/USEPA/US
To: David McIntosh/DC/USEPA/US@EPA
Date: 10/01/2009 08:43 AM
Subject: Re: Doniger on Chamber's Hostage-Taking Attempt

V good. (b) (5) Deliberative

[Redacted content]

David McIntosh

----- Original Message -----

From: David McIntosh
Sent: 10/01/2009 08:23 AM EDT
To: Richard Windsor
Subject: Doniger on Chamber's Hostage-Taking Attempt

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What's more likely is that Congress will clear this up well before the courts weigh in, by writing the EPA's thresholds into new comprehensive climate and energy legislation. That's an idea with support from both environmental organizations and responsible companies.

Maybe I'm a dreamer, but it's never too late for the Chamber and its allies to stop the scare-mongering and join the effort to pass this new legislation.

01268-EPA-2921

Richard Windsor/DC/USEPA/US
10/01/2009 11:10 AM

To "Seth Oster"
cc
bcc

Subject Fw: Doniger on Chamber's Hostage-Taking Attempt

David McIntosh

----- Original Message -----

From: David McIntosh
Sent: 10/01/2009 08:46 AM EDT
To: Richard Windsor
Subject: Re: Doniger on Chamber's Hostage-Taking Attempt

(b) (5) Deliberative

Richard Windsor V good. (b) (5) Deliberative 10/01/2009 08:43:51 AM

From: Richard Windsor/DC/USEPA/US
To: David McIntosh/DC/USEPA/US@EPA
Date: 10/01/2009 08:43 AM
Subject: Re: Doniger on Chamber's Hostage-Taking Attempt

V good. (b) (5) Deliberative

[Redacted content]

David McIntosh

----- Original Message -----

From: David McIntosh
Sent: 10/01/2009 08:23 AM EDT
To: Richard Windsor
Subject: Doniger on Chamber's Hostage-Taking Attempt

It's Hard To Hide An Oil Refinery Behind a Donut Shop



David Doniger
Policy Director, NRDC Climate Center, Washington, D.C.

[Blog](#) | [About](#)

Posted September 30, 2009 in [Solving Global Warming](#)

Today the Environmental Protection Agency [announced plans](#) to curb carbon pollution from big power plants and other big polluters under the Clean Air Act, while at the same time assuring the millions of mom and pop businesses across the country that they have nothing to worry about.

"By using the power and authority of the Clean Air Act," [said](#) EPA administrator Lisa Jackson, speaking at the Governors Climate Summit in Los Angeles, "we can begin reducing emissions from the nation's largest greenhouse gas emitting facilities without placing an undue burden on the businesses that make up the vast majority of our economy." She added: "The corner coffee shop is not a meaningful place to look for carbon reductions."

What's going on here? Well, two years ago, the Supreme Court issued a [landmark ruling](#) that EPA has the authority and responsibility to use the existing Clean Air Act to cut dangerous global warming pollution. And under President Obama, EPA is starting act. Under the [clean car peace treaty](#) unveiled in the Rose Garden last March, Administrator Jackson has proposed nationwide global warming pollution standards for new cars and trucks, modeled on California's path-breaking standards. And EPA is working on carbon limits for big power plants, oil refineries, cement plants, and other big factories responsible for most of our heat-trapping pollution.

In a fairly desperate reaction, some of America's biggest polluters - led by the U.S. Chamber of Commerce, the National Petroleum Refiners Association (NPRA), and others - are trying to scare America's small businesses owners into thinking it's them that the EPA is after.

If they force me to curb my pollution, the [big boys say](#), they'll come after schools, homes, and hot dog stands. No one is safe, they shout. Be afraid. Be very afraid.

But it's hard to hide an oil refinery behind a donut shop.

So what is EPA really doing?

Well, when EPA issues its final clean car standards next March, certain other things happen automatically under the Clean Air Act. The most important is that when companies build or expand big pollution sources -- power plants, oil refineries, or cement kilns, for example -- they will have to install the "best available control technology" (BACT) for carbon dioxide and the other global warming pollutants. This is nothing fancy. It's what they've done for years for other dangerous pollutants like sulfur dioxide.

EPA is proposing to set "thresholds" - carbon pollution levels that separate big sources that will have to meet these requirements from small ones that will not.

This is a common sense concept that NRDC and other environmental groups proposed a more than a year ago.

But along come lawyers and spokesmen for the big boys arguing that EPA can't do that. If you regulate any of us, you have to regulate all of us, down to the donut shop.

It's hostage taking. We're gonna take everyone down with us. Listen to Charles Drevna, of the National Petroleum Refiners Association:

"This proposal *incorrectly assumes that one industry's greenhouse gas emissions are worse than another's* ," [Drevna said](#). "Greenhouse gas emissions are global in nature, and are not isolated to a few select industries. The Clean Air Act stipulates unequivocally that the threshold to permit major sources is 250 tons for criteria pollutants. EPA lacks the legal authority to categorically exempt sources that exceed the Clean Air Act's major source threshold from permitting requirements, and this creates a troubling precedent for any agency actions in the future."

EPA argues that it can set a different threshold - it has proposed 25,000 tons of carbon dioxide - to recognize that each power plant or other big source emits roughly 100 times more carbon dioxide than conventional pollutants like sulfur dioxide. Accordingly, EPA says the proposed 25,000 ton threshold respects Congress's decisions about which big plants should have to install the best available control technology, and which small ones should not. Congress, EPA contends, never wanted to treat mom and pop shops the same as the big boys. In short, EPA argues that its new thresholds avoid absurd results and administrative nightmares.

The big boys' lawyers are getting ready to argue that EPA can't do this, that only Congress can change these threshold numbers. They claim the courts will strike EPA's rule down. But who'll bring that suit? It won't be NRDC or any of the other environmental groups active in this fight. And it's not clear that the big boys have "standing" - the kind of legal injury needed to take to take this complaint to court. And the courts themselves have recognized the doctrines of avoiding absurd results and administrative nightmares.

So I'm betting on EPA. And then, with small businesses safely shielded, the Chamber and NPRA will have no one to hide behind.

What's more likely is that Congress will clear this up well before the courts weigh in, by writing the EPA's thresholds into new comprehensive climate and energy legislation. That's an idea with support from both environmental organizations and responsible companies.

Maybe I'm a dreamer, but it's never too late for the Chamber and its allies to stop the scare-mongering and join the effort to pass this new legislation.

01268-EPA-2922

Richard Windsor/DC/USEPA/US
10/01/2009 05:00 PM

To Adora Andy
cc
bcc

Subject Re: HEADS UP: 60 Min Preview/clip

Not too bad yet
Adora Andy

----- Original Message -----

From: Adora Andy

Sent: 10/01/2009 04:12 PM EDT

To: Allyn Brooks-LaSure; Betsaida Alcantara; Bob Sussman; Brendan Gilfillan; Richard Windsor; Seth Oster

Subject: Re: HEADS UP: 60 Min Preview/clip

Here's what's on their website next to the video clip I sent earlier:

How Safe Is Coal Ash?

60 Minutes Investigates a Potentially Harmful Waste Byproduct that Inundated

(CBS) If coal ash is safe to spread under a golf course or be used in carpets, why are the residents of Kingston, Tenn., where the material was spilled last December? **60 Minutes correspondent Lesley Stahl** reports from the town, where a spill containing coal ash - the byproduct of burning coal for power - inundated homes and yards in a spill 100 times larger than the

Her **60 Minutes** investigation into a substance that contains the toxic metals mercury, arsenic and lead but has yet to be fully regulated, will be broadcast this Sunday, Oct. 4, at 7 p.m. ET/PT.

Most of the 130 million tons of waste generated in the U.S. every year by the burning of coal for electricity is recycled into products like road pavers, bricks and concrete blocks. But nearly half of this waste stream today is recycled and used as a cement additive for agricultural applications, and even in household products like carpeting or kitchen countertops.

This recycling of coal ash has been going on for years. Many uses have been studied and found to be safe and sound. But the EPA does not review many of these uses. Asked why, Lisa Jackson, the new Administrator for the EPA, says, "Coal ash is a regulated material by the federal government."

It is only regulated by the states. Jackson says she does not know if the substance is safe in carpeting or countertops. Her agency is currently reviewing whether or not the EPA should regulate the disposal of coal ash as a hazardous waste. "In December we will make a regulatory proposal with respect to this material," she tells Stahl.

But in one site at least, her agency is already treating coal ash like a hazardous waste. The EPA has taken over the cleanup of a coal ash spill in Tenn., coal ash spill, where the waste is being dredged up from the Emory River. On location, there is concern that the ash is being used in a way that is not safe. "In the wrong circumstances coal ash is dangerous. Breathing it, that's dangerous," says Leo Francendese, head of the

It's considered dangerous enough that when Stahl left the Kingston site where she spoke to Francendese, both she and the EPA were wearing coal ash powder residue.

Jim Roewer, a lobbyist for the power industry who specializes in coal ash related issues, says that in the wake of

can do better, but on the whole he thinks they are disposing of the coal ash as safely as they can.

He warns that if the EPA labels and regulates coal ash as a hazardous waste, its recycling - which significantly c severely impacted in a negative way, and the price of electricity will shoot up. "Environmental protection doesn'

Adora Andy
Press Secretary
U.S. Environmental Protection Agency
Office of Public Affairs
202-564-2715
andy.adora@epa.gov

Adora Andy A taste of what's to come Sunday... Lin... 10/01/2009 03:51:38 PM

From: Adora Andy/DC/USEPA/US
To: Seth Oster/DC/USEPA/US@EPA, Allyn Brooks-LaSure/DC/USEPA/US@EPA, Betsaida Alcantara/DC/USEPA/US@EPA, Richard Windsor/DC/USEPA/US@EPA, Bob Sussman/DC/USEPA/US@EPA
Cc: Brendan Gilfillan/DC/USEPA/US@EPA
Date: 10/01/2009 03:51 PM
Subject: HEADS UP: 60 Min Preview/clip

A taste of what's to come Sunday... Link below. Brendan made the transcript for those in the field:

<http://www.cbsnews.com/video/watch/?id=5356259n&tag=related;photovideo>

(VOICE OVER VIDEO of coal ash being poured and spread on the ground)
Stahl: Coal ash is recycled in dozens of ways. As cement substitute for instance. It's also placed under roads, and in deserted mines. It's added to products from carpets to bowling balls to bathroom sinks. While the industry says the uses have been studied, I asked Lisa Jackson if the EPA knows whether some of the recycled products are safe.
(BACK ON CAMERA)

Stahl: School room carpeting?

LPJ: I don't know. I have no data that says that is safe at this point.

Stahl: Kitchen counters?

LPJ: The same.

Stahl: 50,000 tons of coal ash, the byproduct, have been used in agriculture. Now what's being done, through EPA, to look at the use of coal ash in agricultural products. Anything? Is there a study?

LPJ: I'm not sure that there's any study out there right now.

Stahl: How did we get to a place where coal ash is in products without anybody knowing?

LPJ: We're here now because coal ash right at this time isn't regulated material by the federal government.

###

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Office of Public Affairs
202-564-2715
andy.adora@epa.gov

01268-EPA-2927

Richard Windsor/DC/USEPA/US
10/05/2009 03:24 PM

To Adora Andy
cc
bcc

Subject Re: WSJ: The 'Absurd Results' Doctrine

Ok

Adora Andy

----- Original Message -----

From: Adora Andy
Sent: 10/05/2009 03:00 PM EDT
To: Richard Windsor; Bob Sussman; Lisa Heinzerling; Seth Oster; Allyn Brooks-LaSure; David McIntosh; Arvin Ganesan
Cc: Betsaida Alcantara; Brendan Gilfillan; Michael Moats
Subject: WSJ: The 'Absurd Results' Doctrine

The 'Absurd Results' Doctrine

Turning the carbon screws on businesses so they lobby Congress for cap and trade.

'In recent years, many Americans have had cause to wonder whether decisions made at EPA were guided by science and the law, or whether those principles had been trumped by politics," declared Lisa Jackson in San Francisco last week. The Environmental Protection Agency chief can't stop kicking the Bush Administration, but the irony is that the Obama EPA is far more "political" than the Bush team ever was.

How else to explain the coordinated release on Wednesday of the EPA's new rules that make carbon a dangerous pollutant and John Kerry's cap-and-trade bill? Ms. Jackson is issuing a political ultimatum to business, as well as to Midwestern and rural Democrats: Support the Kerry-Obama climate tax agenda—or we'll punish your utilities and consumers without your vote.

The EPA has now formally made an "endangerment finding" on CO₂, which will impose the command-and-control regulations of the Clean Air Act across the entire economy. Because this law was never written to apply to carbon, the costs will far exceed those of a straight carbon tax or even cap and trade—though judging by the bills Democrats are stitching together, perhaps not by much. In any case, the point of this reckless "endangerment" is to force industry and politicians wary of raising taxes to concede, lest companies have to endure even worse economic and bureaucratic destruction from the EPA.

Ms. Jackson made a show of saying her new rules would only apply to some 10,000 facilities that emit more than 25,000 tons of carbon dioxide each year, as if that were a concession. These are the businesses—utilities, refineries, heavy manufacturers and so forth—that have the most to lose and are therefore most sensitive to political coercion.

The idea is to get Exelon and other utilities to lobby Congress to pass a cap-and-trade bill that gives them compensating emissions allowances that they can sell to offset the cost of the new regulations. White House green czar Carol Browner was explicit on the coercion point last week, telling a forum hosted by the Atlantic Monthly that the EPA move would "obviously encourage the business community to raise their voices in Congress." In Sicily and parts of New Jersey, they call that an offer you can't refuse.

Yet one not-so-minor legal problem is that the Clean Air Act's statutory language states unequivocally that the EPA must regulate any "major source" that emits more than 250 tons of a pollutant annually, not 25,000. The EPA's Ms. Jackson made up the higher number out of whole cloth because the lower legal threshold—which was intended to cover traditional pollutants, not ubiquitous carbon—would sweep up farms, restaurants, hospitals, schools, churches and other businesses. Sources that would be required to install pricey "best available control technology" would increase to 41,000 per year, up from 300 today, while those subject to the EPA's construction permitting would jump to 6.1 million from 14,000.

That's not our calculation. It comes from the EPA itself, which also calls it "an unprecedented increase" that would harm "an extraordinarily large number of sources." The agency goes on to predict years of delay and bureaucratic backlog that "would impede economic growth by precluding any type of source—whether it emits GHGs or not—from constructing or modifying for years after its business plan contemplates." We pointed this out earlier this year, only to have Ms. Jackson and the anticarbon lobby deny it.

Usually it takes an act of Congress to change an act of Congress, but Team Obama isn't about to let democratic—or even Democratic—consent interfere with its carbon extortion racket. To avoid the political firestorm of regulating the neighborhood coffee shop, the EPA is justifying its invented rule on the basis of what it calls the "absurd results" doctrine. That's not a bad moniker for this whole exercise.

The EPA admits that it is "departing from the literal application of statutory provisions." But it says the courts will accept its revision because literal application will produce results that are "so illogical or contrary to sensible policy as to be beyond anything that Congress could reasonably have intended."

Well, well. Shouldn't the same "absurd results" theory pertain to shoehorning carbon into rules that were written in the 1970s and whose primary drafter—Michigan Democrat John Dingell—says were never intended to apply? Just asking. Either way, this will be a feeble legal excuse when the greens sue to claim that the EPA's limits are inadequate, in order to punish whatever carbon-heavy business they're campaigning against that week.

Obviously President Obama is hellbent on punishing carbon use—no matter how costly or illogical. And of course, there's no politics involved, none at all.

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andy.adora@epa.gov

01268-EPA-2933

Bob Sussman/DC/USEPA/US

10/06/2009 05:47 PM

To William Early

cc Bharat Mathur, Cindy Cook, Gregory Peck, Mike Shapiro,
Peter Silva, Stan Meiburg, Suzanne Schwartz

bcc Richard Windsor

Subject Re: Fw: Groups Charge Environmental Injustice in
Appalachia

(b) (5) Deliberative

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency

William Early

Attached below is the EJ MTM petition t...

10/06/2009 12:56:15 PM

From: William Early/R3/USEPA/US
To: Bob Sussman/DC/USEPA/US@EPA, Gregory Peck/DC/USEPA/US@EPA, Peter
Silva/DC/USEPA/US@EPA, Mike Shapiro/DC/USEPA/US@EPA, Suzanne
Schwartz/DC/USEPA/US@EPA
Cc: Stan Meiburg/R4/USEPA/US@EPA, Bharat Mathur/R5/USEPA/US@EPA, Cindy
Cook/R3/USEPA/US@EPA
Date: 10/06/2009 12:56 PM
Subject: Fw: Groups Charge Environmental Injustice in Appalachia

Attached below is the EJ MTM petition that I mentioned

(b) (5) Deliberative

Thanks.

William C. Early
Acting Regional Administrator
Middle Atlantic Region
U. S. Environmental Protection Agency
215 814 2626
215 814 2603 (Fax)
Early.William@epa.gov

----- Forwarded by William Early/R3/USEPA/US on 10/06/2009 09:58 AM -----

Charles Lee/DC/USEPA/US

10/06/2009 04:37 AM

To William Early/R3/USEPA/US, Jim Newsom/R3/USEPA/US,
John Armstead/R3/USEPA/US@EPA, Samantha
Beers/R3/USEPA/US@EPA, John
Pomponio/R3/USEPA/US@EPA, Reggie
Harris/R3/USEPA/UScc Heather Case/DC/USEPA/US@EPA, Suzi
Ruhl/DC/USEPA/US@EPA, Arati
Tripathi/DC/USEPA/US@EPA, Kent
Benjamin/DC/USEPA/US@EPA, Mustafa
Ali/DC/USEPA/US@EPA, Catherine
McCabe/DC/USEPA/US@EPA

Subject Fw: Groups Charge Environmental Injustice in Appalachia

Hi Everyone

You probably have seen this. But in case you have not, this is a petition from the Sierra Club on MTM citing EO 12898 and other authorities. (b) (5) Deliberative

Charles

Charles Lee
Director
Office of Environmental Justice
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (MC 2201A)
Ariel Rios Building South, Room 2226
Tel: 202-564-2597
Fax: 202-564-1624

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----- Forwarded by Charles Lee/DC/USEPA/US on 10/06/2009 04:27 AM -----

From: Bonnie Piper/DC/USEPA/US
To: Owens.Stephanie@epamail.epa.gov, Oster.Seth@epamail.epa.gov, Brooks-LaSure.Allyn@epamail.epa.gov, Andy.Adora@epamail.epa.gov, Sussman.Bob@epamail.epa.gov, Peck.Gregory@epamail.epa.gov, Silva.Peter@epamail.epa.gov, Lee.Charles@epamail.epa.gov, "Mike Shapiro" <Shapiro.Mike@epamail.epa.gov>, "Amy Dewey" <Dewey.Amy@epamail.epa.gov>, "Doretta Reaves" <Reaves.Doretta@epamail.epa.gov>, "Macara Lousberg" <Lousberg.Macara@epamail.epa.gov>, "Bonnie Piper" <Piper.Bonnie@epamail.epa.gov>
Date: 10/05/2009 02:46 PM
Subject: Fw: Groups Charge Environmental Injustice in Appalachia

Bonnie Piper
Liaison to Environmental Organizations
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Office: 202 564-7836
Email: piper.bonnie@epa.gov

From: "Virginia Cramer, Sierra Club" [virginia.cramer@sierraclub.org]
Sent: 10/05/2009 01:35 PM EST
To: Bonnie Piper
Subject: Groups Charge Environmental Injustice in Appalachia

[View a web version of this email.](#)





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FOR IMMEDIATE RELEASE

the Press Room

Explore, enjoy and protect the planet

October 5, 2009

Contact: Virginia Cramer, Sierra Club, (804) 225-9113x102

**Groups Charge that Mountaintop Removal Coal Mining
Disproportionately Impacts Low-Income Americans**

**Petition Seeks Greater Attention to Environmental Justice
Considerations in Review of Mining Permits**

Washington, D.C.: Today a coalition of Appalachian residents and community organizations submitted a petition to the Environmental Protection Agency (EPA) citing the need for the agency to address the environmental justice tragedy of mountaintop removal mining in Appalachia. The petition urges EPA to incorporate environmental justice considerations into its review of pending applications for mountaintop removal coal mining permits, among other actions. The petition outlines how EPA has the responsibility under Executive Order 12898 to address the environmental justice impacts of mountaintop removal mining, and has the authority under the Clean Water Act, the Clean Air Act, the National Environmental Policy Act, and other laws, to do so.

"The worst polluters have always targeted the communities least able to resist their abuses and protect their homes and families," said Vernon Haltom of Coal River Mountain Watch. "In Appalachia, coal companies are oppressing residents while they suck the wealth out of communities."

On September 30, 2009, EPA announced that it is undertaking a coordinated review of 79 applications for mountaintop removal mining permits in conjunction with the U.S. Army Corps of Engineers. Today's petition asserts that these, and all future applications for mountaintop removal coal mining permits, should be scrutinized by EPA to identify and address any disparate impacts the proposed mining may have on vulnerable, economically disadvantaged communities. The petition also asks EPA to create an environmental justice plan and strategy for the region, and to ensure a meaningful opportunity for public participation by the Appalachian coalfield communities in each individual permit review and in EPA's overall permit review process.

"The people of the Appalachian coal fields are among the nation's poorest. Many of us struggle with persistent poverty and sub-standard housing. To impose the impacts of coal on our already vulnerable population is an environmental justice issue that our nation has conveniently ignored for too long. We are forced to live with the ravaged landscape, polluted air, flooding and contaminated water. Clean water is a basic human right and it's been taken from us," said Teri Blanton of Kentuckians for the Commonwealth.

"The Appalachian people have long suffered unduly for the sacrifices we have made to fuel this nation and its progress," said Kathy Selvage of Southern Appalachian Mountain Stewards. "I believe if the EPA folks visited in the Appalachian region for awhile, they would find themselves standing in the West Wing advocating for an end to mountaintop removal coal mining immediately to help us save our ancient mountains and the place we call home."

[View](#) the petition, filed by groups including: Coal River Mountain Watch, Kentuckians For The Commonwealth (KFTC), Ohio Valley Environmental Coalition (OVEC), Sierra Club's Environmental Justice and Community Partnerships Program, Southern Appalachian Mountain Stewards (SAMS), Statewide Organizing for Community eMpowerment (SOCM), and the Appalachian Center for the Economy and the Environment.

"The communities of Appalachia have suffered appalling damage from mountaintop removal mining because of the remoteness of the region and the poverty of the people living here. It is past time to acknowledge the horrendous impacts of all forms of mountaintop removal mining on the people of Appalachia. Our communities have struggled long enough. We need action now," said Cathie Bird, coalfield resident and member of Statewide Organizing for Community eMpowerment

"We urge the EPA to scrutinize all mountaintop removal mining permits through the lens of environmental justice," said Janet Keating, Executive Director of the Ohio Valley Environmental Coalition, based in Huntington, WV. "People living with mountaintop removal are paying too high of a price for the nation's so-called 'cheap' energy, including damage to their health and the contamination of their water."

Due to its vital charge under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," the EPA must take immediate steps to recognize and address the environmental justice effects of mountaintop removal mining, a destructive practice that is occurring at a high and destructive rate and only in the economically disadvantaged communities of Appalachia. The disproportionate environmental destruction from mountaintop removal clearly falls within the purview of the Executive Order.

"The environmental justice claims in this petition are not an afterthought," said Leslie Fields, Sierra Club's National Environmental Justice and Community Partnerships Director. "Proper review of permits will only occur when the EPA abides by the environmental justice executive order and all other applicable laws. The affected communities in Appalachia deserve no less than full compliance and enforcement by the EPA."

###



**RAW: Uncooked Truth,
Beyond Belief.**



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01268-EPA-2935

**David
McIntosh/DC/USEPA/US**
10/06/2009 06:34 PM

To Adora Andy

cc Allyn Brooks-LaSure, Arvin Ganesan, Betsaida Alcantara,
Bob Sussman, Brendan Gilfillan, Lisa Heinzerling, Michael
Moats, Richard Windsor, Seth Oster

bcc

Subject Re: CEI: GOV-FUNDED RESEARCH UNIT DESTROYED
CLIMATE DATA

(b) (5) Deliberative

a.”

Adora Andy

I'm sending you this stuff because Gree...

10/06/2009 06:27:40 PM

From: Adora Andy/DC/USEPA/US
To: Richard Windsor/DC/USEPA/US@EPA, David McIntosh/DC/USEPA/US@EPA, Bob
Sussman/DC/USEPA/US@EPA, Lisa Heinzerling/DC/USEPA/US@EPA
Cc: Brendan Gilfillan/DC/USEPA/US@EPA, Betsaida Alcantara/DC/USEPA/US@EPA, Allyn
Brooks-LaSure/DC/USEPA/US@EPA, Arvin Ganesan/DC/USEPA/US@EPA, Seth
Oster/DC/USEPA/US@EPA, Michael Moats/DC/USEPA/US@EPA
Date: 10/06/2009 06:27 PM
Subject: CEI: GOV-FUNDED RESEARCH UNIT DESTROYED CLIMATE DATA

I'm sending you this stuff because Greenwire/NYT is asking for comment by tomorrow morning. Working on that now, but just a heads up:

Competitive Enterprise Institute:

Govt-Funded Research Unit Destroyed Original Climate Data

CEI Petitions EPA to Reopen Global Warming Rulemaking

Washington, D.C., October 6, 2009—In the wake of a revelation by a key research institution that it destroyed its original climate data, the Competitive Enterprise Institute petitioned EPA to reopen a major global warming proceeding.

In mid-August the University of East Anglia's Climate Research Unit (CRU) disclosed that it had destroyed the raw data for its global surface temperature data set because of an alleged lack of storage space. The CRU data have been the basis for several of the major international studies that claim we face a global warming crisis. CRU's destruction of data, however, severely undercuts the credibility of those studies.

In a declaration filed with CEI's petition, Cato Institute scholar and climate scientist Patrick Michaels calls CRU's revelation "a totally new element" that "violates basic scientific

principles, and “throws even more doubt” on the claims of global warming alarmists.

CEI’s petition, filed late Monday with EPA, argues that CRU’s disclosure casts a new cloud of doubt on the science behind EPA’s proposal to regulate carbon dioxide. EPA stopped accepting public comments in late June but has not yet issued its final decision. As CEI’s petition argues, court rulings make it clear that agencies must consider new facts when those facts change the underlying issues.

CEI general counsel Sam Kazman stated, “EPA is resting its case on international studies that in turn relied on CRU data. But CRU’s suspicious destruction of its original data, disclosed at this late date, makes that information totally unreliable. If EPA doesn’t reexamine the implications of this, it’s stumbling blindly into the most important regulatory issue we face.”

Among CRU’s funders are the EPA and the U.S. Department of Energy – U.S. taxpayers.

> Read the [CEI petition to the EPA](#).

> Read more about the data dump: [The Dog Ate Global Warming](#) , by Patrick J. Michaels.

Adora Andy
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U.S. Environmental Protection Agency
Office of Public Affairs
202-564-2715
andy.adora@epa.gov

01268-EPA-2936

Michael Moats/DC/USEPA/US
10/06/2009 06:34 PM

To David McIntosh, Adora Andy
cc Allyn Brooks-LaSure, Arvin Ganesan, Betsaida Alcantara, Bob Sussman, Brendan Gilfillan, Lisa Heinzerling, Richard Windsor, Seth Oster
bcc
Subject Re: EPW RELEASE: EPA ENDANGERMENT FINDING RELIED ON FLAWED DATA

(b) (5) Deliberative, (b) (6) Personal Privacy

[Redacted]

David McIntosh

----- Original Message -----

From: David McIntosh
Sent: 10/06/2009 06:28 PM EDT
To: Adora Andy
Cc: Allyn Brooks-LaSure; Arvin Ganesan; Betsaida Alcantara; Bob Sussman; Brendan Gilfillan; Lisa Heinzerling; Michael Moats; Richard Windsor; Seth Oster
Subject: Re: EPW RELEASE: EPA ENDANGERMENT FINDING RELIED ON FLAWED DATA

(b) (5) Deliberative
[Redacted]

[attachment "Petition%20plus%20attachments%2010-5-09.pdf" deleted by Michael Moats/DC/USEPA/US]

Adora Andy From Inhofe and Barrasso: 10/06/2009 06:21:39 PM

From: Adora Andy/DC/USEPA/US
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Date: 10/06/2009 06:21 PM
Subject: EPW RELEASE: EPA ENDANGERMENT FINDING RELIED ON FLAWED DATA

From Inhofe and Barrasso:

NEW PETITION SHOWS EPA ENDANGERMENT FINDING RELIED ON FLAWED DATA

Tuesday, October 6, 2009

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NEW PETITION SHOWS EPA ENDANGERMENT FINDING RELIED ON FLAWED DATA

Inhofe, Barrasso Urge Jackson to Reopen Public Comment Process

[Link to Press Release](#)

Washington, D.C.-Senator James Inhofe (R-Okla.), Ranking Member of the Senate Environment and Public Works Committee, and Senator John Barrasso (R-Wyo.), Ranking Member of EPW's Oversight Subcommittee, called on EPA to reopen the public process for the agency's endangerment finding for greenhouse gases in light of the finding that a crucial scientific data set was destroyed. In a petition filed by a non-profit organization, the evidence is clear that EPA is relying on scientific information for its endangerment finding that could very well be seriously flawed.

Inhofe and Barrasso [recently asked EPA Administrator Lisa Jackson](#) to respond to requests about transparency and openness in the scientific process used to develop the endangerment finding. Thus far, the agency has ignored their request. The following is the reaction from the senators to today's development:

Sen. Inhofe: **"It's astonishing that EPA, so confident in the scientific integrity of its work, refuses to be transparent with the public about the most consequential rulemaking our time. Now the evidence shows that scientists interested in testing some of EPA's assertions can't engage in basic scientific work, such as assuring reproducibility and objectivity, because the data they seek have been destroyed. In order to conform to federal law and basic standards of scientific integrity, EPA must reopen the record so the public can judge whether EPA's claims are based on the best available scientific information."**

Sen. Barrasso: **"It's disturbing to learn that the data used for the EPA's finding no longer exists. If true, the agency needs to reopen the comment period or withdraw the rule and start over."**

Related:

[**WATCH: Inhofe on Kudlow Speaks About Obama Backdoor Energy Tax**](#)

[**Inhofe, Barrasso Urge EPA to Provide Answers Before Finalizing EPA Endangerment Finding**](#)

[Carlin Investigation Continues: Inhofe, Barrasso Send Letter to EPA On Possible Manipulation of Endangerment Finding](#)

[Inhofe, Barrasso Question EPA Commitment to Transparency](#)

FOXNEWS: Republicans are raising questions about why the EPA apparently dismissed an analyst's report questioning the science behind global warming

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