



Office of Public Utility Counsel

P.O. Box 12397
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2011 SEP 20 AM 9:45
Sheri Givens
Public Counsel
EXECUTIVE SECRETARIAT
OFFICE OF THE
REMOVED

September 9, 2011

Lisa P. Jackson, Administrator
U.S. Environmental Protection Agency
Office of the Administrator
Room 3000, Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Gina McCarthy, Assistant Administrator
U.S. Environmental Protection Agency
Office of Air and Radiation
Ariel Rios Building, Mail Code 6101A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

RE: Request for Reconsideration and Stay; Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals (Docket No. EPA-HQ-OAR-2009-0491)

Administrator Jackson and Assistant Administrator McCarthy:

The Texas Office of Public Utility Counsel (OPUC) is a state agency that specifically represents and advocates for Texas consumers of electricity in both the ERCOT and non-ERCOT regions of the State. As Public Counsel, I am also a member of the ERCOT and Texas RE Board of Directors. I am writing you to express my office's concerns relating to the Cross-State Air Pollution Rule (CSAPR) from a Texas residential and small business consumer perspective. Since the publication of the CSAPR in July, I have had multiple conversations with generators, ERCOT, and other affected state agencies, including the Public Utility Commission of Texas, the Texas Commission on Environmental Quality, and the Texas Office of the Attorney General. Pursuant to my discussions with these various groups, I am most alarmed by two issues – reliability and costs – and their potential impact on my office's constituency.

Reliability

ERCOT ensures the reliable flow of electricity for 23 million Texas customers, representing 85% of the state's electric load. Texas residential customer load can range from 20% of the overall ERCOT load during off-peak conditions to over 50% during summer peaks, and small commercial customer load can range from 34% on a moderate day to 25% on a peak day.¹ Capacity available at peak is 73,175 MW, and the minimum reserve margin required for reliability is 13.75%.²

Texas has experienced one of its record hottest summers this year. During this summer, ERCOT experienced record peak demand, with new records set over three consecutive days at the beginning of August,³ and issued Energy Emergency Alerts notifying consumers of the need to conserve, due to the tightness of the reserve margin, to prevent statewide rotating outages. Rotating outages were avoided only by the curtailing of large commercial and industrial load through voluntary agreements to be curtailed during an emergency and the aggressive conservation efforts by consumers and businesses to reduce usage of electricity, especially between the hours of 3:00pm to 7:00 p.m.⁴ On the hottest day with the highest demand, ERCOT fell to a mere 3.8% reserve margin.⁵

In February of this year, ERCOT experienced rotating outages on a single day lasting approximately eight hours due to generation inadequacy caused by an unexpected loss of 8,000 MW of generation during a winter weather event,⁶ and at least one death was attributed to those outages.⁷ We have been fortunate, to date, not to have to enforce rotating outages this summer.

Prior to the August peak days, the ERCOT CEO issued a statement relaying the concern that many coal plants in ERCOT will be forced to limit or shut down operations in order to maintain compliance with CSAPR.⁸ Such limitations and shut downs could lead to inadequate operating reserve margins with insufficient time to retrofit existing generation or build new generation to meet the state's electricity needs. CEO Doggett also added that it is unclear whether ERCOT operations has adequate tools to maintain long-term reliability in the face of losing large amounts of base load in such a short period of time.

On September 1, ERCOT issued a report, "Impacts of the Cross-State Air Pollution Rule on the ERCOT System" regarding the dangerous impacts to the reliability of the Texas grid due to the short timeline associated with CSAPR compliance.⁹ The report presents an overview of the significant operational challenges for the state's electric grid should the rule be implemented as proposed and provides for three scenarios of potential impacts from CSAPR. Operational challenges to affected resource owners include the limited supply of available Powder River Basin coal coupled with increased demand, the limited number of allowances available to Texas units, the potential damage to units based on continuously-needed maintenance or de-rating, and the potential reduced capacity of generation units during retrofitting.¹⁰ Through dialogue with resource owners throughout Texas, ERCOT found that, due to the risks associated with the various compliance options under CSAPR, it is unlikely that all of the resource owners' plans will function as designed.¹¹ It was also clear to ERCOT that the resource owners' plans are "still preliminary and based on assumptions regarding technology effectiveness, fuel markets, impacts

on altered unit operations on maintenance requirements, and the cost-effectiveness of modifying and operating units to comply with CSAPR.”¹² ERCOT concluded that the implementation deadline of the rule does not provide ERCOT and its resource owners with “a meaningful window for taking steps to avoid the loss of thousands of megawatts of capacity, and the attendant risks of outages for Texas power users.”¹³ By delaying the CSAPR implementation deadline, options for maintaining system reliability would be expanded.¹⁴

One generator in ERCOT, Luminant, a subsidiary of Energy Future Holdings (EFH), or Luminant/EFH, has stated the impact of the CSAPR rule on its generation fleet will be the curtailment of operations and possible shutdown of units in a matter of months to meet Texas’ required emissions budgets.¹⁵ Unfortunately, due to the lack of notice relating to the EPA’s inclusion of Texas in the CSAPR, Luminant has not had an opportunity to fully review and comment on the rule’s impact to electric reliability and prices.¹⁶ However, one thing is certain, electric reliability will be put at risk and reserve margins will be dangerously decreased without a stay of this rule.¹⁷ In the recent 8-K filing of Luminant’s parent company, EFH, CSAPR compliance options identified include reducing operating levels of lignite/coal-fueled generation facilities, conducting seasonal or temporary shut-downs, installing and operating dry sorbent injection systems in conjunction with reducing operations and mothballing certain legacy lignite/coal-fueled generation and related mining operations.¹⁸

One non-ERCOT utility, located within the Texas Panhandle in the Southwest Power Pool, Southwest Public Service Company (SPS), a subsidiary of Xcel Energy, Inc. (Xcel), or SPS/Xcel, has stated that its affected Texas units, two-coal fired power plants (Harrington and Tolk) consisting of five units (or 2,146 MW of capacity), will be most dramatically impacted by CSAPR.¹⁹ SPS/Xcel continues to analyze the rule’s impacts and intends to supplement its data in the coming weeks.²⁰ Because of power-import and transmission constraints on SPS/Xcel, the company does not believe it will be able to purchase sufficient power to keep the lights on in its service territory should it have to curtail its coal-fired generation to comply with CSAPR.²¹

Without adequate generation capacity available to ensure a reliable grid, Texas electricity consumers may face rotating outages on a continuing basis which will potentially affect the health, safety and welfare of all Texans.

Costs

Texas electric customers in the ERCOT region have access to electricity prices as low as 4.5 cents/kWh for variable rate plans and 8 cents/kWh for fixed rate plans. With the proposed expeditious deadline of the CSAPR, resource owners and market analysts estimate affected Texas generators will face substantial costs, and acknowledge those costs will be pushed down to Texas consumers through the electric rates they pay.

SPS/Xcel estimates that the “system flip,” from coal-fired base load to natural-gas fired base load required by CSAPR compliance, may cost upwards of \$250 million in additional costs in 2012. Costs may include “added costs from switching from coal to natural gas, additional costs for purchase power, higher transmission costs, higher costs for natural gas due to increased

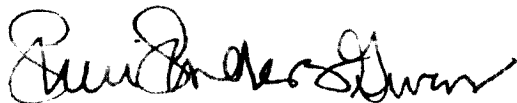
demand, and potential liquidated damages on coal rail contracts," much exceeding the EPA's estimated \$500 per ton threshold by as much as 20 times that amount.²² On September 2, SPS/Xcel did a media education session where it shared that the approximate \$250 million increase in fuel costs for re-dispatching its system would translate into an increase of approximately 12% to residential consumer bills, or for an average family, \$8 more per month on their electric bill starting as early as March or April of 2012.²³

Luminant/EFH compliance estimates for coal-fired generation have ranged between \$1.2 and \$2 billion.²⁴ Generation sources will need to make substantial compliance investments expeditiously in the coming months, and these investments may not be reversible if the Texas emission limits are revised or if Texas is later excluded.²⁵ The basic theory of supply and demand portends that the price to purchase necessary control equipment and appropriate coal types during high demand will cause higher-than-market value prices. Such increased costs will likely be passed on through wholesale electric rates which ultimately will be passed through retail electric rates paid by Texas consumers.

Though EPA acknowledges average retail electricity prices could increase by 1.7 % in the U.S., NERA Economic Consulting proposes average retail electric prices could increase by 12% nationally, and as much as 24% regionally.²⁶ For the ERCOT region, prior to inclusion of Texas in CSAPR emission reduction requirements, NERA estimated retail electricity prices could change as much as 12%, but it is clear, those estimates will be much higher with the recent addition of Texas. ERCOT CEO Doggett predicted to Senator John Cornyn these changes could increase electricity costs by 10%.²⁷

For these, and numerous other reasons put forth by other interested Texas parties, OPUC urges EPA to reconsider this rule and the impact it will have on reliability and the harm it could pose to Texas electric consumers. At the very least, OPUC encourages EPA to provide Texas resource owners adequate time to comply with these new regulations to mitigate the impact to Texas ratepayers so they are not left paying higher costs associated with the accelerated timeline.

Regards,



Sheri Sanders Givens

Public Counsel

Office of Public Utility Counsel

cc: The Honorable Rick Perry
The Honorable David Dewhurst
The Honorable Joe Straus
The Honorable Members of the Texas Legislature
The Honorable Members of the Texas Congressional Delegation
The Honorable Bryan W. Shaw, TCEQ
The Honorable Donna L. Nelson, PUCT



Correspondence Management System

Control Number: AX-11-001-5613

Printing Date: September 20, 2011 12:01:54



Citizen Information

Citizen/Originator: Lyou, Joseph

Organization: Coalition for Clean Air

Address: 811 West 7th Street, Los Angeles, CA 90017

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-11-001-5613

Alternate Number: dx

Status: Pending

Closed Date: N/A

Due Date: Oct 4, 2011

of Extensions: 0

Letter Date: Sep 19, 2011

Received Date: Sep 20, 2011

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: LTR (Letter)

Priority Code: Normal

Signature: DX-Direct Reply

Signature Date: N/A

File Code: 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.

Subject: Daily Reading File-Protecting public health is good for the economy. The recession is not a good reason for delaying the finalization of new ozone standards. I suggest using this delay to prepare new non-attainment area officials for what they will need to do to implement the new ozone standards.

Instructions: DX-Respond directly to this citizen's questions, statements, or concerns

Instruction Note: N/A

General Notes: N/A

CC: OEAE - Office of External Affairs and Environmental Education

OP - Office of Policy

R9 - Region 9 - Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6) Personal Privacy	OEX	OAR	Sep 20, 2011	Oct 4, 2011	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History



Protecting California's air since 1971

MEMO

TO: Lisa Jackson
FR: Dr. Joseph Lyou, President & CEO, Coalition for Clean Air
Date: 9/19/11

RE: RECLAIMING THE FRONT LINES ON OZONE STANDARDS

Let's make use of the 2-year delay on ozone standards. With a proactive agenda and message, EPA and the Obama Administration can:

- Lay the groundwork for new standards;
- Build support among state and local government air quality officials;
- Reclaim the high ground by linking the new standards to improved public health and a growing green economy; and
- Negate future claims that these regulations are an economic burden.

Protecting public health is good for the economy. The recession is not a good reason for delaying the finalization of new ozone standards. **I suggest using this delay to prepare new non-attainment area officials for what they will need to do to implement the new ozone standards.**

Dozens of states and air basins will find themselves out of attainment for the first time. We need to build local governments and the regulatory agency capacity for creating and implementing attainment plans.

Please consider initiating a 2-year program to build this capacity through:

- Information sharing on best practices and funding mechanisms
- Outreach to states and local government agencies
- Regional conferences

There are many opportunities to use California's historic experience and leadership on the issue. The Coalition for Clean Air would be glad to help new non-attainment areas by providing an honest analysis of the California experience.

EPA and the Obama Administration can reclaim leadership on the economic, environmental and public health fronts simply by being proactive and practical. I welcome the opportunity to discuss this issue with you.

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fax (559) 486-3669

1107 9th Street, Suite 830
Sacramento, CA 95814
(916) 498-1560
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Correspondence Management System

Control Number: AX-11-001-5629

Printing Date: September 20, 2011 12:26:06



Citizen Information

Citizen/Originator: Blomeke, Jerry

Organization: Cass Rural Water Users District
Address: Box 98 131 Maple Street, Kindred, ND 58051

Constituent: N/A

Committee: N/A **Sub-Committee:** N/A

Control Information

Control Number: AX-11-001-5629 **Alternate Number:** N/A
Status: Pending **Closed Date:** N/A
Due Date: Oct 4, 2011 **# of Extensions:** 0
Letter Date: Sep 12, 2011 **Received Date:** Sep 19, 2011
Addressee: AD-Administrator **Addressee Org:** EPA
Contact Type: LTR (Letter) **Priority Code:** Normal
Signature: DX-Direct Reply **Signature Date:** N/A
File Code: 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.

Subject: Daily Reading File- I request that EPA favorably respond to the reconsideration of the 2010 final RICE NESHAP rules by eliminating certain restrictions on non-emergency annual hours of operation.

Instructions: DX-Respond directly to this citizen's questions, statements, or concerns
Instruction Note: N/A
General Notes: N/A
CC: OEAE - Office of External Affairs and Environmental Education
 OP - Office of Policy
 R8 - Region 8 -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6) Personal Privacy	OEX	OAR	Sep 20, 2011	Oct 4, 2011	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History



Cass Rural Water Users District

BOX 98 • 131 MAPLE STREET
KINDRED, NORTH DAKOTA 58051
PHONE: 701-428-3139 • TOLL FREE: 800-922-2798
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www.cassruralwater.com

9/1
RECEIVED

2011 SEP 19 PM 2:45

OFFICE OF THE
EXECUTIVE SECRETARIAT

September 12, 2011

The Honorable Lisa Jackson
EPA Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave. N.W.
Washington D.C. 20460

Dear Administrator Jackson:

I am writing in regard to recent EPA rules that set National Emission Standards for Hazardous Air Pollutants ("NESHAP") for compression ignition and spark ignition stationary Reciprocating Internal Combustion Engines ("RICE"). I request that EPA favorably respond to the reconsideration of the 2010 final RICE NESHAP rules by eliminating certain restrictions on non-emergency annual hours of operation.

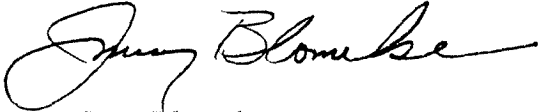
Among the engines covered by the RICE NESHAP rules are small diesel engines used primarily for emergency standby power and occasionally for peak-shaving to manage electric load. These rules will prohibit the use of these small emergency units for peak-shaving programs beginning May 2013 without the addition of expensive emission reduction technology. The additional cost associated with these requirements will likely make it economically prohibitive for the continued use of these engines for peak-shaving programs. Cass Rural Water District is a small water system and as such we are extremely sensitive to increases in the cost of our operations. These rules will certainly result in much higher electric rates with little or no real benefit to the environment or public health.

Peak-shaving programs enhance electric reliability and lower cost to the consumer by reducing demand on central station power supplies. The engines are used on a limited basis and are run fewer hours than the 100 hours allowed in the rule for general non-emergency operation. We are asking the EPA to remove the prohibition on these engines for peak-shaving and demand reduction purposes, the result would be no more run-time than is already provided for in the rule and no measurable public health risk or environmental harm.

In light of these factors, I request that you modify the final RICE NESHAP rules by including unrestricted peak-shaving and demand reduction operation within the 100 hours

per year provided in the rule for maintenance and readiness testing. Thank you for your consideration of this very important matter.

Sincerely,

A handwritten signature in cursive script, reading "Jerry Blomeke". The signature is fluid and extends to the right.

Jerry Blomeke
General Manager
Cass Rural Water District



Correspondence Management System

Control Number: AX-11-001-5630

Printing Date: September 20, 2011 12:33:41



Citizen Information

Citizen/Originator: Thompson, L. Dan

Organization: White Energy

Address: 5005 LBJ Freeway, Dallas, TX 75244

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-11-001-5630

Alternate Number: N/A

Status: Pending

Closed Date: N/A

Due Date: Oct 4, 2011

of Extensions: 0

Letter Date: Sep 7, 2011

Received Date: Sep 19, 2011

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: LTR (Letter)

Priority Code: Normal

Signature: DX-Direct Reply

Signature Date: N/A

File Code: 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.

Subject: Daily Reading File- Cross State Air Pollution Rule - Petition for Reconsideration Docket No. EPA-HQ-OAR-2009-0491

Instructions: DX-Respond directly to this citizen's questions, statements, or concerns

Instruction Note: N/A

General Notes: N/A

CC: OEAE - Office of External Affairs and Environmental Education

OP - Office of Policy

R6 - Region 6 -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6) Personal Privacy	OEX	OAR	Sep 20, 2011	Oct 4, 2011	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date
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CLEAN ENERGY FOR A CLEAN FUTURE

REC'D

2011 SEP 19 PM 2:45

OFFICE OF THE EXECUTIVE SECRETARIAT

September 7, 2011

*Pending
DX
to UAP*

Lisa P. Jackson
Office of the Administrator
Environmental Protection Agency
Room 3000, Ariel Rios Building
1200 Pennsylvania Ave. NW
Washington, DC 20004

Re: Cross State Air Pollution Rule – Petition for Reconsideration
Docket No. EPA-HQ-OAR-2009-0491

Dear Administrator Jackson:

I am writing on behalf of White Energy in support of the August 23, 2011 Southwestern Public Service Company (SPS) petition for reconsideration and request for stay of the Cross State Air Pollution Rule (CSAPR).

As indicated in SPS's petition, the EPA chose to include Texas in the CSAPR year-round emission reduction programs without providing the public with an opportunity to comment on that decision. Moreover, the EPA is requiring SPS and other Texas utilities to comply with CSAPR beginning in 2012, a short five months after the rule was finalized. This requirement has significant consequences for our local economy and the wellbeing of the people of our community.

SPS serves our local area, and about half its power comes from coal. As the SPS petition indicates, to comply with this rule by Jan. 1, 2012, SPS will be forced to reduce operation of its coal-fired power plants and rely significantly more on natural gas-fired electric generation. As a result, CSAPR will drive up electricity costs significantly. SPS demonstrates in its petition that the cost of increasing its reliance on natural gas plants could be up to \$200 to \$250 million in 2012 alone. It is energy consumers like White Energy that ultimately pay this cost.

We estimate that the increased annual energy costs exceed \$480 thousand per plant, which increases our total bill by 16%.

More importantly, as described in the SPS petition, we are concerned that CSAPR could harm the reliability of the electric system. We and all the people of the Texas Panhandle and Eastern New Mexico rely on the SPS electric system for our livelihoods and well-being. Especially after the record temperatures we've experienced this year, we believe it is vital that the EPA design CSAPR and all of its other rules to ensure that our region has access to reliable electricity.



For these reasons, we urge you to grant SPS's petition and stay CSAPR pending reconsideration of the rule.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Dan Thompson", with a long horizontal flourish extending to the right.

L. Dan Thompson
CEO



Correspondence Management System

Control Number: AX-11-001-5636

Printing Date: September 20, 2011 02:14:58



Citizen Information

Citizen/Originator: Perry, Charles

Organization: Texas House of Representatives
Address: Post Office Box 2910, Austin, TX 78768

Constituent: N/A

Committee: N/A Sub-Committee: N/A

Control Information

Control Number: AX-11-001-5636 Alternate Number: dx
 Status: Pending Closed Date: N/A
 Due Date: Oct 4, 2011 # of Extensions: 0
 Letter Date: Sep 15, 2011 Received Date: Sep 20, 2011
 Addressee: AD-Administrator Addressee Org: EPA
 Contact Type: LTR (Letter) Priority Code: Normal
 Signature: DX-Direct Reply Signature Date: N/A
 File Code: 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.
 Subject: Daily Reading File-Cross State Air Pollution Rule - Petition for Reconsideration Docket No. EPA-HQ-OAR-2009-0491
 Instructions: DX-Respond directly to this citizen's questions, statements, or concerns
 Instruction Note: N/A
 General Notes: N/A
 CC: OEAE - Office of External Affairs and Environmental Education
 OP - Office of Policy
 R6 - Region 6 -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6) Personal Privacy	OEX	OAR	Sep 20, 2011	Oct 4, 2011	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date
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DAILY READING FILE
TEXAS HOUSE OF REPRESENTATIVES



Capitol Office
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Austin, Texas 78768-2910
(512) 463-0542
(512) 463-0671 Fax

CHARLES PERRY
DISTRICT 83

District Office
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Lubbock, Texas 79423
(806) 783-9934
Fax (806) 783-9738

September 15, 2011

Lisa P. Jackson
Office of the Administrator
Environmental Protection Agency
Room 3000, Ariel Rios Building
1200 Pennsylvania Ave. NW
Washington, DC 20004

RECEIVED
2011 SEP 20 PM 12:50
OFFICE OF THE
EXECUTIVE SECRETARIAT

Re: Cross State Air Pollution Rule – Petition for Reconsideration
Docket No. EPA-HQ-OAR-2009-0491

Dear Administrator Jackson:

I am writing in support of the August 23, 2011 Southwestern Public Service Company (SPS) petition for reconsideration and request for stay of the Cross State Air Pollution Rule (CSAPR).

This action by the EPA ignores the fact that from 2000 to 2010, Texas reduced ozone emissions by 27 percent, which is more than any other state. During this time Texas also reduced SO₂ emissions by 32 percent and NO_x emissions by 58 percent. Texas was able to demonstrate these great successes and remain the nation's leading energy producer while protecting jobs.

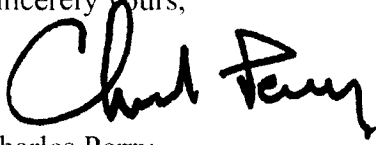
As indicated in SPS's petition, the EPA chose to include Texas in the CSAPR year-round emission reduction programs without providing the public an opportunity to comment on that decision and requiring SPS and other Texas utilities to comply with CSAPR in five short months after the rule was finalized. This requirement has significant consequences for our local economy and the wellbeing of the people in House District 83.

SPS serves HD 83, and approximately half its power comes from coal. As the SPS petition indicates, to comply with this rule by Jan. 1, 2012, SPS will be forced to reduce operation of its coal-fired power plants and rely more on natural gas-fired electric generation. As a result, CSAPR will drive up electricity costs significantly and it is my constituents that will ultimately pay this cost.

More importantly, as described in the SPS petition, I am concerned that CSAPR could harm the reliability of the electric system. HD 83 along with all the people of the Texas Panhandle and Eastern New Mexico rely on the SPS electric system for our livelihoods and well-being. Especially after the record temperatures we've experienced this year, I believe it is vital that the EPA design CSAPR and all of its other rules to ensure that our region has access to reliable electricity.

For these reasons, I urge you to grant SPS's petition of reconsideration and request for stay of the CSAPR, pending reconsideration of the rule. If I can be of any further assistance or provide any additional information, please don't hesitate to contact my office.

Sincerely yours,

A handwritten signature in black ink that reads "Charles Perry". The signature is written in a cursive style with a large, prominent initial "C".

Charles Perry
State Representative -- House District 83



Correspondence Management System

Control Number: AX-11-001-5637

Printing Date: September 20, 2011 02:23:30



Citizen Information

Citizen/Originator: Bertel, Jim

Organization: Union Storage and Transfer Company
Address: Post Office Box 2797 4275 Main Avenue, Fargo, ND 58108

Constituent: N/A

Committee: N/A Sub-Committee: N/A

Control Information

Control Number: AX-11-001-5637 Alternate Number: N/A
Status: Pending Closed Date: N/A
Due Date: Oct 4, 2011 # of Extensions: 0
Letter Date: Sep 14, 2011 Received Date: Sep 20, 2011
Addressee: AD-Administrator Addressee Org: EPA
Contact Type: LTR (Letter) Priority Code: Normal
Signature: DX-Direct Reply Signature Date: N/A
File Code: 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.

Subject: Daily Reading File-I am writing in regards to recent EPA rules that set National Emission Standards for Hazardous Air Pollutants ("NESHAP") for compression ignition and spark ignition stationary Reciprocating Internal Combustion Engines ("RICE").

Instructions: DX-Respond directly to this citizen's questions, statements, or concerns

Instruction Note: N/A

General Notes: N/A

CC: OEAE - Office of External Affairs and Environmental Education
OP - Office of Policy
R8 - Region 8 -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6) Personal Privacy	OEX	OAR	Sep 20, 2011	Oct 4, 2011	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

PHONE 701-282-4321
FAX 701-277-1244



POST OFFICE BOX 2787
4275 MAIN AVENUE
FARGO, NORTH DAKOTA 58108

AND
TRANSFER COMPANY
GENERAL & REFRIGERATED STORAGE

September 14, 2011

The Honorable Lisa Jackson
EPA Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave. N.W.
Washington D.C. 20460

Dear Administrator Jackson:

I am writing in regard to recent EPA rules that set National Emission Standards for Hazardous Air Pollutants ("NESHAP") for compression ignition and spark ignition stationary Reciprocating Internal Combustion Engines ("RICE"). I request that EPA favorably respond to the reconsideration of the 2010 final RICE NESHAP rules by eliminating certain restrictions on non-emergency annual hours of operation.

Among the engines covered by the RICE NESHAP rules are small diesel engines used primarily for emergency standby power and occasionally for peak-shaving to manage electric load. These rules will prohibit the use of these small emergency units for peak-shaving programs beginning May 2013 without the addition of expensive emission reduction technology. The additional cost associated with these requirements will likely make it economically prohibitive for the continued use of these engines for peak-shaving programs.

Peak-shaving programs enhance electric reliability and lower cost to the consumer by reducing demand on central station power supplies. The engines are used on a limited basis and are run fewer hours than the 100 hours allowed in the rule for general non-emergency operation. We are asking the EPA to remove the prohibition on these engines for peak-shaving and demand reduction purposes, the result would be no more run-time than is already provided for in the rule and no measurable public health risk or environmental harm.

In light of these factors, I request that you modify the final RICE NESHAP rules by including unrestricted peak-shaving and demand reduction operation within the 100 hours per year provided in the rule for maintenance and readiness testing. Thank you for your consideration of this very important matter.

Sincerely,

John Bertel
Vice President

EXECUTIVE SECRETARIAT

OFFICE OF THE

2011 SEP 20 PM 12:49

RECORDED



Correspondence Management System

Control Number: AX-11-001-5640

Printing Date: September 20, 2011 02:49:11



Citizen Information

Citizen/Originator: Cornwall, Mary Adams

Organization: Virgin Islands Waste Management Authority

Address: 1 La Grande Princess, Kingshill, VI 00820

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-11-001-5640

Alternate Number: N/A

Status: Pending

Closed Date: N/A

Due Date: Oct 4, 2011

of Extensions: 0

Letter Date: Sep 19, 2011

Received Date: Sep 20, 2011

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: LTR (Letter)

Priority Code: Normal

Signature: DX-Direct Reply

Signature Date: N/A

File Code: 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.

Subject: Daily Reading File-As I promised at the August 18 Senate Hearing, I have attached my rebuttal to the letter from Judith Enck, EPA Regional Administrator, which was read into the record in its entirety

Instructions: DX-Respond directly to this citizen's questions, statements, or concerns

Instruction Note: N/A

General Notes: N/A

CC: N/A

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6) Personal Privacy	OEX	R2	Sep 20, 2011	Oct 4, 2011	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date
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Office of the Executive Director

September 18, 2011

Honorable Louis Patrick Hill
Senator
29th Legislature of the U.S. Virgin Islands
Charlotte Amalie, VI 00802

**Reference: Rebuttal to Undated Letter From EPA Regional Administrator Judith Enck
In Response to Senator Hill's July 21 Invitation to EPA Officials to Provide
Testimony an August 18 Legislative Hearing**

Dear Senator Hill:

This letter serves as a rebuttal to the statements made by Judith Enck, Regional Administrator of the Environmental Protection Agency (EPA), Region 2, in the undated letter in response to your July 21 letter to Jim Casey of the EPA. Your letter requested his appearance to provide testimony at a legislative hearing to reincorporate the Virgin Islands Waste Management Authority (VIWMA) into the central government and to provide an update on the closure and status of the Anguilla and Bovoni Landfills.

On August 18, 2011, Enck's letter was read into the legislative record in its entirety at the referenced hearing. As promised, this rebuttal letter is submitted to counter those statements and I would appreciate it if you would personally read it into the legislative record in its entirety and not waive the reading. I have provided additional copies of this rebuttal and would further appreciate your distributing them to your colleagues.

It is apparent that Enck's letter is seeking to influence and, frankly, interfere with local government politics. In my 23 years in public service, this is the first time that a federal official has departed from well established federal policy regarding federal interference in local government politics. In fact, it is reported that Enck's letter was sent over the objections of the legal staffs at the EPA's own Office of Regional Counsel and the US Department of Justice which are both currently in good faith settlement negotiations with the Government of the Virgin Islands, the Virgin Islands Port Authority, the Virgin Islands Waste Management Authority, and a private party. Those federal attorneys were overruled and relegated to the duty of making the letter "better than it would have otherwise been".

Please note that my time spent writing this rebuttal statement could have been better spent working on the myriad of daily waste management challenges we are facing, but it is warranted in order to defend not only the men and women of the Authority and the Virgin Islands Government as a whole but also to defend the men and women at the U.S. Environmental Protection Agency who have worked closely with the Authority since its creation in 2004 and

publicly recognized the tremendous strides and significant accomplishments of the Waste Management Authority.

Below, I have incorporated Enck's statements and highlighted the negative statements directed at the VIWMA to inform my rebuttal:

Thank you for your letter of July 21, 2011 to Mr. Jim Casey requesting that the U.S. Environmental Protection Agency testify before the U.S. Virgin Islands legislature on a proposed bill to abolish the Virgin Islands Waste Management Authority and create the Virgin Islands Waste Management Agency with the same responsibilities as the authority. You also requested an update on the status of the Bovoni and Anguilla landfills. An EPA representative will not be available to attend the August 18, 2011 hearing, but we will respond to some of these issues in this letter.

In considering the proposal, there are certain objectives that should guide the structure of any new government entity that you are considering. First and foremost, any agency given responsibility for wastewater and solid waste infrastructure must be fully accountable to the executive branch, and be subject to appropriate legislative oversight. Second, the agency should be properly staffed by professionally qualified and experienced personnel. Third, the government should ensure that adequate resources are provided both for day-to-day operations and necessary capital expenditures. Fourth, it should be accountable to the public by holding public meetings, providing the public with financial and operating reports, and be committed to transparency in its decision making process.

The Virgin Islands Waste Management Authority has and continues to meet all of the stated objectives. The Authority is fully accountable to the executive branch through its Board members who are appointed by the Governor and approved by the Legislature as with all semi-autonomous and autonomous agencies. We are staffed with professional qualified and experienced personnel. The government has provided resources for the day-to day operations and capital expenditures. Financial audits are included in the central government single audit which is available to the public. The Authority has been accountable to the public through public meetings and we are committed to transparency its decision making process.

Overall, it is the view of EPA that the VIWMA has not achieved satisfactory results since its creation in 2004, although environmental performance improved in some areas compared to prior years in which responsibility for environmental and infrastructure matters was scattered among several agencies. But it hasn't improved much.

Legislative Act 6638 created the Authority in January 2004 and the Board was seated in June 2004. Its first Executive Director was hired in May 2005. The Authority assumed responsibility for a failing waste water infrastructure and non-compliant landfills. The Authority also took on the task of complying with a 1984 court-ordered EPA Consent Decree and five EPA Administrative Orders on Consent from 1998 to 2002 all of which were issued to the GVI. **The Authority has, in fact, achieved satisfactory results and has improved environmental**

performance very much. For the record, in six years the Authority has accomplished the following:

A. In Waste Water...

- Constructed two (2) new state-of-the-art Waste Water Treatment Plants (WWTP) at Anguilla on St. Croix and at Red Point in St. Thomas, both of which are operating in compliance with permit effluent discharge limits.
- Diverted waste water flows to the Red Point Waste WWTP and decommissioned the Cyril E. King Airport Lagoon WWTP; thereby, eliminating untreated sewage discharge and associated odor nuisances negatively impacting the airport.
- Achieved compliance with permit discharge limits and approval of the District Court to remove four of the eight treatment plants from the Consent Decree.
- Achieved compliance with permit discharge limits at the four remaining WWTPs; however, the U.S. Department of Justice (DOJ) and EPA are opposed to a similar District Court Order due to the Figtree pump stations failures. Therefore, an unopposed motion to remove three (3) of the WWTPs will soon be filed. Upon completion of the Figtree pump station rehabilitation and the removal of the Anguilla WWTP, the Authority will file a motion for the termination of the 27-year old EPA Consent Decree.
- Upgraded major waste water pumps at LBJ, Lagoon Street, Barren Spot, Long Bay, and Bovoni Pump Stations
- Constructed more than 20,000 linear feet of new and existing underground force mains, sewer lines, and manholes in planned capital improvement projects
- Replaced more than 5000 feet of sewer lines and 20 manholes per year in emergency sewer line and manholes projects such as Mon Bijou, Whim, William's Delight, Golden Rock, Humbug, Old Tutu, and Bovoni Hills collection systems and the Krause Lagoon and Airport Interceptors.

B. In Solid Waste...

- Modified solid waste hauler contracts based on available resources and contract performance and realized immediate improvements with the garbage collection system
 - Initiated and continue to conduct pre-hurricane and pre-Christmas season bulk waste collection and clean-up campaigns and the year-round curbside bulk waste collection service for senior citizens and persons with disabilities
 - Diverted more than 90,000 tons of scrap metal from the Anguilla Landfill, the Bovoni Landfill, and the Susannaberg Transfer Station for off-island recycling since 2005 under a modified contract designed for the Authority to share in the profits from the sale of the scrap metal on the world market
 - Diverted over 70,000 scrap tires from the landfills for off-island recycling
-

- Constructed the Peter's Rest Convenience Center, a manned collection facility, which is designed for source-separated recyclable materials and household waste drop off, including bulk waste, special waste, household hazardous waste, and universal waste
- Contracted a qualified, certified Manager of Landfill Operations to manage and operate the landfills with the required landfill compactor equipment, resulting in immediate improvements in compaction, slopes, litter control, and daily cover material so as to prevent frequent landfill surface fires previously experienced
- Fenced and gated and commenced hazardous waste random screening at both landfills
- Removed submerged scrap metal and debris from Mangrove Lagoon
- Removed lead-acid batteries and cleaned up battery dumpsites at Bovoni Landfill
- Extinguished the Anguilla Landfill subterranean fire and reconstructed the south slope of the landfill in preparation for closure
- Submitted design engineering plans for the compliance and closure of both landfills for EPA approval
- Installed a gas collection and control system (GCCS) in compliance with the Clean Air Act and groundwater monitoring wells in compliance with the Clean Water Act at the Bovoni Landfill
- Commenced the design of a methane landfill gas to energy project at Bovoni Landfill to convert the gas to power to be used at our facilities

C. In Environmental Programs...

- Diverted special and universal waste – used oil, lead acid batteries, scrap metal, scrap tires, e-waste, and household hazardous waste (HHW) including fluorescent bulbs
- Constructed two HHW sites for the central government – VIWMA's Williams Delight Offices and the Bovoni Landfill
- Diverted aluminum cans for off-island recycling through school contests and event recycling programs
- Awarded Community Enrichment Grants semi-annually in the amount of \$50,000 per district for each grant cycle to organizations and associations for environmental education, recycling, and other antilitter and beautification projects
- Hired 100-150 students and engineering interns through the YES Program each summer

Without a doubt, the abovementioned accomplishments demonstrate that the Authority has indeed achieved satisfactory results and improved environmental performance very much, notwithstanding.

VIWMA has had a very poor record of compliance with the Clean Water Act with respect to the wastewater collection system and with the Clean Air Act and the Resource Recovery and Conservation Act at the Bovoni and Anguilla landfills. VIWMA has also not achieved satisfactory compliance with Resource Conservation and Recovery Act Administrative Orders on Consent regarding scrap tires and scrap metal.

It is common knowledge that the “very poor record” in waste water dates back more than 27 years ago to the 1984 EPA Consent Decree and in solid waste back more than 13 years to the 1998-2002 EPA Administrative Orders, all against GVI. **As stated above, the Authority’s record speaks for itself. We have significantly and notably turned around this “very poor record” in just 6 years.**

In order to ensure improvement of this bad situation, in May 2010, EPA filed a federal lawsuit under the Clean Air Act and Resource Conservation and Recovery Act to address longstanding deficiencies at the Bovoni and Anguilla landfills and mandate their closure. The lawsuit also seeks the removal of scrap tires adjacent to Bovoni.

The USDOJ, on behalf of the EPA, filed a lawsuit against the Virgin Islands Government Defendants (VIGD) - Government of the Virgin Islands, Virgin Islands Port Authority, and VIWMA. The VIGD, represented by Winston & Strawn, are currently negotiating landfill consent decrees in good faith with the USEPA and USDOJ legal staff. It is presumably for this reason that the federal attorneys objected to Enck’s letter.

It should be noted that the Scrap Metal Administrative Order on Consent is not included in the lawsuit negotiations presumably because the Authority has removed the scrap metal from the Anguilla Landfill.

In March 2010, EPA, acting through the U.S. Department of Justice, found it necessary to seek emergency judicial relief under the Clean Water Act to remedy continuing operational problems at several wastewater pumping stations. These matters, including a proposed Stipulated Order in the Clean Water matter, are before the federal court. There are two attachments which provide further information on these actions.

When VIWMA was established in 2004, many had expectations that the new entity would succeed in correcting environmental deficiencies and ensure compliance with environmental laws and regulations. Unfortunately, this has not occurred. It should be noted, however, that the VIWMA has been dependent since its creation on the Virgin Islands government for its operational and capital funding. Without a significant, approved fee structure, the VIWMA cannot enter the capital bond market.

Although Waste Water issues was not the subject matter of your July 21 letter, Enck’s gratuitously offered statements regarding the ongoing enforcement action for the St. Croix pump stations; however, failed to acknowledge the successful partial termination of the 1984 Consent Decree. Further, the District Court Judge ordered a separate Stipulated Order rather than the initial EPA proposal to amend and effectively delay the full termination of this 1984 Consent Decree. That latter Order was negotiated amicably between the USDOJ, the GVI, and the VIWMA.

Enck's opinion on the VIMWA's financial dependence on the GVI would apply to any agency and it does not recognize that the Government of the Virgin Islands is, by statute and by the EPA Administrative Order, the responsible party for regulatory compliance. Accordingly, the GVI is expected to fund any agency that is charged with this responsibility to comply with enforcement orders on its behalf and has done so with the Authority. Therefore, to date, the Authority's success has not been compromised by the lack of approved fees. The ability to implement fees and the time required to achieve full cost recovery for any public services will depend on the approval of the Public Service Commission and the economic factors.

The Commission denied the proposal for Environmental User Fees, which were mandated by law, and ordered conditions for submittal of a revised fee proposal. The Authority plans to submit a new proposal for advance disposal fees on special and universal waste, solid waste collection, and tipping fees to the PSC for its approval. It should be noted here that the Authority did receive PSC approval to increase the waste water user fees for \$50 to \$110 per household per year.

Any new structure is to be considered it must be accompanied by adequate funding and support from the Virgin Islands government. For example, more than \$75 million in capital funds are required to be authorized by the Virgin Islands government for necessary landfill improvements and closure and post-closure work over the next several years. These improvements include installation of a gas collection and control system at the Anguilla landfill, storm water runoff controls, provision of impermeable liners and final cover at both the Bovoni and Anguilla landfills, and necessary ground water monitoring wells at Anguilla. Additional capital funds, estimated to be in the range of \$50 million, are required for the rehabilitation or reconstruction of the wastewater collection system, including upgrades of wastewater pumping stations and replacements of collection lines.

The Authority has developed and is ready and capable of implementing its 5-year Capital Improvement Plan. The Authority has successfully completed over \$100M in waste water and solid waste management capital improvement projects, with funding and support from the GVI, including:

- \$52M – two new Waste Water Treatment Plants
 - \$18M – emergency sewer system repair and rehabilitation
 - \$9.8M – St. Croix Transfer Station
 - \$5.0M – Solid Waste Planning – consultants - landfills, transfer station, waste to energy
 - \$4.6M – Bovoni Landfill Gas Collection & Control & Groundwater Monitoring Systems
 - \$4.2M – Anguilla Landfill Fire Extinguishment and South Slope Reconstruction
 - \$1.2M – Household Hazardous Waste Collection Centers
 - \$1.0M – Peter's Rest Convenience Center
 - \$1.0M – Capital equipment investments - Waste Water Pumps, Sewer Cleaner Trucks, Solid Waste Collection Trucks, Roll on Roll Off Trucks, Backhoes, Lowboys, and Knuckleboom Truck
-

Another important solid waste management concern in the Virgin Islands is the absence of an effective waste reduction, composting or recycling program. To encourage increased recycling, waste reduction, reuse and composting, EPA established the Virgin Islands Recycling Partnership, which has brought together representatives of the business community, government and NGOs to find effective solutions to the waste management problem in the Virgin Islands. We expect the VIWMA or any successor agency to assume a key role in this effort. To date, that has not been the case. I attach a recent report, U.S. Virgin Islands Integrated Solid Waste Management Strategy, Sustainable Materials Management (April 25, 2011), of the great potential for waste reduction, recycling and composting in the U.S. Virgin Islands.

The EPA and specifically Enck, selectively invited individuals to become members of the USVI Recycling Partnership, some of whom have been combative, hostile, and unreasonable to the point of "editorially gunning people down who do not do what they want them to do" to put it in the words of Rick Brandes, the recently retired EPA Chief of Energy Recovery and Waste Disposal, Office of Resource Conservation and Recovery. Certain members of this partnership continually second guess and challenge the Authority and its professional engineering, legal, and financial consultants who have many times more education, technical background, and experience.

Contrary to Enck's statement, not only does the VIWMA staff participate in meetings and calls, but the Authority's staff, including myself, were also interviewed extensively by the EPA group facilitator for information which was used to make this, otherwise generic, Integrated Solid Waste Management Strategy Report, more locally specific. Further, we have communicated that we would use this report as a guide to develop the updated Integrated Solid Waste Management Plan.

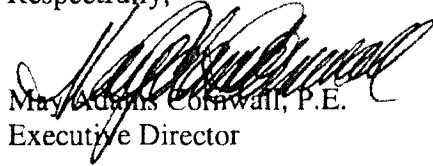
Across the world, these three approaches have been the cornerstone of any effective solid waste management strategy. Not only are they protective of the environment, but they also save tax dollars and create jobs. In this day and age, it is stunning that VIWMA has made virtually no progress in promoting waste reduction, composting and recycling, although these topics are currently being considered by VIWMA. I am confident that if these approaches are made convenient for the residents of the U.S. Virgin Islands, they will participate. It is unfortunate that the VIWMA has failed to implement these programs to date.

The Authority's Environmental Programs Division staff are engaged in environmental education and community outreach programs which promote and facilitate reduce, reuse, recycle programs in classroom presentations, Quest teacher development workshops, Agricultural Fairs, Career Fairs, Housing Fairs and annual sponsored partnership programs such as the Eco-Fair with the St. Croix Environmental Association, the Mathematics and Environmental Science Academy with the Department of Education, and the Coast Weeks with the University of the Virgin Islands Marine Advisory Service. We also provide direct community and business support programs such as the Community Enrichment Grant Program and the Greenhouse Program, where associations, organizations, residents, and businesses receive financial and technical support for recycling and composting projects.

Page 8
September 18, 2011
Senator Louis Patrick Hill

In closing, I will not speculate on what prompted this unwarranted and unsubstantiated attack on the Authority by Judith Enck; but, I trust that you and the members of the 29th Legislature now have a balanced view of the performance of the Virgin Islands Waste Management Authority and that you will be guided accordingly.

Respectfully,



May Adams Cornwall, P.E.
Executive Director

MAC/mac

Attachments

xc: Governor John deJongh
Members of the 29th Legislature
Judith Enck, EPA Regional Administrator, Region 2
Lisa Jackson, EPA Administrator

ATTACHMENT A

Violations of RCRA and CAA that the United States Alleges in Its Lawsuit Concerning the Bovoni and Anguilla Landfills

Resource Conservation and Recovery Act (RCRA) Claims

1. Bovoni Landfill

- a. Administrative Order – the ordered items which have been completed include fencing landfill with gates, random screening of waste, removal of lead acid batteries and scrap metal from specific areas on site and in the lagoon; the remaining work includes lead-acid battery site remediation and fencing along the wetlands area to the east of the landfill.
- b. Administrative Order – the ordered items which have been completed include daily cover, litter control, vector control, dust control, and groundwater monitoring; remaining work includes leachate collection, storm water control, final slopes, cap, and cover for the landfill.
- c. Scrap Tire Removal – Scrap tires at the Bovoni Landfill are currently being baled to be shipped off-island; on-island recycling proposals have been evaluated and contract negotiations will begin upon approval of the Executive Director.

2. Anguilla Landfill

- a. Admin Order – the ordered items which have completed include daily cover, litter control, vector control, and dust control; the remaining work includes groundwater monitoring, leachate collection, storm water control, final slopes, cap, and cover of the landfill
- b. Scrap Metal Removal – Scrap metal has been substantially removed from the site adjacent to the landfill and shipped off-island; the remaining work includes site mediation and restoration.

Clean Air Act (CAA) Claims

1. Bovoni Landfill

- a. Compliance Order - the gas collection and control system completed

2. Anguilla Landfill

- a. Compliance Order – a phased gas collection and control system has been proposed to EPA

3. Susannaberg Landfill

- a. Compliance Order – a gas collection and control system is not required
-

ATTACHMENT B

Virgin Islands -- Fact-Sheet of Judicial Enforcement Actions to Address
the Recent Discharges of Raw Sewage from Pump Stations

Relative to the Stipulated Order, it has been signed and submitted to the District Court judge for his consideration. Below is a status of the ordered provisions.

1. Opened Raw Sewage Avoidance Account in the amount of \$300,000 for emergency equipment repairs
 2. Ordered new and spare pumps for Figtree, LBJ, and Lagoon Street pump stations
 3. Replaced Barren Spot pumps with new submersible pumps
 4. Design for the Cancryn Pump Station Rehabilitation is underway
 5. Relining of the Krause Lagoon Interceptor will commence by the end of September
-



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1868

Honorable Louis Patrick Hill
Vice President, 29th Legislature
Legislature of the Virgin Islands
Capital Building – Old Barracks Yard
P.O. Box 1690
St. Thomas, Virgin Islands 00804-1690

Dear Senator Hill:

Thank you for your letter of July 21, 2011 to Mr. Jim Casey requesting that the U.S. Environmental Protection Agency testify before the U.S. Virgin Islands legislature on a proposed bill to abolish the Virgin Islands Waste Management Authority and create the Virgin Islands Waste Management Agency with the same responsibilities as the authority. You also requested an update on the status of the Bovoni and Anguilla landfills. An EPA representative will not be available to attend the August 18, 2011 hearing, but we will respond to some of these issues in this letter.

In considering the proposal, there are certain objectives that should guide the structure of any new government entity that you are considering. First and foremost, any agency given responsibility for wastewater and solid waste infrastructure must be fully accountable to the executive branch, and be subject to appropriate legislative oversight. Second, the agency should be properly staffed by professionally qualified and experienced personnel. Third, the government should ensure that adequate resources are provided both for day-to-day operations and necessary capital expenditures. Fourth, it should be accountable to the public by holding public meetings, providing the public with financial and operating reports, and be committed to transparency in its decision making process.

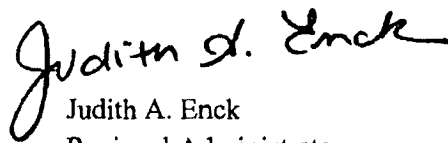
Overall, it is the view of EPA that the VIWMA has not achieved satisfactory results since its creation in 2004, although environmental performance improved in some areas compared to prior years in which responsibility for environmental and infrastructure matters was scattered among several agencies. But it hasn't improved much.

case. I attach a recent report, *U.S. Virgin Islands Integrated Solid Waste Management Strategy, Sustainable Materials Management (April 25, 2011)*, of the great potential for waste reduction, recycling and composting in the U.S. Virgin Islands.

Across the world, these three approaches have been the cornerstone of any effective solid waste management strategy. Not only are they protective of the environment, but they also save tax dollars and create jobs. In this day and age, it is stunning that VIWMA has made virtually no progress in promoting waste reduction, composting and recycling, although these topics are currently being considered by VIWMA. I am confident that if these approaches are made convenient for the residents of the U.S. Virgin Islands, they will participate. It is unfortunate that the VIWMA has failed to implement these programs to date.

Thank you for your interest in waste management in the U.S. Virgin Islands and the need to protect people's health and the critical natural resources of the islands. If you have any questions, please contact me at 212-637-5000.

Sincerely,



Judith A. Enck
Regional Administrator

cc: Governor John P. deJongh
May Adams Cornwall, Executive Director, VIWMA

ATTACHMENT A

Violations of RCRA and CAA that the United States Alleges in its Lawsuit Concerning the Bovoni and Anguilla Landfills

The Civil Complaint, amended in November 2010, includes claims by the United States against VIWMA, the Government of the Virgin Islands (GVI), the Virgin Islands Port Authority, and two private individuals for alleged violations at or near the Anguilla and Bovoni landfills of requirements under the Resource Conservation and Recovery Act (RCRA) and the Clean Air Act (CAA).

RCRA Claims

The Complaint alleges violations of three previously issued administrative RCRA Section 7003 orders on consent.

- (1) A June 2000 Order on Consent requires work at Bovoni landfill, requiring offsite shipment of lead acid batteries and used oil, installation of fencing to prevent unauthorized entry, steps to improve inspections of incoming loads to keep hazardous waste out of the landfill, improved application of daily cover, an investigation of any subsurface fires and their abatement, and the submission and implementation of a plan to bring the facility into compliance with the Criteria for Municipal Solid Waste Landfills codified at 40 C.F.R. part 258 ("Criteria for Municipal Solid Wastes Landfills"), including measures for leachate collection and groundwater monitoring. The Order was entered into with the GVI, but VIWMA later assumed responsibility for the landfill and has been implementing the work for the government; the United States' Complaint alleges that all the required work has not been completed.
- (2) A September 2001 Order on Consent was entered into with GVI and the Port Authority for work at Anguilla landfill. In addition to requiring steps similar to those ordered at Bovoni, this Order required the development of a plan to address scrap tires at the facility. Again, while not a signatory to the Order, VIWMA has assumed operational responsibility for the landfill and while many tasks have been completed, the United States alleges that important work to bring the landfill into compliance with 40 C.F.R. Part 258 requirements has yet to be completed.
- (3) A September 2008 Order on Consent with VIWMA, GVI, and three private parties for removal of scrap tires at various locations adjacent to the Bovoni landfill. VIWMA and the GVI were responsible for the removal and transport off-island for recycling or disposal of 260,000 scrap tires from an area denominated as Area A, and GVI and VIWMA were responsible for taking the same steps for all the tires in other "incidental" areas. The Order also required safer storage of tires before their removal, steps to control mosquitoes to limit potential dengue fever outbreaks, creation of better access for fire

The Defendants have denied many of the allegations in the United States' Complaint, and the case is now before the Court.

ATTACHMENT B

Virgin Islands: Fact-Sheet of Judicial Enforcement Actions to Address the Recent Discharges of Raw Sewage from Pump Stations

Procedural History: In March of 1984, the United States commenced this action by filing a complaint alleging violations of the Clean Water Act at certain of the wastewater treatment plants operated by the Government of the Virgin Islands (GVI). In order to resolve this matter, the United States and the GVI subsequently entered into an Amended Consent Decree approved by the Court in January, 1996. VIWMA assumed responsibility for wastewater and currently operates eight WWTPs and a wastewater collection and conveyance system, including pump stations and sewer lines, that are used to transport raw sewage to one of the eight WWTPs operated by VIWMA (hereinafter the "Collection System").

I. Current Court Proceedings

- On March 11, 2010, the United States filed an emergency motion ("Emergency Motion") requesting that the Court order VIWMA to immediately cease the unlawful discharge of raw sewage into the ocean as a result of the failure of the Figtree Pump Station, to implement repairs at the Figtree Pump Station, the Barren Spot Pump Station, and the Cancryn Pump Station, and to implement related relief.¹
- On March 31, 2011, the Court issued a Memorandum Opinion holding that VIWMA's discharges of raw sewage were in violation of their TPDES permit, the Amended Decree, and the CWA.
- On May 11, 2011, the Court conducted an evidentiary hearing with respect to the Emergency Motion. The Court, after the May 11, 2011, hearing, suggested that the parties attempt to stipulate to a proposed order providing for short-term and long-term relief related to the Emergency Motion.

¹ The US supplemented its pleadings by filing: a Response of the United States to Certification and Status Report, dated August 13 2010; and a Submission of The US in Response To Court's Order, dated April 11, 2011.



LOUIS PATRICK HILL
Vice President
29th Legislature

July 21, 2011

Legislature of the Virgin Islands

Capitol Building-Old Barracks Yard

P.O. Box 1690

St. Thomas, VI 00804-1690



Chairman
Committee on Planning
and Environmental Protection

Vice-Chairman
Committee on Finance

Member
Committee on Housing
and Labor
Committee on Education,
Youth, and Culture
Committee on Economic
Development, Technology,
and Agriculture

Mr. Jim Casey, Virgin Islands Coordinator
EPA Region 2/CEPD VI Office
Tunick Building Suite 102
2336 Beltjen Road
St. Thomas, VI 00802

Dear Mr. Casey:

SUBJECT: Testimony on Bill 29-0137 and an update on the Closure of the Anguilla Landfill

The 29th Legislature's Committee on Planning and Environmental Protection will convene a meeting at 10:00 a.m. on Thursday, August 18 in the Frits E. Lawaetz Legislative Conference Room on the island of St. Croix. At that time, the Committee will meet to receive testimony on **Bill 29-0137 An Act amending Title 29 V.I.C., Chapter 8, to abolish the Virgin Islands Waste Management Authority and create the Virgin Islands Waste Management Agency, and an update on the closure and status of the Anguilla and Bovoni Landfills.** A copy of Bill 29-0137 is attached.

As Chairman of the Committee on Planning and Environmental Protection, I am requesting that in your capacity as the V.I. Coordinator for EPA Region 2, you or your representative be available to answer questions. If you have any written testimony, please provide (20) copies for distribution to members of the 29th Legislature.

Please contact my Chief of Staff, Mrs. Colette Monroe at 693-3523, to RSVP as to your attendance. I thank you for your kind cooperation.

Sincerely,

Louis Patrick Hill
Chairman
Committee on Planning and Environmental Protection

LPH/cem

ccs: Members 29th Legislature; Mr. Carl-Axel Soderberg, EPA Region 2 Caribbean Director
Enc.



Correspondence Management System

Control Number: AX-11-001-5651

Printing Date: September 20, 2011 03:33:48



Citizen Information

Citizen/Originator: Chisum, Warren

Organization: House of Representatives
Address: Post Office Box 2910, Austin, TX 78768

Constituent: N/A

Committee: N/A Sub-Committee: N/A

Control Information

Control Number: AX-11-001-5651 Alternate Number: N/A
Status: Pending Closed Date: N/A
Due Date: Oct 4, 2011 # of Extensions: 0
Letter Date: Sep 15, 2011 Received Date: Sep 20, 2011
Addressee: AD-Administrator Addressee Org: EPA
Contact Type: LTR (Letter) Priority Code: Normal
Signature: DX-Direct Reply Signature Date: N/A
File Code: 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.

Subject: Daily Reading File-Cross State Air Pollution Rule - Petition for Reconsideration Docket No. EPA-HQ-OAR-2009-0491

Instructions: DX-Respond directly to this citizen's questions, statements, or concerns

Instruction Note: N/A

General Notes: N/A

CC: OCIR - Office of Congressional and Intergovernmental Relations
OEAE - Office of External Affairs and Environmental Education
OP - Office of Policy
R6 - Region 6 -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6) Personal Privacy	OEX	OAR	Sep 20, 2011	Oct 4, 2011	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Warren Chisum
STATE REPRESENTATIVE

COMMITTEES:
Appropriations
Environmental Regulation



House of Representatives

Austin Office:
P.O. Box 2910
Austin, Texas 78768-2910
(512) 463-0736

District Office:
P.O. Box 2061
Pampa, Texas 79066-2061
(806) 665-3552

September 15, 2011

OFFICE OF THE
EXECUTIVE SECRETARIAT

2011 SEP 20 PM 1:40

RECEIVED

Lisa P. Jackson
Office of the Administrator
Environmental Protection Agency
Room 3000, Ariel Rios Building
1200 Pennsylvania Ave. NW
Washington, DC 20004

Re: Cross State Air Pollution Rule – Petition for Reconsideration
Docket No. EPA-HQ-OAR-2009-0491

Dear Administrator Jackson:

I am writing to you on behalf of Xcel Energy to show my support of the August 23, 2011, Southwestern Public Service Company (SPS) petition for reconsideration and request for stay of the Cross State Air Pollution Rule (CSAPR).

I believe that the EPA is treating the state of Texas and its various utility companies unfairly when you chose to include Texas in the CSAPR year-round emission reduction programs without providing the public with an opportunity to comment on that decision. I also believe that it is extraordinarily unrealistic that the EPA is expecting and requiring SPS and other Texas utilities to comply with CSAPR beginning in 2012, a short five months after the rule was finalized. This requirement has serious consequences for our local economy and the livelihoods of people in our community. You have already had to address another Texas company's need to close facilities and trim operations, which will lay off approximately 500 Texans. In these economic times, the EPA's actions seem to be unnecessarily hasty.

SPS serves our local area, and about half its power comes from coal. As their petition says, to comply with this rule by Jan. 1, 2012, SPS will be forced to reduce operation of its coal-fired power plants and rely significantly more on natural gas-fired electric generation. By changing the source of generation, CSAPR will heavily increase electricity costs. SPS demonstrates in its petition that the cost of increasing its reliance on natural gas plants could be up to \$200 to \$250 million in 2012 alone. It is energy consumers like Xcel Energy and other utility companies that ultimately pay this cost.

More importantly, I am concerned that CSAPR could harm the reliability of the electric system. The people of the Texas Panhandle and Eastern New Mexico rely on the SPS electric system for our livelihoods and well-being. Especially after the record temperatures we've experienced this year, I

Warren Chisum
STATE REPRESENTATIVE

COMMITTEES:
Appropriations
Environmental Regulation



House of Representatives

Austin Office:
P.O. Box 2910
Austin, Texas 78768-2910
(512) 463-0736

District Office:
P.O. Box 2061
Pampa, Texas 79066-2061
(806) 665-3552

believe it is extremely important that the EPA design CSAPR and all of its other rules to ensure that our region has access to reliable electricity.

I encourage you to grant SPS's petition and stay CSAPR pending reconsideration of the rule.

Sincerely,

A handwritten signature in cursive script that reads "Warren Chisum".

Warren Chisum



Correspondence Management System

Control Number: AX-11-001-5653

Printing Date: September 20, 2011 03:09:54



Citizen Information

Citizen/Originator: **Edwards, Eddie**

Organization: City of Borger

Address: 600 North Main Street Post Office Box 5250, Borger, TX 79008-5250

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-11-001-5653

Alternate Number: N/A

Status: Pending

Closed Date: N/A

Due Date: Oct 4, 2011

of Extensions: 0

Letter Date: Sep 19, 2011

Received Date: Sep 20, 2011

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: LTR (Letter)

Priority Code: Normal

Signature: DX-Direct Reply

Signature Date: N/A

File Code: 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.

Subject: Daily Reading File-Cross State Air Pollution Rule - Petition for Reconsideration Docket No. EPA-HQ-OAR-2009-0491

Instructions: DX-Respond directly to this citizen's questions, statements, or concerns

Instruction Note: N/A

General Notes: N/A

CC: OEAE - Office of External Affairs and Environmental Education

OP - Office of Policy

R6 - Region 6 -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6) Personal Privacy	OEX	OAR	Sep 20, 2011	Oct 4, 2011	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date
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City of Borger

600 N. MAIN ST.
P. O. BOX 5250
BORGER, TX 79008-5250

(806) 273-0900
FAX (806) 273-0911

September 13, 2011

Lisa P. Jackson
Office of the Administrator
Environmental Protection Agency
Room 3000, Ariel Rios Building
1200 Pennsylvania Ave. NW
Washington, DC 20004

RECORDED
2011 SEP 20 PM 1:40
OFFICE OF THE
EXECUTIVE SECRETARIAT

Re: Cross State Air Pollution Rule – Petition for Reconsideration
Docket No. EPA-HQ-OAR-2009-0491

Dear Administrator Jackson:

I am writing on behalf of the citizens of the City of Borger, Texas, in support of the August 23, 2011 Southwestern Public Service Company (SPS) petition for reconsideration and request for stay of the Cross State Air Pollution Rule (CSAPR).

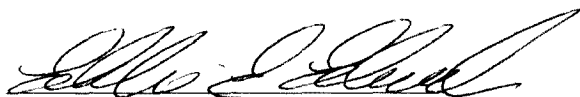
As indicated in SPS's petition, EPA chose to include Texas in the CSAPR year-round emission reduction programs without providing the public with an opportunity to comment on that decision. Moreover, EPA is requiring SPS and other Texas utilities to comply with CSAPR beginning in 2012, a short five months after the rule was finalized. This requirement has significant consequences for our local economy and the wellbeing of the people of our community.

SPS serves our local area, and about half its power comes from coal. As the SPS petition indicates, to comply with this rule by Jan. 1, 2012, SPS will be forced to reduce operation of its coal-fired power plants and rely significantly more on natural gas-fired electric generation. As a result, CSAPR will drive up electricity costs significantly. SPS demonstrates in its petition that the cost of increasing its reliance on natural gas plants could be up to \$200 to \$250 million in 2012 alone. It is energy consumers and citizens in and around the City of Borger and the Panhandle region in general that will ultimately pay this cost.

We estimate that the increased energy costs may force the City to cutback or curtail other public services and/or programs. More importantly, as described in the SPS petition, we are concerned that CSAPR could harm the reliability of the electric system. The Panhandle area has enjoyed a reliable electrical grid for decades. A major change in the daily operation of the system could prove detrimental; frequent outages should they occur, compromise the health, safety, and welfare of our citizens. We and all the people of the Texas Panhandle and Eastern New Mexico rely on the SPS electric system for our livelihoods and well-being. Especially after the record temperatures we've experienced this year, we believe it is vital that EPA design CSAPR and all of its other rules to ensure that our region has access to reliable electricity.

For these reasons, we urge you to grant SPS's petition and stay CSAPR pending reconsideration of the rule.

Sincerely,

A handwritten signature in black ink, appearing to read "Eddie E. Edwards". The signature is fluid and cursive, with a long horizontal stroke at the end.

Eddie E. Edwards

City Manager

City of Borger, Texas

806-273-0905

eedwards@ci.borger.tx.us



Correspondence Management System

Control Number: AX-11-001-5696

Printing Date: September 21, 2011 02:56:00



Citizen Information

Citizen/Originator: Madara, James L.

Organization: American Medical Association
Address: 515 N. State Street, Chicago, IL 60654

Constituent: N/A

Committee: N/A Sub-Committee: N/A

Control Information

Control Number: AX-11-001-5696 Alternate Number: N/A
 Status: Pending Closed Date: N/A
 Due Date: Nov 16, 2011 # of Extensions: 0
 Letter Date: Sep 18, 2011 Received Date: Sep 21, 2011
 Addressee: AD-Administrator Addressee Org: EPA
 Contact Type: LTR (Letter) Priority Code: Normal
 Signature: DX-Direct Reply Signature Date: N/A
 File Code: 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.
 Subject: DRF - Invitation to submit nominations for the 2012 Dr. Nathan Davis Awards for Outstanding Government Service
 Instructions: DX-Respond directly to this citizen's questions, statements, or concerns
 Instruction Note: N/A
 General Notes: N/A
 CC: OEAE - Office of External Affairs and Environmental Education

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6) Personal Privacy	OEX	OARM	Sep 21, 2011	Nov 16, 2011	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date
(b) (6) Personal Privacy	OEX	Assign OARM as lead office	Sep 21, 2011



DAILY READING FILE

James L. Madara, MD
Executive Vice President, CEO

American Medical Association
515 N. State Street
Chicago, Illinois 60654

ama-assn.org

(t) 312.464.5000
(f) 312.464.4184

September 18, 2011

The Honorable Lisa Perez Jackson
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, Northwest, Room 3000
Washington, DC 20460

RECEIVED
OFFICE OF THE
EXECUTIVE SECRETARIAT
2011 SEP 21 AM 9:48

Dear Ms. Jackson:

On behalf of the Officers and members of the American Medical Association (AMA), it is our pleasure to invite you to submit nominations for the 2012 Dr. Nathan Davis Awards for Outstanding Government Service. The Awards, currently in their twenty-third year of presentation, are recognized nationally as one of the most prestigious honors extended to elected officials and career government employees for outstanding endeavors that advance public health.

Please take a few minutes to review the enclosed brochure that outlines the criteria utilized by the independent panel of judges as they make their recommendations to the AMA. You will note that the AMA presents these awards in seven categories of public service, including local, state and federal government. Each year, the caliber of nominees is a testament to the incredible initiatives being advanced by government and elected officials throughout our nation.

Also, enclosed is a nomination form with the hope that you or your organization will submit one or more nominations. Please note the deadline for submission is 5:00 p.m. Friday, November 18, 2011. While you may submit your nominations by mail or facsimile, a registered delivery is preferred for your protection. Supplemental supporting material should be limited to no more than ten pages.

Each year, we are enormously pleased by the interest in the awards and the outstanding nominations we receive. Clearly, there is a desire and a necessity to recognize and salute individuals in government service who are giving of themselves and their talents in meaningful ways.

If you have any questions regarding the awards or the nomination process, contact the Awards Secretariat at (202) 783-9156. We look forward to receiving your nominations.

Sincerely,

[Handwritten signature of James L. Madara]

James L. Madara, MD

Enclosures

P.S. The awards will be presented at a gala banquet at the Grand Hyatt Washington Hotel in Washington, DC on Tuesday, February 14, 2012, in conjunction with the National Advocacy Conference. Mark your calendars now.



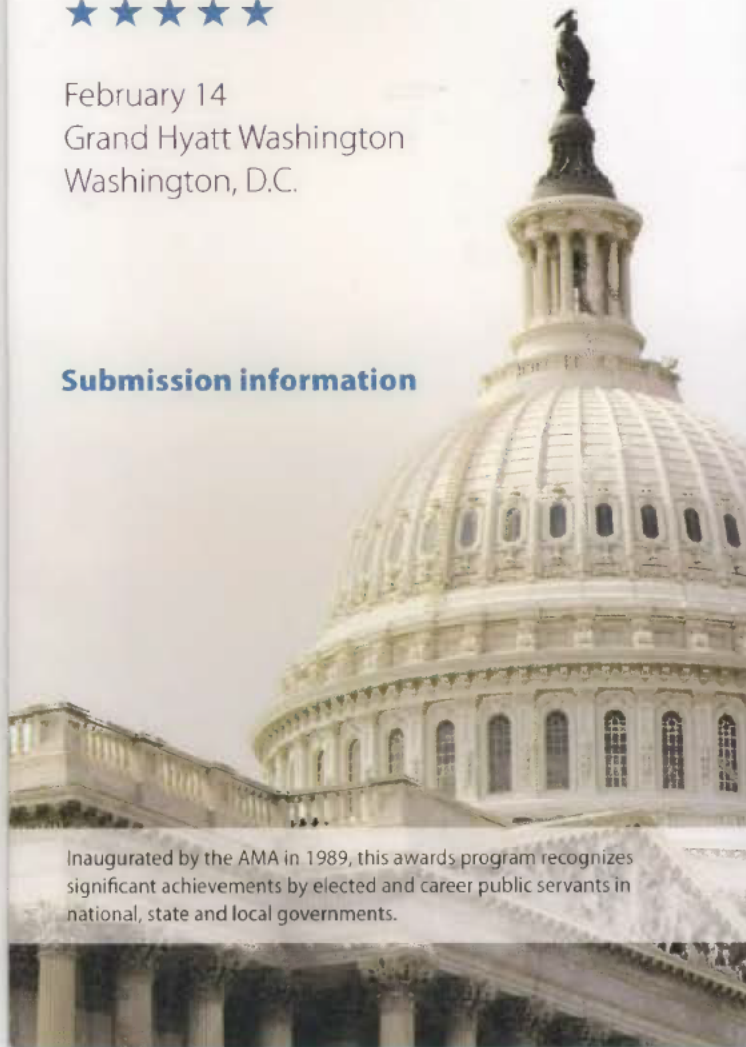
2012
Dr. Nathan Davis Awards
for Outstanding Government Service



February 14
Grand Hyatt Washington
Washington, D.C.

Submission information

Inaugurated by the AMA in 1989, this awards program recognizes significant achievements by elected and career public servants in national, state and local governments.



Awarded to elected and career public servants in national, state and local governments, the **Dr. Nathan Davis Awards for Outstanding Government Service**, which are named for the founder of the American Medical Association, are presented for outstanding contributions that "promote the art and science of medicine and the betterment of public health."

Through these awards, the AMA strives to encourage and stimulate public recognition for the highest standards of service throughout the levels of government. The awards underscore the significant accomplishments attained by men and women who are giving of themselves to advance the well-being of all.

To uphold the dictates of its constitution, the AMA, on behalf of its members, looks forward to receiving your nominations, and to selecting and saluting the recipients of the 2012 Dr. Nathan Davis Awards for Outstanding Government Service.

Please nominate one or more individuals in any of the categories cited herein who uphold and advance the criteria listed.

★ Award categories

- U.S. senator
- U.S. representative
- Member of the executive branch serving by presidential/political appointment (federal)
- Member of the executive branch in career public service (federal)
- Governor or elected statewide official
- Member of a state legislature
- Career public servant at the state or local level

★ Award criteria

The criteria to be observed in selecting these outstanding individuals shall include one or more of the following:

- Contributed greatly to the public health through elected and career government service
- Is an outstanding leader in his/her field
- Has high personal integrity
- Promoted the art and science of medicine in or through government service
- Developed a special project that contributed to the public health of a given community or special population

★ Submitting nominations

All nominations must be submitted in a typed format using the enclosed nomination form (or facsimile thereof). Nominations must be received at the Office of the Secretariat by 5 p.m. EST on Friday, November 18, 2011.

Nominations should be submitted to:

Dr. Nathan Davis Awards
Office of the Secretariat
1401 Eye St. N.W., Ste. 220
Washington, DC 20005

Telephone inquiries should be directed to the awards secretariat at (202) 783-9156.

Awards, including a suitable recognition presentation piece, will be made by the AMA upon the selection of winners by an outstanding panel of judges. Judges may determine to select or not select a recipient in a given category. Awards will be presented at a recognition dinner in Washington, D.C.

★ 2011 recipients

The Honorable Rosa L. DeLauro

United States House of Representatives
Representative of the Third District of Connecticut

The Honorable R. Gil Kerlikowske

Director
White House Office of National Drug Control Policy

William A. Gahl, MD, PhD

Clinical director, National Human Genome Research Institute
Director, intramural program of the National Institutes
of Health Office of Rare Diseases
Director, National Institutes of Health Undiagnosed
Diseases Program

Vice Admiral Adam M. Robinson Jr., MD

Surgeon General
U.S. Navy

The Honorable Dan K. Morhaim, MD

Deputy majority leader
Maryland House of Delegates

Donald E. Williamson, MD

State health officer
Alabama Department of Public Health

Donald F. Schwarz, MD, MPH, MBA

Deputy mayor for health and opportunity
Commissioner for the Department of Public Health
City of Philadelphia

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R2211-0445 6M/8/11





2012 Dr. Nathan Davis Awards for Outstanding Government Service



Nomination form

To be completed and returned to:

Awards Secretariat, attn: Roy Pfautch, 1401 Eye St. N.W., Ste. 220, Washington, DC 20005

Telephone: (202) 783-9156 / Fax: (202) 783-9158

Nomination submitted by:

Name (Please indicate Mr., Ms., Miss, Mrs., or appropriate salutation and appropriate professional designation MD, PhD, MPH, etc.)

Title

Organization

Mailing address (If providing P.O. Box, please include street address.)

City

State

ZIP code

Telephone

Fax

Email address

Submit nominations in a typed format using the enclosed nomination form (or facsimile thereof).

Nominations must be received at the Office of the Secretariat by 5 p.m. EST on Friday, November 18, 2011.

I. Nominee for award

Name (Please indicate Mr., Ms., Miss, Mrs., or appropriate salutation and appropriate professional designation MD, PhD, MPH, etc.)

Title/position/occupation

Organization

Mailing address (If providing P.O. Box, please include street address.)

City

State

ZIP code

Telephone

Fax

Email address

II. Category of nomination

Check one: U.S. senator U.S. representative Governor or elected statewide official

Member of executive branch serving by presidential/political appointment (federal government)

Member of executive branch in career public service (federal government)

Member of a state legislature

Career public servant at the state or local level

III. Brief biographical statement about nominee

Additional biographical information may be attached. Alternate paper may be used for nomination form.

IV. I/We nominate the above for the Dr. Nathan Davis Awards for Outstanding Government Service because:

Please indicate in 500 words or fewer why your nominee should receive the Dr. Nathan Davis Award.

Note: No more than 10 pages of supplementary material may be submitted along with this nomination.

Accompanying materials can include letters, testimonials, news clippings, pamphlets, etc. Do not submit tapes, cassettes, display materials, films, scrapbooks, or books, since they will not be considered in judging the nomination. All materials submitted become the property of the American Medical Association and will not be returned. When preparing accompanying materials, keep the materials to a minimum and submit materials that reproduce clearly.



Correspondence Management System

Control Number: AX-11-001-5698

Printing Date: September 21, 2011 03:33:17



Citizen Information

Citizen/Originator: McMullan, Brian

Organization: City of St. Catharines
Address: 20 North Wacker drive, Chicago, IL 60606

Barrett, Tom

Organization: City of Milwaukee
Address: 200 East Wells Street, Milwaukee, WI 53202

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-11-001-5698

Alternate Number: N/A

Status: Pending

Closed Date: N/A

Due Date: Oct 5, 2011

of Extensions: 0

Letter Date: Sep 19, 2011

Received Date: Sep 21, 2011

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: LTR (Letter)

Priority Code: Normal

Signature: DX-Direct Reply

Signature Date: N/A

File Code: 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.

Subject: Daily Reading File-The mayors of the Great Lakes and St. Lawrence Cities Initiative (Cities Initiative) are committed to advancing the long-term protection and restoration of the Great Lakes and St. Lawrence River. The Lakes and River provide drinking water to approximately 40 million Canadian and U.S. citizens, represent a significant ecosystem and are the foundation for the region's economy.

Instructions: DX-Respond directly to this citizen's questions, statements, or concerns

Instruction Note: N/A

General Notes: Please Assign to Cam Davis

CC: OCIR - Office of Congressional and Intergovernmental Relations
OEAE - Office of External Affairs and Environmental Education
OP - Office of Policy
OW - Office of Water -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6) Personal Privacy	OEX	R5	Sep 21, 2011	Oct 5, 2011	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					

Supporting Information

Supporting Author: N/A



RECEIVED
2011 SEP 21 AM 9:51
OFFICE OF THE
EXECUTIVE SECRETARIAT

September 12, 2011

The Honorable Lisa P. Jackson, EPA Administrator
US EPA Headquarters
Ariel Rios Building
1200 Pennsylvania Ave., NW
MC 1101A
Washington, DC 20460

Dear Administrator Jackson:

The mayors of the Great Lakes and St. Lawrence Cities Initiative (Cities Initiative) are committed to advancing the long-term protection and restoration of the Great Lakes and St. Lawrence River. The Lakes and River provide drinking water to approximately 40 million Canadian and U.S. citizens, represent a significant ecosystem and are the foundation for the region's economy. Despite their importance, the Lakes and River continue to face serious threats including a legacy of toxic contamination, the introduction of invasive species, aging water and wastewater infrastructure, and climate change. To meet these challenges, it will take a collective and concerted effort by all orders of government and stakeholders.

At the 2011 Annual Meeting of the Cities Initiative, held in Niagara Falls, Ontario June 15-17, Great Lakes and St. Lawrence mayors called upon the Canadian and U.S. Federal governments to build upon local investments in protection and restoration and the U.S. Great Lakes Restoration Initiative and make a sustained bi-national commitment to the region, supported by long-term funding. Commitment and investments from all orders of government are needed to respond to the enormous challenges facing the Great Lakes and St. Lawrence River.

In addition to the call for a bi-national commitment to the Lakes and River, the Cities Initiative membership approved a number of key resolutions. These resolutions represent the collective priorities of Cities Initiative members and serve to guide the policy direction of the organization over the next year. Enclosed are copies of all the resolutions, but we direct your attention specifically to Resolution #1 *Stormwater*

20 North Wacker Drive, Suite 2700, Chicago, Illinois 60606 ~ (312) 201-4516 phone ~ (312) 407-0038 fax
www.glsicities.org

Brian McMullan, Mayor of St. Catharines, Chair

Tom Barrett, Mayor of Milwaukee, Vice-Chair

Régis Labeaume, President of Québec Metropolitan Community, Secretary/Treasurer



Management in the Great Lakes and St. Lawrence River Basin, Resolution #4 Chicago Area Waterway System 21st Century – Stopping Asian Carp and Other Invasive Species, and Resolution #10 Resolution Endorsing Town of Ajax Council Resolution on Asian Carp.

We will appreciate your support in moving forward on these key matters. We look forward to continuing to work with you to protect and restore the Great Lakes and St. Lawrence River.

Sincerely,

Mayor Brian McMullan
City of St. Catharines

Chair, Great Lakes and St. Lawrence Cities Initiative

Mayor Tom Barrett
City of Milwaukee

Vice Chair, Great Lakes and St. Lawrence Cities Initiative

20 North Wacker Drive, Suite 2700, Chicago, Illinois 60606 ~ (312) 201-4516 phone ~ (312) 407-0038 fax
www.glsccities.org

Brian McMullan, Mayor of St. Catharines, Chair

Tom Barrett, Mayor of Milwaukee, Vice-Chair

Régis Labeaume, President of Québec Metropolitan Community, Secretary/Treasurer



GREAT LAKES AND ST. LAWRENCE CITIES INITIATIVE
ALLIANCE DES VILLES DES GRANDS LACS ET DU SAINT-LAURENT

SUMMARY OF 2011 RESOLUTIONS

1. Stormwater Management in the Great Lakes and St. Lawrence River Basin
2. Support for Measures to Promote Safe Shipment of Goods in the Great Lakes and St. Lawrence Region
3. Impact of Local Investment on the Great Lakes and St. Lawrence
4. Chicago Area Waterway System 21st Century – Stopping Asian Carp and Other Invasive Species
6. Endorsing Green Marine
7. Protection of Drinking Water Intakes and Tributaries - *Submitted by the Metropolitan Community of Québec*
8. Development and Consideration of Sustainable Urban Water Management - *Submitted by the Milwaukee Metropolitan Sewerage District and the City of Milwaukee*
9. Water Summit - *Submitted by the City of Racine*
10. Resolution Endorsing Town of Ajax Council Resolution on Asian Carp
11. Flooding in the Richelieu and Lake Champlain Valleys



GREAT LAKES AND ST. LAWRENCE CITIES INITIATIVE
ALLIANCE DES VILLES DES GRANDS LACS ET DU SAINT-LAURENT

RESOLUTION 1 – 2011M

STORMWATER MANAGEMENT IN THE GREAT LAKES AND ST. LAWRENCE
RIVER BASIN

WHEREAS, stormwater has been recognized by the International Joint Commission, and Canadian and US regulatory authorities as a leading non-point source of pollutants to nearshore water quality in the Great Lakes and St. Lawrence; and

WHEREAS, greater urban intensification can be anticipated to result in more untreated stormwater from population growth entering our waterways, further adversely impacting nearshore water quality; and

WHEREAS, more intense and more frequent storms due to climate change will increasingly overwhelm current municipal stormwater systems and wastewater treatment facilities, seriously damaging municipal infrastructure and public property, and at times resulting in flooding situations that are a danger to public safety; and

WHEREAS, stormwater regulations and standards vary widely across the Great Lakes and St. Lawrence basin, resulting in significant discrepancies in stormwater activities, and financing of these activities; and

WHEREAS, the responsibility for stormwater management is decentralized, shared across multiple municipal departments and across residential, industrial, commercial and institutional sectors; and

WHEREAS, stormwater management still commonly does not have a dedicated revenue stream as does water and wastewater management; and

WHEREAS, investing in stormwater measures provides environmental, social and economic benefits over the long term; and

WHEREAS, municipalities find it challenging to measure progress in water quality improvements arising from improved stormwater controls primarily in the absence of study of baseline and subsequent environmental conditions; and



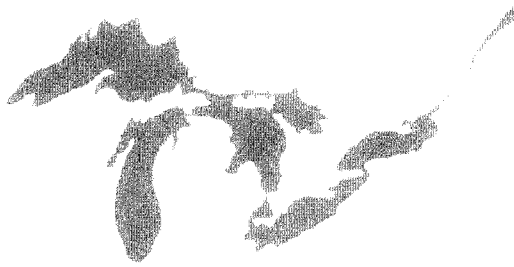
WHEREAS, an increasing number of municipalities are adopting stormwater management plans integrating ‘green infrastructure’, using on-site natural attenuation where soil conditions are conducive to reduce the amount of stormwater to be collected or otherwise managed through costly grey infrastructure; and

WHEREAS, for the above reasons, the Cities Initiative has designated stormwater management as its first priority area under its Green CiTTS (Cities Transforming Towards Sustainability) program, and has surveyed its members on their current stormwater practices, and has developed a report and recommendations on stormwater practices across the Great Lakes and St. Lawrence Basin.

- a. **NOW, THEREFORE, BE IT RESOLVED**, that the Cities Initiative encourage and support its members through training, pilot projects, research, web-based resource and the exchange of best practices, to continuously improve their stormwater practices by developing a comprehensive corporate-wide stormwater plan for the purpose of reducing and remediating stormwater using a centralized management approach, which
 - a. Defines explicit roles and responsibilities for municipal departments involved in stormwater management;
 - b. Provides training on water quality generally and more specifically stormwater quality and quantity standards and analyses for officials responsible for stormwater management (e.g. public works, building and planning departments), and in ICI sectors;
 - c. Implements education/outreach programs and/or regulation of ICI and residential sector stormwater activities;
 - d. Requires practical but effective stormwater management components in new and infill/intensification/retrofit development;
 - e. Establishes implementable maintenance and inspection programs for existing and new stormwater infrastructure eg. retention ponds;
 - f. Establish and maintains a dedicated budget for stormwater activities and a stable, sustainable source of funding.

BE IT FURTHER RESOLVED, that members of the Cities Initiative endeavor to reduce the impact of stormwater on the Great Lakes and St. Lawrence and their tributaries by:

- a. Setting water quality goals and regularly monitoring and reporting on the performance of stormwater systems;
- b. Improving monitoring of stormwater impacts on water quality in receiving waters and reporting on the findings annually;



Great Lakes and St. Lawrence Cities Initiative
Alliance des villes des Grands Lacs et du Saint-Laurent

- c. Promoting pilot projects on stormwater quality in communities throughout the Great Lakes Basin in conjunctions with senior governments and local academic institutions (e.g. universities);
- d. Improving stormwater quality through promotion of and implementation of pollution prevention plans.

BE IT FURTHER RESOLVED, that members of the Cities Initiative be encouraged, and be provided support from all levels of government, to prepare for the impact of changing climatic conditions as applies to stormwater by:

- a. Preparing climate change vulnerability assessments;
- b. Gathering existing precipitation and climate change modelling data for your local region;
- c. Revising infrastructure design criteria and intensity duration frequency curves;
- d. Developing a Master Plan with short, medium and long-term goals to address flood risk areas associated with the Great Lakes shoreline and tributaries.
- e. Developing emergency response plans associated with anticipated flooding in flood plains and other low-lying or vulnerable areas.

BE IT FURTHER RESOLVED, that members of the Cities Initiative endeavor to integrate Low Impact Development (L.I.D.) approaches to stormwater management throughout communities, including areas of planned high density urbanization, and remove barriers that obstruct the application of green infrastructure.

BE IT FINALLY RESOLVED, that the Cities Initiative and its members seek support from federal, provincial, state authorities

- a. For a basin-wide public awareness campaign linking the effect of on-site stormwater management and runoff on Great Lakes and St. Lawrence water quality;
- b. To advance stormwater management through stormwater framework guidance materials, guidance and incentives for climate change adaptation, the removal of barriers to the application of new stormwater technologies or practices;
- c. To advance water quality monitoring, reporting and analyses associated with stormwater through coordination and sharing of data and reports collected at the Federal, Provincial, state, regional and local levels with a view to conducting comprehensive nearshore water quality studies and seeking solutions that will bring about desired improvements;
- d. to advance commitments or set goals with respect to stormwater to improve nearshore water quality, in agreements currently under renegotiation including the St. Lawrence



Great Lakes and St. Lawrence Cities Initiative
Initiative des villes des Grands Lacs et du Saint-Laurent

Plan, the Canada-Ontario Agreement Respecting Great Lakes Basin Ecosystem, and the Canada-US Great Lakes Water Quality Agreement;

- e. to recognize that stormwater management lacks funding and therefore municipalities request federal, provincial and state authorities to increase and strengthen funding for stormwater management;
- f. Seek funding from government sources, including Environment Canada's Great Lakes Sustainability Fund and the US Great Lakes Restoration Initiative, for municipal stormwater demonstration projects and the undertaking and analysis of nearshore water quality study results; and encourage more dedicated funding for green infrastructure through green infrastructure set asides in Canada's Strategic Infrastructure Fund and the U.S. Clean Water State Revolving Fund.

Signed this 16th day of June, 2011

Brian McMullan, Chair
Great Lakes and St. Lawrence Cities Initiative
Mayor of St. Catharines



Grands Lacs et St. Laurent - Cities Initiative
Alliance des Villes des Grands Lacs et du Saint-Laurent

GREAT LAKES AND ST. LAWRENCE CITIES INITIATIVE
ALLIANCE DES VILLES DES GRANDS LACS ET DU SAINT-LAURENT

RESOLUTION 2 – 2011M

SUPPORT FOR MEASURES TO PROMOTE SAFE SHIPMENT OF GOODS IN
THE GREAT LAKES AND ST. LAWRENCE REGION

WHEREAS, the Great Lakes and St. Lawrence provide a vital transportation corridor, and this marine highway stretches over 2,000 miles from Duluth to the Gulf of St. Lawrence; and

WHEREAS, the annual commerce of the Seaway is over 180 million metric tons and maritime transportation contributes to the economic vitality of our ports, harbors, communities and regions; and

WHEREAS, the long term prospects for continued growth of the world economy is such that doubling of maritime traffic will occur in intervals of 15-20 years; and

WHEREAS, two thousand different chemical products are being shipped by sea on a regular basis; and

WHEREAS, spill prevention and response planning has traditionally focused on spills of oil and gas from ships, and there is a need to recognize emerging issues such as spills from additional sources such as pipelines, and spills from additional cargo such as chemical and other materials; and

WHEREAS, the Great Lakes and St. Lawrence are the largest source of freshwater in the world, and provide drinking water to over 40 million people; and

WHEREAS, the Great Lakes and St. Lawrence despite their vast size make up a fragile and vulnerable ecosystem and continuous efforts are necessary to ensure their protection and restoration.

NOW, THEREFORE, BE IT RESOLVED, that the Great Lakes and St. Lawrence Cities Initiative encourages the U.S. and Canadian federal/ provincial, First nations and tribes to work collaboratively with municipal governments and other parties to support all measures to promote the safe shipment of goods in the Great Lakes and St. Lawrence; and



Great Lakes and St. Lawrence Cities Initiative
Alliance des villes des Grands Lacs et de Saint-Laurent

BE IT FURTHER RESOLVED, that the Great Lakes and St. Lawrence Cities Initiative calls on the U.S. and Canadian federal, provincial and local governments to take a leadership role in development of measures to reduce spills, increase spill prevention, response and rehabilitation; and

BE IT FURTHER RESOLVED, that the Great Lakes and St. Lawrence Cities Initiative calls on the federal governments to hasten the development of spill prevention and response plans for chemical products, and other emerging cargo,

BE IT FINALLY RESOLVED, that the Great Lakes and St. Lawrence Cities Initiative calls on all three orders of government to work co-operatively to ensure that sufficient resources, funding and training is provided to ensure safe transportation of cargo on the Great Lakes and St. Lawrence.

Signed this 16th day of June, 2011

Brian McMullan, Chair
Great Lakes and St. Lawrence Cities Initiative
Mayor of St. Catharines



GREAT LAKES AND ST. LAWRENCE CITIES INITIATIVE
ALLIANCE DES VILLES DES GRANDS LACS ET DU SAINT-LAURENT

RESOLUTION 3 – 2011M

IMPACT OF LOCAL INVESTMENT ON
THE GREAT LAKES AND ST. LAWRENCE

WHEREAS, the Great Lakes and St. Lawrence River system is a significant natural resource and ecosystem upon which millions rely for drinking water and recreation, as well as being the cornerstone for industry and a vibrant regional economy; and

WHEREAS, the Great Lakes and St. Lawrence Cities Initiative is a coalition of more than 70 U.S. and Canadian mayors and locally elected officials representing over 13 million citizens, working to advance the protection and restoration of the Great Lakes and St. Lawrence River and to help ensure the resource is managed in a sustainable manner for generations to come; and

WHEREAS, the Great Lakes and St. Lawrence Cities Initiative recognizes that mayors and local elected officials are at the frontline addressing issues concerning the Great Lakes and St. Lawrence and serve as catalysts for action to protect and restore the Great Lakes and St. Lawrence; and

WHEREAS, a 2008 study conducted by the Great Lakes and St. Lawrence Cities Initiative and the Great Lakes Commission found that local governments around the Great Lakes and St. Lawrence River invest an estimated \$15 billion annually in efforts to protect and restore the resource; and

WHEREAS, investment in the Lakes and River results in a multitude of benefits, including jobs creation, quality of life improvements, environmental benefits and economic vitality; and

WHEREAS, the Great Lakes and St. Lawrence Cities Initiative acknowledges the significance of federal investment in the region through the American Recovery and Reinvestment Act, the Great Lakes Restoration Initiative and the Infrastructure Stimulus Fund of Canada and the positive effects these investments have had on the region and the resource; and

WHEREAS, the Great Lakes and St. Lawrence River region contains a great deal of aging water and wastewater infrastructure that needs to be brought up to date, and



there is an urgent need to invest in repairing and replacing this aging infrastructure and this represents one of the major investment deficits facing the region;

WHEREAS, funding for green infrastructure, a sustainable approach that can compliment and extend the life of traditional grey infrastructure, has not historically been a priority for federal, state or provincial governments, though there has been some movement towards dedicated funding, as exemplified in the 2009 American Recovery and Reinvestment Act 20% set aside for green infrastructure projects.

NOW, THEREFORE, BE IT RESOLVED, that the Great Lakes and St. Lawrence Cities Initiative (Cities Initiative) encourages the continued commitment of local governments to invest to protect, restore and promote the Great Lakes and the St. Lawrence River; and

BE IT FURTHER RESOLVED, that the Cities Initiative encourages other orders of government to continue their commitment to protect, restore and promote the Great Lakes and the St. Lawrence through increased and sustained investment in this vital resource; and

BE IT FURTHER RESOLVED, that the Cities Initiative urges that all orders of government improve tracking and documenting the economic impact of investment in the Great Lakes and St. Lawrence, including job creation; and

BE IT FINALLY RESOLVED, that the Cities Initiative calls for dedicated funding for green infrastructure in both Canada and the U.S. through green infrastructure set asides in Canada's Strategic Infrastructure Fund and the U.S. Clean Water State Revolving Fund as a means to help address aging water and wastewater infrastructure issues throughout the region and country.

Signed this 16th day of June, 2011

Brian McMullan, Chair
Great Lakes and St. Lawrence Cities Initiative
Mayor of St. Catharines



GREAT LAKES AND ST. LAWRENCE CITIES INITIATIVE
ALLIANCE DES VILLES DES GRANDS LACS ET DU SAINT-LAURENT

RESOLUTION 4 – 2011M

**CHICAGO AREA WATERWAY SYSTEM 21ST CENTURY-
STOPPING ASIAN CARP AND OTHER INVASIVE SPECIES**

WHEREAS, Over 180 invasive species are already in the Great Lakes and St. Lawrence and are doing extensive damage to the ecosystem and the economy; and

WHEREAS, threats of more introductions are present and will continue in the foreseeable future; and

WHEREAS, one of the greatest threats is the Asian carp, which has migrated through the Mississippi and Illinois Rivers and is approaching Lake Michigan; and

WHEREAS, one of the most significant pathways for the Asian Carp and other invasive species is the Chicago Area Waterway System (CAWS); and

WHEREAS, CAWS was created over 100 years ago to reverse the flow of the Chicago River in order to carry treated wastewater away from Lake Michigan, and also to enhance transportation and improve flood control in the region; and

WHEREAS, much has changed in those 100 years, and there is currently an opportunity to develop ways to bring CAWS into the 21st century in a way that can stop the passage of invasive species in both directions, and at the same time improve water quality, transportation, and flood control; and

WHEREAS, the Great Lakes and St. Lawrence Cities Initiative (Cities Initiative) together with the Great Lakes Commission (GLC) is leading an expedited project to develop options for bringing about such improvements to CAWS.

NOW, THEREFORE, BE IT RESOLVED, that the Cities Initiative gives its full support to this work to develop options for CAWS; and

BE IT FURTHER RESOLVED, that the Cities Initiative fully supports the efforts of state, provincial, and Federal governments to keep the Asian carp out of the Great Lakes in the short and mid-term while long term solutions are being developed; and



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A joint effort of the Great Lakes and St. Lawrence

BE IT FURTHER RESOLVED, that the Cities Initiative and the GLC will work cooperatively with the full range of stakeholders in this project, especially with the U.S. Army Corps of Engineers (US ACE) and the Metropolitan Water Reclamation District of Greater Chicago (MWRD); and

BE IT FINALLY RESOLVED, that the Cities Initiative encourages US ACE and MWRD to cooperate fully with the Cities Initiative and GLC to share information and to make maximum use of the work done by the Cities Initiative and GLC in the CAWS 21 project so that a permanent solution can be found and implemented to prevent the passage of invasive species through this waterway and to bring about the needed improvements in water quality, transportation, and flood control.

Signed this 16th day of June, 2011

Brian McMullan, Chair
Great Lakes and St. Lawrence Cities Initiative
Mayor of St. Catharines



Great Lakes and St. Lawrence Cities Initiative
Alliance des villes des Grands Lacs et du Saint-Laurent

GREAT LAKES AND ST. LAWRENCE CITIES INITIATIVE
ALLIANCE DES VILLES DES GRANDS LACS ET DU SAINT-LAURENT

RESOLUTION 6 – 2011M

ENDORISING GREEN MARINE

WHEREAS, the maritime industry is adopting voluntarily common objectives to improve its environmental performance; and

WHEREAS, the constituents of the maritime industry unite with the aim of applying a voluntary environmental policy on the whole Great Lakes and the St-Lawrence River corridor; and

WHEREAS, Green marine is an initiative of associations representing the maritime industry of Canada and the United States, including American Great Lakes Ports Association, St-Lawrence Shipowners Association, Association of Canadian Port Authorities, Canadian Shipowners Association, Chamber of Marine commerce, Shipping Federation of Canada, Ontario Marine Transportation Forum, St-Lawrence Economic Development Council (Sodes), and United States Great Lakes Shipping Association; and

WHEREAS, the main goals of Green Marine are to 1). strengthen environmental performance through a process of continuous improvement; 2). build strong relations with Great Lakes – St. Lawrence Waterway stakeholders; and 3). heighten understanding of the industry’s activities and environmental benefits; and

WHEREAS, the maritime industry recognizes the environmental impacts linked with its activities, and it takes action by mobilizing around seven major environmental issues: Aquatic invasive species; Pollutant air emissions: sulphur oxides (SOx) and nitrogen oxides (NOx); Greenhouse gases (GHGs); Cargo residues; Oily water; Conflicts of use in ports and terminals (noise, dust, odors and light); and Environmental leadership; and

WHEREAS, every year the participants of Green Marine measure their environmental performance according to the criteria established for each of the issues which apply to them. The collective results, and for each of the participants, are then communicated with the general public in an annual report produced by Green Marine; and

WHEREAS, Green Marine aims at concrete and measurable improvement of the environmental performance of the maritime industry of the Saint Lawrence and the Great



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Lakes. To meet this objective, Green Marine adopted a set of guiding principles. In addition to respecting laws and applicable regulations, every company that joins Green Marine agrees to: 1). demonstrate corporate leadership in the search for best environmental practices in accordance with a sustainable development approach; 2). carry out its activities in a responsible manner with a view to minimizing its environmental impacts; 3). aim for continuous improvement of its environmental performance; 4). develop and promote voluntary protection measures; 5). integrate sustainable development practices that are technically and economically achievable; 6). collaborate with governments and citizen groups in the progressive implementation of the action plans arising from this program; and 7). actively participate in an integrated management approach for the St. Lawrence which includes collaboration with all the other actors at the local, regional, national and international levels; and

WHEREAS, Green Marine has 44 members including domestic and foreign shipowners, port authorities, stevedoring companies, terminal operators and shippers; and

WHEREAS, Green Marine has 28 supporters which endorse the environmental program either symbolically or through the provision of services, including: governments; municipalities; communities; and environment groups.

NOW, THEREFORE, BE IT RESOLVED, that the Great Lakes and St. Lawrence Cities Initiative supports the implementation of Green Marine's environmental program and shows its support for this initiative of sustainable development undertaken by the maritime industry by becoming a Supporter of Green Marine.

Signed this 16th day of June, 2011

Brian McMullan, Chair
Great Lakes and St. Lawrence Cities Initiative
Mayor of St. Catharines



GREAT LAKES AND ST. LAWRENCE CITIES INITIATIVE
ALLIANCE DES VILLES DES GRANDS LACS ET DU SAINT-LAURENT

RESOLUTION 7 – 2011M

PROTECTION OF DRINKING WATER INTAKES AND TRIBUTARIES

Submitted by the Metropolitan Community of Québec

WHEREAS, the Great Lakes-St. Lawrence system supplies drinking water to close to 40 million citizens in the United States and Canada; and

WHEREAS, over 10% of the population of the United States (30 M inhabitants) and 30% of the population of Canada (10 M inhabitants) live within the Great Lakes and St. Lawrence system; and

WHEREAS, in addition to representing a major source of drinking water, the Great Lakes-St. Lawrence basin is used for swimming, recreation and fishing purposes; and

WHEREAS, it is the duty of the municipalities located in the Great Lakes-St. Lawrence basin to protect this water for the current good of their citizens and that of future generations; and

WHEREAS, the costs inherent in treating water are generally higher than those resulting from regulatory protection measures; and

WHEREAS, human actions and activities carried out in the Great Lakes-St. Lawrence River basin, and more specifically those carried out in the watersheds of drinking water intakes, can be detrimental to the quality of water in these systems; and

WHEREAS, some of these actions should be modified, monitored or prohibited, or be the subject of more in-depth studies in order to reduce the likelihood of contamination of the raw water flowing into the water intakes, the Great Lakes and the St. Lawrence River; and

WHEREAS, national, provincial and state laws and regulations contribute to protecting sources of drinking water, but these laws and regulations are sometimes inadequate and not really adapted to certain local situations.



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NOW, THEREFORE, BE IT RESOLVED, that the Great Lakes and St. Lawrence Cities Initiative (Cities Initiative) urges its members to introduce any regulatory action necessary for protecting the Great Lakes and St. Lawrence River tributaries on their territories, and more specifically the tributaries where drinking water intakes are located; and

BE IT FURTHER RESOLVED, that the Cities Initiative disseminate all information likely to help its members implement appropriate measures for protecting watercourses, including through its website; and

BE IT FINALLY RESOLVED, that the Cities Initiative adequately publicize the measures put in place to that effect by its various members.

Signed this 16th day of June, 2011

Brian McMullan, Chair
Great Lakes and St. Lawrence Cities Initiative
Mayor of St. Catharines



GREAT LAKES AND ST. LAWRENCE CITIES INITIATIVE
ALLIANCE DES VILLES DES GRANDS LACS ET DU SAINT-LAURENT

RESOLUTION 8 – 2011M

DEVELOPMENT AND CONSIDERATION OF SUSTAINABLE URBAN WATER
MANAGEMENT PRINCIPLES

Submitted by the Milwaukee Metropolitan Sewerage District and the City of Milwaukee

WHEREAS, the Great Lakes and St. Lawrence Cities are the population centers of the Great Lakes and St. Lawrence watershed; and

WHEREAS, complex challenges such as population growth, climate change, aging infrastructure, and changing regulatory climates present financial constraints on the Great Lakes and St. Lawrence Cities' ability to reinvest in their water infrastructure; and

WHEREAS, it is incumbent on the Great Lakes and St. Lawrence Cities to insure that they protect the Great Lakes and St. Lawrence watershed by minimizing the negative impacts of their water usage, wastewater discharges, and stormwater runoff on the watershed; and

WHEREAS, utilizing sustainable urban water management principles, such as green infrastructure and triple bottom line accounting, help to increase the efficiency of existing grey infrastructure while building local economic growth and competitiveness and advancing social equity.

NOW, THEREFORE, BE IT RESOLVED, that the Great Lakes and St. Lawrence Cities Initiative will develop Sustainable Urban Water Management Principles.

BE IT FINALLY RESOLVED, that these Sustainable Urban Water Management Principles will then be provided to all the Great Lakes and St. Lawrence Cities for their consideration in future water-related investments.

Signed this 16th day of June, 2011

Brian McMullan, Chair
Great Lakes and St. Lawrence Cities Initiative
Mayor of St. Catharines



GREAT LAKES AND ST. LAWRENCE CITIES INITIATIVE
ALLIANCE DES VILLES DES GRANDS LACS ET DU SAINT-LAURENT

RESOLUTION 9 – 2011M

WATER SUMMIT

Submitted by the City of Racine

WHEREAS, The Great Lakes and St. Lawrence River are a unique and fragile ecosystem that holds almost 20 % of the surface fresh water in the world; and

WHEREAS, The Great Lakes and St. Lawrence River directly support more than 1.5 million jobs and generate more than \$62 billion in US wages alone as well as provide drinking water for approximately 40 million U.S. and Canadian cities; and

WHEREAS, the resource faces a wide variety of threats, including toxic pollution, invasive species, storm water runoff, combined sewer overflows; habitat destruction, spills, and many others; and

WHEREAS, storm water runoff and combined sewer overflows present especially difficult mitigation challenges due to the financial costs associated with engineered and soft path control measures and the uncertainty in predicting the necessary capacity and success of these control measures due to effects of climate change; and

WHEREAS, mayors and their cities are the front line of defense in preventing these pollution sources from adversely impacting the quantity and quality of Great Lakes and St. Lawrence River water resources; and

WHEREAS, many science-based engineered and best management approaches have been developed in recent years to address the adverse the impacts of stormwater runoff and combined sewer overflows in cities across the region; and

WHEREAS, much of this expertise resides within the university and professional communities and are available resources to assist municipalities in these efforts; and

WHEREAS, The Johnson Foundation at Wingspread has previously brought together national and international experts to strategize on the most practical and timely solutions to these problems; and



Great Lakes and St. Lawrence Cities Initiative
Alliance des villes des Grands Lacs et du Saint-Laurent

WHEREAS, a Great Lakes-St. Lawrence Summit, hosted by the Mowat Centre and the Brookings Institution will be held this summer (2011) and will aim to identify ways to collaborate across the border and ensure prosperity and sustainability in the region; and the outcomes from this summit can help inform discussions at future Great Lakes-St. Lawrence summits.

NOW, THEREFORE, BE IT RESOLVED, that the Great Lakes and St. Lawrence Cities Initiative work with the City of Racine, The Johnson Foundation at Wingspread, other member cities, and external academic and professional organizations interested in participating to plan and carry out a summit to find meaningful solutions to water issues such as, storm water runoff and combined sewer overflow management; and

BE IT FURTHER RESOLVED, that this summit be held at a to be determined date during the fall of 2011 at The Johnson Foundation facilities located at Wingspread near Racine, Wisconsin; and

BE IT FINALLY RESOLVED, that this summit be expressly designed for mayors and their senior technical staff as a problem solving venue where all participants would leave with new and better ideas on the management of combined sewer overflows and stormwater runoff.

Signed this 16th day of June, 2011

Brian McMullan, Chair
Great Lakes and St. Lawrence Cities Initiative
Mayor of St. Catharines



GREAT LAKES AND ST. LAWRENCE CITIES INITIATIVE
ALLIANCE DES VILLES DES GRANDS LACS ET DU SAINT-LAURENT

RESOLUTION 10 – 2011M

RESOLUTION ENDORSING TOWN OF AJAX COUNCIL RESOLUTION
ON ASIAN CARP

WHEREAS, the attached Town of Ajax City Council resolution was proposed by the Town of Ajax after the date of nominations had passed, was voted by the membership to be read from the floor, was discussed by the members and then passed by the members at the Great Lakes and St. Lawrence Cities Initiative Annual Members Meeting on June 15, 2011 in Niagara Falls.

WHEREAS, at the meeting, members discussed the need for prompt action to prevent Asian Carp, the need to increase public awareness on Asian Carp impacts and the need for increased public input into Asian Carp projects.

NOW THEREFORE BE IT RESOLVED, that the following resolution calling for greater public input and meeting on preventing Asian Carp from reaching the Great Lakes and St. Lawrence was endorsed by the membership on the condition that:

- This resolution supports the earlier GLSLCI members' resolution calling for immediate action to prevent the entry of Asian carp into the Great Lakes and St. Lawrence River
- A public meeting would not in any way act to delay action needed to prevent Asian Carp from entering the Great Lakes and St. Lawrence
- Regular reports on progress on Asian Carp be made publicly available.

BE IT FURTHER RESOLVED, that the Great Lakes and St. Lawrence Cities Initiative request that a public meeting be held in Canada on actions to prevent Asian Carp from entering the Great Lakes and St. Lawrence, and that the Army Corps of Engineers be invited to hear the comments of Canadian municipalities, other stakeholders and members of the public about the impacts of invasive Asian Carp on shared international waters.

Signed this 16th day of June, 2011

Brian McMullan, Chair
Great Lakes and St. Lawrence Cities Initiative
Mayor of St. Catharines



Extract of the Minutes of Council May 9, 2011

The following is a recommendation ratified by Council of the Town of Ajax at its regular Meeting of Council held May 9, 2011

Invasive Asian Carp Species in Great Lakes

Moved by: C. Jordan
Seconded by: P. Brown

WHEREAS the transfer of invasive Asian Carp (an aquatic nuisance species) into the Great Lakes poses a significant threat to the health and welfare of Canadians and Americans; and,

WHEREAS the U.S. Army Corps of Engineers was authorized by U.S. Congress in 2007 to prevent the movement of aquatic species between the Mississippi River Basin and the Great Lakes Basin; and,

WHEREAS, according to a 2009 Risk Assessment conducted by the Canadian Department of Fisheries and Oceans, the time has come to take decisive, co-ordinated actions to protect the Great Lakes from reaching the avoidable, irreversible ecological "tipping point" that is anticipated to result from an Asian Carp invasion; and,

WHEREAS a permanent, sustainable solution to the proliferation of Asian Carp in the Great Lakes Basin requires re-establishing the hydrologic separation between the Mississippi River Basin and the Great Lakes Basin in the Greater Chicago area, as confirmed in Resolution 8-2010M approved by the members of the Great Lakes and St. Lawrence Cities Initiative in 2010; and,

WHEREAS the complementary "Statement of Unity" respecting Asian Carp approved by the members of the Great Lakes and St. Lawrence Cities Initiative in 2010 established a series of short term (2010), mid term (2011-2012) and long term (2013 and beyond) actions; and,

WHEREAS the Statement of Unity did not anticipate the need for and appropriateness of conducting public hearings regarding Asian Carp as an international pollutant under Section 310(a) of the *Clean Water Act* of the U.S.A. to allow citizens and stakeholders in U.S. and Canadian Great Lakes communities who are concerned about the impact of an Asian Carp invasion to provide comments directly to the U.S. Army Corps of Engineers; and,

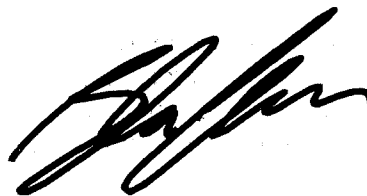
WHEREAS the above-noted Resolution and Statement of Unity were endorsed as an expression of shared widespread concern about the threats that invasive Asian Carp would pose to ecological conditions, habitat and recreational activities along Great Lakes and St. Lawrence shorelines and tributaries, yet Canadian municipalities, stakeholders and citizens have not been provided with the opportunity to express their concerns directly to the U.S. Army Corps of Engineers, as the U.S. *Clean Water Act* does not require that public hearings be conducted in Canada or, more specifically, in Ontario and Quebec;

NOW THEREFORE BE IT RESOLVED, that the comments and recommendations set out in the Toronto and Region Conservation Authority report entitled "Great Lakes and Mississippi River Interbasin Feasibility Study-Invasive Asian Carp Species", dated April 29, 2011, and the comments of Great Lakes United to the U.S. Army Corps of Engineers (USACE), dated March 31, 2011, regarding the "Great Lakes and Mississippi Interbasin Feasibility Study" be endorsed;

BE IT FURTHER RESOLVED, that the members of the Great Lakes-St. Lawrence Cities Initiative, other stakeholders and the public be afforded an opportunity to convey their views about the serious adverse impacts of Asian Carp, on recreational activities and commercial fisheries, as identified by both the Ontario Government and Environment Canada and valued at approximately \$400 million CDN per year, and other potentially costly impacts, in a public hearing conducted in Canada forthwith, and that USACE provide regular opportunities for discussion about their progress in public forums, at least two times per year, in Canada;

BE IT FINALLY RESOLVED, that this resolution be sent to the Board of Directors of the Great Lakes-St. Lawrence Cities Initiative requesting that said resolution be considered and approved at the Annual General Meeting being held on June 16, 2011 in Niagara Falls, Ontario, Canada and then sent forthwith to the U.S. Department of State with a request that Foreign Affairs host a public hearing in Canada where the U.S. Army Corps of Engineers team would be invited to hear the comments of Canadian municipalities, other stakeholders and members of the public about the impacts of invasive Asian Carp on shared international waters.

CARRIED



Blair Labelle, Deputy Clerk

Item AUTH7.8

TO: Chair and Members of the Authority
Meeting #4/11, April 29, 2011

FROM: Deborah Martin-Downs, Director, Ecology

RE: **GREAT LAKES AND MISSISSIPPI RIVER INTERBASIN FEASIBILITY STUDY**
Invasive Asian Carp Species

KEY ISSUE

Support for comments sent by Great Lakes United to the U.S. Army Corps of Engineers on the Great Lakes and Mississippi River Interbasin Feasibility Study (GLMRIS) to prevent the spread of the invasive Asian carp species between the Great Lakes and Mississippi River.

RECOMMENDATION

WHEREAS Toronto and Region Conservation (TRCA) objectives for Healthy Rivers and Shorelines and Regional Biodiversity are supported by fisheries management plans that strongly recommend actions to prevent the introduction and spread of aquatic invasive species;

AND WHEREAS the Asian carp are aquatic invasive species that pose a threat to the biodiversity and nearshore habitat structure of Lake Ontario and potentially the lower reaches of relatively large river systems within the TRCA jurisdiction, such as the Humber and Rouge Rivers and Duffins Creek;

THEREFORE LET IT BE RESOLVED THAT TRCA endorse the comments contained in the letter on the Great Lakes and Mississippi River Interbasin Feasibility Study (GLMRIS), dated March 31, 2011, sent by the Great Lakes United (GLU) to the U.S. Army Corps of Engineers to prevent the spread of Asian carp between the Great Lakes and Mississippi;

AND FURTHER THAT staff report back to the Authority with progress on GLMRIS.

BACKGROUND

TRCA was approached by GLU, an international citizens coalition dedicated to protecting and restoring the Great Lakes-St. Lawrence River Ecosystem, and asked to consider endorse their comment letter as a means of helping to prevent the spread of Asian carp into the Great Lakes and St. Lawrence River. The membership of GLU spans a diverse spectrum of interests, organizations and individuals, including citizens, environmentalists, conservationists, labour unions, First Nations, hunters, anglers, academics, and progressive business and industry.

GLU is very concerned about an Asian carp invasion to the international waters of the Great Lakes and St. Lawrence River. One of the most significant opportunities to help stop the Asian carp from spreading is the Great Lakes and Mississippi River Interbasin Feasibility Study. This study was authorized by U.S. Congress in 2007 mandating that the U.S. Army Corps of Engineers (the Corps) determine how to prevent the two-way transfer of invasive fish species through the Chicago area waterways, as well as all the hydrological connections between the Great Lakes and Mississippi River watershed.

The Corps recently announced Chicago District's Notice of Intent to Prepare a Draft Environmental Impact Statement; Initiate the Public Scoping Period; and host Public Scoping Meetings for the GLMRIS. GLU submitted, in the form of a letter with support from various groups (including TRCA), specific comments meant to improve the GLMRIS and ensure the ecological and economic health of these waters and basins are protected from the impacts of aquatic invasive species. The comments are summarized as:

- the need for the Corps to adhere to the U.S. Congressional authority to "*prevent*" the spread of aquatic invasive species between the Great Lakes and Mississippi River basins and not just "*reduce the risk*";
- accelerate the timeline for completion of the GLMRIS;
- prioritize the Chicago Area Waterway System portion of the GLMRIS;
- provide for public comment as the study proceeds; and
- conduct a public hearing in Canada.

RATIONALE

The term "Asian carp" refers to four different species of fish: Bighead, Black, Grass and Silver Carp. The Bighead and Silver Carp are the species closest to invading the Great Lakes from the Chicago area waterways. In 2005, the Ontario Ministry of Natural Resources (OMNR) introduced legislation making it illegal to possess, sell or import live Asian carp. A risk assessment study undertaken by Fisheries and Oceans Canada (DFO) in 2009 concluded that if Asian carp successfully colonized the Great Lakes there is a high probability they would spread across the Great Lakes basin. The study stresses that such an invasion would have a significant impact on the food web and trophic (community) structure of aquatic systems. Furthermore, the Ontario government has stated that if Asian carp enters the Great Lakes there will be serious adverse impacts on Ontario's recreational and commercial fisheries. Environment Canada has made a similar assessment.

The various fisheries management plans (FMP) written for watersheds within the TRCA jurisdiction all recognize that aquatic invasive species disrupt the balance of native aquatic communities and are considered one of the most serious threats to biodiversity. The most recently completed FMP, the *Rouge River Watershed Fisheries Management Plan* (TRCA and OMNR, 2010), recommends that priority emphasis should be placed on monitoring and preventing the spread of invasive and exotic fish species. To date, the Asian carp species of concern have not been collected by the TRCA regional or waterfront monitoring programs but field crews are alerted to the risk and know to bring such species to the attention of our partner agencies with mandates for fisheries management (i.e. OMNR and DFO).

The Toronto and Region Remedial Action Plan (RAP) has identified, as a first priority, the protection of existing fish habitat with a focus on coastal wetlands and nearshore physical habitat (e.g. reefs and spawning shoals). RAP states that protecting these existing habitats can be through the firm and effective enforcement of policies and guidelines, which would include legislation that speaks to preventing invasive species introductions. A secondary priority of RAP is to rehabilitate waterfront areas where habitat potential is very high (e.g. Rouge Marshes and Toronto Island wetlands), areas that are vulnerable to destruction should Asian carp enter the system. Over the recent decades, significant funding has been provided through RAP for extensive habitat rehabilitation along the Toronto waterfront with continued opportunities for future work. In this context, failing to keep Asian carp out of Lake Ontario could be a major setback to achieving RAP and TRCA priorities for fish habitat.

*Algonquin Eco Watch*Alliance for the Great Lakes*APT Environment*Atchafalaya
 Basinkeeper*Barrington Area Conservation Trust*Blanchard River Watershed Partnership*Blue Water
 Sportfishing Association*Canadian Auto Workers-Windsor Regional Environment Council*Canadian
 Environmental Law Association*Citizens Concerned for Michipicoten Bay*Clean Water Action*Clean
 Water Action Alliance of Minnesota*Committee on the Middle Fork Vermilion River*Congregation of St.
 Joseph*Crop Plus*Duck Creek Watershed Assembly*Ducks Unlimited- Great Lakes/Atlantic
 Region*Ecojustice*Environment America*Environment Illinois*Environment New York*Environment
 Ohio*Environmental Defenders of McHenry County*Essex County Field Naturalists' Club*Fish On II
 Charters*Flint River Watershed Coalition*Forest City Flyfishing Club*Freshwater Future*Friends of Big
 Creek*Friends of the Mississippi River*Friends of the Salmon River*Friends of Wetlands*Georgian Bay
 Association*Great Lakes Environmental Law Center*Great Lakes Sport Fishermen*Great Lakes
 United*Gulf Restoration Network*Indiana Wildlife Federation*Iowa Environmental Council*Izaak Walton
 League of America - Minnesota Division*Izaak Walton League of America - Wisconsin Division*Izaak
 Walton League of America- A.D. Sutherland Chapter*Izaak Walton League of America- Dwight Lydell
 Chapter*Izaak Walton League of America- Great Lakes Committee*Izaak Walton League of America- New
 York State Division*Izaak Walton League of America- Ohio Division*Kalamazoo River Sturgeon for
 Tomorrow*Kentucky Waterways Alliance*Lake Erie Charter Boat Association*Lake Erie Region
 Conservancy*Lake Erie Waterkeeper*Lake Ontario Trout & Salmon Association*Land Trust
 Alliance*London and District Labour Council- Environment Committee*Luna Pier Harbour Club*Michigan
 Charter Boat Association*Michigan Environmental Council*Michigan United Conservation Clubs*Michigan
 Wildlife Conservancy*Midwest Environmental Advocates*Milwaukee Riverkeeper*Minnesota B.A.S.S.
 Federation*Minnesota Center for Environmental Advocacy*Minnesota Trout Association*Minnesota Trout
 Unlimited*Missouri Coalition for the Environment*National Parks Conservation Association*National
 Wildlife Federation*Natural Resources Defense Council*Nature Abounds*Nature Center at Shaker
 Lakes*New York League of Conservation Voters*Ohio Environmental Council*Ontario Shorewalk
 Association*Ottawa Riverkeeper*Pelican River Watershed District*Pentwater Sportfishing
 Association*Prairie Rivers Network*Quinte Conservation*River Alliance of Wisconsin*River Network*Rock
 River Coalition*Salmon Unlimited of Illinois*Save Lake Superior Association*Save the Dunes*Save The
 River*Shaker Lakes Garden Club*Sierra Club Ontario*Sierra Club-Binational Great Lakes
 Committee*Sisters of St. Francis of Penance and Christian Charity*St. Clair Region Conservation
 Authority*St. Louis River Alliance*Stray Cat Charter Fishing*Tennessee Clean Water Network* The Lake
 Huron Centre for Coastal Conservation*Thunder Bay Salmon Association*Tip of the Mitt Watershed
 Council*Toronto and Region Conservation Authority*Town and Country Resource Conservation and
 Development*Trollers Unlimited*Upper Peninsula Environmental Coalition*Upper Thames River
 Conservation Authority*Vera Cruz Yacht Club*Welland River Keepers*Wisconsin Great Lakes
 Coalition*Wisconsin Lakes *Wisconsin Land & Water Conservation Association*Wisconsin Wildlife
 Federation*

March 31, 2011

Mr. David Wethington
 U.S. Army Corps of Engineers
 111 North Canal Street, 6th Floor
 Chicago, IL 60606

**Re: Notice of Intent to Prepare a Draft Environmental Impact Statement (EIS), Initiate the
 Public Scoping Period and Host Public Scoping Meetings for the Great Lakes and
 Mississippi River Interbasin Study (GLMRIS)**

Dear Mr. Wethington,

Please accept these comments submitted on behalf of the following 108 organizations, as well as
 our hundreds of thousands of members across the Great Lakes, St. Lawrence and Mississippi
 River basins, in both the United States and Canada, regarding the U.S. Army Corps of Engineers

(Corps), Chicago District's Notice of Intent to Prepare a Draft Environmental Impact Statement (EIS), Initiate the Public Scoping Period and Host Public Scoping Meetings for the Great Lakes and Mississippi River Interbasin Study (GLMRIS). We represent environmental, conservation, fishing, boating, labour and religious groups with a shared interest in preventing the ecological and economic harm caused by aquatic invasive species.

The undersigned organizations are extremely concerned about an Asian carp invasion to the international waters of the Great Lakes and St. Lawrence River, as well as concerned about the two-way transfer of aquatic invaders between the Mississippi and Great Lakes basins. We are submitting specific recommendations to improve GLMRIS and ensure the ecologic and economic health of these great basins is protected from damaging aquatic nuisance species.

Prevent Aquatic Nuisance Species (ANS) Transfer

The GLMRIS study was authorized by the U.S. Congress in 2007 to “prevent” rather than “reduce the risk” of aquatic nuisance species movement between the Great Lakes and Mississippi River basin¹. In other words, Congress requires the Corps to only be developing solutions that are 100% effective and it is beyond the scope of the Corps’ statutory authorization for the GLMRIS study to look at any solutions that would not achieve prevention.

We believe the only permanent and sustainable solution to the Asian carp threat to the Great Lakes, and the threat of future movement of invasives, is the hydrologic separation of the Great Lakes and the Mississippi River basin because if water does not flow between the two watersheds, water-based plants, animals and diseases will not be able to migrate actively or passively. The Corps has inappropriately broadened GLMRIS to study “risk reduction”² which is neither what Congress told them to do, nor a credible strategy to prevent ANS movement through the Chicago Area Waterway System (CAWS) or any of the other aquatic connections. Short-term, emergency activities have already been authorized around the CAWS and in Eagle Marsh, Indiana, and funded separately from GLMRIS. We support these emergency activities. However, expanding the scope of GLMRIS to address risk reduction will divert resources from determining how to achieve prevention as fast as possible.

¹ Water Resources Development Act of 2007 (“2007 WRDA”), Pub. L. No. 110-114, § 3061(d) (2007) says: (d) Feasibility Study- The Secretary, in consultation with appropriate Federal, State, local, and nongovernmental entities, shall conduct, at Federal expense, a feasibility study of the range of options and technologies available to *prevent* the spread of aquatic nuisance species between the Great Lakes and Mississippi River Basins through the Chicago Sanitary and Ship Canal and other aquatic pathways

² U.S. Army Corps of Engineers (“USACE”), *Project Management Plan: Great Lakes and Mississippi River Basin Interbasin Feasibility Study 1* (2010), and U.S. Army Engineer Division, Great Lakes and Ohio River (“CELRD”), USACE, *Memorandum for Record* ¶ 2, dated December 15, 2010, available at: http://glmr.is.anl.gov/documents/docs/GLMRIS_prevent_whitepaper.pdf

Produce Results Before 2015

The GLMRIS study takes too long. The Chicago portion of the study is not predicted to be complete until mid-2015, over four years from now. Corps staff indicated in at least one public meeting that this official timeline is optimistic and the actual end date is likely to be even later. The Corps should acknowledge the urgency of finding a permanent solution, narrow the scope of investigation to hydrological separation, condense the timeline and produce final results for the Chicago portion of GLMRIS within 18 months rather than mid-2015.

Further, additional study requirements in GLMRIS, such as a review of all invasive species that could move between the two basins, should not extend the study timeline and should not influence the mandate to “prevent” aquatic invasive species movement between the two basins.

Prioritize Solutions for the Chicago Area

The obvious and critical threat of Asian carp establishing in the Great Lakes is a reason for urgent action. The Corps should study and provide a solution for the CAWS as the first priority, and where needed, act on other aquatic pathways, based on the greatest likelihood of invasion. If necessary, the Corps should consider a phased approach to separating the two watersheds, prioritizing measures to prevent Asian carp migration while still taking steps that will lead to permanent prevention of all movement of aquatic nuisance species in both directions.

Integrate Relevant Research into GLMRIS

In order to accelerate the time frame of the study and save resources, the Corps should not duplicate relevant work that has already been done or is currently being performed. The Corps should integrate the scientific results from the binational risk assessment of Asian carp being facilitated by the Great Lakes Fishery Commission, and the identification of hydrological separation options being developed by the Great Lakes Commission and the Great Lakes-St. Lawrence Cities Initiative into GLMRIS, after an independent critical review.

Provide for Public Review and Input

The Corps should create an opportunity for regular discussion forums during which the public can interact with technical staff and consultants for detailed questions and answers on the progress of GLMRIS. We recommend forums held at least two times a year, in addition to the requirements of the NEPA process.

Request Hearing in Canada

An Asian carp invasion to the Great Lakes is not just a threat to Americans; it presents a serious threat to the health and welfare of Canadians. Approximately 40 percent of the shoreline of the Great Lakes and 36 percent of their waters lie within the boundaries of Ontario, Canada. The majority of the St. Lawrence River basin is in Québec, Canada. A risk assessment study conducted by the Canadian Department of Fisheries and Oceans concluded that if Asian carp successfully colonize the Great Lakes there is a high probability they would spread across the

Great Lakes basin and possibly even through the prairie provinces.³ The study stresses that such an invasion would have a significant impact on the food web and trophic structure of aquatic systems. Furthermore, the Ontario government has stated that if Asian carp enters the Great Lakes there will be serious adverse impacts on Ontario's recreational and commercial fisheries, which are valued at approximately CAD\$400 million per year.⁴ Environment Canada has made a similar assessment.⁵

In 2010 four not-for profit organizations in Canada requested the U.S. Secretary of State to formally request a public hearing in Canada regarding Asian carp as an international pollution threat, under section 310(a) of the *Clean Water Act*.⁶ A response to this petition was never received. The Department of State should request that Foreign Affairs host a public meeting in Canada where the Corps study team would be invited to hear comments from stakeholders in Canada who are concerned with the impact of an Asian carp invasion to shared international waters.

In summary, our organizations strongly encourage the Corps to adhere to the Congressional authority to "prevent" the spread of aquatic nuisance species between the Great Lakes and Mississippi River basins and not "reduce the risk"; accelerate the timeline for completion of GLMRIS; prioritize the CAWS portion of GLMRIS; provide for public comment as the study proceeds; and request a hearing in Canada.

Thank you for the opportunity to comment, and for seriously engaging in this study, which is critical to the health of the Great Lakes-St. Lawrence River and Mississippi River basins in both the United States and Canada. If you have any questions please do not hesitate to contact Jennifer Nalbene, Director, Navigation and Invasive Species for Great Lakes United at phone: (716) 213-0408 or email: jen@glu.org.

³ Department of Fisheries and Ocean Canada (Canadian Science Advisory Secretariat), *Risk Assessment for Asian Carp in Canada*. Department of Fisheries and Ocean Canada., 2009), at 19 – 27.

⁴ Brief of Amicus Curiae Her Majesty The Queen In Right of Ontario in Support of the State of Michigan's Motion For a Preliminary Injunction (31 December 2009).

⁵ Environment Canada, *Invasive Alien Species of the Month* (Environment Canada, undated), available at <<http://www.ec.gc.ca/eee-ias/default.asp?lang=En&n=8E8C2C22-1>>.

⁶ Petition on behalf of the Waterkeepers Alliance, Great Lakes United, Environmental Defence Canada and Georgian Bay Forever to the U.S. Secretary of State and to the Administrator of the U.S. Environmental Protection Agency concerning s. 310 of the *Clean Water Act*. May 2010



Correspondence Management System

Control Number: AX-11-001-5706

Printing Date: September 21, 2011 03:43:38



Citizen Information

Citizen/Originator: Brunjes, Jim

Organization: Texas Tech University System
Address: Box 42016, Lubbock,, TX 79409-2016

Constituent: N/A

Committee: N/A Sub-Committee: N/A

Control Information

Control Number: AX-11-001-5706 Alternate Number: N/A
 Status: For Your Information Closed Date: N/A
 Due Date: N/A # of Extensions: 0
 Letter Date: Sep 12, 2011 Received Date: Sep 21, 2011
 Addressee: AD-Administrator Addressee Org: EPA
 Contact Type: LTR (Letter) Priority Code: Normal
 Signature: N/A Signature Date: N/A
 File Code: 401_127_a General Correspondence Files Record copy
 Subject: Daily Reading File-Cross State Air Pollution Rule - Petition for Reconsideration Docket No. EPA-HQ-OAR-2009-0491
 Instructions: For Your Information -- No action required
 Instruction Note: N/A
 General Notes: N/A
 CC: OEAE - Office of External Affairs and Environmental Education
 OP - Office of Policy
 R6 - Region 6 -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
No Record Found.					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
(b) (6) Personal Privacy	OEX	OAR	Sep 21, 2011

History

Action By	Office	Action	Date
(b) (6) Personal Privacy	OEX	Forward control to OAR	Sep 21, 2011



TEXAS TECH UNIVERSITY SYSTEM™

Jim Brunjes
Vice Chancellor and Chief Financial Officer

RECEIVED
2011 SEP 21 AM 9:50
OFFICE OF THE
EXECUTIVE SECRETARIAL

September 12, 2011

Lisa P. Jackson
Office of the Administrator
Environmental Protection Agency
Room 3000, Ariel Rios Building
1200 Pennsylvania Ave. NW
Washington, DC 20004

Re: Cross State Air Pollution Rule – Petition for Reconsideration
Docket No. EPA-HQ-OAR-2009-0491

Dear Administrator Jackson:

I am writing on behalf of the Texas Tech University System in support of the August 23, 2011 Southwestern Public Service Company (SPS) petition for reconsideration and request for stay of the Cross State Air Pollution Rule (CSAPR).

As indicated in SPS's petition, EPA chose to include Texas in the CSAPR year-round emission reduction programs without providing the public with an opportunity to comment on that decision. Moreover, EPA is requiring SPS and other Texas utilities to comply with CSAPR beginning in 2012, a short five months after the rule was finalized. This requirement has significant consequences for our local economy and the wellbeing of the people of our community.

SPS serves our local area, and about half its power comes from coal. As the SPS petition indicates, to comply with this rule by Jan. 1, 2012, SPS will be forced to reduce operation of its coal-fired power plants and rely significantly more on natural gas-fired electric generation. As a result, CSAPR will drive up electricity costs significantly. SPS demonstrates in its petition that the cost of increasing its reliance on natural gas plants could be up to \$200 to \$250 million in 2012 alone. It is energy consumers like the Texas Tech University System that ultimately pay this cost.

The Texas Tech University System (TTUS) is composed of one health related and two general academic institutions. The TTUS encompasses seven academic campuses and centers, most of which are located in West Texas. The total enrollment across all

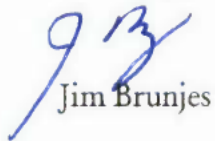
components is over 42,000 students. TTUS is headquarter in Lubbock and employs more than 18,000 faculty and staff. The annual combined budget of all components of the System totals more than \$1.46 billion.

We estimate that the increased energy costs will impact our operations (primarily in Lubbock and Amarillo) through increased utility costs of approximately \$1.6 million. For TTUS, a publicly funded System of Higher Education, there are only two sources to fund this increased cost, the State of Texas or our students. With the current state of the economy, the choice for the Texas Tech University System will no doubt manifest itself through increased costs to our students.

More importantly, as described in the SPS petition, we are concerned that CSAPR could harm the reliability of the electric system. We and all the people of the Texas Panhandle and Eastern New Mexico rely on the SPS electric system for our livelihoods and well-being. Especially after the record temperatures we've experienced this year, we believe it is vital that EPA design CSAPR and all of its other rules to ensure that our region has access to reliable electricity.

For these reasons, we urge you to grant SPS's petition and stay CSAPR pending reconsideration of the rule.

Sincerely,



Jim Brunjes

Vice Chancellor and Chief Financial Officer
Texas Tech University System
Mail Stop 42016
Lubbock, Texas 79409-2016



Correspondence Management System

Control Number: AX-11-001-5769

Printing Date: September 22, 2011 02:02:36



Citizen Information

Citizen/Originator: Mull, Stephen D

Organization: United States Department of State
Address: 2201 C Street, NW, Washington, DC 20520

Constituent: N/A

Committee: N/A Sub-Committee: N/A

Control Information

Control Number: AX-11-001-5769 **Alternate Number:** N/A
Status: For Your Information **Closed Date:** N/A
Due Date: N/A **# of Extensions:** 0
Letter Date: Sep 19, 2011 **Received Date:** Sep 22, 2011
Addressee: AD-Administrator **Addressee Org:** EPA
Contact Type: EML (E-Mail) **Priority Code:** Normal
Signature: SNR-Signature Not Required **Signature Date:** N/A
File Code: 401_127_a General Correspondence Files Record copy
Subject: Daily Reading File The National Security Affairs Calendar for the upcoming months
September 12, 2011-November 30, 2012
Instructions: For Your Information -- No action required
Instruction Note: N/A
General Notes: N/A
CC: Noah Dubin - OEX
OEAEE - Office of External Affairs and Environmental Education
OHS - Office of Homeland Security

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
No Record Found.					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
(b) (6) Personal Privacy	OEX	OITA	Sep 22, 2011

History

Action By	Office	Action	Date
(b) (6) Personal Privacy	OEX	Control Created	Sep 22, 2011
(b) (6) Personal Privacy	OEX	Forward control to OITA	Sep 22, 2011

201116671



United States Department of State

Washington, D.C. 20520

September 19, 2011

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MEMORANDUM FOR NATHAN D. TIBBITS
EXECUTIVE SECRETARY
NATIONAL SECURITY STAFF

SUBJECT: National Security Affairs Calendar

The National Security Affairs Calendar for the upcoming months is attached.

A handwritten signature in black ink, appearing to read "SD Mull".

Stephen D. Mull
Executive Secretary

Attachment:
As stated.

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September 19, 2011

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NATIONAL SECURITY AFFAIRS CALENDAR

ONGOING EVENTS

Sep 12-30	18th Regular Session of the Human Rights Council, Geneva
Sep 18-23	ASEAN Ministers of Energy Meeting, Brunei
Sep 19-20	66th United Nations General Assembly Non-Communicable Disease High-Level Session, New York
Sep 19-23	International Atomic Energy Agency (IAEA) General Conference, 55th Session, Vienna
Sep 19	Haiti Partners Ministerial Meeting, New York
Sep 20	66th United Nations General Assembly Desertification High-Level Session, New York
Sep 20*	Visit of Crown Prince Al-Mutahdee Billah of Brunei to Washington
Sep 20	Presidential and Legislative Elections in Zambia
Sep 20	Open Government Partnership (OGP) Summit, New York
Sep 20-23*	Visit of Prime Minister Cissé of Mali to Washington
Sep 21	66th United Nations General Assembly General Debate begins, New York

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- Sep 22 Subnational Legislative Elections in Saudi Arabia (Snap)
- Sep 22 Official Launch of the Global Counterterrorism Forum (GCTF), New York
- Sep 22 Inaugural Session of the Governing Council of the Community of Democracies, New York
- Sep 23 UN Conference on Facilitating the Entry into Force of the Comprehensive Nuclear Test Ban Treaty, New York
- Sep 23-25* 2011 World Bank/IMF Annual Meetings, Washington
- Sep 24 Legislative Elections in the United Arab Emirates
- Sep 24 Parliamentary Elections in Bahrain (Snap)-1st Round
- Sep 25-26 Asia-Pacific Economic Cooperation (APEC) Senior Officials' Meeting 3, San Francisco
- Sep 25* Visit of Prime Minister Barrow of Belize to Washington
- Sep 25-28 World Food Program (WFP) Conference, Bamako
- Sep 26 International Atomic Energy Agency (IAEA) Board of Governors Meeting, Vienna
- Sep 26-27* International Engagement Conference in Support of Republic of South Sudan (IEC), Washington

LOOKING FORWARD

- Sep 27-30 6th UN Internet Governance Forum (IGF), Nairobi
- Sep 27* Visit of Foreign Minister Portas of Portugal to Washington

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Sep 27-28* Visit of Foreign Minister Zarifi of Tajikistan to Washington

Sep 28* Visit of Foreign Minister Amr of Egypt to Washington

Sep 28 - Oct 1 4th Review Conference of the Treaty on Conventional Forces in Europe, Vienna

Sep 29* Visit of Foreign Minister Olugbenga Ashiru of Nigeria to Washington

Oct TBD Election of UN Security Council Non-Permanent Members

Oct 1 Parliamentary Elections in Bahrain (Snap)-2nd Round

Oct 2-5 2nd Meeting of the Sub-Group on Media Exchanges under the U.S.-Russia Bilateral Presidential Commission's Working on Education, Culture, Sports and Media, Moscow

Oct 3-28 UNGA First (Disarmament and International Security) Committee, New York

Oct 3* U.S.-Japan Economic Harmonization Initiative High-Level Meeting, Washington

Oct 5-6 North Atlantic Treaty Organization (NATO) Defense Ministers Meeting, Brussels

Oct 5-6 4th Pathways to Prosperity Ministerial Meeting, Santo Domingo

Oct 5-7 The Americas Competitiveness Forum, Santo Domingo

Oct 5* Visit of President Lobo of Honduras to Washington

Oct 9 Parliamentary Elections in Poland

Oct 9 Presidential Elections in Cameroon

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Oct 9-13 ASEAN Ministerial Meeting on Transnational Crimes (AMMTC), Bali

Oct 10-11 Summit on the Global Agenda 2011, Abu Dhabi

Oct 11 Presidential and Legislative Elections in Liberia

Oct 11* Visit of Prime Minister Luksic of Montenegro to Washington

Oct 13* U.S.-India Higher Education Summit, Washington

Oct 13* Visit of President Lee Myung-Bak for the Republic of Korea to Washington

Oct 13-14 Council of Europe Forum for the Future of Democracy, Limassol, Cyprus

Oct 14-15 G-20 Finance Ministerial, Paris

Oct 16-17 APEC Workshop on Terrorist Abuse of Non-Profit Organizations, Kuala Lumpur

Oct 17-18 International Congress on Energy Security, Geneva

Oct 17-21 IAEA: International Conference on the Safe and Secure Transport of Radioactive Materials, Vienna

Oct 17-20 7th UNESCO Youth Forum, Paris

Oct 18-22 ASEAN Defense Ministers' Meeting (ADMM) Retreat, Bali

Oct 18-19 International Energy Agency (IEA) Governing Board and Management Committee Ministerial-Level Meeting, Paris

Oct 21-23 World Economic Forum on the Middle East, Dead Sea, Jordan

Oct 23 Presidential Elections in Bulgaria

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Oct 23	Presidential and Legislative Elections in Argentina
Oct 24-28	International Telecommunication Union (ITU) Telecom World 2011, Geneva
Oct 27	Presidential Elections in Ireland
Oct 30	Presidential Elections in Kyrgyzstan
Oct 31*	U.S.-Indonesia Higher Education Summit, Washington
Nov TBD*	U.S.-Israel Strategic Dialogue, Washington
Nov 1-2	London International Cyber Conference, London
Nov 2	Regional Summit on Afghanistan, Istanbul
Nov 3-4	G-20 Summit, Cannes
Nov 5-6	Presidential and Legislative Elections in Nicaragua
Nov 5-6	Presidential Elections in Guatemala-2nd Round
Nov 7-9	APEC Business Advisory Council (ABAC) IV, Honolulu
Nov 8-9	Asia-Pacific Economic Cooperation (APEC) Concluding Senior Officials Meeting and Related Meetings, Honolulu
Nov 9*	U.S.-Vietnam Human Rights Dialogue, Washington
Nov 10	Asia-Pacific Economic Cooperation (APEC) Finance Ministerial, Honolulu
Nov 10-11	Asia-Pacific Economic Cooperation (APEC) CEO Summit, Honolulu

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Nov 11	Asia-Pacific Economic Cooperation (APEC) Ministerial Meeting, Honolulu
Nov 12-13	19th Asia-Pacific Economic Cooperation (APEC) Economic Leaders' Meeting, Honolulu
Nov 12	Parliamentary Elections in Denmark
Nov 13-15	India Economic Summit, Mumbai
Nov 14-18	International Atomic Energy Agency (IAEA) International Conference on Research Reactors, Rabat
Nov 14-18	International Education Week
Nov 14 (T)	Parliamentary Elections in Guyana
Nov 16-17	Visit of President Obama to Australia to Commemorate the 60th Anniversary of the U.S.-Australia Alliance
Nov 17-18	International Atomic Energy Agency (IAEA) Board of Governors Meeting, Vienna
Nov 17-19	ASEAN Summit and Related Meetings, Bali
Nov 17-18	2011 Black Sea Energy and Economic Forum, Istanbul
Nov 17	Plenary Meeting of the Contact Group on Piracy Off the Coast of Somalia, New York
Nov 19	East Asia Summit (EAS) Meeting, Bali
Nov 20	Parliamentary Elections in Spain
Nov 21 (T)	Parliamentary Elections in Egypt

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- Nov 22 International Energy Forum (IEF) Executive Board Meeting, Riyadh
- Nov 24 Presidential Elections in Gambia
- Nov 25 Parliamentary Elections in Morocco
- Nov 26 Parliamentary Elections in New Zealand
- Nov 28 (T) Presidential and Legislative Elections in the Democratic Republic of Congo
- Nov 28 - Dec 9 17th Session of the Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) and the 7th Session of the Conference of the Parties Serving as a Meeting of the Parties (CMP 7) to the Kyoto Protocol, Durban
- Nov 29 - Dec 1 4th High-Level Forum on Aid Effectiveness, Busan
- Dec 4 Parliamentary Elections in Croatia
- Dec 4 Parliamentary Elections in Russia
- Dec 5-22 Biological Weapons Convention 7th Review Conference, Geneva
- Dec 5 International Afghanistan Conference, Bonn
- Dec 6-7 Organization for Security and Cooperation in Europe (OSCE) Ministerial, Vilnius
- Dec 7-8 North Atlantic Treaty Organization (NATO) Foreign Ministers Meeting, Brussels
- Dec 9 Ministerial Conference on Internet Freedom, The Hague
- Dec 10 Presidential Inauguration in Argentina

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Dec 11 (T) Parliamentary Elections in Cote d'Ivoire

Dec 12-19 World Trade Organization (WTO) Ministerial Conference, Geneva

2012 Jan 16-19 5th World Future Energy Summit, Abu Dhabi

Jan 22 Presidential Elections in Finland-1st Round

Jan 23 - Feb 17 World Radiocommunications Conference 2012 (WRC-12), Geneva

Jan 25-29 World Economic Forum Annual Meeting, Davos-Klosters

Feb 3 48th Munich Security Conference, Munich

Feb 5 Presidential Elections in Finland-2nd Round

Feb 12 Presidential Elections in Turkmenistan

Feb 26 Presidential Elections in Senegal

Feb 27-28 Mobile World Conference, Barcelona

Mar TBD Presidential Elections in Egypt

Mar 4 Presidential Elections in Russia

Mar 5-9 International Atomic Energy Agency (IAEA) Board of Governors Meeting, Vienna

Mar 10-11 Legislative Elections in El Salvador

Mar 12-17 6th World Water Forum, Marseille

Mar 12-14 International Energy Forum (IEF) Ministerial Meeting, Kuwait City

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Mar 26-27	2nd Nuclear Security Summit, Seoul
Mar 29	Parliamentary Elections in Iraq
Apr 14-15	6th Summit of the Americas, Cartagena
Apr 22	Presidential Elections in France-1st Round
May TBD	NATO Summit, Chicago
May TBD	38th G-8 Summit, Chicago
May 6	Presidential Elections in France-2nd Round
May 16	Presidential Elections in the Dominican Republic
May 18-19	2012 European Bank for Reconstruction and Development (EBRD) Annual Meeting, London
May 20	Presidential Elections in the Dominican Republic
May 31 - Jun 1	African Development Bank Annual Meeting, Arusha
Jun 4-6	UN Conference on Sustainable Development (UNCSD) or Rio + 20, Rio de Janeiro
Jun 4-8	International Atomic Energy Agency (IAEA) Board of Governors Meeting, Vienna
Jun 4-8	25th World Gas Conference: "Gas: Sustaining Future Global Growth", Kuala Lumpur
Jun 10	Legislative Elections in France-1st Round
Jun 17	Legislative Elections in France-2nd Round

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Jul 1	Presidential and Legislative Elections in Mexico
Jul 8-10	Organization of American States (OAS) General Assembly, Cochabamba
Jul 21-25 (T)	19th Annual ASEAN Regional Forum, Phnom Penh
Jul 27 - Aug 12	XXX Summer Olympic Games, London
Aug 14	Presidential Elections in Kenya-1st Round
Aug 29 - Sep 9	Paralympic Games, London
Sep 10-14	International Atomic Energy Agency (IAEA) Board of Governors Meeting, Vienna
Sep 17-21	International Atomic Energy Agency (IAEA) General Conference, Vienna
Oct 8	Legislative Elections in Slovenia
Oct 28	Parliamentary Elections in Ukraine
Nov 18-20 (T)	21st Annual ASEAN Summit, Phnom Penh
Nov 29-30	International Atomic Energy Agency (IAEA) Board of Governors Meeting, Vienna

* = Taking Place in Washington

(T) = Tentative

TBD = To Be Determined

For additions/updates/corrections/changes:

Please email Saadia Sarkis at sarkiss@state.sgov.gov or sarkiss@state.gov.

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Correspondence Management System

Control Number: AX-11-001-5709

Printing Date: September 22, 2011 01:45:39



Citizen Information

Citizen/Originator: Litt, Martin D.

Organization: Intrepid Potash, Inc.
Address: 707 17th Street, Denver, CO 80202

Constituent: N/A

Committee: N/A Sub-Committee: N/A

Control Information

Control Number: AX-11-001-5709 Alternate Number: N/A
 Status: Closed Closed Date: Sep 22, 2011
 Due Date: N/A # of Extensions: 0
 Letter Date: Sep 13, 2011 Received Date: Sep 21, 2011
 Addressee: AD-Administrator Addressee Org: EPA
 Contact Type: LTR (Letter) Priority Code: Normal
 Signature: SNR-Signature Not Required Signature Date: N/A
 File Code: 401_127_a General Correspondence Files Record copy
 Subject: Daily Reading File- Cross State Air Pollution Rule - Petition for Reconsideration Docket No. EPA-HQ-OAR-2009-0491
 Instructions: For Your Information -- No action required
 Instruction Note: N/A
 General Notes: N/A
 CC: OEAE - Office of External Affairs and Environmental Education
 R6 - Region 6 -- Immediate Office
 R8 - Region 8 -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
No Record Found.					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
(b) (6) Personal Privacy	OEX	OAR	Sep 22, 2011
Sabrina Hamilton	OAR	OAR-OAP	Sep 22, 2011

History

Action By	Office	Action	Date
(b) (6) Personal Privacy	OEX	Forward control to OAR	Sep 22, 2011
Sabrina Hamilton	OAR	Forwarded control to OAR-OAP	Sep 22, 2011

DAILY READING FILE

INTREPID POTASH®

Intrepid Potash, Inc.
707 17th Street, Suite 4200
Denver, CO 80202
303.296.3006
303.298.7502 fax

September 13, 2011

Lisa P. Jackson
Office of the Administrator
Environmental Protection Agency
Room 3000, Ariel Rios Building
1200 Pennsylvania Ave. NW
Washington, DC 20004

RECEIVED
2011 SEP 21 AM 9:49
OFFICE OF THE
EXECUTIVE SECRETARIAT

Re: Cross State Air Pollution Rule – Petition for Reconsideration
Docket No. EPA-HQ-OAR-2009-0491

Dear Administrator Jackson:

I am writing on behalf of Intrepid Potash – New Mexico, LLC (Intrepid) in support of the August 23, 2011 Southwestern Public Service Company (SPS) petition for reconsideration and request for stay of the Cross State Air Pollution Rule (CSAPR).

As indicated in SPS's petition, EPA chose to include Texas in the CSAPR year-round emission reduction programs without providing the public with an opportunity to comment on that decision. Moreover, EPA is requiring SPS and other Texas utilities to comply with CSAPR beginning in 2012, a short five months after the rule was finalized. This requirement has significant consequences for our local economy and the wellbeing of the people of our community.

SPS serves our local area, and about half its power comes from coal. As the SPS petition indicates, to comply with this rule by Jan. 1, 2012, SPS will be forced to reduce operation of its coal-fired power plants and rely significantly more on natural gas-fired electric generation. As a result, CSAPR will drive up electricity costs significantly. SPS demonstrates in its petition that the cost of increasing its reliance on natural gas plants could be up to \$200 to \$250 million in 2012 alone. It is energy consumers like Intrepid that ultimately pay this cost.

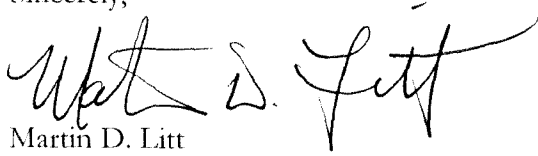
We presently estimate that the increased energy costs for Intrepid as result of the CSAPR would be about \$1.1 million annually or about a 13% overall increase annually. In the present economy, adding these types of costs only hinders job growth. Intrepid is working diligently to grow its business and, as a result, grow its workforce. At national unemployment levels above 9 percent, this is clearly needed. To increase company costs in this magnitude seems entirely out of step with the President's job growth initiatives announced last week.

Furthermore, as described in the SPS petition, we are concerned that CSAPR could harm the reliability of the electric system. We and all the people of the Texas Panhandle and Eastern New Mexico rely on the SPS electric system for our livelihoods and well-being. Especially after the record temperatures we've experienced this year, we believe it is vital that EPA design CSAPR and all of its other rules to ensure that our region has access to reliable electricity.

Lisa P. Jackson
September 13, 2011
Page 2

For these reasons, we urge you to grant SPS's petition and stay CSAPR pending reconsideration of the rule.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin D. Litt". The signature is fluid and cursive, with a large initial "M" and a distinct "Litt" at the end.

Martin D. Litt
Executive Vice President & General Counsel
Intrepid Potash, Inc.



Correspondence Management System

Control Number: AX-11-001-5711

Printing Date: September 21, 2011 04:40:58



Citizen Information

Citizen/Originator: Hight, Courtney

Organization: Energy Action Coalition
Address: 1850 M Street, NW, Washington, DC 20036

Cowley, Maura

Organization: Energy Action Coalition
Address: 1850 M Street, NW, Washington, DC 20036

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-11-001-5711 Alternate Number: N/A
Status: For Your Information Closed Date: N/A
Due Date: N/A # of Extensions: 0
Letter Date: Aug 15, 2011 Received Date: Sep 21, 2011
Addressee: AD-Administrator Addressee Org: EPA
Contact Type: LTR (Letter) Priority Code: Normal
Signature: SNR-Signature Not Required Signature Date: N/A
File Code: 401_127_a General Correspondence Files Record copy
Subject: DRF - Thank you to the Administrator for speaking at Power Shift 2011
Instructions: For Your Information -- No action required
Instruction Note: N/A
General Notes: N/A
CC: OAR - Office of Air and Radiation -- Immediate Office
OCHP - Office of Children's Health Protection

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
No Record Found.					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
(b) (6) Personal Privacy	OEX	OEAE	Sep 21, 2011

History

Action By	Office	Action	Date
(b) (6) Personal Privacy	OEX	Forward control to OEAE	Sep 21, 2011

DAILY READING FILE



August 15, 2011

Administrator Lisa Jackson
Environmental Protection Agency
1200 Pennsylvania Ave NW
Room 3000 ARS
Washington, DC 20460

OFFICE OF THE
EXECUTIVE SECRETARIAT

2011 SEP 21 AM 9:49

RECORDED

Dear Administrator Jackson,

Thank you so much for speaking at Power Shift 2011. You are one of the youth climate movement's favorite leaders. It was wonderful to have you help us re-ignite the youth climate movement. We were able to show that fighting the impacts of climate change is a top priority of the Millennial Generation.

Almost 10,000 young people descended upon Washington, DC to participate in the largest grassroots organizing training in U.S. history. Young people joined from over 700 college campuses and every state in the country to get trained with the necessary tools to run local campaigns.

Young people are inspired by you every day for standing up and protecting the public health, water and air of the American people. You are a strong voice for impacted communities as well, and your words at Power Shift resonated with the almost 300 attendees we had from environmental justice communities. Power Shifters have been mobilizing around the country, pushing for more support for clean air and clean water policies. We are more committed than ever to continue in that fight.

We truly appreciate your support of the Energy Action Coalition and helping to make Power Shift 2011 a huge success. We look forward to continuing to work with you and your incredible staff at the EPA as we fight to protect our present and our future.

Sincerely,

Courtney Hight
Co-Director

A handwritten signature in black ink that reads "Courtney Hight". The signature is written in a cursive, flowing style.

A handwritten signature in black ink that reads "Maura Cowley". The signature is written in a cursive, flowing style.

Maura Cowley
Co-Director

cc: Eric Wachter

POWER SHIFT MOVING FORWARD: Young People Rising Up to Transition Campuses, Communities and Our Country to 100% Clean Energy

Power Shift 2011 engaged over 10,000 youth leaders from every walk of life in America to be the front line warriors in the fight for a clean energy future. Power Shift 2011 marked a turning point for the youth climate movement – a departure from a role in the chorus of advocates simply calling for change, and an emergence into a position of leadership; demanding real change on energy and climate.

Energy Action Coalition will continue to engage these young leaders to work locally to transition their communities and campuses to 100% clean energy and demand that our elected leaders follow our lead.



**POWER
SHIFT 2011**

APRIL 15-18, WASHINGTON DC



Power Shift 2011: We Came, We Saw, We Conquered

- 13,326 #PowerShift tweets
- 10,000 young people trained in grassroots organizing skills
- 5,000 people marched in the streets demanding Big Polluters Pay
- 3,000 Washington DC doors knocked on
- 1,500 green hard hats handed out
- 711 campuses from across the country represented
- 500 young people trained in non-violent direct action
- 350 Washington DC homeowners interested in weatherization
- 300 lobby day meetings
- 247 media hits
- 200 young leaders from the environmental justice movement
- 114 panels and workshops
- 8 regional trainings leading up to Power Shift
- 3 "re-tweets" by EPA Administrator Lisa Jackson
- 1 meeting with the President of the United States of America

At Power Shift, Energy Action Coalition trained over 10,000 young people in advanced grassroots organizing skills and an additional 150 young leaders in environmental justice analysis and organizing. The leadership of Power Shift met with President Barack Obama and made national news calling for 100% clean energy. Facebook, Twitter and the blogosphere were buzzing with Power Shift.

In the Fall of 2011, Energy Action Coalition will continue to build momentum across the country, in the media and in Washington DC by activating the youth climate movement's growing grassroots base around four strategic campaign areas:

1. **No Keystone XL Pipeline:** We will continue to leverage our national power to demand President Obama block the Keystone XL Pipeline;
2. **Clean Air Act Defense:** Young people will continue to stand up and demand a strong Clean Air Act;
3. **WeArePowerShift.org:** We will continue to grow the online community launched at Power Shift 2011 where young clean energy advocates across the country can showcase their local campaign successes and demand our leaders follow;
4. **Regional Power Shifts:** This fall, Energy Action Coalition, its partners and the growing grassroots base of young people demanding a clean energy future will host regional Power Shift conferences in OH, NY, OR, VA and NC that will continue to build regional momentum around a 100% clean energy future.



**ENERGY ACTION
COALITION**
THE HUB OF THE YOUTH CLIMATE MOVEMENT

WWW.WEAREPOWERSHIFT.ORG

The New York Times

<http://www.nytimes.com/cwire/2011/04/18/18climatewire-young-climate-activists-push-obama-vow-to-cr-82293.html>

Young Climate Activists Push Obama, Vow to Create More Local Awareness

By JOEY PETERS of ClimateWire

Published: April 18, 2011

About 10,000 young climate change activists gathered this weekend in Washington, D.C., for what they billed as the largest grass-roots training event in the nation's history.

The third-ever Power Shift, which began Friday at the Walter E. Washington Convention Center and ends today, drew speeches from former Vice President Al Gore, former green jobs czar Van Jones and U.S. EPA Administrator Lisa Jackson. But the event's main goal was to teach young environmentalists how to organize in their communities.

"We don't want to just get 10,000 people together and get them hyped and excited," said Courtney Hight, co-director of the Energy Action Coalition, an umbrella organization of environmental groups that put on Power Shift. "You want to get them hyped and excited and then send them off to take action."

Previous Power Shifts didn't place as much of an emphasis on training as they did on having workshops explaining the impacts of obtaining natural gas through the fracturing, or "fracking," method or the benefits of sustainable living practices, Hight said. But with President Obama already in re-election campaign mode and facing a political climate that's drifting away from large-scale efforts to curb global warming, the message of the conference was direr and more immediate this time around.

At the last national Power Shift two years ago, attendees were basking in the glow of a newly elected Obama, for whose campaign many had volunteered. This weekend, many of them expressed disappointment and frustration over the president's energy policies over the past two years.

Many also acknowledged that chances for larger initiatives like last year's cap-and-trade push won't be coming back anytime soon.

"I feel like in many ways, a big opportunity was missed to do climate legislation," said Matt Kazinka, a junior environmental studies major at Macalester College in St. Paul, Minn. "Right now it seems like there isn't a lot of opportunity to push large-scale climate legislation through."

"But I also think it's a good moment for the climate movement to step back and say, 'Maybe right now the large-scale political approach isn't going to work,' just given what's happening," he said.

Kazinka volunteered for Obama's campaign two years ago. Now he's torn over what he sees as a lack of leadership from Obama on the issue and the reality of a political climate that's limiting the president, he said. Kazinka isn't alone.

"A part of me feels like maybe it's just politics, and he's on our side," said Abbe Schnibbe, a University of Vermont junior in environmental studies, "but maybe he has had to put things in the back burner in the partisan issues we have as opposed to the issues that we need to address."

Schnibbe said her generation, which organized for Obama and got him elected into office, still has the power to make changes.

In a speech at the event Friday night, Gore underlined the same point.

"Young people are leading this movement. You are the core of this movement," he said to a loud applause.

Gore continued: "There are four anti-climate lobbyists on Capitol Hill in this city for every single member of the House and every single member of the Senate. What is the answer for this? It has to come from you. It has to come at the grass-roots level."

Personalizing the issue

With the emphasis on organizing communities came an emphasis in shifting climate change from a global issue to a more personal, local issue.

"We have all the facts in the environmental movement, but a lot of times, you seem impersonal if all you use is facts," said Connor Klausing, a first-year student at St. John's University in Collegeville, Minn. "So you have to convey the personal, in a way that's personally affecting you. And a lot of times that's a lot more effective to people."

A lot of people think of global warming as a slow process that doesn't affect them, Klausing said. A vegetarian, Klausing frames his stump speech on how the meat industry is linked to climate change by causing desertification in Africa, leaving natives of the continent living in drying environments.

But attendees were pushed to make their personal issues more local than that. Many of the environmental groups with booths at the conference reflected that push.

They ranged from the Dogwood Alliance, which launched a campaign accusing fast food giant KFC of destroying forests in the American South for its packaging material, to the Chesapeake Climate Action Network, which is dedicated to curbing global warming specifically in the Virginia, Maryland and Washington, D.C., area.

One organization, Mountain Justice, focuses on organizing civil disobedience actions over mountaintop-removal techniques to extract coal in Appalachia. Many of its members live near the mountains that get operated on.

"You're connected to something better in your backyard than you are 5,000 miles away," said

The Washington Post

http://www.washingtonpost.com/national/youth_at_environment_summit_unhappy_with_obama_energy_policies/2011/04/14/AFnj9weD_story.html?wprss=rss_politics

Youth at environment summit unhappy with Obama policies

By Darryl Fears, Thursday

April 14, 6:43 PM

In 2008, Courtney Hight fell in love with Barack Obama's message of hope and change, especially his stalwart support of renewable and alternative energy. She worked long hours as the youth vote director for his campaign in Florida.

But lately the young activist has started to feel that President Obama isn't quite the man she fell for. During his energy security speech at Georgetown University in March, when he said oil drilling and clean coal would help power America's energy future, Hight said she accepted what friends told her for weeks: Obama changed.

On Friday, Hight and 10,000 other young clean-energy advocates will open the third Power Shift conference at the Washington Convention Center in the District. The three-day climate summit takes place every other year.

But instead of endorsing the president's energy policy, as in 2009, they plan to lambaste it, saying that Obama is siding with what they consider to be the dark side — big oil and coal-fired power plants. Organizers are planning a demonstration Monday with 5,000 participants outside the White House.

"When I looked at that energy security speech, it seemed like something BP wrote," said Hight, 31, of Scottsdale, Ariz., who is co-director of Power Shift 2011. "We want to make sure the president is seeing that we're done with this. We need them to draw a line in the sand. We need him to stand up to the polluters."

Considering the political environment in Washington, where congressional Republicans are fighting Obama's every step, some say Power Shift's demands are unrealistic.

And Obama's energy security speech wasn't devoid of messages that Power Shift's organizers favor. He said he wanted to cut America's oil dependence by a third in the next decade, put a million more electric vehicles on the roads by 2015 and help Americans upgrade their homes and businesses with energy-efficient building materials that could save them tens of billions of dollars a year.

Hight of the Energy Action Coalition.

One example she brought up was people living next to coal plants. She recently toured Little Village, a predominantly Mexican neighborhood on Chicago's West Side not far from two coal-fired power plants. At one point, Hight encountered an uncovered pile of coal ash.

"All the sudden it got windy, and I just breathed in coal ash!" she said. "And there are people that breathe it every day."

Obama surprises environmentalists with White House visit

Count Hight among the many activists at the event frustrated with Obama's track record on clean energy policies. Hight is particularly disappointed in what she calls Obama's lack of boldness on the issue. She does give him credit for a lot of things, including saving EPA funding in the budget compromise for the remainder of fiscal 2011.

She and 10 other activists from around the country attended a meeting at the White House on Friday. Hight, 31, was one of the older activists in the West Wing. Some were 18.

Going in, they thought they were only meeting with White House officials, but the president walked into the room. What resulted was a back-and-forth discussion over their differences in defining clean energy that lasted a half-hour.

The group of activists started out by thanking him on keeping EPA funded before jumping into their differences. Obama includes clean coal, natural gas and nuclear in his "clean energy economy," something the environmentalists at the meeting were at odds with.

"He said we can't just move to wind and solar. We're saying just don't call it clean. You're misrepresenting what it is," Hight said.

Like many of Power Shift's attendees, Hight played a role in his campaign. She started as a field organizer in New Hampshire in 2007 and later became the youth director in Florida during the general election. In the early months of the administration, she worked for the Council on Environmental Quality.

Friday marked the first time Hight ever pressured Obama politically, she said. Earlier that day, *The Washington Post* quoted her with statements critical of Obama's energy policy. Obama wasn't pleased with them, she said.

But the meeting ended with Obama acknowledging that it's his role to govern and the activists' role to pressure him, Hight said.

"We brought him in office so he could do amazing things, and he's done amazing things, but he's going to have to scale it up in the face of challenges," she said. "And we're scaling it up, too; we're not just telling him to do it."

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But when Obama said his administration has approved 39 new shallow-water drilling permits and an additional seven deepwater permits in recent weeks, following the disastrous Deepwater Horizon oil spill last year in the Gulf of Mexico, it was akin to dragging his fingernails across a blackboard for his base of young environmental voters.

“I worked for Barack Obama for years,” said Hight, who claimed that her organizing in Tampa helped drive hundreds of thousands of voters to the polls. “When I saw that, it almost made my stomach drop. When I watched that speech, that’s when I changed. It flipped me.”

The president continues to enjoy high approval ratings from Americans ages 18 to 29, according to a recent Washington Post/ABC News poll. Several workers at Power Shift’s command center in downtown Washington said they will probably vote for him.

But their vote isn’t really the issue. It’s their desire to take time off from their jobs, knock on doors, drive enthusiasm on Facebook, Twitter and other social networks, and work young people into a get-out-the-vote frenzy for Obama.

“He has my vote, but only by default, by virtue of the clowns on the other side,” said Derrick Evans, 44, of Gulfport, Miss., referring to Republicans who favor oil drilling and oppose Environmental Protection Agency regulations on greenhouse gas emissions from power plants. “If I were [Obama], I wouldn’t want that to be the glue that adheres me.”

As he monitored the Twitter traffic of people who said they were on their way to the conference, Jeff Mann, 25, of Bloomfield Hills, Mich., said the frustration with the president’s energy policy was evident.

“There are hundreds of tweets asking Obama not to go with big polluters,” said Mann, the online director for the Energy Action Coalition, 50 youth-led environmental and social justice organizations that created Power Shift. “More than a few people are going to support Obama, but they’re not excited about it. I haven’t seen anyone on my list who wanted to go out after Power Shift and join the Obama 2012 campaign.”

Jenna Garland of Woodstock, Ga., who’s recruiting youth to the conference, said her support for Obama hinges on whether he continues to embrace oil, coal and natural gas, which is extracted using chemicals that environmentalists say endanger fresh water sources. “That is the thing that will determine whether I will take the time off and do the door knocks,” said Garland, 26. “I may have a real hard time getting motivated to do that for him.”

At Power Shift’s command center on M Street, young volunteers were hard at work preparing for the summit, where former vice president Al Gore and EPA Administrator Lisa P. Jackson are scheduled to speak.

Jennifer Ridder, 24, of Denver, said she worked from 9:30 a.m. Wednesday to 1 a.m. Thursday assigning rooms at the convention and working on lodging.

Ridder said most participants can’t afford to rent a hotel room, so she’s lining up space at hostels and Arlington camp sites. She’s also encouraging homeowners to let them sleep in spare beds and back yards

POWER SHIFT TODAY

Weather Shift

Today



SMOG

Tomorrow



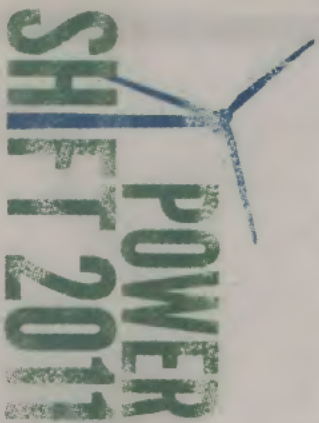
CLEAR SKIES

VOL. 1, No. 1

POWER SHIFT TODAY—APRIL 15-18, 2011

★ ★ ★

Youth Leaders Arrive to Reclaim Future



A NEW GENERATION OF LEADERS FOR A CLEAN AND JUST ENERGY FUTURE

WASHINGTON, DC— Welcome to Power Shift 2011, the largest grassroots organizing and movement building training in American history. Why? Because, dedicated, networked and trained young leaders are exactly what the world needs right now.

Our generation is the leading the way to a clean, renewable energy future. But Big Polluters are working to undermine our efforts.



AP Photo/Mark Lenz/Wood

in community change. Young people in the Middle East took to the streets harnessing social media tools to topple dictators across the Middle East. We catapulted the first African-American president into the White House, and support labor protests in Wisconsin. Young people are shutting down dirty energy facilities across the country, and

together, and supporting on another to lead our entire generation. Power Shift will unleash a social movement dedicated to 100% safe, equitable and clean energy economy that is so strong that our leaders can no longer afford to ignore us.

WE'RE TAKING ACTION.

WE ARE POWER SHIFT.

The Power Shift is a new generation of leaders coming to age, bridging social justice, environmental and clean energy movements. We are the ones creating the future we want to see. We are the ones standing up to dirty energy because we

BP ravaged the Gulf Coast with the

disastrous. Big corporations are flooding our democracy with their dirty money, corrupting our political process.

IT'S PEOPLE VS. POLLUTERS.

Our generation has created revolutions around the world, and been cornerstones

Big Polluters are in the way.

WE ARE RISING TO THE CHALLENGE.

We are young people from over 700 schools and hundreds more communities; coming from all 50 states and nearly every Congressional District. We're training

Polluters Pay. For too long BigPolluters have placed an incredible burden on the American people, receiving massive handouts, dodging taxes, and pollution or air and water. Enough is enough, it's time we make them pay.

Celebrate the victories, meet new friends, party at the concert, and delve into the film festival. But don't forget—it doesn't end when you go home. Our job is unleashing a clean energy movement so strong that our leaders must follow, and we can't stop at anything short of that.

8 METRO

Where Are You Going? Maps of the Convention Center

11 CLASSIFIEDS

What's Going On? A Menu of Track-listed Sessions & Descriptions

9 FEATURES

A Greeting from Our Co-Directors - Welcome to Power Shift

24 ARTS & ENTERTAINMENT

Mini-Film Festival - Weekend Schedule

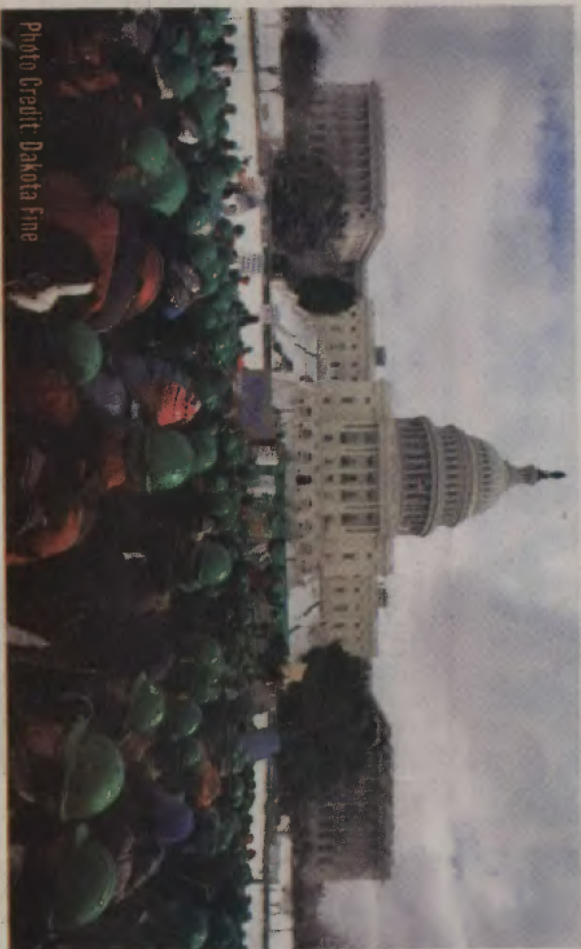


Photo Credit: Dakota Fine



DOCUMENT HISTORY.
CREATE A #POWERSHIFT.

➔ TWEET WITH THE HASHTAG #PowerShift

➔ SEND YOUR PHOTOS TO photos@powershift2011.org OR TAG THEM [PowerShift2011](#) ON *Flickr*

➔ TAG YOUR *YouTube* VIDEOS [PowerShift2011](#) SO WE CAN SHARE THEM WITH THE WORLD



POWER SHIFT TODAY

POWERSHIFT2011.ORG



Correspondence Management System

Control Number: AX-11-001-5715

Printing Date: September 22, 2011 09:55:10



Citizen Information

Citizen/Originator: **Berry, John**

Organization: United States Office of Personnel Management

Address: 1900 E Street, NW, Washington, DC 20415

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-11-001-5715

Alternate Number: N/A

Status: For Your Information

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of Extensions: 0

Letter Date: Aug 26, 2011

Received Date: Sep 21, 2011

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: LTR (Letter)

Priority Code: Normal

Signature: SNR-Signature Not Required

Signature Date: N/A

File Code: 401_127_a General Correspondence Files Record copy

Subject: Daily Reading File- OPM has reviewed your request and determined your system warrants provisional certification, and OMB concurs.

Instructions: For Your Information -- No action required

Instruction Note: N/A

General Notes: N/A

CC: N/A

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
No Record Found.					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
(b) (6) Personal Privacy	OEX	OARM	Sep 22, 2011

History

Action By	Office	Action	Date
(b) (6) Personal Privacy	OEX	Forward control to OARM	Sep 22, 2011

Comments

DAILY READING FILE



The Director

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

AUG 26 2011

2011 SEP 21 PM 2:05

OFFICE OF THE
EXECUTIVE SECRETARIAT

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
Washington, D.C. 20460

Dear Ms. Jackson:

This is in response to your request of September 1, 2010, for full certification of the U.S. Environmental Protection Agency (EPA) senior level (SL) and scientific or professional (ST) employee performance appraisal system. The U.S. Office of Personnel Management (OPM) has reviewed your request and determined your system warrants provisional certification, and the U.S. Office of Management and Budget (OMB) concurs. The certification period begins the date of this letter and continues for 12 months. Certification authorizes pay above the rate for level III of the Executive Schedule, up to the rate for level II of the Executive Schedule, and use of the higher aggregate pay limit.

The system warrants provisional rather than full certification because the system did not meet certification criteria upon our initial review. EPA has revised the system and its performance plans, and the system now warrants provisional certification.

EPA must continue to report annually to OPM the data resulting from the application of this certified system, and EPA's compliance with established report submission deadlines may affect continued certification. OPM will review this data to determine whether EPA's awards for all EPA SL/ST employees involve meaningful distinctions based on performance – a prerequisite to receiving continued certification. EPA should also reapply for certification six months prior to the expiration date of the performance appraisal system certification in order to continue applying a higher maximum rate of basic pay and the higher aggregate limitation on pay beyond the expiration date; this request must result in certification of the appraisal system by OPM and OMB by the end of the one-year certification period to avoid any gap in authority to apply the higher maximum rate of pay and higher aggregate limit. When submitting a certification request in 2012, EPA should use OPM's SL/ST Performance Appraisal Assessment Tool (SL/ST-PAAT).

Thank you for your attention to this matter. If you have questions regarding EPA's certification status or requirements, please contact Ms. Karen Lebing, Manager for Performance Management Implementation, Executive Resources and Employee Development, at 202-606-1633, or by e-mail at karen.lebing@opm.gov.

Sincerely,

A handwritten signature in blue ink that reads "John Berry".

John Berry
Director



Correspondence Management System

Control Number: AX-11-001-5746

Printing Date: September 22, 2011 12:51:31



Citizen Information

Citizen/Originator: Boyer, William

Organization: Mosaic Potash Carlsbad, Inc.
Address: P.O.Box 71, Carlsbad, NM 88221-0071

Constituent: N/A

Committee: N/A Sub-Committee: N/A

Control Information

Control Number: AX-11-001-5746 Alternate Number: N/A
 Status: For Your Information Closed Date: N/A
 Due Date: N/A # of Extensions: 0
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 Addressee: AD-Administrator Addressee Org: EPA
 Contact Type: LTR (Letter) Priority Code: Normal
 Signature: SNR-Signature Not Required Signature Date: N/A
 File Code: 401_127_a General Correspondence Files Record copy
 Subject: Daily Reading File- Cross State Air Pollution Rule - Petition for Reconsideration Docket No. EPA-HQ-OAR-2009-0491

Instructions: For Your Information -- No action required
 Instruction Note: N/A
 General Notes: N/A
 CC: OEAE - Office of External Affairs and Environmental Education
 OP - Office of Policy
 R6 - Region 6 -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
No Record Found.					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
(b) (6) Personal Privacy	OEX	OAR	Sep 22, 2011

History

Action By	Office	Action	Date
(b) (6) Personal Privacy	OEX	Forward control to OAR	Sep 22, 2011

RECEIVED
2011 SEP 22 AM 9:04
OFFICE OF THE
EXECUTIVE SECRETARIAT

Sept 15, 2011

Lisa P. Jackson
Office of the Administrator
Environmental Protection Agency
Room 3000, Ariel Rios Building
1200 Pennsylvania Ave. NW
Washington, DC 20004

Re: Cross State Air Pollution Rule – Petition for Reconsideration
Docket No. EPA-HQ-OAR-2009-0491

Dear Administrator Jackson:

I am writing on behalf of Mosaic Potash Carlsbad, New Mexico in support of the August 23, 2011 Southwestern Public Service Company (SPS) petition for reconsideration and request for stay of the Cross State Air Pollution Rule (CSAPR).

As indicated in SPS's petition, EPA chose to include Texas in the CSAPR year-round emission reduction programs without providing the public with an opportunity to comment on that decision. Moreover, EPA is requiring SPS and other Texas utilities to comply with CSAPR beginning in 2012, a short five months after the rule was finalized. This requirement has significant consequences for our local economy and the wellbeing of the people of our community.

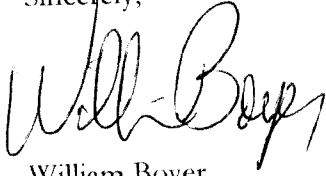
SPS serves our local area, and about half its power comes from coal. As the SPS petition indicates, to comply with this rule by Jan. 1, 2012, SPS will be forced to reduce operation of its coal-fired power plants and rely significantly more on natural gas-fired electric generation. As a result, CSAPR will drive up electricity costs significantly. SPS demonstrates in its petition that the cost of increasing its reliance on natural gas plants could be up to \$200 to \$250 million in 2012 alone. It is energy consumers like Mosaic Potash that ultimately pay this cost.

We estimate that the increased energy cost will have a \$2.0 to \$2.5 Million impact on our operating cost.

More importantly, as described in the SPS petition, we are concerned that CSAPR could harm the reliability of the electric system. We and all the people of the Texas Panhandle and Eastern New Mexico rely on the SPS electric system for our livelihoods and well-being. Especially after the record temperatures we've experienced this year, we believe it is vital that EPA design CSAPR and all of its other rules to ensure that our region has access to reliable electricity.

For these reasons, we urge you to grant SPS's petition and stay CSAPR pending reconsideration of the rule.

Sincerely,

A handwritten signature in black ink, appearing to read "William Boyer". The signature is written in a cursive style with a large, prominent initial "W".

William Boyer
General Manager
Mosaic Potash
Carlsbad, NM 88220



Correspondence Management System

Control Number: AX-11-001-5750

Printing Date: September 22, 2011 12:24:22



Citizen Information

Citizen/Originator: Hollub, Vicki

Organization: Occidental Oil and Gas Corporation
Address: 5 Greenway Plaza, Houston, TX 77227-7757

Constituent: N/A

Committee: N/A Sub-Committee: N/A

Control Information

Control Number: AX-11-001-5750 Alternate Number: 875889958030
 Status: For Your Information Closed Date: N/A
 Due Date: N/A # of Extensions: 0
 Letter Date: Sep 20, 2011 Received Date: Sep 22, 2011
 Addressee: AD-Administrator Addressee Org: EPA
 Contact Type: LTR (Letter) Priority Code: Normal
 Signature: SNR-Signature Not Required Signature Date: N/A
 File Code: 401_127_a General Correspondence Files Record copy
 Subject: DRF - Cross State Air Pollution Rule - Petition for Reconsideration Docket No. EPA-HQ-OAR-2009-0491

Instructions: For Your Information -- No action required
 Instruction Note: N/A
 General Notes: N/A
 CC: OEAE - Office of External Affairs and Environmental Education
 OP - Office of Policy
 R6 - Region 6 -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
No Record Found.					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
(b) (6) Personal Privacy	OEX	OAR	Sep 22, 2011

History

Action By	Office	Action	Date
(b) (6) Personal Privacy	OEX	Forward control to OAR	Sep 22, 2011



Occidental Oil and Gas Corporation

A subsidiary of Occidental Petroleum Corporation

5 Greenway Plaza, Suite 110, Houston, Texas 77046-0521
P.O. Box 27757, Houston, Texas 77227-7757
Phone 713.215.7000

September 20, 2011

Lisa P. Jackson
Office of the Administrator
Environmental Protection Agency
Room 3000, Ariel Rios Building
1200 Pennsylvania Ave. NW
Washington, DC 20004

RECEIVED
2011 SEP 22 AM 9:01
OFFICE OF THE
EXECUTIVE SECRETARIAT

Re: Cross State Air Pollution Rule – Petition for Reconsideration
Docket No. EPA-HQ-OAR-2009-0491

Dear Administrator Jackson:

I am writing on behalf of Oxy Permian CO₂, the largest business unit of Occidental Oil & Gas (Oxy), in support of the August 23, 2011 Southwestern Public Service Company (SPS) petition for reconsideration and request for stay of the Cross State Air Pollution Rule (CSAPR).

As indicated in SPS's petition, EPA chose to include Texas in the CSAPR year-round emission reduction programs without providing the public with an opportunity to comment on that decision. Moreover, EPA is requiring SPS and other Texas utilities to comply with CSAPR beginning in 2012, a short five months after the rule was finalized. This requirement has significant consequences for our local economy and the wellbeing of the people of our community.

SPS serves our local area, and about half its power comes from coal. As the SPS petition indicates, to comply with this rule by Jan. 1, 2012, SPS will be forced to reduce operation of its coal-fired power plants and rely significantly more on natural gas-fired electric generation. As a result, CSAPR will drive up electricity costs significantly. SPS demonstrates in its petition that the cost of increasing its reliance on natural gas plants could be up to \$200 to \$250 million in 2012 alone. It is energy consumers like Oxy that ultimately pay this cost.

We estimate that the increased energy costs will result in an incremental electrical cost of more than \$10 million per year for Oxy.

More importantly, as described in the SPS petition, we are concerned that CSAPR could harm the reliability of the electric system. We and all the people of the Texas Panhandle and Eastern New Mexico rely on the SPS electric system for our livelihoods and well-being. Especially after the record temperatures we've experienced this year, we believe it is vital that EPA design CSAPR and all of its other rules to ensure that our region has access to reliable electricity.

For these reasons, we urge you to grant SPS's petition and stay CSAPR pending reconsideration of the rule.

Sincerely,

Vicki Hollub
President and General Manager
OXY Permian CO₂



Correspondence Management System

Control Number: AX-11-001-5773

Printing Date: September 22, 2011 03:03:34



Citizen Information

Citizen/Originator: Brown, Nicholas A.

Organization: Southwest Power Pool, Inc.
Address: 415 North McKinley Street, Little Rock, AR 72205

Meyer, John

Organization: Southwest Power Pool, Inc.
Address: 415 North McKinley Street, Little Rock, AR 72205

Christiano, David

Organization: Southwest Power Pool
Address: 415 North McKinley Street, Little Rock, AR 72205

Burrows, Ferry

Organization: Southwest Power Pool
Address: 415 North McKinley Street, Little Rock, AZ 72205

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number:	AX-11-001-5773	Alternate Number:	N/A
Status:	Pending	Closed Date:	N/A
Due Date:	Oct 6, 2011	# of Extensions:	0
Letter Date:	Sep 20, 2011	Received Date:	Sep 22, 2011
Addressee:	AD-Administrator	Addressee Org:	EPA
Contact Type:	LTR (Letter)	Priority Code:	Normal
Signature:	DX-Direct Reply	Signature Date:	N/A
File Code:	404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.		
Subject:	Daily Reading File Southwest Power Pool's Review of EPA's IPM Analysis of the Cross-State Air Pollution Rule		
Instructions:	DX-Respond directly to this citizen's questions, statements, or concerns		
Instruction Note:	N/A		
General Notes:	N/A		
CC:	OEAE - Office of External Affairs and Environmental Education OP - Office of Policy R6 - Region 6 -- Immediate Office		

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6) Personal Privacy	OEX	OAR	Sep 22, 2011	Oct 6, 2011	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					



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TO KEEP THE LIGHTS ON... TODAY AND IN THE FUTURE

VIA ELECTRONIC MAIL AND FIRST CLASS MAIL

September 20, 2011

Administrator Lisa P. Jackson
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 1101A
Washington, DC 20460

Re: SPP's Review of the EPA's IPM Analysis of the Cross-State Air Pollution Rule, Docket ID No. EPA-HQ-OAR-2009-0491

Dear Ms. Jackson:

Southwest Power Pool, Inc. (SPP), in its capacity as a Federal Energy Regulatory Commission (FERC) approved Regional Transmission Organization (RTO) and a Regional Entity, is concerned that the Environmental Protection Agency (EPA) finalized the Cross-State Air Pollution Rule (CSAPR) without adequately assessing the reliability impacts of the CSAPR on the SPP region. SPP originally expressed concern with the reliability impacts of proposed regulations¹ in its July 19, 2011 comment letter to the EPA.

As required by the Energy Policy Act of 2005, FERC has approved mandatory and enforceable reliability standards promulgated by NERC with which the industry must comply. These standards were developed through a well vetted industry process identifying key requirements to ensure the bulk electric system meets an adequate level of reliability. Failure to comply with these standards can affect the ability of the power grid to operate reliably as well subject SPP and its members to financial penalties. These standards require that SPP's Transmission Planners ensure that transmission lines are not overloaded and that voltage is maintained within certain prescribed limits in the event of the failure of a single element in the system. Additionally, the standards require that Transmission Operators operate in real-time within certain limits. In order to meet the demands of the system there needs to be an adequate balance of generation and transmission availability both in the short and long term. The timing of the CSAPR regulations does not provide the SPP region with enough time to ensure that adequate balance.

Our reliability modeling² indicates that the CSAPR Integrated Planning Model 4.1 (IPM) results, as depicted by the EPA, are likely to cause SPP to be out of compliance with the applicable NERC standards as early as 2012. SPP's planning models identified 5.4 GW from the 48 generation units identified by the EPA with zero fuel burn in 2012 that would have been dispatched during the 2012

¹ On July 19, 2011, Nicholas A. Brown, SPP President and CEO, submitted comments to the EPA in Docket ID Nos. EPA-HQ-OW-2008-0667, EPA-HQ-OAR-2009-0234, and EPA-HQ-OAR-2011-0044, additionally providing SPP's preliminary assessment of the potential reliability impacts of proposed EPA regulations impacting generation in the SPP footprint.

² SPP removed all generation units in its models that consumed zero fuel in the EPA models. No other SPP model adjustments were made.

Summer Peak conditions. Our analysis revealed 220 overloads in excess of the required, 100% of emergency ratings under contingencies, and 1047 circumstances at various locations on the transmission system where voltage was below the prescribed lower limit of 90% of nominal rating. The statistics in this analysis must be viewed as being indicative, not definitive, results and are probably very conservative compared to what would be experienced in the real world should the modeled system conditions exist. An even clearer representation of reliability violations can be found by applying higher operability limits of 120% to the overloads. There were 16 such overloads on the system. Using a similar out of normal range there were 93 circumstances where voltage dropped below 85% of nominal. These “clear-cut” examples of standards violations represent the well founded concerns regarding the timeline with which the CSAPR would be instituted.

Additionally, 30 contingency scenarios did not solve, which is indicative of extreme system constraints, including the potential of cascading blackouts similar to what occurred in 2003 or which could require the shedding of firm load (that is, localized rolling black-outs initiated by utilities within the SPP region) to avoid more widespread and uncontrolled blackouts and to remain in compliance with reliability standards. Some of the contingencies could be resolved with other short-term transmission and/or resource solutions, but several could not. In those cases, SPP would be in clear violation of mandatory reliability standards and subject to penalty from FERC. However, SPP cannot be compliant with NERC’s planning standards without placing its generation owners in violation of EPA standards when the unutilized units in the IPM are unavailable to SPP. Further exacerbating this situation, SPP’s analysis also revealed that generation production from “small units”³ increased from 13 to 57 units deployed. Some of these units are likely subject to the reciprocating internal combustion engines (RICE) regulations, which were not evaluated as part of this reliability study. If we look beyond the summer peak hour studied, the unavailability of approximately 11 GWs⁴ of total capacity from the EPA model in SPP’s footprint would likely result in additional localized reliability issues.

The result of SPP’s reliability assessment of the EPA’s CSAPR IPM generation dispatch indicates serious, negative implications to the reliable operation of the electric grid in the SPP region raising the possibility of rolling blackouts or cascading outages that would likely have significant impacts on human health, public safety and commercial activity within SPP. These regulations further compound the reliability impacts addressed by SPP in its July 19, 2011 comment letter, which focused on the MACT regulations to be enacted in 2014/15. The time period between finalization of the CSAPR and its effective date is too short to allow SPP and its members/registered entities to appreciate the effects of the rule and to take actions to ensure reliability.

SPP supports a more flexible approach to meeting the emission requirements under the CSAPR, as stated in a joint letter from the New York Independent System Operator, Midwest Independent System Operator, PJM Regional Transmission Organization, the Electric Reliability Council of Texas, and SPP to the EPA in August. The EPA must provide time to allow the industry to plan an approach to comply with its rules in a reliable and reasonable fashion. As it stands now, SPP and its members may be placed in the untenable position of deciding which agency’s rules to violate, FERC or EPA. Putting an

³ “Small units” denotes those units generating 25 megawatts or less per unit.

⁴ Although the EPA model had additional units and capacity with zero fuel burn in 2012 (10.7 - 10.9 GW in total depending on the source of the Pmax), many of these units which were not dispatched in our 2012summer model will be needed during off-peak load periods to accommodate outages and to maintain system reliability.



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TO KEEP THE LIGHTS ON... TODAY AND IN THE FUTURE

industry with critical infrastructure in the position of choosing which agency's rules to violate is bad public policy. SPP suggests that the EPA delay CSAPR's effective date at least a year to allow for investigating, planning, and developing solutions to assist our members in maintaining grid reliability and compliance with both its current regulatory bodies and all of the EPA regulations that impact the electric industry.

Your prompt attention to this matter is greatly appreciated. Please do not hesitate to contact me if you have any questions or would like to discuss this matter further.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Nick Brown', written in a cursive style.

Nicholas A. Brown
President & CEO
Southwest Power Pool, Inc.
(501) 614-3213 • Fax: (501) 664-9553 • nbrown@spp.org

A handwritten signature in black ink, appearing to read 'John Meyer', written in a cursive style.

John Meyer
Chairman and Trustee
Southwest Power Pool Regional Entity

A handwritten signature in black ink, appearing to read 'David Christiano', written in a cursive style.

David Christiano
Trustee
Southwest Power Pool Regional Entity

A handwritten signature in black ink, appearing to read 'Gerry Burrows', written in a cursive style.

Gerry Burrows
Trustee
Southwest Power Pool Regional Entity

cc: SPP Board of Directors
SPP Regional State Committee
SPP Strategic Planning Committee
State Regulators in Arkansas, Kansas, Louisiana, Missouri, Mississippi, Nebraska, New Mexico,
Oklahoma, and Texas



Correspondence Management System

Control Number: AX-11-001-5751

Printing Date: September 23, 2011 02:14:17



Citizen Information

Citizen/Originator: Lerner, Carolyn

Organization: U.S. Office of Special Counsel
Address: 1730 M Street, N.W., Washington, DC 20036-4505

Constituent: N/A

Committee: N/A Sub-Committee: N/A

Control Information

Control Number: AX-11-001-5751 Alternate Number: N/A
Status: Pending Closed Date: N/A
Due Date: Oct 7, 2011 # of Extensions: 0
Letter Date: Sep 20, 2011 Received Date: Sep 23, 2011
Addressee: AD-Administrator Addressee Org: EPA
Contact Type: LTR (Letter) Priority Code: Normal
Signature: DX-Direct Reply Signature Date: N/A
File Code: 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.

Subject: Daily Reading File-The Office of Special Counsel has completed an investigation of a complaint of prohibited personnel practice filed by (b) (6) Privacy against the Environmental Protection Agency,

Instructions: DX-Respond directly to this citizen's questions, statements, or concerns

Instruction Note: N/A

General Notes: N/A

CC: N/A

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6) Personal Privacy	OEX	OGC	Sep 23, 2011	Oct 7, 2011	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

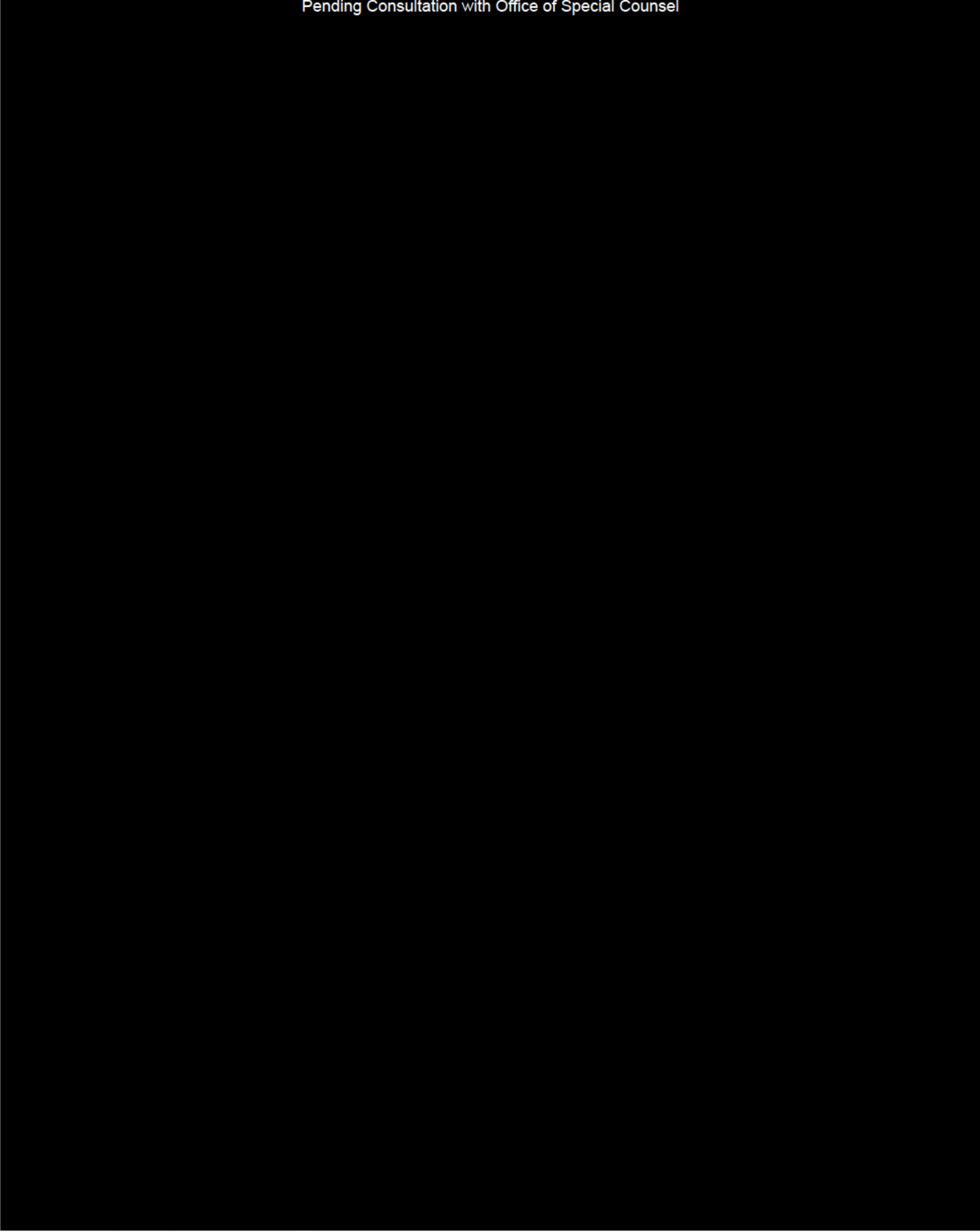
Action By	Office	Action	Date
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U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300

RECEIVED

Pending Consultation with Office of Special Counsel





Correspondence Management System

Control Number: AX-11-001-5778

Printing Date: September 23, 2011 09:23:46



Citizen Information

Citizen/Originator: Sutley, Nancy

Organization: Executive Office of the President, Council on Environmental Quality
Address: 730 Jackson Place, N.W., Washington, DC 20503

Constituent: N/A

Committee: N/A Sub-Committee: N/A

Control Information

Control Number: AX-11-001-5778 Alternate Number: N/A
Status: For Your Information Closed Date: N/A
Due Date: N/A # of Extensions: 0
Letter Date: Sep 21, 2011 Received Date: Sep 23, 2011
Addressee: AD-Administrator Addressee Org: EPA
Contact Type: EML (E-Mail) Priority Code: Normal
Signature: SNR-Signature Not Required Signature Date: N/A
File Code: 401_127_a General Correspondence Files Record copy
Subject: DRF - NOC FY13 Budget Guidance Memorandum on Ocean Priorities
Instructions: For Your Information -- No action required
Instruction Note: N/A
General Notes: N/A
CC: GCERTF - Gulf Coast Ecosystem Restoration Task Force
OP - Office of Policy

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
No Record Found.					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
(b) (6) Personal Privacy	OEX	OW	Sep 23, 2011

History

Action By	Office	Action	Date
(b) (6) Personal Privacy	OEX	Forward control to OW	Sep 23, 2011

Comments

September 12, 2011

MEMORANDUM FOR THE HEADS OF DEPARTMENTS AND AGENCIES

FROM: John P. Holdren
Director, Office of Science and Technology Policy
Co-Chair, National Ocean Council



Nancy Sutley 
Chair, Council on Environmental Quality
Co-Chair, National Ocean Council

SUBJECT: National Ocean Policy Implementation Guidance for the FY 2013 Budget

I. Introduction

Executive Order 13547 establishes a comprehensive, integrated National Policy for Stewardship of the Ocean, our Coasts, and the Great Lakes (National Ocean Policy). The National Ocean Policy (NOP) recognizes that America's stewardship of the ocean, our coasts, and the Great Lakes is intrinsically linked to environmental sustainability, national prosperity, and national and homeland security. It directs Federal agencies to implement Policy under the guidance of a National Ocean Council (Council). Among other things, the National Ocean Policy directs Council Co-chairs to develop, in collaboration with the Office of Management and Budget, an annual interagency ocean budget guidance memorandum. This memorandum provides guidance on National Ocean Policy implementation budgetary priorities for fiscal year 2013.

Implementation of the National Ocean Policy is in the early stages. This memorandum presents initial budget priorities as they are known at this time. It is intended to set the stage for more detailed budget guidance to follow in future annual memoranda as implementation develops and when Strategic Action Plans are completed, which address each of the nine National Priority Objectives.

II. Prioritizing Key National Ocean Policy Implementation Activities

Recognizing the current budget climate, each Council department, agency, and office should re-evaluate how resources are allocated in light of the overarching policy goals vis-à-vis their existing statutory and regulatory mandates. In that light, focus should be on eliminating redundancy, encouraging innovation and efficiency, and evaluating and prioritizing ongoing and emerging activities. Any options presented for expanded capabilities should be firmly grounded in foundational elements of the National Ocean Policy and funded within the agency's overall funding level described in the OMB Director's 2013 Budget guidance letter of August 17th. Council members are encouraged to identify opportunities which will enable leveraging existing resources.

Council departments and agencies should explain in their budget submissions how they will direct limited FY 2013 resources, as appropriate and consistent with their mission, to support implementation of the Policy's National Priority Objectives. This support includes ensuring availability of priority data sets to support development of the National Information Management

System (NIMS) and data portal for Coastal and Marine Spatial Planning (CMSP) as part of initial development of data and information needs to broadly support National Ocean Policy implementation. Council members involved in Regional Planning Bodies (RPB) should also explain how they will support and build capacity for the RPBs, whose primary responsibility will be to undertake the CMSP process and to ultimately develop regional CMS Plans.

Increased public understanding of the value of the ocean, our coasts, and Great Lakes will build a foundation for enhanced National Ocean Policy implementation. Council departments, agencies, and offices should integrate NOP outreach and communication efforts into existing or future public outreach activities where applicable.

Council departments, agencies, and offices should also pay particular attention to those interagency efforts addressing significant issues in the Arctic region due to its rapidly changing conditions and increasing strategic importance, and in the Gulf Coast region as part of the restoration efforts following the Deepwater Horizon spill. Council agencies should indicate in their FY 2013 budgets how resources will be directed to support ongoing Administration place-based stewardship efforts in these regions. Additional emphasis in these two regions connected to advancing the goals of the National Ocean Policy may serve to secure more tangible Council results in the near term.

III. Program Guidance

National Priority Objectives

The National Ocean Policy describes an implementation strategy centered on nine National Priority Objectives (see Appendix). Responsibilities for addressing these objectives will be outlined in a strategic action plan (SAP) for each, expected to be completed early in calendar year 2012. These plans will serve to focus the collective implementation efforts of each of the Council members around discrete actions.

- As these plans are not yet complete, the proposed budgets of Council departments, agencies, and offices when applicable should demonstrate programmatic connection with overarching priority objective obstacles, opportunities, and key areas each plan is required to address.
- While the SAPs currently are under development and subject to public review, the development process should help inform Council budget priorities for FY 2013, particularly as SAPs will be completed--and initial implementation will be occurring--in FY 2013.
- Specifically, Council departments and agencies should indicate in their FY 2013 budget submissions, as appropriate, at least three key activities they will continue or undertake to further the nine National Priority Objectives, with emphasis on activities with strong interagency coordination and collaboration¹. These activities may include, but are not limited to, the areas of emphasis as listed under Section II of this memorandum.
- Council departments and agencies are also encouraged to indicate those activities that cut across SAPs, contributing to implementation in more than one area.

¹ The NOC recognizes some NOC member agencies, such as Joint Chiefs of Staff, do not have line item budgets and thus are unable to comply with this provision.

Data and Information Management

The National Ocean Policy calls for the development of a NIMS and data portal to support CMSP. As the coastal and marine spatial planning process moves forward, additional data needs will be identified that cannot be fulfilled by existing data collection efforts. Additionally, in support of achieving the National Priority Objectives, development of methods for sharing data and information may be necessary.

- Council departments and agencies should ensure their budgets maintain their information and data assets, (including scientific, management, and technical information), ensure accessibility through the web, and be consistent with Federal standards and NIMS guidance.
- Council departments and agencies should ensure their budgets clearly take into account the need for resources to ensure easy access to data, while laying necessary groundwork for long term commitment to responsible data maintenance.

IV. National Ocean Council Operational Support

To adequately support implementation of National Ocean Policy initiatives in FY 2013, the Council has identified essential operational support requirements. These include, but are not limited to, funds for Governance Coordinating Committee member meetings (e.g., travel), Council staff travel, stakeholder outreach, including meetings and other materials, and planning and execution of any remaining regional coastal and marine spatial planning workshops. The Council will follow up with individual Council departments and agencies pursuant to this section regarding specific amounts required.

Appendix

National Priority Objectives

How We Do Business: *These objectives represent overarching ways in which the Federal Government must operate differently or better improve stewardship of the ocean, our coasts, and the Great Lakes*

- 1. Ecosystem-Based Management:** Adopt ecosystem-based management as a foundational principle for the comprehensive management of the ocean, our coasts, and the Great Lakes.
- 2. Coastal and Marine Spatial Planning:** Implement comprehensive, integrated, ecosystem-based coastal and marine spatial planning and management in the United States.
- 3. Inform Decisions and Improve Understanding:** Increase knowledge to continually inform and improve management and policy decisions and the capacity to respond to change and challenges. Better educate the public through formal and informal programs concerning the ocean, our coasts, and the Great Lakes.
- 4. Coordinate and Support:** Better coordinate and support Federal, State, tribal, local, and regional management of the ocean, our coasts, and the Great Lakes. Improve coordination and integration across the Federal Government and, as appropriate, engage with the international community.

Areas of Special Emphasis: *These objectives represent a substantive area of particular importance to achieving National Policy, including addressing some of the most pressing challenges facing the ocean, our coasts, and the Great Lakes.*

- 1. Resiliency and Adaptation to Climate Change and Ocean Acidification:** Strengthen resiliency of coastal communities and marine and Great Lakes environments and their abilities to adapt to climate change impacts and ocean acidification.
- 2. Regional Ecosystem Protection and Restoration:** Establish and implement an integrated ecosystem protection and restoration strategy that is science-based and aligns conservation and restoration goals at the Federal, State, tribal, local, and regional levels.
- 3. Water Quality and Sustainable Practices on Land:** Enhance water quality in the ocean, along our coasts, and in the Great Lakes by promoting and implementing sustainable practices on land.
- 4. Changing Conditions in the Arctic:** Address environmental stewardship needs in the Arctic Ocean and adjacent coastal areas in the face of climate-induced and other environmental changes.
- 5. Ocean, Coastal, and Great Lakes Observations, Mapping, and Infrastructure:** Strengthen and integrate Federal and non-Federal ocean observing systems, sensors, data collection platforms, data management, and mapping capabilities into a national system and integrate that system into international observation efforts.



Correspondence Management System

Control Number: AX-11-001-5854

Printing Date: September 23, 2011 02:16:37



Citizen Information

Citizen/Originator: Austin, Diane E.

Organization: Good Neighbor Environmental Board

Address: Address Unknown

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-11-001-5854

Alternate Number: N/A

Status: Pending

Closed Date: N/A

Due Date: Oct 7, 2011

of Extensions: 0

Letter Date: Sep 21, 2011

Received Date: Sep 23, 2011

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: LTR (Letter)

Priority Code: Normal

Signature: DX-Direct Reply

Signature Date: N/A

File Code: 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.

Subject: Daily Reading File-The Good Neighbor Environmental Board writes to urge the United States, as a party to the North American Agreement on Environmental Cooperation, to work with the other signatories, Mexico and Canada, and finally conclude an agreement on Transboundary Environmental Impact Assessment matters tremendously to border residents and stakeholders

Instructions: DX-Respond directly to this citizen's questions, statements, or concerns

Instruction Note: N/A

General Notes: N/A

CC: R7 - Region 7 -- Immediate Office

R9 - Region 9 - Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6) Personal Privacy	OEX	OITA	Sep 23, 2011	Oct 7, 2011	N/A
Instruction: N/A					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

RECEIVED

2011 SEP 23 AM 9:01

OFFICE OF THE
EXECUTIVE SECRETARIAT



GOOD NEIGHBOR ENVIRONMENTAL BOARD

*Presidential advisory committee on environmental and infrastructure issues
along the U.S. border with Mexico*

Chair

Diane Austin, Ph.D.
Telephone: (520) 626-3879
E-mail: daustin@email.arizona.edu

Acting Designated Federal Officer

Mark Joyce
Telephone: (202) 564-2130
E-mail: joyce.mark@epa.gov

September 21, 2011

President Barack Obama
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20006

Dear Mr. President:


As your advisory committee on environmental issues along the U.S.-Mexico border, the Good Neighbor Environmental Board (GNEB) writes to urge the United States, as a party to the North American Agreement on Environmental Cooperation, to work with the other signatories, Mexico and Canada, and finally conclude an agreement on Transboundary Environmental Impact Assessment (TEIA). TEIA matters tremendously to border residents and stakeholders.

We have previously written about the urgent need to finalize an agreement on TEIA, most recently in our 13th annual report, released in June 2010. We also raised the issue in our May 2009 advice letter, as well as in our 4th, 5th, and 6th annual reports. And in September 2009, the ten U.S.-Mexico Border Governors agreed in their joint declaration that finalizing TEIA was important. The three parties have missed the deadline for finalizing an agreement by more than 14 years—a delay which has led to innumerable instances of nonexistent or poor notification, assessment, or mitigation of environmental projects with a cross-border impact.

Some examples of transboundary environmental impacts which have not been addressed since 1994 due to the failure to conclude a TEIA agreement: water quality impacts on shared rivers between the U.S. and Mexico; elevated ozone levels in remote rural areas; and use of shared aquifers, which the Congressionally-mandated Transboundary Aquifer Assessment Program (TAAP) seeks to address. Managed by the U.S. Geological Survey in our country, the TAAP is of crucial importance to the border region, where water is becoming a limiting resource.

Once again, we urge you to renew efforts to conclude this agreement that is so vital to residents and the environment of the border region.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Diane E. Austin". The signature is fluid and cursive, written in a professional style.

Diane E. Austin, Chair
Good Neighbor Environmental Board

NOTE: Good Neighbor Environmental Board representatives from Federal Departments and Agencies have recused their organizations from this Comment Letter.

cc: The Honorable Joe Biden
The Vice President of the United States

The Honorable Nancy Sutley
Chair, Council on Environmental Quality

The Honorable Lisa P. Jackson
Administrator, Environmental Protection Agency



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Comments

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Message Information

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Subject September 16th Meeting with Texas Officials and Deputy Administrator Perciasepe

Message Body

Dear Deputy Administrator Perciasepe,

I wanted to take this opportunity to thank you for last Friday's meeting with you, Gina McCarthy, and other EPA officials regarding CSAPR. It is my hope that an open dialogue can continue between the EPA, TCEQ, the PUC, and ERCOT, in order to facilitate a constructive approach to resolving the issues discussed in our meeting.

Per our discussion on Friday, I have included a letter for your consideration that details our main concerns related to CSAPR and the negative impacts the rule will have on electric reliability in the state of Texas. I have also included as attachments our petition for reconsideration and stay for your reference. These two documents contain the additional information you requested relating to data concerns. I have CC'ed a number of individuals of relevance to this matter.

I am available to be of assistance or answer any questions that may arise over the course of our communications on this critically important issue.

with the States, to designate areas as “nonattainment,” “attainment,” or “unclassifiable.” 42 U.S.C. § 7407(c), (d).

The statute provides States with important rights and responsibilities with respect to EPA’s actions. After the issuance of NAAQS, States are required to develop state implementation plans (“SIPs”) to meet them. *Id.* § 7410(a)(1). Generally speaking, States enjoy wide latitude when determining how areas within their borders will attain and maintain NAAQS. *Train v. Natural Res. Defense Council, Inc.*, 421 U.S. 60, 86-87 (1975); *see Union Elec. Co. v. EPA*, 427 U.S. 246, 269 (1976) (explaining that “Congress plainly left with the states, so long as the [NAAQS] were met, the power to determine which sources would be burdened by regulation and to what extent”).¹

Of particular relevance to this proceeding is the CAA’s “good neighbor” provision, 42 U.S.C. § 7410(a)(2)(D)(i)(I). Under that provision, States are required to “prohibit[] . . . any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will . . . contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any . . . national primary or secondary ambient air quality standard.” *Id.*

II. The Proposed and Final Versions of the Rule

In early August 2010, EPA published the “Clean Air Transport Rule,” the proposed rule on which the Final Rule is based. Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone, Proposed Rule, 75 Fed. Reg. 45,210 (Aug. 2, 2010) (the “Proposed Rule”). The Proposed Rule announced EPA’s intent to issue federal implementation plans (“FIPs”) that would “limit the interstate transport of emissions of nitrogen oxides (NO_x) and sulfur dioxide (SO₂) . . . within 32 states in the eastern United States that affect the ability of downwind states to attain and maintain compliance with the 1997 and 2006 fine particulate matter (PM_{2.5}) . . . NAAQS and the 1997 ozone NAAQS.” *Id.* at 45,210; *see also* Luminant’s Petition for Reconsideration and Stay at 8-10, Docket No. EPA-HQ-OAR-2009-0491 (Aug. 5, 2011) (“Luminant PFR”) (providing a more detailed account of the Proposed Rule).²

Significantly, the Proposed Rule did not include the State of Texas among the “25 jurisdictions that contribute significantly to nonattainment in, or interfere with maintenance by, a downwind area with respect to the 24-hour PM_{2.5} NAAQS promulgated in September 2006.” Proposed Rule, 75 Fed. Reg. at 45,215. Nor was Texas included among the “24 jurisdictions that contribute significantly to nonattainment in, or interfere with maintenance by, a downwind area with

1. TCEQ (formerly the Texas Natural Resource Conservation Commission) has primary responsibility for implementing and overseeing Texas’s CAA obligations, including compliance with the requirement to implement, maintain, and enforce NAAQS through SIPs. *See generally* TEX. HEALTH & SAFETY CODE ch. 382; *id.* § 382.0173(a).

2. To avoid repetition of information that has already been presented to EPA, Texas incorporates the cited portions of other parties’ filings by reference.

respect to the annual PM_{2.5} NAAQS promulgated in July 1997.” *Id.* The Proposed Rule announced an intent to require Texas to reduce only its “ozone season NO_x emissions . . . that contribute significantly to nonattainment in, or interfere with maintenance by, a downwind area with respect to the 1997 ozone NAAQS promulgated in July 1997.” *Id.*

The Final Rule, however, is very different from the Proposed Rule. Instead of targeting only ozone-season NO_x emissions for Texas, as the Proposed Rule had done, the Final Rule also targets annual NO_x emissions, as well as SO₂ emissions. The Final Rule does so based on EPA’s finding—made for the first time in the Final Rule—that Texas contributes significantly to downwind nonattainment with respect to the 1997 Annual PM_{2.5} NAAQS. Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 Fed. Reg. 48,208, 48,213-14 (Aug. 8, 2011) (the “Final Rule”). It also establishes a FIP for ozone and annual PM_{2.5} only and specifies emission budgets for Texas for annual SO₂, annual NO_x, and ozone-season NO_x, *id.* at 48,262-63 (Tables VI.D-3, VI.D-4), requiring Texas electric generating units (“EGUs”) to comply with specific emission allocations beginning January 1, 2012, *id.* at 48,211—less than five months after the Final Rule was published in the Federal Register. *Id.* at 48,208 (published August 8, 2011).

The inclusion of Texas in the Final Rule is based on modeling, which EPA presented for the first time in the Final Rule, predicting that Texas will, in 2012, contribute significantly to PM_{2.5} nonattainment at a single air-pollution monitoring site: the Granite City site in Madison County, Illinois. *Id.* at 48,213, 48,240 (Tables V.D-1, V.D-2, V.D-3, V.D-4). EPA concluded that, because its model of Texas’s annual PM_{2.5} contribution (0.18 µg/m³, *see id.* at 48,240 (Table V.D-1)) predicts exceedance of the relevant significance threshold (0.15 µg/m³, *id.* at 48,236), Texas should be required to reduce the emissions that would purportedly lead to this modeled contribution.³

This was true even though, as already noted, the Proposed Rule had not found Texas to be contributing significantly to either the annual or 24-hour PM_{2.5} standard. Proposed Rule, 75 Fed. Reg. at 45,215; *see id.* at 45,255, 45,261 (Tables IV.C-13, IV.C-16) (listing Texas’s largest contribution to downwind annual PM_{2.5} nonattainment as 0.13 µg/m³, to downwind annual PM_{2.5} maintenance-interference as 0.06 µg/m³, to downwind 24-hour PM_{2.5} nonattainment as 0.21 µg/m³, and to downwind 24-hour PM_{2.5} maintenance-interference as 0.28 µg/m³). Indeed, the Proposed Rule had called for comment on whether Texas should be included in the Final Rule on just one basis: the prospect that exclusion of Texas from the Final Rule’s scope would reduce the price to Texas EGUs of high-sulfur coal, which in turn could cause the EGUs that purchased and burned that coal to begin contributing significantly to downwind nonattainment and maintenance-interference in other States. *Id.* at 45,284. TCEQ and others provided comments critical of that proposed basis for including Texas, and EPA ultimately abandoned it, choosing to include Texas in the Final Rule based on new modeling significantly linking Texas to the Granite City monitor.

3. EPA specifies in the Final Rule that it is not adopting a FIP for Texas with respect to the 24-hour PM_{2.5} NAAQS. *See id.* at 48,214. But EPA also clearly acknowledges, in setting Texas’s emissions budgets, that those budgets will address significant contributions for the 24-hour PM_{2.5} NAAQS. *See id.*

And although that modeling suggested, to EPA, that Texas would just barely exceed the relevant significance threshold (by 0.03 $\mu\text{g}/\text{m}^3$ for annual $\text{PM}_{2.5}$ contribution, *see* Final Rule, 76 Fed. Reg. at 48,240-242 (Tables V.D-1, V.D-4)), the Final Rule's previously undisclosed emissions budgets for Texas mandated substantial reductions in both annual NO_x and SO_2 . *Id.* at 48,269. As noted below, the required reductions for Texas were more onerous than those for other States whose significant contributions to downwind nonattainment and maintenance-interference far exceeded Texas's modeled contributions.

REASONS TO CONVENE A RECONSIDERATION PROCEEDING AND GRANT A STAY

Under the CAA, EPA's Administrator has no choice but to reconsider the Final Rule. The statute directs that the Administrator "shall convene a proceeding for reconsideration" if two showings are made: *first*, that it was either impracticable to raise the relevant objection during the comment period or the grounds for such objection arose after the period for public comment (but within the time specified for judicial review), and *second*, that the objection is of central relevance to the outcome of the rule. 42 U.S.C. § 7607(d)(7)(B). Each of those elements is satisfied here.

On the first point, the Final Rule is so fundamentally different from the Proposed Rule, and predicated on such fundamentally different grounds than the Proposed Rule, that it could not possibly be viewed as a logical outgrowth of the Proposed Rule. *See infra* Part I; *see also* Luminant PFR at 4-5 (quoting the Office of Management and Budget's ("OMB's") report on interagency review, which noted that the Final Rule was a "significantly different rule than originally proposed," Summary of Interagency Working Comments on Draft Language under EO 12866 Interagency Review ("OMB Summary of Interagency Working Comments"), Document EPAHQ-OAR-2009-0491-4133 at 11 (posted July 11, 2011)). Although TCEQ provided some comments during the public-comment period and in response to EPA's Notices of Data Availability ("NODAs"), neither it nor any other party could have provided comment on the core elements of the Final Rule as it relates to Texas because those elements were not disclosed until the Final Rule was promulgated.

On the second point, the objections raised in this petition are of central relevance to the outcome of the rule because they reflect the Final Rule's legal invalidity on multiple grounds. For that reason, the Administrator must "convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed." 42 U.S.C. § 7607(d)(7)(B).

I. Texas did not have adequate notice or a meaningful opportunity to comment.

A. The law on notice is well-settled and, if EPA does not grant reconsideration, Texas's lack of notice will be a basis for vacating the Final Rule on judicial review.

In “afford[ing] interested parties a reasonable opportunity to participate in the rulemaking process,” *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 236 (D.C. Cir. 2008) (internal quotation mark omitted), adequate notice is fundamental to sound administrative decision-making. The notice requirement is “designed (1) to ensure that agency regulations are tested via exposure to diverse public comment, (2) to ensure fairness to affected parties, and (3) to give affected parties an opportunity to develop evidence in the record to support their objections to the rule and thereby enhance the quality of judicial review.” *Int’l Union, United Mine Workers of Am. v. Mine Safety & Health Admin.*, 407 F.3d 1250, 1259 (D.C. Cir. 2005) (citing *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 547 (D.C. Cir. 1983)).

Here, two statutes required EPA to provide Texas and other interested parties adequate notice of the rule and its underlying support. The APA required EPA to publish, in the Federal Register, a notice of proposed rulemaking that included “either the terms or substance of the proposed rule or a description of the subjects and issues involved.” 5 U.S.C. § 553(b)(3). And the CAA required EPA to take the additional, and more detailed, step of providing a statement of the Proposed Rule’s basis and purpose that included “a summary of—(A) the factual data on which the proposed rule [wa]s based; (B) the methodology used in obtaining the data and in analyzing the data; and (C) the major legal interpretations and policy considerations underlying the proposed rule.” 42 U.S.C. § 7607(d)(3); see *Small Refiner*, 705 F.2d at 518-19 (discussing the requirements of CAA section 7606(d)(3)).

As the D.C. Circuit has frequently explained, a proposed rule and a final rule may permissibly differ “only insofar as the latter is a ‘logical outgrowth’ of the former.” *Env’tl. Integrity Project v. EPA*, 425 F.3d 992, 996 (D.C. Cir. 2005) (citing *Shell Oil Co. v. EPA*, 950 F.2d 741, 750-51 (D.C. Cir. 1991)), and a final rule is a “logical outgrowth” of a proposed rule only if interested parties “‘should have anticipated’ that the change was possible, and thus reasonably should have filed their comments on the subject during the notice-and-comment period.” *Ne. Md. Waste Disposal Auth. v. EPA*, 358 F.3d 936, 952 (D.C. Cir. 2004) (quoting *City of Waukesha v. EPA*, 320 F.3d 228, 245 (D.C. Cir. 2003)). Stated differently, “a final rule will be deemed the logical outgrowth of the proposed rule if a new round of notice and comment would not provide commentators with their first occasion to offer new and different criticisms which the agency might find convincing.” *Fertilizer Inst. v. EPA*, 935 F.2d 1303, 1311 (D.C. Cir. 1991) (internal quotation marks omitted).

In light of these requirements, notice is adequate only if it allows interested parties a chance to provide “meaningful” comments, and comments can be meaningful only if parties are made aware of what, specifically, they need to comment on. See *Gerber v. Norton*, 294 F.3d 173, 179 (D.C. Cir.

2003) (finding no meaningful opportunity to comment on a permit that was linked to the mitigation value of an undefined mitigation site); *see also Small Refiner*, 705 F.2d at 518-19, 548 (discussing “Congress’ intent, expressed in [CAA] § 307(d), that EPA provide a detailed proposal for interested parties to focus their comments on”). “If the APA’s notice requirements mean anything, they require that a reasonable commenter must be able to trust an agency’s representations about which particular aspects of its proposal are open for consideration.” *Envtl. Integrity Project*, 425 F.3d at 998 (citing *Fertilizer Inst.*, 935 F.2d at 1312).

Adequate notice is particularly important when an agency relies on scientific studies or data in support of a final rule. As the D.C. Circuit has explained, “[i]ntegral to the notice requirement is the agency’s duty ‘to identify and make available technical studies and data that it has employed in reaching the decisions to propose particular rules An agency commits serious procedural error when it fails to reveal portions of the technical basis for a proposed rule in time to allow for meaningful commentary.’” *Solite Corp. v. EPA*, 952 F.2d 473, 484 (D.C. Cir. 1991) (quoting *Conn. Light & Power Co. v. NRC*, 673 F.2d 525, 530-31 (D.C. Cir. 1982)); *see Sierra Club v. Costle*, 657 F.2d 298, 334, 397-98 & n.484 (D.C. Cir. 1981) (describing public notice and comment regarding relied-upon technical analysis as “safety valves in the use of . . . sophisticated methodology”).

Along these same lines, the D.C. Circuit has explained that “[i]t is not consonant with the purpose of a rule-making proceeding to promulgate rules on the basis of inadequate data, or on data that, [to a] critical degree, is known only to the agency.” *Portland Cement Ass’n v. Ruckelshaus*, 486 F.2d 375, 393 (D.C. Cir. 1973). For that reason, post-comment publication of the key methodology underlying a rule cannot provide adequate notice where that methodology is an integral part of the agency’s model. *Owner-Operator Indep. Drivers Ass’n v. Fed. Motor Carrier Safety Admin.*, 494 F.3d 188, 201-02 (D.C. Cir. 2007); *see Weyerhaeuser Co. v. Costle*, 590 F.2d 1011, 1030-31 (D.C. Cir. 1978).

Generally, an agency must *itself* satisfy the notice requirement, rather than rely on third parties’ comments on a rule to do so indirectly. *Small Refiner*, 705 F.2d at 549 (explaining that “the EPA must itself provide notice of a regulatory proposal. Having failed to do so, it cannot bootstrap notice from a comment.”); *see McLouth Steel Prods. Corp. v. Thomas*, 838 F.2d 1317, 1323 (D.C. Cir. 1988). In *Small Refiner*, the court recognized that a contrary rule “would turn notice into an elaborate treasure hunt, in which interested parties . . . must search the record for the buried treasure of a possibly relevant comment.” 705 F.2d at 550; *see, e.g., AFL-CIO v. Donovan*, 757 F.2d 330, 340 (D.C. Cir. 1985).

Under the CAA, a notice violation will result in a rule’s reversal so long as there is “a substantial likelihood that the rule would have been significantly changed if [the complained-of] errors had not been made.” 42 U.S.C. § 7607(d)(8); *Small Refiner*, 705 F.2d at 521-24, 543-44 & n.102, 550. And “failure to observe the basic APA procedures, if reversible error under the APA, is reversible error under the [CAA] as well.” *Small Refiner*, 705 F.2d at 523. Challengers must present “enough to show that on remand they can mount a credible challenge to the amended rule and were thus prejudiced by the absence of an opportunity to do so before the amendment.” *Util.*

Solid Waste Activities Group v. EPA, 236 F.3d 749, 755 (D.C. Cir. 2001); *but see also McLouth*, 838 F.2d at 1324 (noting that requiring a showing of prejudice “is normally inappropriate where the agency has completely failed to comply with [APA] § 553”).

As shown below, EPA failed to comply with both APA section § 553(b) and CAA section § 7607(d)(3) with respect to Texas’s inclusion in the Final Rule. EPA should grant reconsideration and a stay to save the rule from vacatur on this basis. *See, e.g., Envtl. Integrity Project*, 425 F.3d at 998; *Int’l Union*, 407 F.3d at 1261.

- B. The lack of notice prevented Texas from providing comments that would have significantly changed the Final Rule.**
 - 1. Because the Proposed Rule gave Texas no notice that it would be significantly linked to a PM_{2.5} monitor for nonattainment, Texas had no opportunity to identify the errors underlying its linkage, in the Final Rule, to the Granite City monitor.**

As already noted, the Proposed Rule did not identify any Texas linkage to nonattainment or maintenance-interference monitors for PM_{2.5}, nor was Texas included in the proposed PM_{2.5} FIP. *See Proposed Rule*, 75 Fed. Reg. at 45,632-33. In the Proposed Rule, EPA provided estimated interstate contributions to annual PM_{2.5}, 24-hour PM_{2.5}, and 8-hour ozone nonattainment and maintenance-interference for each of 37 states. *Id.* at 45,255 (Table IV.C-13). Texas’s largest downwind contribution to nonattainment for annual PM_{2.5} was 0.13 µg/m³. These downwind contributions were calculated for each State with respect to each of the 32 monitoring sites that were projected to reflect nonattainment status and each of the 16 sites projected to reflect maintenance problems for the annual PM_{2.5} NAAQS in the 2012 base case. *Id.* at 45,255. Because Texas’s largest downwind contribution did not exceed EPA’s 0.15 µg/m³ significance threshold, *see id.* (Table IV.C-13), the Proposed Rule did not significantly link Texas to any annual PM_{2.5} monitor receptor, and Texas was therefore not required to make any emissions reductions to meet the annual PM_{2.5} NAAQS. *See id.* at 45,216 (Table III.A-1).

It was impossible and impractical, based on the limited information provided through the Proposed Rule, for the State to comment on the potential significant contribution of Texas for the annual PM_{2.5} NAAQS. This is especially true in light of the different monitor-receptor projections regarding future nonattainment, maintenance-interference, or both and the photochemical modeling that appeared in the Final Rule but was never previously made available for public review and comment. *Compare, e.g., Proposed Rule*, 75 Fed. Reg. at 45,246-251, *and id.* at 45,253-260 *with Final Rule*, 76 Fed. Reg. at 48,233-244. The Final Rule’s scientific and technical underpinnings were so vastly different in both nature and scope that Texas could not have “guessed” that it would be modeled to contribute significantly with respect to any downwind area, much less for any particular NAAQS. In short, it was impossible for TCEQ or any other party to comment on the particular PM_{2.5} monitor to which Texas was significantly linked in the Final Rule because that

monitor was not identified, in the Proposed Rule, as a nonattainment monitor that Texas might significantly affect.

Had Texas been aware of this linkage, it would have submitted comments addressing problems with the Granite City monitor, as another commenter has now done. *See* Luminant PFR at 16-19. That monitor is inappropriate for at least two reasons. First, it is currently in attainment of the annual PM_{2.5} NAAQS. *See* Approval and Promulgation of Air Quality Implementation Plans; Illinois; Missouri; Saint Louis Nonattainment Area; Determination of Attainment of the 1997 Annual Fine Particle Standard, 76 Fed. Reg. 29652 (May 23, 2011). Second, the Granite City monitor is heavily influenced by local conditions—specifically, the close proximity of a steel mill, which is the proximate cause of any past exceedances of the PM_{2.5} NAAQS. *See id.* at 29,653 (“EPA agrees that Madison County, Illinois monitors have generally recorded the highest ambient PM_{2.5} concentrations in the Saint Louis area. In addition to monitor 17-119-1007, area high values have been recorded at monitor 17-119-0024. Both monitors are in Granite City near [the steel mill].”).

In determining that the Granite City monitor was an appropriate nonattainment receptor, EPA ignored air-quality data from a federally approved regulatory monitor and, indeed, its own recent acknowledgment that this area is in attainment of the annual PM_{2.5} NAAQS. Despite its language in the notice determining that this area is in attainment, *id.* (stating that “[m]onitored attainment of the standard is the only basis of a determination of attainment or nonattainment, and it is the only relevant issue”), EPA is ignoring monitored air-quality data in favor of a hypothetical modeling exercise to determine potential nonattainment receptors that do not fully consider current relevant conditions and air-quality controls. *See* Final Rule, 76 Fed. Reg. at 48,233-235 (explaining EPA’s revised air-quality modeling). Texas could not have commented on this situation at the proposed-rule stage, as EPA did not propose to significantly link Texas to this particular monitor.⁴ Further, EPA’s final acknowledgment of attainment for the area in which this monitor is found was only published May 23, 2011, so TCEQ would not have had that information available to it at the time the Proposed Rule was published.

In neither its proposed or final determination of attainment notice for the St. Louis nonattainment area (in which the Granite City monitor is located) does EPA mention transport as a potential reason for either past or future nonattainment or for maintenance issues at the monitor. *See* Approval and Promulgation of Air Quality Plans; Illinois; Missouri; Saint Louis Nonattainment Area; Determination of Attainment of the Fine Particle Standard, Proposed Rule, 76 Fed. Reg. 12,302 (March 7, 2011); Approval and Promulgation of Air Quality Plans; Illinois; Missouri; Saint Louis Nonattainment Area; Determination of Attainment of the Fine Particle Standard, 76 Fed. Reg. 29,652 (May 23, 2011). This is in contrast to another recent EPA notice recommending that Baton

4. EPA provided a list of modeled linkages for all States analyzed in the Proposed Rule in its Air Quality Modeling Technical Support Document, but Texas was below the linkage threshold for both annual and 24-hour PM_{2.5}, and therefore no monitor was identified in the Proposal Rule for Texas to analyze and comment on. In the Final Rule, EPA made significant revisions to its modeling, *see* 76 Fed. Reg. at 48,253, and determined that Texas was significantly linked to the Madison County monitor (monitor number 171191007) for both 24-hour and annual PM_{2.5}.

Rouge, Louisiana be redesignated to attainment of the 1997 eight-hour ozone standard. *See* Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Louisiana; Baton Rouge Ozone Nonattainment Area: Redesignation to Attainment for the 1997 8-Hour Ozone Standard, 76 Fed. Reg. 53,853 (August 30, 2011). That notice contained a specific discussion of the reductions required by the Clean Air Interstate Rule (“CAIR”), and projected to be required by the Final Rule, and the role of those reductions in ensuring that Baton Rouge reached and will maintain the ozone standard. *Id.* at 53,868. Therefore, even if Texas had been able to divine EPA’s intent to further investigate the Granite City monitor, it would not have had notice that EPA considered transport from Texas to be significantly contributing to the Granite City monitor. It is unreasonable that Texas is being required to make drastic emissions reductions for the purported purpose of ensuring that this monitor will attain the annual PM_{2.5} standard.

Furthermore, EPA’s use of the Granite City monitor as a nonattainment receptor for an upwind state is unreasonable on its face, due to heavy influence from its close proximity to a sizable steel mill. The steel mill ceased operation in 2008, and the monitor has since monitored attainment for both annual and 24-hour PM_{2.5}. *See* Saint Louis Determination of Attainment, 76 Fed. Reg. at 29,654. Although the mill resumed operations in 2010, its emissions are greatly reduced under a Memorandum of Understanding with the Illinois Environmental Protection Agency designed to prevent future attainment issues. “Assessment of Local-Scale Emissions Inventory Development by State and Local Agencies,” Sonoma Technology, Inc. (October 2010), *available at* http://www.epa.gov/ttn/chief/local_scale/sti_epa_local_scale_ei_final_report.pdf, and appx. B, “Presentations by State and Local Agencies to the Local-Scale Emissions Focus Group,” 89-127, *available at* http://www.epa.gov/ttn/chief/local_scale/sti_epa_local_scale_ei_final_report_appendices.pdf; “United States Steel Corporation Granite City Works and IEPA Memorandum of Understanding,” signed July 1, 2010.

The Final Rule also provides a precedent to consider the effects of local controls in calculations of upwind States’ significant contributions to this monitor. But EPA applies the consideration of local contribution in the Final Rule arbitrarily. A monitor in Allegheny County, Pennsylvania, is located downwind from a large coking unit. Final Rule, 76 Fed. Reg. at 48, 247, n.40. The Allegheny County monitor is located approximately the same distance from the coking unit as the Granite City monitor is to the steel mill. Even though the Allegheny County monitor continued to show maintenance issues after the \$2,300/ton reductions were applied, EPA did not increase the cost threshold to require emissions reductions from any upwind State, due to the heavy local influence on the Allegheny County monitor.⁵ Similarly, States linked to the Granite City monitor should not be shifted to a new cost threshold (in this case, from \$0.00 to \$500.00/ton) and

5. Final Rule, 76 Fed. Reg. at 48,259. EPA stated: “It is well-established that, in addition to being impacted by regional sources, the Liberty-Clairton area is significantly affected by local emissions from a sizable coke production facility and other nearby sources, leading to high concentrations of organic carbon in this area. EPA finds that the remaining PM_{2.5} nonattainment problem is predominantly local and therefore does not believe that it would be appropriate to establish a higher cost threshold solely on the basis of this projected ongoing nonattainment of the 24-hour PM_{2.5} standard at the Liberty-Clairton receptor.” *Id.*

required to reduce emissions due to the heavy local influence on the Granite City monitor. EPA provides no rationale for why the Granite City monitor is treated differently from the Allegheny County monitor.

Had the EPA considered more recent monitoring data at the Granite City monitor (which would incorporate the effects of local, non-CAIR controls on this primarily locally influenced monitor), it would have found that the monitor was in attainment and would continue to be in attainment without the Final Rule's controls. At a minimum, had EPA still chosen to include this monitor as a nonattainment receptor, by considering local influences at the monitor, it should have selected a cost threshold lower than \$500/ton when calculating significant contribution.

Therefore, the use of a modeled linkage showing a significant contribution between Texas and the Granite City monitor is unreasonable and was not supported in the Final Rule by any rational reason. EPA should reconsider the appropriateness of the Granite City monitor for use in evaluating upwind significant contributions because it is actually demonstrating attainment through air-quality monitor data and the monitor is heavily influenced by the local steel mill. Additionally, even if the Madison County monitor were an appropriate receptor for consideration, EPA should reconsider the appropriate cost threshold for evaluating significant contribution and required emissions reductions.

If, as EPA has acknowledged in its determination of attainment for the St. Louis area, St. Louis will remain in attainment without any emissions reductions from Texas, then Texas cannot possibly be significantly contributing to nonattainment or maintenance-interference for this monitor. For these reasons alone, Texas was denied the reasonable opportunity to participate in the rulemaking process that the APA, the CAA, and the case law requires. *See supra* Part I.A. But as explained below, that is by no means the extent of the problem.

2. The Proposed Rule failed to provide adequate notice of key factual data and EPA's methodology, both of which the State would have challenged during the notice and comment period.

In the Proposed Rule, EPA noted that it was proposing a two-step approach to identify which States were significantly contributing to downwind nonattainment and maintenance-interference. Proposed Rule, 75 Fed. Reg. at 45,233-34. The first step was to utilize air-quality modeling to quantify individual state contributions to downwind nonattainment and maintenance-interference sites in 2012. *Id.* States whose contributions to any downwind site exceeded one percent of the relevant NAAQS were considered "linked" to the site. *Id.* In the second step, EPA identified the portion of each State's contribution that was considered "significant." *Id.* For this step, EPA used maximum cost thresholds with additional information from what it called "air quality considerations." *Id.* Basically, EPA determined what reductions were available from EGUs in an individual upwind State at a particular maximum cost threshold and required all of those emission reductions to be made without regard to what was actually required to eliminate a State's significant contribution to the downwind monitor receptor. *Id.* at 45,270-284. Therefore, the determination of the downwind monitor receptor sites was a critical factor in EPA's analysis and, as such, a crucial

piece of information for a State to evaluate when gauging the possibility that it would significantly impact a particular monitor.

EPA first identified “all monitors projected to be in nonattainment, or based on historic variability in air quality, projected to have maintenance problems in 2012.” *Id.* at 45,233.⁶ The question this endeavor was to answer—whether any particular monitor was appropriately projected to be in nonattainment or have maintenance problems in 2012—was of obvious and critical importance to any State eventually found to be significantly contributing to another State’s air pollution.

EPA reflected its own understanding of the importance of information regarding monitor linkages and the timely dissemination of that information to the States by providing six other States supplemental notice and an opportunity to comment on monitor linkages that either were not included in the Proposed Rule or were altered in the Final Rule. Federal Implementation Plans for Iowa, Kansas, Michigan, Missouri, Oklahoma, and Wisconsin to Reduce Interstate Transport of Ozone, Proposed Rule, 76 Fed. Reg. 40,662 (July 11, 2011). Inexplicably, however, EPA failed to provide Texas with supplemental notice and the ability to comment on its purported significant linkage for nonattainment of the annual PM_{2.5} standard to the Granite City monitor, which was likewise not disclosed in the Proposed Rule.

6. To do so, EPA considered all emissions reductions associated with the implementation of all federal rules promulgated by December 2008 and assumed that CAIR, a previous rule with a purpose similar to that of the Final Rule, had no effect. *Id.*; see *North Carolina*, 531 F.3d at 930 (vacating CAIR); *but see also North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008) (per curiam opinion on rehearing remanding the case to EPA without vacating CAIR).

Specifically, Iowa, Kansas⁷, Michigan⁸, Missouri, Oklahoma⁹ and Wisconsin were all found to have new ozone linkages in the Final Rule and were therefore given a chance to comment. Final Rule, 76 Fed. Reg. at 48,244-246. Yet Texas, which the Proposed Rule did not significantly link to any monitors for PM_{2.5}, was afforded no opportunity for notice and comment regarding its significant contribution to any nonattainment receptor for PM_{2.5}. Additionally, and as already noted, the monitor on which EPA based its significant-contribution finding for Texas in the Final Rule is currently in *attainment* status. See Saint Louis Determination of Attainment, 76 Fed. Reg. at 29,652-53 (acknowledging that the Saint Louis PM_{2.5} nonattainment area in Illinois and Missouri has attained the 1997 annual PM_{2.5} NAAQS and that “[m]onitored attainment of the standard is the only basis of a determination of attainment or nonattainment, and it is the only relevant issue”); see Luminant PFR at 16-19. Had this link been identified in the Proposed Rule, Texas would have commented on several flaws in EPA’s assumptions regarding the monitor and the propriety of its inclusion as a receptor. See *supra* Part I.B.1.

3. EPA’s sole request for comment regarding Texas was misleading.

In the Proposed Rule, EPA not only failed to provide notice of key information regarding Texas’s inclusion in the Final Rule, but it also asked for comments on what ultimately proved to be a non-issue. Whether intentionally so or not, this request was misleading, and it yielded comments from TCEQ and others that EPA later admitted were “no longer relevant.” Transport Rule Primary Response to Comments at 562, Document No. EPA-HQ-OAR-2009-0491-4513 (June 2011); see Luminant PFR at 12-14.

At the rule-proposal stage, EPA requested comment on the potential inclusion of Texas with respect to PM_{2.5} emissions—a request premised on the idea that the Final Rule would lead EGUs in

7. Kansas was included in the ozone program at the proposed-rule stage (and thus provided a preliminary budget for review and comment) due to a linkage to Dallas County, TX (481130069), Proposed Rule, 75 Fed. Reg. at 45,269-270 (Tables IV.C.20, IV.C.21), that was subsequently dropped as a projected maintenance monitor in the Final Rule. Kansas was linked in the Final Rule to a new monitor (Allegan, MI (260050003)). Final Rule, 76 Fed. Reg. at 48,246 (Tables V.D.8, V.D-9).

8. Michigan was included in the ozone program at the proposed-rule stage (and thus provided a preliminary budget for review and comment) due to a linkage to Suffolk, NY (361030009). Proposed Rule, 75 Fed. Reg. at 45,269 (Table IV.C-20). The Suffolk monitor was dropped as a projected nonattainment monitor in the Final Rule, but Michigan was linked to a new monitor (Harford, MD (240251001)). Final Rule, 76 Fed. Reg. at 48,246 (Tables V.D.8, V.D-9).

9. Oklahoma was included in the ozone program at the proposed-rule stage (and thus provided a preliminary budget for review and comment) due to a linkage to a Tarrant County, TX nonattainment monitor (484391002), and to Dallas and Tarrant County, TX, maintenance monitors (481130069, 481130087, 484392003), Proposed Rule, 75 Fed. Reg. at 45,269-270 (Tables IV.C-20, IV.C-21), all of which were subsequently dropped as nonattainment and/or maintenance monitors in the Final Rule. Oklahoma was linked in the Final Rule to a new monitor (Allegan, MI (260050003)). Final Rule, 76 Fed. Reg. at 48,246 (Tables V.D.8, V.D-9).

covered jurisdictions to buy more low-sulfur coal, which in turn would decrease the demand for (and price of) higher-sulfur coal that Texas EGUs might then begin to buy and burn in quantities sufficient to yield significant emissions contributions in downwind States. Proposed Rule, 75 Fed. Reg. at 45,284. EPA's proposal predicted SO₂ emission increases of more than 5,000 tons for Texas and four other States. But because EPA's projected significance threshold was exceeded only for Texas, EPA requested comment only on the potential inclusion of Texas for this purpose. *Id.* (stating that "[f]urther analysis with the air quality assessment tool indicates that these projected increases in the Texas SO₂ emissions would increase Texas's contribution to an amount that would exceed the 0.15 µg/m³ threshold for annual PM_{2.5}. For this reason, EPA takes comment on whether Texas should be included as a group 2 state.").¹⁰

EPA did not, however, identify any nonattainment or maintenance monitor as a potential receptor that could be affected by the anticipated increased use of high-sulfur coal. And because it requested comment only on the potential inclusion of Texas due to increased SO₂ emissions, specifically due to fuel switching, Texas could not reasonably have been expected to provide comments based on inclusion for any one of innumerable possibilities that were *not* proposed.

4. Because the Proposed Rule did not include emissions budgets for Texas, Texas had no opportunity to comment on the effects the Final Rule would have and identify problems that EPA should have considered.

The Final Rule's core premise is that the covered States must reduce their total emissions of NO_x and SO₂ to ensure that they do not contribute significantly to air pollution in downwind States. Final Rule, 76 Fed. Reg. at 48,209. To accomplish that goal, the rule sets emissions budgets that States may not exceed. *Id.* at 48,210. As already noted, EPA's data did not show Texas contributing significantly to any out-of-state monitor, so EPA did not propose emission budgets for Texas for annual NO_x or annual SO₂. Proposed Rule, 75 Fed. Reg. at 45,291 (Table IV.E-1); *id.* at 45,294-95 (Tables IV.F-1, 2); *see also* Luminant PFR at 14-16.

Because EPA did not propose emissions budgets for Texas, neither TCEQ nor any other party could comment on potential emissions-reduction requirements for Texas or other related issues. In the Final Rule, EPA suggests that it was unnecessary to provide illustrative budgets for States because EPA provided a proposed methodology for budget calculation that should be considered sufficient (suggesting that Texas should have calculated its own budget). Final Rule, 76 Fed. Reg. at 48,214. It is unclear, however, why Texas alone should have had to provide this independent assessment in order to understand and assess the impacts of the rule on the State and its EGUs.

10. TCEQ and several other parties commented, in response to this request, on the infeasibility for many Texas EGUs to switch to higher-sulfur coals, making it improbable that Texas SO₂ emissions would increase significantly because of fuel-switching if Texas were not included in the Final Rule. *See, e.g.*, Comment submitted by Mark R. Vickery, Executive Director, Tex. Comm'n on Env'tl. Quality, Document No. EPA-HQ-OAR-2009-0491-2857 (posted Oct. 7, 2010) (commenting on the Proposed Rule); *see also* Luminant PFR at 12-14.

Again, this problem was unique to Texas; no other State covered by the Final Rule was denied proposed budgets.

The absence of emissions budgets for Texas frustrated the purpose of the notice requirement. Without a proposed budget, Texas did not have, and could not have had, an opportunity to comment on a part of the rule that directly affects its interests. The budgets are the key limitation that the rule imposes, and as such are integral to the purported purpose of prohibiting interstate transport of regulated pollutants. Because it had no opportunity to examine the budgets that eventually appeared for the first time in the Final Rule, Texas was unable to adequately comment on the potential effects of the Final Rule on the State.

The lack of emissions budgets for Texas in the Proposed Rule was particularly problematic because it deprived the State of any opportunity to comment on the cost-benefit analysis that determines if a State should be included in a rule of this nature. Proposed Rule, 75 Fed. Reg. at 45,270-285. The central question of what costs EGUs would actually have to incur to meet EPA's budgets could not be answered without knowing what the budgets were. And the lack of that information caused specific harm because EPA's own cost-benefit analysis did not specifically evaluate Texas. Moreover, in the Final Rule, EPA made an erroneous determination that Texas EGUs could make the required emissions reductions at a cost of only \$500/ton of SO₂. See Final Rule, 76 Fed. Reg. at 48,251-252, 48,257-259.

That determination was based on several incorrect facts and analytical mistakes. For instance, in projecting power-industry compliance in 2012, EPA assumed (1) year-round operation of existing controls; (2) operation of scrubbers that are currently scheduled to come on-line by 2012; (3) some fuel-switching to lower-sulfur coal; and (4) changes in dispatch and generation shifting from higher-emitting units to lower-emitting units. *Id.* at 48,279-48,281. Had it received adequate notice of its inclusion for annual PM_{2.5}, Texas would have offered comment on these assumptions' specific inapplicability in Texas. See Elec. Reliability Council of Tex., Inc., Impacts of the Cross-State Air Pollution Rule on the ERCOT System, at 3-6 (Sept. 1, 2011) ("ERCOT Report," attached hereto as Ex. A and incorporated by reference herein); Luminant PFR at 27-35.

EPA's errors are significant, and its own analysis belies its assertion that Texas will be able to meet the Final Rule's budgets. EPA states that, for Texas and other "Group 2" States, see Final Rule, 76 Fed. Reg. at 48,214, the costs to meet the emissions budgets for SO₂ are capped at \$500/ton for 2012 and will remain constant. *Id.* at 48,251-252. But EPA also states that the costs necessary to meet budgets may escalate in 2014, given the emissions limits imposed upon "Group 1" states. EPA illustrates this in Table VI.B-3 of the Final Rule. *Id.* at 48,252 -253. This table shows that, to meet a budget of 243,000 tons of SO₂ emissions in 2014, Texas EGUs will have to expend \$10,000/ton. And because the \$10,000/ton figure is the highest cost level that EPA examined, this may well be an underestimate. Indeed, in light of EPA's numerous mistakes regarding Texas's ability to meet the budget it announced in the Final Rule, the \$10,000/ton figure is possibly a very large underestimation. Nevertheless, costs of \$10,000/ton to meet the SO₂ emissions limits in 2014

are unreasonable, and Texas should have been allowed a chance to explain why that was so during the notice-and-comment period.

EPA's own analysis also reveals the flaw in its prediction that Texas will be able to meet its 2013 emissions budget. Although EPA updated its lignite-usage information for Texas to reflect that fewer cost-effective emissions reductions would be available, *id.* at 48,284, it failed to account for this change in Texas's SO₂ budget. *Id.* at 48,269. Even if EPA maintains that this discrepancy does not interfere with Texas's ability to comply with the Final Rule because Texas's emissions would still fall below Texas's assurance level (287,866 tons for 2012, 2013, 2014 and beyond, *id.* at 48,269), that conclusion is flawed. A presumption that Texas must rely on allowances purchased from out-of-state sources in order to comply with the Final Rule improperly disregards rule-compliance costs and highlights the inadequacy of Texas's budget. Not only did EPA fail to consider the possibility that the required volume of allowances would be unavailable for purchase within the limited pool of Group 2 States, *see* ERCOT Report at 6, it also did not analyze this as a compliance option available at the \$500/ton cost threshold. 76 Fed. Reg. at 48,279-281.¹¹

Were Texas to have attempted its own analysis and guessed at a relationship between the control cost thresholds and a potential state budget, it could only have assumed that its SO₂ budget would have been set at around 293,000 to 295,000 tons. This would have been the only plausible assumption based on the EPA's data, which did not specify a cost threshold for Group 2 states, but rather indicated that some amount below \$2000/ton was appropriate, with some States' budgets reflecting thresholds as low as \$200/ton. Proposed Rule, 75 Fed. Reg. at 45,272, 45,281-282. The lack of a proposed cost-threshold for Texas EGUs would have further hampered any attempt by Texas to calculate a possible SO₂ budget. Operating on such inadequate information, a budget estimate at this level might have been approximately 50,000 tons higher than the SO₂ budget for Texas that was unveiled in the Final Rule.

The lack of a proposed SO₂ budget, combined with the lack of clarity regarding the appropriate cost threshold for Group 2 States and the incorrect base-case data, would have rendered any potential calculation by Texas regarding its SO₂ budget meaningless. Had the EPA provided a proposed budget to Texas, Texas would at least have had the same opportunities for budget review and comment that all other States covered by the Final Rule were provided. And that required notice

11. *See also* Transport Rule Remedy Sensitivity Analysis: Cost-Effectiveness of Texas Emission Reductions, Environmental Protection Agency, Document No. EPA-HQ-OAR-2009-0491-4474 (posted July 12, 2011) (EPA emission projections considering revised lignite sensitivity analysis discussed in the Final Rule). If each of the States made exactly the reductions predicted by the EPA to be available to them at a \$500/ton cost threshold (the threshold used by EPA for 2012 reductions), Texas's SO₂ emissions after those reductions (based on the lignite sensitivity) were 280,000 tons, and all available Group 2 allowances were sold *only* to Texas, Texas would still be short 23,894 allowances. Failure to hold 23,894 allowances to cover emissions (which are still within Texas's overall assurance limit) would result in a forfeiture by whichever EGUs were unable to secure those allowances from the following year's budget of 47,788 allowances. *See* 76 Fed. Reg. at 48,294-298. Further, were this 23,894-ton exceedance over available allowances to occur, it could result in civil penalties of up to \$327,049,125,000 for just one control period (23,894 tons x 365 days in a control period x \$37,500) and the potential for criminal penalties as well. *See* 42 U.S.C. § 7413(a)(3).

would have allowed Texas to assess possible emissions reductions and their anticipated ripple effects, such as impacts on electric reliability. *See infra* Part IV. As it stands, EPA has failed to acknowledge or account for the negative impacts of this rule on electrical generation in the State and the far-reaching effects it could have on Texas citizens. *Id.*

II. The Final Rule violates the CAA by setting emissions budgets for Texas that greatly exceed what would be required to eliminate Texas's purported significant contribution.

As another commenter has already noted, EPA's modeling reflects that Texas's alleged 0.18 $\mu\text{g}/\text{m}^3$ SO₂ contribution to downwind nonattainment for annual PM_{2.5}, *see* Final Rule, 76 Fed. Reg. at 48,240 (Table V.D-1), just barely exceeds the 0.15 $\mu\text{g}/\text{m}^3$ significance threshold, *id.* at 48,236, and is well below the alleged significant contributions of many other States. *See* Luminant PFR at 19-22 and Exhibit 7. Yet the Final Rule requires Texas to make the second largest reduction in 2012 SO₂ emissions. *See id.*; Final Rule, 76 Fed. Reg. at 48,269. This conspicuous disparity between Texas's alleged significant contribution and its required emissions reductions violates the CAA.

As the D.C. Circuit explained in *North Carolina*, EPA "is 'a creature of statute,' and has 'only those authorities conferred upon it by Congress'; 'if there is no statute conferring authority, a federal agency has none.'" 531 F.3d at 922 (quoting *Michigan v. EPA*, 268 F.3d 1075, 1081 (D.C. Cir. 2001)). As already noted, the CAA gives EPA authority to require States to "prohibit[] . . . any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will . . . contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any . . . national primary or secondary ambient air quality standard." 42 U.S.C. § 7410(a)(2)(D)(i)(I). Neither this statutory provision nor any other, however, gives EPA authority to go further and require States to prohibit emissions below the significant-contribution threshold.

North Carolina speaks clearly on this point. There, the Court explained that, even though EPA's "redistributional instinct may be laudatory," section 7410(a)(2)(D)(i)(I) gives the agency "no authority to force an upwind state to share the burden of reducing other upwind states' emissions. Each state must eliminate its own significant contribution to downwind pollution. While [an EPA rule] should achieve something measurable towards that goal, it may not require some states to exceed the mark." 531 F.3d at 921. The Court confirmed that its previous decision in *Michigan* does not permit EPA to "just pick a cost for a region, and deem 'significant' any emissions that sources can eliminate more cheaply," explaining that "[s]uch an approach would not necessarily achieve something measurable toward the goal of prohibiting sources 'within the State' from contributing significantly to downwind nonattainment." *Id.* at 918 (quoting 42 U.S.C. § 7410(a)(2)(D)(i)(I)); *see also id.* at 919-20 (explaining that EPA "may not trespass beyond the bounds of its statutory authority by taking other factors into account than those to which Congress limited it, nor substitute new goals in place of the statutory objectives without explaining how doing so comports with the statute" (internal quotation marks and brackets omitted)).

As with the other matters addressed in Part I, Texas had no opportunity to comment on the severe disconnect between its minimal alleged downwind contribution at the Granite City monitor and the significantly disproportionate amount of emissions reductions the Final Rule requires of it. As already noted, EPA's modeling reflected that Texas did not significantly affect any monitor for purposes of the PM_{2.5} NAAQS. But EPA significantly revised the modeling after issuance of the Proposed Rule, ultimately determining, in the Final Rule, that emissions from Texas exceeded the significance threshold. Final Rule, 76 Fed. Reg. at 48,240, 48242. The amount of that alleged overage, however, was minimal—a mere 1.05% of the 24-hour PM_{2.5} standard and 1.2% of the annual PM_{2.5} NAAQS standard. Yet the Final Rule requires a reduction of over 40% of Texas's total SO₂ emissions (as evidenced by Texas's emissions budget, which is more than 40% less than Texas's 2012 base case emission inventory for SO₂). *Id.* at 48305, 48269.

EPA has offered no explanation for this disparity, and it is difficult to see how any explanation could comport with *North Carolina*. EPA's only rationalization for the Final Rule's amount of reductions in Texas is based on cost-effectiveness. *Id.* at 48,246-264. But the D.C. Circuit has specifically foreclosed reliance on that rationale in this type of scenario. *North Carolina*, 531 F.3d at 918-21.¹²

Even if Texas could have reasonably guessed at a possible emissions budget, it could not have commented on the lack of a rational connection between the required emissions reductions and its purported significant contribution identified in the Final Rule because, as already noted, the Proposed Rule did not significantly link Texas to any downwind receptor monitors. And it would have been odd indeed for Texas to expect a significant-contribution linkage to the Granite City monitor, given that this monitor is currently monitoring PM_{2.5} attainment. *See* Approval and Promulgation of Air Quality Implementation Plans; Illinois; Missouri; Saint Louis Nonattainment Area; Determination of Attainment of the 1997 Annual Fine Particulate Standard, 76 Fed. Reg. at 29,652 (May 23, 2011). It is difficult to see how EPA could rationally require *any* reductions based on data from a monitor showing attainment, much less reductions of over 40% of Texas's total SO₂ emissions.

III. The EPA should grant an administrative stay pending appellate review that postpones the Final Rule's effective date and compliance deadlines as they pertain to Texas.

Texas requests a partial administrative stay, postponing the Final Rule's effective date and compliance deadlines as they pertain to Texas and EGUs within the State. This stay would operate for a three-month period during agency reconsideration of the Final Rule, and/or for the entire period in which there is a pending application for judicial review, whichever is longer.

Authority for granting a stay derives from both the CAA, 42 U.S.C. § 7607(d)(7)(B), and the APA, 5 U.S.C. § 705. Under either provision, EPA has broad discretion to delay the effective date

12. Moreover, EPA's cost-effectiveness analysis is flawed in several respects, *see supra* Part I.B.4, and EPA has not identified a scientific basis for a specific amount of reductions that would correspond to Texas's purported significant contribution to nonattainment at the Granite City monitor.

of a rule, based on the specific facts and circumstances before it. *Cf., e.g., Industrial, Commercial, and Institutional Boilers and Process Heaters and Commercial and Industrial Solid Waste Incineration Units*, 76 Fed. Reg. 28,662, 28,663 (May 18, 2011). Section 7607(d)(7)(B) authorizes EPA to postpone a rule's effectiveness for three months if a reconsideration proceeding is convened. It is apparent that EPA considers the three-month limitation to apply only to the agency's plenary authority to grant a stay without notice and comment. *See Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Aggregation*, 74 Fed. Reg. 22,693, 22,694 (May 14, 2009).

APA section 705 authorizes EPA to postpone the effectiveness of a rule pending judicial review when justice so requires. *See* 5 U.S.C. § 705. Section 705's general provisions applicable to federal agencies are not subject to the CAA's more specific provision applicable to the EPA. *See* 42 U.S.C. § 7607(d)(1) (stating that CAA section 7607(d) replaces sections 553-557 of the APA (except as otherwise provided in section 7607(d)), but not stating that it replaces APA section 705). Moreover, when needed, the EPA has used APA section 705 to continue the effect of a stay initially issued under CAA section 7607(d)(7)(B). *Cf. NESHAP Radionuclide*, 55 Fed. Reg. 10,455, 10,456 (Mar. 21, 1990).

A. Texas is entitled to a stay under CAA section 7607(d)(7)(B).

Beyond the requirement that a reconsideration proceeding be convened, CAA section 7607(d)(7)(B) imposes no other requirement for granting a three-month stay pending reconsideration. *Cf., e.g., National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants*, 76 Fed. Reg. 28,318, 28,326 (May 17, 2011) (stating that stay was not appropriate under section 7607(d)(7)(B) because petitions for reconsideration were denied). No particular test or standard for evaluating a stay request is given. Nevertheless, past requests for stay submitted to the EPA reveal several considerations that may be taken into account in ruling on a stay request.

The EPA has considered whether a stay will provide sufficient time to reconsider an agency action or rule. *See, e.g., National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage 1)*, 60 Fed. Reg. 62,991, 62,991 (Dec. 8, 1995). The EPA has also considered whether a stay will prevent "undue hardship" and "possible harm" to the requestor during reconsideration. *See, e.g., Standards of Performance for Petroleum Refineries*, 73 Fed. Reg. 55,751, 55,752 (Sept. 26, 2008). Other considerations include: (1) "potential negative effects" on an industry, *see National Emission Standards for Hazardous Air Pollutants*, 56 Fed. Reg. 10,523, 10,523 (Mar. 13, 1991); (2) adverse economic consequences to the requestor such as substantial costs and business disruption, *see Protection of Stratospheric Ozone*, 60 Fed. Reg. 24,676, 24,678 (May 9, 1995); *National Emissions Standards for Hazardous Air Pollutants*, 57 Fed. Reg. 56,877, 56,878 (Dec. 1, 1992); and (3) potential environmental impacts, *see Protection of Stratospheric Ozone*, 60 Fed. Reg. 24,676, 24,678 (May 9, 1995).

Assuming Texas's request for reconsideration is granted, the facts and circumstances pertaining to Texas and Texas EGUs warrant at least a temporary stay of three months under CAA section 7607(d)(7)(B). To begin, given that the Final Rule's provisions applicable to Texas were first introduced in the Final Rule, represented a significant change from the Proposed Rule, and Texas had no opportunity to comment on these new requirements in the Final Rule, reconsideration will likely take considerable time and not conclude before the Final Rule's scheduled effective date.

Without a stay in place during reconsideration, Texas and its EGUs will experience significant harms. For one thing, without a stay, Texas EGUs will be required to take costly steps in order to attain compliance before reconsideration is likely concluded. These compliance efforts will require major investment by Texas EGUs, which may not be recoverable if reconsideration leads to significant revisions or abrogation of the rule as to Texas. *See* Luminant PFR at 33-36. Such unrecoverable costs could lead to dire economic consequences for Texas EGUs. Besides EGUs, the State of Texas and its citizens would also experience avoidable economic hardship. Absent a stay, if the Final Rule forces "EGUs in Texas . . . to cut production or shutdown in a matter of months," Texas can expect a potential "loss of jobs, loss of tax revenue, and collateral economic consequences, all of which will damage the small, rural communities that rely almost exclusively on . . . mines and plants for their economic livelihood." *Id.* at 34.

Making matters worse, without a stay, the Electric Reliability Council of Texas ("ERCOT") forecasts that the Final Rule's requirements applicable to Texas and the Final Rule's truncated implementation deadlines will have a profound negative impact on Texas EGU operations, which will, in turn, cause foreseeable near- and long-term adverse impacts to the ERCOT-system grid in the form of rotating outages of customer load, *i.e.*, rolling blackouts. *See* ERCOT Report at 4-7. Rotating power outages and the attendant destabilization of the power-delivery system to residential, industrial, and commercial users has the potential to severely disrupt the Texas economy and inflict human suffering throughout the State.

All of these harms far outweigh the minuscule effect that the fine particulate-matter emanating from Texas currently has on air quality in other States. As already noted, the Final Rule's Texas provisions were imposed based solely on predicted emissions that Texas EGUs will contribute to nonattainment of the annual and daily PM_{2.5} NAAQS in 2012 at a single monitor in Madison County, Illinois (the Granite City monitor), which already shows air-quality attainment. Final Rule, 76 Fed. Reg. 48,208, 48,223 (Aug. 8, 2011). The amount attributed to Texas currently is only 0.03 µg/m³ above the significance level of 0.15 µg/m³. *Id.* at 48,240. Issuing a temporary stay of the Texas provisions at this time will not cause any significant adverse environmental impacts or harm to the public at large. It will also not threaten the ability of the Granite City monitor to attain and maintain the annual PM_{2.5} NAAQS, given that the monitor is, as already noted, in attainment status.

Weighing all of these factors, a stay under CAA section 7607(d)(7)(B) to preserve the status quo during EPA reconsideration of the Final Rule, as to Texas and EGUs within the State, is well justified.

B. Texas is entitled to a stay under APA section 705.

As already mentioned, APA section 705 grants the EPA authority to stay an agency order or final determination pending judicial review of such order or determination if the EPA finds “that justice so requires.” 5 U.S.C. § 705. Section 705 also provides that a reviewing court may grant a stay pending appeal “to the extent necessary to prevent irreparable harm.” *Id.* Beyond these requirements, section 705 specifies no further criteria to guide agencies in determining whether to grant a stay of an agency decision pending appeal.

At least one federal agency has looked to the Federal Rules of Appellate Procedure for additional guidance regarding the criteria that courts and agencies should use in determining whether to impose a stay of an agency decision. The Federal Election Commission has observed that Federal Rule of Appellate Procedure 18 permits a person to apply to the court of appeals in which a petition for direct review of an agency order or decision is pending for a stay of that order or decision. *See Compliance Procedures*, 50 Fed. Reg. 21,077, 21,079 (May 22, 1985). Rule 18, however, requires that, in most instances, application for a stay first be made to the administrative agency, as provided by 5 U.S.C. § 705. 50 Fed. Reg. at 21,079. In addition, FEC has noted that the advisory committee notes to Rule 18 state that the rule “merely assimilates the procedure for obtaining stays in agency proceedings with that for obtaining stays in appeals from the district courts.” 50 Fed. Reg. at 21,079. Thus, according to the FEC, because an administrative agency is analogous to a district court in the situation where a stay is sought pending appellate review, the standard applied by the district courts in determining, in the first instance, if such a stay should be granted should likewise be applied by the administrative agency when confronted with the same issue. *Id.*

That standard is the familiar four-part test applied by federal courts in determining whether a stay or any other type of injunctive relief ought to be imposed pending a judicial action. Under that test, the petitioner must show that: (1) he or she will suffer irreparable injury in the absence of such a stay; and, if so, that (2) he or she has made a strong showing of the likelihood of success on the merits of the judicial action; (3) that such relief is consistent with the public interest; and (4) that no other party’s interests will be substantially harmed by the stay. *Id.* (citing *Wash. Metro. Area Transit v. Holiday Tours, Inc.*, 559 F.2d 841, 842-43 (D.C. Cir. 1977); *Va. Petrol. Jobbers Ass’n v. Fed. Power Comm’n*, 259 F.2d 921, 925 (D.C. Cir. 1958)); *accord Special Counsel v. Campbell*, 58 M.S.P.B. 455, 457 (1993) (stating that whether a stay should issue under 5 U.S.C. § 705 depends on analysis under four-part test).

The Federal Energy Regulatory Commission takes a somewhat similar approach to that of FEC. FERC focuses on only two factors in determining whether to grant a stay pending appeal under APA section 705. *Ceiling Prices; Old Gas Pricing Structure*, 51 Fed. Reg. 27,529, 27,530 (Aug. 1, 1986); *Regulation of Natural Gas Pipelines After Partial Decontrol*, 50 Fed. Reg. 49,370, 49,370-71 (Dec. 2, 1985). FERC asks whether (1) implementation of the regulations will cause imminent, irreparable harm to the petitioner, and (2) staying the effectiveness of a regulation is in the public interest. 51 Fed. Reg. at 27,530; 50 Fed. Reg. at 49,370-71.

By contrast, EPA has shunned any test beyond simply section 705's "as justice so requires" standard. See EPA's Memorandum in Opposition to Sierra Club's Motion for Summary Judgment and in Support of EPA's Cross-Motion for Summary Judgment 13-14, in No. 1:11-cv-01278-PLF, *Sierra Club v. Jackson* (Document 20, filed Aug. 25, 2011). EPA apparently believes that applying additional factors besides the "as justice so requires" standard is contrary "to the very language of the statute":

Section 705 specifically provides a different standard: an agency may postpone the effective date of an agency action "when an agency finds that justice so requires." That Congress chose, in the second sentence of section 705, to make irreparable injury a predicate for a court's grant – presumably over an agency's objection – of a judicial stay in fact indicates that neither irreparable injury nor any other portion of the traditional judicial standard for granting preliminary relief is a predicate to an agency's own exercise of discretion under section 705: A reviewing court may postpone the effective date of agency action "only to the extent necessary to prevent irreparable injury": while an agency may do so when the agency finds that "justice so requires." By using different language, Congress established that the standards governing stays to be issued by the agencies and the courts are different. Further, the D.C. Circuit has articulated the standard for an agency's exercise of its authority under section 705 consistent with the text of the statutory provision, without referencing the factors [from the four-part test].

Id. at 13-14 (citing *Recording Indus. Ass'n of Am. v. Copyright Royalty Tribunal*, 662 F.2d 1, 14 (D.C. Cir. 1981)). Indeed, EPA has expressly disclaimed the four-part test in considering a request for stay pending appeal. *Id.* at 13 n.9. And EPA considers that its decision whether to stay the effective date of a Final Rule pending appeal need only be reasonable in light of the circumstances presented by the stay request. See *id.* at 14-15.

Thus, in determining a stay request pending appeal, EPA's sole focus has been section 705's "as justice so requires" standard. *Id.* at 14. Despite the inherently subjective nature of this inquiry, EPA has indicated that a stay may be appropriate when (1) an insufficient opportunity for public comment was given on certain revisions that EPA made to proposed rules, (2) data was received before rules were finalized that the EPA was unable to incorporate into the final rules, and (3) many facilities across multiple diverse industries might need to begin making major compliance investments in light of impending compliance deadlines, and those investments may not be reversible if the standards are in fact revised following reconsideration and full evaluation of all relevant data. *Id.* at 14. These elements—as well as the more stringent judicial-stay requirements noted above—are satisfied here.

1. Justice requires that the EPA grant Texas's stay request.

In light of the EPA's stated position on section 705 stays, Texas's requested stay should be granted for the following reasons. First, as explained above, Texas was not afforded adequate notice

or a meaningful opportunity to comment on the Final Rule, and the lack of adequate notice prevented Texas from providing comments that would have significantly changed the Final Rule. *See supra* Part I.

Even more, the Final Rule will require Texas EGUs to make major compliance investments in light of the rule's impending deadlines. Five months to make the changes required by this rule is *per se* unreasonable, and EPA has provided no analysis or rational reason for how or why these reductions are to be made within the short time frame provided for compliance. These investments may not be reversible if the rule is in fact revised after reconsidering and fully evaluating all of the relevant data. *See* Luminant PFR at 33. As stated above, such unrecoverable costs could lead to dire economic consequences for Texas EGUs and have equally dire collateral economic consequences on Texas communities and the citizenry who rely on the EGUs for their economic livelihood. *See id.* at 33-34.

Taking into account all of those considerations, the equities weigh heavily in favor of granting Texas a stay pending judicial review. Nothing more should be required to grant Texas's stay request. If, however, the EPA needs further proof, consideration should be given to the irreparable harm that Texas and the public will suffer if a limited stay is not granted. In particular, if a stay pending appeal is not issued, the Final Rule, as it presently stands, will degrade Texas's electric reliability and threaten its electricity consumers with enhanced risk of power outages.

2. The Final Rule will cause irreparable harm to Texas.

The Final Rule threatens to disrupt the provision of reliable electricity through the interconnected web of electric-transmission systems serving Texas consumers. There are three main interconnected networks, or power grids, that comprise the electric-power system in the continental United States: the Eastern Interconnect, the Western Interconnect, and the Texas (ERCOT) Interconnect. The Texas Interconnect is not connected with the other networks, except through certain direct current ("DC") interconnection facilities, and the other two have limited interconnection with each other (also through DC interconnections). *See* Electric Power Industry Overview 2007, Energy Information Administration, *available at* <http://www.eia.gov/cneaf/electricity/page/prim2/toc2.html>.

Portions of Texas fall into each of the three interconnects, and power generation in Texas is monitored by several regional reliability councils, including ERCOT, the Western Electricity Coordinating Council ("WECC"), the Southwest Power Pool ("SPP"), and the Southeastern Electric Reliability Council ("SERC"). *See id.* The Final Rule could have direct impacts in all of the electric-power systems regulated by these regional reliability councils, including ERCOT. Because of their interconnectedness, compliance decisions made by one regional authority could impact the others. For example, compliance decisions made by Texas EGUs could have direct impacts to power-system reliability in the WECC, SPP, or SERC for EGUs whose operations span multiple States. These considerations are critical to understanding the far-reaching impact of the Final Rule. But notably, EPA did not evaluate these issues, nor did it provide an opportunity to comment on

these impacts in the Proposed Rule. *See* Southwestern Public Service Company's Petition for Reconsideration, Docket No. EPA-HQ-OAR-2009-0491 (Aug. 23, 2011).

At the request of Texas's Public Utility Commission, however, ERCOT has at least studied the impact that the Final Rule will have on the reliability of Texas's primary electric grid and power-delivery system. *See generally* ERCOT report. The ERCOT Report demonstrates the harm to Texas. It concludes that the Final Rule will immediately and directly impact Texas EGUs through allocation of emission allowances, compliance deadlines, and substantial noncompliance penalties. *See id.* at 2-3. To achieve the impending compliance deadlines, EGUs must consider whether to implement one or more of several compliance options. *See id.* at 3-4.

One option for reducing SO₂ emissions is switching to "lower sulfur content fuel." *Id.* at 3. That switch, however, is fraught with risk. For one thing, "the demand for lower sulfur coal is expected to exceed the mining capacity and/or railroad capacity necessary to deliver the coal to Texas." *Id.* For another thing, the switch may cause "unit capacity derates" and "may require modifications to the unit's air emissions permit." *Id.* In any event, EPA provides no analysis of economic availability of low-sulfur coal. *See* Final Rule, 76 Fed. Reg. at 48,279-281.

Another option would involve more frequent use of existing SO₂ control equipment such as wet-limestone scrubbers and possibly increase the effectiveness of this equipment. *Id.* But this option is available to only "a small subset of coal plants in ERCOT" and, in any event, the expected benefit of employing this option is only a 1 to 2 percent decrease in the maximum net output of units to which the option might apply. *Id.* Additionally, increased use of such controls could easily require permit modifications that could not be completed in time to comply with the Final Rule's deadline, and EPA failed to consider SIP-approved state-specific permitting requirements.

A third option to reduce SO₂ emissions is dry sorbent injection. *Id.* This option may decrease SO₂ emissions by 25 to 30 percent in units without existing necessary control equipment. *Id.* But if this option is to be employed, public notice or modifications to air permits may be required. *Id.*

Reducing NO_x emissions will likely entail "high capital cost unit retrofits, including the addition of selective non-catalytic reduction (SNCR) or selective catalytic reduction (SCR) technologies." *Id.* Making these changes will require "several years for permitting, design and construction." *Id.* Given this reality, the Final Rule's near-term compliance deadlines are problematic, to say the least.

The near-term impossibility of these "options" leaves Texas EGUs with just one option: decrease production. This could be accomplished by (1) decreasing EGU outputs to their minimum levels during off-peak hours, then powering up to maximum capacity during peak afternoon hours; or (2) imposing extended unit outages. *Id.* Making either of these choices, however, will cause reliability problems. *See id.* at 3-4 (noting that, if these dispatch patterns are employed, traditionally

base-loaded units can be expected to experience increased maintenance outages and long start-up requirements, making them unavailable during off-peak extreme weather events).

Considering these compliance options, ERCOT has estimated the likely “aggregate impacts on the ERCOT system.” *Id.* at 4. ERCOT’s analysis indicates that the Final Rule’s “annual SO₂ program is likely to be the most restrictive on the ERCOT system.” *Id.* The NO_x program is not as likely to be as restrictive as the SO₂ program, but, if Texas has another extended hot summer like the record one currently being experienced in 2011, EGUs would need to obtain additional emission allowances through trading of NO_x emissions allowances. *See id.*

However, “there will not be a liquid market throughout the year for allowances” due to uncertainty among resource owners and stiff civil and criminal penalties for non-compliance. *Id.* at 6. Moreover, it can be expected that unforeseen complications will likely cause the various compliance options to not always function as designed, nor perform as anticipated. *Id.* Given these assumptions, ERCOT developed three likely compliance scenarios to assess the risks to the system posed by the Final Rule. *Id.* All of the events depicted in these scenarios are reasonably foreseeable in light of the realities of having to comply with the Final Rule.

Scenario one relies on the compliance plans of which Texas EGUs have notified ERCOT. *Id.* This scenario anticipates an incremental reduction in available operating capacity of approximately 3,000 MW in the off-peak months of March, April, October, and November, and an operating capacity reduction of 1,200-1,400 MW during the remainder of the year, including the peak-load months of June-August. *Id.*

Scenario two builds upon the first by assuming that increased dispatching of “base-load units” will cause increased maintenance outages, especially in the fall months. *Id.* at 5. That is, beyond the reduced capacities assumed in scenario one, the outages envisioned under scenario two will result in an additional loss of approximately 5,000 MW of capacity during October and November, and possibly December. *Id.*

Finally, scenario three adds to scenario two by considering “possible near-term market limitations on the availability of imported low-sulfur coals, either due to nationwide demand exceeding mine output capacity or railroad shipping capacity.” *Id.* This occurrence would unleash a domino effect whereby “coal plant resource owners would be forced to rely on higher sulfur coals during the spring and peak season summer months,” and then, in order to conserve allocated resources, these owners would be forced to reduce unit output in the fall, causing decreased capacity in October and November. *Id.* As a result, under scenario three’s assumptions, the ERCOT system could experience approximately 6,000 MW of lost capacity during October and November, and possibly December, which would be in addition to the reduced capacities of scenario one. *Id.* That is, scenario three could result in 1,000 MW more in lost capacity during October, November and December beyond that which is envisioned under scenario two. *Id.* Additionally, in this third scenario, ERCOT would expect incremental capacity losses of approximately 3,000 MW in the off-

peak months of March and April and approximately 1,200-1,400 MW during the remainder of the first nine months of the year. *Id.*¹³

Even under the best-case scenario (scenario one), ERCOT can expect that EGUs' attempts at complying with the Final Rule will result in "a reduction in available operating capacity of 1,200-1,400 MW during the peak season of 2012." *Id.* To put that operating loss into perspective, if it had occurred in the peak season of 2011, ERCOT would have experienced rotating outages in August. *Id.* Even without the Final Rule that would force ERCOT to lose thousands of MWs of generation capacity, on at least one day this summer, ERCOT was forced to import over 1,000 MW under emergency protocols from grids outside ERCOT to meet its system needs. *See* Press Release, Elec. Reliability Council of Texas, ERCOT Breaks Peak Demand Record Third Time (August 3, 2011), *available at*, http://www.ercot.com/news/press_releases/show/416. It is therefore easily foreseeable that implementation of the Final Rule has a significant likelihood of resulting in rolling blackouts in 2012 and beyond.

What is more, there is a greater risk of rotating outages during the off-peak months, too, because of the reductions predicted in the three scenarios coupled with annual maintenance outages and weather variability during the off-peak season. ERCOT Report at 5. As undesirable as these scenarios are, they likely *underestimate* the severity that might befall Texas if the Final Rule goes into effect. Open Meeting of the Pub. Util. Comm'n of Tex., Hearing on the Reliability Impacts of CSAPR, Sept. 1, 2011 (statement of Warren Lasher, ERCOT System Planning Manager (minutes 30:20-31:13), *available at* <http://www.texasadmin.com/puct.shtml>); *see also* ERCOT Report at 6 (explaining that, "[d]ue to numerous uncertainties, ERCOT cannot confidently estimate a 'worst case' scenario at this time"). Combinations of certain events discussed in the ERCOT Report may "further increase the risk of increasingly frequent and unpredictable emergency conditions, including the potential for rotating outages." ERCOT Report at 6. In sum, the Final Rule's effective date and compliance deadlines do not allow ERCOT and Texas EGUs sufficient time to take the steps necessary to avoid the loss of thousands of megawatts of capacity and the specter of rotating outages for Texas power customers. *See id.* at 7.

As it presently stands, the Final Rule threatens to destabilize Texas's power-delivery system by increasing the risk of rotating power outages that will leave swaths of Texans without electricity for indeterminate periods of time. That situation is *per se* irreparable harm. *See Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181 F. Supp. 2d 1111, 1121 (E.D. Cal. 2001) (holding that rolling blackouts put health and safety of citizens at risk and constitute irreparable harm); *see also Westlands Water Dist. v. U.S. Dep't of Interior*, No. Civ. F00-7124 WWDLB, 2001 WL 34094077, at *11 n.33 (E.D. Cal. 2001) (stating that serious harm occurs when energy cannot be obtained and power consumers are directly deprived); *U.S. Transmission Sys. v. Americus Ctr., Inc.*, Civ. A. No. 85-7044, 1986 WL 1202, at *12 (E.D. Pa. 1986) (stating that the termination of essential utilities such as electricity can cause irreparable harm). Indeed, the mere "threat of a blackout"

13. All of these scenarios fail to consider: (1) possible barriers to increasing production (at units that are currently designated as "peaking units") that are inherent in modification of existing permits; and (2) the necessity of meeting other federal standards, including both the 2010 NO_x and SO₂ NAAQS.

demonstrates irreparable harm. *Cf. City of Cleveland v. Cleveland Elec. Illuminating Co.*, 684 N.E.2d 343, 350 (Ohio Ct. App. 1996); *cf. also Pa. Power & Light Co. v. Leininger*, No. 81 E 30, 1983 WL 384, at **5 (Pa. Ct. Common Pleas 1983) (holding that defendant's actions constituted a clear and present as well as future danger of irreparable harm to an electrical company's customers by hindering or obstructing the company's maintenance of a power transmission line serving those customers).

Should rotating outages occur, Texas can expect severe economic and concomitant public-health effects, including death or severe disablement.¹⁴ The effects would be most pronounced during summer and winter, when Texas experiences both extreme heat and cold events. *See generally* <http://atmo.tamu.edu/osc/> (information available from the Office of the Texas State Climatologist). The Final Rule's adverse consequences will result in substantial risks to the health, welfare, and lives of Texans—vulnerable senior citizens and economically disadvantaged families in particular. Heat is the number one weather-related killer in the United States, resulting in hundreds of fatalities each year. On average, excessive heat claims more lives each year than floods, lightning, tornadoes, and hurricanes combined. *See Heat Wave: A Major Summer Killer*, Nat'l Oceanic & Atmospheric Admin., available at <http://www.noaawatch.gov/themes/heat.php>. An average of approximately 175 people die each year from heat-related causes. *See The Heatwave of July 1995*, Nat'l Oceanic & Atmospheric Admin., available at <http://www.crh.noaa.gov/arx/events/heatwave95.php>. Heat waves can exacerbate heat-related deaths, as illustrated during the summer of 1980 when an estimated 10,000 people were killed nationwide by a heat wave. *See Billion Dollar U.S. Weather Climate Disasters*, Nat'l Oceanic & Atmospheric Admin., available at <http://lwf.ncdc.noaa.gov/oa/reports/billionz.html>. In August 2003, an estimated 50,000 Europeans were killed by a heat wave. *See Heat Wave: A Major Summer Killer*, Nat'l Oceanic & Atmospheric Admin., available at <http://www.noaawatch.gov/themes/heat.php>.

According to EPA, “[a]ir conditioning is the best defense” to prevent heat-related problems, and EPA therefore recommends that local governments “work with utilities to ensure that no one’s electricity is turned off during a heat wave.” *See Planning for Excessive Heat Events*, EPA (Apr. 2009), available at http://www.epa.gov/agingepa/resources/factsheets/lowlit_itdhpfehe_100-F-09-019.pdf. As a result of power shortages due to Japan’s recent earthquake and tsunami, the number of people taken to the hospital for heatstroke tripled in June of this year, compared to June of last year. *See Michael Marshall & Wendy Zuckerman, Japanese Power Cuts Linked to Heatstroke Deaths*, NEW SCIENTIST, July 19, 2011, available at <http://www.newscientist.com/article/dn20716-japanese-power-cuts-linked-to-heatstroke-deaths.html>. Japanese health experts are warning the public of the risk of heat stroke if they refrain from using air conditioning, noting that “air conditioning is the best help for people with illnesses and for elderly people to avoid heatstroke.”

14. Mortality and morbidity associated with extreme temperature related events is widely discussed and acknowledged. Power outages due to inadequate base-load capacity will likely increase mortality and morbidity following implementation of the Final Rule during months in which extreme temperature events are likely.

See Heatstroke Feared as People Save Power, JAPAN TIMES ONLINE, July 10, 2011, available at <http://search.japantimes.co.jp/cgi-bin/nn20110710a3.html>.

Moreover, economic hardship will result from power-plant shutdowns and lignite-mine closures. Not only will the people currently employed by these plants suffer the harm of unemployment, but the entire area will also suffer economic depression. Tax revenue from the power industry and associated mining activity funds significant portions of county tax rolls. The education system and infrastructure of an area supported by this industry will not be sustainable without sufficient revenue. As an example of the potential economic harm, the Texas Comptroller estimates that a loss of just \$1 million from power production in Titus County would result in an additional loss of \$420,000 and three jobs within Texas. Within the county, the loss would amount to an additional \$160,000 for each million dollars of direct loss of revenue. (For comparison purposes, the estimated appraised value of the power plant and mine in Titus County is \$967 million. The amount of tax revenue to Titus County is \$16.7 million. In addition, the mines for this plant also provide approximately \$386,000 in tax revenue to two other counties, Camp and Hopkins Counties.)

That is not all. As electricity demand increases to a point that electric reliability in the ERCOT region is jeopardized, ERCOT will implement its Energy Emergency Alert procedures to prevent loss of power across the grid. To meet electricity demand under constrained system operations, ERCOT first seeks demand reduction through a program of voluntary load curtailment in an effort to avoid involuntary load shed (rolling blackouts). To the extent that constrained system operations lead customers (*i.e.*, hospitals, schools, water/waste water treatment plants) choose to utilize back-up generators, these units would emit at substantially higher emission rates than coal-fired EGUs, and they would have a direct impact on highly populated urban areas with existing air-quality challenges such as Dallas, Houston, Austin, and San Antonio. However, if after taking all of these steps, ERCOT cannot satisfy electricity demand with available generation resources, ERCOT's only remaining option would be to order involuntary load shed in the form of rotating blackouts.

In short, Texas has shown that the Final Rule presents a real and imminent threat to Texas's power-delivery system—which in turn threatens Texans' lives and livelihoods. For this additional reason, a stay should be granted pending judicial review of the Final Rule.

RELIEF REQUESTED

For the reasons explained above, Texas respectfully requests that EPA convene a proceeding for reconsideration of the Final Rule. Texas further requests an immediate stay of the Final Rule's effectiveness and its compliance deadlines as to Texas for the longer of EPA's reconsideration proceeding or any subsequent action for judicial review. Finally, Texas requests that EPA extend the compliance deadlines as to Texas to reflect any period during which the rule's effectiveness was stayed.

Respectfully submitted,

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EXHIBIT A



**Impacts of the Cross-State Air Pollution Rule
on the ERCOT System**



September 1, 2011

Executive Summary

ERCOT was asked by the Public Utility Commission of Texas (PUCT) in the Open Meeting on July 8, 2011, to evaluate the impacts of the Cross-State Air Pollution Rule (CSAPR) on the reliability of the ERCOT grid. The ERCOT analysis included meetings with representatives of the Texas Commission on Environmental Quality and the U.S. Environmental Protection Agency, review of the compliance strategies provided by the owners of coal-fired resources in the ERCOT region, and consolidation of these compliance strategies for purposes of evaluating system-wide impacts.

Based on the information provided by the resource owners, ERCOT developed three scenarios of potential impacts from CSAPR. The first scenario, derived directly from the compliance plans of individual resource owners, indicates that ERCOT will experience a generation capacity reduction of approximately 3,000 MW during the off-peak months of March, April, October and November, and 1,200 – 1,400 MW during the other months of the year, including the peak load months of June, July and August. Scenario 2, which incorporates the potential for increased unit maintenance outages due to repeated daily dispatch of traditionally base-load coal units, results in a generation capacity reduction of approximately 3,000 MW during the off-peak months of March and April; 1,200 – 1,400 MW during the remainder of the first nine months of the year; and approximately 5,000 MW during the fall months of October, November and possibly into December. Scenario 3 includes the impacts noted for Scenario 2, along with potential impacts from limited availability of imported low-sulfur coal. This scenario results in a generation capacity reduction of approximately 3,000 MW during the off-peak months of March and April; 1,200 – 1,400 MW during the remainder of the first nine months of the year; and approximately 6,000 MW during the fall months of October, November and possibly into December.

When the CSAPR rule was announced in July, it included Texas in compliance programs that ERCOT and its resource owners had reasonably believed would not be applied to Texas. In addition, the rule required implementation within five months – by January 2012. The implementation timeline provides ERCOT an extremely truncated period in which to assess the reliability impacts of the rule, and no realistic opportunity to take steps that could even partially mitigate the substantial losses of available operating capacity described in the scenarios examined in this report. In short, the CSAPR implementation date does not provide ERCOT and its resource owners a meaningful window for taking steps to avoid the loss of thousands of megawatts of capacity, and the attendant risks of outages for Texas power users.

If the implementation deadline for CSAPR were significantly delayed, it would expand options for maintaining system reliability. ERCOT is advancing changes in market rules – such as increasing ERCOT’s ability to control the number and timing of unit outages and expanding demand response – that could help avert emergency conditions. These measures will not, however, avoid the losses in capacity due to CSAPR that increase the risk of such emergencies. As discussed in this report, those losses will, at best, present significant operating challenges for ERCOT, both in meeting ever-increasing peak demand and in managing off-peak periods in 2012 and beyond.

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Impacts of the Cross-State Air Pollution Rule on the ERCOT System

1. Introduction

ERCOT was asked by the Public Utility Commission of Texas (PUCT) in the Open Meeting on July 8, 2011, to evaluate the impacts of the Cross-State Air Pollution Rule (CSAPR) on the reliability of the ERCOT grid. The final language of the CSAPR was released by the U.S. Environmental Protection Agency (EPA) on July 6, 2011, and was published in the Federal Register on August 8, 2011.

The CSAPR is one of several environmental rules proposed by EPA that affect electric generation. The CSAPR includes three separate compliance programs: an annual SO₂ program, an annual NO_x program, and a peak season NO_x program (for emissions during the peak ozone season of May – September). In the proposed rule (then known as the Clean Air Transport Rule [CATR]), Texas was only included in the peak season NO_x program. Based on the proposed rule, an ERCOT study completed on June 21, 2011, evaluating the expected impacts of the pending regulations, did not include any incremental impacts from the CATR on the ERCOT system.

In the CSAPR rule actually adopted by the EPA, however, Texas is included in all three compliance programs - the peak season NO_x program, the annual NO_x program, and the annual SO₂ program. The implementation date for the CSAPR is January 1, 2012.

In order to accomplish this review, ERCOT undertook several activities.

- ERCOT reviewed documentation published on the EPA web-site regarding the rule.
- ERCOT met with representatives of the Texas Commission on Environmental Quality (TCEQ) and the EPA.
- ERCOT consulted with environmental experts from several of the generating entities in the ERCOT region whose facilities were likely to be affected by the CSAPR regulations. The purpose of these meetings was to ascertain the likely compliance plans for those resources owners.
- These compliance plans were aggregated so that ERCOT could evaluate the likely impacts to grid reliability.

2. Rule Description

The CSAPR is being implemented in order to address the interstate transport of sulfur dioxide (SO₂) and nitrogen oxides (NO_x). The rule is a replacement for the Clean Air Interstate Rule (CAIR), which was implemented in 2005. The CAIR was remanded to the EPA by the United States Court of Appeals for the District of

Columbia Circuit in 2008. In the CAIR program, Texas was regulated for particulate matter emissions (annual NOX and SO2 emissions).

Under CSAPR, generating units in Texas will be regulated for annual emission of SO2 and NOX, as well as emissions of NOX during the peak season (May – September). Each unit will be given a set allocation of emissions allowances. At the end of the calendar year, resource owners must turn in one allowance for each ton of emissions or be subject to penalties. Intra-state trading of allowances between resource owners is unlimited in the rule. However, interstate trading of allowances is capped – no state can have annual net imports of allowances of more than approximately 18% of the total state allocation of allowances. If this limit is exceeded, any resource owner that contributed to the excessive use of imported allowances will be subject to penalties.

Resource owners in Texas are permitted to trade SO2 allowances with resource owners in Kansas, Nebraska, Minnesota, Alabama, Georgia and South Carolina. Trading of NOX emissions will be allowed with states as depicted on the following map.

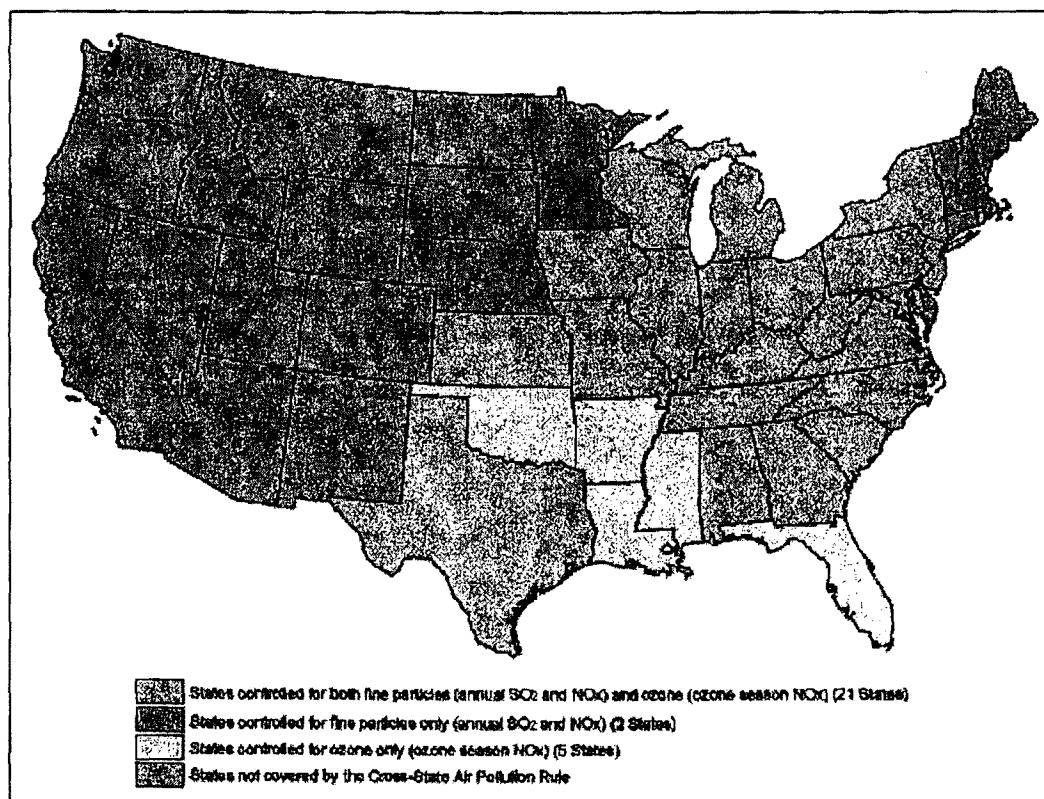


Figure 1: States Included in the Cross-State Air Pollution Rule

Resource owners who have emissions in excess of their annual allocations will have their next year's allocations reduced by one emission for each excess ton of emissions, plus a penalty of two additional allowances for each excess ton. In addition, the Clean Air Act includes provisions for civil lawsuits in the event of non-compliance. Non-compliance penalties under the CSAPR program are substantial, and can reach up to \$37,500 per violation per day. In addition to program penalties, failure to comply can subject entities to the risk of civil penalties, lawsuits by private parties, and criminal liability.

3. Compliance Options

Resource owners have several near-term compliance options to meet the emissions limits established by the CSAPR. In order to reduce SO₂ emissions, lower sulfur content fuel can be used. In the case of plants that are currently burning lignite coal, or a mix of lignite and sub-bituminous coals (such as coal from the Powder River Basin [PRB] region of northwest Wyoming), increasing the use of low sulfur western coal will reduce SO₂ emissions. Units that currently are being fueled exclusively by western sub-bituminous coals can be switched in whole or in part to ultra-low-sulfur western coals.

In the near-term, the demand for lower sulfur coal is expected to exceed the mining capacity and/or the railroad capacity necessary to deliver the coal to Texas. In addition, the use of lower sulfur coals can result in unit capacity derates due to increased heat content of the fuel. Unit modifications to resolve any such derates may require modifications to the unit's air emissions permit.

Existing SO₂ control equipment, such as wet-limestone scrubbers, can be utilized more frequently than is current practice, and in some cases the effectiveness of this equipment can be increased. This option only applies to a small subset of coal plants in ERCOT, and the use of scrubbers results in a decrease in maximum net output from the affected units of about 1 to 2 percent.

The use of dry sorbent injection is another compliance option to reduce SO₂ emissions. Dry sorbent compounds, such as sodium bicarbonate and trona, can be injected into a flue duct where they react with SO₂ (and acid gases) to form compounds that can be removed using an electrostatic precipitator (ESP) or baghouse. Resource owners exploring this option anticipate that it will provide a 25 – 30% reduction in emissions of SO₂ on units without existing SO₂ control equipment. The use of dry sorbent injection may require public notice or air permit modification.

Most of the low cost options to reduce NO_x emissions have been utilized to comply with existing air quality regulations. Further reductions will likely require high capital cost unit retrofits, including the addition of selective non-catalytic reduction (SNCR) or selective catalytic reduction (SCR) technologies. Any such unit changes would require several years for permitting, design and construction.

The remaining option for reducing SO₂ and NO_x emissions will be reducing unit output, either through dispatching units down to minimum levels during the off-peak hours and up to maximum capacity during peak afternoon hours, or through extended unit outages. Some of the traditionally base-loaded units will

experience increased maintenance outages due to this daily dispatch pattern. These same base-load units have long start-up requirements, which could make them unavailable for operation during some off-peak extreme weather events.

4. Study Methodology

In order to evaluate the potential impacts associated with implementation of the CSAPR, ERCOT met with representatives of the TCEQ and the EPA to evaluate details of the rule and its implementation. ERCOT also reviewed compliance strategies provided by the owners of coal-fired resources in the ERCOT region. ERCOT consolidated these compliance strategies for purposes of evaluating system-wide impacts.

5. CSAPR Impacts

The compliance strategies of individual resource owners were compiled and consolidated to determine the aggregate impacts on the ERCOT system. This analysis indicates that, of the three CSAPR programs, the annual SO₂ program is likely to be the most restrictive on the ERCOT system. Even though individual units may have emissions in excess of the peak season or annual NO_x limits, Texas as a whole is likely to be below the state-wide limit, indicating that resource owners can achieve compliance through trading of NO_x emissions allowances. An extended hot summer, such as the one experienced in 2011, may result in limited availability of peak season NO_x emissions, and a need to obtain additional allowances from out-of-state.

In consolidating the compliance strategies from the resource owners, it became apparent that each resource owner was assuming a level of effectiveness of the various compliance options identified in Section 3. While many of these compliance plans are likely to be adequate, given the risks associated with each compliance option, it is unlikely that all of the resource owners' plans will function as designed. For example, the use of dry sorbent injection on the scale required to attain compliance at certain facilities may perform as anticipated, but its use in this context is novel and may involve unexpected complications. As a result, ERCOT has developed three compliance scenarios in order to assess the potential risks to the system based on different assumptions regarding implementation of compliance strategies.

The first scenario is derived directly from the compliance plans of individual resource owners. Based on the information that ERCOT has been given, in this scenario, the ERCOT region will experience an incremental reduction in available operating capacity of approximately 3,000 MW in the off-peak months of March, April, October and November, and an operating capacity reduction of 1,200 – 1,400 MW during the other months of the year, including the peak load months of June, July and August. Capacity reductions in the off-peak months are expected to be greater because power prices are lower during these periods, making them a more attractive time for resource owners to take extended outages to conserve allocated allowances.

The second scenario is derived from the first, but includes the additional assumption that the increased dispatching of base-load units will lead to increased maintenance outages, especially in the fall months. Over the course of the spring months it may become increasingly apparent that dispatching specific units is leading to extensive maintenance requirements. In these cases it may be cost-effective to idle these units rather than dispatch them down to minimum levels during off-peak hours. These units would likely be run through the summer peak months, but then would be idled for an extended period in the fall in order to conserve allocated allowances. Given this additional constraint, it is likely that ERCOT would experience an incremental loss of approximately 3,000 MW of capacity in the off-peak months of March and April, approximately 1,200 – 1,400 MW during the remainder of the first nine months of the year, and approximately 5,000 MW of capacity during the fall months of October, November and possibly into December.

The third scenario is derived from the second, with the added consideration of possible near-term market limitations on the availability of imported low-sulfur coals, either due to nationwide demand exceeding mine output capacity or railroad shipping capacity. In the event of such limitations, coal plant resource owners would be forced to rely on higher sulfur coals during the spring and the peak season summer months. As a result, they would be forced to further reduce unit output in the fall months, beyond what is currently included in their compliance strategy, and could be required to decommit additional capacity in October and November in order to conserve allocated allowances. As a result, given these assumptions, it is likely that ERCOT would experience an incremental loss of approximately 3,000 MW of capacity in the off-peak months of March and April, approximately 1,200 – 1,400 MW during the remainder of the first nine months of the year, and approximately 6,000 MW of capacity during the fall months of October, November and possibly into December.

6. Discussion

The scenarios analyzed in this study represent best-case (Scenario 1), and two cases with increasing impacts to system reliability. Scenarios 2 and 3 are based on the occurrence of events that are reasonably foreseeable given the circumstances facing generation resources attempting to comply with the CSAPR. Even in the best-case scenario, ERCOT is expected to experience a reduction in available operating capacity of 1,200 – 1,400 MW during the peak season of 2012 due to implementation of the CSAPR. Had this incremental reduction been in place in 2011, ERCOT would have experienced rotating outages during days in August. Off-peak capacity reductions in the three scenarios evaluated as part of this study, when coupled with the annual maintenance outages that must be taken on other generating units and typical weather variability during these periods, also place ERCOT at increasing risk of emergency events, including rotating outages of customer load.

There are numerous unresolved questions associated with the impacts of the CSAPR on the ERCOT system. It is important to note that the resource owners have had less than two months to develop compliance plans for the new rule. These plans are still preliminary and based on assumptions regarding technology

effectiveness, fuel markets, impacts of altered unit operations on maintenance requirements, and the cost-effectiveness of modifying and operating units to comply with the CSAPR. The overall system impacts noted in this study will change if these individual compliance strategies are adjusted to take into account updated information.

The availability of SO₂ allowances for purchase by resource owners in Texas is a significant source of uncertainty at this time. A lack of allowances for purchase from out-of-state resources will likely increase the severity of the CSAPR rule. Many resource owners expressed their concern that parties that have excess allowances may, at least initially, hold on to their excess, in order to maintain flexibility and future compliance options. As noted in Section 2, given the penalties for non-compliance, resource owners are unlikely to exceed the number of allowances they have in hand, with the expectation that allowance markets will open up later in the year. It may be that some resource owners will keep their excess allowances until it becomes clear that they will not be needed, late in the year. Other resource owners may have to shut units down in the early fall in order to conserve allowances.

In addition, the information ERCOT has received indicates there will not be a liquid market throughout the year for allowances, which will make it difficult to determine the appropriate value of allowances to compensate resource owners for operations associated with reliability commitments, such as through the daily or hourly reliability unit commitment process. It may be necessary to administratively establish a value for these allowances through the market stakeholder review process.

It is also possible that the impacts of CSAPR will increase in 2013 and 2014. In those years, it is unlikely that resource owners will have any additional options for rule compliance. Increased dispatching of base-load units will likely continue to lead to extended maintenance outages, and delivered availability of low sulfur western coals is likely to remain limited. In addition to these factors, some resource owners will be placing units on extended outages to install emission control technologies, such as wet-limestone scrubbers and possibly selective catalytic or selective non-catalytic reduction equipment. These retrofit outages could further reduce the generation capacity available during off-peak months.

Due to the numerous uncertainties, ERCOT cannot confidently estimate a “worst case” scenario at this time. Combinations of particular events may result in reductions in operating capacity that exceed those identified in Scenario 3, and thus further increase the risk of increasingly frequent and unpredictable emergency conditions, including the potential for rotating outages. The best outcome ERCOT can expect occurs if Scenario 1 is realized (*i.e.*, all generation resources’ current plans come to fruition), and, as discussed above, Scenario 1 appreciably increases risks for the ERCOT system, in both the on-peak and off-peak months.

7. Conclusion

When the CSAPR rule was announced in July, it included Texas in compliance programs that ERCOT and its resource owners had reasonably believed would

not be applied to Texas. In addition, the rule required implementation within five months – by January 2012. The implementation timeline provides ERCOT an extremely truncated period in which to assess the reliability impacts of the rule, and no realistic opportunity to take steps that could even partially mitigate the substantial losses of available operating capacity described in the scenarios examined in this report. In short, the CSAPR implementation date does not provide ERCOT and its resource owners a meaningful window for taking steps to avoid the loss of thousands of megawatts of capacity, and the attendant risks of outages for Texas power users.

If the implementation deadline for CSAPR were significantly delayed, it would expand options for maintaining system reliability. ERCOT is advancing changes in market rules – such as increasing ERCOT’s ability to control the number and timing of unit outages and expanding demand response – that could help avert emergency conditions. These measures will not, however, avoid the losses in capacity due to CSAPR that increase the risk of such emergencies. As discussed in this report, those losses will, at best, present significant operating challenges for ERCOT, both in meeting ever-increasing peak demand and in managing off-peak periods in 2012 and beyond.



Correspondence Management System

Control Number: AX-11-001-5941

Printing Date: September 26, 2011 05:27:18



Citizen Information

Citizen/Originator: Schrock, Charles A.

Organization: Integrys Energy Group

Address: Address Unknown

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-11-001-5941

Alternate Number: N/A

Status: Pending

Closed Date: N/A

Due Date: Oct 11, 2011

of Extensions: 0

Letter Date: Sep 23, 2011

Received Date: Sep 26, 2011

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: EML (E-Mail)

Priority Code: Normal

Signature: SNR-Signature Not Required

Signature Date: N/A

File Code: 401_127_a General Correspondence Files Record copy

Subject: Daily Reading File- CSAPR - filing for reconsideration

Instructions: NRN-No Response Necessary

Instruction Note: N/A

General Notes: Close no response per (b) (6) Personal Privacy on 9/26/11. KLabbe 9/26/11

CC: N/A

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6) Personal Privacy	OEX	OAR	Sep 26, 2011	Oct 11, 2011	N/A
Instruction: N/A					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date
(b) (6) Personal Privacy	OEX	Created and closed control	Sep 26, 2011
(b) (6) Personal Privacy	OEX	Reopened Control	Sep 26, 2011
(b) (6) Personal Privacy	OEX	Assign OAR as lead office	Sep 26, 2011

RECEIVED

2011 SEP 26 AM 8:47

OFFICE OF THE
EXECUTIVE SECRETARIAT

Message Information

Date 09/23/2011 02:31 PM
From "Schrock, Charles A" <CASchrock@integrysgroup.com>
To LisaP Jackson/DC/USEPA/US@EPA; "Wolf, Barth J"
<BJWolf@integrysgroup.com>
cc
Subject CSAPR - filing for reconsideration

Message Body

Dear Administrator Jackson:

I left a message with your assistant regarding this; I thought it might be helpful to also send this email.

First, thank you –again – for your time and interest last Monday. I thought we had a very good discussion.

I appreciate the immediate followup we received from Joe Goffman, and we are ready to discuss technical details with your staff at their convenience. I believe your staff is working on scheduling that discussion.

As we discussed on Monday, we have been evaluating the filing for reconsideration and the timing of such a filing. We've concluded that it is important and prudent for us to make such a filing, so – as a courtesy – I wanted to let you know. Our filing will be made today (Friday, September 23).

As I indicated earlier, we are pleased with the agency's interest in addressing our concerns, and we look forward to continuing to work with the EPA on this matter.

Please feel free to call me if you have any questions. My number is 312-228-5420.

Charles A. Schrock
Chairman, President & CEO
Integrus Energy Group

OEX Processing Information

Processed Date:

Processed By

PO Office

Category:

Message Count



Correspondence Management System

Control Number: AX-11-001-5967

Printing Date: September 26, 2011 05:29:57



Citizen Information

Citizen/Originator: Winokur, Peter S.

Organization: Defense Nuclear Facilities Safety Board
Address: 625 Indiana Ave NW, Washington, DC 20004

Constituent: N/A

Committee: N/A Sub-Committee: N/A

Control Information

Control Number: AX-11-001-5967 Alternate Number: N/A
 Status: For Your Information Closed Date: N/A
 Due Date: N/A # of Extensions: 0
 Letter Date: Sep 2, 2011 Received Date: Sep 26, 2011
 Addressee: AD-Administrator Addressee Org: EPA
 Contact Type: LTR (Letter) Priority Code: Normal
 Signature: SNR-Signature Not Required Signature Date: N/A
 File Code: 401_127_a General Correspondence Files Record copy
 Subject: Daily Reading File- This letter is in response to your letter regarding the safe operation of the Annular Core Research Reactor (ACCR) at Sandia National Laboratories (SNL).
 Instructions: For Your Information -- No action required
 Instruction Note: N/A
 General Notes: N/A
 CC: Brigid Lowery - OSWER-CPA
 Kecia Thornton - OSWER
 Michelle Crews - OSWER
 OEAE - Office of External Affairs and Environmental Education
 OSWER - OSWER -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
No Record Found.					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
(b) (6) Personal Privacy	OEX	OAR	Sep 26, 2011
Martha Faulkner	OAR	OAR-OAQPS	Sep 26, 2011

History

Action By	Office	Action	Date
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Peter S. Winokur, Chairman
Jessie H. Roberson, Vice Chairman
John E. Mansfield
Joseph F. Bader

DEFENSE NUCLEAR FACILITIES
SAFETY BOARD
Washington, DC 20004-2901



September 2, 2011

Mr. David McCoy
Executive Director
Citizen Action New Mexico
P.O. Box 4276
Albuquerque, New Mexico 87196

Dr. Robert Gilkeson
Registered Geologist
P.O. Box 670
Los Alamos, New Mexico 87544

Ms. Joni Arends
Executive Director
Concerned Citizens for Nuclear Safety
107 Cienega Street
Santa Fe, New Mexico 87501

Dear Mr. McCoy, Dr. Gilkeson, and Ms. Arends:

This letter is in response to your April 21, 2011, letter regarding the safe operation of the Annular Core Research Reactor (ACRR) at Sandia National Laboratories (SNL) and other regulatory compliance issues related to engineered storage silos at SNL.

Regarding the issues you raised with respect to the safe operation of the ACRR, the Defense Nuclear Facilities Safety Board's (Board) staff is currently reviewing the safety basis for the ACRR and will consider your comments and concerns during this review. However, the Board will not comment on the results of the review until it has been completed.

With respect to the issue you raised regarding the engineered storage silos, the Board stated in its February 28, 2011, letter to you: "The staff's review of the silos concluded that they provide adequate protection of the public health and safety." The Board has responded to your March 14, 2011, Freedom of Information Act (FOIA) request on the same subject, and you should already have received a letter with the appropriate enclosures from Mr. Andrew L. Thibadeau, FOIA Officer, dated June 10, 2011.

RECEIVED
2011 SEP 26 PM 12:42
OFFICE OF THE
EXECUTIVE SECRETARIAT

Regarding your question of whether the Board reviews compliance with Department of Energy (DOE) Orders, the answer is yes. DOE Orders provide a major basis for the Board's reviews. The list of Orders of Interest to the Board can be found at: http://www.dnfsb.gov/pub_docs/orders_of_interest/ooi.php.

With regard to your concern about the Mixed Waste Landfill, our assessment is that the jurisdictional connection is tenuous, and that the Board will not be applying oversight resources to the Mixed Waste Landfill. This assessment is consistent with our letters of July 31, 2008, July 29, 2009, and July 12, 2010. We have referred your concerns related to environmental management to the New Mexico Environmental Department, the Environmental Protection Agency, and to appropriate entities in DOE and National Nuclear Security Administration.

You also expressed an interest in reviewing the Board's review plan for the ACRR and meeting with the Board's staff. The Board trusts that you were able to convey all of your concerns during your teleconference with our staff on July 21, 2011.

Finally, the Board would like to clarify two points in your letter. First, it is important to recognize that the ACRR and the Auxiliary Hot Cell Facility (AHCF) are not in the same high-bay area. The Hot Cell Facility (Building 6580) is connected to the ACRR (Building 6588), but the AHCF (Building 6597) is a separate building. The September 27, 2004, report to which your letter refers was a review of the safety basis at the AHCF, not the ACRR, and the 'basis of safety inadequacies' you cite is not from the Board's letter of February 28, 2011. The second point is that the Board has not been required to certify the continued operation of the ACRR and therefore there is no certification to withdraw.

In closing, we would like to note that the Board has provided independent oversight of nuclear weapons-related operations at SNL since the Board was created in 1989. We continue to value your input and thank you for your dedication to the safety of the citizens of New Mexico.

If you should have any further concerns, please do not hesitate to contact us.

Sincerely,



Peter S. Winokur, Ph.D.
Chairman

c: The Honorable Lisa P. Jackson
Mr. F. David Martin
Ms. M. Patrice Wagner
Ms. Mari-Jo Campagnone



JOHN M. FRULLO
STATE REPRESENTATIVE
DISTRICT 84

RECORDED

2011 SEP 26 PM 12:56

9/13/11 OF THE
EXECUTIVE SECRETARIAT

Lisa P. Jackson
Office of the Administrator
Environmental Protection Agency
Room 3000, Ariel Rios Building
1200 Pennsylvania Ave. NW
Washington, DC 20004

Re: Cross State Air Pollution Rule – Petition for Reconsideration
Docket No. EPA-HQ-OAR-2009-0491

Dear Ms. Jackson:

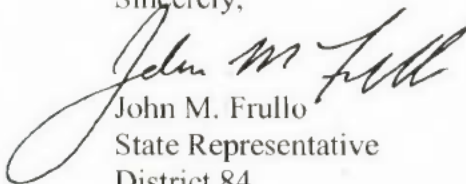
I am writing in support of the August 23, 2011 Southwestern Public Service Company (SPS) petition for reconsideration and request for stay of the Cross State Air Pollution Rule (CSAPR).

As indicated in SPS's petition, EPA chose to include Texas in the CSAPR year-round emission reduction programs without providing the public with an opportunity to comment on that decision. Moreover, EPA is requiring SPS and other Texas utilities to comply with CSAPR beginning in 2012, a short five months after the rule was finalized. This requirement has significant consequences for our local economy and the reliability of our electric system.

SPS serves our community, and about half its power comes from coal. As the SPS petition indicates, to comply with this rule by Jan. 1, 2012, SPS will be forced to reduce operation of its coal-fired power plants and rely significantly more on natural gas-fired electric generation. As a result, CSAPR will drive up electricity costs creating significant hardship for local businesses and taxpayers. SPS demonstrates in its petition that the cost of increasing its reliance on natural gas plants could be up to \$200 to \$250 million in 2012 alone. The potential job loss and stress on an economy already struggling to recover is unacceptable given the underlying assumptions for this rule are misguided.

Moreover, we are concerned that CSAPR could harm the reliability of the electric system. Had this rule been in place this summer when we have experienced record temperatures, Texas could have experienced several rotating outages. We and all the people of the Texas Panhandle and Eastern New Mexico rely on the SPS electric system for our livelihoods and well-being. For these reasons, we urge you to grant SPS's petition and stay CSAPR pending reconsideration of the rule.

Sincerely,


John M. Frullo
State Representative
District 84

Capitol Address
P.O. BOX 2910
Austin, TX 78768-2910
512-463-0676



District Address
4601 50th Street, Suite 216
Lubbock, TX 79414
john.frullo@house.state.tx.us



Correspondence Management System

Control Number: AX-11-001-5978

Printing Date: September 26, 2011 04:09:57



Citizen Information

Citizen/Originator: Nelson, Jeffrey L.

Organization: East River Electric

Address: 211 South Harth Avenue P.O. Box 227, Madison, SD 57042-0227

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-11-001-5978

Alternate Number: N/A

Status: Pending

Closed Date: N/A

Due Date: Oct 10, 2011

of Extensions: 0

Letter Date: Sep 21, 2011

Received Date: Sep 26, 2011

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: LTR (Letter)

Priority Code: Normal

Signature: DX-Direct Reply

Signature Date: N/A

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.

Subject: Daily Reading File- I am writing to request that EPA favorably respond to the reconsideration of the 2010 final RICE NESHAP rules.

Instructions: AA-OAR-Prepare draft response for signature by the Assistant Administrator for OAR

Instruction Note: N/A

General Notes: N/A

CC: OEAE - Office of External Affairs and Environmental Education

OP - Office of Policy

R8 - Region 8 -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (6) Personal Privacy	OEX	OAR	Sep 26, 2011	Oct 10, 2011	N/A
Instruction: AA-OAR-Prepare draft response for signature by the Assistant Administrator for OAR					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date
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211 South Harth Ave. | P.O. Box 227
Madison, SD 57042-0227

Telephone: (605) 256-4536
Fax: (605) 256-8058

A Touchstone Energy® Cooperative

September 21, 2011

The Honorable Lisa Jackson
U.S. Environmental Protection Agency
Ariel Rios Building, Mail Code 1101A
1200 Pennsylvania Avenue NW
Washington, DC 20460

RECEIVED
2011 SEP 26 PM 12:56
OFFICE OF THE
EXECUTIVE SECRETARIAT

Dear Administrator Jackson:

I am writing in regard to recent EPA rules that set National Emission Standards for Hazardous Air Pollutants ("NESHAP") for compression ignition and spark ignition stationary Reciprocating Internal Combustion Engines ("RICE") and request that EPA favorably respond to the reconsideration of the 2010 final RICE NESHAP rules by eliminating certain restrictions on non-emergency annual hours of operation.

Among the engines covered by the RICE NESHAP rules are small diesel engines used primarily for emergency standby power and occasionally for peak shaving to manage electric load. These rules will prohibit the use of these small emergency units for peak-shaving programs beginning May 2013 without the addition of expensive emission reduction technology. The additional cost associated with these requirements likely make it economically prohibitive for the continued use of these engines for peak-shaving programs.

Peak-shaving programs enhance electric reliability and lower cost to the consumer by reducing demand on central station power supplies. The engines are used on a limited basis and are run fewer hours than the 100 hours allowed in the rule for general non-emergency operation. Were EPA to remove the prohibition on these engines for peak-shaving and demand reduction purposes, the result would be no more run-time than that which is already provided for in the rule and no measurable public health risk or environmental harm.

In light of these factors, I request that you modify the final RICE NESHAP rules by including unrestricted peak-shaving and demand reduction operation within the 100 hours per year provided in the rule for maintenance and readiness testing. Thank you for your consideration of this very important matter.

Sincerely,

Jeffrey L. Nelson
General Manager

JLN/sl

