



Congress of the United States
House of Representatives
Washington, DC 20515-3807

May 31, 2011

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Administrator Jackson,

I am writing to follow up on your May 24, 2011 testimony before the House Oversight and Government Reform Committee. You were questioned about how the Environmental Protection Agency (EPA) decides whether the loss or creation of jobs should be part of the economic analysis which precedes the proposing of a new regulation. You were further questioned on whether the EPA quantifies the impact on jobs when crafting regulations. Your response was unclear, stating "We have done it; although we have not done it in every example."¹ When this same line of questioning was posed to EPA Assistant Administrator Mathy Stanislaus at a hearing of the House Energy and Commerce Committee on April 14, 2011 his response was equally ambiguous. He acknowledged that the cost of jobs is not directly examined when conducting an economic analysis of a proposed regulation. My colleague, Congressman Cory Gardner (R-CO) has recently written to you separately in respect to that testimony.

I respectfully ask for a timely response to the following questions:

- How does the EPA decide whether the loss or creation of jobs, as a result of a regulation, is made part of the thorough economic analysis which is called for under Executive Order 13563?
- Please clearly outline what criteria are taken into account when deciding whether or not to consider the impact a proposed regulation may have on jobs.
- Please identify the authority upon which you rely to determine that such a consideration is discretionary rather than uniform. In addition to the direct impact a proposed regulation may have on employment, do you ever consider the impact on indirect employment? If not, why not?
- Is there any occasion under which the EPA deems it acceptable not to consider job creation or loss in a thorough economic analysis?

¹ U.S. House of Representatives hearing of the Full Committee on Oversight and Government Reform. *Pain at the Pump: Policies that Suppress Domestic Production of Oil and Gas*. Lisa Jackson, Administrator of the Environmental Protection Agency. May 24, 2011.

Further, I am specifically interested in the Economic and Benefits Analysis (EA) conducted prior to the April 2011 proposed rulemaking under Section 316(b) of the Clean Water Act. In this report the EPA defines “severe impact” as a facility closure and the associated loss of jobs that action would entail. “Moderate impact” is defined as adverse financial changes but not a threat to the facility’s short-term viability. Remarkably, the EA determines that there is a **zero percent** chance that, when implemented, the Proposed Section 316(b) Existing Facilities Rule would have a severe or moderate impact on regulated facilities. Zero percent means that the EPA is certain that there will be no adverse impact, in particular no job losses.

I respectfully ask for a timely response to the following questions:

- What analysis was done specifically related to refineries in the Northeast region?
- How is it that you are certain that there will be no job losses related to these particular refineries due to this proposed rule?

In order to evaluate the ability to absorb compliance costs, the EA evaluates the financial health and general business outlook of a series of manufacturing industries including the Petroleum Refining industry. The EA concludes that “although the Petroleum Refining industry has weathered difficult periods over the last two decades, the expected strengthening of the industry’s financial condition and general business outlook as the world and U.S. economy recover from the current economic weakness, point to the ability of the in-scope facilities in the Petroleum Refining industry to withstand additional regulatory compliance costs without imposing significant financial impacts.”²

Contrary to this conclusion, on May 25, 2011 the Paris-based Organization for Economic Co-operation and Development (OECD) released their latest Economic Outlook report. Citing widespread unemployment as a top challenge facing countries around the world, OECD Secretary-General Angel Gurría said, “This is a delicate moment for the global economy, and the crisis is not over until our economies are creating enough jobs again.”³ Additionally, Mr. Gurría states that high public debt levels must be stabilized in order to avert a negative impact on growth.⁴

I respectfully ask for a timely response to the following questions:

- In light of the drastic economic conditions in much of Europe and in Japan, the rapid inflation in China, and the continuing high rate of unemployment and staggering debt here in the United States, what recent economic indicators has the EPA examined to conclude that the U.S. and world economies are “strengthening”?
- What evidence do you rely upon to conclude that high public debt levels are being sufficiently stabilized to avert a negative impact on growth?

² Environmental Protection Agency, “Economic and Benefits Analysis for Proposed 316(b) Existing Facilities Rule,” *EPA 821-R-11-003* (March 28, 2011): 2C-2.

³ Organisation for Economic Co-operation and Development. (May 25, 2011) Global recovery firmly underway but surrounded by risks, says OECD Economic Outlook [Press Release]. Retrieved from http://www.oecd.org/document/22/0,3746,en_21571361_44315115_48021286_1_1_1_1.00.html

⁴ *ibid*

As the EA identifies, the United States has lost more than half of its operable refineries over the last twenty years. No new major refinery has been built in the United States since 1976; yet major refinery construction projects are taking place in India, China and Nigeria. We are sending American refining jobs overseas where there is little to no regulation. Once these jobs are lost, they will not return. With each new regulation we are approaching a tipping point at which it may be commercially infeasible to continue certain refining in the United States.

At one particular refinery in my district, the EPA has directed that the state agency require the installment of a new water cooling tower and a closed cycle cooling system at an estimated cost to the refinery of \$350 million. The purported basis is that water is two degrees warmer upon discharge. I support responsible efforts to promote the vitality of our air and water supply; in fact, I am proud to have fought to promote those objectives as a former federal prosecutor working alongside the EPA. There is, however, a balance which must be struck between responsible stewardship and over-regulation. I am terribly concerned that hosts of new regulations at the refineries in my district may be out of balance. The end result may be that arduous regulation comes with such cost that the operations cannot compete economically. Such a result would be catastrophic to my district and the families who rely on the more than 7,000 jobs the industry supports locally.

I respectfully request that you address the points raised in my letter and explain why the EPA appears to be violating the President's Executive Order 13563 which requires that "Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation."⁵

Thank you for your time and attention. I look forward to your response.

Sincerely,



Patrick Meehan
Member of Congress

⁵Executive Order 13563, "Improving Regulation and Regulatory Review" (January 18, 2011).