

**HEARING ON THE NOMINATION OF  
REGINA McCARTHY TO BE ASSISTANT  
ADMINISTRATOR, OFFICE OF AIR AND RADIATION,  
OF THE ENVIRONMENTAL PROTECTION AGENCY**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON**  
**ENVIRONMENT AND PUBLIC WORKS**  
**UNITED STATES SENATE**  
**ONE HUNDRED ELEVENTH CONGRESS**  
FIRST SESSION

APRIL 2, 2009

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COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ONE HUNDRED ELEVENTH CONGRESS  
FIRST SESSION

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TRATOR, OFFICE OF AIR AND RADIATION,  
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AGENCY**

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**THURSDAY, APRIL 2, 2009**

U.S. SENATE,  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,  
*Washington, DC.*

The committee met, pursuant to notice, at 10 a.m. in room 406, Dirksen Senate Office Building, Hon. Barbara Boxer (chairman of the committee) presiding.

Present: Senators Boxer, Inhofe, Carper, Voinovich, and Udall.

**OPENING STATEMENT OF HON. BARBARA BOXER,  
U.S. SENATOR FROM THE STATE OF CALIFORNIA**

Senator BOXER. Good morning. This morning the Environment and Public Works Committee will consider President Obama's nomination of Gina McCarthy to be the Assistant Administrator of the Office of Air and Radiation at the U.S. Environmental Protection Agency. I am so pleased that President Obama has selected someone with such a strong background in clean air protection for this critical role at the EPA.

Gina McCarthy comes to this position with nearly three decades of experience in public service and a unique record of accomplishment in addressing air pollution, including greenhouse gas emissions, and at the State level in Massachusetts and Connecticut. Gina McCarthy was appointed by a Republican Governor, Jodi Rell of Connecticut, and brings to this role a spirit of bipartisanship that I greatly appreciate.

The Office of Air and Radiation oversees the development of national programs, policies and regulations for addressing air pollution and radiation exposure. This nomination is especially important to the people of my State. California faces some of the most dangerous air pollution issues in the Country. Pollution around our ports, including the Ports of Los Angeles and Long Beach, is responsible for increased rates of respiratory diseases, including cancer, among families who live near those facilities. We have actually tracked those cancers and we can see that.

The California Air Resources Board estimates that diesel emissions contribute to 2,000 premature deaths each year. The health costs of diesel emissions are billions of dollars each year. Millions

of people in areas like the Central Valley and the Inland Empire experience dangerous air pollution day after day.

The Obama administration has already begun to reverse many of the previous Administration's environmental rollbacks. During his first week in office, President Obama announced an EPA review of the California waiver decision. In a speech to a joint session of Congress, President Obama underscored his support for a market-based cap on carbon. The EPA has sent the endangerment finding to the Office of Management and Budget, and there are reports that it will be released very soon. These are positive developments.

I am also pleased that EPA has recently taken steps to test dangerous air pollution around schools, including schools in my State. I believe this program should be expanded so that any school where children may be exposed to dangerous air pollution is addressed.

This is a pivotal time for the EPA. I am very pleased to see that under the leadership of Administrator Jackson, EPA has already begun to reverse the damage that was done under the previous Administration and return the EPA to its mission to protect the public health and the environment. The Assistant Administrator for Air and Radiation will play a crucial role in continuing that process.

I look forward to hearing from today's nominee. I took 3 minutes to do that speech, so that is what we are going to give everybody today, 3 minutes for an opening, and then we will get right to Regina McCarthy, who I would her to take her seat, if she would.

Senator INHOFE.

**OPENING STATEMENT OF HON. JAMES M. INHOFE,  
U.S. SENATOR FROM THE STATE OF OKLAHOMA**

Senator INHOFE. Thank you, Madam Chairman. First of all, that Office of Air and Radiation at the Environmental Protection Agency is very, very significant. It has a great effect on our economy. I want to say to Ms. McCarthy, thank you very much for the inconvenience you had to go to to meet with me way over at the Armed Services Committee. I appreciate that very much.

It is my understanding, Madam Chairman, that you want to hold a business meeting on Ms. McCarthy's nomination the week that we return, which at this point I have no problem with that. I think I would agree with you. But first, I need to provide a little historic context, which has nothing to do with Ms. McCarthy. This all happened before.

The Senate has not confirmed a nominee for this position in 8 years, not since 2001. It is due entirely to the opposition of my colleagues on the other side of the aisle. Opposition arose from allegations that nominees failed to provide timely and complete answers to questions submitted to them, and in effect, Madam Chairman, the standard was set by you and by the Democrats on this Committee. In order to advance this nominee as expeditiously as possible, as you have stated, and I have agreed that we need to do, the minority will need to timely complete the answers to our questions.

I want to say that Ms. McCarthy has already done this. We received a document this morning. We haven't had a chance to re-

view it yet. I am sure there are some things that we may want to pursue.

As I indicated earlier, the next Assistant Administrator of Air will face several daunting regulatory challenges. These are just a few, meeting the new deadlines for attainment of National Ambient Air Quality Standards, addressing interstate air pollution, continuing reductions in mercury and other hazardous air pollutants, implementing the next phase of the renewable fuel standard and a pending decision on the California waiver.

Ms. McCarthy, these issues by themselves will overwhelm you and your calendar. And yet as time-consuming as these policies will be, they pale in comparison to what would ensue if CO<sub>2</sub> becomes a regulated pollutant under the Clean Air Act. If the EPA makes an endangerment finding under the Act, and according to recent new accounts, this decision has already been made by the Administration, it could extend EPA's regulatory reach into every corner of the economy.

Ms. McCarthy, I hope that you will approach pending decisions on the greenhouse gas regulation with great care, and to the extent that you can, ensure that the concerns of small businesses, families, and every American who uses energy would receive proper hearing. I have had the pleasure of meeting you briefly and I have every reason to believe you would be very cooperative. We look forward to getting this information from you.

Thank you, Madam Chairman.

[The prepared statement of Senator Inhofe follows:]

STATEMENT OF HON. JAMES M. INHOFE, U.S. SENATOR  
FROM THE STATE OF OKLAHOMA

Thank you, Chairman Boxer, for calling this hearing today. I welcome you, Ms. McCarthy, to our committee and I look forward to working with you.

The Office of Air and Radiation at the Environmental Protection Agency issues regulations that protect the air we breathe. Those regulations also significantly impact the American economy. For these reasons, the job of Assistant Administrator for Air entails serious responsibilities. This committee and the full Senate, therefore, must thoroughly assess the qualifications of the nominee to head the office.

I understand, Madam Chairman, that you wish to hold a business meeting on Ms. McCarthy's nomination the week we return from recess. At this point, I have no objection to that schedule. But first, I need to provide a little historical context. The Senate has not confirmed a nominee for this position in 8 years—due entirely to opposition from my colleagues on the other side of the aisle.

Opposition arose from allegations that nominees failed to provide timely and complete answers to questions submitted to them. In effect, Madam Chairman, a standard was set by you and your colleagues: in order to advance this nomination as expeditiously as possible, the minority will need timely and complete answers to our questions. Let's hope that occurs.

As I indicated earlier, the next Assistant Administrator for Air will face several daunting regulatory challenges. Let me list a few: meeting new deadlines for attainment of national ambient air quality standards; addressing interstate air pollution; continuing reductions in mercury and other hazardous air pollutants; implementing the next phase of the renewable fuel standard; and a pending decision on the California waiver.

Ms. McCarthy, these issues by themselves will overwhelm your calendar. And yet as time-consuming as these policies will be, they will pale in comparison to what will ensue if CO<sub>2</sub> becomes a regulated pollutant under the Clean Air Act. If EPA makes an endangerment finding under the Act—and according to recent news accounts, this decision has already been made by the Administration—it could extend EPA's regulatory reach into every corner of the U.S. economy.

Ms. McCarthy, I hope that you will approach pending decisions on greenhouse gas regulation with great care, and to the extent you can, ensure that concerns from

small businesses, families, and every American who uses energy receive a proper hearing.

I had the pleasure of meeting you briefly yesterday, and I value your commitment to public service. You have an impressive background in serving Connecticut and Massachusetts with distinction. I look forward to hearing more about your record today.

As you well know, Ms. McCarthy, there is an enormous amount at stake here. If the policies pursued are not pursued with great care and restraint, this great machine we call America will grind to a halt. That's something I know everyone here wants to avoid. So I urge you to work with us—majority and minority—in addressing the issues now before us and those yet to come.

Senator BOXER. Thank you so much, Senator.

Senator, we are checking on that 8 years, because we believe that Mr. Wehrum was in that position—I am sorry——

Senator INHOFE. But he was not confirmed.

Senator BOXER. No, I am sorry, Homestead was in that position. But we will find the exact date, because I would be shocked that it was 8 years.

Senator INHOFE. OK, that is fine. And I am glad that you are shocked.

Senator BOXER. It wasn't 8 years.

Now, here is the situation. We have Senator Dodd with us. We are so happy he is here to introduce Regina McCarthy. Is your schedule tough or can you wait 9 minutes? It is up to you.

Senator DODD. Absolutely I can wait.

Senator BOXER. You are OK, all right, wonderful. Then we will go to Senator Carper.

**OPENING STATEMENT OF HON. THOMAS R. CARPER,  
U.S. SENATOR FROM THE STATE OF DELAWARE**

Senator CARPER. Ms. McCarthy, welcome, thank you for bringing Senator Dodd with you this morning. I understand you might have brought a couple of people from your family, too, and we look forward to welcoming them.

I will just say right now to those who are gathered from the McCarthy clan, what was your maiden name?

Ms. MCCARTHY. My nickname is Gina, my maiden name is McCarthy and my husband's name is McCarey. Confusing.

[Laughter.]

Senator CARPER. That is a lot of Irish. I hope you are lucky, we need some luck. We are glad you are here, we welcome you and thank you for your willingness to serve.

For those in your family that are here, thank you for your willingness to share a good woman with us. Ms. McCarthy and I come from parts of the Country that I refer to as the end of the Nation's tail pipe. And it is great to live in Delaware, it is great to live along the east coast. But that is one aspect that we don't like, and we are anxious to do something about it.

I know you tried to address air pollution in your State through a multi-pollutant approach. You had impressive results and we are encouraged by that. We think in——

Senator BOXER. I am sorry, we are in a debate over here.

[Laughter.]

Senator INHOFE. We are listening to everything you say.

Senator BOXER. It is the usual Boxer-Inhofe debate. I am so sorry. Please. You have the floor.



Senator CARPER. Thanks so much. I will start over again.  
[Laughter.]

Senator CARPER. In too many respects, opportunities for progress on clean air have largely been squandered over the last 8 years. It seems like every time we want to get something done, every major clean air regulation that the Bush administration has tried to move has been rejected by the courts. And as a result, we are left with no meaningful Federal regulations to clean up our dirtiest fossil fuel power plants.

And as the Assistant Administrator for Clean Air, you will need to write at least, I think, three major rules in the next couple of rules to replace the Clean Air Interstate Rule, to replace the flawed mercury rule and replace the particulate matter rule. You will need to implement vital air toxic risk rules that have been shelved or unfunded by the last Administration.

As if that is not enough, you are going to be called on to address how we move forward on climate change and on renewable fuels under the Clean Air Act. You have a tough road ahead, but I am encouraged that you are experienced and your achievements have shown that you can rise to the challenge. We need leaders like you who can build alliances. We need people who can build alliances and work with Congress and determine a path forward that strengthens our economy and protects our air quality.

So we look forward to working with you, we plan to be your partner in these challenges. Congratulations and good luck.

[The prepared statement of Senator Carper follows:]

STATEMENT OF HON. THOMAS R. CARPER, U.S. SENATOR  
FROM THE STATE OF DELAWARE

Thank you, Chairman Boxer, for having this hearing today.

As Chairman of the Senate Subcommittee on Clean Air and Nuclear Safety, I warmly welcome Ms. Gina McCarthy to our Committee today. I look forward to today's discussion.

Ms. McCarthy and I both come from States that are at the end of what I like to call "the Nation's tailpipe." She has tried to address air pollution in her State through a multi-pollutant approach. And she has had impressive results.

But if confirmed—Ms. McCarthy—you've got your work cut out for you.

As you know, we've had 8 years of delays on clean air. Every major clean air regulation by the Bush administration has been rejected by the courts.

As a result, we are left with no meaningful Federal regulations to clean up our dirtiest fossil-fuel power plants.

As the Assistant Administrator for Clean Air, you will need to write at least three major rules in the next few years to replace CAIR, the flawed mercury rule, and the particulate matter rule.

You will need to implement vital air toxic risk rules that have been shelved or unfunded by the last Administration.

And if that is not enough work, you will also have to address how we move forward on climate change and on renewable fuels under the Clean Air Act.

You face a tough road ahead. But your experience and achievements have shown you will rise to the challenge.

We need leaders like you who can build alliances, work with Congress, and determine a path forward that strengthens the economy and protects our air quality.

I especially look forward to working with you, Ms. McCarthy, and hope we can move your nomination through quickly.

Senator BOXER. Senator Carper, thank you.  
Senator Voinovich.

**OPENING STATEMENT OF HON. GEORGE V. VOINOVICH,  
U.S. SENATOR FROM THE STATE OF OHIO**

Senator VOINOVICH. Thank you, Madam Chairman.

I first of all want to thank your family for the sacrifices that you have made so that Regina could serve. If you think you have made sacrifices in the past, believe me there are going to be a lot more of them. Because the job that she has been nominated for is one of the toughest jobs in the Environmental Protection Agency.

The fact that Ms. McCarthy brings over 20 years of experience as an environmental regulator on both the local and State level, I know those experiences are going to serve her well in her new capacity.

I am comforted by the fact that you have had State experience, and as a result of that I think will have a better understanding of what the implications are of the decisions that you are going to be making on just ordinary folks out in the States.

As Assistant Administrator for Air and Radiation, Ms. McCarthy will be responsible for administering some of the most complex and contentious regulatory issues facing the Obama administration. And those issues include the EPA's decision on the California waiver request, EPA's decision on endangerment and regulation of greenhouse gas emissions under the Clean Air Act, and implementation of the next standards and regulations to air toxins, some of the toughest stuff that you can deal with.

Subsequent to the courts vacating a series of the Bush administration's rules limiting emissions from power plants, Ms. McCarthy, you are going to have to decide how to address the regional transportation of emissions and Section 126 petitions filed by downwind States, have to write and implement regulations to reduce mercury emissions from coal-fired power plants and using EPA's authority to regulate greenhouse gas emissions under the Clean Air Act. That is a little bit troubling to me.

As evidenced by the Agency's advance notice of proposed rule-making on the issue, CAA regulation would set forth a multitude of costly, burdensome programs regulating nearly every aspect of Americans' lives. The Act's principal regulatory programs were enacted decades ago for the purpose of controlling regional and local air pollution. It was designed to not address the global phenomena like greenhouse gases.

So I think that all of these things are going to have to be taken into consideration. I hope that, well, I am confident that you will try to throw the ball down the middle as I talked to with you when you were in the office. I think we are fortunate to have someone like you who is interested in this job and has the experience and hopefully will help the Administrator do the job that needs to be done for the American people.

Thank you.

[The prepared statement of Senator Voinovich follows:]

STATEMENT OF HON. GEORGE V. VOINOVICH, U.S. SENATOR  
FROM THE STATE OF OHIO

Madam Chairwoman, thank you for having today's hearing.

Today we consider President Obama's nomination of Gina McCarthy to be EPA's Assistant Administrator for Air and Radiation. Having served as a mayor, Governor and now as a Senator, I understand the impact that decisions made in Washington,

DC can have on our local, State and national economies. Mrs. McCarthy brings with her over 20 years' experience as an environmental regulator on both the local and State level and I trust that those experiences will serve her well in this new capacity. Inside the Washington beltway, many of the policies we debate take on ideological and often academic overtones as if they exist in a vacuum—detached from workers and families we were sent here to serve. When we go back home, however, the implications of the actions taken here in Washington are all too apparent. Mrs. McCarthy, should you move on to the post to which you have been nominated, I hope you keep in mind the impacts your decisions will have on everyday Americans.

As Assistant Administrator for Air and Radiation, Mrs. McCarthy will be responsible for administering some of the most complex and contentious regulatory issues facing the Obama administration. Those issues include—EPA's decision on the CA Waiver request; EPA's decision on endangerment and regulation of greenhouse gas emissions under the Clean Air Act (CAA); revisions to, and implementation of, the National Ambient Air Quality Standards (NAAQS) and standards and regulations relating to air toxics. Subsequent to the court's vacating a series of the Bush administration's rules limiting emissions from power plants, Mrs. McCarthy will need to decide how to address the regional transportation of emissions and section 126 petitions filed by downwind States. She will also have to write and implement regulations to reduce mercury emissions from coal-fired power plants.

The use of EPA's authority to regulate greenhouse gas emissions under the Clean Air Act is particularly troubling. As evidenced by the agency's Advance Notice of Proposed Rulemaking (ANPR) on this issue, CAA regulation would set forth a multitude of costly, burdensome programs regulating nearly every aspect of Americans' lives. The Act's principal regulatory programs were enacted decades ago for the purpose of controlling local and regional air pollution. The Act was not designed to address a global phenomenon environmental like climate change in an efficient and effective manner.

The agency has thus far attempted to get around this fact by exploring a number of legal theories in which the Act might be creatively interpreted to allow EPA to implement various policy alternatives that the Agency believes might reduce GHG emissions in an equitable and cost effective manner. However, the courts have not agreed with EPA's attempts to read flexibility into the Act and have blocked the agency from applying its own notions of efficient air quality policy—the DC Circuit's vacating the Clean Air Interstate Rule being a prime example. If EPA proceeds with GHG regulation under the CAA, it is my belief that it will find that it has much less policy discretion than is reflected in the ANPR and that regulating GHG emissions under the CAA will be much more costly than the agency believes. Indeed, CAA regulation may very well mean imposing costly requirements not only on utilities and manufacturers, but commercial buildings, including hospitals and schools.

Climate change may be the single most significant issue that has been before this committee, touching every sector of the economy and having immense energy, economic, environmental and national security consequences. It is my hope that Congress enacts a sensible program to reduce emissions, ensure energy security and provide for economic stability and that we abandon the arcane path laid out by the CAA. But this will be no easy task and policies that tax Americans trillions of dollars and implement vast new government programs are not a viable alternative.

Enacting cost effective climate legislation will not be an act of mere political will, but of thoughtful consideration. And because it may take us some time to move forward, I would remind the agency that is under no legal obligation to act quickly. Given the very difficult legal and policy issues at play, as well as the extremely high stakes involved, EPA should take the time necessary to understand the regulatory consequences of its actions.

Senator BOXER. Thank you so much, Senator.

Senator Udall.

Senator VOINOVICH. Madam Chairman.

Senator BOXER. Yes.

Senator VOINOVICH. Do you mind if I ask that the rest of my written statement be included in the record?

Senator BOXER. Absolutely, it will be included.

Senator Udall.

Senator UDALL. Thank you, Madam Chair. I would also like to just put my full statement into the record.

Senator BOXER. Without objection.

[The referenced material was not received at time of print.]

Senator UDALL. I will talk briefly, because I want to hear from Chris Dodd and from Gina McCarthy.

I rode up in the elevator with Chris and he told me that you were one of the folks who was involved in putting in place the first cap and trade, what I think has been called the regional greenhouse gas initiative. I think having that experience is very important to the position that you are moving into. While you may be being sent notes of caution about moving forward, I would encourage the Environmental Protection Agency to move forward with all deliberative speed to make sure that you do what you can under the law. It is not clear to me that the Congress is going to act. I am one of the ones who really believes that we need to act and we need to act urgently.

But I think it is important that the authority that you have, that you understand what it is. I believe the EPA is moving forward right now with a registry, which I think is a very good first step, because we can't put a regimen in place until we know who is emitting and where they are and under what conditions they do it. So I am one of the one who would just urge you, move forward, keep it going, that will keep the pressure on the Congress, because I think we need that tension and dynamic to get things done.

With that, I will yield back my time and look forward to hearing from Chris Dodd and then from Gina. Thank you.

Senator BOXER. Thank you, Senator Udall.

We are going to call on Senator Dodd. He has 5 minutes to introduce you. But I thought it would be nice, before he starts, if you would introduce your family, so we know who is here.

Ms. MCCARTHY. Thank you, Madam Chairman, I appreciate that very much.

Let me begin by introducing my husband, Ken McCarey. And I have my three wonderful children, that is Maggie and Daniel and Julie. I have my sister Elaine, who is a middle school teacher who has been teaching U.S. history for many decades to middle school children, God bless her.

[Laughter.]

Ms. MCCARTHY. She may be the only person who is more excited to be here than I am.

[Laughter.]

Ms. MCCARTHY. I have my sister-in-law Mona McCarey and my brother-in-law, Paul.

Senator BOXER. Thank you so very much.

Senator Dodd.

**OPENING STATEMENT OF HON. CHRISTOPHER J. DODD,  
U.S. SENATOR FROM THE STATE OF CONNECTICUT**

Senator DODD. Thank you very much, Madam Chair. Let me express my pleasure in being here with you this morning and introducing Gina to the Committee. Having listened to the comments of our colleagues here, I think you are going to be pleasantly, not surprised, but pleased to be able to deal with someone who brings as much experience and background to the issues before the Committee.

She has been nominated, as you pointed out, to the important post of Assistant Administrator for Air and Radiation and EPA. And of course, that is her family here, we are delighted to see all of them as well with us this morning.

I want to congratulate President Obama for nominating such a remarkable, qualified, energetic and passionate individual who cares about these issues as much as Gina does. She has 25 years of experience working at all levels of local and State government, and has a depth and breadth of knowledge on environmental issues that few can rival. She has also served in both Democratic and Republican Administrations of Governors, so that bipartisanship that George Voinovich was talking about, Tom Carper referenced as well, the ability to work under a variety of different political experiences I think has been worthwhile.

She worked in Massachusetts as well as in Connecticut, all of whom have recognized her as a uniquely talented environmental advocate. As Commissioner of Connecticut's Department of Environmental Protection since 2004, she has amassed a very, very impressive record of accomplishments. She spearheaded the No Child Left Inside program, an initiative in Connecticut and nationwide which combines environmental education with numerous outdoor programs to promote physical activity while teaching kids to become good stewards of our environment.

She has advised Governor Jodi Rell on how to stimulate sustainable economic development in our State, has worked tirelessly to reinvigorate our State park system and has been a terrific advocate for open space and conservation initiatives. Perhaps most prominently, and again, this was referenced by Tom Udall, she was the driving, one of the important forces behind the creation of the regional greenhouse gas initiative, the Nation's very first mandatory cap and trade program which was adopted by 10 States in the northeast to address the grave threats of climate change. The Commission's work on this issue of climate change has been recognized and lauded nationally. Her experience will be, I think, invaluable when she is confirmed as Assistant Administrator for Air and Radiation.

President Obama has made it clear that addressing climate change is a top priority of his. As the Assistant Administrator, I think Gina will provide a very important role in developing, implementing and working with people across the spectrum on this issue, which will be critically important. I know that there is no unanimity on this issue. But to have someone of her background and experience, both politically and substantively on these issues I think will be a great, great addition to the debate and discussion.

In my view, this is a rather incredible list of accomplishments, does not do justice to the qualities that Gina will bring to her new position if she is confirmed. Across our State, she has the well-deserved reputation for boundless energy, incredible passion and willingness to speak frankly in order to address challenges. Much has been made of her enormous impact since the March 14th Hartford Courant ran an editorial entitled DEP Chief Gina McCarthy a Hard Act to Follow, which praised both her passion for the issues and her pragmatic approach. The Courant specifically noted her ability to revitalize a department which had lost the public's trust

and engaged people across our State in preserving Connecticut's landscape and Long Island Sound in a comprehensive, bipartisan fashion.

Once again, I want to congratulate Gina McCarthy, and I want to thank her family as well. As it has been pointed out by George Voinovich, this is a tough job to take on. But you have in front of you an individual who has the demonstrated ability to take on tough jobs and succeed at it by listening to people and working together. I think that is something we are all looking for in people who are willing to take on these tremendous responsibilities.

So I am very honored and pleased this morning to be able to present to you Gina McCarthy as the nominee for this very important position.

[The prepared statement of Senator Dodd follows:]

STATEMENT OF HON. CHRISTOPHER J. DODD, U.S. SENATOR  
FROM THE STATE OF CONNECTICUT

Chairman Boxer, members of the Committee, thank you for holding this hearing. It is with great pleasure that I introduce Gina McCarthy, who has been nominated to the important post of Assistant Administrator for Air and Radiation at the Environmental Protection Agency. I would also like to welcome her husband, Kenneth McCarey, and her children, David, Maggie, and Julie.

I congratulate President Obama on nominating such a remarkably qualified, energetic, and passionate individual to serve as Assistant Administrator. Commissioner McCarthy has 25 years of experience working at all levels of local and State government and has a depth and breadth of knowledge on environmental issues that few can rival. She has also served under both Democratic and Republican Governors, in Massachusetts as well as my home State of Connecticut, all of whom recognized Gina as a uniquely talented environmental advocate.

As Commissioner of Connecticut's Department of Environmental Protection since 2004, Gina has amassed an impressive record of accomplishments. She spearheaded the "No Child Left Inside" Initiative in Connecticut and nationwide, which combines environmental education with numerous outdoor programs to promote physical activity while teaching kids to become good stewards of the environment.

She has advised Governor Jodi Rell on how to stimulate sustainable economic development in our State, has worked tirelessly to reinvigorate our State park system, and has been a terrific advocate for open space and conservation initiatives.

Perhaps most prominently, Commissioner McCarthy was one of the driving forces behind the creation of the Regional Greenhouse Gas Initiative (RGGI), the Nation's first mandatory cap and trade program, which was adopted by 10 States in the northeast to address the grave threat of climate change. The Commissioner's work on the issue of climate change has been recognized and lauded nationally, and her experience will be invaluable when she is confirmed as Assistant Administrator for Air and Radiation.

President Obama has made it clear that addressing climate change is a top priority for his Administration, and as Assistant Administrator, Gina will play a vital role in developing and implementing policies to control greenhouse gas emissions.

In my view, this incredible list of accomplishments does not do justice to the qualities Gina will bring to her new position once she is confirmed. Across my State she has a well-deserved reputation for her boundless energy, incredible passion and determination, and willingness to speak frankly in order to address challenges head on.

Indeed, she has made such an enormous impact that on March 14th, the Hartford Courant ran an editorial entitled "DEP Chief Gina McCarthy a Hard Act to Follow," which praised both her passion for the issues and her pragmatic approach. The Courant specifically noted her ability to revitalize a department which had lost the public's trust and engage people across the State in preserving Connecticut's landscape and Long Island Sound.

Once again, I congratulate Gina McCarthy on her nomination and thank the Committee for holding this hearing. Gina, while we are sad to see you leave Connecticut, I know you will continue to be the outstanding advocate for the environment and public health you always have been, and I look forward to working with you in your new position at the EPA.

Senator BOXER. Thank you so much.

Ms. McCarthy, you will be happy to know that Senators Kerry, Kennedy and Lieberman have also put very strong statements into the record supporting you.

We are delighted, you have the floor now. And thank you, Senator Dodd, I know you have a hectic morning. We so appreciate the time you took to be here.

Senator DODD. Thank you, Madam Chairman.

Senator BOXER. Ms. McCarthy.

**STATEMENT OF REGINA McCARTHY, NOMINATED TO BE ASSISTANT ADMINISTRATOR, OFFICE OF AIR AND RADIATION, OF THE ENVIRONMENTAL PROTECTION AGENCY**

Ms. McCARTHY. Thank you, Madam Chairman. I first want to thank you, Chairman Boxer, as well as Ranking Member Inhofe, for holding the hearing, and all the Committee members who took their time today to be here and express their thoughts, as well as your willingness to meet with me and speak with me over the past weeks.

I also obviously want to recognize and especially thank Senator Dodd, not only for all of his years of support to me and his kind words, but also for the leadership he has provided to the Great Nutmeg State, and also to this Nation.

If I may, I would like to recognize again my family, my husband and my children, who are the lights of my life. I also would be negligent if I didn't recognize the entire McCarthy-McCarey clan back home, who we told could not be here today because they would get too rowdy. When two large Irish families merge, you are never alone again. And for the most part, that is a good thing.

[Laughter.]

Ms. McCARTHY. But I do want to thank them for their years of love and support.

I am deeply honored and I am thrilled to be nominated as Assistant Administrator for Air and Radiation at EPA by President Obama and to be before you today asking for your support. I also want to recognize Administrator Lisa Jackson. I can't thank her enough for wanting me to be part of her terrific team at a time when I believe that there is so much that needs to get done, but also great promise and opportunity.

For the past 25 years, I have worked on air quality, radiation and climate issues. In the last 10, I have overseen a number of critical decisions, both in the Commonwealth of Massachusetts and most recently over the past 4 years in Connecticut, where I have been the Commissioner of the Department of Environmental Protection.

I have been deeply involved in the development of the regional greenhouse gas initiative, the passage of the Connecticut State law to reduce greenhouse gas emissions and other efforts to combat NO<sub>x</sub>, SO<sub>x</sub> and mercury emissions. Simply put, I care deeply about these issues.

And we all know that science around air quality, radiation and climate is extremely complex. In fact, some of the most complicated scientific modeling and assessment that is underway at EPA actually takes place in this particular Air office. And I am sitting here

today not because I am a scientist, but because like President Obama and Administrator Jackson, I intend to leave the science to the scientists. If confirmed, I will reach out to the EPA scientists and I will commit to them and I will commit to you and to this Committee today that I will fully consider their work in each and every decision that I recommend to the Administrator. Science will be the backbone of our decisionmaking process. That is what Administrator Jackson has promised and that is what I will deliver.

If confirmed, I will sit down with EPA's professional policy and program staff, who I already know to be smart, capable, dedicated and passionate public servants, and I am going to ask them, how do we get the job done in ways that not only meet the letter of the law but the spirit of the law. The rule of law will be the fundamental principle that will guide our actions. That is what Administrator Jackson has promised, and that is what I will deliver.

And then I am going to open a few windows in my office and around OAR so we can let in some fresh air, that is, if the windows in a Federal office building actually open. Because there is lots of work to be done, and we need clean, fresh air, and we need fresh ideas. Administrator Jackson made a promise that her EPA will be transparent in its decisionmaking, and that is again what I will deliver. Because transparency is more than sharing what the science and the law is telling us, and it is more than making clear decisions that can stand the test of time, which we all know is of paramount importance.

Transparency is all about letting in and embracing new ideas, new technologies and new approaches. No individual entity or agency, no matter how smart, how old or how experienced, can afford to stop learning. I can attest through my own personal experience that brainstorming with oneself is not very productive. In fact, the most successful people and agencies I know are open to new ideas, but they also actively seek them out.

So if I am confirmed, my office will reach out for the best and the brightest ideas we can find in the world today, so we can be better prepared for the challenges ahead and all that the future may bring.

But above all else, if confirmed, I will keep my eyes on the real prize, that is, saving lives by protecting our environment. Air pollution kills people and makes them sick, a lot of people, each and every day, each and every year. And climate change, if greenhouse gas emissions remain unchecked, has the potential to rob my children, Daniel, Maggie and Julie, and to rob all of our children of their rightful future.

So my deliverable, if confirmed, will be clean air and Federal leadership on climate. If confirmed, I will work tirelessly to reach out, to listen and to learn both inside and outside the Agency on behalf of Administrator Jackson. I will speak plainly and I will speak truthfully about the lives that are being lost, the responsibilities that we face, the challenges ahead, the options we have and the opportunities that we can all realize if we face the future together.

Thank you.

[The prepared statement of Ms. McCarthy follows:]



**STATEMENT OF REGINA A. MCCARTHY  
HEARING ON NOMINATIONS  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS  
UNITED STATES SENATE  
APRIL 2, 2009**

Thank you Madame Chairman.

I first want to thank Chairman Boxer and Ranking Member Inhofe for holding this hearing, as well as all the Committee members who have taken the time to express their thoughts today and who have been willing to meet and speak with me over the past weeks.

If I may, I would like to begin by introducing my husband Kenneth McCarey and my three wonderful children, Daniel, Maggie and Julie who are the greatest joy in my life, as well as my sister Elaine who for years has studied and taught the history of this great nation to her middle school students and is amazed and perhaps even more excited than I am to be here. And I also want to recognize all of the McCarthy/McCarey clan who are back home in Massachusetts today. When two large Irish families merge – you're never alone again. And that's a good thing – well, most of the time. I do want to thank them for all their years of love and support.

I am deeply honored and thrilled to be nominated as Assistant Administrator for Air and Radiation at the Environmental Protection Agency by President Obama and to be speaking before you today. I cannot thank Administrator Lisa Jackson enough for wanting me to be part of her team at EPA during a time when there is so much that needs to get done but also such great promise and opportunity.

For the past 25 years I have worked on air quality, radiation and climate issues. In particular, for the past 10 years I have overseen a number of critical air policy and climate decisions in the Commonwealth of Massachusetts and, most recently, the State of Connecticut where I have been the Commissioner of the Department of Environmental Protection for the past four years. In these capacities I have been deeply involved in the development of the Regional Greenhouse Gas Initiative, the Connecticut state law to reduce greenhouse gas emissions and efforts to combat NO<sub>x</sub>, SO<sub>x</sub> and Mercury emissions. Simply put, I care deeply about these issues.

As we all know, the science around air quality, radiation and climate is very complex. In fact, some of most complex scientific modeling and assessments underway within the Environmental Protection Agency take place within the Office of Air and Radiation. And I am sitting here today not because I am a scientist, but because, like President Obama and Administrator Jackson, I intend to leave the science to the scientists.

If confirmed I will reach out to the EPA's scientists who work so hard to inform our health risk and impact assessments and to define our environmental challenges. I commit to this Committee that I will fully consider their work in each and every decision I recommend to the Administrator. Science will be the backbone of our decision-making process. That is what Administrator Jackson has promised, and that is what I will deliver.

If confirmed I will sit with the air, radiation and climate policy and program staff who I already know to be smart, capable, dedicated and passionate public servants who came to EPA to protect public health and the environment. I am going to ask them how we can get the job done in ways that not only meet the letter of the law but the spirit of the law. The rule of law will be the fundamental principle that will guide our actions. That is what Administrator Jackson promised, and that is what I will deliver.

And then I am going to open a few windows in my office and around OAR so we can let in some fresh air – that is, if the windows of our building actually open. There is a lot of work to be done and we need clean, fresh air – and fresh ideas. Administrator Jackson has made a promise that her EPA will be transparent in its decision-making, and that is what I will deliver.

Transparency is more than sharing what the science and the law is telling us with Congress, with our partners the states, with the regulated industry, with environmental advocates and with the communities and people we serve. Transparency is even more

Thank you.

**Environment and Public Works Committee Hearing  
April 2, 2009  
Follow-Up Questions for Written Submission**

Questions for McCarthy

Questions from:

Senator Barbara Boxer

**Question 1: California Waiver**

Ms. McCarthy, in 2005, California asked for a Clean Air Act waiver to set greenhouse gas emissions standards for vehicles. The last Administration denied the request, contrary to its own experts' advice and contrary to the law.

The new Administration has decided to reconsider that denial. California and 18 other states -- with more than half the U.S. population -- await a decision.

If confirmed, will you commit to apply the rule of law and the best science on this waiver request?

*Answer: Yes. If confirmed, I will apply the law and best science when making my recommendation to the Administrator regarding the California waiver request.*

**Question 2: CO2 Limits – Power Plants**

Ms. McCarthy, Administrator Johnson decreed in a memo that a new power plant's greenhouse gas emissions should not be controlled. I and many others were pleased when Administrator Jackson recently announced that EPA would convene a public process to review this memo.

If confirmed, will you commit to ensure that EPA uses a transparent and lawful process when addressing the issue of greenhouse gas emissions from power plants and other large stationary sources?

*Answer: Yes. If confirmed, I will commit to using a transparent and lawful process when addressing emissions from power plants and other large stationary sources.*

**Question 3: Ports**

Ms. McCarthy, Southern California ports are major sources deadly air pollution. The US has just taken an important step in reducing ship emissions under international law -- but more is clearly needed to protect public health.

If confirmed, do you commit to begin working with me within 30 days on a plan to use all existing authorities to reduce deadly port pollution even further, and to identify areas where EPA needs more authority?

*Answer: Yes. From my work in CT and MA, I am very familiar with the pollution problems posed by ports, particularly for the communities located nearby. If confirmed, addressing port pollution will be a high priority for me and I will work with the Committee and the Administrator to expeditiously develop and implement an overall plan to reduce port emissions. I understand the Agency is making significant progress in this area, including a recent application to the International Maritime Organization to establish Emission Control Areas for new, stringent Oceangoing Vessel standards, developing Clean Air Act regulations, and implementing an overall Ports Strategy to address a range of emission sources at ports. If confirmed, I will consult with you and your staff on how we can enhance these efforts, and with EPA attorneys to identify areas where EPA may need more authority.*

**Question 4: Need to Revise Air Rule**

Ms. McCarthy, during the past eight years, the Bush administration promulgated a number of Clean Air Act rules that failed to provide the needed protection to public health. All too often EPA ignored the expert analysis and recommendations of scientific and children's health advisers.

If confirmed, do you commit to act within 30 days to develop a plan for reviewing and correcting flaws in various air rules, such as the lead-monitoring rule, and air quality standards for toxic soot and smog?

*Answer: Yes. If confirmed, one of my top priorities will be to promptly review and take action to address the many air pollution rules issued by the Bush Administration that have been rejected by the courts or are being revisited by the Agency in response to petitions for reconsideration. If confirmed, I will work with the OAR managers and staff to assess the work that must be done for the Agency to take action that is consistent with the law and that takes into account the need for any additional information on relevant scientific and technical issues. Based on that assessment, I will develop a plan for the Administrator's consideration to take action on those rules as quickly as possible. I would be happy to work with the Committee during this process.*

Senator Frank R. Lautenberg

1. The Clean Air Act requires the EPA to set standards to significantly reduce emissions of hazardous air pollutants, which can cause cancer and other health problems. However, the U.S. Court of Appeals for the D.C. Circuit found ten of the eleven Bush Administration standards they examined illegal because they were too weak or contained loopholes.

Will you commit to quickly promulgating standards that adhere to the law and will protect public health from hazardous air pollutants?

*Answer: If confirmed, I will make it a top priority to review and act on the standards for hazardous air pollutants that have been set aside by the courts or that we have been asked to revise through petitions for reconsideration or rulemaking. I commit that any action I advise the Administrator to take on these standards will adhere to the law and protect public health.*

2. Mercury pollution is a serious problem in my home state of New Jersey and across the country. Yet EPA has no rule in place to control mercury emissions from power plants or cement kilns, in part because courts have struck down the Bush Administration's mercury cap-and-trade rule for power plants.

What actions will you take to reduce mercury pollution from power plants and other major sources?

*Answer: As you know, when EPA requested that its petition for Supreme Court review of the decision in the Clean Air Mercury case be withdrawn, the Administrator announced that EPA would proceed to develop standards to address all emissions of hazardous air pollutants from power plants. If confirmed, I will work with OAR staff to develop such standards for the Administrator's consideration. In addition, I understand that EPA expects to propose rules to set standards for mercury and other hazardous air pollutant emissions from Portland Cement plants later this spring.*

3. Americans spend 90% of their time indoors, and EPA has found that indoor air can be as much as 100 times more polluted than outdoor air. Children are especially sensitive to air pollution, and EPA has estimated that up to half of our nation's schools have problems with indoor air quality.

What will OAR—working together with other offices at EPA—do to address indoor air quality, especially at our schools?

*Answer: I am aware that the Office of Air and Radiation (OAR) has taken significant steps to improve indoor air quality in schools, homes and office buildings, and if*

*confirmed, I look forward to supporting the Office's continuing work in this important area. An example of the Office's work is EPA's comprehensive Indoor Air Quality (IAQ) Tools for Schools program, which provides a robust suite of practical, effective, no-cost and low-cost strategies to help schools prevent and resolve indoor air quality problems that may worsen asthma and reduce children's ability to learn. If confirmed, I will also continue OAR's close collaboration with the Office of Children's Health Protection and all of EPA's school programs, to improve integration of all of EPA's K-12 school guidance and regulations. Such cooperation across EPA will improve the quality of all indoor environments, and particularly in schools.*

4. The Clean Air Act gives EPA the authority to protect the public against cancer risks greater than 1-in-1-million caused by toxic air pollution. Unfortunately the Bush Administration chose not to carry out this level of protection and instead adopted policies that accepted cancer risks at a minimum of 100-in-1-million, but as high as 250-in-1-million and even 400-in-1-million.

Will you commit to revisiting the Bush administration policy and consider protecting the public against cancer risks greater than 1-in-1-million caused by air toxics?

**Answer:** *Yes. If confirmed, I will revisit this policy.*



Senator Bernard Sanders

1) You have served as the Administrator for the Connecticut Department of Environmental Protection, and Connecticut, like Vermont, is a member of the Regional Greenhouse Gas Initiative. Would you please share your views and any lessons learned from participation in that initiative that could inform the federal debate on global warming legislation?

*Answer: There are many lessons that I have learned from my participation in the design and implementation of the Regional Greenhouse Gas Initiative that could inform the federal debate regarding climate change legislation. Here are a few of the more important lessons: 1) It is possible to put a price on carbon without significantly impacting energy costs. 2) There are many ways to contain costs associated with a cap and trade program that do not interfere with the functioning of a carbon allowance market. 3) The most effective way to contain costs is to invest in energy efficiency. 4) Offsets may be important to help contain costs but they must be carefully evaluated and monitored to ensure that they are real, enforceable, additional, verifiable and permanent. 5) A healthy carbon market can be launched and grow - even in these difficult economic times. 6) Allowances should be auctioned. 7) A carbon allowance auction can be designed, launched and managed in ways that minimize opportunities for collusion and market manipulation. 8) It is possible to monitor carbon auctions to detect signs of collusion or market manipulation. 9) The proceeds from carbon auctions provide significant opportunities to invest in energy efficiency, renewable energy, carbon mitigation technologies, climate adaptation, green job training and other efforts needed to support the transition to a clean energy future. They also provide significant opportunities for direct and indirect consumer benefits. 10) States continue to be engines for innovation, piloting new approaches to address environmental challenges and any federal effort to address climate change should encourage states to work in partnership with EPA in implementation of federal legislation and other complimentary actions.*

2) Protective Action Guides (PAG) suggest precautions for state and local officials to take to keep people from receiving a harmful amount of radiation during an emergency, including a nuclear power plant incident. In its last days in office, the Bush Administration approved new PAG regulations which would have increased the allowable levels of radioactive exposure during an emergency. Vermonters should not be exposed to harmful levels of radiation during emergencies, and we should base regulations like these on the best available science. The Obama Administration has halted these regulations and is reviewing them. Will you support stronger, science-based PAG regulations to protect Vermonters and all Americans in the event of an emergency?

*Answer: If confirmed, I will work with scientists and emergency response experts in OAR's Office of Radiation and Indoor Air to review the proposed PAGs guidance and assess what action should be taken. Administrator Jackson has committed to making science the cornerstone of EPA's work. If confirmed, I will uphold that commitment in*

*reviewing and advising the Administrator on the proposed guidance for protecting the public from harmful levels of radiation during radiological emergencies.*

**3) Please discuss any specific regulations that your Office is responsible for administering which were enacted during the previous Administration and which you believe merit review and possible changes.**

***Answer:*** *As indicated by the questions posed by your colleagues on the Committee, the Bush Administration issued a number of rules that have been overturned or remanded by the courts or that the Agency is now reconsidering at the request of states, environmental groups or others. If confirmed, I will work with OAR to review those rules and develop options for the Administrator's consideration for possible changes.*

Senators James M. Inhofe, George V. Voinovich, David Vitter, and Christopher S. Bond

For the following questions, please answer all questions for the record as they were asked and presented in this letter. Specifically, please do not combine answers to any questions or parts of questions in your response, and please make the time and effort to answer each and every itemized subpart of a question.

1) Your opening statement indicates that you were “deeply involved” in a number of “critical” air quality decisions in the State of Massachusetts and the State of Connecticut. Specifically, you list the Regional Greenhouse Gas Initiative and efforts to combat NO<sub>x</sub>, SO<sub>x</sub> and Mercury emissions. So that the committee may understand more fully the depth and breadth of your experience at the state level, please provide detailed responses to the following questions:

- (a) Please provide the committee with a list of all important and substantial matters involving the implementation of the Clean Air Act in Massachusetts and Connecticut and/or other parts of the country in which you were personally involved in the interpretation, implementation or administration of the law.

*Answer: For a five-year period when working at the MA Executive Office of Environmental Affairs, I reviewed and provided input and recommendations to the Environmental Secretary and the Governor's Office on all air policy matters worthy of high level attention. In addition, I was actively engaged in a number of regulatory and policy efforts such as the CAL LEV Program, a mercury reduction program, a four pollutant power plant regulation, air permitting associated with the “Big Dig” and Logan Airport, federal initiatives to clean cars and reduce airport emissions, regional and state climate change efforts, low level radioactive waste, regional and national interstate ozone reduction strategies, regional haze strategies, NESCAUM, OTC and ECOS air discussions, strategies and agreements, The Climate Registry, The State Voice discussions, RGGI and other air related matters. As the Commissioner of the CT DEP, I have had statutory authority for the past four years over all air quality and radiation matters and I have taken the lead and advised on all climate change matters including interagency efforts to develop clean energy policies and programs.*

*In both positions, the issues under my review and approval were so numerous that any attempt to develop a list would fall far short of comprehensive and accurate.*

- (b) Please specify which efforts involving “NO<sub>x</sub>, SO<sub>x</sub> and Mercury emissions” your testimony refers to. Please indicate whether these efforts involve state implementation of relevant NAAQs and other Clean Air Act standards, or whether reference is to efforts aside from the implementation of relevant federal standards that presently exist or previously existed.

*Answer: For a five-year period when working at the MA Executive Office of Environmental Affairs, I reviewed and provided input and recommendations to the Environmental Secretary and the Governor's Office on all air policy matters worthy of high level attention. In addition, I was actively engaged in a number of regulatory and policy efforts such as the CAL LEV Program, a mercury reduction program, a four pollutant power plant regulations, air permitting associated with the "Big Dig" and Logan Airport, federal initiatives to clean cars and reduce airport emissions, regional and state climate change efforts, low level radioactive waste, regional and national interstate ozone reduction strategies, regional haze strategies, NESCAUM, OTC and ECOS air discussions, strategies and agreements, The Climate Registry, The State Voice discussions, RGGI and other related matters. As the Commissioner of the CT DEP, I have had statutory authority for the past four years over all air quality and radiation matters and I have taken the lead and advised on all climate change matters including interagency efforts to develop clean energy policies and programs.*

*In both positions, the issues under my review and approval were so numerous that any attempt to develop a list would fall far short of comprehensive and accurate. However I can confirm that the above efforts, with the exception of climate and radiation matters, related to a variety of federal attainment and maintenance efforts.*

- (c) Please provide the committee with a list of all matters involving the implementation of the Clean Air Act in Massachusetts and Connecticut and/or other parts of the country in which you consulted with the Massachusetts or Connecticut State Attorney General's Office concerning the proper interpretation of the law.

*For a five-year period when working at the MA Executive Office of Environmental Affairs, I reviewed and provided input and recommendations to the Environmental Secretary and the Governor's Office on all air policy matters worthy of high level attention. In addition, I was actively engaged in a number of regulatory and policy efforts such as the CAL LEV Program, a mercury reduction program, a four pollutant power plant regulation, air permitting associated with the "Big Dig" and Logan Airport, federal initiatives to clean cars and reduce airport emissions, regional and state climate change efforts, low level radioactive waste, regional and national interstate ozone reduction strategies, regional haze strategies, NESCAUM, OTC and ECOS air discussions, strategies and agreements, The Climate Registry, The State Voice discussions, RGGI and other related matters. As the Commissioner of the CT DEP, I have had statutory authority for the past four years over all air quality and radiation matters and I have taken the lead and advised on all climate change matters including interagency efforts to develop clean energy policies and programs.*

*In both positions, the issues under my review and approval were so numerous that any attempt to develop a list would fall far short of comprehensive and*

*accurate. In some cases such as the Cal Lev Program, the power plant regulations, permitting related to Logan Airport, and RGGI, I consulted directly with the Attorney General or his staff on matters. Other times I participated on joint calls (OTC, LADCO, ECOS, etc.) and still other times staff consulted with the AG's Office and provided me with an overview of the issues and concerns.*

- (d) Please provide the committee with a list of all matters involving the implementation of the Clean Air Act in Massachusetts or Connecticut and/or other parts of the country in which you, your office or staff under your supervision were involved in discussing with the state Attorney General's Offices, other state entities or private parties, whether to file comments or pursue any legal action regarding decisions or rulemakings that were published or otherwise communicated by the United States Environmental Protection Agency. In addition, please send copies of all of the lawsuits in which Massachusetts and Connecticut, during your tenure of service to both states, challenged an EPA rule.

*Answer: There are many instances when I or my staff participated in discussions involving comments and legal actions relative to federal rulemaking- so many that any list would prove inaccurate. Below is a preliminary list of cases that involved EPA regulation interpretation, or challenges to EPA rules.*

### Massachusetts' Cases Challenging EPA Regulations or Interpretation of Regulations During Gina McCarthy's Tenure

**Alliance of Automobile Manufacturers, et al. v. EPA**

AAM v. EPA

US Court of Appeals for the District of Columbia Circuit

Court Docket Number: 99-1401

Automakers petition for review of a letter by EPA responding to questions posed by First Circuit Court of Appeals in our appeal of ZEV ruling.

Opened and Closed in 1999

**Climate Change - 111 Petition**

Amicus Brief filed in CA case see related cases for lit #03-00241-P Petition for EPA to amend regulations to include NSPS for CO2

Opened and Closed in 2003

**Climate Change 111 Action**

Our Children's Earth Foundation and Sierra Club v. USEPA  
 US District Court Northern District of California  
 Docket No. C 03-0770 CW  
 Petition for EPA to amend regulations to include NSPS for CO2  
 Opened in 2003, Closed in 2004

**Commonwealth of MA, States of Ct, IL ME, NJ, NM, NY, OR, RI, VT, and Washington; American Samoa Government; and District of Columbia v. USEPA**  
 Open in 2003

Court docket number: 03-1361 - 03-1365  
 US Court of Appeals for the District of Columbia Circuit  
 Petition for Review for regulation of emissions of greenhouse gases. Ultimately decided in U.S. Supreme Court.

**Commonwealth of Massachusetts v. Christine Whitman**

Climate Change Mandamus Action  
 Climate C Mandamus Suit Filed 6/4/02. Potential mandamus action against EPA Administrator pursuant to Section 108 of the Clean Air Act.

**Commonwealth of Massachusetts v. Christine Whitman**

Climate Change Mandamus Action  
 Notice of dismissal filed 9/3/03. No Appeal. Closing case 12/31/03. Mandamus suit under Section 108 of the Clean Air Act seeking to compel EPA to regulate carbon dioxide as a criteria pollutant  
 Opened and Closed in 2003

**Commonwealth of Massachusetts, et al. v. U.S. Environmental Protection Agency**

Ozone NAAQS Implementation Rule  
 US Court of Appeals for the District of Columbia Circuit  
 Court Docket Number: 04-1200  
 Challenge to rules implementing the 8-hour ozone standard because they do not require all nonattainment areas to implement required measures.

**Commonwealth v. American Electric Power Service Corp., et al.**

US District Court - Southern District of Ohio (filed in 1999; active case, including active in CT)  
 Docket No. C299 -1182 & C299-1250  
 Case filed by US EPA, NY, CT, and New Jersey.  
 Joining suit against owner/operator of coal-fired power plants in Midwest to enforce Clean Air Act. This case was consolidated with case C299-1250

**Conservation Law Foundation v. Carol Browner**

DC Cir. 95-1241 (closed in October 1999) & 94-1692 (still open)  
 Challenge to rule regarding extension of attainment deadlines.

**Massachusetts v. EPA**

DC Cir. 95-1242

Challenge to policy regarding areas affected by overwhelming transport  
Opened in 1995, closed October 1999**Michigan v. EPA**

DC Cir. 98-1497 (U.S. Supreme Court denied cert on March 5, 2001)

Ozone SIP Call; defense of regulation.

**National Petrochemical & Refiners Ass'n v. EPA**

Diesel regulations case

Court docket number: 01-1052

DC Circuit

Intervention in support of EPA's diesel regulations for heavy duty engines.

**State of New York, et. al v. Environmental Protection Agency**

US Court of Appeals for the District of Columbia Circuit

Court Docket Number: 03-1380

Challenge to the Equipment Replacement portion of the New Source Review rules.

**State of New York, et. al v. Environmental Protection Agency**

Appeal of new EPA NSR rule

US Court of Appeals for the District of Columbia Circuit

Court Docket Number: 02-1387

Appeal to DC Circuit Court of Appeals challenging NSR rule

**West Virginia v. U.S. Environmental Protection Agency**

126 Petition / Growth Factor Suits

US Court of Appeals for the District of Columbia Circuit

Court Docket Number: 02-1181

Suit by West Virginia and power companies challenging growth factors used by EPA in  
NOx SIP Call and Section 126 findings to reduce transported emissions. EPA essentially  
reaffirmed factors used in the original rules after remand by the Court for further  
explanation.

Opened in 2002, Closed in 2004

**Wisconsin Paper v. United States EPA**Ozone SIP Call Litigation-7<sup>th</sup> Circuit.

Docket no. 98-4269

Petition for review of EPA's final rule requiring 23 State to amend their State  
Implementation Plans to reduce ozone forming emissions.

Opened in 1999, Closed in 2001

**Connecticut Cases Challenging EPA Regulations**

or Interpretation of Regulations During Gina McCarthy's  
Tenure

- (1) U.S. v. Cinergy Corp.  
**UNITED STATES OF AMERICA**, Plaintiff, STATE OF NEW YORK, STATE OF NEW JERSEY, **STATE OF CONNECTICUT**, HOOSIER ENVIRONMENTAL COUNCIL, and OHIO ENVIRONMENTAL COUNCIL, Plaintiff-Intervenors, vs. CINERGY CORP., PSI ENERGY, INC., and THE CINCINNATI GAS & ELECTRIC COMPANY, Defendants.

Docket No.: 1:99-cv-1693-LJM-JMS

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF INDIANA,  
INDIANAPOLIS DIVISION

- (2) Pennsylvania v. Allegheny Energy, Inc. (Need for air construction permits; interpretation of "major modification" v. routine maintenance; EPA not a party; CT= plaintiff; most recent activity on LEXIS Nov. 18, 2008)

COMMONWEALTH OF PENNSYLVANIA,  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION, STATE OF CONNECTICUT**, STATE OF MARYLAND, STATE OF NEW JERSEY, and STATE OF NEW YORK, Plaintiffs, v. ALLEGHENY ENERGY, INC., ALLEGHENY ENERGY SERVICE CORPORATION, ALLEGHENY ENERGY SUPPLY COMPANY, LLC; MONONGAHELA POWER COMPANY, THE POTOMAC EDISON COMPANY, and WEST PENN POWER COMPANY, Defendants.

Docket No.: 02:05cv885

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF PENNSYLVANIA

- (3) U.S. v. PSI Energy, Inc. (CAA routine maintenance?; EPA = plaintiff; CT = plaintiff-intervenor; most recent activity on May 16, 2008)



**UNITED STATES OF AMERICA**, Plaintiff, STATE OF NEW YORK, STATE OF NEW JERSEY, **STATE OF CONNECTICUT**, HOOSIER ENVIRONMENTAL COUNCIL, and OHIO ENVIRONMENTAL COUNCIL, Plaintiff-Intervenors, vs. PSI ENERGY, INC., and THE CINCINNATI GAS & ELECTRIC COMPANY, Defendants.

Docket No.: 1:99-cv-1693-LJM-JMS

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION

- (4) U.S. v. American Electric Power Service Corp. ("major modification" v. routine maintenance; EPA = plaintiff; CT= plaintiff-intervenor; most recent activity on LEXIS Sept. 2, 2004)

**United States of America**, Plaintiff, v. American Electric Power Service Corp., et al., Defendants. State of New York, **State of Connecticut** and State of New Jersey, Plain-tiff-Intervenors, v. American Electric Power Service Corp., et al., Defendants. Ohio Citizen Action, et al., Plaintiffs, v. American Electric Power Service Corp., et al., Defendants.

Docket No.: C2-99-1182, C2-99-1250

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION

- (5) New York v. Browner (Citizen suit against EPA to perform non-discretionary duties; EPA won its motion for summary judgment because EPA produced a report fulfilling the statutory mandate by including an analysis, or examination, of the nature and numerical value of a deposition standard sufficient to protect sensitive and critically sensitive aquatic and terrestrial re-sources. ; EPA = defendant; CT= plaintiff-intervenor; most recent activity on LEXIS June 1, 1999)

STATE OF NEW YORK, Plaintiff, and **STATES OF CONNECTICUT** and NEW HAMPSHIRE, Intervenor-Plaintiffs, -against- CAROL M. BROWNER, ADMIN-

ISTRATOR of the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Defendants.

Docket No.: 97-CV-1028

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK

- (6) Michigan v. U.S. EPA, 213 F.3d 663 (March 3, 2000) (AG Blumenthal was involved; implications of 8 hr ozone NAAQs on 1 hr section 126 petitions, NOx SIP call etc.)

STATE OF MICHIGAN, MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY AND STATE OF WEST VIRGINIA, DIVISION OF ENVIRONMENTAL PROTECTION, PETITIONERS v. U.S. ENVIRONMENTAL PROTECTION AGENCY, RESPONDENT; NEW ENGLAND COUNCIL, INC., ET AL., INTERVENORS

No. 98-1497, Consolidated with 98-1499, 98-1500, 98-1501, 98-1502, 98-1504, 98-1518, 98-1556, 98-1567, 98-1573, 98-1585, 98-1588, 98-1590, 98-1596, 98-1598, 98-1601, 98-1602, 98-1608, 98-1609, 98-1611, 98-1615, 98-1616, 98-1617, 98-1618, 98-1619, 98-1621, 99-1070, 99-1093

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

- (7) Whitman v. American Trucking Assn, 531 U.S. 457 (Feb. 27, 2001) (AG Blumenthal amici brief re: ozone NAAQs)

CHRISTINE TODD WHITMAN, ADMINISTRATOR OF ENVIRONMENTAL PROTECTION AGENCY, ET AL. v. AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.; AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL. v. CHRISTINE TODD WHITMAN, ADMINISTRATOR OF ENVIRONMENTAL PROTECTION AGENCY, ET AL.

2) For each matter listed in question 1 subparts (a), (b), (c) and (d) please provide a detailed statement as to characterize your involvement in the matter, including any significant policy positions which you personally advocated or otherwise instructed staff under your supervision to advocate or include in the relevant efforts. Please devote specific attention in your response to subpart (d), if applicable, to lawsuits or arguments challenging EPA for exceeding its authority under the Clean Air Act.

**Answer:** *Given that the air-related issues under my review and approval in MA and CT were so numerous, any attempt to develop a list would fall far short of the level of comprehensiveness and accuracy that the Committee should expect from a nominee and it is therefore not possible for me to outline with a high degree of confidence at this time, my specific involvement in all air-related decision-making. I can however say with confidence that my role in MA was advisory in nature while in CT I was authorized by law to make final decisions.*

3) For each matter listed in question 1(d), please provide a statement as to whether you agreed entirely, concurred in part, or objected in whole or in part of the subsequent comments or legal actions that may have been filed. Please attest as to the completeness of your response to this question and, if necessary, please indicate in your response if any part of your response or material which may be attached material to your response is subject to a claim of privilege. If so, please include all such material with your response, but specifically indicate in providing the response what statement(s) or material(s), or parts of statements or materials to which a claim of privilege may exist.

**Answer:** *Given that the air-related issues under my review and approval in MA and CT were so numerous, any attempt to outline my professional recommendations and compare those to the final policy determination of regulatory action taken, etc, would fall far short of the level of comprehensiveness and accuracy that the Committee should expect from a nominee. However it may be pertinent to point out that most air-related matters were developed with significant agency and public input, resulting in well-thought out, balanced decisions.*

4) You say in your statement that you “intend to leave the science to the scientists.” In your confirmation hearing, you further indicated that science should drive decision making. In the past, the Clean Air Scientific Advisory Committee (CASAC) has presented their advice to EPA as a “consensus scientific opinion.” (a) Do you believe you can, as a matter of law, disagree with a “consensus scientific opinion” presented by CASAC regarding setting the level, form or indicator for any NAAQS? (b) If the answer to the question in (a) is “yes”, please provide the Committee with specific examples of the type of scientific evidence that you believe would be necessary to support a decision to disagree with a “consensus scientific opinion” as presented in formal letters or other comments to the Agency during the NAAQS review process. (c) if “no”, please provide the Committee with the specific statutory requirement binding you to the opinion of the CASAC.

**Answer:** *As you know, CASAC is an advisory committee established by the CAA with a mandate to provide advice to the Administrator throughout the NAAQS review process. While I agree that the Administrator is not bound to follow their advice, I believe their views are entitled to great weight. If confirmed, I will consult with Agency experts in considering advice from CASAC as well as any public comments received during the NAAQS review and rulemaking. The Administrator has*

*expressed her commitment to decisions that are based on sound science and I will do everything I can to ensure that my recommendations meet her stated expectations.*

5) CASAC also indicated with respect to previous decisions on the ozone standard that EPA determinations “fail(ed) to satisfy the explicit stipulations of the Clean Air Act [regarding] an adequate margin of safety for all individuals including sensitive subpopulations.” Do you believe that a NAAQS must “ensure” an adequate margin of safety for all individuals”? If not, please detail the legal rationale for your statement.

*Answer: It is my understanding that the Clean Air Act requires that NAAQS be set at a level that provides an adequate margin of safety for sensitive subpopulations and not for every member of that subpopulation.*

6) In *Whitman v. American Trucking Association* the Supreme Court explained that for a primary NAAQS to be “requisite” it must be “not lower or higher than . . . necessary.” Previous CASAC chairs have testified before this Committee that there are instances where the science is less than clear and that decisions concerning the NAAQS are ultimately at the discretion of policy-makers. Please detail how you intend to set standards that are “not lower or higher than necessary” to protect public health in instances where the science is less than clear.

*Answer: It is my understanding that the scientific evidence that EPA considers in setting NAAQS rarely if ever establishes a “bright line” that defines the standard which should be set, so I agree with previous CASAC chairs who have testified that decisions concerning the NAAQS generally involve an exercise of discretion by the Administrator. Each NAAQS review poses different scientific, public health and environmental policy issues that need to be considered in applying the Supreme Court’s decision. If confirmed, I will fully consider the views of agency scientific, policy and legal experts, CASAC and public commenters in reviewing and assessing the available scientific information and applying the Supreme Court’s decision.*

7) What is your personal opinion as to whether an Advance Notice of Proposed Rulemaking (ANPR) should be incorporated into the process of reviewing a NAAQS? Will you commit to seeking to retain this part of the NAAQS review process? If not, please indicate your reasons for not including an ANPR in the NAAQS review process and how this is consistent with the statements in your statement to the committee concerning the need for transparency.

*Answer: Like Administrator Jackson, I am committed to transparency in the development of agency regulations. While I have not assessed the advisability of incorporating an ANPR into the NAAQS review process nor have I discussed this matter with Agency experts or the Administrator, it is my understanding that the Administrator is considering this issue. It is also my understanding that EPA has traditionally provided multiple opportunities for CASAC and public input as the*

*Agency assembles and reviews the available scientific evidence and considers policy options. If confirmed, I will support the Administrator in her efforts to consider this issue and to implement appropriate actions while ensuring that CASAC and the public continue to have meaningful opportunities to comment throughout the NAAQS review process.*

**8)** Your statement contains several broad statements regarding your commitment to transparency and changing the way in which the Office of Air and Radiation operates. Please provide specific examples of what actions you will take to increase transparency with regard to the following important actions which fall under the responsibilities of the office for which you have been nominated: (a) the NAAQS review process; (b) the petition filed under section 202 of the Clean Air Act regarding the regulation of greenhouse gases from motor vehicles; (c) other petitions filed before the Agency concerning the regulation of greenhouse gases under authority of the Clean Air Act; (d) EPA consideration of the current California waiver petition for GHG standards for motor vehicles.

*Answer: It is my understanding that EPA has provided, or will provide, opportunities for public comment for all of the actions you list in your questions, and has conducted one or more public hearings for most of those actions. As I stated in my testimony, I strongly support transparency in the government's conduct of the nation's business, and if confirmed, I will work with Agency experts and the Administrator to ensure that OAR provides the public with meaningful opportunities to participate in the Office's regulatory process.*

**9)** Again, with respect to your commitment to increasing transparency within EPA and the Office of Air and Radiation, please specify the extent to which you will provide prompt access to the following, including any specific conditions that you would place regarding the use or further communication of the following: (a) your personal communications of all types and forms, including face-to-face meetings, phone calls and electronic communications, with other members of the Executive Branch; (b) your personal communications of all types and forms, including face-to-face meetings, phone calls and electronic communications, with any individual employed by the government of the United States who is not part of the Executive Branch of government; (c) your personal communications of all types and forms, including face-to-face meetings, phone calls and electronic communications with any individual or organization that is not part of the government of the United States; (d) your personal communications of all types and forms, including face-to-face meetings, phone calls and electronic communications with employees of the Executive Office of the President including (i) the Office of Management and Budget, (ii) the Office of Information and Regulatory Affairs, (iii) the Council for Environmental Quality, (iv) White House economic advisors, (v) members of the Vice President's staff, (vi) members of the President's staff, (vii) Carol Browner.

*Answer: President Obama and Administrator Jackson have made transparency a cornerstone of their decision-making efforts. I will ensure that my actions are*

*consistent with their overall commitment; however, I am not sufficiently familiar with nor have I consulted with Agency experts regarding the legal, policy and practical implications relating to the specific communications outlined above.*

**10)** You have advocated broad transparency within the public office that you are now seeking to fill. It would therefore appear reasonable that such transparency should extend to the state-level experience that lies at the heart of your qualifications for the position that you now seek. In this regard, please provide a list of contacts, and any supporting records of such contacts, with individuals or organizations outside of government during the past 10 years when you had “overseen a number of critical air policy and climate decisions in the Commonwealth of Massachusetts and, most recently, the State of Connecticut” This list should include all contacts that are related to your consideration of the air policy and/or climate decisions referenced in your testimony.

*Answer: President Obama and Administrator Jackson have made transparency a cornerstone of their decision-making efforts. I have pledged that, if I am confirmed, my actions as Assistant Administrator will be also conducted with a high degree of transparency. The records you request from the past 10 years do not, however, provide a window into actions I have not yet taken, in a position for which I have not yet been confirmed.*

**11)** Please explain how your new national role may require you to change your position in the past as an advocate for the state of CT? Specifically, please address (a) the NAAQS review process; (b) the petition filed under section 202 of the Clean Air Act regarding the regulation of greenhouse gases from motor vehicles; (c) other petitions filed before the Agency concerning the regulation of greenhouse gases under authority of the Clean Air Act; (d) EPA consideration of the current California waiver petition for GHG standards for motor vehicles; (e) CAIR/transport issues; (g) RGGI; (f) mercury; (g) New Source Review.

*Answer: As a state employee I have worked hard to advance the interests of the Commonwealth of Massachusetts and the State of Connecticut, consistent with the law and sound science, to preserve, protect and enhance the environment in ways that minimize costs and support economic growth. If confirmed, I will work equally hard - in partnership with all states and regions, to support Administrator Jackson's efforts to promote EPA's mission on behalf of the nation.*

**12)** We assume you will permanently recuse yourself from any and all issues where a conflict may exist. If you disagree with this assumption, please indicate examples of when and where, and justifications for doing so.

*Answer: In consultation with the Office of Government Ethics and the Agency's Designated Agency Ethics Official, I have entered into an ethics agreement that sets forth my ethical obligations. Consistent with that agreement and with the Standards*

*of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, as well as Executive Order 13490, I will not participate personally and substantially in any particular matter that involves my former employer for one year.*

**13)** Does the use of coal contribute to our national security? (b) If so, how? (c) Do you believe that a 70-80% reduction in coal use would pose a national or energy security issue?

*Answer: The President recognizes that coal is a vital energy resource for our country and therefore an important contributor to the nation's energy and national security. Coal currently provides nearly 50 percent of our electricity, and we have enormous coal reserves that can provide power long into the future. At the same time, coal-fired power plants are the largest contributor to U.S. greenhouse gas emissions. That's why I share President Obama's view that we need to aggressively pursue carbon capture and storage technology, or CCS. We're going to need this technology here in the United States, and it's going to be needed in China, India and elsewhere around the world, if we are going to successfully reduce greenhouse gas emissions while maintaining adequate energy supplies in the near term.*

**14)** Do you personally believe there is such a thing as clean coal? If so, please provide a definition of what you would consider to be clean coal.

*Answer: I agree with President Obama and Administrator Jackson that coal is a vital energy resource. I also believe, as they do, that technology advances like carbon capture and storage are needed to reduce pollution and make coal a cleaner fuel.*

**15)** Do you share the view with thisisreality.org that there is no such thing as clean coal? If you don't agree with this organization in this matter, please state the specific reasons for your disagreement.

*Answer: I am not familiar with this website but if it does not recognize coal as a vital energy resource and espouse the need for public and private incentives and investments in new technology to reduce, capture and store greenhouse gas emissions from coal-fired power plants, then our opinions would differ.*

**16)** It is my understanding that the U.S. Environmental Protection Agency uses actual monitoring data during its consideration of what areas of the country are to be designated as being in attainment or nonattainment with National Ambient Air Quality Standards. That is, while designation decisions may be based on numerous evaluative factors as specified by EPA guidance, the determination of relevant air quality data for the attainment or nonattainment designation is based on data that comes from Federal Reference Method monitors. (a) Please indicate whether, given your long state

experience in these matters, if this is your understanding of current practice; (b) Please provide a date by which, if confirmed to the position you now seek, you will provide a confirmation of whether this is the case or not the case in a written letter signed under your authority as Assistant Administrator for Air and Radiation; (c) Please indicate if you either now disagree with this statement that only actual monitoring data has been utilized in the past; (d) Please commit, in writing, to inform the committee if any internal EPA review is initiated in whatever form to change this current practice.

*Answer: It is my understanding that the air quality data used in attainment or nonattainment designation decisions are based on the Federal Reference Monitors (or Federal Equivalent Monitors) sited in accordance with EPA's regulations governing monitor placement. If confirmed, I will meet with EPA staff, to discuss my understanding and within 30 days I will inform the committee in writing as to whether or not my understandings were accurate and to discuss any actions to be taken to further assess and/or adjust current practices.*

17) Some studies indicate that roadside emissions may result in elevated concentrations of pollutants. Such concentrations may be elevated within a few dozen to several hundred meters of a road. Please indicate whether you believe, given your long state experience with the implementation of several NAAQS, that if a roadside monitor is properly placed according to relevant federal regulations and guidance, data from such a roadside monitor which indicates an exceedence of a NAAQS (e.g., the data indicates that the area monitored is above the design value of a NAAQS) would require the EPA to designate such an area and any contributing areas as being in nonattainment with a NAAQS.

*Answer: I am not familiar enough with EPA's historic practices to confidently answer your question, however, I do know that states, including Connecticut, have raised concerns about roadside monitors and if confirmed, I will ask for a briefing from EPA staff on this issue and take any appropriate action to ensure that emission concentrations are being appropriated monitored.*

18) Please indicate for each listed Clean Air Act section, whether you believe that the Environmental Protection Agency can consider during a rulemaking relying in whole or in part on each section of the law, the benefits of reducing greenhouse gas emissions in countries other than the United States of America. Sections 107, 108, 109, 110, 111, 112, 165, 202, 211 (exclusive of 211(o)), 211(o), 213, 231, and 615. If you do not presently know the answer to this question or any specific CAA section cited in question, please state so in the affirmative and provide a specific date by which you will provide such an answer for each listed section of the Clean Air Act.

*Answer: I do not currently have enough information to form a professional opinion on whether the listed sections of the Clean Air Act allow EPA to consider the benefits of reducing greenhouse gas emissions in countries other than the U.S. If confirmed, I will consult with EPA staff and lawyers regarding the Agency's ability to consider*



*this and other relevant factors in making regulatory decisions under the Act. Depending on advice from Agency staff and counsel and any decisions made by the Administrator in light of that advice, I will work with EPA staff to take into account those considerations that the law makes relevant to shaping Clean Air Act regulations.*

19) EPA's Technical Support Document related to its upcoming endangerment finding indicates that certain parts of the U.S. population may be especially vulnerable to climate change. In specific, the TSD indicates that these segments of the population may include those with limited "rights and powers (such as recent immigrants with limited English skills) . . ." Can you provide further detail with regard to what "rights and powers" the TSD is making reference to? If you do not know the answer to this question, could please provide a date by which a detailed response will be provided.

*Answer: It is my understanding that the TSD that you reference in your question is a draft and the final version has not yet been issued. If confirmed, I will make sure that I am fully briefed on the final TSD and I would be happy to address any questions you may have.*

20) The same TSD refers to a CCSP report citing "locales with relatively limited social and political capital." Similar to the request in the question above, could you provide further detail regarding what is considered to be limited social and political capital. If you do not presently know the answer to this question, please provide a date by which a detailed response will be provided?

*Answer: Again, it is my understanding that the TSD that you reference in your question is a draft and the final version has not yet been issued. If confirmed, I will make sure that I am fully briefed on the final TSD and I would be happy to address any questions you may have.*

21) Given what you know about the science of climate change, do you believe that US greenhouse gas emissions could have an impact on foreign countries as well as the U.S.?

*Answer: Yes. It is my understanding that manmade greenhouse gas emissions contribute to global climate change.*

- a. Clean Air Act Section 115 has benefits because it provides the Administrator with significant discretion to address climate issues while working in concert with other countries. Do you believe this should be considered as an option?

*Answer: If confirmed, I will be open to all suggestions regarding how best to use the Clean Air Act to control greenhouse gases, if the Administrator makes a final positive decision on endangerment in response to the Supreme Court's ruling in Massachusetts v. EPA.*

- b. Will you commit to seek comment on the use of Section 115 in any proposal that EPA makes with regard to endangerment?

*Answer: If the Administrator makes a final positive endangerment finding for greenhouse gases under the Clean Air Act, I will, if confirmed, work with Agency experts to advise the Administrator on appropriate agency action and move forward with any appropriate rulemaking and consider all public comments.*

22) While I understand your desire to “leave the science to the scientists”, wouldn’t you also agree that it is important to ensure that scientific issues are adequately vetted by other scientists in the government, academia and in the private sector to ensure they reflect the best science?

*Answer: I appreciate the importance of public notice and comment in vetting all issues – scientific, technical and legal – that are integral to Agency decision-making on regulatory actions.*

- a. Would you support continued interagency review of major EPA science-related issues by other scientists in the government, especially when those issues may affect other departments and agencies?

*Answer: President Obama has called for a review of Executive Order 12866, which governs interagency review of agency actions. If confirmed, I will abide by the terms of the Executive Order as it is revised by this Administration.*

23) From your testimony, you clearly are supportive of increased transparency. Does your support for greater transparency extend to providing the public with the underlying research data of key studies in order to allow other scientists to validate those studies?

*Answer: It is my understanding that access to research data has been considered on a case-by-case basis, taking into account the statutory provisions at issue, the nature of the underlying research data, including privacy concerns, and statutory provisions under the Freedom of Information Act. If confirmed, I will consult with Agency experts on this issue regarding the appropriateness and advisability of any broader commitment.*

- a. Do you believe it is appropriate to base significant rules on studies for which the underlying research data have not been made available to you or to the public?

*Answer: It is my understanding that the appropriateness of basing significant rules on studies for which the underlying research data that have not been made available has also been considered on a case-by-case basis to allow all relevant factors to be weighed. If confirmed I will consult with Agency experts on this issue.*

**b.** Do you believe that if the federal government financially contributes to a study which is later utilized for federal rulemaking activity, the complete underlying research data, including the raw data collected by the researchers, be made available to EPA and the public so that a study's results can be verified or replicated?

*Answer: It is my understanding that provisions of the Freedom of Information Act govern this matter but I will consult with Agency experts if confirmed.*

**24)** As the Assistant Administrator for Air and Radiation, you are responsible for the implementation of the Clean Air Act both within EPA and, more broadly, within the federal government. Given that one implication of the Massachusetts v. EPA decision is that all greenhouse gases could be directly regulated under the authority of the Clean Air Act, how would you describe the role of the office you intend to lead on climate? How would you contrast the role of the Office of Air and Radiation and EPA generally on regarding climate policy and climate regulation with the role served by the Department of Energy, the Department of Interior and other relevant federal departments and agencies?

*Answer: The Office of Air and Radiation (OAR) is responsible for developing options and recommendations for the Administrator's consideration in implementing the Clean Air Act and with implementing the Administrator's decisions and the rules issued under the Act. If the Administrator makes a final positive endangerment finding for greenhouse gases under section 202(a) of the Clean Air Act, OAR will develop the draft new motor vehicle regulations for those pollutants under the Act. I understand the interconnected nature of the energy, economic and environmental issues raised by climate change and potential greenhouse gas regulation, so I would expect that other EPA offices and other federal agencies will have an important role in providing expertise and advice in the design and implementation of greenhouse gas controls. I also recognize the important role that EPA's voluntary programs have played in achieving greenhouse gas reductions, and if confirmed, I will support a continued role for such programs.*

**25)** How has your experience in the Northeast helped you understand the energy issues and air quality issues in the Midwest, South or the West? In your tenure in Massachusetts and Connecticut, how did you analyze the impacts of policies or programs you considered on states dependant on coal for their electricity production? In your role of administrator of a national air program, how will a state or region's reliance on coal for energy production or manufacturing for job creation change views or positions you currently hold on air policy?

*Answer: While I have worked for Northeast states, my experience has included participation on the ECOS Air Committee, membership on the Ozone Transport Commission (OTC), air policy discussions between OTC and the Lake Michigan Air Directors Consortium (LADCO), informal discussions regarding federal, regional*

*and state greenhouse gas reduction efforts known as the State Voice, acting as the first chair of The Climate Registry, among other national and interstate efforts. While coal is not a growing source of energy generation in New England, it is a significant energy resource and fuel diversity remains an important state and regional consideration. All regulatory actions I have participated in and overseen have included an assessment of economic impacts and if relevant, energy generation impacts. I do know that coal is a vital energy resource and, if confirmed, I will ensure that the economic impacts associated with rulemaking are assessed and considered where appropriate, including state or regional reliance on coal for energy production or manufacturing.*

26) Before the State of Connecticut agreed to join RGGI, did it analyze and what were the results expected from the proposal in regard to (a) job loss, (b) new revenue generation, (c) overall economic impact, (d) change in price of electricity and natural gas, (e) per family cost?

*Answer: Modeling was conducted by the RGGI states to estimate the cost of allowances, impacts on energy prices, and costs to consumers. It was estimated that the cost of allowances would range from \$2 to \$5. Modeling conducted on electric price impacts were focused on two of the later years,<sup>1</sup> 2015 and 2021 (the 2021 numbers reflect RGGI's requirement to cut emissions 10% from the baseline levels). For the baseline RGGI package scenario, which includes no increased spending for efficiency programs, residential and commercial bills, averaged over the RGGI region, were projected to rise 0.3% in 2015 and 0.6% in 2021; and industrial bills 0.7% and 1.2%. These price impacts are based on the assumption that 25% of allowances are auctioned and that the proceeds are used for consumer benefits. In reality many states are auctioning much higher numbers of allowances thereby increasing the benefit and decreasing program costs. After considering these energy efficiency savings, average residential customer bills are now estimated to decrease by 7% in 2015 and 12% in 2021. For commercial customers, bills are estimated to decrease by 4% in 2015 and 7% in 2021, and for industrial customers the bill reductions are estimated to be 2% in 2015 and 3% in 2021. Those customers that participate in the energy efficiency programs would expect greater overall cost reductions. (All RGGI modeling runs are available at: <http://rggi.org/about/history/modeling>.) And, while I cannot cite quantitative studies on job impacts given RGGI's infancy, considerable resources are being invested in the RGGI region that support the growth of green jobs and enhance regional and state businesses that are in the forefront of new energy technologies and services.*

27) During your tenure in Massachusetts and Connecticut, did you or the organizations you led analyze and what were the results of the impact of national cap and trade

<sup>1</sup> "The Impact of Energy Efficiency Measures Integrated with the RGGI Policy on Residential, Commercial, and Industrial Customer Consumption and Bills" (Revision 12/08/07), MA Division of Energy Resources.

proposals to reduce greenhouse gas emissions on your state regarding (a) job loss, (b) new revenue generation, (c) overall economic impact, (d) change in price of electricity and natural gas, (e) per family cost?

*Answer: Yes. As part of the regional planning effort, Massachusetts contracted with the Economic Development Research Group in Boston to model preliminary economic impacts of RGGI under a variety of scenarios. One scenario included the impact on the RGGI program area in the event of a national carbon cap on the electric generating sector. According to this modeling, if both the U.S. and Canadian governments implement national caps on CO<sub>2</sub> emissions, customers in RGGI states will experience greater increases in electric rates than they would under RGGI alone. The modeling was preliminary and did not delve into the factors noted above on a national basis. However, on a regional basis, the modeling indicated that overall economic indicators were small – below 0.1% without consideration of monetized health benefits, energy efficiency, and other program flexibility mechanisms.*

See: [http://www.rggi.org/docs/remi\\_modeling\\_5\\_19\\_05.pdf](http://www.rggi.org/docs/remi_modeling_5_19_05.pdf) or generally at: <http://rggi.org/about/history/modeling>

28) Can you further explain your role on the Board of RGGI Inc? Do you have a role in the auctioning of allowances?

*Answer: As one of the 20 RGGI Inc Board members, I attended Board meetings and participated on the Finance Committee. While RGGI Inc assists the states in contracting for the services of a company to manage the regional RGGI auction and track allowances, as well as contracting for the services of a market monitor, the RGGI agency heads are responsible for approving the auction results in accordance with each state's laws and regulations and for any necessary enforcement action. RGGI Inc has no role in the auction of allowances. The auction is held by an independent contractor who is under real-time review by an independent auditor. Board members do, however, approve rules, procedures or protocols that govern how the auction is held, for example, reserve price, auction design, maximum purchase amounts, etc.*

29) Given the state and federal constitutional challenges that have arisen regarding the implementation of RGGI, did you have any concerns with the possible constitutional challenges of a cap and trade program like RGGI when you were instituting it?

*Answer: Legal staff from the RGGI states as well as the 10 Attorneys' General Offices have actively and consistently provided input into the design, start up and implementation of RGGI and RGGI Inc. to ensure that it was lawfully created and would stand up to legal challenges. I would also note that while RGGI is a regional effort, each state made its own determination as to whether sufficient state legal authority existed or needed to be augmented. The CTDEP working with the Office of the Attorney General and the CT General Assembly augmented our legislative*

*support for RGGI, RGGI Inc., and the allowance auction. As such, CT's implementing regulations have not been challenged.*

**30)** The RGGI Staff Working Group modeling at one point predicted that leakage might be expected to account for 40 percent of the reductions attributable to RGGI, and outside modeling predicting the actual experience could easily turn out to be far worse. (a) When were you made aware in the process of instituting RGGI that leakage would be a serious problem? (b) Do you have the same concerns about a national GHG cap and trade's potential for leakage internationally?

*Answer: Leakage was a consideration in the early design of RGGI and remains an on-going area of investigation. A Leakage Committee was initiated to assess the potential for leakage to occur and to identify options to address it. Thus far, no evidence exists to suggest that significant leakage is occurring. Any national cap and trade program should also take leakage into consideration and identify options to address it.*

**31)** As a leader in the operation of RGGI, could you take a moment and compare and contrast the benefits and costs associated with full auction of allowances in a cap and trade regime versus some combination of auction and free allocations? Please address the idea that free allocations represent a giveaway to polluters – essentially rewarding them for polluting.

*Answer: The RGGI Memorandum of Understanding requires that each state set aside at least 25% of allowances to auction and invest the proceeds in energy efficiency, renewable energy and other climate research and GHG technology development. However, as a result of state-by-state rulemaking and legislative directive, more than 70 percent of allowances in Connecticut are now auctioned with the vast majority of proceeds invested in energy efficiency and renewable energy. These investments are viewed by the states as the most effective way to contain costs, to provide direct consumer benefits, and to support the kind of technologies and job growth that will assist in the transition to a clean energy future. It is also important to note that most states in the RGGI region have deregulated energy markets and it was understood that costs associated with the purchase of allowances would be incorporated into the price of energy - even if the allowances were given to energy generators free. We've seen this phenomenon occur when new market based programs for NOx and SOx were implemented in the 1990's. In those instances, many of the affected sources were able to comply with the cap and still increase the price of their product. In essence, these generators were not required to internalize the externalities associated with the air pollution they emit. This creates a situation where the benefits inure to the generators while society bears the cost of the pollution. For that reason, only a small percentage of allowances were given away to generators free of charge or at a reduced fixed price, with most of those free allowances going to companies locked into long-term supply contracts with limited ability to adjust prices.*

32) Do you support cap and trade legislation that is enacted under authority outside of the Clean Air Act over regulation of greenhouse gases under the authority of the current Clean Air Act? If cap and trade legislation were to be considered by Congress relying on authority outside of the Clean Air Act, would you support inclusion of a provision in that law which provided for full preemption of regulatory action concerning GHGs under authority of the CAA?

*Answer: President Obama and Administrator Jackson have recently reiterated that they strongly prefer cap and trade legislation tailored to transitioning the nation to a clean, low-carbon economy over reliance on the current Clean Air Act for greenhouse gas controls. I agree with their view. If confirmed, I look forward to exploring with the Administrator and EPA staff the extent to which the CAA might also be used to complement new federal legislation in controlling greenhouse gases.*

33) Friends of the Earth recently released a report highlighting the need for caution with respect to the potential for trading abuses surrounding the carbon markets and its potential derivatives and other markets. What is your assessment of the risks posed by carbon and related markets? How would you propose to avoid such risks?

*Answer: The public and the participants in a cap and trade system must be confident in the integrity of the system and its ability to achieve the reductions required in law. EPA runs successful cap and trade programs for sulfur dioxide and nitrogen oxides. The keys to the success of these programs are rigorous and transparent emissions monitoring to ensure environmental integrity, and flexibility for companies to trade so that the program can be as economically efficient as possible. A greenhouse gas market would be much larger than the sulfur dioxide market, but working with Congress and the other experts in the Administration at Treasury and elsewhere, I think RGGI has shown that a well-regulated, transparent market in greenhouse-gas emissions can be designed. Connecticut is a founding member of the Regional Greenhouse Gas Initiative, which is the first cap and trade program for greenhouse gas emissions in the United States. RGGI has taken steps to ensure fair, transparent auctions of GHG allowances and to avoid collusion and market manipulation. These measures include auction bidding limits, disclosure of beneficial ownership, and limitations on bidder communications. In addition, RGGI has utilized the services of an independent consulting company to evaluate the results of each auction to look for any evidence of collusion or market manipulation prior to auction approval. This same consultant has also analyzed and produced a similar independent report on the secondary market for RGGI allowances.*

34) Almost all bills set aside 2 to 3 billion emission offsets as a way of reducing prices, but there is a real concern that EPA may never approve an offset due to the technical challenges and inability to verify these, especially from the agricultural sector. Given the recent GAO report on the problematic nature of some offsets, as well as the ETS's recently expressed concern about the quality of some CDM projects, how do intend to ensure that international and domestic offsets are additional, verifiable, and enduring,

while at the same time ensuring that offset markets are robust and meaningful? What can you do to commit that offsets will not end up as a mirage?

*Answer: I understand the important role that offsets can play in reducing the costs and increasing the flexibility of a greenhouse gas cap and trade program. I also appreciate the challenges associated with ensuring the environmental integrity of any offsets generated for use in complying with a cap and trade program. If confirmed, I look forward to working with Congress, EPA and other federal agencies to help develop cost containment mechanisms which may include offsets.*

35) In various challenges to EPA regulations over the past 8 years in which the State of Connecticut participated as a petitioner, petitioners argued that EPA must strictly adhere to the plain terms of the Clean Air Act. Similarly, Administrator Jackson has publicly proclaimed her commitment to strict adherence to the rule of law. In this context, please explain:

a. Whether EPA has authority to establish major source thresholds for CO<sub>2</sub> that differ from the statutory thresholds of 100 and 250 tons per year? If you believe EPA has such authority, please explain in detail the justification for this position.

*Answer: While I understand that EPA does not have authority to revise federal laws, it is my understanding that the CAA leaves EPA discretion, if the Agency regulates greenhouse gas emissions under the Act, to do so in a way that takes account of the size of emission sources. If confirmed, I will work with Agency staff and counsel to explore avenues for the EPA to provide regulatory flexibility consistent with CAA requirements and in light of the public comments received in response to the advance notice of proposed rulemaking on potential CAA regulation of greenhouse gases.*

b. Whether EPA has authority to establish significant thresholds for CO<sub>2</sub> that exceed the major source thresholds of 100 and 250 tons per year? If you believe EPA has such authority, please explain in detail the justification for this position.

*Answer: While I understand that EPA does not have authority to revise federal laws, it is my understanding that the CAA leaves EPA discretion, if the Agency regulates greenhouse gas emissions under the Act, to do so in a way that takes account of the size of emission sources. If confirmed, I will work with Agency staff and counsel to explore avenues for the EPA to provide regulatory flexibility consistent with CAA requirements and in light of the public comments received in response to the advance notice of proposed rulemaking on potential CAA regulation of greenhouse gases.*

c. Assuming the answer to question a. is "no," whether EPA has authority to exclude any sources with a potential to emit of more than 100 or 250 tons per year (as applicable) of CO<sub>2</sub> from the PSD program (either temporarily or permanently)? If so, please explain in detail the justification for this position. Administrator Jackson has suggested that a *de minimis* legal theory or a theory of administrative necessity might justify such exclusions. If you believe you can manage this, how do you protect these sources against citizen suits?



**Answer:** *My understanding is that the ANPR on potential CAA regulation of greenhouse gases explored legal theories for providing regulatory flexibility with respect to small sources of global warming pollution and that the Agency is now considering comments received on those theories in response to the ANPR. I look forward to hearing the views of Agency legal counsel and the public commenters on the Agency's ability to take source size into account in exercising CAA authorities. As you know, the CAA requires that citizens give EPA and the relevant state 60 days notice before bringing a citizen suit. If confirmed, I will request that I be informed if any such notice is filed with regard to a small source, and I will follow-up with the potential litigants.*

d. Please explain how an attempt to exercise such authority would square with your state's and the Administrator's commitment to strict adherence to the law. If you conclude that any or all of the above questions cannot be answered because you do not yet work for EPA, please answer all questions in your capacity as Commissioner of the Connecticut DEP.

**Answer:** *I expect that any exercise of EPA authority to provide regulatory flexibility for small sources would be consistent with federal law.*

36) On February 17<sup>th</sup>, EPA announced that it would reconsider its position in the December 18, 2008 Deseret Memorandum. This memo found that greenhouse gas emissions are not currently regulated pollutants under the Clean Air Act because they are not subject to control requirements. Given the enormous consequences of changing this position -- including the triggering of a massive stationary source regulatory program under the Clean Air Act -- can you assure us today that you will not yourself reverse, or recommend to the Administrator of EPA that she reverse, the position taken in the Deseret Memorandum without first providing an opportunity for public comment and review?

**Answer:** *Yes. It is my understanding that the Administrator has already said that she will seek public comment prior to making this decision.*

37) There has been much discussion about the potential for carbon sequestration. What is your assessment of the potential for this technology and when do you believe it will be reliable and affordable enough for widespread commercial deployment?

**Answer:** *CCS is promising and technically viable, but full-scale deployment will require sustained commitment from the public and private sector. It is my understanding that with careful site selection and monitoring, scientists agree that CO<sub>2</sub> can be safely sequestered in geologic reservoirs.*

38) In the ANPR on GHGs released last year, the agency, to the best of our knowledge, did not claim any additional mortality or morbidity as a result of GHG emissions. Could

you comment on that, and compare it with the additional mortality, morbidity, and social pathologies associated with unemployment and poverty?

*Answer: My understanding is that the ANPR on GHGs did not attempt to assess the additional mortality or morbidity that would result from failing to control GHG emissions. I agree that unemployment and poverty exact their own toll in terms of additional mortality and morbidity, but I believe, based on the reports of the IPCC and others, that the poor are likely to be especially vulnerable to climate change impacts, in part because they are less able to afford to move away from or otherwise avoid or reduce those impacts.*

39) In the ANPR, the EPA referenced economic impact models that were works in progress. Please confirm that EPA has not and will not use models that are not publicly available and have not been subjected to full review under the EPA's Information Quality Guidelines. If you do not presently know the answer to this question, please provide a date by which a detailed response will be provided?

*Answer: I do not presently know the answer to your question, but if confirmed, I will consult with EPA staff about this issue and provide a detailed response in a timely manner.*

40) The recently released House draft climate bill proposes to exempt sources from New Source Review for greenhouse gas emissions if they are covered by the cap. Do you agree with such an approach in the context of legislation?

*Answer: While I have not yet consulted with the Administrator on this matter, I fully appreciate the issues that would arise if sources covered under federal cap and trade legislation were not exempt from NSR for greenhouse gases and I agree that this issue needs to be clearly addressed and resolved to eliminate barriers to successful implementation.*

41) Given your experience overseeing the implementation of the PSD program in Connecticut, do you believe IGCC should be considered Best Available Control Technology for a new pulverized coal power plant?

*Answer: I do not presently have enough information to form a confident professional position in response to your question. If confirmed, I will ask for a full briefing on this issue.*

42) One unfortunate consequence of the Clean Air Act five-year review cycle and constant litigation over National Ambient Air Quality Standards is that the standards appear constantly in flux. Right now the PM2.5, ozone, NOx and SO2 standards are all under active review. Given your background, can you explain to the Committee the hardship this imposes on states to develop and implement plans to reduce emissions?

**Answer:** *In my experience, states currently face unprecedented resource challenges. While NAAQS must evolve with science and State Implementation Plans (SIPs) must be living documents, actions needed to comply with federal requirements such as inventory and modeling are resource intensive and need to be done in a coordinated process with the assistance of timely guidance from EPA. If not, these efforts can easily overwhelm state resources. Given current resource constraints and the fact that emission reductions are getting harder and harder to achieve, I believe that EPA must work in partnership with the states to identify and pilot opportunities that offer significant environmental benefit, such as the development and implementation of multi-pollutant strategies that would provide certainty to the regulated community and allow for smarter investment decisions. If confirmed, I will remain fully committed to efforts to keep abreast of the current science and to achieve needed environmental benefits but at the same time I will work with Agency staff and counsel to examine what is required in SIPs as well as the EPA review/approval process to identify ways to more effectively coordinate federal and state efforts, reduce unnecessary federal and state burden, and better leverage CAA compliance efforts to achieve improve environmental outcomes.*

(a) Do you have any ideas as to how to stop making NAAQS moving targets for States when there is still a tremendous amount of work that needs to be done to meet the existing standards?

**Answer:** *I understand that the basic elements and deadlines for the NAAQS standard-setting and implementation process are specified in the Clean Air Act. The law calls for periodic review of air quality standards so that they continue to be updated as necessary to reflect the best current scientific information on health and environmental effects of air pollution.*

*Having spent my career thus far on the implementation side of the NAAQS program, I believe that the Clean Air Act affords opportunities for flexibility in achieving clean air standards. If confirmed, I will work with the Agency experts to better understand all aspects of the NAAQS process and how they might be improved consistent with existing law, and I will strive to enhance coordination and make the process as effective and efficient as possible to reduce unnecessary resource burdens and improve environmental outcomes.*

43) Do you support a single national fuel economy standard?

**Answer:** *As I understand it, DOT has authority to establish fuel economy standards, and EPA has authority under the Clean Air Act to establish greenhouse gas emission standards. The two agencies are working closely to coordinate efforts to ensure that automobile manufacturers can produce one fleet of vehicles that will meet both standards.*

44) Does it make sense to require manufacturers to comply with three different standards regulating the same thing— one by DOT, one by EPA, and one by CARB?

*Answer: If the Administrator makes a positive endangerment determination, it will be EPA's charge to set greenhouse gas emission standards for new motor vehicles that reduce the risk of climate change. NHTSA's responsibility is to set fuel economy standards that reduce our nation's use of petroleum. Those two goals are complementary, and I would expect the two agencies to develop standards under their respective authorities that reinforce and complement one another.*

*If I am confirmed, I look forward to working with the staff and leadership of EPA and NHTSA to ensure that our respective programs are based on the best scientific, technical, and economic information available, and are developed in close coordination with our stakeholders, including the states and the vehicle manufacturers. We will also coordinate closely with CARB as we move forward on GHG standards.*

45) Consumers buy different vehicles in different quantities in different states. Do you recognize that it is this variation in state fleets that creates a regulatory “patchwork,” not CARB’s standard itself?

*Answer: There are only two programs for regulating clean cars in the United States, EPA's Tier 2 program and the California LEV2 program. In my experience in Massachusetts and Connecticut, adoption of California standards that are met on a fleet-wide average basis have been effectively implemented by automakers and provided our residents with enhanced opportunities to purchase cleaner cars.*

46) Are you aware of any evidence suggesting that CARB’s regulation would have any impact on climate in California?

*Answer: I am not yet familiar with the data regarding the impact of CARB's regulation on the state's climate but, if confirmed, I will be thoroughly briefed on the matter before making any recommendation to the Administrator regarding a determination on the California waiver request.*

47) What is your experience on other areas of the Clean Air act, including mobile source and fuels issues?

*Answer: I participated in the implementation of the CAL LEV and LEV2 Programs in both Massachusetts and Connecticut. My experience in fuels includes state efforts to eliminate the use of MTBE in reformulated gasoline, as well as issues related to renewable fuels such as ethanol and biodiesel and state efforts to develop a cleaner blend of heating oil. Most recently, I participated in*

*regional efforts to develop a low carbon fuel standard across in the Northeast and Mid-Atlantic states. Other experience also includes the development of a state-wide Clean Diesel Plan and the implementation of strategies to reduce diesel emissions. My other experience also extends to transportation strategies, and initiatives to promote transit strategies, reduce emissions from airports, airplanes, air emission technology assessments, permit decisions and other related efforts.*

**48) [Repeat of question 40]**

*Answer: Same as 40*

**49)** The House bill does not appear to address the problem that control of greenhouse gas emissions could lead to increases in other non-GHG pollutants which could then trigger New Source Review. Do you believe those increases should also be exempt?

*Answer: I do not have a sufficient understanding of these matters to form a professional opinion. If confirmed, I will consult with Agency staff and counsels to more fully understand this issue.*

**50)** Could you discuss your understanding of how Canadian crude derived from sands would be treated under an LCFS? Could you discuss your understanding of how Venezuelan crude (which has a higher lifecycle carbon footprint than Canadian crude derived from sands) would be treated under an LCFS? Could you address the costs to consumers of an LCFS, as well as possible national security implications, and compare those to the environmental benefit derived from an LCFS? If you do not presently know the answer to this question, please provide a date by which a detailed response will be provided?

*Answer: There is currently no low-carbon fuel standard in place. Developing such a standard would be a complex undertaking requiring the Agency to address these and other relevant questions through analysis, consultation with stakeholders and a public comment process.*

**51)** Would a LCFS, as currently constructed in Congressman Waxman's discussion draft, lead to more importation of crude oil from the Middle East? If you think it will not, please explain why not.

*Answer: I understand that this draft bill would require the Agency to develop an LCFS within 3 years of enactment. The issue you raise is one issue, among many, the Agency would need to assess and request comment on as part of the rulemaking development process to issue a LCFS.*

**52)** The recently released House Climate discussion draft proposes to establish a Low Carbon Fuel Standard only after the renewable fuel standard under Section 211(o) has been fully implemented. It also seeks to harmonize the CAFE standards with the new motor vehicle emission standards. This kind of harmonization makes sense. Given that there are several regulatory programs under the Clean Air Act that could result in two or more programs regulating the same pollutant at the same source, can you commit to us that you will use your discretion under the Clean Air Act to harmonize conflicting standards so that emissions sources are only faced with a single standard for each pollutant emitted?

*Answer: I understand the agency is already working to closely coordinate potential motor vehicle GHG standards with CAFE standards and if confirmed, I will commit to working with Agency staff to continue to coordinate agency efforts, to enhance clarity and to avoid conflicting standards in all decision-making.*

**53)** A recent decision by the U.S. Court of Appeals for the District of Columbia, in *Sierra Club v. EPA*, (December 19, 2008) would vacate provisions in current regulations that exempt equipment from meeting the numerical emission limits established for steady state operations during startup, shutdown, and malfunction events. Given your background, I am sure you understand that emission limitations established for periods of steady state operations with data from only such periods cannot be met in a non-steady state operating environment such as often occurs during startup or shutdown of processes or that may occur during malfunctions of control or process equipment. Unless the pending decision is modified, hundreds if not thousands of companies across the country may be placed in the difficult position of knowingly violating a regulation if they shut down or restart a plant operation. Some may simply choose not to restart – an outcome that would be bad given the state of our economy. If this decision is not modified, industry will be forced to challenge every standard that is impacted. Will you commit to immediately reviewing this decision immediately if confirmed?

*Answer: I do not have sufficient understanding of this issue to form a professional opinion but if confirmed, I will ask Agency staff for a full briefing and take appropriate action.*

**54)** Many believe that distributional benefits of a rule or requirement should be assessed as part of a benefit-cost analysis. To the extent that distributional concerns are taken into consideration, do you believe they should be applied to costs as well as benefits?

*Answer: I do not have sufficient understanding of this issue to form a professional opinion but if confirmed, I will ask Agency staff for a full briefing and take appropriate action.*

**55)** The EPA has traditionally used the recommendations of such expert organizations as the National Academy of Sciences, United Nations Scientific Committee on Atomic

Radiation, National Council on Radiation Protection and Measurements, and the International Commission on Radiological Protection as the primary technical basis for its radiation standards and radiation risk assessment methods. Do you see any reason why the agency should change that long-standing policy?

*Answer: No. It is my understanding that the recommendations from these and other expert bodies provide valuable scientific insights, and, if confirmed, I will ensure that the Office of Air and Radiation maintains its strong tradition of considering and requesting their expert advice as it develops radiation protection tools, standards and policies.*

56) The EPA Office of Inspector General (OIG) plays an important role in ferreting out fraud, waste and abuse and in assessing the efficiency and effectiveness of agency programs. How do you plan to work with the OIG if confirmed?

*Answer: I understand the important role OIG plays, and if confirmed, I will cooperate with the OIG in any review it undertakes of OAR activities.*

57) The OIG may make recommendations designed to improve Agency operations and programs that you may not agree with. How will you respond when such disagreements arise?

*Answer: I understand that there is an existing process to address disagreements between OIG and Agency offices concerning OIG recommendations. If confirmed, I anticipate following that process in the event that the OIG makes a recommendation that I do not believe is appropriate.*

58) Having free and unfettered access to Agency employees and information is critical for the OIG function. How will you ensure the OIG has such access?

*Answer: I understand the important role OIG plays, and if confirmed, I will cooperate with the OIG in any review it undertakes of OAR activities.*

59) To help accomplish its mission, OAR delegates air programs to State, local, and tribal agencies. Delegation, however, does not relieve EPA of its statutory and trust responsibilities for protecting human health and the environment. The OIG has identified a number of cases where OAR has not performed sufficient oversight of delegated programs to ensure that they are achieving their clean air goals. If confirmed, what priority do you plan to give such oversight issues?

*Answer: In my experience, EPA and the states work in partnership to ensure that federal laws are properly implemented and enforced. I understand the importance of the federal-state relationship and the public health and environmental consequences*

*that can result from the failure to adhere to federal requirements. If confirmed, I will consider these efforts a high priority.*

**60)** In 2002, EPA adopted improvements to the New Source Review (“NSR”) permitting program. Most of these rules were upheld by the federal D.C. Circuit Court of Appeals. These rules have been in effect under the federal NSR program and in states delegated authority to implement the federal NSR program for over five years. Numerous states have revised their own NSR programs and obtained approval of their revised programs from EPA, which is accomplished through federal notice and comment rulemaking. During your tenure as Commissioner of the Connecticut DEP, you sought and obtained approval from EPA to continue to implement your existing NSR program, without revision. Your request was required by federal law to be based on a showing that the existing Connecticut NSR program was no less stringent (with regard to the environmental protection afforded by the program) as the revised federal program.

a. The State of Wisconsin recently sought approval of its revised NSR program, which was changed to incorporate EPA’s 2002 NSR improvements. EPA’s approval of Wisconsin’s revised program has been challenged on the grounds that the revised Wisconsin NSR program is weaker than the prior program and that EPA is prohibited from approving an allegedly less protective program. In 2002, EPA produced an analysis showing that the NSR improvements would be as effective as, and likely more effective than, the prior program with regard to the level of environmental protection afforded by the revised program. Do you believe EPA’s revised program is more environmentally protective or less environmentally protective than the prior program? Please provide a detailed explanation for your answer to this question. If you believe the revised program is less environmentally protective, please explain in detail why EPA’s analysis of the environmental effectiveness of the NSR improvements is in error. If you assert that you are unable to answer these questions, in whole or in part, please explain why that is the case in light of your responsibility for the Connecticut NSR program and your oversight of and apparent personal involvement in Connecticut’s assessment of the relative effectiveness of its existing program.

*Answer: First, let me clarify that Connecticut is one of a number of States that submitted demonstrations that our existing NSR programs were at least as stringent as the 2002 Federal rules although EPA has yet to take final action on those demonstrations. I am happy to provide a copy of the CT demonstration which is sound and I believe, likely to be approved given its consistency with the D.C. Circuit Court decision which affirmed that such demonstrations should be based on a factual record developed for the state in question taking into account both the role NSR plays in deterring certain beneficial changes, as well as the role it plays in assuring stringent controls on the changes that get reviewed. I am not presently familiar with the Wisconsin demonstration, but if confirmed, I will commit to review all pending NSR SIPs on a case-by-case basis after full*



*consideration of the best available information on the effects of NSR adoption in a particular area.*

b. One of the NSR improvements that was overturned by the D.C. Circuit was the so-called pollution control project ("PCP") exclusion. This exclusion was adopted by regulation for electric power generators in 1992 and was implemented by policy well before then. With only minor revisions, EPA's 2002 rule codified the longstanding existing rule and policy. EPA recently filed enforcement actions asserting that PCP projects that were properly excluded from the NSR program at the time the projects were implemented are now unlawful by virtue of the vacatur of the PCP exclusion. In effect, EPA is asserting in these actions that previously lawful actions have become retroactively unlawful as a result of the court decision. In your capacity as Commissioner of the Connecticut DEP, you have responsibility and authority for enforcement of the Connecticut NSR program. Do you agree with this practice of seeking to establish violations for conduct that was lawful at the time it occurred? If your answer is anything other than an unequivocal "no," please provide a detailed explanation of your answer – including a thorough discussion of the legal basis for your position, why as a matter of equity and basic fairness that previously lawful conduct should give rise to retroactive liability, and the disincentives such a position creates to the implementation of programs that will be under your responsibility if confirmed to be AA for OAR.

*Answer: I am not familiar with the basis for these actions but I would note that EPA enforcement policies are overseen by the Assistant Administrator for the Office of Enforcement and Compliance Assistance (OECA).*

61) Climate change advocacy groups are calling for at least a 50 percent reduction in global emissions of greenhouse gases by 2050. The Obama Administration has set a long-term goal of an 83-percent reduction by 2050, using 2005 as a baseline. This number is in line with those proposed by other developed countries. If the international community is to at least halve global emissions by 2050, how will you work with the International Office to achieve this goal? In addition, what do you believe this implies for a long-term target for developing countries as a group, assuming that other developed countries accept long-term reduction targets on the order of 80 percent, global CO2 emissions from fossil fuel combustion climb to at least 50 gigatons per year, and non-OECD countries account for roughly two-thirds of those total emissions?

*Answer: These are important questions that will be addressed in the negotiations under the UN Framework Convention on Climate Change (UNFCCC) in the coming year, culminating at the COP/MOP meetings in Copenhagen in December. My understanding is that the U.S. is still in the process of developing its positions on many aspects of the negotiations, including the quantitative and qualitative aspects of a long term reduction goal for greenhouse gases, and appropriate mitigation actions for both developed and developing country Parties. While I cannot provide specific answers to your questions today, it is my understanding that the Office of Air and Radiation will work with the State Department and other federal agencies to support*

*the development of the U.S. position on these and other critical negotiating issues in the coming months that will be consistent with President Obama's commitment to provide international leadership on climate change as well as the development of a fair and equitable international strategy. Clearly, while some countries are already doing a lot to tackle climate change, we collectively need to do more if we are to avoid dangerous levels of greenhouse gases in the atmosphere. There must be a global response, with significant actions by all major economies, including advanced developing countries.*

**62)** Growth Energy recently submitted an application to EPA requesting approval for the use of up to 15% ethanol in gasoline which it justified in part on the basis that it would lead to "increased energy security." What process under Section 211 of the Clean Air Act will EPA use to assess this application? Will there be an opportunity for public comment? If you do not presently know the answer to this question, please provide a date by which a detailed response will be provided?

*Answer: It is my understanding that EPA will follow the usual process for fuel additive requests. That process provides an opportunity for public comment on the request and a federal register notice should be issued very soon. In addition, I understand that DOE has testing underway to help determine the impact E15 might have on vehicle emissions and durability.*

**63)** The proposed renewable fuel standard regulations to implement the EISA legislation were required to be finalized last December.

a. Why has EPA not even issued a proposed regulation yet?

*Answer: I understand that EPA has been working very closely with USDA, DOE and other federal and private stakeholders in developing this regulation since the Energy Independence and Security Act was signed into law in December 2007. A draft proposed rule is currently at OMB undergoing interagency review.*

b. Isn't it true that without final regulations, obligated parties will be unable to comply with both the "advanced" and "bio-based diesel" mandates in 2009?

*Answer: I understand that when the Agency issued the RFS compliance standards last November for the 2009 compliance year, they included an indication of the provisions they intend to propose in their forthcoming RFS2 notice for addressing the biomass based diesel volume standards as set forth in EISA for 2009 and 2010.*

c. Are you aware of the adverse impact this delay is likely to have on the biodiesel industry?

*Answer: I have not had an opportunity to fully explore the potential impact of a delay on the biodiesel industry, but I will do so expeditiously, if confirmed.*

- d. When will the proposal be issued?

*Answer: I am not in a position to be able to answer that question at this time.*

- e. Isn't it very likely that EPA will not be able to finalize these regulations before the end of the year?

*Answer: I understand that it will be a challenge to finalize the rulemaking by the end of the year but the Agency's stated intention is to work towards this timeframe.*

- f. What impact will a delay into next year have on the various biofuels mandates?

*Answer: I do not currently have enough information to answer your question but I will examine and address that issue expeditiously if I am confirmed.*

**64)** As various states and regions create Low Carbon Fuel Standards and similar programs, they are establishing their own carbon intensity values for fuels. EPA has also been directed by EISA 2007 to establish carbon intensity values for the same fuels, but is using a different model.

- a. Is EPA using the same modeling approach as California to estimate both direct and indirect land use changes, and the overall life-cycle emissions of the various biofuels?

*Answer: I do not currently have enough information to answer your question but if confirmed, I will ask Agency staff for a briefing.*

- b. If not, what efforts have been and will be taken to coordinate with California so that the various biofuels are not valued differently under the federal RFS vs. California's low-carbon fuel standard?

*Answer: I do not currently have enough information to answer your question but if confirmed, I will ask Agency staff for a briefing.*

**65)** What assessments of conventional pollutants is/has EPA conducted on the various biofuels - ethanol and bio-diesel? What impact will increased ethanol use have on ozone non-attainment? If you do not presently know the answer to this question, please provide a date by which a detailed response will be provided?

*Answer: It is my understanding that the Agency may include an assessment of the impact of biofuels on criteria air pollutants as part of the RFS2 proposal.*

66) Under EISA, EPA is required to conduct a technology review of domestic cellulosic biofuels production in 2010 and then make a regulatory adjustment of the mandate this November. What impact will the lack of a final regulation have on this EISA requirement?

*Answer: I do not currently have enough information to answer your question but if confirmed, I will ask Agency staff for a briefing and will examine the issue expeditiously.*

67) The Clean Air Act requires technology-based Maximum Achievable Control Technology, or "MACT", standards for new and existing sources of hazardous air pollutants. In setting these standards, EPA first determines a MACT "floor", or minimum level of stringency, based on emission controls "achieved in practice" by similar new and existing units. In reviewing the Clean Air Act's requirements for MACT floors, the United States Court of Appeals for the D.C. Circuit determined that "achieved in practice" means exactly that. Sierra Club v. EPA, 167 F.3d 658, 665 (D.C. Cir. 1999). Thereafter, EPA is supposed to, if appropriate, revise the technology-based standards taking into account a variety of factors, including costs and feasibility.

In a recently proposed rule pertaining to MACT standards for Hospital/Medical /Infectious Waste Incinerators, 73 Fed. Reg. 72,962 (Dec 1, 2008), EPA came up with a new method for setting MACT standards, where the agency recalculated the floors it set 12 years ago based on a hypothetical amalgam of what different facilities might be able to achieve. We understand this recalculation of the floors was determined without consideration of costs or feasibility and that EPA concedes the new standards are so stringent that no facility will be able to comply. (a) Is it your view that the proposed revised standards are consistent with the requirement that MACT standards be based on what is achieved in practice? (b) Do you think Congress intended, in enacting the Clean Air Act, to have EPA set technology-based standards without regard costs or feasibility? (c) will you commit to undertaking a common sense review of this regulation with a view of improving air quality in a manner that is consistent with past precedent for setting such standards?

*Answer: If confirmed I will ask Agency staff for a briefing on this matter and take appropriate action.*

68) Could you comment on the potential for oil derived from shale? As part of that commentary, could you outline your understanding of the lifecycle carbon footprint of corn-based ethanol and oil derived from shale?

*Answer: I do not currently have enough information to comment on the potential for oil derived from shale nor do I to have a full understanding of the lifecycle carbon footprint of corn-based ethanol and oil derived from shale. If confirmed, I will fully examine these issues.*

69) Last October, EPA approved a revision to Alabama's State Implementation Plan ("SIP") that established an improved method for regulating visible emissions (*i.e.*, "opacity") from certain power plants. *See* 73 Fed. Reg. 60957 (Oct. 15, 2008). Alabama first asked for approval of amended opacity rules on September 11, 2003. The final approval – issued almost five years later – was based on extensive negotiations between EPA and the State, which resulted in several significant revisions to the proposed opacity rule to address concerns raised by EPA and by public comments.

On January 15, 2009, the EPA Regional Administrator for Region IV denied an administrative petition from the Alabama Environmental Council and affiliated organizations ("Petitioners") asking EPA to reconsider this final rule. *See* Letter from J. I. Palmer, Jr., Regional Administrator to George E. Hays, Esq. (Jan. 15, 2009). Petitioners have filed a petition for review of this final action in the U.S. Court of Appeals for the 11<sup>th</sup> Circuit.

Petitioners subsequently filed on February 25, 2009, a second administrative petition for reconsideration of this final rule. On April 3, 2009, the acting EPA Regional Administrator for Region IV issued a letter granting Petitioners' second request for reconsideration. *See* Letter from A. Stanley Meiburg, Acting Regional Administrator, to George E. Hays, Esq. (Apr. 3, 2009). By all appearances, EPA is poised to renege on its approval of the opacity rule that the State of Alabama had carefully crafted and substantially amended to specifically address the multiple concerns raised by the Agency during its five-year consideration of this SIP amendment.

a. From your experience as the head of Connecticut's environmental program, do you believe that EPA should stand by the approval of a SIP amendment that incorporates all changes requested by the Agency during its review of the proposed SIP amendment?

*Answer: I do not have enough information to speak to this individual case but in my experience, EPA and the states in general work collaboratively on the implementation of delegated programs and states should be able to rely on EPA SIP decisions just as EPA should be able to rely on the implementation and enforcement action of the states. However, EPA has an obligation to review its decisions when questions arise to ensure that their decisions meet legal standards and to take appropriate action if they do not.*

b. If your answer to question 1 is anything other than an unequivocal "yes," please explain why states should ever expect EPA to negotiate in good faith in light of the Agency's demonstrated willingness to repudiate its prior good faith dealings.

*Answer: EPA and the states must continue to work together to protect public health and the environment and recognize that these issues are complex and the science, technology and laws evolve.*

c. In your capacity as commissioner of the Connecticut DEP, if EPA approved an amendment to the Connecticut SIP through the required notice and comment rulemaking procedures, do you believe that the Agency can subsequently require

the state to revise the approved amendment without making a finding that the approved SIP is inadequate pursuant to CAA § 110(k)(5)? If your answer is anything other than an unequivocal "no," please provide a detailed explanation of how you believe EPA could require the State of Connecticut to revise the EPA-approved SIP amendment.

*Answer: While I do not have sufficient information to provide you with a professional opinion, I do understand the need for consistency and certainty in decision-making and believe it is the responsibility of EPA and the states to work together in the interest of protecting public health and the environment.*

70) Could you discuss your understanding of the science surrounding global warming?

*Answer: I understand that there is a broad and clear consensus among the world's most authoritative scientific bodies (i.e. the IPCC, the CCSP, and NRC) that greenhouse gas emissions from human activities have elevated concentrations of greenhouse gases in the atmosphere to levels not seen in many thousands of years, very likely resulting in the warming observed in recent decades, as well as sea level rise, increases in storm intensity, and other climate changes. Future projections of climate change indicate even greater warming in the coming decades with unwelcome impacts on human health and the environment such as increases in floods and drought, heat-related deaths, declining air quality, coastal inundation, glacier loss, and loss of species. To reduce these impacts, we will need to respond by both reducing our GHG emissions and implementing sound adaptation strategies.*

71) As a leading proponent of the CARB approach for your state, I understand that if consumers in a "California" state don't buy the "right" mix of vehicles, automakers must: (1) ration/eliminate certain large vehicles or (2) force dealers to buy more small vehicles. Building to CARB's standard does not guarantee compliance to CARB's rules in any "California" state. (a) Can you explain if this is your understanding of the CARB approach? (b) Is this approach a sensible way to reduce greenhouse gases?

*Answer: This is not my understanding of the California standard and is inconsistent with my past experience in implementing the California LEV program. California has established a performance-based set of GHG standards for cars and for trucks. Each manufacturer has the freedom to sell a mix of vehicles in California, as long as the manufacturer's fleet average standard complies with the California GHG standard. This does not require companies to ration or eliminate vehicles, nor does it force dealers to buy smaller vehicles.*

72) In an April 26, 2007 letter to then-EPA Administrators Johnson, you stated that California has "provided a solid demonstration that its greenhouse gas emissions standards meet relevant waiver criteria." What assurances can you give the Committee

that you can be unbiased on this issue when recommending a decision to the Administrator?

*Answer: The Administrator has made it clear that she will make the decision based on science and the law. If confirmed, I am confident that I can provide unbiased advice based on the waiver record.*

73) How will automakers that historically have paid fines rather than meet CAFE standards be treated under an EPA rule regulating motor vehicles greenhouse gases?

*Answer: I believe this is the kind of issue that EPA and DOT are currently coordinating as the Agencies move forward on their respective standards, so that automobile manufacturers will ultimately be able to comply with both standards with the same vehicle fleet.*

74) CARB estimated in 2004 that its regulation would increase the price of a new car by about \$1,000. Does EPA know how much CARB regulation would increase the price of a new passenger car or light truck today, in light of the fact that automakers also have to comply with new, higher fuel economy standards set by the Obama Administration?

*Draft answer: I do not currently have enough information to answer your question, but I will examine the issue expeditiously if I am confirmed.*

75) How many jobs will be lost nationally if the California waiver is granted? If this information is not available, will you commit to the Committee that you will not recommend a decision on the California waiver until you gather that information and report it to the Committee?

*Answer: I do not currently have enough information to comment. My review of the waiver record will be guided by the statutory criteria laid out in Section 209 of the Clean Air Act.*

76) Do you believe the Emergency Planning and Community Right to Know Act or the Comprehensive Environmental Response, Compensation and Liability Act requires reporting of ammonia and related emissions from Concentrated Animal Feed Lots? If so, please explain.

*Answer: I do not have the information necessary to form a professional judgment. However, my understanding is that EPA's Office of Solid Waste and Emergency Response, as the office charged with implementing these statutes, has the lead on the issue you raise and that EPA issued a final rule in January 2009.*

**Senator David Vitter****Review of formaldehyde scientific data by the  
National Academy of Sciences****Background:**

Given the considerable attention formaldehyde has received recently, particularly in conjunction with Federal Emergency and Management Agency (FEMA) trailers, it is essential that our nation's policy makers and regulators have a clear understanding of this chemical's potential effect on human health.

A comprehensive review of all the current scientific information on formaldehyde data is needed today to provide the best scientific consensus basis for regulation and protecting the health and safety of the public.

On September 30, 2008 I joined three of my Senate colleagues in writing to former Administrator Johnson requesting that EPA contract with the National Academy of Sciences for a review of the current data and scientific studies to provide a single comprehensive analysis of formaldehyde. We expressed our concern over the likelihood that reviews and interpretations of data by multiple government agencies will provide an inconsistent picture of formaldehyde risks and could result in levels that are not adequately protective.

On December 3, 2008 EPA published an Advanced Notice of Proposed Rulemaking to gather comments on whether to adopt the California Air Resources Board standard for formaldehyde emissions from compressed wood products. This action was in response to a TSCA Section 21 petition by the Sierra Club and others. In that Federal Register notice the agency stated, "EPA also intends to commission the National Academy of Sciences to conduct a comprehensive review of the available scientific data on formaldehyde. The Agency believes that this additional analysis and advice will further strengthen the scientific basis of its understanding of formaldehyde risks."

**Questions:**

1. Will EPA follow through on its stated commitment to contract with the NAS to produce a consensus scientific assessment of the health effects, both cancer and non-cancer, from formaldehyde exposure?
2. I understand that this review by the NAS could be done while the continued work by the EPA on the IRIS assessment of formaldehyde continues. However, recognizing that the GAO has recently put the EPA IRIS program on its high risk list, due to the pace of the completed assessments, the inadequate leadership and the questionable results on some of the recent chemical reviews, would you also agree to have the draft IRIS assessment of formaldehyde reviewed by the NAS when it is completed?
3. It is my understanding that the Consumer Products Safety Commission expressed its support for an NAS review of formaldehyde and that an EPA response dated January 13, 2009, signed by Dr. Peter Preuss of the Office of Research and Development stated the agency "has started to draft documents to seek input on formaldehyde toxicity from the



National Academy of Sciences.” Can you tell me where this process stands and will you commit to having the NAS study done? Please advise to when you believe the NAS review can begin.

*Answer: My understanding is EPA's Office of Research and Development (ORD) would be the appropriate office to respond to Questions 1, 2, and 3. These questions have been sent to ORD, and staff will be in touch with your office to discuss these questions further.*

Senator John Barrasso

1) How can we manage the bureaucratic mess that will occur if we regulate climate change using the Clean Air Act?

*Answer: Like President Obama and Administrator Jackson have previously stated, I believe that comprehensive legislation to address greenhouse gas emissions and global warming is the preferred route. In its Advance Notice of Proposed Rulemaking, EPA identified a number of issues concerning use of the Clean Air Act to regulate greenhouse gases, and explored ways in which those issues might be addressed. I understand that EPA is now considering the public comments it received on the ANPR. I am confident that under Administrator Jackson's leadership, EPA will make common sense decisions about using the Clean Air Act to reduce greenhouse gas emissions. If confirmed, I look forward to assisting the Administrator in that effort.*

2) With regards to using the Clean Air Act as a climate change tool, EPA administrator Lisa Jackson told the New York Times that "We are poised to be specific on what we regulate and on what schedule."

- How will you be able to defend in court exempting farms, schools, hospitals, nursing homes and small businesses from the reach of the Clean Air Act if an endangerment finding is made with regard to greenhouse gasses such as CO<sub>2</sub>?

*Answer: A final endangerment finding would not subject any sources to Clean Air Act regulation. As you know, the Supreme Court's decision requires that EPA decide whether motor vehicle GHG emissions endanger public health or welfare. A positive finding would require that EPA take the next step of proposing GHG regulations for motor vehicles. This and any other new regulations would have to go through notice-and-comment rulemaking procedures before being established.*

*The greenhouse gas ANPR explores the ramifications of potentially applying the Clean Air Act permit programs to greenhouse gases, including the potential effect on small businesses. The ANPR also describes some potential options for tailoring and streamlining the permit programs to avoid or reduce the burden on small sources. I understand that the Agency received many comments on these issues in response to the ANPR. If confirmed, I look forward to working with the Administrator and EPA staff in considering those comments and making decisions about how to proceed.*

- If Congress does not pass legislation to exempt these sectors, please answer what actions the EPA would take in response to losing a court case if your department tried to exempt farms, schools, hospitals, nursing homes and small businesses from the reach of the Clean Air Act if an endangerment finding was made?

*Answer: As noted above, the ANPR explored a number of possible ways of streamlining the CAA permit programs to reduce any impact they might have on*

*small businesses. These are among the possibilities I will explore at EPA if I am confirmed and the Administrator takes action under the CAA that would trigger the application of the Act's permitting programs to greenhouse gases.*

3) The Environmental Protection Agency (EPA) proposed on December 23, 2008 a regulation to adjust the allowance system for controlling HCFC production, import, and export. Among other things, this proposed rule would prohibit virtually all non-refrigeration uses of HCFC-22 beginning on January 1, 2010. This ban stipulated in the proposed rule would prevent the ongoing use of sterilants containing HCFC-22 in the medical device industry. The Montreal Protocol requires such uses to be banned on January 1, 2015. EPA proposes to accelerate this deadline using discretionary authority provided under the Clean Air Act.

The use of sterilants is vital in the production of certain widely-used medical devices that are essential to safe and effective surgical treatments.

- Please describe an estimated timeline for completion of this rule, including key internal agency milestones.

*Answer: I understand that this issue was raised to EPA during the comment period, which closed on March 9, 2009. I am not in a position now to know about the Agency's plans for internal government review. However, I understand the necessity of finalizing the rule well in advance of January 1, 2010, in order to allow the necessary market planning and transition time to occur. If confirmed, I will ensure that it continues to be a high priority within OAR.*

- If this rule will not be completed by June 30, 2009, please explain how the Agency will assure that adequate time will be provided to allow for a safe and reasonable transition away from sterilants containing HCFC-22 if the proposed use ban is adopted.

*Answer: I understand that EPA learned of this issue during the comment period on the proposed rule and is analyzing options for addressing it. I expect that EPA's response will be consistent with its overall regulatory framework for stratospheric ozone protection, which phases out ozone-depleting substances under the Montreal Protocol and Clean Air Act while recognizing that certain important uses may require additional time to make the transition. If confirmed, I will ensure that EPA considers all options to ensure that safe and effective medical treatments continue to be available during the time of the transition.*

Senator BOXER. Thank you so much. You made a beautiful statement.

I just want to ask you two questions, then I am going to put the rest in the record and you can respond in writing.

Ms. McCarthy, USA Today had this amazing story about the pollution around schools, toxic pollution, not just the run of the mill, but toxic pollution. That story broke when Administrator Jackson was coming before the Committee and she committed to use whatever authority she had to measure the amount of this toxic pollution. She has followed up and done it.

The reason I am so excited about your nomination, first of all, I think both sides of the aisle agree that you are an open, wonderful person to deal with, and that is very helpful. But I think it is so hard for Lisa Jackson to do this job without someone like yourself backing her up. So my question is, if confirmed, will you commit to use the full extent of EPA's authority and to work with us to expand the monitoring plan around these schools and to address the problem of toxic air pollution at schools?

Ms. MCCARTHY. Senator, thank you for the question. First of all, thank you for your leadership on this issue. I did happen to catch the video of the hearing for Administrator Jackson, and I know you challenged her and I do know she stepped up and she is meeting that challenge. What I will commit to you today is that the Air Program, under my watch, will have children's health as the No. 1 issue. As you have recognized, children are the key to protecting the air quality and the public health in this Country. If we can protect the children, the adults come along with it.

So you are absolutely right to point out that issue, and Administrator Jackson has rallied the resources of the Agency, and I will, if confirmed, go back to the Agency, get a good understanding of the schools that they have identified and why. We will make sure that we work with the State and local level to do testing that is necessary to identify the risks and to move forward as quickly as possible to reduce any risks that we find.

Senator BOXER. I so appreciate that. I think across the board, we all believe that our kids, the least we can do for our kids is allow them to grow up in a healthy fashion. Ever since I came to the Congress, and I learned more about the danger that children face when we don't face danger, it is the recognition that children are just not little adults. We tend to think they are, but everything is changing in their bodies and they can't handle some of the toxins that we can handle at our ages.

I know that Senator Carper is a real leader on the mercury issue. I want to ask you a question about mercury. I know that you know it is a potent toxin on the human nervous system. And it is especially dangerous to infants, children and pregnant women. Coal-fired power plants are one of the biggest sources of mercury pollution in America. Common sense dictates that we make every effort to limit exposure to this dangerous toxin.

I know your answer will be yes to this, but I just want to get it on the record, will you listen to EPA scientists and the children's health advisors in issuing new mercury air pollution standards for power plants?

Ms. MCCARTHY. Yes, I will.

Senator BOXER. I don't have any other questions, but I will tell you what I am going to do with my last moment. I want to ask Arvin Ganesan to stand up for a second and make sure our colleagues know that Arvin worked for Frank Lautenberg for quite a while here. EPA stole him away from us, and he is Deputy Associate Administrator at EPA. He is helping with this confirmation. We just want to say how nice it is to see you here, our EPA family welcomes you back.

There is one more thing I have to do, I have to ask you, do you agree if confirmed as Assistant Administrator of EPA's Office of Air and Radiation to appear before this Committee or designated members of this Committee and other appropriate committees of the Congress and provide information subject to appropriate and necessary security protection with respect to your responsibilities as Assistant Administrator?

Ms. MCCARTHY. I do.

Senator BOXER. And do you agree to ensure that testimony, briefings, documents and electronic and other forms of communication are provided to this Committee and to its staff and other appropriate committees in a timely manner?

Ms. MCCARTHY. I will.

Senator BOXER. And do you know of any matters which you may or may not have disclosed that might place you in any conflict of interest if you are confirmed as Assistant Administrator?

Ms. MCCARTHY. No, I do not.

Senator BOXER. Very good.

Senator Inhofe, the floor is yours.

Senator INHOFE. Thank you, Madam Chairman.

Let me do this, I want to make sure that it is real clear, because I hold you in a very high regard, I think we are very fortunate to have someone like you willing to take on a very difficult task. But I had made the statement that we wanted to be sure to get some questions responded to by you prior to the time that your confirmation vote may come up. Yesterday when we talked I gave you a list of five things, of which you have already answered four, I think to our satisfaction. I haven't had a chance to read it yet, so you have been a lot faster than I have.

The other is, we are going to have questions on the record. Now, as I understand the rules of the Committee, and I think you probably are aware of this, but maybe you are not, we have until Thursday to get our questions into the record, then you have 1 week after that. So this would mean that the questions we have given you and those that are on the record, you will have by Thursday. Then you have 7 days after that to do that.

So I just want to mention that, I want to make sure that you get on the record on some things that are meaningful to us.

Ms. MCCARTHY. Senator, I will do everything I can to get you as complete an answer as possible.

Senator INHOFE. I believe that.

Also, in addition to the questions that the Chairman asked you, I will ask you a couple of questions that I already asked you once before, but I would like to do it in the hearing, and that you would be just as responsive to the minority as you are the majority in giving us information that we are asking for.

Ms. MCCARTHY. I absolutely will.

Senator INHOFE. All right. And the other thing I was asking you, most of your experience has been in the northeast, which of course is where Lisa Jackson also is from. So I wanted to ask you about some of your background in dealing with things in my part of the Country.

Ms. MCCARTHY. I suppose I should confess that it is not unusual that we are both from the northeast, because that is where we got to know each other. Lisa Jackson and I did work on the regional greenhouse gas initiative together, which is one of the regional initiatives that I have worked on.

I also work on national issues, Senator. I know that the issues are unique in every region. I have done considerable work across the Country. I also chair a national group that is looking to develop a national greenhouse gas registry, it is called the Climate Registry. So I do have considerable interest and expertise and experience in air quality issues across the Country. I will do my best, as I did in New England, to represent their interests. If I am confirmed, I will do my best to represent the national interests to the extent that I can.

Senator INHOFE. All right. That is good.

It is always difficult when we talk on these issues about the economy and about costs. In fact, some areas you are precluded from considering the costs. However, in those areas where the law does not have this restriction, would you do what you can to, where legally permitted, or I might ask you this, what approach would you use in balancing the costs with environmental protection, where the law allows?

Ms. MCCARTHY. Senator, I will.

Senator INHOFE. All right. We have had several times in the past, when we are considering and going through all these things, dealing with CASAC, Clean Air Scientific Advisory Committee. What do you see as their role and your interaction with CASAC?

Ms. MCCARTHY. That committee, Senator, is extremely important in providing advice to the agency on many critical issues. I have already in my opening statement made a commitment that I will let science drive the decisionmaking. I will listen and be advised by the council. I will work with Administrator Jackson to do the best I can to meet her commitment that science is a fundamental principle of the Agency's decisions, and I will carry that out as well.

Senator INHOFE. Can you think of a scenario by which you might have to disagree with CASAC?

Ms. MCCARTHY. I do think that, Senator, there are opinions that need to come into the agency, there is advice that we need to take. But we also need to be guided by the rule of law, and we also need to pay attention to all of the comments that are produced during a rulemaking procedure, and I will take all those comments into consideration and I will make sure that all those comments are fully considered.

Senator INHOFE. I think that is very reasonable. And when I say that, I have to say that during a Republican Administration, at that time I believe there were 21 scientists on CASAC where we found disagreement with them on some things. There is some level

of independence, but in terms of being guided by science, I think you have answered the question that you are going to give every consideration to them.

I think Senator Udall would probably agree with my asking you this question and would want to join in on asking it, and that is on your views about coal and the future of coal.

Ms. MCCARTHY. Senator, I agree with the President in his assessment that coal is a vital resource for the Nation and it will remain so for a considerable amount of time. The challenge we have in facing all of our air pollution challenges, as well as our climate challenges, is to make sure that we produce the kind of technologies that will keep coal viable and also take care of the air pollution and the greenhouse gas emissions that are emanating from those facilities.

We know that coal is here. We need to put our energy and our ingenuity and our resources to keeping it and making it as clean as possible.

Senator INHOFE. I appreciate that, because we still have to run this machine called America. Right now, maybe the percentage is a little high, but about half the generation does come from coal. That has to be a consideration.

Madam Chairman, I don't have any further questions and I have to go to Armed Services hearings. So I thank you very much for spending the time with me that you did, and I look forward to working with you.

Ms. MCCARTHY. Thank you so much, Senator.

Senator BOXER. Senator Inhofe, thank you for your gracious comments. We hope this nominee does move forward.

I just want to underscore what Senator Inhofe said about, and I know you will, information that frankly, any committee member asks for, whatever side of the aisle, it is really important. Information is power and information is what we need.

So I know you will do that, but I want to make sure my colleague understands that when I asked you those series of questions, it was on behalf of the entire committee, not just the majority.

Senator Carper, you will finish it up and close it out.

Senator CARPER. That is great. We will break for lunch around 2.

[Laughter.]

Senator CARPER. There is a lot of legislation we want to move while I have this gavel in my hands.

Just to follow up on what Senator Inhofe and Senator Boxer just said, when I was, oh, I think I had been here about 3, maybe 4 years as a member of the Senate and a member of this Committee. We were trying, I offered legislation focusing on four pollutants from the utility sector, sulfur dioxide, nitrogen dioxide, mercury and CO<sub>2</sub>. We asked the Administration and we asked EPA to model our proposals, the President's so-called Clear Skies proposal, and a proposal offered by Senator Jeffords on dealing with carbon dioxide emissions. And we asked the Administration to model all three and just share with us the information that came from that. They wouldn't do it, wouldn't do it under Administrator Christie Whitman, a close friend of mine, wouldn't do it under the leadership of Mike Leavitt, a close friend of mine, all Governors together. It

wasn't because they didn't want to, it was because I think the Administration wouldn't let them.

Finally, we literally held up the nomination of Stephen Johnson for a while just to make the point that we needed that kind of information. So having known what it is to feel like when we were in the minority and not getting the information that frankly we needed to make those smart decisions, wise decisions with respect to climate change, I think the points that you have heard made here in that regard, now that the shoe is on the other foot, and we are in the majority and in the White House, that we will be fairer in the way that we respond and more appropriate in the way we respond to requests. That is a point I wanted to underline.

In the time we were together recently we had a chance to talk about the Clean Air Interstate Rule. As you know better than me, in December the D.C. Circuit Court of Appeals remanded the Bush administration's Clean Air Interstate Rule and the decision that essentially keeps the Clean Air Interstate Rule in place for an undetermined amount of time, while EPA must rewrite the rule. You come from a State and have worked in a couple of States that are very much impacted by the Clean Air Interstate Rule. I would just ask, do you believe that the CAIR went far enough to help States meet our ambient air qualities?

Ms. MCCARTHY. Senator Carper, first, let me thank you for all of your leadership on air quality issues. I think your State and the States that I have worked for share a common concern about taking care of the transport of air pollution that comes from upwind States. I will say that CAIR was a gigantic step forward, but the lack of CAIR at this point, or at least phase two, the further reductions and the long-term strategy, is a significant problem.

I will say, speaking on behalf of the little State of Connecticut that CAIR actually didn't go far enough.

Senator CARPER. In Delaware, we think of Connecticut as a big State.

Ms. MCCARTHY. It is a big State, I am sorry, you are absolutely right.

Senator CARPER. Like California.

[Laughter.]

Ms. MCCARTHY. The huge State of Connecticut, speaking on their behalf, even with CAIR the State of Connecticut would never have achieved attainment. So to answer your question, no, CAIR did not go far enough. We have not yet addressed the transport of air pollution as we need to. But my understanding is that EPA is on a 2-year path to correct that. If I am confirmed, I will tell you that that will be one of the priorities for me to take care of and to keep them on that time line.

Senator CARPER. When you think of CAIR, and we think of trying to reduce emissions of sulfur dioxide and nitrogen dioxide, just talk with us a little bit about where is the opportunity, the role for the regulators, for the regulatory agency, EPA to move forward, and what opportunities would you suggest for us to pursue in the Congress?

Ms. MCCARTHY. I think that EPA is on some significant time lines for rulemaking requirements. You have mentioned CAIR. We also have a utility MACT standard that we need to get out to deal



with mercury and other hazardous air pollutants. We are on some significant time lines here, and I know that President Obama and Administrator Jackson want Federal leadership on greenhouse gases as well. It is my goal to keep my eye on the prize in terms of rulemaking, but to also work with Congress.

It has been very clear that President Obama wants a cap and trade program for greenhouses gases at the Federal level. I will support that in any way I can, and I will work with you and others. I know you have other legislative initiatives that you want to propose that will help us align some of our rulemaking moving forward. I will be happy to help with that as well.

But in my opinion, it is going to need change in legislation, as well as moving strongly and quickly on rulemakings.

Senator CARPER. I have worked with several of my colleagues here on the Committee, most notably Lamar Alexander, for a number of years, and with Senator Voinovich as well, all of us ironically all former Governors, who end up here, all of us worked very actively in the National Governors Association and played leadership roles there. I had an opportunity to work closely on these issues here.

When I began in 2001 and 2002 working on clean air issues involving the utility sector, my initial thought was not to favor an economy-wide climate change bill, but just to focus on the utility sector to see if we couldn't get that done. And while we were focusing on utilities for CO<sub>2</sub>, we would also address SO<sub>x</sub>, NO<sub>x</sub> and mercury. My thinking has evolved over time to say that maybe we should do an economy-wide CO<sub>2</sub> bill, but I am still very much interested in addressing the other issues of SO<sub>x</sub>, NO<sub>x</sub> and mercury, because of health issues involving your constituents and mine.

In your own thinking, where might a three-pollutant approach that involves sulfur dioxide, nitrogen oxide and mercury fit into climate-wide approach on CO<sub>2</sub>, if at all? I am almost to the point, I hope we are going to move a climate-wide bill on CO<sub>2</sub>. I hope it is going to be a cap and trade bill, I hope it is a bipartisan bill at the end of the day. But I also want to make sure we get the rest of the other three pollutants this year, either in the context of an economy-wide bill or a CO<sub>2</sub> or on its own.

Would you just share your thinking, kind of think out loud with us on this?

Ms. MCCARTHY. Senator, as you know, when I was in the Commonwealth of Massachusetts, way back when, we did actually a four-pollutant regulation that basically focused on the State's coal-fired power plants. I am proud of that work. It gave us a lot of opportunity to create certainty in that regulated community, so they knew what the target was. It also gave us a wonderful opportunity to leverage investments in one and do it in a way that met standards in a second pollutant.

That is the kind of thinking I think that EPA needs to bring to the table as it coordinates its rulemaking procedures. And there are opportunities there. There is no question that some of the changes that you are going to see in terms of pollution emission technology reductions, the reductions in the emissions as a result of technologies, will also benefit us from a CO<sub>2</sub> perspective.

But CO<sub>2</sub> will be a significant challenge. It is not just going to be about pollutant emission control technology. It is also going to be things like investments in energy efficiency, investments in renewables. It is a much larger portfolio of tools that you can bring to the table. Many of those tools are actually going to be economically beneficial. That is really what we need to bring to the table; how do we do this in a common sense way, how do we really drive a clean energy economy.

Senator CARPER. Thank you for that response.

My time is expired, I will just ask you to respond briefly to this. In light of the court decisions regarding mercury and the Clean Air Interstate Rule and other attempts by the previous Administration really to delay clean air regulations, what do you think might be your top two clean air priorities for this year, for 2009? And how can we help?

Ms. MCCARTHY. I appreciate that, Senator.

Senator CARPER. Especially Senator Udall and me, well, he has gone. I guess he has bailed on me.

Ms. MCCARTHY. I will tell you, Senator, that if confirmed I have to sit down with the professional staff at EPA and we need to develop a work list. One of the things I was looking at and thinking about was when Senator Inhofe and Senator Voinovich were first speaking, they sort of gave a litany of all the challenges ahead. I felt like going ahh, and running out of the room a little bit. There is a lot of work that needs to get done.

But it is very clear to me what the President has on his mind and it is clear to me what Administrator Jackson has on her mind. They have a need to establish Federal leadership on climate. That will be No. 1. And they have a need to address other air pollutant issues like CAIR and mercury. Those will always be my top challenges.

Senator CARPER. Good. All right. I want to thank you for being here today. And thank you for your stewardship. I think it is kind of interesting, you have worked, as I understand it, your current Governor, what is her name?

Ms. MCCARTHY. Jodi Rell.

Senator CARPER. Jodi Rell, yes. I understand she is a Republican who succeeded a Republican. And in Massachusetts, did you work for Governor Romney?

Ms. MCCARTHY. I did.

Senator CARPER. And now you are here in a Democratic Administration. I think that is interesting. Maybe it explains at least in part why some of our Republican colleagues who are here today seemed comfortable with you serving in this role.

What have you found has enabled you to work well within two Republican administrations in the States of Massachusetts and Connecticut and now be prepared to come and work in a Democratic Administration here in our Nation's capital? What is it about your approach to your responsibilities that enables you to do that?

Ms. MCCARTHY. I think it is fairly simple, Senator, I listen. I try to listen well. And I really have never met an environmental challenge that couldn't have a common sense solution, that couldn't be at least addressed significantly in ways that take the economy in mind and look at jobs. I think maybe it is my middle class back-

ground. I came from a working family, my dad was a public school teacher in the Boston schools for 40 years. My mom worked as a waitress, in a plastics factory, did some nurse's assistant work. My first 11 years working in government was at the local level. I knew the people that I was regulating. I saw their faces, I heard their voices. I see them now.

So that no matter what level of government I serve, I listen to that, and I understand both the need to drive the reductions we are looking for in terms of emissions and improving air quality and the value that that brings to public health.

But I also know that a job is important. I have always had one, and I always will.

Senator CARPER. Thank you for that. My father, who is now deceased, used to say to my sister and me at least once a week, sometimes at least once a day, when we pull some boneheaded stunt, he would say to my sister and me, just use some common sense. He didn't say it quite that nicely. He said it to us over and over. And I am sure you can think of things that your parents said to you to drum into your head. I see your three children here, they can probably tell us some things that you say to them, you and your husband say to them, to try to get to them over and over, unrelentingly. I am tempted to call them to the witness table.

In fact, let me just ask, while I have time, obviously your husband and children can't sit at the table and testify on your behalf, but if they could, what might be some things that they might say that in your own lives, as you raised all four of them, or all three of them—

[Laughter.]

Senator CARPER. As you have raised them, some things that they have noticed and seen in you that might suggest you could do we in this arena?

Ms. MCCARTHY. That is a really good question. I am glad you are not asking them.

Senator CARPER. Anything come to mind? Maybe it is not a fair question.

Ms. MCCARTHY. Actually, I think they know how much I value work. I do work hard, but I am also a very thoughtful person. I don't jump to conclusions. When they have asked me crazy things, I don't jump and say, no, what are you, nuts? We talk it through and we come to conclusions together. I respect their opinions and I think they respect mine, and I think that is what I bring to the table.

Senator CARPER. All right, that is good. I think that is pretty much it.

I want to just mention that some of my colleagues who couldn't be here, we have other hearings going on. I have several going on right now that I need to rush off to. But some of our colleagues are going to be submitting questions in writing to follow up. They are due, I believe, 10 a.m. next Thursday. So that gives you about a week to work on your answers. Judging from what Senator Inhofe said, it sounds like you are pretty prompt in doing that kind of thing.

We are just delighted that you are here, and happy to have a chance to meet the members of your family. To those of the ex-

tended clan, wherever they are, Massachusetts or Connecticut, we extend our best to them.

Ms. MCCARTHY. Thank you, Senator.

Senator CARPER. Thank you so much, and with that, this hearing is adjourned.

[Whereupon, at 10:50 a.m., the committee was adjourned.]

[Additional statements submitted for the record follow:]

STATEMENT OF HON. BENJAMIN L. CARDIN, U.S. SENATOR  
FROM THE STATE OF MARYLAND

Madam Chairman, thank you for holding this hearing today.

The range of issues facing the EPA Assistant Administrator for Air is dizzying.

- National air quality for smog and soot and the Clean Air Interstate Rule, or CAIR,

- Controlling mercury emissions,
- The acid rain program,
- The renewable fuel standard, which we discussed at a hearing chaired by Senator Carper yesterday,
- Atomic radiation standards,

And that doesn't include the preeminent issue of controlling greenhouse gas emissions in our battle against global warming, including the California Waiver issue.

We will be looking to you to provide new leadership at EPA. We need rules and regulations that are based on good science and the rule of law ... rules and regulations that don't get over-turned by the courts.

Your pledge to support sound science and to rely on the expert advice of Clean Air Act attorneys is refreshing.

I must note that your record in the Federal courts on these issues has been better than the EPA's in recent years.

The full range of clean air issues are of great importance to Maryland.

In my State, we had 55 days in 2007 in which air quality was unhealthy.

Cecil County, as part of the Philadelphia-Wilmington area, and all the counties which comprise the Baltimore metropolitan region, are classified as in "severe" non-attainment for ozone. The Maryland counties here in the Washington metropolitan region are in "serious" non-attainment for ground-level ozone.

Altogether that means more than 5.6 million Marylanders are forced to breathe unhealthy air every summer. And that's 5.6 million too many.

Smog is more than a nuisance—it is a real and persistent health threat. For our most vulnerable—our children, the elderly, and those who are already unhealthy—ozone can lead to heart and lung damage, and even death.

We have a host of State impacts from other clean air issues:

- Mercury pollution is poisoning our fish ... and has led to fish consumption advisories all across the State.
- Hazardous air pollutants continue to pose immediate health threats to many.
- Air deposition of nitrogen oxides onto the Chesapeake Bay watershed is one of the leading causes of nitrogen pollution in the Bay. Scientists estimate that 30 percent of the excess nitrogen in the Bay comes from air deposition. Controlling air pollution is a critical element in restoring the health of the Chesapeake.

And as I mentioned at the beginning of my remarks, the effects of global warming are of grave concern. Climate change is affecting Maryland today. Sea levels are rising, putting thousands of acres of the low-lying Eastern Shore at risk of flooding.

On March 18th, Maryland participated in its third cap-and-trade auction under the Regional Greenhouse Gas Initiative, a program that you helped design.

The lesson of the RGGI experience is plain and reassuring: cap-and-trade works.

- Thousands of tons of pollution credits were successfully auctioned,
- Electricity prices didn't skyrocket, and
- Industries didn't close.

Instead,

- Pollution was reduced,
- Carbon markets were given certainty, and
- Maryland received millions of dollars in auction revenue that it is using to promote energy conservation, to develop clean, renewable energy programs, and to provide financial support for the low income energy assistance program.

I hope that you will take a few minutes today to speak about RGGI and its effectiveness.

I look forward to Ms. McCarthy's testimony.

Thank you, Madam Chairman.

STATEMENT OF HON. BERNARD SANDERS, U.S. SENATOR  
FROM THE STATE OF VERMONT

The Office of Air and Radiation is responsible for administering a number of important programs and policies within the Environmental Protection Agency. These include programs on energy efficiency and green buildings, greenhouse gas and air pollution reduction, and radioactive waste. It is critical that we increase our use of renewable energy and reduce our emissions.

It is also critical that we protect the public. Vermont receives a significant portion of its power supply from nuclear power at the Vermont Yankee plant. I believe it is important for Federal agencies such as the Office of Air and Radiation to ensure that regulations relating to the public's health and safety, particularly during emergencies, should be based on the best available science.

I am pleased to see the nominee's dedication, reflected in her statement, to returning EPA to its appropriate role of being an agency focused on using the best available science in carrying out national policy objectives. I look forward to working with the nominee and the Committee to ensure these important national objectives are realized.

STATEMENT OF HON. JOHN KERRY, U.S. SENATOR  
FROM THE STATE OF MASSACHUSETTS

Everyone who knows Gina McCarthy understands that long before it was fashionable, she lived out a special determination to make every day Earth Day.

For more than a quarter of a century, she's been absolutely tireless working to save our planet, holding influential positions, most of them in Massachusetts.

She's an excellent choice to be Assistant Administrator for Air and Radiation at the Environmental Protection Agency.

President Obama has promised to make climate change one of his top initiatives. His choice of Gina is an important step in making good on that promise. It's crucial that he do so and that we act quickly—because time is running out.

Ignoring climate change will have devastating effects—more famine, more drought, more widespread pandemics, more natural disasters, more resource scarcity, and human displacement on a massive scale. That's why we're already at work on it in the Senate Foreign Relations Committee.

Gina is a familiar face for those of us from Massachusetts. She held a number of high level positions in our State, all of which she used to improve our environment. That was after she had the good sense to get a good education in our State—at the University of Massachusetts and Tufts University.

But she eventually went on to serve Connecticut to be Commissioner of the State Department of Environmental Protection. She used that position to produce an innovative Climate Change Action plan and to push the Regional Greenhouse Gas Initiative to cap greenhouse gas emissions and create a region carbon market.

Gina also promoted conservation and the expansion of the State park system through a great program called "No Child Left Inside." It's no secret that today's kids spend a great deal of time indoors. But it was Gina brought them outdoors so they could experience nature firsthand instead of on TV or on a computer screen.

Gina has served under two Republican Governors—Mitt Romney in Massachusetts and Jodi Rell in Connecticut. So her selection also demonstrates how serious the President is about bipartisanship.

Gina has demonstrated a level of achievement worthy of this important position. Economist Gary Yohe thinks so. Yohe, who shared the 2007 Nobel Prize with Al Gore, said Gina will bring "energy and excitement" to the Obama administration.

I couldn't agree more. And as chairman of the Foreign Relations Committee, I can't wait to work with her and the EPA to keep the energy and excitement flowing to ensure the long-term health of our global environment. We've got no time to waste—and we need Gina at the helm.

STATEMENT OF HON. EDWARD M. KENNEDY, U.S. SENATOR  
FROM THE STATE OF MASSACHUSETTS

Chairman Boxer, I appreciate the opportunity to offer my strong support for President Obama's nominee, Regina McCarthy, to be the Assistant Administrator for Air and Radiation at EPA.

Ms. McCarthy is an outstanding choice for this important position. Her strong background in environmental policy at the State and local levels has given her a sharp understanding of how essential it is to have the cooperation of all levels of

government, the private sector, and NGOs in pursuing broad national policies affecting the environment.

Such cooperation will be especially important at a time when the new Administration and this Committee, under the extraordinary leadership of Senator Boxer, will be developing a major initiative to control greenhouse gas emissions and prevent climate change.

This challenge is urgent, and we have delayed too long already in meeting it. I'm proud that a leader from Massachusetts will be at the forefront of this effort in the Obama administration, especially since coastal States such as ours are facing an increasingly grave threat from rising sea levels.

The breadth of issues involving the Office of Air Quality spans all forms of pollutants, from reducing vehicle emissions to improving indoor air quality; from controlling environmental health impacts to encouraging new technology to make the Nation less dependent on fossil fuels. The mandate is broad, and Regina McCarthy is an excellent candidate for this position.

I urge the Committee to approve her nomination, and I look forward to working with her and the Committee on these fundamental issues in the coming weeks. Thank you for the opportunity to testify today.

STATEMENT OF HON. JOSEPH I. LIEBERMAN, U.S. SENATOR  
FROM THE STATE OF CONNECTICUT

Thank you, Chairwoman Boxer.

I strongly support the confirmation of Gina McCarthy to head the Office of Air and Radiation at the Environmental Protection Agency (EPA). She is extremely knowledgeable, accessible and very clearly a passionate environmentalist. She has been an asset to me and my staff and I was thrilled when the President announced her nomination.

Ms. McCarthy's strong environmental record speaks for itself. As Commissioner of Connecticut's Department of Environmental Protection, Ms. McCarthy worked tirelessly to protect our State's air, land and water. She helped pioneer our region's approach to addressing climate change and she is widely recognized as a chief engineer of the Regional Greenhouse Gas Initiative.

Since her appointment in 2004, Ms. McCarthy has fought to improve the integrity of Connecticut's parks and forests and she has devoted herself to restoring vitality to the Long Island Sound.

Before coming to Connecticut, Ms. McCarthy served with distinction in a number of health and environmental roles in Massachusetts on both the State and Federal level—including positions with the Stoughton Board of Health and Conservation, Massachusetts' Hazardous Waste Facility Site Safety Council, the Massachusetts Toxics Use Reduction Program and the New England Governor's Environment Committee. Ms. McCarthy served as Undersecretary of Policy at the Massachusetts Executive Office of Environmental Affairs and as the Deputy Secretary of Operations to the Office for Commonwealth Development, where she oversaw the development and implementation of Massachusetts' first Climate Protection Action Plan.

We have been lucky to have her in Connecticut, and I know she will flourish at EPA. I wish her all the best and a hearty congratulations on her selection to run the Office of Air and Radiation. She has been a great resource to Connecticut and I know she will be an asset to the Obama administration.

Thank you.