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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

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April 17, 2015

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator McCarthy:

As you are aware, the Committee on Environment and Public Works (EPW) has been conducting oversight of the U.S. Environmental Protection Agency's (EPA) proposed greenhouse gas regulations for new, existing, and modified power plants.¹ Such oversight is critical given the role of environmental advocacy groups in, the questionable legal basis for, the significant anticipated economic impact from, and considerable government resources already spent on these proposed rules. However, many important pieces of information about the development, cost, and legal strategy for the rules have been shielded from the public and Congress.

While it is well known that these rules will have a devastating economic impact on state and local governments, businesses, and private citizens, very little is known about the amount of taxpayer dollars and Agency resources that have already gone into developing these rules. Information about the staff time and contractor resources devoted to these efforts, as well as the policy options and legal risks considered, are key to understanding how EPA has been implementing the Clean Air Act and other legal requirements in these rulemakings. Most recently, EPA requested millions more to finalize, defend, and implement them. For example, EPA's Fiscal Year (FY) 2016 budget request seeks an additional \$3.56 million in funding to hire 20 additional attorneys to support just the rule for existing power plants.² This request is on top of the \$11.44 million EPA has requested to finalize and implement the rules.³

¹ See, the Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units; Proposed Rule (signed March 27, 2012); the Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units; Proposed Rule (signed September 20, 2013); the Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Unites; Proposed Rule (signed June 2, 2014); see also, June 25, 2013 memorandum from President Obama to the Environmental Protection Agency regarding Power Sector Carbon Pollution Standards.

² U.S. Environmental Protection Agency, Fiscal Year 2016, Justification of Appropriation Estimates for the Committee on Appropriations, at pages 401-406.

³ *Id.* at 224.

In addition to needing an accounting of the government resources that are being used for these rules, it is equally important for Congress and the public to know the type of outside resources EPA is utilizing to develop and defend these rules. As you know, the Committee has been conducting oversight of the role played by environmental advocacy groups in developing these proposed rules. Indeed, documents obtained by the Committee establish a record of coordination with such groups in developing these rules. However, the Committee understands that such coordination did not halt after the rules were proposed. Meetings and calls – particularly regarding “legal issues” with these rulemakings – have continued in the months since the rules were proposed and legal challenges were filed.

For example, EPA attorneys met with representatives from the Natural Resources Defense Council (NRDC) on August 6, 2014,⁴ November 11, 2014,⁵ and February 2, 2015,⁶ to discuss “legal issues” concerning these rulemakings. NRDC and other environmental groups have filed legal briefs in support of EPA in the legal challenges to the proposed rules.⁷ Similarly, EPA attorneys discussed “legal issues” concerning the proposed rules with Harvard Law School Professor Jody Freeman and others from Harvard Law School and Columbia University on November 26, 2014,⁸ and December 11, 2014.⁹ A former White House official, Ms. Freeman submitted a “friend of the court” brief in support of EPA.¹⁰

The extent of EPA’s ongoing, close coordination with these groups and individuals and lack of transparency about expenditures in support of these rulemakings are unacceptable. These circumstances are especially concerning in light of the substantial public opposition, economic cost, legal challenges, and uncertain climate change benefits from these rules. As such, the following information and documents are needed for the Committee to further its constitutional duty to conduct oversight of the implementation of the Clean Air Act as enacted by Congress.

⁴ See, <http://www.regulations.gov#!documentDetail;D=EPA-HQ-OAR-2013-0602-18198>.

⁵ See, <http://www.regulations.gov#!documentDetail;D=EPA-HQ-OAR-2013-0602-25084>.

⁶ See, <http://www.regulations.gov#!documentDetail;D=EPA-HQ-OAR-2013-0602-33551>.

⁷ Brief of Natural resources Defense Council, Environmental Defense Fund, and Sierra Club as Intervenor in Support of Respondent, State of West Virginia, et al. v. U.S. Environmental Protection Agency, No. 14-1146 (D.C. Cir.), available at:

<http://www.ago.wv.gov/publicresources/epa/Documents/Final%20Intervenor%20Brief%20for%20Sierra%20Club%20et%20al%20-%2014-1146%20%28M0060045xCECC6%29.pdf>; Brief of the Natural Resources Defense Council, Environmental Defense Fund, Clean Wisconsin, Michigan Environmental Council, Ohio Environmental Council, and Sierra Club, as Amici Curiae in Support of Respondent, In Re: Murray Energy Corp., No. 14-1112 (D.C. Cir.), available at: <http://www.ago.wv.gov/publicresources/epa/Documents/EnviroAmicus.pdf>.

⁸ See, <http://www.regulations.gov#!documentDetail;D=EPA-HQ-OAR-2013-0602-33496>.

⁹ See, <http://www.regulations.gov#!documentDetail;D=EPA-HQ-OAR-2013-0495-11267>; see also, <http://www.regulations.gov#!documentDetail;D=EPA-HQ-OAR-2013-0602-33497>.

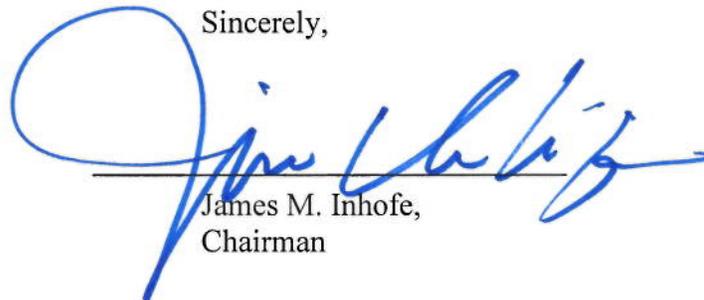
¹⁰ Amicus Curiae Brief of Law Professors in Support of Respondents, In Re: Murray Energy Corp. and Murray Energy Corp. v. U.S. Environmental Protection Agency, Nos. 14-1112 & 14-1151 (D.C. Cir.); available at: http://www.eenews.net/assets/2015/02/23/document_gw_02.pdf.

Please provide the following information and documents no later than May 11, 2015:

1. All emails, briefing materials, agendas, calendar entries, notes, or other documents concerning all communications between EPA and the Natural Resources Defense Council, the Environmental Defense Fund, the Sierra Club, the Clean Air Task Force, Professor Jody Freeman, Professor Richard Lazarus, Center for American Progress, and the American Lung Association since April 15, 2013, and the present date concerning EPA's proposed rules to regulate carbon emissions from new, modified, and existing power plants under section 111 of the Clean Air Act.
2. A list of all contractors and/or consultants hired by EPA, the date each contract was entered, a summary of each task performed by each contractor, and amounts paid by EPA for each task, including modeling, analysis, technical support, drafting, comment review, or public outreach in connection to EPA's proposed rules to regulate carbon emissions from new, modified, and existing power plants under section 111 of the Clean Air Act.
3. All analytical blueprints, meeting agendas, briefing materials, memoranda, presentations, and concurrence related documents created for or otherwise used in connection to EPA's intra-agency action development process, including but not limited to option selection decisions, for the following proposed rules:
 - a. the Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units; Proposed Rule (signed March 27, 2012);
 - b. the Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units; Proposed Rule (signed September 20, 2013); and
 - c. the Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Unites; Proposed Rule (signed June 2, 2014).

I look forward to your prompt response to this request. Please have your staff contact the Committee on Environment and Public Works at (202) 224-6176 with any questions concerning this request.

Sincerely,



James M. Inhofe,
Chairman