UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

JUN 16 2011

The Honorable Cory Gardner
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Gardner:

Thank you for your letter of May 3, 2011, providing questions following the April 14, 2011 hearing on "H.R. 1391- A Bill to Prohibit the EPA from Regulating Coal Combustion Residuals Under Subtitle C of the Solid Waste Disposal Act."

Please find the enclosed responses to your questions. If you have further questions, please contact me or your staff may contact Carolyn Levine in EPA's Office of Congressional and Intergovernmental relations at (202) 564-1859.

Sincerely,

Arvin R. Ganesan
Deputy Associate Administrator
for Congressional Affairs

Enclosure

EPA Responses to Questions from the April 14, 2011 Hearing on H.R. 1391- A Bill to Prohibit the EPA from Regulating Coal Combustion

Congressman Cory Gardner (R-CO-4)

1. Is it the case that, prior to EO 13563, the EPA did not take into account job losses or gains in an economic analysis of every economically significant regulation?

Response: Consistent with relevant Executive Orders, EPA estimates the benefits and costs of all of its economically significant rules. Labor, a key factor of production, is intrinsically incorporated into EPA's economic analyses and EPA pays close attention to the impact of our rules on industry and the economy. The Agency has supplemented these detailed analyses on a case-by-case basis with a qualitative or quantitative analysis that looks specifically at employment impacts, but it has never been standard practice of the Agency (under any Administration) to perform an employment analysis for every rule. EPA is keenly aware that these are tough economic times and there is particular concern about impacts on employment -- that is why we have been performing quantitative employment analyses on economically significant rules more frequently than the last Administration.

2. What is the methodology used by the EPA to plan and perform a thorough and complete economic analysis of a particular regulation, including analysis of regulatory alternatives? How does EPA decide whether the creation of jobs directly as a result of regulation should be part of a thorough economic analysis? Please provide me with examples of regulatory analyses in which EPA has assessed the impact on employment, and the rationale for performing jobs analyses for these regulations?

Response: EPA's *Guidelines for Preparing Economic Analyses* (USEPA 2010) provides the basic framework for the Agency's economic analyses. Recently revised and updated to reflect the latest literature, the Agency generally received strong support and praise from its Science Advisory Board on the document:

> "By providing thorough and consistent technical advice regarding the application of benefit cost analysis to environmental problems, the Guidelines significantly elevate the quality and transparency of the information upon which environmental decisions are made. We again applaud EPA for developing these Guidelines and the Agency's commitment to continually revise and improve them. Indeed, we believe these Guidelines could serve as a successful model for all state and federal agencies who undertake benefit-cost analysis in support of environmental decision making." [1]

EPA's analyses also comply with OMB Circular A-4's guidelines on economic analysis. Because each regulation is different, EPA examines them on a case-by-case basis to determine if additional analysis on

[1] USEPA. 2009. Science Advisory Board (SAB) Advisory on EPA's draft *Guidelines for Preparing Economic Analyses (2008).* EPA-SAB-09-018. P iii. http://yosemite.epa.gov/sab/sabproduct.nsf/cf0020ec3f99320a85256eb4006b6bd1/559b838f18c36f078525763c0058b32f/$FILE/ATTC1H4M/EPA-SAB-09-018-unsigned.doc

employment impacts is warranted, and if the appropriate analytical tools are available to provide a quantitative estimate.

As an example, EPA performed an employment analysis as part of the National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial & Institutional Boilers and Process Heaters. Published, peer-reviewed work by Morgenstern, Pizer, and Shih (2002) which examined actual employment impacts in regulated industries gave EPA an analytical basis for estimating employment impacts for the industrial sectors in this specific NESHAP major source rule. Our analysis estimates that the rule's impact on employment will be modest, but will, on net, result in an increase in employment in those sectors.

3. Regarding the Coal Ash Rule, EPA's analysis shows that there is a larger proportion of low-income families in the areas where the analyzed plants are located, and also that this regulation would increase their electricity prices. Please explain why EPA decided not to include an assessment of how job losses combined with increased electricity prices in these communities would impact these families.

Response: As discussed in response to questions posed by several Subcommittee Members during the April 14, 2011 hearing, EPA conducted an extensive Regulatory Impact Analysis to estimate the economic and environmental benefits and costs of the Coal Ash Rule. Among its other estimates, the RIA estimated the potential increase in the cost of disposal of coal ash that could result from the regulatory options—that is, a Subtitle C regulatory approach and a Subtitle D regulatory approach that EPA considered in the proposal -- and the potential impacts of those estimated cost increases on electricity prices.

In estimating the upper-bound of a potential electricity price increase, the RIA evaluated a hypothetical scenario whereby the electric utility "passes through" 100 percent of regulatory costs to their customers. The RIA estimated that even with a 100 percent cost pass-through, the potential increases in electricity prices to coal fired electricity customers would be an average of 0.795 percent for the Subtitle C option and an average of 0.172 percent for the Subtitle D option, relative to the 2009 national average electricity price of $0.088 per kilowatt hour. Given these small effects, electricity production would not be expected to change much, if at all, as a result of the proposed rule. Therefore, EPA anticipates there would be little, if any, impact on jobs associated with electricity production.

Although not calculated in the RIA, it is possible to translate these potential maximum electricity price increases for the 100% hypothetical cost pass-thru scenario into potential maximum increases in the average monthly electricity bills paid by U.S. households. This translation is based on the most recent (2008) electricity consumption data available for the U.S. from the Energy Information Administration. Under the Subtitle C option, the average monthly household electricity bill would be expected to increase by a maximum of roughly 82 cents per month, less if part of the regulatory costs come from profits of the facility. Under the Subtitle D option, the average monthly household electricity bill would be expected to increase by a maximum of roughly 18 cents per month.

In addition, as part of the RIA, EPA conducted an analysis on the potential ancillary impact on coal ash beneficial use industries. Please note, since the proposed rule retained the Bevill exclusion regarding the beneficial use of coal combustion residuals (CCRs), the proposed rule would not require that CCRs beneficially used be subject to any federal regulation. Thus, no "direct costs" would apply as a result of the proposed rule. However, because of concerns that were raised regarding the "stigma" of calling CCRs hazardous wastes, the 2010 RIA conducted an analysis that estimated three alternative future scenarios involving an increase in the beneficial use of CCRs, a decrease in the beneficial use of CCRs,

and no change in the beneficial use of CCRs by other industries. For each scenario, the RIA estimated the future possible change in the annual market cost of these three scenarios on continued future use of CCRs, compared to the alternative market cost to the other industries for purchasing substitute raw materials.

EPA would expect that an increase in the beneficial use of CCRs might result in an increase in jobs related to CCR-beneficial use industries, although it could result in a decrease in jobs related to raw material supply industries for which CCR would be a substitute material, while a decrease in the beneficial use of CCRs might result in a decrease in jobs related to CCR-beneficial use industries, but might lead to an increase in jobs in industries related to the use of substitute materials for CCRs. In each beneficial use scenario, EPA anticipates an increase in jobs associated with the pollution control equipment and services for compliance with the rule. The RIA with the proposed rule did not include specific indications of the magnitude or net effects of these jobs impacts. However, EPA specifically solicited comment on market costs and employment, and will consider those comments as we develop a final rule.

4. How will the EPA quantify both the direct and indirect effects on U.S. job creation and employment associated with particular regulation in the future, as directed by the President's EO?

Response: On January 18th 2011, President Obama issued a new executive order, EO 13563. This executive order reaffirms that:

a. "Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation." [2]

In particular, OMB's recent Draft Report to Congress clarifies:

b. "consistent with Executive Order 13563, regulatory decisions and priority-setting should be made in a way that is attentive to the importance of promoting economic growth, innovation, job creation, and competitiveness. The simplest method for achieving that goal is to continue to engage in careful analysis of both costs and benefits and as a general rule, to proceed only if the benefits justify the costs."[3]

EPA will be fully complying with EO 13563.

5. Please provide me with a list of all rules that have been finalized for which the EPA has not yet performed an economic analysis of the regulation's direct and indirect impact on jobs.

Response: So far this year, the only economically significant rule which has been finalized for which the EPA did not perform an analysis of employment impacts is the "Oil Pollution Prevention: Spill Prevention, Control and Countermeasure (SPCC) Rule – Amendments for Milk and Milk Products Containers." This rule resulted in an annualized savings of $146 million.[4]

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[2] http://www.whitehouse.gov/the-press-office/2011/01/18/improving-regulation-and-regulatory-review-executive-order

[3] OMB, Draft 2011 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities, page 50 (http://www.whitehouse.gov/sites/default/files/omb/legislative/reports/Draft_2011_CBA_Report_AllSections.pdf

[4] http://www.gpo.gov/fdsys/pkg/FR-2011-04-18/pdf/2011-9288.pdf

6. EO 13563 directs the executive branch to periodically review "existing significant regulations to determine whether any such regulations should be modified." Will this review include an analysis of the impact various regulations have had on jobs since they were finalized?

Response: EPA will be examining a variety of factors as we review regulations under EO 13563, including, where appropriate, the available data on the economic impacts of such rules. EPA notes that, peer-reviewed studies of the retrospective impacts of environmental regulations on employment have often failed to find major employment impacts, even in heavily regulated sectors. For example, Morgenstern et al. (2002) estimated employment impacts for four heavily regulated industries (pulp and paper, refining, iron and steel, and plastic) and concluded:

a. "We find that increased environmental spending generally does *not* cause a significant change in employment. Our average across all four industries is a net gain of 1.5 jobs per $1 million in additional environmental spending…. These small positive effects can be linked to labor-using factor shifts and relatively inelastic estimated demand." [5]

Harvard Economist Dale Jorgenson recently agreed that that there was no evidence to support large job losses linked to environmental regulations, saying: "I wouldn't say that there is any academically respectable support for that view."[6]

[5]Jobs Versus the Environment: An Industry-Level Perspective. Richard D. Morgenstern, William A. Pizer, and Jhih-Shyang Shih, *Journal of Environmental Economics and Management* | May 2002 | Vol. 43, no. 3 | pp. 412-436.
These results are similar to Berman and Bui (2001) who find that while sharply increased air quality regulation in Los Angeles to reduce NOx emissions resulted in large abatement costs they did not result in substantially reduced employment.

[6] Is EPA's greenhouse gas plan a job killer? History might offer clues. Christian Science Monitor. (March 2, 2011)