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THE ADMINISTRATION'S CLEAR SKIES INITIATIVE

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND AIR QUALITY

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

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THE ADMINISTRATION'S CLEAR SKIES INITIATIVE

THURSDAY, MAY 26, 2005

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON ENERGY AND AIR QUALITY,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:05 p.m., in room 2123 of the Rayburn House Office Building, Hon. Ralph Hall (chairman) presiding.

Members present: Representatives Hall, Shimkus, Wilson, Walden, Otter, Murphy, Burgess, Barton (ex-officio), Boucher, Waxman, Engel, Allen, Solis, Gonzalez, and Dingell (ex-officio).

Staff present: Mark Menezes, chief counsel for energy and the environment; Margaret Caravelli, majority counsel; Peter Kielty, legislative clerk; Michael Goo, minority counsel; and Bruce Harris, minority professional staff.

Mr. HALL. Okay. The subcommittee will come to order.

And without objection, the subcommittee will proceed pursuant to Committee Rule 4E which allows members the opportunity to defer opening statements for, excuse me, extra questioning time and the Chair recognizes himself for an opening statement.

The opening statement is that we have a vote on and they just don't give us any cooperation or any respect anymore to this committee. Do you want to get on the way and get started? All right. We will get our statements out of the way.

Today, the subcommittee is holding a hearing on the administration's Clear Skies Initiative. And this initiative, modeled after the acid rain program in Title 4 of the Clean Air Act, seeks to repeat the success of innovative Cap and Trade Program that achieved substantial reductions in sulfur dioxide deposition at a cost lower than predicted by EPA and lower than predicted by industry.

I would like to welcome and thank our esteemed witnesses for joining us today. The witnesses represent the administration's experts in the field of clean air and will walk us through the policy objectives and public health and environmental benefits to be realized by the Clear Skies Initiative. Chairman James Connaughton of the Council of Environmental Quality and the Honorable Jeffrey Holmstead of the Environmental Protection Agency join us as representatives of the administration. It is a pleasure to have both of you with us here today and we thank you for your time.

The Clear Skies Initiative intends to bring clarity to complex patchwork I would say set of requirements established by the Clean Air Act. The Clean Air Act is separate requirements in vary-

ing dates for emission compliance for each pollutant. The hodgepodge of deadlines makes it extremely difficult for States and for industry to meet clean air objectives in a timely and cost effective manner.

I think since the time and the passage of the 1990 Clean Air Act Amendments over 15 years ago, substantial gains have been made in the Nation's air quality. One program of the Clean Air Act that has proven to be highly effective is the acid rain cap and trade provisions. Continuing the goal of improved air quality, the administration's Clear Skies Initiative builds on the positive legacy of the Acid Rain Program. It does so by creating a series of Cap and Trade Programs for the reduction of three air pollutants, sulfur dioxide, nitrogen oxide, and for the first time, mercury. For the mercury cap, we hope this will drive technology in other countries as well as in our own.

The cap and trade for sulfur dioxide is a tightening of the current Acid Rain Program lowering the cap from a current 8.95 million tons per year today to 3.0 million tons per year by the year 2020. The nitrogen oxide cap and trade is divided into two trading zones, east and west, to account for regional differences and deal with the seasonal ozone issues. These market based programs set strict limitations on emissions while at the same time allowing industry the flexibility to choose the most cost effective course, the course of action that they think will achieve these limitations.

The Clean Skies Initiative seeks to reduce from current emissions level sulfur dioxide emissions by 73 percent, nitrogen oxide emissions by 67 percent, and mercury emissions by 69 percent by the year 2020. These national caps recognize the transitory nature of air pollution and the emissions do not adhere to the lines on the map. Nationwide Cap and Trade Programs take into account the impact of upwind sources on downwind areas. The benefit of this is that States are insured that upwind neighbors are doing everything they can to address emissions and, therefore, eliminate the transport of pollution.

So the Clean Skies Initiative also provides for the designation of transitional areas to help synchronize the benefits of all three Cap and Trade Programs with the achievement of reduced emission levels. This will be especially helpful to those areas recently designated as non-obtainable for the $PM_{2.5}$ and 8-hour ozone national ambient air quality standards since these pollutants are formed from the three building blocks sulfur dioxide, nitrogen oxide, and mercury. This idea is a continuation of an EPA policy and I believe that good ideas should be pursued.

When the Clear Skies Initiative is fully implemented, expect annual health benefits by 2020 to include 14,100 avoided premature deaths, 8,800 fewer cases of chronic bronchitis, 12.5 million fewer days with respiratory illnesses and symptoms, 30,000 fewer hospitalizations and emergency room visits. All of these add up to $110 billion in annual public health benefits by the year 2020.

The Clear Skies Initiative also provides for timely environmental improvements and these include: visibility improvements in parks and forests, reductions in sulfur, nitrogen, and mercury deposition to improve the health of lakes, streams, and estuaries. The cost of the Clear Skies Initiative is projected to be a little over $6 billion

per year by the 2020 full implementation date. When compared to all the health benefits I just mentioned, it is clear that this approach to improving air quality across the Nation is a win-win situation for industry and individuals alike. I favor a practical policy of simplifying things so as to make the accomplishment of a goal more certain and I am looking forward to hearing from the administration's representatives about the practical policy and how it achieves the objectives of the Clean Air Act in a more straightforward and streamlined way. At this time, I recognize, Mr. Boucher, the ranking member.

[The prepared statement of Hon. Ralph Hall follows:]

PREPARED STATEMENT OF HON. RALPH HALL, CHAIRMAN, SUBCOMMITTEE ON ENERGY AND AIR QUALITY

The Subcommittee will come to order. Without objection, the Subcommittee will proceed pursuant to Committee Rule 4(e), which allows Members the opportunity to defer opening statements for extra questioning time.

The Chair recognizes himself for an opening statement. Today, the Subcommittee holds a hearing on the Administration's Clear Skies Initiative. This initiative, modeled after the Acid Rain Program in Title IV of the Clean Air Act, seeks to repeat the success of the innovative cap and trade program which achieved substantial reductions in sulfur dioxide deposition at a cost lower than predicted by EPA and industry.

I would like to welcome and thank our esteemed witnesses for joining us today. Our witnesses represent the Administration's experts in the field of Clean Air and will walk us through the policy objectives and public health and environmental benefits to be realized by the Clear Skies Initiative. Chairman James Connaughton of the Council on Environmental Quality and The Honorable Jeffrey Holmstead of the Environmental Protection Agency join us as representatives of the Administration. It is a pleasure to have you join us here today.

The Clear Skies Initiative intends to bring clarity to a complex patchwork set of requirements established by the Clear Air Act. The Clean Air Act has separate requirements and varying dates for emission compliance for each pollutant. This hodgepodge of deadlines makes it extremely difficult for states and industry to meet clean air objectives in a timely and cost effective manner.

Since the passage of the 1990 Clean Air Act Amendments, over fifteen years ago, substantial gains have been made in the nation's air quality. One program of the Clean Air Act that has proven to be highly effective is the Acid Rain cap and trade provisions. Continuing the goal of improved air quality, the Administration's Clear Skies Initiative builds on the positive legacy of the Acid Rain Program. It does so by creating a series of cap and trade programs for the reduction of three air pollutants: sulfur dioxide, nitrogen oxide, and for the first time, mercury. For the mercury cap we hope this will drive technology in other countries as well as in our own. The cap and trade for sulfur dioxide is a tightening of the current acid rain program, lowering the cap form a current 8.95 million tons per year today to 3.0 million tons per year by 2020. The nitrogen oxides cap and trade is divided into two trading zones, East and West, to account for regional differences and deal with seasonal ozone issues.

These market based programs set strict limitations on emissions while at the same time allowing industry the flexibility to choose the most cost effective course of action to achieve these limitations. The Clear Skies Initiative seeks to reduce, from current emission levels, sulfur dioxide emissions by 73%, nitrogen oxide emissions by 67%, and mercury emissions by 69%, by 2020.

These national caps recognize the transitory nature of air pollution and that emissions do not adhere to lines on a map. Nationwide cap and trade programs take into account the impact of upwind sources on downwind areas. The benefit of this is that states are ensured that upwind neighbors are doing everything they can to address emissions and therefore eliminate the transport of pollution.

The Clear Skies Initiative also provides for the designation of transitional areas to help synchronize the benefits of all three cap and trade programs with the achievement of reduced emission levels. This will be especially helpful to those areas recently designated as nonattainment for the PM 2.5 and 8-hour ozone national ambient air quality standards since these pollutants are formed from the three building

blocks: sulfur dioxide, nitrogen oxide, and mercury. This idea is a continuation of an EPA policy and I believe that good ideas should be pursued.

When the Clear Skies Initiative is fully implemented expected annual health benefits by 2020 include:

- 14,100 avoided premature deaths
- 8,800 fewer cases of chronic bronchitis
- 12.5 million fewer days with respiratory illnesses and symptoms
- 30,000 fewer hospitalizations and emergency room visits

All these add up to $110 billion in annual public health benefits by 2020.

The Clear Skies Initiative also provides for timely environmental improvements. These include:

- Visibility improvements in parks and forests
- Reductions in sulfur, nitrogen, and mercury deposition to improve the health of lakes, streams, and estuaries.

The cost of the Clear Skies Initiative is projected to be a little over $6 billion per year by the 2020 full implementation date. When compared to all the health benefits I just mentioned, it is clear that this approach to improving air quality across the nation is a win-win situation for industry and individuals alike. I favor a practical policy of simplifying things so as to make the accomplishment of a goal more certain. I am looking forward to hearing from the Administration's representatives about this practical policy, and how it achieves the objectives of the Clean Air Act in a more straightforward and streamlined way.

Mr. BOUCHER. Well thank you, Mr. Chairman.

We have had the second bills for the floor vote. Do you intend to continue through the vote with this hearing or do you intend to recess?

Mr. HALL. I don't know any way we can continue it through the votes. I don't think these men would want to testify to one another.

Mr. BOUCHER. Well that being the case, Mr. Chairman, let me suggest a recess and we have a series of votes and you can——

Mr. HALL. Do you want to recess before you give your opening statement?

Mr. BOUCHER. Well I think it might be appropriate and then we can reconvene after that.

Mr. HALL. What do we do? By that time they have forgotten everything I have said.

Mr. BOUCHER. That is part of my point, Mr. Chairman.

Mr. HALL. All right. We will recess for 20 minutes.

Mr. BOUCHER. Well whatever time it takes, we have got a series of votes.

Mr. HALL. For 20 minutes and 5 minutes are gone.

Mr. BOUCHER. It is going to be longer than that, 45 minutes. There are about five votes. It will probably be 3 before we can come back.

Mr. HALL. All right, belay that order, we will be back when we get back and probably we will be back here in about 30 minutes. At ease, thank you.

[Brief recess.]

Mr. HALL The other guys are a lot slower than us younger people. Since the main ones are here, I recognize the gentleman from Virginia, Mr. Boucher, for an opening statement.

Mr. BOUCHER. Well thank you very much, Mr. Chairman.

I join with you in welcoming our witnesses this afternoon and thank them for taking time to inform this committee of their views with regard to clean air measures.

Following a lengthy and thorough markup spanning several weeks and involving a number of postponements in the effort to achieve consensus, the Senate Environment Committee has voted

not to approve the administration's Clear Skies Initiative. I am not aware of any changes that have taken place in the Senate or that are likely to take place there that would affect that outcome assuming that the matter would be considered potentially later this year or not next year.

At the same time, the Environmental Protection Agency has moved forward with a series of rulemakings including a mercury control program and a regulation on the interstate transport of other emissions in the Clear Air Interstate Rule. The EPA has also addressed the new source review controversy by promulgating a rule that specifies the circumstances under which utilities that operate the older cold fired power plants, can undertake routine and maintenance on those facilities without triggering the new source performance standards.

In view of the Senate action on Clear Skies and in view of the progress that the EPA is making in achieving many of the goals of the Clear Skies legislation through regulatory means, I will welcome the views of the witnesses on the practical utility of this committee attempting to legislate at this time. Perhaps in that respect a comment from Mr. Holmstead on the status of litigation regarding some of the EPA's rules would be appropriate and I will hope he will make some comment about those during his testimony.

Frankly, Mr. Chairman, as far as I am concerned, this hearing should focus primarily on these practical questions rather than on a detailed analysis of the substance of the administration's bill. I think the key question for us is is there really any need for this committee to spend time and effort addressing a matter that from our perspective if it were to pass the House would simply go nowhere in the Senate.

If after our discussions this afternoon it is apparent that the bill cannot be enacted during this session of Congress because of the Senate committee's decision, and if it appears that the EPA is making substantial progress in addressing many of the goals of the bill through regulations, then I think we should decide to focus our attention for this Congress on matters where we can make a genuine difference. Specifically on the urgent business of passing the Energy Bill, which I strongly support, as does the subcommittee chairman. And that is an area where our work can produce a major and much needed change.

Mr. Chairman, I look forward to the witness' testimony today and I thank you for convening this opportunity for them to inform us of their views and I yield back.

Mr. HALL. I thank you.

At this time I recognize the chairman of Energy and Commerce Committee, the Honorable Joe Barton of Texas.

Chairman BARTON. Thank you, Mr. Chairman.

I want to thank our two witnesses today. I know both of them well and they are both gentlemen and professionals and they have both done outstanding work in trying to protect the air quality of our Nation.

Since the committee last focused on the Clear Skies Initiative, many clean air developments have occurred. In the past year, the Environmental Protection Agency has moved forward with the des-

ignation of non-attainment areas for the two new national ambient air quality standards: the 8-hour ozone and the $PM_{2.5}$ standard.

In recent weeks, two new rules have been finalized; the Clean Air Interstate Rule and the Clean Air Mercury Rule. The various rules and standards that the States were required to comply with highlights the necessity in my opinion for comprehensive national clean air policy that provides certainty and also ease of implementation. The Clean Air Act has gone far to improve the Nation's air quality and these rules would appear to be helpful but at some time it would seem to me that we need to also legislate.

Progress can only be sustained through a cost effective process such as the Clear Skies Initiative the President has proposed. The success of the Acid Rain Program established under the 1990 Clean Air Act, demonstrates that a National Cap and Trade Program will clean the air efficiently while giving industry the flexibility it needs to deliver affordable electricity to our homes.

The Clear Skies Initiative has stirred intense political debate over the best way to improve air quality. Of particular interest has been the appropriate mechanism to control emissions from the electric utility industry, a vital sector of our Nation's economy. Needless to say, people need both clean air and reliable power. Nobody should have to breathe polluted air, but people also don't want to be left in the dark, or not have a job.

Throughout this discourse there has been a lack of understanding as to how the elements of the Clear Skies Initiative would amend the Clean Air Act. The new designations under the new 8-hour standard for non-attainment are of particular concern. My district, Ellis County, is a rural county with few major emitters. Yet, it has been designated as non-attainment for the 8-hour ozone standard even though, according to the EPA's own estimating procedure, it supplies less than .2 of a percent of the ozone in the affected region that is already in non-attainment.

In time, as the new State implementation Plans are coming due, my constituents are going to come to me and point out the confusing time lines and misaligned deadlines. I hope I will be able to tell them that the Congress will be helpful. I want to be able to say that we had a chance to make the rules simpler and more straight forward and we did. I hope the experience and knowledge gained over 15 years with the successful Acid Rain Program shows us how to provide market mechanisms to being about cleaner air in a more cost effective way.

Twenty-five of the 33 members of this subcommittee represent areas that have been designed non-attainment under the new $PM_{2.5}$ or 8-hour ozone NAAQS standard. I expect soon that their constituents are going to begin coming to them complaining they are unable to attract new industry and new jobs, that they are prohibited from building roads to alleviate congestion, that the process is too complex, and that they have exhausted their local resources.

We have an opportunity to be responsible, to simplify, and to allow market forces to determine the best course of action. We have a chance now to make even greater strides in approving America's air quality by preventing much of the postponements that have occurred in the past. It is time for us to put to good use the lessons we have learned in the last 15 years.

We have much to learn from our two witnesses today. How do the Cap and Trade Programs make achieving the Nation's air quality goals easier? How do they assist newly designated non-attainment areas achieve their clean air requirements? What can only be done by Congress? These are just some of the issues that the administration's experts have been asked to testify on today during the hearing. Some important reforms to the Clean Air Act can only be achieved through legislative action.

I support the goals of the President's proposed Clear Skies Act. Myself and former Chairman Tauzin were sponsors of the President's proposal in the last Congress. I am willing to work toward a bipartisan solution on this legislation. Today's hearing should provide members of the committee on both sides of the aisle an opportunity to become educated on all parts of the Clear Skies proposals, rules, and necessary legislative action.

One of the things that I hope to learn today is whether we can agree that jobs, growth, and opportunity are just as important as clean air. I am interested in learning if others in our committee are prepared to work on a bipartisan basis, roll up our sleeves, and work together in a good faith fashion to construct the legislative proposal that all members in the community, on the industrial side and the environmental side, can be supportive of.

With that, Mr. Chairman, I yield back the balance of my time. I thank you for holding this hearing.

[The prepared statement of Hon. Joe Barton follows:]

PREPARED STATEMENT OF HON. JOE BARTON, CHAIRMAN, COMMITTEE ON ENERGY AND COMMERCE

Thank you, Mr. Chairman. Since the Committee last focused on the Clear Skies Initiative, many clean air developments have occurred. In the past year, the Environmental Protection Agency has moved forward with the designation of nonattainment areas for the two new National Ambient Air Quality Standards (NAAQS): the 8-hour ozone and the PM 2.5 standards. In recent weeks, two new rules have been finalized: The Clean Air Interstate Rule and the Clean Air Mercury Rule. The various rules and standards the states are required to comply with highlight the necessity for comprehensive national clean air policy that provides certainty and ease of implementation. The Clean Air Act has gone far to improve the nation's air quality, and these rules also appear to be helpful.

However, progress can only be sustained through a cost-effective process like the Clear Skies Initiative. The success of the Acid Rain Program established under the 1990 Clean Air Act Amendments demonstrates that a national cap-and-trade program cleans the air efficiently while giving industry the flexibility it needs to deliver affordable electricity to our homes.

The Clear Skies Initiative has stirred political debate over the best way to improve air quality. Of particular interest has been the appropriate mechanism to control emissions from the electric utility industry, a vital sector of our Nation's economy. Needless to say, people need both clean air and reliable power. Nobody should have to breath polluted air, but people cannot be left to sit in the dark while we figure it out. Throughout this discourse there has been a lack of understanding as to how the elements of the Clear Skies Initiative will amend the Clean Air Act.

The new designations for nonattainment are of particular concern. In my district, Ellis County, a rural county with few major emitters, has been designated nonattainment for the 8-hour ozone standard. And in time, as the new state implementation plans are coming due, my constituents are going to come to me and point out the confusing timelines and the misaligned deadlines. I hope I will be able to tell them Congress was helpful. I want to be able to say that when we had a chance to make the rules simpler and more straightforward, we did. I hope the experience and knowledge gained over 15 years with the successful Acid Rain program will allow us to provide market mechanisms to bring about cleaner air in a cost-effective way. Continued oppressive regulation is not the best or only way to improve our environment.

Twenty-five of the thirty-three Members of this subcommittee represent areas that have been designated nonattainment under the new PM 2.5 and 8-hour ozone NAAQS. I expect soon our constituents will come to us complaining they are unable to attract any new industry and new jobs; they are prohibited from building roads to alleviate congestion; and that the process is so complex that they have exhausted their resources. We have the opportunity to be responsible, to simplify, and to allow market forces determine the best course of action. And we have the chance now to make even greater strides in improving America's air quality by preventing much of the postponements that have occurred. It's time for us to put to good use all the lessons we have learned from the past 15 years.

We have much to learn from these witnesses today. How do the cap-and-trade programs make achieving the nation's air quality goals easier? How do they assist newly-designated nonattainment areas achieve their clean air requirements? What can only be done by Congress? These are issues the Administration's experts are invited to address during today's hearing.

Some important reforms to the Clean Air Act can only be achieved through legislative action. I support the goals of the President's proposed Clear Skies Act. I am willing to start the hard work towards a bipartisan agreement and today should provide Members of the Committee to become educated on all parts of the Clear Skies Initiative—the rules and the legislation.

One of the things I hope to learn today is whether we can agree that jobs, growth and opportunity for our people are important. I am interested in learning if others on our committee are prepared to work, really roll up our sleeves, and work together on a good faith, bipartisan, constructive basis to achieve clean air, reliable power, and economic growth for the people who depend on us for all three.

I thank the Chairman for having this hearing and look forward to the testimony. I yield back the balance of my time.

Mr. HALL. I thank the chairman for his time and his good remarks.

I recognize at this time the former, long-time, very vererable chairman of this committee, John Dingell, 5 minutes.

Mr. DINGELL. Thank you, Mr. Chairman and I commend you for holding this important hearing on the administration's Clear Skies Initiative.

In July 2003, we last met to discuss this same legislative program. Since that time, there have been a number of key developments that affect both the wisdom and the necessity of entertaining extensive amendments to the Clean Air Act at this time. I am hopeful that this hearing will provide us with an opportunity to explore these developments and to gain a better understanding of whether moving forward in this area continues to make sense. I am troubled about the lack of information on this matter and intend to explore those questions today. I must confess that I am not convinced at this particular time that moving forward with legislation is a good idea.

As an initial matter, we suffer from a lack of reliable information regarding the options available to the committee. Before we begin to seriously consider substantial changes in the Clean Air Act, we need advised information from the Environmental Protection Agency, EPA that relates to the complete range of legislative possibilities including leaving the existing Clean Air Act in place.

At our last Clean Skies hearing nearly 2 years ago, I quoted one of our witnesses today, Mr. Jeffrey Holmstead as saying, "This sort of analysis that we are showing you today is result of months, and months, and months of staff work and we have no intention of doing that kind of work on other legislative proposals." As I mentioned at that time, such an approach to information sharing does not bode well for a thoughtful and thorough inquiry into what changes, if any, need to be made in the Clean Air Act.

Last week in advance of the hearing, I sent a letter to the two witnesses appearing before us today and reiterated my position that before we begin to work, we should look seriously at the changes to the Clean Air Act—that we would need to analyze a range of multi pollutant programs and not just this one here.

Since EPA has recently finalized important Clean Air Act rules using the authority of the existing Clean Air Act, I noted that EPA should include those rules in its analysis of what would happen without extensive amendments to the Clean Air Act. That way, a fair comparison could be made between the existing act and the changes sought by the administration and others.

I noted that because the administration's bill relaxes key provisions of existing law, the effect of these changes should be projected as well. Anything less will result in an one-sided analysis and a situation where the committee does not have full information upon which it may predicate its judgments.

Finally, given that EPA finalized its own proposal using state-of-the-art models, I asked that the same models be used to analyze other proposals so that direct comparisons are available to everyone and we are not compelled to compare apples and oranges to arrive at a curious decision that may perhaps only be described best as fruit salad. Only then can we fully and truly evaluate the relative merits of the administration proposal.

As I noted in my letter, I remain highly skeptical about the need for extensive reworking of the Clean Air Act. The compromise we forged in 1980 has proven to be a sound one, one that balances environmental needs and economic viability. We worked hard on that legislation, as many will recall, for many, many months, and well into the night and sometimes into the next day in our attempts to develop something that all parties could agree upon. I will not support diverging from that compromise unless there is no question that the result will be better in all respects. Better for the environment, better for our energy uses, and better for our economic future. And a better and simpler policy that provides more certainty and rationality for everyone.

At this time, I am afraid that we are a long way from that goal. I look forward to this hearing and learning more about this important topic at future hearings and I thank you for your recognition, Mr. Chairman.

Mr. HALL. I thank the chairman.

At this time, I recognize, Mr. Murphy, the gentleman from Pennsylvania.

Mr. MURPHY. Thank you, Mr. Chairman and thank you also for holding this important hearing on Clear Skies Initiative.

Although we have not been able to get the consensus on moving these forward on the other side of the hill, I do believe we have a lot of work that we have to continue to take the lead on.

Like many other districts, my district is one that has some problems with this, although sadly, some of the problems, many of the problems that have come with non-attainment designation don't even originate in the counties I represent and quite frankly, don't even originate in Pennsylvania. For this reason, it is a concern that even though our areas are in non-attainment and it affects our ability to do manufacturing and industry work, it is something that

comes from farther away and I believe it is something that we need to address in this Clear Skies Initiative to work on employment in this Nation.

But ultimately, this is also a public health issue and that is where I am pleased that we are moving forward in this, Mr. Chairman, because it is vitally important. I recognize that moving forward more progressively on Clear Skies is a way of saving millions of dollars in healthcare costs, perhaps even more and for that reason, I am eager to hear some of the testimony and some of the actions that we can move forward on.

Thank you, Mr. Chairman.

Mr. HALL. I thank you and at this time recognize the gentleman from California, Mr. Waxman.

Mr. WAXMAN. Thank you, Mr. Chairman.

Today this committee is holding only its second hearing in 3 years on the President's proposal to change the Clean Air Act. Congress has passed major amendments to the Clean Air Act of 1970 just twice, in 1977 and 1990. Representative Dingell and I are the only two members of the committee who were around for both the 1977 and 1990 amendments and we know how hard the committee worked and how many hundreds of hours of hearings and markups it took to pass those landmark laws. And certainly those who were there for the 1990 Clean Air Act revisions had firsthand experience of how much work we put into it.

The legislation we are considering today is fundamentally different than the 1977 and 1990 amendments. Those laws strengthen the Clean Air Act and brought clean air to millions of Americans. The President's proposal I believe undermines the Clean Air Act and will increase pollution and delay clean up efforts.

The President, its sponsors, and big power plants and chemical companies want Americans to believe that their proposal will clean up the air. In reality, this bill will dismantle one of the most effective environmental laws ever adopted. The result will be decades of dirtier air, tens of thousands of unnecessary illnesses and premature deaths, and ongoing damage to lakes, rivers, and forests. I support clean air; that is why I oppose the President's proposal.

The Clean Air Act says that the air should be healthy for people to breathe. Areas that fail to meet the health based air quality standards must take steps to reduce pollution over a reasonable timeframe. The President's proposal amends the Clean Air Act to extend the existing timeframes for cleaning up the air in many areas, but it does not require them to do anything, so people will breathe unhealthy air for years longer if this bill passes.

The Clean Air Act requires old power plants to adopt modern pollution controls when they upgrade. The President's proposal removes this requirement allowing plants with no pollution controls at all to keep on polluting. The Clean Air Act allows downwind States suffering from pollution from beyond their borders to petition EPA to require upwind reductions. The President's proposal dismantles this, making it almost impossible for downwind States to obtain any relief.

The Clean Air Act has been successful in part because it provides multiple tools for tracking air pollution and for tackling the problem of how to reduce it. This bill would eliminate proven and effec-

tive tools such as enforceable deadlines, State authorities, and technology based standards. In fact, using its authorities under the existing law, EPA has already required through regulation almost all of the emissions reductions the President claims the bill will provide.

This proposal is not about clean air, it is about letting polluters off the hook.

Thank you, Mr. Chairman.

Mr. HALL. I thank the gentleman.

The Chair recognizes Mr. Shimkus of Illinois.

Mr. SHIMKUS. Thank you, Mr. Chairman and thanks for holding this hearing.

I have great respect for my friend from California and there has been great success in environmental standards.

What this debate now is about is bringing some sense to the different components of having a good energy portfolio and monitored and being constricted by the old rules. One of the greatest things they did was the cap and trade system for sulfur. And it has been very, very successful. And why has it been successful? Because it incentifies new abilities for people to clean the sulfur out of emissions and then they got benefits from it. And all Clear Skies does is move that same provision into the other emmittants.

And that is why I am very excited about this proposal. We have—because there has been a down side with the Clean Air Act and that has been thousands of coalminer jobs in Southern Illinois. It has also been a one fuel policy that this country's had that has caused natural gas prices to skyrocket. Now we have high skyrocketing natural gas prices. We cannot get liquefied national gas in on the coast because the environmentalists don't want the L&G facilities there. So if we want a balanced energy program and clean air, the Clear Skies is a great way to go. And so I am all encouraged and look forward to working very diligently for it.

Two real world instances. We have two new coal generating plants on the board in Southern Illinois. Now I would ask my friends, what would you rather have, a 40-year-old coal generating facility that may have been grandfathered or would you rather have new technology and new plants with higher standards and new technology? And I think the answer is clear. You are going to get a better burn, you are going to get better generating capacity, and you are going to have cleaner air because they are going to reap financial benefits because of the cap and trade provisions.

So the time for this legislation has come. I am glad it is now right after the Energy Bill. They are—they already go hand and hand and I look forward to moving the President's legislation forward.

I yield back to balance my time.

[The prepared statement of Hon. John Shimkus follows:]

PREPARED STATEMENT OF HON. JOHN SHIMKUS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Thank you Mr. Chairman.

America's air has become markedly cleaner in the 35 years since the Clean Air Act was passed in 1970. Mercury emissions, which reached a peak in the 1960's, have continually decreased. We will continue to do more to improve air quality; how-

ever, we need to consider the most efficient and productive way to achieve the desired result.

Existing law is now a hodge-podge of overlapping and conflicting regulations, often held up in legal battles, and fails to provide consistency, clarity or certainty. This process makes achieving cleaner air more complicated and costlier, while at the same time delaying improvements in air quality, and costing many people in my home state of Illinois, valuable jobs. The mining industry in Illinois was once a vibrant industry with over 14,000 jobs only 15 years ago. That was before the Clean Air Act amendments of 1990. Today, there are only a little over 3,000 mining jobs. The future of the Illinois coal industry can be bright again, if we provide them with the regulatory certainty provided under the Clear Skies plan.

Clear Skies provides a balance between our environmental and our energy policies. Not finding a balance between these 2 issues is one of the biggest reasons while natural gas prices are so high. The government forced the use of natural gas for years, without thinking of the potential impact on prices.

Clear Skies is significantly better for the environment than the existing Clean Air Act because it provides predictably that significant pollution reductions will occur and certainty as to when they will occur. The existing Act cannot guarantee either result.

The cap and trade program in Clear Skies has shown it can work with the Acid Rain program, reducing SO_2 emissions faster and at far lower costs than anticipated. The cap and trade program gives states the flexibility they need to meet our clean air goals.

The way to achieve real emission reductions is through legislation, not agency regulations. Because with regulations, we get litigation. And with litigation, we get delays. Clear Skies will bring emission reductions sooner than current law, while at the same time keeping our economy moving forward.

Thank you.

Mr. HALL. Okay. Mr. Engel.

Mr. ENGEL. I am sort of in the middle of two microphones, Mr. Chairman.

Thank you very much for giving our subcommittee the opportunity to consider the President's proposal Clear Skies. I have been having a balancing act all day between this subcommittee and the telecom subcommittee of our committee in which I serve. They are holding simultaneous hearings so I apologize in coming in and coming out.

I want to welcome EPA Assistant Administrator, Jeffrey Holmstead and James Connaughton, Chairman of the White House Council on Environmental Quality to our subcommittee today.

The adoption of the Landmark Clean Air Act in 1970 and its updated provisions in 1990 were significant because for the first time, Congress set National environmental standards to protect our environment and citizens from the harmful effects of air pollution.

Through key environmental attainment deadlines and census for smog reduction and empowerment of State and local Government to take control of their pollution problems, real progress was made. We obviously still have more work to do. It has been estimated that over 25,000 people die each year prematurely from power plant pollution. Additionally, power plant emissions are responsible for 38,000 heart attacks, over 3 million lost work days, and more than half a million asthma attacks.

The last health consequence is particularly troubling to me. Today over 7 million kids suffer from asthma, including two of my own, and the rates of asthma affliction keep going up so it is clear we have to continue the fight for environmental health and safety.

I am willing to have an open mind on this bill. I appreciate Mr. Connaughton contacting me and coming to my office to discuss Clear Skies and to answer many of my questions. But what trou-

bles me is I am told that this proposal only significantly extends communities deadlines to responsible reduce pollution, but also undermines State's abilities to confront pollution problems caused by industry emissions both near and far away. I would be willing to hear if that is not the case.

My own State of New York has utilized both Sections 1 to 6 and new source review statutes to effectively and significantly reduce our exposure to pollutant sources. It seems to me logically that eliminating those tools is not progress and certainly will not result in clear skies for New York.

Furthermore, I worry about a one size fits all approach to pollution control. There is no reason to essentially apply the same cap and trade system to sulfur dioxides, nitrogen oxides, and mercury. In the first place, the Cap and Trade Program is not an adequate substitute, I believe, for all the Clear Air Act requirements.

And second, it is not appropriate and unsafe to allow plants to buy emissions reductions credits rather than install mercury emissions controls as mercury deposits locally is toxic and could result in concentrations of mercury contamination known as hot spots. These concentrations of mercury are known to result in birth and developmental defects for children 40,000 of whom are born each year in New York and cardiovascular and immune system problems in adults. This is simply not acceptable.

In 2000, the EPA recognized that mercury was appropriate and necessary to be regulated and determined that plants should install the strictness emissions control technology possible to protect against excessive mercury emissions. In March, the agency took a giant step backwards with the issuance of their troubling mercury rule which both delisted mercury from a list of pollution sources subject to the strict pollution controls and established the Cap and Trade Program.

New York, along with a number of other States, sued EPA over both issues. Notably both the Government Accountability Office and EPA Inspector General have also issued reports deeply critical of the way in which EPA developed the rule. I welcome the opportunity to open the debate on how to best improve our environment.

The Senate Environment and Public Works Committee which have had over 24 extensive hearings on multi-emissions legislation since 1998 and at the end of which could not muster a majority to support the Clear Skies proposal has in many instances demonstrated a strong commitment toward crafting and proven environmental standards. We must craft legislation that strengthens and expands our current policies without undermining its most fundamental protection.

Again, I am willing to listen. I know there are answers to some of my questions and perhaps I can be convinced but I thought it would be best for me to put my concerns on the record and I eagerly await to hear what the gentlemen have to say.

Thank you, Mr. Chairman.

Mr. HALL. I thank the gentleman and recognize the gentleman from Idaho, Mr. Otter.

Mr. OTTER. I will waive, Mr. Chairman.

Mr. HALL. The Chair recognizes Mrs. Wilson, the young lady from New Mexico.

Ms. WILSON. I will waive as well, Mr. Chairman.

Mr. HALL. I accept all waivers.

The Chair recognizes Mrs. Solis, the young lady from California.

Ms. SOLIS. Thank you, Mr. Chairman and good afternoon.

Thank you for holding this important hearing, and I welcome Mr. Holmstead and Chairman James Connaughton. I appreciate your being here this afternoon. I am very concerned about clean air as it relates to our public health.

More than 159 million people live in areas that do not meet attainment for ozone standards and many of these individuals that are affected tend to be minority communities. In fact, more than 70 percent of Latinos and African Americans live in counties that have dirty air, high levels of air pollution; 5.5 million Latinos live within 10 miles of coal fired power plant and 68 percent of all African Americans in the U.S. live within 30 miles of a coal fired power plant, the distance within which the health impacts are more acute. Latino children have high rates of asthma, more than 2 to 3.5 times that of non-Latino white children. Death rates from asthma among African Americans at 2.5 times higher rates than white. Nationwide, African Americans are rushed to the emergency room with asthma attacks three times more than whites.

If implemented and enforced, the existing Clean Air Act could help remedy these problems. But rather than fully implement and enforce existing law, the administration is pushing forward what I believe is one of the biggest gifts yet to corporate polluters, Clear Skies.

In 1990, the Clean Air Act amendments risk based processes were implemented to regular air toxins. One such toxic emitter is industrial boilers like those used in refineries, chemical plants, and manufacturing facilities which emit hydrogen chloride, lead, arsenic, and mercury.

Clear Skies, as proposed by President Bush, would exempt industrial boilers from existing standards on all of these toxic emissions if the facility chooses to accept weaker regulations on nitrogen oxide, sulfur oxides, and mercury. The Clear Skies proposal weakens regulations and ignores release of toxic emissions like lead and arsenic. As a result of President Bush's proposal, there are likely to be 14,000 more lost days of work, and 175 more cases of bronchitis in Los Angeles County, 574 more heart attacks in Cook County, Illinois, and 160 more people suffering from asthma in Franklin County, Ohio.

Clear Skies should really be called, in my opinion, "Dirty Skies" because it weakens existing law and worsens our air quality and harms the public heath, in particular, low income communities and communities of color. I urge my colleagues to take this issue very seriously, as I do. The potential damaging impacts of Clear Skies is one that will be felt for many generations. It is our responsibility to provide them with air that is clean and an environment that is healthy and thriving.

I hope that the gentlemen that are sitting before us will be able to address some of the questions that I have regarding the implementation of this proposal.

Thank you.

Mr. HALL. I thank you.

[Additional statement submitted for the record follows:]

PREPARED STATEMENT OF HON. MICHAEL C. BURGESS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman, I would like to thank you for holding this important hearing.

I can't think of a better time to hold a hearing on clean air. My Congressional District, like the Chairman's, is located in the Dallas-Fort Worth Metroplex in North Texas. Each summer the Metroplex faces a serious public health problem in the form of ozone.

The hot Texas air combines with Volatile Organic Compounds and nitrogen oxides to form ground level ozone, which causes health problems for our elderly and children, and especially those with asthma.

I believe that clean air will be one of the North Texas region's most important and challenging issues over the next decade. I support efforts to clean up our air—clean air is one of the most important legacies that we can leave our children.

In North Texas, there is a significant commitment to clean the air. The EPA, the State of Texas, the Cities of Fort Worth and Dallas, and the North Texas Clean Air Coalition, which is comprised of the North Texas Council of Governments and community leaders, are all working together to improve air quality in the North Texas region. They've done a good job so far—North Texas has grown rapidly over the last decade and the degree of air pollution has not increased, and has even improved.

The Dallas-Fort Worth Metroplex has been designated as in "moderate" non-attainment under the recently announced 8-Hour ozone designations, with an attainment date of 2010. This is an improvement over its 1-hour ozone designation, when Dallas-Fort Worth was classified as in "serious" non-attainment. I am pleased about the progress we have made over the last few decades on cleaning up our air, but there is a lot of work still to be done.

The Clean Air Act has helped to improve our air quality since it was enacted, but I believe that the time is right for Congress to examine whether or not it makes sense for the future.

The complexity alone makes it difficult for states and localities to comply. I do not believe that we should let states and cities "off the hook" for cleaning the air, as some have alleged.

But I think that it makes common sense to allow states and cities to spend their resources on cleaning up the air rather than complying with unnecessarily complex federal laws and regulations.

And, as a former member of the Transportation and Infrastructure Committee, I am also concerned about the transportation conformity provision in current law.

In conclusion, Mr. Speaker, I'd like to welcome Chairman Connaughton and Administrator Holmstead and thank them for testifying before us today. I look forward to learning more about the President's Clear Skies Initiative.

Mr. HALL. Now we get to the main feature. We have two gentlemen here that are going to testify for us and answer questions for us. We first have Jeffrey Holmstead who is in charge of all activities in the EPA's Office of Air and Radiation. He was Associate Council to the President in the White House, from 1989 to 1993 for George H. W. Bush. From 1993 until his EPA appointment, he practiced law at the firm of Lathem and Watkins. He is a native of Colorado, which I understand is a State made up of people from Iowa that don't want any more Texans. Is that right? And he graduated, unlike the Chair, first in his class at Brigham Young University with degrees in Economics and English, and he is a graduate of Yale Law School. I recognize you hopefully for about 5 minutes.

Mr. HOLMSTEAD. Mr. Chairman, if I could ask——

Mr. HALL. You can. And we will go with Mr. Connaughton first. Is that what you want to do? They just told me. They said we are going to start with Mr. Connaughton first: I said, "no we are not."

Mr. HOLMSTEAD. Well we will defer to you but my testimony makes more sense after he gives his.

Mr. HALL. We recognize Mr. Connaughton, who is a very intelligent advisor to the President, as well as Director of White House Office on Environmental Policy and he graduated high up in his class. He must have been in the same class with Mr. Holmstead because he graduated second in his class, magna cum laude at Yale University and also graduated from the Northwestern University School of Law. We all would recognize you for whatever time you take.

STATEMENTS OF JAMES L. CONNAUGHTON, CHAIRMAN, COUNCIL ON ENVIRONMENTAL QUALITY, EXECUTIVE OFFICE OF THE PRESIDENT; AND HON. JEFFREY R. HOLMSTEAD, ASSISTANT ADMINISTRATOR FOR AIR AND RADIATION, ENVIRONMENTAL PROTECTION AGENCY

Mr. CONNAUGHTON. Thank you so much, Mr. Chairman.

And it is a pleasure to be here before members of the subcommittee. And for those of you with whom I was able to meet before this hearing, I appreciate that and I do look forward to meeting with those of you whom I have not yet had a chance to sit down privately.

I very much appreciate the opportunity to talk about and to strongly urge the passage of the President's Clear Skies Initiative. President Bush is dedicated to providing our families and our children with a healthier, more economically vibrant and secure future. Important to achieving that future is bringing proven innovative tools to the task, and Clear Skies legislation is just such a proven innovative tool. It will mean healthier citizens, stronger communities, more affordable and reliable and secure energy, and more vibrant wildlife habitat across America.

It will do this by significantly expanding the Clean Air Act's most innovative and successful program in order to cut power plant pollution of sulfur dioxide, nitrogen oxide, and for the first time mercury by an unprecedented 70 percent in two phases. These cuts in pollution will provide substantial health benefits, prolonging the lives of thousands of Americans annually and improving the conditions of life for hundreds of thousands of people with asthma, other respiratory illnesses, and heart disease. As the son of a pediatrician who is also a chronic asthmatic and someone who I had to take to the hospital usually about once a month or every 6 weeks, my passion for this policy is deeply personal.

Clear Skies will produce the benefits, these health benefits with greater certainty by imposing a mandatory permanent multi-pollutant cap on emissions from more than 1,300 power plants nationwide, reducing pollution by as much as 9 million tons annually at full implementation. Now your utilities will achieve this by spending more than $52 billion to install, operate, and maintain new primarily coal pollution abatement technology on both old and new power plants. That is twice the expenditure that was undertaken to achieve the ambitious goals of the Acid Rain Trading Program in 1990.

Clear Skies will require only a few dozen Government officials to operate it and will assure compliance through a system that is easy to monitor but more importantly is easy to enforce.

Accordingly, the Clear Skies cap and trade approach will give our States the most powerful, efficient and proven tool available for meeting the new tough health based air quality standards for fine particles and for ozone. At the end of last year, EPA completed the process of informing over 500 counties that they either do not meet or that they contribute to another county not meeting new standards. That relatively straightforward act has now triggered a very complex process that will lead later this year to a frenzy of intrastate negotiation and conflict, interstate negotiation and conflict, Federal and State negotiation and conflict, State and citizen petitions, lawsuits, and heightened uncertainty and energy markets producing an avoidable but negative impact on local investment, jobs, and consumer energy bills. It is not a pretty picture. This is a chart that gives you an example of the numerous steps ahead of us, each of which is a field day for lawyers.

Now as a former Governor, the President personally experienced and understands the complexities of developing and implementing State plans to meet air quality standards. That is why he places a premium on practical and common sense solutions. Clear Skies, in conjunction with the Bush Administration's new rules cutting diesel engine pollution by more than 90 percent, will provide that solution. Most counties will be able to meet the new tougher air quality standards without having to take local measures beyond the Clear Skies power plant reductions and the diesel ryles. For the relative few that remain, their burden will be substantially lighter and their likely challenge a local one. This simple approach could save governments and the private sector tens of millions of dollars in negotiations, litigation and otherwise inevitable delay in meeting the air quality standards.

Now I would like to show you the attainment maps. These are the 350 counties monitored that have to meet these new ozone and fine particle standards. The next chart will show you what happens after the new diesel rules, current Clean Air Act programs and the Clear Skies legislation. Most of those counties will meet the standards. And by the way, most of them will meet them on time without having to take local measures.

Now that is how the program will work so we will attain the standards, but let us talk about what it means to our communities. Clear Skies will help keep communities together. The up front assurance that legislation would provide of meeting air standards will give communities the certainty that they need to keep and attract manufacturing jobs in the places where generations of their families currently live, work, play, and pray. The absence of such certainty could exacerbate the break up of communities experiencing the exodus of industrial jobs to either "greenfields" locations in the United States or, even more consequentially and more often these days, overseas.

If we could go back to the previous slide. If you look at the non-attainment areas, this is industrial America. These are the urban communities that we care about. Now by cleaning up these communities with certainty through legislation, it allows them to stay together and re-attract the new investment that they so desperately need. It allows us to take our "brownfields" legislation that this

committee and the Congress so strongly endorsed and provide for new reinvestment in those "brownfields" for new good paying jobs.

Clear Skies is also going to make these communities stronger by helping to keep energy affordable, reliable, and domestically secure for their businesses and homes. Now that is particularly important to those least able to afford their energy needs. The market based trading approach will substantially cut the overall cost of compliance that is passed on to consumers and to fixed income shareholders. In addition, the specific cap levels in Clear Skies which have been endorsed by organizations such as the U.S. Conference of Mayors and the National Association of Counties are calibrated to encourage utilities to put controls on coal rather than switch to natural gas in order to comply. That minimizes the overall impact on energy prices. Forcing fuel switching from coal to natural gas is a tool of compliance by contrast maximizes the costs of compliance.

This chart gives you a picture of coal, what happens to coal under Clear Skies. You see a steady increase in the rise of coal which is our most affordable, abundant, and domestically secure energy source. If we proceeded with other measures where there is less certainty about how they can comply, we will see switching out of coal into natural gas. And many of these—many members of the subcommittee have communities that are currently under a great burden in terms of their natural gas prices.

Finally, Clear Skies will help our ecosystems and wildlife thrive. It will eliminate chronic acidity in the Adirondacks which was the purpose of the Acid Rain Trading Program and virtually eliminate it in other Northeastern lakes. It will improve long-term conditions in streams, rivers, lakes, and bays, and it will vastly improve visibility in many of our parks and other scenic locations.

Now several members of the subcommittee have raised the questions about additional modeling and additional information and I would just like to indicate to the subcommittee that we will be providing that. Administrator Johnson has a letter going up to the Senate and we will share that if I could put that into the record, Mr. Chairman, we will be sharing that with the subcommittee as well.

Mr. HALL. No objection.

Mr. CONNAUGHTON. So Mr. Chairman, for all of these reasons, a broad array of State, regional, and local officials, as well as unions and non-Governmental organizations have endorsed the approach to meeting the air quality that Clear Skies delivers. We, therefore, look forward to the Congress delivering Clear Skies Legislation.

Thank you, Mr. Chairman.

[The prepared statement of James L. Connaughton follows:]

PREPARED STATEMENT OF JAMES L. CONNAUGHTON, CHAIRMAN, COUNCIL ON ENVIRONMENTAL QUALITY

Mr. Chairman and members of the subcommittee. I appreciate the opportunity to appear before you today to strongly urge passage of the President's Clear Skies Initiative. President Bush is dedicated to providing our families and children with a healthier, more economically vibrant and secure future. Important to achieving that future is bringing proven, innovative tools to the task. Clear Skies legislation is just such a tool, and means healthier citizens, stronger communities, more affordable, reliable and secure energy, and more vibrant wildlife habitat across America.

Clear Skies will significantly expand the Clean Air Act's most innovative and successful program in order to cut power plant pollution of sulfur dioxide, nitrogen oxides and, for the first time, mercury by an unprecedented 70 percent in two phases. These cuts in pollution will provide substantial health benefits, prolonging the lives of thousands of Americans annually, and improving the conditions of life for hundreds of thousands of people with asthma, other respiratory illnesses, and heart disease.[1] As the son of a pediatrician who is also a chronic asthmatic, my passion for this policy is deeply personal.

Clear Skies will produce these health benefits with greater certainty by imposing a mandatory, permanent, multi-pollutant cap on emissions from more than 1300 power plants nationwide, reducing pollution by as much as 9 million tons annually at full implementation. Utilities will achieve this by spending more than 52 billion dollars to install, operate and maintain new, primarily clean coal pollution abatement technology on both old and new power plants. Clear Skies will require only a few dozen government officials to operate and will assure compliance through a system that is easy to monitor and easy to enforce.

Accordingly, the Clear Skies cap and trade approach will give our states the most powerful, efficient and proven tool available for meeting our new, tough, health-based air quality standards for fine particles and ozone. At the end of last year, EPA completed the process of informing over 500 counties that they either do not meet or that they contribute to another county not meeting the new standards. That relatively straightforward act has now triggered a very complex process that will lead later this year to a frenzy of intrastate negotiation and conflict, interstate negotiation and conflict, federal-state negotiation and conflict, state and citizen petitions, lawsuits, and heightened uncertainty in energy markets, producing an avoidable and negative impact on local investment, jobs and consumer energy bills. Not a pretty picture.

As a former governor, the President personally experienced and understands the complexities of developing and implementing state plans to meet air quality standards. That is why he places a premium on practical, common sense solutions. Clear Skies, in conjunction with the Bush Administration's new rules cutting diesel engine pollution by more than 90 percent, provides that solution. Most counties will be able to meet the new standards without having to take any new local measures beyond the Clear Skies power plant reductions. For the relative few that remain, their burden will be substantially lighter and their likely challenges local ones. This simple approach could save governments and the private sector tens of millions of dollars in negotiations, litigating and otherwise inevitable delay in meeting air quality standards.

Clear Skies will also help keep communities together. Up front assurance of meeting air standards will give communities the certainty they need to keep and attract manufacturing jobs in the places where generations of their families currently live, work, play, and pray. The absence of such certainty could exacerbate the breakup of communities experiencing the exodus of industrial jobs to either "greenfields" locations in the United States or, even more consequentially, overseas.

Clear Skies will also make communities stronger economically by helping to keep energy affordable, reliable, and domestically secure for their businesses and homes—particularly important to those least able to afford their energy needs. The market-based trading approach will substantially cut the overall cost of compliance that is passed on to consumers and shareholders. In addition, the specific cap levels in Clear Skies—endorsed by organizations such as the U.S. Conference of Mayors and National Association of Counties—are calibrated to encourage utilities to put controls on coal rather than switch to natural gas in order to comply. That minimizes the overall impact on energy prices. Forcing fuel switching to natural gas, by contrast, maximizes it.

Finally, Clear Skies will help our ecosystems and wildlife thrive. It will eliminate chronic acidity in the Adirondacks and virtually eliminate it in other Northeastern lakes. It will improve long-term conditions in streams, rivers, lakes and bays. It will vastly improve visibility in many of our parks and other scenic locations.

Mr. Chairman, for these reasons, a broad array of state, regional and local officials, as well as unions and non-governmental organizations, have endorsed the approach to meeting air quality that Clear Skies delivers. We look forward to the Congress delivering Clear Skies.

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[1] Further detail about these benefits can be found in the materials accompanying this testimony and on the EPA and White House Web sites (www.epa.gov/clearskies and http://www.whitehouse.gov/ceq/clear-skies.html).

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

MAY 26 2005

THE ADMINISTRATOR

The Honorable James Inhofe
United States Senate
453 Russell Senate Office Building
Washington, DC 20510-1004

Dear Senator Inhofe:

I am writing to follow up on the issue of the analyses by the Environmental Protection Agency of various Clear Skies legislative proposals.

Enactment of Clear Skies is a priority for the President and for the Environmental Protection Agency. While EPA's recent rules to control power plant emissions of SO2, NOx and mercury are a good start, they are not a substitute for effective legislation. Earlier this week, the President again directed me to do whatever I can to facilitate Congress' consideration and passage of Clear Skies legislation this year.

As you know, on April 21st, I proposed to direct EPA's Office of Air and Radiation to conduct additional modeling which would provide up-to-date information projecting the economic, public health and environmental effects of four multi-pollutant proposals (specifically S. 131 and S. 150, both introduced in January of this year; S. 843, introduced on April 9, 2003; and the Manager's Amendment introduced by Chairman Inhofe and Senators Voinovich and Bond on March 9th of this year). I indicated that the Agency would use the same models, techniques and assumptions in analyzing each bill and committed to producing this information within a reasonable timeframe.

Over the past few weeks, I have appreciated the opportunity to discuss with each of you, and other members of the Senate Environment and Public Works Committee, your views concerning the need for additional information on various Clear Skies proposals. The information already available to Congress to assess multi-pollutant legislation is more than adequate to inform policy decisions. Prior to my April 21st letter to you, an enormous amount of information was made available to Congress and the public regarding Clear Skies and other multi-pollutant legislation. EPA has provided more technical information on this legislation than any other legislative proposal to amend the Clean Air Act. However, in these discussions, some Members have expressed a strong interest in obtaining modeling that includes updated assumptions and further air quality analysis.

Therefore today, I am directing the EPA Office of Air and Radiation to conduct analysis of the four proposals outlined in my April 21, 2005 letter, in the manner outlined in that letter. I am also requesting that EPA staff update analysis of the Clear Skies Act of 2003 in the same manner as specified in the letter to Senator Carper. Additionally, I am directing staff to perform the necessary analytical work in order to analyze each bill for the year 2020 as well as the previously described output years of 2010 and 2015. I am hopeful that this information will help to move this debate back to the merits of the legislation. The updated and new analysis will be provided to Congress within a reasonable timeframe and with a reasonable expenditure of Agency resources.

The additional output year and analysis will be accomplished by performing air quality modeling analysis for each of the three run years using Community Multiscale Air Quality model (CMAQ) for fine particles and Comprehensive Air Quality Model (CAMx) for ozone. These models will be run for two of the five legislative proposals S. 131 and S.843. The Agency will then conduct detailed benefits analysis using the Environmental Benefits Mapping and Analysis Program (BENMAP) for these run years. Information for other legislative proposals for which CMAQ and CAMx is not directly run will benefit from additional data and certainty provided by the new analysis as well as consideration of analytical work that we have recently completed for the Clean Air Interstate Rule. This more extensive analysis should also assist the Agency in providing very high quality information for all model outputs and allow for further "apples to apples" comparison between all legislative proposals.

Now that our technical work on the CAIR and CAMR rulemaking is complete, EPA should be able to complete all the work outlined in this letter within 10 to 12 weeks. I intend to provide the information to Congress as soon as reasonably possible and will work closely with the committees of jurisdiction over Clean Air Act legislation.

Getting Clear Skies legislation to the President's desk is of utmost importance. I am confident that this new updated and additional information will help us reach this goal. Should you require further information on this effort, please contact Diann Frantz in the Office of Congressional and Intergovernmental Relations at (202) 564-3668.

Sincerely,

Stephen L. Johnson
Administrator

Mr. HALL. Thank you.

Now I recognize Mr. Holmstead for 5 minutes with the same request that you stay within the 5 minutes and then we will ask you questions.

STATEMENT OF HON. JEFFREY R. HOLMSTEAD

Mr. HOLMSTEAD. I will do so, Mr. Chairman, thank you.

It is a pleasure to be here and to have the opportunity to testify before this subcommittee.

As I think many of you know, this is the very room where much of the hard work on the 1990 amendments took place and frankly, I would not mind if a little of that magic rubbed off on us today and we could really move forward on this important proposal.

As Chairman Connaughton just testified, the President's Clear Skies Initiative would build on the Clean Air Act and ensure that we continue to clean up the Nation's air and protect the public health.

In my oral statement, I would like to address just two major issues. One, why do we need the legislation, which I think is a question that Mr. Engel and Mr. Dingell and others asked. And second, why does our proposed approach for reducing mercury emissions make sense. As several of you have mentioned, the Agency has recently issued what we call the Clean Air Interstate Rule and the Clean Air Mercury Rule which if they are implemented as designed will achieve much of the pollution reduction that we would get under Clear Skies. But these regulations are limited in both scope and function. Importantly, the CAIR rule applies to only 28 States and the District of Columbia. That is because under the authority we have under the current Clean Air Act, those were the only States we could cover under the authority. So unlike CAIR, Clear Skies would be national in scope and would achieve additional emission reductions in the west principally but also in the east.

CAIR and the Clean Air Mercury Rule are also inherently more uncertain over time. They are regulations, not law, and as final regulations, they are subject to legal challenge and litigation. I would say that we have done everything we can to make sure that they are legally defensible. But the only other time the agency tried to use this regulatory authority there were many lawsuits, the regulations that we tried to implement were delayed and, in fact, were paired down as a result of some of those lawsuits.

Aside from the delays that could result from judicial action, CAIR and the Clean Air Mercury Rule will also provide less certainty for private investment and planning for compliance with regulations. Our experience with Acid Rain Program which was enacted in this room tells us that when incentives are built into the law and rules are clear for affected industries, sources will comply in advance of the actual deadlines.

In summary, we think that by far the better thing to do from a public policy perspective is to provide certainty to the environment, to State and local agencies, to citizens who need the clean air, and to be fair to industry and provide them with the regulatory certainties so that they can go out and with certainty to invest the billions of dollars that will be necessary to achieve our clean air goals.

If I could, Mr. Chairman, take a minute just to talk about one of the more controversial issues, which is mercury. And I hope that we have a chance to talk more about this because over the last 18 months or so, the United States Environmental Protection Agency has conducted the most comprehensive study ever of how Americans are exposed to mercury and in particular, the role that coal fired power plants play in that exposure. And I need to make just a couple of points if I can.

First, Americans are exposed to mercury mainly through eating fish and shellfish that contain methyl mercury. Ninety percent of the fish and shellfish that we eat are from the ocean environments and nearly 80 percent of those are imported from waters far beyond our borders. Because the U.S. represents just a few percent of global manmade mercury emissions, we cannot expect a quick fix to the global mercury problem. But we recognize that although the vast majority of mercury exposure comes from ocean fish, there are at least some people who eat significant amounts of fresh water fish here that are caught locally and this is something we have looked at very carefully.

[Slide.]

If I could show you just a couple of slides. This shows of all the mercury that gets deposited in the United States, it is about 144 tons a year that gets deposited within our borders. Of that, you can see the little slivers at the bottom that 11 tons and 12 tons represent the amount that emitted in the United States that gets deposited here. So 84 percent of what is deposited in the United States comes from outside of our borders. Only about 16 percent is emitted in the United States and gets deposited here and power plants represent about 11 of the 144 tons, or about 8 percent. Now if you look on the right hand side, we have blown up the power plant portion. And so right now power plants deposit 11.1 tons. And under the President's proposal, that would be reduced by about 70 percent down to 3 tons by 2010. So it represents a very small portion.

But we also realize that it is not correct simply to look at it on an aggregate basis because there are certain areas that receive higher amounts of pollution of this deposition than others.

[Slide.]

If I can go to the next slide. So this tells you total deposition. The next slide actually shows mercury deposition from all sources in 2001 based on the most recent state of the science models from our office in research and development. It is hard to see the legend there but the darker colors represent where the greater deposition occurs.

So look at this map and then go to the next map and keep this one in your mind. This is mercury deposition from all sources in the U.S. and Canada. So you can see this just gives you the distribution what I showed before that about—it is only about 16 percent comes from U.S. sources. Now I don't mean to suggest that we have control over Canadian sources but because of the way our models work, I wanted to show you this map.

[Slide.]

Now let me go to the next slide and that shows you mercury deposition today from coal fired power plants. So they are at subset

and almost exclusively in the eastern part of the United States. That is today.

[Slide.]

Now let me go onto the next slide. This shows you what happens under the rules that we recently promulgated which are roughly equivalent to Clear Skies. So we go from having really very, very little impact—and I would be happy to provide you more information—to something we have been trying to explain all along that the President's proposal gets the greatest reduction in the places where you need it most. And so we only have about one microgram per meter here that comes from power plants.

[Slide.]

Now let me—if you look at this slide and then go to the next slide which again shows you that even with those dramatic reductions of over 70 percent from U.S. coal fired power plants, this is a rough estimation of what things—if we hold other emissions constant, this is what it will look like in the year 2020. So we believe the President's proposal really does essentially eliminate the problem of mercury deposition from U.S. power plants.

And again, I would be happy to provide any of you with more detailed information. But I know for instance in the State of Maine, which Mr. Allen cares about very much, right now power plants represent about 3 percent of mercury deposition. We estimate it will be about 1 percent of mercury deposition after the President's proposal is put in place.

Overall, the Clean Air Act has been and continues to be a vehicle for great progress but we know we can do better. We believe that Clear Skies would build on proven portions of the Clean Air Act and we look forward to working with this committee to see that it could be enacted into law.

Thank you.

[The prepared statement of Hon. Jeffrey R. Holmstead follows:]

PREPARED STATEMENT OF JEFFREY HOLMSTEAD, ASSISTANT ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY

I. INTRODUCTION

Thank you, Mr. Chairman and Members of the Committee for the opportunity to testify today concerning the President's Clear Skies Act, which would reduce substantially emissions of sulfur dioxide (SO_2), nitrogen oxides (NO_X) and mercury from power plants. Although I am very proud that the Agency has just issued two regulations limiting power plant emissions (the Clean Air Intestate Rule and Clean Air Mercury Rule), legislation would be a more effective, efficient and long-term mechanism to achieve large-scale national reductions.

This country should be very proud of the progress we have already made in cleaning up our air. Since the Clean Air Act was first enacted in 1970, total national emissions of the six most common air pollutants have been reduced 54 percent. Remarkably, this improvement in national air quality has occurred even while, during the same almost 35-year period, the U.S. Gross Domestic Product increased 187 percent, energy consumption increased 47 percent, and vehicle miles traveled increased 171 percent.

The President's Clear Skies Act is the most important next step we can take to continue our progress in providing healthy air and a clean environment for all Americans. Clear Skies would make great strides towards solving our remaining air quality problems in a way that also advances national energy security and promotes economic growth. It would reduce power plant emissions of SO_2, NO_X and mercury by approximately 70 percent from today's levels and do it with more certainty than would current law. Because of the innovative capandtrade approach used in Clear Skies and the legal certainty provided by caps and deadlines set by statute, power

plants would have an incentive to start reducing emissions as soon as Clear Skies is passed, resulting in emissions reductions more quickly than required.

When fully implemented, Clear Skies would deliver tens of billions of dollars in annual health benefits by prolonging thousands of lives and preventing millions of illnesses each year. It would also provide billions of dollars of economic benefits, including saving millions of dollars in health care costs.[1] The added benefit of Clear Skies would virtually assure attainment of the new ozone and particulate matter standards for much of this country, yielding a level of air quality that meets the new, more protective health-based national air quality standards for millions of people. Clear Skies would also virtually eliminate chronic acidity in modeled northeastern lakes, reduce nitrogen loading in coastal waters, and help restore visibility in our national parks and wilderness areas.

Although the Clean Air Interstate Rule (CAIR) and the Clean Air Mercury Rule (CAMR) are very important rules, with significant health and environmental benefits, the country would be even better off if Congress passed the President's Clear Skies Act. Clear Skies would provide more expansive and certain results. Clear Skies would enable us to achieve broader reductions of SO_2 and NO_X emissions because the legislation would apply nationally, while CAIR is limited in geographic scope to 28 states and the District of Columbia. Although CAIR addresses the bulk of power plant emissions of S02 and NO_X, Clear Skies would also reduce SO_2 and NO_X emissions in the West and incorporate the SO_2 program developed by Western states. Based on our experiences with litigation on the NO_X SIP Call versus that on the Acid Rain Trading Program, Clear Skies would provide more certainty for the utility industry, and for state and local air quality planners. Although the NO_X SIP Call is now in place, litigation on this rule delayed compliance, making planning for pollution control installations difficult, raising costs to industry and consumers, and delaying health and environmental benefits. In contrast, the Acid Rain Trading Program, enacted by Congress as part of the 1990 Clean Air Act Amendments, has been almost free of litigation and started on schedule. Compliance has been nearly 100 percent, and the inherent flexibility of the allowance trading program has reduced costs by 75 percent from initial EPA estimates.

As Chairman Connaughton said before me, we strongly urge passage of Clear Skies. Clear Skies gives our states a critical, proven tool for meeting our new air quality standards for fine particles and ozone. We urge you to act soon as the States are now developing their implementation plans.

II. CLEAR SKIES PROVIDES SIGNIFICANT BENEFITS

The heart of Clear Skies is a proven cap-and-trade approach to emissions reductions. Mandatory caps restrict total emissions and decline over time. When fully implemented, Clear Skies would result in a 70% reduction in power plant emissions of SO_2, NO_X and mercury from 2000 levels. Clear Skies would continue the existing national cap-and-trade program for SO_2, but dramatically reduce the cap from 9 million to 3 million tons. Clear Skies would also use a national cap-and-trade program for mercury that would reduce emissions from the current level of about 48 tons to a cap of 15 tons. The legislation would also employ two regional cap-and-trade programs for NO_X to reduce emissions from 2000 levels of 5 million tons to 1.7 million tons.

Although national in scope, Clear Skies recognizes and adjusts for important regional differences in both the nature of air pollution and the relative importance of emissions from power generation. The eastern half of the country needs reductions in NO_X emissions to help meet the ozone and fine particle standards, which generally are not a regional issue in the western half of the county (with the exception of California, which does not have significant emissions from existing coal-fired power plants). The western half of the country needs NO_X reductions primarily to reduce the regional haze that mars scenic vistas in our national parks and wilderness areas, and the nitrogen deposition that harms fragile forests. Recognizing these regional differences, Clear Skies would establish two trading zones for NO_X emis-

[1] Unless otherwise noted, all projections about the costs and benefits of the Clear Skies Act are based on EPA's 2003 analysis of the Clear Skies Act of 2003. The analysis can be found at http://www.epa.gov/air/clearskies/technical.html. To calculate the costs and benefits of Clear Skies, EPA compared the Clear Skies Act of 2003 to a Base Case (Existing Control Programs), which is the typical approach EPA uses in calculating the costs and benefits of Agency rulemakings. The Existing Control Programs reflected implementation of only finalized control programs and the non-road diesel rule as it was proposed in April, 2003; it did not include yet-to-be developed regulations, such as the now final Clean Air Interstate Rule and Clean Air Mercury Rule, or other regulations that may be developed to implement the National Ambient Air Quality Standards.

sions and prohibit trading between the zones to ensure that the critical health-driven goals in the East are achieved.

Clear Skies also recognizes the special visibility protection measures that have been developed by states participating in the Western Regional Air Partnership (WRAP). Clear Skies would essentially codify the WRAP's separate SO_2 backstop cap-and-trade program, which would come into effect only if the WRAP states did not meet their 2018 SO_2 emissions targets.

Finally, Clear Skies requires tough, technologybased new source standards on all new power generation projects and maintains special protections for national parks and wilderness areas when sources locate within 50 km of "Class I" national parks and wilderness areas.

Significant Public Health and Environmental Benefits

The public health and environmental benefits of Clear Skies present compelling reasons for its immediate passage. EPA's 2003 analysis of the President's Clear Skies Act (which did not account for CAIR and CAMR) projected that Americans would experience significant health benefits each year by 2020, including approximately:

- 14,100 fewer premature deaths;
- 8,800 fewer cases of chronic bronchitis;
- 23,000 fewer non-fatal heart attacks;
- 30,000 fewer visits to hospitals and emergency rooms for cardiovascular and respiratory symptoms, including asthma attacks; and
- 12.5 million fewer days with respiratory illnesses and symptoms.

Many of these benefits, as well as the benefits described below, would be achieved by CAIR and CAMR if they are not delayed or blocked by litigation.[2] Clear Skies would lock in the benefits of CAIR and CAMR and provide additional benefits, particularly in the West.

Clear Skies' benefits would far exceed its costs. EPA estimated in 2003 that the monetized value of the health benefits we can quantify under Clear Skies would be $110 billion annually by 2020—substantially greater than the projected annual costs of approximately $6.3 billion. The Agency estimated an additional $3 billion in benefits from improving visibility at select national parks and wilderness areas. These estimates did not include the many additional benefits that were not monetized, such as human health benefits from reduced risk of mercury emissions, and ecological benefits from improvements in the health of our forests, lakes, and coastal waters.

Clear Skies would achieve most of these benefits by dramatically reducing fine particle pollution caused by SO_2 and NO_X emissions, which is a year-round problem. Of the many air pollutants regulated by EPA, fine particle pollution is perhaps the greatest threat to public health. Hundreds of studies in the peer-reviewed literature have found that these microscopic particles can reach the deepest regions of the lungs. Exposure to fine particles is associated with premature death, as well as asthma attacks, chronic bronchitis, decreased lung function, and respiratory disease. Exposure is also associated with aggravation of heart and lung disease, leading to increased hospitalizations, emergency room and doctor visits, and use of medication.

By reducing NO_X emissions, Clear Skies also would reduce ozone pollution in the eastern part of the country and help keep ozone levels low in the western portion of the country. Ozone (smog) is a significant health concern, particularly for children and people with asthma and other respiratory diseases who are active outdoors in the summertime. Ozone can exacerbate respiratory symptoms, such as coughing and pain when breathing deeply, as well as transient reductions in lung function and inflammation of the lung. Ozone has also been associated with increased hospitalizations and emergency room visits for respiratory causes. Repeated exposure over time may permanently damage lung tissue.

Analyzing the Clear Skies reductions, coupled with the decreases associated with the nonroad diesel engine rule and other existing state and federal programs, EPA's 2003 analysis projected that 86% of counties monitoring nonattainment for the $PM_{2.5}$ standard (based on 1999-2001 data) would monitor attainment by 2020, and 91% of counties monitoring nonattainment for the 8-hour ozone standard (based on 1999-2001 data) would monitor attainment by 2020.

Even in the few areas that would not attain the standards, EPA's modeling projected that Clear Skies would significantly improve air quality. Throughout the West, Clear Skies would hold emissions from power plants in check, preserving clean air in high-growth areas and preventing degradation of the environment, even

[2] See explanation in footnote 1 for more detail regarding EPA's 2003 analysis of costs and benefits.

as population, the economy and electricity demand increase. (See Attached Figures 1 and 2.)

Clear Skies would also address mercury emissions from power plants. People are exposed to mercury mainly through eating fish and shellfish that contain methylmercury. While mercury in fish is not an issue for most people, mercury can put a developing fetus or young child's developing nervous system at risk when ingested in sufficiently high quantities. Some recent studies raise a possibility that exposure to methylmercury may attenuate the cardioprotective effects of fish consumption in some populations of men, although other studies have not observed an association. This is a new area of research and these potential effects need to be further evaluated in the context of the known heart-health and developmental benefits of a well-balanced diet that includes a variety of fish and shellfish.

Mercury is released into the environment from many sources. Mercury emissions are a complex atmospheric pollutant transported over local, regional, national, and global geographic scales. As previously indicated, Americans are exposed to mercury through eating fish that contain methylmercury. Of the mercury that falls directly onto the U.S. we estimate that approximately 16% comes from U.S. sources, about half of which is from power plants. This fraction varies significantly across the U.S. (See Figures 3 and 4.) Ninety percent of the fish and shellfish we eat are from the ocean environment; and nearly 80 percent of those are imported. Because the U.S. represents just a few percent of global man-made mercury emissions, we cannot expect a quick fix to the global mercury problem. For the foreseeable future, EPA advises that women who may become pregnant, pregnant women, nursing mothers, and young children carefully observe the joint EPA-FDA Fish Advisory issued last year. We are also committed to working collaboratively with those countries that are the largest sources of airborne mercury to help them reduce those emissions to the global pool. Our actions reduce our contribution to the global pool and promote the technologies so other countries can follow our lead.

Clear Skies will require a 69% reduction of mercury emissions from power plants from 1999 levels. Under Clear Skies, units are projected to install selective catalytic reduction (SCR) and scrubbers to meet their SO_2 and NO_X requirements and take additional steps to meet the mercury reduction requirements, including adding mercury-specific control technologies (such as Activated Carbon Injection). The specific controls we anticipate will be adopted by utilities under the Clear Skies are particularly good at reducing the forms of mercury that are of concern with respect to U.S. deposition. Therefore, we expect U.S. deposition to be reduced faster than emissions.

Not only do the controls tend to reduce the forms of mercury that matter most for reducing U.S. deposition from power plants but many of the mercury emission reductions are projected to result from large units installing these controls. Under the cap-and-trade approach we are projecting that mercury reductions result from units that are most cost effective to control, which enables those units that cannot install controls cost-effectively to use other approaches for compliance. The largest emitting plants are generally more cost-effective to control than small plants and under our cap-and-trade approach, the large plants produce the greatest reductions in the form of mercury that matters most for reducing U.S. deposition. For all of these reasons, Clear Skies is projected to lead to the greatest reduction in power plant deposition where it is the greatest. (See Figures 5 and 6.)

In addition to substantial human health benefits, Clear Skies would also deliver numerous environmental benefits. Nitrogen loads to the Chesapeake Bay and other nitrogen sensitive estuaries would be reduced, reducing potential for water quality problems such as algae blooms and fish kills. Clear Skies would also accelerate the recovery process of acidic lakes, virtually eliminating chronic acidity in all but 1% of modeled Northeastern lakes by 2030, according to our 2003 analysis. The Acid Rain Program has allowed some of these lakes and the surrounding forests to begin to recover. Clear Skies would also help other ecosystems suffering from the effects of acid deposition by preventing further deterioration of Southeastern streams. Finally, Clear Skies would improve visibility across the country, particularly in our treasured national parks and wilderness areas, resulting in projected improvements of approximately two to seven miles in visual range in many areas (based on our 2003 analysis).

Reasonable Costs and Energy Security for Consumers and Industry

The President directed us to design Clear Skies to meet both our environmental and our energy goals. While delivering substantial emission reductions, Clear Skies is not projected to impact electricity prices significantly. Our extensive economic modeling of the power industry looked at a broad array of factors to gauge the effects of Clear Skies on the energy industry—and they all show that cleaner air and energy security can go hand-in-hand.

Clear Skies would maintain energy diversity. With Clear Skies, our analysis indicated that coal production for power generation would be able to grow by 10 percent from 2000 to 2020 while air emissions are significantly reduced. Our analysis showed that the legislation would also have little effect on natural gas prices. EPA's economic modeling for Clear Skies demonstrated that the proposal's emission reductions would be achieved primarily through retrofitting controls on existing plants, where those controls would likely be most cost-effective. Clear Skies' timeframe and certainty enable the power sector to meet aggressive emission reduction targets without fuel switching. This is important not only to power generators and their consumers who want to continue to rely on our most abundant, reliable, affordable and domestically secure source of energy, but also to other consumers and industries whose livelihoods could be hurt by a rise in natural gas prices.

One of the key reasons Clear Skies would be cost-effective is its reliance on cap-and-trade programs. Like the Acid Rain Trading Program upon which it is based, Clear Skies would give industry flexibility in how to achieve the required emission reductions, which allows industry to make the most cost-effective reductions and pass those savings on to consumers. Power plants would be allowed to choose the pollution reduction strategy that best meets their needs (e.g., installing pollution control equipment, switching to lower sulfur coals, buying excess allowances from plants that have reduced their emissions beyond required levels). Like the Acid Rain Trading Program, Clear Skies includes banking provisions, enabling companies to save unused allowances for future use. Banking creates a tangible, quantifiable, economic incentive to decrease emissions beyond allowable levels, which EPA projects will result in significant early benefits due to over-compliance in the initial years, particularly for SO_2. It also leads to gradual emissions reductions over time, and therefore a less disruptive transition to tighter emission controls needed to address lingering problems. Based on past experience under the Acid Rain Trading Program, by placing a monetary value on avoided emissions, Clear Skies would stimulate technological innovation, including efficiency improvements in control technology, and encourage early reductions.

Assistance to State and Local Governments

Under the current Clean Air Act, state and local governments face the daunting task of meeting the new fine particle and ozone standards. Clear Skies would substantially reduce that burden. By making enormous strides towards attainment of the fine particle and ozone standards, Clear Skies would assist state and local governments in meeting their obligation under the Clean Air Act to bring areas into attainment with these health-based standards, and provide Americans with cleaner air.

As noted previously, the combination of Clear Skies, EPA's rule to decrease emissions from nonroad diesel engines, and other existing state and federal control programs—such as pollution control requirements for cars and trucks—would bring a substantial number of counties that currently monitor nonattainment into attainment with the fine particle and ozone standards. Even in the few areas that would not attain the standards without adoption of local control measures, Clear Skies would significantly improve air quality. This would make it easier for state and local areas to reach the ozone and fine particle standards.

Clear Skies' assistance to states goes beyond ensuring that power plants will reduce their emissions. Clear Skies relies on a common-sense principle—if a local air quality problem will be solved cost-effectively in a reasonable time frame by the required regional reductions in power plant emissions, we should not require local areas to adopt local measures. Under Clear Skies, areas that are projected to meet the ozone and fine particle standards by 2015 would be able take advantage of the broad emission reductions occurring at the regional level as a result of Clear Skies.[3] If certain conditions are met, these areas could be designated "transitional" areas, instead of "nonattainment", and they would not have to adopt local measures (except as necessary to qualify for transitional status). They would have reduced air quality planning obligations and would not have to administer more complex programs, such as transportation conformity, nonattainment New Source Review, or locally-based progress or technology requirements in most circumstances.

III. IMPROVING THE CLEAN AIR ACT WITH CLEAR SKIES

Clear Skies would improve the Clean Air Act in a number of ways. It would build on the proven portions of the Clean Air Act—like the national ambient air quality

[3] Clear Skies legislation introduced in the House of Representatives (H.R. 999, February 27, 2003) was introduced before EPA designated nonattainment areas for the 8-hour ozone or $PM_{2.5}$ standards. Such areas have since been designated.

standards and the Acid Rain Trading Program—and reduce reliance on complex, less efficient requirements like New Source Review for existing sources. The mandatory emission caps at the heart of Clear Skies guarantee that reductions will be achieved and maintained over time. In contrast, litigation uncertainties make it difficult to estimate how quickly and effectively current regulations would be implemented under the current Clean Air Act.

Legislation Now Is Better than Regulation Followed by Years of Litigation

Clear Skies has several benefits over the regulatory scheme that will otherwise confront power generators. Clear Skies provides regulatory certainty and lays out the timeframes necessary for plant managers to design a cost effective strategy tailored to both their current budgets and future plans. Clear Skies is designed to go into effect immediately upon enactment. Power plants would immediately understand their obligations to reduce pollution and would be rewarded for early action. As a result, public health and environmental benefits would begin immediately and result in emissions reductions more quickly than required. Given Clear Skies' design, it is unlikely that litigation could delay the program (particularly since Congress would decide the two most controversial issues—the magnitude and timing of reductions).

Past experience suggests that litigation delays on the regulatory path are likely. Our experience with two cap-and-trade programs—the legislatively-created Acid Rain Trading Program and the administratively-created NO_X SIP Call—illustrates the benefits of achieving our public health and environmental goals with well-designed legislation rather than relying solely on existing regulatory authority. Even when regulations are ultimately upheld in the courts, emission reductions can be delayed and costs can increase simply because of uncertainty.

Reductions from the Acid Rain Trading Program were experienced early, well before compliance deadlines. There were few legal challenges to the small number of rules EPA had to issue—and none of the challenges delayed implementation of the program. The results of the program have been dramatic—and unprecedented. Reductions in power plant SO_2 emissions were larger and earlier than required, providing earlier human health and environmental benefits. Now, in the tenth year of the program, we know that the greatest SO_2 emissions reductions were achieved in the highest SO_2-emitting states; acid deposition dramatically decreased over large areas of the eastern United States in the areas where it was most critically needed; trading did not cause geographic shifting of emissions or increases in localized pollution; and the human health and environmental benefits were delivered broadly beyond what EPA had projected.

It is clear from this example that existing regulatory tools often take considerable time to achieve significant results, and can be subject to additional years of litigation before significant emissions reductions are achieved. Even when the regulation is ultimately upheld by the courts, litigation creates uncertainty that can delay emission reductions or increase costs.

Conclusion

The President's Clear Skies Act provides a balanced approach that our nation needs for meeting clean air goals, while safeguarding economic growth and promoting energy security. Congressional action on Clear Skies legislation is the preferable route toward ensuring that health and environmental goals can be met. We stand ready to work with this Committee and the Congress to get a bill on the President's desk as soon as possible.

Mr. HALL. Thank you and it is good to have you.

I would like to now yield my time as chairman to Chairman Barton, the chairman of the full committee.

Chairman BARTON. Well, thank you. And thanks again to both of you gentlemen.

When does the enforcement mechanism kick in for all these counties that were in attainment for the 1 hour standard, but will be non-attainment for the new 8-hour standard?

Mr. HOLMSTEAD. Some of the requirements kicked in already late last year. Automatically, upon designation, there are certain requirements that apply such as increased difficulty in permitting, increased planning when it comes to transportation conformity. The real burden on the counties and the local Government comes

as part of the State planning process. So they now have 3 years to submit State implementation plans. Typically, that process is not a smooth one. There is often litigation involved. I can tell you that we have been sued by any—quite a number of State and local organizations, as well as, industry groups over those designations so we are in a period right now that will eventually lead to cleaner air but is often a pretty difficult and cumbersome process.

Chairman BARTON. Mr. Connaughton, do you want to comment on that?

Mr. CONNAUGHTON. Yes, we have this period that we went through in the 1990's which was extremely conflict ridden because the burden was primarily on local communities. That is the design of the Clean Air Act. This burden, and really it starts about this summer and this fall for the new standards, each county is going to start figuring out its portfolio of where it can go after this high hanging fruit now because we have gotten the low hanging fruit, we have gotten the middle fruit, we are now going after the high hanging fruit, the tough stuff, especially on ozone but also the fine particles is new. And so this is going to be a new challenge for our States and their local communities.

Because it is new and because it is tough, it makes the deal making within the State a lot harder and then every State has an incentive to blame the other guy, the State across the border. And so—and that is understandable because also the costs are quite high. And so that is a recipe for litigation. It is a recipe for what we saw in the 1990's with States and localities asking EPA or asking the Congress to give them extensions of time on meeting attainment deadlines. Understandably.

Many did not meet the air quality standards on time and that resulted in this mechanism under the Clean Air Act that imposes an additional burden. It raises them to a new level of concern at the agency and requires them to do even more so there is a penalty for not being able to make it on time.

What we are trying to do with this policy which I think is the opposite of your question, Mr. Chairman. What we are trying to do with this policy is turn that dynamic around. Let us give a reasonable, opportunity to meet the standards through this combined set of programs so that the few that remain and there will be fewer that remain, will be able to concentrate on truly local issues.

And I think you gave the example of Ellis County where your main burden is coming from other counties. And I think to the extent there is a little bit of extra work to do in Ellis County. I would assume the county is a little bit better off and feels a little better about it when they know that pollution coming across from other locations has been addressed first. And that is what this legislation is intended to do.

Chairman BARTON. It is my understanding that the Clear Skies Initiative will achieve through incentive and market certainty the installation of the pollution control equipment that is sought by the ongoing New Source Review litigation.

Mr. Holmstead, has the EPA or the Department of Justice estimated the cost associated with the Government's expenses so far and their expected continuing expenses in the existing prosecution

of new source cases? If not, could the EPA and/or the Department of Justice supply the committee with that information?

Mr. HOLMSTEAD. What I can say is I know it represents a very significant portion of the enforcement office budget and the Department of Justice Environment Division Budget. I don't know the exact numbers but we could provide those to you, I am sure.

Chairman BARTON. We would like that. And if we were to pass this legislation and it would become law, how would that improve this? What would be different if we were to do Clear Skies?

Mr. CONNAUGHTON. Mr. Chairman, the litigation currently is against several dozen power plants. The U.S. Government is bringing it as are a number of States. It is not against all 1,300 that would be covered by Clear Skies so you have a difference there. The litigation is only against firms against which there is an argument they made an upgrade.

Most power plants avoided doing investments in efficiency and other things because of the fear of New Source Review litigation so we only have a hook with respect to a few dozen right now. And as it turns out, we have had a few successful settlements, several billion dollars in settlements and so far though we have only won about half the cases. We are 8 years into the litigation and we have probably eight to 12 more years to go with respect to the current filed cases.

Now take Clear Skies by contrast instead of a few dozen power plants it is over 1,300 power plants. Instead of lots of lawsuits in different locations all around the country, you have no lawsuits. You get the retrofits that we are looking for through the New Source Review litigation. You get the retrofits not just at the, you know, several dozen plants where we have litigation but you get it at a whole lot more, nearly all the big ones and all the medium size ones and many of the small ones. So you also then save all those enforcement costs.

The Acid Rain Program has proved to be the most enforceable program of the Clean Air Act. We have nearly 100 percent compliance and have not had to see the inside of a court room because you have 24-hour monitoring, you know exactly how much someone is polluting and they have to have an allowance to meet that commitment. In order to be able to pollute, you have to have an allowance so it is 100 percent enforceable. It also only takes a few dozen EPA employees to actually run the whole program rather than the thousands of government officials and private sector people and lawyers involved in trying to pursue the New Source Review process. So that is why the benefits are enormous and the certainty is nearly complete.

Chairman BARTON. My final question is if this subcommittee and perhaps the full committee were to pass this legislation, would that in any way enhance the possibility the Senate might take this up again? In other words, is it worth our time to try to legislate here responsibly given what has happened in the Senate, where the proposal has already died because of a deadlocked committee?

Mr. CONNAUGHTON. Action by the House always is an inspiration to the Senate.

Chairman BARTON. Good answer for this group.

Mr. CONNAUGHTON. I also noted a number of the opening statements by members. I have not seen that level of deference to the Senate from this body in a long time. The Senate process is not dead, Mr. Chairman. I participated very actively in it. We hit a roadblock over the modeling issues. Senator Carper in particular wanted to see more information. You will have in the record today a commitment from Administrator Johnson to provide that additional information. We are going to do the next round of modeling because we can now. The rulemaking process is over. And the folks who are working on a bipartisan basis toward a constructive solution by the way included Senator Carper who has indicated that he still wants to see legislation this summer.

Now whether that can happen or not will really turn on reengagement in the Senate but the President and his team, Jeff Holmstead and I are firmly committed to keeping up the effort in the Senate. The House inspired Healthy Forests legislation in the Senate, it inspired "brownfields" legislation in the Senate, the House has inspired energy, action again in the energy bill in the Senate. I think leadership in the House is a wonderful thing and we look forward to further leadership from the House.

Chairman BARTON. Well we are interested if the Senate is also interested. We are, as I have told you privately, I am not interested in engaging in the process here that is sterile from the beginning because lack of apparent ability to act in the Senate. But, if it will help our friends in the Senate to do something, we are certainly willing to that.

Thank you.

Mr. CONNAUGHTON. Thank you, Mr. Chairman. I will be back.

[Brief recess.]

Mr. HALL. We will wait right here. I have just cast the last vote of the day and others are going over to cast the last vote and probably the next vote they cast will be what airplane they are going to get on. So you are going to have it get a little bit easier.

But I have a question, sir, I want to ask you. And one I will throw out here that you can knock clear out of the park, but we would like to have it for the record. You have partially answered it, Mr. Holmstead. You have heard critics, and one of the panel mentioned that the Clear Skies is a rollback of the Clean Air Act, arguing that the current act is properly interpreted and faithfully executed it could potentially achieve more emission reductions in this bill. And for the record, why don't you give us your answer to this assertion.

Mr. HOLMSTEAD. Mr. Chairman, this is designed to substantially improve upon the Clean Air Act. And we will get more certain reductions. We will get greater reductions and we keep in place all of the important parts of the Clean Air Act that actually get real reductions in pollution. So if I can just say in a more positive way, this bill is designed to and will improve upon the pollution reductions that we would otherwise get under the current Clean Air Act.

Mr. CONNAUGHTON. Mr. Chairman, if I might, let me add——

Mr. HALL. Yes, sir, please do.

Mr. CONNAUGHTON. [continuing] just an essential specific reason why. The Clean Air, ambient air quality standards for ozone and fine particles were set in 1997, were litigated all the way through

to the Supreme Court. President Bush and his team completed the litigation process and we have now done all the designations required for setting the air quality standard so we already have in place in America today the performance standard that we are trying to meet and that does not change.

So the air quality standard is the performance standard. What we are talking about today is merely the tool by which we can enable our States to meet these tough new standards. And so for those who suggest that we are rolling back Clean Air Act protections, the facts are the complete opposite of that assertion because nobody is suggesting changing the new health based ambient air quality standards. This is how we get there. And Clear Skies will help most counties do it without having to do any additional work as we indicated in our earlier testimony and it will actually provide a simple and effective tool as a replacement for a whole series of tools that again they can work too but they are not nearly effective and they are much more costly and they tend to produce delay. And so this is the most effective way to getting to our shared goals.

Mr. HALL. Well I thank you for that.

Let me ask you this, Mr. Holmstead. What happens to those facilities that have already installed emission control technology on their plants? What will be the impact of Clear Skies on those companies and will they be penalized or disadvantaged in any way under the new program?

Mr. HOLMSTEAD. Absolutely not. The design of the Clear Skies Program essentially gives people allowances based on something we called heat input. But the design of that system is specifically designed to reward people who have already put on good control. So for example, a facility that is very well controlled may receive more allowances than it needs so it actually would have something of value that it could sell to someone else. But it is specifically designed not to penalize, in fact, it is designed to reward facilities who have already installed good pollution controls.

Mr. HALL. Mr. Connaughton?

Mr. CONNAUGHTON. The only thing I would add, those who have done it already are lucky in one sense because they don't bear the additional burden that will be required of the facilities that have not. But as Mr. Holmstead said we are not going to penalize them but we are also looking to facilities that can reduce earlier and there is a whole class of big power plants that with the Clear Skies legislation that currently don't have controls that will now have an incentive to put on controls fast, do it early rather than wait to some compliance date in the future. So the old ones will be in good position, the ones who have already done the investment. But it is this group that have the potential to reduce early and fast are the ones we want to incentivize and that is what this legislation will do.

Mr. HALL. But they won't have the ability to improve as they have already improved and what affect will that have on their credits and the cost of it?

Mr. HOLMSTEAD. One of the concerns about the Clean Air Act before 1990 was that there was something called the percent reduction approach where, often times, wherever you were, you had to get an additional reduction. And for the very reason you outlined,

the Agency has avoided that approach altogether because we really do want to make sure that we are fair to people who have already taken actions to reduce their emissions. So the way that it works, just mechanically, is that all of those facilities get allowances under the current Acid Rain Program. They will continue to get those allowances. Many of those companies will have allowances to sell and will continue to have allowances to sell under the President's proposal.

Mr. HALL. I thank you and I yield to the gentleman from Virginia for 5 minutes, Mr. Boucher.

Mr. BOUCHER. Well thank you very much, Mr. Chairman, and I want to thank both of our witnesses for their illuminating testimony today.

Mr. Holmstead, I was glad to hear you talk about mercury and your mercury rule and I have a couple of questions about that.

I am looking at the phase one mercury allocations in your rule and its application to particular coal types. And I am concerned that it has a disproportionate affect among the various types. Here are the numbers I have, correct me if I am wrong. With regard to allocations between now and 2010, the bituminous coal allowance is about 87 percent. So there could be emissions equal to 87 percent of current emissions by 2010.

With regard to sub-bituminous, the allocation is considerably more generous. For sub-bituminous, the emissions by 2010 could be 104 percent of the current levels so there is an increase of 4 percent for bituminous and decrease of 13 percent. And then you get the lignite and you have the largest disparity of all. By 2010, the permitted emissions for lignite would be 175 percent of current. And so you would have a 75 percent increase.

And I just don't see how that kind of desperate treatment can be sound public policy. The ultimate effect would be that the users of bituminous coal are going to have to go to the users of lignite and buy emission allowances. And that strikes me as being unjust. So would you like to have a word about your methodology and first of all if these numbers are wrong tell me but assuming they are right, why are we doing it this way?

Mr. HOLMSTEAD. Let me see if I can correct that a little bit.

Mr. BOUCHER. Fine.

Mr. HOLMSTEAD. And I can tell you that this has been something that we have worked very hard and looked very hard at because there is I think a real sensitivity to making sure that we have a level playing field among all the coal types, among all the regions of the country. And we did extensive analytical work in an effort to make sure that we were not in any way artificially advantaging one type over another, one region of the country over another.

What we tried to recognize—and again, the way the rule works is there is an adjustment factor that is specifically designed to reflect the additional cost of reducing mercury from some coal types. We know based on a lot of data that the cost of reducing an ounce of mercury from bituminous is less than the cost of reducing an ounce of mercury from sub-bituminous or lignite. And that is where we have the adjustment factor. And I assume that is how you derive those numbers. But the adjustment factor is one for bituminous, 1.25 for sub-bituminous, and three for lignite.

What our analysis shows is that when you apply those factors, you do not get any switching of coal use from one region of the—to another. And, in fact, I don't think we see—no one is buying or selling mercury allowances until after 2010——

Mr. BOUCHER. Yes.

Mr. HOLMSTEAD [continuing]. Because there is no cap today and so there is no reason for bituminous to buy from lignite or sub-bituminous because——

Mr. BOUCHER. I understand all that, Mr. Holmstead, but the reason that you might not get switching is because it is impractical to utilize lignite in an application that uses bituminous for example. There are a lot of investments in clean coal technologies and other things that would not be compatible with that other coal type perhaps and there are probably a lot of other reasons too. And I fully understand that you don't have the capping effect until a later date. But at some point, you are going to get this kind of disparity. If you disagree that this disparity exists, I would like for you to send a letter out that explains why it does not because this is the information presented to us and if it is wrong, I hope it is wrong. If it is, I would like for you to correct it.

Mr. HOLMSTEAD. I would be happy to provide that technical information. One thing I would like to say, if I can, just to make sure that everybody hears this today, all of our analyses suggests that there will be an increase not only in total coal usage but in each type of coal over time so that we do project the use of bituminous will continue to grow, the use of sub-bituminous, and use of lignite will all continue to grow and——

Mr. BOUCHER. Well, I agree with you that there is going to be an increase in coal use, but I think that is occasioned by a lot of factors, the confluence of a range of factors and not a market force——

Mr. HOLMSTEAD. No, that is absolutely right.

Mr. BOUCHER. The high cost of natural gas which is not projected to come down and a lot of other reasons will contribute to that. This particular analysis, if it is correct and there is this disparate effect against bituminous, will have a degrading effect on the willingness of people to use that particular fuel type because they will have the cost of going out and buying allowances from the users of lignite presumably. So if this is wrong, let me know and if it is not, we will have a continual discussion about it.

Let me just say one other thing. I understand that your mercury rule approximates what you would get should Clear Skies pass. I think you said that in your testimony.

Mr. HOLMSTEAD. Yes, sir.

Mr. BOUCHER. I also believe your CAIR rule approximates the kind of result you would have on SO_2 and NO_X were Clear Skies to pass.

Mr. HOLMSTEAD. That is not correct.

Mr. BOUCHER. That is not correct.

Mr. HOLMSTEAD. With respect to mercury, the results are very similar. With respect to NO_X and SO_2, under Clear Skies, you would get additional reductions because it is a nationwide program and so you get pretty significant additional reductions of SO_2 and also NO_X partly because of working within the existing regulatory

structure, we could not have a cap as far out into the future that continues to drive things down. So I don't want to overstate the differences because the mercury is very similar, but you do get additional benefit in NO_X and SO_2, both in terms of the amount and getting the nationwide coverage there.

Mr. BOUCHER. So the eastern region it would be more or less the same under your rule and under Clear Skies?

Mr. HOLMSTEAD. No, even under Clear Skies you would get——

Mr. BOUCHER. You would still get more.

Mr. HOLMSTEAD. Even in the east you would get more, yes.

Mr. BOUCHER. Okay. Gentlemen, thank you very much.

Mr. Chairman, I yield back.

Mr. HALL. The Chair recognizes Mr. Waxman, the gentleman from California for 5 minutes.

Mr. WAXMAN. Thank you, Mr. Chairman.

Mr. Connaughton, the administration is portraying the proposal as benefiting the public health but if you compare it to the implementation of the Clean Air Act, your bill would allow more pollution as I understand it for years longer. Areas where the administration bill weakens existing law, it guts the State authority to address upwind pollution, drops protection for national parks, exempts utilities from installing controls when they upgrade and increases the emissions. And then what you do is extend the deadlines and you hope that you are going—the areas will achieve emissions.

Under existing law and regulations, most areas have to attain the health based standards for air quality by 2007 or 2010. But the bill called Clear Skies would allow re-designation of up to 198 counties including areas like New York City and Chicago as transitional areas. They will have a level of air pollution that violates the health base standards. They could all be given a deadline extension until 2015. Then if they do not meet the standards by 2015, they will automatically get another 5 year extension to 2020. Now that is a long time difference.

How many people that live in these areas will be affected by these delays in terms of their health?

Mr. CONNAUGHTON. Let me take your question in order. First, Congressman, there is no change in the health based air quality standards. The new stricter standards for ozone and for fine particles go into effect and they were enacted in—they were put in place in 1997, litigated to the Supreme Court——

Mr. WAXMAN. Do you disagree with the idea that whatever the standards are under your bill they are given a lot longer time to achieve them?

Mr. CONNAUGHTON. Yes, I do disagree with your characterization of it. The EPA modeling shows——

Mr. WAXMAN. Then why not leave the existing deadlines in place rather than change them?

Mr. CONNAUGHTON. The only place that the legislation—well first of all, the modeling shows that most counties will come into attainment on time with the scheduled attainment dates, so we need to start there. So then we are talking about a smaller range, a smaller number of counties. I don't—I have not heard the 198 counties so I would be interested to see your analysis on that. But a smaller

number of counties may require a little more time and there then becomes—there then comes the choice—and this is the logic behind the transition area provision. If it is shown that within a very short period of time the power plant reductions will bring an area into compliance with the new standard, then that county could then seek to obtain the benefit of the transition county designation. And the logic is pretty straightforward. If they are very close, they have a choice then of having to go through a whole State planning process to get a whole bunch of locally obtained reductions when in a very short period of time they are going to be getting those reductions anyway.

Mr. WAXMAN. Well under——

Mr. CONNAUGHTON. That has been a great challenge and it is——

Mr. WAXMAN. Under our analysis based on your data there are 76 million people living in areas of the Eastern United States that are projected to have unsafe air in 2010. The attainment dates are being pushed back for those areas by 5 to 10 years. That means your proposal allows an additional 380 million to 760 million person years of exposure to dangerous levels of air pollution.

The philosophy of the Clean Air Act of 1990 was if an area was close to attainment of the standards, you did not give them a long period of time, you gave them a short period of time and they did not have a lot to do because they were getting close. But if they were further away from meeting the standards, you gave them more time but you required them to do more.

I was interested in the comments, I think maybe by Mr. Barton, but I am not sure, who talked about how terrible it would be if an area is bumped up. Well, a reason an area would be bumped up is they did not do what was necessary to get to the standards in time so if they continued to have even increased pollution, they would be bumped up to an area where they would have to do more but they are given more time to do that.

The problem we had prior to 1990 was that this—there would be these State implementation plans based on modeling that were all fictitious. It looked—it did not have anything real in it. So we had very clear amounts of time requirements for those areas that were the most polluted to do the most, those that were least polluted to do the least, and make sure that they did the things that would get them into compliance.

It seems to me, your bill has a lot of assumptions that I guess what the off road diesel rule and a few others, there was something else in there the—I think you have the—your cap and trade, but that has already been put in place with the interstate rule, that you think the air is just going to sit and wait and most of the areas will be clean. But if they are not, they are just given more time without having to do anything. That is a real concern because that seems to me that this—if you don't—if these assumptions don't work out, we are going to have a lot of dirty areas.

Mr. CONNAUGHTON. Very briefly, then I think Mr. Holmstead could get to some of the more technical points.

The goal here is actually for counties to meet the standards on time. So I think we have got a shared view there. And the fact of the matter is these two massive national programs, the diesel rules

and the Clear Skies legislation will enable most areas to do that. And then the only ones that could be looking for more time—by the way they tend to be the ones that more classically have either failed to meet their deadlines or never: I mean, some have never met their deadlines but some might be failed to meet the deadlines but even in that instance, the only ones that could apply for a transition status is if they could demonstrate that the reductions will actually occur otherwise by addressing these transported air pollution reductions. The ones who could not make that showing are still going to have to develop very stringent local air quality plans and, in fact, as it turns out there will fewer of them. They will have less work to do because at least they will make substantial strides as a result of these transported air pollution reductions.

So hopefully we will have minimized the local challenge rather than maximize the local challenge and we will have a higher level assurance that even those counties have a hope of finally making it on time. So we are talking about a very small universe.

But I think it would be helpful then for Mr. Holmstead to just give you a few more of the very specific points.

Mr. WAXMAN. If it would be—if he addresses them, I know it is a little difficult to keep the 5 minutes and I have already gone beyond. But an area can still get a transitional status if the power plant emissions or reductions alone will not get them there to meet the standards and then the area can just simply promise to adopt measures. Mr. Holmstead?

Mr. HOLMSTEAD. That is not the way we read the President's bill. And I know there has been some confusion about which bill people are looking at but the way we structured the President's bill was to make sure that the right mix of power plant reductions and local reductions are—that we strike the right balance to bring everybody into attainment as expeditiously as practical.

Mr. WAXMAN. But that was not in the Senate though.

Mr. HOLMSTEAD. Well in the President's bill that we are supporting, it does require that State and local Governments also take the actions that they need to take to show that they are going to come into attainment on time.

Mr. WAXMAN. Let me just tell you we disagree about that. I think even the President's bill allows——

Mr. HOLMSTEAD. Well we would be happy to clarify that.

Mr. WAXMAN. Yes.

Mr. HOLMSTEAD. The other point that I think is really important is what improved air quality is not necessarily deadlines. As you well know, a number of areas, your own district has failed to meet many deadlines and what we have tried to do is focus on those things to get real emission reductions and that is why we are so focused not on, you know, an artificial deadline but actually putting in place the things that get pollution reductions and by in large it has not been the planning process, it has been specific requirements, things like the non-road rule, the 2007 highway diesel rule, the CAIR2 program and all of those things coupled with the additional local reductions that will need to be achieved. And we could—I would be happy to talk with your staff or to explain but the idea here is to get most areas into attainment by their deadlines. Because one of the things that people have complained about

as being unfair is even if they do everything they can locally, they may not be able to come into attainment——

Mr. WAXMAN. But the deadlines are extended.

Mr. HOLMSTEAD. Just like they were for California in 1990 when people realized——

Mr. WAXMAN. My time is up. I appreciate your answer. I beg to disagree with you and perhaps we can discuss it further to get clarifications.

Mr. HALL. I am trying to go as long as we can with anybody that has questions or answers but some of us have a 10 flight tonight. The Chair recognizes if the gentleman from Maine will allow me to recognize the Dean again, Mr. Dingell. I recognize Mr. Dingell for five minutes.

Mr. DINGELL. Mr. Chairman, thank you for your courtesy and I thank the gentleman from Maine.

Gentlemen, I have sent a letter on May 19 to Mr. Stephen Johnson, Administrator of EPA and the Honorable James L. Connaughton regarding the questions that might be asked factually about this legislation. When, gentlemen, will that letter be responded to?

Mr. HOLMSTEAD. If we could have 30 days from the date that we received it. It does ask a number of complicated questions but we will definitely get it to you within 30 days, Mr.——

Mr. DINGELL. Now gentlemen, EPA last testified on this subject and admitted it had done months and months of modeling on its own proposal but it had not analyzed anyone else's proposal.

In that letter I sent you last week, I asked you to analyze all other major multi-pollutant proposals to analyze reductions we would get under existing Clean Air Act, to analyze all the provisions of the administration bill including those which relax portions of the Clean Air Act and that you use the same models for everyone. I understand that you today sent a letter to Senator Inhofe suggesting that you will do some initial modeling. As I requested earlier, will you commit to doing the modeling that I have requested in my letter?

Mr. CONNAUGHTON. The letter from Administrator Johnson will lay out in detail the elements that we are able to model and to head toward that straight comparison between several of the most prominent proposals and will enable all of us to get a very clear sense of the relative differences between the two——

Mr. DINGELL. It is different modeling though, on different questions, and you come up with different answers, don't you?

Mr. CONNAUGHTON. Well, in this——

Mr. DINGELL. And the answers may or may not be compatible. Is that not right?

Mr. CONNAUGHTON. Well, in this particular case, you will see in the letter, Congressman, Administrator Johnson lays out in detail the modeling that he will undertake and will be undertaken equivalently as to the different packages.

Mr. DINGELL. Equivalently is not the same is it?

Mr. HOLMSTEAD. If——

Mr. DINGELL. It is quite different, isn't it?

Mr. HOLMSTEAD. No, we will——

Mr. CONNAUGHTON. Well, we will clarify that for you right now.

Mr. HOLMSTEAD. Yes, if I could just clarify.

Mr. DINGELL. Just tell me, equivalent and the same are not necessarily identical are they?

Mr. HOLMSTEAD. We are going to be using the same models to analyze sort of the range of bills.

Mr. DINGELL. So you will use the same models then?

Mr. HOLMSTEAD. I want to just clarify one exception to that. That is the majority of the modeling will be done on all of the bills. The air quality—and this is something we have tried very hard to explain to Mr. Carper and others. The actual air quality modeling analysis does take many, many weeks and a lot of——

Mr. DINGELL. But it will also get you the facts——

Mr. HOLMSTEAD. No, no, and we are going to provide you with the facts, Mr. Dingell.

Mr. DINGELL. Okay. I will——

Mr. HOLMSTEAD. We are going to do that for one bill sort of that is the most stringent and one that is the least stringent——

Mr. DINGELL. So——

Mr. HOLMSTEAD. And that will allow us to interpolate including the President's bill.

Mr. DINGELL. So we need to have the same modeling for each and every one of these bills so that we have the same answers. Is that right?

Mr. HOLMSTEAD. We will give you much more modeling than anybody ever dreamed possible in 1990.

Mr. DINGELL. Will you give us the same modeling in each instance?

Mr. HOLMSTEAD. Yes, we will.

Mr. DINGELL. You will. All right.

Mr. HOLMSTEAD. Exactly as spelled out in Mr. Johnson's letter.

Mr. DINGELL. That is fine, the same modeling. Now is the modeling—now let us see. Will the modeling only analyze the impact of provisions that relax existing law or will they analyze the provisions that tighten and change existing law?

Mr. CONNAUGHTON. Actually, you got that reversed so——

Mr. HOLMSTEAD. No, I think I understood the question.

Mr. DINGELL. All right.

Mr. HOLMSTEAD. Mr. Dingell, we just disagree with the assumption that there are things that relax existing law.

Mr. DINGELL. Okay.

Mr. HOLMSTEAD. The caps are so stringent that they overtake anything that you could possibly——

Mr. DINGELL. So you will analyze all provisions, that is fine.

Now I guess that is all the questions I have, gentlemen, thank you. Thank you Mr. Chairman.

Mr. HALL. Thank you, gentleman. The Chair recognizes Mr. Shimkus for 5 minutes.

Mr. SHIMKUS. Thank you, Mr. Chairman.

And if I have time, Mr. Holmstead, we will go back to this modeling question because I don't know if—we got all confused because I think you want—why don't you—is there anything else you want to say about this modeling provision to clarify this assertion that there is not similar and I think that was kind of the intent of the question.

Mr. HOLMSTEAD. Yes, thank you for giving me the chance to do that. In order to model these proposals, we use a number of different of models sequentially. And I will not go into all the acronyms, but the bottom line is we will allow an apples to apples comparison of all the proposals and so we have worked with our technical people and that is what is contained in Mr. Johnson's letter, something that we can give to this body, that we can give to the Senate, and so people with a great deal of confidence can look at the full range of proposals on an apples to apples basis.

Mr. SHIMKUS. Thank you.

Mr. CONNAUGHTON. Congressman, I would just add we have already done a massive amount of modeling on the major proposals and have already enabled very significant apples to apples comparison so this will be an addition and supplement to that effort with the most updated information.

Mr. SHIMKUS. And again, I appreciate that. Unfortunately, we don't always deal in facts and apples to apples comparisons will not be portrayed as apples to apples comparisons so I think we want to encourage to do the best job we can and we will try to fight it out and let the fourth estate have a crack at them but we really would—the more precise they can be, the better it is for us to make the case. And so I think in apples to apples comparison will help our argument.

Three quick things that if we have time, you kind of talked about the—this is really tied also with the—our National energy planner, our Energy Bill and you cannot really divorce the two because as you constrain, as you don't bring in new science, as you don't incentivize new generation, cleaner generation, then you are stuck with the old plan. And what is the old plan if we don't move this, what will it effect—how will that affect energy prices? Do you have any idea and probably not for you, Mr. Holmstead but——

Mr. CONNAUGHTON. As a general proposition this—it is fair to say that this will be the most cost effective way for the energy sector to meet their inevitable compliance obligations and so that is why we say we have an obligation to meet our air quality standards. It is clear the power plants are going to be a bigger part of the equation than they have been in the past and so the issue is how can we get more of them to install more controls at the lowest cost for energy consumers, especially our manufacturers who are energy intensive and it is very important for our household consumers, many of whom are suffering under very high bills. Now you and I can afford it but there are many in our society for whom it is a struggle to meet their energy bills. So that is a very important component of this.

And it is also important to recognize, we spent the last 3 years talking about the concern about the leveling off of natural gas prices at very high levels. In order to deal with that situation, we also have to find an increased place for coal.

Mr. SHIMKUS. Right.

Mr. CONNAUGHTON. And it is an energy security issue for us, too, because coal is here. This will enable us to keep our base load energy generation in coal and that will free up natural gas for its better use which is in people's homes to provide—you know, to heat

and cook food and in manufacturing enterprises where they use it directly. That is the best place for natural gas.

Mr. SHIMKUS. The—and following up on the train wreck that we are going to experience nationally if we don't get some certainty on this clean air debate and the State implementation plans, I always use the example I fly into St. Louis to get home and then I—if I drive 90 miles to another part of my district in Illinois, I go through three air quality plans. When there is a disruption in the fuel, you cannot ship one fuel to the other area because it does not comply. So it escalates the price. It is the craziest thing I have ever seen in my life. But that is current law. And that is going to be even worse if we don't move because States are going to try to comply and as you said earlier we have got the low hanging fruit. So it is just going to be more stringent.

I have—in the Energy Bill, we talked—we addressed some downwind provisions. Jersey County, Illinois is north of Madison County rural, it is non-attainment, no manufacturing. How do they meet it? I mean, what is Jersey County, Illinois going to do to meet the standards? The answer is nothing. Other—maybe their own—if I may, Chairman, I will finish with this—Mr. Chairman?

Mr. HALL. Go on. Give him a chance to answer and your time will be up. Go ahead.

Mr. SHIMKUS. Just to finish up. Will Jersey County have to themselves have a county implementation plan and a county fuel of choice to meet their attainment?

Mr. CONNAUGHTON. Jersey County like Ellis County will have the strong incentive to try to go through a petition process and a litigation process to make their neighbors do the work they need to do to help them come into attainment. Now you can either do it through the litigation driving process or you can do it with legislation that will guarantee they will get the reductions they need. I think legislation that eliminates lawyers from the process is a good outcome.

Mr. SHIMKUS. And less expensive.

Thank you, Mr. Chairman, I yield back.

Mr. HALL. All right.

The Chair recognizes a very patient Mr. Allen from the State of Maine.

Mr. ALLEN. Thank you, Mr. Chairman.

Just a point of clarification. I was here at the beginning of the hearing. Do I get 5 minutes or 8 minutes? I did not give my opening? I was here at the beginning.

Mr. HALL. We are not going to be very restricting on you. Ask your questions and get your answers.

Mr. ALLEN. Okay. I have so much to say, I was just concerned. I want to thank Mr. Connaughton for coming by my office the other day. We had two brief conversations but then I think we could go at this for some period of time.

Let me just react to some of the things you have said and then turn to some questions. Despite all—well, despite everything you have said so far, I think several things are true. One is that we are really not debating certainty. That, I mean, you have said over and over again we want to have certainty, we want industry to be able to invest to achieve its clear air goals.

I don't think that is what is going on here. We could create certainty by requiring every power plant to install scrubbers tomorrow but the administration would not agree to it. We could create certainty be repealing the Clean Air Act but the public will not accept that. And it seems to me that what we are really trying to do here or ought to be trying to do is improve the public health in a way that allows industry a time to adapt and does not sort of, you know, make it impossible for them to go ahead.

And the way I read the Clean Air Act as it exists today and the President's proposal whether it is what he said or what is in Senator and House bill is the Clean Air Act, the Clear Skies weakens the Clean Air Act as it exists today. The President's proposal allows non-attainment areas to be reclassified as transitional areas to avoid local pollution reductions and to miss their 2007 and 2010 deadlines by more than a decade.

And people were saying, I think Mr. Connaughton, you were saying well, you know, it is not a smooth process when these local areas are trying to figure out how to comply with these regulations. Right, that is the point. What it does as it is done in Maine and across the, you know, all up and down the East Coast, it has forced cities, it has forced counties which are in non-attainment to try to do everything they can to regulate air pollution that they can. We regulate gas containers in Maine. And what Clear Skies does, what Senate and House bill does, what your legislative proposal will do is to say well it is getting complicated, it is not very smooth so we want to postpone everything, we will set everything back by a decade.

What you do in your proposal as I read it is you eliminate the incentive for the dirtiest areas in this country to work day after day to figure out how to clean up their own area as long as they can show that there is a significant contribution of the air coming into their county from somewhere outside. And my view is that whole non-attainment approach is really something that is just going to give all of these areas a chance to push off any serious effort on controlling their own homegrown pollution.

The President's proposal eliminates protection for national park visibility. It eliminates requirements that new sources install the latest control technology. And it strips Governors of Section 126 and other tools to reduce pollution that is literally killing their constituents.

Now my—when you look at Section 126, 126 is the tool that Governors use in order to force the EPA, you can take a different view and that would be fine. But in our view to force the EPA to go after these other States and polluters in other States—and frankly once you take that away in hopes that, you know, there will be more voluntary compliance or that your proposals will lead to lower reductions, I don't think it works because it takes away the initiative and the power of the States to really act responsibly.

I am told that EPA's models show that in 2020 under the administration's bill, 46 percent of the Nation's coal fired power plants still will not have modern controls. Because what—your cap and trade system frankly is one that allows a lot of plants not to clean up their act. And my understanding again, you can correct me if

I am wrong is that EPA's projections show that by 2020 only 14 units or about 1 percent will have installed controls.

Let me go back, Mr. Holmstead, on mercury. You know, it is true that, you know, numbers can be read a lot of different ways. It is true that most mercury deposition is not local in the United States but it is also true that 40 percent of all the manmade emissions of mercury in this country come from coal fired power plants. That is the low hanging fruit when it comes to mercury. That is the low hanging fruit. And the mercury rule doesn't do what it should.

Now you made a case, Mr. Holmstead, and I understand the case. You are saying well, so much of this comes from other places in the world that we can't control that; we can only deal with a tiny percentage. And my response to that is fine, but when has this administration ever taken leadership on an international basis to get together with other countries to control carbon dioxide, sulfur dioxide, nitrogen oxides, or mercury? When has it done that? It has walked away from all of the major opportunities to deal with international environmental pollution.

And so, you know, again when it comes to mercury, it seems to me you are ignoring the hot spots. You had them up there on the map. You have got hot spots particularly in the Ohio River Valley. They are all on the east. You know, most of them are east of the Mississippi and, you know, I just think that when you compare the Clean Air Act to the Mercury Rule and the way the Mercury Rule was put together, it seems to me that we really are making a mistake not to deal with mercury as a hazardous air pollutant under the Section 112 of the Clean Air Act. And it does seem to me to be what we ought to be doing.

And just a couple of other comments. That is the core—let me just see if there is something else here, a couple of other points. On litigation delays for CAIR, if we pass a law there will be litigation. If you do a new regulation, there will be litigation, it is inevitable. Somebody is going to sue over it. It has happened in the past, it will happen again. But CAIR as it stands today without modifying the Clean Air Act, CAIR as it stands today, I think will probably do pretty well because as you said, you hope it—you think it is defensible but it was—it is based on the same legal authority upon which the NO_X, SIP Call was already established and litigated and I don't think though the NO_X, SIP Call was stayed, you would not think that would happen now that the Supreme Court has made a decision in that litigation.

So I just—I really believe here—and you can obviously you can react to this, that our job here as legislators is to do no harm. And, you know, Mr. Connaughton, talking about utility bills. Most people's healthcare bills are a lot higher than their utility bills and that is what we are ultimately concerned about. We are concerned about the public health and making sure we don't undermine one of the great achievements of this Congress in the last 30 or 40 years, which is the Clean Air Act.

So that is my speech. I would not have done that except I have been listening so long, it gets all pent up. I am happy if the Chairman will give you a little extra time to react. I suspect I have not persuaded you.

Mr. CONNAUGHTON. Well, I have enjoyed our conversation today and I look forward to future conversations, Congressman.

Let me take it in reverse order. First of all, thank you for your ringing endorsement of President Bush's Clean Air Interstate Rule and if you like the Clean Air Interstate Rule, then you should love Clear Skies because it does it better and it does it more effectively and it would be immediate. We don't have to wait for the States to go through their processes of adopting it and we don't have to wait for the States to design State implementation plans around which they can incorporate it.

And when it comes to litigation, we know two things. Nearly every provision of the Clean Air Act and its implementing regulations has been litigated except for two. One of them was the Acid Rain Trading Program upon which the Clean Air, Clear Skies legislation is modeled. That is the one that did not get litigated. That is the one that was implemented with nearly 100 percent effectiveness. So that is a great signal. The other one by the way was the Diesel Rule, the Non-Road Diesel Rule which we negotiated in a very constructive negotiation between the effected industries and the environmental community.

So President Bush has a very strong track record of making enormous progress when we put our shoulders to it like we did on "brownfields" with the Congress. And this is an opportunity. You said Congress' position is to do no harm. We believe the President's position and Congress' position should be to lead.

And it has been 15 years since we have taken a look at the Clean Air Act and we are looking at one element in trying to expand the best tool available to us. That is all we are trying to do here. We are not looking at the entire Clean Air Act. We are not looking—we are looking at taking the best tool and making the most of it rather than a lot of the muddling through to, you know, to—and having thousands of lawyers and consultants and Government officials slogging through to an outcome that we all share and yet we know we could get much easier, you know, by going on a level field around the mountain rather than trying to go up over the top and to the other side.

Mr. ALLEN. Just one quick question. Then why eliminate 126?

Mr. CONNAUGHTON. Well actually, it is not being eliminated.

Mr. ALLEN. Or weakened.

Mr. CONNAUGHTON. Section 126 is just like the New Source Review provision. We are granting through Clear Skies Legislation, we are granting the 126 petitions up front. Rather than wait for the 4 year process of an EPA petition and then its subsequent implementation, Congress, through an act of legislation, effectively is telling the States we grant your transition—your transport petitions. We are going to grant it right now and you don't have to wait for EPA to act.

The same is true of New Source Review and you and I discussed this. Right now we have lawsuits against a few dozen facilities, a few dozen power plants. If I could tell anybody here that tomorrow I could guarantee that we have settled all the lawsuits and EPA wins, I think everybody would be for that. Well, not only do we settle all the lawsuits and EPA wins as to those several dozen power plants, but we settle the future lawsuits and EPA wins with re-

spect to 1,300 power plants. So this is the actual, the judicial relief that the Federal Government has been seeking and the States have been seeking. This legislation would provide it without having to then further bother the courts and that is why it is perfectly appropriate to replace the NSR litigation with an NSR solution which is what Clear Skies is about.

Mr. HALL. We are way over our time. I ask unanimous consent for these two gentlemen to have dinner together sometime. All right. The Chair recognizes—thank you, Mr. Allen.

Mr. ALLEN. Thank you.

Mr. HALL. The Chair recognizes Dr. Burgess from the State of Texas for 5 minutes.

Mr. BURGESS. Thank you, Mr. Chairman.

And I appreciate you giving the panel an opportunity to answer that last series of questions. I will try not to take 5 minutes to ask my question but Administrator Holmstead, speaking of lawsuits, earlier this month the Environmental Protection Agency and the Texas Council on Environmental Quality, several of our local Governments and environmental groups in the Dallas, Fort Worth area reached an agreement on a lawsuit filed by the environmental groups over the 1-hour ozone standard that expires in June.

And in fact, Mr. Chairman, if I could, I would like to ask unanimous consent that the EPA's press release about the consent decree, as well as, a copy of the consent decree be entered into the record.

Mr. HALL. Without objection, they are admitted.

[The information referred to follows:]

[News Release—May 5, 2005]

PARTIES REACH AGREEMENTS ON DALLAS/FORT WORTH AIR QUALITY PLANNING

Government agencies, local officials and citizen groups have reached a series of agreements regarding plans to achieve health-based air quality standards in the Dallas/Fort Worth area. The U.S. Environmental Protection Agency (EPA) has agreed to take steps to settle a lawsuit over the expiring 1-hour ozone standard. EPA, the Texas Commission on Environmental Quality (TCEQ), and local governments have voluntarily committed to additional steps for ensuring progress in meeting the new 8-hour ozone standard.

"I am pleased that we and the local citizens groups were able to reach an agreement that moves us toward our goal of cleaner, healthier air for residents of the Dallas/Fort Worth area," EPA Regional Administrator Richard E. Greene said. "The commitments made in a series of agreements by many members of the Dallas/Fort Worth community will help us take faster steps toward achieving healthier air quality under the new standard."

Four citizen groups (Blue Skies Alliance, Downwinders at Risk, Public Citizen's Texas Office and the Sierra Club) sued the EPA, alleging that insufficient action had taken place to approve and implement the State Implementation Plan for meeting the old 1-hour standard for ozone, due to expire next month. A number of organizations intervened in the litigation supporting EPA, including the TCEQ, Collin County, Tarrant County and some industry representatives.

"This settlement marks a new era of action to improve Dallas/Fort Worth's air quality as quickly as possible. For the first time since the Clean Air Act was passed, we think we have an outline of a plan that can finally deliver clean air for Dallas/Fort Worth residents to breathe," said Wendi Hammond, Director of Blue Skies Alliance. "And we believe that if all the parties continue to cooperate as they have during these negotiations, we'll arrive at that goal sooner than we would have without this agreement."

In a consent decree, EPA agreed to a schedule to complete action on a number of 1-hour ozone standard planning requirements including a program for cleaner engines and traffic congestion prevention measures. Significantly, parties went beyond the lawsuit and made voluntary commitments focused on making progress to

achieve the new 8-hour standard. EPA also agreed to evaluate the most significant toxic air pollutants for additional monitoring.

TCEQ agreed to a cement industry study to evaluate the potential availability of new air pollution control technologies for cement kilns in the Dallas/Fort Worth 8-hour ozone nonattainment area.

"We are pleased that all of the parties involved agreed to move forward to take positive steps towards improving air quality in the Dallas/Fort Worth area immediately," TCEQ Commissioner R.B. "Ralph" Marquez said. "We remain committed to evaluating all reasonable pollution control measures to move us closer to our goal of cleaner air."

Local officials agreed to implement local pollution control measures earlier than required by state and federal regulations.

"Clean air has been my goal for some time," Collin County Judge Ron Harris said. "These measures will help us bring relief faster to children and families suffering from the effects of poor air quality."

Tarrant County Judge Tom Vandergriff said, "Besides making us healthier, clean air will make our area more attractive to businesses and spur economic development. It's a problem we created together and one we must solve together."

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

BLUE SKIES ALLIANCE, *et al.*, Plaintiffs, v. and STEPHEN L. JOHNSON, as Administrator of the United States Environmental Protection Agency, *et al.*, Defendants.	)	Civil Action No. 3:04-CIV-2169-N

EPA'S NOTICE OF LODGING
OF PROPOSED CONSENT DECREE

Defendant Stephen L. Johnson, Administrator of the United States Environmental Protection Agency ("EPA"), with this notice lodges with the Court a proposed consent decree.

The proposed consent decree which Defendant lodges today should not be signed or entered by the Court at this time. Pursuant to section 113(g) of the Clean Air Act, 42 U.S.C. § 7413(g), the consent decree is not final and cannot be entered by the Court until the EPA Administrator provides "a reasonable opportunity by notice in the Federal Register to persons who are not named as parties or intervenors to the action" to comment in writing upon the proposed decree. After a reasonable public comment period, the EPA Administrator must promptly consider any written comments received. Id. If none of the comments disclose facts or considerations which indicate that the decree is inappropriate, improper, inadequate or inconsistent with the requirements of the Clean Air Act, the Administrator will request the Court to enter the decree. Id.

Respectfully submitted,

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May 4, 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

BLUE SKIES ALLIANCE, *et al.*, Plaintiffs, v. STEPHEN L. JOHNSON, as Administrator of the United States Environmental Protection Agency, *et al.*, Defendants.	Civil Action No. 3:04-CIV-2169-N

CONSENT DECREE

WHEREAS, Plaintiffs Blue Skies Alliance, Downwinders at Risk, Public Citizen, and Sierra Club (collectively "Blue Skies"), filed the complaint in this action on October 1, 2004, against Defendants Stephen L. Johnson, Administrator of the United States Environmental Protection Agency; Richard Greene, Administrator, Region 6; and the United States Environmental Protection Agency (collectively "EPA");

WHEREAS, Blue Skies' complaint alleges that EPA has failed to perform a nondiscretionary duty pursuant to section 181(b)(2) of the Clean Air Act ("CAA"), 42 U.S.C. § 7511(b)(2) to determine whether the Dallas/Ft. Worth ozone nonattainment area ("DFW") had attained the one-hour national ambient air quality standard for ozone by the applicable statutory attainment date;

WHEREAS, the complaint further alleges that EPA has failed to perform a nondiscretionary duty pursuant to CAA section 110(k)(2), 42 U.S.C. § 7410(k)(2), to take final action by the statutory deadline on two state implementation plan ("SIP") revisions for DFW submitted by the Texas Council of Environmental Quality ("TCEQ") to EPA in April 2000;

WHEREAS, Blue Skies seeks an order from this Court establishing a deadline by which EPA must complete these allegedly mandatory duties;

WHEREAS, Blue Skies and EPA (jointly referred to as "the Parties") agree that this Court has jurisdiction under the citizen suit provision of the Clean Air Act, 42 U.S.C. § 7604(a);

WHEREAS, the Parties seek to effect a settlement of this Action without expensive and protracted litigation;

WHEREAS, the Parties have agreed to a settlement of this Action without any admission or adjudication of fact or law;

WHEREAS, the Parties agree that this settlement represents a good faith compromise of disputed claims;

NOW THEREFORE, before the taking of testimony, without trial or determination of any issue of fact or law, and upon the consent of the Parties, it is hereby ordered, adjudged, and decreed that:

DEFINITION

1. For the purposes of this Consent Decree, the following terms shall have the following meaning:

a. "TERP" shall mean the Texas Emission Reduction Plan SIP revision for which TCEQ adopted rules on August 22, 2001;

b. "VMEP" shall mean the Voluntary Mobile Source Emission Reduction Program SIP revision submitted by TCEQ to EPA on April 25, 2000 (*See* 66 Fed. Reg. 4756, 4760 (2001); and

c. "TCM" shall mean the Transportation Control Measures SIP revision submitted by TCEQ to EPA on April 25, 2000 (*See* 66 Fed. Reg. 4756, 4761 (2001)).

EPA OBLIGATIONS

2. No later than December 1, 2005, EPA shall sign for publication in the Federal Register a notice(s) of final rulemaking to approve or disapprove, in whole or in part, the TERP, VMEP, and TCM SIP submissions. EPA shall promptly deliver the notice(s) to the Office of the Federal Register for publication. EPA shall make a copy of the notice(s) of rulemaking available to Blue Skies within five business days following signature.

MODIFICATION OF THIS DECREE

3. Any dates set forth in the Consent Decree may be extended by written agreement of the parties and notice to the Court. To the extent the parties are not able to agree to an extension, EPA may seek a modification of this Consent Decree in accordance with the procedures specified below.

(a) If EPA files a motion requesting modification of a date or dates established by this Consent Decree totaling more than thirty (30) days and provides notice to the Plaintiffs at least thirty (30) days prior to filing such motion, and files the motion at least sixty (60) days prior to the date for which modification is sought, then the filing of such motion shall, upon request, automatically extend the date for which modification is sought. Such automatic extension shall remain in effect until the earlier to occur of (i) a dispositive ruling by this Court on such motion, or (ii) the date sought in such motion. EPA may move the Court for a longer extension.

(b) If EPA files a motion requesting modification of a date or dates established by this Consent Decree totaling thirty (30) days or less, provides notice to the Plaintiffs at least fifteen (15) days prior to the filing of such motion, and files the motion at least seven (7) days prior to the date for which modification is sought, then the filing of such motion shall, upon request, automatically extend the date for which modification is sought. Such extension shall remain in effect until the earlier to occur of (i) a dispositive ruling by the Court on such motion, or (ii) the date sought in the modification.

(c) If EPA does not provide notice pursuant to subparagraphs 3(a) or 3(b) above, EPA may move the Court for a stay of the date for which modification is sought. EPA shall give notice to the Plaintiffs as soon as reasonably possible of its intent to seek a modification and/or stay of the date sought to be modified.

(d) If the Court denies a motion by EPA to modify a date established by this Consent Decree, then the date for performance for which modification has been requested shall be such date as the Court may specify.

(e) Any motion to modify the schedule established in this Consent Decree shall be accompanied by a motion for expedited consideration. The parties to this Consent Decree shall join in any such motion for expedited consideration.

4. This Consent Decree may be modified by written agreement of the parties and approval of the Court. Nothing in this Consent Decree or in the parties' agreement to its terms, shall be construed to limit the equitable powers of the Court to modify those terms upon a showing of good cause by any party.

CONTINUING JURISDICTION AND TERMINATION

5. The Court shall retain jurisdiction only to effectuate compliance with this Consent Decree and to consider any requests for costs of litigation (including attorney's fees) pursuant to CAA section 304(d), 42 U.S.C. § 7604(d). When EPA has discharged its obligations under paragraph 2 above and the relevant notice(s) has/have been published in the Federal Register, then this case shall be dismissed with prejudice.

SAVINGS PROVISIONS

6. The obligations imposed by EPA under Paragraph 2 of this Consent Decree can only be undertaken using appropriated funds. No provision of this Decree shall be interpreted as or constitute a commitment or requirement that EPA obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable federal statute.

7. Nothing in this Consent Decree shall be considered to limit or modify any discretion EPA may have to alter, amend, or revise the actions taken pursuant to Paragraph 2 of this Consent Decree.

8. Nothing in the terms of this Decree shall be construed to limit or modify the discretion accorded EPA by the Clean Air Act or by general principles of administrative law in taking the actions referred to in Paragraph 2.

9. Nothing in the terms of this Consent Decree shall be construed either (a) to confer upon this Court jurisdiction to review any issues that are within the exclusive jurisdiction of the United States Courts of Appeals under section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1), or (b) to waive any remedies plaintiffs may have under section 307(b)(1), 42 U.S.C. § 7607(b)(1). Nothing in the terms of this Decree shall be construed to confer upon the district court jurisdiction to review any decision, either procedural or substantive, to be made by EPA pursuant to this Decree, except for the purpose of determining EPA's compliance with this Decree.

ATTORNEY FEES AND COSTS

10. The Parties agree that an award to Blue Skies of costs of litigation (including attorneys' fees) pursuant to CAA section 304(d), 42 U.S.C. § 7604(d), is appropriate. Blue Skies is entitled to such an award in an amount to be determined either by settlement or by the Court. The deadline for filing a motion for costs of litigation (including attorney's fees) for activities performed prior to entry of this Consent Decree in this case is hereby extended until 120 days after entry of this Consent Decree by the Court. During this time the parties shall seek to resolve informally any claim for costs of litigation (including attorney's fees), and if they cannot, will submit that issue to the Court for resolution. The Court shall retain jurisdiction to resolve any request for costs of litigation (including attorney's fees), notwithstanding any dismissal pursuant to paragraph 5 above.

RECIPIENTS OF NOTIFICATION

11. Any notices required or provided for by this Decree shall be in writing, effective upon receipt, and sent to the following:

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or such other person as either party may subsequently identify in writing to the other party.

SECTION 113(g)

12. The Parties agree and acknowledge that before this Consent Decree can be finalized and entered by the Court, EPA must provide notice in the Federal Register and an opportunity for comment pursuant to Clean Air Act section 113(g), 42 U.S.C. § 7413(g). EPA will expeditiously prepare such notice and forward it to the Office of Federal Register after lodging the draft Consent Decree with the Court. After this Consent Decree has undergone an opportunity for notice and comment, the Administrator and/or the Attorney General, as appropriate, shall promptly consider any such written comments in determining whether to withdraw or withhold consent to this Consent Decree, in accordance with section 113(g) of the Clean Air Act. If the federal government elects not to withdraw or withhold consent to this Consent Decree, the parties shall promptly file a motion that requests the Court to enter this Consent Decree.

SIGNATURE OF PARTIES

13. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to consent to the Court's entry of the terms and conditions of this Consent Decree.

SO ORDERED this _____ day of _____ 2005.

_____
HONORABLE JERRY BUCHMEYER
UNITED STATES DISTRICT JUDGE

SO AGREED:

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Dated: May 2, 2005

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Dated: May 4, 2005

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by first-class mail, postage prepaid, on May 4, 2005, upon:

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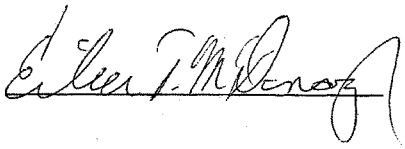

Mr. BURGESS. Administrator Holmstead, to quote the EPA's press release, the EPA "The EPA agreed to a schedule to complete action on a number of 1-hour ozone standard planning requirements including a program for cleaner engines and traffic congestion prevention measures." Additionally, the release states that "Parties went beyond the lawsuit and made voluntary commitments focused on making progress to achieve the new 8-hour standard. The Environmental Protection Agency also agreed to evaluate the most significant toxic air pollutants for additional monitoring." According to the press release, local officials also agreed to implement local pollution control measures earlier than required by State and Federal regulations. And the Texas Commission on Environmental Quality agreed to a cement industry study to evaluate the potential availability of new air pollution control technologies for cement kilns in the 8-hour ozone non-attainment area.

I know I am beginning to sound like Mr. Allen, but my question is this. Is the legal agreement legally binding, and if so, how would it change in air quality law like the changes that would be made under the President's proposed Clear Skies Initiative impact this agreement?

My personal opinion is that this is such a watershed agreement back home that we cannot allow it to move backward, so I would be interested in your answer.

Mr. HOLMSTEAD. We are equally enthusiastic about that agreement. It really is a great achievement by a lot of people working together in the local area. And as you have asked it, it is a legally binding agreement. I am quite sure there is nothing in the President's bill that would have any impact on that. But let me do this if I can. Let me see if we can get you a letter to that effect. And the other thing I think I can say on behalf of the administration is if anybody thinks there is something in there, I mean, that is one of the great things about legislation, we just make that is not the case because we would not want to do anything to undercut all the good work that has been done in that area.

Mr. BURGESS. So, Mr. Chairman, can we accept his expounded answer in writing for the record?

Mr. HALL. I see no objection. If there are no objections to it. Who is here to object?

Mr. BURGESS. I guess just you and I.

Mr. HALL. No, we would want to be fair with them even in their absence. Let me ask Counsel is there any objection? There being no objection, it will be allowed.

Mr. BURGESS. Very good, thank you, Mr. Chairman.

Let me then just ask a general question to either one of you. What is the current status—we spent a long time hearing about mercury. I would like to hear you talk about it. What is the current status of mercury controlled technology? What is it about the status of this technology that you think would make a Cap and Trade Program for reducing mercury emissions more effective than a more traditional command and control model?

Mr. HOLMSTEAD. One of the great things we have learned about the Cap and Trade Program is—and this is just one example. Years ago when all the arguments were about what technology you put

on a certain plant, there would be endless debate about whether this scrubber can get 70 percent reduction or 72 percent reduction or 78 percent reduction. All of a sudden when you have a Cap and Trade Program that creates an economic incentive, we have scrubbers that are getting 95 percent reduction because there is an economic incentive for the plants and the engineers to find the most cost effective way to maximize things.

Today there is no commercially available mercury specific control technology. There are other pollution controls that are designed to reduce sulfur dioxide or nitrogen oxides that accidentally reduce mercury emissions. But what we would like to do with the cap and trade is to create an incentive for people to optimize those controls to develop other controls.

And one of the things, one of the great features of the Cap and Trade Program is that with so much mercury coming from overseas, if we can be the leaders in creating incentives for the development with the cost effective control technology, then maybe other countries will adopt it. Right now we are the only country in the world to require mercury controls. But through this Cap and Trade Program, we are confident that over time you will see the development of much better, much more cost effective controls that we hope can then be exported to reduce this global background that comes in from all over the world.

Mr. BURGESS. Thank you. Mr. Chairman, I must just point out that the Peterbilt plant in my area in Denton, Texas produces a truck with a diesel engine that has practically zero emissions of the year 2007.

I will yield back.

Mr. HALL. We thank you, Doctor, for yielding back and if there are no more questions, I want to thank this panel. You have been——

Mr. SHIMKUS. Mr. Chairman?

Mr. HALL. I am sorry, Mr. Shimkus. I recognize you for 1 minute and 30 seconds is gone.

Mr. SHIMKUS. Thank you, Mr. Chairman.

I just want to follow up on the mercury.

Mr. HALL. I recognize the gentleman from Illinois.

Mr. SHIMKUS. Thank you, Mr. Chairman.

Say that again. Right, is there current specific mercury reduction technology on the shelf today for—just solely for reducing mercury emissions?

Mr. HOLMSTEAD. The short answer is no.

Mr. SHIMKUS. Thank you.

The—and so it is an offset of other technology that is doing other things.

Mr. HOLMSTEAD. No, but there is mercury specific control technology that people are trying to adapt for power plants.

Mr. SHIMKUS. Correct.

Mr. HOLMSTEAD. And they have done some short-term tests and they have done—and we are confident that that technology will work but right now there is not a power plant in the country that actually has that installed on a regular basis.

Mr. SHIMKUS. The reason I bring this—we have talked about the mercury, the old mercury MACT and now the new mercury rule,

can you assure those of us who have eastern coal that there will be a single standard for the challenge when we move to mercury of the reduction of mercury instead of a two tiered system for the different type of coals used?

Mr. HOLMSTEAD. You probably heard my earlier answer. The whole goal of the way we have done it in the regulation and the way it is in the President's bill is to create a level playing field so that no one is artificially advantaged. And we have spent an enormous amount of time working with industry folks and the coal industry, and the technical people at DOE and within our office and we believe that we have struck that balance. And I know that there still continues to be some disagreement but the whole goal and we think the result is to create a level playing field across all coal types.

Mr. SHIMKUS. Thanks.

And I will end on this. You know, I have a lot of fun with my good friend from Maine and we debate this all the time, this whole issue. But it did strike a nerve when he said coal is a low hanging fruit. Coal is not the low hanging fruit. In the last Clean Air Act, 10,000 miners in Southern Illinois lost their jobs. Costs are escalated. So for people to say coal is the low hanging fruit, I would challenge them to come to Southern Illinois, come to West Virginia, go all parts around the—on this country in which coal was the primary low cost power producer.

Mr. CONNAUGHTON. Congressman, it is hard to understand how a $52 billion cost which is twice as expensive as the next most expensive program is low hanging fruit. I mean, this is—what we are imposing through this legislation is enormously costly but it is the most cost effective. And by doing it, we can actually increase our use of coal and put those coal miners in Illinois back to work.

Mr. SHIMKUS. I am with you. Keep up the great work and I yield back, chairman.

Mr. HALL. I want to thank you for your time today, for the time it took to prepare, for all the good work you have put into this, and the assistance you give a good President. We are going to probably talk about getting this bill sent back over for the Senate to reconsider. I thank you again and really appreciate everything. With that, we are adjourned.

[Whereupon, at 4:48 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

RESPONSE FOR THE RECORD BY JAMES L. CONNAUGHTON, CHAIRMAN, COUNCIL ON ENVIRONMENTAL QUALITY

ANSWER TO SUBMITTED QUESTION OF HON. RALPH M. HALL

Question 1. Recently the 1998-1999 global warming studies producing what is nicknamed the "hockey stick" temperature history, which formed the basis for international finding that late 20th century temperatures were the warmest of the 1,000 years, have been discredited. What impact, if any, does this have on the Administration's position that CO_2 is not a pollutant and should not be part of the Clear Skies Initiative?

Response: The ongoing debate on reconstructing climate over the past 1000-2000 years underscores the need to invest in new knowledge on natural climate variability, including developing and deploying comprehensive and sustained global observations of the climate system through programs such as the U.S.-led Global Earth Observation System of Systems (GEOSS) international partnership. The President's 2006 Budget includes nearly $2 billion for climate change science and

another $3 billion for technology research, development, and deployment activities. The Administration's portfolio of climate change programs and cross-cutting initiatives focus on reducing the fundamental scientific uncertainties associated with climate change; advancing the development and introduction of energy-efficient, renewable, and other low- or non-emitting technologies; and improving standards for measuring and registering emissions reductions.

The intent of Clear Skies is to reduce the emissions of conventional air pollutants from the power sector which have harmful health effects when present in the ambient air at certain levels. CO_2 does not fall in that category nor is it regulated by the Clean Air Act.

The President's National Energy Plan envisions an integrated strategy for advancing economic growth and addressing energy security, air quality, climate change, and economic growth. Through a combination of research and development and market incentives these policies provide investment opportunities to advance cleaner, more efficient technologies such as a new generation of low polluting and lower carbon emission coal power plants. Combined with Administration policies to transform the way we use energy by improving efficiencies in transportation, buildings and appliances; to promote the use of nuclear power, clean diesel, methane, renewable energy, bio-energy, and more efficient power grids and development of hydrogen-powered vehicles we will dramatically improve our air quality and reduce greenhouse gas emissions without compromising our economic growth.

The Honorable MICHAEL BURGESS
United States House of Representatives
Washington, DC 20515

DEAR CONGRESSMAN BURGESS: This letter follows up on your question raised during the House Energy and Commerce hearing on May 26, 2005. At the hearing, you asked whether the recent Dallas/Fort Worth settlement to address ozone problems in the area was legally binding, and whether Clear Skies legislation would affect this agreement. At the hearing, then acting Administrator Jeffrey R. Holmstead stated that we at the Environmental Protection Agency (EPA) strongly supported the settlement of the litigation over the 1-hour ozone State Implementation Plan (SIP) for the Dallas/Fort Worth area and did not think that anything in Clear Skies would affect this settlement. This letter memorializes his statement.

We are of the opinion that the Clear Skies legislation would not affect what EPA has agreed to in the settlement, which was entered on August 8, 2005. In the consent agreement, EPA committed to taking final action on three elements of the Texas SIP for Dallas/Fort Worth. These elements of the SIP are: 1) the Texas Emission Reduction Plan SIP revision; 2) the Voluntary Mobile Source Emission Reduction Program SIP revision; and 3) the Transportation Control Measures SIP revision. None of these actions committed to in the consent agreement are affected by Clear Skies legislation and EPA has now completed final rulemaking on all three actions. In an action not part of the consent agreement, EPA's Regional Office in Dallas further agreed, in a letter dated February 18, 2005, to some activities in the Dallas/Fort Worth area that will serve the interest of clean air for the area. These agreed-upon activities are also independent of the outcome of expected Clear Skies legislation.

Separately, the Texas Commission on Environmental Quality has committed to the Plaintiffs that it will make a good faith effort to submit an 8-hour attainment demonstration SIP for the Dallas/Fort Worth nonattainment area in advance of the existing deadline of June 15, 2007, and to attain the 8-hour ozone standard in the Dallas/Fort Worth area as expeditiously as practicable.

I hope this response adequately addresses your question. I appreciate your interest in air quality issues, especially those for the Dallas/Fort Worth area. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

WILLIAM WEHRUM
Acting Assistant Administrator
Office of Air and Radiation

cc: Richard Green, Regional Administrator

The Honorable RALPH M. HALL
U.S. House of Representatives
Washington, DC 20510-6115

DEAR CONGRESSMAN HALL: Thank you for your July 1, 2005, letter in which you request additional information regarding Clean Air Act (CAA) related issues. I hope you find our responses helpful to you and the Committee. If you have further questions, please contact me or your staff may contact Lora Strine in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-3689.

Sincerely,

JOHN REEDER
Acting Associate Administrator,
Office of Congressional and Intergovernmental Relations

QUESTIONS FROM THE HONORABLE RALPH M. HALL FOR JEFFREY HOLMSTEAD, ASSISTANT ADMINISTRATOR FOR AIR AND RADIATION, U.S. ENVIRONMENTAL PROTECTION AGENCY

Question 1. There was concern when the Acid Rain Program was initiated that fuel switching was used as a method to comply with sulfur dioxide emissions reductions. Does EPA predict fuel-switching happening under the Clear Skies Initiative cap and trade programs? Please include in your response the supporting analysis for any conclusions reached.

Answer: Under the Acid Rain Program, significant SO2 reductions were achieved from coal-fired electric generating facilities by switching the type of coal that is burned from higher sulfur content to lower sulfur content varieties, but not necessarily by switching fuels (from coal to natural gas). EPA analysis of the Clear Skies Act of 2003 projected that significant fuel switching would not occur as a result of the Act, and instead, projected that significant amounts of pollution controls would be installed to meet the emission reduction requirements of Clear Skies. Coal was projected to remain an important fuel in providing affordable and reliable electricity to consumers, and Clear Skies was designed in part to avoid any major disruptions to the supply of fuel for producing electricity. The conclusions are based upon power sector modeling done in 2003 in support of Clear Skies, which can be found on EPA's Clear Skies website and is detailed in the Clear Skies Technical Support Package (http://www.epa.gov/air/clearskies/econ.html). Additional comprehensive analysis of Clear Skies and other proposed multipollutant legislation, as well as recent regulation, (available at http://www.epa.gov/airmarkets/mp) supports these findings.

Question 2. Please tell the Committee, how the mercury allowances will work under the Clear Skies Initiative? How did EPA take into account the various coal types utilitized? Please include in your response the supporting analysis for any conclusions reached.

Answer: Under the Clear Skies Act of 2003, allowances would be allocated to affected units based on the proportionate share of their baseline heat input to total heat input of the units. For mercury, only coal units would be affected, and the baseline heat input for each unit is adjusted for coal type. Different types of pollution controls are able to achieve a range of mercury reductions based upon the type of coal that is being burned at a particular facility and other facility characteristics. If allowances were allocated proportional to the overall reduction required under Clear Skies, then the coal types that are less able to get reductions would have to purchase more allowances. Under the allocations methodology of Clear Skies, bituminous units would be allocated a share of the mercury allowances 1.0 times their share of the overall heat input, subbituminous units would be allocated at 1.25 times their share, and lignite units would be allocated at 3.0 times their share. This allocation formula would partially compensate for the different mercury removal capabilities from the various coal types. Under Clear Skies, allocations are based on historical coal rank and heat input data, so the allocation approach does not create incentives to switch fuels, and fuel switching would not result in a unit being allocated any additional allowances.

Question 3. Outlined in comments submitted on the EPA's Clean Air Mercury Rule (CAMR), was a concern that test data EPA relied on for Gulf Coast lignite coal may have underestimated the mercury content of Gulf Coast lignite coal by a factor of two. Please tell the Committee if EPA believes that the mercury content of Gulf Coast lignite coal was underreported by the ICR data? Furthermore, what does the Agency believe is the mercury content of Gulf Coast lignite coal? In your response please provide the supporting analysis for any conclusions reached and how those conclusions impact plants using Gulf Coast lignite coal in meeting CAMR's requirements. Lastly, if the ICR data underreported the mercury content, please provide

an estimate of the amount of increased emissions that must be reduced by plants using Gulf Coast lignite coal in order to meet the requirements of CAMR.

Answer: We have no reason to doubt the accuracy of the data submitted during the public comment period for CAMR indicating that the mercury content of Gulf Coast lignites may have been underreported in the 1999 ICR effort. Further, we have no reason to doubt the revised mercury content values reported by the commenters for Gulf Coast lignites. However, we do not believe that units combusting Gulf Coast lignites will be adversely impacted by the "error" in the ICR data related to the mercury content of the lignite itself, because the mercury content of the coal was not a direct factor in the analysis. In developing the CAMR new source limits, where we did factor in the mercury-in-coal values, we accounted for the new mercury values for Gulf Coast lignites, such that new units burning Gulf Coast lignite should not be disproportionately burdened by the new source standards. In developing the allowance allocation adjustment factors for determining State budgets, EPA balanced three factors: (1) data on mercury capture by control configuration and coal type, (2) data on coal characteristics impacting mercury capture, and (3) mercury emissions by capacity. Although EPA utilized ICR data in determining these factors, EPA believes that these adjustment factors reasonably reflect that subbituminous and lignite coals have the lowest mercury capture with existing technologies, represent more emissions per capacity, and, in the case of lignite, also have a higher coal mercury content. EPA believes that the values we have assigned to these factors will succeed in equitably distributing allowances to the States and Tribes on the basis of the affected industry within their borders. Additionally, under CAMR, States have the discretion to allocate mercury allowances to sources in any manner that they choose. The final allocation adjustment factors are discussed in greater detail in a technical support document entitled "State and Indian Country Emissions Budgets" available at http://www.epa.gov/ttn/atw/utility/state__indiancountry__emissionbudgets__oar__2002__0056__6154.pdf.

Question 4. Please tell the Committee, if the mercury content of Gulf Coast lignite coal was underreported by the ICR data, what impact this might have on the overall mercury reduction requirement for the utility industry? Please provide the Committee with information on what the chlorine levels are in Gulf Coast lignite coals, including the impact those levels may have on the ability of plants utilizing Gulf Coast lignite coal to reduce mercury emissions.

Answer: As noted in the response to Question 4, the mercury content of the various coals, including Gulf Coast lignites, was not used in the analyses to develop the Phase I and II CAMR mercury caps. Therefore, the underreporting of the mercury content of Gulf Coast lignites in the ICR will have no impact on the overall mercury reduction requirement of the utility industry. It is widely known that mercury emissions from units utilizing Gulf Coast lignites are relatively more difficult to control than are those from other coals, partially as a result of generally low chlorine levels. However, the U.S. DOE is including such facilities in its mercury control technology demonstration program; early results indicate that these units will have options for reducing their mercury emissions but they may not be able to reduce them as much as other units may.

QUESTIONS FROM THE HONORABLE HILDA L. SOLIS FOR JEFFREY HOLMSTEAD, ASSISTANT ADMINISTRATOR FOR AIR AND RADIATION, U.S. ENVIRONMENTAL PROTECTION AGENCY

Question 1. EPA's 2004 guidance on rulemaking allows discussion of environmental justice only "as necessary and appropriate," while other executive orders must always be addressed. Why did EPA decide that the executive order on environmental justice only has to be discussed "as necessary and appropriate"? When would it not be appropriate to discuss environmental justice? If environmental issues are not considered during a rulemaking because it is not deemed necessary and appropriate, how does EPA determine there are no environmental justice impacts?

Answer: EPA has consistently worked to consider and address environmental justice issues in its rulemaking process. Since 1994, EPA has considered and analyzed the environmental justice implications of rules under development, but EPA does not require each rule's preamble to discuss Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (EO 12898). EPA believes there is a distinction between the consideration of environmental justice issues during rule development and including in each rule preamble a section addressing EO 12898. EPA believes that through its Action Development Process, rulewriters and managers are provided sufficient guidance to ensure environmental justice issues are appropriately identified, analyzed and addressed in the rulemaking process. The absence of a specific discussion of EO 12898

in every regulatory preamble, therefore, should not be viewed as an absence of care and consideration of environmental justice implications.

Question 2. How many new clean air rules over the last five years included consideration of the executive order on environmental justice and how many did not? Please identify each rulemaking specifically. For each, please identify the reason why consideration of environmental justice was or was not included.

Answer: As noted above, EPA believes it appropriately addresses environmental justice issues in its rulemakings and that a specific preamble discussion of EO 12898 is not always necessary.

Question 3. Please detail the specific role the Office of Environmental Justice's (OEJ) had in developing the CAIR Rule, the Mercury Rule and both the October 27, 2003 "Equipment Replacement Rule" and December 31, 2002 Final NSR "Improvement" Rule for NSR. If OEJ did not have a role please explain why and provide information explaining how the decision to not involve OEJ was made.

Answer: The Office of Air and Radiation manages environmental justice issues in its rulemakings. OEJ develops broad policy, which the program offices implement in their specific activities, generally without further OEJ involvement,

Question 4. In the 420 page document for CAIR, there are only two paragraphs which address environmental justice. These state "The agency expects this rule to lead to reductions in air pollution and exposures generally. For this reason, negative impacts to these subpopulations (minority or low-income) that appreciably exceed similar impacts to the general population are not expected." The final rule does not say that "negative impacts" are not expected at all. Can you please detail the negative impacts that are expected for any and all populations and locations which will experience negative impacts under the CAIR rule?

Answer: The Clean Air Interstate Rule is expected to lead to reductions in air pollution and exposures throughout the CAIR region of the Eastern U.S. The vast majority of the population living in this region, including the inhabitants of major cities such as New York, Philadelphia, Atlanta, and Chicago will experience dramatic improvements in air quality. All populations are expected to benefit from the rule, including low-income and minority populations. For particulate matter, in fact, ambient concentrations are predicted to decline for every location: we do not anticipate any negative impacts to any populations anywhere in the CAIR region. Modeling for 2015 predicts that a small region in western Michigan may experience small increases, of less than 2 ppb, in the 2015 time period. In this instance of small, temporary increases in ozone concentrations, no disproportionate impacts will be experienced by localized low-income or minority populations. Other areas in the CAIR region will experience reductions in ozone pollution between now and 2015.

Question 5. Both the final CAIR rule and the Regulatory Impact Analysis state that a rule like CAIR may lead to reductions in air pollution and exposures generally. Please provide detailed information on where these reductions are expected generally and those locations where reductions are not expected to occur.

Answer: See answer to #4.

Question 6. Has the Office of Environmental Justice sought advice from the OAR about the future of NEJAC? If yes, what advice was given to them? If no, what is OAR's role in the dismantling of NEJAC?

Answer: All EPA advisory committees are required to be evaluated annually. As one of 23 advisory committees of the Agency, the NEJAC charter was evaluated earlier this year and extended until September 25, 2006. The Agency has committed over the next year to seek independent advice and recommendations from the NEJAC's Executive Committee regarding options for meaningful public involvement, training, collaborative problem-solving and partnership building. The decision to renew the charter of an advisory committee authorized under the Federal Advisory Committee Act lies within the Office of the Administrator. Such a decision is made with the advice of the offices that manage the Committee, and other relevant program offices, which in this case includes OAR.

Question 7. Please identify what tools does EPA will have to obtain information from low-income and minority communities on how they are being impacted by environmental and public health issues if NEJAC is dismantled. What evidence does EPA have that these tools are sufficient enough to dismantle NEJAC? Please refer this question to the appropriate office, including the Office of the Administrator or Office of Environmental Justice if OAR is unable to respond.

Answer: The Agency is not dismantling the NEJAC, as noted above.

Question 8. Please identify, in consultation with OEJ, any OAR rulemakings for which OEJ requested, either formally or informally, an opportunity to participate. Please identify any such rulemakings in which OEJ did not participate in the rulemaking process, and/or was not provided with an opportunity to participate in the rulemaking process.

Answer: In 2000, OEJ requested an opportunity to participate in the NSR and Title V rulemakings. This request was made at a staff-to-staff level. Given time constraints and the adequacy of OAR's consideration of environmental justice issues, OEJ's involvement was not required. OEJ has not asked to participate in any other rulemakings. OAR informally solicited OEJ's recommendations with respect to the Tier II rulemaking after comments on the proposed rule were received.

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ONE HUNDRED NINTH CONGRESS

U.S. House of Representatives
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Washington, DC 20515–6115

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May 19, 2005

The Honorable Stephen L. Johnson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

The Honorable James L. Connaughton
Chairman
Council on Environmental Quality
722 Jackson Place, N.W.
Washington, D.C. 20503

Dear Administrator Johnson and Chairman Connaughton:

I understand that the Environmental Protection Agency (EPA) and the Council on Environmental Quality (CEQ) have been invited to testify before the House Committee on Energy and Commerce regarding the Administration's Clear Skies Initiative (CSI) on Thursday, May 26, 2005. While I remain highly skeptical about the wisdom and need for extensive amendments to the Clean Air Act (CAA) at this time, I am writing in order to request some basic information from EPA and CEQ regarding multi-pollutant legislation and other CAA related issues in advance of the hearing. In the event that you cannot answer some of these questions due to time constraints, I would request that you identify those responses and analyses that cannot be completed prior to the hearing and provide a date certain for providing such information.

As you know, sound legislative policy requires that comprehensive and reliable background data be made uniformly available to all parties. Over the past few years, several competing proposals to address multiple pollutants from power plants have been introduced in both chambers of Congress. EPA has extensive capabilities to analyze how these proposals will affect public health, electricity prices, coal use, natural gas supplies, and many other economic and environmental factors. EPA has already done so for its own CSI proposal. Before Congress can engage in any serious consideration of multi-pollutant legislation, we must have the benefit of up-to-date and detailed information that allows direct comparisons between all potential approaches, including leaving the existing Clean Air Act in place.

Clear Skies Initiative Related Questions

In developing information regarding multi-pollutant proposals, I ask that EPA use the latest available modeling tools, and that EPA take account of its own regulatory activities, including the recent issuance of the Clean Air Interstate Rule (CAIR) and the Clean Air Mercury Rule (CAMR). In addition, I ask that you commit to continuing to provide updated information, on a real-time basis, for all competing legislative proposals, if and when further significant developments occur in the complex multi-pollutant area.

1. EPA has performed extensive modeling on the Administration's CSI proposal as introduced by Representative Barton (H.R. 999/S. 485 (108th Cong.)). The results of this effort can be seen on the EPA Web site at: http://www.epa.gov/air/clearskies. I request that this modeling be updated for H.R. 999, as discussed below, and that the same modeling then be done for the following legislative proposals as well:

    - The Manager's Amendment introduced by Chairman Inhofe and Senators Voinovich and Bond on March 9, 2005;
    - The Clean Air Planning Act (H.R. 1873);
    - The Clean Smokestacks Act (H.R. 1451 or its Senate counterpart, S. 150); and
    - EPA's previously released "Strawman Proposal."

In order to ensure that the information is the most accurate and up-to-date, while also ensuring that meaningful and direct comparisons are possible, I request that EPA conduct:

a. IPM runs using the same modeling assumptions and parameters as EPA used for the analysis of CAIR and CAMR; and

b. National air quality modeling runs using the same modeling platforms and assumptions that EPA used for CAIR.

Modeling outputs should be provided for the years 2010, 2015, and 2020. These modeling runs should include, as part of their base case, recently promulgated EPA rules, such as CAIR and CAMR. In addition, to the extent such proposals also contain provisions relaxing, or otherwise altering relevant provisions of the existing Clean Air Act (for instance, compliance extensions, exemptions from preconstruction permitting requirements, or exemptions from air toxics control requirements), the effect of these provisions should be modeled and included in

the results as well.[1] The analysis of each proposal should have the complete set of outputs that the agency produced for its own Clear Skies proposal.

2. EPA has recently modeled air quality benefits for the CAIR. Using the same models, please determine, for all counties or areas in the CAIR region, NOx, SOx, and Hg emission levels and ozone and PM 2.5 levels and attainment status under:

   a. H.R. 999, and

   b. CAIR plus CAMR.

   Please provide modeling outputs for the years 2010, 2015, and 2020. Developing this regional analysis separately from the national analysis described above will allow everyone to clearly compare the results of Clear Skies versus CAIR/CAMR in the CAIR region.

3. I understand that EPA has completed IPM runs for at least 20-30 multi-pollutant scenarios over the past few years. To date, however, the agency has only released four such runs. Please provide a list of all such model runs with a brief description or summary of the primary parameters of such runs and the date such runs were conducted. Please also provide an estimate of both the total cost of such runs and the average cost per run. Please also provide any summary sheets, power-point presentations, or other documents associated with each such run that were used to brief EPA career staff or political appointees.

4. As you know, coal is one of our most abundant and reliable resources, and is therefore essential to our energy future. Coal mined in different areas of the country has different physical and chemical properties, such as sulfur, mercury, and Btu content. The Administration's CSI proposal sets out a specific mercury allocation ratio for bituminous, sub-bituminous, and lignite coal of 1.0, 1.25, and 3.0. EPA has stated that this ratio is based on estimated removal efficiencies for various types of coal using current technologies. What is in fact the technical basis for establishing this particular mercury allocation ratio?

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[1] If EPA cannot predict the number of sources or areas that would take advantage of an "opt-in" or compliance extension provision then, as a default assumption, EPA should assume that the maximum number of sources or areas eligible for such extensions or options do in fact take advantage of their availability and model the effect of such changes accordingly. Alternatively, EPA could model the effect of various percentages of sources, such as 25 percent, 50 percent, and 75 percent, taking advantage of such provisions.

In addition, it is worth noting that the mercury allocations are to be granted in perpetuity, using the ratio described above. Given that the second phase mercury cap in CSI does not occur until 2018, what is the technical basis for permanently allocating mercury allowances using current removal efficiencies, when those efficiencies may be substantially different in 2018?[2] Might allocating allowances on that basis ultimately result in substantial inequities in mercury allocations to the advantage of utilities burning one type of coal versus another?

Questions Related to Section 1443 of H.R. 6

Section 1443 of the House-passed energy bill, H.R. 6, amends section 181 of the Clean Air Act to require EPA to grant compliance extensions to certain ozone nonattainment areas. Under Section 1443, EPA "must approve" an extension for a "downwind area" that requests an extension and submits a plan demonstrating attainment by the extended attainment date. I have a number of questions relating to this provision and its effect on ongoing efforts to attain the National Ambient Air Quality Standard for ozone.

1. Attached is a list of all areas that EPA recently classified as "Subpart 1" areas under the 8-hour ozone standard. This list was submitted on December 9, 2004, to members of the Senate Committee on Environment and Public Works, including Senators Carper, Voinovich, and Jeffords. Is this an accurate and complete list of all Subpart 1 areas? If not, please provide such a list. Could Section 1443 of H.R. 6 be used to extend the attainment date for any of these Subpart 1 areas?

2. Please identify each 8-hour Subpart 2 ozone area outside California that EPA has found is affected by "significant contribution." Does EPA know of any reason(s) why any of these areas would not be eligible for a Section 1443 attainment extension, assuming they were to submit an extension request that is in compliance with the information and plan requirements of Section 1443? Which areas and why?

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[2] In its mercury rule, EPA acknowledged that Hg control efficiencies may change in the future, stating that: "[a]t some point in the future, the performance of control technologies on Hg emissions could advance to the point that the rank of coal being fired is irrelevant to the level of Hg control that can be achieved (similar to the point reached by controls for SO2 and NOx emissions)." CAIR Rule p. 36.

3. EPA's CAIR rule states that a "significant contribution" to nonattainment may be as little as one percent of the overall emissions inventory for an area.[3] Does Section 1443 of H.R. 6 require that extensions only be granted in cases where it is impossible for the area to attain due to the "significant contribution" of transported air pollution? Or, does Section 1443 allow an area to obtain an extension even where cost-effective local measures could provide for attainment without any upwind controls being implemented?

4. Has EPA performed an analysis of health impacts of Section 1443? Assuming all Subpart 2 areas outside of California were eligible for extensions under Section 1443 and obtained such extensions, what would be the health impacts? How would such a situation affect EPA's projections regarding the amount of residual nonattainment under CSI and CAIR?

Mercury Rule Related Questions

On May 28, 2004, I wrote a letter to then EPA Administrator Michael Leavitt, regarding EPA's process for finalizing its mercury rule. In that letter, I raised both substantive and procedural concerns regarding the EPA mercury rulemaking, some of which EPA Administrator Leavitt had identified himself. A substantial portion of the letter sought information regarding the effect of EPA's rule on various types of coal. Other concerns raised in the letter related to EPA's failure to conduct key analyses and to explain decisions that it had made or proposed. Given that nearly ten months remained before the rule was to be finalized, my overarching concern was that EPA state clearly its plans, both in terms of analysis and process, for finalizing the rule in a way that met the dictates of an open and public process, based on sound science and consistent with the requirements of applicable law, including the Administrative Procedures Act and the CAA.

On March 15, 2005, EPA finalized the CAMR. To date, EPA has not responded to my letter. As a result, I request that EPA answer the following questions:

1. Was my letter of May 28, 2004, included in the rulemaking docket, and did EPA respond to the concerns raised in my letter regarding the EPA rulemaking? If so, when and where?

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[3] See CAIR Rule pages 70 and 162 which state that: "For the 8-hour ozone air quality factor, EPA employs the same threshold amounts and metrics that it used in the NOx SIP Call. That is, as described in section VI, emissions from an upwind State contribute significantly to nonattainment if the maximum contribution is at least 2 parts per billion, the average contribution is greater than one percent, and certain other numerical criteria are met." [and] "[s]pecifically, EPA considered an upwind State not to contribute significantly to a downwind nonattainment area if the State's maximum contribution to the area was either (1) less than 2 ppb, as indicated by either of the two modeling techniques; or (2) less than one percent of total nonattainment in the downwind area."

2. Does EPA intend to respond to my May 28, 2004, letter or is it EPA's position that the simple passage of time has relieved it of the burden to respond to my concerns?

3. Will EPA commit to reviewing the letter and providing a response to the issues raised therein within a date certain? If so, when is that date?

Thank you for your attention to these important matters. If you have any questions regarding this letter, please contact me or have your staff contact Michael Goo, Minority Counsel, Committee on Energy and Commerce at (202) 226-3400.

Sincerely,

JOHN D. DINGELL
RANKING MEMBER

Attachment

cc: The Honorable Joe Barton, Chairman
Committee on Energy and Commerce

The Honorable Ralph M. Hall, Chairman
Subcommittee on Energy and Air Quality

The Honorable Rick Boucher, Ranking Member
Subcommittee on Energy and Air Quality

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

DEC 9 2004

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Thomas R. Carper
Ranking Member
Subcommittee on Clean Air, Climate Change
and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Senator Carper:

Thank you for the opportunity to respond to questions for the record that followed an April 1, 2004 hearing on the implementation of the National Ambient Air Quality Standards for Particulate Matter and Ozone. I hope this information will be useful to you and Members of the Committee.

If you have any questions, you may call me at (202) 564-5200 or your staff may call Diann Frantz of my staff at (202) 564-3668.

Sincerely,

Charles L. Ingebretson
Associate Administrator

Enclosures

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

DEC 9 2004

OFFICE OF CONGRESSIONAL AND INTERGOVERNMENTAL RELATIONS

The Honorable George V. Voinovich
Chairman
Subcommittee on Clean Air, Climate Change
and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Thank you for the opportunity to respond to questions for the record that followed an April 1, 2004 hearing on the implementation of the National Ambient Air Quality Standards for Particulate Matter and Ozone. I hope this information will be useful to you and Members of the Committee.

If you have any questions, you may call me at (202) 564-5200 or your staff may call Diann Frantz of my staff at (202) 564-3668.

Sincerely,

Charles L. Ingebretson
Associate Administrator

Enclosures

TABLE 3-2: 8-hour Ozone Nonattainment Areas
Listed by Classification then Design Value (2001-03 data)

Classification/Area Name	***Design Value (ppb)***
Severe 17	
Los Angeles South Coast Air Basin, CA	131
Serious	
San Joaquin Valley, CA	115
Riverside Co, (Coachella Valley), CA	108
Sacramento Metro, CA	107
Moderate	
Philadelphia-Wilmin-Atlantic Ci,PA-NJ-MD-DE	106
Los Angeles-San Bernardino Cos(W Mojave),CA	106
Baltimore, MD	103
Cleveland-Akron-Lorain, OH	103
New York-N. New Jersey-Long Island,NY-NJ-CT	102
Houston-Galveston-Brazoria, TX	102
Chicago-Gary-Lake County, IL-IN	101
Milwaukee-Racine, WI	101
Charlotte-Gastonia-Rock Hill, NC-SC	100
Sheboygan, WI	100
Dallas-Fort Worth, TX	100
Fredericksburg, VA	99
Washington, DC-MD-VA	99
Jefferson Co, NY	97
Boston-Lawrence-Worcester (E. MA), MA	95
Boston-Manchester-Portsmouth(SE),NH	95
Greater Connecticut, CT	95
Providence (All RI), RI	95
Ventura Co, CA	95
Springfield (Western MA), MA	94
Poughkeepsie, NY	94
St Louis, MO-IL	92
Marginal	
Portland, ME	91
Atlanta, GA	91
Beaumont-Port Arthur, TX	91
Norfolk-Virginia Beach-Newport News (HR),VA	90
Imperial Co, CA	87
Baton Rouge, LA	86
San Francisco Bay Area, CA	86

Areas reclassified from Moderate to Marginal-Effective Nov. 2004

Detroit-Ann Arbor, MI	97
Kent and Queen Anne's Cos, MD	95
Muskegon, MI	95
Richmond-Petersburg, VA	94
Cass Co, MI	93
La Porte Co, IN	93
Lancaster, PA	92
Memphis, TN-AR	92

Subpart 1

Buffalo-Niagara Falls, NY	99
Kern Co (Eastern Kern), CA	98
Nevada Co (Western Portion), CA	98
Allegan Co, MI	97
Indianapolis, IN	96
Cincinnati-Hamilton, OH-KY-IN	96
Columbus, OH	95
Youngstown-Warren-Sharon, OH-PA	95
Hancock, Knox, Lincoln and Waldo Cos, ME	94
Jamestown, NY	94
Pittsburgh-Beaver Valley, PA	94
Raleigh-Durham-Chapel Hill, NC	94
Door Co, WI	94
Franklin Co, PA	93
Kewaunee Co, WI	93
South Bend-Elkhart, IN	93
Toledo, OH	93
San Diego, CA	93
Erie, PA	92
Knoxville, TN	92
Louisville, KY-IN	92
Essex Co (Whiteface Mtn) NY	91
Allentown-Bethlehem-Easton, PA	91
Reading, PA	91
Huntington-Ashland, WV-KY	91
Benton Harbor, MI	91
Amador and Calaveras Cos (Central Mtn), CA	91
Mariposa and Tuolumne Cos (Southern Mtn),CA	91
Clearfield and Indiana Cos, PA	90
Canton-Massillon, OH	90
Dayton-Springfield, OH	90
Flint, MI	90
Manitowoc Co, WI	90
Greene Co, PA	89
York, PA	89
Rocky Mount, NC	89

Grand Rapids, MI	89
Lima, OH	89
Mason Co, MI	89
Chico, CA	89
Rochester, NY	88
Harrisburg-Lebanon-Carlisle, PA	88
State College, PA	88
Chattanooga, TN-GA	88
Benzie Co, MI	88
Fort Wayne, IN	88
Greene Co, IN	88
Muncie, IN	88
Sutter Co (Sutter Buttes), CA	88
Albany-Schenectady-Troy, NY	87
Johnstown, PA	87
Madison and Page Cos (Shenandoah NP), VA	87
Parkersburg-Marietta, WV-OH	87
Wheeling, WV-OH	87
Birmingham, AL	87
Huron Co, MI	87
Terre Haute, IN	87
Phoenix-Mesa, AZ	87
Charleston, WV	86
Scranton-Wilkes-Barre, PA	86
Tioga Co, PA	86
Macon, GA	86
Kalamazoo-Battle Creek, MI	86
Lansing-East Lansing, MI	86
Steubenville-Weirton, OH-WV	86
Las Vegas, NV	86
Altoona, PA	85
Clarksville-Hopkinsville, TN-KY	85
Haywood and Swain Cos (Great Smoky NP), NC	85
Murray Co (Chattahoochee Nat Forest), GA	85
Evansville, IN	85
Jackson Co, IN	85

Early Action Compact - Marginal - Effective Nov. 2004

Greensboro-Winston Salem-High Point, NC	93

Early Action Compact - Subpart 1

Columbia, SC	89
San Antonio, TX	89
Hickory-Morganton-Lenoir, NC	88
Fayetteville, NC	87
Greenville-Spartanburg-Anderson, SC	87
Denver-Boulder-Greeley-Ft Collins-Love., CO	87
Berkeley and Jefferson Counties, WV	86
Washington Co (Hagerstown), MD	86
Johnson City-Kingsport-Bristol, TN	86
Nashville, TN	86
Frederick Co, VA	85
Roanoke, VA	85

126 Areas

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