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OVERSIGHT OF U.S. ENVIRONMENTAL PROTECTION AGENCY ENFORCEMENT AND COMPLIANCE PROGRAMS

HEARING

BEFORE THE

SUBCOMMITTEE ON SUPERFUND, WASTE MANAGEMENT, AND REGULATORY OVERSIGHT

OF THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

JUNE 29, 2016

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C O N T E N T S

OVERSIGHT OF U.S. ENVIRONMENTAL PROTECTION AGENCY ENFORCEMENT AND COMPLIANCE PROGRAMS

WEDNESDAY, JUNE 29, 2016

U.S. SENATE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON SUPERFUND, WASTE MANAGEMENT, AND
REGULATORY OVERSIGHT
Washington, DC.

The committee met, pursuant to notice, at 2:30 p.m. in room 406, Dirksen Senate Office Building, Hon. Mike Rounds (chairman of the subcommittee) presiding.

Present: Senators Rounds, Markey, Crapo, Sullivan, and Inhofe.

OPENING STATEMENT OF HON. MIKE ROUNDS, U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA

Senator ROUNDS. Good afternoon, everyone. The Environment and Public Works Subcommittee on Superfund, Waste Management, and Regulatory Oversight is meeting today to conduct a hearing entitled Oversight of U.S. Environmental Protection Agency Enforcement and Compliance Programs.

Today we will hear testimony from Cynthia Giles, the Assistant Administrator of the Office of Enforcement and Compliance Assurance at the U.S. Environmental Protection Agency. We will be conducting oversight on the EPA's civil, criminal enforcement and compliance programs, and explore suggestions for improvement.

Federal laws such as the Clean Air Act, Clean Water Act, and the Resource Conservation Recovery Act give the EPA the authority to issue penalties and pursue criminal and civil actions in order to enforcement requirements of environmental laws. The EPA Office of Enforcement and Compliance Assurance, OECA, administers EPA's environmental enforcement and compliance programs, and provides compliance assistance to the EPA's regional offices, States, businesses, local governments, and tribes.

However, in recent years, rather than providing compliance assistance, the EPA has dictated compliance by engaging in heavy-handed environmental enforcement. We have heard multiple reports of the EPA inspecting facilities and leaving the company waiting years for the results, imposing huge fines on companies that self-reported and corrected simple administrative errors, and a lack of transparency regarding environmental violations.

Rather than assisting with compliance, the EPA chooses to simply impose aggressive and, at times, unreasonable penalties using

questionable enforcement methods. For example, in 2015, the EPA threatened Andy Johnson, a Wyoming farmer and father of four, with $16 million in fines, alleging that he had violated the Clean Water Act by constructing a stock pond on his property. It took the Johnson family over a year to settle a lawsuit with the EPA.

In 2012, the EPA was criticized for using aerial surveillance over farms in Iowa and Nebraska to investigate Clean Water Act violations rather than speaking with landowners personally about the alleged violations. Most alarmingly, in 2010, an EPA regional administrator was quoted as saying he wanted to crucify oil and gas companies like Roman conquerors, with the goal of making them easy to manage for the next few years.

Tactics and statements like this by EPA officials, who are supposed to be working collaboratively with stakeholders, are worrisome and lead to serious questions regarding the integrity of the EPA enforcement process. Further, the EPA has expanded their use of Section 114 information requests under the Clean Air Act.

Section 114 letters allow the EPA to collect information from covered entities to use in developing our regulation or as part of an investigation for an enforcement action. The EPA has increasingly issued Section 114 letters to companies who are not the target of an enforcement action, but merely may have information relevant to a separate investigation of which they are not a part.

These information requests are extremely burdensome, can cost companies hundreds of thousands of dollars, and, despite the fact that the company receiving the request is not involved in the enforcement action, they can still be subject to criminal and civil penalties if they do not accurately comply with these requests in a timely fashion.

Additionally, the EPA has begun the implementation of their Next Generation Compliance Initiative, which, among other things, would outsource EPA enforcement responsibilities to third-party auditors who would take the place of actual EPA personnel in enforcing environmental laws.

We all want clean air and clean water. Compliance with environmental law is a requirement and there should be repercussions for breaking those laws. However, when an agency unfairly targets certain sectors of the economy or imposes large fines on small companies who take the time to voluntarily self-report, or whose only recourse is to pay the fine because they do not have the resources to engage in a time-consuming lawsuit, it runs contrary to the true intent of the EPA's enforcement program.

The EPA should strive to be a resource that assists with environmental compliance rather than an agency that simply uses fines and scare tactics to dictate compliance. When the EPA works in a transparent, cooperative fashion with regulated communities, taxpayer dollars will be better managed, environmental laws will be more effective, and our environment will be cleaner for it.

I would like to thank our witness for being with us today, and I look forward to hearing your testimony.

Now I would also like to recognize my friend, Senator Markey, for a 5-minute opening statement.

But let me just say this before Senator Markey steps in. I have appreciated Senator Markey's work on the Committee and I have

appreciated the fact that Republicans and Democrats sometimes have differing points of view on different issues. But I think the one thing that we both agreed on is that we want an efficient and effective delivery of services, and we want a sense of accountability from the agencies that we are here to provide oversight to. So I just want to say that I have appreciated Senator Markey's interest in this and your willingness to work with us in going through this series of oversight committee hearings.

Senator MARKEY.

OPENING STATEMENT OF HON. EDWARD J MARKEY, U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator MARKEY. Thank you, Mr. Chairman, very much. You and I, last week, were at the White House sitting there while President Obama signed a bill which had equal numbers of Democrats and Republicans working together, the toxic chemical update of a law that is a 1975 law. Last night on the Senate floor we passed out the brownfields law; both of them coming out of this Committee, both of them bipartisan, working together to try to ensure that we have commonsense laws that are on the books. And I want to thank you, as a result, for scheduling today's hearing.

I would also like to extend my appreciation to Cynthia Giles for testifying here today. The Commonwealth of Massachusetts benefited from your expertise leading the water protection program at the Massachusetts Department of Environmental Protection. We thank you for that work. You have a similar job now to make sure that these laws are enforced, and the EPA is charged with implementing and enforcing the environmental laws to protect the air we breathe, the water we drink, the use for recreation and the land we use to grow our food.

To ensure its mission is fulfilled, the EPA must have an enforcement arm with effective tools to enhance compliance with the law. It must be empowered to deter violations that can endanger health and the environment.

The Agency's commitment to environmental protection can be seen on the front page of yesterday's New York Times, when Volkswagen agreed to pay up to $14.7 billion to settle allegations of cheating on air emissions tests and deceiving customers. This is an excellent example of the EPA acting as a tough cop on the environmental beat, working with State governments to enforce the law and protect public health.

EPA enforcement actions have led to increased corporate compliance and environmental cleanup and mitigation of projects. EPA actions for non-compliance with environmental law have led to nearly $2 billion from corporate owners to clean up Superfund sites, $7 billion in investments by companies to control pollution and cleanup contaminated sites, $4 billion in court-ordered environmental projects resulting from criminal prosecutions.

Unfortunately, the EPA's ability to continue the pace of its compliance activities is strained by diminished resources. The EPA's enforcement budget has declined by nearly 9 percent from 2010 to 2016, and its enforcement and compliance force has decreased by 17 percent during that same time period. Investing in EPA enforce-

ment activities and providing the Agency with necessary funding is critical to its success.

We must also bring EPA's compliance enforcement activities into the 21st century. The EPA's Next Generation Compliance Initiative supports the advancement of more effective and efficient ways of controlling pollution by embracing advanced monitoring technology, electronic reporting, and increased transparency. Using an advanced monitoring system like infrared video cameras to actually see dangerous emissions, reducing the paper burden on both industry and the Agency, and increased public awareness of enforcement activities are all benefits of this new 21st century approach.

Whether it is Love Canal, VW, Flint, Michigan, or Woburn, Massachusetts, where, in 1979, a woman, Ann Anderson, brought her young son, Jimmy, into my office and asked me if I would help her. She had done an epidemiological study of her own neighborhood and found that not only Jimmy, but other children in the neighborhood, had leukemia, had cancers. She had done the work and she had a city that was turning a deaf ear to her. She wasn't receiving the right kind of support from the State. So Senator Kennedy and I went to the EPA to say, can you come in, can you begin to work on those issues.

So it has to be a place where people can turn in order to make sure that their families are in fact protected.

Now, over the years, of course, there have been many who have said, well, EPA just is not an agency which is needed to do this job. And I am reminded back in 1981 there was a guy whose name was Hernandez. He wrote a book after he had been considered and then rejected for the position of the head of the EPA, and he said he remembered the interview which he had in February 1981 to get the job as the head of the EPA, and in the meeting he was asked whether or not he would be willing to bring the EPA to its knees; and he said he did not know how to respond, but it was with the greatest relief when he learned that somebody else had been given the job, Ann Burford, Ann Gorsuch.

Unfortunately, there is still this dynamic tension which exists between those that want to make it effective and work, and those that just want to bring it to its knees, and it is that balance that we have to strike here in order to make sure that we have an agency that is on the side of ordinary families, trying to protect their families from pollution in all of its forms.

So I thank you, Mr. Chairman, for conducting this hearing and I am looking forward to hearing from the witness.

Senator INHOFE. It is not appropriate to give an opening statement, but I do have a brilliant one I want to make a part of the record.

Senator ROUNDS. Without objection.

[The prepared statement of Senator Inhofe follows:]

Subcommittee on Superfund, Waste Management, and Regulatory Oversight Hearing:

"Oversight of U.S. Environmental Protection Agency Enforcement and Compliance Programs."

Wednesday, June 29, 2016, at 2:30 pm.

This very important oversight hearing is long overdue, so thank you to Subcommittee Chairman Rounds for scheduling this to examine the Environmental Protection Agency's (EPA) enforcement and compliance programs.

I would like to welcome our witness, Cynthia Giles, who is the Assistant Administrator for the Office of Enforcement and Compliance Assurance at EPA, back before the Committee.

Ms. Giles has testified before this Committee only twice before – at her confirmation hearing and at a drinking water oversight hearing – both of which were in 2009.

At Ms. Giles' confirmation hearing, I raised concerns that too many of President Obama's top EPA officials were from the northeast and were unfamiliar with issues affecting the vast majority of the country beyond the urban centers of the east coast.

My concerns have been proven correct. The Obama EPA – and in particular, the enforcement program under Ms. Giles' leadership – has shown itself to be heavy-handed and out of touch with rural communities that grow our food and produce our energy.

Look no further than the statements by Dr. Al Armendariz, the former Region 6 Administrator for EPA based in Dallas, who said in 2010 that

EPA's "general philosophy" for enforcement was to "crucify" a couple of oil and gas companies to make an example of them and incite fear in the rest of the sector. I exposed these remarks on the Senate floor in 2012 and soon thereafter Dr. Armendariz resigned.

Indeed, Dr. Armendariz was behind a 2010 Safe Drinking Water Act emergency administrative order against a Texas oil and gas company, which was counter to findings from state officials and based on dubious reports. According to emails obtained by the Committee, Ms. Giles wrote to Dr. Armendariz and told him that he did a "terrific job" in issuing the order. Never mind that in 2012 EPA withdrew the order after questions were raised about the science on which it was based, vindicating the state's regulators who had urged caution. That is not my definition of a terrific job.

This enforcement-first philosophy is not limited Dr. Armendariz. It seems to be part of the day-to-day operations at EPA.

Just look at EPA's attempts to spy on farms in the Midwest from the air to enforce the Clean Water Act, and the culture of intimidation those tactics create where people cannot feel safe in their own homes from the prying eyes of EPA agents.

Then there was the case EPA brought against a family in Idaho, who had tried to build a house near a lake only to have EPA threaten them with millions in fines under the Clean Water Act. EPA even argued that the land owners could not challenge the enforcement order in court, but a unanimous Supreme Court ruled in their favor in 2012.

That was followed by another questionable Clean Water Act case where EPA went after a farmer in Wyoming and threatened him with millions in fines for building a stock pond. That case was settled just last month, and the farmer will get to keep his pond.

These are just a few examples of an agency quick to throw down the hammer when it advances policy goals of EPA headquarters, without conducting due diligence and listening to partners at state agencies. Yet, when cases arise that truly impact the environment, EPA is slow to take action and it is also clear the Agency does not hold itself to the same high standards it expects farmers and other small businesses to follow.

For instance, just look at what happened at the Gold King mine in Colorado, where EPA staff and contractors caused more than 3 million gallons of contaminated mine water to spill into a local river last August. Almost a year later, and no one has been held to account for this incident. Just imagine if a mining company or other business had caused the spill and ask yourself whether EPA have been as lenient?

I ask that my full statement be entered into the record. Thank you.

Senator INHOFE. Our witness joining us today is Cynthia Giles, Assistant Administrator, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency. Ms. Giles has served as Assistant Administrator of OECA since May 12th, 2009. That was when she was confirmed by the Senate by a voice vote for the position.

She previously served as the Director of the Conservation Law Foundation's Advocacy Center in Rhode Island. Earlier in her career she served as Assistant United States Attorney in Philadelphia, head of the water protection program for the Commonwealth of Massachusetts, and the Director of Enforcement Coordination for EPA Region 3.

We will now turn to our witness, Assistant Administrator Cynthia Giles, for her opening statement of approximately 5 minutes.

Assistant Administrator Giles, you may begin.

STATEMENT OF CYNTHIA GILES, ASSISTANT ADMINISTRATOR, OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE, U.S. ENVIRONMENTAL PROTECTION AGENCY

Ms. GILES. Thank you, Mr. Chairman and Ranking Member Markey and members of the Subcommittee. I am Cynthia Giles, Assistant Administrator for the Office of Enforcement and Compliance Assurance, and I want to thank you for the opportunity to testify today about how EPA meets the challenge of ensuring consistent implementation and enforcement of Federal environmental laws and regulations.

The mission of EPA's enforcement and compliance program is to protect both human health and the environment by ensuring compliance with environmental laws. Most of these laws are built around important ideas of federalism, where States and the Federal Government have important, complementary roles in protecting public health and the environment.

EPA is proud of the environmental progress this Country has made over the last several decades, due in large part to the combined efforts of tribal, State, and Federal Governments. During the more than 7 years that I have been in this position, I have learned that EPA and our partners share a strong commitment to a clean environment, and also to ensuring that there is a level playing field for companies that play by the rules.

EPA is sensitive to the need for consistency and fairness, as well as flexibility to adapt to local issues. The Agency has developed innovative tools to help the regulated community, particularly small businesses, understand and comply with environmental requirements.

EPA prepares small entity compliance guides when a rule may have significant economic impact on small entities. These guides explain in plain English the action that a small entity must take to comply. EPA also operates web-based Compliance Assistance Centers that received over 2.5 million visitors last year, and we maintain topic-specific hotlines for responding to requests.

In EPA's civil compliance program, we work closely with our State, local, and tribal partners to monitor compliance and, where significant violations are found and Federal enforcement is appropriate, work with the regulated entity to remedy the violation.

Most cases brought by EPA are resolved through a mutually agreeable settlement. Judicial cases are often brought jointly by both EPA and States.

EPA also works with our partners to implement an effective cleanup enforcement program by engaging responsible parties to perform cite investigations and cleanups. Encouraging responsible parties to enter into cooperative cleanup settlements has reduced the need for litigation, cleaned up thousands of communities, and saved the American taxpayer billions of dollars in cleanup expenses.

The Agency also undertakes criminal investigation and works with DOJ to prosecute the most egregious violators, while working closely with local law enforcement partners. States often take the lead on prosecuting crimes that endanger public health and damage the environment.

EPA is currently modernizing our enforcement program with the Next Generation Compliance Initiative. Next Gen is based on the principle that today's environmental challenges require a modern approach to compliance, using new information tools and approaches while strengthening enforcement. Better pollution monitoring and reporting helps to identify problems before they become really serious, helping save time and money for the regulated entities and for regulators at the tribal, State, and Federal levels. An example is our move toward electronic reporting. Making use of these kinds of modern information technology saves money for businesses, saves times for States, and increases transparency while improving accuracy.

Over the last four decades, EPA, working with our State, local, and tribal partners, has made tremendous progress toward achieving cleaner air, water, and land for our Nation. A strong enforcement and compliance program has helped to make this possible. We will continue to work with our partners to take advantage of innovations and make smart choices about priorities, ensuring that the public health comes first. We know that achieving this goal requires consistency, a level playing field, and flexibility that acknowledges and allows for the diversity in our Nation's environmental, economic, and demographic conditions.

Thank you for the opportunity to testify, and I would be happy to answer any questions.

[The prepared statement of Ms. Giles follows:]

Testimony of Cynthia Giles, Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Before the
Senate Committee on Environment and Public Works
Subcommittee on Superfund, Waste Management and Regulatory Oversight

Wednesday, June 29, 2016

Mr. Chairman, Ranking Member Markey, distinguished Members of the Subcommittee, I am Cynthia Giles, Assistant Administrator of EPA's Office of Enforcement and Compliance Assurance. Thank you for the opportunity to testify about how the EPA meets the challenge of ensuring consistent implementation and enforcement of federal environmental laws and regulations. I will be focusing my remarks on how EPA's compliance and enforcement program helps to ensure the public health benefits envisioned by federal environmental laws, and will describe how we provide for consistency in the agency's enforcement and compliance program, flexibility to ensure fairness – including for small business, and a level playing field for the regulated community as a whole. I will also discuss some innovations we are using to increase compliance and reduce pollution in ways that make sense and are cost effective.

The Mission of Enforcement and Compliance at the EPA

EPA's enforcement and compliance program's mission is to protect both human health and the natural environment across the varied national landscape by ensuring compliance with environmental laws of the United States. The EPA has responsibility for implementing 28 different environmental programs contained in 11 different environmental statutes. Most of these laws are built around important ideas of federalism, where states and the federal government each have important and complementary roles in ensuring the public health and environmental

benefits the laws were designed to achieve. EPA's enforcement program includes both civil and criminal enforcement of the federal environmental laws as well.

The EPA is proud of the environmental progress in the United States over the last several decades, due in large part to the combined efforts of tribal, state and federal governments to ensure compliance with federal laws. We don't just set standards to protect public health and the environment, we work hard to ensure that we actually achieve them. During the more than seven years that I have been in this job, one thing I have learned is that the EPA and states share a strong commitment to a clean environment for our citizens. And we also all know that a strong compliance and enforcement program is necessary both to achieve those health protections and to ensure that the companies that play by the rules are not put at an unfair competitive disadvantage.

Consistency and Flexibility in Enforcement

EPA's compliance and enforcement program – both civil and criminal – is implemented across the country by our headquarters office in Washington, D.C. as well as our ten regional offices. The regional offices support the national program while tailoring their expertise and work to address specific regional issues. They also coordinate with their state, local and tribal counterparts to ensure that EPA's work complements state and tribal environmental priorities.

The Enforcement and Compliance Assurance program employs statute-specific policies and guidance to address compliance monitoring, enforcement responses to violations, responsible party cleanups, and penalty assessment, all of which were created to provide consistency across the regions and headquarters. While we recognize that consistency is important, we know that we must also be sensitive to the unique or differing circumstances of

individual situations. We know that states and the regulated community want the same things: consistency and fairness, as well as flexibility to adapt to the realities on the ground.

Compliance Assistance and Support for Small Businesses

The EPA recognizes the role and position of small businesses in the nation's economy, and the unique challenges they face. To that end, the agency has developed innovative compliance assistance tools to help the regulated community understand and comply with environmental requirements – particularly small businesses. First, the EPA prepares Small Entity Compliance Guides when a rule may have a significant economic impact on small entities, pursuant to the Small Business Regulatory Enforcement Fairness Act (SBREFA). These Compliance Guides explain in plain English the actions that a small entity must take to comply with the rule. Second, the EPA works with outside organizations to operate 15 web-based Compliance Assistance Centers that received over 2.5 million visitors in FY 2015. The EPA also maintains a number of topic specific hotlines for responding to requests for information.

EPA's enforcement policies and practices are also designed to accommodate small businesses. In recognition of our enforcement and compliance efforts, the Small Business Administration has given the EPA an "A" rating every year since 2005.

Overview of the Enforcement Process

EPA's enforcement and compliance program is focused on pollution problems that impact American communities. In both civil and criminal enforcement, our objective is to address the most serious water, air and chemical hazards.

For the civil compliance program, EPA's regional offices, together with their state, local and tribal partners, monitor compliance through inspections of facilities and other activities to

gather compliance-related information. Where significant violations are found, and federal enforcement is appropriate, the EPA will work with the regulated entity to remedy the violation and resolve the matter. The vast majority of all cases brought by the EPA are resolved on consent, through a mutually agreeable settlement. Most cases, approximately 90 percent, are handled administratively, while larger, more complex matters are usually handled as civil judicial cases, in conjunction with the U.S. Department of Justice (DOJ). Civil judicial cases are often brought jointly by both the EPA and states and we routinely share information with states and discuss division of work. EPA's objective in all cases is to secure compliance with the law in order to protect the environment, to safeguard communities from exposure to unhealthy pollutants, and to ensure a result that is fair – to the defendant, to the defendant's competitors, and to the public impacted by the violations.

The EPA also works with states, tribes and local governments to implement an effective cleanup enforcement program. The EPA engages responsible parties to perform investigations and cleanups of Superfund sites instead of using taxpayer funds to clean them up. Encouraging responsible parties to enter into cooperative cleanup settlements has reduced the need for litigation, cleaned up thousands of communities, and saved the American taxpayer billions of dollars in cleanup expenses. EPA's enforcement program has also facilitated the cleanup and sustainable reuse of contaminated properties throughout the country using tools and policies developed to promote land revitalization.

The agency also undertakes criminal investigations and works with DOJ to prosecute the most egregious violators of our nation's environmental protection statutes. EPA maintains a strong working relationship with DOJ and U.S. attorneys for these matters. We also work closely

with our law enforcement partners at the state and local levels, with states often taking the lead on prosecuting environmental crimes that endanger public health and damage the environment.

Next Generation Compliance

The EPA is currently undertaking an effort to modernize its enforcement program using the Next Generation (Next Gen) Compliance initiative. Next Gen is based on the principle that today's environmental challenges require a modern approach to compliance with new information tools and approaches while strengthening vigorous enforcement as the backbone of environmental protection. Better pollution monitoring and reporting helps to identify problems before they become really serious--helping save time and money for regulated entities while also saving money for taxpayer funded regulators at the tribal, state, and federal levels. The National Pollutant Discharge and Elimination System (NPDES) e-reporting rule that was finalized earlier this year is an example of how technology can help realize these improved outcomes. Filing water pollution discharge information electronically, rather than creating excess paperwork, saves states time and improves outcomes for industry by eliminating opportunities for data errors, while creating opportunity for greater transparency.

Conclusion

Over the last four decades, the EPA, working with our state, local and tribal partners, has made tremendous progress toward achieving cleaner air, water and land for our nation. A strong enforcement and compliance program has helped to make this possible. We will continue to work with states, tribes and local governments to take advantage of innovations and make smart choices about priorities, ensuring that public health comes first. We know that achieving that goal requires consistency, a level playing field for industry and stakeholders and flexibility that

acknowledges and allows for the diversity in our nation's environmental, economic and demographic conditions.

Thank you for the opportunity to testify. I would be happy to answer any questions.

U.S. Environmental Protection Agency
Responses to Questions for the Record
Hearing: "Oversight of U.S. Environmental Protection Agency Enforcement and Compliance Programs"
Subcommittee on Superfund, Waste Management, and Regulatory Oversight
U.S. Senate Committee on Environment and Public Works
Wednesday, June 29, 2016

Chairman Inhofe:

1. According to the Environmental Council of States (ECOS), states conduct about 90% of enforcement cases and conduct 96% of inspections. Since assuming your position in 2009, what has your office done to improve EPA's relationship with state regulators on enforcement and compliance work?

Response: The EPA recognizes the critical role of state, local, and tribal environmental agencies in implementing environmental statutes, and the important work states do to evaluate compliance and address violations to protect human health and the environment. The agency has and continues to routinely engage with states to work collaboratively to achieve shared public health and environmental goals. EPA regions meet regularly and work with each of the states in their geographic area on enforcement and compliance monitoring, coordination and work-sharing expectations.

The EPA also works closely with ECOS, which has been invaluable in providing leadership and a constructive venue for advancing our shared goals. The EPA actively participates in national ECOS meetings and numerous workgroups including the Compliance and Enforcement Committee. The EPA's collaboration with states through the E-Enterprise Leadership Council, established in 2014 to modernize environmental programs, has provided an extremely productive venue to work together with states on a number of efforts to design, modernize and improve environmental protection including enforcement. One area where the agency is working with ECOS and the states is the development of improved tools for federal and state inspectors. For example, the agency is developing mobile tools for field inspectors which will support inspections and improve the quality and consistency of inspections.

Another area where the EPA's Office of Enforcement and Compliance (OECA) has worked closely with ECOS and individual states since 2008 is in the development of the final National Pollution discharge Elimination System (NPDES) Electronic Reporting Rule, which will modernize the reporting system for water permits, improve compliance, and reduce costs for regulated facilities and regulatory agencies.

Our work with states on enforcement issues is continuous. The EPA is currently working with ECOS to assess state compliance and enforcement training needs, identify available training, and look for opportunities to expand the range of training available and enhance access to these trainings.

2. Your office develops National Enforcement Initiatives (NEI) every three years to focus Agency enforcement resources. Your website states that "[t]he initiatives are chosen with input from the public and from stakeholders across EPA's state, local and tribal agency partners." However, public comments submitted on the most recently proposed NEI expressed concerns over EPA's failure to consult with state partners earlier in the process for developing the NEI.
    a. What is EPA's process for developing and finalizing the NEI? Please describe any intra-agency consultation within EPA headquarters and/or regions as well as interagency consultation with other federal agencies and offices.
    b. Outside of the notice-and-comment process, what steps has your office taken to seek public and state, local and tribal input when developing a proposed NEI?

Response: The EPA process for NEI's includes a solicitation for ideas and recommendations for NEIs from states and tribal governments, a proposal for the NEIs which is published and includes a public comment period, a series of discussions with stakeholders, and then a final selection. The process of developing and finalizing the FY 2017-2019 NEIs began in June of 2014 and continued through February of 2016. In 2014, as part of the process of developing the FY 2016-2017 National Program Manager Guidance, the EPA sought comments and suggestions from states, tribes and the public for the FY 2017-2019 NEIs. In 2015, the EPA published the Federal Register Notice titled: "Public Comment on EPA's National Enforcement Initiatives for Fiscal Years 2017-2019" which provided additional information on potential new initiative areas and sought comments from the public on the potential initiatives. The EPA then conducted a series of consultation calls with states, state associations, and tribal governments in 2015 to specifically discuss the selection of NEIs. The NEIs were then finalized in 2016.

3. EPA's recently finalized NEI does not include any response to public comments on the proposed NEI, which suggests EPA does not meaningfully consider public comments on the proposed NEI.
    a. Why has EPA not responded to public comments in its final NEI?
    b. Has EPA considered developing a Response to Comments document for the NEI?
    c. What steps has your office taken during your term to ensure public comments on a proposed NEI are considered?

Response: When publishing non-rulemaking Federal Register Notices seeking comment or information, the agency assesses whether to provide a Response to Comments document on a case-by-case basis. In this case, the Federal Register Notice noted that the EPA would not be providing responses to the comments received. The EPA considered all public comments received in response to the Federal Register Notice (Docket EPA-HQ-OECA-2015-0628), as well as public comments related to NEIs that were received through the NPM Guidance development process. The EPA also considered additional comments that were received during calls soliciting input on NEIs from states, state associations, and from tribes through consultation calls.

The agency received comments from a diverse array of stakeholders through the above processes. Generally, comments received from private citizens expressed support for

continuing the existing NEIs, while many of the comments from states and state associations focused on their need for EPA's cooperation, enforcement support, and flexibility. Industry comments largely requested that the EPA ensure that its enforcement work is helping to ensure a level playing field, and protect responsible businesses that comply with the law. The NEIs selected for FY 2017-2019 reflect these comments.

4. The recently finalized NEI retained four initiatives, added two new initiatives, and expanded one to include a new area of focus.
    a. What factors does EPA consider when developing the NEI?
    b. How does your office consider upcoming rulemakings impacting the initiatives and areas being considered for the NEI?
    c. What, if any, quotas/metrics are utilized to determine the value of such initiatives? Are the same quotas/metrics used across the initiatives and areas? How have these quotas/metrics changed throughout your term?
    d. How does EPA define "success" for the NEI (i.e. what is the threshold for an area or initiative to be removed from NEI)?
    e. Is there any authority (e.g. statutory, guidance, or policy) preventing EPA from removing or adding an initiative or area prior to the NEI's expiration?
    f. Are there any limitations on the number of initiatives or areas to be included on the NEI (i.e. does EPA have a minimum number or an upper-bound limit)?

Response: Every three years, the EPA selects NEIs to address specific environmental problems, risks, or patterns of noncompliance. These initiatives are reevaluated every three years in order to ensure that federal enforcement resources are focused on the most important environmental problems where noncompliance is a significant contributing factor, and where federal enforcement attention can have a significant impact. Along with consideration of the public comments received when developing the FY 2016-2017 NPM Guidance and the Federal Register Notice, these factors were critical in the agency's selection of the FY2017-2019 NEIs. In addition, from FY 2014 to FY 2016, extensive analysis was conducted using publically-available environmental, compliance and enforcement data (including data from the EPA enforcement and compliance databases, the Enforcement and Compliance History Online (ECHO), the National Emissions Inventory, the Toxics Release Inventory, the Risk Management Plan (RMP) database, and water pollution discharge data) to examine NEI options and proposals.

The EPA posts detailed information on the NEI website: (https://www.epa.gov/enforcement/national-enforcement-initiatives) about the activities and annual progress made under each NEI, such as the numbers of inspections conducted, numbers of facilities addressed, the enforcement actions taken, and the pollution reductions achieved. From FY 2011 through FY 2015, the NEIs accounted for over 75% of the injunctive relief, 45% of the pounds of pollutants reduced, 75% of the hazardous waste reduced, and almost 100% of untreated discharge reduced that has been secured through all of EPA's enforcement actions during that time period.

The number of industry sectors selected as an NEI is discretionary. Changes to the NEIs will occur over time. The EPA may return an initiative to the base enforcement program level

when the agency determines sufficient compliance progress has been made with the sector to warrant this action. For example, the Mineral Processing NEI will be discontinued beginning in FY 2017.

5. It seems EPA develops the NEI to target reductions of specific pollutants. For example, Reducing Air Pollution from the Largest Sources initiative targets NOx and SO2, Cutting Hazardous Air Pollutants initiative targets HAPs, Reducing Pollution from Mineral Processing initiative targets metals, and Reducing Risks of Accidental Releases at Industrial & Chemical Facilities initiative targets hazardous substances. However, EPA does not list a specific pollutant for the Energy Extraction Enforcement Initiative.
    a. What is the goal of the Energy Extraction Enforcement Initiative in terms of specific pollutant reductions and ultimately air-quality benefits? What is the goal for both the upstream exploration and production sector nationally, as well as within delegated states and air districts? How is this goal working with existing permitting/compliance demonstration approaches in delegated air programs in states and air districts?
        i. If EPA does not have such a goal, how does EPA distinguish this initiative from the other initiatives that target specific pollutants?
    b. How has EPA determined compliance (i.e. associated reduction in pollution or reduced enforcement actions) for this initiative in the past?
        i. Has EPA used the same analogous structure/approach for compliance in the Energy Extraction Enforcement initiative (i.e. are the same parameters, metrics/measurements from other NEIs being utilized for Energy Extraction/upstream sector initiative to measure analogous results)? If not, why?

Response: The NEIs address specific industry sectors and focus on reducing environmental pollution at regulated facilities within the targeted industry sectors. The goal of the multi-media Energy Extraction NEI is to work with state agencies to ensure that domestic onshore natural gas extraction and production activities are conducted in a way that protects public health and the environment and complies with applicable laws including the Clean Air Act (CAA) and the Clean Water Act. For example, the EPA seeks to identify and address surface water and groundwater impacts that may result from wastewater spills or NPDES violations. Under the CAA, the EPA assesses compliance with CAA requirements such as New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), State Implementation Plan/Federal Implementation Plan (SIP/FIP) provisions, permit requirements, and General Duty Clause/Risk Management Plan requirements. Air pollutants of specific concern include, but are not limited to, volatile organic compounds (VOCs) and hazardous air pollutants.

6. Under the "Reducing Air Pollution from Largest Sources" NEI, EPA states specific reductions in NOx and SO2 for the specific manufacturing of cement, glass, and acids. These operations appear to be well defined.
    a. Can/how does EPA define the scope of facilities included under the Energy Extraction Initiative?

b. Can you give any clarity to what types of facilities have been under its enforcement actions?
c. Are facilities that are not energy companies included in the number of enforcement cases under this initiative? Does EPA include enforcement actions on ancillary operations for other initiatives that focus on a business sector?
d. Does your office include enforcement actions on landfills that accept animal waste, or are those numbers strictly tied to the objective of looking at concentrated feeding operations?

Response: The Energy Extraction NEI assesses compliance and addresses non-compliance with applicable laws and regulations at onshore natural gas exploration and production facilities, as well as those that handle exploration and production wastes. Facilities that have been assessed and addressed under the NEI include natural gas well sites, processing plants, and wastewater treatment and /or disposal facilities.

Disposal of wastes in landfills are governed and enforced by states, not the EPA, under Subtitle D of the Resource Conservation and Recovery Act (RCRA). The EPA does have a separate NEI that relates to addressing pollution violations at concentrated animal feeding operations.

7. The Energy Extraction Enforcement Initiative has been included in the last three NEIs. In light of all the new, proposed and existing state and federal regulations affecting compliance and air emissions reduction within the energy extraction sector—a number of which were finalized after EPA issued the NEI for FY2017-2019—how long does your office envision the need to include this sector in the NEI?
    a. If the NEI has been used to help informally develop the recently promulgated regulations for the oil and gas sector, how does your office justify maintaining this sector on the NEI going forward?

Response: The EPA will assess whether to continue the Energy Extraction NEI as part of the planning process, which includes an opportunity for our co-regulators in state, local, and tribal governments as well as the public to comment on the NEIs, when evaluating the FY2020-2022 NEI cycle.

8. The EPA recently issued a proposed Information Collection Request (ICR) from oil and gas operators under Section 114 of the Clean Air Act that is currently open for public comment. What was your office's role in developing this ICR?
    a. Is this ICR part of your office's Energy Extraction NEI?
    b. What is the reason for the collection of this information?
    c. What is EPA planning to do with this information? How will your office use this information for enforcement purposes?

Response: The recent proposed ICR for oil and gas operators was not issued by OECA and is not part of the Energy Extraction NEI. The EPA issued a draft ICR to require oil and natural gas companies to provide extensive information needed to develop regulations to reduce methane emissions from existing oil and gas sources. The draft ICR is a critical step toward

meeting the Obama Administration's commitment to reduce emissions from existing oil and gas sources, as part of the President's *Climate Action Plan: Strategy to Reduce Methane Emissions*. The draft ICR seeks a broad range of information that will help the agency determine how to best reduce emissions. This includes information on how equipment and emissions controls are, or can be, configured, and what installing those controls entails and the associated costs. These types of information will help the EPA determine how the agency can, working with states, best develop and apply standards to effectively reduce emissions from existing sources. It also will help identify sources with high emissions and the factors that contribute to those emissions. The information that the EPA receives will build on what state and other federal agencies have learned through their own rules, programs and experiences.

The ICR process, which is governed by the Paperwork Reduction Act, provides the public two opportunities to review drafts of the information collection request. The draft ICR was published on June 3, 2016, and the first of two public comment periods lasted for 60 days. The agency may revise the first draft as necessary based on comments and then publish a second draft which will also be submitted to the Office of Management and Budget (OMB) for review. If the collection request– which can include surveys and required emissions monitoring – is approved by OMB, the survey will then be sent to industry, which will be required to respond and attest that the information is accurate. The EPA's goal is to receive the first phase of information this year.

More information on the draft ICR is available at:
https://www3.epa.gov/airquality/oilandgas/methane.html

9. The Energy Extraction Enforcement Initiative has been included in the last three NEIs, which resulted in nearly 3,200 inspections with 194 enforcement actions according EPA. This is low enforcement rate, an average 5 to 6%, compared to other initiatives, such as the Keeping Raw Sewage out of Our Nations Waters initiative, which has an enforcement rate around 11%, and other initiatives have higher rates.
    a. How does your office justify continued targeting of the Energy Extraction sector when EPA data shows an average 95% compliance rate over the last five fiscal years?
    b. How does this low enforcement rate for Energy Extraction align with EPA's "Next Gen Enforcement Policy" that proclaims smart and innovative enforcement that utilizes data to support the need for enforcement?

Response: Calculating the overall compliance rate for this sector would require a more detailed analysis than dividing the number of enforcement actions by the number of inspections/compliance evaluations conducted. Currently, there are more than 500,000 facilities that may be covered by the initiative. To calculate an overall compliance rate for this industry would require a significantly larger investment with inspections/compliance evaluations at a much larger universe of sources than the current agency effort. Due to the size of the universe, the wide distribution of regulated sources, and the potential public health and environmental impacts, the agency is focusing agency resources on the most critical potential health and environmental concerns.

10. Based on your January 2015 Next Generation Compliance enforcement memo, it seems EPA is targeting prioritized sectors.

a. Could you please provide an overview of recent enforcement actions targeting emissions from the upstream energy sector and the terms of ensuing consent decrees?

b. I also understand that certain regions have developed quotas to use the Resources Conservation and Recovery Act's "imminent and substantial endangerment authority" for a number of oil and gas locations. Could you please explain more about this (e.g. those in EPA's Region 8)?

c. To what extent are these enforcement actions being coordinated with other federal agencies, including the Pipeline and Hazardous Materials Safety Administration, the Occupational Safety and Health Administration, and the U.S. Fish and Wildlife Service?

Response: The agency's effort to promote the use of Next Gen includes promoting the use of new technologies which will more effectively help regulated facilities maintain compliance. This is not targeted towards a particular sector but rather is an approach that is encouraged for companies that are willing to use such technologies in various sectors. For example, in a 2015 settlement with Noble Energy, Inc., Noble Energy agreed to use technologies available for fence line monitoring.

There is no quota for using RCRA "imminent and substantial endangerment authority" for oil and gas locations. If the EPA discovers conditions in the field that may be of concern for another federal agency, the EPA shares that information with the agency and coordinates as appropriate.

11. Early in your term, your office added the Energy Extraction NEI. Since then, your office has reported more than 3,000 inspections demonstrating 94% compliance, EPA has retracted three high-profile investigations into hydraulic fracturing, and EPA issued a national study on hydraulic fracturing finding no "widespread, systematic impacts" to drinking water supplies. Given all these factors, how does your office justify again listing energy extraction on the most recently finalized list of NEIs for FY2017-2019?

Response: As discussed in response to Question 9, the number of enforcement actions relative to – or divided by – the number of inspections and evaluations does not provide the enforcement / compliance rate. Natural gas extraction and production is projected to continue to grow in the U.S. for the next several decades. Natural gas extraction and production activities present potential health and environmental risks to air quality, groundwater and surface water quality, and public and private water supplies. To minimize these impacts, it is important that the agency continues to monitor this industry and utilize our compliance and enforcement expertise to ensure that this natural resource is developed in a manner that is environmentally protective and in compliance with existing environmental requirements.

12. At the hearing, I asked about EPA's requests for information letters per Section 114 Clean Air Act, and using the data received in response for an enforcement action. In

some instances, I am aware of EPA issuing multi-billion dollar fines that effectively intimidate companies into signing consent agreements creating de facto regulations and imposing requirements that EPA could not otherwise mandate through the Agency's existing authorities.

a. How can EPA justify scaring American businesses with astronomical fines for actions that in many instances have not been violating existing EPA regulations?
b. How can EPA justify such actions, which essentially write new rules for the industry, under these settlement agreements without following the legal procedures required to do issue new rules?

Response: The EPA seeks penalties consistent with statute-specific requirements and policies to ensure general consistency across enforcement actions in the EPA regions and headquarters. There have been no multi-billion dollar penalties as part of the Energy Extraction NEI. Consistent with its statute-specific policies, the EPA seeks penalties that recover any economic benefit gained as a result of noncompliance with existing regulations to ensure a level playing field between those operators that comply with the law and those that violate the law.

13. I've heard reports of your office requiring companies to take new regulatory action, such as installing certain emissions control technology, under the auspice of enforcement. This often leads to inconsistencies across industries, which is not only unfair but lacks transparency and circumvents the rulemaking process.

a. Do you consider your enforcement authority as an easier, less time consuming approach to get companies to take new actions than the rulemaking process, which would provide more time for public notice and input and require sound science and economic justification for new regulatory actions?

Response: No. As mentioned in response to the prior question, EPA's enforcement actions seek relief intended to ensure compliance with existing regulatory requirements.

14. EPA's recent air enforcement efforts aimed at upstream oil and gas operators in North Dakota and elsewhere would seem to require that each operator engage in lengthy and expensive design evaluations of their facilities that are not expressly required by current regulations. In fact, the regulations in question for North Dakota operators only require that emission control devices be sized properly so as to control vapors that might otherwise be emitted by oil and produced water storage tanks. On what basis does EPA justify the interpretation of a general obligation of this type to force an entire industry to change its designs, in effect to change the standards of the industry itself?

a. Doesn't EPA have technology-forcing authority to require this sort of wholesale re-evaluation of an industry's facility designs that would be required to go through the transparent and public process of notice and comment rulemaking, if shown to be cost-effective?
b. Why is EPA attempting to change technology and facility design through enforcement, rather than through rulemaking, as it should?
c. If an industry design standard that must satisfy both safety and environmental performance concern is to be changed or tightened, isn't rulemaking the best way

to accomplish that for all affected operators, so as to be scrutinized on the administrative record for cost-effectiveness, achievability and other appropriate, objective factors?

Response: As stated in response to the prior questions, EPA's enforcement actions seek relief intended to ensure compliance with existing, federally-enforceable regulatory requirements.

15. Isn't it true the States really get stuck with the job of administering the program, permitting and enforcement, after EPA is done with its one-off enforcement efforts that make hay of an already complex regulatory scheme? To what extent has EPA engaged state regulatory partners in evaluating the industry's compliance, and how have you consulted with them regarding their opinions of compliance/regulatory interpretations, etc.? How has/does EPA understand and integrate permitting/compliance approaches of delegated air programs (states and air districts) in advance of generating and distributing Section 114-information request letters? Are the states/air districts notified of potential letter recipients in advance and allowed to generate feedback/discussion on those selected recipients?

Response: The EPA's mission is to protect both human health and the natural environment across the varied national landscape by ensuring compliance with the environmental laws under 11 statutes. As mentioned above, the EPA recognizes the critical role of state, local, and tribal environmental agencies in implementing environmental statutes, and the important work states do to evaluate compliance and address violations to protect human health and the environment. The EPA has and continues to routinely engage with states to work collaboratively to achieve shared public health and environmental goals.

The EPA often has the dual role of maintaining a federal enforcement program while promoting effective state, local and tribal enforcement. The EPA's ten regional offices, together with state, local, and tribal partners, monitor compliance through inspections of facilities and other activities to gather compliance-related information. In all cases, the EPA's objective is to secure compliance with the law in order to protect the environment and to safeguard communities from exposure to unhealthy pollutants and to ensure a result that is fair – to the defendant, the defendant's competitors, and the public affected by the violations.

The EPA routinely meets with its regulatory partners to discuss issues of mutual concern, and provides them guidance, inspection tools, training, and technical assistance for compliance monitoring activities. In addition, the EPA responds to written inquiries from the regulated community as well as delegated state/local agencies about the broad range of NSPS and the NESHAP regulatory requirements under the CAA. These inquiries pertain to site-specific applicability determinations and alternative monitoring and testing decisions, and to regulatory interpretations that provide guidance to a whole source category or on a broad range of NSPS and NESHAP regulatory requirements. These EPA-issued determination letters and memoranda are compiled on the EPA Applicability Determination Index (ADI) website, which can be readily accessed by the public at the following address: https://www.epa.gov/compliance/clean-air-act-caa-compliance-monitoring. These

determinations provide national consistency and facilitate state/local determinations on similar issues.

As to CAA section 114 information request letters, 114 information requests are one of the tools the EPA uses to investigate potential non-compliance with the environmental laws. The agency does not notify states in advance of issuing a 114 information request, however, the EPA routinely partners with the states when conducting inspections and states frequently join the EPA as co-plaintiffs in enforcement actions.

16. We have heard reports of companies with operations in different EPA regions receiving different levels of EPA enforcement. What is your office doing to promote consistency across EPA regions when it comes to enforcement?

Response: The EPA recognizes that unique or differing circumstances may be faced by different members of the regulated community. Enforcement actions for the same type of violation that may result in different penalties do not necessarily indicate an inconsistency or disparity. For example, a lower penalty may reflect mitigation or supplemental environmentally beneficial project that a settling party has agreed to undertake, or that one party was a small business whose financial resources were taken into account as provided by policies for determining penalties. A higher penalty could reflect exacerbating circumstances, such as the duration of the violation or the severity of any environmental damage that resulted from the violation.

Most EPA programs are implemented by the ten regional offices, with headquarters maintaining responsibility for national oversight and direction. The regions work with their state, local and tribal counterparts to ensure that EPA's work, as appropriate, complements state and tribal environmental priorities. The enforcement program uses statute-specific policies and guidance to address compliance monitoring, enforcement responses to violations, and penalty assessment both to ensure consistency across the regions while allowing for sufficient discretion to address regional- and case-specific circumstances.

17. In these Section 114 enforcement actions, the EPA has used the FLIR digital imaging camera to detect fugitive hydrocarbon emissions and to thereby declare those facilities with these fugitive emissions so detected, out of compliance. I understand the accuracy of these cameras is affected by weather conditions and can be subject to various sensitivity settings. These cameras will yield neither a quantitative nor a qualitative result, and are very subjective. In fact, some state agencies will not allow the use of these cameras for demonstration of compliance. Given these limitations, why does the EPA use these digital imaging cameras for compliance monitoring?

Response: It is important to distinguish between the use of equipment to screen for regulated pollutant emissions, and the use of equipment to identify violations and make compliance determinations. Infrared cameras can be a very effective screening tool in identifying potential excess emissions and in certain circumstances can be used for compliance monitoring, for example, where state and/or federal standards require emissions to be captured and controlled. The current generation of FLIR cameras can visually detect releases

of pollutants that would otherwise be invisible to the naked eye. As a result, they are valuable in identifying where a leak appears to be occurring. Once a leak is identified, other appropriate equipment is used to measure the emissions and determine whether a violation has occurred based upon the underlying regulatory and/or permit requirements.

18. Data released recently by National Oceanic and Atmospheric Administration revealed that global methane concentrations have not been increasing as has been proclaimed recently. This same data also revealed that fossil fuel production, (i.e. oil and gas) is not the main source of global methane. Rather, the main source is tropical wetlands and the biogenic process associated with biological decay. Yet, EPA has targeted the oil and gas industry for methane emissions. How does your office justify such enforcement measures?
    a. Why does EPA persist in regulating methane as a pollutant when it is not a source of global methane nor is it a pollutant that is one of the precursors to photochemical ozone formation?

Response: Methane is the key constituent of natural gas and has a global warming potential more than 25 times greater than that of carbon dioxide. Methane is the second most prevalent greenhouse gas emitted by human activities in the U.S., and approximately one-third of those emissions come from oil production and the production, processing, transmission and storage of natural gas. In addition to its impact on climate change, methane emissions from the oil and gas industry come packaged with other pollutants: VOCs, which are a key ingredient in ground-level ozone (smog); and a number of pollutants known as "air toxics" – in particular, benzene, toluene, ethylbenzene and xylene. Ozone is linked to a variety of serious public health effects, including reduced lung function, asthma attacks, asthma development, emergency room visits and hospital admissions, and early death from respiratory and cardiovascular causes. Air toxics are known or suspected to cause cancer and other serious health effects. The NOAA study (Schaefer et al. 2016), does show that fossil fuel production is a source of methane. It also shows that microbial sources, including wetlands, are sources for the increase in the rate at which global methane concentrations have been rising since 2007.

However, this does not imply that fossil fuels do not contribute to rising global methane concentrations. Also, given the global scale of the study, the conclusions cannot be applied to estimates and trends of methane emissions from the U.S. oil and gas sector, which represent a fraction of the global total of anthropogenic and non-anthropogenic emissions assessed by the study. Many recent U.S.-based studies, including those by NOAA, confirm that U.S. oil and gas systems emit large quantities of methane.

The collective GHG emissions from the oil and natural gas source category are significant, whether the comparison is domestic (where this sector is the largest source of methane emissions, accounting for 32 percent of U.S. methane and 3.4 percent of total U.S. emissions of all GHGs), global (where this sector, while accounting for 0.5 percent of all global GHG emissions, emits more than the total national emissions of over 150 countries, and combined emissions of over 50 countries), or when both the domestic and global GHG emissions comparisons are viewed in combination. Consideration of the global context is

important. GHG emissions from U.S. oil and natural gas production and natural gas processing and transmission will become globally well-mixed in the atmosphere, and thus will have an effect on the U.S. regional climate, as well as the global climate as a whole for years and indeed many decades to come.

No single GHG source category dominates on the global scale. While the oil and natural gas source category, like many (if not all) individual GHG source categories, could appear small in comparison to total emissions, in fact, it is a very important contributor in terms of both absolute emissions, and in comparison to other source categories globally or within the U.S.

In addition, in the U.S., methane emissions from oil & gas operations are projected to increase by about 25% over the next decade if additional steps are not taken to reduce emissions from this rapidly growing industry.

More information on the justification for EPA's actions to regulate methane from the oil and gas industry can be found at: https://www3.epa.gov/airquality/oilandgas/actions.html

19. EPA's Enforcement and Compliance History Online database, known as "ECHO", contains data on the compliance history of hundreds of thousands of facilities in the U.S. Unfortunately, ECHO has had a history of errors that the agency has been working on that can create reputational issues for individual companies. For instance, errors in the inputted state data were often "frozen" in the ECHO database for a full year even though states pointed out the errors to EPA at the time the data were frozen. This includes simple errors such as the double counting of violations.
   a. Can you explain why EPA could not correct errors in the data in a timelier manner? What steps has EPA taken to address this problem?
   b. Is there now a way to correct data without waiting for the year to end?

Response: EPA, state, local, and tribal regulatory agencies report compliance and enforcement data into the EPA national data systems of record for the media-specific programs (e.g., air, water, hazardous waste). This data is then imported to ECHO for purposes of public access. Given the number of different reporting agencies and entities and the volume of information reported, the overall error level is low. For example, in 2015, there were a total of 800,000 facilities in ECHO and 542 errors were reported.

To maintain this level of data accuracy, the EPA works collaboratively with our state, tribal and local regulatory partners. The EPA has a network of approximately 300 data stewards from the regulatory agencies to ensure data quality and respond to data concerns as they arise. To supplement this network for addressing data concerns, the EPA recently enhanced ECHO to update the data on a weekly basis which helps to ensure that data corrections in the underlying media-specific national data systems are reflected in ECHO in a more timely manner.

Although the primary portion of ECHO works on a weekly refresh, the State Review Framework and ECHO State Dashboards work on yearly data sets where snapshots (referred to as a data freeze) of the data systems of record are taken approximately four months after

the end of the federal fiscal year. The EPA typically does not update that data set as it is intended to represent static and unchanging data that can be used to support stable trend analysis and audits.

The ECHO State Dashboards display state-aggregated performance metrics that relate to compliance with and enforcement of environmental standards. Several of the dashboards allow for drilling-down into the aggregate data to see facility-level metrics. Prior to the data freeze, regulatory agencies are provided with a lengthy review period as part of the data verification process. This review process is supported by ECOS.

20. Other complaints with ECHO include the fact that minor paperwork errors are often listed as violations. Most facilities have to comply with numerous regulations each of which may require multiple reports to demonstrate compliance. The end result may be thousands of data entries on an annual basis. Not surprisingly, many of the non-compliance items involve problems filling out or filing the reports. For instance, one of the violations listed as significant for the Texas Municipal Power Agency was a form that contained all the correct information but in the wrong places.
    a. How is EPA working to allow data entry violations to be distinguished from real violations?
    b. Are corrected data entry errors still listed as violations? Alternatively, are the violation notices removed when the data are corrected?
    c. Specifically, what is EPA's process for evaluating violations based on corrected data entries?
    d. What opportunities does the regulated community have to abate minor violations like paperwork or clerical errors made in good faith?

Response: ECHO is an agency tool that provides public access to compliance and enforcement information reported by EPA, state, local, and tribal regulatory agencies into the EPA national data systems of record for the media-specific programs (e.g., air, water, hazardous waste). The type of compliance monitoring and enforcement data reported to the underlying data systems are defined on a media-specific basis in consultation with our regulatory partners. To provide consistency within programs, guidance addresses issues such as what information needs to be reported nationally, the frequency of reporting, the timeframe for data entry, and how to correct data errors. If a regulatory agency identifies a data error that resulted in a violation listing, the delegated/authorized agency (i.e., the EPA, or state, local, tribal agency) has the ability to edit the data in the underlying data system of record. That change will be reflected quickly in ECHO since most of the data in ECHO is updated weekly.

The enforcement response to address reported violations also is defined on a media-specific basis, and the related guidance provides flexibility in how to address the violations depending on factors such as their severity, duration, impact on human health and the environment.

The EPA has provided a number of opportunities and options for companies to quickly and easily come into compliance. For example, under EPA's Small Business Compliance Policy

(65 Fed. Reg. 19,630, Apr. 11, 2000), the EPA will waive or greatly reduce penalties for small businesses that identify and correct any noncompliance they discover.

The agency also recently created a centralized web-based "eDisclosure" portal (80 Fed. Reg. 76,476, Dec. 9, 2015) to receive and automatically process self-disclosed civil violations of environmental law, which allow large and small businesses to be able to quickly get some of their more routine types of disclosures resolved. While the EPA is primarily focused on addressing violations that expose communities to excess levels of pollution, the agency also recognizes the importance of ensuring that the regulated community provides accurate and complete information when required under the nation's environmental laws. For example, enforcement policies provide for the issuance of administrative notice to a company to correct or revise a report. EPA's enforcement program also uses "Expedited Settlement Programs" for regulated parties to address minor violations that can be quickly corrected and that do not cause significant health and environmental harm, in lieu of more formal traditional enforcement.

21. EPA's ECHO data system currently only presents a facility's Clean Air Act status as either "In Violation" or "Not Available" for facilities across the nation. State environmental agencies have spent significant resources to provide accurate data on a facility's compliance status.
   a. Why has EPA been unable to update this data display issue to ensure that, when facilities are in compliance, their data on ECHO states they are in compliance?
   b. Similarly, why hasn't EPA updated ECHO displays to prevent a single day late report being shown as a full quarter or six months of non-compliance in the system?

Response: ECHO is an agency tool that provides public access to compliance and enforcement information reported by the EPA, state, local, and tribal regulatory agencies into EPA national data systems of record for the media-specific programs (e.g., air, water, hazardous waste). The term "Not Available" is no longer used in reference to the CAA program. The agency is working with our regulatory partners to determine how to best capture information on violations and best summarize and display information on a facility's compliance status in ECHO. While the agency is working with our partners, the CAA section of the multi-media table "3-Year Compliance Status" has been noted that the section is "Under Development", and in the "Enforcement and Compliance Summary" it is noted whether a violation has been identified within the past one year.

22. According to EPA's Next Generation Compliance Strategic Plan for 2014 to 2017, your office will enhance ECHO by making facility environmental performance information and real-time monitoring data available. Will this effort help reduce the current number of inaccuracies in the ECHO database?
   a. Are there ways to identify potential inconsistencies in the new data from what is already included in ECHO?
   b. Can the Next General Compliance data help identify and accelerate the correction of preexisting errors in the ECHO database?
   c. What types of errors are possible with the addition of data from the Next

Generation Compliance effort?

d. Will EPA's Next Generation Compliance Strategy help eliminate or at least reduce the ECHO database inaccuracies that the public sees?
e. How will the data collected under the Next Gen enforcement initiative be included in the ECHO database?

Response: EPA, state, local, and tribal regulatory agencies report compliance and enforcement data into the EPA national data systems of record for the media-specific programs (e.g., air, water, hazardous waste).

The Next Generation Compliance Initiative does not create new data reporting requirements. Data that is entered into the national data systems of record will continue to flow to ECHO during the weekly data update process. Continuous process improvements will help to further improve data accuracy. For example, the conversion from paper reports to electronic reporting will improve data quality since data quality and edit checks are designed into electronic reporting systems. Real time monitoring data is becoming increasingly available and will improve data quality.

23. What role do states have in the Next Generation Compliance Initiative?

a. How much of the data included in the initiative will come from state databases?
b. Do you expect states to rely on this data in enforcing federal laws to the extent they are delegated states?
c. How are states reacting to the Next Generation Compliance program?
d. Will lack of state participation limit the reach of Next Generation Compliance in those states? How will it affect facilities and communities?
e. What training efforts do you have underway with states?
f. Do states currently have the technical resources and capabilities to be partners?

Response: The EPA has met with 20 states and local agencies to discuss Next Generation Compliance and opportunities for collaboration. The EPA has conducted additional outreach through ECOS, and state air, water, and waste associations. States and local governments have been receptive to the Next Generation Compliance concepts and the EPA has offered to work with states on projects to develop approaches to compliance with state and local requirements that are more efficient and effective.

Although resources are limited for many of these agencies, the EPA anticipates that Next Generation Compliance can be used to help identify tools that promote compliance in a cost-effective manner. For example, electronic reporting requires an upfront investment, but ultimately saves state and, tribal, and local governments time and resources. It also improves outcomes for industry by eliminating opportunities for data errors, while creating opportunity for greater transparency. While Next Generation Compliance encourages the use of tools such as advanced monitoring and electronic reporting, it does not require any additional collection of data at the state or federal level.

24. There is significant concern over EPA's proposed use of advanced monitoring devices, such as portable air quality sensors, in determining compliance with regulations that did

not anticipate the use of these new monitoring devices. A key aspect in evaluating the achievability of a new rule is determining how the standard will be enforced.

a. Is EPA intending to apply these new data collection approaches to existing standards, or only to standards where they have been discussed and evaluated as part of the rulemaking process?
b. How many of the new monitoring approaches included in the Next Generation Compliance Strategy have been field-tested?
c. How do you evaluate their reliability?
d. How is source attribution determined with fence-line and portable monitoring equipment?
e. What are the potential security risks posed by the making this expanded data set available to the public?
f. What are you doing to assure that the increased emphasis on data sharing and third-party audits will not result in increased security risks for facilities and workers?
g. Does EPA expect the use of these devices to impact the kind of data collected through future Information Collection Requests ("ICRs")? If so, how?

Response: While there are many new technologies made available every year, when a new technology becomes available and is contemplated for use to meet the requirements of a rule, the EPA uses detailed review processes to determine the appropriate use of the technology. These processes have been in place for many years as new monitoring technologies have become available. For emerging technologies that are not yet ready for formal review and approval, or can be used in ways that do not require such approval (e.g., early pollutant screening for possible further investigation), the EPA may conduct early screening and field tests, regulated parties may suggest and agree to use new technologies, pilots may be conducted to evaluate the accuracy and potential use of new technologies or collaborations may be conducted with states, research institutions, or communities to try new technologies. These analyses and tests regularly include issues such as reliability, accuracy, data sharing, and other associated parameters.

25. What is EPA's decision-making process for whether to impose fines on companies that have self-reported and voluntarily corrected violations?

a. Do you believe imposing large fines on companies who have voluntarily self-reported and corrected mistakes is conducive and constructive for building a collaborative relationship between the EPA and regulated entities?
b. What incentive does the regulated community have to work with EPA if the result of self-reporting is a larger fine?

Response: Self-reported and voluntarily corrected violations are eligible for substantial penalty reductions under EPA's enforcement policies. Under both the "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" (Audit Policy - 65 Fed. Reg. 19,618, Apr. 11, 2000) and the "Small Business Compliance Policy" (65 Fed. Reg. 19,630, Apr. 11, 2000), civil penalties for self-reported violations can be substantially reduced or waived in their entirety. Over the past 20 years, thousands of small and large companies have worked with the EPA to resolve violations at more than 16,000 facilities,

over 90% of which have been resolved for $0. In those few instances where a penalty is assessed, in order to help maintain a level playing field for competitors that have complied, the penalty is generally only to recoup the economic advantage a company gained over its competitors by delaying its investment in compliance. In December 2015, EPA further improved implementation of its self-disclosure policies by creating a centralized web-based eDisclosure portal to receive and automatically process self-disclosures from large and small businesses, saving enormous time and resources for the regulated entities and EPA.

26. What is EPA's decision-making process when it comes to selecting companies to audit or inspect?
   a. Are there any specific internal processes or guidelines used to determine which facilities are to be audited or inspected?
   b. How will EPA determine which facilities to inspect when enforcing its new NEI for reducing risks at chemical facilities?

Response: Inspections are an integral part of EPA's compliance monitoring programs. They are an important tool for assessing compliance with environmental regulations and permit requirements. EPA's regulatory partners (e.g., the states) conduct the vast majority of inspections conducted across the country under the various environmental statues.

EPA uses a number of factors in identifying facilities to be inspected, including for example:

- Analysis of data to determine facilities with violations or to identify national concerns;
- Statutory requirements regarding the type and frequencies of inspections, and media-specific Agency compliance monitoring strategies;
- Strategic planning such as the National Program Managers Guidance, discussions with states on program priorities, and state grant guidance;
- Environmental justice concerns;
- Information about potential violations that may be occurring.

In addition, EPA's National Program Managers Guidance, which is developed together with our state and local partners and updated every two years, also includes facility inspection approaches as part of EPA's strategic planning process for implementing the National Enforcement Initiatives (see https://www.epa.gov/planandbudget/national-program-manager-guidances).

27. EPA's most recently finalized NEI for FY2017-2019 added "Reducing Risks of Accidental Releases at Industrial and Chemical Facilities" as a new initiative.
   a. As a part of this initiative, does EPA intend to enforce the General Duty Clause of section 112(r) of the Clean Air Act? If so, has EPA taken steps to define the term "extremely hazardous substances"?
   b. Has EPA taken any steps to create any EPA-wide policies or guidelines with respect to the definitions of terms used in the General Duty Clause?

Response: The General Duty Clause (GDC) imposes a requirement that facilities operate safely. While Congress expressly required the EPA to issue a list of substances and thresholds to implement the RMP requirements of CAA 112(r)(7), it intentionally left the substances potentially covered by the CAA GDC open-ended. The explanation at the time of enactment was that extremely hazardous substances would include, but are not limited to the list of substances covered in the risk management plan requirements and all extremely hazardous substances identified under the Emergency Planning and Community Right-to-Know Act, and "other agents which may or may not be listed or otherwise identified by any Government agency" that may cause death, injury, or serious property damage in an accidental release (Senate Committee on Environment and Public Works, Clean Air Act Amendments of 1989, Senate Report No. 228, 101st Congress, 1st Session 211 (1989)). The Senate provided further guidance by saying that "the release of any substance which causes death or serious injury or which causes substantial property damage would create a presumption that such substance is extremely hazardous" (Id.) (emphasis added).

Because the hazard posed by a substance depends upon the conditions of use and because those conditions may vary greatly, it would be advisable or appropriate to develop a definition that would capture all possible conditions and uses. The EPA has implemented the GDC consistent with this intent. EPA has provided policy and guidance on the GDC. In particular, in May 2000, the EPA issued "Guidance For Implementation Of The General Duty Clause Clean Air Act Section 112(r)(1)" that discusses the term "extremely hazardous substance," among others.

28. A recent news article criticized EPA's handling of the money received from Superfund settlement agreements, calling them a "slush fund" with little transparency or accountability.

a. What is EPA doing to address these concerns and increase the transparency and accountability for Superfund special accounts?

b. How do you keep consistency among the regions, maintain cooperative relationships with state regulators, and avoid these problems in the future?

Response: Pursuant to the statutory authority provided by CERCLA § 122(b)(3), and the terms of specific settlement agreements with potentially responsible parties, the EPA uses special account funds to finance site-specific CERCLA response actions at the site for which the account was established. Funds collected under settlements are intended to finance future cleanup work at particular sites over the short and long-term.

The EPA has made significant efforts to increase transparency of special accounts, including providing additional information about special accounts on the EPA website. Over the past several years, the EPA has responded to GAO, OIG, Congressional, public, and press inquiries regarding special accounts, including creating and modifying its annual report on special accounts to Congress in EPA's annual "Congressional Justification" in response to specific requests from the OIG and Congress.

The EPA conducts short and long-term planning for the use of funds in individual special accounts, and reviews these plans on a semi-annual basis to account for any changes to site

conditions, resources, contractual considerations, or other factors. The EPA will continue to provide information and transparency to our stakeholders regarding the use of special account funds while balancing the need to maintain confidentiality of certain data so as not to jeopardize future enforcement and procurement actions.

In response to the OIG's report, "Improved Management of Superfund Special Accounts Will Make More Funds Available for Clean-ups" (March 2009), the EPA created the Special Accounts Senior Management Committee (Committee), comprised of senior managers across the agency responsible for the management and use of special accounts, to provide guidance and oversight over the EPA's use of special accounts. The Committee meets at least semi-annually to discuss the current status of special accounts.

29. One of the many problems encountered by the Renewable Fuel Standard (RFS) has been Renewable Identification Numbers (RIN) fraud, the generation and sale of RINS that are invalid and are not tied to any renewable fuel actually produced. Once RINs are found to be fraudulent, those obligated parties that used the RINs for compliance may have to replace those invalid RINs. In an effort to alleviate RIN fraud EPA established a quality assurance program for verifying the validity of RINS under the RFS. However, recent EPA enforcement work with the Department of Justice illustrates valid RIN generation remains a concern.

a. What compliance monitoring takes place in regard to the RFS, and specifically RIN generation?
b. Can you tell us if instances of RIN fraud are decreasing or increasing?

Response: Ensuring the integrity of the RFS program remains a high priority for the EPA. The program structure includes compliance monitoring through RFS stakeholder involvement to monitor the program, a third-party Quality Assurance Program (QAP) that enables private industry to monitor and help ensure fuel is compliant, and a sophisticated database system that tracks and monitors renewable fuel credits. Enforcement, both civil and criminal, against those individuals who have fraudulently produced RINs, continues to be important to ensuring the integrity of the program. Criminal and civil enforcement deters future fraudulent activity.

30. EPA's National Environmental Justice Advisory Committee has called for state plans developed under the Clean Power Plan (CPP) to include resource-intensive analyses on environmental justice (EJ) effects. At an October 2014 meeting of this Advisory Committee, Administrator McCarthy suggested the Agency would not include such a requirement with the CPP, but hinted they may impose this requirement for state implementation plans (SIPs) under the revised ozone National Ambient Air Quality Standards (NAAQS). As you know, states are still implementing the 2008 ozone NAAQS and they are now conducting duplicative activities for the 2015 update. EPA will be releasing its rule for SIP requirements under the 2015 standard this fall.

a. Since your office houses EPA's Office of Environmental Justice, what has been your involvement in any plans to require states conduct EJ analyses?

b. Can you commitment that EPA will not require states to develop a separate EJ analyses with their state plans? If not, under what statutory authority is EPA able to require states to include this type of analyses?
c. What is EPA's definition of environmental justice?

Response: The EPA works to address, as appropriate, any disproportionate impacts of its programs, policies, and activities on EJ communities as directed by E.O. 12898. For example, the agency has made significant progress in incorporating EJ considerations into our rulemaking efforts. A number of states are also interested in avoiding disproportionate impacts, and are conducting analyses of their own to identify areas of concern.

In the recently finalized implementation rule for the 2012 National Ambient Air Quality Standards (NAAQS) for PM2.5, the EPA encouraged states to conduct EJ analyses and include EJ communities in the SIP development process. The agency also made suggestions for states' consideration regarding where they might target emissions reductions in EJ communities as they are developing their attainment plans.

As noted in the question, the EPA intends to release a proposed rule this fall in which the agency will address a range of implementation requirements for the 2015 National Ambient Air Quality Standards (NAAQS) for ozone, including the nonattainment area classification system, and the timing of State Implementation Plan (SIP) submissions. It will also discuss and outline relevant guidance on meeting the Clean Air Act's requirements pertaining to attainment demonstrations, reasonable further progress, reasonably available control measures, nonattainment new source review, and emission inventories. Other issues addressed in this proposed rule are the potential revocation of the 2008 ozone NAAQS and anti-backsliding requirements that would apply if the 2008 NAAQS are revoked. Similar to the PM2.5 implementation rule, the EPA anticipates that the proposal will not include EJ analysis requirements, but will encourage states to meaningfully engage EJ communities in the SIP process and consider addressing ozone precursors in EJ communities where appropriate.

The agency will keep the Committee updated on the status of this proposed rule and can address specific questions regarding the proposal once it has been released for public comment.

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Information on EPA's environmental justice efforts can be found at: https://www.epa.gov/environmentaljustice

31. In February the U.S. Supreme Court issued a stay on implementation of EPA's Clean Power Plan (CPP). While there is no dispute the stay puts a hold on enforcement of the CPP, EPA has maintained it can continue work towards implementation and assist states that want to develop compliance plans.

a. Given that your office is responsible for both enforcement *and* compliance assistance, what level of compliance assistance is your office providing states related to the CPP?
b. Aside from the likelihood that the rule may ultimately get struck down by the Courts, why would you dedicate your office's resources on a rule that is in squarely not in effect? Is it not a priority for your office to enforce and provide assistance with active rules?
c. When rules in the past have been stayed by the courts, what is your office policy on providing compliance assistance to entities that want to move forward anyway?

Response: On February 9, 2016, the Supreme Court stayed the Clean Power Plan (CPP) pending judicial review before the U.S. Court of Appeals for the D.C. Circuit and any subsequent proceedings in the Supreme Court. The EPA firmly believes the Clean Power Plan will be upheld when the courts address its merits because the Clean Power Plan rests on strong scientific and legal foundations. The stay means that no one has to comply with the Clean Power Plan while the stay is in effect. During the pendency of the stay, states are not required to submit anything to the EPA, and the EPA will not take any action to impose or enforce any such obligations.

Since the stay was issued, many states have said they intend to move forward voluntarily to continue to work to cut carbon pollution from power plants and are seeking the agency's guidance and assistance. The agency will be providing such assistance, which is not precluded by the stay. In particular, some states have asked to move forward with outreach and to continue providing support and developing tools, including the proposed design details for the Clean Energy Incentive Program (CEIP). The agency will move forward in a way that is consistent with the stay while providing states the tools they have asked for to help address carbon pollution from power plants.

32. On June 30, EPA's proposed Clean Energy Incentive Program (CEIP) was published in the Federal Register. The CEIP is a key part of EPA's implementation of the Clean Power Plan (CPP), despite the U.S. Supreme Court's stay on the CPP. Given that your office participates in regulatory workgroups to provide input on implementation and compliance for developing actions, what advice did your office provide on the proposed CEIP?

Response: EPA's Office of Enforcement and Compliance Assurance participated in the workgroup, led by the Office of Air and Radiation, which developed the CEIP proposal. OECA's input is reflected in the proposal that was released in June 2016.

33. At the hearing I asked you about former EPA Region 6 Administrator Dr. Al Armendariz's 2010 remarks to local business and government leaders in which he said EPA's "general philosophy" on enforcement is to "crucify" and "make examples" of oil and gas companies. Since his resignation, has your office done any review of enforcement actions authorized by Dr. Armendariz?

Response: As you are probably aware, Dr. Armendariz acknowledged in 2012 that his 2010 remarks, which were made shortly after his appointment as Region VI Regional Administrator in late 2009, did not reflect the efforts by Region VI to address potential violations of the nation's environmental laws during his tenure. Further, both the EPA Administrator and the White House also stated that that the 2010 remarks were an inaccurate characterization of the work that EPA does. In addition, because OECA meets regularly with all regional enforcement managers throughout the year to review each region's ongoing and planned enforcement activities, as well as with the Department of Justice on civil judicial matters, a separate review of Region VI's enforcement actions was not necessary.

34. Mr. Don Grube from Durant, OK, sells small engines and his business is being harmed by the fact that the Office of Enforcement and Compliance is not fully enforcing relevant air emissions standards. Mr. Grube spends about $25,000 every two years getting his engine emissions lab tested and certified per the EPA requirements. When OECA fails to enforce the regulations on the books, he cannot compete and the bad actors in the field are rewarded. Can you follow-up regarding Mr. Grube's complaint? What is the penalty for importers who sell small engines in this country that do not comply with air emissions standards?

Response: The EPA is actively enforcing the Clean Air Act requirements for small gasoline engines. This includes inspections and civil penalty actions for engines being illegally imported into the country. On matters concerning importations, the EPA works in close collaboration with the U.S. Department of Customs and Border Protection. Resolved enforcement cases are found at: https://www.epa.gov/enforcement/clean-air-act-vehicle-and-engine-enforcement-case-resolutions. The Act, as adjusted for inflation, provides for maximum civil penalty of just over $44,000 for each engine that is imported in violation.

The EPA has spoken with Mr. Grube numerous times and provided appropriate information. However, consistent with EPA policy, the agency did not provide information on prospective and ongoing enforcement cases.

35. Continental Carbon Company (CCC) is one of five companies that produce carbon black in this country. In February, the company entered into a now public consent decree with EPA under the explicit expectation that all other producers of carbon black would be held to the same standard. Over the past few years the company spent $8 to 10 million on legal fees and a couple thousand man hours obtaining data, filing reports and interacting with EPA and DOJ just to get to the decree. To date, only 2 of the 5 companies have been required to make the resulting types of technology investments. From June 28 staff phone call with CCC President: "We are not and have never been opposed to reducing emissions at our facilities … we simply request industry standards are applied in a fair and consistent manner." Why did EPA choose to pursue an enforcement initiative instead of a formal rulemaking if the net result, installing emission control technology, is the same? What is EPA doing to ensure imported carbon black, particularity from Russia and China, are held to the same environmental standards the Agency is enforcing upon domestic producers?

Response: The EPA has an ongoing initiative to bring all of the carbon black companies operating facilities in the U.S. back into compliance with the New Source Review provisions of the Clean Air Act.

Senator Rounds

1. Ms. Giles, at the hearing I requested an inventory of the Agency's information request letters submitted under Section 114 of the Clean Air Act for the last ten years. Please provide such inventory to the Committee and specify the following:
    a. The date Section 114 request was sent;
    b. The NAICS code and city and state location for the recipient;
    c. The title and office of the authorizing EPA official;
    d. The deadline for response;
    e. The basis for the letter, including the specific Clean Air Act provision (other than Section 114) and regulation, under which the information was being sought;
    f. Whether the relevant State environmental agency was provided a copy of the Section 114 request upon its issuance;
    g. Whether the relevant State environmental agency was provided a copy of the information obtained in response to the Section 114 request;
    h. Whether the recipient of the Section 114 request claimed any information provided to EPA as confidential business information or trade secret;
    i. Whether EPA provided access to the information obtained in response to the Section 114 request to any third-party, including an EPA contractor;
    j. Any subsequent Agency enforcement action(s) taken against the recipient as a result of such letter, including penalties and/or fines or notices of violation based on the information obtained in response to the Section 114 request, the date such action was taken; and
    k. Any subsequent Agency regulatory action(s) which were based, in whole or in part, on information obtained in response to the Section 114 request.

Response: Section 114 of the Clean Air Act (CAA) provides the EPA with authority to gather information to assist the agency in implementing the Act, which includes developing regulations and determining compliance at specific facilities to protect public health and the environment. The agency uses CAA Section 114 letters to investigate concerns that may require attention and the responses to these letters are evaluated to determine if further action is needed. Because these letters are not uniformly reported in a centralized system, the agency is not able to provide the detailed inventory requested.

Senator ROUNDS. Thank you for your testimony.

Senators will now have 5 minutes each for questions. I will begin.

I appreciated your comments with regard to the cooperative approach with States, and specifically I would like to focus on Section 114. The EPA has increasingly issued requests for information from regulated entities under the Clean Air Act Section 114. These requests sometimes inform future regulatory actions and, in other cases, lead to enforcement action.

Despite the inherent principle of cooperative federalism in the Clean Air Act, the EPA Headquarters submits these requests without including its State partners, who are most familiar with the regulated entities. Do you think this practice is consistent with the principle of cooperative federalism in the Clean Air Act, and is there any reason not to include State regulators on such correspondence, and would you consider including these State regulators on such correspondence moving forward?

Ms. GILES. Thank you, Senator. Thank you for that question. As you point out, Section 114 is the authority that Congress gave to EPA to collect information to look for potential violations, so we use it for that purpose. I am not aware of the increasing use that you reference, but we do, and have, consistently used that authority to collect information about potential violations, and we also do routinely share information with States about what we know about violations or issues of concern, and they, likewise, share information they have with us.

Senator ROUNDS. It is interesting that you bring up the fact that there is a concern as to whether or not there actually is an increasing use of it, and I am just wondering who is accountable for keeping the records of who does receive these letters and the purpose of the requests.

Ms. GILES. We use 114 authorities when it is appropriate to review specific concerns that we may have about compliance. I am not aware that we separately track them, but we are careful to use them just in those instances where we have a reason to believe that there is a concern that requires attention.

Senator ROUNDS. Would there be any reason why we shouldn't be able to keep track of the number of 114 requests that are made and their outcomes? Seems to me to be a reasonable metric to keep.

Ms. GILES. Well, we do track, of course, the cases that we bring, and Clean Air cases very frequently are based on information we gain from 114 letters.

Senator ROUNDS. Do you think that there is someone that keeps track of the number of 114s? I would just ask for the record if you don't know if there is, could we get you to followup with the Committee and find out whether or not there is someone responsible for keeping track of the 114s? And, if not, is there any reason that you could think of why we shouldn't be keeping track of the number of inquiries made to the 114 process?

Ms. GILES. I am not specifically aware of a separate record that is kept, but I would say each enforcement team and regional office is responsible for ensuring the appropriate use of Section 114 letters. I would be happy to look into that further and get back to you.

Senator ROUNDS. It would be very interesting to find out the number of 114s. As you say, if there is a perception out there that the 114s have increased, and you are not sure if they have, it would be a fact one way or another that would be useful to have in front of us for these purposes. Fair enough?

Ms. GILES. I will look into that and get back to you, Senator.

Senator ROUNDS. OK, thank you.

How does the EPA justify the use of 114 letters to require operators to require a lengthy and rather expensive design evaluation that are not expressly required by current regulations? Isn't this a backdoor way of requiring the industry to change its operations without a transparent public rulemaking process of notice and comment?

Ms. GILES. Thank you, Senator. The 114 authority does allow EPA to ask facilities to collect information about emissions or other relevant information to determine if there is compliance. It is not for the purpose of rulemaking; it is for the purpose of determining if there is a pollution problem that requires enforcement attention.

Senator ROUNDS. Thank you.

Senator Markey.

Senator MARKEY. Thank you, Mr. Chairman, very much.

Over the last 6 years your office has seen a 9 percent decrease in funding and a 17 percent reduction in your work force. Your responsibilities have not decreased over the last 6 years; you still have the same statutory and regulatory responsibilities. So you have been really asked to do more with a lot less over the last 6 years, is that correct?

Ms. GILES. Senator, that is certainly correct. We have, along with the rest of the Agency, struggled with declining budgets.

Senator MARKEY. And how is that working out?

Ms. GILES. Well, we have made every effort to innovate, as both of you mentioned in your opening remarks, to innovate to make sure that we are making use of new technologies to find the most serious pollution problems, and we direct our enforcement attention to the most serious situations.

Senator MARKEY. Well, let me ask this. A report released this week by the National Resources Defense Council states, "At State and Federal levels, resources for the enforcement of the Safe Drinking Water Act have been decimated by poor funding and bureaucratic indifference." Overall, do you agree with the NRDC recommendations to strengthen drinking water enforcement and address environmental injustices?

Ms. GILES. We certainly agree that drinking water compliance and enforcement is at the very top of the list for EPA's priorities, and we know that the States feel the same way about it, and we are heightening our attention to this important topic and appreciate the input of organizations like NRDC drawing more attention to it.

Senator MARKEY. Well, it turns out that, in 2015, enforcement actions have been taken on only 11 percent of the 8,000 violations of regulations designed to ensure that our drinking water is free of dangerous levels of lead and copper. Might the cuts in your budget and work force be partially responsible for the limited enforcement actions?

Ms. GILES. Senator, I am not really sure where NRDC got their numbers. I can tell you that, in 2015, which is, I think, the year that they were focused on in their report, there were about 6,000 enforcement actions for drinking water taken across the Country, primarily by States, to address concerns about drinking water compliance.

Senator MARKEY. How about the EPA?

Ms. GILES. EPA takes a much smaller number because we have an oversight role, primarily, with respect to drinking water. I think we had somewhere over 100 enforcement actions for drinking water.

Senator MARKEY. So what additional actions are you taking at the EPA in order to oversee this Flint mess at large across the whole Country, community after community, and are reporting that they have the same problem?

Ms. GILES. Well, specifically with respect to Flint, as you mentioned, EPA did issue an enforcement order back in January, and we are working closely weekly, daily with the city of Flint and the State of Michigan to return that system to acceptable condition. I am pleased to say we are making good progress, but we are going to stay at it until we make sure that system is in good shape.

Senator MARKEY. So, when you look at Flint, you are looking at a disadvantaged community. They obviously need a lot of help in order to make sure that these issues get resolved. It is not always a disadvantaged community. Woburn, Massachusetts was a good example of the community that had just been ravaged by industries, Monsanto, W.R. Grace and others, just using the land and the water as a dumping ground for TCE. By the way, under TSCA, the EPA just might be able to ban TCE in the years ahead, so that is about a year wait, but hopefully TSCA will make that possible.

So, can you talk a little bit about how disadvantaged communities need a little bit more help from the Federal Government is they are going got be able to deal with these environmental issues that endanger their children?

Ms. GILES. Senator, thank you. We totally agree that the overburdened communities in America require our attention and they need to know we have their backs, so that is what our EJ 2020 agenda that is out for public comment now is designed to accomplish, to make sure that we are focused in rulemaking, permitting, enforcement, cleanup, and in our science on addressing the questions that these communities struggle with.

Senator MARKEY. I just want to say, Mr. Chairman, through you to Chairman Inhofe, that I actually called Ann Anderson last week to tell her that we had overhauled TSCA and that this chemical which was the principal culprit in giving her son leukemia, and other children in that neighborhood, was now going to be potentially regulated and potentially banned under this new law.

And she obviously, 40 years later, because of the incredible courage which she showed and resourcefulness, the Government had failed her, she had to do it by herself to do this epidemiological study of her own neighborhood. Ultimately Superfund got created because of her story, and that ultimately became a movie called A Civil Action, a famous book called A Civil Action. But that plus Love Canal kind of led to Superfund being passed, and now on the

Superfund site out there we have a lot of industrial development, but we also have the Jimmy Anderson, named after her son, Transportation Center.

So that is a good example of where public sector investment or oversight then led to economic development that now serves the long-term best interests of the community of Woburn. So there is a good enforcement action that turned into something that was economically much more beneficial for that community.

Thank you, Mr. Chairman.

Senator ROUNDS. Thank you.

Senator Inhofe, in this case Chairman Inhofe, I just would like to add that Senator Markey earlier had indicated the success that you clearly had the responsibility for with regard to the creation and the upgrade of TSCA, and also your success the other evening in the brownfields; and I would also like to add my congratulations to you for this bipartisan effort as well.

Senator INHOFE. Well, this was a huge joint effort, right?

Senator MARKEY. Thank you for saying that, because I was praising you behind your back.

Senator INHOFE. Oh.

Senator MARKEY. On brownfields and TSCA.

Senator INHOFE. Well, I certainly forgive you for that.

[Laughter.]

Senator INHOFE. Let me get back, Ms. Giles, to something the Chairman was talking about on the 114s, because we have heard from people that the oil and gas companies, that these are used to pressure them to curb and monitor methane emissions before the EPA has even issued a methane rule for the industry. Now, are you contending that these are not enforcement letters, but they are, I think you said, informational letters?

Ms. GILES. Thank you, Senator Inhofe. Yes, 114 letters are for the purpose of collecting information, they are not enforcement actions.

Senator INHOFE. So would you confirm that they are not targeting methane, let's say, in future consent decrees?

Ms. GILES. I am not aware of the specific matter that you are referring to, but Section 114, that section of the statute, does give EPA the authority to ask companies for information about pollution and emissions as we are looking into the potential violations that may be occurring.

Senator INHOFE. We all talked about and made our own comments about what happened in Paris and the President coming up with a commitment that he would be reducing CO2 emissions by between 26 and 28 percent by 2025, and then we made an effort through every group we could find, including the EPA, to determine how he is going to do that and we haven't been able to find anyone who has any idea.

In fact, I don't think it can be done. I don't think he does either. But it appears that your office stepped up enforcement of VOC emission requirements against the oil and gas sector, and the chairman commented, as a backdoor effort for the EPA to cut greenhouse gas emissions.

Now, the question I would ask you is have you been pressured or do you have any kind of a mandate to reduce greenhouse gas

emissions through enforcement against utilities and the oil and gas industry to help the President meet these climate commitments? Has that happened?

Ms. GILES. No, it hasn't. Senator, I think what you may be referring to is some enforcement work that EPA has done with respect to VOC emissions, as you mentioned, from the oil and gas sector, which is with respect to existing laws that have long been in effect, and deal with pollution issues in some communities that are quite significant in the formation of ozone as a result of some of these industries.

Senator INHOFE. In a broader perspective on your regulations that you are in the process of doing, have you been talking to the Administration about seeing what regulations can be adjusted or changed or put forth that would help them meet these requirements? In other words, nobody knows how he is going to get to a 26 percent reduction, and I am if you have had conversations with them saying, through the regulation, what can you get done.

Ms. GILES. Senator, the Enforcement Office doesn't write regulations, so I am not aware of what conversations——

Senator INHOFE. So you haven't had conversations.

Ms. GILES. I personally have not.

Senator INHOFE. You know, it wasn't long ago that Al Armendariz made the statement, when he was talking to a bunch of subordinates, that, you know, what we have to do to the oil and gas industry is the same thing that the Romans did when they went through Turkey; they went into various small villages, crucified the first four people, get their attention. And we actually got the wording that he used on that, and after that happened he was let go.

What is your evaluation of a comment like that, that a man who is working for the EPA, making to subordinates and going after a particular industry?

Ms. GILES. I would disagree with that comment in the strongest possible terms. I do not agree with what he said and I disavowed it in public at the time.

Senator INHOFE. If that is the case, why is it you praised him for it when you wrote him a letter saying, I just want to say how impressed I am at the terrific work the region did in the range order, what specifically he was talking about at that time. Great job.

Ms. GILES. Senator, the comment I was making to him was with regard to a specific enforcement action, it was not with respect to his comment.

Senator INHOFE. Well, it was a terrific job, and this was right after he did that.

Ms. GILES. I don't believe it was after he said that.

Senator INHOFE. Oh, yes it was. The date was specifically the 8th of December 2010. And it was the spring of 2008 that he made the statement.

Ms. GILES. Thank you for refreshing my recollection. It may have been after he made that comment, but it was not after I knew about the comment that he had made.

Senator INHOFE. Thank you, Mr. Chairman.

Senator ROUNDS. Senator Sullivan.

Senator SULLIVAN. Thank you, Mr. Chairman.

Administrator Giles, good to see you. I am appreciative and I always think it is important to emphasize that everybody on this Committee certainly is focused on making sure we have the cleanest air and cleanest water in the Country; certainly something that is a big issue in my State, in Alaska, where we do have some of the most pristine environments and clean air.

One of the things I have raised on the Committee a lot is my concern about legal issues where I think the EPA is not following the law. I think it is not just us, but it is frequent court cases. And it also relates to the area that you are in charge of in terms of enforcement and compliance.

I want to talk a little bit about the summer of 2013 in Alaska. Are you familiar with what happened in Chicken, Alaska during that summer?

Ms. GILES. Generally, yes.

Senator SULLIVAN. So that was when I think it was seven armed EPA agents, rifles, body armor, several ATVs, made a raid. Anything less than calling it a raid on a plaster mining operation, of a bunch of Alaskans who were out plaster mining, looking for Clean Water Act violations. The State of Alaska did an extensive report on that and one of the things you talked about, working closely with law enforcement, they said that there was actually very little coordination with law enforcement when you came in, scared the living daylights out of a bunch of Alaskan miners looking like, you know, the U.S. Army as opposed to the EPA.

Have you learned any lessons on coordinating better with State officials on something like that? The Governor's report in Alaska said that there could have been a terrible tragedy, terrible accident; a bunch of EPA enforcers coming in, rapid raid. You said that you are focused on working closely with law enforcement. What have you learned from that raid?

Ms. GILES. Senator Sullivan, thank you for the question. As you know, the Governor's special council did do a review of that situation and found that the investigation was done professionally and courteously; and I would add not just by EPA, but——

Senator SULLIVAN. Oh, I don't think so. Did you find any violation of the Clean Water Act in that investigation?

Ms. GILES. The information that was found was turned over to the State and to the prosecutors for their evaluation.

Senator SULLIVAN. The answer is no. There were no Clean Water Act violations in that raid that was conducted.

How much does EPA spend on training your officials, your agents, in terms of high-powered military weapons and arms training?

Let me get to just a more direct question. When EPA started out for the first 20 years, you did not have armed agents. Why do you believe you need armed agents now, when in your initial 20 years you didn't have armed agents? Why do you need armed EPA agents now? You spend millions of dollars on training, weapons, bullets. Why do you need that?

Why can't you rely on, for example, if you go to Chicken, Alaska, why can't you rely on the State troopers to work with you for cooperation and coordination, so they can go in, if you think it is dangerous? Why is EPA spending so much money on having armed

agents, when the first two decades of your Agency's existence you didn't have that?

Ms. GILES. Senator, the reason that was sought and the reason that Congress decided to give that authority to EPA was because the mechanism that was working up to that point was not working now. President Reagan is the president who specifically sought that authority. In his signing statement he said, I am pleased to sign this bill into law because it contains the explicit law enforcement authority for the Environmental Protection Agency, which this administration actively——

Senator SULLIVAN. Well, my first amendment as a U.S. Senator, my first bill was actually to disarm the EPA, because I don't think you need the weapons. I think it would force you to actually cooperate, which you didn't in the Chicken, Alaska case, with local law enforcement, and to have them be in charge of any kind of weapons in terms of any kind of dangerous mission. I still think that the vast majority of Americans don't know that we have had a dramatic increase in the arming of our Federal bureaucracy.

I am someone who is a strong Second Amendment supporter. I believe in an armed citizenry, but I don't believe in an armed bureaucracy. And I think that I am going to continue to work with my colleagues here to throttle back on this area of the Federal Government's increasing power to arm Federal agents. I think the EPA has not shown that it needs these weapons, and I think that is something that the Chicken, Alaska raid in particular demonstrated.

Let me turn to the Gold King Mine site issue. If a private company had released 3 million gallons of contaminated water into a river, would your office have charged them criminally or brought civil or criminal charges to a private company that did something like that?

Ms. GILES. Senator, the law and enforcement distinguishes between the company who makes and releases pollution and the entities that are trying to respond and cleanup pollution that other people created. So, in the case of EPA's action in Gold King, we were acting as a responder, trying to prevent releases of pollution that were left there by others.

Senator SULLIVAN. The EPA Administrator told us in a Committee hearing that she would hold the EPA to a higher standard that a private sector company. There have been numerous instances where the EPA has actually criminally charged people who accidentally, not on purpose, polluted rivers with much less amounts of pollution.

Why has nobody in the EPA ben held liable, been criminally charged? The EPA administrator told this Committee she would hold the EPA to a higher standard, and yet nothing has happened. And if a private sector company did this, it is likely that the CEO or some members of that company would actually be in jail right now.

You have not demonstrated any commitment similar to what the EPA administrator said she would do, which is hold EPA to a higher standard than the private sector. How come that has not happened?

Ms. GILES. I totally agree, Senator.

Senator SULLIVAN. You agree with what?

Ms. GILES. I agree that EPA is responsible and that we should hold ourselves to the same standard or higher that we would expect from a private party.

Senator SULLIVAN. Then why has that not happened and people have gone to jail for doing something less than you did?

Ms. GILES. In the event of a response action, if somebody causes a spill, as part of a response action, not pollution they created, we generally do not assess fines or pursue them for violations as you are discussing here. We do that in the case of someone who creates the pollution and is responsible for releasing it.

Senator SULLIVAN. Didn't you create the pollution and release it?

Ms. GILES. We did not. We were responsible for the release. The pollution was not created by EPA; we were attempting to remedy the pollution that was left there by someone else.

Senator SULLIVAN. But for the EPA's action that day, would the Animus River have been polluted?

Ms. GILES. I totally agree we are responsible for that. And what we expect from private parties when they are in that situation, if they are doing a response action and they make the situation worse, we expect them to fix it, and that is what EPA has been attempting to do.

Senator SULLIVAN. But no one is civilly liable or going to jail, as has happened in the past.

Ms. GILES. EPA does not typically assess penalties or pursue enforcement actions other than to get response parties to clean up the mess that they made, and that is what EPA is taking responsibility for doing, which we should do.

Senator ROUNDS. I think what we will do is just in terms of since there are just a few of us here, I think we are going to try to do one more round. We are going to limit it to 3 minutes per senator, and we will roll on through, and I will begin.

I have a specific question concerning the followups on the inspections. When the EPA conducts an inspection on facility, what are the policies and guidelines that the EPA follows in order to keep in communication with the facility and report the results of the inspection in a timely fashion? If there such a thing as an average time that it takes to report the results of an enforcement action to an inspection facility, what is it? Do you keep track of that? What should be considered timely for a followup response?

Ms. GILES. We do. Thank you, Senator. We certainly do attempt to respond and communicate in a timely way with the facilities, all the way from talking to them at the time when the inspector is there through what subsequent action may be appropriate; and I would say the time for that probably varies quite a bit by the extensiveness of the inspection and the seriousness of the issues found there.

Senator ROUNDS. If the EPA delays reporting the results of an inspection to a facility, what recourse does a facility have to get a more timely response from the EPA? I think you probably understand the reason. You inspect a facility; there is a threat of an enforcement action, clearly, with the inspection; there is a concern about whether they get a clean bill of health or whether they have to look at defensive actions coming in the future. It seems to me

that there ought to be some kind of a timeframe in which the EPA should have a responsibility to at least let the organization know whether there is going to be an enforcement action that they are going to be following.

Ms. GILES. Yes, Senator. I would agree that it is important for us to stay in communication with the facilities, and we do certainly support and encourage folks in doing that. Any facility that does not think that they are getting information in a timely way, we would certainly hope they would call us, and we would make an attempt to communicate with them at that point.

Senator ROUNDS. When you do the enforcement actions, do you communicate with your partners, the States in this particular case? And at what point does the communication with the State begin, or is there a process that you have in place within policy that directs that communications begin once again with the State, or are you in communication with the States during the entire time?

Ms. GILES. Senator, thank you. Yes, the regions have regular communications with their State counterparts in the different compliance programs, and that varies from weekly to monthly to quarterly, and the purpose of those is to share information, what the States know, what EPA knows, and to see if we can reach joint decisions about what the best way of proceeding should be.

Senator ROUNDS. What about in cases where you have specific enforcement actions that at least an inspection has been done with a facility? Is there any way for communication with the States? Would the States know what is going on with the activity that you brought or that you may bring with a facility within their jurisdiction as well?

Ms. GILES. I think, Senator, generally the regions do have that communication with States around inspections that they are doing and what they have found, and, likewise, States share with EPA information that States have about pollution problems and compliance issues and discuss the best way to approach them.

Senator ROUNDS. Thank you.

I will just say earlier I had requested the information concerning the number of 114 requests, and what I will put into my official request will be that you just simply look at it over a 10-year period of time, over the last 10 years, including the most recent data that you might have. And we will extend you a formal letter on that, OK? Thank you.

Senator MARKEY.

Senator MARKEY. Thank you, Mr. Chairman, very much.

May I ask, Ms. Giles, if EPA's special agents have ever been attacked or killed as they are in the line of duty in enforcing the law?

Ms. GILES. It is unfortunately the case that EPA agents who are executing search warrants or arresting people for serious environmental crimes have been assaulted, and it also happens, unfortunately too frequently, that the agents find significant quantities of firearms in these locations. So having a sidearm is a standard piece of equipment for any law enforcement officer, and we do the same at EPA, along with, of course, the training and the requirements that they follow the rules.

Senator MARKEY. And I think that is very appropriate. These are crimes, in many instances, that the EPA is investigating, and those

who have committed these crimes, or alleged to have committed these crimes, could have guns themselves.

So to send an EPA law enforcement officer into a situation without a gun, while there could be a gun on the other side of the door, I think would basically differentiate an EPA enforcement officer from every other enforcement officer at every other level of government in the United States. And we know that the person behind the door could have a gun.

We know that there is no law that if you are on a no-fly terrorist list that you can't buy a gun in the Unites States. We know that people can buy guns in gun shows without having gone through a background check. We know that people can go on Instagram and buy an Instagun.

So we know that we don't have all the safeguards that are in place, and yet why should we say to an EPA enforcement officer, when there have been officers which have been attacked in the past, that they can't have a gun to protect themselves? Not to use it in an arbitrary way, but at least to have that kind of protection, which I think each law enforcement officer in our Country is entitled to.

So I just think it makes no sense to have everybody else in America be able to buy a gun because of all the loopholes that we have, and that the only one subgroup in the whole Country that would not have a gun would be actually a law enforcement officer for the EPA. It just doesn't make any sense whatsoever, given the fact that they are in fact enforcing the laws of the United States of America.

So I would just like to put a good word in for those EPA special agents who are risking their lives every time they knock on a door, every time they are investigating a crime. The consequences for the person that they are investigating could be quite severe and, as a result, a reaction to an EPA special agent could be something that is life-threatening. So I just want to put in a good word for all those people who are out there and work every day for us.

Ms. GILES. Thank you, Senator. They greatly appreciate that.

Senator MARKEY. Thank you.

Senator ROUNDS. Senator Sullivan.

Senator SULLIVAN. So, Administrator Giles, I want to go to another issue. I talked about the frustration of the Animus River example. I think that there is a sense, certainly in my State, of a do-as-I-say-not-as-I-do approach to some of the EPA enforcement, and I have raised this issue a number of times in this Committee, but you mentioned earlier a statement by a senior EPA administrator that you said you immediately disavowed.

On the eve of the EPA vs. Michigan case, where EPA Administrator Gina McCarthy was asked if she thought that the EPA was going to win that case in front of the Supreme Court, she said she was confident that the EPA would; and then she said, "But even if we don't win, it was 3 years ago. Most of them," meaning all the companies and private sector businesses, "are already in compliance. Investments have been made and we'll catch up. We're still going to get at the toxic pollutions from these facilities."

Do you see a problem with that statement and do you disavow that statement? I mean, I find that statement to be remarkable be-

cause, in my view, it ignores the rule of law. It is essentially saying, heads, we win, tails, we win; it doesn't matter. Do you understand why a statement like that from the head of the EPA brings so much frustration to the average American who is trying to comply with the law, the average small business?

Do you disavow that statement from the EPA Administrator and do you understand why—as you probably know, that statement has been quoted all over the Country. People were shocked when they heard her say that. Do you understand why people were shocked? First of all, do you disavow that statement by your boss?

Ms. GILES. Senator, are you referring to the mercury toxic standard?

Senator SULLIVAN. I am referring to the quote that the Administrator made on the eve of the EPA vs. Michigan Supreme Court decision, which the EPA lost, by the way.

Ms. GILES. Well, from an enforcement perspective, what I can tell you is when rules become final, companies do make progress toward complying with them, and if rules are overturned many years later, many companies have already gone a long distance toward compliance.

Senator SULLIVAN. But it seems to me that she has that as part of EPA's strategy, kind of like it doesn't matter whether we were right or wrong on the rule because the companies had to comply. Do you understand why that makes people frustrated? Do you want me to read the quote again?

Ms. GILES. No, Senator. I understand what you are saying, your frustration——

Senator SULLIVAN. No, it is not mine. I would say it is probably millions of Americans who are frustrated with that approach to the law and regulations by the EPA.

Ms. GILES. Well, it certainly is the case that sometimes it takes quite a while for judicial cases to come to conclusion, and, meanwhile, companies do comply with the laws, has been my experience.

Senator SULLIVAN. But you don't understand why a statement from the head of EPA just like I read would make a lot of Americans very frustrated with how Federal agencies, particularly yours, operates? You don't get that?

Ms. GILES. I think the Administrator is expressing her view and confidence about the outcome of that litigation.

Senator SULLIVAN. No, actually, she wasn't. I mean, I am fine with her saying that she thinks they are going to win; she has good lawyers. That is fine. That is actually a strong statement from the EPA Administrator. That is expected. That part of her statement is fine. It is the part of her statement that says, "But even if we don't win, it was 3 years ago. Most of them are already in compliance. Investments have been made. We will catch up." That is really, even if we lose, we win. Like there is no way to lose.

Ms. GILES. Senator, I think it is a statement of fact that many companies had made investments to comply with the regulation.

Senator SULLIVAN. Oh, I know it is a statement of fact, but I am just asking you do you understand why that frustrates people. Can you see it? Can you sympathize with the small business person who fought that, thought it was illegal, and then the Supreme Court came out and said it was illegal, and then the head of the

EPA says, hey, too bad, it was illegal, but you already had to pay for it; good luck. Do you see how that makes people frustrated?

Ms. GILES. I think I am getting pretty far out of my zone in enforcement and regulations.

Senator SULLIVAN. Well, that is enforcement. That has a lot to do with enforcement.

So you don't see how that frustrates people. No sympathy there?

Ms. GILES. It is not a matter of not sympathy. I think it is a statement of fact, which is a correct statement.

Senator SULLIVAN. Thank you, Mr. Chairman.

Senator ROUNDS. Thank you.

Before we close, Senator Barrasso was not able to be here. We have three separate subcommittees that are all meeting at the same time and Senator Barrasso asked that I highlight the practical recommendations for improving the partnership between your office and State regulatory agencies.

The Wyoming Department of Environmental Quality submitted, in October 14th of 2015, a letter to your office, of which I have a copy here that I will enter into the record, and I understand that the Wyoming DEQ has not yet received any response or outreach from your office on this letter. In the letter, I would like you to check and see what the followup was.

If they have received it, if they have reviewed the recommendations that the Department of Environmental Quality in Wyoming has made, and if I could get from you a response back in writing once you have had a chance to find the letter and so forth. If you would agree to make sure that we get a copy of the response that you would expeditiously followup on and get back to the Wyoming DEQ.

Ms. GILES. Certainly, Senator, I will look into that.

Senator ROUNDS. Thank you.

Senator Markey, thank you once again for this participation.

I would like to thank Ms. Giles once again for your participation in our meeting today.

I think it is important that we get in and we ask the questions and we get the followup and so forth, and at least share some of our thoughts, frustrations on both sides of the aisle in some cases with activity. But, nonetheless, I think it is important that we continue with these oversight hearings and, once again, I want to thank you for attending today.

The record for this meeting will be open for 2 weeks, which brings us to Tuesday, July 13th. This hearing is adjourned.

[Whereupon, at 3:35 p.m. the committee was adjourned.]

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