The Honorable Ed Whitfield  
Chairman  
Subcommittee on Energy and Power  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

Thank you for the opportunity to respond to questions for the record that followed a May 5, 2011 hearing entitled “The American Energy Initiative.” I hope the information contained in these responses will be helpful to you and members of the Committee.

If you have any further questions, please contact me at (202)564-5200 or your staff may contact Diann Frantz at (202)564-3668.

Sincerely,

David McIntosh  
Associate Administrator

Enclosure
The Honorable Ed Whitfield

1. EPA has only approved 2 feedstocks to make cellulosic ethanol even though there are many more out there that may yield better results. One of those is arundo donax. What is the status of the petition to utilize this feedstock?

Response: In March EPA received a petition requesting we add Arundo donax as an eligible feedstock for biofuel production under the provisions of the RFS2 regulations. As required by the Energy Independence and Security Act of 2007 (EISA), EPA is completing a lifecycle greenhouse gas (GHG) emissions assessment of such biofuel pathways. In coordination with the U.S. Department of Agriculture and Department of Energy, our lifecycle assessment will determine whether Arundo donax will qualify as a feedstock which can be used to produce biofuels meeting the cellulosic biofuel GHG performance threshold established by EISA. After completing this analysis, EPA will, if appropriate, adopt a change to the RFS2 regulations to add Arundo donax as a feedstock for producing cellulosic biofuel.

2. Are there any other feedstocks besides the two already approved (switchgrass and miscanthus) that the agency is considering, and what is the timeline for the approval process?

Response: In addition to switchgrass and miscanthus, the current RFS2 regulations have approved cellulosic biofuel pathways for feedstocks including agricultural residues such as corn stover, slash, forest trimmings and forest product residues, cellulosic components of separated yard wastes, cellulosic components of separated food wastes, and cellulosic components of municipal solid wastes. Additionally we are developing a lifecycle GHG assessment of energy cane as a potential feedstock source for cellulosic biofuel production. As in the case of Arundo donax, after completing our GHG assessment, we would add energy cane to the RFS2 regulations via rulemaking.

The Honorable John Shimkus

1. The NHTSA/EPA joint Model Year 2012-16 fuel economy/greenhouse gas rulemaking states that it is "harmonized and consistent." In the Energy Independence and Security Act of 2007 (EISA), Congress specifically extended the flex fuel (FFV) credit, and phased it out entirely by 2020.

Congress extended the flex fuel program in 2007 by statute specifically because Congress wanted to encourage the production of vehicles that can run on E-85.

The EPA's program also allows FFV credits in line with the limits set by Congress in EISA, but only during the period from model years 2012 to 2015. After model year 2015, EPA will only allow FFV credits based on a manufacturer's demonstration that the alternative fuel is actually being used in the vehicles.
a. How can this rule be characterized as "harmonized and consistent" if the way EPA treats FFV vehicles is markedly different than the way Congress mandated FFV credits be treated under CAFE?

b. The joint EPA/NHTSA fuel economy rule states on page 25,433: "Unlike EPCA, CAA section 202(a) does not mandate that EPA treat FFVs in a specific way. Instead EPA is required to exercise its own judgment and determine an appropriate approach that best promotes the goals of this CAA section." Could the logical reason for Congress' silence on FFVs in section 202(a) be that Congress never envisioned the Clean Air Act would be used to regulate fuel economy?

c. Please provide this Subcommittee with a list of areas in the EPA/NHTSA joint rulemaking of May 7, 2010 where EPA's rules are contrary to the program designed by Congress in EPCA as amended by EISA, and why EPA chose to substitute its judgment over the clear, specific policy preferences passed by Congress.

Response: In setting standards for model years 2012-2026 light-duty vehicles, EPA and NHTSA worked jointly to develop a closely coordinated set of GHG and CAFE standards that together comprise the "National Program." In developing the National Program, the agencies harmonized many elements of program design, such as the form of the standard (the footprint-based attribute curves) and the definitions of cars and trucks, developed the same or similar compliance flexibilities to the extent allowed under their respective statutes, such as averaging, banking, and trading of credits, and harmonized the compliance testing and test protocols used for purposes of the fleet average standards.

On the specific issue of FFVs, EPA is treating FFV credits the same as under EPCA for model years 2012-2015. Starting with model year 2016, EPA is using a different approach that should promote greater use of alternative fuels. EPA recognizes that under EPCA automatic FFV credits are entirely phased out of the CAFE program by MY 2020, and apply in the prior model years with certain limitations, but without a requirement that the manufacturers demonstrate actual use of the alternative fuel. EPA treats FFVs for model years 2012-2015 the same as under EPCA. Starting with model year 2016, EPA believes the appropriate approach is to ensure that FFV emissions are based on demonstrated emissions performance, which will correlate to actual usage of alternative fuels. This approach was supported by several public comments. If a manufacturer wants to earn FFV credit after MY 2016, a manufacturer would have to demonstrate that a portion of its FFVs are using an alternative fuel in use (by extrapolating from national average E85 usage data, for example), and FFV emissions compliance values would be calculated based on the vehicle’s tested value using gasoline and the alternative fuel, prorated based on the percentages of the fleet using gasoline and the alternative fuel in the field. This approach will promote greater use of alternative fuels, consistent with the agency’s overall commitment to the expanded use of renewable fuels.

On the question of differences between the CAFE and GHG portions of the joint 2012-2016 light-duty vehicle rulemaking, EPA’s program for those years allows manufacturers the
flexibility to comply with the standards through improvements in air conditioning related emissions, but NHTSA’s does not for those years. EPA also finalized certain compliance flexibilities, and takes those flexibilities into account in its technical analysis and modeling supporting its final program. EPCA places certain limits on certain statutorily-provided compliance flexibilities for CAFE, and expressly prohibits NHTSA from mandating compliance with standards based on assumed use of those compliance flexibilities.

The CAA specifies different civil penalty provisions for noncompliance than EPCA does, and EPA cannot therefore adopt the CAFE penalty structure.

In summary, given the common technical issues before each agency, the similarity of the factors each agency is to consider and balance, and the authority of each agency to take into consideration the standards of the other agency, both EPA and NHTSA have established standards that result in a harmonized National Program.

The Honorable Cory Gardner

1. On September 30, 2010, EPA and NHTSA issued a “Notice of Intent” stating the Obama Administration plans to raise the fuel economy standard between 47 to 62 miles per gallon for cars and light trucks by 2025. On January 28, 2011, you were quoted in the press (EPA urges ‘civility’ in fuel-efficiency debate,” E&E Daily, 1/28/11) saying, “There are environmental groups on one side calling for 62 mpg and the last time I checked, they hadn’t done any work to show why that’s the case.”

The Notice of Intent indicates EPA is actively considering raising the fuel economy standard to 62 mpg. Such a standard would hurt the ranchers and farmers I represent who rely on full size pickup trucks to make a living. In light of your quote above, can you assure this Subcommittee that the EPA will not propose a 62 mpg fuel economy/GHG standard?

Response: Let me be clear that EPA has not made any decisions regarding the recommended level of the proposed greenhouse gas standards for model year 2017-2025 light-duty vehicles. EPA and DOT are working jointly to develop a proposal and we are still in the process of assessing the best available science and data to inform our decisions. EPA and DOT, in collaboration with California, have met with a wide range of stakeholders to gather input, including all of the major automakers, suppliers, the UAW, NGOs and state and local governments. Our current plans are to issue a joint proposal with DOT in September.

The Notice of Intent issued by EPA and DOT in September 2010 was meant to describe the agencies’ initial assessment of potential levels of stringency for the model year 2017-2025 standards. The agencies were clear in the Notice of Intent that we have not reached any decisions on the levels of stringency that would ultimately be proposed: “[t]he agencies have not reached any conclusions at this time regarding the appropriate level of stringency for [model year] MY 2017 and later, and the assessment presented in this Joint Notice does not preclude the agencies from considering standards outside of this range for the upcoming rulemaking.” However, the agencies are continuing to consider, as we did for the 2012-2016 rule, an approach...
which sets standards based on a vehicle "footprint" attribute, where each vehicle has a different
GHG/CAFE emissions target depending on its size. Generally, the larger the vehicle, the higher
the emissions target, and each auto manufacturer has a different overall fleet target depending on
the individual vehicle models it produces. In this way, manufacturers are not compelled to build
vehicles of any particular size or type, thus preserving consumer choice.

Finally, it is important to point out that all consumers – including the ranchers and
farmers you mention – will benefit from the significant savings realized by improved vehicle fuel
efficiency. In our initial assessment presented in the Notice of Intent, the net lifetime consumer
savings were nearly $5,000 to $7,400 across the level of standards evaluated. We can mitigate
the impact of high fuel prices on American families and businesses by setting improved fuel
efficiency standards that enable people to travel the same distance with less fuel while
maintaining a wide range of vehicle choices to meet consumers needs (due to the footprint
approach described above.

\textbf{The Honorable Gene Green}

1. What is the agency’s estimate for misfueling in the first few years of E15’s existence at the
gas pumps?

\textbf{Response:} We are not currently in a position to estimate the extent to which any misfueling
with E15 would occur in the first few years of E15 becoming available at gas pumps.
Misfueling rates would depend on a number of factors that are difficult if not impossible to
quantify at this time (e.g., the extent and rate of expansion of E15 into the marketplace, how
E15 is marketed at the pump). This is particularly the case because the E15 partial waiver
decisions allow, but do not require, E15 to be introduced into commerce. It is now up to
businesses to decide whether and how to market E15, and there are number of steps that need
to be taken before E15 can be made broadly available (e.g., determining equipment
compatibility, compliance with other federal, state and local requirements).

Moreover, EPA has taken significant steps to minimize potential misfueling with E15 when it
becomes commercially available in the market. We conditioned the partial waivers on E15
providers submitting a misfueling mitigation plan for approval by EPA. The plan must
provide for E15 pump labeling, tracking of E15 through the supply chain, and
implementation surveys of E15 content and labeling requirements. A plan may also include
other measures as appropriate to address misfueling. No one has yet submitted a misfueling
plan.

In addition, we proposed a misfueling mitigation regulatory program that will further reduce
the potential for misfueling by establishing a prohibition on misfueling, as well as
requirements for national labeling, product transfer and surveys. We expect to issue the final
misfueling mitigation rule soon. We also plan to work with stakeholders on public education
and outreach on E15 use and to periodically evaluate the effectiveness of the mitigation
measures put in place under the waivers and final rule. Our goal and expectation is that the
E15 misfueling mitigation program, like the similar program for ultra low sulfur diesel fuel,
will be highly effective.

2. There are a number of consumers that actively seek clear gasoline and who must have no
higher blend than E10 in order to avoid violating their engine warranty.

a. What is your plan to ensure the availability of these fuels and what do you see for their
future availability as RFS2 forces more ethanol on consumers?

b. What should be done to ensure the availability of low-ethanol blends or clear gasoline for
such legacy products?

Response: While the Agency, after extensive review of test data, approved the use of up to
15 volume percent ethanol in gasoline for 2001 and newer light-duty vehicles, it is important
to remember that E15 is not required. Further, as noted above, we proposed a program for
mitigating potential misfueling with E15 when it becomes commercially available in the
market, and we received several comments regarding concerns about the continued
availability of E10 (and possibly E0) for the vehicles, engines and equipment not covered by
the E15 partial waivers. We are committed to working with stakeholders to monitor the
transition to E15 in order to identify and address any availability issues that may develop.

3. The RFS currently requires 15 billion gallons of first generation biofuels to be blended by
2015. This amount is referred to as a soft cap, meaning it can be increased beyond 15 billion.
Most experts believe that second and third generation advanced biofuels hold varying
degrees of promise due to various factors. No one can say with 100 percent certainty that
they will comprise the bulk of our renewable fuel supply twenty years from now.

    While the volume requirements within the RFS for second and third generation fuels
remain a challenge, preserving volume space within the RFS for these second and third
generation fuels is key to the achievement of the coverall policy goals of the RFS. Unless
this space is preserved, ethanol is likely to continue to creep into that unfilled space, driving
away venture capital investments and thus thwarting the RFS policy objective.

    Do you think Congress should consider capping first generation biofuels at 15 billion
to achieve the bigger policy objectives laid out in the RFS which are to ensure a more
diversified national transportation fuels supply?

Response: As mandated by the Energy Independence and Security Act of 2007 (EISA) and
as adopted in the RFS2 regulations, of the total of 36 billion gallons of renewable fuel to be
included in the transportation fuel pool by 2022, 21 billion gallons of the total is set aside for
fuels meeting the advanced biofuel performance threshold of at least a 50 percent
improvement in GHG performance compared to the petroleum-based fuel it is replaced.
(either gasoline or diesel). Within these 21 billion gallons of advanced biofuel, 16 billion gallons are set aside for cellulosic biofuels meeting at least a 60 percent improvement in GHG performance compared to the petroleum-based fuel they are replacing. These RFS2 provisions do “preserve space” for advanced biofuels. Although producers can sell more than 15 billion gallons of corn ethanol, under EISA, corn ethanol cannot qualify as an advanced biofuel.