

# WebMemo



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## Key Questions for Lisa Jackson, Nominee for EPA Administrator

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The U.S. Senate will soon render its advice and consent on the nomination of Lisa Jackson for administrator of the Environmental Protection Agency (EPA).

Running the EPA in a manner that best serves the interests of the American people is always a challenge, but particularly so during economically difficult times. The Clean Air Act and other environmental statutes the agency is charged with implementing have significant economic impacts, especially on things like energy costs and employment in the manufacturing sector. In the past, the agency has taken actions that were unnecessarily costly, and more of the same in the months and years ahead could jeopardize any economic recovery. These risks will be greatly heightened if the agency chooses to embark on regulations to address global warming.

Therefore, their hearings for Jackson, Senators should consider asking her the following questions:

### **Question #1: EPA Regulation of Greenhouse Gases**

In the agency's Advance Notice of Proposed Rulemaking (ANPR), issued last July, EPA Administrator Stephen Johnson took the highly unusual step of questioning the merits of his agency's proposal to regulate carbon dioxide and other greenhouse gases under the Clean Air Act. *Will you as administrator take steps to incorporate his concerns as you move toward final resolution of this pending issue?*

**Answer:** Johnson noted the many difficulties in using the Clean Air Act to regulate greenhouse gases, something the 1970 statute was not designed to do. In the preface to the lengthy ANPR, he stated, "I believe the ANPR demonstrates the Clean Air Act, an outdated law originally enacted to control regional pollutants that cause direct health effects, is ill-suited for the task of regulating global greenhouse gases." Johnson added that such regulations would be costly and would likely produce little environmental benefit. "Pursuing this course of action would inevitably result in a very complicated, time consuming, and, likely, convoluted set of regulations" that would "be relatively ineffective at reducing greenhouse gas concentrations given the potentially damaging effect on jobs and the U.S. economy." The administrator's comments are all the more valid given the economic downturn that has occurred since, and his concerns should be taken into account as the EPA moves forward on this matter.

### **Question #2: Responses to ANPR**

After the ANPR was issued, many thousands of impacted entities filed comments with the agency detailing the difficulties in complying with all of the requirements should the EPA open the door to reg-

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ulating greenhouse gases under the Clean Air Act. *Will you make sure that these concerns are adequately addressed?*

**Answer:** The range of commenters—from those representing the largest industrial corporations to the smallest businesses, from farming operations to commercial property owners and many non-profit and government entities as well—underscores the sweep of such regulations and the concern that the ANPR would lead to the application of the Clean Air Act to nearly all economic activity. Some raised concerns that such a final rule would force them to shut down. To the extent any action by the EPA on this matter fails to address these concerns, the final rule would serve as a massive de-stimulus package for years to come.

### Question #3: High Energy Prices

High energy costs, and especially high gasoline prices, have been a big concern for the American people over the past few years, and it is likely that the current respite is only temporary. While increases in the price of oil driven by strong global demand was far and away the major factor in creating high gasoline prices, EPA regulations have at times made a bad situation worse. *Will you as administrator make a concerted effort to minimize the impact of additional regulations on energy prices?*

**Answer:** No new refinery has been built in the U.S. since the 1970s, and expansions at existing ones have at times struggled to keep up with growing demand (though lower demand due to the economic downturn and the requirement that some gasoline be replaced with ethanol has reduced the pressure for now). A maze of environmental regulations is a contributor to the refinery capacity constraints, and these rules could be streamlined in ways that would not increase pollution. Similarly, regulations dictating the composition for gasoline (actually a dozen different blends) have had an impact on pump prices and increased the incidence of localized shortages. Reconsidering past regulations, and taking care not to promulgate unnecessarily costly new ones, will help make driving more affordable in the coming years.

### Question #4: Coal-Powered Electricity

America needs more electric generation in the years ahead, but EPA regulations have hampered the construction of new coal-fired power plants. *Will you consider streamlining the regulations that stand in the way of more affordable electricity from coal?*

**Answer:** Coal is the one energy source America has in overwhelming abundance, and it currently provides 50 percent of the nation's electricity largely because of its affordability. Without additional coal-fired generation to meet America's growing electricity demand, energy costs would be considerably higher, posing hardships for consumers and greatly hurting the economy. Provisions in the 1990 Clean Air Act amendments, which have been aggressively interpreted by the agency, have substantially reduced the number of proposed coal-fired power plants that have been approved since that time. This is true even though state-of-the-art coal plants are far cleaner than the many old ones still in operation that they would replace. And recent EPA efforts to take global warming concerns into account would only add to the hurdles coal-fired generation faces and could in fact deal a death blow to new coal. The EPA should adopt a policy that requires reasonable emissions limits on new coal-fired power plants but does not stop the construction of these badly needed facilities.

### Question #5: Past EPA Policies

*Will the EPA review past policies that may be environmentally counterproductive?*

**Answer:** There are many examples of EPA measures that are unnecessarily costly, but in some cases such measures may actually be environmentally counterproductive as well. Consider New Source Review (NSR), a program that imposes expensive and time-consuming requirements on any newly constructed industrial facility as well as any major modifications to existing ones. Over the past decade, the phrase "major modification" has been defined downward to include rather routine repairs, maintenance, or part replacements. NSR is so burdensome that companies try to avoid it. As a result, it is easier for many regulated entities to continue using older, dirtier power plants, refineries, or factories than to upgrade or replace them. Allowing

turnover to newer and cleaner technologies not only contributes to economic growth but is something the EPA should be encouraging. Reform of NSR and other programs that have proved harmful should be a part of the EPA agenda.

**Moving Forward.** Since the EPA's creation in 1970, air and water quality have, by most measures, improved markedly. Today, there is much to be done to better balance environmental and economic concerns. First on this list is avoiding ill-advised measures in the name of combating global warm-

ing. In addition, efforts to reduce the impact of environmental rules on the economy and energy prices—and reconsidering policies not benefiting the environment at all—are particularly critical now as America struggles to extricate itself from the current recession and build an economy that is both stronger and cleaner in the years ahead.

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### For More Information

Ben Lieberman, “The True Costs of EPA Global Warming Regulation,” Heritage Foundation *Backgrounder* No. 2213, November 24, 2008, at <http://www.heritage.org/Research/EnergyandEnvironment/bg2213.cfm>.

David Kreutzer, Ph.D., and Karen Campbell, Ph.D., “CO<sub>2</sub>-Emission Cuts: The Economic Costs of the EPA's ANPR Regulations,” Heritage Foundation *Center for Data Analysis Report* No. CDA08–10, at <http://www.heritage.org/Research/EnergyandEnvironment/cda08-10.cfm>.

Ben Lieberman, “Time to Remove Barriers to Boosting Oil Refining Capacity,” Heritage Foundation *WebMemo* No. 1174, July 25, 2006, at <http://www.heritage.org/Research/EnergyandEnvironment/wm1174.cfm>.

Ben Lieberman, “Correcting Mistakes of the 1990s Should Top the Energy Agenda for 2006,” Heritage Foundation *Backgrounder* No. 1921, March 20, 2006, at <http://www.heritage.org/Research/EnergyandEnvironment/bg1921.cfm>.

Dana Joel Gattuso, “Why the New Source Review Program Needs Reform: A Primer on NSR,” Heritage Foundation *Backgrounder* No. 1518, February 22, 2002, at <http://www.heritage.org/Research/EnergyandEnvironment/BG1518.cfm>.