SELECT COMMITTEE ON ENERGY INDEPENDENCE
AND GLOBAL WARMING,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

TELEPHONIC INTERVIEW OF: JASON K. BURNETT

Tuesday, July 15, 2008

Washington, D.C.

The interview in the above matter was held at Room B-249, Longworth House Office Building, commencing at 2:05 p.m.

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Appearances:

For SELECT COMMITTEE ON ENERGY INDEPENDENCE AND
GLOBAL WARMING

GERARD J. WALDRON, MAJORITY STAFF DIRECTOR/CHIEF COUNSEL
MICHAL FREEDHOFF, PROFESSIONAL STAFF MEMBER
JOEL C. BEAUVAIS, COUNSEL

For JASON K. BURNETT

(None)
Ms. Freedhoff. Thanks very much for talking with us today.

In the room with me, I have Joel Beauvais, one of our counsels, and he is going to be sort of asking most of the questions during the session. I also have Gerry Waldron, our staff director. And I think you've either met with or talked to or both with both of these folks in the past.

Mr. Burnett. Yes.

Ms. Freedhoff. Just as a reminder. So we appreciate the time, and I think we should probably just get started.

Mr. Burnett. Well, a couple of questions on the ground rules.

Ms. Freedhoff. Sure. Okay.

Mr. Burnett. Will the entire conversation be recorded, or is there an opportunity to go off the record if there's a reason to do so?

Ms. Freedhoff. I think, you know, if there's a reason to do so, we can certainly do that.

Mr. Burnett. Okay. With that, I think I am ready to get started.

EXAMINATION

BY MR. BEAUVAIS:

Q Great. Thanks, Jason. This is Joel Beauvais.

A Yes.

Q So we're going to be -- this is an interview to


discuss some of the discussion within EPA and the administration more generally with regard to the potential for regulating stationary source emissions of greenhouse gases under the Clean Air Act after the Massachusetts v. EPA decision in April of 2007.

So I just wanted to start by asking, just to give us a little bit of context, can you just describe your sort of position and role within the agency during the period of the matters that we're going to be discussing today?

A Sure. The Administrator of EPA, Administrator Steve Johnson, asked for me to return to the agency in June of -- early June of 2007 in order to help him lead the effort to respond to the Massachusetts v. EPA Supreme Court decision. So I started in my position as associate deputy administrator in early June 2007.

And my general portfolio was climate and energy, although by far my main focus was developing a response and coordinating the development of a response to the Supreme Court, both within the agency as well as through the interagency process.

Q Great. Just for my own clarification, I've seen your title reported either as the deputy associate administrator or as associate deputy administrator. Can you just set me right on that?

A I have seen it both ways. My correct title is
Q Great. Thanks. And when did you leave that position?

A My last day at the agency was June 9th of this year.

Q All right. So from early June 2007 to June 9th of this year. And you mentioned that you were returning to the agency at Administrator Johnson's request. Can you just -- again, just for context, can you briefly sort of explain what your prior role at the agency was?

A Sure. I had previously been asked to come to the agency by then-Governor Leavitt, Administrator Leavitt. And my role was the senior policy advisor within the Office of Air and Radiation.

That office is the office in charge of setting air quality standards and developing rules to meet those standards, either at the federal level or working with states. And in that position, I worked on several power plant rules as well as the national air quality standard for particulate matter.

Q And the time frame during which you had that policy advisor role or senior policy advisor role to the OAR head?

A From 2004 to 2006. I left in the fall of 2006 following the decision on the fine particle national ambient
air quality standard.

Q And what motivated -- I mean, you mentioned Administrator Johnson's request for you to come back on board to work on the agency's response to the Massachusetts v. EPA decision. What motivated you to want to come back to the agency and agree to take on that work?

A Well, I had left the agency just a number of months before, I suppose about eight months before, for two reasons. The first is I was disappointed in the fine particle air quality decision, both the decision process and the decision itself. But also, I wanted to return to working on climate. I had studied climate change economics at Stanford University, and had done work prior to joining the agency on climate change.

During my first time at EPA, the time from 2004 to 2006, there wasn't a lot going on within the agency on policy-making for climate change. There was important work being done with EnergyStar and various voluntary programs, but in terms of a regulatory approach to greenhouse gases, there wasn't much activity at all within the agency. So I had left enough agency in part to work on climate change.

After the Supreme Court case of Massachusetts v. EPA came down, it became clear to me and many other people that, suddenly, a lot more was going to occur within the agency developing regulations. And when the Administrator
asked if I would be willing to come back to work on that, it was an honor to come help lead such an important endeavor.

Q Great. So, I mean, it sounds like you were fairly optimistic that EPA was going to be engaged in sort of proactive process to really take some steps forward on regulating greenhouse gas emissions.

A Well, before I agreed to come back to the agency, I tried to do my homework, talking with people within the agency and talking with observers on the outside. And most people thought that the agency was indeed moving forward with regulation, and they thought that for two basic reasons. One is a recognition that this administration probably would want to put its mark on such an important regulatory program; and that was echoed by the fact that the President, that President Bush had given remarks in the spring of 2007 following the Supreme Court case directing EPA to work with other agencies and departments towards the first federal greenhouse gas regulations for both fuels and vehicles. And that was accompanied by an executive order.

So there were a number of reasons why I thought that it was a serious undertaking, that this administration did intent to respond to the Supreme Court and develop at least mobile source regulations. And because of that, I decided it was an important and unique opportunity to help lead the effort to develop those first-ever federal
greenhouse gas regulations.

Q Thank you. So there's been a fair amount of public
discussion about some of the process within the agency
related to regulation of emissions from mobile sources as
well as regulation of greenhouse gas emissions from fuels for
on-road and non-road engines.

I wanted to talk today about stationary source
emissions. So maybe just to begin, in your role in advising
the Administrator on climate change and energy issues, and in
responding to the Massachusetts v. EPA decision, were you
involved in exploration or discussions of whether stationary
sources of greenhouse gases such as power plants, refineries,
or other sources could or should be effectively regulated
under the Clean Air Act?

A Yes.

Q And can you describe I guess the nature of EPA's
work in this area, as well as the timing of its work on
potential regulations for stationary sources?

A Sure. The first observation to make is that while
the Supreme Court case in Massachusetts v. EPA was
specifically addressing Title II authority and Section 202,
which is the authority to regulate emissions from new motor
vehicles, virtually everyone recognizes that that decision
has profound consequences well beyond the mobile sources of
Title II.
And the agency recognized that early on in the process and we began sorting through, first of all, how any regulation of mobile sources would affect and potentially limit options for stationary source regulation. And then we began to look at what stationary source regulation would be most appropriate.

That undertaking looked not only at what sources may be appropriate for regulation, but what sections of Title I of the Clean Air Act, the stationary source title of the Clean Air Act, would be most workable for a new pollutant like greenhouse gases.

Q If I can just interject for a moment, Jason, what was the time frame during which this process that you're describing began?

A In the summer of 2007, we began a careful look at the different provisions of the Clean Air Act and how they might work for greenhouse gas regulation. We began that process first within the agency, but early on engaged the interagency process, the other departments and agencies within the administration that had an interest in stationary sources and the potential for stationary source greenhouse gas regulation.

Q I'd like to circle back with regard to that interagency process. But before going there, can you just talk a little bit about which types of sources were under
serious consideration by the agency as potential targets for regulation?

Well, there are several different sections of the Clean Air Act that could potentially apply. Let me talk about two in particular. The first is the PSD program, the prevention of significant deterioration program within the new source review program. And that part of the Clean Air Act will be triggered immediately upon greenhouse gases becoming a regulated pollutant.

And the statutory thresholds for regulation are quite low and could potentially bring in a very large number of sources, ranging from large sources like power plants and refineries and factories, but also to much smaller sources. And so we were working through different options for making that program work as well as it could, given that it clearly was not designed to regulate a pollutant like greenhouse gases or CO$_2$.

The other focus of our work was determining what section that would not be automatically triggered but would eventually be triggered because of the Supreme Court decision. And there was a choice between three basic sections of the Clean Air Act, the Section 108/109, which is the national ambient air quality standards; Section 111, which is the new source performance standards, and existing sources can also be regulated under Section 111; and
Section 112, which is the hazardous air pollutant section. Most people thought that Section 111 afforded the most flexibility both in terms of what sources were regulated and the regulatory design of any program. We were focused on the larger sources for a couple reasons. There were several court cases or court deadlines that were going to compel action for some sources. Petroleum refineries, Portland cement, utility and industrial boilers in particular had court cases or court deadlines. But we were looking at some sources beyond those as possibly appropriate to be subject to regulation under Section 111.

Q And were there other source categories in addition to the three that you mentioned, petroleum refineries, Portland cement manufacturing, and utility and industrial boilers?

A There are numerous sources that are already listed under Section 111. So if the agency were to decide to move down a 111 pathway, the agency would have to determine how many of those sources and what sequence to pursue regulation for those sources.

One source that was of interest was large landfills because it was believed that greenhouse gas emission reductions could be achieved very cost-effectively from that source category. But we were looking at a range of source
Q Can you talk a little bit about the agency's internal process for considering potential regulations for these various source categories? I think we're interested in things like, you know, an approximate number of meetings or other interactions within the agency; whether, you know, those meetings at times included senior-level career staff or political appointees. And can you paint a picture for what that process looked like?

A Section 111 is administered out of the Office of Air Quality, Planning, and Standards, which is based in Research Triangle Park in North Carolina. The basic process that we had was to ask the staff in OAQPS, along with the lawyers in the Office of General Counsel, to develop options for the Administrator's consideration.

And those options were presented to -- those option briefings were developed within the Office of Air and Radiation, and I was also involved in overseeing the development of those briefings for the Administrator.

Ultimately, the Administrator was briefed on the options, and --

Q Jason?

A Yes.

Q Sorry, I didn't know if you paused or if we lost connection with you.
I had simply paused. He would often have follow-on questions that came out of a given briefing that would lead to a follow-up briefing.

Q And can you describe -- so in addition to the OAQPS staff in Research Triangle Park that was tasked with developing the options for various stationary source categories, what was the nature of the sort of -- who all was involved in the process within the Administrator's office or, you know, at the level of senior appointees or career officials within the Office of Air and Radiation, or elsewhere in the agency if appropriate?

A Formulating a response to the Massachusetts v. EPA Supreme Court case was the highest priority for the agency, for the Administrator, during this period of time. And these briefings received very high level attention across the agency, across the relevant offices and the senior political and career leadership.

That included the heads of the policy office, the air office, the general counsel's office, and others within -- myself and others within the Administrator's office.

Q Can you describe what some of the EPA staff's conclusions were regarding the feasibility and appropriateness of going forward with regulation of greenhouse gas emissions from various stationary source
A Well, part of the approach that we took was, first of all, recognizing that regulation would be required under the Clean Air Act unless Congress passes new legislation that supersedes or replaces the Clean Air Act authority.

So we weren't so much asking ourselves whether regulation would be appropriate, but how regulation could best be developed, given that it was required by the Clean Air Act and the Supreme Court's interpretation of the Clean Air Act.

Q So what were some of the agency staff's conclusions with regard to that specific question? Were there recommendations to proactively go forward with specific proposed regulations, or what other recommendations were there?

A Well, the general approach that was recommended not only by career staff but by many of us was to attempt to channel regulation into the sections of the Clean Air Act that had the most flexibility and therefore could be most -- could be adapted to regulation of a new pollutant like greenhouse gases.

Most everybody believed that Section 111 was the most flexible and the most appropriate for greenhouse gas regulation. And the question was: Could regulation be channeled to Section 111, and could regulation under 111 be
used as one of the justifications for not moving forward with a national ambient air quality standard for CO₂ or greenhouse gases generally.

Q And what were the conclusions with regard to those questions?

A Well, the basic conclusion was that rolling off the national ambient air quality standard for CO₂ had challenges, had legal challenges associated with it, but that the Office of General Counsel believed that they could defend such a position provided that we could point to other authority that was used to accomplish basically the same result.

And so the belief was that by moving forward with regulation under 111, we could argue that it was not appropriate to move forward with the national ambient air quality standard for CO₂ or greenhouse gases. And so in this way, by moving forward with regulation under 111, we could channel regulation away from Section 108 and 109, the national ambient air quality standards.

Q And recognizing that you're not an attorney and weren't representing the Office of General Counsel here, what was the legal argument for the proposition that the Administrator wouldn't be inexorably required to go forward with a national ambient air quality standard?

A Well, you are correct to observe that I am not an attorney, so this is simply my best articulation of the
advice that I received and others in the Administrator's office received.

There are three listing criteria for national -- for new criteria pollutants, for new NAAQS pollutants. The first is the public endangerment test. It's quite similar to the test for Section 202, the section at issue in the Supreme Court case.

And everyone believed that that first criteria was clearly met. The public is endangered by greenhouse gases, and so there was no way to argue that the Administrator would not list greenhouse gases as a NAAQS pollutant based on the first criteria.

The second criteria is that the pollutant comes from numerous and diverse sources. For CO₂ and greenhouse gases, that's also clearly the case, and so the second criteria is also met.

That left us with the third criteria. And I have to apologize, I do not have the Clean Air Act before me. But the third criteria basically specifies that it is for pollutants for which the Administrator intends to issue air quality criteria, in other words, for which the Administrator intends to move forward with the NAAQS -- for establishing a NAAQS.

And the belief was that we could argue that the Administrator did not intend to move forward with
establishing air quality criteria on the grounds that there
were other ways of addressing the same air pollutants,
namely, Section 111.

Q And so the Office of General Counsel advised the
Administrator that a decision to go forward with regulation
under Section 111, but not under Sections 108 and 109, could
be defended on the basis that the Administrator -- could
successfully be defended on the basis that the Administrator
had discretion not to go forward with a NAAQS if regulations
were being put forward under Section 111?

A That's basically correct. There is clearly legal
risk associated with that position. It's a similar position
to the position the agency took, first arguing not to lift
lead as a NAAQS, and the agency lost several decades ago.

There are reasons why both the fact patterns are
different here and the standard -- as I understand it, the
standard for judicial review has changed post-Chevron.

But I don't want to say that the Office of General
Counsel expressed the view that that position was not without
some legal risk.

Q One of the primary objections that's been stated to
moving forward with any regulation under the Clean Air Act is
the one that you mentioned before, the effects that would be
triggered for the prevention of significant deterioration or
PSD program.
What recommendations did EPA staff make with regard to how those effects would be avoided or mitigated if the agency went forward with stationary source regulations, for example, under Section 111?

A Three different options, and all three could be pursued in parallel. The first was that this is an area where the agency and the regulatory program would clearly benefit from at least a targeted legislative fix.

Most greenhouse gas regulations that are pursued in states or other countries focus their efforts on sources that emit quite a bit more CO$_2$ than 100 tons or 250 tons, the thresholds for the PSD program. And so there was a believe that many groups would be open to the prospects of raising those thresholds through a legislative fix.

Short of a legislative fix, two other options remained. The first was to try to make an argument that for greenhouse gases and CO$_2$ in particular, the gas of greatest concern for the PSD program given the concentrations and volumes emitted, of CO$_2$ emitted from many sources, to argue that the threshold should be higher than 100 tons or 250 tons. And there were various theories that were put forward for how that could be done.

The third option was the option of phasing in the program over time, starting with the largest sources and only moving down to medium-sized sources and smaller sources after
the program was established for the largest sources. And that could be phased in over a number of years, and that would dovetail well with the approach of seeking a legislative fix, namely, you would start out with the sources that most people who have studied greenhouse gas regulation recognize probably should be covered by regulation, namely, large factories, refineries, power plants, those types of sources.

And over time, as EPA began looking at smaller and smaller sources, Congress would have ample opportunity to come in and establish a threshold above, well above, the 100 tons or 250 tons that are currently written in the Clean Air Act.

Q Was there a preferred approach? Was one of these approaches preferred by you, by the Office of General Counsel, and/or other officials that were advising the Administrator?

A All three approaches could be pursued in parallel. And so I don't want to say that one was preferred over another. They all could work together to make the PSD program work as well as possible, given the complexities and challenges created by the statute.

Q Did you personally have a preference about how to proceed?

A Most everyone within the agency that I am familiar
with, that I interacted with, thought that it made sense to move forward with a fix, a regulatory fix and a legislative fix, to the PSD program.

The worst possible scenario for the country for a sensible regulatory system is to embark upon or begin implementing the PSD program without first issuing a rulemaking that laid out one or multiple of these options that I'm describing. So there was very much a sense that the agency should be proactive in addressing the challenges posed by the PSD program.

Q Is it fair to say that you and others within the agency felt that these were not insurmountable obstacles, but ones that were manageable?

A In the short run, we believed that there was a very good case for phasing in the PSD program. We had support for that from numerous groups, ranging from environmental groups to industry groups, that didn't think that the PSD program should be triggered for all sources, large and small alike, at the outset.

And so we had a high degree of confidence that we could move forward with a PSD program that initially was focused on the largest sources, and the sources for which there is greater potential for greenhouse gas reduction. I think that the concerns with the PSD program would come in over time as there was pressure to move to
smaller and smaller sources. But many of us felt that there
was a good enough case to be made that the agency shouldn't
rush to apply PSD to those smaller sources and could phase in
the PSD program in a measured way, allowing Congress plenty
of time to take action if indeed there were concerns and
problems with the way the agency was moving forward.

Q Thank you. Can you talk a little bit about -- did
the agency pursue -- well, let me step back a second.

In the technical support document for the Advanced
Notice of Proposed Rulemaking that the agency released on
July 11, 2008, there is a discussion of options for reducing
greenhouse gas emissions from a variety of sources, including
power plant and industrial boilers, petroleum refineries,
cement manufacturing plants, steel plants, oil and gas
extraction and production, landfills, and agriculture.

Did the agency -- was the agency during this period
engaged in any quantitative analysis of what the costs and
benefits of going forward with regulation of any or all of
those source categories under Section 111 would be?

A Yes. And we approached it from two basic angles.
The first is the agency and EIA, the Energy Information
Administration, both have very sophisticated economy-wide
models that estimate the potential for greenhouse gas
reductions from different sectors and the costs associated
with that.
And for the level of emission reductions that most legislative proposals are considering, it appears that the most cost-effective greenhouse gas reduction would come from the stationary source sector generally, and power plants in particular. The other -- sorry.

That general insight was gained from the analysis that the agency did of three different legislative packages, the McCain-Lieberman, Lieberman-Warner, and Bingaman-Spector packages. And all three of those, the analysis of all three of those, suggested that the largest emission reduction would come from stationary sources and the power sector in particular.

Now, Section 111 may not be appropriate, and it certainly has not been used in the past, to look out over as long a time horizon as the legislative packages looked, out to 2050 or beyond. So we took a sector-by-sector more near term approach, looking -- rather than using an economy-wide model, looking at an individual sector and performing an assessment of the sorts of emission reductions that could be achieved, and the nature of a regulatory program that could provide incentives for industry to seek those emission reductions.

By and large, in the short run, emission reductions would be achieved through improvements in efficiency. Because the technology is not yet available to sequester, to
capture and sequester, carbon dioxide emissions, the near
term, the 5-10 year prospect for emission reductions from
coal-fired power plants, for example, would be through the
power plant operators taking steps to increase the efficiency
of those power plants.

And the Office of Air Quality, Planning, and
Standards performed technical assessments of what level of
emission reductions could be achieved using those rather --
the known technologies of improving the efficiencies of those
operations.

Q So would those assessments be reflected in
documents that were circulated within the agency?

A Those assessments were presented in briefings to
senior management, including the Administrator. I do not --
you referenced the technical support document that was
released on Friday. I have not completed my review of all of
those documents, of what was actually made public.

I was involved in developing that package. But I'm
not able to comment at this time as to the document that was
actually released because I have not yet completed my review
of those documents.

Q Did you or any other senior staff within the agency
recommend to the Administrator at any time that the agency
actually move forward with regulations for one or more
stationary source categories?
A  The agency developed a plan for moving forward with several Section 111 regulations in order to establish a -- to set the precedent for what would be appropriate regulation under Section 111 for a new pollutant like greenhouse gases, and to channel regulation away from 112 or 108, the two other sections of the Clean Air Act that we judged were less appropriate for greenhouse gas regulation, as well as moving forward with a regulation for addressing the PSD program.

And the agency had developed a plan that was comprised of four or five Section 111 regulations and the PSD regulation.

Q  And can you describe the four or five Section 111 regulations that were contemplated, just briefly?

A  The basic idea would be -- was to move forward with Section 111 regulation for the three sectors for which the agency had a court deadline or a court ruling, namely, utility and industrial boilers, petroleum refineries, and Portland cement.

There were a couple other sectors that were contemplated. Landfill gas was contemplated. And then the PSD program, as I have described, to phase in that program over time and to create whatever other arguments were available for raising the thresholds, at least temporarily.

Q  Can you characterize how, I guess, stringent or aggressive the regulations were that were contemplated for
the three source categories that you've mentioned?
A The basic idea was to establish that regulation
under the Clean Air Act should be tempered by a recognition
that the Clean Air Act poses challenges that new legislation
could much more easily overcome.
And so I would characterize the general stringency
of the regulations that we are contemplating as a step
forward, but not -- but relying on existing technologies,
relying on efficiency improvements, and not actively or
aggressively promoting new technologies.
I say that with the note that the plan was to
develop regulations that could have allowed for and would
have provided incentives for new technologies. But the
regulations could have been met with existing technologies.
It overall was the plan that this administration
would move forward with regulations that would again
establish that the Clean Air Act can be used but shouldn't be
the mechanism -- should not take the place of legislation.
Q Is this plan reflected in one or more documents
that were circulated within the agency and/or presented to
the Administrator?
A Yes. It was generally laid out in options
briefings to the Administrator. Now, we were all very
careful to not preclude options, particularly during the
eyear stages of the decision-making process. So we worked to
keep open the option of moving forward under different sections of the Clean Air Act.

Ultimately, the Administrator made a judgment that Section 111 was the most sensible because it allowed for consideration of costs and technology and benefits and energy, all factors that he thought should be considered in developing greenhouse gas regulations. And that is in stark contrast with either Section 112, the HAP program, or Section 108 and 109, the NAAQS program, which don't allow for consideration of costs or technology to the degree that Section 111 does.

And so he decided that it did make the most sense to pursue a 111 strategy. And we worked through to talk with others within the administration about how and when that strategy should be put in place.

Q When did the Administrator reach that determination?

A In the fall of 2007, it was a long decision process. And so I don't want to characterize, you know, a single meeting or a single briefing that was the day when a decision was made.

But throughout the fall, it became increasingly clear to many of us that this approach made the most sense, and that this approach needed to be acted on quite quickly in order to have something in place before the court deadline.
for the petroleum refineries and Portland cement -- those
court deadlines have now come and passed, but they were for
spring of 2008 -- as well as moving forward in such a way
that this administration could both propose and finalize the
rule so that it could establish what it thought was the best
approach for dealing with this challenge.

Q: So did the Administrator reach that decision before
Thanksgiving of 2007, to the best of your recollection?

A: Yes. We were -- during most of the fall time
frame, we were working to educate our interagency colleagues
on the Clean Air Act and the reasons why Section 111 made a
lot more sense than the other options before the agency.

Q: Are there any documents that were circulated within
the agency or in interagency communications that
Administrator Johnson's conclusion that this was the right
way to move forward?

A: Yes. We developed pro/con papers and other
briefing papers that we used in interagency discussions to --
for Administrator Johnson to educate his counterparts. And
that culminated in a plan for stationary sources that we sent
to various individuals in the White House in the November
time frame.

My memory might not be quite right as to exactly
when I sent that. But it reflected a plan to move forward
with several Section 111 regulations and a PSD regulation,
along with the mobile source regulations for fuels and vehicles that we had been working on throughout the second half of 2007.

Q Can you just sort of describe what some of the discussions with other agencies were and whether -- in other words, can you tell us which agencies Administrator Johnson or other senior officials within EPA consulted with and whether they concurred in the recommendations that EPA ultimately made to the White House?

A We had conversations with most all of the relevant offices and departments within the administration -- the Department of Energy, the Treasury Department, the Council of Economic Advisors, the Council on Environmental Quality, OMB, and others -- to first lay out the challenge posed by the Supreme Court case.

The simple observation either this administration would need to move forward with responding to the challenge or the next one would need to move forward with responding to the challenge. And it was the general belief of the political leadership of this administration that if they moved forward with the challenge, that they could put in place a sensible framework. And the general feeling was that it made sense to establish that mark and set that precedent for such an important decision.

Q What was the nature of the consultations -- I mean,
at what level did the consultations with these other agencies occur? Did Administrator Johnson speak directly with his counterparts, heads of the offices that you've mentioned and departments that you've mentioned, or were these discussions at a staff level? And if at a staff level, how senior a level?

A    Both. I talked with my counterparts. I know that others in a similar position as mine, others within EPA, talked with their counterparts. And Administrator Johnson talked with his counterparts, fellow cabinet-level officials. This decision was and is a profound decision for the country, and had the attention of individuals at the very highest level.

Q    And I understood from what you said previously that at the highest level of each of these other agencies, there was concurrence in the plan that was ultimately submitted to the White House to move forward with regulation not only of mobile sources but also with a number of categories of stationary sources. Is that correct?

A    There was a general belief that moving forward with a challenge and establishing a precedent in channeling regulation would serve the country better than leaving the challenge to the next administration.

The details of how to move forward were being discussed, but certainly most people that we talked to and
most of the cabinet-level officials that Administrator Johnson talked to recognized the importance of considering costs and benefits and technology and energy in developing greenhouse gas regulations. And therefore, most everyone gravitated towards Section 111, the section that allows consideration of all of those factors.

Q Just so we're clear, when we're talking about, you know, the general belief that other agencies had or that everyone agreed on this general approach, are we talking about Administrator Johnson's counterparts in these agencies, including Secretary Bodman for the Department of Energy, Secretary Paulson for the Department of Treasury, James Connaughton for CEQ, I guess it would be Edward Lazear for the Council of Economic Advisors, and so on?

A Yes.

Q And I'd like to follow up on that, actually, because many of the individuals or offices that you've mentioned are ones that actually wade in publicly on the ANPR that was released on July 11th. So I'll just, you know, kind of run down the list just to refresh my own memory and yours. But these are officials that specifically wrote to express their opinion that the Clean Air Act was inherently flawed for purposes of regulating greenhouse gas emissions.

And so those included actually Administrator Johnson himself, Susan Dudley of the Office of Information
and Regulatory Analysis at OMB, Secretary of Agriculture Edward Schafer, Secretary of Commerce Carlos Gutierrez, Secretary of Transportation Mary Peters, Secretary of Energy Samuel Bodman, Chairman of the Council of Economic Advisors Edward Lazear, Director of the Office of Science and Technology Policy John Marburger, Chairman of the Council on Environmental Quality James Connaughton, and Chief Counsel for Advocacy for the Small Business Administration Thomas Sullivan.

Are all of those individuals that previously in this process in fall of 2007 that you describe had already essentially signed off on the Administrator's plan to move forward with regulation of mobile and stationary sources under the Clean Air Act?

A Most of them were. I do not know if all of them were. For example, I believe that the Secretary of Agriculture is new to that position. But also, I don't know that all of the other individuals that you mentioned had been essentially involved as the offices that I mentioned earlier, namely DOE, DOT certainly for mobile sources, Treasury, OMB, CEQ, CEA.

Q Was the --

A Now, allow me to offer up this observation. Much of this depends on how the question is framed. If the question is framed as: Is the Clean Air Act the right tool
for moving forward with regulation of greenhouse gases, most
everybody who I have talked to would say no. I certainly
would say no. The Clean Air Act is not the best tool for
moving forward with regulation. New legislation is
preferable, and far preferable.

The debate that was occurring, however, last year
and early this year was not whether the Clean Air Act should
be used but recognizing that the Clean Air Act will be used,
given the law, the Supreme Court case, and the science, how
best to use it.

And those are very different questions. So when
the question was posed how best to use the Clean Air Act,
there was a general agreement that this administration wanted
to have its hand in answering that question, wanted to help
establish how best to use the Clean Air Act, particularly
given the profound consequences doing so would have for our
country.

Now, more recently, the debate seems to have
shifted, at least in the minds of certain individuals in the
interagency process, towards the question whether the Clean
Air Act should be used. But that question has already been
asked and answered by the Supreme Court case.

It is not within the executive branch's power to
not follow the law. It is within Congress's power to pass a
new, better law. But in the meantime, the question needs to
be asked how best to move forward with the law that is currently on the books.

Q That makes a lot of sense, and I'd like to actually circle back and get your view on some of that in just a moment.

But before we go there, can you just -- you mentioned earlier that this plan that was the subject of -- this EPA plan that was the subject of discussions with other agencies was ultimately submitted to individuals within the White House.

Can you share with us who those individuals were?

A I believe that we sent that document to Susan Dudley, the administrator of the Office of Information and Regulatory Affairs in OMB; James Conناughton, the chairman of the Council on Environmental Quality; Amy Farrell, who at the time, I believe, was working for James Conناughton, Jim Conناughton; and Keith Hennessey, who works as an advisor to the President.

Q Are there any documents of which you're aware that would reflect either the other agencies -- the views of the other agencies with which you consulted on the plan, or of the officials or others within the White House with whom you shared the plan?

A I don't believe there are many, if any, documents that were not generated by EPA. There are not many
documents. I believe that there are some but not many
documents that were generated by others that were shared with
us at EPA. Again, EPA is charged with administering the
Clean Air Act and has the most expertise. So we were
generally asked to produce the documents that were used for
the decision process.

Q Can you describe any of those documents that might
have been generated outside of the agency relating to this
proposal, if you feel comfortable doing so?
A There were documents that referenced the stationary
source for [ramifications] of moving forward with mobile
sources. And those documents were produced at the time of
the decision process. The decision for how to define
endangerment was largely informed by the stationary source
consequences of that endangerment finding.

And others were charged with developing the
decision documents and decision memos for how the
administration would find endangerment to public health or
welfare.

Q Well, we may circle back to that if we have time.
But maybe it would be helpful at this point to -- well,
actually, before I move on, can you -- so you mentioned that
this plan was shared with Susan Dudley, with Jim Connaughton,
with Amy Farrell, and with Keith Hennessey.

Did the Administrator or any senior official in EPA
receive any kind of communication back or have any meetings
with those officials in which they expressed their views or
recommendations on whether and how to move forward with
stationary source regulations?

A We had numerous meetings hosted by OMB that talked
about how to move forward generally. And the document that I
sent to the individuals at CEQ and OMB and the White House
was sent at their request for more specificity as to how EPA
would move forward with these stationary source regulations.

Q And did any of those officials or anybody else from
the White House ever communicate any approval of that
approach?

A There generally was approval of the approach of
moving forward with Section 111 regulation, and a regulation
that would work to address the challenges posed by the PSD
program. The plan was to propose those regulations in the
spring of 2008 and finalize them in the fall of 2008.
However, that plan was shelved when the Energy Independence
and Security Act of 2007 was passed and signed into law on
December 19th.

Q So can you explain how that change occurred when
the Energy Independence and Security Act of 2007 was passed
and what or who caused the change with regard to this plan?

A Prior to the passage of the Energy Bill, there were
two basic reasons why the administration wanted to move
forward with a response to the Supreme Court. The first was
they felt that they would -- they wanted to be the ones to
establish the important policy decisions for how the Clean
Air Act would be used.

And the second was they wanted to have a way to
move forward with the President's 20 and 10 goal of
increasing fuel economy of vehicles and increasing the
quantity of renewable and alternative transportation fuels.

With the passage of the Energy Bill, the
administration largely accomplished the President's Twenty in
Ten goal, and the remaining -- and in so doing, eliminated
one of the two reasons for moving forward. The remaining
reason for moving forward was to help establish the
precedent, but ultimately that was not found to be a
compelling enough reason for this administration to take on
such a profound challenge.

Q  Who is the "they" that were talking about who held
these views and, you know, whose views changed?

A  This decision was made at the highest level within
the administration. The concern was that while moving
forward with the response would enable a more sensible
response to the Supreme Court than if the administration left
it to the courts or the next administration, the concern was
over the President's legacy and not wanting to have an
increase in regulation, particularly regulation under the
Clean Air Act, to be attributed to this administration and to
President Bush's legacy.

Q Can you share with us who the main proponents of
that view were?

A Throughout 2007, after the executive order and the
President's direction to move forward, there were individuals
and offices that were looking for ways to avoid responding to
the Supreme Court and hoping for either a legislative fix,
new legislation, or some other way of moving forward with a
response but limiting it to just the motor vehicles for which
President Bush had articulated a goal of increasing fuel
economy and therefore reducing greenhouse gas emissions.

That effort was headed by individuals in the Office of
the Vice President, the Office of Management and Budget, and
the Council on Environmental Quality.

Ultimately, the decision to move forward was made
by the President's chief of staff, the Office of the Chief of
Staff, and Administrator Johnson was given the go-ahead to
move forward with an endangerment finding. That was the
finding that EPA developed and we sent to the Office of
Management and Budget on December 5th of last year.

The chief of staff's office then appears to have
changed its mind, given that the Energy Bill in early
December looked like it was moving well through Congress.
And certainly after the passage of the Energy Bill, there was
a lot more pressure to simply leave a response to the Supreme Court to the next administration.

Q Who within the Office of the President's Chief of Staff gave Administrator Johnson the go-ahead for the endangerment finding? Was it the chief of staff himself or someone else?

A Most of the interaction that we had we with Joel Kaplan, the deputy chief of staff for policy. And we clearly had the go-ahead from the chief of staff's office to move forward with an endangerment finding up until December 5th, when we received a phone call from the White House asking for us to retract the endangerment finding that we had sent.

Q And from whom did that phone call come?

A The initial phone call came from -- was between a lawyer at the White House to our general counsel. But it was followed by a call from Joel Kaplan to Administrator Johnson asking for the agency to recall the endangerment finding that had just moments ago been sent.

Q When was it that Joel Kaplan and the President's chief of staff's office gave Administrator Johnson the go-ahead to make the endangerment finding?

A I don't remember the precise date, but it was in the early to mid November time frame, if my memory serves me well.

Q And did Administrator Johnson refuse the request
from Joel Kaplan to retract the endangerment finding?

A Yes. We explained -- the first request was to send

a follow-up note stating that the finding had been sent in

error. And we pointed out that not only had we not sent it

in error, but in fact it was consistent with the decision

that was agreed to by Mr. Kaplan himself and therefore could

not -- we could not honestly say that it had been sent in

error because it had not been.

The request then was to send a note saying that the

finding should not be reviewed because the Energy Bill moving

through Congress could make the finding moot by amending the

Clean Air Act.

Q And what was Administrator Johnson's response to

that second request?

A We explained that if Congress did amend the Clean

Air Act, then it would -- in such a way as to make the

Supreme Court case moot, then it would be appropriate for us

to no longer move forward with a response. But until that

occurred, we thought it was best to move forward, and

Administrator Johnson thought it was best to move forward, and

with continuing to respond to the Supreme Court.

Q So Administrator Johnson didn't agree that there

was a rationale for halting EPA's work on the endangerment

finding and the associated regulatory efforts following the

passage of the Energy Independence and Security Act?
A Well, the day in question was before the Energy Independence and Security Act passed.

Q Yeah. Thank you for the clarification.

A We at that point thought that it made sense to move forward because we didn't know whether or not the Energy Independence and Security Act would pass, and if so, whether there would be a provision in there that made the Supreme Court case moot.

In fact, the law that did pass left the relevant section of the Clean Air Act unchanged, and therefore a response is still required and was still required. And it was the agency's judgment and Administrator Johnson's judgment that the country was best served by confronting the challenge and moving forward with a response.

Q So did he communicate that view, that the agency should and indeed was required to move forward with its regulatory efforts even after the passage of the Energy Independence and Security Act? Did he communicate that view to the White House?

A Yes.

Q And can you describe the nature and timing of that communication?

A I will simply say that it was in the first few months of 2008. There was very high level discussion and back and forth between EPA and the White House as to whether
the agency should move forward or whether the agency should leave the decision to the next administration.

It was the agency's view and Administrator Johnson's view that the challenge was best addressed head-on by this administration. But ultimately, the decision was to issue an Advance Notice of Proposed Rulemaking in order to leave the important regulatory decisions to the next administration.

Q And was Administrator Johnson directed by the White House to pursue the ANPR approach in lieu of moving forward with actual proposed regulations as he had proposed or as he had advocated?

A I want to be careful about the word "directed." It became abundantly clear that the White House wanted to -- did not want to move forward with a response, and wanted to move forward with an advance notice that would point out the complexities and the interconnections. And ultimately, Administrator Johnson agreed to go along with that White House decision.

Q How did the White House's view on this become abundantly clear?

A We were told to move forward with an ANPR, and were told how the ANPR should be structured, and that the ANPR should not establish a path forward or a framework for regulation, but should emphasize the complexity of the
challenge.

And we worked back and forth on how to characterize the task of the ANPR because we wanted to ensure that document was ultimately productive and helpful to the agency and the next administration, and through seeking public comment on the complexity and on the different options that the agency must confront.

Q Who at the White House communicated to Administrator Johnson or to others in the agency that the White House did not want to go forward with a regulatory proposal and that an ANPR would be preferable?

A We worked with the same individuals that had been involved throughout the process. And it was clear that the desire to move forward with an ANPR was coming from the White House at the very highest levels.

Q So when you mention the same individuals involved throughout the process, do you mean, among others, Joel Kaplan, the deputy chief of staff?

A Yes. He wanted to avoid responding, and thought the best strategy -- as I understand, his strategy was to leave these decisions so that they would be on the record on the legacy of the next president, not of President Bush.

Q Were there any communications at a higher level than Mr. Kaplan?

A I'll simply leave it that the agency and
Administrator Johnson made it very clear that -- what our views were, that the country would be best served by moving forward with a response. At that point in the first few months of 2008, it no longer was possible to move forward with both stationary source regulations other than the PSD regulation and the mobile source regulations.

So we had scaled back what we were proposing to do to simply responding to the Supreme Court, issuing an endangerment finding, and issuing the mobile source regulations under Section 202 and the fuel regulations under 211.

Q Can you give an idea of when the time frame was that Mr. Kaplan and others in the White House communicated to Administrator Johnson or to senior EPA officials that the White House no longer wanted to move forward with a regulatory proposal?

A We were advancing the plan to move forward in January and early February of 2008. Ultimately, the decision not to move forward was made public in a letter -- letters that Administrator Johnson sent to the Hill, to members of Congress, articulating the ANPR option and decision.

Q When was the decision that's reflected in that letter to the Hill actually made by Administrator Johnson?

A It was made by the administration in the late February time frame.
Q: Are there any documents reflecting that decision that you're aware of?

A: There are -- there are documents reflecting the decision process that ultimately led to a decision to move forward with the ANPR.

Q: And when you said that the administration reached that decision in February, I believe you said, do you mean the President's chief of staff or deputy chief of staff made that decision in that time frame?

A: Administrator Johnson had decided it was best to move forward, and he was told that that was not the path that this administration would be taking.

Q: And was he told by the chief of staff's office?

A: Yes.

Q: Thanks. Let me turn actually to what -- briefly, at least, to what some of the consequences of that decision not to move forward with an actual regulatory proposal were. As I understand it, there were a number of other stationary source rulemakings that were pending before the agency, including the petroleum refinery new source performance standard rule and the Portland cement manufacturing new source performance standard rule. These were revisions to existing standards.

The agency took the position that notwithstanding the Massachusetts v. EPA decision, it wasn't required to
include controls on greenhouse gas emissions in those rules.

Can you share with us any -- what the nature of the
discussion around that decision was and whether the Office of
General Counsel and other senior agency officials thought
that it was appropriate or legally defensible for the agency
refuse to include greenhouse gas controls in those rules?

A In the fall of 2007 time frame, we were
recommending that the agency should move forward with NSPS
regulations for greenhouse gases in order to keep that issue
out of the courts and in order to channel regulation to
Section 111, again, the section that could best be tailored
to address greenhouse gases.

The concern was that the agency would not be able
to successfully defend a decision not to move forward with
greenhouse gas emission controls in an NSPS reviewing the
Supreme Court's decision that greenhouse gas are air
pollutants under the definition of the Clean Air Act.

Ultimately, the fallback position of the agency
was to use the Advance Notice of Proposed Rulemaking as the
justification for not moving forward at this time for
greenhouse gas regulations. But I think that it is clear
to many that those -- that such regulations will be coming
out of the agency after the close of the comment period of
the ANPR and whatever policy process the next administration
engages in.
Q And did you believe that the ANPR provided a sufficient justification for not proposing controls, greenhouse gas controls, either in these rulemakings or that that would not -- let me rephrase. I apologize.

A That's a legal judgment and a question that the courts will be asked to address.

Q Did they --

A It certainly will be a challenge for the agency to defend a decision not to move forward with controls for greenhouse gases, and the agency would be in a more defensible position if it could point to a plan that said these issues are very complicated.

And the Advance Notice of Proposed Rulemaking really does make it clear that there are both profound ramifications of any decision and many interconnections that need to be thought through. So we'll have to wait and see whether the courts accept the agency's rationale to first complete that advance notice process before actually moving forward.

Q So were you present at any briefings that the Administrator received from agency officials on the litigation risk, you know, or policy consequences associated
with refusing to include greenhouse gas controls in these rules?

A Yes. Again, there were a couple reasons that we thought it made sense to move forward with Section 111 greenhouse gas regulations. One certainly was the legal risk that the agency faces in issuing an NSPS but not issuing controls for pollutants that are clearly omitted from those same source categories.

Q Are there any documents of which you're aware, memoranda, white papers, or other documents, reflecting concerns about the defensibility of not including greenhouse gas controls in those regulations?

A Yes. I believe there are briefing papers on different options for moving forward with the new source performance standards that the agency has finalized in the case of petroleum refineries and proposed in the case of Portland cement.

And there were several options laid out for the Administrator's consideration, along with the associated legal arguments that would need to be made to support any of those options. I think it was made clear that the option of not moving forward with a regulation presented a legal challenge that the agency could and would defend, but that it would be harder to defend than taking steps towards a regulation, whether that be a proposed rule or a direct final
rule in the case of the petroleum refineries.

Q Thanks. Thanks for explaining that.

Mr. Beauvais. I just was reminded, though, we've been going for quite a while here. This has been fascinating, and had lost track of the time. We've been going for two hours. We would like to ask a few more questions of you, if possible, but I wanted to give you a chance to take a five-minute break, if you'd like.

Mr. Burnett. Yes. Why don't we take a five-minute break. And if you can call me back at this number?

Mr. Beauvais. Great. That should work just fine. Thanks very much, Jason. We'll call you back in five minutes or so.

[Recess.]

Mr. Beauvais. All right. This is still again Jason.

BY MR. BEAUVAIS:

Q I thought maybe we're at a kind of good point in the progression of what you've shared with us to talk a little bit about the process leading up to the release of the ANPR on July 11, 2008.

So there had been a May 30, 2008 version of the ANPR that was obtained by a number of individuals outside of the agency. And I wanted to ask whether that draft, that May 30th draft, was sent to OMB or not.

A I do not believe that it was. We submitted a draft
for informal review on May 23rd, I believe. It is possible that somebody sent a May 30th draft to individuals either at -- within the executive branch outside of EPA. But I didn't authorize a version going out after the May 23rd version.

Q What does that mean when you say that it was informally shared with OMB?

A It means simply that we gave them a version before we submitted it for the formal review that triggers both the Clean Air Act public docketing and Executive Order 12866. It is, in essence, a courtesy copy allowing them a preview of the document that we were working on and getting ready to submit formally.

Q And did OMB then sort of communicate views or provide direction on what shape the ANPR should take after receiving that -- when it received that informal version or that informal transmittal?

A Yes, they did. They were concerned about the length of the document and, generally, the tone of the document in particular sections, concerned that it would leave a reader with the impression that the Clean Air Act was not -- that the Clean Air Act didn't have challenges when in fact I think we all believed that the Clean Air Act is not the ideal authority to be using to address greenhouse gas emissions.
Q Did OMB provide direction as to how to address those concerns?
A I had worked to establish a principle that EPA was not taking direction from OMB during the informal review period because I didn't want to allow for the informal review to be the same as the familiar review, simply without the public transparency.

So the general guidance or direction that I provided to EPA staff, the team that we had working on the ANPR and the team that was listening to and considering OMB's comments was to accept comments and observations and suggestions that, in EPA's judgment, made the document stronger.

And so we worked to that end, and I believe that the draft did become stronger from May 23rd through June 9th, my last day at the agency. And the last draft that I saw was a draft on that day. It is my understanding that that process continued through to the time when a draft was formally submitted to OMB later in June.

Q What were some of the changes that were made during the period during which you were involved, the May 23rd to June 9th period?
A Just an example would be there was a concern that the reader may come away with the feeling that the NAAQS program could work well for greenhouse gases, and that the
agency was in fact backing such a program. That was not the case. The agency and the office that was working, that works to set and implement the NAAQS, thought that there were significant challenges with the NAAQS. And so we worked to change primarily the tone of that section so that it made it clear that the agency was not advocating a NAAQS for greenhouse gases.

Q When the ANPR was ultimately released on July 11, 2008, there was an introductory statement from Administrator Johnson and letters from a number of cabinet agency heads as well as heads of White House offices.

And I wanted ask you, first, just prior to asking you about some of those statements, had the agency received feedback on earlier drafts of the proposal, of the ANPR, either the May 23rd draft or the May 30th draft that later was released to some outside sources? Had you received feedback on either of those drafts from other agencies?

A We had -- our conversations were with OMB, although it was clear that OMB was relaying comments from others.

Q So you had no direct communications from other agencies, but the communications that you were getting from OMB made clear that they were sharing those drafts with other agencies and were relaying those agencies' views?

A Yes.

Q Can you provide any insight as to -- well, let me
You've said that Administrator Johnson, following the passage of the Energy Independence and Security Act in December of 2007, continued to believe that the agency should go forward with regulations under the Clean Air Act, and that the passage of the December 2007 legislation hadn't changed the rationale for going forward.

Administrator Johnson included an introductory statement in the ANPR stating, among other things, that the Clean Air Act was ill-suited for regulation of greenhouse gases and that -- you know, essentially suggesting that it wouldn't be prudent to go forward with regulation.

Can you provide any insights as to why his view on this may have changed?

A The first observation is that President Bush gave a speech earlier this year in which the President articulated the view that the Clean Air Act should not be used. So I believe that part of what the introductory material, both from Administrator Johnson and from others within the administration, reflect an echoing of President Bush's views about the Clean Air Act.

The second observation is that there was always a concern with moving forward with Clean Air Act regulation because the Clean Air Act is not the -- was not designed to address greenhouse gases, and poses a number of challenges
that would not be inherent in legislation specifically designed for that type of pollutant.

And I think what we have seen is a change in strategy from accepting the ramifications of the Supreme Court decision and, along with that, a believe that moving forward with a response would be better than leaving the response to either the courts or the next administration, to now a strategy of highlighting the problems with a response and hoping that that will motivate Congress to pass new, better legislation.

Q Do you think that -- I mean, you speak of these communications as echoing the President's views, you know, as he had expressed in that April speech from this year.

Do you think or are you aware of any pressure from the White House or direction from the White House either to Administrator Johnson or to any of the other agency or office heads who included statements with the ANPR to sort of reflect on the unworkability or difficulty of moving forward under the Clean Air Act?

A No. I was as surprised as most others when I learned that the agency was going to release a document that contained the particular statements from others within the administration articulating those sorts of views.

We long understood that there were concerns with greenhouse gas regulation generally in some quarters, and
greenhouse gas regulation under the Clean Air Act certainly.
And we knew that parts of the ANPR were likely to be
significantly modified as part of the interagency review
process.

But I have not experienced a situation where there
is -- where differences are not worked out as part of the
interagency process, but rather are presented -- but rather
those differences are presented in a formal regulatory
document to be published in the Federal Register.

Q Do you have any idea, based on communications with
your former colleagues since you've left the agency or
otherwise, as to how this unusual approach came about?

A I do not. I have been hesitant to engage in many
conversations with my former colleagues because I don't want
to put them in a difficult position.

Q Understood. I want to in just a moment give you a
chance to sum up some of your reflections on the issues
raised by some of the matters that we've discussed. But just
looking over my notes, I had just a couple of quick follow-up
questions that I wanted to pursue with you.

Just recently you were talking about the change
in strategy within the administration from accepting the
implications of the Supreme Court's decision and moving
forward under a view that it would be better that this
administration shape the trajectory of regulation under the
Clean Air Act than leave it to the courts and the next administration.

Earlier in our discussion, you had said that that view was abandoned, essentially, because of concerns within the White House that it would be -- it would reflect negatively on the President's legacy to have increased regulation under the Clean Air Act.

And you specifically mentioned that individuals within the Office of the Vice President and within OMB had championed the view that it would not be -- that it would reflect negatively on the President's legacy, and that therefore EPA shouldn't go forward with any regulation under this administration.

I wondered if you could expand on who the principal people within the administration, whether in the Office of the Vice President or OMB, were seeking to block regulation from going forward.

A My answer to that question depends on the time frame. Before the passage of the Energy Bill, or at least before it looked like the Energy Bill was going to move through the Congress, most individuals accepted the president's decision to confront the challenges of the Supreme Court and move forward with regulation because that would enable the administration to accomplish the President's Twenty in Ten goal of reducing gas consumption.
After the passage of the Energy Bill, then it looked to a number of individuals within the administration that responding would have no longer the up side of accomplishing the President's Twenty in Ten goal -- because that was already accomplished -- and only the down side, from their perspective, of having to grapple with the challenges posed by the Clean Air Act.

Q And so who were the individuals who had opposed regulation from the outset, even before the passage of the Energy Bill became imminent?

A There was all along concern from the Department of Transportation because responding to the Supreme Court would give EPA similar authority to the authority that Department of Transportation had. And there was concern about the regulatory turf between EPA and the Department of Transportation.

Within the White House, the individuals in the Office of Management and Budget's general counsel's office were quite concerned about giving additional authority to EPA, even on the transportation side. And the Office of the Vice President also was concerned, both on the transportation side but more specifically on the stationary source side.

Q It was reported in the Washington Post recently that F. Chase Hutto III, Vice President Cheney's energy advisor, and Jeffrey Rosen, general counsel to OMB, both
played a key role in trying to block regulatory action.

Is that accurate? Are they some of the individuals who had opposed regulatory action from the outset?

A Yes.

Q Are they the highest level officials in OMB or the Office of the Vice President who had expressed opposition?

A Over time and after the passage of the Energy Bill, the opposition to move forward came from higher up. But during the interagency decision-making process, they were certainly central to the arguments for either not moving forward, keeping an option to not move forward, or in many cases unrealistically limiting the ramifications of the Supreme Court case to just cars and trucks, or at least mobile sources.

Q Just one further question on that decision process from fall of 2007 before we kind of move to wrapping up. You had mentioned earlier consultations with industry and environmental stakeholders and, you know, you had mentioned some consultation specifically with regard to a PSD rule.

I just wanted to ask you if you could characterize which industry stakeholders had some direct involvement in the agency's decision-making process about whether to go forward with stationary source regulations, and what kind of positions were those stakeholders taking?
A Well, as part of any rulemaking, certainly a rulemaking of this complexity, there are numerous discussions with different individuals and different groups, so I can't -- I don't know all of the discussions that took place. But generally, we tried to reach out, and I tried to reach out, to groups on the environmental side and groups on the industry side to make sure that we were benefitting from a diversity of opinions and perspectives.

There was a general -- industry divided into two basic camps, frankly, the same camps within the administration, some believing that a response was inevitable and it would be done more sensibly by the executive branch rather than leaving decisions to the courts, and others who thought that moving forward should be put off as long as possible in the hopes that there would be new legislation passed, or at least that regulation could be delayed.

Q Who were some of the leading stakeholders in each of those two groups?

A In the -- on the side of recognizing that the Supreme Court needed to be responded to, certain groups and individuals representing the power sector, power plants, thought that it did make sense to start moving forward. Generally, the individuals representing the oil industry were opposed to moving forward, and some of those individuals expressed the argument that moving forward would harm
President Bush's legacy by having on his legacy an increase in regulations.

Q And who were some of those individuals representing the oil industry that expressed that argument?
A I would prefer to not go into the individual names. They were individuals working for particular oil companies, Exxon Mobil, as well as individuals working for trade associations, American Petroleum Institute and NPRA.

Q Thank you. Among the groups representing stakeholders in the power sector who thought that it did make sense to move forward, what kind of regulatory approach or strategy were those stakeholders advocating?
A Moving forward with Section 111 regulations that would cover not only their industry but also others. And they thought that it made sense to move forward with Section 111 regulations, and offered to work with the Office of Air Quality, Planning, and Standards to help provide information and other data to help with such a regulatory effort.

Q And who were the companies or trade groups that were leaders on that side?
A The Edison Electric Institute is a prominent example of a group that recognized that this was coming, and that they at least said that they thought that their members would be better served by getting out in front and actively
engaging rather than trying to fight what they judged to be inevitable.

Mr. Beauvais. Thanks very much. That's extremely informative.

That concludes the outline of what we wanted to discuss with you today. But I wanted to offer you the opportunity to talk as we conclude about your views on this process, the workability and/or advisability of moving forward with regulations under the Clean Air Act, and sort of the trajectory or decision that this administration has taken on that front.

Mr. Burnett. Well, let me start with the last. I came to the agency to work on this issue with the belief that actively engaging on it would -- regardless of the magnitude of the challenge, would be better that leaving at the challenge for another day.

I still think that that is the case. And it is not too soon for both of the campaigns for President to start thinking about how their administrations would address the challenges posed by greenhouse gas regulation under the Clean Air Act.

I don't want to sugar-coat or -- it's important to emphasize that there are real challenges posed by Clean Air Act regulation. But the question is how best to address those challenges, now how to avoid regulation, because there
is no defensible way of avoiding an endangerment finding unless Congress takes action.

That brings me to my second point. I think that part of the legislative debate must be a recognition that existing Clean Air Act authority not only authorizes but obligates regulation of greenhouse gases, and it's not too soon for the legislative debate to seriously consider what parts of the Clean Air Act should be left in place and what parts of the Clean Air Act should be modified or eliminated as they apply to greenhouse gases when Congress works towards new legislation.

I think that there are parts of the Clean Air Act that can work quite well, and so one option is to begin moving forward with those sections of the Clean Air Act and take whatever progress can be made under those sections and incorporate that progress in new legislation when Congress does pass new climate change legislation.

Mr. Beauvais. Thank you, Jason. That's very helpful. Is there anything further that you'd like to add expounding on any of those points or other points that we haven't addressed that you'd like to talk about?

Mr. Burnett. I think that the agency -- the EPA draft of the Advance Notice of Proposed Rulemaking is a solid document that lays out a number of options, the sort of options that the next administration will be able to choose
from. And I hope that there can be a robust public
discussion of those options and a robust discussion in
Congress.

There are authorities that the agency can use to
develop a cap in trade system for greenhouse gases under
existing authority, probably not a system that would work as
well as if Congress passes new legislation.

But the opportunity and the challenge will be to
move forward with that existing authority in a way that
doesn't preclude a better legislative path, but in fact
informs and compliments the legislative debate.

Mr. Beauvais. Great. Well, thank you very, very much
for sharing your insights. Thank you for your generosity
with your time. I realize that we've been at this for quite
a while, and we really appreciate the time that you've taken
and your insights and how forthcoming you've been in
discussing these matters.

So with that, I think my questions conclude. I'll hand
over to Michal in case she has anything to say or ask in
conclusion.

Ms. Freedhoff. No. I just want to reiterate Joel's
thanks. It's been very, very helpful. And again, just
thanks for all the time. I know you've got a lot on your
plate right now.
Mr. Burnett. You are both welcome, and have a good afternoon.

Ms. Freedhoff. Thanks, Jason.

[Whereupon, the interview was concluded at 4:51 p.m.]
CERTIFICATE OF DEPONENT/INTERVIEWEE

I have read the foregoing 63 pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

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Jason K. Burnett