Recent Air Regulations: What Picture Will the Jigsaw Pieces Create?

Summary

Air law and policy are moving at a lightning-fast pace. At ELI's annual Fall Practice Update, held October 21, 2011, attendees joined our expert panel to learn how developments in air law and policy interact and what picture they create when pieced together. What is the resulting regulatory tableau that industry must navigate? What are the potential political ramifications for the 2012 elections? The panel discussed the potential benefits and drawbacks of the Cross-State Air Pollution Rule and the proposed Utility MACT rule. In addition, the panel looked at EPA's rule designating NSPSs and NESHAPs for oil and gas production and natural gas transmission and storage and introduced attendees to anticipated proposed and final rules on topics such as the ozone NAAQS and upcoming greenhouse gas regulations.

Robert Brenner, former Director of the Office of Policy Analysis and Review, Office of Air and Radiation, U.S. Environmental Protection Agency (moderator)
Jay Duffy, Staff Attorney, Clean Air Council
Pamela M. Giblin, Partner, Baker Botts LLP
Frank O'Donnell, President, Clean Air Watch
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John Cruden: For over 30 years, Rob Brenner has been a leader on the Clean Air Act (CAA).[1] He was involved in the creation of the CAA Amendments in 1990 and then spent many years afterwards interpreting and implementing the Act. In his career, he has focused on innovative, cost-effective ways to implement the provisions, particularly using market-based approaches. He was a leader in the U.S. Environmental Protection Agency's (EPA's) effort to promote development of more effective pollution control technologies, such as diesel engine retrofits, and a pioneer in the use of economic analysis. He has been active in nurturing and developing voluntary partnerships with community groups to help them reduce pollution. He retired from EPA a short time ago.

I. CAA Background

Robert Brenner: Thank you, John. I can't tell you how much I appreciate that introduction coming from our close partner year in and year out in bringing these 1990 CAA programs to successful implementation and then defending them when the inevitable challenges occurred. Your track record was excellent, and it meant a lot to us to know we had that kind of support at the U.S. Department of Justice.

Thanks to the Environmental Law Institute for holding this panel. This is certainly a good time for us to be talking about the CAA, given the current controversies out there, and I want to thank Chandra Middleton from the ELI staff for having pulled together an outstanding group of panelists. We're fortunate to have panelists who have been very much involved in what I think of as the day-to-day implementation of the Act, but also have the ability to take a step back and look at what's happening both in clean air policy and in the inevitable political realm associated with the Act. I'll introduce each of the panelists before they speak.

But first, as you can imagine, given my experience with the CAA that John described, there is a lot that I'd like to say about it. For now, I'm going to limit myself to just doing some stage-setting, and then do the panel introductions. All of us on the panel have committed to a very brief five-minute opening presentation in order to leave time for what I expect will be a very lively and interesting discussion, and hopefully an interactive one, with all of you. So, start thinking about your questions and your comments and in just a few minutes, we're going to open up that part of the panel.

The CAA, by any measure, has been a huge success. The 1990 Amendments alone, in just one year, 2010, prevented 160,000 premature deaths and millions of illnesses. And every year, those health benefits continue to increase. In benefit-cost terms, the benefits were more than an order of magnitude larger than the cost. So, there is a tremendous track record for the Act.

1. 42 U.S.C. §§7401-7671q, ELR Stat. CAA §§101-618.

Yet, there are still four major areas of controversy, and too ofte, what happens is that the real issues, the real sources of controversy get kind of lost in arcane discussions of things like MACT and BACT and LAER and CSAPR and NAAQS and MATS, and so forth.[2] I want to start by describing the key overarching issues, and then we can go a bit deeper in any of the areas you'd like. I'm going to give you my view of what the four key areas of controversy are.

The first one has to do with coal, and that's been true ever since the passage of the 1970 CAA. The debates over the CSAPR, the Regional Haze Program, the MATS, and much of the industrial boiler controversy really have to do with the use of coal. Over one-half of coal-fired power plants now are pretty well-controlled with scrubbers. Many of them have selective catalytic reduction and effective particulate controls. The issue is whether, and by when, the remaining plants are going to need to put on controls.

In the case of toxics from non-coal sources that burn oil and solid waste or have processes that can produce toxics, the question is whether the recent revisions to the technology-based standards or the risk-reduction requirements go too far. Do they require too much investment to be made in pollution control at these sources at a time when many of these facilities are teetering at the brink of closure? That's the second area of controversy.

The third area is NAAQS and their implementation: the state implementation plans and the permits. This is the issue of whether those standards, most notably for ozone and fine particles, should be tighter to reflect what the health science is showing. How will they be implemented? Are the burdens on the states that exist now to develop air quality plans too complicated? Is the permitting process for individual facilities too long and too unpredictable?

On top of these three sets of controversial issues there has now come a fourth category, and that is greenhouse gases (GHGs). Somewhat surprisingly though, in the transportation sector, the implementation of GHG reductions, for example for cars, is going pretty well. Until recently, we had a standard of 26 miles per gallon for vehicles, and it will most likely be going up next year to a standard for 54 miles per gallon, more than a doubling of the standards, and virtually all of the auto industry is supporting it. But in the transportation sector, we still have some very difficult issues to deal with regarding the displacement of oil with ethanol and other biofuels.

On the stationary source side, with respect to GHGs, EPA would tell you that they are simply following through on a three-and-one-half-year-old U.S. Supreme Court decision finding that GHGs threaten the environment, requiring the large sources of GHG emissions to report their emissions, and when the facilities are built or modified, requiring them to consider energy efficiency measures. I'll tell you I'm fairly sympathetic to that view. But what you will hear from opponents is that EPA is embarking on a process that's going to make a very complex set of permitting processes even more difficult, and even more complicated. They claim that it will be tougher for them to navigate that process and that it is likely to end up strangling the economy.

Let me start the introductions of the panelists. We're going to start with Jay Duffy. Jay is the staff attorney at the Clean Air Council in Philadelphia, Pennsylvania. His work has primarily been on the air issues associated with the Marcellus Shale Formation, as well as coal-fired power plant litigation. He graduated from Villanova Law School in 2010, where he was a member of the Delaware Valley Inn of Court, the *Villanova Environmental Law Journal*, and he held internships at EPA Region III and at PennFuture. His Article, which is titled *No Boundaries: Exploring the Potential Cumulative Impacts of Natural Gas Drilling on Air Quality in the Northeast* is forthcoming in the *New York Environmental Lawyer.* Welcome, Jay.

II. The Politics of Clean Air Rules

Jay Duffy: I primarily work on Marcellus ShaleAair issues in Pennsylvania. That's kind of my expertise here. But I want to talk about this series of rules in the context of politics of air pollution and climate change.

While the Republicans have turned climate change into a four-letter word, the public is still on the side of clean air. The latest nationwide poll released by Ceres[3] indicated that the public overwhelmingly supports clean air protection across demographic and party lines. Voters favored the CSAPR by 67% to 16%, and the Utility MACT rule 77% to 9%. This is true for Republicans as well, as they supported the CSAPR 48% to 30%, and the MACT 63% to 20%. However, Jon Huntsman is currently alone in the field of Republican candidates in his belief that climate change is a real problem, and he is only backed by 2% of likely Republican voters. So, there is clearly a disconnect between the issue of air pollution and the issus of climate change.

The Ceres report indicates that voters' largest concern with the new air pollution rules is that they will increase electricity prices. The poll indicates that the counterargument that there will be savings from public health benefits doesn't really resonate with voters. But showing that the electricity prices will not actually go up is a case that I believe can be made, and it does indeed resonate with voters.

Everyone agrees that natural gas is a cleaner burning fuel, but it's not clear that the life cycle of natural gas, which includes exploration, extraction, processing, production, and transmission, is actually cleaner. The impact on air quality from natural gas operations includes emissions of volatile organic compounds (VOCs), nitrogen oxide (NO_x), particulate matter, and other hazardous air pol-

2. Maximum Available Control Technology, Best Available Control Technology, Lowest Achievable Emissions Rate, Cross-State Air Pollution Rule, National Ambient Air Quality Standards, Mercury and Air Toxics Standards.

3. Press Release, Ceres, Voters Overwhelmingly Support Air Pollution Rules (Oct. 12, 2011), http://www.ceres.org/press/press-releases/cleanairpoll (last visited Dec. 15, 2011).

lutants. VOCs and NO_x, mixed with air and sunlight to produce ground-level ozone, leads to respiratory problems, while hazardous air pollutants are linked to elevated levels of cancer and neurological health issues.

There is a strong argument to be made, especially for the lovers of the free market, in the failure of industry to account for its externalities, which include air pollution and climate change and their effects. A recent study published in the *American Economic Review*[4] estimates that costs imposed on society by air pollution from coal-fired power plants are greater than the value added to the economy by the industry. I'm confident that if a similar study was done with natural gas, it may not be as large of an addition, but that there indeed would be similar additional unaccounted-for costs that would emerge.

Regulations are necessary to ensure that the burden of pollution is not placed on the public in the form of climate change and public health and environmental degradation. Failure to regulate puts a virtual subsidy on top of the actual subsidies for fossil fuels and puts renewable energy at a disadvantage. If the real cost of dirty fuels were imposed on industry and thereby on the public, new sources of energy without those externalities would have the ability to compete.

Rules such as the New Source Performance Standards (NSPS) and the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for the oil and gas sector can even save the industry money. Natural gas is primarily methane, along with VOCs and hazardous air pollutants. This is the raw natural gas. These rules focus primarily on reducing leaks into the ambient air and thereby retaining the companies' salable product. The rules, therefore, they say, result in net savings of $29 million to the industry.

It won't be this easy to convey the savings for most rules, but with public support on the side of clean air and a system that currently, to some extent, exempts industry from paying for their pollution while forcing the public to endure its effects and tilting the market away from renewables, the case for strict regulation for air pollution is definitely there. Democrats and environmentalists must focus on repackaging in the debate, instead of cowering to industry and Republican demands. Failing to revise ozone standards, delaying the NSPS for refineries and power plants, and proposing to not regulate methane directly under the oil and gas NSPS/NESHAP only gives credence to a losing argument.

While the ozone rules EPA proposed in accordance with scientific and health standards at 0.070 parts per million (ppm) were dismissed by the Barack Obama Administration, it's not tied directly to climate change. The other two delays and failures appear to be tied to a fear of following through on the endangerment finding for GHGs. The NSPS for oil and gas fail to directly regulate methane. While EPA insists that controls for VOCs have the co-benefit of reducing methane, methane is a real issue associated with natural gas operations in Pennsylvania, primarily due to leaks and blow-back and things like that from the well.

No facilities associated with Marcellus Shale have actually been permitted as major sources, due many times to improper single-source determinations that will only be aggravated by some guidance that was released last week in Pennsylvania. The guidance misconstrues a long-standing EPA regulation on aggregation and single-source determinations. However, in the past month, due to the Greenhouse Gas Tailoring Rule's Step 2, which began on July 1, three sources have tripped major status due to just GHGs. Yet apparently, it's not big enough of an issue to include in the NSPS for the industrial source.

It only makes sense that if the public trusts EPA more than the U.S. Congress, as polls show, and support clean air regulations, that they would support the regulation of GHGs as well. The difference between air pollution and climate change, which is essentially pollution of the ai, with a different effect, is that climate change has become a lightning-rod issue for politicians. The CAA and itsAamendments were passed with strong bipartisan support, and there is no reason that now actually following this law should become a venomous political issue.

III. Pressure Points of the CAA

Robert Brenner: Pam Giblin is a senior partner in the Austin office of Baker Botts. She's practiced environmental law since 1970 and has had extensive experience in advising clients on a broad array of environmental issues, particularly in the area of air quality. She serves as a member of EPA's CAA Advisory Committee. She is a member of the American College of Environmental Lawyers. Ms. Giblin is listed in the Environmental Law Section of *The Best Lawyers in America*, and Pam is the first woman to receive the Distinguished Lawyer Award from the Travis County Bar Association. She serves on the Seton Family of Hospitals Board of Directors and the Seton Fund Board of Directors.

Pamela Giblin: I'll address the demonizing of coal here in a minute, but I want to talk about some of the pressure points in the CAA first. I started practicing law in 1970 as general counsel of the Texas Air Control Board, and we were tasked with how to implement this new 1970 federal CAA. It was a fascinating time.

I think as we work through the 1990 version of the CAA, we need to remember that it has not been touched in 21 years statutorily, so a lot of what we are seeing is really sort of reinterpretation, or 2011 eyes looking at a statute that's been in place for a long time. It's a magnificent statute. I am biased, obviously. I think it's one of the best environmental statutes because it is flexible. It has a lot of breadth. It was fairly far-sighted. I had the privilege of working on the Amendments of 1977 and the 1990 Amendments, and in 1977, I worked with a U.S. Senate staffer, Leon Billings, who was one of the architects of the original 1970 Act. To

4. Nicholas Z. Muller et al., *Environmental Accounting for Pollution in the United States Economy*, 101 Am. Econ. Rev. 1649 (Aug. 2011), *available at* http://pubs.aeaweb.org/doi/pdfplus/10.1257/aer.101.5.1649.

hear him explain the interrelationship of all of the various titles comes home to me a lot when we are working these problems. Since I'm in Austin, most of my practice is helping people navigate some of these pressure points.

Let me highlight a couple of things that are causing those of us who work in this area to spend a lot of time thinking about how this is supposed to work. The first is the interrelationship of the various titles. This Administration has the mandate in the CAA to review the NAAQS every five years, and if necessary, to revise them. So, you're seeing a roll-out of new NAAQS with a lot more frequency than you ever had before. There were some like the lead standard that had not been reviewed really since 1972. When there is a change to the NAAQS, then that cascades into the State Implementation Plan (SIP), which is one of the backbones of the CAA. That cascades into permitting, and so on. Those of us that advise clients on how to comply with one of these rules, it's never in a vacuum.

So, I want to talk about that SIP, the repercussions of some action, and the effect that it has in the SIP. A lot of you may have heard about what's called the "SIP gap." There is an inevitable gap when a state adopts a rule to comply with a NAAQS or for any other reason between the time that the rule becomes effective at the state level and it gets approved by EPA, and that's known as the SIP gap. For example, in Texas, there were a number of rules that for 15 years had not been acted on one way or another by EPA.

Recently, there were disapprovals of some of those rules, though some of those issues are in litigation. I'm not focused so much on the disapproval of this inevitable SIP gap because it's really creating a dilemma for states. Should they make their state rules contingent upon approval by EPA and thereby delay the tightening effect, or should they go ahead and gamble on this SIP gap? We've been involved, for example, in major permitting decisions where there were rules on the books that have been approved by EPA that are less stringent. You have the more stringent rules or the different rules that have been approved by the state but not SIP-approved. Which apply? Those are unanswered questions that are really coming to the fore a lot more.

When Title V was developed and put into the CAA Amendments of 1990, Title V was envisioned as a repository of all applicable requirements at a particular facility, so that nobody had to wonder what really applied. It is now being used more as a pressure point to get a second bite at all of the permitting decisions that were made at a source. Revisiting decisions that were made 5, 10, 15 years ago is causing a lot of anxiety out there.

Finally, I want to talk briefly about something that we environmental lawyers can never forget: the importance of administrative law. Rarely in my career have I seen a case turn on how many micrograms per cubic meter are being emitted. Almost inevitably, it's the procedural issues, particularly notice issues.

The CSAPR rule has, as one of the key issues in the litigation, the propriety of a proposal that doesn't identify precisely what is going to be done to affect certain stakeholders, and then has the final rule reveal that for the first time. So, there is a lot of controversy.

This happens with the NAAQS a lot. The lead NAAQS is a perfect example. The proposal came out saying we're reviewing the lead NAAQS and we may either repeal the lead NAAQS as an anachronism no longer needed with the demise of lead paint, or we may choose a number very, very close to zero. The final rule came out, and it's more in the latter category, a very, very restrictive standard. EPA probably had some reasons, but you see that the standard is revealed for the first time in the final rule.

There is a question of fairness and administrative procedure that I think you're going to start seeing get teed up more in a lot of litigation. The question is whether EPA should say precisely what it's proposing to do, and then take comments on that as opposed to the more generic proposals.

There was a broad request for comments about whether Texas should be included in the CSAPR. The final rule came out, and Texas was in there with an allocation that some of the sources feel may be too stringent. Regardless of how you fall on the merits, there is this administrative procedure overlay that carries over in a lot of statutes, especially in the CAA.The CAA provides so many different tools. You've got NSPS, NESHAPs, and NAAQS. If the goal is to require selective catalytic reduction at coal plants, there is a more linear way to do that. What I think frustrates people sometimes is the more attenuated, nonlinear approach of getting to a goal using a tool that was not designed for that goal and has collateral consequences.

IV. Price Signals and Caps

Robert Brenner: Patrick Traylor practices in the area of environmental law, with a particular emphasis on energy infrastructure, CAA compliance, litigation, and carbon trading. His practice is devoted largely to assisting clients as they attempt to navigate the environmental aspects of energy infrastructure development and operation of these facilities. He has extensive environmental experience in the permitting and construction of new coal, gas, and renewable electric power generation, as well as oil, gas, and liquids pipeline systems. In addition, he provides CAA regulatory advice to a very broad range of energy and industrial clients.

Patrick Traylor: The year 1990 seems like a long time ago. The 1990 CAA Amendments were, as Pam said, fantastic. They're powerful, they're flexible, they're meaningful, and they have, as Rob, commented there earlier, had a tremendous impact on human health and the environment and air quality in this country. I like them. We can do better. We can do more. I think we have to do better, and I think we have to do more, and I'm not convinced that the 21-year-old statute is the vehicle by which we can do what needs to be done going forward. So, I'd like to offer the perspective

this morning in the panel discussion and these opening remarks that it is past time for us to develop a sensible, centrist position in Congress for amending the CAA to advance the goals of air quality protection. We have to do it. We can do it. And we can do what we've been doing all of this time better.

What's needed is a nationwide, knowable price signal. Let me speak for a moment just to the power sector. That's the one that I work most with. That's the one I'm most familiar with. But these requirements also apply to other sectors as well. But a national, knowable price signal is what many of the utility CEOs are begging for, "Please just tell us what the rules are going forward and give us a reasonable length of time so we can design our capital upgrade budgets and the turnover of our generation fleets in a way to meet the goal." But this starting and stopping and this uncertainty is no way that folks can run businesses where we have to invest literally billions, tens of billions, if not hundreds of billions of dollars to get us from here to there. National, knowable price signals are very, very important.

China can do this. China has done this. China has, I think, I'm no expert on Chinese legislation, but I think with a stroke of a pen, China imposed sulfur dioxide (SO_2) reductions equivalent to the CSAPR rule in SO_2 and five times the reductions of the CSAPR rule in NO_x. I don't think we ought to run our country the way that China runs its country in terms of central control of these sorts of things, but it does underscore the importance of political decisionmaking when the issues get tough, like they are getting tough now, with CSAPR, with Utility MACT, with GHGs, with the four elements and the four challenges that Rob I think correctly points out. There is something very strong to say about a political solution that includes, of course, science and technical issues, as well as economic considerations. And so if China can do it, surely we can do the same thing. We can advance CAA goals, taking a balanced view of science and political and economic realities.

A really good example of this—it's sort of always been the case but it's now become the case much more apparently—is when the president delayed the revision of the ozone NAAQS. The Administrator has a great technical case, a great science case for making revisions, I suppose, to the—and I'm no scientist; I've not read all the details of the technical support document. I have no way to really support or criticize them. But I'm assuming that was good science and EPA did its job correctly in terms of the ozone NAAQS. But the fact is, the Administrator didn't have the ability to consider cost when setting those standards. And we seem to be getting to a place, at least with the ozone NAAQS, where cost is and economic impacts are important issues. I think the president made that pretty clear in his statement about the ozone NAAQS.

In a time of economic uncertainty, where jobs are scarce and not getting less scarce anytime quickly, the president made, I think, a rational decision that balanced a number of things that the CAA Amendments of 1990, in fact, the original CAA of 1970, don't allow the Administrator to balance. That's what I mean by political, economic, costs, science, technical, air quality things. Those things really are the particular providence of political decisionmakers, principally Congress.

"Will we ever see this in a Congress?" is the real question. I see some of you around the room sort of smiling, "Oh yes, that sounds great, Patrick. It sounds great to sort of put this back on Congress. Look, take this statute, make it better, make it stronger." I think it can. I mean in 1990, only 35 members of Congress voted against the CAA Amendments of 1990. Can you imagine today only 35 members of Congress voting against anything other than renaming a post office? I mean the partisan divide is so deep that it seems that we can't even get budgets passed without these sort of continuing resolutions and omnibus budget bills, where things seem to be frozen on the Hill. But that can't be an excuse for not trying. That can't be an excuse for not trying.

I would observe, in closing—I only have a few minutes for the comments—but we had an opportunity to do this back during the Bush Administration, the Clear Skies Act. If you look at the Clear Skies Act, SO_2 and the NO_x caps nationwide were more aggressive than what we are achieving under the CSAPR program. They were very stringent kinds of caps, and the timing of those caps were fairly stringent, 2018 for those caps. It also added mercury, 15 tons. And maybe the mercury MACT gets a little better than 15 tons nationwide in mercury these days. We've had a little bit of time to do some more science and cost analysis, but the Clear Skies Act, for whatever flaws folks may have found in it, was fairly stringent in terms of those three pollutants.

It fell to pieces though because there was a sense of they wanted the whole loaf, not just half the loaf. They wanted the fourth P. They wanted GHGs. And back then, Congress just wasn't in a place to deliver GHG reductions. I think it's pretty plain that today, Congress is not in a position to deliver GHG reductions, and so we forewent the improvement in air quality from those dramatic reductions of those three pollutants, I think. And I think that was just a political mistake, and I think we can't afford to continue to make those sorts of mistakes going forward, at least with these three Ps.

I will not talk about GHGs. My time has expired. That's a thorny issue. So, let me just think first about these three Ps, and then move forward from there. I think we can do it. I think Congress is capable of giving a nationwide, knowable price signal, so that folks can respond to it and continue to improve air quality in this country.

V. Public Opinion

Robert Brenner: Frank O'Donnell is president of Clean Air Watch, a nonprofit, nonpartisan clean air watchdog organization founded in 2004. Clean Air Watch closely monitors clean air-related activities on Capitol Hill, at EPA, and at state and local levels. Frank is regularly sought out

by the media for interpretation of clean air developments. What a lot of people don't know is that Frank is formerly a successful broadcast journalist; although when you hear his voice, you won't be all that surprised. Frank managed a staff of 50 to produce the nightly hour-long 10 o'clock news on FOX Television on Channel 5 in Washington for five and one-half years. He's earned numerous awards, including an Emmy, an AP, and UPI Best Newscast accolades.

As a print journalist, Frank has published articles in dozens of national magazines and daily newspapers, including the *Washington Post*, the *Chicago Tribune*, the *Philadelphia Inquirer*, the *Baltimore Sun*, *Newsday, The New Republic, U.S.A. Weekend*, *Washington Monthly*, and *The Progressive.* He's a frequent contributor to, and later became the editor of, *Regardie's Business Magazine*.

Frank O'Donnell: The current Administration, the current EPA, inherited a royal mess. I'm not saying this in a way to try to denigrate the predecessors. I don't think that the prior Administration deliberately set out to set an air quality standard for fine particles so that they would be overturned by the courts. I don't think they deliberately set out to set an air quality standard for smog that would probably have been overturned by the courts if the environmentalists hadn't been suckered into agreeing to a reconsideration. I don't believe that they deliberately set out to set an interstate rule that would be overturned by the courts, or a mercury rule that would be overturned by the courts, or a boiler rule that would be overturned by the courts, or a cement rule that would be overturned by the courts, or the GHG situation, which they decided they didn't want to touch. I think they didn't do that deliberately.

But bottom line is the current EPA is like a guy walking along sweeping up after the elephant. And for people to criticize them as being too aggressive is just flat out wrong. They have a legal obligation to handle all these unresolved problems, and in my experience over the years in dealing with EPA and folks, there is that they are very reasonable and they actually want to do the right thing. This idea that there is some crazy zealot bureaucrat who is out to kill jobs in America is just flat out nuts.

Having said that, I think the opponents of EPA have won some rhetorical wars over the last couple of years. For example, about a week and one-half ago, of the term "farm dust," the opponents of EPA were castigating it, saying EPA was out to regulate farm dust, and that was a label that stuck. Lo and behold, the end of last week, EPA announced that, by god, not only was it not going to regulate farm dust, it wasn't going to make any changes at all to the national air quality standard for big particles generally, PM_{10}, for those of you who follow this kind of stuff, even though the clean air science advisers had written a letter saying they thought that standards should be changed to provide better health protection.

So, the enemies of EPA are winning some of these rhetorical wars. I don't know that it's all over yet, but it's hard to go outside of D.C., and I've tried to spend a lot of time outside of D.C. these days to understand these issues better, without hearing EPA described as the "job-killing EPA." It reminds me of not that long ago in national politics where there was a term "abortion on demand," as if it was all one word. And now "job-killing EPA" is all one word and virtually all one syllable. And it couldn't be farther from the truth, in my opinion. The CAA has created tons of jobs, just look at lawyers.

It has created jobs in manufacturing, high-quality jobs throughout the country. Those of us who are advocates of cleaning up the air and trying to do a good job of it have been woefully deficient in pointing out the job-creating aspects of the CAA. I hope that we will all do a better job of that going forward, or we're going to face even bigger problems down the road.

If you look at some of the presidential candidates, particularly on the Republican side, who are saying, "We don't want to abolish the EPA flat out or return all its functions to the states or do all that," you know that EPA is becoming a high-profile political thing. In fact, when they asked—not the most recent debate but the one before that, when they asked [Herman] Cain what he would change, his first thing was, "I'll abolish the EPA." So, you know that this is going to be an increasingly high-profile issue going forward.

Will there be political consequences for those who attack EPA? There had been a couple of very, very good articles in recent weeks analyzing some of the voting patterns in Congress. In 1995, you saw a Republican party fairly divided in some of its votes on the environment, where members of that party from what we today would consider blue states or blue districts often broke with the party leadership and voted against some of Newt Gingrich's changes and some of the other things they were doing in that era to try to weaken EPA. In contrast, today, it's almost been 100% Republican solidarity against EPA. I think they are voting against the interest of their constituents. Will there be any consequences for them? I think only time will tell.

The next biggest shoe to drop in terms of EPA regulations will be the so-called utility MACT or the mercury toxics standards for power plants that are due under a court directive. Unless they've done something in the last day or so to send it to the Office of Management and Budget (OMB), OMB is not going to have a long time to review it if they are going to make that court deadline. Will they make that deadline or not? I think they fully intend to, from everything I've heard, but the clock is ticking. I think there will be a lot of dismay not only among environmental and public health advocates, but a lot of the power companies that support those rules if they miss yet another deadline.

VI. Discussion

Audience Member: What do you as experts in the field think candidates should be discussing at a presidential election level?

Frank O'Donnell: I think the president needs to show some leadership and get out there and say, "We're cleaning up the air. We're making public health better. We're also making the economy stronger," and not run away from it. One of the biggest disappointments I have with the ozone decision was that he seemed to accept the arguments of the opponents, which is that cleaning up the environment somehow hurts the economy. I think history shows that that's largely false. He's undermined his own position. I hope he'll step up, come out boldly, and say, "We're not going to be like these guys trying to abolish clean air protections, trying to abolish health protections, go back to the Dark Ages when factories could spew stuff into the air and water." And I think he probably will. I don't think they are totally clueless about these points. And in fact, I think on his bus tour this week, the president started talking this way a little bit. So, I think as we get closer to a general election and we find out who the opponent is going to be, I think you will hear more about that.

Robert Brenner: As EPA becomes more of a political issue in the campaign, it will bring additional attention to some of the statements being made by both sides on the issues. As a result, there will almost certainly be a group of reporters that will be more interested in doing some fact checking such as: "What is the validity of some of the statements being made?" That's going to be very helpful for this debate because, as you could tell from my earlier comments, I think the health benefits of what has been accomplished under the Act, and the need for additional reductions, are clear. There are certainly legitimate issues about the best way to go about getting those additional reductions, and having that kind of discussion and debate—if that's what evolves—would be excellent. Far better than what many of us perceive to be going on now, which is more like: "Is there any value to the CAA at all"; and that's really unfortunate.

Patrick Traylor: I don't think that environmental issues really have the traction in terms of what it takes to be elected president. In most districts, it probably doesn't rise to the level of an issue that's going to make someone lose their seat or not in Congress. The polls that Ceres published here a while back showed continued strong support by the American population in general for environmental protection objectives, but I'm not sure they translate really into voting issues. Congress and the president have to just lead on these issues, even though not leading on issues may not have much of a political consequence.

Voting against your constituents' general interests, Frank, I'm not quite sure makes someone lose their seat in Congress. Voting for clean air protections that are sensible I don't think will cause anyone to lose their job either. It just requires, I think, leadership. So, I think President Obama might consider leading in a way, and he is a big ideas guy, right? He is a big change guy. And so the idea of only doing three or four Ps is probably anathema. He wants to do it all. He wants to lead. He wants to get it all done. I think we can make progress that is, I hesitate to use the word, incremental, but still quite helpful. So, if it were President Obama, I would look for the ability to craft sensible, fairly near-term, more limited improvements, particularly in those three areas that we mentioned.

To the Republican candidate, I would suggest that the notion of disbanding or getting rid of EPA is just a very bad idea. It feeds into this notion that Republicans are crazy people. And many Republicans are not crazy people. The notion that we're just going to abolish EPA and just sort of let, I don't know who, the states I guess as the idea that states would sort of take over from EPA with small and shrinking budgets and all that that means. That doesn't sound sensible to me. What the Republican candidate I think ought to come to grips with is the fact they sort of eliminate the rhetoric from the extreme end of the conservative or libertarian perspective and reach consensus, as Congress has many times in the past. On these very important issues, they are bipartisan. They are not liberal or conservative issues. They are bipartisan issues of public health, and there is a range of motion in the middle that I think a presidential candidate can rationally lead both in the Administration and with Congress to accomplish some results.

Pamela Giblin: Yes. I would very much echo that. I'm not seeing a whole lot of traction. What I would like to see is some discussion of how things are implemented and the kinds of people that each candidate would appoint to administer the statute.

I think one of the reasons that the GHG regulation in the automobile industry has been successful, or at least as successful as anything, is because there was actual real negotiation with the stakeholders. It was done in a linear way at the source of the vehicular standards. I think some people have that talent to broker those kinds of resolutions. And so I would be very interested in the kinds of people that would be put in place. I mean again, this is the same statute that was in place for the eight years of the Clinton Administration with Carol Browner. And there were not these sort of lurches that you're seeing now. Same statute, just different people. I think there are very, very good people within this Administration who, when encouraged, can broker solutions. A lot of these issues need to be resolved other than with shouting on both sides. Both sides need to ratchet it back I think, and I think that will actually get things done a lot more.

Audience Member: One powerful vehicle that the president's office has is the executive order, especially on GHG regulations or on regulating the federal government on GHG emissions. Do you see in today's political climate from this point forward any more executive orders coming out of the president's office that would affect either climate change or GHG regulation as far as the federal government is concerned?

Jay Duffy: I don't, really. I think when you have the ozone NAAQS that are supported by science and it still has to go back, taking unilateral measures to go forward isn't quite where I see this process headed. I think if you're not going to use the actual tools that are designed for this process, I don't quite see executive orders being the answer.

Frank O'Donnell: Didn't the White House stop talking about GHGs about a year and one-half ago and start talking about clean energy instead? Since Patrick made reference to it, let me go back to the prior question for one second if I can. I agree with a lot of what he said, by the way, and I like the conversation up here. In terms of people getting dinged for voting against their constituents, I totally agree. In most cases, there are so many issues that you probably won't pay a price for it just because power of the incumbency is great. The media today is very different than it was 15 or 20 years ago. It used to be you had a lot of bureaus in D.C. with folks who reported on the actions of the members back home and wrote stories about them, and an awful lot of what I've done over time was actually to give ideas to these reporters to say you ought to look at this guy's vote, etc.

A lot of these bureaus have been dismembered for economic reasons, either abolished completely or shrunk. So, a lot of these guys get a free pass without any kind of scrutiny, especially in districts that are not major media markets, and they have their own media machines that they put little columns in the papers at home and stuff like that, and so there is not a whole lot of scrutiny of their actions.

Sierra Club is running some television spots right now on Lansing, Michigan, about Tim Walberg, a Republican congressman from that district. The ads are blasting him for his vote in favor of the so-called TRAIN Act in Congress. The ad is on YouTube, if you want to see it. I don't know if it's that effective or not; we'll find out. It has a little baby and the baby is getting ready to drink some mercury or something like that, so it's not exactly subtle. But I don't know if they are going to do enough of a media bite to actually get any traction, because it actually does take a lot of that. I think if they hadn't had some prior newspaper coverage, then it may not have the same oomph if it's coming cold.

This guy got elected in 2004, and then got dumped in the next election, and then got back in, and then in the next election, he won last time with I think 50.1% of the vote. He is a Tea Party guy, so he is getting hit from a lot of different issues. But if even 1% of the voters decided that his environmental vote was a bad thing, it might be enough to sink him.

Patrick Traylor: On the executive order question, I agree with what Jay said about how there is sort of a remote chance that this president will issue executive orders on GHGs. I think one of the reasons is the impact on economy. He is very cognizant of the cost of these sorts of regulations. I know it's an article of faith at EPA that all of these rules' benefits outweigh the costs, but there is a range of costs and a range of benefits.

I think to be clear about the potential impact on economy, you just go to EPA's website. When they talk about the cost of the new ozone standard, there is a range of $19-25 billion annually in costs, so that's a fairly narrow range and $11-37 billion a year in benefits. So, if you take the cheapest version of cost and the most beneficial aspect of benefits, you get a really nice positive number of $18 billion net benefit to the economy, and that's good. But if you take the worst of both, the most expensive implementation and the least beneficial benefits, you actually get a loss of $14 billion per year. So, I think the question of cost is in play. And because it's in play, I think the president would be reluctant to, through executive order, mandate additional reductions in GHGs. So, I'd like to have the conversation about cost continue and not sort of accept as an article of faith that all of these rules necessarily have net economic benefits.

Audience Member: You talked about possibly having some amendments to the CAA; do you see any sort of tipping point on the horizon? A lot of the Bush rules were overturned, and if I remember correctly, when this EPA came in, they said, "Okay, we want to have legally defensible clear rules." But here we are with the boiler MACT, and it's a pretty big mess, and here we are with CSAPR, where there are some pretty juicy administrative law questions going on.

Robert Brenner: I spoke at an ELI seminar—I guess it was a year and one-half ago—where I said I thought it was going to be very important for CAA implementation to move toward more of a multipollutant and a sector-based approach. Many of these problems that you're referring to come up when multiple rules involving multiple pollutants are developed and it turns out that the joint impact of the rules on the source category; such as cement, steel, or chemicals; are difficult. Difficult in the sense that it's hard for companies to make good decisions about what technologies or processes to adopt, because there might be different time lines, different sets of requirements, and trade offs between some of the pollutants.

EPA, with some help from its CAA Advisory Committee, will try to move toward these more coordinated rulemakings using sector and multipollutant types of tools. In fact, Patrick was very much involved in looking at opportunities under the existing CAA to use those approaches. To the extent that works, stakeholders will see that the Agency is moving in a direction that makes sense for business and makes sense for the environment, and that will encourage better technologies to evolve. To the extent it turns out that the statute and the court decisions make it very difficult to move far in that direction; a lot of the problems that you're alluding to are going to remain, and there will be pressure to make legislative changes instead, which would be a big lift at this point. It's very hard for this Congress to deal

with big complicated issues, as we see again and again. So, I hope to do my bit to help move along this transition to more of a multipollutant, sector-based approach using the current statute.

Pamela Giblin: Yes. The 1970 Act was skeletal, almost like the U.S. Constitution; it was about a 32-page pamphlet. The 1977 Amendments were much more robust and detailed, and then the 1990 Amendments were about 893 pages added to the CAA, really drilling down to a lot of detail and precision. I am not sure that reopening the CAA in this political environment is something that either side is willing to gamble on. I hear Patrick, and there are some things that are broken, but you know how it's broken. You're comfortable with how it's broken. I have really good friends in the environmental community with whom we always negotiate and broker things. I haven't heard someone from that side really point to something that they feel is sufficiently broken to be willing to go and reopen. I think on the industry side, you're hearing the inability of EPA to consider cost in NAAQS setting. In the implementation of NAAQS in the SIP, you can consider cost and effect. You have to consider cost. So, there is a little bit of a safety valve there.

I think some of the people who want the Act to say exactly what they want on a particular point really haven't thought enough about whether it's worth going and trying to do that, because it is a very, very flexible act. I think some of the frustration that you see is again where people use the wrong tool, where what they want to accomplish is X, and they go reach for a particular title or plank of the CAA that wasn't designed for that.

On the CAA Advisory Committee, we developed a framework for this multipollutant approach, and I think Rob's exactly right that there appears to be support in the current statute for harmonizing. That's why I get back to, who are the people implementing the statute? What are their priorities? What's their view of federalism? What's their view of all of these various overarching issues, and how do you harmonize these provisions? So much of the frustration by industry is the collision of dates, sometimes collision of two rules that seem to drive you in different directions. That I think can be dealt with to some extent with harmonization. But I think opening up the CAA, as massive as it is, as many details as it has, is going to be very interesting.

Jay Duffy: What I think is a bigger issue than the CAA being broken is the implementation, as Pam was saying, of it, particularly deadlines. We have the NSPS that I'm dealing with in the oil and gas industry. It was made in 1985, and it was supposed to be reviewed every eight years, and now we are dealing with it in 2011. I just commented on an infrastructure SIP in Pennsylvania that had 2003 science that was before the Marcellus Shale boom, so everything is out of whack there as well.

After the ozone NAAQS fell apart, groups are now moving to get the 2008 standards implemented. Those aren't even implemented. EPA hasn't designated attainment and nonattainment areas. They have not implemented PSD [prevention of significant deterioration] rules. Every rule that comes along seems to be brought because of a lawsuit, because of delays. So, you can't really say that the CAA is broken until you're actually complying with it and its deadline. So, if complying with the deadlines doesn't end up working, then I think you go back and say, "Okay, is this actually broken?" But until you're moving and there isn't that sort of SIP gap that's going on and implementation gap and the review gap that's happening now, I think it's premature to look at reopening the CAA.

Patrick Traylor: I think there are at least two tipping points to act. The first would be the outcome of a number of these court challenges. Frank went through the litany of all the different rules and regulations that went to the [U.S. Court of Appeals for the] D.C. Circuit or even to the Supreme Court and were overturned. That creates massive uncertainty in the economy, and to sources who otherwise would be happy and willing to do more, they just need these price signals that allow them to do that with confidence. To the extent that some of these large programs still fail on appeal, any of the GHG rules, CSAPR, boiler MACT, any of those rules begin to fail, there is reinjected massive cost uncertainty. And that could be a powerful trigger for folks to want to be at the table to remove that uncertainty.

The second tipping point could very well be the 2012 congressional elections. We see the U.S. House of Representatives already beginning to do things like the TRAIN Act. They are beginning to respond to what the Republican majority is viewing as EPA excesses. Whether there are excesses or not is beyond the point. The House Republicans are reacting. If the Senate has a lot more Republicans in it, I think you might start seeing more of that kind of activity in the Senate, and that might be a tipping point. I'm not meaning to suggest that if the Republicans take over the Senate, they're going to gut EPA and the CAA, because they are not going to get more than 60 votes, I think. Even if they did, I don't think you'd find that many people voting to undercut the CAA. But it could be a tipping point to have an engagement, just like we saw with industry in the climate change debate.

I think once one or two of those tipping points on these other issues are reached, I think you'll be able to build a consensus that reaches across stakeholder interests, environmental groups, industry groups, and political groups to come up with some sensible middle-ground approach. I'm an optimist though.

Frank O'Donnell: I think Patrick and the others have made some excellent points about that. I don't think you're going to see anything like that in this Congress. Maybe after the elections there will be a new landscape. Who

knows at this point? I mean everything is still up for grabs in terms of the elections.

It's interesting to note that with all the stuff about EPA and the CAA, you haven't seen a systematic look at it by the majority in the House. They are doing more of these taxes on specific rules, and the reason for that I believe is that they are not really serious. I think these are more message votes in a lot of cases. And in fact, Rep. Ed Whitfield of Kentucky (R) has even said this in a couple of interviews, that these are not really designed to become law. These are designed to put some Democrats who are up for election in 2012 on the spot, try to force them to take votes that might get them tossed out, at least to put them on the hot seat, and so a lot of this is really playing politics as much as anything else.

Will that succeed? I don't know. You notice that there are contrary efforts to try to prevent those kinds of votes happening at the same time. A couple of examples just within the last week: EPA, as we talked about earlier, is not going to tackle so-called farm dust. I think part of the reason for that was to try to prevent a vote in the Senate that would have some Democrats in embarrassing situations. Same thing with a less publicized thing that driveled out last Friday, where they suddenly announced they were going to take a new look at how they are going to, if at all, regulate biomass combustion after there have been complaints from various senators with the wood products industries in their state, such as Oregon.

So, a lot of this is politics. It's not a rational approach. I think a lot of us would love to see a rational look at changes to the law. And in fact, in the last Congress, there was an attempt to amend the law that environmentalists supported, and that was to do something about GHGs. In that case, the shoe was on the other foot, and the opponents raised a holy war about that and it didn't go anywhere. So, I guess bottom line, I don't think we're going to see any changes in this Congress. Maybe after the elections they'll take a fresh look at it.

Audience Member: I'd like to take a step away from the conversation on politics and consider the economics of the new regulations for a moment. I have a series of questions on that. First, what sort of resources will be required for EPA to implement the rules that are currently pending, and does it have those resources? If it doesn't, how will cuts to the states' budgets affect their ability to effectively implement their implementation plans?

Given the difficulties and the challenges involved with enforcing the CAA, how should private practice attorneys advise their clients when they are looking at these new regulations in light of the fact that it might be very difficult to even know how to proceed and whether or not those decisions will be construed as effective compliance with the regulations?

Pamela Giblin: The way the CAA works is that most of the implementation is delegated to the states. For example, in Texas, where you have the second largest environmental agency in the world, second only to EPA, all of the programs are delegated, and so it's really the states that do the implementing, which is a good system. I haven't so much seen that you have to have this huge staff at EPA, although the oversight and ensuring that the states do it uniformly and correctly is there. I think it is a problem for a number of the states just because at some point, something's got to give if there is a new set of rules, and that's why the harmonizing is so important, where can you really do more bang for your buck by having the rules either synchronized in terms of time or controls and making sure of that. So, I think it's more of a state workload problem.

With regard to how you advise clients, you not only have the moving target that you have to evaluate, but because of this SIP gap issue, especially if somebody has a major project. There are still a lot of major projects in Texas. We just finished getting the permits for what will now be the largest refinery in North America. It is a huge refinery expansion in Port Arthur, Texas. During the course of that permitting, which had a very long planning horizon—it was a $9 billion project—rules were changing. What you default to is a very conservative approach of anticipating because again, you don't have the luxury of arguing that, "That doesn't apply," so you have to be arguing, "We don't think we have to meet this new rule that has been enacted right in the middle of our process. But if we did, here is how we meet it." What it drives is a very, very conservative look.

I hate to say this in front of some of these folks, but we are permitting coal-fired power plants and we have survived the court challenges. When you're doing a coal-fired power plant and whenever you're permitting a high-profile controversial project, you know that you have to reach out to stakeholders. You've got to talk to the host communities and you have to really anticipate and you have to take very conservative positions on what rules apply and overkill. If you don't, you might get setback.

There were several other projects represented by others that were reversed by the courts because again, they chose, for example, not to demonstrate compliance with a new MACT because it was in progress. They were taking the position that the application was administratively complete. This gets back to all of those procedural issues. We were taking the position that unless you've already got your permit, you probably have to at least demonstrate compliance. There is an argument that you don't, but do you want to run that risk? All of these things go into the cost of a project.

Jay Duffy: I just wanted to speak to the state resources question that you had. We were actually speaking about this before the panel. And as I said, I'm working in Pennsylvania in the Marcellus Shale boom. We've had people come out in litigation, in deposition, saying that they are only looking at each permit for 30 minutes or something along those lines. George Jugovic, who was the director

of the southwest region where a lot of the Marcellus Shale drilling is going on, said last weekend in a Democratic Policy Committee hearing that they do not have the resources or staffing to really do an adequate job. I think what you need to start getting to is whenever NAAQS are revised, the state has to submit an infrastructure SIP that says that they have adequate resources and personnel. This has kind of historically just been rubberstamped, but it might actually be something that we really have to start looking at to ensure that the states do have the ability to implement and enforce these new NAAQS.

Robert Brenner: I want to come back to the issue of jobs, because we're having a very good discussion here about some constructive paths that stakeholder groups could begin discussing in order to make progress. But it's going to be very difficult to hold those discussions as long as the issue of jobs is out there; especially in such a hard-edged way. You have one perspective of the CAA as a job killer and this other perspective of no, we're not talking about job losses; in fact, we're talking about job gains as a result of clean air programs.

What I believe the analyses show is that yes, when you impose new requirements on sources, there are sometimes facilities that end up closing and jobs are lost. They are usually facilities that have all kinds of other problems. They are facing loss of some of their demand and stiff competition from other producers, and a CAA requirement ends up being the straw that breaks the camel's back, and they close and there are job losses.

On the other hand, you have other facilities that pick up that demand that was lost. Now, sometimes, they might be overseas, and people make that point. A lot of times, they are in the United States and they pick up some of that demand and they expand. They grow. In addition, the money that is spent for pollution control does not disappear into a black hole somewhere. It is used to purchase scrubbers and baghouses and carbon injection systems, and each of those not only has workers who build the system and that operate it, but they use cement and steel and chemicals to operate the systems, and that also needs to be considered when you're looking at the net impact on jobs. The serious looks at this issue come up with results showing that the net impact on jobs of clean air regulations tends to be either neutral or even a slight positive.

But that point is not going to get through to the public until there is more intensive scrutiny of the arguments being made, which I think will happen as a result of the campaign process. The public will see examples in their state of jobs that were created as a result of CAA compliance; and they'll see examples of facilities that closed and hear the arguments regarding the causes. Once you get to that point, where the public can put the employment issue into perspective, then you can begin to have these other discussions regarding how we meet goals in a cost-effective manner. How do we move toward approaches that give industry more predictability and willingness to make the investments they need to make to modernize, to grow and be profitable, and invest in new technologies?

Audience Member: Thinking of CSAPR and the MACT rules, are we going to see more command-and-control proposals going forward?

Patrick Traylor: I'm a centrist when it comes to environmental issues, but I'm slightly right of center in that I'm more comfortable with market-based solutions than I am with command and control. I think a healthy balance is required. That's why I'm a centrist; I'm not on the extremes. Let me speak in favor of not turning the lights out on market-based programs. And let me start by talking about the Title IV A to the CAA Amendments of 1990.

From the time that program was implemented until about 2003, I want to say, average SO_2 prices were about $200 per ton. Nice, fairly steady, not particularly volatile price signal that resulted in a lot of air pollution improvements in this country, both from controlling SO_2 and then somewhat NO_x, but mostly SO_2 pollution from coal-fired power plants and a transition away from coal-fired generations and natural gas generations. Real impacts from putting a cap-and-trade program that was very innovative. Rob was at the table on that. That was a very innovative approach. It was very, very successful.

The Kyoto Protocol was based on the same sort of approach. Even the last Congress' approach to GHG is based on the same approach, because I think there is something to the notion of market-based regulation that is attractive because it does send good price signals. It has a defect though, and the defect was exposed in the Clean Air Interstate Rule (CAIR), and that is that the commodity that's traded is only as good as the government that stands behind it. It is only valuable and not volatile to the extent that the government maintains the value of the commodity. And so when CAIR was struck down by the D.C. Circuit, you had seen SO_2 prices go to $1,600 per ton. That would drive a lot of construction of SO_2 controls. But after CAIR fell to pieces, it dropped—I think they are trading now around fifty cents, right? So, I think the main difficulty with markets isn't that they can't be effective. They can be effective, but we need to be very, very careful that they are designed and implemented and not touched in a way that causes the value of the commodity to lose its value, because then you do lose the value of the entire market-based system. So, it's a challenge and an opportunity, but I'm not quite ready to turn the lights out on market-based approaches.

Frank O'Donnell: I agree and I think that market-based systems also can have a positive impact. As one of my friends who was probably a command-and-control type said to me once, it's just another tool, and a lot of it does depend on what's the cap and what's the deadline and some of the intricacies of the things, as Patrick was talking about. The irony is I think we've got a hiatus on it right now, and

the irony is folks who are to the right of anybody on this panel made that happen by demonizing the term "cap and trade." I remember I was in Florida about two years ago with some folks there and they were sitting around. Literally, somebody who was in the real estate game got up—and they were talking about politics and one of them got up and says, "Don't get me started on cap and trade!" And I went, "My God, if people sitting around Florida are talking about cap and trade like this, this stuff they're talking about on the Hill ain't going nowhere." And unfortunately, I was right.

And the same kind of thing happened the day Scott Brown got elected to the Senate to that Ted Kennedy seat. I have been watching my old affiliation—I know you find it hard to believe I was affiliated with FOX at one point, but FOX Business Channel had Stuart Varney. He got up there and he started yelling, "Cap and trade is dead! Cap and trade is dead!" So, I think that the folks on maybe a little bit to the right have demonized that term. We're going to have to probably invent a different term for it if we are going to be effective probably. I don't know what.

Robert Brenner: This has been an extraordinary discussion, one that is very constructive and pointed to a number of paths in which it is possible to move to get some much better results—both in terms of the environment and economic results in implementing the CAA. It highlights the kind of role that ELI has played and I know under your leadership, John, will continue to play. It's an opportunity to begin to both diagnose the problems, and then describe some of the directions we might be able to move to address those problems. ELI brings together the people who understand these issues in great depth and have the ability to take a step back and provide some perspective and think about new approaches. I see Leslie [Carothers], you're here and you certainly sponsored many of those kinds of discussions during your tenure as president, and I know that will continue. I'm sure I speak for the whole panel in saying we would be pleased to be a part of that process. Finally, I want to say thanks to the audience for an excellent set of questions and a very good discussion. Thank you.