HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

JUNE 13, 2017

Printed for the use of the Committee on Environment and Public Works



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COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ONE HUNDRED FIFTEENTH CONGRESS FIRST SESSION

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TUESDAY, JUNE 13, 2017

U.S. Senate, Committee on Environment and Public Works, Washington, DC.

The Committee met, pursuant to notice, at 10:08 a.m. in room 406, Dirksen Senate Building, Hon. John Barrasso (Chairman of the Committee) presiding.

Present: Senators Barrasso, Inhofe, Capito, Boozman, Wicker, Ernst, Sullivan, Carper, Whitehouse, Gillibrand, Booker, Markey, Duckworth, and Harris.

Senator BARRASSO. Good morning. I call this hearing to order.

Today, we will consider the nominations of three individuals to serve as members of the U.S. Nuclear Regulatory Commission: Kristine Svinicki, current member and Chair of the NRC; Annie Caputo, Senior Policy Advisor on this Committee's majority staff; and David Wright, President, Wright Directions, LLC.

We will also consider the nomination of one individual, Susan Bodine, Chief Counsel on this Committee's majority staff, to serve as Assistant Administrator, Office of Enforcement and Compliance Assurance—OECA—at the U.S. Environmental Protection Agency.

I applaud the President's nomination of such experienced Americans and dedicated public servants. The four nominees before us today are all well qualified candidates. Three are well known to members of this Committee and staff. One is not well known, and that is why Senator Lindsey Graham is here today to bring to the attention of the Committee the nominee from his home State of South Carolina.

Senator Graham, if it is OK with you, based on schedules, I would hope you could make an introduction at this time.

OPENING STATEMENT OF HON. LINDSEY GRAHAM, U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator Graham. Thank you, Mr. Chairman.

It is my pleasure to introduce David to you. We served together in the South Carolina House of Representatives for 2 years, so I have known David for a long time. His mother, Irene, is with him. This is a big day for the Wright family. I want to thank the President for nominating David to the Nuclear Regulatory Commission.

He is a graduate of Clemson University. We celebrated their national championship yesterday at the White House. Go, Tigers.

David has an incredible background in terms of the subject matter. He was on the South Carolina Public Service Commission from 2004 to 2013. South Carolina, per capita, has the most nuclear power of any State in the nation. We are a pro-nuclear power State. I think David understands the issues surrounding nuclear power as well as anyone in the country.

From 2008 to 2009 he was President of the Southeastern Association of Regulatory Commissioners. In 2011 and 2012 he was President of the National Association of Regulatory Commissioners. David understands the nuclear industry as well as anyone I know. The President chose wisely. Again, South Carolina's nuclear footprint is very large.

He has been a mayor, so he knows how to get along with people. If you are going to be a successful mayor, you have to make things win-win.

I could not recommend more highly to you David Wright. I want to thank the President. All of us in South Carolina are proud. He will hit the ground running because he knows the subject matter. Thank you very much, Mr. Chairman.

OPENING STATEMENT OF HON. JOHN BARRASSO, U.S. SENATOR FROM THE STATE OF WYOMING

Senator BARRASSO. Thank you very much, Senator Graham. We appreciate it. I know with a busy schedule, you probably have additional obligations. At this time, you are excused. Thank you for being with us today.

Of the nominees this morning, two have been previously reported by this Committee and confirmed by the Senate by voice vote.

Ms. Svinicki has served as a member of the Nuclear Regulatory Commission for more than 9 years, including the last 6 months as the Chair. She was confirmed as a member in 2008. She was reported by this Committee by voice vote in December 2007 and confirmed by the Senate by voice vote on March 13, 2008.

She was re-nominated to a second term in 2012. Again, she was reported successfully by this Committee by voice vote and confirmed by the Senate by voice vote 8 days later. She was designated as the NRC's Chair by President Trump in January 2017.

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Before joining the NRC, Ms. Svinicki served in various staff positions in the U.S. Senate, including with the Armed Services Committee, where she concentrated on defense science and technology policy and defense related atomic energy activities.

She also worked as a nuclear engineer at the Energy Department and as an energy engineer for the Wisconsin Public Service Commission.

She was honored with the Woman of the Year Award by the Women's Council on Energy and Environment in 2013 and the Presidential Citation Award by the American Nuclear Society twice, in 2012 and 2006.

Ms. Caputo has spent more than 20 years advising Congress and industry on nuclear energy matters. She has served as a policy advisor for this Committee and for the House Energy and Commerce Committee for the past 12 years.

Before that, she worked for Exelon Corporation as a Congressional Affairs Manager. In 2013 the U.S. Nuclear Infrastructure Council honored Ms. Caputo with its Meritorious Service Award.

In response to Ms. Caputo's nomination, the Vice President of the Clean Energy Program at Third Way, a think tank once labeled as "radical centrists" by the New York Times, stated of the nominee, "She has consistently worked with members on both sides of the aisle to promote effective nuclear regulation and is well respected across partisan lines for her expertise, professionalism, and competence. Few people are more qualified to fill this role at the NRC."

Mr. Wright has served as member and Chairman of the South Carolina Public Service Commission, as President of the South-eastern Association of Regulatory Utility Commissioners, and as President of the National Association of Regulatory Utility Commissioners. He is Chairman Emeritus of the Nuclear Waste Strategy Coalition, a group that includes State utility regulators and State attorneys general focusing on addressing nuclear waste policy matters.

He has served as a member of the South Carolina House of Representatives and as Councilman and Mayor of the Town of Irmo, South Carolina. He has also owned and operated several different businesses and been honored with various awards.

Ms. Bodine served as Assistant Administrator for the EPA's Office of Solid Waste and Emergency Response from 2006 to 2009. She was reported by this Committee by voice vote on July 20, 2005, and confirmed by the Senate by voice vote later that year.

She previously served as Staff Director of the House Committee on Transportation and Infrastructure, Subcommittee on Water Resources and the Environment, and as an attorney in private practice.

Today's nominees will fill critically important roles in protecting Americans' public health and safety. The Nuclear Regulatory Commission ensures that nuclear power plants, nuclear materials, and waste are handled and used safely and securely.

The EPA's role, specifically the one being discussed today, is responsible for enforcing our nation's environmental laws, including the Clean Air Act, Clean Water Act, and Superfund. The need for nuclear and environmental safety protection is bipartisan. We need to move quickly on these nominations.

Unless today's NRC nominees are confirmed by June 30th, the NRC will lose its quorum. This will degrade the NRC's collective ability to fulfill its mission of licensing and regulating the nation's civilian use of radioactive materials to protect public health and provide for safety and security. The Committee must act to restore the NRC to a full slate of Commissioners expeditiously.

Similarly, the EPA does not have a Senate-confirmed Assistant Administrator of OECA. The Committee must act to confirm this nominee to lead OECA quickly, so that our environmental laws are

rigorously enforced so that polluters are held accountable.

I can think of no better candidate to take on the critical task of leading OECA and enforcing our nation's environmental laws than Susan Bodine. Past EPA officials, notably from both Republican and Democratic Administrations, have praised Susan's nomination.

Mathy Stanislaus, a former Obama EPA Assistant Administrator, said, "Ms. Bodine understands both the internal side of the Agency and the proper balance of enforcement and would be a 'standup person.'"

Ben Grumbles, a former George W. Bush Assistant Administrator and currently the Maryland Secretary of the Environment, said, "She is tough and fair and committed to public service."

Elliott Laws, a former Clinton Assistant Administrator, said, "Bringing in someone with her knowledge of the Agency and the

issues facing it can only be a positive."

John Cruden, a former Obama Justice Department Assistant Attorney General for the Environment and Natural Resources Division, said, "Susan is dedicated to the rule of law, a lawyer with great integrity, and she understands the critical importance of effective and timely enforcement."

I will now turn to Ranking Member Carper for his statement.

OPENING STATEMENT OF HON. THOMAS R. CARPER, U.S. SENATOR FROM THE STATE OF DELAWARE

Senator CARPER. Thank you, Mr. Chairman.

I want to start off by welcoming each of our four witnesses to today's hearing. I want to welcome your families as well, your spouses, sons and daughters, mothers, and any other friends and family that might be in the room.

Several of our witnesses, Mr. Chairman, have talked about their core values and where they came from. They actually remind me a lot of ours. So, Ms. Irene, thank you for raising this kid and send-

ing him our way.

Thank each of you for your past public service and for your continued willingness to serve in these new capacities. For Kristine, it is not a new capacity, but to continue to serve. The jobs to which you have been nominated are very important to the health and safety of the American people.

Mr. Chairman, as we have discussed, I am concerned that we do not have parity in the Nuclear Regulatory Commission nominees before us today. It is critical for the Commission to have consistent leadership from both political parties, especially as the industry

faces a challenging future.

I hope we can find a path, as we discussed, to ensure that the White House re-nominates Commissioner Jeff Baran and that the Committee pairs consideration of his nomination with some or all of the NRC nominees before us.

Having said that, Mr. Chairman, the minority members of this Committee remain deeply disappointed, not with these witnesses or their families, but disappointed that the Committee has not received complete written responses from Administrator Pruitt to 11

oversight letters that Democratic members have sent the EPA this year.

In fact, we recently learned that the White House has instructed Federal agencies not to respond at all to oversight requests from Senators who are not Chairmen. Such a directive harms both parties and takes us further from the truth.

You do not have to take my word for it. Our colleague, Senate Judiciary Committee Chairman Chuck Grassley, sent a letter to President Trump just this past Friday admonishing the directive, noting, "It harms not just the members who happen to be in the minority party at the moment, but also members in the majority party who are not currently Chairmen. It obstructs what ought to be the natural flow of information between agencies and the committees, which frustrates the constitutional function of legislating."

I am sure that my colleagues on both sides of this dais can agree that preventing Senators from performing their oversight responsibilities is simply unacceptable. In fact, this Committee has a tradition of ensuring that oversight requests receive responses as part of the confirmation process. I would like to share two short examples with you this morning.

First, in 2013 Republicans insisted on responses to five requests as part of former Administrator Gina McCarthy's confirmation process. The Republican minority sought information on the Agency's compliance with the Freedom of Information Act, the availability of outside scientific research, the use of economic analysis, and lawsuit settlements.

Republican members of EPW boycotted the first business meeting on Administrator McCarthy's nomination because they believed that the EPA had not been responsive to their requests. We may have another poster here. On that day, Mr. Chairman, you noted, "The new nominee to be EPA Administrator has been extremely unresponsive with the information we requested." You went on to add, "We're simply requesting that Ms. McCarthy and this Administration honor its commitment to transparency—that's what they promised."

In order to help obtain this information, at that time, I personally called the EPA and implored the Agency to respond to Senator Vitter and to the Republican members of this Committee. Ultimately, EPA did so.

By the time the McCarthy nomination reached the Senate floor, EPA had sent at least five letters and provided more than 1,300 pages of documents and data. In the end, after 136 days, Gina McCarthy was confirmed without a filibuster.

Second, in 2009 Republican requests for information and economic analysis delayed Senate floor consideration of Bob Perciasepe's nomination to be Deputy EPA Administrator for almost 6 months. Last Congress, I am told that Republicans sent at least 156 oversight letters to EPA's Air Office alone and that all of them received responses.

We have another chart that refers to EPA's 2015 responses. Additionally, in calendar year 2015, EPA received 884 letters from lawmakers seeking a response from the Agency. That same year, EPA received 60 document requests from Congress and one sub-

poena. The Agency also made EPA officials available to testify at 40 hearings.

In 2015 alone with all of those incoming requests, EPA, under Gina McCarthy's leadership, sent 276,510 pages of documents to Congress. One more time, that is 276,510 pages.

Colleagues, while our asks may not be welcomed by this Administration, I do not believe they are unreasonable, nor are they un-

precedented.

Oversight should not be a partisan issue. As Senator Inhofe and then-Chairman Inhofe noted in 2015, lack of timely and complete responses from agencies "frustrate[s] Congress' ability to fulfill its constitutional duty to perform oversight of the executive branch." Mr. Chairman, I would say you were right then, and you are right today.

Absent a heartfelt commitment by EPA to provide complete and timely responses to our current information requests, I will find it very difficult to support moving forward with the consideration of

any EPA nominees.

Ĭ do not make such a statement lightly, I make it with no sense of joy, but the nominations we are discussing today are important ones. They deserve our attention, just as our inquiries from the mi-

nority side deserve the attention of this Administration.

Let me close by saying, the EPA's Office of Enforcement and Compliance Assurance is an indispensable "cop on the beat," safeguarding the public's health and our country's environment. The office's actions drive reductions in toxic air pollution as well as the clean up of our land and our waterways. Last year, I am told EPA's enforcement work required companies to invest \$13.7 billion in such actions.

Turning to the NRC, following the lead of former Committee Chairman Jim Inhofe, Mr. Chairman, you and I have worked to strengthen the "culture of safety" within the U.S. nuclear energy industry for years.

In part due to our collective efforts, the NRC leadership, and the Commission's dedicated staff, the NRC continues to be the world's gold standard for nuclear regulatory agencies. However, that does not mean we can become complacent when it comes to nuclear safety and our NRC oversight responsibilities, a perspective that I am certain is shared by every member of this Committee.

In closing, I look forward to hearing how each of the nominees before us today will fulfill the responsibilities of the positions to which they are nominated. I hope they will share with the Committee their commitment to ensure that these agencies remain vigilant and devoted to the protection of all Americans and that you will be responsive to the legitimate questions we may ask of you from time to time.

Thank you all for joining us today.

[The prepared statement of Senator Carper follows:]

Statement of Ranking Member Tom Carper
U.S. Senate Committee on Environment and Public Works
Hearing on the Nomination of Susan Parker Bodine to be Assistant Administrator for the
Office of Enforcement and Compliance Assurance of the U.S. Environmental Protection
Agency (EPA) and Chairman Kristine Svinicki, Annie Caputo and David Wright to be
Members of the Nuclear Regulatory Commission (NRC)

June 13, 2017, 10:00AM

Let me begin by welcoming each of our four witnesses to today's hearing. Thank you for your past public service and for your continued willingness to serve. The jobs to which you have been nominated are very important to the health and safety of the American people.

Mr. Chairman, as we have discussed, I am concerned that we do not have parity in Nuclear Regulatory Commission (NRC) nominees before us today. It is critical for the Commission to have consistent leadership from both political parties, especially as the industry faces an uncertain future.

I hope we can find a path to ensure that the White House re-nominates Commissioner Jeff Baran, and that the Committee pairs consideration of his nomination with some or all of the NRC nominees before us.

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And you don't have to take my word for it either. Our colleague, Senate Judiciary Committee Chairman Chuck Grassley, sent a letter to President Trump just this past Friday, admonishing the directive, noting,

"It harms not just the Members who happen to be in the minority party at the moment, but also, Members in the majority party who are not currently Chairmen. It obstructs what

ought to be the natural flow of information between agencies and the committees, which frustrates the Constitutional function of legislating."

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also made EPA officials available to testify at 40 hearings. And in 2015 alone, with all of those incoming requests, EPA, under Gina McCarthy's leadership, sent 276,510 pages of documents to Congress. One more time – 276,510 pages. Colleagues, while our asks may not be welcomed by this administration, they are not unreasonable, nor are they unprecedented.

Oversight should not be a partisan issue. As Senator Inhofe and then-Chairman Inhofe noted in 2015, lack of timely and complete responses from agencies "frustrate[s] Congress' ability to fulfill its constitutional duty to perform oversight of the Executive Branch…" You were right then, and you are right today.

Absent a heartfelt commitment by EPA to provide complete and timely responses to our current information requests, I will find it very difficult to support moving forward with the consideration of ANY EPA nominees.

I do not make such a statement lightly or with any sense of joy, but the nominations we are discussing today are important ones. They deserve our attention, just as our inquiries deserve the attention of this administration.

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In closing, I look forward to hearing how each of the nominees before us today will fulfill the responsibilities of the positions to which they are nominated. I hope they will share with the Committee their commitment to ensure that these agencies remain vigilant and devoted to the protection of all Americans. Again, let me thank each of our witnesses for joining us today and for your willingness to serve your country in these important positions of trust.

Senator Barrasso. Thank you very much, Senator Carper.

As you and I have discussed, I believe the Administration should and has a responsibility to answer members' questions. The Obama administration, I believe, went out of its way to avoid answering my specific oversight requests, responses that I never received, and I found it very disturbing.

With respect to the Committee's oversight function, I believe it is critically important. I agree the executive branch agencies must be required to respond to the Committee's reasonable oversight re-

quests.

I understand that so far the EPA, this is the Trump Administration, so far has received 416 letters and has answered 386 to date. That is only since January 20, 2017. That is what I understand,

and we will get the specific breakdown.

As Chairman, I am going to work to ensure that the executive branch agencies under the current Administration work diligently and expeditiously to respond to the Committee's reasonable oversight requests in compliance with all laws, rules, policies, precedents, and practices.

Senator Inhofe.

OPENING STATEMENT OF HON, JAMES M. INHOFE. U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator Inhofe. Thank you, Mr. Chairman.

Let me just say that I appreciate the fact that I can say some things about two of my favorite people, whom I have worked with for a long period of time. I have to say this, by comparison with the responsive attitude they have always had, some of the other

people did not look so good in the past.

Yet, we have watched people like Pruitt, for example, having gone through this thing and not only being grilled and asked questions to an unreasonable extent, but when it came time for his questions on the record, he had to endure 1,600 questions. That is unheard of. You guys are not going to have to do this. That would not be fair at all.

Let me say this. I have worked with both Annie Caputo and Susan Bodine for many, many years. I have noticed, Annie, you have your husband, AJ, with you, and your son, Owen. I see that cute little girl; hold your hand up. That is Abbey. I remember when Abbey was born. That is how long I have known these people.

Annie joined my EPW staff in 2007. Because her experience and

expertise in the nuclear area are so well known, she has been called upon by members of the Democratic Party as well as the Republican Party. Her expertise was valuable to me in the aftermath of the nuclear accident at Fukushima and in my work to ensure the NRC issued timely decisions on new nuclear plant licenses. Most recently, she has been central in developing the bipartisan Nuclear Innovation Act.

Similarly, Susan Bodine has been so valuable to me. As a staffer, she was the general counsel for our Committee for the last few years. Prior to that, she had experience and tenure in the EPA during the George W. Bush administration. She was critical to me and my staff when we worked on the famous Tar Creek Superfund site in northeastern Oklahoma. I think, at the time, that was the most devastating Superfund site in America, and we waded through that.

In the last Congress, Susan was a large part of the team that put together the FAST Act, the Water Infrastructure Act and the Chemical bill. In fact, we had a meeting at 12:15 p.m. every Wednesday with the leader of the Senate, Mitch McConnell, and the Chairmen of the committees. When my turn came, I would say, "Now a report on the Committee that actually does things," and that is this Committee. That is true. We did.

Susan will be an asset to the Agency where she previously

worked. She knows the laws that govern the EPA.

I thank you again for allowing me to speak on behalf of these two individuals that have served the Committee and me so faithfully over the years.

Senator Barrasso. Thank you very much, Senator Inhofe.

We would now like to welcome, congratulate, and hear from our nominees. I want to remind each of you that your full written testimony will be made a part of the record. I look forward to hearing the testimony. We ask that you keep your comments to 5 minutes. We will hear first from Ms. Svinicki. Please proceed.

STATEMENT OF KRISTINE SVINICKI, NOMINATED TO BE CHAIRMAN, U.S. NUCLEAR REGULATORY COMMISSION (REAPPOINTMENT)

Ms. SVINICKI. Thank you, Chairman Barrasso, Ranking Member Carper, and members of the Committee.

I am grateful to President Trump for nominating me to a third term of service on the Commission and was humbled by his request of me earlier this year to assume the role of the Commission's Chairman.

If the Senate acts favorably on my nomination, I would, once again, be privileged to continue this work, alongside my currently serving colleagues, Commissioners Baran and Burns.

I also congratulate my fellow nominees to the Commission and wish them well in this confirmation process. I know them both to be individuals of great capacity and commitment and am confident that, if confirmed, they will apply themselves in full measure to supporting the NRC's important mission.

According to those keeping records at the NRC, this is my eighteenth appearance as a witness before this Committee; my third as a nominee. In light of that, the record of my views on relevant mat-

ters is well established.

With the exception of Senators new to the Committee, it is likely that the votes I have taken and the positions I have established over this span of years provide adequate terrain for both agreement and disagreement with elements of my record.

I state with sincerity that my appearances before your Committee and the exchange of sometimes pointed differences on issues have shaped me as a Commissioner. The members of this Committee have routinely challenged me to examine all dimensions of the issues, to apply the highest rigor to my consideration of all matters, and to continue to stay open to new information and new insights.

These exchanges reinforce the importance of never becoming complacent in my work, of maintaining an inquiring attitude, and being mindful always of the full weight of the solemn responsibilities entrusted to me. If you honor me with your approval of my nomination, I commit myself to continuing to approach my duties in this way.

Of course, any contributions I have made to the NRC during my time there would not have been achieved without the hard work and commitment of the women and men of the NRC and their sustained efforts to advance the NRC's mission under the law, that of ensuring adequate protection of public health and safety and promoting the common defense and security.

Nearly 10 years into this journey, their commitment to this shared goal is what inspires and motivates me each day. Once again, I would like to take this opportunity to convey my personal gratitude to each of them for their contributions to whatever achievements I have had along the way and for their engagements with me over the years, which have helped to shape and form my views on so many important matters before the Agency.

Chairman Barrasso, Senator Carper, and members of the Committee, thank you. I appreciate the opportunity to appear today

and look forward to the Committee's questions.

[The prepared statement of Ms. Svinicki follows:]



Kristine L. Svinicki

The Honorable Kristine L. Svinicki was designated Chairman of the U.S. Nuclear Regulatory Commission (NRC) by President Donald J. Trump on January 23, 2017. She was sworn in for her second term as a Commissioner to a term ending on June 30, 2017. Her previous term as a Commissioner began on March 28, 2008.

Ms. Svinicki has a distinguished career as a nuclear engineer and policy advisor, working at the state and federal levels of government, and in both the legislative and executive branches. Before joining the NRC, Ms. Svinicki spent over a decade as a staff member in the United States Senate advancing a wide range of policies and initiatives related to national security, science and technology, and energy and the environment. She also served as a professional staff member on the Senate Armed Services Committee for the Committee's former Chairman, Sen. John Warner, R-Va., and, subsequently, for the Committee's ranking Republican member, Sen. John McCain, R-Ariz. There, Ms. Svinicki was responsible for the Committee's portfolio of defense science and technology programs and policies, and for the atomic energy defense activities of the U.S. Department of Energy, including nuclear weapons, nuclear security, and environmental programs.

Previously, Ms. Svinicki worked as a nuclear engineer in the U.S. Department of Energy's Washington, D.C. Offices of Nuclear Energy, Science and Technology, and of Civilian Radioactive Waste Management, as well as its Idaho Operations Office, in Idaho Falls, Idaho. Before that, she was an energy engineer with the State of Wisconsin at the Wisconsin Public Service Commission in Madison, Wisconsin.

Born and raised in Michigan, Ms. Svinicki earned a bachelor's degree in nuclear engineering from the University of Michigan in 1988. She is a longstanding member of the American Nuclear Society, where she served two terms on the ANS Special Committee on Nuclear non–Proliferation. In 2006 and 2012, the Society honored her with its Presidential Citation in recognition of her contributions to the nuclear energy policies of the United States and the regulatory framework guiding its development and use. She has served as a member of the Center for Strategic and International Studies' Task Force on Global Nuclear Materials Management, and as an Expert Advisory Panel Member to the NRC on assessing the future of regulatory research needs. She was selected as a Stennis Congressional Fellow of the 108th Congress, as a Brookings Institution Legis Congressional Fellow in 1997, and as the University of Michigan College of Engineering Alumni Society Merit Award recipient for Nuclear Engineering and Radiological Sciences in 2009.

WRITTEN TESTIMONY OF KRISTINE L. SVINICKI, CHAIRMAN UNITED STATES NUCLEAR REGULATORY COMMISSION APPEARING AS A NOMINEE BEFORE THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

JUNE 7, 2017

Thank you Chairman Barrasso, Ranking Member Carper, and members of the Committee. I am grateful to President Trump for nominating me to a third term of service on the Commission and was humbled by his request of me earlier this year to assume the role of the Commission's Chairman. If the Senate acts favorably on my nomination, I would, once again, be privileged to continue this work, alongside my currently serving colleagues, Commissioners Baran and Burns. I also congratulate my fellow nominees to the Commission and wish them well in this confirmation process. I know them both to be individuals of great capacity and commitment and am confident that, if confirmed, they will apply themselves in full measure to supporting the NRC's important mission.

According to those keeping records at the NRC, this is my eighteenth appearance as a witness before this committee; my third as a nominee. In light of that, the record of my views on relevant matters is well established. With the exception of Senators new to the Committee, it is likely that the votes I have taken and the positions I have established over this span of years provide adequate terrain for both agreement and disagreement with elements of my record. And I state with sincerity that my appearances before your Committee and the exchange of sometimes pointed differences on issues have shaped me as a Commissioner. The members of this Committee have routinely challenged me to examine all dimensions of the issues, to apply the highest rigor to my consideration of all matters, and to continue to stay open to new information and new insights. These exchanges reinforce the importance of never becoming complacent in my work, of maintaining an inquiring attitude, and being mindful always of the full weight of the solemn responsibilities entrusted to me. If you honor me with your approval of my nomination, I commit myself to continuing to approach my duties in this way.

Of course, any contributions I have made to the NRC during my time there would not have been achieved without the hard work and commitment of the women and men of the NRC and their sustained efforts to advance the NRC's mission under the law – that of ensuring adequate protection of public health and safety and promoting the common defense and security. Nearly 10 years into this journey, their commitment to this shared goal is what inspires and motivates me each day. Once again, I would like to take this opportunity to convey my personal gratitude to each of them for their contributions to whatever achievements I have had along the way and for their engagements with me over the years, which have helped to shape and form my views on so many important matters.

Chairman Barrasso, Senator Carper, and members of the Committee, thank you. I appreciate the opportunity to appear today and look forward to the Committee's questions.

Senate Environment and Public Works Committee
Hearing entitled, "Hearing on the Nominations of Kristine Svinicki
(Reappointment), Annie Caputo and David Wright to be Members of the U.S.
Nuclear Regulatory Commission, and the Nomination of Susan Bodine to be
Assistant Administrator of the Office of Enforcement and Compliance Assurance
of the U.S. Environmental Protection Agency."
June 13, 2017
Questions for the Record for Kristine Svinicki

THE HONORABLE COREY BOOKER

QUESTION 1.

Some private sector companies are working on new technologies such as fusion reactors and sub-critical reactors that are not currently subject to NRC review. If NRC was to amend its definition of "nuclear reactor" to cover advanced reactors such as these, do you believe that NRC should subject these technologies to the existing regulatory framework designed for light water reactors, or would you expect that NRC would instead quickly develop a more appropriate risk based regulation for these types of inherently safer technologies?

ANSWER.

While the current regulations provide the NRC with sufficient flexibility to review and appropriately make conclusions on the safety and security on all reactor designs, the NRC acknowledges the potential inefficiencies for non-light water reactor (LWR) applications reviewed against existing LWR criteria. Therefore, the NRC is enhancing its existing framework in a technology-neutral manner to increase efficiency, timeliness, and predictability of non-LWR reviews. If reconfirmed as Chairman, I commit to continuing to support these efforts.

THE HONORABLE EDWARD MARKEY

QUESTION 2.

The 2005 Energy Policy Act includes a provision, which I authored, that mandates that the NRC conduct security inspections at U.S. nuclear power plants. These inspections must include force-onforce exercises, where a mock adversary force conducts a simulated attack on a power plant to probe potential gaps in the plant's security.

These exercises allow the NRC to ensure that nuclear power plants are adequately protected against terrorists or other bad actors. The alternative – of having plant operators run their own exercises – would not only violate the law, but it would also create a clear conflict of interest, and undermine public safety.

In the past, the nuclear industry lobbied the NRC to get rid of its force-on-force exercises in favor of exercises conducted by power plant operators. In effect, this would have nuclear power plant operators inspect themselves, in violation of the law.

Do you support security evaluations of nuclear power plants that are conducted by the Nuclear Regulatory Commission, and not by licensees?

ANSWER.

Section 170D of the Atomic Energy Act of 1954, as amended, requires the NRC to conduct triennial security evaluations at facilities designated by the Commission. These security evaluations must include a force-on-force (FOF) exercise that simulates security threats in accordance with the Design Basis Threat to the maximum extent practicable. Additionally, the Commission must mitigate any potential conflict of interest that could influence the results of an FOF exercise. Section 170D does not specifically state that the NRC must conduct these FOF exercises. If the NRC was petitioned to amend its regulations to have licensee-conducted FOF exercises, the Commission would need to determine whether that proposal would meet the requirements of Section 170D in order for such a change to be permissible. This determination has not been made.

QUESTION 3.

When Entergy announced its intention to cease operations at the Pilgrim Nuclear Power Station, the Nuclear Regulatory Commission promised that the closure would "not relieve [Entergy] of the responsibility of running that plant as safely as possible until the end of its life."

But in the last several months, the NRC has broken that promise by providing Pilgrim with exemptions from critical safety upgrades. After the Fukushima nuclear disaster in 2011, the Fukushima Near-Term Task Force recommended a series of safety upgrade for America's nuclear fleet. The NRC opted to accept these recommendations, and apply them to reactors of the same design as Fukushima, like Pilgrim.

Among the critical safety upgrades were the requirement to reevaluate and address the risk of earthquakes and floods. The other critical safety upgrade was to install hardened containment vents capable of operating under severe accident conditions. These are meant to prevent the release of radioactivity in the event of a terrorist attack or severe accident.

But instead of requiring Entergy to carry out these commonsense safety upgrades, the NRC provided Pilgrim with exemptions Do you believe that providing exemptions from NRC safety regulations to U.S. nuclear plants increases public confidence in the safe operation of those plants?

ANSWER.

The practice of considering exemptions is a well-established part of the NRC's regulatory process that allows licensees to address site-specific situations or implement alternative approaches for circumstances not necessarily contemplated in the regulations. A key part of the NRC's review of an exemption request is the determination that granting the exemption will not present an undue risk to the public health and safety and is consistent with the common defense and security. This determination, combined with the NRC's inspection oversight of the licensee's implementation of safety regulations, license requirements, and the conditions of the exemption, provide assurance that the safe operations of facilities to which an exemption has been granted will be maintained.

QUESTION 4.

Do you intend to continue granting exemptions to nuclear plants that have announced their intention to shut down operations?

ANSWER.

The NRC considers the use of exemptions to be an appropriate and essential part of our regulatory program. Exemptions allow licensees to address site-specific situations or implement alternative approaches for circumstances not necessarily contemplated in the regulations or to seek regulatory relief from existing requirements to address special circumstances, such as when application of the regulation in the particular circumstance is not necessary to achieve the underlying purpose of the rule, or to avoid undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted. The exemption process also allows the NRC to grant appropriate regulatory relief that permits permanently shut down power resource to develop programs that are commensurate with the site-specific risks, and to focus resources on decommissioning, while continuing to maintain adequate measures to protect the health and safety of the public and not endanger common defense and security.

Several reactors in the U.S. are transitioning to decommissioning. During the transition period, numerous site-specific licensing actions are required to revise the plant's licensing basis to reflect the diminished potential for accidents and reduced risk after permanent shutdown and defueling. The NRC's current process establishes an appropriate regulatory framework for decommissioning a plant; however, the NRC has initiated a decommissioning rulemaking that could reduce the numerous licensing actions needed during the transition period. The proposed rule will be provided for Commission consideration in 2018. Until the rulemaking is complete, NRC and licensees will continue to follow the existing licensing action approach to transition to decommissioning, which may include granting site-specific exemptions on a case-by-case basis.

QUESTION 5.

The recent National Academies of Sciences report on lessons learned from the Fukushima nuclear disaster noted that the risk of a spent nuclear fuel fire may actually rise at a decommissioned nuclear plant, because "the pool may be filled to near capacity and some plant safety systems may be inoperable." Yet the Commission has made it a habit of providing exemptions to decommissioned reactors from emergency response and security regulations. Exempting these plants from NRC rules wholesale permits the nuclear industry to lower the safety margin at decommissioned reactors, which continue to have dangerous spent nuclear fuel on site.

Do you agree that the danger of accidents at spent-fuel pools at decommissioned reactors warrants the application of all emergency response and security regulations that are designed to protect against spent fuel fires?

ANSWER.

While NRC regulations support the agency's statutory mission to promote the common defense and security and to protect the health and safety of the public, a licensee may at times seek exemptions from emergency planning or security requirements to reflect the lower risk and reduced security focus associated with a power reactor being permanently shut down. These exemption requests are evaluated on a case-by-case basis, and are granted only if a licensee demonstrates that the applicable regulatory criteria in 10 CFR § 50.12(a) or 10 CFR § 73.5 are met.

QUESTION 6.

In June 2016, I wrote to the NRC to urge the Commission to reexamine and address the risk to public safety posed by overcrowded spent-fuel pools at commercial reactors, in light of two reports that identified serious gaps in the NRC's previous analysis. A fire in a densely-packed spent-fuel pool could result in health and economic consequences comparable to those caused by an accident at an operating reactor, including the displacement of millions of people and untold economic damage. These risks could be much reduced by transferring spent fuel to dry casks, which are more resilient against accidents or attacks.

The National Academy of Sciences (NAS) report, Lessons Learned from the Fukushima Nuclear Accident for Improving Safety and Security of U.S. Nuclear Plants, recommends that the NRC "perform a spent fuel storage risk assessment to elucidate the risks and potential benefits of expedited transfer of spent fuel from pools to dry casks." Do you intend to carry out this recommendation? If not, why not?

ANSWER.

The U.S. Nuclear Regulatory Commission (NRC) staff has previously evaluated expediting the transfer of spent fuel from pools to dry casks. Based on the staff's assessment, the Commission decided that, due to the low risk to public health and safety from spent fuel pool storage, additional regulatory action is not needed. The agency's evaluation was supported by several studies of spent fuel storage, for both pools and dry cask storage, performed or sponsored by the NRC. The NRC also evaluates operational experience and risk assessments performed by the scientific and international community, industry, and members of the public to ensure the risks posed by spent fuel pools and dry cask storage are understood and are adequately addressed by regulatory requirements. In addition, the NRC staff participates in international activities associated with assessing and addressing potential issues related to the storage of spent fuel. The NRC staff reassessed the NAS recommendation and found that existing studies and ongoing activities noted above are sufficient to support regulatory decisions on the safety and security of spent fuel pools.

QUESTION 7.

The NAS report recommended that the NRC "strengthen their capabilities for identifying, evaluating, and managing the risks from terrorist attacks," and that the NRC's spent fuel storage risk assessment "should address accident and sabotage risks." Do you agree with the NAS recommendation that the NRC must fully account for the risk of terrorism and sabotage in its re-assessment of spent-fuel risks? If not, why not?

ANSWER.

Plant security is one of many topics within the NRC's risk-informed, performance-based framework that is assessed in combination with, but not fully integrated into, probabilistic risk assessment models. The NRC has used and will continue to use risk insights in the security area to ensure an appropriate level of security is maintained at NRC-regulated facilities. Security issues were extensively assessed in studies and regulatory analyses following the terrorist attacks of September 11, 2001. As a result, enhanced security requirements were

established to reduce the risks of radiological sabotage at nuclear power plants, including consideration of spent fuel pools.

QUESTION 8.

What steps, if any, will you support to strengthen the NRC's capabilities for identifying, evaluating, and managing the risk of terrorist attacks on nuclear facilities, including spent-fuel storage sites?

ANSWER.

The NRC works in close cooperation with other Federal agencies to continually assess the possible nature and likelihood of security threats, and determine if changes to plant security programs are needed. In addition, the NRC and industry response to the September 11, 2001, terrorist attacks included plant changes as part of mitigating strategies to maintain or restore core cooling, containment, and spent fuel pool cooling capabilities under the circumstances associated with loss of large areas of the plant due to explosions or fire. The NRC staff assessed the NAS recommendation and did not identify a need to initiate new activities or to otherwise redirect resources to revise existing programs or to accelerate initiatives to enhance the use of risk assessment techniques in the security area.

QUESTION 9.

As the Fukushima disaster demonstrated, a major release of radioactivity at a nuclear plant could have significant societal effects. As such, to fully capture spent-fuel storage risks, the NAS report recommended that the NRC's analysis "[c]onsider societal, economic, and health consequences" of a spent-fuel fire, as well as the direct risks of radioactive release. Do you agree with this recommendation? If not, why not?

ANSWER

The NRC staff evaluated changing its approach to analyzing severe accident scenarios and related costs and benefits of new regulatory requirements after the accident at the Fukushima Dai-ichi nuclear power plant in Japan. The staff's 2012 assessment was provided to the Commission in the publicly available report, "Consideration of Economic Consequences within the U.S. Nuclear Regulatory Commission's Regulatory Framework,"(SECY-12-0110). At that time, the Commission determined that major changes such as those cited in the NAS recommendation were not needed to support its regulatory decisions on whether new requirements were needed for operating nuclear power plants. Further, in performing economic analyses, the NRC does consider public health, occupational health, environmental considerations, and property impacts.

QUESTION 10.

According to the NAS report, the NRC "has not carried out an independent examination of surveillance and security measures for protecting stored spent fuel," as recommended by the NAS's 2006 report. As such, the 2016 NAS report recommended that the NRC fulfill this recommendation, and that the NRC's analysis "should include an examination of the effectiveness of [the NRC's] programs for mitigating insider threats." Do you support carrying out an independent examination, as recommended by both NAS studies? If not, why not?

ANSWER

The NRC establishes strategic goals and measures and issues routine reports regarding its performance related to its safety and security goals. In the security arena, the NRC also works closely with other Federal agencies to identify and address possible threats. In addition to the NAS studies, the NRC has obtained independent assessments in the security area from the NRC's Office of the Inspector General (OIG), U.S. Government Accountability Office (GAO), and other oversight bodies. Further, the staff routinely assesses information gained from operating experience, the inspection program, insights from drills and exercises, and the agency's participation in various international activities. Therefore, after evaluating the NAS recommendation, the NRC staff concluded that another independent assessment is not necessary, given that the NRC's requirements to ensure security of nuclear power plants and spent fuel storage will continue to be the subject of independent reviews by the OIG, GAO, and other organizations. The staff will also continue to benefit from independent insights gained from interactions with other Federal agencies, international bodies, licensees, and other stakeholders.

QUESTION 11.

According to an article in the May 26 issue of Science magazine, the NRC's previous assessment of spent-fuel risks ignored the potential damage from a spent fuel fire beyond 50 miles of a plant, despite the fact that a significant portion of the radiation exposure would occur beyond that radius. Failing to account for this factor led the NRC to underestimate the destruction of a spent fuel fire. Do you support inclusion of contamination and other effects beyond 50 miles in the NRC's assessment of spent fuel fire risks?

ANSWER.

The NRC will continue to evaluate any new information that arises in this area and assess its impact to existing regulatory requirements.

QUESTION 12.

According to the Science magazine article, the NRC's previous analysis also assumed that, in the event of a spent fuel fire, contaminated areas could be effectively cleaned up within a one year timeframe, despite evidence from both the Chernobyl and Fukushima accidents. Do you support revising that assumption in any re-assessment by the Commission of spent-fuel risks?

ANSWER.

The NRC will evaluate any new information that arises in this area and assess its impact to existing regulatory requirements.

QUESTION 13.

According to the recent NAS study, under NRC rules, if the risk of prompt and cancer fatalities in the vicinity of a nuclear accident falls below a certain threshold, the NRC is not required to undertake a cost-benefit analysis of strategies for mitigating that risk. As a result of this rule, even though a spent-fuel fire could displace millions of people and result in trillions in economic damage, the NRC would not be required to evaluate the costs and benefits of strategies to mitigate such an event because it would not necessarily produce a significantly higher risk of fatalities in the immediate vicinity of the plant. To address this obvious deficiency, the NAS study cites experts who have suggested that the NRC should amend its rules by

setting a limit on the likelihood that a large number of people would be displaced for a long-term period following a release of radioactive fall-out. Do you support implementing such a rule?

ANSWER.

The NRC considers a broad range of costs and benefits when determining whether to require safety enhancements at nuclear power plants. The NRC's NUREG/BR-0184, "Regulatory Analysis Technical Evaluation Handbook," directs that a value-impact analysis consider a wide range of attributes that could be affected by the proposed regulatory action (e.g., a proposed safety enhancement at a nuclear power plant). One of these attributes, discussed in Section 5 of NUREG/BR-0184, considers changes to offsite property in various forms, including costs of evacuations and indirect impacts to tourism and other industries. This same analysis also considers interdiction measures, such as decontamination and cleanup costs.

THE HONORABLE BERNARD SANDERS

QUESTION 14.

As you know, the Vermont Yankee Nuclear Power Station is in the process of decommissioning. The Nuclear Regulatory Commission (NRC) requested comments on a draft regulatory basis ending this month to support a rulemaking that would amend NRC's regulations for the decommissioning of nuclear power reactors. The NRC's goals in amending these regulations would be to provide for an efficient decommissioning process; reduce the need for exemptions from existing regulations; address other decommissioning issues deemed relevant by the NRC staff; and support the principles of good regulation, including openness, clarity, and reliability. If confirmed, will you commit to supporting the following decommissioning requirements for the decommissioning rulemaking? If not, why?

- The enhancement of community involvement by requiring licensees of decommissioning reactors to include state and local officials' input into licensees' decommissioning plans;
- that decommissioning funds are used strictly for statutorilyauthorized purposes;
- that spent nuclear fuel be removed from wet storage and placed into safer dry cask storage as quickly as possible;
- that the site of the plant is rapidly returned to beneficial use instead of decades after the plant ceases operations, and that licensees maintain or obtain the financial resources necessary to do so; and
- that all emergency preparedness and response, and security resources and licensing requirements, remain in place until all the spent nuclear fuel is placed into safer dry cask storage or removed from the site.

ANSWER.

At this stage of the rulemaking process, as a member of the Commission, voicing support for specific issues could impede the open and transparent rulemaking process employed by the

staff as it engages with the public and stakeholders in formulating the draft and final rule, which NRC Staff will then present to the Commission for its consideration.

QUESTION 15.

What do you believe should be the process for reviewing and processing public comments in the rulemaking and other formal proceedings? How should public comments be weighed by the Commission against comments from the industry?

ANSWER.

The NRC Staff adheres closely to the Administrative Procedure Act in all aspects of its rulemaking process. This includes the notice and comment process whereby NRC Staff engages with the public to receive comments on its proposed rules. Each comment is independently evaluated by the NRC Staff as it refines the draft rule into the final rule. If confirmed, I will continue to support the NRC Staff in this process and ensure that the Staff closely adhere to the requirements in the Administrative Procedures Act.

QUESTION 16.

How should the NRC educate the public about the existence and meaning of the ongoing decommissioning rulemaking process? What should be NRC's plan for community outreach for the remainder of this decommissioning rulemaking process?

ANSWER.

The NRC extends opportunities to participate in the agency's regulatory process, including rulemaking activities, to a diverse body of stakeholders and the general public. Typically, the public is given 75 to 90 days to provide written comments for consideration on rulemaking actions. The NRC uses the government-wide Web site http://www.regulations.gov to provide an easy way for members of the public to access and comment on NRC rulemaking actions.

In the case of the decommissioning rulemaking, the NRC issued An Advance Notice of Proposed Rulemaking in November 2015. The NRC received 161 public comment submissions, which are being considered as part of the development of the regulatory basis for the proposed rule. A proposed rule is expected to be provided for the consideration of the Commission in May of next year. If the proposed rule is approved by the Commission, the NRC will subsequently seek public comments to help inform the final rule.

QUESTION 17.

Should NRC plan public field meetings to gather comments or testimony from communities where nuclear plants are decommissioning now, or will be soon? If not, why?

ANSWER.

The NRC has hosted public meetings to discuss the decommissioning rule. While the NRC may not be able to host meetings near all the nuclear plants that have announced premature shutdown, the NRC offers stakeholders the option to participate in our public meetings in a variety of ways, for example, they can participate in person or via telephone conference. The agency has also expanded its use of Web conferencing to allow participation by anyone with access to a computer, minimizing travel costs and increasing opportunities for public involvement

QUESTION 18.

What is the justification for the NRC to continuously waive its own regulations, especially those pertaining to the decommissioning

trust fund, even though it is working to create new decommissioning rules?

ANSWER.

A licensee may at times seek exemptions from emergency planning requirements to reflect the lower risk and reduced security focus associated with a power reactor being permanently shut down. These exemption requests are evaluated on a case-by-case basis, and are granted only if a licensee demonstrates that the applicable regulatory criteria in 10 CFR 50.12(a) or 10 CFR 73.5 are met.

QUESTION 19.

What justification is there for the NRC to approve withdrawals from Vermont Yankee's Decommissioning Trust Fund for spent fuel management when NRC's regulations expressly prohibit such use? (10 C.F.R. § 50. 75 at FN 1.)

ANSWER

Under NRC regulations, some licensees choose to place funds in their decommissioning trusts to pay for costs associated with spent fuel management and site restoration. Vermont Yankee Nuclear Power Station sought regulatory exemptions to use decommissioning trust funds for spent fuel management expenditures on the grounds that the amount of money projected to be in the fund exceeded the amount projected to be needed for radiological decommissioning. The NRC has approved the request to use these excess funds, consistent with the criteria set forth in Title 10 of the Code of Federal Regulations (10 CFR) 50.12.

In approving this exemption, allowing withdrawals from decommissioning trust funds for spent fuel management, the staff acted under the authority delegated to it by the Commission. The staff found the exemptions were authorized by law, concluded the exemptions presented no undue risk to public health and safety and were consistent with the common defense and security, and determined that special circumstances existed.

QUESTION 20.

Former NRC Chair Allison Macfarlane authored a paper in 2003 along with other experts that concluded that dry cask storage offers compelling advantages over wet pool storage: It is safer and it is less prone to failure. They recommended that spent fuel should be transferred from wet pools to dry cask storage within five years of discharge to reduce the risk of fire and subsequent radioactive contamination of air and land.

Do you have a position on dry cask versus wet pool storage? If confirmed, will you commit to supporting more studies of this issue?

ANSWER

The NRC's responsibility is to ensure that spent nuclear fuel is managed safely and securely in either wet or dry storage. Both storage modes have been determined to be safe. In May of 2014, the Commission approved the staff's recommendation not to pursue additional study to assess possible regulatory action to require expeditious transfer of spent fuel from nuclear power plants' spent fuel pools to dry cask storage. In my vote on this question, I noted the large body of evidence presented by the staff, and concluded that this record, taken as a whole, overwhelmingly supported the staff's recommendation. If reconfirmed, I would support more studies of this issue should new and significant information on this matter be developed.

QUESTION 21.

State regulatory officials from Vermont have raised concerns that the NRC is less likely to consider commentary received from state and local governments on reactor license change requests, and NRC rulemaking and regulatory guidance efforts, than commentary from nuclear power plant operators (e.g. Entergy, Exelon and First Energy) and nuclear power industry organizations such as the Nuclear Energy Institute (NEI). If confirmed, what steps would you take to assure that commentary and concerns expressed by state and local governments, or other nuclear power plant stakeholders, are given consideration equal to that already enjoyed by nuclear power plant operators and their supporters?

ANSWER

Under the Administrative Procedure Act and the Atomic Energy Act of 1954, as amended, the NRC has an obligation to provide stakeholders, including state and local governments, with an opportunity to participate in rulemakings and adjudications and must consider the input from all entities in developing the final agency action. As an additional matter, the agency frequently makes its guidance documents available to members of the public for a similar opportunity to comment. The State of Vermont has often participated in these activities, and last year prevailed in its adjudicatory claim that the agency staff should have prepared an environmental assessment for an exemption request related to the Vermont Yankee decommissioning fund. Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), CLI-16-17, 84 NRC 99 (2016). If reconfirmed, I commit to ensuring that the agency continues to meet its legal obligation to consider input from interested stakeholders in an even-handed manner.

QUESTION 22.

To date, nuclear power plants that have permanently shut down have been permitted to eliminate their offsite Emergency Planning Zones (EPZs) roughly 15 to 20 months after cessation of power generation. The risk of a spent fuel fire resulting from a significant loss of spent fuel pool water inventory is greatly reduced, but a reduction in risk is not an elimination of risk. A reduced risk of a spent fuel fire still requires a significant offsite emergency response that requires drills or exercises to demonstrate proficiency in response and funding to maintain essential emergency response equipment and staff. If confirmed, will you support maintaining offsite EPZs for permanently shut down nuclear power plants until such time that all spent fuel is removed from onsite spent fuel pools?

ANSWER.

Following the permanent removal of all spent fuel from the reactor vessel, the range of events that can have significant offsite consequences is greatly reduced. As a result, some decommissioning licensees have requested relief from emergency planning requirements that do not reflect the reduced risk. If these exemptions are granted, licensees must continue to maintain an onsite emergency plan addressing the declaration of an emergency up to the second-lowest classification level ("Alert"), capability to notify licensee personnel and offsite authorities of emergencies, onsite exercises with the opportunity for offsite response organization participation, arrangements for offsite response organizations (i.e., law

enforcement, fire and medical services) that could respond to onsite emergencies, and coordination with designated offsite government officials following an event declaration so that, if needed, offsite authorities can implement appropriate response actions. If reconfirmed, I will continue to approve exemptions that are authorized by law and maintain an appropriate level of safety at the facility in question, subject to the NRC staff's specific evaluation.

QUESTION 23.

When NRC staff respond to concerns raised by state or local government officials, or individual concerned citizens, they rely heavily on references to voluminous regulatory documents which are difficult to follow, or use jargon that only makes sense to other NRC staff. If confirmed, what actions would you consider taking to facilitate clear communication by NRC officials with lay members of the public?

ANSWER.

The Commission has directed staff to make greater use of plain language when speaking to the public, particularly about high profile events, such as the nuclear accident at Fukushima-Daiichi in Japan. In addition, the NRC's Executive Director for Operations has issued guidance to the staff on improving the quality of documents, emphasizing clarity of writing and the use of plain language, with links to training opportunities. Finally, the agency held approximately 1,000 public meetings last year, at many of which members of the public had opportunities to ask the technical staff questions or engage in discussions before or after the meeting. These meetings provide an important opportunity for members of the public to better understand regulatory issues. If confirmed, I will continue to emphasize the need for clear communications, consistent with the Principles of Good Regulation.

QUESTION 24.

One significant source of frustration for state and local governments, and individuals who are following nuclear power plant decommissioning efforts, is that the process of complete decommissioning and site restoration is under the jurisdiction of multiple federal agencies in addition to the NRC, such as the Environmental Protection Agency, the Department of Energy, the Department of Transportation, and the Department of Homeland Security, just to name a few. If confirmed, what steps would you take to assure that the scope of regulatory authority of all federal agencies with jurisdiction is clear to all stakeholders?

ANSWER.

As discussed above in response to question 23, the NRC has undertaken extensive efforts in recent years to improve the clarity of its communications with interested stakeholders. If reconfirmed, I will continue to support these efforts.

QUESTION 25. What do you believe is the future of nuclear power in this country?

ANSWER.

Nuclear power is likely to provide some fractional component of U.S. energy supply in the future at levels dependent on economic and other factors outside of the NRC's jurisdiction.

QUESTION 26.

If confirmed, what role do you believe you should play—if any—as Commissioner in supporting the nuclear power industry?

ANSWER.

As an independent agency, the NRC does not play a promotional role for the nuclear power industry. The mission of the NRC under law is to license and regulate the Nation's civilian use of radioactive materials to protect public health and safety and promote the common defense and security.

QUESTION 27.

According to recent Energy Information Agency estimates, the generating capacity from nuclear power will drop from 20 percent to 11 percent by 2050. If confirmed, how will you ensure safety during this time of mass decommissioning?

ANSWER.

The NRC ensures that safety requirements are being met throughout the decommissioning process by reviewing decommissioning or license termination plans, conducting inspections, and monitoring the status of activities to ensure that radioactive contamination is reduced or stabilized. The agency's previous experience in the 1990s, and currently, with groups of nuclear power plant ceasing operations before the end of their license terms and decommissioning at the same time, provided lessons learned regarding the safety oversight program for decommissioning sites. As more facilities complete decommissioning, the NRC has implemented those lessons learned in order to improve the effectiveness and efficiency of the safety oversight program for decommissioning sites and is currently undergoing rulemaking to further increase effectiveness and efficiency. If reconfirmed, I will continue to support these activities.

QUESTION 28.

Most of the plants currently being decommissioned across the U.S. are doing so because they are not economically competitive. Some have proposed easing safety and other regulatory burdens to help the economic viability of the nuclear fleet. If regulations on existing and new power plants are decreased, how will you ensure the safety of our nuclear fleet?

ANSWER.

While the Commission is aware of the economic pressures resulting from competition in the energy sector generally, the Commission's role as a regulator is to ensure that the Nation's nuclear plants operate safely, consistent with the agency's health and safety mission. The NRC will continue to maintain adequate measures to protect the health and safety of the public and not endanger common defense and security. If reconfirmed, I will continue to support these efforts.

QUESTION 29.

If confirmed, how will you ensure the public safety of nextgeneration nuclear reactors that implement advanced technologies?

ANSWER.

NRC maintains communication with and awareness of the Department of Energy and private industry activities so that we are aware of new and emerging technologies. This enables NRC to address regulatory policy issues in a timely manner and to be prepared to engage in preapplication and licensing reviews to ensure the safety and security of licensed designs.

Throughout the preparatory activities, we will ensure that the focus remains on safety – NRC will independently verify applicant's data, determine safety margins, and explore uncertainties. If reconfirmed, I will continue to support these activities.

QUESTION 30.

How will the potential development of advanced nuclear technologies affect the problems NRC is currently confronting in storing spent nuclear fuel long-term?

ANSWER.

The NRC expects that its current regulatory structure provides the necessary flexibility through the use of a risk-informed, performance-based framework to accommodate on-site storage, potential offsite interim storage and, when available, geologic disposal of alternate waste forms arising from advanced reactor fuel cycles.

QUESTION 31.

Currently the U.S. has no permanent storage for spent nuclear fuel. Where do you anticipate that spent nuclear fuel from next-generation nuclear reactors will be stored?

ANSWER.

For spent fuel and high-level waste disposal, the NRC expects that the use of a risk-informed, performance-based framework would provide adequate flexibility to accommodate on-site storage, potential offsite interim storage and, when available, geologic disposal of alternate waste forms arising from advanced reactor fuel cycles.

QUESTION 32.

The March 2011 Fukushima nuclear accident prompted the NRC to review its own regulations. The Commission's Fukushima Task Force, consisting of NRC experts with 135 years of nuclear regulatory expertise among them, made a range of key recommendations for improving nuclear plant safety. The final report included 12 recommendations ranging from requirements to upgrade seismic and flood protections to protections against the long power outages that were the ultimate cause of the Japanese meltdowns. They also concluded that all of the recommendations were necessary for the "adequate protection" of nuclear power plants.

Despite the repeated urging of its own experts, the Commission has so far refused to make these recommendations mandatory. What steps will you take to ensure that the Commission revisits this decision and does, in fact, adopt the Task Force's safety recommendations as mandatory?

ANSWER.

Following the issuance of the Task Force Report, the NRC staff prioritized the recommendations based on the urgency of the action and the need for additional information to develop an approach. The NRC staff has since evaluated all of the recommendations and developed an approach to addressing them. The orders, in particular, are mandatory. For example, the majority of plants are in compliance with the Mitigating Strategies Order, which requires plants to be able to maintain safety functions during long power outages. The need for upgrades for seismic and flooding protections will be determined on a plant-specific basis based on the results of ongoing evaluations; in many cases, plants have made interim improvements while the more detailed evaluations are being completed. The most safety-significant activities are either complete or progressing under clearly defined processes. If reconfirmed, I will continue to support the agency's plan for prioritizing and implementing the recommendations from the Task Force Report.

QUESTION 33.

A paper published in *Science* last month by nuclear experts from the Union of Concerned Scientists and Princeton University argued that the NRC places the U.S. at risk of disasters like Fukushima because of problems in its approach to assessing the risks and benefits of safety improvements. The authors suggest that NRC should reform its risk assessments in the following ways (see below). Do you concur that these corrections to current NRC risk assessments are needed? If not, why? If so, how will you address these issues as a Commissioner, if confirmed?

- Take into account the possibility of a terrorist attack in regulatory decisions such as the one on whether or not to require the nuclear utilities to remove spent fuel to dry cask storage after 5 years.
- Take into account accident consequences beyond 50 miles of the site.
- Make assumptions concerning population relocation, and therefore property losses, after a nuclear accident consistent with the EPA's guidance concerning dose levels.
- Make realistic assumptions concerning the efficacy and speed of decontamination actions.
- Update the NRC's assumption concerning the value of a life lost to radiation-induced cancer by a factor of 2.5, as recommended by the NRC staff.

ANSWER.

Over the past several years, the NRC staff has evaluated these issues. In the first four cases, the staff has found that the agency's existing approach provides for reasonable assurance of adequate protection of public health and safety and common defense and security. The Commission has endorsed the staff's findings and recommendations in these matters. The staff is reviewing the article referenced in this question. The staff's proposal regarding the dollar per person-rem conversion factor (which is described in the fifth case above) remains under Commission review and deliberation.

QUESTION 34.

A February 2017 report by Union of Concerned Scientists stated, "Just as nuclear plant owners have downplayed and dismissed clear and present signs about safety culture problems at their plants, the data suggest that the NRC's management is just as dismissive of indications that it has a poor safety culture." Are you concerned that staff at nuclear power plants and the NRC are reluctant to report safety problems because of the lack of trust between workforce and management? If so, how can NRC address the lack of a nuclear safety culture, and lessen risks to public and environmental safety? If not, what evidence do you have that NRC management maintains a robust safety culture?

ANSWER.

Safety and security are the primary pillars of the NRC's regulatory mission and consideration of both is an underlying principle of the Safety Culture Policy Statement issued in 2011. The Policy Statement communicated the Commission's expectations that individual nuclear power plants establish and monitor a positive safety culture commensurate with the safety and security significance of their activities.

The NRC assesses our licensees' Safety Conscious Work Environment (SCWE) through inspections, responses to allegations, and evaluation of performance deficiencies with a SCWE cross-cutting aspect. The NRC takes action, such as issuing chilling effect letters and orders, when it concludes additional actions are warranted to ensure that licensees take appropriate actions to foster a robust SCWE and safety culture.

Internally, the NRC is committed to fulfilling our important safety and security mission, while continuing to nurture an environment that reflects the characteristics of a strong safety culture that encourages all NRC employees and contractors to raise concerns and differing views promptly without fear of reprisal. When recent NRC employee surveys and self-assessments indicated the need for additional action, NRC's management and staff partnered to develop an action plan that focuses on "fostering a greater climate of trust at the NRC" with the goals of strengthening the positive environment for raising concerns; promoting a culture of fairness, empowerment and respect across the agency; and establishing clear expectations and accountability for NRC leaders. I support these efforts.

QUESTION 35.

NRC's Office of Nuclear Material Safety and Safeguards (NMSS) is responsible for regulating activities which provide for the safe and secure production of nuclear fuel used in commercial nuclear reactors; the safe storage, transportation and disposal of high-level radioactive waste and spent nuclear fuel; and the transportation of radioactive materials regulated under the Atomic Energy Act. The United States is facing a significant long-term problem in its disposal of nuclear waste. What do you envision as a potential solution, and what role should NRC play?

ANSWER

The NRC's authority to regulate the storage, transportation, and disposal of high-level waste comes from the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and the Nuclear Waste Policy Act of 1982, as amended. The NRC's role under its authority is that of ensuring safety during transportation and the safety of any facility proposed for such storage or disposal. Those same statutes provide the U.S. Department of Energy (DOE) with the responsibility and authority for designing, constructing, operating, and decommissioning a permanent disposal facility for HLW, and potential interim storage facilities, under NRC licensing and regulation. In its role as a safety regulator, it is the NRC's responsibility to process any such application regardless of the methods and technologies

utilized for transportation, storage, or disposal. The NRC has previously licensed a private fuel storage facility, and has made progress in the review of a geologic repository for HLW disposal. NRC will follow the national policy debate on disposal of HLW, but the establishment of or modification to this policy is the domain of the Congress.

QUESTION 36.

President Trump's FY18 budget proposal would revive the approval process for Yucca Mountain nuclear waste site. NRC's role in approving the Yucca Mountain site has been to assess DOE's license application to consider whether the proposed facility meets its regulatory requirements for geologic disposal of the waste. The NRC process also includes conducting a Safety Evaluation Report and adjudicatory hearings before the Atomic Safety and Licensing Board. Adjudicatory hearings for Yucca Mountain, which must be completed before a licensing decision can be made, remain suspended. If confirmed, will you ensure robust public comment and involvement in any decision on a potential solution to this country's significant long-term problem of nuclear waste disposal?

ANSWER. Yes.

QUESTION 37.

According to the NRC, radioactive iodine 131 is the most toxic isotope used in medicine. Before 1997, patients receiving therapeutic doses of I-131 for thyroid cancer had to be kept in radiological isolation until it was safe for them to go home and mingle with the public. In 1997, however, a radical deregulation by the NRC made outpatient treatment with I-131 the norm. The U.S. is now an outlier in the world radiation protection community, with weaker controls than those not only of Europe and Japan, but also of Iran and Indonesia. We are a first-world country with sub-third world radiation protection for the public.

During the Chairmanship of Allison Macfarlane, she and

During the Chairmanship of Allison Mactariane, she and Commissioner Magwood sought to correct this situation, but lacking your support, their efforts failed. If reconfirmed, will you commit to correct this situation and address the need to protect the public from exposure to medical radioactive iodine contamination?

ANSWER.

The NRC believes the current criteria for the release of patients following radiation therapy contained in 10 CFR 35.75 adequately protect public health and safety. As directed in Staff Requirements Memorandum (SRM) COMAMM-14-0001/COMWDM-14-0001, "Background and Proposed Direction to NRC Staff to Verify Assumptions Made Concerning Patient Release Guidance," NRC staff has conducted additional research and is reevaluating its patient release regulatory requirements and guidance. The staff requested and is evaluating public input on this evaluation. The staff will provide their evaluation to the Commission in December 2017.

QUESTION 38.

The National Council on Radiation Protection and International Commission on Radiological Protection both declare that the maximum radiation dose to a member of the public from a licensed activity should be 100 millirems per year. Yet the NRC allows all

members of the public, including pregnant women and nursing mothers, to receive 500 millirems from released patients. If confirmed, will you commit to reconsidering the NRC's 500 millirems standard?

ANSWER.

The NRC has conducted additional research and is currently reevaluating the existing patient release regulatory requirements and guidance, as directed in SRM COMAMM-14-0001/COMWDM-14-0001, "Background and Proposed Direction to NRC Staff to Verify Assumptions Made Concerning Patient Release Guidance." As part of this evaluation, the NRC staff is specifically looking at the allowable limits to pregnant women, nursing mothers, and children along with all members of the public. This evaluation includes input from a diverse group of stakeholders, including members of the public. The staff will provide its evaluation to the Commission in December 2017.

QUESTION 39.

Within the past two weeks, doctors at Pennsylvania State University published a paper analyzing 44 cases of thyroid cancer in the vicinity of the Three Mile Island nuclear plant and found convincing evidence that they showed signs of exposure to radiation. In 2002, as part of the response to the 9/11 disaster, Congress authorized an expansion from 10 to 20 miles of the radius within which the drug potassium iodide would be distributed. At the time, the NRC fought that expansion, and under President Bush, the law was not implemented. If confirmed, will you commit to a re-evaluation of the need for greater availability of potassium iodide in view of increased evidence of the sensitivity of the thyroid gland to the carcinogenic effects of radiation?

ANSWER.

The NRC believes that current emergency planning and protective measures—evacuation and sheltering—are adequate and protective of public health and safety. However, the NRC recognizes the supplemental value of potassium iodide and the prerogative of the States to decide the appropriateness of the use of potassium iodide by its citizens. The NRC is currently reviewing the paper published by Pennsylvania State University and will take regulatory action if it is warranted.

QUESTION 40.

The NRC used to be considered one of the top federal agencies in workplace satisfaction. Yet, according to index scores from the U.S. Office of Personnel Management's Federal Employee Viewpoint Survey, employee satisfaction at NRC is the worst since 2005 with declines of 3.5 points in just the last year (2015 to 2016). This drop in the last year represents one of the steepest declines among agencies of its size. Moreover, scores on leadership are consistently down across all categories, including senior leadership, empowerment, and fairness. Having served as a Commissioner since 2008, how would you explain these declines in workplace satisfaction? If confirmed, what will you do in your role as chairman to address these declines?

ANSWER.

The agency maintains a clear focus on safety and security, and carrying out its core mission of protecting people and the environment, even as we continue to face a number of challenges, such as adapting to fact-of-life changes. The agency traditionally scores well above the government average in the Federal Employee Viewpoint Survey (FEVS), but has seen a decline in overall scores over the past few years. However, in 2016, the Office of Personnel Management (OPM) still ranked the NRC in the top 10 among large agencies (i.e., agencies with 800 or more employees) in the areas of global satisfaction and employee engagement. The agency continues to evolve using data from the FEVS and the NRC Office of Inspector General Safety Culture and Climate Survey. The agency is also implementing an action plan that focuses on "fostering a greater climate of trust at the NRC" with the goals of strengthening the positive environment for raising concerns; promoting a culture of fairness, empowerment and respect across the agency; and establishing clear expectations and accountability for NRC leaders. If reconfirmed, I will continue to reinforce the continued progress on this action plan.

QUESTION 41.

The first of the Nuclear Regulatory Commission's five Principles of Good Regulation is "Independence." What does that principle mean to you?

ANSWER:

The Principle of Independence means that nothing but the highest possible standards of ethical performance and professionalism should influence regulation. However, independence does not imply isolation. All available facts and opinions must be sought openly from licensees and other interested members of the public. The many and possibly conflicting public interests involved must be considered. Final decisions must be based on objective, unbiased assessments of all information, and must be documented with reasons explicitly stated.

QUESTION 42.

Would you agree that the Nuclear Regulatory Commission (NRC) should not allow political meddling from Congress, other parts of the executive branch, or industry to interfere with the NRC's independent decision-making processes?

ANSWER.

QUESTION 43.

Do you commit to zealously guard the independence of the NRC and oppose any efforts to undermine it?

ANSWER. Yes.

THE HONORABLE DAN SULLIVAN

QUESTION 44.

Earlier this spring the Committee on Environment and Public Works reported S.512, the "Nuclear Energy Innovation and Modernization Act" on a strong bi-partisan vote. The findings and purposes of this bill provide a framework for these questions. In S.512 the Committee found that one of the "...impediments to the

commercialization of advanced nuclear reactors..." is the "...
durations associated with applying the existing nuclear regulatory

framework to advanced nuclear reactors. We further found that "...license application reviews should be as predictable and efficient as practicable without compromising safety or security." And, that "the existing nuclear regulatory framework and the requirements of that framework have not adapted to advances in scientific understanding or the features and performance characteristics of advanced nuclear reactor designs."

To address these findings S.512 would establish "...a program to develop the expertise and regulatory processes necessary to allow innovation and the commercialization of advanced nuclear reactors". S.512 provides the NRC with ample time to develop that program so, even if the bill were enacted this year, it will not be fully in place for several years.

Assuming that S.512 is enacted, I would like to understand your views with respect to the application of the NRC's current regulatory authority to innovative nuclear technologies during the time between enactment and the establishment of this new program. Do you agree with the general findings of S.512? If not, please explain.

ANSWER.

There are many similarities between the requirements of S.512 and the NRC's ongoing activities related to advanced reactors. In addition, the fundamental requirements in S.512 are complementary in concept to the NRC's ongoing activities. The NRC can review innovative, non-light water reactor designs using our existing regulatory framework. This approach would continue to ensure safe, secure, and environmentally responsible uses of nuclear power. However, the NRC is enhancing its existing framework in a technology-neutral manner to increase efficiency, timeliness, and predictability of such reviews. The NRC currently has significant ongoing and planned activities in the areas of advanced reactor licensing infrastructure, technical preparation, and stakeholder outreach. In addition, the NRC, in coordination with DOE, is training NRC staff to close technical skills gaps, and performing outreach activities to educate the new vendors on the regulatory process. I support these efforts.

QUESTION 45.

In this interim period, the Commission likely will be confronted with innovative and advanced nuclear technologies, e.g. subcritical technologies, which may not fit within the scope of the NRC's current regulations. The Atomic Energy Act vests the NRC with broad authority to determine the scope of its regulatory jurisdiction, including the discretion to issue additional regulations to bring new technologies within the scope of the existing regulatory framework. In the event you encounter such an issue while serving on the NRC, what views will guide how you exercise your discretion with respect to regulation of such new technologies? Will you regulate simply to regulate or will you insist that there be regulation only when it is needed to adequately address public health and safety risks?

ANSWER.

The NRC and its predecessor agency, the Atomic Energy Commission (AEC), have regulatory experience with non-light water reactor (non-LWR) designs, including licensing sodium fast reactors, sodium graphite reactors, and high temperature gas cooled reactors, and performing

pre-application reviews for additional non-LWR designs. The current regulations provide the NRC with sufficient flexibility to review and appropriately make conclusions on the safety and security on all reactor designs. The most important element of the review is for the vendor to readily demonstrate the safety of its design, especially for innovative or novel features. LWR-specific regulations that do not apply to non-LWR design features could be addressed through the use of the existing exemption process. In addition, policy issues can be addressed during pre-application interactions, which will allow the NRC to complete non-LWR reviews in a timely manner. If reconfirmed, I will continue to insist that NRC regulation be tied to protecting the public health and safety, promoting the common defense and security, and otherwise complying with applicable law.

QUESTION 46.

Nuclear industry activities frequently are subject to regulation by many different federal agencies which often have different perspectives and objectives.

If you are presented with a situation in which regulation of a new innovative technology by other agencies appropriately addresses any public health and safety risks presented by that technology, will you insist that the NRC also regulate?

ANSWER

Under the Atomic Energy Act of 1954, as amended, the NRC has a statutory obligation to "protect the health and safety of the public" and "promote the common defense and security" with respect to civilian applications of nuclear technology. Consequently, for any new technology, the Commission legally must have a reasonable basis for finding that these standards are met. Nonetheless, if compliance with existing regulations from another entity sufficed to ensure these standards were met, then I would not propose additional requirements beyond those required.

THE HONORABLE SHELDON WHITEHOUSE

QUESTION 47.

Last year, NRC's budget included a \$5 million request to build up the infrastructure for improving licensing of advanced reactor concepts. This request was appropriated in this year's Omnibus. Unfortunately, in this year's budget request NRC does not ask for additional funding for their advanced rector licensing work. Can you discuss what the NRC plans to do with the additional funding for advanced reactor licensing?

ANSWER

The NRC is enhancing its existing regulatory framework to address non-LWR in a technology neutral manner as part of its vision and strategy for safely achieving effective and efficient Non-Light Water Reactor (LWR) mission readiness. The FY 2018 budget does not include off-the fee based funding for advanced reactors, but does include very limited on-fee based funding for non-LWR infrastructure development and pre-application interactions. Examples of activities underway include the development of advanced reactor design criteria and the NRC issued draft regulatory guide "DG-1330, "Guidance for Developing Principal Design Criteria for Non-Light Water Reactors," for formal public comment in February 2017. The NRC plans to issue a final regulatory guide at the end of 2017. In October 2016, the NRC issued a draft "Regulatory Review Roadmap for Non-Light-Water Reactors, which described flexible review options, including the use of a staged-review process and the use of conceptual design assessments

during the pre-application period. The NRC is working with stakeholders on a utility-led licensing modernization project supported by the Department of Energy and the Nuclear Energy Institute. White papers are being prepared by the utility-led working group and provided to the NRC staff as part of development of regulatory guidance for non-LWR applicants. The NRC staff is currently reviewing the first white paper on risk-informed performance based-licensing bases event selection.

QUESTION 48. Why did NRC not ask for additional funding in the President's FY2018 budget to continue its work in this area?

ANSWER.

NRC's FY 2018 budget request was developed to ensure the agency can meet its mission and to be consistent with budgetary direction from the Administration.

QUESTION 49.

There have been tremendous advances in predictive modeling and simulation capabilities for new nuclear technologies that can yield new insights into new reactor behaviors and accelerate the licensing of new technologies. Will you help direct the NRC staff to embrace and adopt these tools?

ANSWER

Yes. The NRC supports the appropriate use of computer models and simulation tools to evaluate the safety of nuclear technologies. Throughout the history of licensing nuclear technologies, the NRC has approved applications that rely on a combination of computer simulation modeling and experimental data to demonstrate compliance with NRC safety requirements. Given the importance of nuclear safety, sole reliance on computer simulation models needs to be approached deliberately. Computer simulation models need to be validated to assure that they appropriately model physical processes and accurately predict the results of phenomena of interest.

The NRC is currently evaluating several DOE computer simulation models for applicability and use for new and advanced reactor technologies. The NRC recognizes that computer simulation models can allow a greater number and range of issues to be analyzed. I will continue to be supportive of the NRC staff's use of appropriate evaluative tools to carry out the NRC's mission.

QUESTION 50.

The Chinese currently have 21 new nuclear reactors under construction. The Chinese regulatory system appears to be similar to the new, post-Fukushima Japanese system, where the nuclear regulatory body is housed in the Environment Ministry. Although it appears that the Chinese regulatory systems seems to have similar licensing and regulatory authority to that of the U.S. NRC, their ability to license reactors appears to be more efficient. Can you discuss whether the current regulatory licensing framework at NRC is different than the Chinese licensing system? If so, what are the differences?

<u>ANSWER</u>

There are significant differences between the U.S. and Chinese regulatory licensing frameworks. The most significant differences appear to relate to transparency and public hearing rights. These differences are manifestations of our different systems of government.

QUESTION 51.

Can you comment on what may be enabling the Chinese to be able to license 21 new reactors under their framework?

ANSWER.

The NRC's engagements with its counterpart in China have focused on technical safety issues rather than licensing framework, in light of the significant differences in governmental systems and national laws.

QUESTION 52.

Has the NRC looked at a cross comparison between the Chinese licensing process and the U.S. system?

ANSWER.

While the NRC has not performed a cross comparison between the Chinese and US licensing processes, it does participates in the Multi-National Design Evaluation Programme (MDEP), of which the US and China are members. MDEP is a 10-nation initiative with the goal of cooperating on safety design reviews of new reactors and identifying opportunities to harmonize and converge on safety licensing review practices and requirements. When appropriate, the NRC has applied lessons learned through this process and technical exchanges with the Chinese Regulator to its licensing process.

QUESTION 53.

The NRC budget includes \$30 million from the Nuclear Waste Fund to fund activities for the proposed Yucca Mountain deep geological repository. DOE has been collecting fees since 1983 under the Nuclear Waste Policy Act of 1982 to go into the Nuclear Waste Fund. Until 2010, DOE was collecting around \$750 million a year (nearly \$31 billion in total) into the fund. The fee program was stopped in 2010 after the Obama administration backed away from the planned nuclear fuel repository at Yucca Mountain. If you are confirmed as Commissioner and Congress passes funding for Yucca Mountain licensing do you plan on moving the licensing process forward?

ANSWER.

Yes. If Congress provides funding, the NRC would continue its review of the construction authorization application for a repository at Yucca Mountain.

QUESTION 54.

If the licensing process for Yucca Mountain moves forward do you support reinstating the fee for the Nuclear Waste Fund?

ANSWER.

Under its statutory authorities, the NRC's role associated with Yucca Mountain is that of licensing and oversight to ensure adequate protection of public health and safety and to promote the common defense and security. As such, the NRC has no role regarding reinstatement of the fee.

QUESTION 55.

Do you believe that nuclear waste as a liability associated with it that should be quantified? Can you estimate what the liability of the existing nuclear waste stockpile might be?

ANSWER. Under its statutory authorities, the NRC's role associated with nuclear waste is that of licensing to ensure adequate protection of public health and safety and to promote the common defense and security. As such, the Commission has no jurisdiction regarding this matter.

Senator BARRASSO. Thank you so much for your comments. Ms. Caputo.

STATEMENT OF ANNIE CAPUTO, NOMINATED TO BE A MEMBER OF THE U.S. NUCLEAR REGULATORY COMMISSION

Ms. CAPUTO. Thank you, Chairman Barrasso, Ranking Member Carper, and members of the Committee.

I have been very thankful for the opportunity to work for Chairman Barrasso this year, continuing my service to the members of

the EPW Committee under his leadership.

I am also grateful to President Trump for nominating me to serve on the Nuclear Regulatory Commission. Public service is a privilege. If the Senate confirms my nomination, I will be honored to serve and very humbled to serve with such esteemed fellow colleagues as Chairman Svinicki, Commissioner Baran, Commissioner Burns and my fellow nominee, David Wright.

Before I begin, I would like to acknowledge my family. I want to thank AJ, my husband of 19 years, for his constant support of my public service, and our children, Owen and Abigail, who are our greatest blessings and who assured me they would be on their best

behavior today.

In preparing for today, I have spent time reflecting on what it would mean to take on the responsibility of the position of Commissioner and how key experiences in my life have prepared me for such a role.

What I realized is several experiences closely echo the NRC's

mission, values, and principles of good regulation.

First, my mother not only taught me right from wrong, but to distinguish between what is right and what is popular. This is a lesson that would guide me in the position to which I have been nominated.

It is a lesson I believe is well articulated in the NRC's Principle of Independence which states, "All available facts and opinions must be sought openly from licensees and other interested members of the public. The many and possibly conflicting public interests involved must be considered. Final decisions must be based on this state which are appropriate of all information."

objective, unbiased assessments of all information."

Second, my brief service as a volunteer firefighter and emergency medical technician for the Snowmass Wildcat Fire Department showed me the importance of dedication to public health and safety, professionalism, teamwork, and the satisfaction of serving the community. It was here that the seed of public service was planted and took root. These are values that guide me to this day and are in keeping with the NRC values of commitment, respect, cooperation, and service.

Third, my first job after graduating with my nuclear engineering degree was with Commonwealth Edison in Chicago. At the time, half of their nuclear plants were on the NRC's "watch list" due to

safety concerns.

A man named Oliver Kingsley took on the role of President and transformed the organization's performance based on the principle that safety and operations are inextricably linked: that operations excellence depends on a dedication to safety.

If a nuclear plant is not maintained with disciplined focus on safety, it will not run well. Safety is first. That is what I learned from Oliver Kingsley, and that is the mission of the Nuclear Regu-

latory Commission.

I have been privileged to serve in both the House and Senate for 12 years, the majority of my career. In these roles, I have been continually challenged by Members to learn as much as I can. In doing so, I have seen the impressive expertise and professionalism of the NRC staff in action. I have no doubt the staff's caliber and commitment is why the NRC is considered the gold standard for nuclear safety the world over. I have much to learn, and they have much to teach me if I am confirmed.

Last, members have directed me to seek out the best policy and to work with bipartisanship to accomplish their goals. These experiences have developed my ability to work collegially to find agreement among different views and to craft solutions by working to-

gether.

By sharing these experiences with you, I hope to provide you with insight into my character and how my values would guide my conduct as a Commissioner, if confirmed. It is humbling to be considered for such a serious responsibility. I would strive to execute that responsibility with integrity and professionalism, in a manner that earns the public's trust, and in keeping with NRC's mission, principles, and values.

I appreciate the opportunity to appear today and look forward to

your questions.

[The prepared statement of Ms. Caputo follows:]



SENIOR POLICY ADVISOR COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS U.S. SENATE

Annie serves as senior policy advisor for Chairman John Barrasso (R-WY) on the Senate Environment and Public Works Committee. She is responsible for oversight and legislative issues related to nuclear technologies and the Nuclear Regulatory Commission. She also held this position for previous Chairman James Inhofe (R-OK) from 2007 to 2012 and from 2015 to 2016.

From 2012 to 2015, Annie worked for the House Committee on Energy & Commerce assisting Chairman Fred Upton on nuclear energy issues. Her responsibilities included oversight of the Nuclear Regulatory Commission and Department of Energy, briefing Members and staff on nuclear issues, making policy recommendations, and drafting legislation. Annie had previously worked for the Energy and Commerce Committee under Chairman Joe Barton from 2005 to 2006 with responsibility for nuclear energy provisions within the Energy Policy Act of 2005.

Aside from public service, Annie worked in Exelon's Washington office as Congressional Affairs Manager. Her responsibilities included strategy and communications on policy matters including nuclear energy, electricity restructuring, security, and other utility operations issues. Annie also worked as a consultant to Areva, Inc. during the early stages of their effort to develop the Eagle Rock uranium enrichment project.

With a Bachelor's degree in nuclear engineering from the University of Wisconsin-Madison and a focus in communications studies, Annie pursued a unique skill set for communicating issues related to all aspects of nuclear energy including safety, radiation, waste management and transportation, and fuel production. Earlier in her career, Annie was active in the American Nuclear Society, previously serving on the Board of Directors, the Finance Committee, and as Public Policy Chairman.

Prior to her nuclear engineering education, Annie studied Chemical Engineering at Michigan Technological University. Upon leaving Michigan Tech, Annie moved to Aspen, Colorado, spending several years as a ski instructor and patroller, and volunteering with the Snowmass Wildcat Fire Department as a firefighter and emergency medical technician.

STATEMENT OF ANNIE CAPUTO Committee on Environment and Pubic Works United States Senate June 7, 2017

Thank you, Chairman Barrasso, Ranking Member Carper, and Members of the Committee. I have been very thankful for the opportunity to work for Chairman Barrasso this year, continuing my service to the Members of the EPW Committee under his leadership.

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First, my mother not only taught me right from wrong, but to distinguish between what's right and what's popular. This is a lesson that would guide me in the position to which I've been nominated. It is a lesson I believe is well articulated in the NRC's Principle of Independence that states:

"All available facts and opinions must be sought openly from licensees and other interested members of the public. The many and possibly conflicting public interests involved must be considered. Final decisions must be based on objective, unbiased assessments of all information..."

Second, my brief service as a volunteer firefighter and emergency medical technician for the Snowmass Wildcat Fire Department showed me the importance of dedication to public health and safety, professionalism, teamwork, and the satisfaction of serving the community. It was here that the seed of public service was planted and took root. These are values that guide me to this day and are in keeping with the NRC Values of Commitment, Respect, Cooperation, and Service.

Third, my first job after graduating with my nuclear engineering degree was with Commonwealth Edison in Chicago. Half of their nuclear plants were on the NRC's "watch list" due to safety concerns. Oliver Kingsley took on the role of president and transformed the organization's performance based on the principle that safety and operations are inextricably linked: that operations excellence depends on a dedication to

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By sharing these experiences with you, I hope to provide you with insight into my character and how my values would guide my conduct as a commissioner, if confirmed. It is humbling to be considered for such a serious responsibility. I would strive to execute that responsibility with integrity and professionalism, in a manner that earns the public's trust, and in keeping with NRC's Mission, Principles, and Values.

I appreciate the opportunity to appear today and look forward to your questions.

Senate Environment and Public Works Committee
Hearing entitled, "Hearing on the Nominations of Kristine Svinicki (Reappointment),
Annie Caputo and David Wright to be Members of the U.S. Nuclear Regulatory
Commission, and the Nomination of Susan Bodine to be Assistant Administrator of the
Office of Enforcement and Compliance Assurance of the U.S. Environmental Protection
Agency."

Tuesday, June 13, 2017
Questions for the Record for Annie Caputo

THE HONORABLE THOMAS CARPER:

QUESTION 1.

It is very important to me that the NRC continues to strive for a culture of safety and continues to be independent in its decision-making. If confirmed, what steps would you take to ensure this culture of safety environment continues?

ANSWER.

I agree with you that a strong safety culture is important. Critically, from my observations, I believe the NRC staff is committed to fulfilling the agency's important safety and security mission, an important basis for agency safety culture. Beyond this, I understand the NRC has several programs in place to support raising differing views, without fear of retribution or retaliation, which can help nurture a strong safety culture. If confirmed, I will examine ongoing efforts to promote safety culture and look for opportunities to strengthen it further.

QUESTION 2. What skills do you bring to the Commission that will enhance the NRC's ability to focus on safety?

ANSWER.

My degree in nuclear engineering gives me a foundational understanding of nuclear technologies and nuclear materials that are subject to NRC regulation. My industry experience inculcated in me a firm belief that safety and security must always come first. My ten years of experience as congressional staff supporting Members' oversight of the NRC has instilled in me a deep respect for the NRC's regulatory processes and the Commission's policy, rulemaking, and adjudicatory responsibilities. If confirmed, I believe these educational and work life experiences have well prepared me to support the NRC's statutory mission to protect public health and safety and the common defense and security.

QUESTION 3. At one time, the NRC was rated the best place to work in the federal government. Now, it is rated 12th for mid-size agencies. What will

you do to boost morale for the NRC workforce?

ANSWER.

I will personally maintain and promote with the staff a clear focus on safety and security, and carrying out the NRC's mission of protecting public health and safety and the environment. Embracing and sharing an important mission like the NRC's is keystone upon which to build employee morale. Beyond that, I believe the agency should examine, to the extent it does not already do so, the findings of the study that ranked best places to work in the government and take action in the areas of weakness that were identified.

QUESTION 4. During the question and answer portion of your nomination hearing, you mentioned concerns about the NRC budget. It is my

understanding that the NRC is now looking at possible layoffs this summer and there is not much more fat to trim from the NRC's budget. As more reactors start the decommissioning process, that means less money coming into the NRC, what will you do to ensure the NRC has the appropriate funds to recruit the best people and is able keep up with the evolving workload?

ANSWER.

With the nuclear industry undergoing significant change, it remains a challenge to ensure the NRC is appropriately resourced with the right skill sets to manage shifts in the nature of its existing and anticipated workload. If confirmed, I will work with my fellow Commissioners to develop annual agency budget requests that fully support taking the actions necessary to fulfill the NRC's safety and security mission.

THE HONORABLE ED MARKEY:

QUESTION 5.

The 2005 Energy Policy Act includes a provision, which I authored, that mandates that the NRC conduct security inspections at U.S. nuclear power plants. These inspections must include force-onforce exercises, where a mock adversary force conducts a simulated attack on a power plant to probe potential gaps in the plant's security.

These exercises allow the NRC to ensure that nuclear power plants are adequately protected against terrorists or other bad actors. The alternative – of having plant operators run their own exercises –

would not only violate the law, but it would also create a clear conflict of interest, and undermine public safety.

In the past, the nuclear industry lobbied the NRC to get rid of its force-on-force exercises in favor of exercises conducted by power plant operators. In effect, this would have nuclear power plant operators inspect themselves, in violation of the law.

Do you support security evaluations of nuclear power plants that are conducted by the Nuclear Regulatory Commission, and not by licensees?

ANSWER.

I understand that Section 170D of the Atomic Energy Act, as amended by the Energy Policy Act, requires the NRC to conduct triennial security evaluations at facilities designated by the Commission, which must include a force-on-force (FOF) exercise that simulates security threats in accordance the applicable design basis threat. If confirmed, this is an issue on which I will engage the NRC staff because of its importance to national security and public health and safety.

QUESTION 6.

When Entergy announced its intention to cease operations at the Pilgrim Nuclear Power Station, the Nuclear Regulatory Commission promised that the closure would "not relieve [Entergy] of the responsibility of running that plant as safely as possible until the end of its life."

But in the last several months, the NRC has broken that promise by providing Pilgrim with exemptions from critical safety upgrades.

After the Fukushima nuclear disaster in 2011, the Fukushima Near-Term Task Force recommended a series of safety upgrade for America's nuclear fleet. The NRC opted to accept these recommendations, and apply them to reactors of the same design as Fukushima, like Pilgrim.

Among the critical safety upgrades were the requirement to reevaluate and address the risk of earthquakes and floods. The other critical safety upgrade was to install hardened containment vents capable of operating under severe accident conditions. These are meant to prevent the release of radioactivity in the event of a terrorist attack or severe accident.

But instead of requiring Entergy to carry out these commonsense safety upgrades, the NRC provided Pilgrim with exemptions.

Do you believe that providing exemptions from NRC safety regulations to U.S. nuclear plants increases public confidence in the safe operation of those plants?

ANSWER.

I understand that the NRC has a process allowing power reactor licensees to apply for an exemption from an NRC regulation. I understand that the NRC staff may grant such exemptions on a case-by-case basis if special circumstances are present and that granting the exemption will not present an undue risk to the public health and safety and that it is consistent with the common defense and security. If confirmed, I will review this issue with the NRC staff.

QUESTION 7.

Do you support the NRC granting exemptions to nuclear plants that have announced their intention to shut down operations?

ANSWER.

I understand that the NRC has an established process, and that the NRC staff may grant such exemptions on a case-by-case basis after performing a detailed technical safety analysis and determining that special circumstances are present and that granting the exemption will not present an undue risk to the public health and safety and that it is consistent with the common defense and security. If confirmed, I will review this issue with the NRC staff and closely monitor the status and progress of the agency's ongoing rulemaking efforts to improve the regulatory process for power reactors transitioning to decommissioning status.

QUESTION 8.

The recent National Academies of Sciences report on lessons learned from the Fukushima nuclear disaster noted that the risk of a spent nuclear fuel fire may actually rise at a decommissioned nuclear plant, because "the pool may be filled to near capacity and some plant safety systems may be inoperable." Yet the Commission has made it a habit of providing exemptions to decommissioned reactors from emergency response and security regulations.

Exempting these plants from NRC rules wholesale permits the nuclear industry to lower the safety margin at decommissioned reactors, which continue to have dangerous spent nuclear fuel on site.

Do you agree that the danger of accidents at spent-fuel pools at decommissioned reactors warrants the application of all emergency

response and security regulations that are designed to protect against spent fuel fires?

ANSWER.

I understand that the NRC staff has performed and published a number of studies and analyses on the topic of accident risk at spent fuel pools. The Commission has also required enhanced mitigation strategy capabilities through orders issued after the events of Fukushima. I understand that the staff considers such information when issuing exemptions from certain emergency preparedness and security requirements and making the required finding that such exemptions will not present an undue risk to the public health and safety and the common defense and security. If confirmed, I will review this issue with the NRC staff, and closely monitor the status and progress of the agency's ongoing rulemaking efforts to improve the regulatory process for power reactors transitioning to decommissioning status.

QUESTION 9.

In June 2016, I wrote to the NRC to urge the Commission to reexamine and address the risk to public safety posed by
overcrowded spent-fuel pools at commercial reactors, in light of two
reports that identified serious gaps in the NRC's previous analysis.
A fire in a densely-packed spent-fuel pool could result in health and
economic consequences comparable to those caused by an
accident at an operating reactor, including the displacement of
millions of people and untold economic damage. These risks could
be much reduced by transferring spent fuel to dry casks, which are
more resilient against accidents or attacks.

The National Academy of Sciences (NAS) report, Lessons Learned from the Fukushima Nuclear Accident for Improving Safety and Security of U.S. Nuclear Plants, recommends that the NRC "perform a spent fuel storage risk assessment to elucidate the risks and potential benefits of expedited transfer of spent fuel from pools to dry casks." Do you support carrying out this recommendation? If not, why not?

ANSWER.

I understand that the NRC staff recently evaluated this specific NAS recommendation and concluded in a public paper to the Commission that the various analyses already performed or sponsored by the NRC staff were sufficient to support regulatory decisions on the safety and security of spent fuel pools. In that assessment the NRC staff also stated that it is continuing to gather regulatory and technical insights on the security of dry cask storage and is continuing to cooperate with other Federal agencies and international bodies to assess potential security threats and take action, if appropriate. If confirmed, I will engage the staff on the continuation of these efforts.

QUESTION 10.

The NAS report recommended that the NRC "strengthen their capabilities for identifying, evaluating, and managing the risks from terrorist attacks," and that the NRC's spent fuel storage risk assessment "should address accident and sabotage risks." Do you agree with the NAS recommendation that the NRC must fully account for the risk of terrorism and sabotage in its re-assessment of spent-fuel risks? If not, why not?

ANSWER.

I understand that the NRC staff also evaluated this NAS recommendation and concluded that existing NRC security requirements and the NRC's continuous interactions with other Federal agencies to assess potential threats and take action, if appropriate, sufficiently addresses security-related risks to nuclear power plants, including terrorism and sabotage. The staff also stated it would continue to work with other Federal agencies, licensees, and other stakeholders to improve its risk assessment techniques and risk management in maintaining security at nuclear power plants. Because of its importance to national security and public health and safety, I will engage the staff on the continuation of these efforts, if confirmed.

QUESTION 11.

What steps, if any, will you support to strengthen the NRC's capabilities for identifying, evaluating, and managing the risk of terrorist attacks on nuclear facilities, including spent-fuel storage sites?

ANSWER.

I understand that the NRC continuously evaluates the potential risk posed by terrorism to NRC-licensed facilities, including spent fuel storage sites, and that if the NRC determines that new information requires additional protection at NRC-licensed facilities, the NRC will impose additional security requirements at those sites. If confirmed, I will give this vital task of protecting national security and the public health and safety the attention it deserves.

QUESTION 12.

As the Fukushima disaster demonstrated, a major release of radioactivity at a nuclear plant could have significant societal effects. As such, to fully capture spent-fuel storage risks, the NAS report recommended that the NRC's analysis "[c]onsider societal, economic, and health consequences" of a spent-fuel fire, as well as the direct risks of radioactive release. Do you agree with this recommendation? If not, why not?

ANSWER.

I understand that the NRC gives consideration to societal, economic, and health consequences of hypothetical severe accidents as part of its regulatory analysis process, and that there is an ongoing NRC effort to update is regulatory analysis guidelines for the consideration of economic consequences. If confirmed, I will review this topic with the NRC staff.

QUESTION 13.

According to the NAS report, the NRC "has not carried out an independent examination of surveillance and security measures for protecting stored spent fuel," as recommended by the NAS's 2006 report. As such, the 2016 NAS report recommended that the NRC fulfill this recommendation, and that the NRC's analysis "should include an examination of the effectiveness of [the NRC's] programs for mitigating insider threats." Do you support carrying out an independent examination, as recommended by both NAS studies? If not, why not?

ANSWER.

I understand that the NRC has conducted numerous studies over the years to assess potential risks from terrorist attacks, and that the agency continuously evaluates the risk posed by terrorism to NRC-licensed facilities, including spent fuel storage sites. I also understand that the NRC has an insider threat program. If confirmed, I will give this vital task of protecting national security and the public health and safety the attention it deserves.

QUESTION 14.

According to an article in the May 26 issue of *Science* magazine, the NRC's previous assessment of spent-fuel risks ignored the potential damage from a spent fuel fire beyond 50 miles of a plant, despite the fact that a significant portion of the radiation exposure would occur beyond that radius. Failing to account for this factor led the NRC to underestimate the destruction of a spent fuel fire. Do you support inclusion of contamination and other effects beyond 50 miles in the NRC's assessment of spent fuel fire risks?

ANSWER.

I understand that the NRC staff has previously documented its analysis of spent fuel risks resulting from the potential damage from a spent fuel fire in COMSECY-13-0030, and that as part of this analysis the NRC staff did perform sensitivity analyses that extended beyond 50 miles. I understand that the NRC staff concluded from this analysis that regulatory changes were not appropriate. If confirmed, I will familiarize myself with their conclusions and engage the NRC staff on this topic.

QUESTION 15.

According to the *Science* magazine article, the NRC's previous analysis also assumed that, in the event of a spent fuel fire, contaminated areas could be effectively cleaned up within a one year timeframe, despite evidence from both the Chernobyl and Fukushima accidents. Do you support revising that assumption in any re-assessment by the Commission of spent-fuel risks?

ANSWER.

I understand that the NRC staff has previously documented its analysis of spent fuel risks resulting from the potential damage from a spent fuel fire in COMSECY-13-0030. I understand that the NRC staff concluded from this analysis that regulatory changes were not appropriate. If confirmed, I will engage the NRC staff on this topic.

QUESTION 16.

According to the recent NAS study, under NRC rules, if the risk of prompt and cancer fatalities in the vicinity of a nuclear accident falls below a certain threshold, the NRC is not required to undertake a cost-benefit analysis of strategies for mitigating that risk. As a result of this rule, even though a spent-fuel fire could displace millions of people and result in trillions in economic damage, the NRC would not be required to evaluate the costs and benefits of strategies to mitigate such an event because it would not necessarily produce a significantly higher risk of fatalities in the immediate vicinity of the plant. To address this obvious deficiency, the NAS study cites experts who have suggested that the NRC should amend its rules by setting a limit on the likelihood that a large number of people would

be displaced for a long-term period following a release of radioactive fall-out. Do you support implementing such a rule?

ANSWER.

I am unfamiliar with the details of this issue. If confirmed, I will engage with the NRC staff on this topic.

QUESTION 17.

As you know, the Vermont Yankee Nuclear Power Station is in the process of decommissioning. The Nuclear Regulatory Commission (NRC) requested comments on a draft regulatory basis ending this month to support a rulemaking that would amend NRC's regulations for the decommissioning of nuclear power reactors. The NRC's goals in amending these regulations would be to provide for an efficient decommissioning process; reduce the need for exemptions from existing regulations; address other decommissioning issues deemed relevant by the NRC staff; and support the principles of good regulation, including openness, clarity, and reliability. If confirmed, will you commit to supporting the following decommissioning requirements for the decommissioning rulemaking? If not, why?

- The enhancement of community involvement by requiring licensees of decommissioning reactors to include state and local officials' input into licensees' decommissioning plans;
- that decommissioning funds are used strictly for statutorilyauthorized purposes;

- that spent nuclear fuel be removed from wet storage and placed into safer dry cask storage as quickly as possible;
- that the site of the plant is rapidly returned to beneficial use instead of decades after the plant ceases operations, and that licensees maintain or obtain the financial resources necessary to do so; and
- that all emergency preparedness and response, and security resources and licensing requirements, remain in place until all the spent nuclear fuel is placed into safer dry cask storage or removed from the site.

ANSWER.

I understand that the NRC's decommissioning rulemaking is currently ongoing and still in the early stages of the process. I understand that the NRC has published draft documents including preliminary options and recommendations for public comment associated with this rulemaking. If confirmed, I will give the various issues presented in your question full and impartial consideration as I review the staff's progress and conclusions as this rulemaking progresses during the course of my term.

QUESTION 18. What do you believe should be the process for reviewing and processing public comments in the rulemaking and other formal proceedings? How should public comments be weighed by the

Commission against comments from the industry?

ANSWER.

I understand that the Administrative Procedure Act governs the process by which agencies solicit and respond to public comments in rulemaking proceedings. I also understand that the NRC has various internal policies and guidance relating to soliciting and responding to public comments. I understand that the NRC, as an independent agency, must consider and evaluate information it receives fairly and objectively regardless of the affiliation of the submitter.

QUESTION 19.

How should the NRC educate the public about the existence and meaning of the ongoing decommissioning rulemaking process?

What should be NRC's plan for community outreach for the remainder of this decommissioning rulemaking process?

ANSWER.

I understand that the NRC uses various processes to educate and engage the public about its rulemaking activities, including the decommissioning rulemaking. For example, as with the decommissioning rule, the NRC can issue an Advance Notice of Proposed Rulemaking to obtain and consider views from the public at the initial stage of the rulemaking process. I understand that the NRC has also held public meetings to raise awareness of this rulemaking and facilitate better public understanding. I understand that the NRC also has an Office of Public Affairs which routinely publishes press releases and performs other outreach to members of the public and provide updates on ongoing regulatory activities, including the decommissioning rulemaking. In all, I understand the importance of understandable and transparent communication with the public and, if confirmed, I will continue these efforts.

QUESTION 20.

Should NRC plan public field meetings to gather comments or testimony from communities where nuclear plants are decommissioning now, or will be soon? If not, why?

ANSWER.

I understand that the NRC staff already does hold public meetings in the vicinity of a decommissioning facility in the early stages of the decommissioning process to discuss the licensee's planning, schedule, cost, and environmental impact information.

QUESTION 21.

What is the justification for the NRC to continuously waive its own regulations, especially those pertaining to the decommissioning trust fund, even though it is working to create new decommissioning rules?

ANSWER.

I understand that the NRC has an established process, and that the NRC staff may grant such exemptions on a case-by-case basis after performing a detailed technical safety analysis and determining that special circumstances are present and that granting the exemption will not present an undue risk to the public health and safety and that it is consistent with the common defense and security. If confirmed, I will review this issue with the NRC staff and closely monitor the status and progress of the agency's ongoing rulemaking efforts to improve the regulatory process for power reactors transitioning to decommissioning status.

QUESTION 22.

What justification is there for the NRC to approve withdrawals from Vermont Yankee's Decommissioning Trust Fund for spent fuel management when NRC's regulations expressly prohibit such use? (10 C.F.R. § 50. 75 at FN 1.)

ANSWER.

I am unfamiliar with the details of this issue. If confirmed, I will review the issue with the NRC staff.

QUESTION 23.

Former NRC Chair Allison Macfarlane authored a paper in 2003 along with other experts that concluded that dry cask storage offers compelling advantages over wet pool storage: it is safer and it is less prone to failure. They recommended that spent fuel should be transferred from wet pools to dry cask storage within five years of discharge to reduce the risk of fire and subsequent radioactive contamination of air and land.

Do you have a position on dry cask versus wet pool storage? If confirmed, will you commit to supporting more studies of this issue?

ANSWER.

The NRC has concluded that spent fuel storage in pools and dry casks are both safe. If confirmed, I will support examination of any new information on this topic.

QUESTION 24.

State regulatory officials from Vermont have raised concerns that the NRC is less likely to consider commentary received from state and local governments on reactor license change requests, and NRC rulemaking and regulatory guidance efforts, than commentary from nuclear power plant operators (e.g. Entergy, Exelon and First Energy) and nuclear power industry organizations such as the Nuclear Energy Institute (NEI). If confirmed, what steps would you take to assure that commentary and concerns expressed by state and local governments, or other nuclear power plant stakeholders, are given consideration equal to that already enjoyed by nuclear power plant operators and their supporters?

ANSWER.

I understand that the Administrative Procedure Act governs the process by which agencies solicit and respond to public comments in rulemaking proceedings. I also understand that the NRC has various internal policies and guidance relating to soliciting and responding to public comments. If confirmed, I will ensure that the NRC, as an independent agency, consider and evaluate information it receives fairly, transparently, and objectively, regardless of the affiliation of the submitter.

QUESTION 25.

To date, nuclear power plants that have permanently shut down have been permitted to eliminate their offsite Emergency Planning Zones (EPZs) roughly 15 to 20 months after cessation of power generation. The risk of a spent fuel fire resulting from a significant loss of spent fuel pool water inventory is greatly reduced, but a

reduction in risk is not an elimination of risk. A reduced risk of a spent fuel fire still requires a significant offsite emergency response that requires drills or exercises to demonstrate proficiency in response and funding to maintain essential emergency response equipment and staff. If confirmed, will you support maintaining offsite EPZs for permanently shut down nuclear power plants until such time that all spent fuel is removed from onsite spent fuel pools?

ANSWER.

I understand that the NRC staff has performed and published a number of studies and analyses on the topic of accident risk at spent fuel pools (such as NUREG-1738: "Technical Study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants," NUREG-2161: "Consequence Study of a Beyond-Design-Basis Earthquake Affecting the Spent Fuel Pool for a U.S. Mark I Boiling Water Reactor," COMSECY-13-0030: "Staff Evaluation and Recommendation for Japan Lessons Learned Tier 3 Issue on Expedited Transfer of Spent Fuel,"), and has also required enhanced mitigation strategy capabilities through orders issued after the events of Fukushima. I understand that the NRC staff considers such information when it evaluates the issuance of exemptions from certain emergency preparedness requirements and makes the required finding that the exemption will not present an undue risk to the public health and safety. If confirmed, I will review this issue the NRC staff, and closely monitor the status and progress of the agency's ongoing rulemaking efforts to improve the regulatory setting for power reactors transitioning to decommissioning.

QUESTION 26.

When NRC staff respond to concerns raised by state or local government officials, or individual concerned citizens, they rely heavily on references to voluminous regulatory documents which are difficult to follow, or use jargon that only makes sense to other NRC staff. If confirmed, what actions would you consider taking to facilitate clear communication by NRC officials with lay members of the public?

ANSWER.

I understand that the NRC is committed to using clear, plain language in its communications with members of the public, and that, per the Plain Writing Act of 2010, the agency has internal plain-writing guidance and a Plain Writing Action Plan, and publishes annual reports on its implementation of these requirements. I understand the importance of the quality and clarity of communications with NRC stakeholders to ensure they are adequately informed of the agency's regulatory, licensing, and oversight activities. If confirmed, I will support the agency's continued efforts in this area.

QUESTION 27.

One significant source of frustration for state and local governments, and individuals who are following nuclear power plant decommissioning efforts, is that the process of complete decommissioning and site restoration is under the jurisdiction of multiple federal agencies in addition to the NRC, such as the Environmental Protection Agency, the Department of Energy, the Department of Transportation, and the Department of Homeland Security, just to name a few. If confirmed, what steps would you take

to assure that the scope of regulatory authority of all federal agencies with jurisdiction is clear to all stakeholders?

ANSWER.

I understand that the NRC currently has various Memoranda of Understanding with these federal agencies with respect to jurisdictional responsibilities and the overall regulatory framework of decommissioning and site restoration. If confirmed, I will work with the NRC staff, such as the Office of Public Affairs, to ensure that these responsibilities are communicated clearly with interested stakeholders and ensure that the public is adequately informed and engaged on these matters.

QUESTION 28. What do you believe is the future of nuclear power in this country?

ANSWER.

I expect nuclear power will continue to be an element of the nation's diverse electric generation portfolio but at a somewhat diminished percentage for the next several decades.

QUESTION 29. If confirmed, what role do you believe you should play—if any—as

Commissioner in supporting the nuclear power industry?

ANSWER.

The NRC's only role is to ensure that the design, construction, operation, and decommissioning of commercial nuclear power plants satisfy the agency's regulatory standards, in a manner that

is protective of public health and safety and the common defense and security. If confirmed, I would have no other role.

QUESTION 30.

According to recent Energy Information Agency estimates, the generating capacity from nuclear power will drop from 20 percent to 11 percent by 2050. If confirmed, how will you ensure safety during this time of mass decommissioning?

ANSWER.

I understand that the NRC oversees the safety and security of reactors during decommissioning and currently has comprehensive regulations to ensure their safety and security during its decommissioning process. This regulatory framework includes safety, environmental, and financial reviews so that the NRC staff can assess decommissioning activities in areas such as financial assurance, training and qualification of licensee staff, decommissioning methods, and clean up criteria. I understand this oversight also includes independent NRC review and monitoring during major decommissioning activities and NRC verification of the site's final radiological conditions. If confirmed, I will work with the staff to ensure that the NRC's decommissioning regulatory framework continues to preserve the safety and security of these sites, even during a time of increasing decommissioning, and I will closely monitor the status and progress of the agency's ongoing rulemaking efforts in this area. Additionally, if confirmed, I will work with the Commission and with Congress to ensure that, if these EIA estimates are correct, the agency has adequate resources to respond to the increasing numbers of nuclear power plants entering decommissioning.

QUESTION 31.

Most of the plants currently being decommissioned across the U.S. are doing so because they are not economically competitive. Some have proposed easing safety and other regulatory burdens to help the economic viability of the nuclear fleet. If regulations on existing and new power plants are decreased, how will you ensure the safety of our nuclear fleet?

ANSWER.

I understand that the NRC has a statutory responsibility to ensure there is reasonable assurance of adequate protection of public health and safety and the common defense and security under the Atomic Energy Act of 1954 and that the NRC does not consider cost when determining what is necessary for adequate protection. If confirmed, I will ensure that, to the extent the agency revises any regulations for new or existing power reactors, compliance with those regulations will continue to ensure reasonable assurance of adequate protection.

QUESTION 32. If confirmed, how will you ensure the public safety of nextgeneration nuclear reactors that implement advanced technologies?

ANSWER.

I understand that in 2008 the Commission published a Policy Statement on the Regulation of Advanced Reactors, which established an expectation that advanced reactors will provide enhanced margins or safety and/or use simplified, inherent, passive, or other innovative means to accomplish safety and security functions. If confirmed, I will ensure that this policy is implemented and that the NRC staff is giving the appropriate consideration to the safety and

security of the design of advanced reactors and the development of a regulatory framework for advanced reactor designs.

QUESTION 33.

How will the potential development of advanced nuclear technologies affect the problems NRC is currently confronting in storing spent nuclear fuel long-term?

ANSWER.

I understand that advanced nuclear technologies propose to use various fuel forms that will generate and potentially consume high-level radioactive waste. If confirmed, I will ensure that the NRC engages with necessary stakeholders including the Department of Energy, advanced reactor designers, industry organizations, international organizations, and the public, as the agency develops and implements any plans for the possible regulation of advanced reactor designs and related fuel cycle facilities, including those associated with storage of spent nuclear fuel.

QUESTION 34.

Currently the U.S. has no permanent storage for spent nuclear fuel.

Where do you anticipate that spent nuclear fuel from nextgeneration nuclear reactors will be stored?

ANSWER.

In keeping with its mission to protect the public health and safety and the common defense and security, the NRC must ensure that spent fuel is stored safely. In the event that the storage of

spent fuel from next-generation reactors raises issues not previously anticipated, I will engage with the NRC staff to develop a full understanding and resolution of those issues.

QUESTION 35.

The March 2011 Fukushima nuclear accident prompted the NRC to review its own regulations. The Commission's Fukushima Task Force, consisting of NRC experts with 135 years of nuclear regulatory expertise among them, made a range of key recommendations for improving nuclear plant safety. The final report included 12 recommendations ranging from requirements to upgrade seismic and flood protections to protections against the long power outages that were the ultimate cause of the Japanese meltdowns. They also concluded that all of the recommendations were necessary for the "adequate protection" of nuclear power plants.

Despite the repeated urging of its own experts, the Commission has so far refused to make these recommendations mandatory. What steps will you take to ensure that the Commission revisits this decision and does, in fact, adopt the Task Force's safety recommendations as mandatory?

ANSWER.

I understand that following the accident at Fukushima, the NRC assessed the operability of the US nuclear fleet and determined that it remained safe for the nuclear fleet to continue operations. The NRC also chartered a Near-Term Task Force (NTTF) to conduct a review of NRC requirements, programs, and processes and recommend any improvements to the NRC's

regulatory system. I understand that the Commission issued orders based on the recommendations of the NTTF to implement the most significant safety recommendations and that implementation of these safety enhancements are substantially completed. I understand the agency is currently engaged in a rulemaking effort that would make these and other NTTF recommendations required for all current and future nuclear power plants. If confirmed, I would continue to engage the NRC staff on this important topic of post-Fukushima actions.

QUESTION 36.

A paper published in *Science* last month by nuclear experts from the Union of Concerned Scientists and Princeton University argued that the NRC places the U.S. at risk of disasters like Fukushima because of problems in its approach to assessing the risks and benefits of safety improvements. The authors suggest that NRC should reform its risk assessments in the following ways (see below). Do you concur that these corrections to current NRC risk assessments are needed? If not, why? If so, how will you address these issues as a Commissioner, if confirmed?

- Take into account the possibility of a terrorist attack in regulatory decisions such as the one on whether or not to require the nuclear utilities to remove spent fuel to dry cask storage after 5 years.
- Take into account accident consequences beyond 50 miles of the site.
- Make assumptions concerning population relocation, and therefore property losses, after a nuclear accident consistent with the EPA's guidance concerning dose levels.

- Make realistic assumptions concerning the efficacy and speed of decontamination actions.
- Update the NRC's assumption concerning the value of a life lost to radiation-induced cancer by a factor of 2.5, as recommended by the NRC staff.

ANSWER.

I understand that the NRC staff has, in various studies and regulatory analyses, provided the Commission with its assessment of several of these issues. For example, in COMSECY-13-0030, I understand the NRC documented its analysis of spent fuel risks resulting from the potential damage from a spent fuel fire, which included a sensitivity analysis extending beyond 50 miles. In another example, I understand the staff has recently provided recommendation to the Commission in a public paper to update the NRC's guidance on the "Dollar Per Person-Rem Conversion Factor Policy," which is the agency's monetary valuation of the cancer mortality risk of radiation exposure. Additionally, I understand the NRC staff continuously monitors and assesses threat conditions and plant security associated with terrorist attacks, interacting and coordinating with other federal agencies, and that the NRC is committed to take appropriate actions to address this changing threat environments should new information ever indicate new risks to plants or spent fuel. If confirmed, I will engage with the NRC staff on these issues on an ongoing basis.

QUESTION 37.

A February 2017 report by Union of Concerned Scientists stated,
"Just as nuclear plant owners have downplayed and dismissed clear
and present signs about safety culture problems at their plants, the
data suggest that the NRC's management is just as dismissive of

indications that it has a poor safety culture." Are you concerned that staff at nuclear power plants and the NRC are reluctant to report safety problems because of the lack of trust between workforce and management? If so, how can NRC address the lack of a nuclear safety culture, and lessen risks to public and environmental safety? If not, what evidence do you have that NRC management maintains a robust safety culture?

ANSWER.

I understand that the NRC has a policy statement which describes how it assesses a licensee's safety conscious work environment (SCWE) where employees are encouraged to raise safety concerns without fear of retaliation or retribution and where those concerns are promptly reviewed and resolved accordingly. I understand the NRC assesses licensees' SCWE and takes action when necessary through tools such as allegations, inspections, chilling effect letters, and orders. I also understand that internally, the NRC is committed to fostering an environment where the staff is free to raise concerns and offer differing views without fear of reprisal. If confirmed, I will continue to engage the NRC staff in these important ongoing efforts, both externally and internally, to promote the importance of a robust safety culture.

QUESTION 38.

NRC's Office of Nuclear Material Safety and Safeguards (NMSS) is responsible for regulating activities which provide for the safe and secure production of nuclear fuel used in commercial nuclear reactors; the safe storage, transportation and disposal of high-level radioactive waste and spent nuclear fuel; and the transportation of radioactive materials regulated under the Atomic Energy Act. The

United States is facing a significant long-term problem in its disposal of nuclear waste. What do you envision as a potential solution, and what role should NRC play?

ANSWER.

National policy regarding solutions for the disposal of spent nuclear fuel is set by Congress and the President. In its regulatory role as an independent federal agency, the NRC must evaluate the safe and secure operation of high-level waste storage through its licensing and regulatory actions, as well as its oversight responsibility of licensees, consistent with the statutory direction set by the Congress and the President.

QUESTION 39.

President Trump's FY18 budget proposal would revive the approval process for Yucca Mountain nuclear waste site. NRC's role in approving the Yucca Mountain site has been to assess DOE's license application to consider whether the proposed facility meets its regulatory requirements for geologic disposal of the waste. The NRC process also includes conducting a Safety Evaluation Report and adjudicatory hearings before the Atomic Safety and Licensing Board. Adjudicatory hearings for Yucca Mountain, which must be completed before a licensing decision can be made, remain suspended. If confirmed, will you ensure robust public comment and involvement in any decision on a potential solution to this country's significant long-term problem of nuclear waste disposal?

ANSWER.

Yes.

QUESTION 40.

Within the past two weeks, doctors at Pennsylvania State University published a paper analyzing 44 cases of thyroid cancer in the vicinity of the Three Mile Island nuclear plant and found convincing evidence that they showed signs of exposure to radiation. In 2002, as part of the response to the 9/11 disaster, Congress authorized an expansion from 10 to 20 miles of the radius within which the drug potassium iodide would be distributed. At the time, the NRC fought that expansion, and under President Bush, the law was not implemented. If confirmed, will you commit to a re-evaluation of the need for greater availability of potassium iodide in view of increased evidence of the sensitivity of the thyroid gland to the carcinogenic effects of radiation?

ANSWER.

If confirmed I will engage with the NRC staff on this issue and any review or assessments the staff makes of this study.

QUESTION 41.

The NRC used to be considered one of the top federal agencies in workplace satisfaction. Yet, according to index scores from the U.S. Office of Personnel Management's Federal Employee Viewpoint Survey, employee satisfaction at NRC is the worst since 2005 with

declines of 3.5 points in just the last year (2015 to 2016). This drop represents one of the steepest declines among agencies of its size. Moreover, scores on leadership are consistently down across all categories, including senior leadership, empowerment, and fairness. If confirmed, what will you do as Commissioner to address these declines?

ANSWER.

If confirmed, I will personally maintain and promote with the staff a clear focus on safety and security, and carrying out the NRC's mission of protecting public health and the environment. Embracing and sharing an important mission like the NRC's is keystone upon which to build employee morale. I understand the NRC is implementing an action plan that focuses on "fostering a greater climate of trust at the NRC" with the goals of strengthening the positive environment for raising concerns; promoting a culture of fairness, empowerment and respect across the agency; and establishing clear expectations and accountability for NRC leaders. Beyond that, I believe the agency should examine, to the extent it does not already do so, the findings of the study that ranked best places to work in the government and take action in the areas of weakness that were identified. If confirmed, I would support these efforts.

QUESTION 42. The first of the Nuclear Regulatory Commission's five Principles of Good Regulation is "Independence." What does that principle mean to you?

ANSWER.

The NRC's Principle of "Independence" states:

"Nothing but the highest possible standards of ethical performance and professionalism should influence regulation. However, independence does not imply isolation. All available facts and opinions must be sought openly from licensees and other interested members of the public. The many and possibly conflicting public interests involved must be considered. Final decisions must be based on objective, unbiased assessments of all information, and must be documented with reasons explicitly stated."

I strongly agree with this Principle and, if confirmed, I will personally adhere to it and promote the importance of independence in my interactions with NRC staff.

QUESTION 43.

Would you agree that the Nuclear Regulatory Commission (NRC) should not allow political meddling from Congress, other parts of the executive branch, or industry to interfere with the NRC's independent decision-making processes?

ANSWER.

Yes.

QUESTION 44.

Do you commit to zealously guard the independence of the NRC and oppose any efforts to undermine it?

ANSWER.

Yes.

QUESTION 45.

As a former executive for Exelon, the nation's largest nuclear power plant operator, you have considerable ties to the nuclear industry. If confirmed, will you commit to recusing yourself on any matters that Exelon might bring before the NRC?

ANSWER.

If confirmed, I will consult with the designated ethics official at the NRC regarding the need to recuse myself from any particular matter in order to comply with the Ethics in Government Act of 1978, Office of Government Ethics regulations, and Executive Order 13770.

QUESTION 46.

Please list all conference panels, meetings, public rallies, or other public events that you have attended at which nuclear energy or nuclear waste issues were discussed.

ANSWER.

For the 12 years working as a member of the professional staff of either the Senate

Environment and Public Works Committee or the House Energy and Commerce Committee, I
have attended many meetings and participated in many panels in the performance of my
duties. Generally, the purpose of my attendance was to discuss the agenda of those
committees with respect to nuclear issues. I attended those meeting on behalf of Senator John
Barrasso, Senator James Inhofe, Congressman Joe Barton, or Congressman Fred Upton.

Prior to my Congressional career, I was Congressional Affairs Manager for Exelon. In that role,
I attended conferences and meetings on behalf of Exelon. I did not keep records of such
conferences and meetings during that time period. However, I can recall attending conferences
and meetings with the following organizations:

American Nuclear Society

Department of Commerce

Department of Energy

Department of State

Edison Electric Institute

Electric Power Supply Corporation

Energy Information Administration

LES

National Academies of Science

National Association of Regulatory Utility Commissioners

National Energy Resources Organization

Nuclear Energy Institute

U.S. Nuclear Infrastructure Council

I don't recall attending conferences or meetings during my time as a consultant for Areva, Inc., in 2007.

If confirmed, in meeting my obligations as a Commissioner I would seek to fully understand concerns raised by the broad spectrum of organizations and individuals, regardless of their affiliation, in my consideration of matters that come before the Commission, consistent with the NRC's Principles of Good Regulation and specifically the principle of "Independence."

QUESTION 47.

Please provide copies (written, audio, or video) of all speeches you have made concerning nuclear energy, nuclear safety, spent nuclear fuel, Yucca Mountain, nuclear waste, or other issues of relevance to the work of the NRC.

ANSWER.

During my 12 years as a member of the professional staff of either the Senate Environment and Public Works Committee or the House Energy and Commerce Committee, I have given speeches and participated in panels in the performance of my duties. Generally, the purpose of my attendance was to discuss the agenda of those committees with respect to nuclear issues. Such speaking engagements would have been on behalf of Senator John Barrasso, Senator James Inhofe, Congressman Joe Barton, or Congressman Fred Upton.

To the best of my knowledge and recollection, the only speech meeting this description that I gave during my employment with Exelon or Areva, Inc., was "Nuclear Inside the Beltway" presented to the American Nuclear Society's Western Regional Student Conference in 1999 (attached).

QUESTION 48.

Please provide a list of all organizations—with an interest in nuclear energy, nuclear waste, nuclear safety, or related matters—of which you are, or have been a member?

ANSWER.

To the best of my knowledge and recollection, the only organizations with an interest in nuclear energy, nuclear safety, or related matters that I have been a member of is the American Nuclear Society and the North American Young Generation in Nuclear. I am no longer a member of either organization with my memberships having lapsed over two years ago.

QUESTION 49.

Have you or any member of your immediate family received funding, either directly or indirectly, from organizations supporting the

licensing of Yucca Mountain as a repository for spent nuclear fuel or from organizations supporting the licensing new nuclear reactors? If so, please describe.

ANSWER.

I was employed by Exelon from February 10, 1997, until February 11, 2005. I was also a paid consultant to Areva, Inc., for five months in 2007. From February 14, 2005, until January 2, 2007, and since May 30, 2007, I have been employed as a congressional staff member on committees with jurisdiction for oversight of the Nuclear Regulatory Commission.

THE HONORABLE DAN SULLIVAN:

QUESTION 50.

Earlier this spring the Committee on Environment and Public Works reported S.512, the "Nuclear Energy Innovation and Modernization Act" on a strong bi-partisan vote. The findings and purposes of this bill provide a framework for these questions.

In S.512 the Committee found that one of the "...impediments to the commercialization of advanced nuclear reactors..." is the "... durations associated with applying the existing nuclear regulatory framework to advanced nuclear reactors. We further found that "...license application reviews should be as predictable and efficient as practicable without compromising safety or security." And, that "the existing nuclear regulatory framework and the requirements of that framework have not adapted to advances in scientific understanding or the features and performance characteristics of advanced nuclear reactor designs."

To address these findings S.512 would establish "...a program to develop the expertise and regulatory processes necessary to allow innovation and the commercialization of advanced nuclear reactors". S.512 provides the NRC with ample time to develop that program so, even if the bill were enacted this year, it will not be fully in place for several years.

Assuming that S.512 is enacted, I would like to understand your views with respect to the application of the NRC's current regulatory authority to innovative nuclear technologies during the time between enactment and the establishment of this new program.

Do you agree with the general findings of S.512? If not, please explain.

ANSWER.

I agree with the findings.

QUESTION 51.

In this interim period, the Commission likely will be confronted with innovative and advanced nuclear technologies, e.g. subcritical technologies, which may not fit within the scope of the NRC's current regulations. The Atomic Energy Act vests the NRC with broad authority to determine the scope of its regulatory jurisdiction, including the discretion to issue additional regulations to bring new technologies within the scope of the existing regulatory framework. In the event you encounter such an issue while serving on the NRC, what views will guide how you exercise your discretion with respect to regulation of such new technologies? Will you regulate simply to

regulate or will you insist that there be regulation only when it is needed to adequately address public health and safety risks?

ANSWER.

Should I encounter such an issue while serving on the NRC, my views would be guided by NRC's Principles of Good Regulation, particularly "Efficiency", "Clarity" and "Reliability." I would also look to recent precedent regarding the licensing of innovative and advanced nuclear technologies, such as the construction permit for the SHINE Medical Technologies, Inc. application, a first-of-a-kind facility dedicated to medical isotope production.

QUESTION 52.

Nuclear industry activities frequently are subject to regulation by many different federal agencies which often have different perspectives and objectives.

If you are presented with a situation in which regulation of a new innovative technology by other agencies appropriately addresses any public health and safety risks presented by that technology, will you insist that the NRC also regulate?

ANSWER.

Yes, consistent with NRC's statutory role mandated by Congress as the nation's sole regulatory authority for the licensing and oversight of commercial nuclear technology.

THE HONORABLE SHELDON WHITEHOUSE:

QUESTION 53.

Last year, NRC's budget included a \$5 million request to build up the regulatory infrastructure for improving licensing of advanced reactor concepts. This request was appropriated in this year's Omnibus. Unfortunately, in this year's budget request NRC does not ask for additional funding for their advanced rector licensing work.

- a. Can you discuss what the NRC plans to do with the additional funding for advanced reactor licensing?
- b. Why did NRC not ask for additional funding in the President's FY2018 budget to continue its work in this area?
- c. There have been tremendous advances in predictive modeling and simulation capabilities for new nuclear technologies that can yield new insights into new reactor behaviors and accelerate the licensing of new technologies. Will you help direct the NRC staff to embrace and adopt these tools?

ANSWER.

- a. b. I am not privy to the FY2017 and FY2018 internal budgetary deliberations of the
 Commission, other than what has been made publicly available in the agency's Congressional
 Budget Justification. If confirmed, I will work to ensure that the NRC is adequately funded for its existing and anticipated work relating to advanced reactor licensing.
- c. Yes, I will.

QUESTION 54.

The Chinese currently have 21 new nuclear reactors under construction. The Chinese regulatory system appears to be similar to the new, post-Fukushima Japanese system, where the nuclear regulatory body is housed in the Environment Ministry. Although it appears that the Chinese regulatory systems seems to have similar licensing and regulatory authority to that of the U.S. NRC, their ability to license reactors appears to be more efficient.

- Can you discuss whether the current regulatory licensing framework at NRC is different than the Chinese licensing system? If so, what are the differences?
- Can you comment on what may be enabling the Chinese to be able to license 21 new reactors under their framework?
- Has the NRC looked at a cross comparison between the Chinese licensing process and the U.S. system? If not, would you commit to doing such a comparison?

ANSWER.

I am not familiar with the current regulatory licensing framework used by the Chinese nuclear safety and security regulatory body, nor am I aware of a cross comparison between the US and Chinese licensing system. If confirmed, I will engage with the NRC staff on this issue.

QUESTION 55.

The NRC budget includes \$30 million from the Nuclear Waste Fund to fund activities for the proposed Yucca Mountain deep geological repository. DOE has been collecting fees since 1983 under the Nuclear Waste Policy Act of 1982 to go into the Nuclear Waste Fund.

Until 2010, DOE was collecting around \$750 million a year (nearly \$31 billion in total) into the fund. The fee program was stopped in 2010 after the Obama administration backed away from the planned nuclear fuel repository at Yucca Mountain.

- If you are confirmed as Commissioner and Congress passes funding for Yucca Mountain licensing do you plan on moving the licensing process forward?
- If the licensing process for Yucca Mountain moves forward do you support reinstating the fee for the Nuclear Waste Fund?
- Do you believe that nuclear waste as a liability associated with it that should be quantified? Can you estimate what the liability of the existing nuclear waste stockpile might be?

ANSWER.

If confirmed as a Commissioner, I would have an obligation to follow the law and comply with Congressional direction provided in enacted appropriations legislation. Reinstatement of the fee for the Nuclear Waste Fund and quantification of nuclear waste liability are policy matters that would need to be resolved by Congress and the Administration.

Nuclear Inside the Beltway

Annie Caputo Western Regional Student Conference April 9, 1999



Electricity Restructuring

Regulatory compact with utilities
Cost-of-service regulation by the states
Obligation to serve
19 states implementing restructuring
AZ, AR, CA, CT, IL, ME, MD, MA, MI, MT,
NV, NH, NJ, NY, OK, PA, RI, VT, VA



1

6/22/2017

Electricity Restructuring

Who ensures reliability?
FERC, FERC w/states, ISO's, trans-co's
Stranded cost recovery
Prudent investments based on
obligation to serve, regulator approved
Competitive transition charges



Electricity Restructuring

Fair market
Price spikes
Regional differences
Public Power
Social obligations
e.g. low income consumers



6/22/2017

Restructuring - Nuclear Issues

Amend the Atomic Energy Act
Foreign ownership
Federal nuclear obligations
Unfunded decommissioning obligations
Spent fuel fees
D&D fees for enrichment plants



Restructuring - Nuclear Issues

- Amend the tax code

 Allow tax-free transfer of decommissioning trust funds
- Amend bankruptcy code
 protect integrity of decommissioning
 funds in the event of bankruptcy



6/22/2017

Spent Fuel

Historically proposed legislation

- Interim storage
- Radiation standard for licensing the repository



Spent Fuel - Budget Problem

Program funding

- Every year: \$660M paid in, \$225M appropriated
- Nuclear Waste Fund balance of \$8B untouchable due to budget process
- Funding after ~2007 inadequate to complete repository in 2010

Com≣d

4

Spent Fuel - Veto Problem

- President will veto interim storage
- Over-ride votes in House, not in Senate
- DOE Secretary Richardson offers to accept title, responsibility, and costs
- **Bipartisan efforts to compromise**



Global Climate Change

- Science uncertain
- Costs high
- **Politically charged**
- Tough international consensus process

e.g. Clean Air Act



Global Climate Change

Nuclear energy

7% below 1990 emission levels? WITHOUT NUCLEAR?! Congressional support Japan's plan



Beltway Sentiment

A change of heart...?



Senator Barrasso. Thank you so much for your comments. Now I would like to turn to Mr. Wright. You are next.

STATEMENT OF DAVID WRIGHT, NOMINATED TO BE A MEMBER OF THE U.S. NUCLEAR REGULATORY COMMISSION

Mr. WRIGHT. Thank you, Chairman Barrasso, Ranking Member Carper, and members of the Committee for the opportunity to appear before you today.

I would be remiss if I did not also thank Senator Lindsey Gra-

ham for his kind introduction earlier.

I am humbled and honored to appear before you today as the nominee of the President to serve as a Commissioner on the Nuclear Regulatory Commission. It is an honor and privilege, not just for me personally, but also for my family, my church, my community, my State, and all of the people I have worked and served with over the years.

Mr. Chairman and members of the Committee, if I may, I would like to recognize my mother, Irene Wright, who is sitting behind me today. She gave birth to me on her 24th birthday, and next month, we will both celebrate the 62nd anniversary of her 24th birthday. I will let you all do the math. She is truly one of God's

angels living on this earth, and I get to call her Mom.

June is a busy time of year for the Wright family. My oldest daughter, Kimberly, is wrapping up her year as a kindergarten teacher. My second daughter, Courtney, works for the State of South Carolina. She and her husband, Ray, are raising three wonderful children, my grandchildren.

Senator Boozman, my oldest son, Austin, is a nursing home administrator working in Cabot, Arkansas. I believe I shared that with you. My youngest son, Andrew, a rising college sophomore, is in his last week as a Young Life Summer Camp counselor at Sharp Top Cove in Jasper, Georgia. Although the rest of my family is not able to be here in person today, I can feel each of them and their support

Mr. Chairman and members of the Committee, if confirmed, I look forward to working closely with my fellow nominees, Chairman Kristine Svinicki and Annie Caputo, as well as Commissioners Steve Burns and Jeff Baran, in carrying out the NRC's mission of protecting public health and safety, promoting the common defense

and security, and protecting the environment.

I pledge to work closely with each member of the Commission in the spirit of collegiality. I believe we will work very well together. I look forward to developing a good working relationship with this Committee as you also fulfill your important oversight role.

I have a broad and varied professional background in private business and in public life. Having been self-employed the majority of my adult life, I have also served in various elected positions in

local and State government.

Although we are all shaped by the entirety of the events and experiences in our lives, I am confident I find myself before you today because of my service on the South Carolina Public Service Commission. Since first elected in 2004, I served as a South Carolina Commissioner for nearly 10 years, where I also had the privilege to serve as Chairman.

During my tenure as a Commissioner, in $2008\ I$ was diagnosed with stage 3 colon cancer. I had surgery and went through months of chemotherapy, but I did not miss very much time at the commission. It was during that time that I made the decision to do things I had not previously considered and to challenge myself in ways I

might not have had it not been for that trial in my life.

As a Commissioner, I was already active within the National Association of Regulatory Utility Commissioners, NARUC, where I was serving as Chairman of the Subcommittee on Nuclear Issues and Nuclear Waste for 3 years. In June 2008 I was elected to serve as President of the 11-State Southeastern Association of Regulatory Utility Commissioners.

In 2011 following a year serving as First Vice President, I was elected by my fellow commissioners to serve as the President of NARUC, the highest professional honor of my life until today.

During my years as a Commissioner, including my service in leadership roles at the regional and national levels, I have been successful in building bridges and building consensus on issues,

and in the creation and adoption of policy.

If given the honor to serve the country in this position, I will approach my service as a Commissioner at the NRC no differently. I believe my regulatory background at the State level, along with my experiences in business and elected office, provide a sound foundation for considering matters that will come before me as a member of the Commission.

If confirmed, I will approach my work as a Commissioner with an open mind and in a collegial manner. I will listen to all parties and al points of view, seek clarification where needed, endeavor to establish a complete record, base my decision on the facts before me, and work to build consensus among the Commissioners whenever possible.

Chairman Barrasso, Ranking Member Carper, and members of the Committee, thank you for the opportunity to appear before you

[The prepared statement of Mr. Wright follows:]



David Wright President, Wright Directions, LLC

On May 22, 2017, President Trump announced his intent to nominate David Wright to be a Member of the NRC for the remainder of a five-year term expiring June 30, 2020. Mr. Wright is currently the President of Wright Directions, LLC, a strategic consulting and communications business in the energy sector. Mr. Wright previously served as a member and Chairman of the South Carolina Public Service Commission (SCPSC) from 2004-2013. He was elected to serve as President of the National Association of Regulatory Utility Commissioners (NARUC) for 2011-2012. Mr. Wright has owned and operated several different businesses, and served as a councilman, Mayor and a member of the

South Carolina House of Representatives. A colon cancer survivor, Mr. Wright is active as an advocate for colon cancer awareness and education and is frequently asked to share his message with groups around the country. He received his bachelor's degree from Clemson University. Mr. Wright has four children and three grandchildren. He resides in Columbia, South Carolina.

STATEMENT OF DAVID A. WRIGHT, NOMINATED TO BE A MEMBER OF THE NUCLEAR REGULATORY COMMISSION

June 13, 2017

Thank you, Chairman Barrasso, ranking Member Carper, and the members of the committee for the opportunity to appear before you today. And, I would be remiss if I did not also thank my home state Senator and my friend, Lindsey Graham, for his kind introduction of me to this committee.

I am humbled and honored to appear before you today as a Presidential nominee of the President to serve as a commissioner on the Nuclear Regulatory Commission. It is an honor and privilege, not just for me personally, but also for my family, my church and community, my state, and all of the people I have worked with, and served with over the years.

Mr. Chairman, and members of the committee, if I may, I would like to recognize my mother, Irene Wright, whom is with me today. She gave birth to me on her 24th birthday...and next month, we will both celebrate the 62nd anniversary of her 24th birthday! I will let you all do the math.

She is truly one of God's Angels living on this Earth...and I get to call her Mom.

June is a busy time of year for the Wright Family. My oldest daughter, Kimberly, is wrapping up her year as a kindergarten teacher. My second daughter, Courtney, is working for the State of South Carolina, and she and her husband, Ray, are raising three wonderful children – and my grandchildren. Senator Boozman, my oldest son, Austin, is a nursing home administrator working in Cabot, Arkansas; and, my youngest son, Andrew, a rising college sophomore, is in his last week as a Young Life Summer Camp counselor at Sharp Top Cove in Jasper, Georgia. Although my family is not able to be here in person today, I can feel each of them and their support. They are a gift from God and I am blessed to be their Dad.

Mr. Chairman and members of the committee, if confirmed, I look forward to working closely with my fellow nominees, Chairman Kristine Svinicki and Annie Caputo, as well as Commissioners Steve Burns and Jeff Baran, in carrying out the NRC's mission of protecting public health and safety, promoting the common defense and security and protecting the environment. I pledge to work closely with each member of the Commission in the spirit of collegiality, and I believe we will work very well together. I look forward to developing a good working relationship with this committee as you fulfill your important oversight role, too.

One thing my mother taught and modeled for me was selflessness in service to others. She told me that when I volunteered or committed to something, to do so to the best of my ability. Work hard, do not quit, and never, ever give up. It was through her that I

learned that as I helped others succeed and achieve their goals, I would find success and satisfaction for myself, too.

I have a broad and varied professional background in private business and in public life. Having been self-employed the majority of my adult life, I have also served in various elected positions in local and state government. Although we are all shaped by the entirety of the events and experiences in our lives, I am confident I find myself before you today because of my service on the South Carolina Public Service Commission.

Since 2004, I served as a South Carolina Commissioner for nearly ten years, where I also had the privilege to serve as Chairman.

During my tenure as a commissioner, in 2008, I was diagnosed with Stage 3 colon cancer. I had surgery and went through months of chemotherapy, but I did not miss very much time at the commission. For the record, my oldest daughter was diagnosed with Stage 3-c colon cancer a year after I completed treatments, but I will save that story for another time. It was during that time, though, that I made the decision to do things I had not previously considered, and to challenge myself in ways I might not have, had it not been for that trial in my life.

As a commissioner, I was already active within the National Association of Regulatory Utility Commissioners (NARUC). I served as chairman of the Subcommittee on Nuclear Issues and Nuclear Waste for three years.

I was our state's representative on the Nuclear Waste Strategy Coalition (NWSC), where I also served on the executive committee. In 2006, I was asked to serve as the NWSC's Chairman and I served in that role until I retired from state service in 2013.

I had the honor of serving as President of the Southeastern Association of Regulatory Utility Commissioners (SEARUC) in June of 2008 and led that 11-state regional association until June 2009.

In November 2010, I became first Vice-President of NARUC and, in November 2011, I was elected by my fellow commissioners to serve as the President of NARUC – the highest professional honor of my life - until today.

During my years as a commissioner, including my service in leadership roles at the regional and national levels, I have been successful in building bridges and building consensus on issues, and in the creation and adoption of policy. In fact, the NARUC staff called me "Coach" during my year as president. If given the honor to serve the country in this position, I will approach my service as a commissioner at the NRC no differently.

In establishing the Commission, the Congress wisely sought to bring together five individuals with diverse backgrounds and experiences. If confirmed, I believe my regulatory background at the state level, along with my experiences in business and elected office, provide a sound foundation for considering matters that will come before

me as a member of the Commission.

If confirmed, I will approach my work as a Commissioner with an open mind and in a collegial manner. I will listen to all parties, and points of view, seek clarification where needed, endeavor to establish a complete record, base my decision on the facts before me, and work to build consensus among the commissioners whenever possible.

Chairman Barrasso, Ranking Member Carper, and members of the committee, thank you for the opportunity to appear before you today. I look forward to your questions.

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Senate Environment and Public Works Committee
Hearing entitled, "Hearing on the Nominations of Kristine Svinicki (Reappointment),
Annie Caputo and David Wright to be Members of the U.S. Nuclear Regulatory
Commission, and the Nomination of Susan Bodine to be Assistant Administrator of the
Office of Enforcement and Compliance Assurance of the U.S. Environmental Protection
Agency."

Tuesday, June 13, 2017 Questions for the Record for David Wright

THE HONORABLE THOMAS CARPER

QUESTION 1.

In your ethics agreement, you have stated that you will recuse yourself from agency matters that involve clients of your consulting firm, Wright Directions, and from several organizations that you participate, including the Nuclear Waste Strategy Coalition, Nuclear Matters, and E4 Carolinas. Is that correct?

ANSWER.

Yes, as stated in my ethics agreement, upon confirmation, I will resign from my positions with the following entities: E4 Carolinas, the Nuclear Waste Strategy Coalition, the Nuclear Matters Advocacy Council, and the Irmo-Chapin Recreation Commission. For a period of one year after my resignations, I will not participate personally and substantially in any particular matter involving specific parties in which I know any of these organizations are a party or represent a party, unless I am first authorized to participate pursuant to 5 C.F.R. § 2635.502(d).

Additionally, upon confirmation, I will place my consulting LLC in an inactive status and cease engaging in any business through the LLC or providing any services for my former clients. I will not participate personally and substantially in any particular matter involving specific parties in which I know a former client of mine is a party or represents a party for a period of one year after I last provided service to that client unless I am first authorized to participate pursuant to 5 C.F.R. § 2635.502(d). I also understand that there are additional restrictions that I will be

subject to under the "Ethics Pledge" (Executive Order No. 13770), which will prevent me for a period of 2 years from the date of my appointment from participating in any particular matter involving specific parties that is directly and substantially related to any of my former clients from the 2 years prior to my appointment, unless I first receive a waiver. I will abide by these restrictions.

QUESTION 2. Please provide a list of your clients that you are working with, or have worked with in the past, through Wright Directions LLC.

ANSWER.

Clients who are associated with, or have been associated with David Wright Directions, LLC since its' formation in June 2013, are: Pepco Holdings, Inc., Edison Electric Institute, Nuclear Matters Advocacy Council, The SEFA Group, AAC-Utility Partners, Inc., and Energy Solutions.

QUESTION 3. Do any of your clients, or organizations, in which you've worked with currently or the past have pending business before the NRC? If so, please provided detailed information on the client or organization and business.

ANSWER.

In 2016, I performed a compensated service for Energy Solutions through my LLC. The amount of income I received was below the reporting threshold of the OGE Form 278e, and thus, Energy Solutions is not listed on my financial disclosure form. However, I have been advised

that I may be restricted in my ability to participate in specific matters involving Energy Solutions, a former client, and will abide by those restrictions. Energy Solutions is the operator of two low-level waste disposal facilities (Barnwell, South Carolina and Clive, Utah) and also provides services to decommissioning nuclear power plants and so it may have business before the NRC at any given time.

QUESTION 4.

Do any of your clients, or organizations, in which you've worked with currently or the past have lawsuits before the NRC? If so, please provided detailed information on the client or organization and the lawsuit.

ANSWER.

I am not personally aware of any lawsuits before the NRC with respect to any of my clients or previous organizations.

QUESTION 5.

Have you ever testified before Congress, if so, can you provide your testimonies?

ANSWER.

Yes (see attachments to question 5). To the best of my knowledge, and in date order, the appearances were:

- 08/03/2006 U.S. Senate Energy & Nat. Res. Comm. "Nuclear Fuel Management & Disposal Act".
- 09/25/2008 U.S. Senate EPW Roundtable Meeting on Recycling Spent Nuclear Fuel;

- 02/10/2009 U.S. Senate Energy & Nat. Res. Comm. "National Renewable Portfolio Standard";
- 07/27/2010 U.S. House Budget Committee hearing on Yucca Mountain
- 02/01/2012 U.S. House Energy & Commerce Comm., Subcommittee on Energy & the Environment – "Recommendations of the Blue Ribbon Commission on America's Nuclear Future"
- 06/19/2012 U.S. House Energy & Commerce Committee, Subcommittee on Energy & Power – "American Energy Initiative: EPA Greenhouse Gas Regulations"

QUESTION 6.

It is very important to me that the NRC continues to strive for a culture of safety and continues to be independent in its decision-making. If confirmed, what steps would you take to ensure this culture of safety environment continues?

ANSWER.

I agree with you that a strong safety culture is important. Critically, from my observations, I believe the NRC staff is committed to fulfilling the agency's important safety and security mission, an important basis for agency safety culture. Beyond this, I understand the NRC has several programs in place to support raising differing views, which can help nurture a strong safety culture. If confirmed, I will examine ongoing efforts to promote safety culture and look for opportunities to strengthen it further.

QUESTION 7.

What skills do you bring to the Commission that will enhance the NRC's ability to focus on safety?

ANSWER.

If confirmed, I believe what I have been exposed to, and learned, both in my role as a state regulator, in private business, and as a baseball umpire for the past 45 years will help me as an independent regulator at the NRC.

Having been self-employed the majority of my adult life, I believe I bring a skill set and life experiences that will help me be successful as an independent regulator. Not only do I have a broad and varied background in private business, I gained knowledge and experience serving in various elected positions in local and state government, as well.

I was a public utility commissioner in South Carolina for nearly 10 years, so I understand the role of a regulator. If confirmed, I will approach my work as a Commissioner with an open mind and in a collegial manner. I will listen to all parties - and points of view, seek clarification where needed, endeavor to establish a complete record, base my decision on the facts before me and work to build consensus among the commissioners whenever possible in implementing the NRC's mission of protecting public health and safety, promoting the common defense and security, and protecting the environment.

QUESTION 8.

At one time, the NRC was rated the best place to work in the federal government. Now, it is rated 12th for mid-size agencies. What will you do to boost morale for the NRC workforce?

ANSWER.

I will personally maintain and promote with the staff a clear focus on safety and security, and carrying out the NRC's mission of protecting public health and the environment. Embracing and sharing an important mission like the NRC's is an important foundation upon which to grow employee morale. Beyond that, I believe the agency should examine, to the extent it does not already do so, the findings of the study that ranked best places to work in the government and take action in the areas of weakness that were identified.

QUESTION 9.

During the question and answer portion of your nomination hearing, you mentioned the need to "right-size" the NRC. It is my understanding that the NRC is now looking at possible layoffs this summer and there is not much more fat to trim from the NRC's budget. As more reactors start the decommissioning process, that means less money coming into the NRC, what will you do to ensure the NRC has the appropriate funds to recruit the best people and is able keep up with the evolving workload?

ANSWER.

If confirmed, I will work with my fellow Commissioners to develop annual agency budgets that fully support taking all actions necessary to successfully fulfill the NRC's safety and security mission.

THE HONORABLE EDWARD MARKEY

QUESTION 10.

The 2005 Energy Policy Act includes a provision, which I authored, that mandates that the NRC conduct security inspections at U.S. nuclear power plants. These inspections must include force-onforce exercises, where a mock adversary force conducts a simulated attack on a power plant to probe potential gaps in the plant's security.

These exercises allow the NRC to ensure that nuclear power plants are adequately protected against terrorists or other bad actors. The alternative – of having plant operators run their own exercises – would not only violate the law, but it would also create a clear conflict of interest, and undermine public safety.

In the past, the nuclear industry lobbied the NRC to get rid of its force-on-force exercises in favor of exercises conducted by power plant operators. In effect, this would have nuclear power plant operators inspect themselves, in violation of the law.

Do you support security evaluations of nuclear power plants that are conducted by the Nuclear Regulatory Commission, and not by licensees?

ANSWER.

I understand that Section 170D of the Atomic Energy Act, as amended by the Energy Policy Act, requires the NRC to conduct triennial security evaluations at facilities designated by the Commission, which must include a force-on-force (FOF) exercise that simulates security threats in accordance the applicable design basis threat. If

confirmed, this is an issue on which I will engage the NRC staff because of its importance to national security and public health and safety.

QUESTION 11.

When Entergy announced its intention to cease operations at the Pilgrim Nuclear Power Station, the Nuclear Regulatory Commission promised that the closure would "not relieve [Entergy] of the responsibility of running that plant as safely as possible until the end of its life."

But in the last several months, the NRC has broken that promise by providing Pilgrim with exemptions from critical safety upgrades.

After the Fukushima nuclear disaster in 2011, the Fukushima Near-Term Task Force recommended a series of safety upgrade for America's nuclear fleet. The NRC opted to accept these recommendations, and apply them to reactors of the same design as Fukushima, like Pilgrim.

Among the critical safety upgrades were the requirement to reevaluate and address the risk of earthquakes and floods. The other critical safety upgrade was to install hardened containment vents capable of operating under severe accident conditions. These are meant to prevent the release of radioactivity in the event of a terrorist attack or severe accident.

But instead of requiring Entergy to carry out these commonsense safety upgrades, the NRC provided Pilgrim with exemptions. Do you believe that providing exemptions from NRC safety regulations to U.S. nuclear plants increases public confidence in the safe operation of those plants?

ANSWER.

I understand that the NRC has an established process, codified at 10 C.F.R. 50.12, allowing power reactor licensees to apply for an exemption from an NRC regulation. I understand that the NRC staff may grant such exemptions on a case-by-case basis if the criteria within that regulation are met, including findings by the staff that special circumstances are present and that granting the exemption will not present an undue risk to the public health and safety and that it is consistent with the common defense and security. If confirmed, this is an issue on which I will engage the NRC staff.

QUESTION 12. Do you support the NRC granting exemptions to nuclear plants that have announced their intention to shut down operations?

ANSWER.

I understand that the NRC has an established process, codified at 10 C.F.R. 50.12, allowing power reactor licensees to apply for an exemption from an NRC regulation. I understand that the NRC staff may grant such exemptions on a case-by-case basis after performing a detailed technical safety analysis if the criteria within that regulation are met, including findings by the staff that special circumstances are present and that granting the exemption will not present an undue risk to the public health and safety and that it is consistent with the common defense and security. If confirmed, this is an issue

on which I will engage the NRC staff, and I will closely monitor the status and progress of the agency's ongoing rulemaking efforts to improve the regulatory setting for power reactors transitioning to decommissioning.

QUESTION 13.

The recent National Academies of Sciences report on lessons learned from the Fukushima nuclear disaster noted that the risk of a spent nuclear fuel fire may actually rise at a decommissioned nuclear plant, because "the pool may be filled to near capacity and some plant safety systems may be inoperable." Yet the Commission has made it a habit of providing exemptions to decommissioned reactors from emergency response and security regulations.

Exempting these plants from NRC rules wholesale permits the nuclear industry to lower the safety margin at decommissioned reactors, which continue to have dangerous spent nuclear fuel on site.

Do you agree that the danger of accidents at spent-fuel pools at decommissioned reactors warrants the application of all emergency response and security regulations that are designed to protect against spent fuel fires?

ANSWER.

I understand that the NRC staff has performed and published a number of studies and analyses on the topic of accident risk at spent fuel pools (such as NUREG-1738: "Technical Study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants," NUREG-2161: "Consequence Study of a Beyond-Design-Basis Earthquake Affecting the Spent Fuel Pool for a

U.S. Mark I Boiling Water Reactor," COMSECY-13-0030: "Staff Evaluation and Recommendation for Japan Lessons Learned Tier 3 Issue on Expedited Transfer of Spent Fuel,"), and has also required enhanced mitigation strategy capabilities through orders issued after the events of Fukushima. I understand that the staff considers such information when it has issued exemptions from certain emergency preparedness requirements and making the required finding that the exemption will not present an undue risk to the public health and safety. If confirmed, this is an issue on which I will engage the NRC staff, and I will closely monitor the status and progress of the agency's ongoing rulemaking efforts to improve the regulatory setting for power reactors transitioning to decommissioning.

QUESTION 14.

In June 2016, I wrote to the NRC to urge the Commission to reexamine and address the risk to public safety posed by
overcrowded spent-fuel pools at commercial reactors, in light of two
reports that identified serious gaps in the NRC's previous analysis.
A fire in a densely-packed spent-fuel pool could result in health and
economic consequences comparable to those caused by an
accident at an operating reactor, including the displacement of
millions of people and untold economic damage. These risks could
be much reduced by transferring spent fuel to dry casks, which are
more resilient against accidents or attacks.

The National Academy of Sciences (NAS) report, Lessons Learned from the Fukushima Nuclear Accident for Improving Safety and Security of U.S. Nuclear Plants, recommends that the NRC "perform a spent fuel storage risk assessment to elucidate the risks and potential benefits of expedited transfer of spent fuel from pools to

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dry casks." Do you support carrying out this recommendation? If not, why not?

ANSWER.

I understand that the NRC staff recently evaluated this specific NAS Recommendation and concluded in a public paper to the Commission that the various analyses already performed or sponsored by the NRC staff were sufficient to support regulatory decisions on the safety and security of spent fuel pools. In that assessment the NRC staff also stated that it is continuing to gather regulatory and technical insights on the security of dry cask storage and is continuing to cooperate with other Federal agencies and international bodies to assess security threats and take action if appropriate. If confirmed, I will engage the staff on the continuation of these efforts.

QUESTION 15.

The NAS report recommended that the NRC "strengthen their capabilities for identifying, evaluating, and managing the risks from terrorist attacks," and that the NRC's spent fuel storage risk assessment "should address accident and sabotage risks." Do you agree with the NAS recommendation that the NRC must fully account for the risk of terrorism and sabotage in its re-assessment of spent-fuel risks? If not, why not?

ANSWER.

I understand that the NRC staff also evaluated this NAS recommendation and concluded that existing NRC security requirements and the NRC's continuous interactions with other Federal agencies to assess possible threats sufficiently addresses security-related risks to nuclear power plants, including terrorism and sabotage. The staff also stated it would continue to work with other Federal agencies, licensees, and other stakeholders to improve its risk assessment techniques and risk management in maintaining security at nuclear power plants. Because of its importance to national security and public health and safety, if confirmed I will engage the staff on the continuation of these efforts.

QUESTION 16.

What steps, if any, will you support to strengthen the NRC's capabilities for identifying, evaluating, and managing the risk of terrorist attacks on nuclear facilities, including spent-fuel storage sites?

ANSWER.

I understand that the NRC continuously evaluates the risk posed by terrorism to NRC-licensed facilities, including spent fuel storage sites, and that if the NRC determines that new information requires additional protection at NRC-licensed facilities, the NRC will impose additional security requirements at those sites. If confirmed, I will give this vital task of protecting national security and the public health and safety the attention it deserves.

QUESTION 17.

As the Fukushima disaster demonstrated, a major release of radioactivity at a nuclear plant could have significant societal effects. As such, to fully capture spent-fuel storage risks, the NAS

report recommended that the NRC's analysis "[c]onsider societal, economic, and health consequences" of a spent-fuel fire, as well as the direct risks of radioactive release. Do you agree with this recommendation? If not, why not?

ANSWER.

I understand that the NRC does give consideration to societal, economic, and health consequences of hypothetical severe accidents as part of its regulatory analysis process, and that there is an ongoing NRC effort to update is regulatory analysis guidelines for the consideration of economic consequences. If confirmed, I will engage the staff on this topic.

QUESTION 18.

According to the NAS report, the NRC "has not carried out an independent examination of surveillance and security measures for protecting stored spent fuel," as recommended by the NAS's 2006 report. As such, the 2016 NAS report recommended that the NRC fulfill this recommendation, and that the NRC's analysis "should include an examination of the effectiveness of [the NRC's] programs for mitigating insider threats." Do you support carrying out an independent examination, as recommended by both NAS studies? If not, why not?

ANSWER.

I understand that the NRC has conducted numerous studies over the years to assess potential risks from terrorist attacks, and that the agency continuously evaluates the risk posed by terrorism to NRC-licensed facilities, including spent fuel storage sites. I also understand that the

NRC has an insider threat program. If confirmed, I will give this vital task of protecting national security and the public health and safety the attention it deserves.

QUESTION 19.

According to an article in the May 26 issue of *Science* magazine, the NRC's previous assessment of spent-fuel risks ignored the potential damage from a spent fuel fire beyond 50 miles of a plant, despite the fact that a significant portion of the radiation exposure would occur beyond that radius. Failing to account for this factor led the NRC to underestimate the destruction of a spent fuel fire. Do you support inclusion of contamination and other effects beyond 50 miles in the NRC's assessment of spent fuel fire risks?

ANSWER.

I understand that the NRC staff has previously documented its analysis of spent fuel risks resulting from the potential damage from a spent fuel fire in COMSECY-13-0030, and that as part of this analysis the NRC staff did perform sensitivity analyses that extended beyond 50 miles. I understand that the NRC staff concluded from this analysis that regulatory changes where not appropriate, and if confirmed I will familiarize myself with and engage the NRC staff on this topic.

QUESTION 20.

According to the *Science* magazine article, the NRC's previous analysis also assumed that, in the event of a spent fuel fire, contaminated areas could be effectively cleaned up within a one year timeframe, despite evidence from both the Chernobyl and

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Fukushima accidents. Do you support revising that assumption in any re-assessment by the Commission of spent-fuel risks?

ANSWER.

If confirmed I will engage with the NRC staff on this topic.

QUESTION 21.

According to the recent NAS study, under NRC rules, if the risk of prompt and cancer fatalities in the vicinity of a nuclear accident falls below a certain threshold, the NRC is not required to undertake a cost-benefit analysis of strategies for mitigating that risk. As a result of this rule, even though a spent-fuel fire could displace millions of people and result in trillions in economic damage, the NRC would not be required to evaluate the costs and benefits of strategies to mitigate such an event because it would not necessarily produce a significantly higher risk of fatalities in the immediate vicinity of the plant. To address this obvious deficiency, the NAS study cites experts who have suggested that the NRC should amend its rules by setting a limit on the likelihood that a large number of people would be displaced for a long-term period following a release of radioactive fall-out. Do you support implementing such a rule?

ANSWER.

If confirmed I will engage with the NRC staff on this topic.

THE HONORABLE BERNARD SANDERS

QUESTION 22.

As you know, the Vermont Yankee Nuclear Power Station is in the process of decommissioning. The Nuclear Regulatory Commission (NRC) requested comments on a draft regulatory basis ending this month to support a rulemaking that would amend NRC's regulations for the decommissioning of nuclear power reactors. The NRC's goals in amending these regulations would be to provide for an efficient decommissioning process; reduce the need for exemptions from existing regulations; address other decommissioning issues deemed relevant by the NRC staff; and support the principles of good regulation, including openness, clarity, and reliability. If confirmed, will you commit to supporting the following decommissioning requirements for the decommissioning rulemaking? If not, why?

- The enhancement of community involvement by requiring licensees of decommissioning reactors to include state and local officials' input into licensees' decommissioning plans;
- that decommissioning funds are used strictly for statutorilyauthorized purposes;
- that spent nuclear fuel be removed from wet storage and placed into safer dry cask storage as quickly as possible;
- that the site of the plant is rapidly returned to beneficial use instead of decades after the plant ceases operations, and that licensees maintain or obtain the financial resources necessary to do so; and

 that all emergency preparedness and response, and security resources and licensing requirements, remain in place until all the spent nuclear fuel is placed into safer dry cask storage or removed from the site.

ANSWER.

I understand that the NRC's decommissioning rulemaking is currently ongoing and still in the early stages of the process. I understand that the NRC has published draft documents including preliminary options and recommendations for public comment associated with this rulemaking. If confirmed, I will give the various issues presented in your question full and impartial consideration as I review the staff's progress and conclusions as this rulemaking progresses during the course of my term.

QUESTION 23.

What do you believe should be the process for reviewing and processing public comments in the rulemaking and other formal proceedings? How should public comments be weighed by the Commission against comments from the industry?

ANSWER.

I understand that the Administrative Procedure Act governs the process by which agencies solicit and respond to public comments in rulemaking proceedings. I also understand that the NRC has various internal policies and guidance relating to soliciting and responding to public comments. I understand that the NRC, as an independent agency, must consider and evaluate information it receives fairly and objectively regardless of the identity of the submitter.

QUESTION 24.

How should the NRC educate the public about the existence and meaning of the ongoing decommissioning rulemaking process?

What should be NRC's plan for community outreach for the remainder of this decommissioning rulemaking process?

ANSWER.

I understand that the NRC uses various processes to educate and engage the public about its rulemaking activities, including the decommissioning rulemaking. For example, as with the decommissioning rule, the NRC can issue an Advance Notice of Proposed Rulemaking to obtain and consider views from the public at the initial stage of the rulemaking process. I understand that the NRC has also held public meetings to raise awareness of this rulemaking and facilitate better public understanding. I understand that the NRC also has an Office of Public Affairs which routinely publishes press releases and performs other outreach to members of the public and provide updates on ongoing regulatory activities, including the decommissioning rulemaking. In all, I understand the importance of understandable and transparent communication with the public and if confirmed I will continue these efforts.

QUESTION 25. Should NRC plan public field meetings to gather comments or testimony from communities where nuclear plants are decommissioning now, or will be soon? If not, why?

ANSWER.

I understand that the NRC staff already does hold public meetings in the vicinity of a decommissioning facility in the early stages of the decommissioning process to discuss the licensee's planning, schedule, cost, and environmental impact information.

QUESTION 26.

What is the justification for the NRC to continuously waive its own regulations, especially those pertaining to the decommissioning trust fund, even though it is working to create new decommissioning rules?

ANSWER.

I am only aware of the supporting justification that the NRC staff publishes at the time that it grants such exemptions, pursuant to the criteria established in 10 C.F.R. 50.12.

QUESTION 27.

What justification is there for the NRC to approve withdrawals from Vermont Yankee's Decommissioning Trust Fund for spent fuel management when NRC's regulations expressly prohibit such use? (10 C.F.R. § 50. 75 at FN 1.)

ANSWER.

I am only aware of the supporting justification that the NRC staff published at the time that it grants this exemption, which was that the NRC approved the request consistent with the criteria established in 10 C.F.R. 50.12.

QUESTION 28.

Former NRC Chair Allison Macfarlane authored a paper in 2003 along with other experts that concluded that dry cask storage offers compelling advantages over wet pool storage: it is safer and it is less prone to failure. They recommended that spent fuel should be transferred from wet pools to dry cask storage within five years of discharge to reduce the risk of fire and subsequent radioactive contamination of air and land.

Do you have a position on dry cask versus wet pool storage? If confirmed, will you commit to supporting more studies of this issue?

ANSWER.

It is the mission, duty and responsibility of the NRC to ensure that spent nuclear fuel is managed safely and securely in both wet pools and dry cask storage, and both have been determined to be safe.

I would support additional review or studies of this issue should new information become known.

QUESTION 29.

State regulatory officials from Vermont have raised concerns that the NRC is less likely to consider commentary received from state and local governments on reactor license change requests, and NRC rulemaking and regulatory guidance efforts, than commentary from nuclear power plant operators (e.g. Entergy, Exelon and First Energy) and nuclear power industry organizations such as the Nuclear Energy Institute (NEI). If confirmed, what steps would you take to assure that commentary and concerns expressed by state

and local governments, or other nuclear power plant stakeholders, are given consideration equal to that already enjoyed by nuclear power plant operators and their supporters?

ANSWER.

I understand that the Administrative Procedure Act governs the process by which agencies solicit and respond to public comments in rulemaking proceedings. I also understand that the NRC has various internal policies and guidance relating to soliciting and responding to public comments. If confirmed, I will ensure that the NRC, as an independent agency, consider and evaluate information it receives fairly, transparently, and objectively, regardless of the identity of the submitter.

QUESTION 30.

To date, nuclear power plants that have permanently shut down have been permitted to eliminate their offsite Emergency Planning Zones (EPZs) roughly 15 to 20 months after cessation of power generation. The risk of a spent fuel fire resulting from a significant loss of spent fuel pool water inventory is greatly reduced, but a reduction in risk is not an elimination of risk. A reduced risk of a spent fuel fire still requires a significant offsite emergency response that requires drills or exercises to demonstrate proficiency in response and funding to maintain essential emergency response equipment and staff. If confirmed, will you support maintaining offsite EPZs for permanently shut down nuclear power plants until such time that all spent fuel is removed from onsite spent fuel pools?

ANSWER.

I understand that the NRC staff has performed and published a number of studies and analyses on the topic of accident risk at spent fuel pools (such as NUREG-1738: "Technical Study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants," NUREG-2161: "Consequence Study of a Beyond-Design-Basis Earthquake Affecting the Spent Fuel Pool for a U.S. Mark I Boiling Water Reactor," COMSECY-13-0030: "Staff Evaluation and Recommendation for Japan Lessons Learned Tier 3 Issue on Expedited Transfer of Spent Fuel,"), and has also required enhanced mitigation strategy capabilities through orders issued after the events of Fukushima. I understand that the NRC staff considers such information when it has issued exemptions from certain emergency preparedness requirements and making the required finding that the exemption will not present an undue risk to the public health and safety. If confirmed, this is an issue on which I will engage the NRC staff, and I will closely monitor the status and progress of the agency's ongoing rulemaking efforts to improve the regulatory setting for power reactors transitioning to decommissioning.

QUESTION 31.

When NRC staff respond to concerns raised by state or local government officials, or individual concerned citizens, they rely heavily on references to voluminous regulatory documents which are difficult to follow, or use jargon that only makes sense to other NRC staff. If confirmed, what actions would you consider taking to facilitate clear communication by NRC officials with lay members of the public?

ANSWER.

I understand that the NRC is committed to using clear, plain language in its communications with members of the public, and that, per the Plain Writing Act of 2010, the agency has internal plain-writing guidance and a Plain Writing Action Plan, and publishes annual reports on its implementation of these requirements. I understand the importance of the quality and clarity of communications with NRC stakeholders to ensure they are adequately informed of the agency's regulatory, licensing, and oversight activities. If confirmed I will support and continue the agency's ongoing efforts in this area.

QUESTION 32.

One significant source of frustration for state and local governments, and individuals who are following nuclear power plant decommissioning efforts, is that the process of complete decommissioning and site restoration is under the jurisdiction of multiple federal agencies in addition to the NRC, such as the Environmental Protection Agency, the Department of Energy, the Department of Transportation, and the Department of Homeland Security, just to name a few. If confirmed, what steps would you take to assure that the scope of regulatory authority of all federal agencies with jurisdiction is clear to all stakeholders?

ANSWER.

I understand that the NRC currently has various Memoranda of Understanding with these federal agencies with respect to jurisdictional responsibilities and the overall regulatory framework of decommissioning and site restoration. If confirmed I will work with the NRC staff, such as the Office of Public Affairs, to ensure that these responsibilities are communicated

clearly with interested stakeholders and ensure that the public is adequately informed and engaged on these matters.

QUESTION 33. What do you believe is the future of nuclear power in this country?

ANSWER.

I am confident nuclear power will continue to provide part of the generation mix needed in the United States in the future, but its' levels will be dependent on economic and other factors outside of the NRC's area of jurisdiction and control.

QUESTION 34. If confirmed, what role do you believe you should play—if any—as

Commissioner in supporting the nuclear power industry?

ANSWER.

The mission of the NRC is to license and regulate the civilian use of radioactive materials in the United States to protect public health and safety, promote the common defense and security, and protect the environment. It is not the duty of a Commissioner or the NRC to support the nuclear power industry. The NRC is an independent agency.

QUESTION 35. According to recent Energy Information Agency estimates, the generating capacity from nuclear power will drop from 20 percent to 11 percent by 2050. If confirmed, how will you ensure safety during this time of mass decommissioning?

ANSWER.

I understand that the NRC oversees the safety and security of reactors during decommissioning and currently has comprehensive regulations to ensure their safety and security during its decommissioning process. This regulatory framework includes safety, environmental, and financial reviews so that the NRC staff can assess decommissioning activities in areas such as financial assurance, training and qualification of licensee staff, decommissioning methods, and clean up criteria. I understand this oversight also includes independent NRC review and monitoring during major decommissioning activities and NRC verification of the site's final radiological conditions. If confirmed, I will work with the staff to ensure that the NRC's decommissioning regulatory framework continues to preserve the safety and security of these sites, even during a time of increasing decommissioning, and I will closely monitor the status and progress of the agency's ongoing rulemaking efforts in this area. Additionally, if confirmed, I will work with the Commission and with Congress to ensure that, if these EIA estimates are correct, the agency has adequate resources to respond to the increasing numbers of nuclear power plants entering decommissioning.

QUESTION 36.

Most of the plants currently being decommissioned across the U.S. are doing so because they are not economically competitive. Some have proposed easing safety and other regulatory burdens to help the economic viability of the nuclear fleet. If regulations on existing and new power plants are decreased, how will you ensure the safety of our nuclear fleet?

ANSWER.

I understand that the NRC has a statutory responsibility to ensure there is reasonable assurance of adequate protection of public health and safety and the common defense and security, and that the NRC does not consider cost when determining what is necessary for adequate protection. If confirmed I will ensure that, to the extent the agency revises any regulations for new or existing power reactors, that compliance with those regulations will continue to ensure such reasonable assurance of adequate protection.

QUESTION 37. If confirmed, how will you ensure the public safety of next-generation nuclear reactors that implement advanced technologies?

ANSWER.

I understand that in 2008 the Commission published a Policy Statement on the Regulation of Advanced Reactors, which established an expectation that advanced reactors will provide enhanced margins or safety and/or use simplified, inherent, passive, or other innovative means to accomplish safety and security functions. If confirmed, I will ensure that this policy is implemented and that the NRC staff is giving the appropriate consideration to the safety and security of the design of advanced reactors and the development of a regulatory framework for advanced reactor designs.

QUESTION 38. How will the potential development of advanced nuclear technologies affect the problems NRC is currently confronting in storing spent nuclear fuel long-term?

ANSWER.

I understand that advanced nuclear technologies propose to use various fuel forms that will generate and potentially consume high-level radioactive waste. If confirmed, I will ensure that the NRC engages with necessary stakeholders including the Department of Energy, advanced reactor designers, industry organizations, international organizations, and the public, as the agency develops and implements any plans for the possible regulation of advanced reactor designs and related fuel cycle facilities, including those associated with storage of spent nuclear fuel.

QUESTION 39. Currently the U.S. has no permanent storage for spent nuclear fuel. Where do you anticipate that spent nuclear fuel from nextgeneration nuclear reactors will be stored?

ANSWER.

I have not yet had the opportunity to be briefed by NRC staff and technical experts on issues related to the storage of spent nuclear fuel from next-generation nuclear reactors. If confirmed, I look forward to learning more detail about those issues.

QUESTION 40.

The March 2011 Fukushima nuclear accident prompted the NRC to review its own regulations. The Commission's Fukushima Task Force, consisting of NRC experts with 135 years of nuclear regulatory expertise among them, made a range of key recommendations for improving nuclear plant safety. The final report included 12 recommendations ranging from requirements to upgrade seismic and flood protections to protections against the

long power outages that were the ultimate cause of the Japanese meltdowns. They also concluded that all of the recommendations were necessary for the "adequate protection" of nuclear power plants.

Despite the repeated urging of its own experts, the Commission has so far refused to make these recommendations mandatory. What steps will you take to ensure that the Commission revisits this decision and does, in fact, adopt the Task Force's safety recommendations as mandatory?

ANSWER.

I understand that following the accident at Fukushima, the NRC assessed the operability of the US nuclear fleet and determined that it remained safe for the nuclear fleet to continue operations, and also chartered a Near-Term Task Force (NTTF) to conduct a review of NRC requirements, programs, and processes and recommend any improvements to the NRC's regulatory system. I understand that the Commission issued orders based on the recommendations of the NTTF to implement the most significant safety recommendations, that implementation of these safety enhancements are substantially completed, and the agency is currently engaged in a rulemaking effort that would make these and other NTTF recommendations required for all current and future nuclear power plants.

If confirmed, as a Commissioner I would continue to work with and engage the NRC staff on this important topic of post-Fukushima actions.

QUESTION 41. A paper published in *Science* last month by nuclear experts from the

Union of Concerned Scientists and Princeton University argued that

the NRC places the U.S. at risk of disasters like Fukushima because of problems in its approach to assessing the risks and benefits of safety improvements. The authors suggest that NRC should reform its risk assessments in the following ways (see below). Do you concur that these corrections to current NRC risk assessments are needed? If not, why? If so, how will you address these issues as a Commissioner, if confirmed?

- Take into account the possibility of a terrorist attack in regulatory decisions such as the one on whether or not to require the nuclear utilities to remove spent fuel to dry cask storage after 5 years.
- Take into account accident consequences beyond 50 miles of the site.
- Make assumptions concerning population relocation, and therefore property losses, after a nuclear accident consistent with the EPA's guidance concerning dose levels.
- Make realistic assumptions concerning the efficacy and speed of decontamination actions.
- Update the NRC's assumption concerning the value of a life lost to radiation-induced cancer by a factor of 2.5, as recommended by the NRC staff.

ANSWER.

I understand that the NRC staff has, in various studies and regulatory analyses, provided the Commission with its assessment of several of these issues. For example, in COMSECY-13-

0030, I understand the NRC documented its analysis of spent fuel risks resulting from the potential damage from a spent fuel fire, which included a sensitivity analysis extending beyond 50 miles. Additionally, for example, I understand the staff has recently provided recommendation to the Commission in a public paper to update the NRC's guidance on the "Dollar Per Person-Rem Conversion Factor Policy," which is the agency's monetary valuation of the cancer mortality risk of radiation exposure. Additionally, I understand the NRC staff continuously monitors and assesses threat conditions and plant security associated with terrorist attacks, interacting and coordinating with other federal agencies, and that the NRC is committed to take appropriate actions to address this changing threat environments should new information ever indicate new risks to plants or spent fuel. If confirmed, I will continue to engage with the NRC staff on these issues.

QUESTION 42.

A February 2017 report by Union of Concerned Scientists stated, "Just as nuclear plant owners have downplayed and dismissed clear and present signs about safety culture problems at their plants, the data suggest that the NRC's management is just as dismissive of indications that it has a poor safety culture." Are you concerned that staff at nuclear power plants and the NRC are reluctant to report safety problems because of the lack of trust between workforce and management? If so, how can NRC address the lack of a nuclear safety culture, and lessen risks to public and environmental safety? If not, what evidence do you have that NRC management maintains a robust safety culture?

ANSWER.

I understand that the NRC has policy statement that describes how it assesses a licensee's safety conscious work environment (SCWE) where employees are encouraged to raise safety concerns and where those concerns are promptly reviewed and resolved accordingly. I understand the NRC assesses and this SCWE and takes action when necessary through tools such as allegations, inspections, chilling effect letters, and orders. I also understand that internally, the NRC is committed to fostering an environment where the staff is free to raise concerns and offer differing views without fear of reprisal. If confirmed, I will continue to engage the NRC staff in these important ongoing efforts, both externally and internally, to promote the importance of safety culture within the nuclear safety and the agency.

QUESTION 43.

NRC's Office of Nuclear Material Safety and Safeguards (NMSS) is responsible for regulating activities which provide for the safe and secure production of nuclear fuel used in commercial nuclear reactors; the safe storage, transportation and disposal of high-level radioactive waste and spent nuclear fuel; and the transportation of radioactive materials regulated under the Atomic Energy Act. The United States is facing a significant long-term problem in its disposal of nuclear waste. What do you envision as a potential solution, and what role should NRC play?

ANSWER.

National policy or solutions for the disposal of spent nuclear fuel is set by Congress and the President. In its regulatory role as an independent federal agency, the NRC must evaluate the safe and secure operation of high-level waste storage through its licensing and regulatory actions, as well as its oversight responsibility of licensees.

QUESTION 44.

President Trump's FY18 budget proposal would revive the approval process for Yucca Mountain nuclear waste site. NRC's role in approving the Yucca Mountain site has been to assess DOE's license application to consider whether the proposed facility meets its regulatory requirements for geologic disposal of the waste. The NRC process also includes conducting a Safety Evaluation Report and adjudicatory hearings before the Atomic Safety and Licensing Board. Adjudicatory hearings for Yucca Mountain, which must be completed before a licensing decision can be made, remain suspended. If confirmed, will you ensure robust public comment and involvement in any decision on a potential solution to this country's significant long-term problem of nuclear waste disposal?

ANSWER.

If confirmed, I will ensure that the NRC follows its established regulations and processes for the adjudicatory hearings, in line with any funding appropriated by Congress for the review and adjudication of the construction authorization application for a repository at Yucca Mountain.

QUESTION 45.

Within the past two weeks, doctors at Pennsylvania State University published a paper analyzing 44 cases of thyroid cancer in the vicinity of the Three Mile Island nuclear plant and found convincing

evidence that they showed signs of exposure to radiation. In 2002, as part of the response to the 9/11 disaster, Congress authorized an expansion from 10 to 20 miles of the radius within which the drug potassium iodide would be distributed. At the time, the NRC fought that expansion, and under President Bush, the law was not implemented. If confirmed, will you commit to a re-evaluation of the need for greater availability of potassium iodide in view of increased evidence of the sensitivity of the thyroid gland to the carcinogenic effects of radiation?

ANSWER.

If confirmed, I will engage with the NRC staff on this issue and any review or assessments the staff makes of this study.

QUESTION 46.

The NRC used to be considered one of the top federal agencies in workplace satisfaction. Yet, according to index scores from the U.S. Office of Personnel Management's Federal Employee Viewpoint Survey, employee satisfaction at NRC is the worst since 2005 with declines of 3.5 points in just the last year (2015 to 2016). This drop represents one of the steepest declines among agencies of its size. Moreover, scores on leadership are consistently down across all categories, including senior leadership, empowerment, and fairness. If confirmed, what will you do as Commissioner to address these declines?

ANSWER.

Until confirmed, and actually at the NRC, it is not possible for me to develop a personal opinion or personal plan of action on the issue of employee satisfaction or morale. As an employer and as former leader of a state agency, I am cognizant of the need to get to know your employees, as well as what they do, how they feel about what they are doing, and listening to what they say in areas that will make them more productive for the overall good. If confirmed, I will become familiar with what the agency is already doing in this area, as well as what the agency's employee satisfaction goals are.

QUESTION 47. The first of the Nuclear Regulatory Commission's five Principles of Good Regulation is "Independence." What does that principle mean to you?

ANSWER.

There are five Principles of Good Regulation the NRC operates by. They are Independence, Openness, Efficiency, Clarity and Reliability. Each of them is important, but the first one - Independence - is most important.

I have umpired baseball for 45 years, where being independent is critical. An umpire has to fairly and impartially interact and manage a game being played between two teams.

An independent regulator has to do much of the same things that an umpire does. An independent regulator can't do his or her job in a vacuum, though. An independent regulator should interact with all factions fairly and impartially. An independent regulator should let the docket unfold before him or her by building a complete record, collecting all of the facts, and understanding all points of view. Then, an independent regulator, much like an umpire, must pause, read, and assess what is contained in the record in order to make a decision that will

stand up to critique and review, because, like an umpire who does his job well, not everyone is likely to agree with every decision an independent regulator will make.

QUESTION 48.

Would you agree that the Nuclear Regulatory Commission (NRC) should not allow political meddling from Congress, other parts of the executive branch, or industry to interfere with the NRC's independent decision-making processes?

ANSWER.

Yes.

QUESTION 49.

Do you commit to zealously guard the independence of the NRC and oppose any efforts to undermine it?

ANSWER.

Yes.

QUESTION 50.

Having served on the leadership council of Nuclear Matters, an industry advocacy group campaigning to "focus attention on the benefits offered by America's nuclear energy fleet," do you believe you can impartially adjudicate issues for the nuclear industry? If confirmed, do you commit to recuse yourself in cases where there is a conflict of interest, or the appearance of a conflict of interest?

ANSWER.

Upon confirmation, I will resign from my positions with the following entities: E4 Carolinas, the Nuclear Waste Strategy Coalition, the Nuclear Matters Advocacy Council, and the Irmo-Chapin Recreation Commission. For a period of one year after my resignations, I will not participate personally and substantially in any particular matter involving specific parties in which I know any of these organizations are a party or represent a party, unless I am first authorized to participate pursuant to 5 C.F.R. § 2635.502(d).

QUESTION 51. Please list all conference panels, meetings, public rallies, or other public events that you have attended at which nuclear energy or nuclear waste issues were discussed.

ANSWER.

To the best of my knowledge, and in date order, the appearances before Congress were:

- 08/03/2006 U.S. Senate Energy & Nat. Res. Comm. "Nuclear Fuel Management & Disposal Act".
- 09/25/2008 U.S. Senate EPW Roundtable Meeting on Recycling Spent Nuclear Fuel;
- 02/10/2009 U.S. Senate Energy & Nat. Res. Comm. "National Renewable Portfolio Standard";
- 07/27/2010 U.S. House Budget Committee hearing on Yucca Mountain
- 02/01/2012 U.S. House Energy & Commerce Comm., Subcommittee on Energy & the Environment – "Recommendations of the Blue Ribbon Commission on America's Nuclear Future"
- 06/19/2012 U.S. House Energy & Commerce Committee, Subcommittee on Energy & Power – "American Energy Initiative: EPA Greenhouse Gas Regulations"

The National Association of Regulatory Utility Commissioners (NARUC) usually has a meeting of the Subcommittee on Nuclear Waste and Waste Disposal at their three meetings each year, but their topics varied.

The Nuclear Waste Strategy Coalition (NWSC) usually meets once each year.

Since August 2104, when I first joined the Nuclear Matters Advocacy Council, and prior to August 2016, I attended several meetings of the National Association of Regulatory Utility Commissioners, the Mid-Atlantic Association of Regulatory Utility Commissioners, various state Consumer Education Alliance 101 breakfast and lunch functions, the U.S. Women in Nuclear Region II Conference, National Federation of Women Legislators, Republican Lieutenant Governors Association National Meeting, the University of South Carolina, Greater Phoenix Chamber of Commerce, Republican Governors Association Corporate Policy Summit, Southern States Energy Board, American Legislative Exchange Council Annual Meeting, National Conference of State Legislators Nuclear Legislative Working Group. I have performed any duty or function, public or private, for the Nuclear Matters Advocacy Council since August 2016.

QUESTION 52.

Please provide copies (written, audio, or video) of all speeches you have made concerning nuclear energy, nuclear safety, spent nuclear fuel, Yucca Mountain, nuclear waste, or other issues of relevance to the work of the NRC.

ANSWER.

(See attachments to question 52) Copies of congressional testimony are also attached.

Presentations made on behalf of Nuclear Matters were generally the same, usually just substituting the name of the group and location where the presentation was being made, and possibly inserting some state-specific data. I have attached several of the presentations I could find. Last, I do not know of the existence of any videos or audios.

QUESTION 53.

Please provide a list of all organizations—with an interest in nuclear energy, nuclear waste, nuclear safety, or related matters—of which you are, or have been a member?

ANSWER.

The National Association of Regulatory Commissioners (NARUC), S.C. Public Service Commission, Nuclear Waste Strategy Coalition (NWSC), Nuclear Matters Advocacy Council, and E4Carolina's.

QUESTION 54.

Have you or any member of your immediate family received funding, either directly or indirectly, from organizations supporting the licensing of Yucca Mountain as a repository for spent nuclear fuel or from organizations supporting the licensing new nuclear reactors? If so, please describe.

ANSWER.

No.

THE HONORABLE DAN SULLIVAN

QUESTION 55.

Earlier this spring the Committee on Environment and Public Works reported S.512, the "Nuclear Energy Innovation and Modernization Act" on a strong bi-partisan vote. The findings and purposes of this bill provide a framework for these questions.

In S.512 the Committee found that one of the "...impediments to the commercialization of advanced nuclear reactors..." is the "... durations associated with applying the existing nuclear regulatory framework to advanced nuclear reactors. We further found that "...license application reviews should be as predictable and efficient as practicable without compromising safety or security." And, that "the existing nuclear regulatory framework and the requirements of that framework have not adapted to advances in scientific understanding or the features and performance characteristics of advanced nuclear reactor designs."

To address these findings S.512 would establish "...a program to develop the expertise and regulatory processes necessary to allow innovation and the commercialization of advanced nuclear reactors". S.512 provides the NRC with ample time to develop that program so, even if the bill were enacted this year, it will not be fully in place for several years.

Assuming that S.512 is enacted, I would like to understand your views with respect to the application of the NRC's current regulatory authority to innovative nuclear technologies during the time between enactment and the establishment of this new program.

Do you agree with the general findings of S.512? If not, please explain.

ANSWER.

I have not had an opportunity to become fully briefed by the NRC staff and technical experts on their activities in the areas of technical readiness, regulatory readiness and communications in the Advanced Reactor technology space. If confirmed, this is an area of great interest and I look forward to learning where the NRC is in preparing for these technologies and reactor designs within the scope of the agency's safety and security mission.

QUESTION 56.

In this interim period, the Commission likely will be confronted with innovative and advanced nuclear technologies, e.g. subcritical technologies, which may not fit within the scope of the NRC's current regulations. The Atomic Energy Act vests the NRC with broad authority to determine the scope of its regulatory jurisdiction, including the discretion to issue additional regulations to bring new technologies within the scope of the existing regulatory framework. In the event you encounter such an issue while serving on the NRC, what views will guide how you exercise your discretion with respect to regulation of such new technologies? Will you regulate simply to regulate or will you insist that there be regulation only when it is needed to adequately address public health and safety risks?

ANSWER.

I have not had an opportunity to become fully briefed by the NRC staff and technical experts on their activities in the areas of technical readiness, regulatory readiness and communications in the Advanced Reactor technology space. If confirmed, this is an area of great interest and I look forward to learning where the NRC is in preparing for these technologies and reactor designs within the scope of the agency's safety and security mission.

QUESTION 57.

Nuclear industry activities frequently are subject to regulation by many different federal agencies which often have different perspectives and objectives.

If you are presented with a situation in which regulation of a new innovative technology by other agencies appropriately addresses any public health and safety risks presented by that technology, will you insist that the NRC also regulate?

ANSWER.

The role of the NRC is that of licensing to ensure adequate protection of public health and safety, to promote the common defense and security, and to protect the environment. If confirmed, I will want to be briefed by NRC staff and technical experts on how the NRC works with other agencies in this area.

THE HONORABLE SHELDON WHITEHOUSE

QUESTION 58.

Last year, NRC's budget included a \$5 million request to build up the regulatory infrastructure for improving licensing of advanced reactor concepts. This request was appropriated in this year's Omnibus. Unfortunately, in this year's budget request NRC does not ask for additional funding for their advanced rector licensing work.

- a. Can you discuss what the NRC plans to do with the additional funding for advanced reactor licensing?
- b. Why did NRC not ask for additional funding in the President's FY2018 budget to continue its work in this area?
- c. There have been tremendous advances in predictive modeling and simulation capabilities for new nuclear technologies that can yield new insights into new reactor behaviors and accelerate the licensing of new technologies. Will you help direct the NRC staff to embrace and adopt these tools?

ANSWER.

a. The NRC is enhancing its existing regulatory framework to address non-LWR in a technology neutral manner as part of its vision and strategy for safely achieving effective and efficient Non- Light Water Reactor (LWR) mission readiness. The FY 2018 budget does not include off-the fee based funding for advanced reactors, but does include very limited on-fee based funding for non-LWR infrastructure development and preapplication interactions. Examples of activities underway include the development of advanced reactor design criteria and the NRC issued draft regulatory guide "DG-1330, "Guidance for Developing Principal Design Criteria for Non- Light Water Reactors," for

formal public comment in February 2017. The NRC plans to issue a final regulatory guide at the end of 2017. In October 2016, the NRC issued a draft "Regulatory Review Roadmap for Non-Light-Water Reactors, which described flexible review options, including the use of a staged-review process and the use of conceptual design assessments during the pre-application period. The NRC is working with stakeholders on a utility-led licensing modernization project supported by the Department of Energy and the Nuclear Energy Institute. White papers are being prepared by the utility-led working group and provided to the NRC staff as part of development of regulatory guidance for non-LWR applicants. The NRC staff is currently reviewing the first white paper on risk-informed performance based-licensing bases event selection.

- I am not privy to the FY2017 and FY2018 internal budgetary deliberations of the
 Commission, other than what has been made publicly available in the agency's
 Congressional Budget Justification, but if confirmed I will work to ensure that the NRC is
 adequately funded for its anticipated work relating to advanced reactor licensing.
- c. Yes.

QUESTION 59.

The Chinese currently have 21 new nuclear reactors under construction. The Chinese regulatory system appears to be similar to the new, post-Fukushima Japanese system, where the nuclear regulatory body is housed in the Environment Ministry. Although it appears that the Chinese regulatory systems seems to have similar licensing and regulatory authority to that of the U.S. NRC, their ability to license reactors appears to be more efficient.

- a. Can you discuss whether the current regulatory licensing framework at NRC is different than the Chinese licensing system? If so, what are the differences?
- b. Can you comment on what may be enabling the Chinese to be able to license 21 new reactors under their framework?
- c. Has the NRC looked at a cross comparison between the Chinese licensing process and the U.S. system? If not, would you commit to doing such a comparison?

ANSWER.

- I do not know the differences between the U.S. and Chinese regulatory licensing frameworks, nor have I had the opportunity to be briefed by NRC staff and technical experts on what is already know. If confirmed, I look forward to learning more about the differences in this area.
- b. Not being confirmed at this time, and not having an opportunity to look at this difference with the NRC staff and technical experts, anything I might suggest would be hazarding just a guess. If confirmed, I look forward to learning more about why these differences exist.
- c. I do not know the differences between the U.S. and Chinese regulatory licensing frameworks, nor have I had the opportunity to be briefed by NRC staff and technical experts on what is already know. If confirmed, I look forward to learning more about the differences in this area.

QUESTION 60.

The NRC budget includes \$30 million from the Nuclear Waste Fund to fund activities for the proposed Yucca Mountain deep geological repository. DOE has been collecting fees since 1983 under the

Nuclear Waste Policy Act of 1982 to go into the Nuclear Waste Fund.
Until 2010, DOE was collecting around \$750 million a year (nearly
\$31 billion in total) into the fund. The fee program was stopped in
2010 after the Obama administration backed away from the planned
nuclear fuel repository at Yucca Mountain.

- a. If you are confirmed as Commissioner and Congress passes funding for Yucca Mountain licensing do you plan on moving the licensing process forward?
- b. If the licensing process for Yucca Mountain moves forward do you support reinstating the fee for the Nuclear Waste Fund?
- c. Do you believe that nuclear waste as a liability associated with it that should be quantified? Can you estimate what the liability of the existing nuclear waste stockpile might be?

ANSWER.

- a. Should the Congress fund the Department of Energy to proceed with the License
 Application, then, the NRC should follow the law, as well, and prepare for the review of the license application.
- b. The NRC would not play a role with regard to reinstatement of the fee.
- c. The NRC is a safety regulator and would not have any jurisdiction regarding the liability questions asked. The role of the NRC is that of licensing to ensure adequate protection of public health and safety and to promote the common defense and security.

Attachment for Question 5

1 2 3	Statement Before the Senate Environment and Public Works Roundtable Meeting on Recycling Spent Nuclear Fuel
4	My name is David Wright. I am a legislatively-elected Commissioner of the
5	South Carolina Public Service Commission. Although I am here today officially
6	representing myself as a South Carolina Commissioner, it is also worth noting that I an
7	also chairman of the Subcommittee on Nuclear Issues and Waste Disposal of the
8	Electricity Committee of the National Association of Regulatory Utility Commissioner
9	(NARUC), chair of the Nuclear Waste Strategy Committee (NWSC) and a national co
10	chair of the Yucca Mountain Task Force (YMTF) There has been considerable discussion
11	about, and interest in, future technologies surrounding nuclear waste disposal, including
12	recycling, in which all these groups have a great deal of interest.
13	Before I begin, I would like to take a moment to thank you for hosting this
14	roundtable discussion today, and I would like to thank you for your leadership on this
15	issue. But, if I might, I would like to single out Senator Domenici of New Mexico for a
16	moment.
17	Senator Domenici has carried large and heavy buckets of water on 'all-things
18	nuclear' for many years. He has truly been a steady voice, providing consistent leadership
19	on nuclear issues, nuclear waste disposal and even reprocessing.
20	I have a personal story.
21	The Senator may not remember this, but on January 24th of this year, a meeting
22	was held in his office to discuss some ideas he had about reprocessing which led to the
23	recent introduction of his SMART bill.

1

I was supposed to be present for that meeting but, fortunately or unfortunately, 2 depending on your point of view I guess, I was diagnosed with colon cancer and had colon surgery performed the day before the meeting. The following morning, on January 3 24th, feeling as good as I could after major surgery, Karen Billups patched me into the 4 meeting via telephone from my hospital bed. Senator Domenici, you could not have been 5 more considerate of me that morning. Thank you for that. 6 Also, sir, I wish to thank you for your many years of public service to your state 7 and to this country. I can assure you, that you, and the leadership you have provided, will 8 9 be truly missed. I appreciate the opportunity to appear before you this morning. The issues that 10 you are addressing in this roundtable are cutting edge for sure. To no one's surprise, there 11 may be more questions at this point than there are answers, but in order to get anywhere 12 13 you first have to start somewhere. Today is a good time and place to start. 14 As a Commissioner, I am charged with balancing the needs of our investorowned, and privately-held utilities, with the needs of the consumer, in an effort to provide 15 reasonable service and service quality at just and reasonable rates. 16 17 I share the concern of those in the Congress who believe in the need to reform the 18 manner in which the Nuclear Waste Fund is managed, for indeed, the repository schedule 19 cannot be met without greater financial resources. Although the Nuclear Waste Fund was 20 well designed in the Nuclear Waste Policy Act as the mechanism for the commercial 21 share of repository disposal costs to be ratepayer-financed, that is not the way the Fund is 22 currently used. Quite simply, the fees collected from ratepayers are not being used for 23 their intended purpose.

Taking the Nuclear Waste Fund off budget, and possibly forming a government 1 chartered or quasi-government organization of some kind to manage all phases of the 2 program and the fund may be a good discussion to have. 3 As a commissioner, I am concerned for the ratepayer. First they are being billed 4 through rates for the Yucca Mountain project through the Nuclear Waste Fund. Second, 5 because of project delays and other political obstacles, DOE failed to take title of the 6 spent commercial fuel by the contracted date with the utilities, so the ratepayer is also 7 paying through rates to store this waste on utility sites. Finally, the ratepayer, as a 8 taxpayer, as well as all taxpayers, regardless of whether they have spent nuclear fuel in 9 their state or not, are paying to settle lawsuits brought by utilities against DOE for the 10 failure to take the waste by the contracted date, through payments from the Judgment 11 12 Fund. And, unless something is done, that is only going to get worse. 13 Just a few short years ago, building nuclear plants was not even on the radar. Today, as I speak to you, we have two open dockets for three proposed nuclear plants 14 before us in South Carolina. Applications for twenty-three new nuclear plants are 15 currently before the Nuclear Regulatory Commission. 16 South Carolina's electricity is 50-plus percent nuclear generated. In addition, we 17 have the Barnwell low-level waste facility and the Savannah River Site located within the 18 borders of our state. To say our state supports nuclear energy would probably be an 19 20 understatement. In other words, it is my feeling, and belief, that South Carolina supports centralized storage, the concept of closing the fuel cycle and the disposal of the waste at a 21 22 centralized repository. Our country's baseload needs for electricity are going to continue to grow. 23

1	Everything we can do should be on the table for consideration, and development, because
2	even with an increased focus on conservation and efficiency, and further development of
3	renewable resources like wind and solar, we will only reduce the rate of increase in
4	demand for electricity – not eliminate it.
5	But then there's still the issue of what to do with the waste, both current and
6	future.
7	One option is whether the reprocessing of spent nuclear fuel should be pursued.
8	Senator Domenici began the discussion with the introduction of his SMART bill
9	and this roundtable is an important discussion as well.
10	While I personally believe reprocessing is a truly merited discussion in today's
11	world, I remind you that reprocessing will not replace the need for Yucca Mountain. We
12	will still need a permanent repository for existing defense waste, which is not a candidate
13	for recycling, as well as for the final byproducts of commercial reprocessing or recycling.
14	The good news, as I see it, is that advanced reprocessing or recycling will result in
15	two positive outcomes. First, an advanced reprocessing program will certainly save this
16	country the money that would have been necessary to build a second geologic repository.
17	Second, through reprocessing, because uranium, plutonium, and other elements now
18	considered waste recovered from spent fuel are recycled into new fuel, the result should
19	be less waste that would need to be stored in a repository and it will have a significantly
20	reduced lifetime.
21	Senators, thank you for the opportunity to appear before you today. I commend
22	you again for holding this roundtable and I look forward to the remaining discussion.

1 2 3 4	Testimony of South Carolina Public Service Commissioner David A. Wright before the Senate Energy and Natural Resources Committee on a national Renewable Portfolio Standard
5	Good Morning. I am honored to have the opportunity to appear before this
6	distinguished Committee today to present testimony before you as you wrestle with this
7	difficult issue.
8	My name is David Wright. I am a legislatively elected Commissioner of the
9	South Carolina Public Service Commission. I am here today as Chairman of the ter
10	member states that comprise the Southeastern Association of Regulatory Utility
11	Commissioners (SEARUC), a regional association of the National Association of
12	Regulatory Utility Commissioners (NARUC). I am also representing my state
13	commission and myself as a South Carolina Commissioner.
14	As regulators, my fellow commissioners and I in the SEARUC region are
15	responsible for ensuring that retail electricity customers receive safe, reasonably priced
16	reliable electric service. We are concerned that a uniform, federal Renewable Portfolio
17	Standard (RPS) mandate fails to recognize that there are significant differences among
18	the states in terms of available and cost-effective renewable energy resources, and that
19	having such a standard in energy legislation will ultimately increase consumers
20	electricity bills.
21	Establishing a uniform national RPS, without regard to crucial regional
22	differences, unnecessarily drives up electricity costs, jeopardizes reliability, and diverts
23	capital needed to achieve aggressive carbon targets. If we are going to have renewable
24	portfolio standards, they should be politically sustainable, and take into account what best

efforts can achieve in each state, given its potential for renewable energy. Federal policy

should give states the flexibility to promote renewable energy in a way that doesn't undercut the higher priority of reducing carbon emissions cost-effectively.

Some regions of the country have unique renewable energy sources, like geothermal. Not all states are fortunate enough to have abundant traditional renewable energy resources, such as wind, or have them located close enough to the load center to render them cost-effective. The Southeast and large parts of the Midwest certainly face this circumstance.

In particular, my state, South Carolina, does not possess a wealth of renewable energy sources, such as the abundant solar energy that is available to states in the Desert Southwest, the wind turbine generation available to states located in the Great Plains, or the hydro generation in the Pacific Northwest. As a result, my state, and our region, must seek to encourage the growth of research and development in the use of renewable resources that are available and economically viable to provide for our future needs. During the earlier years covered in the discussion draft being considered we will also have to continue our reliance on conventional base load generation sources including new nuclear energy to ensure that reliable, reasonably priced, electricity is available to all of our citizens.

Even in regions of the country that do have access to wind energy, there frequently is stiff local opposition to building huge wind turbines, significant costs for the additional transmission needed, and reliability concerns. As a result, some renewable wind energy projects do not get built, while others take years to build.

As for solar power, with the current technology, it has a low capacity factor, takes significant space, and is not always available during times of greatest need. In my state,

we have had testimony that as much as 90% of any wind or solar power would have to be 1 backed up with conventional generation sources. Electricity consumers want power even 2 3 when the sun is not shining and the wind is not blowing. 4 Because the availability and cost-effectiveness of traditional renewable energy 5 resources varies so widely among states and regions, the SEARUC states believe that decisions regarding renewable energy portfolios should be left to the states. 6 7 Renewable energy is touted as a way to achieve energy independence, reduce green house gas emissions and reduce our carbon footprint. All of these are admirable 8 9 goals. 10 But what is it that the country really needs? Is it energy independence? Is it a reduced carbon footprint? Is it greenhouse gas-free energy? Like many, I believe it makes 11 sense to do the best we can to achieve all of the above. But at what price? Additionally, 12 to remove political influences, or the artificial 'feel-good' nature a RPS might bring, you 13 should consider relying on sound science as you craft a policy. By this I mean, the 14 15 claims of trade groups or others who are promoting specific renewable technologies 16 should be proven by sound scientific principles, using independent scientific methodology in a transparent way. The claims should be able to proven and reproducible 17 others. 18 19 After so many years of not having a real national energy policy, we're now in 20 great danger of establishing a national policy that is doomed to failure - with a 21 renewables policy and climate policy at cross-purposes. Consumers and our economy

will pay a heavy price for the unintended consequences.

22

While we agree with the overall goals as stated above, and urge Congress to support renewables, we also ask that you carefully craft any RPS mandate to be practically achievable on a state-by-state basis. Because of the differences in availability of renewable resources, some states' "best efforts" in developing renewables may produce results much lower than those that are practically achievable in other states. As the SEARUC region, we wish to emphasize that the aim of federal energy legislation should not be to transfer wealth from one region of our nation to another through the enforced purchase of Renewable Energy Credits, or RECs.

Quite honestly, the utilities in my region will not be able to meet the renewable portfolio standard as set forth in this legislation. Instead, in order to achieve compliance, they will be forced to write very large checks for the RECs, money that will come from our ratepayers, and the money will leave our region where it is needed most. This will be a very significant dollar amount, too.

As attachments to my testimony, I have included sources, links, memos, articles and letters from states in the SEARUC region to support my testimony. Public Utility Commissions and Commissioners throughout the SEARUC region all tell me the same thing. While all of our states strongly support renewable and alternative energy generation, we do not support a federally mandated one-size-fits-all Renewable Portfolio Standard. As regulators and public officials, our statutory charge is to ensure safe, reasonably priced, and reliable electric service. We are concerned that a federally mandated RPS that fails to account for differences in regional and local characteristics could increase the cost of service for all consumers and businesses who use and pay for

electricity and could reduce reliability, while providing no incentive for investment in our
 states or benefit to the customers in return for those higher bills.

Although the states in the SEARUC region do not support a 'one-size-fits-all'
national renewable portfolio standard, we do support the growth of renewables. It is my
hope that the Congress will recognize that there are truly significant differences in the
availability of renewable resources from state to state. Some states are truly blessed.

Others are not.

I was brought up to believe that you should not criticize or complain about something unless you were prepared to offer an alternative or a solution.

With that in mind, I would ask you that you and the Congress strongly consider doing exactly what was done in the Energy Policy Act of 2005, when you charged public utility commissions across this nation with setting standards for net metering and smart metering within a set period of time.

I would ask that, before you move forward with a national Renewable Portfolio Standard, you first give the states a chance by charging those state public utility commissions across this nation that do not already have a Renewable Portfolio Standard in place with creating such a standard. And, like in the EPACT 2005 legislation, give our state commissions a certain period of time to get it done and in place. Each state's RPS should recognize its renewable resource potential and should push for a best-achievable RPS within a given period of time. If a utility fails to meet the state standard, a penalty or compliance payment would have to be made to the state. That money would stay in the state where it would be invested in renewable technology or to developing and implementing energy efficiency programs for low-income households living in mobile

homes or other energy-inefficient housing. Any utility that meets a state standard would

be deemed to be in compliance with any federal requirement. 2 North Carolina is the only state in the SEARUC region that has adopted, and is 3 operating under, a renewable portfolio standard. After many studies and hearings on the subject, North Carolina adopted a 12.5% RPS by 2021 with 40 percent of that total being 5 allowed to come from energy efficiency. But, North Carolina also adopted a cost cap. 6 Regulators there have told me that if the national RPS were adopted as it is proposed in 7 8 the discussion draft being considered today, the \$0.03 cents/kwh alternate compliance payment alone would more than double the current cost to their customers. Florida is another state that is working through and toward a renewable energy policy. The Florida 10 Public Utilities Commission is currently studying the issues and is consulting with the 11 state legislature. 12 A very large concern for my state and the SEARUC region is that the money used 13 to purchase the REC's and alternate compliance payments will leave our states and our 14 region, the very areas that need the money the most. 15 16 Let me explain why I say that. A 'one-size-fits-all' federal RPS would hit consumers hard in the Southeast, the 17 region with the least renewable resources and the greatest poverty. Electricity customers 18 would have to pay an expensive premium on top of the higher costs that will come with 19 20 meeting carbon targets. South Carolina has one of the lowest income levels in the United States and one 21 22 of the highest unemployment levels. Our workers' average annual salary is \$27,560, 23 compared to a national average of \$33,000. There are a significant number of households living at the poverty level and below in South Carolina, as in much of the Southeast, and many of them live in mobile homes or other energy-inefficient housing. These people are proud, but they are poor.

Literacy levels are low in South Carolina, and pose a significant obstacle to our meeting the energy efficiency component of an RPS. Statistics indicate that South Carolina has high student dropout rates and the majority of residents have some degree of illiteracy. South Carolina has the 4th highest percentage of adults at Level I or 2 in the country. More than half (56%) of our state's residents fall within severe (Level 1) to moderate (Level 2) ranges of illiteracy (level 1 is the lowest literacy level. Adults in this category can perform simple tasks with text and documents, but display difficulty using certain reading, writing, and computational skills considered necessary for functioning in everyday life. Adults at literacy level 2 can begin to compare and contrast but are unable to perform higher level reading and problem solving skills.) If people cannot read or write, they will have a difficult time comprehending information about energy efficiency and conservation.

These low-income households are truly unable to participate in any energy efficiency and conservation efforts, which greatly limits our ability to achieve the proposed RPS or conservation goals. But these people still must heat their homes. Because they live in energy-inefficient housing, their consumption rate of electricity is higher and, naturally, so is their bill for electricity, compared to the figures for occupants of more well insulated energy efficient homes. A sad fact is, the only time they 'conserve' is when they are forced to: when their power is shut off for inability to pay their bill.

South Carolina ranks 40th among in the country in median income, and 44th in 1 disposable income. Many of our citizens simply can't afford weather stripping for the 2 front door, much less energy-efficient windows or an energy-efficient heating unit. They 3 may want to conserve, to make their homes energy efficient, to buy that Energy Star refrigerator, but they can't. They have to settle for that \$100 used refrigerator, if they can 5 afford it, or have to decide how to pay their power bill and buy groceries for the family. 6 This is not an exaggeration. 7 8 A better way would be to provide incentives for the use of, or integration of, 9 renewable technologies into a company's existing portfolio, instead of penalizing them, 10 and ratepayers, for a failure to meet an arbitrary standard. 11 The money a utility (i.e. the ratepayer) pays for REC's and alternate compliance 12 payments should not leave the state. The money should be re-invested in the state where it was paid to develop and implement energy efficiency programs to help low-income 13 households, and to help make these renewable technologies more affordable. 14 15 In the proposed national RPS, development of sources of renewable energy would have to cost less than \$0.03 cents/kWh to avoid paying the alternate compliance payment 16 17 or it would be wasted money, meaning it would be cheaper to make the alternate 18 compliance payment than to develop renewables and energy efficiency technologies. In a 19 recent hearing before the South Carolina Public Service Commission, an witness testified that "...PV solar's cost of energy ranges from 31 cents per kWh to over 44 cents per 20 kWh." Wind resources in the South Carolina and the Southeast that may be suitable for 21 22 wind generation are primarily located along the coast which is subject to hurricanes. No 23 offshore wind turbines currently exist in the United States. A proposed offshore wind

farm in Delaware recently bid to supply generation to Delmarva Power & Light for about 2 13 -14 cent per kWh. I do not know whether this is a busbar cost or a delivered cost. However, I do know that it is above the current average residential retail rate for 3 electricity in South Carolina which is about 10 cents per kWh. 4 The Energy Policy Report recently prepared and released by the Public Utilities 5 Review Committee concluded that renewable resources would provide about 4% of 6 South Carolina's generation by 2027. Assuming that South Carolina could achieve the 7 5% conservation and efficiency limit and 4% of electric generation from renewable by 9 2020, the utilities in South Carolina would fall 11% short of the proposed 20% RPS in 2020. Based on the 2007 total South Carolina generation reported by the Energy 10 Information Agency and the proposed 3 cents per kWh Alternative Compliance Payment, 11 South Carolina ratepayers would be subject to an annual Alternative Compliance 12 Payment of more than \$270 million. This amount is in addition to the added cost of 13 14 generation from renewable resources compared to the cost of generation from conventional resources. It is also possible that a civil penalty of 6 cents per kWh could be 15 16 assessed on all or part of the 11% shortfall in meeting the proposed RPS. From my view as a state regulatory commissioner, there are other issues or possible unintended 17 consequences to consider as well. If I am to balance the needs of the utility against the 18 19 needs of the ratepayer, where is the regulatory tipping point? 20 As a regulator, how am I to treat a utility, and protect the ratepayer, in a rate 21 proceeding when they have had to spend money to try and meet an RPS, and had to spend additional money to pay a penalty for not being able to meet the RPS, when what they 22 really need is serious baseload generation to meet customer demand for electricity and a 23

nuclear reactor is the least-cost generation source for them to meet the demand? An 1 arbitrary national Renewable Portfolio Standard will hamper me as a regulator in being 2 3 able to do the job I am charged to do. And I say that even before mentioning anything about the economic impact possible climate legislation or carbon legislation will have on 4 5 ratepayers. As elected representatives of your states' citizens, you carry a heavy burden. But, 6 7 your constituents trust you to do the right thing. I have followed some of your careers 8 very closely and I have the honor of knowing some of you personally. I know your goal is not to penalize anyone. Please move slowly on this issue. In the meantime, also 10 consider my suggestion to require the state utility commissions to address and adopt a renewable portfolio standard before you do something that may have serious unintended 11 12 consequences. 13 Senators, thank you for your time today. It is truly an honor to be here. I look 14 forward to answering any questions that you may have, either today or, should you 15 prefer, in writing to the Committee in the coming weeks.

16

1	Testimony of
2	South Carolina Public Service
3	Commissioner David Wright
4	Before the House Budget Committee
5	July 27, 2010
6	Good Morning, Mr. Chairman and Members of the Committee.
7	My name is David Wright and I am a legislatively elected
8	commissioner and current Vice-Chairman of the South Carolina Public
9	Service Commission. In addition to that, I am the past Chairman and current
10	member of the Subcommittee on Nuclear Issues and Waste Disposal, and a
11	member of the full Electricity Committee of the National Association of
12	Regulatory Utility Commissioners, most often referred to as NARUC. I also
13	serve as Chairman of the Nuclear Waste Strategy Coalition (NWSC).
14	The issues that you are addressing in this hearing are very important
15	to South Carolina and any other state that is the home to commercial spent
16	nuclear fuel, or the nation's defense waste. I am grateful to have this
17	opportunity to represent and share our views concerning the disposition of
18	spent nuclear fuel currently stored at nuclear power plant sites that is
19	intended for ultimate disposal at the Yucca Mountain geologic repository.

1	I believe it's important to know how we got to where we are today,
2	because it has led to the positions the organizations I represent currently
3	hold.
4	By way of the Nuclear Waste Policy Act of 1982 (NWPA), the federal
5	government became responsible for disposal of high-level radioactive waste
6	- including spent or used nuclear fuel from commercial reactors. Utilities,
7	ratepayers and regulators had the expectation from the NWPA that the
8	Department of Energy (DOE) would begin initial waste acceptance and
9	disposal in the properly licensed and constructed repository by January 31,
10	1998, as the law and contracts signed with owners of spent fuel required.
11	Utility ratepayers have paid, and continue to pay, for the disposal
12	costs of the material. To date, ratepayers in states that receive power from
13	commercial nuclear utilities have paid over \$17 billion dollars into the
14	Nuclear Waste Fund (NWF). Including allocated interest, the NWF today
15	totals almost \$35 billion, but only a fraction of the money collected from
16	ratepayers has actually been spent on developing the Yucca Mountain
17	repository. The ratepayers in South Carolina have paid nearly \$1.3 billion
18	into the NWF, or more than $\$2.3$ billion when interest is included.
19	State public utilities commissions, like mine, are one of the
20	stakeholders on the disposition of used nuclear fuel from commercial

- 1 reactors because the fees paid to the Nuclear Waste Fund by the current
- 2 caretakers of the used fuel, the electric utilities, are passed on to the
- 3 ratepayers who are supplied with electricity from nuclear power generation.
- 4 When the Director of the Office of Civilian Radioactive Waste
- 5 Management (OCRWM) within the Department of Energy (DOE) submitted
- 6 the Yucca Mountain repository license application (LA) in June 2008 it was
- 7 a comprehensive document. The 8,000-page document was the culmination
- 8 of over 25 years of exhaustive investigation of the site.
- 9 Like others, I expected the NRC to conduct a rigorous review and
- 10 conduct an open, fair and inclusive adjudicatory process. The filing of the
- 11 license application was an important step, because it appeared to take the
- 12 application out of the political arena and put it under a full-blown court
- 13 review that would be based on science, not politics.
- 14 Since 1998, when DOE failed to meet its statutory and contractual
- 15 obligation to begin waste acceptance for disposal, organizations that I and
- 16 my state are a part of have simply asked that the government fulfill its part
- 17 of the NWPA disposal bargain and remove the spent fuel per the Standard
- 18 Contract since the utilities and ratepayers continue to pay for services not
- 19 performed. That remains our position, as we believe that the license
- 20 application shows that Yucca Mountain will meet the requirements of the

NWPA and regulations.

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- 2 If Yucca Mountain cannot be licensed through the NRC process, or is
- 3 licensed but not built, we interpret NWPA as still requiring DOE to develop
- 4 and dispose of spent nuclear fuel in a geologic repository. Therefore, unless
- 5 the law is repealed or amended to direct otherwise, Congress is the only
- 6 body that can authorize DOE to conduct a site search for another suitable
- 7 repository site.
- 8 This is particularly costly in most locations where the fuel pool
- 9 cooling storage capacity at the reactor sites has long since been filled. In
- 10 addition, the older fuel in the spent fuel pools is being removed and placed
- in concrete and steel containers called dry casks that are stored outside in
- 12 concrete vaults.
- More than 62,000 metric tons of uranium is currently stored in pools
- or dry cask storage at nuclear plant sites in the United States. This amount
- increases with each refueling cycle, which generally occurs about every 18
- months. License applications for at least 24 new nuclear units have been
- 17 submitted to the Nuclear Regulatory Commission (NRC). The amount of
- 18 spent nuclear fuel to be stored will increase as new units are constructed and
- 19 old units are re-licensed, usually for an additional 20 years, as is happening
- 20 with numerous reactors.

Nearly 3,800 metric tons of Uranium is stored at four nuclear plant 1 sites in South Carolina, which are home to seven reactors. Two new nuclear 2 units at the VC Summer Nuclear Station in Jenkinsville, SC have been 3 approved by the South Carolina Public Service Commission and are 4 awaiting license approval by the NRC. License applications for another two 5 nuclear units near Gaffney, SC have been submitted to the NRC, but not to 6 the South Carolina Public Service Commission. 7 This nation will need more base load electric generation as the 8 population grows and the economy recovers. Some areas, such as the 9 southeast in general and South Carolina in particular, need more base load 10 11 generation in the near future. Renewable energy, conservation, and efficiency help to lessen the amount of base load generation needed, but 12 cannot entirely eliminate that need. The climate and health impacts of 13 burning coal have forced utilities to depend upon gas-fired and nuclear 14 plants to meet the need for new base load generation. Without a solution to 15 the storage of spent nuclear fuel, meaning a permanent repository, state 16 17 regulators may be hesitant to approve the construction of new nuclear units and utilities may be hesitant to construct new nuclear units even if the NRC 18 19 approves the license applications. Such circumstances could result in reduced electric reliability, brown outs, and increased cost of electricity as 20

- 1 gas-fired generation would be the only option and its price would increase as
- 2 the demand for natural gas increases, all else being equal.
- 3 Federal courts have already ruled that the federal government is liable
- 4 for the added storage costs past the dates agreed in original contracts with
- 5 spent fuel utilities. The Department of Energy already faces at least \$1.5
- 6 billion in court judgments and legal expenses resulting from failure to meet
- 7 the government's obligations. In 2009 when DOE had a plan to begin
- 8 waste acceptance and disposal at Yucca Mountain by 2017 DOE officials
- 9 estimated that the liability for 65 cases could reach \$12.3 billion, growing
- 10 further by at least \$500 million for each additional year of delay. DOE pays
- 11 these court-determined liabilities from the Judgment Fund.
- 12 What is really happening is this Because of the federal
- 13 government's failure to construct a permanent repository, ratepayers are
- 14 paying up to four times for ongoing spent fuel storage and future disposal –
- and that does not include decommissioning funds. First, ratepayers are
- paying into the NWF for storage at the deep geologic repository at Yucca
- 17 Mountain; second, because of the initial delay, ratepayers have to pay
- 18 through rates to expand and re-rack their existing cooling pools in order to
- 19 accommodate more waste; third, ratepayers are continuing to pay through
- 20 rates to keep the waste stored at the existing plant sites in dry cast storage;

- and finally, all taxpayers not just ratepayers are paying through taxes for
- 2 judgments and settlements through the Judgment Fund.
- Not counting defense waste, over 62 thousand metric tones of spent
- 4 fuel is stored in 72 operating and shutdown reactor sites in 34 States.
- 5 Individuals or organizations opposed to nuclear power will raise questions,
- 6 or even voice fears, over safety and security at some of these storage
- 7 facilities. Although the utilities and the NRC contend that storage is safe and
- 8 secure, it still costs ratepayers big money to implement individualized
- 9 security programs for each of these locations around the country. As the
- 10 Office of Homeland Security increases security requirements, the cost for
- 11 security programs at the plant sites will increase.
- How can this be more efficient, safe, secure or cost effective than
- 13 having all spent nuclear fuel and defense waste at one secure, deep, geologic
- 14 location?
- Recently, there has been great interest in the reprocessing, or
- 16 recycling as some call it, of spent nuclear fuel. The organizations I am a
- 17 member of, including NARUC, have supported research into reprocessing
- and recycling and shares the view that, if there will be substantial global
- 19 nuclear power expansion, there will probably come a time when uranium
- 20 becomes more scarce and expensive and closing the fuel cycle will become

- 1 necessary.
- No matter the future course of this country whether we reprocess,
- 3 recycle, or maintain the status quo a geologic repository is still going to
- 4 be needed for defense-related high-level radioactive waste that has already
- 5 been reprocessed or cannot be reprocessed, and, the residue from any future
- 6 reprocessing program for commercial spent nuclear fuel.
- Finally, the states of Idaho and South Carolina, and maybe
- 8 Washington, as well, have agreements with the federal government with a
- 9 date certain to move defense waste out of their respective states. There are
- 10 significant financial penalties to the federal government in the agreements
- 11 for failure to comply which is yet another way that all taxpayers, not just
- 12 ratepayers, will have to pay compensation for the government's failure to
- 13 build the site at Yucca Mountain.
- 14 Thank you for the opportunity to testify before you today. I look
- 15 forward to your questions. I will also be happy to provide written answers to
- 16 further questions, should you have any I am unable to answer today or for
- 17 which you would like me to provide answers at a later date.

BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON ENERGY AND COMMERCE, SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT

TESTIMONY OF THE HONORABLE DAVID A. WRIGHT PRESIDENT, NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS COMMISSIONER, SOUTH CAROLINA PUBLIC SERVICE COMMISSION

ON BEHALF OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

ON

"Recommendations of the Blue Ribbon Commission on America's Nuclear Future"

February 1, 2012



National Association of Regulatory Utility Commissioners 1101 Vermont Ave, N.W., Suite 200 Washington, D.C. 20005 Telephone (202) 898-2200, Facsimile (202) 898-2213 Internet Home Page http://www.naruc.org

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Summary for Testimony of the Honorable David A. Wright On Behalf of The National Association of Regulatory Utility Commissioners

- The NRC has stopped the review of the Yucca Mountain license application. We are currently in litigation challenging the basis for not letting the process run to a conclusive result.
- NARUC welcomes the Blue Ribbon Commission Report.
- We support all of the recommendations.
- We place highest priority on fixing the Nuclear Waste Fund so that fees collected are available for purposes intended—disposing of used nuclear fuel.
- The Commission reaffirmed that we still need a new repository regardless of what happens with Yucca.
- We support consolidated interim storage but find the Report vague as to quantity, duration and cost. We encourage seeking volunteer sites.
- Implementation requires leadership from the Administration and Congress. NARUC stands ready to help and represent ratepayers.

Good Morning, Chairman Shimkus, Ranking Member Green, and Subcommittee Members. Thank you for the opportunity to appear before you today.

My name is David Wright. I am a commissioner with the South Carolina Public Service Commission and I serve as president of the National Association of Regulatory Utility Commissioners (NARUC), on whose behalf I am speaking this morning. I appreciate the opportunity to present NARUC's views on the subject of disposition of spent or used nuclear fuel from commercial nuclear power plants.

NARUC is a quasi-governmental, non-profit organization founded in 1889. Our membership includes the public utility commissions serving all States and territories. NARUC's mission is to serve the public interest by improving the quality and effectiveness of public utility regulation. Our members regulate the retail rates and services of electric, gas, water, and telephone utilities. We are obligated under the laws of our respective States to assure the establishment and maintenance of such utility services as may be required by the public convenience and necessity and to assure that such services are provided under rates and subject to terms and conditions of service that are just, reasonable, and non-discriminatory.

NARUC and State utility commissions in forty States served by nuclear-generated electricity have been involved in the troubled history of nuclear waste disposal since 1983. That is when the utilities, which own the used fuel, were required by the Nuclear Waste Policy Act to enter into contracts with DOE. Those contracts called for payments of fees for nuclear-generated electricity to the Treasury for deposit into the Nuclear Waste Fund to pay for the cost of disposal

of the used fuel beginning in 1998. As you know, that disposal has not happened, but the fee payments continue to be made. Or, as a former Florida utility commissioner summarized the status in 1991, "The government has our money—we have their waste." It is now 20-plus years later and we still have the government's waste. Utility commissioners care because the utilities pass the cost of the fees to their customers through their electric bill. In addition, and because of the government's failure to open Yucca, customers, through their rates, have had to pay additional amounts to cover the cost of re-racking of the utility spent fuel pools to accommodate more spent fuel, and have had to pay for on-site dry cask storage as well as the increased security required there. Moreover, all taxpayers, through the Judgment Fund, have had to pay damages for the lawsuits brought to date as well as those to come.

We followed the slow progress of the civilian radioactive waste management program as it met a variety of setbacks and advances, exacerbated by chronic budget cuts even as the illusion of a multi-billion dollar corpus grew in the Nuclear Waste Fund. A significant milestone was met in 2002 when Congress passed the joint resolution approving Yucca Mountain as the site for the geologic repository, subject to the Department of Energy obtaining a construction license from the Nuclear Regulatory Commission. The next setback was the court remand to the Environmental Protection Agency to revise the regulation setting the radiation standard for the facility. Finally, DOE submitted the license application in June 2008. The NRC began its review of the 8,000-page application for the first-of-a-kind facility which was expected to take three to four years.

In 2009, the Administration pronounced Yucca Mountain not to be a "workable option" and that it intended to terminate the repository development there. In March 2010, DOE asked the NRC's Atomic Safety Licensing Board for permission to withdraw the application with prejudice. In June, the ASLB rejected the request, ruling that once a valid license application was submitted under the NWPA, the NRC was required to review and act upon the application. The decision was appealed to the NRC.

While the NRC was disposing of the license matter, the President directed that the Secretary of Energy appoint the Blue Ribbon Commission on America's Nuclear Future (BRC) to consider and recommend a new strategy; a strategy that soon became evident would be a "post-Yucca" strategy.

In 2010, NARUC, and several other parties, petitioned the Court of Appeals under the NWPA to challenge DOE's authority to withdraw the Yucca Mountain license application, but the case was dismissed because there had been no final agency action by the NRC on the appeal of the Board's decision rejecting DOE's request. After lengthy and unnecessary delays, the NRC Chairman ultimately released a decision. The NWPA mandates that once the Yucca Mountain license was submitted the NRC only had three years to complete the review proceedings. Those three years have expired. Currently, the NRC faces a mandamus action to force it to complete the required review in the United States Court of Appeals for the District of Columbia Circuit. NARUC is one of several petitioners in that suit. Our reply briefs were just filed last Friday.

Notwithstanding our position on Yucca, NARUC was closely involved in the work of the BRC. We wrote letters, gave testimony, provided comments on the Subcommittee, and attended most of the public meetings. We were impressed with the distinguished members, their approach to the task, the talented professional staff, and the sincere interest in public input. We have asked DOE to preserve and maintain access to the Commission website.

As for the recommendations, while we welcome them all, we have the following points:

- 1. Reform of the Nuclear Waste Fund is essential for most of the others to occur.
- Regardless of Yucca Mountain, we need another repository. The lessons of Yucca and the better lessons of Finland, Sweden and WIPP suggest the "consent-based" siting approach may get better results, but will require patience.
- 3. We have long favored consolidated interim storage, but find the Report vague as to quantity, duration, and cost. We are not sure what the effect will be on the fee if the Nuclear Waste Fund is to be used to pay for storage.
- 4. We agree with the concept and benefits of a new federal corporation that can focus solely on the waste management mission, hopefully with a fresh partnership attitude for encouraging the consent-based approach. We look forward to refining the concept in enabling legislation.
- Transportation planning and coordination with States and others cannot begin soon enough.

We would add that the time is not right to commit to a reprocessing strategy, although R&D should continue, as the BRC recommends. Also, we encourage DOE to take steps to seek volunteer host communities to step forward in storage siting without waiting to form the new management organization.

There are two areas where we disagree with the Commission Report:

- 1. The Report says: "Overall, we are confident that our waste management recommendations can be implemented using revenue streams already dedicated for this purpose." There are no cost estimates to substantiate that belief, which likely also assumes the \$26.7 billion in the Nuclear Waste Fund is assured.
- 2. The Report further says: "We know what we have to do; we know we have to do it, and we even know how to do it." While we may wish that were true, our assessment is that there are too many people who are content to pass the problem along to future generations and "leave the waste where it is." It is fitting for the Commission to call for prompt action developing both consolidated interim storage and beginning the search for a new repository, but we may need public education and outreach to help persuade some who seem to favor the "no action" alternative. Continuing to "kick the dry cask down the road" should not be an option.

So, yet another study calls for prompt action, yet despite (on paper) a financing plan, implementation relies on leadership from the Administration and Congress. NARUC stands ready to assist on behalf of the ratepayers who may not realize that they are paying for safe waste disposition.

BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON ENERGY AND COMMERCE, SUBCOMMITTEE ON ENERGY AND POWER

TESTIMONY OF THE HONORABLE DAVID A. WRIGHT PRESIDENT, NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS
COMMISSIONER, SOUTH CAROLINA PUBLIC SERVICE COMMISSION

ON BEHALF OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

 \mathbf{ON}

"American Energy Initiative: EPA Greenhouse Gas Regulations"

June 19, 2012



National Association of
Regulatory Utility Commissioners
1101 Vermont Ave, N.W., Suite 200
Washington, D.C. 20005
Telephone (202) 898-2200, Facsimile (202) 898-2213
Internet Home Page http://www.naruc.org

Summary for Testimony of the Honorable David A. Wright On Behalf of the National Association of Regulatory Utility Commissioners (NARUC)

Representing the State public service commissioners who regulate the nation's power providers, NARUC's perspective on the proposed EPA greenhouse gas regulations involves the impact of these regulations on the utilities we regulate and, by extension, their consumers. NARUC adopted the following recommendations, urging EPA in its implementation of power sector regulations to:

- Avoid compromising energy system reliability;
- · Seek ways to minimize cost impacts to consumers;
- Ensure that its actions do not impair the availability of adequate electricity and natural gas resources;
- Consider cumulative economic and reliability impacts in the process of developing multiple environmental rulemakings that impact the electricity sector;
- Recognize the needs of States and regions to deploy a diverse portfolio of cost-effective supply-side and demand-side resources based on the unique circumstances of each State and region;
- Encourage the development of innovative, multi-pollutant solutions to emissions challenges as well as collaborative research and development efforts in conjunction with the U.S. Department of Energy;
- Employ rigorous cost-benefit analyses consistent with federal law, in order to ensure sound public policy outcomes;
- Provide an appropriate degree of flexibility and timeframes for compliance that recognizes the highly localized and regional nature of the provision of electricity services in the U.S;
- Engage in timely and meaningful dialog with State energy regulators in pursuit of these
 objectives; and
- Recognize and account for, where possible, State or regional efforts already undertaken to address environmental challenges.

Good Morning Chairman Whitfield, Ranking Member Rush, and Subcommittee Members.

Thank you for the opportunity to appear before you today.

My name is David Wright. I am Vice Chairman of the South Carolina Public Service Commission and I serve as president of the National Association of Regulatory Utility Commissioners (NARUC), on whose behalf I am speaking this morning. I appreciate the opportunity to present NARUC's views on the Environmental Protection Agency's proposed greenhouse gas regulations under the Clean Air Act. I will also address my personal views from the perspective of a commissioner from South Carolina.

NARUC is a quasi-governmental, non-profit organization founded in 1889. Our membership includes the public utility commissions serving all States and territories. NARUC's mission is to serve the public interest by improving the quality and effectiveness of public utility regulation. Our members regulate the retail rates and services of electric, gas, water, and telephone utilities. We are obligated under the laws of our respective States to assure the establishment and maintenance of such utility services as may be required by the public convenience and necessity and to assure that such services are provided under rates and subject to terms and conditions of service that are just, reasonable, and non-discriminatory.

NARUC understands the significant impact EPA's Proposed Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units regulations (Proposed NSPS for GHGs) and other finalized and pending environmental regulations will have on the power sector. To this end, NARUC adopted policy positions that stress the need for flexibility in compliance requirements, coordination among generating plants, and continued dialogue with federal and State utility and environmental regulators to ensure that compliance with these regulations does not hinder system reliability and minimizes cost impacts on consumers.

Proposed NSPS for Greenhouse Gases Background

The Proposed NSPS for GHGs will limit carbon dioxide emissions from new fossil-fuel fired power plants to 1,000 lbs CO₂/MWh per year. The rule arises under Clean Air Act section 111, which governs pollution from stationary sources such as power plants that have been deemed by the EPA Administrator as a category of sources that "causes, or contributes significantly, to, air pollution which may reasonably be anticipated to endanger public health or welfare." The standard for emissions is defined as, "best system of emissions reductions, (taking into account the cost of achieving such reduction and any non-air quality health and environmental impacts and energy requirements) the Administrator determines has been adequately demonstrated." The Proposed NSPS for GHGs is subject to a settlement agreement where States and environmental entities challenged EPA's failure to address GHG emissions in the 2006 Electric Utility Steam Generating Units NSPS.

EPA proposes to combine coal-fired power plants and natural gas combined-cycle power plants into a single category for the Proposed NSPS for GHGs. The emission limit established for this new combined source category is based on the demonstrated performance of natural gas

combined-cycle units (NGCC) "which are currently in wide use throughout the country, and are likely to be the predominant fossil fuel technology for new generation in the future."

While the Clean Air Act applies NSPS to new and modified sources, the Proposed NSPS for GHGs does not propose a standard for modifications, stating that "sources not subject to the new source performance standards would be treated as existing sources subject to section 111(d)."

The Proposed NSPS for GHGs excludes transitional sources, defined as "a coal-fired power plant that has received approval for its completed PSD [Prevention of Significant Deterioration] preconstruction permit... and that commences construction within 12 months of the date of this proposal." EPA estimates that there are 15 sources that may qualify as transitional sources. The rule also excludes reconstructions from the Proposed NSPS for GHGs.

The Proposed NSPS for GHGs does not provide guidance to the States for promulgating requirements for existing sources, under Clean Air Act 111(d), but the Proposal anticipates future standards for existing sources, and the settlement agreement that catalyzed this NSPS directs EPA to issue guidance for existing affected generating units.

NARUC's Perspective

NARUC does not take a position on the merits of this or any other EPA regulation at this time. However, the Proposed NSPS for GHGs raises concerns regarding resource diversity, consumer costs, and uncertainty for existing sources. These concerns are heightened if one considers previous and future EPA rules that have, or will have, an impact upon electric

generation reliability, consumer costs and resource diversity in concert with the proposed NSPS for GHGs.

Diversity of Resources

NARUC has encouraged EPA to recognize the needs of States and regions to deploy a diverse portfolio of cost-effective supply-side and demand-side resources based on their own unique circumstances and characteristics. The proposed NSPS for GHGs combines two otherwise distinct categories, electric-steam generating units and combined-cycle generating units, based on the fact that they "serve the same function, that is to serve baseload and intermediate demand." This may create a challenge to resource diversity.

The Proposed NSPS states that, "in light of a number of economic factors, including the increased availability and significantly lower price of natural gas, energy industry modeling forecasts uniformly predict that few, if any, new coal-fired power plants will be built in the foreseeable future." EPA "recognize[s] that some owners/operators may nevertheless seek to construct new coal-fired capacity. This may be beneficial from the standpoint of promoting energy diversity and this proposal does not interfere with construction of new coal-fired capacity."

The rule asserts that it does not preclude the development of coal-fired capacity, but it bases its NSPS on the emissions rates for natural gas combined-cycle plants rather than maintaining separate categories and standards for coal and natural gas plants.

NGCC qualifies as the ''best system of emission reduction'' (BSER) that the EPA has determined has been adequately demonstrated because NGCC emits the least amount of $\rm CO_2$ and does so at the least cost. We propose that a NGCC facility is the best system of emission reduction for two main reasons. First, natural gas is far less polluting than coal. Combustion of natural gas emits only about 50 percent of the $\rm CO_2$ emissions that the combustion of coal does per unit of energy generated. Second, new natural gas-fired EGUs are less costly than new coal-fired EGUs, and as a result, our Integrated Planning Model (IPM) model projects that for economic reasons, natural gas-fired EGUs will be the facilities of choice until at least 2020....

The Proposed GHG NSPS recognizes that some power suppliers may want to build coal plants for resource diversity and suggests a 30-year averaging alternative for coal plants that may exceed the 1,000 lbs CO₂/MWh in the first ten years, and then make up these emissions through reducing emissions below threshold for the next 20 years to meet the BSER standard by averaging those 30 years. NARUC supports flexibility such as that provided in the 30-year averaging mechanism.

The decision to combine coal and natural gas combined-cycle categories for the purpose of the Proposed NSPS for GHGs and basing the BSER on the combined cycle emissions favors natural gas-fired plants. The Proposed GHG NSPS indicates that, "The best performing subbituminous-fired EGU has maintained a 12-month emissions rate of 1,730 lb CO2/MWh." Even the best performing coal units cannot meet the NSPS without CCS. The Proposed NSPS for GHG goes on to state that, "we are not proposing that CCS, including the 30-year averaging compliance option, does or does not qualify as the BSER adequately demonstrated" but solicits comments on that decision. A commitment to resource diversity would encourage a separate

NSPS BSER for coal-fired plants and natural gas combined cycle units, keeping the categories separate as they have been historically.

Cost to Consumers

NARUC commissioners are primarily economic regulators who are charged by State law to protect the public interest in affordable and reliable electric service. The Proposed NSPS for GHGs identifies the current trend of low natural gas prices. The price of natural gas, however, like any commodity, can be volatile—the more dependent a system is on a particular fuel, the more risk to the consumer from this volatility. Additionally, depending on natural gas-fired plants increases concerns around gas and electric interdependencies that need to be addressed in order to ensure the continued reliability of the electric grid. Further, while the NSPS for GHGs estimates that it has no cost because the models suggest that all generation developers will build natural gas combined-cycle units, in the case that someone builds coal for resource diversity or other purposes, there will be increased costs (probably because of CCS) associated with coal. The Proposed NSPS for GHGs recognizes this cost and suggests that government subsidies are necessary for building coal with CCS. See, e.g. 77 Fed. Reg. 22,418 and 22,422 (discussing the six transitional sources that will install CCS and have DOE loan guarantees or grants to do so).

Uncertainty for Existing Sources

In many regions, State commissioners are currently reviewing significant cost recovery requests for power plant compliance plans with the Mercury and Air Toxics Standard (77 Fed. Reg. 9,304). The investment decisions may be impacted by the Proposed NSPS for GHGs, but the impact the rule will have on these existing sources remains uncertain.

The proposed NSPS reiterates the established approach that installation of pollution control equipment, such as those required under MATS, does not count as a modification that would trigger the NSPS.

EPA has gone further and excluded all modifications and reconstructions from the NSPS. While NARUC does not have a position on EPA's approach, we are concerned that this may raise legal challenges and extend uncertainty for existing sources. Further, the statute, the settlement agreement, and the Proposed NSPS for GHGs indicate that a NSPS standard promulgated under 111(b) would lead to a standard under 111(d) for existing sources that would be covered by the NSPS as if they were new sources. The proposed NSPS for GHGs itself states that "EPA anticipates that [it will] promulgate at the appropriate time, [standards] for existing sources under 111(d)." Uncertainty about these 111(d) requirements will complicate retrofit investment and cost recovery decisions. No one wants to pour millions of dollars into retrofitting a plant to see it close down based on NSPS for GHG standards for existing sources.

Other Rules

In addition to this Proposed Rule, several other rules will impact the Utility Sector, including the Mercury and Air Toxics Standard, 77 Fed. Reg. 9304 (Feb. 16, 2012), the Cross-State Air Pollution Rule: "Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals," 76 Fed. Reg. 48208 (Aug. 8, 2011) Stayed by the DC Circuit Court of Appeals); the Coal Combustion Residual proposed rule 75 Fed. Reg. 35127 (June 21, 2010); the National Pollution Discharge Elimination System, Clean Water Act 316(b) proposed rule 76 Fed. Reg. 22174 (April 20, 2011). These rules must be evaluated in concert when making investment decisions and cost calculations.

I would now like to take my NARUC hat off and provide some of my personal observations as a State utility regulator.

I, David Wright, am very concerned about the whole suite of regulations that EPA has adopted, proposed, or intends to propose that affect the electric utility sector. This includes the rule being discussed at this hearing on greenhouse gas emissions from new electric generation and the rule EPA said it will issue that applies to greenhouse gas emissions from existing generation. This suite also includes EPA's mercury regulation, (the so-called "MATS" rule), the Cross-State Air Pollution Rule (CSAPR), and others.

As a public utility commissioner, I am ultimately accountable to the electric ratepayer.

When electric bills go up, I get the calls from irate consumers, so naturally I am concerned about

the impact these rules will likely have on electric rates. I am not here to criticize specific provisions in any of the EPA rules – but I am here to express concern about the prospect of rate increases, perhaps significant rate increases, that these rules will create.

For example, EPA's own assessment of the MATS rule, estimates costs of \$9.6 billion per year. When added to assessments of the other EPA rules, these costs will be even higher.

In a September 2011 study performed for the American Coalition for Clean Coal Electricity (ACCCE) entitled *Potential Impacts of EPA Air, Coal Combustion Residuals, and Cooling Water Regulations*, National Economic Research Associates (NERA) analyzed the impact of four EPA rules –MATS, CSAPR, the coal-combustion residuals rule, and the cooling water intake structures regulation – and estimated costs of approximately \$21 billion per year over the period from 2012 to 2020. The present value of these costs is \$127 billion. The rules would cause average U.S. retail electricity prices to increase by approximately 6.5 percent over the period 2012 to 2020, with prices in certain regions increasing considerably more than that. Henry Hub natural gas prices would increase by 10.7 percent on average, according to the study.

A more recent NERA analysis for ACCCE analyzed just the effects of the MATS rule. NERA used EPA's retrofit assumptions and costs to project impacts of the final MATS rule. It found that compliance costs for the electric sector in 2015 are \$10.4 billion. Total compliance costs are \$94.8 billion.

These cost numbers are eye opening and will have a significant effect on ratepayers. As EPA adds new rules, such as its greenhouse gas rules, these numbers will most certainly go up.

It also concerns me that the policies being pursued today actually make it harder for our States and regions to develop diverse resource portfolios by eliminating the use of coal, which will force us to overly rely on natural gas. I am fuel neutral, but resource diversity is critically important in the electric sector. As a regulator, I am responsible for ensuring that the long-term, high capital decisions made by utilities will not overburden their ratepayers. Yet no one can predict the future, especially when that future is reliant on a historically volatile commodity like natural gas. It is therefore important that we as a country maintain the ability to invest in a diverse portfolio of resources so that our ratepayers are protected against price increases that one particular fuel may experience.

Let me drive this point home. Just a few years ago, natural gas prices exceeded \$14/MMBTU. Recently they went down to around \$2.00. It is a mistake to assume these low gas prices will last forever. We must be allowed to keep all fuels, including coal, in our resource mix in case gas prices again spike.

I am also concerned about the impact EPA's regulations will have on the reliability of the grid. The North American Electric Reliability Corporation has termed EPA's regulations significant – the number one risk to grid reliability in the nation.

Part of my concern is that there has never been a formal true reliability assessment of EPA's regulations. EPA's assessments have been resource adequacy assessments, where EPA determines whether the total amount of retirements in a particular region will cause regional reserve margins to fall below acceptable levels. But the true reliability impacts occur locally, because particular units that might be forced into retirement by EPA's regulations are needed for local reliability purposes, such as voltage support or black-start capability. And the potential reliability problems that could ensue, while they might begin in particular local areas, have the potential for cascading into much larger areas.

Last year, because of concern that the reliability impacts of EPA's rules have not been adequately assessed, my agency, the South Carolina Public Service Commission, along with our Office of Regulatory Staff, petitioned the Federal Energy Regulatory Commission (FERC) to establish a joint federal-State board to study the reliability implications of EPA's rules. A number of other State public service commissions filed in support of this effort. While FERC denied the petition, they agreed to establish a continuing dialogue with NARUC on the issue. The first FERC-NARUC Forum on Reliability and the Environment took place in February, and we will meet again this July. The forum proved to be a successful venue for all parties to discuss these issues. We appreciate FERC agreeing to meet with us, and I personally appreciate the participation of EPA so far.

But having a dialogue does not substitute for the needed study, and it does not ameliorate concerns about what the reliability impacts will be and what it will cost to comply with the EPA regulations without impairing grid reliability. In fact, as I look around the country at what some

of the regional transmission organizations and independent organizations are saying will occur as a result of the EPA rules, my concerns are intensified.

- Both the Electric Reliability Council of Texas and the Southwest Power Pool have expressed alarm about blackouts if the Cross-State Air Pollution Rule, which has been stayed in court, were to go into effect.
- The Midwest Independent Transmission System Operator says that 61 of 71 GW of baseload coal in the MISO region will require some action to comply with EPA's regulations over the next three years or sooner. MISO says 13 GW of those 61 GW are at immediate risk of retirement. MISO projects retrofit or replacement costs of \$33 billion. According to MISO, reserve margins are "plummeting." "Retirement of 13 GW of coal-fired generation would cause MISO's current projected reserve margin for 2016 to plunge to 8.3 percent 9.1 percent short of our required 17.4 percent reserve margin."
- PJM is projecting that an unprecedented number of transmission projects will be needed to remove bottlenecks caused by unit retirements 130 separate projects at a cost of nearly \$2 billion and these all have to be completed within the next several years. Delays will threaten reliability and could cause significant electric rate increases.

In sum, if there is one message I would like to leave with the committee, it is that EPA must pause in its regulatory processes until the impact of its regulations, both as to cost to ratepayers and the reliability of the electric system, are better understood. There has to be a

better way to harmonize the need for the country to continue to improve the environmental performance of the electric utility industry with the need to keep electric rates stable and low. In these difficult economic times, the people of my home State, and I'm sure other States as well, cannot afford significant rate increases.

Conclusion

In conclusion, NARUC appreciates the opportunity to present testimony discussing the Proposed NSPS for GHGs and encourages Congress and EPA to consider the principles outlined in our resolutions which are attached, with a specific focus on resource diversity, consumer costs, and the challenges of uncertainty for existing sources when finalizing the NSPS for GHGs.

ATTACHMENTS

Resolution on the Role of State Regulatory Policies in the Development of Federal Environmental Regulation ¹

WHEREAS, The National Association of Regulatory Utility Commissioners (NARUC) recognizes that the U.S. Environmental Protection Agency (EPA) is engaged in the development of public health and environmental regulations that will directly affect the electric power sector; and

WHEREAS, EPA is expected to promulgate regulations to be implemented by State environmental regulators concerning the interstate transport of sulfur dioxide and nitrogen oxides, cooling water intake, emissions of hazardous air pollutants and greenhouse gases, release of toxic and thermal pollution into waterways, and management of coal combustion solid waste; and

WHEREAS, NARUC at this time takes no position regarding the merits of these EPA rulemakings; and

WHEREAS, Such regulations under consideration by EPA could pose significant challenges for the electric power sector, with respect to the economic burden, the feasibility of implementation by the contemplated deadlines and the maintenance of system reliability; and

WHEREAS, EPA is expected to provide opportunities for public comment and input with respect to forthcoming regulations; and

WHEREAS, Compliance with forthcoming environmental regulations will affect consumers differently depending upon each State's electricity market and the nature of the decisions made by State regulators; *and*

WHEREAS, Addressing compliance with multiple regulatory requirements at the same time may help to reduce overall compliance costs and minimize risk assuming reasonable flexibility with respect to deadlines; and

WHEREAS, State utility regulators are well positioned to evaluate risks and benefits of various resource options through policies that appropriately account for and mitigate the risks arising from compliance with pending regulations; and

WHEREAS, Cooperation between utility commissions and environmental regulators can promote greater policy coordination and integration and improve the quality and effectiveness of electricity sector regulation; *and*

WHEREAS, State utility regulators, by working with the power sector and State and federal environmental regulators, can help to facilitate least-cost compliance with public health and environmental goals; and

¹ Based upon Resolution on Implications of Climate Policy for Ratepayers and Public Utilities, adopted by NARUC Board of Directors on July 18, 2007

WHEREAS, State utility regulators can help to minimize environmental risk as well as uncertainty regarding reliability and customer rate impacts by requesting regulated utilities with fossil generation to develop plans that evaluate all relevant environmental rulemakings at U.S. EPA; now, therefore, be it

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2011 Winter Committee Meetings in Washington D.C., urges the EPA to ensure that, as it develops public health and environmental programs, it will:

- Avoid compromising energy system reliability;
- · Seek ways to minimize cost impacts to consumers;
- Ensure that its actions do not impair the availability of adequate electricity and natural gas resources;
- Consider cumulative economic and reliability impacts in the process of developing multiple environmental rulemakings that impact the electricity sector;
- Recognize the needs of States and regions to deploy a diverse portfolio of cost-effective supply-side and demand-side resources based on the unique circumstances of each State and region;
- Encourage the development of innovative, multi-pollutant solutions to emissions challenges as well as collaborative research and development efforts in conjunction with the U.S. Department of Energy;
- Employ rigorous cost-benefit analyses consistent with federal law, in order to ensure sound public policy outcomes;
- Provide an appropriate degree of flexibility and timeframes for compliance that recognizes the highly localized and regional nature of the provision of electricity services in the U.S;
- Engage in timely and meaningful dialog with State energy regulators in pursuit of these
 objectives; and
- Recognize and account for, where possible, State or regional efforts already undertaken to address environmental challenges; and be it further

RESOLVED, That NARUC urges State utility regulators to actively engage with State and federal environmental regulators and to take other appropriate actions in furtherance of the goals of this resolution.

Sponsored by the Committees on Electricity and Energy Resources and the Environment Adopted by the NARUC Board of Directors February 16, 2011

Resolution on Increased Flexibility for the Implementation of EPA Rulemakings

WHEREAS, The Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC) adopted a resolution on the *Role of State Regulatory Policies in the Development of Federal Environmental Regulations* on February 16, 2011; including the following statements:

- WHEREAS, NARUC at this time takes no position regarding the merits of these EPA rulemakings; and
- WHEREAS, Such regulations under consideration by EPA could pose significant challenges for the electric power sector and the State Regulatory Commissions with respect to the economic burden, the feasibility of implementation by the contemplated deadlines and the maintenance of system reliability; and

WHEREAS, NARUC wishes to continue to advance the policies set forth in the resolution as it relates to the proposed EPA rulemakings concerning the interstate transport of sulfur dioxide and nitrogen oxides, cooling water intake, emissions of hazardous air pollutants and greenhouse gases, release of toxic and thermal pollution into waterways, and management of coal combustion solids; and

WHEREAS, NARUC recognizes that a reliable energy supply is vital to support the nation's future economic growth, security, and quality of life; *and*

WHEREAS, There are many strategies available to States and utilities to comply with EPA regulations, including retrofits and installation of pollution control equipment, construction of new power plants and transmission upgrades to provide resource adequacy and system security where needed when power plants retire, purchases of power from wholesale markets, demand response, energy efficiency, and renewable energy policies – the collection of which can be implemented at different time frames by different interested parties and may constitute lower-cost options that provide benefits to ratepayers; and

WHEREAS, A retrofit timeline for multimillion dollar projects may take up to five-plus years, considering that the retrofit projects will need to be designed to address compliance with multiple regulatory requirements at the same time and requiring several steps that may include, but are not limited to: utility regulatory commission approval, front-end engineering, environmental permitting, detailed engineering, construction and startup; and

WHEREAS, Timelines may also be lengthened by the large number of multimillion dollar projects that will be in competition for the same skilled labor and resources; and

WHEREAS, NARUC recognizes that flexibility with the implementation of EPA regulations can lessen generation cost increases because of improved planning, selection of correct design for the resolution of multiple requirements, greater use of energy efficiency and demand-side resources, and orderly decision-making; and

WHEREAS, Some generators that will be impacted by the new EPA rulemakings are located in constrained areas or supply constrained areas and will need time to allow for transmission or new generation studies to resolve reliability issues; and

WHEREAS, The North American Electric Reliability Corporation (NERC) and regional RTOs will need time to study reliability issues associated with shutdown or repowering of generation; and

WHEREAS, NARUC recognizes that flexibility will allow time for these needed studies, and

WHEREAS, The Federal Energy Regulatory Commission (FERC), through its oversight of NERC, has authority over electric system reliability, and is in a position to require generators to provide sufficient notice to FERC, system operators, and State regulators of expected effects of forthcoming health and environmental regulations on operating plants to allow an opportunity for meaningful assessment and response to reliability claims; now, therefore be it

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2011 Summer Committee Meetings in Los Angeles, California, supports efforts to promote State and federal environmental and energy policies that will enhance the reliability of the nation's energy supply and minimize cost impacts to consumers by:

- Allowing utilities to coordinate the closure and/or retrofitting of existing electric
 generating units in an orderly manner that will ensure the continued supply of electricity
 and that will allow power generators to upgrade their facilities in the most cost effective
 way, while at the same time achieving attainable efficiency gains and environmental
 compliance; and
- Allowing regulatory options for units that are necessary for grid reliability that commit to retire or repower; and
- Allowing an EPA-directed phasing-in of the regulation requirements; and
- Establishing interim progress standards that ensure generation units meet EPA regulations in an orderly, cost-effective manner; and be it further

RESOLVED, That Commissions should encourage utilities to plan for EPA regulations, and explore all options for complying with such regulations, in order to minimize costs to ratepayers; and be it further

RESOLVED, That FERC should work with the EPA to develop a process that requires generators to provide notice to FERC, system operators, and State regulators of expected effects of forthcoming EPA regulations on operating plants to allow an opportunity for meaningful assessment and response to reliability issues; and be it further

RESOLVED, That NARUC and its members should actively coordinate with their environmental regulatory counterparts, FERC, and the electric power sector ensuring electric system reliability and encourage the use of all available tools that provide flexibility in EPA regulation requirements reflecting the timeline and cost efficiency concerns embodied in this

resolution to ensure continuing emission reduction progress while minimizing capital costs, rate increases and other economic impacts while meeting public health and environmental goals.

Sponsored by the Subcommittee on Clean Coal and Carbon Sequestration and the Committees on Electricity and Energy Resources and the Environment Adopted by the NARUC Board of Directors July 20, 2011

Attachment for Question 52

Nuclear Matters Talking Points

Slide 1: Introduction to Nuclear Matters

- ➤ Good afternoon everyone!
- ➤ ...and thank you very much for the opportunity to visit with you today on behalf of Nuclear Matters.
- ➤ Man...It's great to be here among many people I call my friends this morning. For those of you though, who don't know me, my name is David Wright.
- ➤ I have been self-employed since I was 26...and, like many of you, I have had to hustle all of my life!

- ➤ I have owned a retail franchise...owned and operated a weekly newspaper with my Dad...and owned a Consulting, Public Relations and Advertising business...(which I kind of still do.)
- ➤ I've consulted, managed or worked in more than 200 political campaigns in this state and around this country, too.
- ➤ On top of that, I have my real estate
 license...I'm a licensed auctioneer in South
 Carolina...plus, I have umpired youth baseball
 around this state since I was 17...the longest
 continuous job I have had in my life!
- ➤ I am diversified!

- ➤ Politically, I have served as a town councilman and Mayor...eight years as a member of the South Carolina House of Representatives...and ten years as a Utility Commissioner, including a stint as Chair.
- ➤ In addition to some regional utility
 associations and organizations I chaired, I also
 had the opportunity to serve as President of the
 National Association of Regulatory Utility
 Commissioners, also known as NARUC, in
 2011-and '12. In fact, I am only the fifth
 South Carolinian to serve as NARUC's
 president since 1896! Quite and honor!
- A great deal of my focus during the last 10 years has been in the area of nuclear issues and nuclear waste. I have had the opportunity to

appear before congressional committees on at least nine occasions, as well as the FERC and the EPA on issues ranging from EPA regulations to Yucca Mountain to reprocessing...and I am very pleased to be able to use my knowledge and expertise on behalf of Nuclear Matters today.

Slide 2: What is Nuclear Matters?

- ➤ I joined this campaign to increase awareness about our current fleet of nuclear energy plants...and why it is critical to recognize the benefit for the future of our energy grid.
- As many of you know, existing nuclear plants are the backbone of our nation's energy portfolio...in fact...it supplies nearly one-fifth of America's energy.
- So, if we are really going to be serious about the economy and climate change...we need to be serious about the vitality of our nuclear industry because nuclear provides over 63 percent of our country's carbon-free energy.

➤ By ignoring the benefits of nuclear energy, we are sleepwalking into our energy future and being irresponsible about a large and dependable carbon-free energy source.

Slide 3: Leadership

- Former U.S. Senators Evan Bayh (D-IN) and Judd Gregg (R-NH) serve as the Co-Chairs of Nuclear Matters. I'm proud to serve alongside them as a member of a diverse Leadership Council that is spearheading this effort.
 - Together, we are a bipartisan group of who have been active for many years in energy policy, the environmental community, business, labor, and state and federal government.

Slide 4: Economic Challenges to Nuclear Energy

- As you all know, there is a lot of work still to be done to ensure that the sources we rely on to meet our carbon goals continue to be a viable part of our energy mix.
- Despite their significant benefits, though, existing nuclear energy plants face "a perfect storm" of economic challenges that threaten their continued operation.
 - For starters, electricity use has been flat for several years due to the combination of a sluggish economy and energy efficiency programs.
 - Combine that with electricity markets that do not value zero-carbon electricity

sources — nuclear energy receives no economic credit for producing carbon-free electricity in these markets...and I believe a reasonable carbon policy – a clean policy - would positively influence the economics of all low- and no-carbon generating sources.

- Then, there's Natural gas production, which has rapidly expanded in recent years, causing a precipitous price decline of nearly 45 percent since 2008 and causing wholesale power prices to drop commensurately.
- And last, but, not least, is an aging transmission system in some markets,
 which does not allow the clean, carbon-

free energy produced at some of these existing plants to get to the markets that need it.

Now, any one or two of these conditions could be managed if that was all that occurred. But this combination of economic AND policy factors has created potentially fatal economic headwinds for some nuclear energy plants...And, policy-makers and legislative leaders need to address it - and solve-this-problem!

Slide 5: Vermont Yankee & Kewaunee, WI

- ➤ In the current climate, the threat of closure <u>is</u>

 <u>real</u>...and there's a lot at stake for the country

 and the communities in which they operate.
- The Vermont Yankee Nuclear Power Station was closed late last year...and Wisconsin's Kewaunee plant was closed in the spring of 2013. As many as 10 other nuclear plants could face the same fate if we don't act to properly value the benefits they provide.
- ➤ Both of these closures were premature, too...

 Vermont Yankee and Kewaunee were

 operating at a capacity factor at or above 90

 percent...and had a decade or more of safe,

 useful life remaining each.

- ➤ And the negative impacts of their closure have been significant. 650 high quality jobs disappeared in each state... Wisconsin lost \$6 million a year in state and local taxes... while Vermont lost over \$6 million... And, between the two states, our energy grid has lost over one thousand megawatts of clean, reliable, baseload energy. These are just a few of the consequences. Oh! And, one other thing the public at-large does not understand... is that...unlike a coal plant that you can mothball and re-open...you don't mothball a nuclear plant. When it closes...it will not come back!!
- ➤ Just this past year Pilgrim and FitzPatrick announced that they will also be shutting their doors.

➤ If these policy and economic issues aren't addressed, they may force additional closures. In fact, many people say not solving these issues SOON will force additional closures.

Slide 6: Need for State Solutions

- So...what can we do to ensure these plants don't close prematurely?
- As states contemplate how they will reduce carbon emissions, existing nuclear energy plants must be recognized for their valuable role in producing carbon-free energy.
- ➤ When designing such programs, I believe states should, at a minimum:
 - Treat all carbon-free resources similarly, regardless of age or fuel type;
 - They should take steps to ensure that all existing nuclear plants will

remain in operation when it is cost effective to do so;

- They should affirmatively demonstrate and not assume that existing carbon-free resources will remain in operation under the program; and they should
- Ensure that state compliance programs are:
 - Complementary to neighboring states' programs...particularly when such states are in organized wholesale power markets; and

 Are consistent with future carbon reduction schemes that may, or will go beyond the power sector.

Slide 7: Examples of State Solutions

- ➤ Some states have already implemented solutions.
- Last spring, the Illinois legislature considered a Low Carbon Portfolio Standard, (also called a Clean Energy Standard), a viable solution to preserve existing nuclear energy plants.
- ➤ In December 2015, the Nuclear Regulatory

 Commission approved a 20-year license
 renewal for Ohio's Davis-Besse plant...and
 long term Power Purchase Agreements may be
 used there.
- Also in December 2015, New York Governor
 Andrew Cuomo issued a letter noting that
 nuclear energy plants would play a key role in

the state's clean energy strategy moving forward.

Slide 8: Economic Benefit

- A recent analysis from The Brattle Group shows that America's nuclear fleet— which...as you know...supplies about 20% of the country's electricity...contributes even more to our economic and environmental goals than once thought.
 - o The study shows that <u>existing</u> nuclear plants add \$60 billion dollars to the country's GDP, support 475,000 high-paying jobs, <u>and</u> contribute \$12.2 billion dollars in federal and state taxes each year.

- ➤ These plants also save consumers an AVERAGE of 6 percent on their electricity bills.
- As for South Carolina, The Brattle Group study showed that the nuclear industry supports 5,000 jobs right here in South Carolina, and contributes at least \$3.3 billion to the local economy each year...and that's not counting the 3,500-plus employees on site at the two units under construction just up the road in Fairfield County.

Slide 9: Carbon-Free Benefits

- ➤ In a time when the public and the policymakers are concerned with carbonemissions and keeping our energy fleet green, we should also be sharing this important message about nuclear. Trying to meet our state and national carbon reduction goals will be difficult...or impossible...to do without our existing nuclear energy plants.
- ➤ In fact, our existing nuclear energy plants are key to advancing toward a clean energy future.
 - As mentioned, last year our existing nuclear energy plants produced 19 percent of the country's electricity supply but accounted for 63% of carbon-free sources of electricity.

- Here in South Carolina, nuclear energy is especially beneficial. Our state's seven reactors provide a majority of our state's electricity – <u>54 percent to be exact</u>!
- And our state's existing nuclear plants provide 97% of our carbon-free electricity.
- ➤ Nuclear energy is a very important part of the energy diversity we have here in South Carolina.
- And, it's important to preserve this diversity, too, because...while energy is low-cost right now...history suggests it won't always be that way...so we need to maintain

a balance where ALL sources of energy have a role to play.

➤ Clemson University, my alma mater, released a study in 2009...and again in 2013...that spotlights the significance of the nuclear industry here in the Carolinas...directly providing 29,000 jobs in North and South Carolina. That's more \$2.2 billion dollars in direct payroll and more than \$950 million dollars paid in state and local taxes. The total economic impact tops \$20 billion dollars....and we haven't even talked about the benefits being felt economically because of the two units under construction at VC Summer...or elsewhere, in Georgia, for that matter.

- ➤ Nuclear energy facilities employ workers across a myriad of disciplines, too.
- ➤ Highly trained and licensed employees operate reactors...and they are supported by various engineers, health physicists, instrumentation and control workers, as well as skilled craftspeople, such as welders and mechanics. *And, then* there are vendors and other local businesses that spring up and support the workers and their families, too.
- ➤ The point is...Nuclear energy plants have a large economic impact on the communities they serve.

- ➤ Employees working at U.S. nuclear plants <u>are paid 36 percent more on average</u> than other people in their local communities.
- ➤ In terms of environmental benefits, more than 38 million metric tons of carbon dioxide are prevented by South Carolina's nuclear plants annually...which equals what would be released in a year by more than 8.6 million passenger cars more than all the registered cars in the state!
 - o And, we've seen its effect in other countries, too...In Germany, the phase-out of their nuclear plants is estimated to have

caused a 25 million ton increase in carbon emissions...the equivalent of adding 4.4 million cars to the road. We cannot take this risk.

- ➤ From an environmental perspective, nuclear energy produces no emissions during operation...no emissions associated with climate change, acid rain, or smog.
- ➤ And, it's important that policymakers and legislators across the country recognize these benefits.

Slide 10: Reliability

- Finally, it's important to highlight the existing fleet's reliability.
- ➤ Nuclear is an energy source that can run 24/7, 365. That includes during periods of extreme weather.
- ➤ Nuclear produces 1/5 of America's energy providing stable baseload energy our country can rely on.
- ➤ Here, in South Carolina, nuclear generates 54% of the state's electricity and operates at a 93% capacity factor.

Slide 11: Thank You

- Thank you again for having me here today to speak about Nuclear Matters.
- ➤ I am happy to answer any questions you might have.

- Good Morning and thank you very much for the opportunity to visit with you today on behalf of Nuclear Matters.
- I joined this campaign to increase awareness about our current fleet of nuclear energy plants and why it is critical to recognize the benefit for the future of our energy grid.
- Existing nuclear plants are the backbone of our nation's energy portfolio; in fact, it supplies nearly one-fifth of America's energy.
- If we are going to be serious about the economy and climate change, we need to be serious about the vitality of our nuclear industry nuclear provides over 62 percent of our country's carbon-free energy.
- By ignoring the benefits of nuclear energy, we are sleepwalking into our energy future and being irresponsible about a carbon free energy source.
- New analysis shows that America's nuclear fleet—which supplies one-fifth of the

country's electricity—contributes even more to our economic and environmental goals than once thought.

- The study, conducted by the Brattle Group, found that existing nuclear plants are drivers of economic growth and jobs in communities across the nation.
- o The study shows that existing nuclear plants add \$6 billion to the country's GDP, support 475,000 jobs and contribute \$12.2 billion in federal and state taxes each year.
- These plants also save consumers an average of 6 percent on their electricity.
- Here in Texas, nuclear supports 1,950 instate jobs.
- Nuclear also contributes at least \$1.88
 billion to the local economy each year.
- Another reason that I got involved in these efforts is because trying to meet our state and national carbon reduction goals will be difficult or impossible to do without our existing

nuclear energy plants.

- The Brattle study shows that nuclear energy prevented over a 1/2 billion tons of carbon emissions each year, avoids 650,000 tons of NOx and 1 million tons of SO2 emissions, which combined, are valued at a social cost of \$33.4 billion annually and is a must for our energy portfolio.
- Here in Texas, nuclear provides 49 percent of the state's carbon-free electricity. The existing fleet in Texas avoids 27.6 million metric tons of carbon emissions each year, while operating on an 89 percent capacity factor.
- Our existing nuclear energy plants are key to advancing toward a clean energy future.
- Last year, our existing nuclear energy plants produced 19 percent of the country's electricity supply but accounted for 63 percent of carbonfree sources of electricity.
 - Closing plants makes meaningful

carbon reduction goals impossible. When nuclear plants close, inevitably states' carbon output increase.

- And we've seen its effect in other countries in Germany, the phase-out of their nuclear plants is estimated to have caused a 25-million-ton increase in carbon emissions, the equivalent of adding 4.4 million cars to the road. We cannot take this risk.
- And Texas isn't alone in more than half of the states, nuclear energy plants are the largest source of carbon-free electricity.
- There is obviously a lot of work still to be done, and we have to ensure that the sources we rely on to meet our carbon goals continue to be a viable part of our energy mix.
- Despite their significant benefits, existing nuclear energy plants face "a perfect storm" of economic challenges that threaten their continued operation.

- Electricity use has been flat for several years due to the combination of a sluggish economy and energy efficiency programs.
- Electricity markets do not value zerocarbon electricity sources — nuclear energy receives no economic credit for producing carbon-free electricity. A reasonable carbon policy would positively influence the economics of all low and nocarbon generating sources.
- Natural gas production has rapidly expanded, causing a precipitous price decline of more than 50 percent since 2008 and causing wholesale power prices to drop commensurately.
- An aging, constrained transmission system prevents some nuclear plants in power-saturated markets from delivering electricity to other markets that need clean electricity.
- Any one or two of these conditions could be

managed if that was all that occurred. But this combination of economic and policy factors has created potentially fatal economic headwinds for some nuclear energy plants.

- Two nuclear plants have already shut down recently and two others FitzPatrick in New York and Pilgrim in Massachusetts have announced premature shutdowns this year.
- The EPA's Clean Power Plan provides a path forward for the country to value nuclear energy's substantial carbon-abatement benefit. As states contemplate how they will comply with the CPP, existing nuclear energy plants must be recognized for their valuable role in producing carbon-free energy.
- Solutions will vary by state/region, but stakeholders and policymakers should consider implementing these types of solutions to make meaningful progress towards preserving existing nuclear energy facilities:
- Some of the solutions that might be considered include:

- New legislative, regulatory and/or competitive market policies, which recognize the zero carbon emissions value of existing nuclear energy plants;

Moderator Questions

- In my opening remarks I highlighted what I think are some of the challenges facing the existing fleet, now I open the floor to you all, what are the challenges here in Texas?
- The industry faces early closures of many more plants, yet there seems to be misunderstandings about the benefits of the existing fleet. What do you see as the opportunities for the industry?
- What do y'all see as viable and reasonable steps for the industry in the next few years... Especially taking into account states are attempting to comply with the Clean Power Plan?

RGA Talking Points

- America's existing nuclear energy plants are the backbone of our nation's energy portfolio and provide tremendous benefits.
 - Existing plants provide about one-fifth of the country's energy supply, powering tens of millions of homes and businesses.
 - Nuclear energy is our most reliable source of energy 24 hours a day, seven days a week through all weather conditions and at 85-90 percent capacity factors, the highest of any energy source.
 - 48% of Illinois' electricity is generated by nuclear energy facilities 24/7/365 and cannot be replaced by wind, solar, or other intermittent renewable energy sources.
 - Illinois' nuclear fleet sets the world's standard for operating at 95% efficiency – during all seasons and weather conditions.
 - Our existing nuclear energy plants are key to advancing toward a clean energy future, providing 63.3 percent of emission-free generation in the U.S. in 2013.

- Existing nuclear plants are drivers of economic growth and jobs in communities across the nation, providing 100,000 jobs across the country and generating substantial domestic economic value in electricity sales
 \$40-\$50 billion each year.
- Despite these significant benefits, existing nuclear energy plants face a 'perfect storm' of economic challenges that threaten their continued operation.
 - Existing plants are threatened by a combination of factors including the unintended consequences of market structure and government policy and an influx of cheap natural gas.
 - Two nuclear plants have already announced that they will shut down prematurely as a result of these conditions, which, if left unaddressed, may force additional closures.
- Our energy policies must ensure that existing nuclear energy plants are preserved though different solutions may be called for in different parts of the country.
 - We are not here to prescribe specific policy solutions our goal is to educate communities and policymakers on the value of the nuclear resources we currently have, and explore the steps we need to take to preserve them.

- Some of the policies that <u>might</u> be considered include:
 - New legislative, regulatory and/or competitive market policies which recognize the zero carbon emissions value of existing nuclear energy plants;
 - New legislative, regulatory and/or competitive market policies which recognize the electric system reliability of existing nuclear energy plants;
 - New efforts to enable rapid development of electric transmission capacity in order to better link existing nuclear energy plants to markets;
 - Other, similar policy initiatives that help improve the economic viability of today's nuclear energy plants.
- Nuclear Matters seeks to raise public awareness of the substantial benefits of existing nuclear energy plants and the economic challenges that threaten those benefits.

 In furtherance of this mission, Nuclear Matters will reach out to stakeholders around the country to hear directly from them about the importance of nuclear energy to their states and communities and find the solutions that will help to preserve this essential energy resource.

Nuclear Matters Talking Points

Slide 1: Introduction to Nuclear Matters

- ➤ Good morning, everyone!... and thank you very much for the opportunity to visit with you today on behalf of Nuclear Matters.
- ➤ When I participated in this event last year, there was a lot of information being exchanged during the different presentations... and time ran short, so I will get right into this presentation.
- As you now know, my name is David Wright.

 I have worked for myself since I was 26. I
 have served as a town councilman and Mayor,
 eight years as a member of the South Carolina
 House of Representatives, and ten years as a

Utility Commissioner, including a stint as Chair.

➤ In addition to some regional utility
associations and organizations I chaired, I also
had the opportunity to serve as President of the
National Association of Regulatory
Commissioners, also known as NARUC, in
2011-and '12.

years has been in the area of nuclear issues and nuclear waste...and I have had the opportunity to appear before congressional committees on at least nine occasions...as well as the FERC and the EPA on issues ranging from EPA regulations to Yucca Mountain to reprocessing...and I am very pleased to be able to use my knowledge and expertise on behalf of Nuclear Matters today.

Slide 2: What is Nuclear Matters?

- ➤ I joined this campaign to increase awareness about our current fleet of nuclear energy plants and why it is critical to recognize the benefit for the future of our energy grid.
- As many of you know, existing nuclear plants are the backbone of our nation's energy portfolio...In fact our existing nuclear plants supply nearly one-fifth of America's energy.
- The truth is...if we are going to be serious about the economy and climate change, we need to be serious about the vitality of our nuclear industry, as well because nuclear provides over 63 percent of our country's carbon-free energy!

➤ I am convinced that...by ignoring the benefits of nuclear energy, we are sleepwalking into our energy future and being irresponsible about a carbon-free energy source.

Slide 3: Leadership

- Former U.S. Senators Evan Bayh (D-IN) and Judd Gregg (R-NH) serve as the Co-Chairs of Nuclear Matters. They are very smart men...and I'm proud to serve alongside them as a member of a diverse Leadership Council that is spearheading this effort.
 - Together, we are a bipartisan group of men and women...who have been active in energy policy for many years...and we come from different backgrounds, too the environmental community, business, labor, and state and federal government.

Slide 4: Economic Challenges to Nuclear Energy

- As you all know, there is a lot of work still to be done to ensure that the sources we rely on to meet our carbon goals continue to be a viable part of our energy mix.
- Despite their significant benefits...existing nuclear energy plants in some areas of the country...face "a perfect storm" of economic challenges that threaten their continued operation.

➤ Why?

 Well, for one, electricity use has been flat for several years due to the combination of a sluggish economy and energy efficiency programs.

- o Add to that...that Electricity markets do not value zero-carbon electricity sources...(In fact, nuclear energy receives no economic credit for producing carbon-free electricity). I am of the opinion that a reasonable carbon policy would positively influence the economics of all low- and no-carbon generating sources.
- Then, there's Natural gas
 production...which has rapidly expanded in recent years...causing a precipitous price decline of nearly 45 percent since
 2008 and causing wholesale power prices to drop commensurately.

- Last, but, not least, is an aging transmission system in some markets, which does not allow the clean, carbonfree energy produced at some of these existing plants to get to the markets that need it.
- Any one or two of these conditions could be managed if that was all that occurred. But this combination of economic and policy factors has created potentially fatal economic headwinds for some nuclear energy plants.

Slide 5: Vermont Yankee & Kewaunee, WI

- ➤ In the current climate, the threat of closure is <u>real</u>...and there's a lot at stake for the country and the communities in which they operate.
- The Vermont Yankee Nuclear Power Station was closed late last year...and Wisconsin's Kewaunee plant was closed in the spring of 2013. As many as 10 other nuclear plants could face the same fate if we don't act to properly value the benefits they provide.
- ➤ Both of these closures were premature; Vermont Yankee and Kewaunee were operating at a capacity factor at or above 90 percent...and had a decade or more of safe, useful life remaining.

- ➤ And the negative impacts of their closure have been significant. 650 high quality jobs disappeared in each state... Wisconsin lost \$6 million a year in state and local taxes... while Vermont lost over \$6 million... and between the two states, our energy grid has lost over one thousand megawatts of clean, reliable, baseload energy. These are just a few of the consequences... And, one other thing the public at-large does not understand... is that... unlike a coal plant that you can mothball and re-open... you don't mothball a nuclear plant. When it closes... it will not come back.
- ➤ Just this past year Pilgrim and FitzPatrick announced that they will also be shutting their doors.

➤ If these policy and economic issues aren't addressed, we may force additional closures.

Slide 6: Need for State Solutions

- ➤ So...what can we do to ensure these plants don't close prematurely?
- As states contemplate how they will reduce carbon emissions, existing nuclear energy plants must be recognized for their valuable role in producing carbon-free energy.
- ➤ When designing such programs, states should:
 - Treat all carbon-free resources similarly, regardless of age or fuel type;
 - Take steps to ensure that all existing nuclear plants will remain in operation when it is cost effective to do so;

- Affirmatively demonstrate and not assume that existing carbon-free resources will remain in operation under the program; and
- Ensure that state compliance programs are:
 - Complementary to neighboring states' programs, particularly when such states are in organized wholesale power markets; and
 - Consistent with future carbon reduction schemes that will go beyond the power sector.

Slide 7: Examples of State Solutions

- ➤ Some states have already implemented solutions.
- Last spring, the Illinois legislature considered a Low Carbon Portfolio Standard...a viable solution to preserve existing nuclear energy plants.
- ➤ In December 2015, the Nuclear Regulatory Council approved a 20-year license renewal for Ohio's Davis-Besse plant.
- Also in December 2015, New York Governor Andrew Cuomo issued a letter noting that nuclear energy plants would play a key role in the state's clean energy strategy moving forward.

Slide 8: Economic Benefit

- New analysis from The Brattle Group shows that America's nuclear fleet...which supplies one-fifth of the country's electricity...contributes even more to our economic and environmental goals than once thought.
- The study shows that the existing nuclear fleet contributes \$60 billion to the country's GDP annually...saving consumers an average of 6 percent on their electricity bills. Across the country, the existing fleet supports 475,000 jobs and contributes \$10 billion in federal and \$2.2 billion in state taxes each year.

➤ Here in Georgia, I believe the existing nuclear fleet generates \$60 million in state and local taxes annually.

Slide 9: Carbon-Free Benefits

- ➤ In a time when the public and the policymakers are concerned with carbonemissions and keeping our energy fleet green, we should also be sharing this important message about nuclear. Trying to meet our state and national carbon reduction goals will be difficult or impossible to do without our existing nuclear energy plants.
- ➤ In fact, our existing nuclear energy plants are key to advancing toward a clean energy future.
 - Last year, our existing nuclear energy
 plants produced 19 percent of the
 country's electricity supply but accounted
 for 63% of carbon-free sources of
 electricity.

- Here in Georgia, existing nuclear plants provide 92.5% of our carbon-free electricity and avoid more than 23 million metric tons of carbon emissions each year.
- O And we've seen its effect in other countries in Germany, the phase-out of their nuclear plants is estimated to have caused a 25 million ton increase in carbon emissions, the equivalent of adding 4.4 million cars to the road. We cannot take this risk.

Slide 10: Reliability

- Finally, it's important to highlight the existing fleet's reliability.
- ➤ Nuclear is an energy source that can run 24/7, 365. That includes during periods of extreme weather.
- ➤ Nuclear produces 1/5 of America's energy providing stable baseload energy our country can rely on.
- ➤ Here in Georgia, nuclear generates 25.9% of the state's electricity and operates at a 93% capacity factor.

Slide 11: Thank You

- Thank you again for having me here today to speak about Nuclear Matters.
- ➤ Happy to answer any questions you might have.

Nuclear Matters Talking Points

Slide 1: Introduction to Nuclear Matters

- ➤ Good afternoon everyone!
- ➤ ...and thank you very much for the opportunity to visit with you today on behalf of Nuclear Matters.
- ➤ Man!...Look at all of you!...Women!...Everywhere!
- ➤ And...get this!
- ➤ Me!...a single guy...talking to a building full of women...women who are interested in same things I am interested in, too!

- ➤ Obviously, I have stumbled into a very special place!
- So...It's wonderful to be with one of the campaign's first official Partners!...Women in Nuclear!
- ➤ I consider it an honor to be with you ladies today, too!
- ➤ Okay, you now know my name is David Wright...
- ➤ I have lived a blessed life...and I have had a few successes along the way.

- ➤ I have been self-employed since I was 26...so I have had to hustle all of my life!
- ➤ I have owned a retail franchise...owned and operated a weekly news paper with my Dad...and owned a Consulting, Public Relations and Advertising business...(which I kind of still do.)
- ➤ I've consulted, managed or worked in more than 200 political campaigns in this country.
- ➤ I have my real estate license...and I am a licensed auctioneer in South Carolina...plus, I have umpired youth baseball around this state since I was 17...the longest continuous work I have had in my life!

- Not everything has been roses, though... I survived a serious battle with colon cancer a few years back.
- And...then...a year later...I fought as a parent...beside my oldest daughter, Kimberly, as she battled Stage 3-c colon cancer at age 27.
- ➤ Very hard couple of years...but...good news!!!...God was not done with either one of us! I'm here with you today...and she's teaching kindergarten today just a few miles down the road from here!
- Those are the experiences in life that teach you a lot about yourself, too. No matter how bad YOU think things are...someone has it

worse...and they would gladly trade places with you if they could.

- ➤ So, we spend a lot of time now "paying it forward"...by advocating, educating, raising money...and visiting and sitting with cancer patients of all kinds patients we do not even know to give THEM some hope when they are in the hospital or receiving chemo treatments.
- ➤ Please forgive me for getting off script there...it happens to me from time to time...but it's all good! It's good to get real sometimes...And now you know I'm an authentic guy, too.
- ➤ What else can I tell you?

- ➤ Politically, I have served as a town councilman and Mayor...eight years as a member of the South Carolina House of Representatives...and ten years as a Utility Commissioner, including a stint as Chair.
- ➤ In addition to some regional utility
 associations and organizations I chaired, I also
 had the opportunity to serve as President of the
 National Association of Regulatory
 Commissioners, also known as NARUC, in
 2011-and '12.
- A great deal of my focus during the last 10 years has been in the area of nuclear issues and nuclear waste. I have had the opportunity to appear before congressional committees on at

least nine occasions, as well as the FERC and the EPA on issues ranging from EPA regulations to Yucca Mountain...and I am very pleased to be able to use my knowledge and expertise on behalf of Nuclear Matters today.

Slide 2: What is Nuclear Matters?

- ➤ I joined this campaign to increase awareness about our current fleet of nuclear energy plants...and why it is critical to recognize the benefit for the future of our energy grid.
- As many of you know, existing nuclear plants are the backbone of our nation's energy portfolio...in fact...it supplies nearly one-fifth of America's energy.
- ➤ So, if we are really going to be serious about the economy and climate change...we need to be serious about the vitality of our nuclear industry because nuclear provides over 63 percent of our country's carbon-free energy.

➤ By ignoring the benefits of nuclear energy, we are sleepwalking into our energy future and being irresponsible about a large and dependable carbon-free energy source.

Slide 3: Leadership

- Former U.S. Senators Evan Bayh (D-IN) and Judd Gregg (R-NH) serve as the Co-Chairs of Nuclear Matters. I'm proud to serve alongside them as a member of a diverse Leadership Council that is spearheading this effort.
 - Together, we are a bipartisan group of who have been active for many years in energy policy, the environmental community, business, labor, and state and federal government.

Slide 4: Economic Challenges to Nuclear Energy

- As you all know, there is a lot of work still to be done to ensure that the sources we rely on to meet our carbon goals continue to be a viable part of our energy mix.
- Despite their significant benefits, though, existing nuclear energy plants face "a perfect storm" of economic challenges that threaten their continued operation.
 - o For starters, electricity use has been flat for several years due to the combination of a sluggish economy and energy efficiency programs.

- o Combine that with electricity markets that do not value zero-carbon electricity sources nuclear energy receives no economic credit for producing carbon-free electricity in these markets...and I believe a reasonable carbon policy a clean policy would positively influence the economics of all low- and no-carbon generating sources.
- Then, there's Natural gas production, which has rapidly expanded in recent years, causing a precipitous price decline of nearly 45 percent since 2008 and causing wholesale power prices to drop commensurately.

- Last, but, not least, is an aging transmission system in some markets, which does not allow the clean, carbonfree energy produced at some of these existing plants to get to the markets that need it.
- Any one or two of these conditions could be managed if that was all that occurred. But this combination of economic and policy factors has created potentially fatal economic headwinds for some nuclear energy plants...And, policy-makers and legislative leaders need to address it and solve this problem.

Slide 5: Vermont Yankee & Kewaunee, WI

- ➤ In the current climate, the threat of closure is real...and there's a lot at stake for the country and the communities in which they operate.
- The Vermont Yankee Nuclear Power Station was closed late last year...and Wisconsin's Kewaunee plant was closed in the spring of 2013. As many as 10 other nuclear plants could face the same fate if we don't act to properly value the benefits they provide.
- ➤ Both of these closures were premature...

 Vermont Yankee and Kewaunee were
 operating at a capacity factor at or above 90
 percent...and had a decade or more of safe,
 useful life remaining.

- ➤ And the negative impacts of their closure have been significant. 650 high quality jobs disappeared in each state... Wisconsin lost \$6 million a year in state and local taxes...while Vermont lost over \$6 million...and between the two states, our energy grid has lost over one thousand megawatts of clean, reliable energy. These are just a few of the consequences. And, one other thing the public at-large does not understand...is that...unlike a coal plant that you can mothball and reopen...you don't mothball a nuclear plant. When it closes...it will not come back.
- ➤ Just this past year Pilgrim and FitzPatrick announced that they will also be shutting their doors.

➤ If these policy and economic issues aren't addressed, they may force additional closures.

Slide 6: Need for State Solutions

- ➤ So...what can we do to ensure these plants don't close prematurely?
- As states contemplate how they will reduce carbon emissions, existing nuclear energy plants must be recognized for their valuable role in producing carbon-free energy.
- ➤ When designing such programs, states should:
 - Treat all carbon-free resources similarly, regardless of age or fuel type;
 - Take steps to ensure that all existing nuclear plants will remain in operation when it is cost effective to do so;

- Affirmatively demonstrate and not assume that existing carbon-free resources will remain in operation under the program; and
- Ensure that state compliance programs are:
 - o Complementary to neighboring states' programs...particularly when such states are in organized wholesale power markets; and
 - Are consistent with future carbon reduction schemes that will go beyond the power sector.

Slide 7: Examples of State Solutions

- ➤ Some states have already implemented solutions.
- ➤ Last spring, the Illinois legislature considered a Low Carbon Portfolio Standard, a viable solution to preserve existing nuclear energy plants.
- ➤ In December 2015, the Nuclear Regulatory Commission approved a 20-year license renewal for Ohio's Davis-Besse plant.
- Also in December 2015, New York Governor
 Andrew Cuomo issued a letter noting that
 nuclear energy plants would play a key role in

the state's clean energy strategy moving forward.

Slide 8: Economic Benefit

- ➤ So...what can we do to spread the word about the clear benefits of nuclear?
- ➤ You all play an important role as nuclear professionals to reinforce the value of the existing fleet.
- A recent analysis from The Brattle Group shows that America's nuclear fleet— which...as you know...supplies one-fifth of the country's electricity...contributes even more to our economic and environmental goals than once thought.
 - The study shows that <u>existing</u> nuclear plants add \$60 billion dollars to the country's GDP, support 475,000 high-

paying jobs and contribute \$12.2 billion dollars in federal and state taxes each year.

- ➤ These plants also save consumers an AVERAGE of 6 percent on their electricity bills.
- As for South Carolina, The Brattle Group study showed that the nuclear industry supports 5,000 jobs here in South Carolina, and contributes at least \$3.3 billion to the local economy each year...not counting the 3,500-plus employees on site at the two units under construction just up the road in Failfield County.

Slide 9: Carbon-Free Benefits

- ➤ In a time when the public and the policymakers are concerned with carbonemissions and keeping our energy fleet green, we should also be sharing this important message about nuclear. Trying to meet our state and national carbon reduction goals will be difficult or impossible to do without our existing nuclear energy plants.
- ➤ In fact, our existing nuclear energy plants are key to advancing toward a clean energy future.
 - Last year, our existing nuclear energy plants produced 19 percent of the country's electricity supply but accounted for 63% of carbon-free sources of electricity.

- Here in South Carolina, nuclear energy is especially beneficial. Our state's seven reactors provide a majority of our state's electricity – 54 percent to be exact!
- And our state's existing nuclear plants
 provide 97% of our carbon-free electricity
 and avoid 38 million metric tons of
 carbon emissions each year.

A Diverse Energy Portfolio

- ➤ Nuclear energy is a very important part of the energy diversity we have here in South Carolina.
- ➤ It's important to preserve this diversity, too, because...while energy is cheap now...history suggests it won't always be

that way...so we need to maintain a balance where ALL sources of energy have a role to play.

➤ Clemson University, my alma mater, released a study in 2009...and again in 2013...that spotlights the significance of the nuclear industry in the Carolinas...directly providing 29,000 jobs in North and South Carolina. That's more \$2.2 billion dollars in direct payroll and more than \$950 million dollars paid in state and local taxes. The total economic impact tops \$20 billion dollars....and we haven't even talked about the benefits being felt economically because of the two units under construction at VC Summer...or elsewhere for that matter.

- ➤ Nuclear energy facilities employ workers across a myriad of disciplines, too.
- ➤ Highly trained and licensed employees operate reactors...and are supported by various engineers, health physicists, instrumentation and control workers, as well as skilled craftspeople, such as welders and mechanics. And, then there are vendors and other businesses that support the workers and their families, too. Nuclear energy plants have a large economic impact on the communities they serve.
- ➤ Employees working at U.S. nuclear plants <u>are paid 36 percent more on average</u>

than other people in their local communities.

- ➤ In terms of environmental benefits, more than 38 million metric tons of carbon dioxide are prevented by South Carolina's nuclear plants annually...which equals what would be released in a year by more than 8.6 million passenger cars more than all the registered cars in the state!
 - O And, we've seen its effect in other countries, too... In Germany, the phase-out of their nuclear plants is estimated to have caused a 25 million ton increase in carbon emissions... the equivalent of adding 4.4 million cars to the road. We cannot take this risk.

- ➤ From an environmental perspective, nuclear energy produces no emissions during operation...no emissions associated with climate change, acid rain, or smog.
- ➤ And, it's important that policymakers and legislators across the country recognize these benefits.

Slide 10: Reliability

- Finally, it's important to highlight the existing fleet's reliability.
- ➤ Nuclear is an energy source that can run 24/7, 365. That includes during periods of extreme weather.
- ➤ Nuclear produces 1/5 of America's energy providing stable baseload energy our country can rely on.

Slide 11: Nuclear Matters

- Nuclear Matters has been traveling across the country to speak directly to policymakers, opinion leaders...and the public in target states...about the value of the existing fleet.
- ➤ We know that organizations like WiN are strong advocates and validators for the goals and activities of the Nuclear Matters campaign...so I'd like to take the time now to thank you for your support.
- There's much to do...and we need your help.

 Let's continue our work on sharing the
 economic, carbon-free and reliable benefits of
 the existing fleet to those around us. We can
 help stop premature closures of the existing
 fleet.

Slide 12: Thank You

- Thank you again for having me here today to speak about Nuclear Matters.
- And thanks to all of you here, and to all members of US WIN for being a wonderful Partner to Nuclear Matters.
- ➤ If you are interested in getting more involved in the program, please let me know and we look forward to working with you moving forward.

(Slide #1 = Cover)

- ➤ Good morning and thank you very much for giving me the opportunity to speak with you today on behalf of Nuclear Matters.
- ➤ As you now know, my name is David Wright. During my professional career, I have served as a town councilman and Mayor, eight years as a member of the South Carolina House of Representatives, and ten years as a Utility Commissioner, including a stint as Chair.
- ➤ In addition to some regional utility associations and organizations I chaired, I also had the opportunity to serve as President of the National Association of Regulatory Commissioners, also known as NARUC, in 2011-2012.
- ➤ A great deal of my focus during the last 10 years has been in the area of nuclear issues and nuclear waste. I have had the opportunity to appear before congressional committees on at least nine occasions, as well as the FERC and the EPA on issues ranging from EPA regulations to Yucca Mountain...and I am very pleased to be able to use my knowledge and expertise on behalf of Nuclear Matters today.

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Slide #2:

- ➤ Nuclear Matters was launched in March of this year, with a focus on educating policymakers and the public about the benefits of nuclear energy, as well as the economic challenges the industry is currently facing.
- ➤ My fellow colleagues and I believe that this isn't a partisan issue. It's really about educating and bringing people together around the issue of preserving reliable, clean energy.
- ➤ We're not prescribing any one specific policy solution, although the campaign hopes that once people become aware of nuclear energy's current challenges, they will begin to consider possible solutions, particularly at the state level within the broader energy policy landscape.
- ➤ We believe that, once people become aware, they will also agree that something needs to be done, because nuclear matters!

Slide #3:

- ➤ The Nuclear Matters effort is being led by two widely respected national leaders, from both sides of the political aisle.
- ➤ Senators Judd Gregg and Evan Bayh not only served in the United States Senate, but also as governors of their respective states.
- ➤ They've dealt with complex energy issues at the national and state level. I actually appeared before Senator Bayh and his former Senate Energy Committee colleagues a few years ago.
- ➤ Judd Gregg and Evan Bayh are involved with this campaign because they care deeply about this country's energy future...and few people understand the political environment better than these two men.

Slide #4:

- ➤ The Nuclear Matters campaign is a group of individuals, businesses and organizations united in the view that existing nuclear energy plants are critical, and that existing nuclear power plants should be preserved.
- ➤ As you can see from this slide, Nuclear Matters has also attracted a diverse group of Leadership Council members.
- ➤ In addition to our co-chairs, I am joined by several other people who I respect enormously...former Secretary of Energy and Governor Spencer Abraham...former EPA Administrator Carol Browner...former White House Chief of Staff and Commerce Secretary Bill Daley...former Arkansas Senator Blanche Lincoln...Vicky Bailey, a former FERC Commissioner, Deputy Energy Secretary and a former state utility commissioner from Indiana...President of the North America's Building Trades Union Sean McGarvey and Ed Hill, President of International Brotherhood of Electrical Workers.

(Continued on next page)

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- ➤ The campaign reflects a wide range of ideologies, political backgrounds, and experience, but what everyone involved *has in common* is an understanding that our existing nuclear *energy* plants are vitally important to preserve.
- And, that these existing nuclear plants create jobs, that they produce carbon-free energy, and contribute to the reliability of our energy supply.
- > I am convinced it's an idea that everyone should be able to get behind.

Slide #5:

- ➤ America's existing nuclear energy plants are the backbone of our nation's energy portfolio and provide tremendous benefits.
 - The country's existing nuclear energy plants provide about one-fifth of the country's energy supply, powering tens of millions of homes and businesses.
 - O Nuclear energy is our most reliable source of energy, working reliably 24 hours a day, seven days a week through all weather conditions...and at 85-90 percent capacity factors, the highest of any energy source!
 - Our existing nuclear energy plants are key to advancing toward a clean energy future, providing 63 percent of emission-free generation in the United States last year.

(Continued on next page)

- Existing nuclear plants are drivers of economic growth and jobs in communities across the nation, too, providing 100,000 jobs across the country and generating substantial domestic economic value in electricity sales — \$40-\$50 billion/year. They actually fuel the growth of the communities where they are located, too!
- ➤ Our energy policies must ensure that existing nuclear energy plants are preserved, although I personally believe that flexibility is needed, too, because different solutions may be required or appropriate for different parts of the country.

Slide #6:

- ➤ Despite these significant benefits, our country's existing nuclear energy plants face a "perfect storm" of economic challenges that threaten their continued operation.
 - Electricity use has been flat for several years due to the combination of a sluggish economy and energy efficiency programs.
 - Electricity markets do not value zero-carbon electricity sources — in other words, nuclear energy receives no economic credit for producing carbon-free electricity. A reasonable carbon policy would positively influence the economics of all lowand no-carbon generating sources.
 - Natural gas production has rapidly expanded, causing a precipitous price decline of more than 50 percent since 2008 and causing wholesale power prices to drop commensurately.

(Continued on next page)

- An aging, constrained transmission system prevents some nuclear plants in power-saturated markets from delivering electricity to other markets that need clean electricity.
- Any one or two of these conditions could be managed, if that was all that occurred. But this combination of economic <u>AND</u> policy factors has created potentially fatal economic headwinds for some existing nuclear energy plants.
- Two nuclear plants have already announced that they will shut down prematurely as a result of these conditions, which, if left unaddressed, may force additional closures.

Slide #7:

- ➤ Since the launch of Nuclear Matters, the campaign has implemented a broad array of coordinated tactics focused on educating national and state-based audiences, including policymakers like you, industry leaders and local stakeholders, on the clear benefits that nuclear energy plants provide to our nation and the economic challenges that threaten those benefits.
- ➤ The campaign has been composed of Media Relations, Paid Advertising, Coalition Building, Voter ID & Mobilization, Localized Engagement, Event & Spokesperson Placement, and Digital Advocacy.
- ➤ Nuclear Matters seeks to raise public awareness of the substantial benefits of existing nuclear energy plants and the economic challenges that threaten those benefits.
 - The campaign is reaching out to stakeholders around the country to hear directly from them about the importance of nuclear energy to their states and communities and find the solutions that will help to preserve this essential energy resource.

Slide #8:

- ➤ Advertising High-impact and targeted print and digital advertising to provide visibility for the campaign's goals and local activities.
 - Placed print advertisements in national and beltway publications, including The New York Times, The Wall Street Journal, Roll Call, National Journal and Chicago Tribune
 - Placed state and local print advertisements in conjunction with key events
 - Placed digital advertisements on high-visibility websites, such as WSJ.com and Salon.com, as well as geo-targeted digital to specific locations
 - Soon we will be rolling out a new advertising campaign, featuring both digital and print advertising, so keep your eyes peeled for that!

Slide #9:

- ➤ With a full range of activities planned in eleven key states, Nuclear Matters has both national reach and local impact...and we will continue to maximize instate efforts throughout 2014 and 2015 in our target states of:
 - o Arizona
 - o Texas
 - o Illinois
 - o Michigan
 - o Ohio
 - o Pennsylvania
 - o New York
 - o New Jersey
 - Massachusetts
 - New Hampshire
 - o Maryland

Slide #10:

➤ National & State Events

 Nuclear Matters is securing opportunities for the campaign's Co-Chairs and Leadership Council to speak directly to policymakers like you, opinion leaders and the public-at-large in target states, including organizing a series of in-state events cohosted by Nuclear Matters.

Slide #11:

➤ Media Relations

- We are positioning Nuclear Matters as a vocal and influential advocate for the preservation of existing nuclear energy plants with members of the media and influential stakeholders in our target states.
- This is designed to be a local and aggressive media-relations campaign that includes reporter briefings, editorial board meetings and prominent opinion pieces, which has resulted in over 50 placements in national, regional and trade digital and print publications, accounting for approximately 42 million impressions in print, digital and broadcast outlets to date!

Slide #12:

- ➤ As I said earlier, Nuclear Matters doesn't prescribe any particular legislative or policy solution, but rather encourages policymakers and stakeholders to take steps that will enable the continued operation of our country's nuclear energy plants.
- ➤ Since I am always asked about what the different solutions could be that may be called for in different parts of the country, I will make you aware of some that have been floated already. They include:
 - New legislative, regulatory and/or competitive market policies that recognize the zero-carbonemissions value of existing nuclear energy plants;
 - New legislative, regulatory and/or competitive market policies that recognize the electric system reliability of existing nuclear energy plants;
 - New efforts to enable rapid development of electric transmission capacity to better link existing nuclear energy plants to markets;

(Continued on next page)

 Other, similar policy initiatives that help improve the economic viability of today's nuclear energy plants.

Slide #13:

- ➤ Here are four important things to take with you and share about existing nuclear plants.
- 1. America's existing nuclear energy plants are the backbone of our nation's energy portfolio and provide tremendous benefits in the following areas:
 - o Reliable
 - o Carbon Free
 - o Economic Engines
- 2. Despite these significant benefits, existing merchant nuclear plants face a "perfect storm" of economic challenges, including rising nuclear costs, flat electricity demand, an increase in natural gas supply, aging transmission system constraints and lack of carbon policies, all of which together threaten the continued operation of these plants.
- 3. Our energy policies must ensure that existing nuclear energy plants are preserved, though different solutions may be called for in different parts of the country.

(Continued on next page)

4. Nuclear Matters is a bipartisan campaign to engage and inform policymakers and the public about the need to preserve existing nuclear energy plants due to their critical role in America's energy mix.

Slide #14:

- ➤ To learn more about our campaign, please go to our website at www.nuclearmatters.com.
 - We also encourage you to "like" us on Facebook and follow us on Twitter.
 - On behalf of the Nuclear Matters campaign, I want to thank you for your time and attention, and I would be happy to answer any questions you have in the time I have left.

Attachment for Question 53

Whitehouse # 53 attachment

The following information is based on public sources or the best of my recollection and is in accordance with my obligations under the D.C. Bar rules.

Lobbying

Used Oil Management Association – registered 10/2010-07/2011. EPA regulation of used oil and impacts on recycling.

Saint Gobain Containers – registered 05/2010-07/2014. Effects of recycling, energy savings and greenhouse gas emissions reductions on the domestic glass manufacturing industry.

American Forest and Paper Association – registered 07/2011-12/2014. EPA regulation of non-hazardous secondary materials.

American Farm Bureau Federation – 04/2011-12/2014. EPA regulation of agriculture under the Clean Water Act.

American Process Inc. – 07/2011-04/2012. EPA's Renewable Fuels Standard and the definition of renewable biomass under the Clean Air Act.

City of Lima, OH - 01/2012-12/2014. Clean Water Act regulation and enforcement issues relating to municipal government.

City of Peoria, IL and Greater Peoria Sanitation District – 08/2012- 12/2014. Clean Water Act regulation and enforcement issues relating to municipal government.

Litigation (all are concluded)

American Foundry Society: D.C. Circuit case no. 11-1150, petition for review of the American Foundry Society of the final rule of United States Environmental Protection Agency (EPA), entitled, "Identification of Non-Hazardous Secondary Materials That Are Solid Waste," published at 76 Fed. Reg. 15456 et seq. (March 21, 2011). Filed May 19, 2011. Dismissed voluntarily July 3, 2013.

American Foundry Society: D.C. Circuit case no. 11-1151, Petition for Review of the final rule of the respondent United States Environmental Protection Agency (EPA), entitled, "Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units," published at 65 Fed. Reg. 75338 et seq. (Dec. 1, 2000). Filed May 19, 2011. Dismissed voluntarily July 3, 2013.

American Foundry Society: D.C. Circuit case no. 11-1152, Petition for Review of the final rule of the United States Environmental Protection Agency (EPA), entitled, "National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, Institutional Boilers and Process Heaters," published at 76 Fed. Reg. 15608 et seq. (March 21, 2011). Filed

May 19, 2011. Dismissed voluntarily July 13, 2011.

American Foundry Society: D.C. Circuit case no. 11-1153, Petition for Review of the final rule of the United States Environmental Protection Agency (EPA), entitled, "Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units," published at 76 Fed. Reg. 15704 et seq. (March 1, 2011). Filed May 19, 2011. Dismissed voluntarily July 2, 2013.

American Forest & Paper Association, the American Wood Council, the Biomass Power Association, the Construction Materials Recycling Association Issues and Education Fund, the Hardwood Plywood & Veneer Association, and the National Association of Manufacturers: D.C. Circuit case no. 11-1223. Petition for review of the final rule of the respondent United States Environmental Protection Agency entitled, "Identification of Non-Hazardous Secondary Materials That Are Solid Waste," published at 76 Fed. Reg. 15456 et seq. (March 21,2011). Filed June 16, 2011. Construction Materials Recycling Association Issues and Education Fund motion to terminate party, January 13, 2015. Substitution of attorney January 14, 2015. Case concluded September 29, 2015.

American Forest & Paper Association, the American Wood Council, the Biomass Power Association, the Construction Materials Recycling Association Issues and Education Fund, the Hardwood Plywood & Veneer Association, and the National Association of Manufacturers, Motion to intervene in support of EPA in D.C. Circuit case no. 11-1189, petition for review of the final rule of the respondent United States Environmental Protection Agency entitled, "Identification of Non-Hazardous Secondary Materials That Are Solid Waste," published at 76 Fed. Reg. 15456 et seq. (March 21, 2011), filed July 18, 2011. Substitution of attorney January 14, 2015. Case concluded September 29, 2015.

Rubber Manufacturers Association: D.C. Circuit case no. 11-1238. Petition for review of the final rule of the respondent United States Environmental Protection Agency entitled, "Identification of Non-Hazardous Secondary Materials That Are Solid Waste," published at 76 Fed. Reg. 15456 *et seq.* (March 21, 2011). Petition filed June 20, 2011, by another firm. Replaced original attorney July 5, 2011. Substitution of attorney January 14, 2015. Case concluded September 29, 2015.

Rubber Manufacturers Association: Motion to intervene in support of EPA in D.C. Circuit case no. 11-1189, petition for review of the final rule of the respondent United States Environmental Protection Agency entitled, "Identification of Non-Hazardous Secondary Materials That Are Solid Waste," published at 76 Fed. Reg. 15456 *et seq.* (March 21, 2011), filed July 15, 2011. Substitution of attorney January 14, 2015. Case concluded September 29, 2015.

American Forest & Paper Association, the American Wood Council, the Biomass Power Association, and the National Association of Manufacturers: D.C. Circuit case no. 13-1158, petition for review of the final rule of the United States Environmental Protection Agency entitled, "Commercial and Industrial Solid Waste Incineration Units: Reconsideration and Final Amendments; Non-Hazardous Secondary Materials That Are Solid Waste, Final Rule" published at 78 Fed. Reg. 9112 et seq. (February 7, 2013), filed May 7, 2013. Severed from D.C. Cir. case

no. 11-1189. Assigned new docket number 14-1201. Substitution of attorney January 14, 2015. Voluntary dismissal April 6, 2016.

American Forest & Paper Association, the American Wood Council, the Biomass Power Association, the Construction Materials Recycling Association Issues and Education Fund, the Hardwood Plywood & Veneer Association, and the National Association of Manufacturers: Motion to intervene in support of EPA in D.C. Circuit case no. 13-1152, petition for review of the U.S. Environmental Protection Agency final agency action entitled "Commercial and Industrial Solid Waste Incineration Units: Reconsideration and Final Amendments; Non-Hazardous Secondary Materials That Are Solid Waste," 78 Fed. Reg. 9112-9213 (Feb. 7, 2013), filed May 31, 2013. Substitution of attorney January 14, 2015. Case concluded September 29, 2015.

Evansville Water and Sewer Utility Board and the City of Evansville: I entered an appearance for third party plaintiffs Evansville Water and Sewer Utility Board and the City of Evansville in United States of America v. City of Evansville, Indiana, So. Dist. Ind., case no. 3:09-cv-00128. In December 2012. The case was dismissed April 19, 2013.

Clean Water Act consent decree negotiations with EPA (all are concluded):

City of Indianapolis, Indiana – concluded with a consent decree modification in November 2010. Evansville, Indiana, Water and Sewer District – my involvement ended in December 2014. According to press releases, this matter was concluded with a consent decree modification in February 2016.

City of Akron, Ohio – my involvement ended in December 2014. According to press releases, this matter was concluded with a consent decree modification in September 2016.

Rulemakings:

Agricultural Retailers Association, American Farm Bureau Federation, National Council of Farmer Cooperatives, National Pork Producers Council, The Fertilizer Institute – Clean Water Act proposed rules related to agriculture, 10/2010 – 07/2014.

American Forest and Paper Association, American Wood Council, Biomass Power Association, Construction & Demolition Recycling Association – RCRA proposed rule. June 2014.

American Petroleum Institute, National Petrochemical and Refiners Association, and American Coke and Coal Chemicals Institute. CERCLA proposed rule. April 2010.

American Process Inc. - Clean Air Act proposed rule. August 2011.

Federal Recycling and Remediation Coalition - RCRA and CERCLA proposed rules and policy issues. April 2011-September 2013.

Federal Water Quality Coalition – Clean Water Act proposed rules and policy issues. May 2010-November 2014.

Used Oil Management Association – RCRA and Clean Air Act proposed rules. August 2010-February 2012.

Other clients not identified above whom I represented at some point of time between March 31, 2009 and January 15, 2005 in EPA-related matters, to the best of my recollection.

3S International Agricultural Nutrient Policy Council Ameren Corporation Boral Industries, Inc BP America Edison Electric Institute Federal Stormwater Association Georgia Pacific Glenn Springs Holding Honeywell International Interstate Resources National Association of Homebuilders National Mining Association National Rural Elec. Coop. Association Sage Environmental Consulting Tradebe Treatment and Recycling, LLC Tyson Food USA Rice Federation

Senator Barrasso. Thank you so very much for your comments. Ms. Bodine.

STATEMENT OF SUSAN BODINE, NOMINATED TO BE ASSIST-ANT ADMINISTRATOR, OFFICE OF ENFORCEMENT AND COM-PLIANCE ASSURANCE, U.S. ENVIRONMENTAL PROTECTION AGENCY

Ms. Bodine. Chairman Barrasso, Ranking Member Carper, and members of the Committee, thank you for the privilege of appearing before you today as the nominee for the position of Assistant Administrator for EPA's Office of Enforcement and Compliance Assurance.

I am honored that President Trump, Administrator Pruitt, and

this Committee are considering me for this position.

I would also like to thank my family. They are not here today because they are all at work. They did come 12 years ago which was the last time I actually had a confirmation hearing before this Committee. My sons, at that time, were 11 and 14. They are now 23 and 26. Thankfully, they are gainfully employed.

I would also like to thank my many current and former col-

leagues for their support and friendship.

I have worked on environmental issues for my entire professional career, as a practicing attorney, as a member of the professional staff of the Subcommittee on Water Resources and Environment of the House Committee on Transportation and Infrastructure, as a former EPA Assistant Administrator, and as a member of the professional staff of this Committee.

If confirmed as the Assistant Administrator for OECA, I would bring with me an extensive background in the environmental laws that OECA enforces. I strongly support those laws and the goals

of protecting public health and the environment.

I also would bring my past experience in managing an EPA headquarters office and my deep respect for the career staff who do the day to day work of implementing our environmental laws and carrying out the responsibilities that Congress has given EPA.

I appreciate that our laws are built around the framework of cooperative federalism. Under cooperative federalism, States and the Federal Government both have important and complementary roles

in implementing our laws.

I also fully appreciate that we cannot protect public health and the environment unless the regulated community knows what they are supposed to do. Enforcement is a critical tool to achieve compliance. Compliance by everyone also creates a level playing field for the regulated community. By enforcing environmental laws, OECA

helps to create that level playing field.

Of course, to comply with the law, the regulated community needs to understand what is expected of them. Sometimes our statutes and regulations are less than clear. OECA plays an important role in making sure that there is clarity and consistency in how our environmental laws are interpreted, and providing assistance when the laws are less than clear. If confirmed, I look forward to working with the EPA program offices and States to provide that clarity and consistency.

Those who have worked with me know that I have a collaborative and inclusive approach to tackling complex environmental issues. For the Assistant Administrator of OECA, this means collaboration and coordination with States that are authorized to carry out Federal laws. It also means collaboration and coordination with the EPA program offices that write the regulations and

implement the statutes that Congress writes.

I also understand the need to communicate. That means not just talking but also listening. Communication with the environmental professional staff at EPA is an important managerial responsibility. Communication with State agencies is a critical component of cooperative federalism. Communication with the regulated community and environmental groups provides important feedback. Finally, communication with the public and Congress provides support for the Agency's mission.

If confirmed by the Senate, I would embrace the responsibility for assuring compliance with environmental laws. I know we all share the goal of protecting public health and the environment. I know we share the goal of making environmental regulations clear

and understandable.

I am very excited about the opportunity to work with Administrator Pruitt as a member of his team to achieve those goals.

In closing, thank you for this opportunity. I look forward to any questions you or your colleagues may have.

[The prepared statement of Ms. Bodine follows:]



Susan Parker Bodine

Susan Parker Bodine is Chief Counsel for the Senate Committee on Environment and Public Works, a position she has held since January 2015.

Ms. Bodine's nearly 29 years of environmental law experience includes both government service and private practice.

From January 2006 through January 2009, Ms. Bodine served in the George W. Bush administration as the assistant administrator of the Environmental Protection Agency's Office of Solid Waste and Emergency Response.

From January 1995 through December 2005, Ms. Bodine was staff director and counsel for the Subcommittee on Water Resources and Environment of the House Committee on Transportation and Infrastructure.

Ms. Bodine was an associate at Covington & Burling from August 1988 to January 1995 and a partner at Barnes & Thornburg from March 2009 to January 2015.

Ms. Bodine's undergraduate degree is from Princeton University and her law degree is from the University of Pennsylvania School of Law.

Statement of Susan Parker Bodine
Nominated to be Assistant Administrator,
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Before the Senate Environment and Public Works Committee
June 7th, 2017

Chairman Barrasso, Senator Carper and distinguished members of the Committee, thank you for the privilege of coming before you today as the nominee for the position of Assistant Administrator for the Office of Enforcement and Compliance Assurance. I am honored that President Trump, Administrator Pruitt and this Committee are considering me for this position.

I would also like to thank my many current and former colleagues for their support and friendship.

I have worked on environmental issues for my entire professional career, as a practicing attorney, as a member of the professional staff of the House Committee on Transportation and Infrastructure, as a former EPA Assistant Administrator, and as a member of the professional staff of this Committee.

If confirmed as the Assistant Administrator for OECA, I would bring with me an extensive background in the environmental laws that OECA enforces. I strongly support those laws and the goals of protecting public health and the environment.

I also would bring my past experience in managing an EPA headquarters office and my deep respect for the career staff who do the day-to-day work of carrying out the responsibilities that Congress has given EPA.

I appreciate that most of our environmental laws are built around the framework of cooperative federalism. Under cooperative federalism, states and the federal government have important and complementary roles in implementing federal environmental statutes.

I also fully appreciate that we cannot protect public health and the environment unless the regulated community complies with the law. Enforcement is a critical tool to achieve that compliance. Compliance with the law by everyone also creates a level playing field for the regulated community. By enforcing environmental laws OECA helps to create that level playing field.

Of course, to comply with the law, the regulated community needs to understand what is expected of them. Sometimes our statutes and regulations are less than clear. OECA plays an important role in making sure that there is clarity and consistency in how our environmental laws are interpreted, and providing assistance when the laws are less than clear. If confirmed, I would look forward to working with the EPA program offices and with states to provide that clarity and consistency.

Those who have worked with me know that I use a collaborative and inclusive approach to tackling complex environmental issues. For the Assistant Administrator of OECA this means collaboration and consultation with states that are authorized to carry out their

own laws, in lieu of federal law, states that are delegated the authority to carry out federal law, and EPA program offices that write the regulations that implement the statutes that Congress writes.

I also understand the need to communicate. When I say "communicate" I mean listening as well as talking. Communication with the environmental professional staff at EPA is an important managerial responsibility. Communication with state agencies is a critical part of cooperative federalism. Communication with the regulated community and environmental groups provides important feedback. Finally, communication with the public and Congress helps build support for the agency's mission.

If confirmed by the Senate, I would embrace the responsibility for assuring compliance with environmental laws. I know we share the goal of protecting public health and the environment. I know we share the goal of making environmental regulations clear and understandable.

I want to work with everyone to achieve these goals.

In particular, I am very excited about the opportunity to work with Administrator Pruitt as a member of his team as we create a driving force for economic growth as well as environmental protection; promote a culture of environmental responsibility; and continue to ensure compliance with our nation's environmental laws.

In closing, I look forward to any questions you or your colleagues may have. Thank you.

Senate Environment and Public Works Committee

Hearing entitled, "Hearing on the Nominations of Kristine Svinicki (Reappointment), Annie Caputo and David Wright to be Members of the U.S. Nuclear Regulatory Commission, and the Nomination of Susan Bodine to be Assistant Administrator of the Office of Enforcement and Compliance Assurance of the U.S. Environmental Protection Agency."

Tuesday, June 13, 2017

Questions for the Record for Susan Bodine

Ranking Member Carper:

1. The EPA's Office of Enforcement and Compliance Assurance (OECA) is responsible for the civil and criminal enforcement of the nation's environmental laws, a responsibility that all agree must be carried out with absolute impartiality. In fact, for decades, both Republican and Democratic administrations alike have had written policies limiting White House contacts with agencies that have investigatory and enforcement responsibilities. These policies have recognized that even a simple phone call from the White House to an agency inquiring about or flagging a specific matter can upset the evenhanded application of the law. We recently learned that Devon Energy, a strong political supporter of Scott Pruitt's, informed the EPA just 5 days after Scott Pruitt was sworn in as Administrator that it was no longer willing to install air pollution technology or pay a high penalty to EPA for its illegal air emissions of cancer-causing benzene and other chemicals. We also know that Trump family casinos, hotels and golf courses have been the subject of EPA enforcement actions for violations of the Clean Air Act and Clean Water Act. Do you agree that it is essential that in making decisions, such as whether to launch an investigation, continue an investigation, proceed with an enforcement action, or close a matter OECA must be shielded from political influence and spared even the appearance of being subject to political influence or considerations?

Yes.

- Will you commit to prevent any and all political efforts by the White House, the Administrator or others seeking to water down or prevent EPA enforcement actions against polluters who break the law? To that end,
 - a. Will you commit to restricting communications between OECA and the White House staff regarding specific investigations and enforcement matters?

Yes.

b. Will you commit to ensuring the staff of OECA is familiar with those restrictions?

Yes.

c. Will you commit to advising this Committee within one week if any inappropriate communications from White House staff to OECA staff, including you, occur?

Yes.

3. In the past, the EPA Enforcement Office has led significant national enforcement cases. For example, EPA responded forcefully in response to Volkswagen's sale of cars that emitted illegal levels of air pollutants because they cheated on their emissions testing in all 50 States. The Tesoro Corporation, to cite another example, was in violation the Clean Air Act in refineries located in six states, from Hawaii to North Dakota. Do you agree that it would have made no sense for all 50 States to file separate enforcement actions against VW, or for the Tesoro refinery in Hawaii to be subject to a different settlement from one that was reached separately in North Dakota?

Yes.

Do you believe that avoiding duplicative and conflicting State efforts is one reason that that EPA enforcement should be providing national leadership, not abdicating it?

I do not believe that EPA is abdicating national leadership. I agree that EPA plays an important role in avoiding duplicative and conflicting enforcement efforts and ensuring there is a level playing field across the country.

4. For years, in lieu of the payment of fines, EPA and companies found to have violated environmental laws have entered into agreements to establish Supplemental Environmental Projects, which are projects that improve the environment. Do you agree that these are a valuable tool that should remain in the enforcement toolbox?

Yes, consistent with existing OECA policy on SEPs.

5. My colleagues and I have sent 14 oversight letters to Scott Pruitt – and ten of them have not been answered. Moreover, we have learned that the White House has actually told agencies not to answer Democrats' mail. Do you agree that federal agencies should fully answer their mail, and do you commit to providing all Members with the information they request of you if you are confirmed?

It is my understanding that Administrator Pruitt has responded to 11 of 21 letters sent by EPW members.

As I stated in my hearing, I believe that Congressional oversight is very important. If confirmed as the Assistant Administrator for Enforcement and Compliance Assurance, I intend to be consistent with past agency practices with respect to responding to individual members of Congress. This includes complying with EPA's long-standing policy of not releasing confidential enforcement information — no matter who is asking for such information

6. If Congress adopts the fiscal year 2018 Trump Budget for OECA, 757 full time employees, or FTEs, will need to be fired. All those employees won't depart EPA the minute Congress enacts the appropriations bill – layoffs of that magnitude would take some time. The Trump Budget only provides \$419 million dollars in total for the Enforcement office – even though paying just the salaries for the employees cost \$440 million dollars last year. Do you agree that the fiscal year 2018 Trump Budget proposal

for EPA's Enforcement office can't be implemented as written, because there isn't even enough money in it to make payroll, let alone conduct the enforcement activities for which the office is currently responsible?

The President's budget is seeking \$12 million for voluntary early retirement. In addition, 20 percent of the workforce is at or over retirement age. Accordingly, as Administrator Pruitt stated on June 15, 2017 before the Interior, Environment, and Related Agencies Subcommittee of the House Appropriations Committee, it is my understanding that EPA expects to see significant reductions in FTEs due to buyouts, retirements and a hiring freeze.

7. The President proposed a 24% budget cut to the EPA Enforcement office, saying that EPA will "take a step back from enforcing laws to protect clean air and water in most cases," under the assumption that in most cases, States will do that work themselves. The fiscal year 2018 budget proposal cuts the grants that States have used to supplement their own enforcement efforts by 44%. Do you agree that if there are double-digit cuts to the EPA enforcement office and double-digit cuts to State enforcement and compliance grants, there will be less enforcement and compliance capacity to avoid, deter and correct environmental crimes?

Categorical grants to support state implementation of the Clean Air Act, the Clean Water Act, and RCRA are proposed to be reduced by 30%, in the President's budget request. These grants often come with conditions that limit state flexibility.

The states are the primary enforcers of most environmental laws and I believe that EPA's enforcement program should respect that strong role. As the Environmental Council of the States (ECOS) noted in the cooperative federalism paper they released on June 12, 2017, states should be the primary enforcement authority for delegated programs and EPA should step in only when needed or appropriate. If confirmed, I will work closely with state agencies who have delegated authority to implement federal law to increase flexibility in the use of federal categorical grants and avoid duplicative efforts and wasted resources.

I agree with the statement in the ECOS paper that recasting the state-federal relationship to embrace cooperative federalism can result in:

- "Equal or greater environmental and public health protection and outcomes through smart deployment of resources on critical priorities;
- Reduced operating costs due to a more efficient division of services, streamlined operating relationships, best practice sharing, and elimination of redundancies across states and divisions of EPA;
- More effective allocation of limited resources by determining the best roles and functions states and EPA are each best suited to perform; and,
- With time, fewer disputes over who should take credit for successes and achievements, and who is responsible for decisions and actions that result in setbacks." https://www.ecos.org/documents/cooperative-federalism-2-0/

8. Do you agree that having a central enforcement office at EPA headquarters is needed to pursue national and significant enforcement actions, provide technical assistance to States and ensure consistency among State enforcement efforts?

Yes.

Senator Cardin:

In a May 2013 Senate EPW Hearing on Water Quality Trading and Nutrient Management in front of the Water and Wildlife Subcommittee that I Chaired at the time, you testified in favor of nutrient pollution trading, and in particular in favor of transferring public taxpayer dollars to agricultural businesses in exchange for their installing pollution controls. You also testified, however, that it would be unnecessary to check whether the farmers actually installed those controls.

However, as an attorney at Barnes and Thornburg you advised the State Ag and Rural Leaders group that basic regulations for agricultural pollution - such as water quality criteria and total maximum loads for nutrient pollution - were unnecessary and too much of a financial burden on business. ²

Since the Chesapeake Bay TMDL was established in Dec. 2010, the Bay has seen significant improvements to water quality flowing from initiatives including the Chesapeake Bay total maximum daily load program.

9. How would you approach this issue as head of OECA? Do you intend to implement and enforce those regulatory controls faithfully and advice while working with industry?

If confirmed, I would enforce applicable regulatory requirements, including those in the Chesapeake Bay TMDL, which was upheld by the Third Circuit in July 2015.

Senator Markey:

- 10. There is tremendous diversity across states in this country, and occasionally states have difference of opinions on how to approach a problem. One of the roles of the federal government is to be an arbiter among states.
 - a. What is your philosophy on how interstate pollution conflicts should be handled?

I believe that OECA plays an important role in maintaining a level regulatory playing field by ensuring states enforce the federal laws that they are authorized to carry out. That can include taking action in the absence of state action.

b. What is the EPA's role in resolving interstate pollution conflicts?

 $^{^{1}\,\}underline{\text{https://www.epw.senate.gov/public/index.cfm/hearings?ID=AD7B2064-9A2F-0F47-5E2D-581F6FC46468}}$

² "Environmental Challenges Facing the Agricultural Community," Legislative Agriculture Chairs Summit, presentation dated January 16, 2011

Under our environmental laws, EPA approves or establishes standards and controls at a level that protects other states. For example, water quality standards under the Clean Water Act must protect downstream waters. Under the Clean Air Act, states must establish controls sufficient to avoid contributing to nonattainment of a national ambient air quality standard in a downwind state. The Office of Water reviews and approves state water quality standards. The Office of Air and Radiation reviews and approves state implementation plans. OECA's job is to ensure states enforce the standards and plans that the EPA program offices have approved, and to step in to take federal enforcement action where necessary and appropriate.

- 11. Shortly after taking office as Oklahoma Attorney General in 2011, Scott Pruitt dismantled the office's Environmental Protection Unit, established to pursue violators of the state's environmental laws. In his FY18 budget, President Trump has proposed to cut the office of enforcement and compliance budget by 24% while also cutting state categorical grants by 44%. Categorical grants are funds spent to implement pollution control programs and are used to monitor pollution releases and enforce pollution limitations.
 - a. Are you concerned that the EPA administrator may decide to similarly dismantle the EPA office of compliance, as he did in Oklahoma?

No.

b. The reduction in staffing and resources that you will face if Trump's budget is enacted as proposed will surely hamper the ability of the office to accomplish its stated goals. What do you expect will be most challenging operating with such a limited budget?

Changing the relationship between EPA and states to embrace cooperative federalism will be a challenge, but I agree with ECOS that such a change can result in:

- "Equal or greater environmental and public health protection and outcomes through smart deployment of resources on critical priorities;
- Reduced operating costs due to a more efficient division of services, streamlined operating relationships, best practice sharing, and elimination of redundancies across states and divisions of EPA;
- More effective allocation of limited resources by determining the best roles and functions states and EPA are each best suited to perform; and,
- With time, fewer disputes over who should take credit for successes and achievements, and who is responsible for decisions and actions that result in setbacks." https://www.ecos.org/documents/cooperative-federalism-2-0/

- c. Do you think it will be easier or harder to catch and hold polluters accountable if the categorical grants given to states to implement and oversee environmental programs is cut by nearly half?
 - I expect EPA and states to use all tools in the toolbox to ensure compliance with federal environmental laws. By avoiding duplication of effort and increasing coordination and communication, I believe that EPA and states can maintain enforcement and compliance assurance efforts in a time of constrained budgets.
- 12. As the widespread lead contamination of Flint Michigan's water supply starkly reminds us, environmental burdens are often borne disproportionately by low income and minority communities. Yet the Trump FY18 budget proposed to completely eliminate the Environmental Justice Program within OECA.
 - a. How do you expect this budget cut will affect the office of compliance's focus on environmental justice issues?
 - I do not expect it to have any effect. Addressing disproportionate adverse impacts on low income and minority communities is carried out by each EPA program office including OECA. In OECA, that function is not performed by the Office of Environmental Justice.
 - b. What are your plans on reducing toxic pollution and disproportional burden of pollutants in communities of color?
 - EPA writes regulations and sets standards to protect everyone. To avoid disproportionate adverse effects it is important to understand whether a community has a disproportionate level of exposure. This requires information and communication. Using a mapping tool like EJSCREEN, EPA can identify locations where additional information collection is appropriate to determine if a disproportionate adverse effect exists.
 - c. What will you do to increase enforcement and oversight in communities that are bearing the burden of environmental hazards?
 - If confirmed, I would expect OECA to continue to use tools like EJSCREEN to identify locations that are appropriate for an increased focus on enforcement and compliance assurance.
- 13. EPA recently developed the agency's EJ2020 action Agenda to better deliver on its historical promises of reducing disparities in environmental protection. Will you utilize and uphold this guidance and procedures outlined in this document throughout the work of your office? Please explain.

I am not familiar with EPA's EJ2020 action agenda. If confirmed, I will seek a briefing on this guidance.

14. Last year entitled, "The ABCs of PCBs: A Toxic Threat to America's Schools." Although Congress and the EPA banned the production and most uses of PCBs in 1979, the toxic chemical is still found in many schools across this country. In addition, my report laid out six recommendations. There are multiple local education agencies and schools that have been seeking the advice and assistance of the EPA in complying with PCB laws and regulations. Will you commit to assisting these agencies and schools with their compliance efforts? How will you ensure that the guidance EPA provides across all Regions of EPA is consistently and proactively provided?

EPA's guidance on PCBs in building materials was issued by the Office of Land and Emergency Management (OLEM) and that office and the Regional PCB coordinators are the primary implementers of that guidance.

https://www.epa.gov/sites/production/files/2016-03/documents/gobs in building materials guestions and answers pdf

03/documents/pcbs in building materials questions and answers.pdf
That guidance points out that EPA's goal is to reduce exposure and that
enforcement may not be the best tool to achieve that goal. If confirmed, I will seek to
ensure there is communication with OLEM and the Regions to identify situations
where there are significant risks to public health that are not being addressed,
where enforcement may be appropriate.

15. Explain your philosophy on cooperating with other federal agencies enforcement programs. How will you institute and continue cooperative enforcement work?

If confirmed, I would ensure that EPA continues to work closely with the Department of Justice (DOJ) to enforce federal environmental law. For judicial enforcement actions, DOJ represents the United States. EPA also needs to communicate with agencies that share enforcement authority. For example, the Coast Guard implements CERCLA, the Oil Pollution Act, and section 311 of the Clean Water Act in the coastal zone, while EPA implements these authorities in the inland zone. The Corps of Engineers has authority to enforce violations of section 404 of the Clean Water Act. Federal land management agencies also have authority to issue orders under CERCLA relating to hazardous substance releases on the property they manage. If I am confirmed, I will ensure that there is continued communication with agencies that share enforcement authority with EPA.

16. What is your plan on increasing capacity and focus on ensuring compliance with existing and new TSCA regulations?

The Lautenberg Act requires EPA to issue a number of new regulations. If I am confirmed, I will work with the Office of Chemical Safety and Pollution Prevention to ensure the regulated community is aware of their new obligations and will take

³ https://www.markey.senate.gov/imo/media/doc/2016-10-05-Markey-PCB-Report-ABCsofPCBs.pdf
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enforcement action where appropriate.

17. According to the EPA website "The mission of EPA is to protect human health and the environment." If confirmed, do you commit to upholding the EPA mission of protecting human health and the environment?

Vec

18. The EPA's website also states that its purpose is to ensure "the U.S. plays a leadership role in working with other nations to protect the global environment." If confirmed, do you commit to upholding the EPA purpose of ensuring the U.S is a leader in protecting the global environment?

If confirmed, I will enforce U.S. law.

Senator Sanders:

Lake Champlain TMDLs

19. Lake Champlain is one of Vermont's most treasured environmental features. Tourism and property values are tied to the health of the lake—swimmable, fishable and drinkable waters. Run-off—including from lawns, paved roads and parking lots, waste-water treatment facilities, and farmlands—contributes to high levels of phosphorus that spur toxic algae growth. In 2016, EPA released new phosphorus limits for the lake by establishing a TMDL (Total Maximum Daily Load). If confirmed, will you enforce clean-up of Lake Champlain through this TMDL?

If confirmed, I will enforce the regulatory features of any TMDL that is in effect. That includes the Lake Champlain TMDL.

Climate change

20. President Trump has suggested in the past that climate change is a hoax. Is the President correct? Is climate change a hoax?

The climate has always been changing.

21. Do you agree with the vast majority of scientists that climate change is real, is caused by human activity, and that we must aggressively transition away from fossil fuels toward energy efficiency and sustainable energy like wind, solar, and geothermal?

OECA is charged with assuring compliance with environmental laws and enforcing those laws when there is non-compliance. That includes enforcing any regulations that are in effect that are related to greenhouse gases. These include:

- Greenhouse Gas Reporting Rule;
- · Greenhouse Gas/CAFE standards for cars and trucks;

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 Prevention of Significant Deterioration and New Source Reviews for major sources that already need to obtain Clean Air Permits pursuant to the Supreme Court's 2014 decision in *Utility Air Regulatory Groups v EPA*.

If confirmed, I will work to ensure compliance with all applicable regulations, including climate-related regulations.

22. Do you agree with the vast majority of scientists that the combustion of fossil fuels contributes to climate change?

See my response to question 21, above.

23. Do you believe that the EPA has a role in reducing the public health harms caused by the extraction and use of fossil fuels as defined under the 2009 Endangerment Finding?

Extraction and use of fossil fuel are regulated under a variety of federal environmental statutes and if confirmed I would enforce those statutes.

24. If confirmed, how will you work to address climate change at EPA?

See my response to question 21, above.

25. Do you support President Trump's decision to leave the Paris climate agreement?

Yes. Given the uncertainty over the accuracy of the climate models, particularly over sensitivity of temperature to CO2, I do not believe it is appropriate to mandate a complete overhaul of the U.S. energy portfolio and constrain our gross domestic product — actions that some have estimated could cost the U.S. economy nearly \$3 trillion over the next several decades — while leaving U.S. manufacturing at a competitive disadvantage with other countries that are not similarly constrained.

Budget cuts and changing EPA priorities

26. The Office of Enforcement and Compliance Assurance ensures compliance with environmental laws and regulations. The office is facing: 1) proposed cuts of more than 20% in the FY18 budget compared to FY17, and 2) new stated agency priorities, such as primary environmental enforcement by the states.

Under these severe financial constraints and shifting priorities, if confirmed, how will you ensure that OECA is able to effectively address civil and criminal lawsuits against environmental polluters and ensure compliance with environmental laws?

If confirmed, I will work closely with state agencies who have delegated authority to implement federal law to avoid duplicative efforts and wasted resources.

I agree with the statement in the ECOS paper that recasting the state-federal relationship to embrace cooperative federalism can result in:

- "Equal or greater environmental and public health protection and outcomes through smart deployment of resources on critical priorities;
- Reduced operating costs due to a more efficient division of services, streamlined operating relationships, best practice sharing, and elimination of redundancies across states and divisions of EPA;
- More effective allocation of limited resources by determining the best roles and functions states and EPA are each best suited to perform; and,
- With time, fewer disputes over who should take credit for successes and achievements, and who is responsible for decisions and actions that result in setbacks." https://www.ecos.org/documents/cooperative-federalism-2-0/

If I am confirmed, I expect that OECA will continue to take enforcement where appropriate or necessary. In particular, OECA is uniquely qualified and situated to take enforcement action against companies or sectors with facilities in multiple states who are violating the law. OECA also is uniquely qualified and situated to bring criminal actions against egregious violators.

27. Given the proposed budget cuts, if confirmed, how will you ensure enforcement of clean-up activities at sites identified under the Comprehensive Environmental Response, Compensation, and Liability Act, Resource Conservation and Recovery Act, and other key environmental laws?

If I am confirmed, OECA will continue to pursue and enter into settlements with parties responsible for cleanup action. The amount varies from year to year as enforcement actions are resolved. For example, in 2016, EPA settlements resulted in commitments by private parties to perform \$1\$ billion worth of cleanup work. In 1984, Congress gave EPA the authority to collect and spend, without appropriation, monies collected from responsible parties to fund future cleanup actions. Currently, the Superfund Trust Fund is holding \$3.6\$ billion in special account (and some state cost share) funds as a result of successful OECA enforcement actions.

28. In February, it was reported by *Inside EPA* that the new administration was considering closing OECA and reverting enforcement duties to program offices. If confirmed, do you foresee returning any enforcement duties to EPA program offices? If so, which programs and areas of enforcement are most likely to be affected?

I am not aware of any plans to close OECA and return enforcement duties to the program offices.

29. The public depends on compliance and reporting data traditionally gathered by EPA to aid in identifying exposure to hazardous substances and areas for enforcement. If confirmed, how will you ensure the full and accurate collection of compliance and reporting data in light of proposed budget cuts?

If confirmed, I expect to continue to maintain, and, working with states on data quality, hopefully improve the Enforcement and Compliance History Online (ECHO) database.

30. With the Environmental Protection Agency planning to offer early retirement and buyout packages this year to comply with the President's effort to reorganize the federal government, reprioritization of the agency's goals, and proposed agency budget cuts of 30% compared to FY17, it has been widely reported that morale at the agency is at a new low. As one of the leaders of the agency, if confirmed, what will you do to address these reported declines in workplace satisfaction?

I have a deep respect for the EPA career staff. If confirmed, I will employ the same management style that I employed when I was the Assistant Administrator for the Office of Solid Waste and Emergency Response by seeking input from and listening to the career staff.

Conflicts of interest

31. As a lobbyist with Barnes & Thornburg between 2009 and 2015, you represented Saint-Gobain Containers. In 2010, Saint-Gobain agreed to pay a \$2.25 million civil penalty in a settlement of a case alleging 15 company facilities for glass bottle manufacturing violated the Clean Air Act and individual State Implementation Plans (SIPs). In addition, one of the firm's Performance Plastics division sites is now being considered for a Superfund designation. On September 9, 2016 EPA proposed to add the Saint-Gobain site in Hoosick Falls, New York to the National Priorities List (NPL), the nation's most contaminated hazardous waste sites targeted for long-term cleanup. Vermont's Chemfab factory in North Bennington is also a former Performance Plastics division site that has allegedly been linked to drinking water well contamination.

If confirmed, you would be in charge of making sure that companies like Saint-Gobain install the necessary pollution control technologies and conduct waste clean-ups.

As Assistant Administrator of OECA, would you have any active conflicts of interest with Saint-Gobain?

If confirmed, I would have no problem taking appropriate enforcement action against any company.

In connection with the nomination process, I have consulted with the Office of Government Ethics and EPA ethics officials to identify potential conflicts of interest under federal law and Executive Order 13770. I have entered into an ethics agreement that was approved by both EPA and the Office of Government Ethics and presented to this Committee. The EPA ethics counsel and the Office of Government Ethics confirm that I have no conflicts of interest.

Further, as I stated during my confirmation hearing, my representation of Saint Gobain Containers related to the encouragement of glass recycling, not regulatory matters. Saint Gobain Containers was formerly a corporation headquartered in Muncie, Indiana. The Saint Gobain Performance Plastics company referred to in your question is a separate entity that I have never represented. Saint Gobain Containers was purchased by Ardagh Glass in 2014.

Do you commit to recuse yourself in cases where there is a conflict of interest, or the appearance of a conflict of interest?

In connection with the nomination process, I have consulted with the Office of Government Ethics and EPA ethics officials to identify potential conflicts of interest under federal law and Executive Order 13770. I have entered into an ethics agreement that was approved by both EPA and the Office of Government Ethics and presented to this Committee. The EPA ethics counsel and the Office of Government Ethics confirm that I have no conflicts of interest. If a situation arises where there may be an appearance of a conflict of interest, then I will consult with the EPA ethics counsel to determine the appropriate course of action.

32. You have also represented the American Forest and Paper Association (AFPA). Members of the AFPA have hundreds of EPA enforcement actions against them, including International Paper, which is co-owner of the Curtis Specialty Paper Superfund Site in New Jersey. As Assistant Administrator of OECA, would you have any active conflicts of interest with members of AFPA?

In connection with the nomination process, I have consulted with the Office of Government Ethics and EPA ethics officials to identify potential conflicts of interest under federal law and Executive Order 13770. I have entered into an ethics agreement that was approved by both EPA and the Office of Government Ethics and presented to this Committee. The EPA ethics counsel and the Office of Government Ethics confirm that I have no conflicts of interest.

My representation of AFPA involved working with EPA to ensure that the forest products industry can continue to use secondary material like biomass as a fuel in their boilers. In states with a large forest products industry, like Maine, New Hampshire, Vermont, Washington, and Oregon, biomass from forest products residuals is an important fuel source. For example, it is used by the city of Burlington, VT, as well as by my son's alma mater, Middlebury College.

33. Do you commit to recuse yourself in cases where there is a conflict of interest, or the appearance of a conflict of interest?

In connection with the nomination process, I have consulted with the Office of Government Ethics and EPA ethics officials to identify potential conflicts of interest under federal law and Executive Order 13770. I have entered into an ethics

agreement that was approved by both EPA and the Office of Government Ethics and presented to this Committee. The EPA ethics counsel and the Office of Government Ethics confirm that I have no conflicts of interest. If a situation arises where there may be an appearance of a conflict of interest, I will consult with EPA ethics counsel to determine the appropriate course of action.

OECA staffing conflicts of interest

- 34. Patrick Traylor has just been named OECA's deputy assistant administrator. He has worked at Hogan Lovells since 1997—and as a partner since 2004—serving clients such as Dominion Energy, Koch Industries, and TransCanada. These three clients alone have been subject to numerous civil penalties for environmental violations (see below). If confirmed, what requirements will you put in place so that Traylor does not participate in OECA activities related to his previous clients? Do you commit to requiring him to recuse himself in cases where there is a conflict of interest, or the appearance of a conflict of interest?
 - a. Since 2011, Transcanada has paid \$183,100 in penalties for seven cases of environmental violations for its pipelines, including one at the EPA. The agency has also been critical of environmental impact statements conducted on behalf of TransCanada projects. In September 2016, OECA sent a letter to the Federal Energy Regulatory Commission criticizing its environmental impact statement for a Transcanada compressor station and gas pipelines through Ohio, Pennsylvania, West Virginia and Kentucky. The EPA also criticized the State Department's environmental impact study of TransCanada's Keystone XL pipeline.
 - b. In April 2013, Dominion Energy agreed to pay a \$3.4 million civil penalty and spend approximately \$9.8 million on environmental mitigation projects to resolve Clean Air Act violations.
 - c. In 2000, Koch Industries paid the largest civil fine ever imposed on a company under any federal environmental law—a \$30 million civil penalty and \$5 million on environmental projects—to resolve claims related to more than 300 oil spills from its pipelines and oil facilities in six states. Since 2012, Koch Industries has generated another 25 EPA violations with total penalties of more than \$5 million.

If confirmed, I will make sure that all OECA staff recuse themselves from cases in which they have a conflict of interest and abide by their obligations under federal ethics laws and regulations and, where applicable, Executive Order 13770. If an appearance of a conflict of interest arises, I will consult with the EPA ethics counsel to determine the appropriate course of action.

Most pressing challenges

35. EPA's FY18 budget lists the following as priorities: clean water and drinking water infrastructure, work at Brownfield and Superfund projects, improving and protecting air quality, and ensuring the safety of chemicals. If confirmed, would these also be the most

pressing challenges that would deserve your and OECA's attention? If confirmed, how will you ensure OECA will do better to address these challenges?

If I am confirmed: OECA will continue to encourage investment in drinking water and clean water infrastructure by ensuring compliance with the Safe Drinking Water Act and the Clean Water Act; OECA will encourage brownfields redevelopment by making developers aware of the liability protections under the 2002 Brownfields Law as well as OECA's enforcement discretion policies; OECA will continue to seek settlements with Superfund responsible parties to secure cleanup commitments and cash out settlements; and OECA will continue to enforce Clean Air Act mobile source standards and work with states on compliance with stationary source Clean Air Act obligations. Finally, if I am confirmed, OECA will work with the Office of Chemical Safety and Pollution Prevention on assistance with the new TSCA regulations being developed under the Lautenberg Act.

Primary environmental enforcement by the states

36. Administrator Pruitt has said the states should take the lead in enforcing environmental laws. In Flint, Michigan, the lack of state enforcement put thousands of children at risk of lead poisoning due to prolonged exposure through the contamination of the city's drinking water. If confirmed, how will you ensure that states and EPA regional offices avoid another Flint-like public health disaster through appropriate enforcement of environmental laws?

I agree with the assessment of many that Flint was a failure of government at every level. If confirmed, I would make it clear that when EPA staff learn of risks to public health, like the Flint drinking water, they need to inform senior managers if their immediate supervisors fail to act. According to the EPA IG report on Flint, OECA headquarters staff did not know about the Flint drinking water until September 2015. OECA issued an emergency order directing state and local action in January 2016.

The failure of the City of Flint to act in a timely manner was in part due to perceived ambiguities in the regulatory responsibilities under the SDWA Lead and Copper rule. OECA is on the workgroup that is developing a revision of that rule. If confirmed, I will ensure that the obligations under the revised rule are clear.

In addition, the EPA IG recommended changing OECA's guidance on when to use section 1431 emergency orders under the SDWA. It is my understanding that OECA is currently implementing that recommendation. If confirmed, I will ensure that all enforcement staff are aware of it.

37. How do you see the agency's preference for enforcement at the state- instead of federal-level affecting cases in which the states and the EPA share enforcement authority, such as under the Clean Air Act?

For example, the Clean Air Act's "good neighbor" provision requires EPA and states to address interstate transport of air pollution that affects downwind states' ability to attain and maintain National Ambient Air Quality Standards (NAAQS). Specifically, the Clean Air Act requires each state in its State Implementation Plans (SIPs) to prohibit emissions that will significantly contribute to nonattainment of a NAAQS, or interfere with maintenance of a NAAQS, in a downwind state. The Act requires EPA to backstop state actions by promulgating a Federal Implementation Plan (FIP) in the event that a state fails to submit a SIP, or if EPA disapproves a SIP.

I do not foresee an impact. The Office of Air and Radiation has the responsibility to review and approve SIPs based on the requirements of the Clean Air Act. OECA has backstop authority to enforce a SIP if a state fails to act. If I am confirmed, I will inform states of planned EPA actions, but will continue to undertake federal enforcement where necessary and appropriate.

- 38. If confirmed, how will you enforce non-compliance against companies that operate in multiple states and may have environmental violations in multiple states?
 - OECA is uniquely qualified and situated to take enforcement action against companies with facilities in multiple states that are failing to comply with federal environmental law. If I am confirmed, I will coordinate with states but continue to undertake such multi-state actions.
- 39. If confirmed, how will you ensure enforcements against states that refuse to enforce criminal environmental laws?

Under our environmental laws and the 10th amendment to the Constitution, EPA does not take enforcement action against a state for failing to implement a federal law. Rather, EPA has backstop authority to take action itself when a state fails to act. If confirmed, I will ensure that OECA continues to backstop state enforcement or lack of enforcement, including the enforcement of criminal laws.

Enforcement and regulatory repeal process

40. In March, Administrator Pruitt announced the establishment of a Regulatory Reform Task Force to make recommendations on regulations that could be repealed, replaced, or modified. A group of Republican attorneys general—including the Administrator's replacement as Oklahoma's Attorney General—has asked that 20 rules be considered. One of these regulations is the Cross-State Air Pollution Rule that was finalized in September, and was to go into effect in May 2017. If confirmed, will you continue to enforce rules, such as the Cross-State Air Pollution Law, that may be under consideration for repeal, replacement, or modification?

If I am confirmed, I will enforce regulations that are in effect.

41. According to the EPA, power plants are currently the primary emitters of mercury (50 percent). Methylmercury, found in the fish and shellfish that people eat, is a powerful neurotoxin that causes adverse health effects. In 2016, EPA issued a final finding that it is appropriate and necessary to set standards for emissions of air toxics from coal- and oil-fired power plants through the Mercury and Air Toxics Standards (MATS), as the public benefits far outweigh the costs. Yet, the EPA said this spring that it will be reviewing the costs assessment made in the 2016 finding.

Do you believe that there is a benefit to industry and regulators in having stability and regulatory certainty? Power plants — mostly coal-powered ones — had to comply with the MATS rule starting in April 2015, and the majority have already either adopted controls or converted to natural gas-powered facilities.

Will you continue to enforce the MATS rule while they are under review by the EPA?

If I am confirmed, I will enforce regulations that are in effect.

Lautenberg Chemicals Safety Act

42. A critical part of implementing the Frank R. Lautenberg Chemical Safety for the 21st Century Act effectively is assuring that EPA gets complete and accurate information about how chemicals are manufactured and used. The Chemical Data Reporting (CDR) rule is an essential information gathering tool and particularly important for the initial 10 chemicals, including asbestos, that are subject to risk evaluations under the new law. If confirmed, will you commit to enforcing the CDR rule as a high priority and that your office will pursue violations promptly and vigorously?

If I am confirmed, I will enforce regulations that are in effect.

Enforcement of environmental laws on tribal lands

43. Many of our environmental laws were designed to permit regulation and enforcement by the states so long as state programs meet minimum federal standards established by EPA. Since state laws, however, do not always have general effect or application on Indian lands, Congress has amended several of our environmental statutes to permit tribes themselves to assume primary enforcement authority.

Do you intend to encourage tribes to develop their own enforcement regimes under approved programs, much as the states do? What will be your goals in working with tribes on compliance monitoring, enforcement, compliance assistance, and environmental justice?

It is my understanding that the Navajo Nation has been approved to implement several environmental statutes on Navajo land. I am not familiar with capabilities of other tribes to receive approval to carry out federal environmental laws in tribal lands. If confirmed, I will ask for a briefing on this issue. In parts of Indian Country where the tribe has not been approved to implement federal law, if I am

confirmed, OECA will continue to take the lead in enforcing environmental laws and will work with the relevant EPA program offices and with other relevant federal agencies, such as the Bureau of Indian Affairs, on compliance issues.

Environmental justice

44. The Office of Environmental Justice (OEJ) sits within OECA. Environmental pollution is not distributed uniformly across the United States. Many studies have found that high polluting industrial and waste disposal facilities are more frequently located near poor and minority neighborhoods, where they harm the health and welfare of residents. In your opinion, what is the role of EPA in addressing inequalities in exposure to environmental pollution, including through its enforcement of environmental laws?

EPA writes regulations and sets standards to protect everyone. To avoid disproportionate adverse effects it is important to understand whether a community has a disproportionate level of exposure. This requires information and communication. Using a mapping tool like EJSCREEN, EPA can identify locations where additional information collection is appropriate to determine if a disproportionate adverse effect exists.

If confirmed, I would expect OECA to continue to use tools like EJSCREEN to identify locations that are appropriate for an increased focus on enforcement and compliance assurance.

- 45. In EPA's environmental justice strategic plan for 2016-2020, OECA is identified as the program leading environmental justice compliance and enforcement. The following strategies in the plan are below. If confirmed, will you commit to implementing each of these strategies in your leadership of the office? If not, why?
 - a. Direct more EPA enforcement resources to the most overburdened communities;
 - work with federal, state, tribal, and local co-regulatory partners to pursue vigorous enforcement for violations in overburdened communities and leverage limited compliance resources by improving joint planning and targeting of enforcement activities; and
 - strengthen communication so enforcement cases can benefit from the knowledge
 of local communities, and empower communities with information about
 pollution and violations that affect them.

I am not familiar with the environmental justice strategic plan for 2016-2020. If I am confirmed I will seek a briefing on it. As I stated above, I agree that communication is important.

46. The President's FY18 budget eliminates the OEJ within OECA. The OEJ and the Office of Civil Rights have traditionally addressed environmental justice mandates under Executive Order 12898 and adherence to Title VI prohibitions of discrimination on the basis of race, color or national origin. How would you describe OECA's current responsibilities for environmental justice compliance and enforcement?

It is my understanding that the Office of Environmental Justice that is currently housed in OECA serves as the federal official for the National Environmental Justice Advisory Committee, participates in the Interagency Working Group on Environmental Justice, maintains the GIS mapping tool called EJSCREEN, and makes about \$1.2 million in grants. According to the President's budget request, the cross-program functions of OEJ will be incorporated into the future policy work of the Integrated Environmental Strategy Program within the Office of the Administrator.

The incorporation of environmental justice into OECA's enforcement and compliance assistance actions is performed by employees who are not part of the Office of Environmental Justice. If confirmed, I will see that OECA continues to carry out its environmental justice responsibilities.

47. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) has been described as the most important provision of federal law with respect to the implementation of environmental justice and the remediation of environmental discrimination. What importance will you ascribe to the law for the purposes of EPA's enforcement and compliance, should you be confirmed?

In December 2016, EPA reorganized the functions of the formerly Office of Civil Rights (OCR) with respect to its External Compliance and Complaints Program. This external civil rights enforcement function now resides organizationally within the External Civil Rights Compliance Office, which is located in EPA's Office of General Counsel.

- 48. If the OEJ is defunded by Congressional appropriations in FY18 per the President's budget recommendations, how would you recommend that environmental justice mandates in Executive Order 12898 and Title VI be addressed by EPA?
 - As I noted above, consideration of environmental justice in OECA enforcement and compliance assistance actions is not performed by employees of the Office of Environmental Justice. Accordingly, if I am confirmed, I do not expect these considerations in OECA's work to be affected by the President's budget request.
- 49. The Federal Interagency Working Group on Environmental Justice was created within the EPA's Office of Environmental Justice under Executive Order 12898 to facilitate the implementation of the order across federal agencies and to collectively advance environmental justice principles. If confirmed, will you support EPA's continued leadership of this interagency effort?

Yes.

50. Since 1993, the National Environmental Justice Advisory Council of the OEJ has provided a critical forum to meaningfully engage with communities and interested members of the public across the country, while promoting the integration and

consideration of environmental issues at the EPA and within federal agencies. If confirmed, will you support EPA's continued leadership of this effort?

Yes.

51. Are you aware of criticism—including a 2016 United States Commission on Civil Rights report—that EPA has historically done a poor job of enforcing Title VI? Do you agree or disagree? If you agree, what changes would you make? If you disagree, what evidence suggests to you that environmental justice enforcement has been adequate?

I am not familiar with that report. If I am confirmed I will seek a briefing on this issue. As I noted above, in December 2016, EPA reorganized the functions of the formerly Office of Civil Rights (OCR) with respect to its External Compliance and Complaints Program. This external civil rights enforcement function now resides organizationally within the External Civil Rights Compliance Office, which is located in EPA's Office of General Counsel.

Senator Whitehouse:

52. According to EPA's website, "The Office of Enforcement and Compliance Assurance (OECA) goes after pollution problems that impact American communities through vigorous civil and criminal enforcement. Our enforcement activities target the most serious water, air and chemical hazards. As part of this mission, we work to advance environmental justice by protecting communities most vulnerable to pollution." Do you agree with and commit to fulfilling this mission by bringing "vigorous civil and criminal enforcement"?

Yes.

53. Please provide a list of all clients you represented before and after your time last serving at the Environmental Protection Agency, the dates you represented them, EPA matters you worked on, and a description of all your EPA-related lobbying activities that includes the entity you lobbied for, issue(s) you lobbied on, and dates you represented them.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the EPA's agency ethics officials to identify potential conflicts of interest under federal law and Executive Order 13770. Given the fact that I have been employed by the Senate Environment and Public Works Committee for the past 2 ½ years, I am advised that I have no conflicts of interest. If any potential conflicts of interest should arise, they will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Agency's designated agency ethics official and that has been provided to this Committee. In addition, I assure you that I am aware of, and will abide by, the obligations under the bar rules of professional conduct that apply to me, including rules 1.6, 1.9 and 1.11, and will work closely with Agency ethics officials.

As an associate at the law firm Covington & Burling from August 1988 to January 1995, I did not have any clients of my own.

As a non-capital partner at Barnes & Thornburg from March 2009 through January 15, 2015, I registered to lobby for several clients and I was engaged by a number of clients to represent them in EPA-related matters. Information about my EPA- related representations that is public is attached. Also attached is information regarding clients whom I represented in EPA-related matters that can be made public in accordance with applicable bar rules.

54. How will you separate your history representing polluters in enforcement actions, to bringing these proceedings against polluters?

If confirmed, I would have no problem taking appropriate enforcement action against any company.

- 55. <u>Early feedback</u> from states, tribes, and associations to the Office of Enforcement and Compliance Assurance's FY2018-2019 National Program Managers Guidance includes a call for the EPA to further "streamline the process for states to gain approval of Alternative Compliance Monitoring Strategies that include allowances for different inspection frequencies and alternative monitoring approaches and to explicitly recognize in the National Program Managers Guidance opportunities for states to use ACMSs."
 - a. How can OECA streamline the process for allowing states to use ACMSs under the CAA, CWA, and RCRA?
 - b. How will EPA ensure the ACMSs are meeting overarching enforcement and compliance goals?

I am not familiar with the issues that states, tribes, and associations are raising in their comments. If confirmed, I will request a briefing on these issues.

- 56. Under the Clean Water Act, the EPA has allowed municipalities to use an integrated planning approach to help undertake and finance a series of wastewater/stormwater improvements in a manner that reduces inefficiencies and prioritizes the most serious upgrades needed to come into compliance. Integrated planning has been included in consent decrees with municipalities subjected to enforcement actions due to CSOs and SSOs.
 - a. Do you believe integrated planning is a useful approach in bringing municipalities into CWA compliance for stormwater and waste water discharges?

Yes.

b. What role can green infrastructure play in these integrated plans?

I believe that green infrastructure can be a successful control measure to reduce stormwater flows, CSOs, and SSOs in ways that can be less costly for municipalities than traditional grey infrastructure, like concrete holding

tanks. I also believe that green infrastructure can provide additional environmental benefits not provided by grey infrastructure.

c. How can the OECA better shepherd and monitor the development and implementation of integrated plans?

If confirmed, I would ensure OECA staff continue to inform municipalities about the opportunity to develop and use integrated plans to achieve compliance with Clean Water Act requirements. Implementation of integrated plans can be through permits monitored by states or the Office of Water, or through administrative orders or consent decrees monitored by OECA.

57. What role should states play in developing integrated plans under the CWA or other alternative compliance strategies?

If confirmed, I would encourage authorized states to allow the use of integrated plans in permits, orders or consent decrees.

58. How should the OECA coordinate with and utilize expertise within EPA regional offices and state enforcement agencies in bringing compliance or enforcement actions against polluters?

If confirmed, I would ensure robust communication with EPA regional offices regarding compliance and enforcement actions.

59. Under your leadership, will you push for greater inclusion of technology-based tools for compliance monitoring and implementation, including electronic reporting and additional air or water quality monitors?

If confirmed, I will request a briefing on "Next Generation" compliance tools.

60. What is the role of Regional Administrators in bringing enforcement actions against polluters?

It is my understanding that EPA Regional Administrators have been delegated significant authority for certain actions. If I am confirmed, I will seek a briefing to fully understand the OECA delegations of authority.

61. Have you heard anything to suggest that EPA may close or consolidate any Regional Offices? If so, what is your opinion about that proposal?

I am not aware of any such plans and the President's budget requests no funds for such actions.

62. If a Regional Office were closed, how would that effect the ability of OECA to do its job and what adjustments would you make?

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See my response to question 61, above.

63. The President's budget request proposed to reduce the OECA budget by 24% to \$419 million. This will give you an excuse to scale back EPA's work enforcing environmental laws and regulations. The proposed 44% cut to categorical grants to the states, which provides them with monitoring and enforcement resources, will hamstring the states. Do these cuts worry you? How do you think these cuts, if enacted, will affect EPA and the states abilities to enforce environmental laws?

The states are the primary enforcers of most environmental laws and I believe that EPA's enforcement program should respect that strong role. If confirmed, I will work closely with state agencies who have delegated authority to implement federal law to increase flexibility in the use of federal categorical grants and avoid duplicative efforts and wasted resources.

I agree with the statement in the ECOS paper that recasting the state-federal relationship to embrace cooperative federalism can result in:

- "Equal or greater environmental and public health protection and outcomes through smart deployment of resources on critical priorities;
- Reduced operating costs due to a more efficient division of services, streamlined operating relationships, best practice sharing, and elimination of redundancies across states and divisions of EPA;
- More effective allocation of limited resources by determining the best roles and functions states and EPA are each best suited to perform; and,
- With time, fewer disputes over who should take credit for successes and achievements, and who is responsible for decisions and actions that result in setbacks." https://www.ecos.org/documents/cooperative-federalism-2-0/
- 64. On June 5, Attorney General Sessions circulated a <u>memo</u> to all component heads and United States Attorneys barring DOJ attorneys from "enter[ing] into any agreement on behalf of the United States in settlement of federal claims or charges, including agreements settling civil litigation, accepting plea agreements, or deferring or declining prosecution in a criminal matter, that directs or provides for a payment or loan to any non-governmental person or entity that is not a party to the dispute" with limited exceptions.
 - a. Do you see this limitation impeding the OECA's work with DOJ in bringing quick and comprehensive enforcement actions against violators?

No. It is my understanding that EPA's policy on supplemental environmental projects (SEPs) already prohibits payments to third parties and anything that would augment or supplement EPA's or another agency's appropriations.

b. In administrative enforcement actions that do not require DOJ attorney support, will the OECA under your leadership continue to use third-party payments in settlements, plea agreements, and other enforcement actions?

As noted above, EPA's policy on SEPs already prohibits third-party payments.

c. Do you interpret Attorney General Sessions' memo to prohibit payments to states, tribes, or local governments as part of a settlement, plea agreement, or other such arrangement?

With three exceptions, the memo prohibits payments to non-party, nongovernmental entities. Thus, it does not appear to apply to payments to governmental entities. If I am confirmed, I will seek a briefing on the intended effect of this memo.

d. Do you interpret Attorney General Sessions' memo to prohibit settlement from including provisions like the \$2 billion for zero emission vehicle development and \$2.7 billion in a trust for states to undertake projects that reduce emissions from vehicles in the VW settlement?

If I am confirmed, I will seek a briefing on the intended effect of this memo.

e. In your experience, do you feel settlement funds in environmental cases have gone to "bankroll third-party special interest groups or the political friends of whoever is in power" as Attorney General Sessions stated in the press release accompanying his June 7 memo? If so, please provide examples that illustrate your concerns.

If I am confirmed, I will seek a briefing on the actions that this memo is intended to preclude.

f. Will you revise or eliminate OECA's Supplemental Environmental Projects Policy to align with Attorney General Sessions' prohibition on third party payments?

I believe that OECA's SEPs policy already conforms to the June 7 memo because it already precludes third party payments. If I am confirmed, I will seek a briefing on the actions that this memo is intended to preclude.

65. The increased concentration of animal feeding operations along waterways has led to a number of pollution problems associated with the large amounts of untreated waste from these facilities. One of the EPA's National Enforcement Initiatives is "Preventing Animal Waste from Contaminating Surface and Ground Water." However, the EPA has steadily decreased the number of federal inspections of and enforcement actions against concentrated animal feeding operations by more than half. What steps will you take to

meaningfully meet the EPA's enforcement initiative regarding animal waste and ensure that concentrated animal feeding operations located in distressed watersheds or over drinking water aquifers that exceed maximum contaminant levels for primary drinking water standards are complying with EPA-administered laws and regulations?

Concentrated animal feeding operations are point sources under the Clean Water Act and if they discharge to waters of the United States, they require a discharge permit. All but four states and the District of Columbia are authorized to carry out their own permitting programs in lieu of the federal program. Those authorized states have the lead in enforcing the Clean Water Act. If I am confirmed, OECA will work with states to avoid duplicative inspections and enforcement efforts in authorized states and would continue to be the primary enforcement authority in states that are not authorized.

66. During your confirmation hearing, you committed to producing the annual enforcement report. If confirmed, do you commit to assess and publish all of the enforcement metrics included in the last report?

Yes

67. In your written testimony, you state the Office of Enforcement and Compliance Assurance has an "important role in making sure that there is clarity and consistency in how our environmental laws are interpreted, and providing assistance when the laws are less than clear." As several regulations are currently under review by the courts, and, by order of President Trump, under reconsideration, how will you ensure "clarity" and "consistency" for regulated parties?

If I am confirmed, OECA will continue to participate in agency workgroups that develop rules.

68. The National Environmental Policy Act has been a bedrock of our nation's environmental laws, ensuring that the environmental and community impacts of major federal actions are properly understood, that alternatives are appropriately considered, and that the public has the opportunity to actively participate in the environmental review process. What is your view of NEPA and its associated regulations, and will you commit to ensuring that the law, including the processes it establishes to ensure meaningful public participation and informed decision making, is in no way weakened?

I agree that NEPA is a bedrock environmental law and I am aware of no proposal at EPA that would weaken NEPA's public participation or informed decision-making provisions.

69. In an interview with the Providence Journal last year, Rhode Island's chief of the Center for Drinking Water Quality at the RI Department of Health stated that "[i]n the last monitoring period, we had six small water systems exceed the lead action level. Five

were school systems." These systems were brought back into compliance, but the concern remains.

a. What have you done in your career to demonstrate lead contamination of drinking water will be a priority if you are confirmed? Please cite specific examples.

Last Congress, I drafted amendments to the Senate energy bill (S. 2012) to address the emergency situation in Flint, Michigan, and worked on the bill introduced by Senator Stabenow and Senator Inhofe on the same subject (S. 2579)

Last Congress, as the lead majority staffer for title 7 of the Senate WRDA bill (S. 2848), I worked to include provisions related to lead contamination in that bill. During negotiations with the House of Representatives I worked to retain those provisions in the enacted Water Infrastructure Improvements for the Nation (WIIN) Act (P.L. 114-322).

These provisions are:

SECTION 2105. REDUCING LEAD IN DRINKING WATER

Authorizes a grant program for replacement of lead service lines, testing, planning, corrosion control, and education. Excludes partial lead service line replacement from eligibility. Authorizes \$60 million a year for fiscal years 2017 through 2021.

SECTION 2106. NOTICE TO PERSONS SERVED

Revises the notification requirements of the Safe Drinking Water Act to require notice to the persons served by the system of exceedances of lead action levels. Requires the Administrator to provide notice of lead monitoring results in certain circumstances. Requires EPA, working with States and water systems, to establish a strategic plan for outreach, education, technical assistance, and risk communication.

SECTION 2107. LEAD TESTING IN SCHOOL AND CHILD CARE PROGRAM DRINKING WATER

Authorizes \$20 million a year for fiscal years 2017 through 2021, totaling \$100 million, for grants to carry out a voluntary school and child care lead testing program.

SECTION. 2201. DRINKING WATER INFRASTRUCTURE

Authorizes \$100 million in additional Drinking Water State Revolving Loan funding for a state with an emergency declaration due to the presence of lead or other contaminants in a public drinking water supply system, to be used at a water system that is the subject of such an emergency. This assistance may

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include principal forgiveness.

Directs ATSDR to use its current authorities to establish a lead exposure registry for communities with drinking water related emergencies and to provide health consultations for the citizens of such communities, if requested.

SECTION. 2203. REGISTRY FOR LEAD EXPOSURE AND ADVISORY COMMITTEE

Authorizes HHS to establish a voluntary lead exposure registry using ATSDR or another relevant agency, or through a grant or contract, applicable to any city whose citizens are exposed to lead contamination in drinking water. Authorizes \$17,500,000 for this activity.

Authorizes an advisory committee coordinated through CDC or other relevant agencies to review federal programs that address lead exposure, and identify research needs, best practices, and effective services. Authorizes \$2,500,000 for this activity.

SECTION, 2204, OTHER LEAD PROGRAMS

Authorizes funding for the following programs:

- \$15,000,000 for the childhood lead poisoning prevention program authorized under section 317A of the Public Health Service Act (42 U.S.C. 247b-1).
- \$15,000,000 to carry out the Healthy Start Initiative under section 330H of the Public Health Service Act (42 U.S.C. 254c-8).
- b. How will you prioritize lead abatement in schools and among the most vulnerable populations?

If I am confirmed, OECA will continue to enforce the Safe Drinking Water Act, including the Lead and Copper Rule. OECA will also continue to participate in the EPA workgroup that is developing revisions to the Lead and Copper Rule, to ensure the regulatory obligations are clear. Finally, if I am confirmed, I will ensure that Regional enforcement staff are aware of the new guidance on the applicability and use of emergency orders under section 1431 of the Safe Drinking Water Act.

70. Following the Sixth Circuit's stay of the Clean Water Rule in 2015 pending further court action, the EPA and Army Corps issued a joint memorandum that states the agencies 1) "look forward to vigorously defending the merits of the Clean Water Rule, which we continue to believe is fully consistent with the law and based on the best available peer-reviewed science," 2) "intend to move forward with measures to improve implementation of the national CWA section 404 program that were announced concurrent with the Rule," 3) will continue their commitment to improve transparency through making

section 404 decisions public and making a number of other improvements to the section 404 permit program, 4) strengthen coordination between the agencies, and 5) "work closely with the Department of Justice to ensure [their] actions remain consistent with the stay." If confirmed, will you uphold the tenets of this memorandum?

If I am confirmed, I will ensure that EPA will continue to not bring enforcement actions using the June 2015 WOTUS rule. If I am confirmed, I also will ensure that the OECA members of the workgroup developing a new WOTUS rule support improvements in transparency and coordination with other agencies.

If not, what would you change in the EPA's pursuance of clean water and cooperative relationship with the Army Corps of Engineers? Will you commit to working collaboratively with the Army Corps under its corresponding section 404 and other Clean Water Act authorities to ensure clean water for all Americans?

If I am confirmed, OECA will work collaboratively with the Corps of Engineers and with the Office of Water in carrying out responsibilities of EPA and the Corps under the Clean Water Act. Section 1134 of the WIIN Act directs the Corps of Engineers to develop a database for the electronic submission and tracking of 404 permit applications.

71. Do you believe all covered water systems should follow EPA's drinking water analytical methods when testing drinking water for contamination? If so, what efforts will you undertake to ensure all water systems are brought into compliance?

I am not familiar with the issue raised in this question. If I am confirmed, I will seek a briefing on it.

72. In your article entitled "EPA Issues Final Revisions to Non-Hazardous Secondary Materials Rule, but Questions Remain" in the ABA Section of Environment, Energy, and Resources TRENDS journal in spring of 2013, you say "[g]iven the draconian consequences to a combustor of misclassifying a NHSM, EPA is likely to find itself in the business of making non-waste determinations for a very long time." Do you continue to consider the regulations governing the combustion of non-hazardous secondary materials under RCRA and the CAA to be "draconian"?

My article does not describe the rule as draconian. The quoted statement refers to the consequences to an operator if he or she combusts material that is later determined to meet the definition of solid waste. Those consequences – a requirement to shut down— are described in the third paragraph of the article:

If a boiler located at a commercial or industrial facility burns a waste it triggers regulation as a commercial and industrial solid waste incineration (CISWI) unit. In fact, if a combustion unit burns a NHSM and the operator does not keep records demonstrating that the NHSM is not a waste, the combustion unit becomes regulated as a CISWI unit. 40 C.F.R. §§ 60.2265 and 60.2875. Once a

boiler becomes a CISWI unit, it stays regulated as a CISWI unit for six months. Thus, if a boiler inadvertently burns a waste material and cannot meet the CISWI emissions standards, the combined impact of the NHSM Rule and the CISWI Rule is to shut down that boiler for six months.

The point I was making was that boiler operators are likely to seek case-by-case non-waste determinations to avoid any ambiguity about the legality of their fuels.

- 73. In your article entitled "Nutrient Trading & Water Quality" in Issue #113 of The Water Report from July 2013, you state that "EPA's recommended criteria developed under CWA section 304(a) and some state standards are based on the level of nutrients found in pristine waters and those levels in many cases are not attainable." You go on to describe the costs of meeting TMDL reduction goals for waterbodies like the Chesapeake Bay.
 - a. Do you believe TMDL limits are attainable?

I do not know if the Chesapeake Bay TMDL limits are attainable.

b. Should economics limit environmental goals, standards, and the regulations to meet clean water goals and standards?

The Clean Water Act allows for the consideration of affordability in setting water quality standards. Under 40 CFR 131.10(g) a state may change the designated use of a water body if the standard is not attainable or if the controls needed to attain the existing standard would result in substantial and widespread social and economic impact. Approval of state water quality standards and use attainability analyses is a function of the Office of Water, not OECA.

c. Why shouldn't we aim for all waters to meet "pristine" standards?

Under the Clean Water Act, states designate uses of water which can include agricultural use, drinking water use, recreational use, aquatic life use, etc. The state then establishes criteria to meet the designated use. The designated use and water quality criteria together make up the water quality standard. If a state wants to adopt a use that does not include the "fishable, swimmable" goal, EPA requires a demonstration through a use attainability analysis that meeting the fishable, swimmable goal is not attainable. Approval of state water quality standards and use attainability analyses is a function of the Office of Water, not OECA.

d. What role should nutrient trading play in meeting TMDL limits?

If the body of water does not meet a water quality standard due to nitrogen of phosphorus levels, then nutrient trading can play a role in meeting TMDL limits. The TMDL establishes the maximum amount of the pollutant (such as nitrogen or phosphorus) that the water body can assimilate and still achieve water quality standards. Under a TMDL, the controls needed to stay

under the overall limit can be achieved in a variety of ways and can allow regulated sources to get credit for reductions from sources that are not regulated, as long as the overall limit is met. A TMDL also can allow trading among regulated sources such that one source stays below its allocation, allowing another source to exceed its allocation. Again, the overall limits must be met. Because cost of reduction in pollutant discharges can be highly variable, this flexibility can reduce the costs of achieving water quality standards. The Office of Water, not OECA, has the responsibility to review and approve TMDLs.

74. Please provide a copy of "A View from the Field: The 2011 Draft Guidance Regarding Identification of Waters Protected by the Clean Water Act."

A copy is attached.

75. In 2014, four Republican former EPA Administrators – Bill Reilly, Bill Ruckelshaus, Lee Thomas, Governor Christine Todd Whitman – testified before EPW that climate change is real, EPA regulations do not end up costing as much as industry initially estimates, and EPA has clear authority under the Clean Air Act to curb carbon pollution. In a 2015 interview with Climate Progress, Governor Whitman said:

"The idea the EPA is a job killer is false" and with regard to the Clean Power Plan "what EPA did was to allow as much flexibility as frankly I've ever seen them be able to create in a regulation."

a. Do you believe climate change is real?

Yes.

b. If so, what causes it?

Please see my response to question 21, above.

c. Do you accept the science of ocean acidification that has directly connected the increase in human-caused carbon dioxide emissions with decreases in ocean pH?

I am aware that in 2010 the National Research Council of the National Academy of Sciences issued a report titled: "Ocean Acidification: A National Strategy to Meet the Challenges of a Changing Ocean." In that report the NRC stated that "Ocean acidification research is still in its infancy." The report also states: "Present knowledge is insufficient to guide federal and state agencies in evaluating potential impacts for management purposes."

d. Do you think that the former Administrators are correct in their assessment that regulations do not cost as much as industry initially estimates? If not, can you explain why not?

It depends on the rule. In a 2005 retrospective analysis of the accuracy of agency regulatory impact analyses, OMB found that agency estimates tend to

overestimate both costs and benefits, but benefits are more often overestimated than costs. Out of 47 regulations, OMB found:

- Eighteen rules with accurate benefit estimates, 19 rules with overestimates and two rules with underestimates.
- Twelve rules with accurate cost estimates, 16 with overestimates, and 12 with underestimates.
- Eleven cases of accurate benefit to cost ratios, 22 overestimates, and 14 underestimates.

https://georgewbush-

whitehouse.archives.gov/omb/inforeg/2005 cb/final 2005 cb report.pdf

76. EPA operates multiple networks to monitor compliance with the Clean Air Act's National Ambient Air Quality Standards and to track hazardous air pollutants regulated under the act. These networks include, among others, the State and Local Air Quality Monitoring Network, the National Air Monitoring Network (which targets areas of high population density with a variety of air pollution sources), Special Purpose Monitoring Stations (used for short-term studies and other purposes), Photochemical Assessment Monitoring Stations (used to measure pollutants that contribute to ground-level ozone, a harmful air pollutant), and the National Air Toxics Trends Stations. Information produced through these networks play a key role in informing enforcement and compliance decisions. Given the drastic cuts proposed in the President's budget, what is your vision for monitoring?

I agree that monitoring is appropriate. If confirmed, I would work with the Office of Air and Radiation to establish monitoring priorities.

77. Rhode Island ozone air quality issues are largely due to transported emissions from upwind states leading to ozone formation that pollutes the air and lungs of people in downwind states like mine. The Rhode Island Department of Environmental Management reports that there remain a number of power plants located in upwind states that have pollution control equipment installed to reduce nitrogen oxides emissions that either do not use that equipment during the ozone season or do not use it in a way that optimizes the reduction of nitrogen oxides emissions. Why would this be the case?

I do not know. If confirmed, I will request a briefing on this issue.

78. During previous administrations, senior EPA managers' schedules have been available to the public. If confirmed, do you agree to make your schedule available as well?

If confirmed, I would make my schedule publicly available pursuant to the Freedom of Information Act.

79. If confirmed, do you commit to notifying the Committee of all of the email addresses you plan to use upon confirmation and within seven days of using a new email address, including any aliases or pseudonyms? Do you commit do conducting all business using official email addresses and other means and to refrain from any mediums that are outside the Freedom of Information Act's reach?

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Yes

80. Carbon Capture Utilization and Storage is a bipartisan policy area that I am working on with my Republican colleagues. Senator Graham and I visited the world's first Carbon Capture project in Canada that has been operational since 2014. In 2016, SaskPower successfully captured and injected 800,000 metric tons of carbon dioxide and the facility has operated nearly 85 percent of the time. Recently, Petra Nova in Texas became the first United States first post-combustion carbon capture project to begin operation. SaskPower and Petra Nova are listed in the Clean Power Plan as viable options for helping states reach their Clean Power Plan targets. Do you believe that CCUS is a viable technology for reducing emissions from power plants?

I am not familiar with those projects. If confirmed, I would defer to the Office of Air and Radiation for an assessment of the viability of CCUS.

81. Carl Icahn has reportedly been serving as a special advisor to the President on overhauling regulations. Carl Icahn is also a majority owner of CVR Energy which is an oil refiner that has a compliance obligation under the RFS to blend its oils with renewable fuels. Icahn's company has repeatedly benefited when he has proposed changes to the RFS that would benefit CVR and through speculation in the Renewable Identification Numbers (RINs) market. For example, in February of 2017 Mr. Icahn reportedly presented the White House with draft Executive Order language that would reform the RFS to benefit CVR energy. The same day, CVR's stock value increased by 3.5%, representing a multi-million dollar windfall to Icahn. Do you think it is appropriate for an Administration official like Mr. Icahn to propose making changes to EPA regulations that clearly benefit a company he owns? If you are confirmed as AA of OECA, and Carl Icahn approaches you about a matter related to the RFS, do you think would be appropriate to talk with him? Will you commit to not talking with Carl Icahn about the RFS?

If confirmed, I will not talk to Mr. Icahn about the RFS.

82. It has been estimated that the RFS supports roughly 850,000 jobs across the country and many of those jobs rely on certainty from the EPA setting its volume requirements for the renewable fuels each year. If confirmed to serve as the Deputy Administrator for Enforcement at EPA, will you carry out the Energy Policy Act as passed in 2005 and updated in 2007, particularly in ensuring that states adopt the statutory volume requirements for renewable fuels as finalized by the EPA?

If confirmed, I will work to ensure compliance with applicable laws.

83. If confirmed, do you commit to providing complete and accurate responses to inquiries from EPW members in a timely fashion?

As I stated in my hearing, I believe that Congressional oversight is very important. I do not intend to change past agency practices with respect to responding to individual members of Congress, including EPW members. However, if confirmed as the Assistant Administrator for Enforcement and Compliance Assurance please be aware that I would not release confidential enforcement information —no matter who is asking for such information. That has been EPA's long-standing policy.

A VIEW FROM THE FIELD THE 2011 DRAFT GUIDANCE REGARDING IDENTIFICATION OF WATERS PROTECTED BY THE CLEAN WATER ACT

On April 27, 2011, the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) released for comment a draft memorandum titled: "Guidance Regarding Identification of Waters Protected by the Clean Water Act" (hereinafter 2011 Draft Guidance). Comments on this guidance are due on July 31, 2011.²

This guidance is intended to supersede the memorandum titled: "Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States," that was issued by EPA and the Corps on December 2, 2008 (hereinafter 2008 Guidance). However, unlike the 2008 Guidance, which on its face applies only to determinations whether permits are required under section 404 of the Clean Water Act to fill wetlands or dredge navigable waters, the 2011 Draft Guidance is intended to be used to identify the scope of federal authority under all parts of the Clean Water Act. If finalized, the 2011 Draft Guidance would apply not only to wetlands and dredging, but would be used to determine (1) whether the state needs to establish water quality standards for the water body, and, if standards are not met, total maximum daily loads (section 303), (2) whether a facility operator needs to prepare a Spill Prevention, Control and Countermeasure Plan and/or a Facility Response Plan to prevent discharges of oil (section 311), (3) whether an applicant for a federal license or permit must obtain a water quality certification from a state (section 401), and (4) whether a permit for a discharge is needed (section 402).

Thus, the 2011 Draft Guidance has the potential to affect a wide variety of activities. These activities include application of pesticides, storage of oil, stormwater management, process water management, and land development.

The exact scope of the potential impact of the 2011 Draft Guidance is unknown at this time. However, we do know that it is intended to expand the scope of federal jurisdiction. In fact, the Federal Register notice announcing the opportunity for public comment expressly states: "The agencies believe that under this proposed guidance the number of waters identified as protected by the Clean Water Act will increase compared to current practice".³

The Agencies propose to achieve this expansion by expanding the scope of each category of water body that is potentially subject to federal jurisdiction: traditional navigable waters, interstate waters, tributaries, adjacent wetlands, and isolated waters.

¹ See 76 Fed. Reg. 24479 (May 2, 2011).

² This is a 30-day extension from the original comment deadline of July 1, 2011.

³ 76 Fed. Reg. 24479 (May 2, 2011).

In particular, the Agencies' proposed expansion of jurisdiction over tributaries could have a dramatic impact on farmers across the country. The guidance would achieve this expansion by taking a very broad view of what constitutes a "significant nexus" to traditional navigable water (or an interstate water), and by taking a very broad view of what it means to be "adjacent" to another body of water.

First, relying on Justice's Kennedy's concurring opinion in the *Rapanos* case, ⁷ the Agencies propose to consider any water body that has any hydrologic or ecological connection to a downstream traditional navigable water or a downstream interstate water to be considered a water of the United States subject to federal jurisdiction. Under the 2011 Draft Guidance, a hydrological connection does not require an actual connection through the means of flowing water. The ability of a pond to hold water and prevent it from flowing downstream is sufficient to establish a hydrological connection. In addition, even though in *SWANCC* the Supreme Court held that use of an isolated water body by migratory birds did not establish a nexus to traditional navigable waters sufficient to support jurisdiction under the Clean Water Act over that isolated water, in the 2011 Draft Guidance the Agencies allow use of water body, whether isolated or not, by *any* species to be sufficient to establish an ecological "significant nexus" as long as that species also spends part of its life downstream in a traditional navigable water or an interstate water.

The Agencies support this analysis by deciding that the potential impacts of all "similarly situated" waters should be considered collectively when deciding if a "significant nexus" to downstream waters exists. This means that, within a watershed, all tributaries are considered collectively, all wetlands are considered collectively, and all isolated ponds that are adjacent to other water bodies are considered collectively, when examining the nexus to a downstream body of water.

The Agencies also support this analysis by proposing to consider all water bodies that are located in the same flood plain or riparian area as a navigable water or an

⁴ Justice Rehnquist used the term "significant nexus" in the *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (SWANCC)* opinion to explain why the rock quarry ponds in that case were not subject to federal jurisdiction. They did not have a significant nexus to navigable waters and the Corps could not establish such a nexus based on the use of the ponds by migratory birds. 531 U.S. 159 (2001).

⁵ Or interstate water. One of the ways the 2011 draft guidance would expand jurisdiction is to consider a body of water a water of the United States based on its relationship to interstate water, not just navigable waters.

⁶ Corps and EPA regulations define waters of the United States to include adjacent wetlands. The Corps defines adjacent to mean bordering, contiguous, or neighboring. Wetlands that are separated from a water of the United States only by a man-made berm are adjacent. The Supreme Court upheld jurisdiction over wetlands that were directly abutting and hydrologically interconnected with traditional navigable water in *United States v. Riverside Bayview Homes, Inc.* 474 U.S. 121 (1985).

⁷ Rapanos v. United States (Rapanos) 547 U.S. 715 (2006). In Rapanos, Justice Kennedy, writing for himself only, decided that federal jurisdiction could be asserted over any water if it had a "significant nexus" to a traditional navigable water.

interstate water to be considered "adjacent" to that water. This new interpretation of adjacency would allow the Agencies to assert jurisdiction over many isolated waters that had been considered beyond the reach of the Clean Water Act since the *SWANCC* decision under the theory that they are now "adjacent" waters that are included within the definition of waters of the United States.

Finally, under the 2011 Draft Guidance, the Agencies would not have to show that use of a water body has an impact on interstate commerce, even though that is the Constitutional basis for Clean Water Act authority. The guidance assumes that a nexus to navigable or interstate waters is sufficient to establish a Commerce Clause connection.

The expansion of jurisdiction that would occur under the 2011 Draft Guidance would have several important implications for farmers. First, the expanded view of what constitutes a tributary (no proof of a hydrologic connection to the downstream traditional navigable water or interstate water is needed) means that many ditches and drains, including ditches on farms that are very far removed from navigable water, could become subject to federal jurisdiction. This means that section 404 permits may be needed to mechanically maintain these ditches and section 402 permits to discharge pesticides may be needed to keep them from becoming choked with weeds.

Second, unless a system is built as a waste treatment system designed to meet the requirements of the Clean Water Act, ⁸ on-site holding ponds and retention ponds could become subject to federal jurisdiction. These ponds could include farm ponds, even though the 2011 Draft Guidance says that settling ponds and farm ponds are "generally" not jurisdictional. ⁹ If a pond is a water of the United States, water quality standards must be established for it; a TMDL may be required if those standards are not met, a permit would be needed to use pesticides to kill aquatic weeds that may threaten to choke the pond; and a permit would be needed to fill it in.

Third, the operator of a facility that stores oil will have to reconsider whether a release of that oil could reach a water of the United States. If a drainage system is now considered a water of the United State, the answer to that question will often be "yes." This means that, if they are large enough to trigger SPCC requirements, oil tanks located on farms to refuel farm equipment may now all require an SPCC plan to prevent the discharge of oil to a ditch that may now be considered a water of the United States.

⁸ The 2011 Draft Guidance appropriately disclaims any impact on existing regulatory exemptions from the definition of "waters of the United States." Thus, the guidance should not be used to seek to establish jurisdiction over a body of water that is subject to an existing regulatory exemption, such as prior converted croplands or waste treatment systems.

⁹ The list of waters that are "generally not jurisdictional" is taken from the preamble to the 1986 Corps regulations defining waters of the United States. However, that preamble language also states that the Corps or EPA could assert jurisdiction over a water body on that list on a "case-by-case" basis. 51 Fed. Reg. 41,206, 41,217 (Nov. 13, 1986). The 2011 Draft Guidance does not say that it could not be used for such "case-by-case" determinations.

It is not speculative to assume a dramatic expansion of jurisdiction would occur under the 2011 Draft Guidance. This expansion is predicted by the EPA's economic analysis of the 2011 Draft Guidance. ¹⁰ In this economic analysis, the agencies anticipate that the 2011 Draft Guidance will result in the assertion of jurisdiction over *all* tributaries and wetlands and 17% of isolated waters. ¹¹

In the cost analysis, EPA estimates that annual costs of mitigating for wetlands impacts will increase between \$79 million and \$222 million. EPA also estimates that the 2011 Draft Guidance will result in an additional \$7.9 million to \$20 million in costs to the Corps to process permits and to the regulated community to obtain permits. Increased costs in these two categories only would result in annual increased costs of between \$86.9 million and \$242 million. These estimates do not include any costs associated with obtaining 404 permits or the costs associated with expanding jurisdiction under sections 303, 311, 401, and 402 of the Clean Water Act. Thus, although the costs estimated by EPA are significant, the effect of the 2011 Draft Guidance will be far greater.

Given the significant impact the 2011 Draft Guidance would have on the ability use, develop, and enjoy property, courts may consider this guidance to be a rule, and not an interpretive guidance. As such, it would not be valid unless it has gone through notice an comment rulemaking. Of course, even if the guidance is adopted as a rule in accordance with the Administrative Procedure Act, if it exceeds the Agencies' authority under the Act, or goes beyond the reach of the Commerce Clause of the U.S. Constitution, it still will not be valid.

Perhaps recognizing their vulnerability to a challenge under the Administrative Procedure Act, the Agencies have announced that they intend to issue an advance notice of proposed rulemaking at the same time they issue the 2011 Draft Guidance in final form. However, the promise of future rulemaking would not validate a guidance that was issued illegitimately or a guidance that exceeds the Agencies' statutory authority.

As noted above, the deadline for filing comments has been extended to July 31, 2011. Any persons who are concerned about the impact of the draft guidance on their ability to carry out their business or enjoy the use of their property may wish to submit comments.

^{10 &}quot;Potential Indirect Economic Impacts and Benefits Associated with Guidance Clarifying the Scope of Clean Water Act Jurisdiction" (EPA) (Apr. 27, 2011),

¹¹ See Id., at 7.

Senator Barrasso. I want to thank all of the nominees for your testimony.

Throughout this hearing and with questions for the record, the Committee members will have an opportunity to learn more about your commitment to public service of our great Nation. I would ask throughout this hearing that you please respond to the questions today and those for the record.

With that said, I have the following questions to ask that we ask all nominees on behalf of the Committee. I will ask each of you to respond individually.

Do you agree, if confirmed, to appear before this Committee or designated members of this Committee and other appropriate committees of the Congress and provide information subject to appropriate and necessary security protections with respect to your responsibilities?

Ms. SVINICKI. Yes, I do. Ms. CAPUTO. Yes, I do.

Mr. WRIGHT. Yes.

Ms. Bodine. Yes.

Senator Barrasso. Do you agree to ensure that testimony, briefings, documents in electronic and other forms of communication of information are provided to this Committee and its staff and other appropriate committees in a timely manner?

Ms. Svinicki. Yes.

Ms. Caputo. Yes.

Mr. WRIGHT. Yes.

Ms. Bodine. Yes.

Senator Barrasso. Do you know of any matters which you may or may not have disclosed that might place you in any conflict of interest if you are confirmed?

Ms. SVINICKI. No, I do not.

Ms. CAPUTO. I do not.

Mr. WRIGHT. No, sir.

Ms. Bodine. No.

Senator Barrasso. I will not ask any questions because at this time I am going to reserve the balance of my time to be used during the hearing.

With that, I will pass to Senator Inhofe. Senator Inhofe. Thank you, Mr. Chairman.

For the benefit of some of you here, we have a bit of a problem in that two of the other members seated to my right have the same problem I do. We are currently meeting at the same time with the Senate Armed Services Committee. In fact, we have Secretary Mattis as a witness, so we will have to go back and forth.

First of all, let me mention that I have been engaged in oversight for the NRC now for a number of years, since 1996. In 1996 I was made the Chairman of the subcommittee. At that time, we had gone 4 years without any kind of an oversight. This is something you cannot do with any bureaucracy. You have to have oversight. We immediately started doing that and started anticipating and expecting response on a regular basis.

I will start with you, Ms. Caputo. If you are confirmed, will you commit to continue these reports and work with the Committee on any revisions to improve their usefulness and also to respond to an oversight hearing on a regular basis?

Ms. Caputo. Yes, I will.

Senator INHOFE. Ms. Bodine, you mentioned OECA several times. I have been a bit disturbed by some of the measures that I would refer to as performance measures. For example, targeting a specific number of enforcement actions sounds like a quota to me. Does it sound that way to you also?

Ms. Bodine. That is an issue I would like to look into if I am confirmed as the Assistant Administrator. Enforcement is a tool. It is a critical tool, but it is not an end to itself. Our goal, of course,

is compliance.

I want to sit down with EPA staff and look over the performance measures and make sure OECA employees are getting credit for their work, whether or not they take a formal enforcement action, because we all want compliance with the law.

Senator Inhofe. You would look into that anyway in that capacity if you are confirmed?

Ms. Bodine. Yes.

Senator Inhofe. That is what we expect.

Most of our Superfund sites are cleaned up by private parties. We have had problems in the past with that. Can you discuss how OECA helps achieve getting these things done through the private sector?

Ms. Bodine. Yes. The Superfund statute is a very forceful law. It does make sure that parties responsible for contamination can be held liable. OECA is the office that holds their feet to the fire and brings action against them so that private parties do clean up. They have been tremendously successful.

Senator Carper, you gave us the statistics from the commitments of clean up work, over \$1 billion from last year. In addition, OECA collects funds and puts it into what we call special accounts so that

private parties can pay money instead of doing the work.

Right now, we actually \$3.5 billion in special accounts that is there, available, not subject to appropriation and is available to carry out clean up work at the sites in the cases where OECA has brought the enforcement action.

Senator Inhofe. Thank you, Ms. Bodine.

Last, Administrator Pruitt wants the EPA to embrace coopera-

tive federalism. How does that apply to enforcement?

Ms. Bodine. In the enforcement context, in my view, that means respecting State interpretations of their own law. It means dividing the work between States and not taking duplicative enforcement actions. It means coordinating with States so we let States know when, for example, OECA enforcement officers are coming into their States to take action.

I would like to point out that just yesterday the Environmental Council of the States, the organization that represents the State Environmental Commissioners, put out a statement entitled, "Cooperative Federalism 2.0," which I guess is a white paper.

There they speak exactly to this issue and talk about how a State should be the primary enforcement authority for programs delegated to the States and have the ability to access Federal enforcement authorities when needed or appropriate.

Senator Inhofe. Ms. Svinicki, I have no questions for you because you have been around a long time. I have always agreed with what you have done. I am just glad you are willing to continue

doing this.

Mr. Wright, you are fairly new to me, but you have a very interesting background. I think it is the kind of background that requires cooperation. It is something you cannot just have out there and command because you have to get along with the other side. I think that is a great asset that you have.

I will certainly look forward to working with you and your talents and building consensus. I think you are going to be of great value. Is there any statement you want to make about how con-

sensus has served you well?

Mr. WRIGHT. Thank you, Senator.

I do not believe I would have risen to the level that I did within the National Association of Regulatory Utility Commissioners had I not been able to work across beliefs, party lines, you name it, because it is a consensus organization. They do not do anything except by resolution and through the committee process.

You have to be able to work with people. That is a skill that is

learned over time. I look forward to using that because I believe

I have a certain skill set that will benefit the Commission.

Senator INHOFE. That is great. I look forward to working with you.

Thank you, Mr. Chairman.

Senator Barrasso. Thank you, Senator Inhofe.

Senator Carper.

Senator CARPER. I am going to yield to Senator Gillibrand. I think several of us have other hearings.

Senator GILLIBRAND. Thank you, Ranking Member.

I am concerned that the NRC's decommissioning rule will potentially set up a process by which the emergency planning zone and associated requirements for nuclear plants will be automatically reduced with a plant's shutdown operations while there is still fuel remaining in the spent fuel pool.

There is currently no maximum amount of time that fuel can remain in a spent fuel pool. A major driver for shrinking the emergency planning zone during decommissioning is the cost to the li-

censee.

My first question to the panel is, is it appropriate to factor the cost to the licensee into the decision on the size and scope of emergency planning activities; why or why not?

Ms. SVINICKI. Thank you for the question, Senator.

As you know, the NRC has a rulemaking underway on this topic right now. It is my understanding that the staff analysis has not developed the draft rule yet, but they have published something called a regulatory basis.

They are looking at sizing the emergency planning zone to the extent of the risk or hazard. I do not believe it is an economic analysis. If I am wrong about that, I can correct that for the record.

Senator GILLIBRAND. That would be great largely because if you have a pool of unspent fuel sitting 50 miles from New York City, it becomes a national security risk that is real. It also is an environmental hazard.

Does anyone else have further thoughts on that question?

Ms. CAPUTO. If confirmed, this is certainly an issue that I would like to look into and focus on and certainly be briefed by the staff. Senator GILLIBRAND. I would be very grateful.

Mr. WRIGHT. I have nothing to add to what Annie just told you. Senator GILLIBRAND. Susan.

Ms. Bodine. Not on that issue, nothing.

Senator GILLIBRAND. Thank you.

If anyone has a thought, should there be limits placed on the amount of time that spent fuel can remain in a spent fuel pool, particularly if you do have an environmental or national security issue?

Ms. SVINICKI. Senator, again, thank you for that question.

NRC looks closely at the hazard posed in making these safety determinations, although it has been NRC's established position that spent fuel pool storage is safe and equally safe to the dry cask storage, the other alternative.

Senator GILLIBRAND. I think of safe as a measure of what. When you are looking at national security concerns and location, I think you have to maybe augment that definition of what is safe.

My second question is for Susan Bodine. It has been reported that during your time as partner at the law firm of Barnes and Thornburg, you represented the plastics company Saint-Gobain.

As you may know, Saint-Gobain was responsible for polluting the drinking water in Hoosick Falls, New York, with PFOA. The Saint-Gobain facility in Hoosick Falls has been proposed for listing as a Federal Superfund site. That proposed listing is still pending at the EPA. Could you please describe the work you did on behalf of Saint-Gobain?

Ms. Bodine. Thank you, Senator Gillibrand.

First, let me say that I would have no problem bringing an enforcement action against any company whatsoever, whether I worked for them in the past or not.

Second, I have never worked for the performance plastics company that you are referring to. I did work with a company called Saint-Gobain Containers, headquartered in Muncie, Indiana. They make glass containers. For example, they have a facility in Milford, Massachusetts, that makes 1.2 million beer bottles a day.

Their issue is that they wanted to increase the amount of glass that was recycled because if they use recycled glass instead of raw material, they can reduce their energy cost and their emissions. My entire representation for them was associated with encouraging recycling.

Senator GILLIBRAND. In your written testimony, you bring up the term "cooperative federalism" several times. How do you envision the EPA role versus the role of States in enforcing Federal environmental statutes?

Ms. Bodine. As I mentioned earlier, many of our environmental statutes authorize or delegate to States the responsibility for carrying out those laws. I think we need to have close coordination with the authorized States to the delegated States so that we are not duplicating action and are both conserving our resources to the greatest extent.

That does not say that there is no role for OECA at all. Of course there are some matters that EPA and the Enforcement Office at EPA are uniquely qualified to carry out whether it is going after sector initiatives or companies with facilities in multiple States. It is more efficient to take an action that involves multiple facilities and criminal enforcement as well. EPA has unique capabilities in

Senator GILLIBRAND. Finally, the Trump budget proposes to cut the funding of the Office of Enforcement and Compliance Assurance by 24 percent. What impact do you expect that will have on the ability of the EPA to hold polluters accountable?

Ms. BODINE. Again, I expect to work with the enforcement staff and with States to go after the highest priority and the most egregious polluters. States are going to implement the day to day enforcement, but EPA is going to maintain an enforcement presence, certainly create the deterrent effect, and take these high profile

Senator GILLIBRAND. Thank you, Mr. Chairman.

Senator Barrasso. Thank you very much.

Before turning to Senator Ernst, I would like to introduce for the record a letter of support for Ms. Bodine's nomination from Stanley Meiburg, the EPA's Acting Deputy Administrator in the Obama administration, supporting her nomination with the quote, "Ms. Bodine's presence as a confirmed nominee will strengthen the voice of enforcement in that Agency."

Without objection, that will be admitted. [The referenced information follows:]

3003 Van Ness Street, NW Washington, D.C. 20008 June 7, 2017

The Honorable John Barrasso Chairman, Environment and Public Works Committee United States Senate

The Honorable Thomas Carper Ranking Member, Environment and Public Works Committee United States Senate

Dear Senator Barrasso and Senator Carper:

For over 46 years, enforcing federal environmental law has been an essential function of the United States Environmental Protection Agency. The cases involving the Deepwater Horizon oil spill and the falsification of emission control devices by Volkswagen are two recent high profile instances that illustrate the importance of this work, but there are thousands of day to day interactions where federal and state officials uphold America's commitment to a healthy and safe environment through the rule of law.

Sound, experienced leadership is needed to ensure that this vital mission is sustained and strengthened. It is for this reason that I write in support of the nomination of Susan Bodine to be Assistant Administrator for Enforcement and Compliance.

I had the privilege of working with Susan during her previous service with EPA as the Assistant Administrator for Solid Waste and Emergency Response. At that time, I was the career Deputy Regional Administrator in Region 4, and also served for two years as a liaison between EPA and the Centers for Disease Control and Prevention. In both of these capacities, I found Susan to be a person of integrity, committed to the rule of law and to the mission of EPA. She is an excellent analytical thinker, asking insightful and searching questions about the legal, factual and scientific underpinnings of policy choices. Perhaps most important, Susan demonstrated professionalism in her relationship with the career staff at EPA. She is a good listener who seeks out a wide range of opinions while retaining the ability to make independent judgments, as any leader should. I have great respect for her knowledge and temperament, and she was a pleasure to work with.

To be sure, there are matters on which we may not see eye to eye. For example, I strongly oppose the administration's proposed budgetary cutbacks in EPA enforcement activities. Even in 2016 these activities were underfunded. But while relevant to ongoing oversight of the agency, that is not the criterion for judging Susan's nomination. Nominees have a right to a full, open, respectful and speedy confirmation process. In Susan Bodine you have an experienced nominee with a broad background, a keen intellect, a strong regard for public service, a history of treating her professional career colleagues with respect, an abiding commitment to the rule of law and

due process, and service within the mainstream traditions of EPA. Her presence as a confirmed nominee will strengthen the voice of enforcement in the agency.

Thank you very much for your consideration.

Respectfully,

A. Stanley Meiburg

Former Acting Deputy Administrator U.S. Environmental Protection Agency

Addressees:

Majority Office 410 Dirksen Senate Office Bldg. Washington, DC 20510-6175

Minority Office 456 Dirksen Senate Office Bldg. Washington, DC 20510-6175 Senator Barrasso. Senator Ernst. Senator Ernst. Thank you, Mr. Chair.

Thank you, panelists and witnesses, for being here today.

Ms. Bodine, I have some questions for you related to how you will manage and conduct the Office of Enforcement and Compliance Assurance at EPA because I think this will be a crucial part of EPA's effort to win back the trust of many Americans.

As you know, regulations and their standards are not always clear. We can see that through WOTUS and so many other exam-

ples that are not always clear on what they require.

Do you believe it is part of EPA's job to make sure regulated parties, like farmers and manufacturers who want to comply, know

how they can comply?

Ms. BODINE. Yes, Senator, I very much believe that is a role that EPA plays. That means that the Enforcement Office needs to work with the States and the EPA program offices so that we all have a consistent understanding of what the law requires and that we communicate that to the farmers, industry, and municipalities.

Senator ERNST. Wonderful. Consistent understanding and com-

munication, I love that. I think that is very, very important.

To briefly follow up, what do you believe should be the primary goal of enforcement in addressing so many of our compliance problems? Do you believe it is EPA's role, not just to levy fines against people, but to also go in and assist them with actual compliance?

Ms. Bodine. The goal is compliance. The goal is not enforcement. Enforcement is not an end to itself; it is an important tool to make sure that our environmental laws are complied with. So, yes, compliance assistance is another tool, and I think also a very important tool.

Senator Ernst. Very good because I believe if we are to solve any of our issues, we have to get to the root cause of the problem, that is assistance with compliance to make sure we all fall within that compliance and move toward the goal of those regulations.

Thank you very much. I yield back my time.

Senator Barrasso. Thank you very much, Senator.

Senator Carper.

Senator CARPER. Senator Whitehouse was here earlier. He is a busy fellow this morning, so I am going to yield to him for whatever questions he would like to ask.

Senator Whitehouse. I thank the Ranking Member, and I welcome all the witnesses. To the candidates who are here for the Nuclear Regulatory Commission, we have had our discussion already.

I will not re-litigate any of those issues here.

We stand extremely ready to work with you to speed up the processes of the Nuclear Regulatory Commission so that next generation nuclear facilities can be appropriately brought on line here with, to me, the most particular and ultimate goal to find technologies that will allow us to turn our existing nuclear waste stock-pile—which has to be a multi-trillion dollar liability on the books of the United States if properly accounted for—into an asset by allowing it to be used to create power, to create electrons.

In the meantime, I look forward to working with you to try to find ways to enable our safely operating nuclear plants, to continue to safely operate rather than shut them down because they are not adequately compensated for the carbon-free nature of their power. We said that already. We can keep going.

My concern mostly is with Ms. Bodine. I am sorry about the circumstance you find yourself in because I think that the Environmental Protection Agency has, in a nutshell, been captured by a corporate polluter raiding party and now is under the direction of

agents of the big polluters that it was intended to regulate.

The founding fathers' word for this would, I think, have been corruption. Teddy Roosevelt would probably have had far stronger words. The polluter raiding party, I am sorry to say, can bet on zero oversight from the EPW Committee majority which would not even require the incoming Administrator's disclosure of his conflicts of interest arising from his dark money political fund raising operation.

Because dark money is a bizarre new phenomenon in our political world, this set of appointees was the first to raise this conflict of interest question. This Committee fell down on its duty to get the requisite disclosure to understand what those conflicts of inter-

est might be.

Therefore, I am very worried that the EPA will not do much enforcing of environmental laws during this Administration. As you know already, Ms. Bodine, Scott Pruitt's record on environmental enforcement is abysmal. He eliminated the Environmental Protection Unit in the Oklahoma Attorney General's Office, did not participate in the Oklahoma Environmental Crime Task Force which his predecessor led, could not list a single environmental enforcement achievement during his confirmation, and stopped reporting the enforcement that his predecessor had reported, including numbers of criminal investigations, Federal and State environmental prosecutions, felony convictions of individuals, jail time, fines, and other basic enforcement statistics.

If you are doing a terrible job, I suppose the first thing you want to do is get rid of the reporting. Refusing to release those statistics recurred again. He would not report even to us during his confirmation, again, I think knowing perfectly well that the majority was not going to require any information from him.

The Agency you will come in to lead has an impressive history of enforcing environmental statutes. Let me ask, first, if you will continue the process of reporting that has been the tradition of that part of EPA.

Ms. Bodine. Yes, Senator, absolutely.

Senator Whitehouse. You will not follow the Pruitt model of closing the reporting to cover up the fact that there is no enforcement left?

Ms. Bodine. OECA has always issued its annual enforcement numbers. If confirmed, OECA will continue to release its annual enforcement numbers.

Senator Whitehouse. If you are told by the Administrator to go light or to back off or to take it easy or to let it go, how will we know that is taking place, and how will we know that you did not

Ms. Bodine. Senator, I cannot accept that premise.

Senator WHITEHOUSE. OK. Change it to the President. What if the President tells you that? We know he said to let Flynn go. Why wouldn't he say let some polluter go?

Ms. Bodine. Enforcement has always been non-partisan and independent at EPA. If confirmed, I would make sure that contin-

ued to be true.

Senator Whitehouse. One of the things people do when asked to do things that are inconsistent with their duties is to push back or resign. Would you be prepared to do that if the pressure from the Administrator was, in your view, inconsistent with the duties and obligations of the Agency?

Ms. Bodine. Again, Senator, I cannot imagine that circumstance coming up, but, yes, I have my own integrity, but so does Administrator Pruitt. I am not at all concerned that the circumstance

would ever arise.

Senator Whitehouse. Wow, because that runs wildly contrary to his entire record.

My time has expired.

Senator BARRASSO. Thank you very much.

I would like to point out to the Committee that any questions relating to potential conflicts for Administrator Pruitt have been fully addressed by the Office of Government Ethics on January 17, 2017.

Walter Schaub, who is the Director of the Office of Government Ethics, responded to a letter from the Ranking Member and other EPW Democrats regarding Scott Pruitt and potential conflicts of interest, "If OGE, the Office of Government Ethics, has transmitted a certified financial disclosure report and an ethics agreement to the Senate, it means that OGE is satisfied that all financial conflicts of interest have been identified and resolved."

This follows Administrator Pruitt's OGE financial disclosure report and ethics agreement that was transmitted to this Committee on January 4, 2017. His letter states, "We," the OGE, "believe that this nominee is in compliance with applicable laws and regulations

governing conflicts of interest."

I ask unanimous consent to enter these two letters into the record.

Senator Whitehouse. I would object and ask unanimous consent also to enter into the record, along with it, the correspondence we have had with OGE about how the dark money operation was not actually considered by them and therefore, was never looked at and was not a part of that OGE response.

Senator Barrasso. Without objection.

Senator Whitehouse. Thank you. No objection then on my side. [The referenced information follows:]

UNITED STATES OFFICE OF GOVERNMENT ETHICS

January 17, 2017

The Honorable Thomas R. Carper Ranking Member Committee on Environment and Public Works United States Senate 456 Dirksen Senate Office Bldg. Washington, DC 20510

The Honorable Benjamin L. Cardin United States Senator 509 Hart Senate Office Bidg. Washington, DC 20510

The Honorable Bernard Sanders United States Senator 332 Dirksen Senate Office Bldg. Washington, DC 20510

The Honorable Sheldon Whitehouse United States Senator 530 Hart Senate Office Bldg. Washington, DC 20510

The Honorable Jeff Merkley United States Senator 313 Hart Senate Office Bldg. Washington, DC 20510 The Honorable Kirsten Gillibrand United States Senator 478 Russell Senate Office Bldg. Washington, DC 20510

The Honorable Cory A. Booker United States Senator 359 Dirksen Senate Office Bldg. Washington, DC 20510

The Honorable Edward Markey United States Senator 255 Dirksen Senate Office Bldg. Washington, DC 20510

The Honorable Tammy Duckworth United States Senator SD-G12 Dirksen Senate Office Bldg. Washington, DC 20510

Dear Ranking Member Carper and Senators Cardin, Sanders, Whitehouse, Merkley, Gillibrand, Booker, Markey, and Duckworth:

This responds to your letter of January 12, 2017, requesting specific information regarding the ethics review of a named individual who has been announced as an intended nominee of the President-elect. The U.S. Office of Government Ethics (OGE) generally avoids providing information about individual nominees, but believes that the information regarding the nominee financial disclosure process provided below is responsive to your request.





The Honorable Thomas R. Carper, et al. Page 2

It is necessary to avoid formally sharing information regarding OGE's work on individual nominations whenever releasing such information could undermine the purposes of the nominee ethics review process. As described below, preclearing a nominee financial disclosure report involves an extensive deliberative process between OGE, the nominee, and agency ethics officials. Accordingly, OGE adheres to this nondisclosure practice as closely as possible, particularly if other information may satisfy the interests underlying the request.

In this instance, additional information about OGE's work and the nomination process is provided below to address the concerns underlying your request. As explained below, if OGE has transmitted a certified financial disclosure report and an ethics agreement to the Senate, it means that OGE is satisfied that all financial conflicts of interest have been identified and resolved. Note that OGE is focused on financial conflicts of interest and not on what might be described as "intellectual conflicts of interest" or the political viewpoints of nominees, which are often the subject of media and public scrutiny of nominees but which are outside the scope of OGE's review. OGE's determination is based on the information contained in the report, the agency's advice regarding possible financial conflicts of interest, and whether the report complies with the Ethics in Government Act and government ethics regulations, all in light of the agency's functions and the nomince's proposed duties.

A nomince submits a draft public financial disclosure report (OGE Form 278e) through OGE's electronic filing system (*Integrity*). Ethics officials review the draft financial disclosure report, ask follow-up questions, and provide instructions for revising the report. Multiple rounds of questions and revisions are almost always exchanged before a report meets the complex disclosure requirements of the Ethics in Government Act.

We note that the disclosure requirements of the OGE Form 278e are dictated by the Ethics in Government Act. Moreover, as your letter correctly stated, OGE's ethics review focuses on a nominee's personal financial interests, not a nominee's history of political solicitations and activity. Your letter asked about reportable positions and "affiliations." Nominees are required to report certain positions held, during the current calendar year and during the two-year period preceding such calendar year, as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States. They are not, however, required to report positions held in any religious, social, fraternal, or political entity or any positions solely of an honorary nature. OGE's view is that a position with a political action committee, for example, qualifies for this exclusion from disclosure by virtue of being political in nature.

The exclusion does not extend, however, to earned income from an excluded position, which must be disclosed in Part 2 of the OGE Form 278e. Nominees must report salaries, fees, commissions, wages, and any other compensation for personal services (other than from

See 5 U.S.C. app. § 102.

² See 5 U.S.C. app. § 102(a)(6)(A).

³ See id.

The Honorable Thomas R. Carper, et al. Page 3

United States Government employment) in excess of \$200 from any one source, including income from positions that need not be reported in Part 1 of the OGE Form 278e.

Your letter also asked about reportable gifts. Nominees are not required to complete the portion of the report that covers gifts and travel reimbursements.3

Each nominee is legally responsible for ensuring that the information he or she reports is "true, complete and correct." The financial disclosure system does not require or authorize either OGE or agency ethics officials to independently investigate or verify the information that a nominee reports; however, OGE and agency ethics officials recognize that the reporting requirements are complex and work diligently to help each nominee to fully comply with the requirements based on the information the nominee provides. OGE and agency ethics officials review a nominee's report for internal inconsistencies and self-evident omissions. OGE staff also asks extensive questions that lead to more complete reporting.

For this work, OGE's staff draws on decades of collective experience in reviewing financial disclosure reports to help filers to identify the types of assets, positions, and liabilities that filers commonly overlook or forget to report. Examples of the types of items that OGE staff discusses with filers are found in sample checklists on OGE's website. Multiple rounds of questions and revisions are usually needed before a nominee's report can be finalized. This back and forth process can take weeks or, in the case of extremely wealthy individuals, sometimes months. Through focused effort, OGE and agency ethics officials help nominees complete their reports as quickly as possible without sacrificing quality.

Once the nominee confirms that the report contains all of his or her legally reportable information, as a result of the revisions discussed above, OGE and agency ethics officials analyze the information contained in the report to identify potential conflicts of interest with the duties of the position for which the individual is being nominated. OGE and agency ethics officials then work together to prepare an ethics agreement. The ethics agreement outlines the specific steps a nominee will take to avoid the identified conflicts of interest and ensures that the nominee will be able to carry out his or her duties as a Presidential appointee. OGE and agency ethics officials draft each ethics agreement using standardized language from OGE's ethics agreement guide, which is tailored to the nominee's unique circumstances. 8 The nominee must agree to take the steps outlined in the agreement to resolve his or her conflicts of interest; for example, resignation of positions, divestiture of holdings, or recusal.

When the nominee has confirmed that the report is "true, complete and correct" and has agreed to take the steps outlined in the ethics agreement to resolve the identified conflicts of interest, OGE can begin to finalize its work. OGE ensures that it is satisfied that the report is

⁴ See 5 C.F.R. § 2634.302(a)(1). ⁵ See 5 C.F.R. § 2634.304(c).

⁶ Public financial disclosure report filers must make the following cortification: "I certify that the statements that I have made in this report are true, complete and correct to the best of my knowledge." See OGE Form 278e, at 1.

These checklists are available online at

https://www.ope.gov/Web/OCF.usf70/BC975C546B68A21C852580560045BE83/\$FH.E.Financinf%20Disclosure%20Checklists, pdf.

8 The OGE PAS Nominee Ethics Agreement Guide is available online at

https://www.oge.gov/Web/oge.nst/Resources/PAS+Nominee+Ethics+Agreement+Guide+(MS+Word).

The Honorable Thomas R. Carper, et al. Page 4

complete and the ethics agreement has resolved all ethics issues. OGE then preclears the report (i.e., provides staff-level assurance that it is cleared for certification by OGE's Director). After OGE has precleared the report, the nominee must log back into the electronic filing system and formally file the report by certifying that the information in the finalized report is correct. Ethics officials at the agency to which the nominee is being nominated then review the report. If they are satisfied with the report, they certify the report and send it to OGE with an opinion indicating that all conflicts of interest have been resolved. Next, OGE reviews the report for final certification, certifies the report, and transmits both the report and the ethics agreement to the Senate.

Your letter asked whether there are "other avenues" that will require the nominee to disclose additional information to the Designated Agency Ethics Official (DAEO), if confirmed, When OGE certifies a report, it means that both the DAEO and OGE are satisfied that all potential conflicts of interest apparent at the present time have been identified and addressed. However, the nominee financial disclosure report is a snapshot in time. If confirmed, the nominee, after becoming an appointee, is subject to periodic transaction, annual, and termination financial disclosure reporting requirements.

In addition, promptly after appointment, the nominee—now an appointee—must complete an initial ethics briefing. The initial ethics briefing must include the following content: 10

- (1) If the individual acquired new financial interests reportable under section 102 of the [Ethics in Government] Act after filing the nominee financial disclosure report, the agency ethics official must appropriately address the potential for conflicts of interest arising from those financial interests.
- (2) The agency ethics official must counsel the individual on the basic recusal obligation under 18 U.S.C. 208(a).
- (3) The agency ethics official must explain the recusal obligations and other commitments addressed in the individual's ethics agreement and ensure that the individual understands what is specifically required in order to comply with each of them, including any deadline for compliance. The ethics official and the individual must establish a process by which the recusals will be achieved, which may consist of a screening arrangement or, when the DAEO deems appropriate, vigilance on the part of the individual with regard to recusal obligations as they arise in particular matters.

See 5 U.S.C. app. §§ 101(d), 101(e), 103(l).
 5 C.F.R. § 2638,305(f) (2017). The recently updated regulations at 5 C.F.R. part 2638 are not yet in print but are available online at http://www.ceff.gov/cgi-bio/retrievel/CER?go_&SID_eBiHbb7d7982feb93026i4806f7f436b&r=PART&n=5v3.0.10,10.1 LEse5.3.2638_1305.

The Honorable Thomas R. Carper, et al. Page 5

(4) The agency ethics official must provide the individual with instructions and the deadline for completing initial ethics training, unless the individual completes the initial ethics training either before or during the ethics briefing.

In addition, the nominee must complete new employee ethics training and, later, annual ethics training. ¹¹ An appointee must also demonstrate compliance with the ethics agreement signed as part of the nomination process. The DAEO works closely with the appointee to ensure full compliance. ¹² OGE tracks ethics agreement compliance by requiring the DAEO to notify OGE when compliance efforts are complete. Finally, an appointee has an ongoing obligation to comply with ethics statutes and regulations, including the criminal conflict-of-interest laws, the Ethics in Government Act, and the *Standards of Ethical Conduct for Employees of the Executive Branch*.

In other words, even if a nominee has fully complied with the requirements of the nominee financial disclosure process, it is possible for that nominee, once confirmed, to face potential conflicts involving interests that were not identified or addressed in his or her financial disclosure report or ethics agreement. This potential is the reason for the executive branch requirements for briefings, training, ongoing disclosure, and consultations with agency ethics officials. Executive branch officials, especially those at the highest levels, should regularly seek the advice of their agency ethics officials in order to avoid potential conflicts of interest when performing the important duties with which the public has entrusted them.

I hope you have found the information provided regarding the nominee financial disclosure process helpful.

Sincerely,

WALTER SHAUB Digitally signed by William DM. 1942, 1942

Walter M. Shaub, Jr. Director

cc: The Honorable John Barrasso
Chairman
Committee on Environment and
Public Works
United States Senate
307 Dirksen Senate Office Bldg.
Washington, DC 20510

¹¹ See 5 C.F.R. §§ 2638.304, 2638.308 (2017).
¹² See 5 C.F.R. § 2638.104(c)(13) (2017).

UNITED STATES OFFICE OF GOVERNMENT ETHICS

JAN - 4 2017

The Honorable James M. Inhofe Chairman Committee on Environment and Public Works United States Senate Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Edward Scott Pruitt. President-Elect Trump has announced his intention to nominate Mr. Pruitt for the position of Administrator, Environmental Protection Agency.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Walter M. Shaub, Jr.

Director

Enclosures

United States Senate

WASHINGTON, DC 20510

January 12, 2017

Kevin Minoli Designated Agency Ethics Official U.S. Environmental Protection Agency 1200 Pennsylvania Avenue, NW Washington, D.C. 20460

Dear Mr. Minoli:

We are in receipt of the Office of Government Ethics [OGE] certified financial disclosure report [Form 278] of Edward Scott Pruitt, and Mr. Pruitt's letter to you outlining the steps he will take to avoid conflicts of interest should he be confirmed as Administrator of the Environmental Protection Agency [EPA]. We are concerned that his representations to date have been incomplete. Without a fuller disclosure of financial and political relationships, EPA may not have sufficient information to evaluate whether Mr. Pruitt should be recused from many matters about which a reasonable person would question his impartiality. We are also concerned that his ethics agreement does not fully address how legal conflicts of interest arising from his representation of the State of Oklahoma in litigation against EPA will be resolved.

With respect to Mr. Pruitt's financial conflicts of interest and his Form 278 disclosures, Mr. Pruitt represents he will not participate personally and substantially in particular matters involving: Southern Baptists Theological Seminary, the Windows Ministry Incorporated, and the Rule of Law Defense Fund [RLDF]. In the attached letter we are sending today to OGE, we have raised concerns that this accounting does not include sufficient detail to allow OGE or EPA to fully assess conflicts of interest arising from his solicitation of funds for 527 and 501(c)(4) organizations, some of which may continue to operate during his tenure as EPA Administrator, should he be confirmed.

For example, RLDF can receive unlimited contributions from individuals, corporations, or partnerships and need not disclose the identity of its donors because it is organized under section 501(c)(4) of the Internal Revenue Code. The RLDF has previously contributed to section 527 political action committees [PACs] like the Republican Attorney Generals Association, effectively laundering the identity of donors whose money ended up funding overlly political purposes. What safeguards will EPA put in place to guard against Mr. Pruitt's involvement in matters involving regulated entities that contribute either publicly or anonymously to PACs and 501(c)(4) organizations with which he has had a prior relationship? In other words, what assurances will we have that regulated entities did not and will not make political contributions in exchange for favorable treatment by him as Administrator? Reporting in the New York Times and elsewhere has documented the real risk of pay-to-play arrangements with this nominee.

With respect to conflicts of interest arising from his position as Attorney General of the State of Oklahoma, Mr. Pruitt makes little more than pro forma representations that he will seek your authorization for a one-year period of time concerning matters in which the State of Oklahoma is a party or represents a party. As you may be aware, Mr. Pruitt has brought multiple lawsuits against EPA on behalf of the State of Oklahoma, many of which remain in active litigation with

entities that have contributed large sums of money to RAGA and other PACs with which Mr. Pruitt is affiliated.

- Could you provide us a complete list of matters that in your opinion will require your authorization?
- What factors will you use to assess whether authorization will be granted? What factors will you use to determine how broadly any recusal, if required, must be drawn? For example, Mr. Pruitt has challenged EPA's carbon pollution standards for power plants. Assuming that a recusal would be required in that matter, would it be limited to decisions regarding the litigation, or to other matters considered by the Office and Air and Radiation?
- Mr. Pruitt has agreed to not participate in any particular matter involving the RLDF without prior authorization. RLDF's activities and donors are largely secret. Without more extensive disclosures about RLDF and Mr. Pruitt's role in it, how will you determine whether a particular matter involves the RLDF?
- The ethics agreement entered into by former EPA Administrator Carol Browner included a clear and permanent recusal of her participation in any EPA matter in which the State of Florida was involved as a party and she was involved personally and substantially as Secretary of the Florida Department of Environmental Regulation. Our understanding of Mr. Pruitt's ethics agreement is that he has made no such unequivocal pledge. Why has EPA concluded that a more lenient arrangement for Mr. Pruitt's conflicts is appropriate?
- Mr. Pruitt has agreed to seek your authorization for a one-year period of time. Is it your understanding that any recusal you may require of Mr. Pruitt would be limited to this one-year period? If so, how will you account for his participation in matters after that one-year period where the conflict still exists, like litigation that he has brought against the agency that has not settled or been decided by that time?
- Mr. Pruitt has sued EPA on behalf of the State of Oklahoma. Before authorizing him to
 participate in EPA decisions involving Oklahoma, how will you determine whether Mr.
 Pruitt has obtained consent from his client to be released from ethical obligations he may
 have to it?
- Many of Mr. Pruitt's lawsuits have involved multi-state coalitions. Presumably he has entered into joint prosecution agreements with his co-plaintiffs. Have you reviewed, or will you review, these agreements to assess whether Mr. Pruitt has a "covered relationship" with other states or parties in those lawsuits? Is it your opinion that he would also have to obtain consent from his co-plaintiffs to participate in matters in which EPA's position is adverse to those states?
- It is a general principle of legal ethics that an attorney may not disclose privileged information without the client's consent. Furthermore, in multi-party litigation when two or more clients with a common interest in litigation agree to exchange otherwise privileged information concerning the matter, the communication is privileged as against third persons. Have any provisions been put in place to prevent the unauthorized disclosure by Mr. Pruitt of confidential client information, either from the State of Oklahoma or other state-plaintiffs in Mr. Pruitt's litigation?

- Pursuant to 42 U.S.C. § 7601(d), the authority of the Administrator to issue rules related
 to topics listed in 42 U.S.C. § 7607(d) is not delegable. How will you address a situation
 where you determine Mr. Pruitt has a conflict of interest with respect to a rule covering
 one of these topics?
- If a recusal is determined appropriate in any matter, has the nominee agreed to forgo any briefings during the period of the recusal?
- Under what obligation is Mr. Pruitt to follow determinations made by you concerning his
 recusals and waivers? If he chooses not to follow your determinations, what recourse is
 available for EPA?

We are committed to protecting the integrity of the EPA. All Americans should have confidence that EPA's decisions are made transparently, without favor to political donors, and by an Administrator who is committed to protecting the prerogatives and mission of the agency, not those suing it. The EPW Committee has scheduled Mr. Pruitt's confirmation hearing for January 18th. Accordingly, we respectfully request responses to these questions prior to the date of the hearing.

Sincerely,

Thomas R. Carper

United States Senator

Benjamin L. Cardin United States Senator

Jeffic A. Merkley United States Senator

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Cor A. Booker United States Senator

Tammy Duckworth United States Senator Sheldon Whitehouse United States Senator

Bernard Sanders United States Senato

Kirsten Gillibrand United States Senator

Edward J. Markey United States Senator

Enclosure: letter to Walter M. Shaub, Jr., Director of the U.S. Office of Government Ethics

CC: Justina Fugh, Senior Counsel for Ethics Office of General Counsel, U.S. Environmental Protection Agency

United States Senate

WASHINGTON, DC 20510

January 12, 2017

Walter M. Shaub, Jr.
Director
U.S. Office of Government Ethics
1201 New York Avenue, NW
Washington, D.C. 20005

Dear Mr. Shaub:

Thank you for your continuing efforts to ensure Senate committees, like the Senate Environment and Public Works Committee [EPW] on which we serve, have the information we need to review potential conflicts of interest faced by nominees of President-elect Trump.

We are in receipt of the Office of Government Ethics [OGE] certified financial disclosure report [Form 278] of Edward Scott Pruitt, nominee to be the Administrator of the Environmental Protection Agency [EPA]. After reviewing Mr. Pruitt's information, we are concerned that the record presented may not provide a complete picture of ethical issues faced by this nominee.

Since the Supreme Court's decision in *Citizens United*, we have entered into an unprecedented and dangerous time in which massive and often anonymous corporate political spending threatens to corrupt our government. OGE's ethics review focuses primarily on a nominee's personal financial interests, and appears not to address a nominee's history of political solicitations and activity. Corporations spend their money to get results, so it is now more important than ever that we have a full disclosure of a nominee's ties to the industries he or she will be charged with regulating. This is particularly important where a nominee may have solicited or raised "dark money" from interests to which they thus may be beholden.

During his tenure as Attorney General of Oklahoma, Mr. Pruitt has blurred the distinction between official and political actions, often at the behest of corporations he will regulate if confirmed to lead EPA. While the disclosures Mr. Pruitt made to OGE may be sufficient to ascertain his personal financial conflicts of interest, they do not document conflicts he may have as a result of political activities. Public reporting based on documents produced by Freedom of Information Act requests illustrate how Mr. Pruitt and members of his staff have worked closely with fossil fuel lobbyists to craft his office's official positions. Public reporting has also identified numerous potential conflicts of interest not disclosed on his Form 278 or addressed in his ethics agreement. For example:

Pruitt indicated on his Form 278 that he has served in various positions, including Chairman, of the Rule of Law Defense Fund [RLDF] since 2014. Because RLDF is organized under section 501(c)(4) of the Internal Revenue Code, it can receive unlimited contributions from individuals, corporations, and partnerships and need not disclose the identities of its donors, donors who may have been solicited directly by Mr. Pruitt in exchange for the RLDF advocating certain positions.

- Although Mr. Pruitt served as Chairman of the Republican Attorney Generals Association [RAGA] for two terms, his affiliation was not listed on his OGE disclosures. Since 2014, RAGA has received nearly \$4 million from fossil fuel-related entities, many of which are either companies regulated by EPA or industry trade associations. According to campaign finance records and the RLDF's 990s, hundreds of thousands of dollars have passed between the RLDF and RAGA. Recently released emails show that RAGA has provided services such as chartered airplane flights to its members. Mr. Pruitt's OGE disclosures do not include information about any gifts or in-kind donations Mr. Pruitt received from RAGA or other groups with which he's been involved.
- It has been reported that Mr. Pruitt is, or has been, affiliated with at least three other
 political action committees [PACs]: Liberty 2.0, Oklahoma Strong Leadership, and Scott
 Pruitt for Attorney General. These PACs have received contributions from numerous
 corporations that are regulated by EPA.² Many of these are challenging EPA standards in
 court along with Mr. Pruitt. Mr. Pruitt's OGE disclosures do not include any of this
 information.³

To better understand the types of information Mr. Pruitt is required to disclose and the potential conflicts of interest that may remain outstanding, we would appreciate answers to the following questions;

- Did Mr. Pruitt provide OGE any information about the identity of RLDF donors, amounts contributed, and any promises made or actions taken by him or the RLDF in exchange for donations made to it?
- Did Mr. Pruitt provide OGE any information about his positions with RAGA, any role he
 played soliciting money for RAGA, what resulted from those solicitations, or any
 promises made or actions taken by him or RAGA in exchange for donations made to it?
- Did Mr. Pruitt provide OGE with any information about gifts, such as any RAGAsponsored chartered flights he may have been on?
- Did Mr. Pruitt disclose contributions to section 527 PACs operating on his behalf?
- Does OGE require nominees to provide information about the types of groups described above as part of its vetting process? If so, is OGE satisfied that it has received complete disclosures from Mr. Pruitt? Is OGE aware of any other avenues that will require Mr.

¹ These include Devon Energy, ExxonMobil, Koch Industries, Murray Energy, and Southern Company, and several industry trade associations, such as the American Petroleum Institute, American Fuel and Petrochemical Manufacturers, and National Mining Association. All of these entities have been involved in litigation Mr. Pruitt has pursued against the EPA and representatives from at least three had private meetings with Republican Attorneys General and staff at RAGA events.

² Murray Energy was the leading contributor to Liberty 2.0 in the 2016 election cycle and executives from Devon Energy and Alliance Resources maxed out to Oklahoma Strong Leadership in 2016. Devon Energy, Koch Industries, Arch Coal, and ExxonMobil all contributed thousands to Scott Pruitt for Altorney General when he was last up for reelection during the 2014 cycle.

³ Just last week we learned that a new 501(c)(4) organization, Protecting America Now, has formed specifically to support Mr. Pruitt's confirmation. This new dark money organization is promising anonymity to donors who contribute to its efforts on behalf of Mr. Pruitt. With so many fossil fuel interests having publicly supported to Mr. Pruitt's political organizations in the past, it would come as little surprise if many of these same interests are now supporting his nomination anonymously.

Pruitt to disclose this information to EPA's Designated Agency Ethics Official during his tenure as Administrator, if confirmed?

For your information, attached to this letter is a letter we are sending today to EPA requesting additional information on its recusal and waiver process. The EPW Committee has scheduled Mr. Pruitt's confirmation hearing for January 18th. Accordingly, we respectfully request responses to these questions prior to the date of the hearing.

Sincerely,

Thomas R. Carper United States Senator

Benjamin L. Cardin United States Senator

Jeffrey A. Merkley United States Senator

Cory A. Booker United States Senator

Tammy Duckworth United States Senator Sheldon Whitehouse United States Senator

Bernard Sanders United States Senator

Kirsten Gillibrand United States Senator

Edward J. Markey United States Senator

Enclosure: letter to Kevin Minoli, Designated Agency Ethics Official, U.S. Environmental Protection Agency



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Washington, D.C. 20460

OFFICE OF GENERAL COUNSEL

IAN 1 6 2017

The Honorable Sheldon Whitehouse United States Senate 530 Hart Senate Office Building Washington, DC 20510

Dear Senator Whitehouse:

This letter responds to your inquiry of January 12, 2017, requesting specific information regarding the ethics review of E. Scott Pruitt, who has been nominated by President-elect Trump to be the Administrator of the United States Environmental Protection Agency (EPA).

Pursuant to the Ethics in Government Act of 1978 (amended by the Ethics Reform Act of 1989 and the Honest Leadership and Open Government Act of 2007), the EPA ethics team reviewed the public financial disclosure report submitted by Mr. Pruitt. We interacted with his surrogates to ensure that he reported all information necessary and required as set forth in the Ethics in Government Act. See "Contents of Report" at 5 U.S.C. app. §102 and in 5 C.F.R. Part 2634, Subpart C. Based on his submission, the EPA certified the public financial disclosure report on January 4, 2017, and forwarded it to the Office of Government Ethics (OGE), which certified it later that same day. Our certification of the report means that "the individual submitting [it] is in compliance with applicable laws and regulations." See 5 U.S.C. app. §106. In addition to certifying the report, the EPA and OGE also approved the language of Mr. Pruitt's ethics agreement, which conformed to the requirements of 5 C.F.R. Part 2634, Subpart H, Ethics Agreements, and the OGE-issued Nominee Ethics Agreement Guide (2014).

Federal ethics laws and regulations define the assets that are to be considered when assessing whether an employee or nominee has a financial conflict of interest. This assessment considers Mr. Pruitt's direct or imputed assets, which are defined to be his own interests, those of his spouse, minor child, general partner, any organization or entity for whom he serves as officer, director, trustee, general partner or employee, or any person with whom he is negotiating for or has an arrangement concerning prospective employment. See 5 C.F.R. § 2640.103(d). An employee's obligation to recuse himself from a particular matter or obtain a waiver pursuant to 18 U.S.C. §208(b) is based upon consideration of these defined interests. Interests or potential interests beyond those included in the definition are not considered and, therefore, cannot form the basis of an obligation under federal ethics laws to recuse oneself. For example, your letter asks whether the EPA considered potential "conflicts of interest arising from [Mr. Pruitt's] solicitation of funds for 527 and 501(c)(4) organizations." The assets of a 527 organization are

not owned directly by Mr. Pruitt or any of his imputed interests, so are, therefore, outside of the bounds of our review. Although Mr. Pruitt himself had a campaign committee for his own political campaigns for office, the EPA received confirmation from his surrogates that he is neither compensated by nor can he direct funds to himself. Further, he is not liable for the campaign's debt and is not owed any money. Mr. Pruitt's surrogates, in an email message from Mr. Adam Raviv, Special Counsel, WilmerHale, dated December 22, 2016, assured the EPA that if confirmed, the "committee will not raise additional money during his service and its only activity will be to settle any liabilities remaining from before his confirmation." We note that, as a federal employee, Mr. Pruitt would be prohibited under the Hatch Act. 5 U.S.C. § 7324, from soliciting any funds whatsoever for any partisan political campaign, group or election.

QUESTION #1: Could you provide us a complete list of matters that in your opinion will require your authorization?¹

ANSWER #1: Upon appointment, Mr. Pruitt will become an employee of the United States Environmental Protection Agency and subject to, among other things, the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, and the conflict of interest statutes codified in Title 18 of the United States Code. The obligation to seek authorization to participate in a specific party matter to avoid a loss of impartiality of the employee originates from 5 C.F.R. § 2635.502(a), which states:

Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee in accordance with paragraph (d) of this section.

The regulation, which includes a definitions section, specifies that an employee has a covered relationship with, among others, "[a]ny person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee." 5 C.F.R. § 2635.502(b)(iv). As set forth in the ethics agreement, Mr. Pruitt has identified that for a period of one year after his resignation from his position as the Attorney General of the State of Oklahoma, he will have a covered relationship with the State of Oklahoma and has agreed to seek authorization prior to participating in any specific party matter in which the State of Oklahoma is a party or represents a party. Similarly, he has identified the Southern Baptist Theological Seminary, Windows Ministry Incorporated, and the Rule of Law

¹ This response differs from the long-standing agency practice of answering questions in a comprehensive narrative in light of the unique nature of the confirmation process and the importance of the federal ethics requirements to that process. In order to facilitate the approach taken, this response includes the wording of the questions contained in your letter verbatim.

Defense Fund as organizations with which he will have a covered relationship for one year from the date he resigns or resigned from his positions with those entities, and has agreed during the time he has a covered relationship with any organization to seek authorization prior to participating in any specific party matter in which any organization in which he has served as director or officer is a party or represents a party.

It is not possible to proactively identify a complete list of specific party matters that could exist across the entire agency that involve the State of Oklahoma or any of the three organizations, nor would it be possible to do so for many other employees who have covered relationships with a state or organization that the EPA interacts on a fairly regular basis. Instead, the employee ensures compliance with the ethics requirements by proactively identifying the persons with which the employee has a covered relationship and then seeking authorization each time the employee seeks to participate in a specific party matter where one of those persons is a party or represents a party.

QUESTION #2: What factors will you use to assess whether authorization will be granted? What factors will you use to determine how broadly any recusal, if required, must be drawn? For example, Mr. Pruitt has challenged EPA's carbon pollution standards for power plants. Assuming that a recusal would be required in that matter, would it be limited to decisions regarding the litigation, or to other matters considered by the Office and Air and Radiation?

ANSWER #2: For the purposes of the impartiality considerations under the Standards of Ethical Conduct, the factors the EPA's Designated Agency Ethics Official will take into consideration are set forth at 5 C.F.R. § 2635.502(d)(1) - (6):

Factors which may be taken into consideration include:

- (1) The nature of the relationship involved;
- (2) The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;
- (3) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) The sensitivity of the matter;
- (5) The difficulty of reassigning the matter to another employee; and
- (6) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

Should a recusal be necessary, that would prohibit participation in that specific party matter in any way, but a recusal in one specific party matter would not itself prevent participating on other specific party matters in which the "covered relationship" is a party or represents a party, or extend to matters of general applicability. Pursuant to the impartiality rules, any court case is considered a specific party matter. Thus, if the State of Oklahoma is a party or represents a party in a particular piece of litigation, Mr. Pruitt's ethics agreement includes a commitment by him to seek authorization to participate personally and substantially in that litigation. Should Mr. Pruitt

seek authorization to participate in any litigation in which a person with whom he has a covered relationship is a party or represents a party, as stated above, the EPA Designated Agency Ethics Official would consider the factors set forth at 5 C.F.R. § 2635.502(d)(1) - (6) for purposes of compliance with the federal ethics rules. Beyond the federal ethics requirements, as an attorney, Mr. Pruitt would also be subject to the rules of any relevant state bar. Those rules, however, are in addition to, and beyond the scope of, the federal ethics review and requirements discussed in this letter.

QUESTION #3: Mr. Pruitt has agreed to not participate in any particular matter involving the RLDF without prior authorization. RLDF's activities and donors are largely secret. Without more extensive disclosures about RLDF and Mr. Pruitt's role in it, how will you determine whether a particular matter involves the RLDF?

ANSWER #3: Federal ethics requirements apply first to the employee himself, and so Mr. Pruitt has agreed that, for the period of time for which he has a covered relationship with the Rule of Law Defense Fund (RLDF), he will seek authorization prior to participating in any specific party matter in which RLDF is a party or represents a party. Once he becomes a federal employee, Mr. Pruitt will have a continuing obligation to comply with the commitments made in his ethics agreement and the federal ethics requirements. In order to have an obligation to seek authorization to participate personally and substantially in a matter, RLDF must be a party or represent a party in a specific party matter. If RLDF has an interest in a specific party matter but is not itself a party or representing a party in that matter, the federal ethics requirements would not obligate Mr. Pruitt to seek authorization prior to participating in that specific party matter.

QUESTION #4: The ethics agreement entered into by former EPA Administrator Carol Browner included a clear and permanent recusal of her participation in any EPA matter in which the State of Florida was involved as a party and she was involved personally and substantially as Secretary of the Florida Department of Environmental Regulation. Our understanding of Mr. Pruitt's ethics agreement is that he has made no such unequivocal pledge. Why has EPA concluded that a more lenient arrangement for Mr. Pruitt's conflicts is appropriate?

ANSWER #4: In assisting Mr. Pruitt with his ethics agreement, the EPA followed federal ethics requirements and the most recent Ethics Agreement Guide published by the Office of Government Ethics (OGE) in 2014. Both the EPA and OGE certified Mr. Pruitt's ethics agreement as complying with all federal ethics requirements and conforming to the template set forth in OGE's Guide. Each ethics agreement is specific to the individual who is signing the agreement, and so consistency with the agreement of a former EPA Administrator is not a requirement for the agreement to be in compliance with the federal ethics rules. While the question indicated Mr. Pruitt's ethics agreement differs from the ethics agreement entered into by former Administrator Carol Browner in 1997, Mr. Pruitt's ethics agreement is very similar to the agreement entered into by former Administrator Lisa Jackson in 2009. Those comparisons do not demonstrate compliance or non-compliance with the federal ethics requirements.

QUESTION #5: Mr. Pruitt has agreed to seek your authorization for a one-year period of time. Is it your understanding that any recusal you may require of Mr. Pruitt would be limited to this one-year period? If so, how will you account for his participation in matters after that one-year period where the conflict still exists, like litigation that he has brought against the agency that has not settled or been decided by that time?

ANSWER #5: As explained above, the regulations define a person with whom an employee has a covered relationship to include "[a]ny person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee." 5 C.F.R. § 2635.502(b)(iv) (italics added). After one year, the covered relationship with the former employer under the federal ethics rules no longer exists. At that point in time and into the future, there is no obligation under the federal ethics rules to seek authorization to participate in the relevant specific party matters, and any disqualification on participating in those specific party matters is no longer in effect. An employee may voluntarily continue to recuse himself from such specific party matters after that point, but is not obligated to do so by the federal ethics requirements. Again, this letter discusses only Mr. Pruitt's obligations under the federal ethics laws and does not address other possible obligations such as compliance with state bar rules.

QUESTION #6: Mr. Pruitt has sued EPA on behalf of the State of Oklahoma. Before authorizing him to participate in EPA decisions involving Oklahoma, how will you determine whether Mr. Pruitt has obtained consent from his client to be released from ethical obligations he may have to it?

ANSWER #6: The federal ethics requirements ensure employees meet certain obligations on behalf of the interests of the federal government, as those interests are articulated in federal laws and regulations. Likewise, the EPA's ethics program is focused on ensuring compliance with those laws and regulations. To the extent Mr. Pruitt has ethical obligations to the State of Oklahoma or any other organization, ensuring compliance with those non-federal obligations is beyond the scope of the federal ethics requirements and the EPA's ethics program.

QUESTION #7: Many of Mr. Pruitt's lawsuits have involved multi-state coalitions. Presumably he has entered into joint prosecution agreements with his co-plaintiffs. Have you reviewed, or will you review, these agreements to assess whether Mr. Pruitt has a "covered relationship" with other states or parties in those lawsuits? Is it your opinion that he would also have to obtain consent from his co-plaintiffs to participate in matters in which EPA's position is adverse to those states?

ANSWER #7: As described above, the federal ethics regulations define persons with whom an employee has a covered relationship, and the impartiality standards do not consider that joint prosecution agreements give rise to any covered relationship with co-plaintiffs. Joint prosecution agreements would not be relevant to evaluating compliance with federal ethics requirements and the EPA has not reviewed any such possible agreements.

QUESTION #8: It is a general principle of legal ethics that an attorney may not disclose privileged information without the client's consent. Furthermore, in multi-party litigation when two or more clients with a common interest in litigation agree to exchange otherwise privileged information concerning the matter, the communication is privileged as against third persons. Have any provisions been put in place to prevent the unauthorized disclosure by Mr. Pruitt of confidential client information, either from the State of Oklahoma or other state plaintiffs in Mr. Pruitt's litigation?

ANSWER #8: The federal ethics requirements ensure employees meet certain obligations on behalf of the interests of the federal government, as those interests are articulated in federal laws and regulations. Likewise, the EPA's ethics program is focused on ensuring compliance with those laws and regulations. To the extent Mr. Pruitt has ethical obligations to the State of Oklahoma or any other state or organization, knowledge of such provisions and ensuring compliance with those non-federal obligations is beyond the scope of the federal ethics requirements and the EPA's ethics program.

QUESTION #9: Pursuant to 42 U.S.C. § 7601(d) (sic), the authority of the Administrator to issue rules related to topics listed in 42 U.S.C. § 7607(d) is not delegable. How will you address a situation where you determine Mr. Pruitt has a conflict of interest with respect to a rule covering one of these topics?

ANSWER #9: Should the federal ethics requirements preclude an Administrator from participating in a matter where the authority to take certain actions is defined by a statute or a regulation to rest with the Administrator, and where the statute or regulation specifically states that the authority may not be delegated, the Federal Vacancies Reform Act and other federal law provide a mechanism for another official of the EPA to perform such functions in an acting capacity. For example, if an Administrator is determined to have a conflict of interest and must be recused with respect to any such non-delegable statutory function or duty, he would be deemed unable to perform the function or duty and the Administrator position would be deemed "vacant" with respect to that function or duty. The Federal Vacancies Reform Act identifies the officials who would serve as the acting Administrator to perform the function or duty, and under Executive Reorganization #3 of 1970, the EPA Deputy Administrator acts as Administrator in the event of a vacancy in the office of Administrator.

QUESTION #10: If a recusal is determined appropriate in any matter, has the nominee agreed to forgo any briefings during the period of the recusal?

ANSWER #10: An employee who is recused from participation cannot be briefed on the same particular matter from which he is recused. In its advisory entitled "Effective Screening Arrangements for Recusal Obligations, DO-04-012 (June 1, 2004), the Office of Government Ethics wrote that:

Ethics officials should also counsel employees regarding the scope of their recusals, including the kinds of actions that may constitute personal and substantial participation.

For example, employees with recusal obligations should not assign covered matters on an ad hoc basis. Participating in a decision concerning who should work on a matter, how a matter should be handled, or whether a matter should be acted upon, is a form of participation in the matter. Involvement in preliminary discussions, in interim evaluations, in review or approval at intermediate levels, or in supervision of subordinates working on a matter also amounts to personal and substantial participation. Recusal means no participation in any way, including briefings.

QUESTION #11: Under what obligation is Mr. Pruitt to follow determinations made by you concerning his recusals and waivers? If he chooses not to follow your determinations, what recourse is available for EPA?

ANSWER #11: Pursuant to the Ethics in Government Act at 5 U.S.C. app. §110, Mr. Pruitt is required to comply with his ethics agreement. Pursuant to 5 C.F.R. § 2634.802(b), he is required to comply with his ethics agreement within ninety days from the date of Senate confirmation. As an employee of the EPA, Mr. Pruitt will be subject to the Standards of Ethical Conduct set forth at 5 C.F.R. Part 2635, as well as the conflict of interest statutes codified in Title 18 of the United States Code, which include specific prohibitions against financial and representational conflict of interest.

As a Presidential nominee for a Senate-confirmed position, Mr. Pruitt is required to have one hour of initial ethics training which he may complete before or after his appointment, but not later than two months after his appointment. 5 C.F.R. § 2638.304(b)(1). In addition, he is required to have an ethics briefing to discuss his immediate ethics obligations. This new training requirement, which became effective on January 1, 2017, may be combined with the initial ethics training, but must occur no later than fifteen days after appointment. See 5 C.F.R. § 2638.305(b)(1). As an employee of the EPA, Mr. Pruitt will be subject to the Standards of Ethical Conduct for Employees of the Executive Branch, which includes the basic obligations of public service set forth at 5 C.F.R. § 2635.101(b)(1) – (12).

As the head of this agency, Mr. Pruitt will be "responsible for, and will exercise personal leadership in, establishing and maintaining an effective agency ethics program and fostering an ethical culture in the agency." 5 C.F.R. § 2638.107. In the event that an employee fails to meet the obligations of his or her ethics agreement, then the EPA may notify the Office of the Inspector General and/or the Office of Government Ethics. See 5 C.F.R. § 2635.101(b)(11), which requires employees to disclose waste, fraud, abuse and corruption to the proper authorities, and 5 C.F.R. § 2638.401, which gives the Office of Government Ethics the authority to take action with respect to deficiencies in an agency's ethics program.

In closing, thank you for your January 12, 2017, letter requesting specific information regarding the ethics review performed by the EPA with regard to the nomination of E. Scott Pruitt for the position of Administrator. The EPA recognizes the importance of the federal ethics requirements to the confirmation process, and is committed to working with the Congress, Mr. Pruitt, and future nominees to explain those requirements and how they apply to a particular situation.

Consistent with that commitment, Mr. Pruitt's representative requested a copy of the signed version of this response after it has been transmitted to you, and one will be provided to him.

If you have further questions, you may contact me at minoli.kevin@epa.gov or (202) 564-8064, or your staff may contact Justina Fugh, Senior Counsel for Ethics, at fugh.justina@epa.gov or (202) 564-1786 and copy Christina Moody of the EPA's Office of Congressional and Intergovernmental Relations, moody.christina@epa.gov or (202) 564-0260.

Sincerely,

Kevin S. Minoli

Designated Agency Ethics Official Principal Deputy General Counsel

UNITED STATES OFFICE OF

GOVERNMENT ETHICS

January 17, 2017

The Honorable Thomas R. Carper Ranking Member Committee on Environment and Public Works United States Senate 456 Dirksen Senate Office Bldg. Washington, DC 20510

The Honorable Benjamin L. Cardin United States Senator 509 Hart Senate Office Bldg. Washington, DC 20510

The Honorable Bernard Sanders United States Senator 332 Dirksen Senate Office Bldg. Washington, DC 20510

The Honorable Sheldon Whitehouse United States Senator 530 Hart Senate Office Bldg. Washington, DC 20510

The Honorable Jeff Merkley United States Senator 313 Hart Senate Office Bldg. Washington, DC 20510 The Honorable Kirsten Gillibrand United States Senator 478 Russell Senate Office Bldg. Washington, DC 20510

The Honorable Cory A. Booker United States Senator 359 Dirksen Senate Office Bldg. Washington, DC 20510

The Honorable Edward Markey United States Senator 255 Dirksen Senate Office Bldg. Washington, DC 20510

The Honorable Tammy Duckworth United States Senator SD-G12 Dirksen Senate Office Bldg. Washington, DC 20510

Dear Ranking Member Carper and Senators Cardin, Sanders, Whitehouse, Merkley, Gillibrand, Booker, Markey, and Duckworth:

This responds to your letter of January 12, 2017, requesting specific information regarding the ethics review of a named individual who has been announced as an intended nominee of the President-elect. The U.S. Office of Government Ethics (OGE) generally avoids providing information about individual nominees, but believes that the information regarding the nominee financial disclosure process provided below is responsive to your request.





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It is necessary to avoid formally sharing information regarding OGE's work on individual nominations whenever releasing such information could undermine the purposes of the nominee ethics review process. As described below, preclearing a nominee financial disclosure report involves an extensive deliberative process between OGE, the nominee, and agency ethics officials. Accordingly, OGE adheres to this nondisclosure practice as closely as possible, particularly if other information may satisfy the interests underlying the request.

In this instance, additional information about OGE's work and the nomination process is provided below to address the concerns underlying your request. As explained below, if OGE has transmitted a certified financial disclosure report and an ethics agreement to the Senate, it means that OGE is satisfied that all financial conflicts of interest have been identified and resolved. Note that OGE is focused on financial conflicts of interest and not on what might be described as "intellectual conflicts of interest" or the political viewpoints of nominees, which are often the subject of media and public scrutiny of nominees but which are outside the scope of OGE's review. OGE's determination is based on the information contained in the report, the agency's advice regarding possible financial conflicts of interest, and whether the report complies with the Ethics in Government Act and government ethics regulations, all in light of the agency's functions and the nominee's proposed duties.

A nominee submits a draft public financial disclosure report (OGE Form 278e) through OGE's electronic filing system (*Integrity*). Ethics officials review the draft financial disclosure report, ask follow-up questions, and provide instructions for revising the report. Multiple rounds of questions and revisions are almost always exchanged before a report meets the complex disclosure requirements of the Ethics in Government Act.

We note that the disclosure requirements of the OGE Form 278e are dictated by the Ethics in Government Act. Moreover, as your letter correctly stated, OGE's ethics review focuses on a nominee's personal financial interests, not a nominee's history of political solicitations and activity. Your letter asked about reportable positions and "affiliations." Nominees are required to report certain positions held, during the current calendar year and during the two-year period preceding such calendar year, as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States. They are not, however, required to report positions held in any religious, social, fraternal, or political entity or any positions solely of an honorary nature. OGE's view is that a position with a political action committee, for example, qualifies for this exclusion from disclosure by virtue of being political in nature.

The exclusion does not extend, however, to earned income from an excluded position, which must be disclosed in Part 2 of the OGE Form 278e. Nominees must report salaries, fees, commissions, wages, and any other compensation for personal services (other than from

¹ See 5 U.S.C. app. § 102.

² See 5 U.S.C. app. § 102(a)(6)(A).

³ See id.

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United States Government employment) in excess of \$200 from any one source, including income from positions that need not be reported in Part 1 of the OGE Form 278e.

Your letter also asked about reportable gifts. Nominees are not required to complete the portion of the report that covers gifts and travel reimbursements.

Each nominee is legally responsible for ensuring that the information he or she reports is "true, complete and correct." The financial disclosure system does not require or authorize either OGE or agency ethics officials to independently investigate or verify the information that a nominee reports; however, OGE and agency ethics officials recognize that the reporting requirements are complex and work diligently to help each nominee to fully comply with the requirements based on the information the nominee provides. OGE and agency ethics officials review a nominee's report for internal inconsistencies and self-evident omissions. OGE staff also asks extensive questions that lead to more complete reporting.

For this work, OGE's staff draws on decades of collective experience in reviewing financial disclosure reports to help filers to identify the types of assets, positions, and liabilities that filers commonly overlook or forget to report. Examples of the types of items that OGE staff discusses with filers are found in sample checklists on OGE's website. 7 Multiple rounds of questions and revisions are usually needed before a nominee's report can be finalized. This back and forth process can take weeks or, in the case of extremely wealthy individuals, sometimes months. Through focused effort, OGE and agency ethics officials help nominees complete their reports as quickly as possible without sacrificing quality.

Once the nominee confirms that the report contains all of his or her legally reportable information, as a result of the revisions discussed above, OGE and agency ethics officials analyze the information contained in the report to identify potential conflicts of interest with the duties of the position for which the individual is being nominated. OGE and agency ethics officials then work together to prepare an ethics agreement. The ethics agreement outlines the specific steps a nominee will take to avoid the identified conflicts of interest and ensures that the nominee will be able to carry out his or her duties as a Presidential appointee, OGE and agency ethics officials draft each ethics agreement using standardized language from OGE's ethics agreement guide, which is tailored to the nominee's unique circumstances.8 The nominee must agree to take the steps outlined in the agreement to resolve his or her conflicts of interest; for example, resignation of positions, divestiture of holdings, or recusal.

When the nominee has confirmed that the report is "true, complete and correct" and has agreed to take the steps outlined in the ethics agreement to resolve the identified conflicts of interest, OGE can begin to finalize its work. OGE ensures that it is satisfied that the report is

⁴ See 5 C.F.R. § 2634.302(a)(1).

⁵ See 5 C.F.R. § 2634.304(c).

⁶ Public financial disclosure report filers must make the following certification: "I certify that the statements that I have made in this report are true, complete and correct to the best of my knowledge." See OGE Form 278e, at 1. These checklists are available online at

https://www.oge.gov/Web/OGE.nst/0/BC975C546E68A21C852580560045BE83/\$FILE/Financial%20Disclosure%20Checklists,

https://www.oge.gov/Web/oge.nsf/Resources/PAS+Nominee+Ethics+Agreement+Guide+(MS+Word)

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complete and the ethics agreement has resolved all ethics issues. OGE then preclears the report (i.e., provides staff-level assurance that it is cleared for certification by OGE's Director). After OGE has precleared the report, the nominee must log back into the electronic filing system and formally file the report by certifying that the information in the finalized report is correct. Ethics officials at the agency to which the nominee is being nominated then review the report. If they are satisfied with the report, they certify the report and send it to OGE with an opinion indicating that all conflicts of interest have been resolved. Next, OGE reviews the report for final certification, certifies the report, and transmits both the report and the ethics agreement to the Senate.

Your letter asked whether there are "other avenues" that will require the nominee to disclose additional information to the Designated Agency Ethics Official (DAEO), if confirmed. When OGE certifies a report, it means that both the DAEO and OGE are satisfied that all potential conflicts of interest apparent at the present time have been identified and addressed. However, the nominee financial disclosure report is a snapshot in time. If confirmed, the nominee, after becoming an appointee, is subject to periodic transaction, annual, and termination financial disclosure reporting requirements.

In addition, promptly after appointment, the nominee—now an appointee—must complete an initial ethics briefing. The initial ethics briefing must include the following content: ¹⁰

- (1) If the individual acquired new financial interests reportable under section 102 of the [Ethics in Government] Act after filing the nominee financial disclosure report, the agency ethics official must appropriately address the potential for conflicts of interest arising from those financial interests.
- (2) The agency ethics official must counsel the individual on the basic recusal obligation under 18 U.S.C. 208(a).
- (3) The agency ethics official must explain the recusal obligations and other commitments addressed in the individual's ethics agreement and ensure that the individual understands what is specifically required in order to comply with each of them, including any deadline for compliance. The ethics official and the individual must establish a process by which the recusals will be achieved, which may consist of a screening arrangement or, when the DAEO deems appropriate, vigilance on the part of the individual with regard to recusal obligations as they arise in particular matters.

⁹ See 5 U.S.C. app. §§ 101(d), 101(e), 103(l).

¹⁰ 5 C.F.R. § 2638.305(f) (2017). The recently updated regulations at 5 C.F.R. part 2638 are not yet in print but are available online at http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=c8d1bb7d7982feb93026d4806f7f436b&r=PART&n=5v3.0.10.10.11#se5.3.2638 1305.

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> (4) The agency ethics official must provide the individual with instructions and the deadline for completing initial ethics training, unless the individual completes the initial ethics training either before or during the ethics briefing.

In addition, the nominee must complete new employee ethics training and, later, annual ethics training. 11 An appointee must also demonstrate compliance with the ethics agreement signed as part of the nomination process. The DAEO works closely with the appointee to ensure full compliance. 12 OGE tracks ethics agreement compliance by requiring the DAEO to notify OGE when compliance efforts are complete. Finally, an appointee has an ongoing obligation to comply with ethics statutes and regulations, including the criminal conflict-of-interest laws, the Ethics in Government Act, and the Standards of Ethical Conduct for Employees of the Executive Branch.

In other words, even if a nominee has fully complied with the requirements of the nominee financial disclosure process, it is possible for that nominee, once confirmed, to face potential conflicts involving interests that were not identified or addressed in his or her financial disclosure report or ethics agreement. This potential is the reason for the executive branch requirements for briefings, training, ongoing disclosure, and consultations with agency ethics officials. Executive branch officials, especially those at the highest levels, should regularly seek the advice of their agency ethics officials in order to avoid potential conflicts of interest when performing the important duties with which the public has entrusted them.

I hope you have found the information provided regarding the nominee financial disclosure process helpful.

Sincerely,

WALTER SHAUB

Walter M. Shaub, Jr. Director

cc: The Honorable John Barrasso Chairman Committee on Environment and Public Works United States Senate 307 Dirksen Senate Office Bldg. Washington, DC 20510

¹¹ See 5 C.F.R. §§ 2638.304, 2638.308 (2017). ¹² See 5 C.F.R. § 2638.104(c)(13) (2017).

Senator Barrasso. Senator Sullivan. Senator Sullivan. Thank you, Mr. Chairman.

I just want to make a few comments based on my good friend Senator Whitehouse's comments. And he is my good friend, and we work on a lot of things together, but we all agree that we need clean water and clean air. Really important, whether you are from

New Jersey or Alaska or Rhode Island.

We also need an EPA that follows the law, that actually follows the law, reads statutes and follows the law. With all due respect to my colleagues on the other side of the aisle, there are many people in my State, Democrats and Republicans, that believe the last Administrator of the EPA didn't follow the law at all. So one of the refreshing things about Administrator Pruitt is that he is going to follow the law. The EPA has to follow the law.

Would you agree with that, Ms. Bodine? Ms. Bodine. Yes, absolutely, Senator.

Senator Sullivan. And I think, and you don't have to comment on this, but as a former AG who also sued the EPA, they didn't follow the law a lot, particularly during the last 4 years. So I think it is a breath of fresh air that we have a new Administrator who actually wants to follow the law and work with States. If you are confirmed, will you commit to work with the States, States like Alaska or Rhode Island or New Jersey or Illinois, to work with us to clean up hazardous sites, to clean up pollution, other things that are the core mission of the EPA?

Ms. Bodine. Yes, Senator, absolutely.

Senator Sullivan. Let me go into a specific issue that relates to Alaska. There was a hearing here recently on contaminated lands that we have with Alaska Native Land Claims Settlement Act. This is millions of acres of lands that were transferred to Alaska Natives. We had a very powerful witness just a couple months ago, Ms. Lukin, who is an Alaska native, who talked about this kind of Catch-22 that Alaska native corporations are in with regard to CERCLA requirements and the clean up. They are being required to now clean up lands that were transferred to them by the Federal Government.

You are very familiar with this issue; we have talked about it. Do you care to comment on that briefly?

Ms. Bodine. Yes, Senator. Yes, I am familiar with that issue. Currently, EPA enforcement uses its enforcement discretion to not

seek to compel the Alaska native villages to clean up the lands because, of course, the contamination was caused by the Federal Government.

Senator Sullivan. Right.

Ms. Bodine. But right now it is an enforcement discretion policy; it is not statute.

Senator Sullivan. First of all, I think, Mr. Chairman, the Ranking Member, my colleagues on the other side of the aisle, I actually believe there is a bipartisan sense that we can hopefully fix this from a statutory perspective on this Committee and in the Senate.

But as we work through that, can you commit to me to continue that kind of discretion on an issue that would essentially bankrupt these companies through no fault of their own?

Ms. Bodine. Yes, sir.

Senator SULLIVAN. And would you commit to work with the Committee to help us try to maybe get to a place where the Administration, and in a bipartisan way, this Committee can work to craft a statutory resolution?

Ms. BODINE. Yes, sir.

Senator SULLIVAN. Let me turn to another issue. In Chicken, Alaska, I believe you are familiar with what happened to my constituents during a raid conducted by the EPA: assault weapons, body armor, the whole nine yards. It was like the U.S. Marines invading a rural community in Alaska, EPA officials armed with weapons to look for clean water violations that they never found. Are you familiar with that?

Ms. Bodine. Yes, I am.

Senator Sullivan. Do you believe that EPA should have agents that are trained to be armed when we have Federal marshals or local, State, and Federal officials that can execute warrants or execute enforcement actions just as easily, better trained than EPA agents armed and coming in and scaring the heck out of law abiding Alaskans who haven't done anything wrong?

Ms. Bodine. Senator Sullivan, if I am confirmed, I would like to review the guidance and policies for when EPA agents would be

armed.

Senator Sullivan. Thank you. I had a bill that would disarm the EPA. The first 20 years of its existence the EPA had no armed agents. I don't think they need them now. I think it is a waste of taxpayer money, and it encourages abuses like you saw in Chicken, Alaska. So I would like to work with you on that as well.

By the way, I think you are highly qualified. I think you are going to make an outstanding addition to the EPA's leadership. I

look forward to voting for your confirmation.

Let me just ask a final question of our other witnesses. How can we assure that we continue the highest levels of safety with regard to our civilian nuclear energy capacity as we look to move forward and actually move forward on perhaps building new reactors that have the capacity to bring clean energy to our power generation for the United States?

Open up to any of the panelists who are up for confirmation on

the Nuclear Regulatory Commission.

Ms. SVINICKI. Thank you, Senator Sullivan. It has been my philosophy, in being a member of this Committee for nearly 10 years, that our safety determinations need to be rooted in the facts, in analysis, need to have rigorous cost-benefit analyses behind them, and be developed in a transparent way with stakeholder and public involvement, and I think that leads to the most informed decisions.

Senator Sullivan. Thank you.

Ms. CAPUTO. I think that history and that track record sets the stage for future reviews. I think timeliness and efficiency is one aspect of that so there is predictability for companies who may embark on development of advanced nuclear.

Senator Sullivan. Great. Thank you.

Mr. WRIGHT. And I think vigilance. You have to pay attention to it every day, and don't accept anything at face value. You have to just review it all the time. Safety is No. 1.

Senator Sullivan. Thank you.

Thank you, Mr. Chairman.

Senator Barrasso. Thank you, Senator Sullivan.

Senator Carper.

Senator CARPER. Thanks, Mr. Chairman. Let me yield to my time, at this point, to Senator Booker.

Senator BOOKER. I wanted to go really quickly here.

Chairman Svinicki, as my colleague said, it is really exciting; billions of dollars of investment, private investment, are really invested in advanced nuclear reactors. It is incredible. The next generation of reactors is going to be more safe, more efficient. I worry, though, the NRC has a lot of experience in licensing water cooled reactors, but limited experience with advanced non-water cooled designs.

Yes or no, do you think the NRC should move forward to a more technologically inclusive risk informed regulatory framework for

advanced reactor licensing?

Ms. SVINICKI. Yes, and we have begun to develop that, but we have work yet to do.

Senator BOOKER. A lot of work, in my opinion. And I am grateful

for the work you are putting in.

These advanced reactors, these sub-critical reactors, these advanced fusion reactors are, to me, very, very exciting. Do you believe, yes or no, that the NRC should subject these technologies to the existing regulatory framework design, or would you expect the NRC, instead, to quickly develop a more appropriate risk based regulation for these types of inherently safer technologies?

Ms. SVINICKI. Senator, we should move forward on the development of a new framework, but if a designer comes in and seeks approval now, although it might be inefficient, I think we should try

to get started. So we should do both at the same time.

Senator BOOKER. I am grateful for that. Just wanted to get that on the record.

Ms. Bodine, I just want to switch to you because I have a great degree of alarm at the state of our country's environmental wellbeing, especially as it affects the poorest amongst us, minorities, tribal communities. In fact, 50 years of research reveals that these minority, low income, and tribal communities are more likely to be exposed to really serious environmental contaminants, public health hazards.

I have begun to visit these around the United States of America, and it is literally stunning, the condition of some communities, as you know. Even Reuters just released a report about lead poisoning with communities, over 1,000 communities having more than twice

the lead poisoning blood levels than even Flint does.

And this is why I am really alarmed. You all will, in OECA, have EPA's environmental justice program which is charged with identifying these problems and health disparities for minority and low income populations. That falls underneath the purview of OECA. So I was stunned with President Trump proposed to eliminate funding in 2018 for the Office of Environmental Justice. So I just have three quick questions.

One is, do you believe that there is a problem in America with certain communities that are adversely affected by outrageous cir-

cumstances of environmental injustice?

Ms. Bodine. Yes, I believe there can be adverse effects on low income or minority populations.

Senator BOOKER. So, yes, there is a persistent problem with environmental injustice in this country in certain communities. Yes, correct?

Ms. Bodine. Yes.

Senator BOOKER. All right. So, if confirmed, will you commit, in a nation where we literally swear an oath, you and I, that we will be a country of liberty and justice for all, will you commit to making environmental justice a top priority to alleviate the injustice going on in certain poor and minority communities?

Ms. Bodine. Environmental justice is important to all the EPA program offices, and the President's budget states that each program office will continue to incorporate environmental justice into their programs. That includes the enforcement program.

their programs. That includes the enforcement program. Senator BOOKER. And that will be a priority for you?

Ms. Bodine. Yes.

Senator BOOKER. OK. I don't have much more time. Because if it is my children living in places with cancer alleys, higher instances of respiratory diseases—right now I live in Newark, New Jersey. We have Superfund sites in our community, at a time where there is no resources to clean them up. And I have seen the longitudinal data. I hope you have studied it. Children born in those areas, if you are a pregnant woman, 20 percent higher rates of autism, 20 percent higher rates of birth defects. It should be a priority, and it should be an urgency.

So will you commit to me right now that your office will advocate within the Administration for the environmental justice office to remain funded at least at 2017 levels so we as a nation can pursue, fight for, and establish environmental justice in our nation?

Ms. BODINE. So that office hasn't always been located in OECA, and according to the President's budget request, the cross-program functions of that office are going to be carried out out of the Office of Policy and the Office of the Administrator. And each program office is going to continue to carry out their environmental justice functions.

I used to head up the office that carried out Superfund and RCRA, and we had environmental justice considerations very front and center in carrying out the decisions of whether it was Superfund or the hazardous waste sites.

Senator BOOKER. So you are telling me that you don't think it is your purview to be pursuing environmental justice in these communities that are so adversely impacted?

Ms. BODINE. I didn't say that, Senator.

Senator BOOKER. So will you explain to me? Because I am going to have to vote on your confirmation, which I will not do unless I know you are going to be a champion for communities of color and communities of poverty.

Ms. BODINE. Yes, I will be a champion for communities of color

Ms. Bodine. Yes, I will be a champion for communities of color and communities of poverty, and those functions are going to be carried out, under the President's budget, both in the program offices, which includes the enforcement office, as well as out of the Administrator's office, which would, I assume, continue to support the advisory committee, as well as there is a tool that is called

EJSCREEN that is a GIS-based tool that you can go and look and see where there might be populations that are either low income

or are also minority populations.

To me, the most important component of carrying out these environmental justice responsibilities is talking to people so that you know where there might be these disproportionate impacts, because our environmental laws are set to protect everyone, but there can be disproportionate impacts based on location, and we have a screening tool that allows us to examine that. We also need to talk to the communities so we understand what people's exposures are. That is something that is important across the board.

Senator BOOKER. My time has expired. Senator BARRASSO. Thank you, Senator Booker.

I would like to introduce for the record a letter from an Obama administration EPA general counsel under Administrator Gina McCarthy, Avi Garbow, who writes, "Based on my experience, Ms. Bodine possesses a strong intellect, a keen understanding of environmental law and policy, and is respectful and responsive. She is a seasoned environmental lawyer and a skilled advocate.'

I ask unanimous consent to enter this into the record. It is a

June 12, 2017, EPA

Senator CARPER. I object. No, I am just kidding.

[Laughter.]

Senator Barrasso. Thank you. Senator CARPER. I don't object.

Senator Barrasso. You don't? Thank you.

[Laughter.]

Senator Carper. You have to liven things up here just a little bit. Loosen them up, anyway.

[The referenced information follows:]

To Whom This May Concern,

I write to convey my thoughts concerning the nomination of Susan Bodine to be the Assistant Administrator for the Office of Enforcement and Compliance Assurance (OECA) at EPA.

Nearly twenty-five years ago, I began my career as an attorney at EPA's Office of Enforcement, and was there when the reorganization gave rise to OECA. Following my service there, including as a Special Assistant to the Assistant Administrator for OECA, I spent several years as a federal prosecutor in the Environmental Crimes Section at the Department of Justice. More recently, I had the privilege of serving under President Obama and Administrator McCarthy as EPA's General Counsel from 2013 through January 2017, and prior to that as EPA's Deputy General Counsel. I am currently a partner at the law firm of Gibson Dunn & Crutcher.

In each capacity, I worked with colleagues at EPA and DOJ to ensure the fair and faithful enforcement of our nation's environmental laws. Federal environmental enforcement – in concert with other compliance assurance measures and working with States – has played an important role in ensuring that all American's receive the health and environmental benefits enshrined in our environmental laws and regulations, and that American businesses operate on a level playing field and benefit from the regulatory certainty that sound enforcement policies can provide. I also observed firsthand the contributions of the many career employees at EPA – in OECA, the Office of General Counsel, and elsewhere – whose service and devotion to the mission of that Agency are deserving of respect and commendation.

While I do not wish, by way of this statement, to speak to the present or future environmental policies of the Trump EPA, nor to issues surrounding the appropriations process, having been through a confirmation process myself I understand the importance of probing and evaluating the character and qualities of the individual nominee. In my practice of environmental law, notably while serving as EPA's General Counsel and Deputy General Counsel, I had several opportunities to meet with Susan Bodine on various work-related matters. Based on my experience, Ms. Bodine possesses a strong intellect, a keen understanding of environmental law and policy, and is respectful and responsive. She is a seasoned environmental lawyer and a skilled advocate. It is also my view that Ms. Bodine's prior service at EPA is an important – though not indispensable – factor to be considered in her nomination. Her familiarity with the Agency and its talented staff would be of service to OECA and Administrator Pruitt, should she be confirmed.

If you have any questions, please let me know.

Respectfully,

Avi Garbow

Avi Garbow

GIBSON DUNN

Gibson, Dunn & Crutcher LLP 1050 Connecticut Avenue, N.W., Washington, DC 20036-5306 Tel +1 202-955.8558 • Fax +1 202.530.9667 AGarbow@gibsondunn.com • www.gibsondunn.com Senator Barrasso. Question for the Nuclear Regulatory Commission nominees. The State of Wyoming is in the process of applying to become what is known as an agreement State in order to regulate uranium recovery. It is home to over 60 percent of the nation's uranium production, and I anticipate Wyoming is going to submit its application sometime later this year.

If confirmed, will you ensure that the Commission gives this ap-

plication fair consideration and makes a timely decision?

Ms. SVINICKI. Yes, Senator, I will. And there is funding requested to support our part of that review in the fiscal year 2018 budget.

Ms. Caputo. Yes, I will, Senator.

Mr. WRIGHT. Yes, sir.

Senator Barrasso. Thank you.

Senator Carper.

Senator CARPER. Thanks, Mr. Chairman.

Let me yield to Senator Duckworth and thank her for coming today.

Senator Duckworth. I thank the Ranking Member.

Thank you, Mr. Chairman.

I would like to start by submitting an op-ed co-authored by Mary Gade, former Administrator of EPA Region 5 under President Bush, and also Howard Lerner, from the Chicago Sun-Times for the record. It is called "Trump EPA Plan Endangers a Global Gem—our Great Lakes."

Senator Barrasso. Without objection. Senator Duckworth. Thank you. [The referenced information follows:]

CHICAGO SUNOTIMES

Trump EPA plan endangers a global gem — our Great Lakes COLUMNISTS 05/26/2017, 10:21am

Howard A. Learner and Mary Gade



President Trump won the 2016 election in several Great Lakes states, but his administration is assaulting Great Lakes protection and restoration.

Slashing funding for the sensible Great Lakes Restoration Initiative from \$300 million annually to \$0. Potentially closing the U.S. Environmental Protection Agency's Region 5 office in Chicago, Chicago, which includes the Great Lakes National Program Office, and transferring its staff to Kansas. Rolling back Clean Water Act standards that protect safe, clean drinking water.

What are they thinking? This is a headscratcher, criticized by both Republican and Democratic leaders.

EPA Administrator Scott Pruitt says he wants to get "back to basics." What could be more basic than protecting the Great Lakes?

The Great Lakes are a global gem. They contain the planet's largest fresh water supply (21 percent), provide drinking water for 42 million people, provide a rich aquatic habitat and ecosystem, support a \$7 billion annual fishing industry, and offer lakefront and recreational opportunities for millions of people. Lake Michigan helps make Chicago a great place to live, work and visit.

The Great Lakes are our great natural treasure. Military analysts say future wars will be fought over fresh water. Chicagoans, Cheeseheads, Hoosiers, Michiganders, Minnesotans and Ohioans all recognize this remarkable liquid gold. We can't afford to spoil it. Why put this at risk?

First, the Trump administration's proposed FY 2018 budget apparently would eliminate funding for the successful Great Lakes Restoration Initiative. Republicans including Sen. Rob Portman of Ohio, Rep. Fred Upton of Michigan, Gov. Rick Snyder of Michigan and Gov. Scott Walker of Wisconsin, have joined with Illinois' two Democratic senators, Dick Durbin and Tammy Duckworth, and Mayor Rahm Emanuel urging President Donald Trump to reverse course.

They understand voters' strong support for the Great Lakes.

The short stopgap FY 2017 budget approved by Congress continues this Great Lakes program at the full \$300 million. The Trump administration's FY 2018 budget, which starts on Oct. 1, does not.

This is a practical program that has supported 3,000 projects to keep the lakes clean, preserve shorelines, restore wetlands and protect safe clean drinking water. For example:

- Waukegan Harbor, once "the world's largest PCB mess," is now cleaner and ready for better economic and recreational use after EPA invested funds to properly dredge and dispose the heavily contaminated sediments.
- In Northwest Indiana, 1.5 million cubic yards of contaminated river bottom will be removed from the Grand Calumet River and 900 acres of habitat restored so that great blue heron, egrets and fishermen can safely ply the wetlands, river and Lake Michigan.
- EPA scientists crisscross the lakes in the Lake Guardian and the Mudpuppy research vessels, gathering water and air quality monitoring data essential to determining safe drinking water supplies and potential health risks that warrant beach closures.

Second, the Trump administration's rumored plans to close the EPA's regional office in Chicago, which oversees the largest freshwater body in the world, are tone deaf and foolish. The EPA's national Great Lakes Program and experienced staff are in Chicago. The reported plan would transfer staff to the EPA's regional office in Lenexa, Kansas as the new center for EPA's Great Lakes protection work and team. Really.

When the Enbridge pipeline broke and spilled oil into the Kalamazoo River, would the EPA's emergency team have responded more quickly from Lenexa, Kansas than from Chicago? Will Kansas-based staff better deal with algae blooms in Lake Erie and Lake Michigan, and contaminated drinking water in East Chicago, Flint and Toledo?

The Trump administration suggests that consolidating Chicago's regional office into Kansas' regional office will save some coin. That's penny-wise and pound foolish, just like the flawed choice to seek short-term cost savings that resulted in the Flint contaminated water tragedy.

Third, Pruitt is rushing to roll back clean water standards that protect safe drinking water and preserve fish and wildlife habitat. The Environmental Law & Policy Center commissioned 12 focus groups of Trump voters in Indiana, Michigan and Ohio. While they didn't like regulatory paperwork, these voters solidly support regulations to protect safe clean water as common sense.

They understand that pollution upstream or next door can contaminate their drinking water. They like swimming in clean lakes and enjoy playing on nice beaches. Some remember when raw industrial sewage polluted our lakes before the Clean Water Act was passed and implemented. They didn't vote for a rollback.

Good policy is good politics. This shortsighted attack on the Great Lakes and safe clean drinking water is bad policy. The public and most political leaders know better. The battle for Great Lakes protection is well worth fighting and winning, but this battle shouldn't have to be fought. President Trump, it's time to step back and reconsider.

Howard A. Learner is the executive director of the Environmental Law & Policy Center, a Midwest-based public interest organization.

Mary Gade served as the U.S. EPA Region 5 administrator in 2006 – 2008 and Great Lakes National Program Manager.

http://chicago.suntimes.com/columnists/trump-epa-plan-endangers-a-global-gem-our-great-lakes/

Senator Duckworth. The article explains why eliminating or moving EPA Region 5 would be a grave mistake. As these authors describe it, closing the region would be "penny-wise and pound foolish, just like the flawed choice to seek short-term cost savings that

resulted in the Flint contaminated water tragedy.'

Ms. Bodine, I am interested in understanding your view on this. I know we discussed this during our meeting, but your answer focused on the process of closing offices, not on your opinions as an enforcer. Do you believe eliminating EPA Region 5 would improve or harm enforcement?

Ms. Bodine. Senator, I haven't seen any analysis that would support that. And as I observed to you in your office, Region 5 is a very large region. I also further note that there is no request in the President's budget for any funding to eliminate any regions.

Senator Duckworth. But given the size of Region 5, if it were eliminated, would it make it easier or harder to enforce rules and regulations that help protect our environment?

Ms. Bodine. So, again, without understanding how the resources

would be picked up, I don't have an answer to your question. Senator DUCKWORTH. OK. Well, I understand that you are not the

Ms. Bodine. But I am also not aware of any plan. I am not aware of any plan to close Region 5.

Senator Duckworth. So I am trying to figure out your view on this from a pure enforcement perspective. Would it increase or decrease enforcement if Region 5 were to be shut down?

Ms. Bodine. If all the resources were simply transferred to another region, it would be the same. But, again, I haven't seen any

plan to do any of that.

Senator Duckworth. But you just said how large Region 5 is. If you move the EPA office for Region 5 somewhere else, the EPA certainly would not be able to respond rapidly to instances when they are needed. For example, we had tornadoes all throughout Illinois, and oftentimes EPA is among the first to respond. But if you shut down Region 5, and you moved it somewhere else, say Kansas or somewhere else, do you think that you could still respond adequately to any type of enforcement requirement?

Ms. Bodine. Some of our other large regions actually have separate offices, they have State offices, like the Montana office. Obviously, there is an Alaska office. Now, I would observe that maybe that would be less efficient if we had to open up other offices, but again, my assumption would be any plan-and again there is none—but if there were to be a plan, it would have to examine all of those issues, including that very valid issue you just raised

about response time.

Senator Duckworth. Well, I will certainly hold you to that.

As the chief enforcement officer, you will be responsible for setting the enforcement goals for the Agency, and this Agency is tasked with safeguarding communities against pollution. What goals will you set, and what areas do you think would demand your attention?

Ms. Bodine. Thank you, Senator Duckworth. As I said earlier in response to Senator Inhofe, I want to look at the performance measures because I want to help focus on outcomes. So I want to sit down with the enforcement staff at EPA and talk about what goals they think would be appropriate to achieve the environmental outcome; that is compliance, that is reduction in pounds of pollutants, that is pounds and cubic yards of waste that is being cleaned up. Those type of outcome measures are ones that I would like to focus on.

Senator Duckworth. So how would you be able to achieve those types of measures, those types of goals, with the diminished resources that the Trump administration is proposing; budget cuts, hiring freezes, regional office closures? How would you be able to

do your job?

Ms. Bodine. Again, EPA's enforcement is going to be working with the States, and if confirmed, I would want to work with the States to make sure that they are carrying out the base programs and that EPA would be focusing on the larger cases, the cases where they have facilities crossing State lines, the criminal enforcement cases, again, targeting the most egregious cases, targeting the cases with the greatest return. And by taking those actions it still creates an enforcement deterrent because EPA is out there taking these actions.

Senator Duckworth. So you basically are saying you are going to hand over many of those routine functions, say, to make sure that there is no lead in the water supply onto the States. That didn't work out very well in Michigan at all. In fact, it failed miserably, and there are children now living with long-term effects of

that, and I don't think that is acceptable.

Ms. Bodine. So you are describing what is already true under our statutes. A State like Michigan, for example, is a primacy State under the Safe Drinking Water Act and does have primary enforcement responsibilities. EPA has a responsibility to make sure that States are carrying out those functions. There is something called the State review framework, where EPA and the States get together, and they evaluate the other States.

Senator DUCKWORTH. But that obviously failed in Michigan, and obviously it did not work. EPA had the ability to step in and stop what was happening in Flint and did not, and failed to do so. And I have Galesburg, Illinois, that has lead in the water supply right now. We have lead in water in Chicago, and I am fearful that EPA, under you, is not going to do its job in regulating and making sure

that we hold people accountable.

Ms. Bodine. May I respond, Senator? Flint wasn't a normal situation, and if I am confirmed, I would want to make absolutely certain that the EPA staff who are enforcement staff in the regions, as well as the headquarters, that if they see a situation like that where, as you point out, it was a tragedy, children were being affected by lead, that they need to report up, because we need to know about it.

Senator Duckworth. My problem is that the Trump administration cuts the budget to have those staff on the ground, so you won't have anybody there in order to do that.

I am way over time, Mr. Chairman. I apologize. I yield back. Senator BARRASSO. Thank you, Senator Duckworth. I appreciate

your comments.

I had a question for the Nuclear Regulatory Commission nominees. I would like each of you to tell me what you think the biggest challenge is today for the Nuclear Regulatory Commission, what it

currently faces and how, if confirmed, you would address it.

Ms. SVINICKI. I would, in this moment, identify that enhancing our agility is a significant challenge for the Agency. When I joined the Commission in 2008, there was an envisioned nuclear renaissance. Many new reactors were envisioned being under construction, and it is hard, in a large organization, when we don't face those circumstances today, to size ourselves and adjust our processes for the energy system that we have today, not the energy system that the United States predicted 10 years ago. So, as an Agency, we need to be able to resource and size ourselves in an agile way.

Senator Barrasso. Ms. Caputo.

Ms. Caputo. I would agree with that. One of the challenges I think that we have watched certainly here in this Committee is, like the Chairman said, the shift from burgeoning growth in the industry to now a decrease, and yet we will see more change coming as advanced reactors blossom and develop and begin to seek licenses at the Agency. So, as she said, agility and being able to position staff to manage those workload changes I think remains the biggest challenge.

Senator BARRASSO. Mr. Wright.

Mr. WRIGHT. I totally agree that right sizing the Agency and streamlining is important. Obviously, we need to make sure that our human capital is used the right way and that we have the right expertise to do what we need to do.

Senator Barrasso. Senator Carper.

Senator CARPER. Thanks, Mr. Chairman.

Senator Markey has been in and out several times.

Senator Markey, why don't you go ahead? Senator Markey. Have you gone yet? Senator Carper. Go ahead, go ahead.

Senator Markey. I appreciate it. Thank you.

Let me start with a major issue facing the Nuclear Regulatory Commission: how to ensure the safety of spent nuclear fuel. According to an article in Science Magazine by physicists from the Union of Concerned Scientists and Princeton University, the NRC has drastically underestimated the risks from a fire at a spent fuel pond. The NRC's analysis has underestimated both the probability of a spent fuel fire and its consequences. As a result, the NRC has understated the benefit to the public of moving fuel from risky pools over to safer, dry cask.

One of the Princeton authors of the new study ran a simulation of the area that could be irradiated by a spent fuel pool fire at the Pilgrim Power Station in Massachusetts if such a fire occurred under summer weather conditions when beach season is getting started. As you can see from the orange contour, the impact of that fire would be devastating. Across Massachusetts, Rhode Island, Connecticut, the consequences of such an event would be absolutely

catastrophic.

The scientists who did the analysis indicated that the cost of the fire could be upwards of \$2 trillion nationally, an economic disrup-

tion. By contrast, the Nuclear Regulatory Commission's estimate of the financial consequences was 20 times less. And the Commission used that estimate to dismiss the benefit of dry cask storage, which would only cost \$50 million per reactor.

So, by dramatically reducing the cost that would occur if such a fire did hit a nuclear power plant, the NRC, in its cost-benefit analysis, is able to avoid forcing the utilities to move from the spent

fuel pools over to dry cask.

Do any of you disagree that the NRC should apply state of the

art science when making decisions about safety?

Ms. SVINICKI. Senator, of course I am in agreement that the correct science should be applied. The NRC staff has done a quick review of the article that you referenced. They have looked at whether it presents different scenarios that were unanalyzed by the NRC. They did not identify anything in this preliminary review, but their look is ongoing, so if I may respond for the record if there

is additional comparative details that they can provide.

Senator Markey. Well, it is a pretty blistering, scalding indictment. It basically concludes that there was an underestimation of the time to clean up after that kind of contamination hit such an area; it failed to account for the risk of a terrorist attack at a nuclear power plant that would seek to ignite a fire with these spent fuel pools; and it actually failed to consider the economic consequences broadly of what the impact would be, including after Fukushima, the shutdown of nuclear power plants, whether or not that same thing would occur in our own country.

So your staff has not done you a good service if they have evaluated the article and not come back, then, with the analysis of these vulnerabilities that have been identified by the Princeton scientists in the evaluation done by the Nuclear Regulatory Commission.

Have you had a chance to read that Science Magazine article?

Ms. SVINICKI. I have not, Senator.

Senator Markey. Have any of you read the Science Magazine article?

Ms. Caputo. I wasn't aware of it.

Senator Markey. Well, again, this just goes to the whole issue of what the impact is, ultimately, on an area when a fire like that could occur. So I recommend to you that you read it, because I am

going to keep coming back on it in terms of the impact.

Ms. Bodine, last year I did a report entitled "The ABCs of PCBs, A Toxic Threat to America's Schools." We have up to 14 million students nationwide, nearly 30 percent of America's school-aged population may be exposed to PCBs for hours every day in their schools. In the President's budget, President Trump cuts the budget by 34 percent to be able to deal with these issues.

How will it be possible, Ms. Bodine, for the Trump administration to deal with this kind of exposure to PCBs of students in cities and towns all across our country if there is a 34 percent reduction in the EPA budget to be able to ensure that there is compliance?

Ms. Bodine. Senator Markey, if confirmed, I would look into the issue you are raising about the PCBs in schools and, again, as I said earlier, OECA, the Federal EPA enforcement is going to continue to focus on cases with the most impact. That might be one of them. And the delegated States, authorized States are going to

carry out the core basic mission, which they are already doing. ECOS likes to put out the statistic that 96 percent of the environmental statutes and work is being carried out by States already.

Senator Markey. Well, here President Trump is going to make sure that children in schools all across the country are going to be more exposed to PCBs in their classrooms, and saying to States and local communities, good luck, you take it over. The EPA had responsibility. So to the extent to which there is a 34 percent reduction in the Trump EPA budget for that issue, you can be sure that the States will try to intervene, but the reason there is a Federal program is because it is so pervasive, so hard, and actually part of a policy back in the 1950s and 1960s, all the way up to 1979, when PCBs were kind of given a free pass. And I blame the Federal Government on that, which is why we had to upgrade the Toxic Substances Control Act last year.

Mr. Chairman, I want to compliment you, Mr. Chairman, on the rewrite of TSCA last year, but this 34 percent cut in this budget is just disgraceful. It really is going to put children all over our country at great unnecessary risk that could have been avoided if the President didn't cut that budget for children to be protected.

Mr. Chairman, I have other questions for the witnesses that I will submit to you for the record and with my hope that the witnesses will answer them. Thank you, Mr. Chairman.

Senator Inhofe [presiding]. Thank you, Senator Markey. Senator Carper, let me put four things into the record.

Senator CARPER. Go right ahead. Senator INHOFE. So I won't forget.

Ask unanimous consent a June 12, 2017, EPA press release that includes statements in support of the EPA nominee from six Democrats, six Republicans, and two association leaders.

Without objection.

The six letters in support of the EPA nominee, two letters in support of the NRC nominees, one statement for the record from Senators Heller and Cortez Masto. Without objection, I ask that they be made a part of the record.

[The referenced information follows:]



News Releases from Headquarters WHAT THEY ARE SAYING

Bipartisan Environmental Leaders Praise Susan Bodine's EPA Nomination

06/12/2017

Contact Information: U.S. EPA Media Relations

WASHINGTON – Prior to Susan Bodine's confirmation hearing in the Senate Environment and Public Works Committee tomorrow, environmental leaders, including former DOJ and EPA officials who served in both Republican and Democrat administrations, are offering praise for Bodine's nomination to serve as EPA's Assistant Administrator for Enforcement and Compliance Assurance. Bodine currently serves as Chief Counsel for the Senate Environment and Public Works (EPW) committee. She previously served as EPA's Assistant Administrator of the Office of Solid Waste and Emergency Response in the George W. Bush Administration, and possesses nearly 29 years of environmental law experience.

What They're Saying About Susan Bodine's Nomination ...

Senate EPW Chairman John Barrasso: "She has extensive experience working both on Capitol Hill and previously in leadership at the EPA. Susan is committed to finding commonsense ways to protect America's land, air, and water. In this new role, I know that she will work to help communities and small businesses comply with the law, while holding polluters accountable."

John Cruden, President-Elect of the American College of Environmental Lawyers and Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice (12/2014-1/2017): "I have worked with Susan over a number of years as she has had significant leadership positions in environmental law and practice. Susan is dedicated to the rule of law, a lawyer with great integrity, and she understands the critical importance of effective and timely enforcement."

Marcus Peacock, EPA Deputy Administrator (08/2005 – 01/2009): "I have known Susan for over 20 years. I can think of no better person to lead the enforcement office at EPA. She understands the mission of the agency and the office and how important it is to protecting human health and the environment. A perfect pick."

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https://www.epa.gov/newsreleases/what-they-are-sayin

Scott Fulton, President of The Environmental Law Institute and EPA General Counsel (08/2009-01/2013): "During the Obama Administration, when I served as EPA's General Counsel, Susan and I worked collaboratively on matters of shared concern to the Administration and the Congress. ... Through these various intersections, I have found Susan to be fair minded, clear thinking, and strategic in her approach, as well as effective in her leadership. She has a deep understanding of EPA and the EPA-State relationship, which will equip her well to lead OECA."

Avi Garbow, EPA General Counsel (08/2013-01/2017) and Deputy General Counsel, EPA (09/2014-08/2013): "Based on my experience, Ms. Bodine possesses a strong intellect, a keen understanding of environmental law and policy, and is respectful and responsive. She is a seasoned environmental lawyer and a skilled advocate. It is also my view that Ms. Bodine's prior service at EPA is an important – though not indispensable – factor to be considered in her nomination. Her familiarity with the Agency and its talented staff would be of service to OECA and Administrator Pruitt, should she be confirmed."

Roger Martella, EPA General Counsel (08/2006-04/2008): "Susan epitomizes all the best character and traits we can ask of public servants: tireless and unflappable commitment to the mission of environmental protection and promoting human health, protective of transparency and process in her decision making, objective and apolitical approach to leadership, and empowerment of career decision makers in government."

Granta Nakayama, EPA Assistant Administrator, Office of Enforcement and Compliance Assurance (07/2005-01/2009): [Bodine is a] "fine environmental attorney" who "reads the statutes and parses the words and does the hard work. She's . . . rigorous in that sense." "[She is also] "an experienced hand in Washington and knows how to get things done. She is very practical and looks for solutions that are going to be workable for everybody."

Mathy Stanislaus, EPA Assistant Administrator, Office of Land and Emergency Management (06/2009-01/2017): "[Susan] understands both the internal side of the agency and the proper balance of enforcement."

Marianne Horinko, EPA Acting Administrator (07/2013-11/2013) and EPA Assistant Administrator, Office of Solid Waste and Emergency Response (10/2001-06/2004): "Susan Bodine is extremely qualified to run EPA's enforcement office. As a dedicated public servant with years of experience in environmental policy, she brings a vast understanding of both the agency and the community it regulates. Susan is well suited to carry out the mission of the Administration, and to protect clean air, land and water for the American people."

Elliot Laws, EPA Assistant Administrator, Office of Solid Waste and Emergency Response (1993-1997): "While I don't envy her challenge, I think bringing Susan back to the agency is an excellent idea." "Having a familiar face back at EPA in a senior role is a plus for staff morale. Bringing in someone with her knowledge of the agency and the issues facing it can only be a positive."

Ben Grumbles, Secretary, Maryland Department of the Environment (03/2016-present), EPA Assistant Administrator, Office of Water (11/2004-01/2009): "She's tough and fair and committed to public service. [Bodine] embodies a compliance-first approach, but also will bring enforcement actions

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when needed."

G. Tracy Mehan, III, EPA Assistant Administrator, Office of Water (08/2001-12/2003): "Susan Bodine brings a commanding intellect and a vast reservoir of experience in environmental policy to the job of running EPA's enforcement office. The Agency and the American people will benefit tremendously from her legislative, executive and legal expertise across the spectrum of air, land and water. The Administration has made an outstanding selection."

Cliff Rothenstein, EPA Deputy Assistant Administrator, Office of Solid Waste and Emergency Response (04/1997-06/2000): "I have known Ms. Bodine for almost 20 years where she served as committee counsel to the House Transportation and Infrastructure and the Senate Environment and Public Works committees, and as Assistant administrator for the EPA's Office of Solid Waste and Emergency Response. She is a dedicated public servant and is well-qualified to lead EPA's office of Enforcement and Compliance Assistance. Ms. Bodine has proved herself time and again to be fair, competent, professional and well respected by those who have had the pleasure to work with her. As an added benefit, Ms. Bodine knows EPA well and is known and respected by EPA employees."

Tom Cochran, CEO and Executive Director, U.S. Conference of Mayors: "Many Mayors, as well as my senior staff, have worked with Ms. Susan Bodine over the past 20 plus years. ... Throughout these years, working with Ms. Bodine has been a real pleasure and she has been an asset in every job she has done. She is extremely thoughtful, knowledgeable and professional and has an understanding of the importance of protecting the environment and public health and to do so in an economically responsible way. Her common sense approach to environmental protection and infrastructure investment is widely respected among her peers and my Mayors. While we are sorry to lose her in her current role, she would be a welcome asset at the EPA."

Zippy Duvall, President, American Farm Bureau Federation: "Susan Bodine's breadth and depth of experience in environmental protection make her an outstanding nominee to lead OECA. ... In her decades of experience in private practice, for Congress and EPA, Susan Bodine has proven her leadership skills and her deep understanding of our nation's environmental laws and how they affect ordinary citizens and small businesses. She has shown leadership in working toward solutions with groups on all sides of the many controversies that entangle environmental protection. We believe she will strictly enforce our nation's environmental laws, using the hammer when necessary. We also believe she will bring back an effective yet underutilized tool in EPA's toolbox – compliance assistance. Farmers and ranchers across the nation look forward to a new era of firm, but fair enforcement."

LAST UPDATED ON JUNE 12, 2017

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The Council on Radionuclides and Radiopharmaceuticals, Inc.

500 North Capitol Street, NW Suite 210 Washington, DC 20001-7407 (202) 547-6582 Fax: (202) 547-4658 michael.guastella@corar.org

Michael J. Guastella, MS, MBA Executive Director

June 1, 2017

Honorable John Barrasso, Chairman Committee on Environment and Public Works United States Senate 410 Dirksen Senate Office Building Washington, DC 20510

Honorable Tom Carper, Ranking Member Committee on Environment and Public Works United States Senate 410 Dirksen Senate Office Building Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper,

It is with great pleasure that we, the Council on Radionuclides and Radiopharmaceuticals, Inc. (CORAR), express our support for the President's nomination of Ms. Annie Caputo to be a Commissioner of the Nuclear Regulatory Commission (NRC).

As the trade association and voice of the radionuclide and radiopharmaceutical industry in North America, our members are committed to research, development, manufacturing and distribution of radiopharmaceuticals and radionuclides used in the diagnosis and treatment of many diseases such as cancer, cardiovascular disease and neurological disorders. Our association advocates for consistent and common sense based public policies that impact health care, transportation safety, homeland security, and manufacturing to ensure a reliable supply, safe and affordable health care treatment for all.

CORAR has had the privilege to work with Ms. Caputo for more than ten years, while she served on the staff of the Senate Environment and Public Works Committee and the House Energy and Commerce Committee. During that time, Ms. Caputo has always been committed to listening and understanding how nuclear energy policy might impact the radiopharmaceutical industry and patient care. While the manufacture and utilization of radioactive materials in healthcare is not a

The Council on Radionuclides and Radiopharmaceuticals, Inc. • 500 North Capitol Street, NW • Suite 210 • Washington, DC 20001-7407 (202) 547-6582 • Fax: (202) 547-4658 • michael guastella@corar.org

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primary aspect of nuclear energy policy, Ms. Caputo has worked diligently to consider all perspectives and to find solutions to even the most difficult problems.

The NRC plays a critical role in overseeing and administering licenses and regulations of the nation's radiopharmaceutical manufacturers, distributors and nuclear medicine facilities. With the magnitude of issues before the Commission, we strongly believe that the agency will benefit from Ms. Caputo's broad knowledge and expertise.

We support the President's decision to nominate Annie Caputo to the NRC, we urge you and your committee to swiftly approve her nomination.

Sincerely,

Roy Brown

Chairman of the Board

Council of Radionuclides and Radiopharmaceuticals, Inc.



THE CLEAN ENERGY PROGRAM

June 8, 2017

Chairman John Barrasso 410 Dirksen Senate Office Building Washington, DC 20510 Ranking Member Tom Carper 456 Dirksen Senate Office Building Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper:

I am writing in strong support of the nominations of Annie Caputo and Kristine Svinicki to the Nuclear Regulatory Commission (NRC). Third Way advocates for the quick and safe deployment of advanced nuclear reactors, and a forward-looking and well-staffed NRC is crucial to this goal. Both Caputo and Svinicki have demonstrated a commitment to ensuring the NRC is prepared to license a new generation of reactors and to regulate the existing fleet effectively and securely. We are very glad to see their nominations.

Caputo's work in the Senate, including her integral role in drafting and moving the Nuclear Energy Innovation and Modernization Act, shows her capability to aid in the NRC's current transition to regulating both existing and advanced nuclear. She has consistently worked with members on both sides of the aisle to promote effective nuclear regulation and is well-respected across partisan lines for her expertise, professionalism, and competence. Few people are more qualified to fill this role at the NRC.

We are similarly pleased with Kristine Svinicki's nomination for another term at NRC and her designation as Chair. Svinicki's work at the NRC has resulted in improved readiness to regulate small modular and advanced reactors. Under her leadership, the agency has worked to prepare licensing infrastructure for new types of reactors that could provide enormous benefits for climate, American leadership, and domestic job creation. With several advanced reactor developers already engaging the NRC and more on the way, Chairman Svinicki's continued leadership is needed now more than ever.

Maintaining a quorum at the NRC is vital to the functioning of America's nuclear sector. Therefore, we request that these nominations be moved as quickly as possible, especially in light of the fast-approaching end to Chairman Svinicki's current term on June 30. As we have not had the opportunity to work with David Wright, Third Way has yet to take a position on his nomination.

Finally, we believe that the NRC is best-functioning when it is free from partisanship and headed by highly qualified individuals; for this reason, we strongly support the nominations of Caputo and Svinicki, both Republicans. However, we also hope to soon see Democratic nominees moved through the Committee to ensure public confidence in the balanced leadership of the Commission. We know the Committee has no direct role in nominations. Nevertheless, any encouragement of prompt Democratic nominations from the Committee or its members could be helpful in maintaining a well-regulated and forward-looking NRC and in avoiding unnecessary politicization of the nuclear energy sector.

Sincerely

Josh Freed

Vice President for the Clean Energy Program

Third Way

From: John Cruden [mailto:john.cruden@icloud.com]

Sent: Monday, May 22, 2017 9:14 AM

To: Bodine, Susan (EPW) < Susan Bodine@epw.senate.gov >

Subject: Re: per your message

Susan. From Charleston South Carolina. Business trip.

How about this as a quote (you will need to capitalize)

"I have worked with Susan over a number of years as she has had significant leadership positions in environmental law and practice, "said John c cruden, past assistant attorney general, environment and natural resources division, us department of justice and president elect of the american college of environmental lawyers." Susan is dedicated to the rule of law, a lawyer with great integrity, and she understands the critical importance of effective and timely enforcement."

Best

John

Sent from my iPhone

From: Tracy Mehan [mailto:tmehan@awwa.org]

Sent: Thursday, June 1, 2017 5:08 PM To: shimmin.kaitlyn@epa.gov

Cc: Bodine, Susan (EPW) < Susan Bodine@epw.senate.gov >

Subject: My personal endorsement of Susan Bodine as AA for OECA

Kaitlyn,

It is my pleasure to provide you with the following quote for your press release:

"Susan Bodine brings a commanding intellect and a vast reservoir of experience in environmental policy to the job of running EPA's enforcement office. The Agency and the American people will benefit tremendously from her legislative, executive and legal expertise across the spectrum of air, land and water. The Administration has made an outstanding selection."

--G. Tracy Mehan, III, former Assistant Administrator for Water, US EPA, in the administration of President George W. Bush. He is presently executive director, government affairs for the American Water Works Association (AWWA) and an adjunct professor at the Antonin Scalia Law School (George Mason University)

Good luck to Susan and the Administration!

Tracy 703-850-9401

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American Water Works Association Dedicated to the World's Most Important Resource ®



Statement by Tom Cochran CEO Executive Director The US Conference of Mayors

Many Mayors, as well as my senior staff, have worked with Ms. Susan Bodine over the past 20 plus years. Originally, in her role as counsel as the Transportation and Infrastructure Water subcommittee on Water, then as Assistant Administrator for the Environmental Protection Agency (EPA) Office of Solid Waste and Emergency Response, in her private practice for the law firm Barnes and Thornburg, and finally in her current role as counsel for the Senate Environment and Public Works Committee.

We have worked with Ms. Bodine on such matters as Brownfields Redevelopment (including development of the original law as well as the current reauthorization bill), water and wastewater infrastructure and regulations (including Combined Sewer Overflows consent decrees, Integrated Planning, and Financial Capability), and Army Corps issues to name a few.

Throughout these years, working with Ms. Bodine has been a real pleasure and she has been an asset in every job she has done. She is extremely thoughtful, knowledgeable and professional and has an understanding of the importance of protecting the environment and public health and to do so in an economically responsible way. Her common sense approach to environmental protection and infrastructure investment is widely respected among her peers and my Mayors.

While we are sorry to lose her in her current role, she would be a welcome asset at the EPA.



1730 M STREET. NW. SUITE 700 WASHINGTON, DC 20036

PHONE (202) 939-3800
EAX: (202) 939-3868
EMAIL: | law@cli.org
WEB: | www.cli.org

June 5, 2017

The Honorable John Barrasso, Chairman U.S. Senate Committee on Environment and Public Works 410 Dirksen Senate Office Building Washington, D.C. 20510-6176

The Honorable Tom Carper, Ranking Member U.S. Senate Committee on Environment and Public Works 456 Dirksen Senate Office Building Washington, D.C. 20510-6175

Re: Nomination of Susan Parker Bodine for Assistant Administrator, U.S. Environmental Protection Agency (EPA) Office of Enforcement and Compliance Assurance

Dear Senators Barrasso and Carper:

I would like to add my voice to those recommending confirmation of Susan Bodine as the next Assistant Administrator of EPA's Office of Enforcement and Compliance Assurance (OECA). My first significant opportunity to work with Susan was during the George W. Bush Administration when she was Assistant Administrator for EPA's Office of Solid Waste and Emergency Response and I was the Acting Assistant Administrator for EPA's Office of International Affairs. During the Obama Administration, when I served as EPA's General Counsel, Susan and I worked collaboratively on matters of shared concern to the Administration and the Congress. More recently, as President of the Environmental Law Institute, the nation's premier non-partisan think tank and research institute focused on environmental law and governance, I have called upon Susan to speak in various programs as a trusted expert on environmental law and policy.

Through these various intersections, I have found Susan to be fair minded, clear thinking, and strategic in her approach, as well as effective in her leadership. She has a deep understanding of EPA and the EPA-State relationship, which will equip her well to lead OECA. Having myself served as a former environmental enforcement leader at both the Department of Justice and EPA, Susan's assumption of the enforcement helm would give me confidence that this vitally

important role will be approached with seriousness. Frankly, I have been concerned by this Administration's proposal to dramatically reduce resources for both federal and state environmental enforcement. Accountability under our environmental laws – through enforcement – has been a key ingredient in the environmental improvements that we have achieved as a country. We need a well-intentioned and capable leader at OECA to help make sure that these gains are not put at risk.

Susan Bodine is, I believe, such a leader, and I accordingly recommend that she be confirmed for this important role. I further recommend that the Congress give her the resources she will need to properly carry out this role.

Respectfully,

Scott Fulton President

Environmental Law Institute

Col Sor Fit

fulton@eli.org

To Whom This May Concern,

I write to convey my thoughts concerning the nomination of Susan Bodine to be the Assistant Administrator for the Office of Enforcement and Compliance Assurance (OECA) at EPA.

Nearly twenty-five years ago, I began my career as an attorney at EPA's Office of Enforcement, and was there when the reorganization gave rise to OECA. Following my service there, including as a Special Assistant to the Assistant Administrator for OECA, I spent several years as a federal prosecutor in the Environmental Crimes Section at the Department of Justice. More recently, I had the privilege of serving under President Obama and Administrator McCarthy as EPA's General Counsel from 2013 through January 2017, and prior to that as EPA's Deputy General Counsel. I am currently a partner at the law firm of Gibson Dunn & Crutcher.

In each capacity, I worked with colleagues at EPA and DOJ to ensure the fair and faithful enforcement of our nation's environmental laws. Federal environmental enforcement – in concert with other compliance assurance measures and working with States – has played an important role in ensuring that all American's receive the health and environmental benefits enshrined in our environmental laws and regulations, and that American businesses operate on a level playing field and benefit from the regulatory certainty that sound enforcement policies can provide. I also observed firsthand the contributions of the many career employees at EPA – in OECA, the Office of General Counsel, and elsewhere – whose service and devotion to the mission of that Agency are deserving of respect and commendation.

While I do not wish, by way of this statement, to speak to the present or future environmental policies of the Trump EPA, nor to issues surrounding the appropriations process, having been through a confirmation process myself I understand the importance of probing and evaluating the character and qualities of the individual nominee. In my practice of environmental law, notably while serving as EPA's General Counsel and Deputy General Counsel, I had several opportunities to meet with Susan Bodine on various work-related matters. Based on my experience, Ms. Bodine possesses a strong intellect, a keen understanding of environmental law and policy, and is respectful and responsive. She is a seasoned environmental lawyer and a skilled advocate. It is also my view that Ms. Bodine's prior service at EPA is an important – though not indispensable – factor to be considered in her nomination. Her familiarity with the Agency and its talented staff would be of service to OECA and Administrator Pruitt, should she be confirmed.

If you have any questions, please let me know.

Respectfully,

Avi Garbow

Avi Garbow

GIBSON DUNN

Gibson, Dunn & Crutcher LLP 1050 Connecticut Avenue, N.W., Washington, DC 20036-5306 Tel +1 202-955 8558 + Fax +1 202-530-9667 AGarbow@gibsondunn.com - www.gibsondunn.com



ph. 202.406.3600 f. 202.406.3606 www.fb.org

June 5, 2017

The Honorable John Barrasso, Chairman U.S. Senate Committee on Environment and Public Works 410 Dirksen Senate Office Building Washington, D.C. 20510-6176

The Honorable Tom Carper, Ranking Member U.S. Senate Committee on Environment and Public Works 456 Dirksen Senate Office Building Washington, D.C. 20510-6175

Dear Chairman Barrasso and Ranking Member Carper:

The American Farm Bureau Federation strongly supports the nomination of Susan Bodine for the position of the Environmental Protection Agency's (EPA) Assistant Administrator for the Office of Enforcement and Compliance Assistance (OECA). We urge you to vote in favor of her confirmation.

Susan Bodine's breadth and depth of experience in environmental protection make her an outstanding nominee to lead OECA. She has extensive experience working for Congress in senior legal and policy positions while at the Subcommittee on Water Resources and the Environment of the House Transportation and Infrastructure Committee and later at the Senate Committee on Environment and Public Works. She also served as the EPA Assistant Administrator for the Office of Solid Waste and Emergency Response under President Bush. In addition to her Executive Branch and congressional experience, she was a partner at the law firm of Barnes and Thornburg, where she was a well-respected and effective legal counsel to our nation's resource users.

In her decades of experience in private practice, for Congress and EPA, Susan Bodine has proven her leadership skills and her deep understanding of our nation's environmental laws and how they affect ordinary citizens and small businesses. She has shown leadership in working toward solutions with groups on all sides of the many controversies that entangle environmental protection. We believe she will strictly enforce our nation's environmental laws, using the hammer when necessary. We also believe she will bring back an effective yet underutilized tool in EPA's toolbox – compliance assistance. Farmers and ranchers across the nation look forward to a new era of firm, but fair enforcement.

For EPA to achieve the goals set forth by President Trump and Administrator Pruitt, EPA needs a strong leadership team. We believe Susan Bodine is an excellent choice and we urge her swift confirmation.

Sincerely,

Topy Durall

Zippy Duvall President

cc: United States Senate Committee on Environment and Public Works





June 12, 2017

The Honorable John Barrasso Chairman, U.S. Senate Committee on Environment and Public Works 410 Dirksen Senate Office Building Washington, D.C. 20510-6176

The Honorable Thomas Carper Ranking Member, U.S. Senate Committee on Environment and Public Works 456 Dirksen Senate Office Building Washington, D.C. 20510-6176

Dear Chairman Barrasso and Ranking Member Carper:

The National Cattlemen's Beef Association (NCBA) and the Public Lands Council (PLC) urge you to vote in favor of Susan Bodine as Assistant Administrator of the Office of Enforcement and Compliance Assurance (OECA) of the Environmental Protection Agency (EPA). NCBA is the cattle industry's largest and oldest national trade association, representing American cattle producers who provide much of the nation's food supply and manage a large part of America's private property. PLC is the only national organization dedicated solely to representing the roughly 22,000 ranchers who hold federal grazing permits and operate on federal lands. Our organizations strongly believe Bodine's nomination is an important step towards protecting our environment through firm, but fair, compliance and enforcement measures.

Bodine has impeccable credentials with 29 years of environmental law and policy experience garnered from leadership positions in the federal government and private sector. Bodine currently serves as Chief Counsel for the Senate Committee on Environment and Public Works, and she was previously the staff director and senior counsel for the House Subcommittee on Water Resources and Environment, and the House Committee on Transportation and Infrastructure. During the George W. Bush Administration, Bodine served as the Assistant Administrator of EPA's Office of Solid Waste and Emergency Response. Bodine was a partner at Barnes & Thornburg LLP where she led coalition efforts on environmental issues. She has proven her commitment to public service and she is a distinguished expert in environmental law, which will prove invaluable in her role as Assistant Administrator of OECA.

On a personal level, NCBA and PLC have found Bodine to be a valuable resource due to her breadth of experience and knowledge. And importantly, she is fair and impartial in all areas of her work.

America's livestock producers are invested in keeping our air, water, and land clean for future generations of livestock producers. A compliance-first approach to regulatory programs would enable farmers and ranchers to work with EPA as partners in environmental stewardship rather than simply being regulatory targets. With Bodine at the helm of OECA, we believe we can achieve this goal and herald an era of environmental success.

For these reasons and many more, NCBA and PLC strongly support Susan Bodine's nomination to Assistant Administrator of OECA.

Sincerely,

Craig Uden
President

National Cattlemen's Beef Association

David Eliason David Eliason President

Public Lands Council

cc: The Honorable Scott Pruitt, Administrator, United States Environmental Protection Agency

Statement for the Record Senator Dean Heller (R-NV) and Senator Catherine Cortez-Masto (D-NV) Tuesday, June 13, 2017, at 10:00 am

Senate Committee on Environment and Public Works

Hearing Entitled: Hearing on the Nominations of Kristine Svinicki (Reappointment),
Annie Caputo and David Wright to be Members of the U.S. Nuclear Regulatory
Commission, and the Nomination of Susan Bodine to be Assistant Administrator of the
Office of Enforcement and Compliance Assurance of the U.S. Environmental Protection
Agency

Mr. Chairman and Ranking Member Carper, we appreciate the opportunity today to raise our concerns regarding the pending nominations to be Members of the U.S. Nuclear Regulatory Commission.

While we recognize that for some moving forward on the Yucca Mountain repository is just an issue of enacting law, for Nevadans it is an issue that is critically important to the safety, security, and economic well-being of the state. Nevada has made clear since the beginning that they do not want, and never will want, a permanent nuclear repository at Yucca Mountain. It is a physically unsuitable site that would not only endanger the health and safety of Nevadans, but threaten our economic revitalization. We remain extremely concerned about the actions of this Administration, the Department of Energy, and Chairwoman Svinicki to restart the licensing process without looking at all viable options.

Consent must be at the center of any conversation related to depositing nuclear waste, especially when there are safer and more cost-effective alternatives. This is why we have authored bipartisan, bicameral legislation, the Nuclear Waste Informed Consent Act, to allow for the construction of a nuclear waste repository only if the Secretary of Energy has secured written consent from the governor of the host state, affected units of local government, and affected Indian tribes.

Our proposal is consistent with the consent-based siting initiative to site waste storage and disposal facilities initiated by the Department of Energy in late 2015. This open process ensures that states have a meaningful voice in the process and that no state will be forced to accept nuclear waste against its own will. Identifying communities that are willing to host long-term repositories, rather than forcing it upon a state that strongly opposed such a site for decades, is the only viable solution to our nation's nuclear waste problem.

Failure to do so will only make the problem worse at a greater cost to the American taxpayer. The Department of Energy has estimated that \$15 billion has already been spent on Yucca and that \$82 billion more would be needed to finish the relicensing, infrastructure, transportation, operation, and decommissioning of the site. This is in addition to the significant safety and environmental concerns with the project. We remain deeply concerned about the dangers of transporting this high-level nuclear waste along the proposed waste transportation routes. We're looking at shipping 9,495 rail casks in 2,800 trains, and 2,650 trucks hauling one case each to Yucca Mountain over 50 years.

And, even putting aside the site's vulnerabilities to corrosion and groundwater contamination, lack of state consent, and transportation concerns, the site would not be available to receive waste for decades. We believe there is growing support for consent-based interim storage sites that could address waste storage concerns in a shorter period of time and a lower cost to the taxpayer. We strongly believe this process should not be held up by attempts to re-license a repository at Yucca.

We recognize that the nominees considered before the Committee today have a history and record of strongly supporting moving forward with the Yucca Mountain repository. We remain hopeful that the nominees, if confirmed, approach this issue without any pre-existing bias and conflicts of interest. Furthermore, we look forward to questioning the nominees at a later date on these issues to ensure that they are fully aware of the hundreds of contentions filed by our state on this ill-conceived project.

Thank you Mr. Chairman, and we look forward to hearing from the witnesses today.

Senator Inhofe. Senator Carper. Senator Carper. Thanks, Mr. Chairman.

I know several of my colleagues have drilled down on the question of funding for EPA, particularly funding for the efforts of the

Agency that you would lead if confirmed, Ms. Bodine.

I asked my staff to go back and to share with me, and I will share with you, what happened to EPA funding overall in the last Administration. Some people would say, well, it probably went up. Well, it didn't. In fact, it was reduced overall for those 8 years by about 20 percent, about 3 percent a year, something like that. So this Administration has not inherited a robust budget level of fund-

ing for EPA.

The Administration would further reduce overall in their budget proposal funding for the EPA by about a third overall. For the Agency that, if confirmed, you would lead—reduction would be about another roughly 24 percent. And the States in this program are what we call a policy of cooperative federalism, the States who share responsibility with the Federal Government on making sure the environment is clean and safe. This Administration would reduce the budget for the States to do their share by almost half.

Now, that may not concern you. As a former Governor, it concerns me. It concerns me. We are talking basically by reducing by half over the last 10 years, 9 years, reducing by half the resources available to do the job in your Agency, and also by half for States

to do their share in enforcement.

Does that trouble you? Does that concern you?

Ms. Bodine. So I don't believe that the State cooperative federalism grant budget is being cut in half. I don't have the exact number in front of me.

Senator Carper. I believe it is 44 percent. Forty-four percent.

Ms. Bodine. I will have to look at those numbers.

Senator CARPER. Can't make this stuff up.

Ms. Bodine. I would point out that the environmental counsel of the States, their report on cooperative federalism that they issued yesterday, they point out that they are calling for a recalibration of State and Federal roles, and they say that that can lead to more effective environmental management at lower cost.

Senator Carper. We are going to move off of this, but this is a source of real concern, certainly to our side of the aisle, and we will

come back to this later.

You were all asked three questions before you testified, and one of the questions you were asked-I think it was the second question asked, was, do you agree to ensure the testimony, briefings, documents, and electronic, and other forms of information are provided to this Committee and its staff, and other appropriate committees, in a timely manner? Each of you said yes. Each of you said yes. I want to take you at your word. I know a couple of you pretty well. I know Ms. Svinicki very well, have a high regard for her.

But I am going to come back and sort of ask that question, Ms. Bodine, in a different way. You are a current Senate staffer and

one who is, I think, highly regarded.

I am troubled in this situation. I think other folks on our side are troubled. I think Republicans would be troubled if we had a situation, if they faced a situation, our Republican friends faced a situation where Democrats were a majority in the House, majority in the Senate, and also had the presidency, the White House, and our Republican friends wanted to get their questions answered from this Administration, from a Democratic administration, and that Democratic administration basically would put out direction from the Administration to say you don't have to respond to the minority. You don't have to respond to the minority.

How do you think the Republicans would take that? You have been around here for a while. How do you think they would take

that?

Ms. Bodine. I have worked for Congress for 13 and a half years in my career, and I have deep respect for the oversight responsibility of Congress. If confirmed, my bias would always be to respond to any Member of Congress, whether the majority or the minority, and certainly would not see that there would be any change in practice from EPA.

Senator CARPER. I don't have much time left. One second. I hope

the Chairman will be generous with me.

He cares a lot about oversight. I do as well. When you have one team, whether it is all Democrat or Republican, whoever is on the outs, whoever is in the minority, they are more likely to do real

oversight.

There is almost an inclination if you happen to be Republican, the White House, the House and the Senate are all Republican, there is less of an inclination to do the kind of tough oversight that is needed, and it falls to the minority. And when the minority can't have our questions responded to, as has turned out to be the case repeatedly here, and especially when the White House itself says don't answer those guys, you don't have to answer those guys, that is deeply troubling, I think for any of us. I don't care what party we are part of.

Let me ask a question, if I can. I will come to the Chairman of the NRC, if I could. A lot of questions have been asked of you already. Is there a question that we should have asked, that we should have asked that hasn't been asked? Is there a question that you think ought to be asked that hasn't been asked? I have several

more, but what do you think?

Ms. SVINICKI. I don't know that it is a very good strategy for me to propose a question that is particularly tricky, because the tricky questions are the ones you should be asking, but maybe why I am here for a third term, which I never could have conceived of, to tell you the truth, Senator. But I have developed a strong commitment and devotion to the NRC and its people. Candidly, this is a town of great opportunity if you are a hard worker, but I couldn't think of anything that was a better application of what I know right now.

So, again, if the Senate acts favorably on my nomination, I am very, very honored to continue. I have had some friends and family question my sanity, but I am very committed to this work if I am

allowed to continue.

Senator CARPER. Well, Senator Inhofe and I have sat here in these seats in the past, and you sat there, and we have watched some very, very difficult questioning and a lot of, frankly, discomfort among the five NRC Commissioners, and things seem to have, I will say, quieted down, and there seems to be a more collabo-

rative willingness to develop consensus. How do you explain how

this has happened?

Ms. SVINICKI. I don't know, but I would observe that we appear to be bucking the trend. I think that we have, again, people of strong care and commitment. We had another Senate hearing last week, and Senator Alexander remarked upon he observed from the dais the same collegiality amongst the serving members of the Commission. I indicated that to us collegiality is separate and distinct from agreeing, necessarily, on any particular matter; that collegiality is the overriding behavior, and we may disagree on individual matters, but collegiality is the imperative, and I think it is a shared value.

Senator CARPER. Mr. Chairman, I was out in California during the Memorial Day recess and met with a bunch of companies out there between San Francisco and San Jose doing exciting and interesting things with technology and innovation and job creation. I asked one of the big electric utilities out there, I said, where do you see growth? Because that particular utility, PG&E, they are actually providing a lot of incentives for their customers, business and otherwise, to use less electricity.

I said, how do you consider your stay in business and be profitable? You know what they said? They said there is, over the horizon, a huge demand for electricity that is going to come from electric vehicles. Electric vehicles. And I was at a place where they were making buses, huge buses that carry like 50 people, and they

go 300 miles between charges. Three hundred miles.

So there is a huge—going to be, I think, growing demand for electricity, actually part of the vehicles, trucks, and buses that they would ride in, and I think, in order to meet that need, part of that generation of electricity has to come from nuclear, and we are seeing one plant after the other after another close and be noticed for foreclosure.

As we all know, nuclear doesn't put out any sulfur dioxide or nitrogen oxide or carbon dioxide, no mercury, and it has to be part of our solution, and we just want to work with you to continue to address that need and to make sure that nuclear is an important

part of the mix.

Mr. Chairman, I would like to submit for the record, if I could, a survey done by the National Association of Clean Air Agencies, which shows State agencies are deeply troubled by the Trump budget cuts, and it will impact what States can do in regards to clean air. I ask for unanimous consent.

Senator Inhofe. Without objection. [The referenced information follows:]

IMPACTS OF PROPOSED FY 2018 BUDGET CUTS ON STATE AND LOCAL AIR QUALITY AGENCIES



A REPORT BY THE
NATIONAL ASSOCIATION OF CLEAN AIR AGENCIES
(NACAA)

MAY 22, 2017

Impacts of Proposed FY 2018 Budget Cuts on State and Local Air Quality Agencies

A Report by the National Association of Clean Air Agencies (NACAA)

May 22, 2017

Executive Summary

President Trump will release his FY 2018 federal budget on May 23, 2017, which calls for huge cuts in funding for the U.S. Environmental Protection Agency (EPA). According to a document obtained by the National Association of Clean Air Agencies (NACAA), the budget will include a 31-percent reduction in EPA's overall funding (from \$8.2 billion in FY 2017 to \$5.7 billion in FY 2018), the elimination of many important environmental programs, and — the focus of this report — a 30-percent decrease in federal grants to state and local air pollution control agencies (from \$227.8 million in FY 2017 to \$159.5 million in FY 2018).

Based on advance information about what the proposed budget would include, NACAA surveyed its members to learn what a reduction of approximately 30-percent in federal grants would mean to state and local air quality programs. The results revealed a very disturbing picture: cuts of the magnitude proposed would likely have a devastating impact on the efforts of state and local air pollution control agencies to provide healthful air quality for the American public. Indeed, if cuts of this magnitude are sustained by Congress, we fear more people will die prematurely and get sick unnecessarily.

State and local air quality agencies have faced inadequate funding for years and have already taken many steps to address their budget shortfalls. Additional cuts of 30 percent would severely impede the ability of many agencies to continue essential programs and, in the most extreme cases, some smaller local agencies could conceivably have to close their doors entirely. If such cuts are enacted, many state and local air pollution control agencies will have trouble fully implementing the Clean Air

¹ http://www.4cleanair.org/sites/default/files/Documents/EPA_FY18_Budget.pdf

² On March 21, 2017, information regarding the Administration's proposed FY 2018 budget for the U.S. Environmental Protection Agency (EPA) was released. While it did not include all the details of the proposal, it indicated that state and local grants under Sections 103 and 105 of the Clean Air Act would be reduced by 31 percent. The memorandum is available here: http://www.4cleanair.org/sites/default/files/Documents/EPA Memo FY 2018 Budget March 21 2017.p

Act's health-based air quality standards and delivering the clean and healthful air quality that the public deserves. Additionally, these agencies could be subject to harsh sanctions under the Clean Air Act, including the withholding of millions of dollars in federal highway funds, severe emissions "off-set" limits that could interfere with economic development, and the possibility of EPA imposing Federal Implementation Plans on states.

In their responses, agency after agency painted a similar picture of severe curtailments to their programs in the face of the steep cuts being proposed: loss of staff, cancellation of programs and a diminished capacity to obtain and maintain healthful air quality. Nearly every respondent reported that cuts of this magnitude would severely reduce the benefits the agencies can provide. These include not only to the general public, with respect to decreasing air pollution, maintaining clean air and generally protecting public health, but also to the regulated community, in terms of permitting, compliance assistance and other services.

The respondents provided a long and varied list of ways in which a 30-percent reduction would impact state and local air pollution control programs, affecting nearly every function they perform. State and local agencies identified many activities to be reduced and/or eliminated, including staffing levels, monitoring, inspections, enforcement, permit issuance, compliance assistance, data analysis, equipment maintenance and complaint response, among others.

The impacts of these reductions are far reaching. Numerous agencies reported that they would be operating at a bare minimum level and that the services they provide the public would be limited or even eliminated. Perhaps most importantly, efforts to obtain healthful air quality and maintain clean air would suffer as a result of these resource constraints on their programs.

Agencies also reported that their state or local governments, which already provide the lion's share of funding for clean air programs, would not be able to make up for the reductions in federal grants through additional state or local appropriations, general funds, grants or other contributions. Additionally, several agencies noted that they could consider increasing fees to address the shortfall, but that gaining approval for additional fees is unlikely as well.

Finally, state and local air quality agencies reported that a 30-percent cut in grants could force them to turn some of their important Clean Air Act implementation work back to the federal government. As local communities, including many regulated entities, generally prefer working with their local and state agencies (as opposed to EPA), the return of responsibilities to the federal government would be a tremendous loss. Additionally, since the proposed budget calls for sharp cuts to EPA's operating budget as well, the agency would not be in a good position to take on the tasks that the state and local agencies can no longer carry out.

State and Local Air Agencies – In Their Own Words:

"A cut in our federal grant of 30 percent would impose serious and adverse impacts on our individual state and collective ability to effectively run our air pollution control programs. There would very likely be many more people in our state getting sick and possibly dying as a result of these budget cuts."

"[We are] insufficiently staffed to assure citizens are protected from asbestos. Asbestos is a carcinogen and was widely used in buildings for fireproofing, thermal and acoustical insulation, condensation control, and decoration. Our current staffing of 5 FTEs is only able to inspect 8% of the structures. This inability to verify compliance places the public directly at risk."

"If you cut back on enforcement programs, such as inspections and compliance assistance, your regulated community tends to be out of compliance more of the time. This can result in increased emissions which affect the health of your citizens."

"We have been forced to cut programs—sunset Stage 2 vapor recovery, returned delegation of asbestos NESHAP, air toxics, downsized monitoring to federal minimum allowed. Permits are slower, enforcement is down."

"If there are further reductions in federal funding, there will be a corresponding reduction in services. It is unreasonable to ask States to further supplement their programs with additional State funds."

Because we are at the federal minimum for our air monitoring network and unable to fully meet our planning, inventory, and asbestos compliance requirements, a reduction of 31% would be devastating. We clearly would be unable to meet the federally-mandated responsibilities."

"Our current level of service will be significantly reduced... The level of public health protection currently provided will definitely be reduced to reflect the impacts of the budget cuts."

"Without question, a cut of 31 percent to the already-reduced funding levels would devastate our program. Under the requested funding reductions, we would be forced to cut our staffing by at least one-third... a reduction in staffing along the proposed lines would significantly delay the issuance of permits for new construction."

"The state and local funding cuts combined with the proposed 30% federal funding cut will result in about a 72% reduction in [our] overall budget. This will significantly impact [our] ability to be here at all, and if we are still here, it will be at a 60-70% decreased staffing level leaving us with 7-10 FTEs to manage a 6 county area. At this level, we will not be able to meet the core requirements of the state contract and federal grants.

"Enforcement would be reduced to only the most serious cases - Violations may not be detected early because there will be less report reviews, inspections, stack tests, and complaint response."

"A reduction of federal funds may result in an air quality monitoring network that does not meet federal requirements."

"These cuts ignore reality; because we still have to meet all the existing federal requirements, even the ones the new administration doesn't like. When we fail, due to a lack of resources, it will be local taxpayers who bear the burden of paying environmental groups' legal fees."

"We'd no longer do any air toxics work."

Who is NACAA?

The National Association of Clean Air Agencies (NACAA) is a national, non-partisan, non-profit association of state and local air pollution control agencies in 45 states, the District of Columbia and four territories. The air quality professionals in its member agencies have vast experience dedicated to improving air quality in the United States.

State and local air pollution control agencies (e.g., NACAA members) have primary responsibility for implementing our nation's air pollution control laws and regulations. The associations serve to encourage the exchange of information and experience among air pollution control officials; enhance communication and cooperation among federal, state and local regulatory agencies; and facilitate air pollution control activities that will result in clean, healthful air across the country.

NACAA's headquarters office is located in Washington, DC. For further information, including contact information for state and local air quality agencies, visit NACAA's web site at www.4cleanair.org or call (202) 624-7864.

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Introduction

NACAA surveyed its members to collect information and examples from state and local air quality agencies of how a reduction of approximately 30 percent in federal grants would affect their programs. NACAA selected the 30-percent cut based on an EPA internal memorandum that was published on March 21, 2017.³ The 30-percent figure was reaffirmed on Friday, May 19 when NACAA obtained a copy of the President's FY 2018 EPA budget request. The information in this report is intended to illustrate the real-world adverse impacts of such budget cuts. While state and local air pollution control agencies have not yet received detailed information about the budget or had the time to conduct full-scale analyses of the specific effects of the projected grant reductions on their programs, the information NACAA collected nevertheless offers a sense of the damaging impacts they would expect.

The information in this report reflects input from 31 state and local air quality agencies. These agencies range in size from small to large and serve areas with a variety of air pollution levels and complexities. The report includes summaries of their responses to various questions, as well as excerpts from the surveys that provide agency responses "In Their Own Words." The details provided in this report are not attributed to any specific state or local agency, since several noted that they could provide more complete information if their specific responses were not identified.

The results of the survey reveal that reductions in federal grants to state and local air pollution control agencies of the level being proposed would be devastating to these programs, which are currently underfunded and have already had to take steps in recent years to adjust to shrinking budgets. Such reductions would have an adverse impact on their ability to obtain clean air and maintain the air quality improvements that have already been accomplished.

How Do State and Local Air Quality Agencies Use Federal Grants?

The Clean Air Act calls for federal funding for state and local air pollution control agencies to implement programs "for the prevention and control of air pollution," among other things. There are many critical responsibilities that state and local air quality

³ On March 21, 2017, information regarding the Administration's proposed FY 2018 budget for the U.S. Environmental Protection Agency (EPA) was released. While it did not include all the details of the proposal, it indicated that state and local grants under Sections 103 and 105 of the Clean Air Act would be reduced by 31 percent. The memorandum is available here: http://www.4cleanair.org/sites/default/files/Documents/EPA Memo FY 2018 Budget March 21 2017.p

agencies must carry out under the Clean Air Act to implement a variety of essential programmatic responsibilities to obtain and maintain healthful air quality. These include not only new efforts, but also ongoing activities that constitute the "core" of their clean air activities and the day-to-day responsibilities that are the foundation of their programs.

Federal grants are not the only source of funding for state and local air quality programs, but they are a very essential one for many agencies (other sources may include state and local funding and different types of fees). Section 105 of the Clean Air Act authorizes the federal government to provide grants for up to 60 percent of the cost of state and local air programs and calls for states and localities to provide a 40-percent match. However, in reality, state and local air agencies provide over three-fourths of their budgets (not including permit fees under the federal Title V program). Section 103 grants, which have been used in recent years for the fine particulate matter monitoring program, among other things, do not need to be matched by the recipients.

For many years, state and local air pollution control agencies have struggled with insufficient resources and have done what they could to fill in the gaps. However, due to economic hardships, states and localities increasingly rely on federal grants provided by the Clean Air Act. Exacerbating the situation is the fact that federal grants have decreased by nearly 17 percent in purchasing power since 2000 due to inflation.

NACAA asked state and local air pollution control agencies for specific examples of the types of activities and programs for which they use their federal grants. They indicated they use them for a variety of critical activities and programs.

Section 105

Section 105 grants fund new efforts and the "base" or "core" air program efforts. These include many resource-intensive and time-consuming activities. One important function of state and local air quality agencies is to develop, amend and put into effect their State Implementation Plans (SIPs) for various pollutants, including ozone, particulate matter, carbon monoxide, sulfur dioxide, nitrogen oxides. The SIP-development efforts include numerous steps, such as crafting supporting technical information; consulting with transportation and other governmental officials; involving stakeholders; seeking public comment; drafting, revising and submitting proposed and/or final SIPs; making equivalency demonstrations; developing delegation requests; implementing supporting state or local regulations; and a variety of other activities. In addition to the SIP-development efforts, Section 105 grants support a host of activities, including the following:

- · personnel expenses;
- issuance of permits to non-Title V sources, including minor sources, construction permits, permits to operate and others;
- · inspections and stack tests;
- · compliance assistance;

- · enforcement;
- · modeling;
- · monitoring (both ambient and source-specific);
- · analysis and quality assurance/control of monitoring samples and data;
- · data entry;
- submission of reports and information to EPA;
- · development of emission inventories;
- implementation of delegated federal programs for hazardous air pollutants (toxics), including for Maximum Achievable Control Technology (MACT) and area sources;
- training;
- travel expenses (especially critical for large states);
- · development of regulations;
- · smoke management;
- · asbestos programs, including inspections;
- · open burning programs;
- · fugitive dust measures;
- complaint response (24/7);
- public outreach and education;
- · air quality forecasting;
- · implementation of other federal programs; and
- · administrative support, including computer support and vehicles

Section 103

Agencies reported that they use Section 103 funds primarily for efforts related to the fine particulate matter (PM $_{2.5}$) monitoring program, including operating monitors; collecting, quality controlling/assuring, analyzing and submitting the data to EPA; maintaining, servicing and repairing the monitoring equipment and sites; operating, maintaining, servicing and repairing the labs that support the PM $_{2.5}$ network; purchasing monitoring equipment; paying personnel to operate the monitoring program; and training staff

State and Local Air Agencies – In Their Own Words:

"Section 105 grant funds are explicitly dedicated to personnel costs. With federal funding being level for so many years, combined with increased personnel costs, no other expenses are charged to this grant....FY17 funding...will cover approximately 31.5% of the total FTE expenditures, which is approximately 21.4% of the total budget expenditures."

"The Section 105 grant funds are critical for the agency to be able to carry out regulatory functions that are not fee based."

"We directly implement air quality programs that improve public health through monitoring, permitting, and enforcement. We provide a level playing field for regulated entities while assuring clean air for the citizens we serve."

"The Section 105 grant funds are critical for the agency to be able to carry out regulatory functions that are not fee based."

"Section 103 grant funds are applied to PM2.5 monitoring only....FY17 funding only covers 46% of one (1) full time employee (FTE). This illustrates the difficulty air agencies are already facing with inadequate federal funding."

"The funding is used for the personnel and equipment needed to monitor the ambient air in accordance with CFR minimum requirements. It varies from year to year depending on the equipment needs, but on an annual basis we spend 50-60% of the funding for personnel to operate the equipment and the remainder goes to purchase the equipment and parts needed for maintenance."

"This funding does not fully cover all air monitoring activities."

"This monitoring site provides important air quality data as background information and concerning pollutants coming to the continental United States from places as far away as China."

How Have Budget Cuts and Lack of Sufficient Funding Affected State and Local Air Quality Programs?

For many years, state and local air quality agencies have struggled with insufficient resources, budget cuts and the dwindling purchasing power of stagnant federal grants (i.e., federal grants have decreased by nearly 17 percent in purchasing power since 2000, due to inflation). While they have done their best to address these challenges, there have been negative impacts resulting from these reductions. Additional cuts to federal grants will only exacerbate these issues.

State and local agencies provided information about the measures they have already taken in the last five to seven years to address their funding shortfalls and the impacts of these struggles on their programs. Many of these examples of actions they took or the effect they had were identified by multiple, and in some cases nearly all, respondents:

- increased permitting and other fees, sometimes significantly (although agencies are prohibited from using Title V fees for many air quality program activities);
- experienced an increasing permit backlog;
- decreased the monitoring program, including reducing the number of monitoring sites (sometimes in spite of public requests for more monitoring);
- delayed purchase and replacement of equipment;
- · reduced laboratory capacity, including the elimination of analytical capabilities;
- · sought additional funds from the legislature;
- reduced staff, delayed hiring or did not fill vacant positions. Lower staffing levels create delays and difficulty in completing work and sometimes require hiring outside contractors to perform tasks;
- eliminated staff raises (leading to more staff turnover and difficulty in training new employees);
- · decreased staff benefits;
- cut training programs for staff;
- reduced staff travel;
- cross-trained staff to be more flexible (able to do more than one function);
- reduced inspections to the bare minimum (in both thoroughness and/or number);
- eliminated or significantly reduced programs, especially non-regulatory programs such as radon and indoor air quality;
- · returned delegation of programs to EPA;
- · cut public outreach and education;
- struggled to meet timeframes, resulting in some late submittals to EPA;
- streamlined permitting:
- · eliminated review or submittal of input on proposed regulations;
- · reorganized and consolidated offices; and
- relocated office space.

State and Local Air Agencies – In Their Own Words:

"If you cut back on enforcement programs, such as inspections and compliance assistance, your regulated community tends to be out of compliance more of the time. This can result in increased emissions which affect the health of your citizens. Less public education and outreach results in the public being less informed and less supportive of air quality programs and emission reduction strategies. If construction permits are not issued quickly you can lose the support of the regulated community. Our local program has historically had a lot of industry support because we have been able to issue permits timely, which helps sources be competitive. [We] once had four permit writers and now we have only two, which makes it more difficult to get permits out quickly during upswings in business activity."

"We have been forced to cut programs—sunset Stage 2 vapor recovery, returned delegation of asbestos NESHAP, air toxics, downsized monitoring to federal minimum allowed. Permits are slower, enforcement is down. Increased permit applicability thresholds, do permits by rule, and eliminate state only programs—noise, indirect sources, etc. Looking at other delegations to return. Cut all outreach/education."

"Compliance has already reduced the number of required inspections to the minimum required for our grant commitments....In addition, we have not been able to observe as many third party stack testing functions and it is taking longer to review stack testing reports, facilities ACC reports and SAM reports. In addition, we have seen an increase in the number of complaints from citizens which have become increasingly more difficult to investigate in a timely manner."

"[P]rogram continues to experience rising costs, such as an 81% increase in employee health insurance expenses absorbed by the program over the past 5 years. As such...cannot continue to provide the same measure of service. If there are further reductions in federal funding, there will be a corresponding reduction in services. It is unreasonable to ask States to further supplement their programs with additional State funds. In recent years [the agency] increased [its] level of match (increasing its Maintenance of Effort (MOE)) to compensate for rising costs or reduced federal funding, essentially living up to its end of the bargain."

"[We are] insufficiently staffed to assure citizens are protected from asbestos. Asbestos is a carcinogen and was widely used in buildings for fireproofing, thermal and acoustical insulation, condensation control, and decoration. The demolition and renovation of buildings has the potential to release asbestos fibers into the air....Our inspection target is 15% of the notifications. Our current staffing of 5 FTEs is only able to inspect 8% of the structures. This inability to verify compliance places the public directly at risk."

"25 percent reduction in technical staff since 2014; 20 percent reduction in nonpersonnel costs; 16 percent reduction in administration personnel costs (comparing 2012 to 2017); Reduced response to complaints; Eliminated air quality education programs"

"Reduced staff 12%; Reduced training; Vehicles have not been purchased (When a vehicle is no longer repairable, we eliminate the vehicle, but do not replace it.); Computers and software have not been upgraded; Reduced number of cell phones"

"Due to current resource constraints, minor sources are only inspected when a complaint is made, even those sources subject to the Reasonably Achievable Control Technologies (RACT) included in the...SIP."

How Would a 30-Percent Budget Cut Affect State and Local Agencies' Ability to Meet Federally Mandated Responsibilities?

The FY 2018 budget proposal calls for a reduction of 30 percent (from current levels) in Sections 103 and 105 grants. Nationally, this would reduce federal air quality grants from \$227.8 million to \$159.5 million. State and local air agencies provided input on the impacts of a further reduction of approximately 30 percent in federal grants on their ability to meet their federally mandated responsibilities, including the protection of public health and welfare. Nearly every respondent reported that cuts of this magnitude would severely curtail the benefits the agencies provide to the public. These include not only to the general public, with respect to decreasing air pollution, maintaining clean air and generally protecting public health, but also to the regulated community, in terms of permitting, compliance assistance and other services.

The list of ways in which a 30-percent reduction would affect state and local air pollution control programs is long and varied, affecting nearly every function the agencies carry out. Some of these programs would be reduced to the minimum levels required or, in certain cases, less. Among the programs and activities that would be reduced and/or eliminated, identified by numerous agencies, are the following:

- · staffing levels;
- staff training;
- ambient monitoring;
- source inspections;
- · permit review and issuance;
- compliance assistance and enforcement efforts for major and minor sources;
- · analysis of data and reports;
- maintenance and replacement of equipment, including monitoring and lab equipment;
- asbestos programs;
- · complaint investigations and response; and
- · environmental justice

The impacts of these reductions that the respondents identified are also far reaching. Numerous agencies noted that they would be operating at a bare minimum level and that the services they provide would be limited or even eliminated. For example, several stated that their ability to review and issue permits in a timely fashion would suffer, including going beyond the timelines required by federal regulations. They would also find it difficult, and in some cases impossible, to continue to provide the public with the timely air quality information to which they are entitled. The state and local agencies' ability to develop air quality plans, including State Implementation Plans, would be hampered by lack of staff and resources. Some agencies indicated they would possibly have to return programs to EPA (see subsequent question). Perhaps most importantly, efforts to obtain healthful air quality and maintain clean air would suffer as a result of these resource constraints on their programs.

Many respondents noted that a 30-percent cut would result in a loss of staff. This would have a lasting impact on the future of air programs in this country. In many cases, the staff that would be eliminated would include the more junior employees. In the words of one respondent, "How are we to sustain an air program in light of coming retirements when there are no mid-level or entry-level staff to take their places? Before proceeding with these reductions, someone needs to answer this question." The fact is, it takes years to train staff to be permit writers, conduct inspections, carry out enforcement, conduct monitoring and modeling and do all the other technical tasks within an air quality agency. According to one respondent: A reduction "will not only reduce our ability to protect human health for the years that funding is low, but also for years after the funding is restored."

Finally, some smaller local air quality agencies noted that they may not be able to withstand a 30-percent reduction in federal grants and could be in danger of dissolving.

This would be a loss to the local population, including the regulated community that generally prefers working with their local agencies that understand their facilities better than the state or EPA.

State and Local Air Agencies – In Their Own Words:

"A cut in our federal grant of 30 percent would impose serious and adverse impacts on our individual state and collective ability to effectively run our air pollution control programs. There would very likely be many more people in our state getting sick and possibly dying as a result of these budget cuts."

"Because we are at the federal minimum for our air monitoring network and unable to fully meet our planning, inventory, and asbestos compliance requirements, a reduction of 31% would be devastating. We clearly would be unable to meet the federally-mandated responsibilities."

"Monitoring networks would be reduced and the information provided to citizens would no longer exist."

"Our current level of service will be significantly reduced...annual inspections of minor sources will most likely be extended to the federal requirement of once every five years. The level of public health protection currently provided will definitely be reduced to reflect the impacts of the budget cuts."

"Without question, a cut of 31 percent to the already-reduced funding levels would devastate our program. We currently meet or exceed all timeliness goals in our permitting and enforcement programs, and maintain our extensive monitoring network on a 24/7 basis. Under the requested funding reductions, we would be forced to cut our staffing by at least one-third. That really means that at least twelve air quality professionals who have devoted their lives to protecting public health would suddenly be unemployed. ... a reduction in staffing along the proposed lines would significantly delay the issuance of permits for new construction."

"This size of a reduction could require the shutdown of five of our eight PM2.5 monitoring sites resulting in our region being out of compliance with the Code of Federal Regulations....A 31 percent reduction would reduce our Section 105 funding by approximately \$191,000. This would greatly impact our ability to [p]repare air permits in a timely manner resulting in delays to businesses expanding their existing operations or constructing new facilities. There would be an increase in the number of permits not being processed within the 180 day statutory deadline."

"Depending how bad the cuts end up being, we'll be forced to reduce staff significantly. Without sufficient staff, we'd be forced to: Discontinue the NCore monitoring site altogether and give it back to the state or EPA; No longer be able to replace equipment or fix equipment as it breaks resulting in a loss of monitoring data for designation purposes; increased backlog of permits; increased time to get permits issued; little to no enforcement ability; elimination of indoor air and radon program; reduction in compliance assistance for smaller facilities; no facility inspections beyond what is required by CMS policy, if we can meet that; no EIS/NATA data review; reduce or eliminate stack testing; Resources would be shifted to higher priority issues and facilities (i.e. just putting out the fires); Thoroughness of inspections would decrease; inspections would become more of a paperwork exercise."

"The state and local funding cuts combined with the proposed 30% federal funding cut will result in about a 72% reduction in [our] overall budget. This will significantly impact [our] ability to be here at all, and if we are still here, it will be at a 60-70% decreased staffing level leaving us with 7-10 FTEs to manage a 6 county area. At this level, we will not be able to meet the core requirements of the state contract and federal grants. This includes – permitting, inspections, compliance assistance, asbestos program, complaint investigation, air quality forecasting, pollen/mold data collection, ambient air monitoring, which will all likely result in [our] losing the state contract and federal grants we've been awarded for 45+ years."

"Enforcement would be reduced to only the most serious cases - Violations may not be detected early because there will be less report reviews, inspections, stack tests, and complaint response."

"Eliminate all education/outreach. Return of some programs to EPA."

"Our program is bare bones now and most of the budget supports staff salaries. A 31% cut would amount to a cut of \$123,628 which is close to being two staff positions. If we had to cut one or two positions we could not meet the current requirements of our contract with the state."

"Valid air quality data is necessary to demonstrate [our[compliance with the ambient air quality standards; for evaluating the impacts of air pollution sources to ensure the air quality standards are met; and for use in making air quality and permitting decisions in the protection of public health and welfare. A reduction of federal funds may result in an air quality monitoring network that does not meet federal requirements."

"The federal grants fund personnel that work on the development of plans (e.g. state implementation plans), strategies, rules, and program revisions necessary to implement the air program and the provisions of the Clean Air Act. Lack of federal funding will likely result in missing federally mandated submittal deadlines."

"Such a reduction would likely result in a need to eliminate at least 5 of 15 full-time positions and would require a corresponding reduction in [our] Ambient Air Monitoring network including the shutdown of at least 4 monitoring sites. Such shutdowns would impact our ability to accurately predict "Air Quality Action Days" and warn the public of pending poor air quality within the state. In addition, such a cut would likely impact our ability to meet federal air quality planning requirements such as rule development and SIP development and submittal in response to federal requirements."

"We have many programs and activities that we already perform pro bono for EPA. It is likely that we would focus less on cooperating with EPA directions that do not align with State and Local objectives or do not provide direct benefit to our region. This would result in a fractured air quality program in which areas that are capable of providing services to their residents would do so, while those who cannot would not see the benefits that progressive agencies are able to achieve."

"The anticipated \$1 million additional reduction in revenue would significantly impact federally-mandated responsibilities. Although the exact impact is yet to be examined and determined, likely outcomes would include:

- A reduction in the number of ambient monitoring stations. These stations are needed to verify compliance with NAAQS. Those that remain operational could only do so while equipment remains operational. As equipment fails, they would be taken off-line and not replaced.
- The division would struggle to make payroll, and therefore select staff would need to be relocated to other Divisions/Departments within the State. This will likely necessitate elimination of additional programs within the Division. Because the Division operates with program functions that are staffed with one level of expertise, placement of staff to other Divisions or Departments will eliminate that capability within the Division"

"It would limit or eliminate our ability to do special monitoring studies requested by the public and needed to address questions about local air quality impacts."

"As EPA's budget is cut, State and local agencies that are able to continue to improve air quality will be less likely to share their data with EPA. The less that data is shared, the less efficient air quality agencies will become as programs and activities are "reinvented" and lessons learned not shared. This would not serve the public interest. In addition, industries would have a much more complex regulatory structure in which to operate, as State and local agencies put in place regulations that may change from area to area, or concentrate in areas without regulations degrading air quality in pockets of the nation. Those pockets would likely suffer more negative health outcomes and suffer other disproportionate impacts."

"These cuts ignore reality; because we still have to meet all the existing federal requirements, even the ones the new administration doesn't like. When we fail, due to a lack of resources, it will be local taxpayers who bear the burden of paying environmental groups' legal fees."

Could States and Localities Make Up for Reduced Federal Grants?

As reported above, state and local governments already provide significant funds for air pollution programs. While the Clean Air Act envisions the federal share of the cost of state and local air programs to be 60 percent, with the state and local agencies providing a 40-percent match, the reality is that state and local air agencies provide over three-fourths of their budgets (not including permit fees under the federal Title V program).

NACAA asked the members to what extent they might be able to make up for the reductions in federal grants through additional state or local appropriations, general funds, grants or other contributions. Nearly every respondent had a similar response: it is highly likely (or even a certainty) that additional funds from the state or local governments will NOT be forthcoming to make up for additional federal grant reductions. Several agencies noted that they could consider increasing fees to address the shortfall, but that gaining approval for fee increases is unlikely as well. Additionally, fees collected under Title V of the Clean Air Act may be used only for costs related to the permitting program and are prohibited to support activities eligible for federal Section 105 grants.

State and Local Air Agencies – In Their Own Words:

"The Air Program has not received any state funding in over 20 years. Permit processing fees have doubled in the last 5 years. NO additional funding would be anticipated."

"Our organization already provides additional funding since federal and state dollars are not enough to operate the required programs. Our organization has increased its percent of local contribution by 21% (comparing percent of local dollars in 2017 to the average of 2013 – 2016). We do not have the additional local resources to make up for the proposed reductions indefinitely."

"The Clean Air Branch could potentially seek to even further raise permit application and annual fees charged to permitted sources to try and make up for losses in federal funding. However, further raising of fees is not a solution to this problem as such a fee increase would have a significant negative impact on [our] businesses and [our] economy."

"We are currently taxed/fee to the limit. State and local sources have no capabilities to take on more taxes/fees."

"It is unlikely that we would be able to make more adjustments in our fees collected from regulated facilities, and we would be competing with other state agency programs to request additional state appropriations."

"We have no ability to ask the state for additional funding, since we expect funds to be cut by the state. This will additionally hamper our ability to carry out state mandated air quality regulations. We just raised the per capita assessment fee to cities and counties in our region and can't ask for another large fee increase. We raise fees charged to business and the assessment fee by the CPI to try to keep up with inflation. Much of our counties and cities are still recovering from the recession and can't increase funding to our agency due to their own dire financial situation."

"The Division has very limited ability to make up for these reductions. Our funding source mix includes: General funds, Federal Grants, Permit Fees, Regional Greenhouse Gas, and Department of Transportation. We are facing similar pressures with general fund cuts. Further, we do not anticipate that our permit holders will support an increase in their fees to supplement this federal reduction. In fact, due to significant emission reductions in this sector, the customer group is expecting the Division to reduce fees for services rendered. Lastly the EPA established guidelines for allowable activities that can be charged to permit holders. Department of Transportation and greenhouse gas funding offer the only opportunities for supplemental support."

Would State and Local Agencies Turn Programs Back to EPA?

If a state or local air quality agency is unable to implement Clean Air Act requirements, it may be forced to turn some of its important work back to the federal government. As local communities, including many regulated entities, generally prefer working with their local and state agencies (as opposed to EPA), the return of responsibilities to the federal government would be a loss.

NACAA asked its members if a cut of approximately 30 percent in federal grants would result in their agencies considering or being forced to turn air quality work back to EPA in whole or in part. Most said they foresee having to turn programs back to the state (in the case of a local agency) or EPA if there are steep cuts in grants. Some indicated that it is difficult to conduct an analysis without knowing the full impact of projected cuts, but that turning programs back to EPA is definitely something they would have to contemplate if the projected cuts materialize. Specifically, monitoring is a program that multiple agencies identified as one they may have to return to EPA.

Respondents noted that EPA is unlikely to be able to carry out the work the agencies may return to them, especially if EPA's budget is subject to the proposed sharp decreases as well. Additionally, EPA would not be able to perform the state and local agencies' functions at the same cost that state and local agencies do.

State and Local Air Agencies – In Their Own Words:

"Cutting the 103 grant by 31% would possibly result in the loss of three staff members in the air quality laboratory who are needed to operate our ambient air quality monitoring system. Significant cuts to 103 funding could result in the state being forced to turn over maintenance and operation of the ambient air quality monitoring network to EPA."

"Currently evaluating what to return to EPA based on just state cuts and attrition."

"Yes, perhaps. This is a question states ask themselves every year as federal funding declines. However, [we] would much rather serve our citizens than have EPA do it, but we can't continue to do that if federal funding continues to be cut."

"If a federal budget passes that mandates reductions, we will need to evaluate how we will reduce our efforts accordingly. This may mean returning specific programs and/or reducing our efforts in other programs. With the biggest expenditures related to air monitoring, reduction in this area would likely be considered first."

"Would have to be negotiated with EPA Region; but if there is an X% reduction in the grant, we would expect EPA to pick up X% of the duties."

"Absolutely, we would look at ALL air quality regulatory obligations and likely could not do everything that was expected of us. Exactly what program areas would be returned are not known at this time."

"We have not fully analyzed what we would cut if the proposed reductions were enacted. Having said that, if the reductions required the divestment of monitors, the monitors still need to be in operation per CFR, so US EPA would have to take on that operation. It would be difficult for US EPA to run the monitors for the same cost that we operate them. Additionally, US EPA may have to take on facility inspections."

"We'd no longer do any air toxics work."

"It actually could result in this happening....[we] would have to give up parts of the program that make us valuable to the community. If EPA receives the proposed cuts to their budget they will be in no position to take up any slack for state or local air programs."

Senator Carper. Again, we thank you all for being with us today. Especially thank your families. Annie, I would just say that your children have been very well behaved and your husband unusually well behaved.

Ms. CAPUTO. Thank you.

[Laughter.]

Senator CARPER. We applaud them all.

Thank you very much.

And let me just say to your mom, Mr. Wright, David, Ms. Wright, my mom and her mom were born on the same day. Same day, August 18th. I always called my mom on her birthday, but I always call my mom on my birthday, too, which is January 23rd, just to thank her for bringing me into the world. Those are some of the most memorable conversations I think I have ever had.

Mr. Wright. I agree.

Senator CARPER. Thank you.

I want to thank your mom for having your back today.

Mr. WRIGHT. She has always had my back. I brought her as my body guard today.

Senator Inhofe. Well, let me just make a comment.

I do agree with a couple of the things that my good friend, Senator Carper, has said, and I disagree with some, obviously. One of the things I have learned, and we talked about this a couple hours ago, was the first subcommittee that I chaired was 1996, and it was this subcommittee, and the subcommittee, at that time, was relieved that they were actually going to get oversight. You don't expect that, really, from a bureaucracy. But they had had no oversight for 4 years, so they really didn't have any direction. It was as if nobody cared and no one was looking.

Right now it is a different environment altogether. I think people realize that this kind of resistance to nuclear energy that has been out there has been overcome to a great extent. It is going to have to be part of the mix. When I have said all of the above, it has always include that. By the way, we do have some deadlines that we have to meet so that we will be able to continue our operations.

Is it all right if I go ahead with our final remarks?

Well, if there are any more questions for today, members may submit follow up written questions for the record. They are called QFRs. We are not talking about 1,600 like Pruitt had to go through, but questions for Ms. Svinicki by the close of business today, Tuesday, the 13th of June. Ms. Svinicki should respond to those questions by close of business tomorrow, Wednesday, June 14th.

With the agreement of Ranking Member Carper, I am expediting the QFR process regarding Ms. Svinicki's nomination because the Committee will vote on her nomination this Thursday. By reporting her quickly, it is our hope that we can expedite her confirmation through the full Senate so that the Nuclear Regulatory Commission does not lose its quorum when her current term expires at the end of June.

Senator CARPER. Mr. Chairman, just for clarification, how long would she have to respond?

Senator Inhofe. I am going to go back and reread this, because this was an agreement that the Chairman that I am sitting in for right now came to.

Senator CARPER. Our staff says 1 day, so that would be like noon tomorrow. Close of business tomorrow. OK, we are fine with that.

Senator INHOFE. It is my understanding that was an agreement that was had.

Senator CARPER. Sounds good.

Senator Inhofe. Members may also submit follow up questions, follow up written QFRs for Ms. Caputo, Mr. Wright, and Ms. Bodine by close of business this Thursday, June 15th. The nominees should respond to those questions by close of business the following Thursday, June 22nd.

All right, I want to thank the nominees for their time and their

testimony today, and we are adjourned.

[Whereupon, at 11:50 a.m. the Committee was adjourned.]

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