AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

S. HRG. 115–325; Volume 1

OVERSIGHT HEARING TO RECEIVE TESTIMONY FROM ENVIRONMENTAL PROTECTION AGENCY ADMINISTRATOR SCOTT PRUITT

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

JANUARY 30, 2018

Volume 1

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

Available via the World Wide Web: http://www.govinfo.gov

OVERSIGHT HEARING TO RECEIVE TESTIMONY FROM ENVIRONMENTAL PROTECTION AGENCY ADMINISTRATOR SCOTT PRUITT—VOLUME 1

S. HRG. 115–325; Volume 1

OVERSIGHT HEARING TO RECEIVE TESTIMONY FROM ENVIRONMENTAL PROTECTION AGENCY ADMINISTRATOR SCOTT PRUITT

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

JANUARY 30, 2018

Volume 1

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

Available via the World Wide Web: http://www.govinfo.gov

U.S. GOVERNMENT PUBLISHING OFFICE

30–599 PDF WASHINGTON : 2018

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ONE HUNDRED FIFTEENTH CONGRESS
SECOND SESSION

JOHN BARRASSO, Wyoming, *Chairman*

JAMES M. INHOFE, Oklahoma
SHELLEY MOORE CAPITO, West Virginia
JOHN BOOZMAN, Arkansas
ROGER WICKER, Mississippi
DEB FISCHER, Nebraska
JERRY MORAN, Kansas
MIKE ROUNDS, South Dakota
JONI ERNST, Iowa
DAN SULLIVAN, Alaska
RICHARD SHELBY, Alabama

THOMAS R. CARPER, Delaware, *Ranking Member*
BENJAMIN L. CARDIN, Maryland
BERNARD SANDERS, Vermont
SHELDON WHITEHOUSE, Rhode Island
JEFF MERKLEY, Oregon
KIRSTEN GILLIBRAND, New York
CORY A. BOOKER, New Jersey
EDWARD J. MARKEY, Massachusetts
TAMMY DUCKWORTH, Illinois
CHRIS VAN HOLLEN, Maryland

RICHARD M. RUSSELL, *Majority Staff Director*
GABRIELLE BATKIN, *Minority Staff Director*

C O N T E N T S

Page

JANUARY 30, 2018

VOLUME 1

OPENING STATEMENTS

Barrasso, Hon. John, U.S. Senator from the State of Wyoming 1
Carper, Hon. Thomas R., U.S. Senator from the State of Delaware 3

WITNESS

Pruitt, Hon. Scott, Administrator, U.S. Environmental Protection Agency 6
Prepared statement 9
Responses to additional questions from:
Senator Barrasso 14
Senator Carper 21
Senator Booker 48
Response to an additional question from Senator Boozman 55
Responses to additional questions from:
Senator Ernst 56
Senator Fischer 59
Senator Markey 61
Senator Merkley 69
Senator Sanders 78
Senator Van Hollen 83
Response to an additional question from Senator Wicker 84

ADDITIONAL MATERIAL

From Senator Barrasso 447
From Senator Carper:
Endangerment Finding and Climate Science 594
Transparency 641

VOLUME 2

ADDITIONAL MATERIAL

From Senator Carper (continued):
EPA Workforce Reductions 742
EPA Budget Cuts 796
Pruitt Expenditures 838
EPA Politicizing Grants 862
Pruitt Travel 883
Deregulation and Delays 926
Air 992
Chemicals 1042
Hazardous Waste 1093
Water 1097
Conflicts of Interest 1111
EPA Scientists 1206
GOP Criticism 1257
Climate 1280

Page

—Continued
Environmental Justice 1298
Pruitt-Style Enforcement 1308
General Materials 1361
Letter to Hon. Scott Pruitt, Administrator, U.S. Environmental Protection Agency, from John Carney, Governor, State of Delaware, January 30, 2018 . 1466

OVERSIGHT HEARING TO RECEIVE TESTIMONY FROM ENVIRONMENTAL PROTECTION AGENCY ADMINISTRATOR SCOTT PRUITT

TUESDAY, JANUARY 30, 2018

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

The Committee met, pursuant to notice, at 10:05 a.m. in room 406, Dirksen Senate Office Building, Hon. John Barrasso (Chairman of the Committee) presiding.

Present: Senators Barrasso, Carper, Cardin, Booker, Markey, Duckworth, Whitehouse, Merkley, Gillibrand, Sanders, Van Hollen, Inhofe, Moran, Boozman, Rounds, Fischer, Sullivan, and Ernst.

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

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

We have quite a full house today. I welcome the audience.

This is a formal Senate hearing in order to allow the Committee to conduct its business, I am going to maintain decorum. That means if there is any disorder or demonstration by a member of the audience, that person causing the disruption will be escorted from the room by the Capitol Police.

First, I would like to welcome the Administrator of the Environmental Protection Agency, Hon. Scott Pruitt, to the Senate Environment and Public Works Committee for your testimony today.

With respect to today's hearing, we are going to abide by the Committee's 5 minute rule for length of member questions in the first round. Time permitting, we will also have a 2 minute second round of questions until 12:30, when Administrator Pruitt has to leave the building. Of course, members will also have the ability to submit written questions to Administrator Pruitt for the record.

Today's hearing is to examine the EPA's record to date after this first year of the Administration. The Environmental Protection Agency, under the leadership of Administrator Pruitt, has been doing the hard work of protecting the air we breathe, the water we drink, and the communities where our families live.

Administrator Pruitt has led the agency fairly. He has balanced the need to prioritize environmental protection with the desires of Americans to have thriving and economically sustainable communities.

His leadership of EPA is vastly different than that of the last two predecessors. Under the Obama administration, the agency had lost its way. In some very high profile cases, the EPA harmed the very communities it pledged to protect.

During the last Administration EPA administrators created broad and legally questionable new regulations that undermined the American people's faith in the agency. These regulations have done great damage to the livelihoods of our Nation's hardest working citizens. The regulatory rampage of the previous Administration has violated a fundamental principle of environmental stewardship to do no harm.

This failed environmental leadership has contributed to two of the worst Government created environmental disasters in decades: the Gold King Mine spill and the Flint, Michigan, water crisis. Those disasters hurt people—many from low income and minority communities, who can least afford it.

Under Administrator Pruitt's leadership, the EPA has taken a number of bold steps to protect the environment, while not harming local economies. Administrator Pruitt is a key leader of the President's de-regulatory agenda, including ending the war on coal. Scott Pruitt's policies at the helm of EPA likely have protected more jobs and promoted more job growth than any other EPA Administrator in history. He has done so while making significant environmental progress.

The American economy grew 2.4 million jobs since President Trump's election. This job growth happened in critical industries, like manufacturing and mining. When the Department of Commerce asked manufacturers at the beginning of 2017 which Federal Government regulations generated the greatest burdens, the answer was clear: the EPA. The top nine identified regulations that impact manufacturing are all EPA regulations. At the top of the list were the Waters of the U.S. Rule and the Clean Air Act Rule.

Administrator Pruitt is working to address these and other EPA rules. His commitment to revisit misguided policies is growing our economy in manufacturing, in mining, and across the board. Two prime examples are proposals to repeal the Clean Power Plan and the Waters of the U.S. Rule.

With regard to the Clean Power Plan, the prior Administration wanted to put coal out of business. Twenty-seven States challenged the Clean Power Plan because they saw what the EPA was doing. EPA, under Pruitt's leadership, is on the right track and getting that rule off the books.

As he undoes that rule, I appreciate the Administrator's desire to hear from those who would have been hurt the most. The Administration has already held a listening session in Senator Capito's home State of West Virginia. I look forward to welcoming the EPA to a listening session in Gillette, Wyoming, in March.

Another key way that Pruitt has put environmental policy on the right track is the EPA's withdrawal of the Waters of the U.S. Rule. The Obama administration's Waters of the U.S. Rule would have given EPA almost boundless authority to regulate what Americans can do on their property. This would have impacted farmers, ranchers, landowners, and businesses.

The EPA can and must redefine Waters of the U.S. in a way that makes common sense and respects the limits of the EPA's authority. This issue is a priority for my home State of Wyoming, as well as many other States.

The Administration's deregulatory approach is working. The White House Counsel on Economic Advisors reports that the unemployment rate for manufacturing workers is low, the lowest rate ever recorded. The facts also show that according to the last Energy Information Agency quarterly report, coal production in the west is 19.7 percent higher than the second quarter of 2016. In addition, the stock market is reaching record all time highs.

Administrator Pruitt has also made significant progress in protecting the environment and righting the wrongs of the past Administration. He has made it a priority to clean up America's most contaminated sites. He has held polluters accountable, even if it was his own agency that was responsible for the pollution.

Pruitt rightfully called the Obama administration's response to the EPA caused Animus River spill wrong. And he allowed for victims of the spill to refile their claims that had been denied by the previous Administration. Administrator Pruitt also allowed the city of Flint, Michigan, to have their $20 million loan forgiven so that money could be better used to protect the health and safety of its citizens. Pruitt stated, "Forgiving this city's debt will ensure that Flint will not need to resume payments on the loan, allowing progress toward updating Flint's water system to continue."

Administrator Pruitt, the reward for good work is often more work. I don't need to tell you that we have a lot more work left to do. Knowing that, on this Committee, we look forward to supporting your continued efforts.

So I would like to now ask Ranking Member Carper for his opening statement.

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

Senator CARPER. Thanks, Mr. Chairman. I want to thank you for finally getting this hearing on the books. Oversight is a critical part of our Committee's work. Regardless of which party is in power, I am glad that we finally have a chance to hear from Mr. Pruitt today.

Welcome.

Mr. Pruitt, it has been a while since you have been with us. Thank you for postponing your planned trip to Israel and Japan to facilitate your appearance before this Committee today for the first time in more than a year.

I have a friend who, when asked how he is doing, he says, "Compared to what?" Sometimes he says, "Compared to whom?"

What I would like to do is say, how about compared to your immediate predecessor? Gina McCarthy appeared before this Committee six times in 2 years. Six times in 2 years. Her predecessor, Lisa Jackson, appeared before us 14 times in 6 years. Fourteen times in 6 years. You could do better on this front. It is important that you do.

Today, we not only are going to hear from you about how things are going at EPA, we will also hear tonight from President Trump

about the current state of our Union. So it seems like an appropriate time to also take a look at the state of our environment. I understand that EPA has been highlighting its so-called first year achievements on posters around the agency. In fact, we have a copy of one of those posters here.

Let's take a closer look at what is being celebrated as achievements. First, EPA has moved to repeal the Clean Power Plan, but with no real replacement to fulfill the agency's legal obligations to protect Americans from carbon dioxide pollution, all while rolling back additional clean air protections. Similarly, EPA has moved to repeal the Clean Water Rule, but again, with no new plan to protect the drinking water sources on which 117 million Americans depend.

You have been touting the agency's work on contaminated Superfund sites by repeatedly taking credit for cleanups completed under President Obama's administration, all while proposing to cut the program by 30 percent. Thirty percent.

As part of the TSCA reforms that Congress passed in 2016, we gave EPA more authority to assure that chemicals being sold on the market are safe. That way, families can have confidence in the products that they use every day. Under your leadership, EPA has not used that authority, so American consumers still do not have the confidence that they deserve and that we intended.

Finally, EPA has moved to either repeal, reconsider, or delay at least 25 environmental and public health protections in the last year alone, which certainly does not create certainty for the entities that you regulate and that we represent.

Those are not achievements. Those are the exact opposite: a clear failure to act. The state of our environment is also fundamentally linked to the state of our climate. And what do we see in 2017 alone? Second hottest year on record, multiple Category 5 hurricanes resulting in more than $200 billion in damages and counting. Catastrophic fires in the West followed by deadly mudslides, severe droughts that have wreaked havoc on our crops, rising sea levels that threaten coastal communities and cause frequent flooding.

From Alaska to Delaware, from Maine to Miami, climate change is clearly affecting every corner of our country. Yet instead of spending time and resources trying to tackle what many of us believe is the greatest environmental challenge of our lifetime, this EPA—under your leadership, Mr. Pruitt—is waging a war on climate science.

This EPA has scrubbed its Web sites of non-partisan climate science data collected over decades. This EPA replaced science advisors who have worked on climate issues for years with individuals backed by industry. Doing nothing would be bad enough. The fact that this Administration seems to be actively working to discredit and hide the clear science is the height of irresponsibility.

For the past year we have heard you give responses to questions from members other congressional committees, and cable news hosts have asked you, and many of the so-called—I really think they are platitudes that you often use to repeat; they are not really answers.

So let me just run through some of your recurring responses now, so that we can actually get to real answers today. Mr. Pruitt, you

often say—these are your words—you often say that "rule of law matters." Well, Congress was very proscriptive when it wrote the Clean Air Act. The law sets timelines that EPA must use to determine our country is meeting Federal standards for harmful ozone pollution. But your EPA has chosen to continuously ignore and delay that very specific mandate from Congress, which leaves downwind States—like mine—and other vulnerable communities at risk indefinitely.

Mr. Pruitt, you say over and over again that process matters. Do you really think that verbally directing career staff at EPA to delete the inconvenient economic benefits of the Clean Water Rule is good rulemaking process? Do you? Do you think that ignoring the advice of EPA scientists helps us clean up our Nation's water? Do you?

You repeatedly insist that you are committed to cooperative federalism and that EPA "needs to work together with the States to better achieve outcomes." Yet this Administration has sought to zero out funding for critical State programs, like those to clean up the Great Lakes and the Chesapeake Bay. And your EPA has refused to allow States to work together to address harmful pollutants like ozone.

You like to tout that the U.S. is—your quote—"actually at pre-1994 levels with respect to our CO_2 footprint, thanks to innovation and technology." But that comment ignores the common sense and bipartisan regulations put in place over the last four decades to get us up to those pre-1994 levels. It did not happen by accident, Mr. Pruitt. Reducing carbon emissions is the result of smart vehicle emissions standards, clean air regulations, and our Federal efforts to incentivize investments in clean energy, including natural gas and renewables, most of which your EPA is now trying to weaken or repeal.

You also remind people that you are a former attorney general. You say that you "know what it means to prosecute folks." But under your leadership EPA has slowed actions against polluters. Though you have touted EPA's recent enforcement successes, saying EPA has collected billions of dollars in penalties during your time at the agency, you conveniently forgot to mention that more than 90 percent of those penalties are from cases prosecuted entirely by the Obama administration.

You say that you are "getting the agency back to basics." But actions like the one you took just last week—just last week—to reverse critical prosecutions against hazardous air pollutants show that your EPA is actually moving us backward—all the way back, in fact, to the early 1970s, when polluters were able to spew the most dangerous toxins—like mercury, lead, and arsenic—into the air we breathe and the water that we drink.

Perhaps the most egregious response we have heard you give repeatedly is when you claim, "President Obama said we had to choose between jobs and growth at the expense of the environment, or choose the environment at the expense of jobs. That is a false choice." That is your quote.

Mr. Pruitt, I have been saying that choosing between our economy and our environment is a false choice for most of my time as Governor and U.S. Senator. My colleagues here will testify to that.

Because I know, and our country's history has proven it to be true. I have easily said that hundreds of times.

You know who else famously said that very same thing hundreds, maybe even thousands of times? Well, it was Barack Obama. Time and time again he told us, "There will always be people in this country who say we have got to choose between clean air and clean water and a growing economy, between doing right by our environment and putting people back to work. That is a false choice." Whose words are those? Barack Obama. And he didn't just say it once. He said it hundreds of times.

But he wasn't just waxing poetic, as some do. Under the Obama administration, our country rebounded, if you will remember, from the worst economic recession since the Great Depression. We went on to add 16 million new jobs, all the while implementing landmark environmental protections and lowering energy costs at the meter and at the pump for consumers.

I don't say this lightly, Mr. Pruitt, but you are repeatedly misrepresenting the truth regarding President Obama's record. Surely we can disagree about policies; that is normal. But to take the very same words, the very same words that President Obama used on countless occasions, use them as your own and then claim that President Obama said the exact opposite is frankly galling. Stop doing it.

I will end with this. Mr. Pruitt, when you were sworn in as EPA Administrator, you took the very same oath of office that every member of this Committee has taken and that some of us have taken many times. You swore that you would well and faithfully discharge the duties of office on which you were about to enter.

Well, one of those duties is to be responsive to the co-equal branch of Government, which means showing up here more than once a year to answer our questions.

Today, Mr. Pruitt, please spare us the kinds of platitudes that you frequently use. Now that you are finally here, I want some real answers. My colleagues want real answers. I think the American people deserve real answers. We look forward to those answers, Mr. Pruitt.

Thank you, Mr. Chairman.

Senator BARRASSO. Thank you, Senator Carper.

We will now hear from Hon. Scott Pruitt, the Administrator of the Environmental Protection Agency.

I would like to remind you, Administrator, your full written testimony will be made part of the official hearing today. I look forward to hearing your testimony. Welcome to the Committee.

STATEMENT OF HON. SCOTT PRUITT, ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. PRUITT. Chairman Barrasso, Ranking Member Carper, members of the Committee, Senators, good to see you this morning. It has been too long, as was mentioned by Senator Carper, and I am looking forward to the exchange and the discussion today.

You know, as you know, I was confirmed by this Senate in mid-February of last year. As I began my journey at the agency I took the opportunity to spend time with the entire agency. I did in fact,

Senator Carper, mention three priorities by which we would govern and lead the agency.

The first was rule of law. And rule of law does matter. Rule of law is something that people take for granted, but as we administer the laws at the agency, the only power that we possess is the power that you give us. So as we execute our responsibilities in rulemaking, what you say in statute matters as we do our work. Because it provides certainty to the American people.

And second, as you have indicated, Senator Carper, is process. Process is often overlooked. Process matters in rulemaking, because of the decisions that we make involving stakeholders across the country, those that seek to offer comment as we make decisions.

So the EPA, the proposed rules that we adopt, the comments that we receive, responding to those comments on the record, then finalizing decisions in an informed way, is very, very important. One of the actions that I have taken as Administrator is to do away with the sue and settle practice that has gone on for years, not just at the EPA, but across executive branch agencies, where someone will sue the agency, and a decision will be made in a courtroom, and a consent decree will be entered, and the rulemaking process is bypassed entirely.

So process is something that we have emphasized over the last several months, and it is something that I believe is working as far as providing clarity and confidence to the American people.

Then third, as Senator Carper mentioned—and this is very important—is federalism principles. Statutes that you have passed here in this body, I think more so than others, cooperative federalism is at the heart of environmental stewardship. And so I have visited almost 30 States these past several months. And as we have visited stakeholders across the country, we have talked about Superfund, to the financial assurances rule in Minnesota, to the WOTUS rule in Utah, across the country, hearing from folks on how those rules impact them.

So we have taken seriously those principles of rule of law, process and federalism.

But as we look forward to 2018, I want you to know that there are some opportunities that we have to work together on some very important issues. The first I will mention to you is lead. One of the things that I think is terribly troubling is the lead in our drinking water. I believe that as we consider infrastructure in the first quarter of this year, as we head into the rest of 2018, investing in infrastructure changes to eradicate lead from our drinking water within the decade should be a goal of this body and I think a goal of the Administration. It is something I have mentioned to the President. The President is very supportive of that. And we look forward to working with you to declare a war on lead as it relates to our drinking water.

Second, abandoned mines across this country are a huge issue. We have hundreds of thousands of those across the country. We have private citizens, companies who have the expertise, the resources to clean up those abandoned mines, but there are liability issues that need to be addressed, as you are fully aware. We should work together to advance an initiative to make sure that we do all we can to clean up those abandoned mines across the country.

Superfund, you have mentioned, Senator Carper. I think one of the most tangible things we can do for our citizens with respect to environmental protection is to make decisions and get accountability with respect to our Superfund sites across the country. Just in the last several months, San Jacinto, Portland, and soon West Lake and St. Louis, Missouri—all sites that have been struggling for years—we are providing direction and leadership to ensure that we get answers and clean up those sites for remediation. It is about leadership and money. I look forward to working with you in that regard.

Now, Senator Carper, I would say to you as I close, I think one of the greatest challenges we have as a country as it relates to environmental issues is the attitude that environmental protection is prohibition. And I don't believe that. I don't believe environmental protection is putting up fences. I believe that we have been blessed as a country with tremendous natural resources that we can use to feed the world and power the world. And we should, as a country, choose to do that with stewardship principles in mind for future generations. We can do both. It is something we must embrace. And I hope that we do work together to achieve that.

I look forward to your questions today, and thank you, Mr. Chairman, for the opportunity to open with an opening comment. Thanks so much.

[The prepared statement of Mr. Pruitt follows:]

Scott Pruitt
Administrator
U.S. Environmental Protection Agency

On February 17, 2017, the United States Senate confirmed Scott Pruitt as the 14th Administrator of the U.S. Environmental Protection Agency.
Administrator Pruitt believes that promoting and protecting a strong and healthy environment is among the lifeblood priorities of the government, and that EPA is vital to that mission.

As Administrator, Mr. Pruitt's overarching goal is to lead EPA in a way that our future generations inherit a better and healthier environment as he works with the thousands of dedicated public servants at EPA who have devoted their careers to helping realize this shared vision, while faithfully administering environmental laws.
Most recently, Pruitt served as the Attorney General for Oklahoma. Almost immediately upon taking office, he worked with his Democratic counterpart in Arkansas to reach agreement to study the water quality of the Illinois River, which crosses the border between the two states and has been enjoyed by generations of Oklahomans. The Statement of Joint Principles provides for a best science study using EPA-approved methods, with both states agreeing, for the first time, to be bound by the outcome.

Also during his tenure as Oklahoma's Attorney General, Pruitt led an historic water rights settlement between Oklahoma, Oklahoma City and the Choctaw and Chickasaw Tribal Nations that preserved the ecosystems of scenic lakes and rivers on native lands. The agreement, which required Congressional approval, was enacted into Section 3608 of Public Law 114-322 and signed in December 2016. It provides a framework that fosters intergovernmental collaboration on significant water resource concerns with the settlement area, while at the same time protecting existing water rights and affirming the state's role in water rights permitting and administration. Water settlement cases can be lengthy, costly, divisive and disruptive; however under Pruitt's forward-thinking leadership, the process was hailed by all parties as one of commitment, hard work, perseverance and cooperation.

Pruitt became a national leader through a career of advocating to keep power in the hands of hard-working Americans. He has a proven track record of working with others – including industry, farmers, ranchers, landowners and small business owners - who want to do the right thing by the environment.

He has dedicated his career to creating policy that serves the people. He strongly believes that environmental law, policy and progress are all based on cooperation between the states, cooperation between the states and EPA, and cooperation between regulators and the public. As Attorney General for Oklahoma, he led the state's legal challenges against property rights intrusion, while protecting Oklahoma's natural resources and environment.

He is recognized as a national leader in the cause to restore the proper balance between the states and federal government, and he established Oklahoma's first federalism unit to combat unwarranted regulation and overreach by the federal government.
Before being elected attorney general, he served eight years in the Oklahoma State Senate where he was a leading voice for fiscal responsibility.

After earning his Bachelor's Degree from Georgetown College and graduating from the University of Tulsa College of Law, Pruitt went into private legal practice, specializing in constitutional law.

In addition to his life as a civil servant, Pruitt is a successful entrepreneur. As a former co-owner and managing general partner of Oklahoma City's Triple-A minor league baseball affiliate, the Oklahoma City Redhawks, Mr. Pruitt took over the team's marketing operations and helped the team become one of the minor league leaders in attendance and merchandise sales.
Pruitt is, first and foremost, a family man. He and Marlyn, his wife of 27 years, proudly raised their two children in Tulsa. Pruitt has made it a priority to pass on to his children the same principled family values with which he was raised.

Testimony of
Administrator Scott Pruitt
before
Senate Environment and Public Works Committee

January 30th, 2018

Good morning Chairman Barrasso, Ranking Member Carper and members of the committee. I appreciate the invitation to join you today to discuss the U.S. Environmental Protection Agency's (EPA) "Back to Basics" agenda.

Core Missions

Since my first day walking through the doors at EPA, my agenda and mission has been to bring the agency "back to basics." This agenda has three primary goals, which are to refocus the agency back to its core mission, restore power to the states through cooperative federalism, and lead the EPA through improved process and adhere strictly to the rule of law.

Pollution comes in many forms with myriad impacts on human health and the environment. With the goal of clean and safe air, water, and land for all Americans, Congress enacted a range of environmental statutes that spell out EPA's core responsibilities. Our nation has come a long way since the EPA was established in 1970. We have made great progress in making rivers and lakes safer for swimming and boating, reducing the smog that once clouded city skies, cleaning up lands that were once used as hidden chemical dumps, and providing American families greater access to information on the safety of chemicals used throughout our nation. Today we can see this enormous progress—yet there are important challenges left to tackle.

EPA under my direction, has established priorities for advancing progress over the next three years in each of its core mission areas—land, air, water—as well as chemicals. The Agency will focus on speeding the cleanup of toxic Superfund sites. We will work with our state partners to more rapidly review submissions of state implementation plans for attaining air quality standards, reducing harmful contaminants that can cause or exacerbate health issues. We will work to make water cleaner and safer by helping to update our nations aging infrastructure, both for drinking water as well as wastewater systems. Of significant importance, EPA's top priority for ensuring the safety of chemicals in the marketplace is the implementation of the new Frank R. Lautenberg Chemical Safety for the 21st Century Act, which modernizes the Toxic Substances and Control Act (TSCA) by creating new standards and processes for evaluating the safety of chemicals in the marketplace within specific deadlines. An act I know many of you on this committee worked so hard to pass. Our mission will be supported by strong compliance assurance and enforcement efforts in collaboration with our state and tribal partners, and by use of the best available science and research to address current and future environmental hazards, develop new approaches, and improve the foundation for making sound decisions

To address existing pollution and mitigate future environmental problems, the Agency will collaborate more efficiently and effectively with other federal agencies, states, sovereign tribal nations, local governments, communities, and other partners and stakeholders. EPA will enhance its direct implementation of federal environmental laws on Native American lands where tribes have not taken on program responsibility. With our partners, we will pay particular attention to vulnerable populations. Children and the elderly, for example, may be at significantly greater risk from elevated exposure or increased susceptibility to the harmful effects of environmental contaminants. There is a lot of hard work

ahead, and together with our partners, we will continue making progress in protecting human health and the environment.Cooperative Federalism

Cooperation and shared responsibility between states, tribes, and federal government is a bedrock in the environmental laws that Congress enacted.

More than 45 years after the creation of the EPA and the enactment of a number of broad federal environmental protection laws, most states, and to a lesser extent territories and tribes, are authorized to implement delegated federal environmental programs within their jurisdictions. Specifically, states have assumed more than 96 percent of the delegable authorities under existing federal law. Recognizing the congressionally intended responsibilities of our state, local and tribal partners, EPA must adapt and modernize our practices to reduce duplication of effort with authorized states and tailor oversight of delegated programs.

Positive environmental results are achieved through a sense of shared accountability. EPA understands that improvements to protecting human health and the environment cannot be achieved by any actor operating alone, only when the states and EPA, in conjunction with affected communities, work hand in hand with a spirit of trust, collaboration, and partnership.

Additionally, EPA recognizes that states and tribes have made advances in implementing environmental laws and programs. This Administration will undertake a series of initiatives to rethink and assess where we are and where we want to be with respect to joint governance. These initiatives will clarify the Agency's statutory roles and responsibilities and tailor state oversight to maximize our return on investment and reduce burden on states, while assuring continued progress in meeting environmental program requirements, as established by Congress.

We also recognize that meeting the needs of states, local governments, and communities, and achieving environmental improvements cannot be done in isolation from economic growth. Opportunities for prosperous economic growth and clean air, water, and land are lost without effective infrastructure investments that align with community needs, especially infrastructure investments that repair existing systems, support revitalization of existing communities, take advantage of existing roads, and lead to the cleanup and redevelopment of previously-used sites and buildings. EPA will play a role in supporting infrastructure investment by optimizing and aligning its relevant programs to catalyze other resources.

EPA needs to be a better partner to the states, which all have unique challenges and needs when it comes to meeting environmental goals. An important aspect of becoming a better partner is recognizing that a one-size-fits-all strategy to achieve environmental outcomes has not, and will not, work. For example, as the Agency continues the process of defining "Waters of the United States", I have traveled to nearly 30 states in order to get different perspectives, to hear from people about how this rule affects different parts of the country. During this process, I am thankful to have had the blessing of learning about the unique challenges faced by each region, and the one-size-fits-all mentality of the previous administration. This type of top-down regulation does not foster a cooperative relationship with the states that Congress intended in the Clean Water Act.

The Agency can also work to be a better partner through compliance assistance and compliance assurance. We will use a full set of compliance tools, such as compliance monitoring, electronic reporting, traditional enforcement, grants to states and tribes, and tribal capacity building, to work jointly with our co-regulators to protect human health and the environment. EPA will also respect the important role that state governors play in cooperative federalism and will seek their views and perspectives on compliance assistance and other opportunities to improve the EPA-state partnership. In addition, the Agency will work to strengthen intergovernmental consultation methods to engage stakeholders and hear diverse views on the impacts of prospective regulations.

Improved Processes and the Rule of Law

EPA will seek to improve its processes and reinvigorate the rule of law as it administers environmental regulations as Congress intended, and to refocus the Agency on its core statutory obligations. I am a firm believer that Federal agencies exist to administer laws passed by Congress, as intended. Along with faithfully following the Rule of Law, improving the processes by which EPA has operated will be crucial as we refocus the Agency.

For many years, outside the regulatory process, well-funded special interest groups have attempted to use lawsuits to force federal agencies – especially ours – to issue regulations that advance their priorities. At some point, this exercise referred to as "Sue-and-Settle" and the practice of acquiescence through consent decrees or settlement agreements, which were often crafted behind closed doors and without the transparency of the rulemaking process, became commonplace. This will not continue at EPA under my watch, which is why on October 16th of last year, I signed a memorandum ending the practice.

Additionally, gone are the days of routinely paying tens of thousands of dollars in attorney's fees to these groups with which we swiftly settle. Finally, my directive creates a transparent process in which impacted parties and states have a voice and creates more awareness for the general public.

As I mentioned before, and have championed since my time as an attorney general in Oklahoma, I am a firm believer that federal agencies exist to administer laws passed by Congress, in accordance with the will of this body. Compliance with the law is not just about enforcement—it is about ensuring consistency and certainty for the regulated community, so it has a complete understanding of the impact of proposed actions on human health, the environment, and the economy, and a clear path and timeline to achieve that compliance. Policies and rules will reflect common sense, consistent with EPA's statutory authorities, and Americans will benefit from greater regulatory and economic certainty. EPA will enforce the rule of law in a timely manner and take strong action against those that choose to violate environmental laws affecting the public's health or the environment.

An important aspect of how EPA must now look at the rule of law is with respect to its own authorities under the law. We have begun the challenge of reversing an attitude and approach under the previous administration that one can simply reimagine authority under statutes. For far too long, the EPA pursued initiatives which exceeded the authority granted to it by Congress, or blantantly circumvented your authority all together. As an Agency, we must ensure that we are acting within the parameters which Congress has laid out for us.

Our actions must be consistent with the authority granted to us by Congress, and if that is exceeded than we will not be consistent with the Agency's mission.

Conclusion

We are committed to performing the work that is necessary to meet our mission of protecting human health and the environment. My goal is to work with all of you is doing what is best to ensure that we make a real difference in our communities across America

I look forward to answering your questions.

Senate Committee on Environment and Public Works
"Oversight Hearing to Receive Testimony from Environmental Protection Agency Administrator Scott Pruitt"
Questions for the Record for Administrator Scott Pruitt
January 30, 2018

Chairman Barrasso:

1. At the beginning of this Administration, prior to your confirmation, EPA alleged that Wyoming contributed to ozone problems in Douglas County, Colorado under the 2008 ozone National Ambient Air Quality Standards (NAAQS). To reach this conclusion, EPA applied a methodology designed for Eastern states.

   Western states have different topographies, higher altitudes, and different weather patterns than Eastern states. In addition, Western states have higher frequencies of wildfires than the East. Under EPA's "one-size-fits-all" model, EPA projected that a tiny amount of emissions would move from Wyoming to Colorado. EPA then imposed additional regulatory burdens on Wyoming. I raised my serious concerns and objections to EPA's action in a recent letter to you on January 19, 2018 (attached).

   In your oral testimony, you stated that EPA is evaluating challenges with international air transport. In a February 1, 2018 response to my letter from Bill Wehrum, Assistant Administrator for the Office of Air and Radiation (attached), he stated EPA plans to work with states "early this year to provide more information and flexibility as [states] look to address interstate transport issues under the 2015 ozone NAAQS." Will EPA also address any remaining interstate transport issues concerning other NAAQS, including the 2008 ozone NAAQS issue identified in my letter? If so, do you have an anticipated timeline for addressing these issues?

   On October 27, 2017, EPA issued a memorandum providing information to assist states' efforts to develop, supplement, or resubmit their "good neighbor" state implementation plans (SIP) for the 2008 ozone National Ambient Air Quality Standards (NAAQS). We noted in this memorandum that states may be able to rely on the modeling information conveyed with the memorandum as part of a demonstration of compliance with the good neighbor requirements. We believe this information will be helpful to any state working to resolve its 2008 good neighbor status, including Wyoming.

   On March 27, 2018, EPA issued a memo that includes EPA's air quality modeling data for ozone for the year 2023 including projected ozone concentrations at potential nonattainment and maintenance receptor sites for the 2015 ozone NAAQS and projected upwind state contribution data. States may use this information as they develop or review state implementation plans to assure that emissions within their jurisdictions do not contribute significantly to nonattainment or interfere with maintenance of the 2015 ozone standards in other states. These plans are due in

October 2018, and EPA will work closely with states, including Wyoming, as this deadline approaches.

Regarding remaining issues with other NAAQS, the ozone air quality modeling shows that, with the Cross-State Air Pollution Rule Update ("CSAPR Update") in place, there would be no remaining nonattainment or maintenance areas in 2023 in relation to the 2008 Ozone NAAQS.

EPA will continue to work with Wyoming to fully address their good neighbor transport requirements for both the 2008 and the 2015 ozone NAAQS.

2. During the hearing, I asked you about 46 outstanding exceptional events filings from the State of Wyoming that EPA has yet to act on. As I mentioned during the hearing, I expressed my concern with EPA's decision not to act on these filings in 2016. Do you have a date by which EPA anticipates it will act on Wyoming's 46 petitions that I highlighted?

   In an April 2016 letter to the Wyoming Department of Environmental Quality (WDEQ) regarding exceptional event demonstrations for calendar years 2011-2014, EPA Region 8 communicated that its review of the demonstrations submitted indicated that, although the flagged PM and ozone data in the demonstrations may have been influenced by exceptional events, the data were not anticipated to be involved in any pending regulatory decision by the EPA. The status of this data has not changed. Therefore, consistent with the approach articulated in the proposed and finalized in the 2016 revisions to the Exceptional Events Rule, the EPA has not made a concurrence/nonconcurrence decision on the demonstrations submitted. However, as noted in the April 2016 letter, and as is the case with the deferred Wyoming demonstrations, if at some point in the future the flagged data were to potentially influence an attainment demonstration or be involved in other regulatory decisions, the EPA would then undertake a full review of the submitted demonstrations to allow a concurrence/nonconcurrence decision at that time.

   If an air agency submits a demonstration that the EPA has determined to not have regulatory significance, then the EPA may respond to the air agency with a notification of "deferral." Deferred demonstrations are considered to be "closed out" (i.e., no longer pending). The EPA considers the 46 demonstrations referenced in the April 2016 letter to be "closed out," unless the flagged data would influence a regulatory decision.

   EPA Region 8 met with Wyoming's Air Director and the Manager for the Air Quality Resource Management Program on February 28, 2018, to discuss options for addressing future potential exceptional events Wyoming flags that may not have a regulatory use at the time the event is flagged. Follow-up discussions will occur over the next several months.

3. As you know, the U.S. Army Corps of Engineers is the agency that makes the vast majority of jurisdictional determinations to identify waters that are regulated under the Clean Water Act. However, according to testimony before this Committee on April 26, 2017, the Corps was not included fully in the process of developing the 2015 Waters of the U.S. (WOTUS) rule.

   In fact, the Corps did not believe that the rule and preamble, as ultimately finalized, "were viable from a factual, scientific, analytical, or legal basis" and "it would be incredibly difficult for Corps leaders, regulatory and legal staff to advance and defend this rule…."

   How will you ensure adequate coordination occurs between the EPA and Corps of Engineers in developing future regulations to delineate the jurisdiction of the Clean Water Act?

   Close coordination between EPA and the Department of the Army is a priority as we work to develop the joint rulemaking. EPA and the Army Corps of Engineers are working closely to implement the Presidential Executive Order on "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule." The agencies' leadership and staff routinely meet and work products are developed jointly.

4. Last year, this Committee heard testimony about barriers under the Clean Air Act to the adoption of technologies that would reduce emissions and/or improve efficiency at power plants and other industrial facilities. Witnesses repeatedly stated that the New Source Review (NSR) program discouraged such projects. I am encouraged that both you and Bill Wehrum, Assistant Administrator for the Office of Air and Radiation, have identified NSR reform as a top priority for the Agency.

   What can this Committee – and Congress as a whole – do to assist you in these efforts and develop bipartisan support for reforms moving forward?

   At this time, EPA has not suggested specific legislative actions to reform the NSR program. However, EPA can provide technical assistance for any proposed legislative actions that the Committee develops. More broadly, the agency will continue to issue interpretive rules, guidance and policy memoranda, and, where appropriate, will conduct notice-and-comment rulemakings to reform NSR. These actions will provide increased regulatory certainty to covered entities encouraging investment in more efficient, environmentally beneficial technologies.

5. Last year, Congress passed the bipartisan Water Infrastructure for Improvements to the Nation (WIIN) Act. On September 14, 2017, EPA granted petitions to reconsider a final rule that regulates coal combustion residuals (CCR) as nonhazardous waste under the Resource Conservation and Recovery Act (RCRA). You stated the purpose of reconsideration is as follows: "In light of EPA's new statutory authority [under the WIIN Act], it is important that we give the existing rule a hard look and consider improvements that may help states tailor their permit programs to the needs of their states, in a way that provides greater regulatory certainty, while also ensuring that human health and the environment remain protected."

   I support EPA's commitment to assure that the CCR rule provides adequate flexibility and authority to states. Does EPA have an anticipated timeline for completing this reconsideration so that states and regulated entities have maximum flexibility and regulatory certainty as soon as possible?

   Yes, the agency does have a timeline for completing its reconsideration of the CCR rule. On March 1, 2018, EPA signed a proposal that includes regulatory language for those provisions where, as a result of its reconsideration, EPA has preliminarily determined that regulatory changes may be appropriate and is seeking public comment on those proposed changes. EPA anticipates the proposal will be published in the Federal Register shortly. EPA further anticipates that it will complete its review of the remaining provisions under reconsideration, and, if it determines that regulatory changes are appropriate, will sign an additional proposal by September 30, 2018.

6. Over the last several years, increased efficiency of gas fueled vehicles and relatively low gas prices have led to fewer than projected consumer purchases of electric vehicles relative to gas fueled vehicles. Current data show how gas prices have been lower than projected in 2012 when vehicle standards were established by EPA and the Department of Transportation's (DOT) National Highway Traffic Safety Administration (NHTSA).

   In 2012, EPA issued standards for light-duty vehicles for MY 2017-2025, and committed to conduct a Midterm Evaluation (MTE) by April 1, 2018. I applaud the EPA's decision last year to reconsider the evaluation issued at the end of the last administration, which was issued under a rushed timeline and without adequate coordination with NHTSA. As you complete the MTE, will you commit to use the best available, current data and collaborate with NHTSA?

   In August 2017, EPA opened a 60-day comment period to allow stakeholders to submit any comments, data, or information they believe relevant to my reconsideration of the Final Determination. EPA also held a public hearing on September 6, 2017. EPA received more than 290,000 comments, and reviewed the new data and information, along with continued review of the body of research already in the record. My new decision on the Midterm Evaluation was signed on April 2, 2018. I found that the model year 2022-2025 greenhouse gas standards are

not appropriate in light of the record before EPA and, therefore, should be revised. I believe this decision was based on the best available data, and is a product of close coordination with NHTSA.

7. In 2016, the U.S. imported roughly 700 million gallons of biodiesel. Last year, EPA considered reducing the renewable fuel volume obligations (RVOs) for biomass-based diesel (BBD) for 2018 and 2019. EPA explained that it "could consider the availability of imports as one factor among others in determining whether to exercise its discretion to use the waiver authority." About the same time, the U.S. International Trade Commission imposed tariffs on imported biodiesel from Argentina and Indonesia. Imports of biodiesel from these two nations declined in 2017 and may decline further this year.
    a. How did EPA account for this foreseeable decrease in the supply of imported biodiesel when it set the 2019 RVOs for BBD?
    b. If U.S. BBD production does not materially increase in 2018, is EPA prepared to reduce the 2020 RVOs for BBD below 2019 levels? If not, why not?
    c. How does relying on imported biodiesel advance the Renewable Fuel Standard's purported objective of improving U.S. energy security?

Biodiesel and renewable diesel are both international markets. As such, any action, such as the tariffs mentioned, will have multiple ripple effects which may offset some or all of the direct impacts targeted. EPA has considered the uncertainty surrounding imported biofuel in setting the RFS standards. We also considered the potential for increased domestic production of biodiesel and renewable diesel, as well as increased imports from countries unaffected by the tariffs. Further, the BBD standard itself was not set at the limit of projected supply. In setting the volume target for BBD for 2019, EPA noted that the number of RINs anticipated to be available for compliance exceeded the volume required to meet the BBD standard. The advanced biofuel and total renewable fuel standards provide an incentive for additional biodiesel volume beyond what is required by the BBD standard. Specifically, while the 2019 BBD volume target was maintained at 2.1 billion gallons, we estimated that approximately 2.6 billion gallons would be used to meet the advanced biofuel standard. As it did in evaluating the 2018 advanced biofuel standard, EPA will assess the supply of imported biodiesel in setting the 2019 advanced biofuel and 2019 BBD percentage standards. EPA will conduct a similar analysis when determining the 2020 BBD volume target.

U.S. energy security includes a measure of the diversity of fuel sources as well as the geopolitical condition of the sources. Increasing diversity (such as through use of biofuels from a variety of countries) could reduce risks associated with a potential disruption of supply. Thus, while biofuel imports may not contribute to energy independence, they may still contribute to the energy security of the United States. The U.S. is also becoming more energy secure and independent due to more domestic oil production, including a 50 percent increase in U.S. crude oil production over the last decade.

8. On December 23, 2016, GE submitted a completion report showing that it had completed implementation of EPA's plan for the cleanup of PCBs from the Hudson River. At that time, GE asked EPA to certify that the project is complete,[1] in accordance with a 2005 Consent Decree signed by GE and the EPA.[2] In that Consent Decree, EPA agreed to grant a certification of completion within 1 year of GE's submission of the completion report.[3] That has since passed, but to date the agency has yet to make a decision on the certificate of completion. When do you expect the agency to make a decision on the certificate of completion?

   EPA provided GE with a response to its submission of the completion report within the agreed-upon timeframe, stating that the Agency is now carefully reviewing input provided by our state and federal partners at the end of 2017 regarding the Certification of Completion of the Remedial Action requested by GE. In addition, EPA recently began an analysis of sediment data collected by the New York State Department of Environmental Conservation (DEC) in late 2017, and we continue to consider the extensive input received from a wide range of stakeholders about the second Five-Year Review report, which was released for public comment in June 2017. EPA will continue to work with our colleagues at DEC in analyzing and reaching scientific consensus on the new sediment data. Therefore, EPA will not have a decision regarding the issuance of the Certificate of Completion of Remedial Action until the data from these samples have been fully analyzed.

   It is important to note that even if EPA certifies the Remedial Action to be completed, the cleanup will not be finished. In the Record of Decision, EPA projected that construction of the remedy (including dredging, backfilling, and habitat reconstruction) would be performed over six years, to be followed by decades of "monitored natural attenuation" or "MNA," during which PCBs remaining in the river after dredging would gradually decrease until the remedial goals are achieved. MNA is also part of the cleanup, and during the entire period of MNA, GE is required to perform "Operation, Maintenance and Monitoring" of the remedy, which includes an extensive program that includes monitoring of sediments, water quality and fish, as well as monitoring of the caps that were installed on portions of the river bottom, and repairing those caps should any

---

[1] "EPA is currently reviewing GE's Remedial Action Completion Report, which the company submitted to EPA, the federal natural resource trustees and New York State in December 2016." Proposed Second Five Year Review Report (2017) at pg. 20 (https://www.epa.gov/sites/production/files/2017-06/documents/hudson_second_five-year_review_report.pdf)

[2] See Consent Decree (https://www3.epa.gov/hudson/consent_decree/consent_decree.pdf)

[3] Consent Decree (Pgs. 40-41): paragraph 57.b (GE GE "shall submit to EPA, for review and approval, a Remedial Action Report . . . request[ing] EPA's Certification of Completion of the Remedial Action"); 57.d ("If EPA concludes . . . that the Remedial Action has been performed in accordance with this Consent Decree, EPA will so certify in writing"); 57.e ("EPA will respond to such request [for Certification] no later than 365 days after EPA's receipt of the request")

damage occur. Once all the work required by the consent decree is complete, the consent decree authorizes EPA to issue a further certification, known as a Certification of Completion of the Work. We do not anticipate issuing this certification before the remedial goals are achieved.

9. In December 2017, EPA announced "a cross-agency effort to address per and polyfluoroalkyl substances (PFAS)."
   a. Is EPA collaborating with other federal agencies, state agencies, or other stakeholders on this initiative? If so, how are these entities contributing to EPA's cross-agency effort?

      EPA is actively collaborating with other federal, state, and local communities to provide tools and technical assistance to communities that are addressing PFAS contamination. As part of this effort, EPA has begun working with states and other federal agencies to develop toxicity values for additional PFAS chemicals, develop new methods for sampling PFAS chemicals in the environment, and identify treatment techniques to remove PFAS in drinking water and other environmental media. EPA is also working with stakeholders to identify best practices and develop risk communication tools to assist states, tribes and local communities address concerns with PFAS in the environment. In addition, EPA continues to conduct research to develop additional technical tools that will be helpful as the agency works with its partners to address this important issue.

   b. Will EPA provide the public with updates on EPA's progress and an opportunity to comment on EPA's work? If so, when do you anticipate this taking place?

      Yes, EPA will continue engaging with a broad set of stakeholders, including states and local communities. To date, EPA's communication efforts have included, but not limited to EPA's website (www.epa.gov/pfas), EPA hosted webinars, organizational meetings (for example the Spring 2018 Environmental Council of the States (ECOS) Meeting in March 2018), and community meetings in PFAS-impacted areas. EPA will provide additional engagement opportunities throughout the coming year.

   c. How will EPA's cross-agency effort help inform ongoing and future state and local efforts to address PFAS?

      EPA has brought together expertise from across the agency including top scientists from EPA's air, chemicals, land, research, and water offices. In addition to a cross-program effort, the agency has also tapped its regional offices to enhance cooperation with partners at the state and local levels and to provide on-the-ground knowledge about specific issues to address PFAS nationwide. By integrating cross-media expertise and experiences, EPA's

PFAS team is well positioned to support and work side-by-side with our state, local and tribal partners to address state and local PFAS efforts.

Ranking Member Carper:

10. EPA's February 1, 2018 Report to Congress on the Integrated Risk Information System (IRIS) states that EPA has already contracted with the National Academy of Sciences for peer review of the formaldehyde human health assessment.
    a. I have been informed that the human health assessment for formaldehyde was completed by IRIS staff months ago. Is that accurate?

       The National Academy of Science (NAS) identified numerous significant recommendations for improving the science that underlies the formaldehyde IRIS assessment. As noted by EPA staff during the February 2018 NAS workshop to review advances made to the IRIS process, the Agency is working to fully implement the NAS recommendation in all IRIS assessments released moving forward.

    b. If so, why has the health assessment not yet been released i) for intra-agency review, ii) inter-agency peer review, iii) for public comment and iv) to the NAS for peer review, and when will each such step occur?

       EPA is committed to ensuring that the IRIS program provides high-quality assessments that adhere to the highest standards of scientific review. Prior to releasing any assessment, EPA NCEA conducts a rigorous and robust review process to ensure that Agency decisions to protect human health are based on high quality science.

    c. If not, please describe precisely what work remains to be completed before each step described above can occur, along with time estimates for each step.

       The Agency is moving away from a "one-size-fits-all" approach to hazard assessment towards assessment products that meet specific decision contexts. As such, any assessment will be evaluated to ensure that it can adequately meet Agency needs and support regulatory priorities in a timely manner.

    d. Please provide me with an un-redacted copy of the current draft of the IRIS human health assessment for formaldehyde.

       The Agency does not release any products that have not undergone proper quality review.

11. From January 20, 2017 until the present, please provide information regarding all meetings (including conference calls) related to the formaldehyde human health assessment, including the date, attendee names (and for non-EPA employees, their affiliations) and copies of any materials prepared for or obtained from each such meeting. Please also provide the same information for meetings EPA staff may have attended related to formaldehyde more generally.

    We are working to gather this information with regard to ORD's external meetings and will provide this information to you as soon as possible.

12. The Report to Congress states that the IRIS staff have operationalized the "systematic review" process used to determine which and how scientific studies can be relied upon to inform IRIS assessments.
    a. Please provide me with a copy of the document that captures these revisions.

       An overview of how the IRIS Program is operationalizing systematic review is described in a memo from the IRIS director, provided here (http://ofmpub.epa.gov/eims/eimscomm.getfile?p_download_id=534484). Additional information on how the IRIS Program is implementing and applying systematic review was presented at the NAS meeting in early February. Copies of presentations at that meeting are included here: http://nas-sites.org/dels/events/review-of-advances-made-to-the-iris-process-a-workshop/.

    b. Please additionally provide a copy of the document that describes the EPA Office of Chemical Safety and Pollution Prevention "fit for purpose" systematic review process that is referenced on page 19 of the December 12, 2017 EPA document entitled "Revised Glyphosate Issue Paper: Evaluation of Carcinogenic Potential[4]."

       OCSPP does not have a document on systematic review. Per the referenced page 19 of the "Revised Glyphosate Issue Paper: Evaluation of Carcinogenic Potential" document, "consistent with NRC's recommendations, EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) is *currently developing* systematic review policies and procedures."

       NRC's 2009 report on *The Silver Book: Science and Decisions* recommended the use of a framework that "maximizes the utility of risk assessment," with a focus on assuring that risk assessments are well-tailored to the problems and decisions at hand so that they can inform the decision-making process most meaningfully. In response to this report, in 2014 EPA published the Human Health Risk Assessment Framework. OCSPP ensures that our approaches are consistent with the EPA framework, which discusses the need for fit for purpose evaluations. Problem formulation entails an initial dialogue between

[4] https://www.epa.gov/sites/production/files/2017-12/documents/revised_glyphosate_issue_paper_evaluation_of_carcinogenic_potential.pdf

scientists and risk managers and provides the regulatory context for the scientific analysis and helps define the scope of an analysis. The problem formulation stage involves consideration of the available information along with key gaps in data or scientific information. As such, the complexity and scope of systematic reviews will vary depending on the different risk management and statutory requirements and responsibilities of OCSPP. In other words, an OCSPP systematic review is conducted as "fit-for-purpose" based on the pre-determined scope and purpose determined from problem formulation.

13. Please describe the timeline and full scope of the NAS review of the IRIS program described in the Report to Congress. Will the IRIS program's new "systematic review" process be included in the scope, and if not, why not?

    The NAS "Review of Advances Made to the IRIS Process" will assess changes that have been implemented or that are planned to be implemented by the EPA in response to recommendations made in previous NAS reports (2011 and 2014). The primary focus of these reports was on the adaptation and implementation of systematic review principles to the IRIS assessment development process. The systematic review process, as applied in the IRIS Program, was described to the NAS committee during a 1.5 day workshop held February 1-2, 2018, included presentations and interactive sessions, and provided multiple opportunities for stakeholder input. The scope of the NAS review, as well as all NAS meeting summaries on this project, can be found on the NAS website http://www8.nationalacademies.org/cp/projectview.aspx?key=49904.

14. When Congress was negotiating the final text of the Toxic Substances Control Act (TSCA), EPA came to Congress and asked for specific provisions that would allow the agency to move forward with bans for some uses of three highly toxic chemicals. Congress agreed, and that language was included in the final law. One of those chemicals, a paint stripper called methylene chloride, is so dangerous that it has killed dozens of people, even when they were wearing protective gear. EPA proposed rules banning these chemicals more than a year ago. But more recent reports indicate that EPA may delay action on the uses of these chemicals for several more years, which almost certainly will mean that more people will get sick and probably some of them will die. When I asked you during the hearing whether you would commit to finalizing these bans within thirty days, you stated that "It's my understanding that is actually on the priority list as far as the chemicals that are we reviewing. TCE and others. So that is something that I will clarify and confirm with the agency. But that was my understanding." I believe you may have been referring to the *remaining* uses of these chemicals (i.e.the uses of the chemicals that are not covered by the proposed bans), which are on EPA's priority list for the first ten chemicals slated for review under TSCA. I was referring to the uses of these chemicals that EPA has *already* proposed to ban. Please provide the specific dates by which each of these proposed bans will be finalized.

Under TSCA Section 6(a), regulation of certain uses of methylene chloride, NMP, and TCE were proposed in 2016 and 2017. The agency is currently considering the comments received, including comments suggesting that EPA quickly finalize these actions and comments suggesting that these actions be evaluated as part of the group of the first ten chemicals undergoing initial risk evaluations under the amendments to TSCA.

15. According to the Paperwork Reduction Act, 44 USC § 3506(d)(3), all agencies must provide "adequate notice" when "substantially modifying, or terminating significant information dissemination products." On April 28, 2017, EPA removed the vast majority – thousands of pages – of its climate change websites, and it appears that EPA did not provide the public an opportunity to comment or express its concerns.
    a. Please describe the "adequate notice" that you issued to the public prior to making any changes to the website, as required by the Paperwork Reduction Act. Please provide supporting documents, including documents memorializing the notice.

       EPA is continually making changes to its website and other digital information resources to reflect and support the agency's current priorities and work. When we move information from our main portal, www.epa.gov, the majority of the time we make sure it is still available to the public via our archive website, https://archive.epa.gov/. In addition, because of the public concern about access to information on our website last year, as well as the receipt of a number of FOIA requests for access to information, we created a snapshot website that contains the content that was on our main portal on January 12, 2017. The snapshot website can be searched here: https://19january2017snapshot.epa.gov/.

    b. Please provide a list of webpages (and a description of the information that was contained on each one) that were eliminated from the EPA website in 2017.

       According to our available data sources, 2,224 pages were archived from www.epa.gov in 2017, representing about 3.5% of our www.epa.gov content. This response is limited to the primary public www.epa.gov webserver, but not other program-specific websites. These pages were unpublished due to:

       - **regular website maintenance,**
       - **content was superseded and replaced with newer information on the topic,**
       - **content was duplicative or no longer relevant,**
       - **comment period closed on Public Notices, and**
       - **various other quality assurance reasons.**

       This content is still in our Web Content Management.

16. On March 24, 2017, you issued an agency-wide memorandum[5] on implementation of Executive Order 13777[6], which announced members of EPA's Regulatory Reform Task Force, appointed Samantha Dravis to serve as EPA's Regulatory Reform Officer, directed certain program offices to recommend rules for repeal, replacement, or modification, and directed all program offices to seek public input on existing regulations and report findings to the Task Force by May 15, 2017. On April 13, 2017, EPA issued a Federal Register notice: Evaluation of Existing Regulations[7]. The comment period closed on May 15, 2017 and EPA received over 460,000 comments, which were published online. The Task Force also led implementation of the Section 2 review in Executive Order 13783, Promoting Energy Independence and Economic Growth. EPA subsequently published a report pursuant to EO 13783 in October 2017. It is unclear whether the Task Force has been active since then or was involved in projects outside of what is discussed above. Accordingly, with regard to the Task Force, please provide us with:
    a. A complete list of who has or is currently serving on the Task Force, including their professional title and office at EPA, and their dates of membership on the Task Force.

       Ryan Jackson – Chief of Staff, Office of the Administrator
       Byron Brown – Deputy Chief of Staff for Policy, Office of the Administrator
       Brittany Bolen – Acting Associate Administrator, Office of Policy
       Samantha Dravis – formerly Senior Counsel and Associate Administrator, Office of Policy

       All members of EPA's Regulatory Reform Task Force have been members during their employment at the Agency since Administrator Pruitt established the Task Force in a memorandum dated March 24, 2017.

    b. Please state whether the Task Force has consulted with non-EPA employees during the course of its work and, if so, please provide a list of their names and employers, and on what rules they have been consulted.

       The Task Force has been informed by the thousands of public comments received in response to EPA's request for input on regulations that may be appropriate for repeal, replacement, or modification, per EO 13777.

[5] https://www.epa.gov/laws-regulations/memorandum-executive-order-13777-enforcing-regulatory-reform-agenda
[6] https://www.federalregister.gov/documents/2017/03/01/2017-04107/enforcing-the-regulatory-reform-agenda
[7] https://www.federalregister.gov/documents/2017/04/13/2017-07500/evaluation-of-existing-regulations

c. A list of meeting dates and topics for Task Force meetings held thus far and scheduled to be held this year. Please provide copies of any agendas that were circulated prior to each meeting.

In implementing EO 13777, EPA hosted a series of public meetings and teleconferences to inform the Regulatory Reform Task Force. Information on these public meetings and teleconferences, including agendas, is accessible through EPA's Regulatory Reform webpage: https://www.epa.gov/laws-regulations/regulatory-reform.

d. All documents created by or for the Task Force, (including emails, memos, white papers, meeting minutes, correspondence, and comments that cannot be found on the regulations.gov website).

A Comprehensive search could not be performed by the submission of this document.

17. The Freedom of Information Act (FOIA) requires agencies to respond to a FOIA request within 20 days of receipt of the request. Although agencies are given some latitude to extend the response timeline in light of "unusual circumstances," EPA's failure to meet the deadlines specified in the Act has resulted in many FOIA requests left unanswered. That, in turn, has led to lawsuits against EPA for failure to meet the FOIA timeline.

a. EPA currently submits open FOIA request logs to the Committee on a monthly basis, pursuant to an oversight letter sent to EPA on March 17, 2017. Beginning on the date of your next log submission, please also provide the number of currently open FOIA requests, the number of lawsuits that have been filed due to EPA's failure to comply with FOIA's deadlines, the number of FOIA lawsuits that have been completed, the number of lawsuits resulting in EPA providing the requested documents, and the cost of each lawsuit to the taxpayer.

Monthly EPA posts on its web site a list of all FOIA request that were pending at the end of the previous month and the status of all FOIA request that were submitted during the previous month. This information can be found, respectively, at https://www.epa.gov/foia/all-foia-requests-pending-month and at https://www.epa.gov/foia/all-foia-requests-received-month. Regarding your request for information concerning the Agency's FOIA litigation, EPA currently has approximately 55 pending FOIA cases, about 45 of which allege that EPA did not complete its response to the FOIA request within the statutory timeframe.

b. Does EPA follow the "rule of three,[8]" which calls on agencies to post frequently requested records to its public website? If so, please identify where those records are posted. If not, please explain why not.

It is EPA's Policy to make all records released in response to a FOIA request available to the public, even if there is only one request for that information. EPA has released over one million records, through FOIAonline, since October 1, 2012. The one exception to this rule is first party FOIA requests. A first party FOIA request is one where a requester is asking for records about themselves.

c. Please provide any internal EPA guidance that exists on the use of FOIA redactions. Please provide documents confirming that staff responsible for redacting documents have received the appropriate training.

All EPA staff are required to take annual FOIA training. EPA's FY 2018 FOIA training is focused on the use of FOIA exemptions. In September 2017, the National FOIA Program, working with the Office of General Counsel, offered a multi-day training session on FOIA. The training covered the lifecycle of a FOIA. Over 170 FOIA professionals from throughout the Agency attended the training. Among other things, the training addressed use of Exemptions 4, 5 and 6.

18. During the hearing Senator Duckworth asked for "a detailed schedule of your meetings and receipts for international travel you have taken since being confirmed." You agreed to provide those documents. Since then, a report[9] detailed tax-payer funded travel you took internationally and domestically that included first-class tickets on commercial flights as well as travel on military jets. For each flight, international or domestic, that you have taken since you were confirmed, please provide the following information:
    a. Date of the flight, the departure city and airport, and destination city.
    b. Class (e.g. coach, business class, first class, or some other class of travel) and cost of the ticket.
    c. Source of funding for the ticket (e.g. federal taxpayers, the State of North Dakota, Heritage Foundation).
    d. For each non-commercial flight, please explain why a non-commercial flight was selected.
    e. Names of staffers who accompanied you on each trip, the cost of their flights, classes of their tickets, and the sources of funding for their tickets.
    f. Copies of all receipts of air travel for you and your accompanying staff.
    g. For any ticket issued to you or your accompanying staff that was not a coach-class ticket (or its equivalent), please explain why it was necessary to purchase that class of ticket.

[8] https://www.justice.gov/oip/oip-guidance/proactive_disclosure_of_non-exempt_information
[9] https://www.washingtonpost.com/national/health-science/first-class-travel-distinguishes-scott-pruitts-epa-tenure/2018/02/11/5bb89afc-0b7d-11e8-8b0d-891602206fb7_story.html?utm_term=.4c0713143235

A Comprehensive search could not be performed by the submission of this document.

19. During the House Energy & Commerce subcommittee hearing on December 7, 2017, you testified that particulate matter is a "very important criteria pollutant" that should be regulated under the National Ambient Air Quality Standards (NAAQS) program. One study[10] found that PM2.5 "was the fifth-ranking mortality risk factor in 2015," and contributes to nearly 90,000 deaths in the US every year.[11]
    a. Do you agree with the general conclusion from this analysis that PM2.5 presents a serious public health concern? If not, please provide supporting evidence, including any research or analysis EPA has conducted, that supports your position.
    b. Please provide documentation supporting any analysis you have done to calculate the amount of PM2.5 pollution that will be created as a result of your actions to reverse, delay, or modify the Clean Power Plan, methane, and the Glider Kit rules. Please state whether you attempted to calculate the adverse human health effects that will be caused by your changes to the rules mentioned above.
    c. Do you think there is a tolerable level of PM2.5 that is appropriate for human exposure? If so, please specify it, and explain what evidence you have to support this.
    d. Are you aware that a study conducted by Tom Brewer at Tennessee Tech University determining that trucks outfitted with glider kits are as clean as new diesel truck engines is now under investigation for "misconduct in research" by Tennessee Tech University?[12] This is the same study that was included in the glider industry's petition asking the EPA to repeal emission requirement for glider kits and cited in the EPA's November 16, 2017 proposal to repeal the Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits. Please describe how you plan to re-assess EPA's November 16, 2017 proposal in light of the potential misconduct associated with this study. If no such plans exist, why not?

Particulate matter (PM), also known as particle pollution, is a complex mixture of extremely small particles and liquid droplets in the air. Once inhaled, these particles can affect the heart and lungs and cause serious health effects. The Clean Air Act requires EPA to review the NAAQS and their scientific basis at least every five years to determine whether standards are requisite to protect public health, with an adequate margin of safety. The fine PM NAAQS was last reviewed and revised in 2012. As part of that process, EPA developed an Integrated Science Assessment to

[10] https://www.ncbi.nlm.nih.gov/pubmed/28408086

[11] "Estimates and 25-year trends of the global burden of disease attributable to ambient air pollution: an analysis of data from the Global Burden of Diseases Study 2015." See Table 2.

[12] http://herald-citizen.com/stories/ttu-investigating-fitzgerald-study,25943

summarize the science related to the health and ecological effects. This most recent assessment, released in December 2009, can be found on EPA's website at: https://www.epa.gov/isa/integrated-science-assessment-isa-particulate-matter.

The "Regulatory Impact Analysis for the Review of the Clean Power Plan: Proposal" presents analysis of the forgone social benefits of changes in non-CO2 emissions from the electricity sector in Section 3.4 (pages 42-55) and Section 7.5 (pages 122-124). For the 2016 oil and gas rule, EPA did not monetize changes in PM2.5 emissions or concentrations.

With respect to gliders, the agency is currently reviewing the comments submitted on the proposed rule and is evaluating next steps. Similarly, although the recent NPRM cited the Tennessee Tech University study, we referenced the study in our proposal but did not rely on it for our decision making.

20. In response to questions from Chairman Barrasso regarding the implementation of the 2015 National Ambient Air Quality Standard (NAAQS) for ground-level ozone, you commented that the EPA was "in the process of designating attainment and non-attainment [areas] with respect to ozone." You went on to state, "when you think about ozone, there has been a lot of focus on whether the parts per billion, 75 parts per billion, reducing it to 70 parts per billion, was a wise decision. That has not been our focus. Our focus has been on more the issues and implementation that you have raised."
    a. Do you agree with EPA's conclusion in 2015 that the primary NAAQS standard for ground-level ozone should be set at a level of 0.070 parts per million (ppm) to protect health with an adequate margin of safety? If not, why not?
    b. Do you agree with the underlying science data for the 2015 NAAQS for ground-level ozone that finds ambient ground-level ozone pollution above 0.070 ppm can trigger asthma attacks in children that have asthma? If not, why not?
    c. Do you agree with EPA's assessment that once implemented, the public health benefits from the 2015 NAAQS for ground-level ozone will outweigh the costs? If not, why not?
    d. Will you confirm that under your leadership, the EPA will not weaken the 2015 primary NAAQS standard for ground-level ozone set at 0.070 parts ppm?

As previously stated, EPA's recent focus for the 2015 Ozone NAAQS has been on resolving implementation issues.

21. Under Clean Air Act section 111, can EPA base emissions guidelines on a "best system of emission reduction," if application of the measures comprising that best system of emission reduction would result in a source increasing total emissions of the regulated pollutant? Why or why not?

Traditionally NSPS standards have been sent as rate-based standards rather than total mass based standards and have not constrained overall emissions.

22. In determining the "best system of emission reduction" under Clean Air Act section 111, do you believe that EPA must consider the degree of air pollution reductions achieved? Why or why not?

While emission reductions are one element relevant to evaluating BSER, EPA anticipates that it will be receiving comments on this issue in connection with its current regulatory actions on the Clean Power Plan.

23. The 2009 Cause or Contribute Finding concluded that the combined emissions from new motor vehicles and new motor vehicle engines of six key well-mixed greenhouse gases—carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride (collectively, "GHGs")—contribute to greenhouse gas pollution that threatens public health and welfare. At the time, EPA cited data showing that in 2007, source categories regulated under CAA section 202(a) accounted for 23.3% of domestic GHG emissions, and the electricity sector accounted for 34.2% of domestic GHG emissions.[13] Do GHG emissions from the electricity sector cause or contribute significantly to greenhouse gas emissions that can reasonably be anticipated to endanger public health or welfare? If not, why not?

To date, EPA has relied on the endangerment finding that it had previously made under CAA section 202(a)(1) with respect to GHG emissions from new motor vehicles for its decision to establish standards of performance for GHG emissions from Electric Generating Units (EGUs). In particular, EPA has asserted the 2009 finding as providing a "rational basis" for regulating GHG emissions from EGUs.

24. Do any parts of the Clean Air Act authorize EPA to decline to set 111 standards (or emission guidelines) for GHGs from stationary sources if there is an Endangerment Finding for GHGs entirely? If so, please specify them.

Section 111(b)(1)(A) of the Clean Air Act states the Administrator shall include a category of sources if in the Administrator's judgment it causes, or contributes significantly to, air pollution which may be reasonably be anticipated to endanger public health and welfare.

25. According to the most recent National Climate Assessment (NCA) released by the Trump Administration, climate change caused by emissions of heat-trapping gases "outweigh[s] other factors in determining burned area in the western U.S. from 1916 to 2003, a finding confirmed by 3000-year long reconstructions of southwestern fire history."[14] According

[13] *See* 74 Fed. Reg. 66496, 66540 tbl.2 (Dec. 15, 2009).
[14] NCA at p. 468, *available at* http://s3.amazonaws.com/nca2014/high/NCA3_Climate_Change_Impacts_in_the_United%20States_HighRes.pdf.

to the NCA, "Numerous fire models project more wildfires as climate change continues," including "up to a 74% increase in burden area in California, with northern California potentially experiencing a doubling under a high emissions scenario toward the end of the century."[15] The NCA calls conifer forests in southern California "notably threatened" by the climate change caused by heat-trapping gases. According to the Trump Administration's NCA, California is also at extraordinary risk from seal-level rise and coastal damage. Without adaptive action, the Trump Administration expects that critical California infrastructure such as the San Francisco and Oakland airports "are at increased risk of flooding with a 16-inch rise in sea level in the next 50 years . . . ." Increasingly high numbers of Californians will be put at risk of flood, including highly vulnerable populations less able to prepare, respond, or recover from natural disaster. On an even more fundamental level, emissions of these heat-trapping gases pose an exceptionally high risk to the highly urbanized population of California due to increasing urban heat. According to the Trump Administration, heat stress has been the leading weather-related cause of death in the United States since 1986 (when record-keeping began).[16] Severe heat waves such as the 10-day California heat wave of 2006 trigger "escalating effects" that kill people, particularly the elderly and those in low-income communities. Heat waves can also cause respiratory stress by expediting chemical reactions that cause the formation of ground-level ozone.

a. Do you agree that emissions of heat-trapping greenhouse gases cause compelling and extraordinary harm to the people and environment of California? If not, please explain why not, including whether you either i) do not accept the findings of the Trump Administration's NCA or ii) do not believe the impacts to California described in the NCA are compelling or extraordinary.
b. Do you agree that emissions of greenhouse gases from motor vehicles cause compelling and extraordinary harm to the people and environment of California? If not, please explain why not.

While there has been extensive research and a host of published reports regarding climate change, our understanding of the role of human activity is still improving. As an environmental regulator it is important for the agency to strive for a better understanding of the role of human activity with respect to climate change given the potentially significant influence on our country's domestic economic viability when protecting the environment.

26. Please list each of the meetings that Administrator Pruitt, Assistant Administrator Wehrum, David Harlow or other EPA political staff (including EPA transition team officials) have held with outside entities, since January 20, 2017, on the topic of changes or "reforms" to the New Source Review or Prevention of Significant Deterioration requirements under the Clean Air Act. Please provide all documents received from outside entities, as well as any email correspondence between EPA employees and outside entities, on this topic, since January 20, 2017.

---

[15] NCA at p. 468, *available at* http://s3.amazonaws.com/nca2014/high/NCA3_Climate_Change_Impacts_in_the_United%20States_HighRes.pdf.
[16] NCA at 471.

This request is also the subject of ongoing FOIA requests. The agency is in the process of responding to those requests and will provide the information to the committee in a timely manner. In the interim, the Administrator's and Assistant Administrator's calendars are publically available at https://www.epa.gov/senior-leaders-calendars.

27. Please explain in detail how the policy options in the December 18, 2017 Advance Notice of Proposed Rulemaking regarding future rulemaking to reduce existing power plant greenhouse gas emissions would achieve the full range of public health, economic, and environmental benefits that would have resulted from Clean Power Plan.

    The Advance Notice of Proposed Rulemaking on State Guidelines for Greenhouse Gas Emissions from Existing Sources (ANPRM) does not present specific policy options. Rather, the ANPRM solicits information from the public about a potential future rulemaking. As you are aware, the comment period closed on February 26, 2018. The agency has begun review of all comments that will inform any next steps to ensure that in any potential new proposed rule, benefits and costs will be appropriately analyzed.

28. In President Trump's June 1, 2017 statement announcing the United States would be withdrawing from the Paris Climate Accord, President Trump highlighted two studies - economic analysis from the National Economic Research Associates and a climate science study from MIT. These same studies were included in White House materials.
    a. Did you, or any other EPA political staff, provide White House staff or the President information on these two studies?
    b. Please provide a copy of all documents, (including but not limited to hand-written notes, paper files, emails, memos, white papers, telephone logs, presentations or meeting minutes) between and among any combination of you, other agency officials, other federal government officials, any state officials, and any non-governmental entities that inform, contribute to, direct, or are otherwise related to related to the Paris Climate Accord.

    A Comprehensive search could not be performed by the submission of this document.

29. How many facilities subjected to MACT standards are also subjected to Reasonably Available Control Technology (RACT) standards that are more stringent or the same requirements for volatile organic compounds? Are there some parts of the country that are not subject to RACT controls for volatile organic compounds? If so, please list those areas.

The EPA has not performed a source-by-source comparison of MACT and RACT standards where both apply. The RACT standards are established by states, not by EPA, and there is enough flexibility in the Clean Air Act in how a state may establish a RACT standard that there is no expectation of uniformity between the level of control or specific sources covered in different states. Specific to the ozone NAAQS program, EPA has established "presumptive RACT" for the key VOC emissions points present in about 44 source categories through the issuance of Control Techniques Guidelines (CTG). CTGs provide guidance for states and do not dictate a source-specific outcome. States that contain certain ozone nonattainment areas and states in the Ozone Transport Region are reqired to submit a revision to new CTGs.

30. Studies have found that regulations may play some small part in reductions in the coal workforce; but automation, shifts in mining practices, and prices of natural gas are all major contributing factors to the decline of coal.
    a. How many coal mines have closed or gone bankrupt since you became EPA Administrator?

       The Agency does not maintain this data.

    b. Please provide a list of every coal mine and coal-fired plant that will remain open, be built, or be expanded as a result of the rescission of the Clean Power Plan, along with the expected number of jobs that will be retained or added as a result. On what basis was each EPA projection made?

       EPA has not published any estimates of regulatory impacts on individual coal mining or coal-fired power plants. EPA has not yet prepared any estimates of the impacts on coal mining or coal-fired plants related to the proposed repeal of the Clean Power Plan. The coal impact analysis in the proposed repeal RIA was limited to presenting the coal impact analysis in the final RIA for the CPP promulgation in 2015. EPA's analyses of particular regulations affecting coal mines and coal-fired power plants do not estimate impacts on individual mines or specific power plants. EPA committed to evaluate the employment impacts of actions under the Clean Air Act within EPA's Final Report of Agency Actions that Potentially Safe, Efficient Development of Domestic Energy Resources under Executive Order 13783 (https://www.epa.gov/sites/production/files/2017-10/documents/eo-13783-final-report-10-25-2017.pdf).

31. I remain concerned about the volatility in the Renewable Fuel Standard (RFS) compliance trading system used by EPA, known as the Renewable Identification Number (RIN) market and the impacts that RIN market manipulation is having on the economic stability of East Coast refineries.

a. Currently, the EPA has a Memorandum of Understanding with the Commodity Futures Trading Commission (CFTC) on RIN market manipulation. In the past year, how often has EPA staff communicated with the CFTC on RIN market manipulation and what have you and your staff done with the CFTC to assess potential RIN market manipulation?

Under the MOU, CFTC looked into a claim by the Renewable Fuels Association (RFA). RFA asserted that some participants in the RIN market may have deliberately driven up RIN prices during a certain period to disrupt the RIN market, in order to support political gains to repeal/reform the RFS program. The RFA letter, dated August 31, 2016 was sent to both CFTC and EPA. To assist CFTC, the EPA provided RIN data from January 2010 to August 2016. CFTC reviewed this data and as noted by the CFTC Chairman Chris Giancarlo in his testimony to U.S. Senate Agricultural Committee on February 15, 2018 that CFTC did not find misbehavior in the market. Given EPA's market oversight limitations, we intend to pursue continued collaboration with CFTC under the MOU.

b. In my conversations with CFTC officials, they indicate that you have not asked them to do much in assessing RIN market manipulation and suggested EPA is not collecting the right type of information to be able to assess potential manipulation. Why haven't you asked the CFTC to do more to help EPA prevent potential RIN market manipulation?

EPA is always looking for ways to improve implementation and transparency of the program, while balancing resource needs and our duty to protect confidential business information as required by our regulations. EPA will continue to work with CFTC and seek to utilize their market oversight expertise and authority.

c. I have asked the Federal Trade Commission (FTC) staff to offer their expertise to your staff. Has anyone at the EPA talked to FTC staff about ways the FTC can be helpful? Have you considered establishing a Memorandum of Understanding with the FTC to assist with RIN market manipulation?

On February 8, 2018, EPA and FTC held a meeting to initiate dialogue on this matter. On the call, the FTC discussed their authority and expertise, which are largely focused on investigating fraudulent reporting of information to governmental agencies and other acts with intent to deceive or gain advantage in market. FTC further differentiated their role compared to CFTC, who has authority to investigate participant behavior and market trends to identify potential market manipulation. EPA and FTC did not specifically discuss establishing an MOU, but did exchange information to facilitate future discussions.

d. Will you commit to working with my staff to do more to address market manipulation in the RIN market?

Although the EPA has not seen evidence of manipulation in the RIN market, EPA is not a commodity market regulatory agency, and thus we do not have expertise in this field. EPA has not EPA's authority and function is to implement the RFS program and address fraud in the program. For example, since 2013, over two dozen individual defendants have been sentenced for RFS related crimes and have received a combined total of over 168 years of incarceration and ordered to pay over $400 million in fines and restitution. Restitution in these cases and the tens of millions of dollars forfeited since have been restored to victims of RFS fraud. Claims of market manipulation prompted EPA to execute a memorandum of understanding (MOU) with the U.S. Commodity Futures Trading Commission (CFTC), who has the authority and expertise to investigate such claims.

e. Will you commit to implementing the RFS fairly in a way that ensures an even playing field among obligated parties?

Yes, EPA is committed to ensnre an even playing field among all the parties participating in the RFS program. In fact, to protect the program's integrity and maintain a level playing field for regulated companies, EPA has pursued civil enforcement actions against renewable fuel producers, importers, and exporters that generated invalid RINs. In addition, since 2013, over two dozen individual defendants have been sentenced for RFS related crimes and ordered to pay over $400 million in fines and restitution. Restitution in these cases and the tens of millions of dollars forfeited have been since restored to victims of RFS fraud.

32. Under the Renewable Fuel Standard (RFS), biogas-generated electricity used to charge electric vehicles (EVs) is already an approved pathway and is eligible for the generation of cellulosic Renewable Identification Numbers (RINs). Applications for this pathway were submitted over a year and a half ago. Will you commit to approving an application for this pathway in the next 60 days?

In 2016, EPA proposed the Renewable Enhancement and Growth Support (REGS) Rule and identified a number of significant policy questions raised by different approaches to capturing RINs from renewable electricity used to charge electric vehicles. Since the REGS proposed rule comment period closed, OAR staff have been going through the many comments received, evaluating various conflicting implementation approaches raised in the comments, and exploring options for the complex issues associated with implementing the electric pathway. We continue to work towards a final decision on these important issues, which are a requisite before any final decisions on pending applications can be made.

33. Aside from the type of water identified in *SWANCC v. Army Corps of Engineers*, which have no significant connection at all to navigable-in-fact waters, are there any categories of water bodies that you believe have such an insignificant relationship to navigable-in-fact waters that discharges into them should be exempt from the Clean Water Act? In those cases, would the federal Clean Water Act allow discharges of unlimited quantities of toxic poisons into those waterbodies, even if a portion of those poisons eventually flowed downstream to navigable-in-fact waters?

    The scope of Clean Water Act jurisdiction under future regulation is currently under development. EPA and the Army have conducted and will continue to conduct a transparent and robust public engagement process, meeting and listening to stakeholders prior to issuing a proposal. EPA and the Department of the Army are currently considering suggestions from states, local government, tribes, and other stakeholders about which waters should be jurisdictional under the Clean Water Act and which should not.

34. The Obama Administration implemented its definition of "Waters of the United States" for several weeks in 2015. Has the EPA conducted any analysis of how easy or difficult it was to administer the Rule during that time? If not, why have you not conducted that analysis?

    The EPA did not conduct an analysis of the administration of the 2015 Clean Water Rule during the approximately six weeks that it was in effect in 37 states. The Army Corps of Engineers has the day-to-day responsibility for conducting jurisdictional determinations with respect to the permitting program under section 404 of the Clean Water Act.

35. In an interview with the National Cattlemen's Beef Association, you said that, "The Obama Administration reimagined their authority under the Clean Water Act and defined a 'water of the United States' as being a puddle ..."[17] The Obama Administration rule expressly exempts "puddles" from the definition of "waters of the United States?" *See* 33 C.F.R. §328.3(b)(4)(vii).
    a. If you were previously aware of this exemption, why have you repeatedly mischaracterized the rule?
    b. If you were not previously aware of this exemption, do you retract your statement? If you will not retract your statement, please explain why.

[17] "EPA Administrator Scott Pruitt Urges Ranchers to File WOTUS Comments," https://www.youtube.com/watch?v=yTVd54WybDQ.

Much of the concern raised about the 2015 Clean Water Rule focused on lack of clarity, uncertainty, and confusion in the implementation of this rule. While the Rule did exclude "puddles" from regulation, the Rule did not define the term. Many stakeholders expressed concern that the agencies would regulate features such as wet spots and tire ruts in farm fields because such features were not expressly as "puddles." clarity and predictability are among the critical goals of the current rulemaking effort.

36. You also stated that the Obama Administration reimagined their authority under the Clean Water Act and defined a 'water of the United States' as being . . . ephemeral drainage ditches."[18] The Obama Administration rule expressly exempts "[d]itches with ephemeral flow that are not a relocated tributary or excavated in a tributary" "puddles" from the definition of "waters of the United States?" *See* 33 C.F.R. §328.3(b)(3)(i).
    a. If you were previously aware of this exemption, why have you repeatedly mischaracterized the rule?
    b. If you were not previously aware of this exemption, do you retract your statement? If you will not retract your statement, please explain why.

The 2015 Clean Water Rule would regulate ephemeral drainage ditches that are a relocated tributary or excavated in a tributary.

37. What specific provision of the Clean Water Act or Administrative Procedure Act gives EPA the authority to alter compliance dates, not merely effective dates, for standards lawfully promulgated under 33 USC 1311(b)(2)?

EPA promulgated the 2015 Steam Electric ELG Rule pursuant to its legal authorities under the CWA, particularly sections 301(b), 304(b), 306, and 307(b) and (c) of the Act. Together, Sections 301(b) and 304(b) authorize EPA to establish effluent limitations guidelines based on Best Available Technology Economically Achievable. Section 306 authorizes EPA to establish Standards of Performance for New Sources, and Sections 304(b) and (c) authorize EPA to establish pretreatment standards for new and existing sources. Moreover, Section 304(m)(1)(A) and 301(d) authorize EPA to review its pretreatment standards for possible revision every year. EPA's authority for the Postponement Rule rests upon the same authorities as the 2015 Steam Electric ELG Rule and that meet the definition of "tributary" set forth in the rule.

[18] "EPA Administrator Scott Pruitt Urges Ranchers to File WOTUS Comments," https://www.youtube.com/watch?v=vTYd54WybDQ.

38. The Clean Water Act prohibits compliance dates that extend more than three years from the issuance of new effluent guidelines (EGs). In what specific statutory provision did Congress allow EPA to flout that requirement by postponing until 2020 the compliance deadline of an EG issued in 2015?

The statutory provisions in Section 301 requiring that effluent limitations be achieved no later than three years after promulgation, and in no case later than March 31, 1989, CWA section 301(b)(2)(C)-(F), could be read to apply only to BAT effluent limitations promulgated before 1989, with the statute being silent with regards to BAT effluent limitations promulgated thereafter. The statute also contemplates periodic review and revision of those guidelines, and implements those provisions through its CWA section 304(m) process. But the statute is silent about the deadline for effluent limitations and standards derived after 1989.

39. EPA explained that it is delaying the compliance deadlines of the steam electric power generating EGs because of costs to regulated industry. However, EPA estimated only 28% of coal-burning plants—and only approximately 12% of power plants overall—would incur any costs from the rule at all. Even among that small subset, almost all of those plants would incur costs less than 1% of the company's revenue.
    a. Do you disagree with those figures? If so, explain your disagreement.
    b. To what extent did you consider the EG's extensive public health benefits when deciding to delay the compliance deadlines?
    c. Do you believe that the incremental costs to industry outweighed the public health and environmental benefits of the EGs? If so, explain why.

EPA is currently collecting additional data on such things as changes that have taken place in the industry subsequent to the analysis supporting the 2015 Rule as part of its commitment to reconsider the technology bases of the new more stringent limits on the flue gas desulfurization (FGD) and bottom ash waste streams that were established in the 2015 Rule.

Extensive consideration was given to estimated public health benefits of the 2015 Rule, as well as the costs, and regulatory options. Petitioners raised serious concerns about the costs and impacts of the 2015 Rule. After considering those concerns, as well as public comment in response to EPA's June 2017 proposed rule to postpone certain compliance dates, EPA finalized a rule in September 2017 postponing certain 2015 Rule compliance dates, and announced EPA's intention to conduct a subsequent rulemaking potentially revising the limits for those wastestreams for which the compliance dates were postponed. EPA's action to postpone those compliance dates in the 2015 Rule was intended to preserve the status quo for FGD wastewater and bottom ash transport water while EPA completes its next rulemaking.

EPA acknowledges that postponement of the compliance dates may lead to a delay in the accrual of some of the benefits attributable to the 2015 Rule. The 2015 Rule assumed that steam electric plants would comply with the new, more stringent requirements no later than 2023, including implementation of new control technologies over a five-year compliance period, according to their permit renewal schedule. However, if EPA did not postpone the compliance dates, industry would likely incur these costs, irrespective of what EPA determines as the final limits for FGD wastewater and bottom ash transport water. EPA determined that the estimated foregone costs to industry warrant the postponement of compliance dates in the 2015 Rule.

40. The Safe Drinking Water Act permits EPA to "fill not more than thirty scientific, engineering, professional, legal, and administrative positions within the Environmental Protection Agency without regard to the civil service laws." 42 U.S. Code § 300j–10. These appointments may be made where the Administrator deems such action necessary to the discharge of his functions as they relate to Title XII of the Public Health Service Act (42 U.S.C. 300f et seq.) (relating to safety of public water systems). These individuals are exempted from certain other Executive Branch requirements, including the Trump Ethics Pledge. In an August 18, 2017 letter to GAO, Senator Whitehouse and I wrote: "EPA has utilized its SDWA authority to hire a number of non-Senate-confirmed political appointees, some of whom are serving in supervisory positions and in roles that raise ethical questions." Based on documents provided by EPA, it appears that some individuals may still be serving as administratively determined appointees. These appointees have been permitted to work on projects with essentially no check on their ethical or financial conflicts. Also, many of these appointees appear to have had EPA e-mail accounts that were created and used by them for weeks and even months before their stated appointment date -- in some cases nearly 4 months before.
    a. What is EPA's policy on the length of time an employee is allowed to serve under the SDWA authority without having to complete a financial disclosure form, or complete a recusal statement (if necessary)?

       All Administratively Determined (AD) appointees receive initial ethics training pursuant to 5 C.F.R. § 2638.304. While the regulation allows agencies up to three months to provide that training, EPA typically ensures that the new AD appointees receive the ethics training within their first two weeks. This training is conducted personally by EPA's ethics officials in the Office of General Counsel rather than online. EPA requires that all AD appointees complete the public financial disclosure report, the OGE 278, and adheres to the regulatory deadlines set forth at 5 C.F.R. § 2634.201(b), which requires filing within the first 30 days. Please note, however, that the Agency may grant filing extensions as set forth at 5 C.F.R. § 2634.201(f).

    b. What safeguards are in place to ensure that employees hired under the SDWA authority do not work on matters that may trigger a conflict before they submit their financial disclosure form and complete any necessary recusal statement?

EPA Ethics delivers initial ethics training in person (or, for appointees who are in regional offices, via conference call or video conference) to all Administratively Determined (AD) appointees. In that training, they specifically address conflicts of interest and impartiality, and inform the appointee about recusal issues. When the appointee files the financial disclosure report, EPA Ethics can more accurately assess possible financial conflict of interest issues and determines whether the appointee should issue a written recusal statement. If necessary, EPA Ethics drafts that document.

c. For each appointee hired under the SDWA authority, please provide the date of their appointment; the date the appointment ended (if any); and the specific projects they worked on while serving as an administratively determined appointee.

Please see Attachment 1.

d. For each employee hired by the EPA under the SDWA authority, Schedule C authority, or as Non-Career SES, provide the date on which their EPA e-mail address was created, and the date of their appointment, whether they worked at EPA in any capacity prior to their appointment date and if so, what capacity.

Please see Attachment 1.

41. In response to questions from Senator Merkley, you testified that a "Red Team / Blue Team" exercise to re-examine the underpinnings of climate science is still "under consideration" at EPA. According to Jim Lakely, the communications director of the Heartland Institute, EPA has "reached out to the Heartland Institute to help identify scientists who could constitute a red team," and the Heartland Institute had been "happy to oblige."[19]
    a. Is Mr. Lakely telling the truth that EPA representatives reached out to the Heartland Institute for help identifying scientists who could participate in a Red Team/Blue Team exercise? If yes, why did EPA choose to contact the Heartland Institute?
    b. Have representatives of the Heartland Institute provided representatives of EPA with a list of "scientists who could constitute a red team"? If yes, who are the Heartland Institute's proposed participants?
    c. Have any EPA representatives consulted with any other organizations, corporations, or individuals about potential individuals who could participate in a Red Team/Blue Team exercise? If yes, provide the names of those organizations, corporations, or individuals consulted, and the names of any proposed participants.

[19] http://www.washingtonexaminer.com/trump-administration-lining-up-climate-change-red-team/article/2629124

d. Do you know the names of any individuals or organizations who have contributed to the Heartland Institute? If yes, please provide the names of any such individuals or organizations with whom you have met in your capacity as EPA Administrator.
e. Please provide a copy of all documents (including emails, white papers, meeting agendas, powerpoint presentations, memoranda and other materials) received or obtained by EPA related to the "Red Team/Blue Team" climate science effort.

Administrator Pruitt encourages an open, transparent debate on climate science – with a Red Team/Blue Team exercise being an option discussed to learn more about the questions around climate science.

42. A press report indicates that EPA's Office of the Chief Financial Officer established a target for Region 9 to reduce their FTEs by 10% by the end of FY18. Has the CFO or anyone in the Administrator's office provided other EPA regional offices or program offices with targets for reducing personnel by a specified percentage? If so, please provide each of the targets. Please also provide any document from the CFO or the Administrator's office communicating an FTE or staff reduction target to any EPA region or program office for FY18 or future fiscal years.

The President's Budgets for FY 2018 and FY 2019 include proposals for significant staffing reductions and those levels were considerations in the establishment of internal planning targets which were to be revaluated after appropriations bills are passed and during the development of EPA's Operating Plan. The effort is on-going. Recent flat-lined appropriations in the majority of EPA's program projects, combined with payroll growth, have created challenges in meeting program requirements that are addressed with contracts or with grants. Taken together, these trends mean the agency must carefully manage workforce levels. Specific impacts vary depending on organizations' current staffing levels and attrition rather than a set percentage.

Office or Region	Starting point Onboard FTE (data as of 9/25/17)	Interim FTE Target for End of FY 2018
OA	362.6	340.3
OAR	1,106.7	1,085.2
OARM	652.0	646.8
OCFO	291.0	300.8
OCSPP	979.0	932.5
OECA	667.2	670.0
OEI	325.9	364.9
OGC	222.1	196.8
OIG	267.5	270.0
OITA	71.8	68.1
OLEM	468.5	456.4
ORD	1,619.9	1,463.7
OW	552.3	533.2
R01	514.9	535.9
R02	752.1	715.7
R03	764.7	713.5
R04	877.0	858.3
R05	1,008.1	979.5
R06	739.9	677.5
R07	445.6	449.0
R08	512.5	478.3
R09	699.5	652.1
R10	522.9	478.5
Total	**14,423.6**	**13,867.0**

43. A recent report[20] indicates that, at a proposed superfund site in Chattanooga, EPA is only taking the most protective clean-up measures at properties where children currently live. EPA cannot possibly know whether families with children will one day move into homes that EPA isn't cleaning up because children don't *currently* live there. And EPA cannot possibly know which homes children visit frequently.
    a. Is the policy described in the report accurate? If not, please fully describe any inaccuracies.
    b. If the policy described in the report is accurate, please provide all documents (including emails, memos, white papers, analysis, meeting minutes and correspondence) related to any policy decision that limits the most aggressive cleanup measures to sites that currently have children residing on the premises.

[20] http://amp.timesfreepress.com/news/local/story/2018/jan/15/dozens-chattanooghomes-sitting-toxic-site/461286/?__twitter_impression=true

The *Chattanooga Free Times* press report is partially accurate with respect to the prioritization of the of the cleanup of impacted properties under the time-critical removal process at the Southside Chattanooga Lead Site. In an effort to minimize residents' exposure to highly contaminated soil, EPA's Superfund program is utilizing both removal and remedial cleanup authorities to expeditiously address the contamination at the Southside Chattanooga Lead Site. Currently, cleanup activities are being conducted under removal authorities. As a result, property cleanup is primarily based on detected lead concentrations above the removal management level of 1,200 milligrams per kilogram (mg/kg). In addition, special considerations are also provided to properties with children.

On January 18, 2018, the site was proposed for listing on the National Priorities List (NPL). Inclusion of the site on the NPL will allow additional resources to be allocated to address the contamination under the remedial program. EPA expects that residential properties, regardless of nature of occupancy, with lead concentrations above the anticipated site-specific cleanup level (360 mg/kg) will be addressed under the remedial process.

44. The President issued an Executive Order saying that for every rule an agency writes, two rules have to be repealed such that the net costs to industry are zero. However, the White House issued guidance on implementing this executive order that says that rules that address critical health matters could be exempted from the two-for-one repeal requirement. Does EPA plan to exempt its rule revising the Lead and Copper Rule from the two-for-one Executive Order? If not, why not, since the Rule does relate to a critical health matter?

    In reviewing an update to the Lead and Copper Rule, EPA assesses potential costs. Any decisions regarding costs will be based on the substance of the rule, which is still in the rulemaking process.

45. Coal ash is laden with toxic pollutants and heavy metals, and is second only to mine waste as the largest industrial waste stream in country. On April 17, 2015, the EPA published a final rule regulating the disposal of coal ash, also known as "coal combustion residuals" (CCR), from power plants.[21] Among other things, the CCR rule established vital rules to protect groundwater resources, to protect local communities from toxic windblown dust,[22] to reduce the risk of catastrophic failure (*i.e.*, collapse) of surface impoundments, and to maintain records of compliance with those rules. You became EPA Administrator on February 17, 2017. On April 17 and May 31, 2017, lawyers for power plants asked to you reconsider a laundry list of provisions in the CCR rule. On

[21] 80 Fed. Reg. 21,302 (Apr. 17, 2015).
[22] *See, e.g.*, Sabrina Shankman, *Is Coal Ash Killing This Oklahoma Town?*, INSIDE CLIMATE NEWS, June 13, 2016, *available at* https://insideclimatenews.org/news/10062016/coal-ash-killing-bokoshe-oklahoma-making-money-having-fun-cancer-asthma.

September 13, 2017, you replied that, "After reviewing your petitions, I have decided that it is appropriate and in the public interest to reconsider the provisions of the final rule addressed in your petitions, in light of the issues raised in your petitions, as well as the new authorities provided in the recently enacted Water Infrastructure Improvements for the Nation Act, Pub. L. No. 114-322, 130 Stat. 1628 (2016)."[23]

You appear to have granted reconsideration of every provision requested by the electric power sector in their two petitions for reconsideration. Is that a correct reading of your letter? If not, which provisions are you reconsidering?

EPA has agreed to reconsider a number of provisions of the CCR rule. The U.S. Court of Appeals for the D.C. Circuit ordered EPA to submit a status report indicating which provisions of the final CCR rule were being or were likely to be reconsidered by the agency and a timeline for their reconsideration. EPA filed that status report on November 15, 2017, indicating that the following provisions were or were likely to be reconsidered. These included issues that were before the Court as well as those that were not:

Provision	**Description**
Issues Before the Court	
40 CFR 257.50(c), 40 CFR 257.100	EPA Regulation of Inactive Surface Impoundments
40 C.F.R 257.53 – definition of beneficial use	The Criteria for Determining Whether Activities Constitute Beneficial Use or Disposal
40 CFR 257.95(h)(2)	Use of Risk-Based Alternative Standards for Remediating Constituents Without an MCL
40 CFR 257.53 – definition of CCR pile	The criteria for determining Whether a Pile will be Regulated as a Landfill or as Beneficial Use
40 CFR 257.96-98	Regulatory Procedures Used to Remediate Certain Non-Groundwater Releases
40 CFR 257.73(a)(4), 257.73(d)(1)(iv), 257.74(a)(4), 257.74(d)(1)(iv)	Requirements for Slope Protection on Surface Impoundments, Including Use of Vegetation
40 CFR 257.103(a) and (b)	Whether to Allow Continued Use of Surface Impoundments Subject to Mandated Closure if No Capacity for Non-CCR Wastestreams
40 CFR 257.50(e)	Regulation of Inactive Surface Impoundments, Including Legacy Ponds

[23] https://insideepa.com/sites/insideepa.com/files/documents/sep2017/epa2017_1860.pdf

40 CFR 257.100	Exemption for Certain Remediation and Post-Closure Requirements for Inactive Surface Impoundments that Close by April 17, 2018 Note: EPA completed reconsideration of the issues associated with this claim. See 81 Fed. Reg. 51,802 (August 5, 2016).
Appendix IV to 40 CFR 257.93(b), 257.94(b), 257.95(b), 257.95(d)(1)	Addition of Boron to the List of Constituents that Trigger Corrective Action
Issues Not Before the Court	
40 CFR 257.97	Whether to Allow Modification of the Corrective Action Remedy
40 CFR 257.90	Whether to Suspend Groundwater Monitoring Requirements Where "No Migration" Demonstration is Made
40 CFR 257.98(c)	Whether to Allow Alternate Period of Time to Determine Remediation is Complete
40 CFR 257.104	Whether to Allow Modification of the Post-Closure Care Period
40 CFR 257.101, 257.102	Whether to Allow CCR to be Used to Close Surface Impoundments Subject to Mandated Closure
40 CFR 257.53	Clarify Placement of CCR in Clay Mines

46. Please provide a copy of all documents (including emails, white papers, meeting agendas, powerpoint presentations, memoranda and other materials) received or obtained by EPA related to the April 17, 2017 petition for reconsideration from the Utility Solid Waste Group, and the May 31, 2017 petition for reconsideration from AES Puerto Rico.

    EPA received two documents related to the April 17, 2017, petition: (1) a petition and cover letter from AES Puerto Rico, and (2) a petition from USWAG. These documents are attached (Enclosures).

47. Section 2301 of the WIIN Act[24] allows EPA to approve state-administered CCR regulations to operate in lieu of certain federal CCR regulations. Will you ensure that any state programs you approve are at least as protective of human health and the environment as the EPA's 2015 CCR rule?

[24] Codified at RCRA section 4005(d), 42 U.S.C. 6945(d).

Yes, the agency will ensure that any state programs that are approved meet all of the requirements for approval under the WIIN Act, including that the be "at least as protective as the 2015 CCR rule or successor regulations." In order for EPA to approve a state program, the statute requires that a state provide "evidence of a permit program or other system of prior approval and conditions under State law for regulation by the State of coal combustion residuals units that are located in the State." See 42 U.S.C. 6945(d)(1)(A). As noted, the statute also requires that the program be "at least as protective as" the federal CCR rule. Moreover, in EPA's Interim Final Coal Combustion Residuals State Permit Program Guidance Document, EPA states in many places that the state must submit evidence that their program is at least as protective as the federal CCR rule and that this determination is subject to public notice aud comment. EPA has been working with our state partners to ensure that their programs meet the statutory standard.

48. As a former state attorney general, you know that laws are only effective insofar as regulated entities believe they will actually be enforced. Could the unavailability of citizen enforcement make a state program less protective of human health and the environment, or is it irrelevant? Please fully explain your response.

Citizen enforcement of environmental laws can support governmental actions and foster deterrence and thus may be a relevant consideration when state legislatures are designing environmental programs. However, citizen suits also may take positions that are contrary to a state's interpretation of its own laws, creating confusion. Ultimately, a decision by a state legislature whether or not to include citizen suit provisions in their statutes should be left to that legislature, taking into account the needs of the state and the environmental program being addressed.

49. For each inactive surface impoundment currently subject to the 2015 CCR rule, please provide:
    a. The site's name;
    b. The site's location;
    c. The amount of coal ash disposed of in the site;
    d. The number of people living within 3 miles; and
    e. Any waterbodies or public water supplies located within 3 miles of the site.

Based on information that electric utilities posted on their CCR websites, EPA is aware of 113 inactive surface impoundments. The 2015 CCR rule defines an inactive surface impoundment as "a CCR surface impoundment that no longer receives CCR on or after October 19, 2015, and still contains both CCR and liquids on or after October 19, 2015." The attached table shows available information on the name and location of the 113 CCR units (Enclosure). EPA does not have the information to answer parts c through e of the question, as facilities are not required to report such information to EPA under the current regulations.

50. One of the companies that requested you reconsider the 2015 CCR rule, AES-Puerto Rico, appears to maintain a five-story pile of coal ash in Guayama, Puerto Rico. Has EPA received complaints about fugitive emissions from this waste pile? Has EPA investigated whether Hurricane Maria affected this and other waste piles in Puerto Rico? Please provide a copy of all documents (including emails, white papers, meeting agendas, powerpoint presentations, memoranda and other materials) received or obtained by EPA regarding off-site migration of coal-ash caused by Hurricane Maria. What precautions is EPA taking to ensure that weather events do not cause the release of coal ash?

On October 12, 2017, a team of EPA officials assessed the AES power plant to evaluate, among other things, potential spills or oil discharges, the stormwater collection and discharges system, and the wastewater treatment system. The assessment revealed that the power plant was structurally sound, oil spills were not observed from the diesel storage areas, and coal combustion residuals (CCR) had not migrated. EPA did not observe any discharge of CCR or Agremax material into wetlands. The stormwater management system implemented at the power plant appears to have prevented Agremax material and coal from discharging into the wetlands. A copy of the assessment information for the facility is enclosed.

It should be noted that the power plant had been shut down until just recently. Some structures, such as metal sidewalls and portions of the conveyors, were impacted by the storm and they were being repaired. The power plant remained out of operation until the Puerto Rico Electrical Power Authority (PREPA) requested that AES begin to produce power. AES began to producing power the week of February 12th, 2018.

Senator Booker:

51. The EPA has conceded that dangerous toxic and carcinogenic substances at dozens of Superfund sites are not adequately under control. The agency has also acknowledged that recent hurricanes have washed unknown amounts of chemicals from multiple Superfund sites into waterways. A recent analysis showed that 327 Superfund sites, 35 of which are in New Jersey, are at a risk of flooding due to climate change. In response to these findings, the Government Accountability Office (GAO) has agreed to investigate the risks to human health and the environment posed by natural disasters' impacts on Superfund sites.
    a. Do you agree that EPA must design Superfund remedies that account for climate change?
    b. Have you directed EPA staff to determine which Superfund sites may require additional remedies or precautions to be taken due to climate change?
    c. Can you please specify any additional resources that EPA may need to help remediate these sites?

EPA agrees that to meet its mission of protecting human health and the environment, Superfund cleanup remedies must be designed to account for the impacts of extreme weather events. The agency's existing processes for site cleanup planning and implementation provide a robust structure that allows consideration of these impacts. EPA integrates extreme weather vulnerability analyses and adaptation planning throughout the Superfund process, including when conducting feasibility studies, remedial designs and remedy performance reviews. Due to wide variation in the location and geophysical characteristics of contaminated sites, the nature of remedial actions at those sites, and local or regional climate and weather regimes, a place-based strategy is the most effective method to achieve this.

In 2012, the agency conducted a Superfund program assessment to: (1) identify extreme weather impacts most likely to affect remedies that are commonly used for contaminated groundwater, soil, or sediment; (2) evaluate associated vulnerabilities of the remedies; and (3) establish adaptation strategies for new and existing remediation systems. Since that time, EPA has been working to raise awareness among stakeholders, including Superfund site remedial project managers, about the importance of evaluating and addressing extreme weather vulnerabilities to ensure the continued protectiveness of remedies. The agency also continues to develop technical guidance, informational tools and training to assist site managers in integrating extreme weather vulnerability analyses and adaptation planning throughout the Superfund process.

52. On May 22, 2017, the Superfund Task Force was established to "provide recommendations…on how the Environmental Protection Agency (EPA) can streamline and improve the Superfund program." The report's recommendations were released in July 25, 2017. The EPA has stated that the Superfund Task Force kept no records of the analysis used to form recommendations for the Superfund program.
    a. Is this correct? Did the Agency keep no records of the analysis used to form recommendations?
    b. If it is correct, please provide justification or reasoning for the lack of record keeping when compiling a report that would shape the management of the Superfund program.

As I indicated at the hearing, the Agency has responded to various requests for records regarding this issue to both Congress and inquiries received via Freedom of Information Act.

<u>Sites Targeted for Immediate Intense Action</u>: In developing the "immediate, intense action" list, senior career Superfund staff at EPA headquarters and in each region were consulted and identified potential sites that may be worthy of special attention now or in the future to advance those sites through the cleanup process. The recommended sites represent the EPA regions' best professional judgment where the Administrator's involvement would facilitate site progress. The Administrator reviewed the recommendations and personally selected the sites for inclusion. The list includes sites that require timely resolution of specific issues to expedite cleanup and redevelopment efforts. The specific issue or milestone that may benefit from the Administrator's attention is noted for each site on the list, which can be found on the EPA website at: <u>https://www.epa.gov/superfund/superfund-sites-targeted-immediate-intense-action</u>.

The list is designed to spur action at sites where opportunities exist to act quickly and decisively. The Administrator will receive regular updates on each of these sites. Further, the list is intended to be dynamic and sites will move on and off the list as appropriate. At times, there may be more or fewer sites based on where the Administrator's attention and focus is most needed.

<u>Redevelopment Focus List</u>: In formulating the redevelopment focus list, EPA headquarters staff reached out to the EPA regional Superfund Redevelopment Initiative (SRI) coordinators to inquire about sites where there has been a strong interest in reuse or at sites appearing to have the strongest near-term reuse potential. This inquiry formed an initial list. Consistent with the Task Force Recommendation #33: *Focus Redevelopment Efforts on 20 NPL Sites with Redevelopment Potential and Identify 20 Sites with Greatest Potential Reuse*, EPA headquarters staff then narrowed the list based on the following criteria:

- **Previous outside interest**
- **Transportation access**
- **Land values**
- **Other critical development drivers.**

This refined list of sites was shared with the Agency's regional Superfund offices, which vetted the sites with SRI experts, remedial project managers, attorneys and regional management. The regional offices also contacted property owners, as appropriate, to let them know that EPA was considering their sites for the list, and reached out to EPA's state counterparts to ask if they had additional sites with redevelopment potential that the Agency should consider. Once EPA headquarters and the regions reached agreement, the list was made public.

The Redevelopment Focus List is intended to easily direct interested developers and potential owners to Superfund sites with redevelopment potential. EPA plans to focus redevelopment training, tools and resources towards the sites on this list. The Agency also plans to work with developers interested in reusing these and other Superfund sites; identify potentially interested businesses and industries to keep them apprised of redevelopment opportunities; and continue to engage with community groups in cleanup and redevelopment activities to promote the successful redevelopment and revitalization of their communities. This list is intended to be dynamic with sites moving on and off the list as appropriate.

The current list of sites may be found at: https://www.epa.gov/superfund-redevelopment-initiative/superfund-redevelopment-focus-list
For additional information about the Superfund Redevelopment Initiative, please go to: https://www.epa.gov/superfund-redevelopment-initiative

53. In response to the Superfund Task Force recommendations issued on July 25, 2017, you developed multiple priority lists of Superfund sites, including a list for sites targeted for "immediate, intense action" and the "Redevelopment Focus" list that highlights sites that can create potential commercial and development opportunities.
    a. How did you pick the sites to include on these lists? What specific criteria did you use?

    As to the Superfund Special Emphasis List, all 10 Regions were asked to submit their recommendations on sites that could benefit from attention and involvement. From the list submitted, the Agency selected the ones to be listed initially. EPA originally anticipated a list of 10 would be the metric. However, with discussion and review of those submitted, the list expanded to 21.

    As to the Redevelopment Site list, all 10 Regions again submitted recommendations for the list. The career staff in EPA's Office of Land and Emergency Management made the final recommendations to me.

b. What process do you intend to use in removing and adding sites to these lists?

As to the Superfund Special Emphasis List, the expected milepost or achievement needing attention is listed at the outset. Once that is achieved and absent a new milepost needing attention, the site wonld be deleted from the list. As to adding sites, the same process as originally employed will be replicated quarterly.

As to the Redevelopment List, a site will be removed once it has had an effective contract to reuse or it is apparent it is not viable, the site would be removed. Additions would come in the manner above with quarterly recommendations from the Regions to the career headquarters Superfund staff.

c. In what ways does the listing of these sites affect cleanup, construction, and revitalization efforts?

As to the Superfund Special Emphasis List, the listing has brought a focus and urgency to both the Potentially Responsible Parties and to those who are directly responsible to effect clean up and interact with the Potentially Responsible Parties. What the boss inspects, the employees respect. We have already seen sites stalled for years come to final pathway to resolution. Additionally, we have seen other sites move through my approval on to the remediation pathway.

As to the redevelopment list, this allows those parties interested in developing Superfund sites to focus on a few promising sites rather than sifting through 1344 sites. It also will allow potential third party dollars to be used in cleanup and more quickly return the property to productive use.

d. Do you plan to release a report or follow up on the progress made at the sites on these lists?

The status of the sites is monitored, particularly on the Special Emphasis List very frequently. We will update and revise after each quarter and will transparently report on additions and deletions, which will be available at https://www.epa.gov/superfund/superfund-task-force.

54. The Diamond Alkali site in Newark, New Jersey is on your list of Superfund sites targeted for "immediate, intense action" – will you be working as quickly as possible to implement the Record of Decision for the lower 8 miles of the Passaic River?

Yes, EPA will continue to work as quickly as possible to implement the Record of Decision (ROD) for the lower 8.3 miles of the Passaic River. The designation as a special emphasis site is intended to maintain a focus on the high priority cleanup actions that are necessary as we continue to oversee the design work for the bank-to-bank dredging and associated work.

After the ROD was signed in March 2016, EPA negotiated and signed a settlement agreement with Occidental Chemical Corporation (OCC) in September 2016 for OCC to perform the remedial design for the selected remedy. Signing a settlement agreement for a $165 million remedial design in six months was an unprecedented accomplishment for EPA. The schedule for the remedial design estimated in the ROD was approximately four years. More than one year into the design, OCC, under EPA oversight, is still on schedule to complete the design by 2020.

55. When you commissioned the Superfund Task Force on May 22, 2017, you nominated Albert Kelly, who previously was CEO and President of Oklahoma-based SpiritBank, as its Chairman. Thirteen days prior to his appointment, he was ordered by the Federal Deposit Insurance Corporation ("FDIC") to pay a civil penalty of $125,000 after he "enter[ed] into an agreement pertaining to a loan ... without FDIC approval." Two months later, the FDIC issued a lifetime ban prohibiting Mr. Kelly from managing financial institutions after determining that his violations "demonstrated ... unfitness to serve as a director, officer, [and] person participating in the conduct of the affairs or as an institution affiliated party of the bank, [or] any other insured depository institution."
    a. The FDIC has banned Albert Kelly from banking for life because he "demonstrated ... unfitness to serve as a ... person participating in the conduct of the affairs ... [of] any ... insured depository institution."
        i. Will he be managing or providing advice on Superfund program funding or any other program funding in his role as Senior Advisor?
        ii. If so, what is the nature of these responsibilities?
        iii. Will you ask him to recuse himself from any specific agency activities or issue areas as a result of the banking ban?
    b. Were you aware of the FDIC investigations when you named him as Chair of the Superfund Task Force?
    c. Were you aware of the FDIC investigations when you named him as Senior Advisor

There is no federal ethics correlation between the FDIC matter and Mr. Kelly's service to EPA.

56. Proper financial management of the Superfund program is critical to its success. Since 1999, federal funding for the Superfund program has declined from about $2 billion to about $1.1 billion annually, and the rate of contamination threat reduction at Superfund sites has declined. During your hearing, you repeatedly stated that you had visited states throughout the country and discussed the Superfund and that the cleanup of sites would require "direction and leadership." The Chairman of the Superfund Task Force is charged with developing and implementing recommendations to improve the work of the Superfund program.
    a. Mr. Kelly had no previous experience in environmental policy or management when you named him to Chair the Superfund Task Force.
        i. What experience did he have that you believe qualified him to serve as Chair?
        ii. What experience does he have that you believe qualify him to serve as your Senior Advisor?
    b. What responsibilities was Albert Kelly given as Chairman of the EPA Superfund Task Force during the production of the Superfund Task Force Recommendations? What is his role and responsibility as Chair now that the Task Force has released its recommendations?
    c. What responsibilities was Albert Kelly given as Senior Advisor at the EPA? What specific policy areas and programs will he be responsible for in this role?

Mr. Kelly has years of leadership positions from our home state of Oklahoma that has suited him to work with the Director of the Office of Superfund Remediation and Technology Innovation to facilitate Superfund reform. During the production of the Superfund Task Force Recommendations, Mr. Kelly was my leading appointee who spearheaded the effort while compiling the suggestions of career staff. Since the production of the recommendations up until his resignation from the Agency, he lead the efforts to begin the implementation of the recommendations.

57. When you decided to move forward with the process to potentially weaken the Agricultural Worker Protection Standard requirements, what steps did you take to comply with Executive Order 12898, which requires EPA to identify and address the disproportionately high and adverse human health effects of its activities on minority and low income communities?

In response to stakeholder concerns, in December 2017, EPA released a Federal Register Notice to initiate the process to revise certain requirements in the Worker Protection Standard (WPS) and Certification of Pesticide Applicators Rule. By the end of fiscal year 2018, EPA expects to publish a Notice of Proposed Rulemaking to solicit public input on possible revisions to the WPS requirements for minimum age, designated representatives, and application exclusion zones, and the minimum age requirement for certified applicators. While the agency seeks public input on these possible changes, the compliance dates for the two rules remain in effect. EPA remains committed to protecting agricultural workers who handle and apply pesticides. Any possible revisions included in the proposed rulemakings will comply

with all applicable statutory requirements and executive orders, including Exccutive Order 12898.

58. Despite proposing drastic cuts to EPA's budget, you are spending taxpayer dollars on questionable expenses such as paying $25,000 to install a custom-made, soundproof phone booth in your office.
    a. Have you used this $25,000 phone booth for any calls with representatives of oil and gas companies?

       No.

    b. Will you provide to this committee within 10 days a log of all of the calls you have made from this phone booth?

       This is a secure phone line and room to be used for secured conversations with administration officials. This was an update to the building. For the information of the Committee, the upgrades and maintenance to the two main North and South portions of this 1930's era grand building is approximately $6 million every year out of EPA's most recently annual appropriation of $7.9 billion.

59. Despite a tradition of EPA reimbursing the Justice Department for their work in holding polluters accountable for Superfund clean ups, it was recently reported that you may break with this precedent, directing your agency to not reimburse the DOJ for that work. Do you plan on withdrawing EPA funding for the Justice Department's Environment and Natural Resources Division?

    Cleaning up the nation's Superfund sites and returning them to communities for beneficial use is one of EPA's top priorities. Under the President's Budget for EPA, up to $20 million will be provided for DOJ support for Superfund Enforcement to focus on the highest priority sites, particularly those that may present an immediate risk to human health and the environment.

Senator Boozman:

60. Administrator Pruitt, I understand that EPA is currently reviewing procurement guidance for the federal government's purchasing of lumber and wood products. During the Obama Administration, EPA issued procurement guidelines for lumber and wood products that called for the use of wood and lumber certified by the Forest Stewardship Council, leaving out wood grown on forests certified by the two major forest certification systems in the U.S.: the American Tree Farm System and the Sustainable Forestry Initiative. This guidance would have excluded of 4 million acres of Arkansas timber eligible for federal procurement. Additionally, the Obama Administration's guidance runs directly counter to the regulations issued under USDA's BioPreferred program, a program created in the 2008 Farm Bill that sets federal purchasing requirements for all biobased products and specifically recognizes eligibility from all three systems. What are you doing to ensure the EPA does not arbitrarily pick winners and losers and prevent the federal government from purchasing American timber?

    EPA's previous action on this issue was carried out under the June 2015 "Implementing Instructions for Executive Order 13693: Planning for Federal Sustainability in the Next Decade," and was not an agency regulation. Based on stakeholder concerns and interagency discussions, the EPA recommendation for the lumber/wood product category was removed from the "Recommendations of Specifications, Standards, and Ecolabels for Federal Purchasing" in December 2016. Before further action on this product category, EPA will ensure coordination with the USDA Forest Service and USDA Natural Resources Conservation Service, Department of Energy, OMB, and CEQ to determine how forestry standards should best be evaluated. Once the federal agencies have had time to come to consensus, EPA would engage stakeholders to refine the guidelines pertinent to evaluating the lumber/wood recommendation. This process is intended to provide a transparent, fair, and consistent approach to updating the EPA recommendation of forestry certifications and assessing other commodities' extraction/harvesting related environmental impacts.

Senator Ernst:

61. In two separate interviews shortly after the time of this hearing, you stated the need for both RFS reform and RIN reform. During the confirmation process, you went to great length to explain your intention to uphold the RFS. Can you please explain what you think RFS reform entails? In Iowa, this is a flashpoint and the continued rhetoric used appears to contradict your promise to this Committee on the RFS.

    There has been a heightened interest from a broad range of stakeholders advocating for programmatic changes to the Renewable Fuel Standard (RFS) in order to expand the use of higher ethanol blends and stabilize the costs of compliance. The above referenced interviews were subsequent to a then-recent meeting with government leaders at the White House which included representatives from your office. As you may recall, concerns were expressed regarding the variability of Renewable Identification Number (RIN) values, the impact of those costs on obligated parties and the range of options government leaders and policy makers should consider to strengthen the long-term viability of the RFS program. My references to RFS or RIN reform in those interviews was merely a summation of those discussions and associated concerns.

62. Much has been said about finding a "win-win" on the RFS and RINs, albeit not by you, but by some Members of Congress. Would you agree that fixing the Reid vapor pressure issue on E15 is a "win-win"? Doing so would reduce RIN prices, which some refineries say they need, while also expanding the marketplace for biofuels.

    Expanding the 1.0 pound per square inch (psi) waiver for RVP to E15 has been and continues to be a part of RFS reform options expressed and supported by a range or stakeholders. Senator Fischer has shown great leadership in the Senate on this issue and, during the same interviews referenced in the preceding question, I discussed the prospect of granting this type of waiver and have been assessing the legal and technical considerations for an administrative action.

63. How aggressively will EPA pursue the RIN obligation from refineries that declare bankruptcy?

    We, along with our colleagues across the federal government, will monitor any such bankruptcy proceedings closely. However, we would treat each situation on a case-by-case basis, so I am not able to comment further on this matter.

64. The Pesticide Registration Improvement Act (PRIA) was first enacted in 2003 and established a fee schedule for pesticide registrations. It lists specific time periods for EPA to make a regulatory decision on pesticide registration and tolerance actions submitted to the Agency. The goal of PRIA was to create a more predictable and effective evaluation system for affected pesticide decisions and couple the collection of individual fees with specific decision review periods. It also promoted shorter review periods for reduced-risk applications.

    PRIA has been tremendously successful, providing hundreds of millions of dollars in funding to EPA and providing product developers with clarity on timelines for Agency actions, and facilitating investment in research and development of new products. Importantly, through these industry fees, it has also provided $1 million annually in worker protection and pesticide safety training.

    PRIA has been reauthorized twice since it was first enacted – in 2007 and 2012 – each time by unanimous consent. It has been supported by large and small manufacturers of agricultural and non-agricultural products, antimicrobial products, biotech companies, and biopesticides, as well as labor and environmental advocates. The current law was set to expire on September 30, 2017; however, an extension was included in the CR that extends the authorization through February 8, 2018. H.R. 1029, the Pesticide Registration Enhancement Act, which would reauthorize these authorities, passed the House by voice vote on March 20, 2017, and was reported by the Senate Agriculture Committee on June 29, 2017.

    a. Can you explain the likely impacts to worker protection programs and your ability to regulate pesticides if PRIA is not reauthorized?

    PRIA provides approximately 33 percent of the funding for EPA's pesticide program activities. Currently operating under the third iteration of the statute, PRIA provides two funding sources to EPA's pesticide program:

    - **One time registration service fees (i.e., PRIA fees) for the evaluation of new applications submitted to the EPA; and**
    - **Annual FIFRA maintenance fees assessed to products currently in the marketplace, a significant portion of which are used to support the re-evaluation of pesticides in order to meet the statutory deadline of October 1, 2022, for completing the first round of registration review.**

    PRIA's authorization expired on September 30, 2017, has been extended in short term reauthorizations in each continuing resolution, and is now authorized through March 23, 2018. Legislation reauthorizing PRIA is currently pending in Congress. If the authorization expiration date is not further extended or if PRIA is not reauthorized by that date, pesticide applications submitted after that date will no longer be subject to decision time periods. The two year sunset provision in FIFRA section 33(m) specifies fees be reduced in fiscal year 2018 by 40 percent below the levels in effect during fiscal year 2017, and by 70 percent in

fiscal year 2019. Effective September 30, 2019, fee requirements under PRIA would be terminated.

Additionally, if PRIA were not reauthorized, $2 million per year for worker protection activities, pesticide safety education programs, and partnership grants, monies that currently come from PRIA funds, would not be available and these programs would not be funded. These activities include:

- **Developing and administering a pesticide safety training program that will support a national network of pesticide safety trainers providing worker safety training to migrant and seasonal farmworkers and their families (National Farmworker Training Program);**
- **Developing pesticide education materials for workers, handlers, and trainers on how to comply with WPS (cooperative agreement with UC-Davis and Oregon State University); and**
- **Supporting National Pesticide Information Center (NPIC), a bi-lingual, factual source of information for professional and public audiences on pesticide-related issues.**

b. What would be the impact to farmers across my state and the country?

PRIA provides predictability and regulatory certainty to all stakeholders regarding the timing of pesticide registration decisions. In the absence of PRIA, the statutory timelines would no longer exist and applications to register new pest control tools would be reviewed as resources were available. However, EPA would not be in a position to guarantee a registration decision timeline with any certainty. Farmers in need of new pest control tools would be greatly impacted as they may not be able to timely adopt new technologies to address their pest management needs.

Senator Fischer:

65. In two recent television interviews, you discussed the need for RFS and RIN reform. Given your commitments made to this committee during the confirmation process that you would uphold the RFS, can you please elaborate on what you think RFS reform means?

    There has been a heightened interest from a broad range of stakeholders advocating for programmatic changes to the Renewable Fuel Standard (RFS) in order to expand the use of higher ethanol blends and stabilize the costs of compliance. The above referenced interviews were subsequent to a then-recent meeting with government leaders at the White House which included representatives from your office. As you may recall, concerns were expressed regarding the variability of Renewable Identification Number (RIN) values, the impact of those costs on obligated parties and the range of options government leaders and policy makers should consider to strengthen the long-term viability of the RFS program. My references to RFS or RIN reform in those interviews was merely a summation of those discussions and associated concerns.

66. How do you plan to approach the bankruptcy court case involving Philadelphia Energy Solutions? Do you intend to ask the refinery to honor their legal obligation?

    We, along with our colleagues across the federal government, will monitor any such bankruptcy proceedings closely. However, we would treat each situation on a case-by-case basis, so I am not able to comment further on this matter.

67. If PES is allowed to use bankruptcy to avoid their RFS obligation, do you expect other refineries to follow this path?

    We are aware that PES recently filed a plan of reorganization with a bankruptcy court in Delaware, and we, along with our colleagues across the federal government, are monitoring the bankruptcy proceedings closely. As this is the subject of ongoing court proceedings, I am not able to comment further on this matter.

68. I understand that several commercial-ready companies seeking approval of new cellulosic biofuel (D3) registrations have been told by U.S. Environmental Protection Agency (EPA) staff that the processing of such applications is currently on hold until EPA staff completes an internal review.

    Because of the investment and long-term planning required to undertake these projects, it is imperative that new production of qualified cellulosic biofuels is approved as efficiently as possible. This will allow these commercial-ready businesses to gain the value associated with the D3 RIN production during this time of tight margins in the

agriculture economy and signal to the marketplace that these gallons are valued, as the Renewable Fuel Standard (RFS) intends.

If EPA is currently delaying registration of new D3 production, the falsely low D3 production volume would affect not only today's market, but also the market for the coming year and beyond, through EPA's annual volumetric rulemaking for the RFS. This practice would systematically underestimate D3 production, and thereby undermine Congress's intent under the RFS to grow the cellulosic biofuel market.

Does EPA currently have new cellulosic registrations on hold until EPA staff completes an internal review?

Under the Renewable Fuel Standard (RFS) program, cellulosic ethanol produced from corn kernel fiber qualifies to generate cellulosic RINs under an existing approved fuel pathway if certain registration and reporting requirements are met. EPA has registered some ethanol facilities under this pathway and received additional applications that are currently under review at this time.

69. When does EPA anticipate completing this review, and what does it hope to accomplish through this review?

Facilities that are simultaneously processing corn starch and corn kernel fiber to produce a mixture of conventional ethanol and cellulosic ethanol. The regulations require use of a test method to identify the cellulosic converted fraction that has either been certified by a voluntary consensus standards body or is demonstrated to produce "reasonably accurate" results. Unfortunately, there is currently no analytical test method that is certified by a voluntary consensus body and no certified reference samples containing both cellulose and starch. This requires EPA to evaluate each company's application on its unique merits. Due to the complexity of these applications, EPA does not have a specific time to complete its review. However, EPA is committed to supporting efforts by the industry and other government/non-governmental parties to find a way forward.

70. What steps is EPA taking to ensure these actions do not negatively impact cellulosic biofuel volumes in the 2019 RVO rulemaking?

The registration process is designed to ensure that when RINs are generated the fuel on which they are based qualified for the corresponding category of renewable fuel. EPA takes this responsibility very seriously, and in some cases it takes considerable time to work through the technical issues, which may include developing new test procedures. In projecting cellulosic biofuel production for 2019 as part of the RVO process, EPA staff carefully monitor the status of pending facility registration requests to ensure that our projections of cellulosic RINs generated in 2019 are as accurate as possible. We also carefully consider the comments we receive on the

proposed rule and make amendments to our projection methodology and volume projections as appropriate.

Senator Markey:

WEBSITE

71. In all, more than 5,000 pages of scientific, policy, and educational material on climate change have been moved off the main website for the Environmental Protection Agency (EPA). This information has been largely relegated to a maze of archives and portals that is virtually inaccessible to the public. The EPA's mission states that the agency should ensure "all parts of society – communities, individuals, businesses, and state, local and tribal governments – have access to accurate information sufficient to effectively participate in managing human health and environmental risks."[25] Additionally, the Paperwork Reduction Act directs agencies to "provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products."[26] However, there was no notice of the changes made to the EPA website, leaving the public with no opportunity to weigh in on the Administrator's decision to move, hide, and archive information on the Clean Power Plan or on climate change.
    a. How does the decision to remove hundreds of webpages and post the notice on the same day comply with the EPA's mission?
    b. How does the decision to remove hundreds of webpages and post the notice on the same day comply with the Paperwork Reduction Act?
    c. Were you personally involved in directing the removal of any information from the EPA website? If so, please provide any correspondence or documentation relating to your personal involvement in the overhaul and censorship of the EPA website.

EPA is continually making changes to its website and other digital information resources to reflect and support the agency's current priorities and work. When we remove information from our main portal, www.epa.gov, the majority of the time we make sure it is still available to the public via our archive website, https://archive.epa.gov/. In addition, because of the public concern about access to information on our website last year, we created a snapshot website that contains the content that was on our main portal on January 12, 2017. The snapshot website can be searched here: https://19january2017snapshot.epa.gov/.

All changes to EPA's websites and digital resources are coordinated between the different offices at the agency. We do our best to make new information available to the public as soon as possible and then notify them of the changes.

[25] "Our Mission and What We Do." United States Environmental Protection Agency. Accessed February 1, 2018. https://www.epa.gov/aboutepa/our-mission-and-what-we-do
[26] 44 USC § 3506(d)(3)

72. The error page on the EPA website that the public reaches when trying to access former resources on climate change reads, "This page is being updated [...] We are currently updating our website to reflect EPA's priorities under the leadership of President Trump and Administrator Pruitt."
    a. Please provide a timeline for when this update will be complete, as well as a detailed list of all the pages that have been permanently removed from www.epa.gov and the changes made on those that remain in an altered form.
    b. Please explain how the priorities of President Trump and Administrator Pruitt necessitate the removal of pages like "What Climate Change Means for Massachusetts" from www.epa.gov.
    c. Please provide an accounting of the costs and employee hours associated with developing the resources that were removed, as well as with the process of moving and updating the website to "reflect EPA's priorities."

    We are constantly updating our website to reflect new initiatives and projects of the Agency. Of course the site will be reflective of the current administration's priorities – with that said, all the content from the previous administration is still easily accessible and publicly available-through the banner across the top of the main page of the site.

ENFORCEMENT

73. Oklahoma recently suffered what may be the deadliest accident in the history of the shale industry, when five workers were killed by an explosion at a fracking site. The company that owns this site (Patterson-UTI) has reportedly experienced several other deadly safety incidents from 2010-2013. Oklahoma's regulators use an enforcement system that shuns fines in favor of working with violators, a strategy which you appear to have emulated during your tenure. For example, Devon Energy had admitted to illegally emitting hazardous chemicals, and was in discussions to pay a settlement of more than $100,000 and install mitigation technology. After your swearing it, Devon Energy informed the EPA that it was "re-evaluating its settlement posture" and now offered a settlement of around $25,000 with no commitment to install additional technology.[27]

    According to a New York Times analysis, compared to the first nine months of the Obama administration, you have: filed roughly 1,000 fewer new enforcement cases; sought 60 percent less in civil penalties; requested almost 90 percent fewer injunctive relief fixes, which prompt companies to cut pollution; and made it harder for EPA offices to request pollution tests.[28]

[27] Brook-Davison, Carrick. "RE: Revised Devon settlement proposal for the Beaver Creek Gas Plant." Guida, Slavich & Flores. February 22, 2017. Accessed February 1, 2018. https://www.documentcloud.org/documents/3727057-Devon-Fights-and-Now-Is-Winning-Battle-Against.html#document/p1/a356485

[28] Lipton, Eric and Danielle Ivory. "Under Trump, E.P.A. Has Slowed Actions Against Polluters, and Put Limits on Enforcement Officers." The New York Times. December 10, 2017. Accessed February 1, 2018. https://www.nytimes.com/2017/12/10/us/politics/pollution-epa-regulations.html

a. Please provide a list of companies and plants that received notices of violations from 2008-2017 under the Clean Water Act, the Clean Air Act, or the Resource Conservation and Recovery Act, but that have not yet had any EPA penalties levied upon them.

In some enforcement circumstances, the EPA issues a NOV to a facility owner/operator that the agency has identified as having one or more violations. However, not all statutes include provisions for issuance of an NOV or require issuance of an NOV. *Compare* Clean Air Act § 205(c)(1), 42 U.S.C. § 7523(c)(1) ("[T]he Administrator shall give written notice to the person to be assessed" a penalty) *with* Clean Water Act § 309, 33 U.S.C. § 1319 (no provision for written notice).

Since not all statutes include these provisions, the agency does not centrally track all NOVs in the agency's Integrated Compliance Information System (ICIS) enforcement and compliance database. Some information on NOVs is available in ICIS, but NOVs are not required to be entered. Additionally, because NOVs do not always result in the need for follow-up enforcement actions, *e.g.*, where the facility promptly returns to compliance, we do not have the ability to link NOVs to later enforcement actions.

b. Please provide a detailed list of cases where, under your leadership, the EPA withdrew or accepted lower civil monetary penalties than were recommended under the previous administration from 2008-2017 and the rationale for these decisions.

EPA's civil penalty policies provide the bases upon which EPA compromises claims and settles cases for less than the statutory maximum penalty. These policies can be found here https://www.epa.gov/enforcement/enforcement-policy-guidance-publications. The negotiation of penalties is based on these policies. The specifics of each case are confidential enforcement information. When an enforcement action is withdrawn or not pursued, that information is reported in ICIS. However, please note that these data are not certified and may not always be entered in a timely manner. We have provided below the total number of enforcement actions in ICIS reported as withdrawn or not pursued. Because the decision to withdraw a case may involve an enforcement-confidential determination, we have not provided a list of cases.

Actions Reported:	CY08	CY09	CY10	CY11	CY12	CY13	CY14	CY15	CY 16	CY 17
Total	64	126	65	105	95	57	57	26	31	23

74. The EPA recently released data that detailed the fines, penalties, and other commitments that the agency collected during fiscal year 2017.[29] According to the EPA's report, the number of new cases, defendants charged, and federal inspections and evaluations began by the agency in FY2017 were all at the lowest level in at least a decade. Despite this, the EPA still touted an increase in the total amount of criminal fines, including restitution and mitigation activities.
    a. Of the cases included in the FY17 reporting, what percentage of fines and restitutions, court ordered environmental projects, Superfund site commitments from liable parties, judicial penalties, injunctive relief, and other penalties were made before January 20, 2017?

The enforcement and compliance work accomplished in fiscal year 2017 included work performed under both the prior and current administrations. This administration is proud to highlight accomplishments and to honor EPA employees for all of the great work they did last fiscal year.

In response to your request for data on the percentage of FY17 fines, penalties, and other relief secured before and after January 20, 2017, please see the chart below.

Measure	Total FY 2017 Values October 1, 2016 - September 30, 2017	Values for October 1, 2016 - January 19, 2017	Percentage for October 1, 2016- January 19, 2017	Values for January 20, 2017 – September 30, 2017	Percentage for January 20, 2017 – September 30, 2017
Fines (Criminal)	$2,829,202,563	$8,716,000	0.3%	$2,820,486,563	99.7%
Restitution (Criminal)	$147,520,835	$84,755,737	57.5%	$62,765,098	42.5%
Court Ordered Environmental Projects (Criminal)	$3,092,631	$1,146,362	37.1%	$1,946,269	62.9%
Amount Committed by Liable parties to Clean Up for Superfund sites	$1,227,057,039	$68,586,500	5.6%	$1,158,470,539	94.4%
Amount Committed by Liable Parties to Reimburse the Government for Past Costs at Superfund Sites	$142,577,803	$22,398,806	15.7%	$120,178,997	84.3%
Judicial Penalties	$1,583,608,081	$51,310,581	3.2%	$1,532,297,500	96.8%
Administrative Penalties	$48,078,393	$13,206,031	27.5%	$34,872,362	72.5%
Injunctive Relief (Judicial and Administrative)	$19,971,202,303	$16,483,587,889	82.5%	$3,487,614,414	17.5%

[29] "Enforcement Annual Results for Fiscal Year 2017." Environmental Protection Agency. Accessed February 9, 2018. https://www.epa.gov/enforcement/enforcement-annual-results-fiscal-year-2017

Supplemental Environmental Projects (Judicial and Administrative)	$17,255,199	$4,013,347	23.2%	$13,241,852	76.8%

b. Of the cases included in the FY17 reporting, what percentage of civil and criminal cases, inspections/evaluations, complaints, and orders were initiated, opened, or filed after January 20, 2017?

Please see the chart below in response to your question.

Measure	FY 2017 Counts	Case Counts from January 20, 2017 - September 30, 2017	Percentage
Civil Judicial Referrals	114	81	71%
Criminal Cases Opened	115	70	61%
Inspections/Evaluations[30]	9,918	7,924	80%
Administrative Penalty Order Complaints (APOCs)	1,218	939	77%
Administrative Compliance Orders (ACOs)	606	476	79%
Final Administrative Penalty Orders (FAPOs)	1,255	972	77%
Complaints Filed With Court	83	43	52%

75. The EPA FY19 budget request included an 18 percent cut to civil enforcement and a 12 percent cut to criminal enforcement from the FY18 annualized Continuing Resolution (CR).
    a. As the number of new enforcement cases are already falling under your tenure, how does limiting the enforcement budget further facilitate your stated objective to "timely enforce environmental laws to increase compliance rates [...] especially enforcement actions to address environmental violations?[31]
    b. How many full-time EPA employees working on civil, criminal, Superfund, and federal facilities enforcement do you expect to be supported by the FY19 budget request?

[30] The Inspection/Evaluation totals in this chart exclude manually reported SDWA UIC inspections because EPA does not maintain the date of these inspections. The FY 2017 total number of inspections reported for Annual Results, including SDWA UIC inspections, is 11,756 (9,918 + 1,838 manually reported SWDA UIC inspections.)
[31] "FY 2019 EPA Budget in Brief." United States Environmental Protection Agency. February 2018. Accessed February 13, 2019. https://www.epa.gov/sites/production/files/2018-02/documents/fy-2019-epa-bib.pdf

EPA's enforcement efforts continue to be focused on achieving compliance, not on the number of individual actions taken. To achieve the desired outcome, EPA works in partnership with state and tribal agencies to assure compliance, protect public health and the environment, and ensure a level playing field for businesses. Recognizing that states are the primary implementers of our nation's environmental laws, EPA will focus where it can provide the most value including matters affecting multiple states or tribes, serving as a backstop when a state or tribe does not address serious noncompliance in a timely fashion, and assisting states and tribes when they lack the capability, resources, or will to address noncompliance.

In FY 2019, the agency is requesting 2,264.1 FTE for the civil, criminal, Superfund, and federal facilities enforcement programs.

CLIMATE IN DRAFT STRATEGIC PLAN

76. You have said that "scientists continue to disagree about the degree and extent of global warming and its connection to the actions of mankind."[32] With regard to human-produced carbon dioxide, in an interview with CNBC, you said that, "I would not agree that it's a primary contributor to the global warming that we see."[33] But the statutorily required National Climate Assessment's Climate Science Special Report that was released by the Trump Administration in November concluded that "human activities, especially emissions of greenhouse gases, are the dominant cause of the observed warming since the mid-20th century."[34] Last year was the second-hottest year in recorded history, according to the National Aeronautics and Space Administration, and saw record-breaking costs incurred by extreme weather and climate disasters.
    a. Do you disagree with the conclusion made in the Climate Science Special Report by our country's top scientists at 13 federal agencies, including your own, that human activities are the dominant cause of global warming, with "no convincing alternative explanation"?

    EPA recognizes the challenges that communities face in adapting to a changing climate. EPA works with state, local and tribal governments to improve infrastructure to protect against the consequences of climate change and natural disasters. EPA also promotes science that helps inform states, municipalities, and tribes on how to plan for and respond to extreme events and environmental emergencies. Moving forward, EPA will continue to advance its climate adaptation efforts, and have reconvened the cross-EPA Adaptation Working Group in support of those efforts.

[32] Pruitt, Scott and Luther Strange. "The Climate-Change Gang." The National Review. May 17, 2016. Accessed January 31, 2018. http://www.nationalreview.com/article/435470/climate-change-attorneys-general
[33] DiChristopher, Tom. "EPA chief Scott Pruitt says carbon dioxide is not a primary contributor to global warming." CNBC. March 9, 2017. Accessed February 1, 2018. https://www.cnbc.com/2017/03/09/epa-chief-scott-pruitt.html
[34] Wuebbles, D.J., and D.W. Fahey, K.A. Hibbard, D.J. Dokken, B.C. Stewart, and T.K. Maycock (eds.) "Climate Science Special Report." U.S. Global Change and Research Program. November 2017. Accessed January 31, 2018. https://science2017.globalchange.gov/downloads/CSSR2017_FullReport.pdf

Human activity impacts our changing climate in some manner. The ability to measure with precision the degree and extent of that impact, and what to do about it, are subject to continuing debate and dialogue.

77. Despite these findings, and the conclusion that "[c]hanges in the characteristics of extreme events are particularly important for human safety,"[35] climate change did not appear in the EPA's Strategic Plan for 2018-2022, as published on February 12, 2018.
    a. Why does climate change not appear in the draft plan?
    b. Do you intend to address climate in other strategic planning documents, commensurate with the findings of the Climate Science Special Report? If not, why not?

Strategic plans are drafted every five years to reflect new initiatives and projects of the Agency. Naturally the plan will be reflective of the current administration's priorities of refocusing the Agency on its core mission, restoring power to the states through cooperative federalism, and leading the Agency through improved processes and adherence to the rule of law.

PERSONNEL

78. In the FY19 budget request, Science and Technology funding was cut from $708,975,000 in the FY 2018 annualized CR to $448,965,000—a decrease of 37 percent. The Regional Science and Technology funding was zeroed out entirely. This attack on science comes as more than 200 scientists have left the agency over the past year.
    a. How many full-time scientists will be supported at the EPA by the FY19 budget request?

    Based on the distribution of scientific positions within the agency workforce, EPA would estimate that between 8,300 and 8,800 scientific positions would be supported through the FY 2019 Presidents Budget Request. This is an estimate extrapolated from on-board data that is current as of FY 2017 and includes non-federal positions. The actual number is dependent upon programmatic workforce decisions that remain to be made as well as factors such as attrition.

    b. Can you describe how the Regional Science and Technology capabilities will be fully replaced by the "ad hoc" efforts described in the Budget in Brief?

    The Regional Science and Technology program performs laboratory analysis, field monitoring, and sampling investigations in order to provide credible scientific data on environmental pollutants and conditions to Agency

[35] Ibid.

policy makers. Under its Reform Plan, the Agency is working to develop a comprehensive enterprise-wide laboratory approach that will address many of the programs' traditional functions.

TOXIC CHEMICALS

79. During the hearing, you committed to updating my office on the status of the formaldehyde health assessment, which I understand has been completed by EPA staff but not yet released.
    a. What date was the draft assessment completed by EPA staff?
    b. What is the exact timeline for public release?
    c. What are the exact steps that EPA must take internally before the report is shared for interagency review?

    Please see response to Question 10.

80. The Integrated Risk Information System (IRIS) provides the scientific research needed to effectively implement the Clean Air Act, Clean Water Act, Safe Drinking Water Act, Food Quality Protection Act, and the Toxic Substances Control Act (TSCA), among other laws that protect our nation's public health and environment. However, there have been repeated attacks made on IRIS's objectivity and independence, despite recent changes made to strengthen its scientific approach. There are reportedly around 30 people left working at IRIS, after a period of serious attrition similar to that seen within other EPA offices.
    a. Does the EPA plan on moving the IRIS program from the Office of Research and Development to the Office of Chemical Safety Pollution and Prevention (OCSPP) as reported, thereby placing it within the regulatory arm of the EPA and out of the science and research office?

       There are no plans to move IRIS out of ORD.

    b. If yes, please detail how the EPA would ensure that the scientific research remains independent, transparent, and non-politicized.

       N/a. See 80a.

    c. Please provide a list of dates and attendees of meetings you or senior political appointees have taken in which IRIS was discussed, as well as any communication or documents relating to these meetings.

       We are working to gather this informatiou with regard to EPA's IRIS meetings and will provide this information to you as soon as possible.

Senator Merkley:

81. Under your new policy, you exclude scientists who currently receive EPA grants from serving on EPA scientific advisory committees (link: https://www.epa.gov/sites/production/files/2017-10/documents/final_draft_fac_directive-10.31.2017.pdf).
    a. What is the legal basis for this new directive?
    b. What is your reasoning in exempting tribal, state, and local EPA grant recipients from the directive?
    c. How do you define conflicts of interest within the EPA advisory committees?
    d. Have you consulted with scientific societies, the National Academies, or other independent science organizations about the definition of conflicts of interest?
    e. How will your directive work to ensure that the agency's advisory committees are able to make objective recommendations based on the best available science?
    f. Can you provide an example of a time when a EPA grant recipient on a federal advisory committee provided "conflicted" advice to the administrator?
    g. Now that your directive has tripled the number of industry scientists on the SAB, how will you ensure that the EPA's science advice remains independent?

    Information responsive to these questions can be found in EPA guidelines and public documents, including:
    - https://www.epa.gov/faca/strengthening-and-improving-membership-epa-federal-advisory-committees
    - https://www.epa.gov/sites/production/files/2015-02/documents/ethicsadvisory.pdf
    - https://yosemite.epa.gov/sab/sabproduct.nsf/Web/ethics?OpenDocument

82. The policy excluding scientists does not affect individuals who have industry ties. For example, Dr. Tony Cox received money from American Chemistry Council, American Petroleum Institute, Engine Manufacturers Association, National Mining Association, and many others, yet you selected him to chair the Clean Air Scientific Advisory Committee (CASAC). Why are industry-funded individuals with apparent conflicts of interest more qualified to serve in these science committees than independent scientists?

    All EPA employees, including Special Government Employees, must abide by federal ethics laws and regulations, including the Standards of Ethical Conduct for Employees in the Executive Branch, 5 C.F.R. Part 2635, and the conflict of interest statutes codified in Title 18 of the United States Code. Agency policies, including ethics-related and conflict of interest guidelines, which can be found at:
    - https://www.epa.gov/faca/strengthening-and-improving-membership-epa-federal-advisory-committees
    - https://www.epa.gov/sites/production/files/2015-02/documents/ethicsadvisory.pdf
    - https://yosemite.epa.gov/sab/sabproduct.nsf/Web/ethics?OpenDocument

83. You took an unprecedented action and dismissed Dr. Donna Kenski from EPA CASC before her term expired, alleging that Kenski would not qualify under EPA's problematic new policy. Even so, Dr. Kenski's employer, the Lake Michigan Air Directors Consortium's EPA grant is routed through the state government, a category is exempted in the new policy. At the same time, Dr. Michael Honeycutt is allowed to chair the Scientific Advisory Board, even though he has received over $58 million in grants while leading the Texas Commission on Environmental Quality. Why does the same policy disqualifies Dr. Kenski while allowing Dr. Honeycutt to serve?

All EPA employees, including Special Government Employees, must abide by federal ethics laws and regulations, including the Standards of Ethical Conduct for Employees in the Executive Branch, 5 C.F.R. Part 2635, and the conflict of interest statutes codified in Title 18 of the United States Code. Agency policies, including ethics-related and conflict of interest guidelines, which can be found at:

- https://www.epa.gov/faca/strengthening-and-improving-membership-epa-federal-advisory-committees
- https://www.epa.gov/sites/production/files/2015-02/documents/ethicsadvisory.pdf
- https://yosemite.epa.gov/sab/sabproduct.nsf/Web/ethics?OpenDocument

84. You pledged repeatedly in front of this committee that since you are a lawyer and a prosecutor, you would defer to your career staff for science advice. Yet you replaced Dr. Kenski with Dr. Larry Wolk, whom according to your staff's memo, had "no direct experience in health effects of air pollution, epidemiology, toxicology." On Dr. Tony Cox, your staff raised conflict of interest and appearance of a lack of impartiality issues. Will you commit to follow the recommendations of EPA's career staff so no one appointed to the EPA's advisory committees are either unqualified or have conflicts of interests so that the committees can provide you with the best and sound science that you and the agency so desperately need?

The Agency is committed to selecting qualified and knowledgeable individuals to serve on advisory committees. All EPA employees, including Special Government Employees, must abide by federal ethics laws and regulations, including the Standards of Ethical Conduct for Employees in the Executive Branch, 5 C.F.R. Part 2635, and the conflict of interest statutes codified in Title 18 of the United States Code. Agency policies, including ethics-related and conflict of interest guidelines, which can be found at:

- https://www.epa.gov/faca/strengthening-and-improving-membership-epa-federal-advisory-committees
- https://www.epa.gov/sites/production/files/2015-02/documents/ethicsadvisory.pdf
- https://yosemite.epa.gov/sab/sabproduct.nsf/Web/ethics?OpenDocument

85. In your hearing in front of the House Energy & Commerce Committee, you said that EPA has issued $77 million in grant money to twenty members of the EPA scientific advisory committees. Please provide detailed information behind this statement, including the names of the 20 members, their affiliations, their EPA-funded projects and grant amount.

EPA makes grant awards publicly available. These databases can be found at:

- **https://yosemite.epa.gov/oarm/igms_egf.nsf/Homepage?ReadForm**
- **https://cfpub.epa.gov/ncer_abstracts/index.cfm/fuseaction/search.welcome**

86. During your nomination hearing, you said that you "have no first-hand knowledge" of the EPA's scientific integrity policy at the time. However, you did commit to "thoroughly reviewing" the policy and following "federal guidance regarding scientific integrity." The policy states that EPA scientists are free to "exercise their right to express their personal views provided they specify they are not speaking on behalf of…" the EPA (Link: https://www.epa.gov/sites/production/files/2014-02/documents/scientific_integrity_policy_2012.pdf). Have you reviewed and implemented this part of the policy? Can you affirm that EPA scientists and managers are free to exercise their right to express their personal views free from political interference, as guaranteed by this policy?

I am committed to upholding EPA's Scientific Integrity Policy, which ensures that the agency's scientific work is of the highest quality, is presented openly and with integrity, and is free from political interference. EPA scientists are supported in speaking directly to the science in their presentations, yet leave policy statements to the relevant programs. In their private capacity, EPA staff can freely exercise their right to express their personal views provided they specify that they are not speaking on behalf of the Agency.

87. The EPA's scientific integrity policy encourages EPA scientists to engage with their peers in the industry, academia, government, and non-governmental organizations as long as it is consistent with their job duties. The policy explicitly states that this can include presenting their work at scientific meetings and actively participating in professional societies, and more. However, 3 EPA scientists that were scheduled to speak at a conference on climate change at Narragansett Estuary Bay were restricted [link:https://www.ucsusa.org/center-science-and-democracy/attacks-on-science/accumulating-evidence-federal-scientists-are-being#.WnDaRq6nFhE] from attending, in direct conflict with the agency's scientific integrity policy.
    a. Did you realize that this decision was in violation of the policy?

I am committed to upholding EPA's Scientific Integrity Policy. Procedures have been put in place to prevent such an occurrence in the future.

b. Will you commit to ensuring that this type of flagrant violation will not happen again under your watch?

I am committed to upholding EPA's Scientific Integrity Policy, which ensures that the Agency's scientific work is of the highest quality, is presented openly and with integrity, and is free from political interference.

c. In the spirit of upholding scientific integrity in EPA decision making, will you commit to not politically interfere in science-based policy decisions at the agency, yes or no?

I am committed to upholding EPA's Scientific Integrity Policy. The policy recognizes the distinction between scientific information, analyses, and results from policy decisions based on that scientific information. Policy makers within the Agency weigh the best available science, along with additional factors such as practicality, economics, and societal impact, when making policy decisions.

88. You decided to postpone steam electric power plant effluent guidelines rule in September. Who are the stakeholders that you met with prior to making this decision? Additionally, please provide the analyses that helped you make this decision.

Meetings related to this issue are in the public record.

As part of EPA's overall regulatory review and in response to a petition in April 2017, EPA announced a proposal to postpone certain compliance dates in the 2015 Steam Electric ELG Rule in order to give full consideration to those concerns. After reviewing thousands of public comments to EPA's June 2017 proposed rule to postpone those dates, EPA finalized a rule in September 2017, postponing certain compliance dates in the 2015 Rule and announcing onr intention to conduct subsequent rulemaking to potentially revise the limits for those wastestreams whose compliance dates were postponed dates.

89. Please explain why the EPA removed methylene chloride, NMP, and TCE from the Unified Agenda of Regulatory and Deregulatory Actions.

Under TSCA section 6(a), regulation of certain uses of methylene chloride, NMP, aud TCE were proposed in 2016 and 2017. These actions were listed as Long-Term Actions on the Unified Agenda, meaning they are under development, but EPA did not expect to have a regulatory action within the year following publication of the Unified Agenda. The agency is currently considering the comments received in response to the 2016 and 2017 proposals, including comments suggesting that EPA quickly finalize these actions and comments suggesting that these actions be evaluated as part of the group of the first ten chemicals undergoing initial risk evaluations under the amendments to TSCA.

90. During the hearing I asked if you were inclined to grant an exemption to asbestos used by the chloralkali industry, which imports 95% of asbestos into the United States. You said that you would have to look into the issue. Now that you have had more time to study the issue, are you going to exempt asbestos used by the chloralkali industry from regulation?

It is premature for EPA to determine whether asbestos used by the chloralkali industry will be subject to regulation under TSCA. As required by amended TSCA under section 6(b)(4)(A), EPA must first conduct a risk evaluation to determine whether the chemical substance presents an unreasonable risk of injury to health or the environment under its conditions of use. EPA initiated the risk evaluation for asbestos in December 2016. Subsequently, in June 2017, EPA published the scope document as per TSCA section 6(b)(4)(D) for the asbestos risk evaluation. In this scope document, EPA identified asbestos diaphragms used by the chloralkali industry to produce chlorine and caustic soda as a condition of use that would be included within the scope of the asbestos risk evaluation. This risk evaluation must be completed within three years of initiation, with a possible extension of 6 months. If EPA determines from the risk evaluation that the conditions of use of asbestos by the chloralkali industry present an unreasonable risk of injury to health or the environment, then regulation would be pursued under TSCA section 6(a).

91. EPA has reduced climate change website access to at least 5,000 pages, possibly many more, of scientific, policy, and educational material paid for by taxpayer dollars over the past year. In the one example of content being partially returned to the website, all of the more than 200 climate-related webpages were omitted from what was previously a 380-page website titled "Climate and Energy Resources for State, Local, and Tribal Governments," which has now been renamed simply "Energy Resources for State, Local, and Tribal Governments." How do you justify such overt censorship of taxpayer-funded information that was created to help state, local, and tribal decision-makers protect the well-being of their constituents? Will you return this content to the EPA website so that the public can benefit from it again?

We are constantly updating our website to reflect new initiatives and projects of the Agency. Of course the site will be reflective of the current administration's priorities – with that said, all the content from the previous administration is still easily accessible and publicly available-through the banner across the top of the main page of the site.

92. According to the Paperwork Reduction Act, 44 USC § 3506(d)(3), all agencies must "provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products." The news release announcing that the EPA was overhauling its website was published the same day that the EPA removed the vast majority of its climate change website, thousands of webpages -- the public did not have an opportunity to provide comment or express its concerns. How do you justify overtly disregarding this process and failing to notify the public?

    We are constantly updating our website to reflect new initiatives and projects of the Agency. Of course the site will be reflective of the current administration's priorities – with that said, all the content from the previous administration is still easily accessible and publicly available-through the banner across the top of the main page of the site.

93. While Dr. Michael Dourson was under consideration to be Assistant Administrator of the Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention (OCSPP), he was employed as a senior adviser at the EPA.
    a. What was Dr. Dourson's job title and type of appointment?

        Dr. Dourson was a Senior Advisor to the Administrator. His position was a Non-Career Senior Executive Service Limited Term position located in the Office of the Administrator. He has since left the agency.

    b. Whom did he supervise?

        Dr. Dourson did not have any supervisory responsibilities.

    c. Did you delegate any duties of the OCSPP to him? If so, what were they?

        Dr. Dourson did not have any OCSPP duties delegated to him.

    d. What projects did Dr. Dourson work on while at EPA and what was his role related to these projects?

        Dr. Dourson was a Senior Advisor to the Administrator, a position located in the Office of the Administrator. He advised on issues related to chemical safety.

    e. What monetary and non-monetary compensation did Dr. Douson receive while he was employed at EPA?

        A Comprehensive search could not be performed by the submission of this document.

f. Please provide Dr. Dourson's daily schedule while he was at EPA.

A Comprehensive search could not be performed by the submission of this document.

94. You claim that special interest groups have been circumventing the regulatory process through litigation, resulting in creation of regulation via consent decrees and settlement agreements. However, EPA has been making "policy decisions" of late that do just that--circumvent the rulemaking process. EPA's January 25 guidance allowing the downgrade of source status from "major" to "area" has a major impact on reporting and compliance requirements, yet this new benefit to industry did not undergo the required regulatory process under the Administrative Procedures Act.
    a. Please describe how EPA is increasing transparency and improving public engagement with respect to making the decision to downgrade source status for industries without a rulemaking, and how this is an improvement to public health and the environment.

EPA's issuance of the January 25, 2018 guidance memo provided the public with notice of EPA's plain language reading of the statutory terms "major source" and "area source". The public was notified of the memorandum through a notice published in the Federal Register on February 8, 2018. Further, EPA will be providing for public engagement through an opportunity for public comment on the plain language reading of the statute discussed in the January 25 memo. As stated in the memo, EPA expects to "publish a Federal Register notice to take comment on adding regulatory text that will reflect EPA's plain language reading of the statute as discussed in this memorandum." EPA staff are currently working on a proposed rule package. Finally, we disagree with the assertion that EPA somehow circumvented the regulatory process in issuing the memo. The January 25 guidance memo provides EPA's reading of the plain language of statutory terms in the Clean Air Act and withdrew a prior guidance memorandum that had been issued without notice and comment rulemaking. The Supreme Court (in Perez v. Mortgage Bankers Association, 135 S.Ct. 1199, 1206 (2015)) has recognized that EPA and other agencies may revise and withdraw policies issued through guidance without conducting a notice and comment rulemaking.

95. Facilities will now have the ability to downgrade to an area source without needing to comply with maximum achievable control technology (MACT) standards, which require control efficiencies of 95% and higher. Please explain how the emissions reductions from MACT standards will be achieved when you are allowing sources to be recategorized as area sources.

In the January 25, 2018, guidance memorandum titled "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act," EPA addressed the question of when a major source subject to a MACT standard may be reclassified as an area source and avoid being subject to major source requirements. The memo states that the plain language of the definitions of "major source" and "area source" in CAA section 112(a) compels the conclusion that a major source becomes an area source at such time as the source takes an enforceable limit on its potential to emit (PTE) hazardous air pollutants (HAP). Under this plain reading of the CAA, sources of HAP previously classified as "major sources" may be reclassified as "area" sources when the facility limits its PTE below major source thresholds using a federally enforceable mechanism. There is no time limitation supported within the plain reading of the CAA Section 112 definitions of major and area source.

96. Historically, environmental organizations have sued EPA due to lack of agency action on implementation of critical environmental laws, resulting in court decisions that force EPA to take action...or as you refer to it, sue and settle. What other courses of action can special interest groups pursue when EPA does not meet statutory deadlines?

    EPA published its FY 2018-2022 Strategic Plan on February 12, 2018. Within that plan, EPA included a strategic measure (SM-19 within Objective 3.2) to meet 100% of legal deadlines imposed on EPA by September 30, 2022. You can view that plan here: https://www.epa.gov/sites/production/files/2018-02/documents/fy-2018-2022-epa-strategic-plan.pdf. Moreover, special interests groups, and others alike, can always choose to exercise the rights provided to them by the law.

97. In your Sue and Settle directive, you issued a memo to EPA managers (https://www.epa.gov/sites/production/files/2017-10/documents/signed_memorandum_in_support_of_consent_decree_and_settlement_agreement_oct162017.pdf) discussing how past practices of EPA have harmed the American public. In this memo, you say that EPA has met with outside groups behind closed door and excluded other interested stakeholders, essentially accusing EPA's Office of General Counsel of collusion. Is it your position that EPA lawyers are liable for collusion? If you believe that collusion has occurred, are you aware that many state bar associations consider collusion grounds for attorney discipline or even debarment? Was it your intention to endanger the status of all EPA attorneys?

    The Memorandum to which you are referring is not a set of conclusions made at the end of a case-by-case investigation, but rather describes general concerns of those outside of the agency who wanted to participate in the process for resolving a particular case but could not. As the related Directive explained, *"It has been reported*, however, that EPA has previously sought to resolve lawsuits through consent decrees and settlement agreements that appeared to be the result of collusion with outside groups." (Emphasis added.) While the words "It has been

reported" do not also appear in the Memorandum, the intent of the statements was the same. It is not my position that EPA lawyers have violated their bar obligations.

98. It has been reported that the grant review process at EPA has been captured by political appointees.
    a. Can you please describe how the EPA is currently reviewing grants?

       Please see Attachments 6 and 7.

    b. Why is the EPA specifically targeting grants that are dealing with climate change and climate impacts?

       The purpose of the grant solicitation review process EPA has in place is consistent with previous administrations. Under our current grant solicitation review process, grant solicitations are prepared by program and regional staff, who then consult with a centralized review to ensure the expenditures of EPA funds are consistent with agency priorities. This process is similar in nature to long standing agency practice for grant awards, under which political appointees heading EPA program and regional offices consult with career staff as they approve or disapprove grants.

       Further, the EPA solicitation review process only addresses competitive grants. State, tribal and local governments receive the vast majority of EPA grant funding on a non-competitive basis for continuing environmental programs and state revolving loan funds for water infrastructure projects. These funds are allocated based on statutory, regulatory or program policy formulas that take into account a variety of factors. The process EPA has established for reviewing competitive solicitations does not impact these grants.

Senator Sanders:

Climate Change

99. During a recent interview with KSNV TV, you stated:

> "Is (global climate change) an existential threat? Is it something that is unsustainable, or what kind of effect or harm is this going to have? I mean, we know that humans have most flourished during times of what? Warming trends. I think there's an assumption made that because the climate is warming, that (warming) is necessarily a bad thing. Do we really know what the ideal surface temperature should be in the year 2100? In the year 2018? I mean it's fairly arrogant for us to think that we know exactly what it should be in 2100."

The Trump Administration's *Climate Science Special Report*, the United Nation's Intergovernmental Panel on Climate Change's *Fifth Assessment Report*, and the Department of Defense's *National Security Implications of Climate-Related Risks and a Changing Climate* report all found with high confidence that global climate change and rising global temperatures are likely to cause rising sea levels and increase crop failures, hunger, illness, and extreme weather. The Department of Defense's report identified these factors as clear risks to the United States' national security.

In January, the National Oceanic and Atmospheric Administration published a technical report that predicted that rising global temperatures could cause global mean sea levels to rise over ten feet by 2100. This sea level rise would displace more than 30 million Americans and mostly or completely cover Cape Canaveral, the U.S. Naval Academy, the Massachusetts Institute of Technology, the John F. Kennedy International and San Francisco International airports, and the Mar-a-Lago resort, among other prominent localities. Given the level of destruction anticipated, would you consider these outcomes to "necessarily be a bad thing"?

In January, the peer-reviewed journal, *Nature Climate Change*, published a report predicting that 260,000 people around the world will die annually by 2100 due to decreasing air quality and rising global temperatures. If global climate change and decreasing air quality were to cause this level of increase in annual deaths, would you consider that outcome to "necessarily be a bad thing"?

In 2012, the independent humanitarian group DARA estimated that between 2012 and 2030, 150,000 people around the world will die annually due to infections and 360,000 people will die annually due to hunger and malnutrition related to rising global temperatures. If a warming climate were to cause this type of increase in illness, would you consider that outcome to "necessarily be a bad thing"?

The Union of Concerned Scientists estimates that if global warming emissions continue to grow unabated, the annual economic impact of more severe hurricanes, residential real-estate losses to sea-level rise, and growing water and energy costs could reach 1.9% of the U.S. GDP by 2100. They also estimate that a sea-level rise of 13-20 inches by 2100

would threaten insured properties in U.S. Northeast coastal communities valued at $4.7 trillion. If a warming climate were to cause these types of economic impacts, would you consider that outcome to "necessarily be a bad thing"?

EPA recognizes the challenges that communities face in adapting to a changing climate. EPA works with state, local and tribal governments to improve infrastructure to protect against the consequences of climate change and natural disasters. EPA also promotes science that helps inform states, municipalities, and tribes on how to plan for and respond to extreme events and environmental emergencies. Moving forward, EPA will continue to advance its climate adaptation efforts, and have reconvened the cross-EPA Adaptation Working Group in support of those efforts.

Human activity impacts our changing climate in some manner. The ability to measure with precision the degree and extent of that impact, and what to do about it, are subject to continuing debate and dialogue.

Lead

100. You have stated that "[l]ead poisoning is an insidious menace that robs our children of their intellect and their future." This is especially true for children living in communities of color, who are most likely to suffer from lead exposure and poisoning. According to the Center for Disease Control, African American children are over three times as likely to have highly elevated blood-lead levels. African American and Latino communities are often more likely to live near active battery recyclers, industrial sites, or highways, and to live in older housing that are sources of high levels of lead. In addition, a 2012 study found that lead exposure resulted in greater cognitive detriment for children with a lower socioeconomic status. Scientists agree that there is absolutely no acceptable level of lead exposure for children.

Based on your own statement, will you commit to eradicating lead exposure for America's children? How will you work with other leaders in the Administration to ensure the safety of our children, including those in more vulnerable communities?

Since the 1970s, EPA and other federal agencies have implemented numerous actions resulting in a significant reduction of lead exposure throughout our country and significantly lower blood lead levels in children. According to the Centers for Disease Control and Prevention, no safe blood lead level in children has been identified and even low levels of lead in blood have been shown to affect IQ, ability to pay attention, and academic achievement. Now, tackling the problem at this stage will benefit from a coordinated federal-wide effort. To this end, EPA is collaborating with our federal partners to address the remaining exposures and to explore ways to increase our relationships and partnerships with states, tribes, and localities. As Co-chair of the President's Task Force on Environmental Health Risks and Safety Risks to Children, EPA Administrator Scott Pruitt recently hosted a meeting of principals from the 17 Federal departments and agencies on the

President's Task Force. At the meeting, the Task Force members, including EPA Administrator Scott Pruitt, committed to make addressing childhood lead exposure a priority and to quickly develop a new federal strategy to reduce childhood lead exposures. At EPA, this includes identifying and seeking to appropriately address disproportionately high and adverse childhood lead exposure in minority and low-income communities.

101. In 2015, the Natural Resource Defense Council found that more than 18 million Americans were served by community water systems that had violated the EPA's Lead and Copper Rule, which limits the concentration of lead and copper in public drinking water. You estimated it would cost "as much as $30 billion or maybe upward of $50 billion" to replace all the lead service lines across the country, implying that this price tag is too high. However, Fitch Ratings, an independent credit rating agency, has estimated that the capital costs to replace these lines could be over $275 billion. Based on the discrepancy in these figures, please detail how you arrived at your estimate, and explain why it is so much lower than that of Fitch Ratings.

EPA's cost estimate to fully replace all lead service lines is $30-$47 billion.

The EPA cost estimate cost range accounts for uncertainty regarding the total number of lead service lines that remain in service. National surveys completed by the American Water Works Association indicate that between 6.5 and 10 million lead service lines may exist. The expense of a lead service line replacement can vary between $1,200 and $12,300, based on a number of factors, including the replacement technique, the length of the service line, if the replacement is coordinated with other infrastructure work, if the street needs to be cut and repaved, and if landscaping restoration is included. EPA estimates that an average lead service line replacement cost is $4,700 per line. Given the average cost of replacing a lead service line and the estimated range of lead service lines in the country, the total cost of replacing all lead service lines may range from $30 to $47 billion.

We would also note that Fitch Ratings retracted their initial cost estimate of $275 billion on March 8, 2016, just a few days after its initial reporting on March 4, 2016, and provided a revised estimate of "a few billion to $50 billion." Their updated cost estimate is in line with EPA's estimate.
https://www.freep.com/story/news/local/michigan/flint-water-crisis/2016/03/08/rating-agency-corrects-lead-pipe-replacement-estimate/81499712/

EPA Website

102. On April 28, 2017, the EPA removed its climate change website. To this day, the removed pages redirect to a notice stating, "we are currently updating our website to reflect EPA's priorities under the leadership of President Trump and Administrator Pruitt." The EPA did not announce the overhaul prior to its start date and has not yet provided a justification for the removals.

According to the Paperwork Reduction Act, all agencies must "provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products." The EPA's announcement regarding its website overhaul was published on the same day that the EPA removed the vast majority of its climate change website, and therefore the public did not have an opportunity to provide comment or express concerns.
Does the EPA generally take public comments into account when making these types of decisions?

Can you please explain how announcing an overhaul of the climate website on the same day changes were made constitutes "adequate notice" under the Paperwork Reduction Act?

We are constantly updating our website to reflect new initiatives and projects of the Agency. Of course the site will be reflective of the current administration's priorities – with that said, all the content from the previous administration is still easily accessible and publicly available-through the banner across the top of the main page of the site.

103. On February 2, 2018, the Associated Press reported that internal EPA emails, released following a Freedom of Information Act request by the Environmental Defense Fund, show that you personally monitored efforts to overhaul the EPA's climate change website. One email from Lincoln Ferguson, an EPA senior advisor for public affairs, states:

> "How close are we to launching this on the website? The Administrator would like it to go up ASAP. He also has several other changes that need to take place."

Did the EPA, under your leadership, remove the content of the EPA's climate change website and replace the removed pages with a notice stating "this page is being updated to reflect the agency's new direction under President Donald Trump and Administrator Scott Pruitt"?

Was this overhaul announced prior to its start date? If not, why not?
Please provide a specific time for the EPA's climate change website to come back online.

We are constantly updating our website to reflect new initiatives and projects of the Agency. Of course the site will be reflective of the current administration's priorities – with that said, all the content from the previous administration is still easily accessible and publicly available-through the banner across the top of the main page of the site.

104. Did the EPA, under your leadership, remove web resources providing information about the benefits of the Clean Power Plan months before the proposed rulemaking to withdraw the rule?

If so, did the EPA remove website information regarding what was, at the time, current EPA policy before initiating the appropriate rulemaking process?

We are constantly updating our website to reflect new initiatives and projects of the Agency. Of course the site will be reflective of the current administration's priorities – with that said, all the content from the previous administration is still easily accessible and publicly available-through the banner across the top of the main page of the site.

Renewable Energy

105. In October 2017, you said that if it were up to you, you would do away with the Renewable Electricity Production Tax Credit and the Investment Tax Credit for wind and solar. You stated:

> "I'd let (solar and wind) stand on their own and compete against coal and natural gas and other sources, and let utilities make real-time market decisions on those types of things as opposed to being propped up by tax incentives and other credits that occur, both in the federal and state level."

As you may know, the United States currently wastes billions of dollars each year subsidizing the fossil fuel industry. Since you believe energy tax credits should be eliminated to let technologies "stand on their own," do you also believe we should eliminate fossil fuel subsidies to let coal, oil and gas "stand on their own" as well? If so, what actions are you taking to eliminate the unfair subsidization of certain energy resources?

My personal view is that the federal government ought not use the tax code to pick winners and losers. As you may know, it is the province of the legislative branch to establish tax credits. EPA does not have a formal role in this process.

Senator Van Hollen:

106. You have noted repeatedly – more than a dozen times in your appearances before Congress and in your testimony for today– that EPA's only authority is the "rule of law" or "the authority given to it by Congress".

The updates to the Toxic Substances Control Act Congress enacted in 2016 directed EPA to assess the safety of new chemicals before they go onto the market. The law says that EPA, quote, "shall issue an order" regulating the chemical in order to protect against the danger the new chemical may pose.

On January 17th of this year, you told CBS News that EPA should not regulate new chemicals using orders even though the law clearly says otherwise. Your views appear to be in direct conflict with the law Congress wrote.

Mr. Pruitt, will you direct EPA staff to issue orders to regulate the safety of new chemicals under all circumstances in which the law says that orders are required?

As directed by Congress, under TSCA, EPA reviews new chemicals for unreasonable risk, and where necessary takes action to protect against such risk before a new chemical may be commercialized. Where EPA makes one of the determinations that call for an order under the statute – for example, that there is insufficient information to permit a reasoned evaluation of the chemical's effects – EPA will issue an order.

107. I appreciated your recent announcement that that you have decided not to abandon proposed EPA oversight of the massive Pebble Mine, leaving restrictions in place while the Agency receives more information on the potential mine's impact on the region's world-class fisheries and natural resources. Given EPA's role in this process, would you say that EPA can contribute valuable feedback to the development of projects, be they energy, mining, or transportation? Given EPA's valuable feedback, would you object to efforts to roll back EPA's responsibilities to provide input on infrastructure projects?

Regarding the Pebble Mine project, EPA's decision to suspend its proposal to withdraw the proposed determination under Clean Water Act section 404(c) does not impede the review of Pebble Limited Partnership's permit application by the Army Corps of Engineers under the normal Clean Water Act process. However, the Corps cannot issue a permit during the pendency of the section 404(c) process, and EPA will ensure protection of the world-class fishery in the Bristol Bay region. EPA looks forward to working with the Corps as the Corps assesses the permit application.

As to your broader question, EPA strongly supports the President's infrastructure initiatives and associated efforts to significantly improve predictability, timeliness, and consistency in the permitting of urgently needed infrastructure projects. The Agency is working under the President's direction to streamline and improve EPA's role in the review of new infrastructure projects to help to assure they are reviewed and permitting decisions are made without unnecessary delay.

Senator Wicker:

108. Do you support providing hardship exemptions from Renewable Fuel Volume Obligations (RVOs) for small refineries experiencing disproportionate economic impacts from high RIN prices?

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its renewable fuel volume obligations for a given year based on a small refinery's demonstration of "disproportionate economic hardship" in that year. The statute also directs EPA to consult with the Department of Energy (DOE) in evaluating small refinery exemption petitions. EPA will grant a hardship exemption if we conclude, after review of available information and in consultation with DOE, that a refinery will experience disproportionate economic hardship that can be relieved in whole or in part by removing its RFS obligations for that year.

Attachment 1 - QFR40 SES Appointments

Run Date as of 02/28/2018. This report criteria includes employees appointed on or after 01/20/2017 to apponting authorities under the Safe Drinking Water Act (SD\

Name	Org Desc	Position Title Opm	Pay Plan
ABBOUD, MICHAEL C	OFFICE OF PUBLIC AFFAIRS	PRESS SECRETARY	AD
ASHBEE, BLAKE MANNING	REGION 4	CHIEF OF STAFF TO THE REGION 4 ADMIN	AD
BEACH, CHRISTOPHER E.	OFFICE OF PUBLIC AFFAIRS	SPEECH WRITER	AD
BECK, NANCY B	ASST ADMR FOR CHEM SAFETY&PLTN PREV	DEP ASST ADMINISTRATOR FOR TOXICS	AD
BENNETT, ELIZABETH T	ASSOC ADMR FOR CONGRESS&INTERGOV RLNS	SENIOR ADVISOR FOR OCIR	AD
BOLEN, BRITTANY A	ASSOC ADMR FOR OFFICE OF POLICY	SENIOR DEPUTY ASSOC ADMIN FOR POLICY	AD
BOWMAN, ELIZABETH S	OFFICE OF PUBLIC AFFAIRS	DEP ASSOC ADMIN FOR PUBLIC AFFAIRS	AD
BROWN, BYRON R.	OFFICE OF THE ADMINISTRATOR	DEPUTY CHEIF OF STAFF FOR POLICY	AD
CHMIELEWSKI, KEVIN DAVID	OFFICE OF THE ADMINISTRATOR	DIRECTOR OF SCHEDULING AND ADVANCE	AD
CORY, KATHERINE PRESTON	OFFICE OF CONGRESSIONAL AFFAIRS	SPEC ASST TO THE SENIOR DEP ASSOC	GS
DAVIS, PATRICK J.	ASST ADMR OFC OF LAND & EMER MGMT	DEP ASST ADMIN FOR OLEM	AD
DOMINGUEZ, ALEXANDER JAVI	OFFICE OF THE ADMINISTRATOR	POLICY ANALYST TO THE SENIOR ADV TO	AD
FALVO, NICHOLAS ANTHONY	OFFICE OF THE ADMINISTRATOR	SPECIAL ASST TO THE SENIOR ADVISOR	AD
FEELEY, ROBERT A	ASSOC ADMR FOR OFFICE OF POLICY	POLICY COUNSEL	AD
FERGUSON, LINCOLN ROSS	OFFICE OF THE ADMINISTRATOR	SPEECH WRITER	AD
FIELDS, JENIFER L	REGION 3	CHIEF OF STAFF	AD
FORD, HAYLEY LYNNETTE	OFFICE OF THE ADMINISTRATOR	DEPUTY WHITE HOUSE LIAISON	AD
FORSGREN JR., DENNIS L	ASST ADMR FOR WATER	DEPUTY ASSISTANT ADMIN	AD
FOTOUHI, DAVID	OFFICE OF GENERAL COUNSEL	DEPUTY GENERAL COUNSEL	AD
FREIRE, JOHN PETER	OFFICE OF PUBLIC AFFAIRS	ASSOC ADMIN FOR PUBLIC AFFAIRS	AD
FRYE, ROBERT A	ASSOC ADMR FOR CONGRESS&INTERGOV RLNS	SPECIAL ASST TO THE DEP ASSOC	AD
GLENN III, ONIS	REGION 4	REGIONAL ADMINISTRATOR	AD
GORDON JR., STEPHEN LAURE	OFC OF PUBLC ENGAGMNT &ENVRNMNTL EDUC	DEPUTY DIRECTOR FOR PUBLIC ENGAGEMENT	AD
GRAHAM, AMY	OFFICE OF THE ADMINISTRATOR	SENIOR ADVISOR TO THE ADMIN FOR	AD
GREENWALT, SARAH A	OFFICE OF THE ADMINISTRATOR	SENIOR ADVISOR TO THE ADMINISTRATOR	AD
GUNASEKARA, AMANDA M	ASSOC ADMR FOR OFFICE OF POLICY	SENIOR POLICY ADVISOR TO THE ADMIN ON	AD
HALE, DAWN MICHELLE	OFFICE OF THE ADMINISTRATOR	EXECUTIVE ASSIT TO THE ADMINISTRATOR	AD
HENDERSON, AUSTIN BRADY	OFFICE OF THE ADMINISTRATOR	SPEC ASST FOR SCHEDULING AND ADVANCE	AD
HEWITT, JAMES O	OFFICE OF PUBLIC AFFAIRS	SPECIAL ADVISOR FOR PUBLIC AFFAIRS	AD
HUPP, MILLAN	OFFICE OF THE ADMINISTRATOR	DEP DIR OF SCHEDULING AND ADVANCE	AD
HUPP, SYDNEY MORGAN	OFFICE OF THE ADMINISTRATOR	SPECIAL ASST. TO THE CHIEF OF STAFF	AD
KELLY, ALBERT C	OFFICE OF THE ADMINISTRATOR	SENIOR ADVISOR TO THE ADMINISTRATOR	AD
LETENDRE, DAISY CHASTAIN	ASSOC ADMR FOR OFFICE OF POLICY	SENIOR ADVISOR FOR POLICY AND	AD
LYON, CHRISTOPHER MARK	REGION 2	CHIEF OF STAFF TO THE REGION 2	AD
LYONS, TROY M	OFFICE OF THE ADMINISTRATOR	ASSOCIATE ADMINISTRATOR FOR OCIR	ES
MCMURRAY, FORREST W	OFFICE OF THE ADMINISTRATOR	SPEC ASST FOR SCHEDULING AND ADVANCE	AD
MORRIS, MADELINE G	OFFICE OF THE ADMINISTRATOR	EXECUTIVE SCHEDULER FOR THE OFFICE OF	AD

PALICH, CHRISTIAN ROBERT	OFFICE OF CONGRESSIONAL AFFAIRS	DEP ASSOC ADMIN FOR CONGRESSIONAL REL	AD
RINGEL, AARON E	ASSOC ADMR FOR CONGRESS&INTERGOV RLNS	DEP ASSOC ADMIN FOR OCIR	AD
RODRICK, CHRISTIAN W	OFFICE OF CONGRESSIONAL AFFAIRS	SPEC ASST TO THE DEP ADMIN FOR	AD
SANDS, JEFFREY M	OFFICE OF THE ADMINISTRATOR	SENIOR ADVISOR TO THE ADMINISTRATOR	AD
SHIMMIN, KAITLYN E	ASSOC ADMR FOR CONGRESS&INTERGOV RLNS	SPECIAL ASSISTANT TO THE OCIR	AD
STEPP, CATHY L	REGION 7	DEPUTY REGIONAL ADMINISTRATOR	AD
THIEDE, KURT A.	REGION 5	CHIEF OF STAFF TO THE REGION 5 ADMIN	AD
WAGNER, KENNETH E	D REGIONAL OPERATIONS STAFF	SENIOR ADVISOR TO THE ADMINISTRATOR	AD
WEHRUM, WILLIAM L.	OFFICE OF THE ADMINISTRATOR	SENIOR ADVISOR	AD
WHITE, ELIZABETH BEACHAM	OFFICE OF EXECUTIVE SECRETARIAT	DIRECTOR, OFFICE OF THE EXECUTIVE	AD
WILCOX, JAHAN R	OFFICE OF PUBLIC AFFAIRS	STRATEGIC COMMUNICATIONS ADVISOR	AD
WOODS, CLINTON J	ASST ADMR FOR AIR & RADIATION	DEPUTY ASSISTANT ADMINISTRATOR	AD
YAMADA, YUJIRO RICHARD	ASST ADMR FOR RESEARCH & DEVELOPMENT	DEPUTY ASSISTANT ADMINISTRATOR FOR	AD

Yellow highlights indicitates employees who were Schedule C then were converted to appointments under the SDWA authority
Orange highlights indicates employees who were converted to a new appointment then resigned or were terminated.
Grey highlights new appointments that are active and have not been terminated or converted.
Green highlights indicates employees who converted from an appointment under the SDWA, then converted to Schedule C, then coverve

NA), Schedule C, and/or Non-Career Senior Executiv Service.

Legal Authority Code	Date of Appointment	End Date of Appointment	Converted to New Appointment	Date Converted to New Appointment	Conversion Legal Authority
P.L.95-190	07/09/17	08/13/17	Yes	P.L. 95-190	08/13/17
P.L. 95-190	10/29/17	ACTIVE APPOINTMENT			
P. L. 95-190	01/21/18	ACTIVE APPOINTMENT			
P. L. 95-190	04/30/17	07/16/17	Yes	07/16/17	P. L. 95-190
P. L. 95-190	03/19/17	05/21/17	Yes	05/21/17	SCH C. 213.33SCH C, 213.3325
P. L. 95-190	03/26/17	05/14/17	Yes	05/14/17	SCH C 3316
P. L. 95-190	03/26/17	05/14/17	Yes	05/14/17	SCH C, 213.3313 AGENCY UNIQUE
P.L. 95-190	03/05/17	ACTIVE APPOINTMENT			
P.L. 95-190	04/23/17	05/14/17	Yes	05/14/17	SCH C 3317
SCH C, 213.3311	06/18/17	02/18/18	Yes	02/18/18	P.L. 95-190
P. L. 95-190	06/04/17	06/04/17	Yes	10/15/17	P. L. 95-190
P.L. 95-190	05/21/17	10/29/17	Yes	10/29/17	P. L. 95-190
P.L. 95-190	05/07/17	07/16/17	Yes	07/16/17	SCH C, 213.3323 AGENCY UNIQUE
P. L. 95-190	09/10/17	ACTIVE APPOINTMENT			
P.L. 95-190	03/13/17	09/03/17	Yes	09/03/17	P.L 95-190
P. L. 95-190	12/24/17	ACTIVE APPOINTMENT			
P.L. 95-190	04/09/17	05/14/17	Yes	05/14/17	SCH C, 213.3315 AGENCY UNIQUE
P. L. 95-190	06/18/17	09/03/17	Yes	07/09/17	OPM FORM 1652 DATED 07-06-17
P. L. 95-190	03/26/17	03/26/17	Yes	04/16/17	OPM FORM 1652
P.L. 95-190	03/24/17	07/11/17	No		
P. L. 95-190	07/23/17	ACTIVE APPOINTMENT			
P. L. 95-190	08/28/17	08/29/17	Yes	08/29/17	
P.L. 95-190	09/17/17	ACTIVE APPOINTMENT			
P. L. 95-190	04/02/17	05/07/17	Yes	05/07/17	SCH C, 213.3310
P. L. 95-190	03/08/17	07/09/17	Yes	07/09/17	SCH C, 213.3321 AGENCY UNIQUE
P. L. 95-190	03/19/17	10/29/17	Yes	10/29/17	P. L. 95-190
P.L. 95-190	02/16/17	08/07/17	No		
P.L. 95-190	05/07/17	05/26/17	No		
P.L. 95-190	07/02/17	08/13/17	Yes	08/13/17	P.L. 95-190
P. L. 95-190	03/13/17	07/09/17	Yes	07/09/17	SCH C, 213.3322 AGENCY UNIQUE
P.L. 95-190	03/13/17	06/29/17	Yes	06/11/17	P.L. 95-190
P. L. 95-190	04/23/17	06/04/17	Yes	06/04/17	OPM FORM 1652 DATED 5/23/17
P..L. 95-190	06/25/17	ACTIVE APPOINTMENT			
P.L. 95-190	12/17/17	ACTIVE APPOINTMENT			
P.L. 95-190	04/02/17	ACTIVE APPOINTMENT			
P.L. 95-190	05/07/17	07/16/17	Yes	02/18/18	P.L 95-190
P.L. 95-190	06/18/17	10/14/17	No		

P.L. 95-190	04/30/17	05/14/17	Yes	05/14/17	SCH C, 213.3316 AGENCY UNIQUE
P. L. 95-190	04/16/17	06/04/17	Yes	06/04/17	SCH C, 213.3316 AGENCY UNIQUE
P.L. 95-190	06/11/17	07/09/17	Yes	07/09/17	SCH C, 213.3320 AGENCY UNIQUE
P. L. 95-190	10/15/17	10/29/17	Yes	10/29/17	SCH C, 213.3323
P. L. 95-190	04/23/17	07/16/17	Yes	07/16/17	SCH C, 213.3325 AGENCY UNIQUE
P. L. 95-190	09/03/17	12/31/17	Yes	12/31/17	12-20-17
P.L. 95-190	02/18/18	04/16/17	Yes	04/16/17	OPM FORM 1652
P. L. 95-190	03/19/17	04/16/17	Yes	04/16/17	OPM FORM 1652
P. L. 95-190	11/12/17	11/21/17	No		
P.L. 95-190	09/24/17	**ACTIVE APPOINTMENT**			
P. L. 95-190	03/19/17	**ACTIVE APPOINTMENT**			
P.L. 95-190	12/10/17	**ACTIVE APPOINTMENT**			
P.L.95-190	06/11/17	07/09/17	Yes	07/09/17	OPM FORM 1652 DATED 07-06-17

rted back to an appointment under the SDWA authority.

Previous EPA Exp.
None
None
None
None
None
None
None
EPA/OGC, Attorney (2001-2011)
None
None
None
None
None
None
None
None
None
None
None
None
None
None
None
[redacted]
None
None
None
None
None
None
[redacted]
None
None
None
None
[redacted]
None

None
None
None
None
None
None
None
None
None
None
None
None
None
None
None
None

Attachment 2 - QFR46 USWAG letter

USWAG UTILITY SOLID WASTE ACTIVITIES GROUP

c/o Edison Electric Institute
701 Pennsylvania Avenue, NW
Washington, DC 20004-2696
202-508-5645
www.uswag.org

May 12, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Mail Code 1101A
Washington, DC 20460

Re: Utility Solid Waste Activities Group Petition for Rulemaking to Reconsider Provisions of the Coal Combustion Residuals Rule, 80 Fed. Reg. 21302 (April 17, 2015), and Request for EPA To Hold in Abeyance Challenge to Coal Combustion Residual Rule, No. 15-1219, et al. (D.C. Cir.)

Dear Administrator Pruitt:

Enclosed please find the Utility Solid Waste Activities Group's ("USWAG") Petition for Reconsideration of EPA's final rule titled Rulemaking to Reconsider Provisions of the Coal Combustion Residuals Rule ("CCR Rule"), 80 Fed. Reg. 21302 (April 17, 2015), and a Request for EPA to seek to Hold In Abeyance the Challenge to the Coal Combustion Residuals Rule, No. 15-1219, et al. (D.C. Cir.).

As set forth in the Petition, USWAG is not seeking reconsideration of the entire Rule, but only those provisions that warrant modification, revision or repeal due to recent legislation fundamentally altering the self-implementing nature of the Rule to one implemented through enforceable permit programs, as well as the Administration's Executive Orders on regulatory reform.

We also ask that EPA take action as soon as possible to extend the Rule's impending compliance deadlines given that owners/operators of coal combustion residuals ("CCR") units are making critical operating decisions based on elements of the CCR Rule that likely will be implemented differently under CCR permit programs and provisions that should be modified based on the re-evaluation of the Rule under the President's Executive Orders on regulatory reform. Extension of the compliance deadlines also is necessary to ensure alignment of the CCR Rule's

requirements with EPA's recent postponement of the compliance dates for implementation of the Final Effluent Limitations Guidelines and Standards Rule for the Steam Electric Power Generating Point Source Category ("ELG Rule"). Because it was EPA's intent that the CCR and ELG Rules work in tandem, both in terms of content and timing, extension of the CCR Rule compliance deadlines is necessary so that owners/operators of CCR units are not forced to make decisions affecting these units under the CCR Rule without first understanding their obligations under the ELG Rule.

Finally, because certain provisions of the Rule identified in the attached Petition are the subject of ongoing litigation challenging the Rule, USWAG requests that EPA seek hold the case in abeyance so that the Agency can reconsider its positions in the litigation in light of the recent statutory changes and Executive Orders.

USWAG believes that the modifications to the Rule identified in this Petition will result in a more practical and workable, yet equally protective regulatory program for CCR disposal units. We look forward to working with EPA in making these important and necessary modifications to the CCR Rule.

Sincerely,

James Roewer
Executive Director

Enclosure

cc: Samantha Dravis
Brittany Bolen
Ryan Jackson
Byron Brown
David Fatouhi
Patrick Davis
Barry Breen
Barnes Johnson

In the United States Environmental Protection Agency

Utility Solid Waste Activities Group Petition for Rulemaking to Reconsider Provisions of the Coal Combustion Residuals Rule, 80 Fed. Reg. 21,302 (April 17, 2015), and Request to Hold in Abeyance Challenge to Coal Combustion Residual Rule, No. 15-1219, et al. (D.C. Cir.)

Douglas Green
Venable LLP
600 Massachusetts Avenue, N.W.
Washington, D.C. 20001
202-344-4483
dhgreen@venable.com

Margaret Fawal
Venable LLP
600 Massachusetts Avenue, N.W.
Washington, D.C. 20001
202-344-4791
mkfawal@venable.com

Counsel for Petitioner Utility Solid Waste Activities Group

TABLE OF CONTENTS

TABLE OF CONTENTS i
RELIEF SOUGHT 1
INTRODUCTION 3
OVERVIEW OF THE CCR RULE 5
REASONS TO RECONSIDER THE RULE 8
A. The Self-Implementing Nature of the CCR Rule Results in Inflexible Requirements that Impose Tremendous Costs on Regulated Entities. 8
B. By Authorizing State CCR Permit Programs, the WIIN Act Fundamentally Altered the CCR Rule's Enforcement Scheme. 11
C. The Policies Established by Executive Orders on Regulatory Reform Support Modification of the CCR Rule. 13
1. EO 13777 13
2. EO 13771 15
3. EO 13783 16
NEED TO EXTEND CCR RULE COMPLIANCE DEADLINES 19
A. Extension of CCR Rule Deadlines is Necessary to Allow Time to Transition to State Permit Programs and Undertake the Necessary Substantive Changes to the Rule. 20
B. Extension of CCR Rule Deadlines is Necessary to Allow for Coordination with ELG Rule. 22
PROVISIONS FOR RECONSIDERATION 26
A. Alternative Risk-Based Groundwater Protection Standards 27
B. Modification to Corrective Action Remedy 30
C. Allowance for Alternative Points of Compliance and Site-Specific Groundwater Monitoring Constituents 32
D. Ability of Unlined CCR Surface Impoundments to Operate While Undertaking Corrective Action 34
E. Adjustments to Post-Closure Care Period 35
F. Repeal The Rule's Regulation of Inactive Surface Impoundments 36
G. Clarification on Using the "Closure-in-Place" Option 38
H. Confirming Beneficial Use of CCR to Close CCR Units 41
I. CCR Beneficial Use at Clay Mine Sites 42

J. State-Approved Liner Systems 44
K. Correction to Definition of Beneficial Use 45
REQUEST TO HOLD CCR LITIGATION IN ABEYANCE 45
CONCLUSION 52

ATTACHMENTS:

Appendix A: Use of Background Concentration as Groundwater Protection Standard for Appendix IV Constituents without Federal Maximum Contaminant Levels (MCLs), Gradient (May 2, 2017)

RELIEF SOUGHT

The Utility Solid Waste Activities Group[1] ("USWAG") hereby petitions the United States Environmental Protection Agency ("EPA") pursuant to 5 U.S.C. § 553(e) and 42 U.S.C. § 6974(a) for a rulemaking to reconsider specific provisions of the Final Rule entitled Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals[2] (the "CCR Rule," the "Final Rule," or "Rule").[3] USWAG is not seeking EPA's reconsideration of the entire CCR Rule, but rather only the provisions of the Rule that warrant modification, revision or repeal due to recent legislation fundamentally altering the self-implementing nature of the Rule, as well as the Administration's Executive Orders on regulatory reform.

An extension of the upcoming CCR Rule compliance deadlines is also necessary, and the EPA should take immediate action to extend those deadlines for several critically important reasons. First, owners/operators of coal combustion

---

[1] USWAG, formed in 1978, is an association of over one hundred and twenty electric utilities, power producers, utility operating companies, and utility service companies located throughout the United States, including the Edison Electric Institute ("EEI"), the American Public Power Association ("APPA"), and the National Rural Electric Cooperative Association ("NRECA"). Together, USWAG members represent more than 73% of the total electric generating capacity of the United States, and service more than 95% of the nation's consumers of electricity and 92% of the nation's consumers of natural gas.

[2] 80 Fed. Reg. 21,302 (April 17, 2015).

[3] Section 553(e) of the Administrative Procedure Act provides that interested persons have "the right to petition for the issuance, amendment, or repeal of a rule." Similarly, section 7004 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6974(a), provides that "any person may petition the Administrator for the promulgation, amendment or repeal of any regulation under this chapter."

residuals ("CCR") units are now facing decisions on whether to make large capital expenditures to comply with central requirements of the CCR Rule—requirements that will be evaluated for potential modification or replacement pursuant to this reconsideration Petition. Second, many of these requirements also may change or be implemented differently with the transition to state permit programs. Finally, an extension is necessary to ensure alignment of the CCR Rule's requirements with EPA's recent postponement of the compliance dates for implementation of the Final Effluent Limitations Guidelines and Standards Rule for the Steam Electric Power Generating Point Source Category[4] ("ELG Rule"). Coordination of the CCR and ELG Rules' compliance time frames has been one of the overarching objectives of the Agency to ensure that owners/operators of CCR units are not forced to make decisions affecting these units under the CCR Rule without first understanding the ELG requirements.[5]

In addition, given that certain of the provisions of the Rule identified in this Petition for reconsideration are the subject of ongoing litigation challenging the CCR Rule,[6] USWAG also requests that EPA seek to hold the case in abeyance so

[4] 80 Fed. Reg. 67,838 (Nov. 3, 2015).

[5] 80 Fed. Reg. at 21,428.

[6] *Utility Solid Waste Activities Group, et al. v. EPA, et al.*, No. 15-1219 (D.C. Cir.) (consolidated with Nos. 15-1221, 15-1222, 15-1223, 15-1227, 15-1228, and 15-1229) (hereinafter "CCR Litigation").

that the Agency can reconsider its positions in the litigation in light of the recent statutory changes and Executive Orders.

INTRODUCTION

EPA's CCR Rule, found at 40 C.F.R. Part 257, regulating the disposal of CCR by the electric utility sector will result in significant economic and operational impacts to coal-fired power generation. Rapidly approaching compliance deadlines for the most impactful components of the Rule are forcing owners or operators of power plants to make irreversible and tremendously significant long-term business and operational decisions regarding how to comply with the Rule. In many cases, these compliance decisions include the closure of CCR disposal units, and even the premature closure of power plants. Put simply, if there is no cost-effective option to manage CCR—the byproduct from the combustion of coal—the use of coal to produce power is significantly burdened, and the economic viability of coal-fired power plants is jeopardized. The CCR Rule is having precisely this adverse effect on coal-fired power generation across the country.

Many of the problems underlying the Rule can be solved through the use of site-specific, risk based management standards that EPA chose not to include in the Final Rule due to the Rule's underlying self-implementing regulatory scheme. But recently enacted legislation now allows the CCR Rule to be implemented

through state CCR permit programs or systems of prior approval (collectively, "state CCR permit programs"). This fundamental change, along with recently issued Executive Orders governing regulatory reform, warrants reconsideration and modification of the CCR Rule to incorporate such site-specific, risk-based provisions for assuring the proper management and disposal of CCR.

As stated above, USWAG is not seeking to eliminate or have EPA reconsider the entire CCR Rule. Indeed, USWAG strongly endorsed and supported EPA's development of RCRA Subtitle D non-hazardous waste rules for the disposal of CCR. Importantly, however, the necessary modifications to the Rule identified in this Petition will produce a more balanced and cost-effective Rule, while also ensuring that CCR disposal units are regulated in a manner meeting RCRA's statutory standard of ensuring "no reasonable probability of adverse effects on health or the environment."[7]

We begin by providing an overview of the CCR Rule and then identify the reasons why reconsideration and modification of the Rule is necessary in light of the new legislation and to achieve the regulatory reform objectives of the Executive Orders. The Petition also identifies why it is critical for EPA promptly to extend the Rule's upcoming compliance deadlines given that many owner/operators must make long-term strategic and operational decisions over the

[7] 42 U.S.C. § 6944(a).

next few months in order to assure compliance with current CCR Rule requirements. As discussed below, we urge EPA to take action as soon as possible to extend these compliance deadlines so that these owners/operators are not left with stranded assets or undertake plant closures in order to comply with elements of the Rule that EPA appropriately determines warrant modification and/or are implemented differently under state permit programs. Finally, we identify the specific provisions of the Rule requiring modification and, given that certain of these provisions are subject to ongoing litigation challenging the CCR Rule, request that EPA seek to hold the case in abeyance while EPA reconsiders its positions in the litigation.

OVERVIEW OF THE CCR RULE

The CCR Rule regulates the disposal of CCR at electric utilities as a non-hazardous solid waste under Subtitle D of RCRA. The Rule establishes minimum federal criteria for determining which CCR landfills and surface impoundments qualify as "sanitary landfills" and may continue to operate, and which landfills and surface impoundments are "open dumps" and must close. A precedent setting aspect of the Rule is EPA's decision to apply these criteria to inactive CCR surface impoundments (*i.e.*, impoundments that ceased receiving CCR *before* the effective date of the Rule), thus resulting in the regulation of inactive CCR surface impoundments in the same manner as operating impoundments. CCR landfills and

surface impoundments that fail to meet the Rule's criteria are considered "open dumps" subject to closure. The Rule became effective on October 19, 2015.

The major criteria in the Rule include (1) restrictions on the siting of CCR units, including the imposition of location restrictions on existing surface impoundments that have been sited and in operation for years; (2) standards for the design of CCR units, such as specified liner requirements that can effectively supersede differing state requirements; (3) operating conditions, such as mandated inspections of landfills and surface impoundments and fugitive dust controls; (4) structural integrity requirements for surface impoundments that, if not met by a specified time period, mandate the prompt closure of the unit; (5) groundwater monitoring and corrective action requirements, which include the establishment of groundwater protection standards that, in the case of certain constituents, are set at background levels—even though these levels can be far lower than established and accepted risk-based levels; (6) two specified closure options, including (i) closure with CCR in place in conformance with specified dewatering, stabilization and cap design standards, followed by a minimum of 30-years of post-closure care and groundwater monitoring, or (ii) closure by removing the CCR from the unit and certifying compliance with the mandated groundwater protection standards, with no subsequent post-closure care; and (7) recordkeeping and reporting requirements

demonstrating compliance with the criteria that must be posted to a publicly available website.

Because the Rule was promulgated as a self-implementing rule, whether in fact a facility is in compliance with the above-referenced criteria is determined by a Qualified Professional Engineer ("QPE"), whose certifications are posted to the facility's publicly available website. The QPE's certification is then subject to review by EPA, the states, and citizen groups and, if there is disagreement, the facility's compliance with the Rule can be challenged by EPA through an EPA administrative enforcement order[8] or through a RCRA citizen suit brought by a citizen group or a state in federal district court.[9] This unorthodox enforcement scheme has led to a degree of uncertainty, as QPE certifications are subject to challenge and possible reversal *after* the certification is made and the applicable regulatory deadline has passed.

Moreover, failure to comply with certain of the Rule's criteria leads to the mandated closure of the CCR disposal unit within very short time frames. Of most importance, the detection of a release to groundwater from an unlined surface impoundment above a mandated groundwater protection standard—even where the

---

[8] When the Rule was originally promulgated in April 2015, EPA did not have statutory authority to enforce the Rule. However, the recently enacted Water Infrastructure Improvements for the Nation Act ("WIIN Act"), which, in part, amended Subtitle D of RCRA to authorize the states to implement the CCR Rule through state permit programs, also gave EPA authority to directly enforce the Rule.

[9] *See* 42 U.S.C. § 6972.

groundwater protection standard is background and far below accepted health-based levels—requires the prompt closure of the impoundment even if other corrective action measures may be available at considerably less cost for ensuring the protection of human health and the environment based on site-specific circumstances.

Certain of the Rule's criteria have already taken effect, including fugitive dust controls, unit inspections and the preparation of closure plans. However, the Rule's most demanding and onerous requirements (including in particular its groundwater monitoring requirements, with the attendant regulatory ramifications of forced closures of CCR disposal units and corrective action) are scheduled to go into effect on October 17, 2017, approximately five months from the filing of this Petition.

REASONS TO RECONSIDER THE RULE

A. The Self-Implementing Nature of the CCR Rule Results in Inflexible Requirements that Impose Tremendous Costs on Regulated Entities.

The enormous costs associated with the CCR Rule are largely attributable to the Rule's burdensome, inflexible, and often impracticable requirements, which do not allow for the type of site-specific, risk-based management techniques contained in many state coal ash regulatory programs and other federal solid waste regulations. Instead, the CCR Rule operates independently of existing state risk-

based CCR control programs.[10] Therefore, owners/operators of coal-fired power plants must often comply with two sets of CCR disposal controls: those imposed by the CCR Rule and any additional state requirements.[11]

This dual and inefficient regulatory regime is the result of the self-implementing nature of the CCR Rule. At the time the CCR Rule was promulgated in 2015, the underlying statute, RCRA, did not allow for the Rule to be delegated to the states or to be implemented through state or federal permit programs. Instead, as explained above, regulated entities are responsible for "self-implementing" the Rule, meaning that owners/operators of coal-fired power plants must ascertain for themselves what is required to comply with the Rule and then certify such compliance on a publicly available website. Alleged non-compliance with the Rule is enforced through RCRA's citizen suit provision or directly by EPA through the issuance of administrative orders.

Because of this self-implementing scheme, EPA declined to include in the Final Rule many site-specific, risk-based provisions contained in other state and federal solid waste programs, and instead created a monolithic, one-size-fits-all regulatory regime. For example, EPA removed certain provisions from the Final Rule—provisions which were contained in the 2010 CCR proposal[12] and drawn

[10] 80 Fed. Reg. at 21,333.
[11] *Id.*
[12] 75 Fed. Reg. 35,128 (June 21, 2010).

from EPA's Municipal Solid Waste Landfills ("MSWLF") program under 40 C.F.R. Part 258—that would have allowed for tailoring of the Rule's groundwater monitoring and corrective action programs based on site-specific conditions. EPA removed this flexibility precisely because there is no regulatory authority overseeing implementation of the CCR Rule through an enforceable permit program. As EPA reasoned, "the possibility that a state may lack a permit program for CCR units made it impossible to include some of the alternatives available in [the MSWLF program], which establish alternative standards that allow a state, as part of its permit program to tailor the default requirements to account for site specific conditions at the individual facility."[13]

This has resulted in a CCR Rule reflecting risk assumptions and regulatory criteria based on the "lowest common denominator." EPA readily acknowledged this point when it determined that any unlined impoundment contaminating groundwater must, in all circumstances, close:

> EPA acknowledges that it may be possible at certain sites to engineer an alternative to closure of the unit that would adequately control the source of the contamination and would otherwise protect human health and the environment. However, the efficacy of those engineering solutions will necessarily be determined by individual site conditions. As previously discussed, the regulatory structure under which this rule is issued effectively limits the Agency's ability to develop the type of requirements that can be individually tailored to accommodate particular site conditions. Under [RCRA] sections

[13] 80 Fed. Reg. at 21,396-97.

> 1008(a) and 4004(a), EPA must establish national criteria that will operate effectively in the absence of any guaranteed regulatory oversight (i.e., a permitting program), to achieve the statutory standard of "no reasonable probability of adverse effects on health or the environment" at all sites subject to the standards.[14]

This lack of site-specific consideration has resulted in an inflexible and overly-conservative Rule that is imposing tremendous operational costs on the power industry and is threatening the premature closure of CCR disposal units. As explained below, however, the statutory structure underpinning the enforcement scheme for the Rule has fundamentally changed since its promulgation in 2015. Therefore, there is no longer any basis for the Rule's inflexible requirements, which, as noted above, even EPA acknowledges can force the closure of units that are otherwise capable of remaining open in a manner that protects human health and the environment. Furthermore, these inflexible requirements are the exact types of unnecessarily burdensome regulation that EPA has been directed to repeal, replace, or modify under the recent Executive Orders relating to regulatory reform.

B. By Authorizing State CCR Permit Programs, the WIIN Act Fundamentally Altered the CCR Rule's Enforcement Scheme.

On December 16, 2016, President Obama signed into law the Water Infrastructure Improvements for the Nation Act ("WIIN Act"), which, in part, amended Subtitle D of RCRA to authorize the states to implement the CCR Rule

[14] *Id.* at 21,371.

through state permit programs.[15] Specifically, the WIIN Act authorizes the states to submit an application requesting EPA's approval to administer the CCR Rule through a state permit program *in lieu of* the self-implementing CCR Rule. Where states do not seek to administer the Rule or where a state's application is denied by EPA—referred to as "Nonparticipating States"—EPA is directed to implement the CCR Rule through a federal permit program.[16] This statutory change fundamentally transforms the CCR Rule from a self-implementing program, into a rule that will be implemented through either a state or EPA permit program (much like traditional federal environmental programs).

With the WIIN Act's change to the implementation of the CCR Rule, EPA's original rationale for excluding the site-specific, risk-based tailoring provisions from the Final Rule—its concern for "abuse" by entities operating under the self-implementing regime—no longer exists. Therefore, the Rule should be amended as soon as possible to incorporate the risk-based management options contained in state and other EPA solid waste programs, eliminating the burdensome one-size-fits-all approach of the current Rule.

---

[15] The legislation amends section 4005 in Subtitle D of RCRA ("Upgrading of Open Dumps") by adding a new subsection (d) to the section entitled "State Programs for Control of Coal Combustion Residuals."

[16] The requirement that EPA implement a CCR permit program in a Nonparticipating State is conditioned on Congress appropriating funds for EPA to administer a CCR permit program. Nonetheless, even without such direct appropriations, nothing in the statute prohibits EPA from administering CCR permit programs in Nonparticipating States if it so chooses.

C. The Policies Established by Executive Orders on Regulatory Reform Support Modification of the CCR Rule.

In addition to the WIIN Act, the Rule requires reconsideration pursuant to the policies set forth in the Administration's recent series of Executive Orders regarding regulatory reform, including the regulatory reform agenda set forth in Executive Order 13777 ("EO 13777").[17] Reconsideration of the Rule also is consistent with the policies expressed in the President's Executive Order 13771 on "Reducing Regulation and Controlling Regulatory Costs"[18] ("EO 13771") and the President's Executive Order 13783 on "Promoting Energy Independence and Economic Growth"[19] ("EO 13783"). We discuss these EOs below and explain why individually, and collectively, they warrant modification to the CCR Rule.

1. EO 13777

One of the key directives in EO 13777 is for agency regulatory reform task forces ("RRTFs") to "evaluate existing regulations and make recommendations to the agency head regarding their repeal, replacement, or modification, consistent

[17] *See* Executive Order 13777, *Enforcing the Regulatory Reform Agenda* (Feb. 24, 2017), 82 Fed. Reg. 12,285 (Mar. 1, 2017).

[18] Executive Order 13771, *Reducing Regulation and Controlling Regulatory Costs* (Jan. 30, 2017), 82 Fed. Reg. 19339 (Feb. 3, 2017).

[19] Executive Order 13783, *Promoting Energy Independence and Economic Growth* (Mar. 28, 2017), 82 Fed. Reg. 16,093 (Mar. 31, 2017).

with applicable law."[20] The RRTFs have until May 25, 2017, to make their recommendations.[21]

In undertaking this task, EO 13777 directs that the RRTF shall attempt to identify regulations that, among other things:

> (i) eliminate jobs or inhibit job creation;
> (ii) are outdated, unnecessary, or ineffective;
> (iii) impose costs that exceed benefits; or
> (iv) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies.[22]

The CCR Rule meets *all* of these criteria.

First, EPA itself readily acknowledged in issuing the Final Rule that the Rule's costs far exceed its benefits, with annual costs conservatively exceeding the Rule's benefits by a range of at least $273 to $441 million per year.[23] Even these ranges far underestimate the gaps between the Rule's compliance costs versus its estimated benefits because they fail to take into account the excessive

---

[20] EO 13777 § 4. EO 13777 refers to the definition of "regulation" or "rule" found in EO 13771, which includes, in pertinent part, "an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency . . . ." EO 13771 § 4.

[21] By imposing a rigorous deadline on the Task Force, EO 13777 recognizes the urgency of addressing overly burdensome regulations. Ultimately, it is the customers of the electric utility industry who suffer the economic burden of exorbitantly expensive rules having no concomitant environmental benefit. This burden is exacerbated when important issues regarding those rules go unresolved for extended periods of time (*e.g.*, the Mercury and Air Toxics rule) and, as a result, the regulated must move forward with burdensome regulations before they can be repealed or revised. Uncertainty also contributes to potential instability in energy delivery. Thus, in the spirit of EO 13777, the Agency should move expeditiously to reconsider and revise the Rule.

[22] EO 13777 § 3(d)(i)-(iv).

[23] 80 Fed. Reg. at 21,460.

compliance costs brought about by the Rule's overly stringent one-size-fits-all operating, groundwater monitoring and corrective action standards that cannot be tailored to reflect site-specific characteristics of a particular unit. Consistent with EO 13777, a rule whose costs exceeds its benefits should be re-evaluated and modified.

The Rule also will cause job losses due to the premature closure of power plants caused by the forced closure of CCR disposal units. Similarly, the provisions of the Rule identified for reconsideration in this Petition are outdated and unnecessary, as they fail to reflect the fundamental statutory change brought about by the WIIN Act with respect to the implementation of the Rule through enforceable permit programs in lieu of the original self-implementing regime. Finally, as discussed below, the adverse effects on coal-powered energy generation caused by the Rule's current implementation scheme and overly burdensome regulatory regime are directly inconsistent, with EO 13783.

For all these reasons, the CCR Rule should be chief among the EPA RRTF's recommendations under EO 13777 for repeal, replacement or modification as set forth in this Petition.

2. EO 13771

The CCR Rule also should be reconsidered as part of EPA's compliance with EO 13771. Among other things, EO 13771 directs that "for every one new

regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through the budgeting process."[24] Agencies are to achieve a net incremental regulatory cost of zero in Fiscal 2017[25] by offsetting the costs of new regulations during the current fiscal year with costs eliminated from existing regulations.[26]

By reconsidering the CCR Rule and taking its costs properly into account when promulgating a modified CCR Rule, EPA can engage in regulatory burden reduction as contemplated by EO 13771, thereby facilitating the promulgation of other rules, including a revised CCR Rule that provides meaningful environmental benefits.

3. EO 13783

EO 13783 provides even further support for the requested modifications to the CCR Rule identified in this Petition. EO 13783 states, in pertinent part, that it is the national policy of the United States and executive agencies to "immediately review existing regulations that potentially burden the . . . use of domestically produced energy resources and appropriately *suspend, revise, or rescind* those that

[24] EO 13771 § 1.

[25] "For fiscal year 2017, which is in progress, the heads of all agencies are directed that the total incremental cost of all new regulations, including repealed regulations, to be finalized this year shall be no greater than zero. . . ." *Id.* § 2(b).

[26] *Id.* § 2(c) ("incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.").

unduly burden the development of domestic energy resources beyond the degree necessary to protect the public interest or otherwise comply with law."[27] To achieve this national policy objective, EO 13783 directs that heads of federal agencies immediately "review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, agency actions) that potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, *coal*, and nuclear energy resources."[28]

Pursuant to the above directives, within 180 days of the issuance of EO 13783, the heads of federal agencies are to submit final reports to the Vice President and Director of the Office of Management and Budget (among others) detailing the regulations identified by the agency as potentially burdening the development or use of domestically produced energy resources, including with particular attention to *coal*, oil, natural gas and nuclear energy resources. After submission of these final reports, the heads of federal agencies "shall as soon as practicable, suspend, revise, or rescind, or publish for notice and comment proposed rules suspending, revising, or rescinding, those actions, as appropriate and consistent with law."[29]

---

[27] EO 13783 § 1(c) (emphasis added).

[28] *Id.* at § 2(a) (emphasis added).

[29] *Id.* at § (g). Agencies are directed to coordinate such regulatory reform with their activities undertaken pursuant to EO 13771, discussed above. *Id.*

The CCR Rule is an "agency action" that directly burdens the use of coal as an energy resource by imposing unduly stringent and extremely costly regulations on the management of CCR—a coal combustion byproduct. Put simply, the continued use of coal for electricity generation is effectively precluded if there is no economical option for managing the residuals from its use. These burdens are only compounded by a suite of other major rules affecting coal-fired power plants. And, ultimately, the costs imposed by these regulations will be borne by consumers of the electricity.

Therefore, as currently written and implemented, the CCR Rule is having significant adverse effects on the domestic use of coal as an energy source in direct contradiction of the national energy policy set forth in EO 13783. This does not have to be the case. The identified revisions, and in certain cases repeal, of the specific provisions of the CCR Rule discussed below will remove these unwarranted regulatory burdens on the management of CCR and the related burdens on the use of coal as an energy source—none of which are mandated by the statute. Rather, with the enactment of a new regulatory paradigm allowing for implementation through CCR permit programs, EPA can move from a monolithic, one-size-fits-all regulatory regime to a site-specific and risk-based approach, all while continuing to ensure that CCR will be managed in a manner meeting

RCRA's Subtitle D standard of ensuring "no reasonable probability of adverse effects on health or the environment."[30]

Therefore, it is appropriate for the CCR Rule to be included in the final report prepared under EO 13783 and then revised as soon as practicable consistent with the request for reconsideration set forth in this Petition.

NEED TO EXTEND CCR RULE COMPLIANCE DEADLINES

Although certain of the CCR Rule's operating criteria have already taken effect, other provisions of the CCR Rule, including the Rule's groundwater monitoring and associated corrective action provisions, have not. As discussed in more detail below, it is critically important to extend the compliance dates of these remaining CCR Rule requirements so that electric utilities do not make irreversible operational and significant investment decisions (including decisions on plant closures) before EPA has time to reconsider the provisions of the Rule identified in this Petition and make any necessary Rule modifications. In addition, an extension of the Rule's upcoming timeframes is necessary to allow time for implementation of the Rule through enforceable permit programs as contemplated under the WIIN Act and, equally important, to ensure alignment of the CCR Rule's remaining compliance dates with the ELG Rule, which was recently stayed while EPA reconsiders many of the key requirements of that rule.

[30] 42 U.S.C. § 6944(a).

A. Extension of CCR Rule Deadlines is Necessary to Allow Time to Transition to State Permit Programs and Undertake the Necessary Substantive Changes to the Rule.

Given the anticipated implementation of the Rule through state permit programs—including the adoption of requirements that may differ, yet be equally protective as the federal Rule—EPA should take immediate action to extend the CCR Rule's upcoming compliance deadlines to coincide with implementation of the Rule through CCR permit programs. This is necessary to allow time for the transition of the Rule to state-based permit programs, under which elements of the Rule, including the groundwater monitoring program, can be tailored to reflect the site-specific characteristics of individual CCR units. Similarly, an extension of time is necessary for EPA to evaluate the requested modifications to the CCR Rule identified in this Petition and to undertake rulemakings to implement those changes, many of which will likely be reflected in state CCR permit programs. As discussed below, these changes will allow for implementation of the Rule's requirements in a more balanced and cost-effective manner while meeting RCRA's statutory standard of ensuring "no reasonable probability of adverse effects on health or the environment."[31]

Indeed, we understand that EPA is in the process of preparing guidance detailing the procedures states should use to apply for and receive approval to

[31] 42 U.S.C. § 6944(a).

implement the CCR Rule through state permit programs.[32] Many states, including Missouri, Georgia and Kansas, have reportedly already expressed an interest in obtaining or are already seeking EPA approval to administer such programs. Therefore, it is expected that many states will be in the position to implement the requirements of the CCR Rule through state permit programs in the near future, perhaps before the end of this year, with more states to follow later.

This transition to state permit programs necessitates an extension of the Rule's deadlines to avoid large-scale capital expenditures by the regulated community for elements of the Rule that are likely to be changed significantly through the reconsideration Petition or at least implemented differently under future permits. Electric utilities should not be forced to invest significant and irretrievable capital resources to comply with requirements that are likely to change.

Chief among these deadlines is the fast approaching October 17, 2017 requirement for initiating the Rule's groundwater monitoring program,[33] which sets off a series of cascading requirements, including possibly onerous corrective action requirements and, in some cases, forced closure of CCR units and power

[32] *See* letter dated April 28, 2017 from Administrator Pruitt to Governor Sandoval of Nevada.

[33] 40 C.F.R. §§ 257.90(b), 257.90(e).

plants.[34] As currently written, the Rule's groundwater monitoring program does not allow for the consideration of any site-specific characteristics, such as groundwater hydrology, local geological characteristics, or proximity to surface water and drinking water receptors. But, now, state regulators will be in a position to tailor, as appropriate, the applicable groundwater standards to reflect the risks and groundwater characteristics of individual sites. Extending the Rule's groundwater monitoring program to coincide with the adoption and implementation of the Rule through state permit programs will avoid needless capital expenditures, the likely closure of CCR units,and perhaps even the premature closure of power plants, for elements of the Rule that may change as a result of the reconsideration rulemaking or be implemented differently under state CCR permit programs.

B. Extension of CCR Rule Deadlines is Necessary to Allow for Coordination with ELG Rule.

An extension of the Rule's compliance deadlines also is critical to ensure coordination with the time frames in the ELG Rule. Significantly, EPA recently

[34] *See id.* §§ 257.90-.98; *see also* 80 Fed. Reg. at 21,397 (discussing the "phased approach" to groundwater monitoring).

granted two petitions for reconsideration[35] of the ELG Rule.[36] As part of this reconsideration, EPA has postponed the compliance deadlines in the ELG Rule through an administrative stay and announced its plan to extend or revise the ELG compliance deadlines through a subsequent notice and comment rulemaking over the next few months.[37]

Although the ELG Rule and the CCR Rule are separate regulations issued pursuant to two separate statutes, both rules impact the management of CCR waste streams and the operation of CCR surface impoundments. Because of this, EPA correctly reasoned in promulgating the CCR Rule that it was necessary to align the structure and timelines of the CCR Rule to account for the content and timelines of the ELG Rule. Therefore, in establishing the compliance time frames in the CCR Rule, EPA "accounted for other Agency rulemakings that may affect owners or operators of CCR units," including specifically the ELG Rule.[38] EPA also explained that "effective coordination of any final RCRA requirements with the ELG requirements would be sought in order to minimize the overall complexity of

---

[35] Petition to reconsider the Final Rule, submitted by U.S. Small Business Administration (April 5, 2017); Petition to reconsider the Final Rule, submitted by Utility Water Act Group (March 24, 2017) (available at https://www.epa.gov/eg/steam-electric-power-generating-effluent-guidelines-petitions-reconsideration).

[36] April 12, 2017 Letter from EPA Administrator Scott Pruitt to Harry M. Johnson, Major Clark, and Kevin Bromberg (available at https://www.epa.gov/sites/production/files/2017-04/documents/steam-electric-elg_uwag-sba-petition_epa-response_04-12-2017.pdf).

[37] 82 Fed. Reg. 19,005 (April 25, 2017).

[38] *Id.*

the two regulatory structures, and facilitate implementation of engineering, financial, and permitting activities."[39]

Accordingly, the compliance deadlines in the CCR Rule were established by EPA with the full expectation that the contents and timing of the final ELG Rule would be understood by owners or operators of CCR units.[40] This was so that the CCR Rule would not force any major operational decisions (such as closure or retrofit of a CCR unit) before an owner or operator of a CCR unit could properly take into account and consider the associated implications under the ELG Rule, allowing "ample time for the owners and operators of CCR units to *understand the requirements of both regulations* and make the appropriate business decisions."[41] EPA recognized this was particularly true with respect to CCR Rule obligations that could require a surface impoundment to undergo closure or retrofit, explaining that "[a] decision on what action to take with that unit may ultimately be directly influenced by the requirements of the ELG rule."[42]

Consistent with the above position, EPA stated that the CCR Rule "will *not* require owners or operators of CCR units to make decisions about these units

---

[39] 80 Fed. Reg. at 21,313.

[40] *See id.* at 21,428 ("Thus, under the final timeframes in this [CCR] rule, any such decision [whether to retrofit a CCR impoundment] will not have to be made by the owner or operator of a CCR unit until well after the ELG rule is final and the regulatory requirements are well understood.").

[41] *Id.* (emphasis added).

[42] *Id.*

[including closure decisions] without first understanding the implications that such decisions would have meeting the requirements of [the ELG]."[43] Obviously, however, owners or operators of CCR units are not in a position to make this type of informed decision given EPA's recent decision to reconsider the content and compliance time frames of the ELG Rule.

For example, a decision on whether to undertake the significant capital investment to retrofit a CCR surface impoundment otherwise required to close under the CCR Rule will turn in large part on whether that impoundment will continue to serve a wastewater management function for an ELG-regulated waste stream—such as bottom ash transport water. But the future role of that impoundment in managing bottom ash transport water under the ELG Rule will not be known until such time as EPA completes its reconsideration of both the timing and content of the ELG Rule. This is precisely the type of predicament that EPA intended to avoid by declaring that it would not force any major compliance decisions under the CCR Rule before a facility could properly take into account and consider the associated implications under the ELG Rule.

In short, because the ELG and CCR Rules were designed to work in tandem, both with respect to content and timing, it is clear that EPA must now also extend the upcoming compliance deadlines in the CCR Rule to coincide with revised

[43] *Id.* (emphasis added).

compliance deadlines in the ELG Rule. For similar reasons, other CCR Rule deadlines that should be extended include the time schedules in 40 C.F.R. §§ 257.60-257.64 for assessing compliance with the CCR Rule's location restrictions.

PROVISIONS FOR RECONSIDERATION

As discussed above, in light of the President's Regulatory Reform Orders and the fundamental statutory change brought about by the WIIN Act, EPA should reconsider and modify the provisions of the CCR Rule identified below. Because the CCR Rule can now be implemented through state permit programs, EPA's rationale for not including many of the risk-based provisions contained in the proposed CCR Rule, and currently contained in many existing state CCR permit programs, no longer exists. Many of the recommended provisions for reconsideration discussed below reflect this fundamental statutory change in how the Rule is to be implemented and, accordingly, urge modifications incorporating common sense, risk-based management options into the Rule. In addition, the CCR Rule contains other overly prescriptive requirements that impose unnecessary regulatory burdens on the electric power sector and increase compliance costs without a corresponding environmental benefit. As discussed below, it is appropriate for EPA also to revise these requirements pursuant to the Administration's Executive Orders relating to regulatory reform.

A. Alternative Risk-Based Groundwater Protection Standards

The Rule's groundwater monitoring regime and corrective action requirements are centered around specified groundwater protection standards for the Rule's list of Appendix IV constituents. For most constituents, the groundwater protection standard is based on maximum contaminant levels ("MCLs"), which are standards set by EPA for drinking water quality. Several Appendix IV constituents (molybdenum, lead, cobalt, and lithium), however, do not have an MCL. For these constituents, the groundwater protection standard defaults to background levels.

In the 2010 proposal, EPA included a provision allowing for the establishment of alternative risk-based groundwater protection standards for Appendix IV constituents that do not have an MCL.[44] This has long been the regulatory regime in the MSWLF program and has not been the subject of any controversy.[45] Even under EPA's Subtitle C hazardous waste program, permit writers are authorized to establish site-specific groundwater protection standards based on the unique conditions of the regulated unit.[46] EPA removed this option from the Final Rule, however, explaining that such flexibility was "inappropriate in a self-implementing rule, as it was unlikely that a facility would have the

[44] 75 Fed. Reg. at 35,249 (proposed 40 C.F.R. § 257.95(h)).
[45] *See* 40 C.F.R. § 258.55(h)(3)(i).
[46] *See Id.* § 264.94(b).

scientific expertise necessary to conduct a risk assessment, and was too susceptible to potential abuse."[47]

By prohibiting risk-based groundwater protection standards, the Rule mandates the use of background levels even when those levels are far below any risk-based standard that would otherwise be required by a state or even by EPA under other federal cleanup programs (where risk-based remediation levels are routinely used). This means that a facility may be forced into the Rule's burdensome corrective action program, even if contamination at the facility does not exceed an acceptable risk-based level. And, more importantly, the ultimate cleanup standard under corrective action in these circumstances is set at background, even if the treatment required is far more costly than treating to an acceptable risk-based level. This overly prescriptive and conservative approach thus imposes compliance costs that far exceed any environmental benefit and is the type of regulation targeted for regulatory reform under the Executive Orders.

The Appendix IV constituent cobalt is a good example of the illogical result compelled by the Rule's inflexible approach. As explained in the attached report prepared by Gradient Corporation (Appendix A), EPA has established a risk-based level for cobalt—referred to as a "Regional Screening Level" or "RSL"—of 6 ug/L in groundwater. However, the median background level of cobalt in groundwater

[47] 80 Fed. Reg. at 21,405.

is 0.17 ug/L, which is *35 times lower* than the RSL developed for cobalt by EPA. And, the median concentration of cobalt in CCR leachate is 1 ug/L, which is *six times lower* than the health-based standard for cobalt established by EPA. Therefore, at the vast majority of CCR facilities, no remediation would ever be required to achieve the health-based benchmarks for cobalt in order to protect human health and the environment.

But this is not how the CCR Rule works. Instead, because cobalt does not have an MCL and facilities are not allowed to set the groundwater protection standard at an acceptable risk-based level, facilities would have to meet the groundwater protection standard of 0.17 ug/L,[48] even though that standard is *35 times lower* than EPA's own risk-based standard. Therefore, facilities that contain the median CCR leachate concentration of 1 ug/L, which itself is six times lower than EPA's risk-based level for cobalt, would still have to spend hundreds of thousands of dollars (if not more) in groundwater remediation costs to achieve a typical (median) cobalt background level of 0.17 ug/L.[49]

And, worse, in the case of unlined CCR surface impoundments, exceedance of a groundwater protection standard results in the mandated cessation of receipt of

[48] This assumes that background is the 0.17 ug/L, the median concentration of cobalt in groundwater.

[49] In contrast, MSWLFs that receive CCR for disposal would be allowed to use risk-based groundwater protection standards under 40 C.F.R. Part 258, since MSWLFs that receive CCR are not regulated under the CCR Rule. *See* 40 C.F.R. § 257.50(i).

CCR within six month and the commencement of closure of the unit. This huge expenditure of time and resources, combined with the forced closure of surface impoundments in circumstances where a groundwater protection standard is below health-based levels and/or requires more treatment than otherwise necessary, provides no incremental benefit to human health and the environment.

There is absolutely no reason for this type of expenditure of resources under the CCR Rule to continue. First, such an outcome is in direct contravention of EO 13777's direction to identify and revise and/or rescind those regulations whose costs exceed their benefits. Second, now that states and EPA can implement the CCR Rule through enforceable permit programs, states and EPA can readily adopt risk-based groundwater protection standards in lieu of the Rule's overly-conservative requirement to default to background levels. EPA should therefore revise the CCR Rule to allow for the use of alternative risk-based standards in establishing groundwater protection standards for Appendix IV constituents that do not have an MCL.[50] This provision should be added to the Final Rule at 40 C.F.R. § 257.95(h).

B. Modification to Corrective Action Remedy

The 2010 proposal included a provision, again modeled after the MSWLF program, allowing a facility to determine that undertaking corrective action was

[50] *See* 75 Fed. Reg. at 35,249-50 (proposed 40 C.F.R. § 257.95(h)).

not necessary if it would not result in any meaningful environmental benefit (*e.g.*, where the groundwater is not a source of drinking water and there is a low likelihood of contamination migrating offsite).[51] The proposal also allowed facilities, when deciding on the appropriate remedy, to take into account "the desirability of utilizing technologies that are not currently available, but which may offer significant advantages over already available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives."[52] Both of these concepts have long been included in EPA's MSWLF program, as state permit writers are well qualified to oversee any risk-based decisions made by a facility when evaluating corrective action options.[53] Both of these provisions, however, were removed from the Final Rule on the basis that such provisions were "potentially subject to abuse" and not appropriate where there is no state oversight.[54]

With the ability to implement the CCR Rule through state or EPA permit programs, EPA's concern for "abuse" by individual facilities no longer exists and permit writers should be authorized to tailor corrective action to the individual characteristics of the site. This allowance will achieve burden reduction by allowing for the use of the most efficient remediation technologies and/or avoiding

---

[51] *Id.* at 35,251 (proposed 40 C.F.R. § 257.97(e)-(f)).
[52] *Id.* (proposed 40 C.F.R. § 257.97(d)(4)).
[53] *See* 40 C.F.R. §§ 258.57(d)(4), 257.57(e).
[54] 80 Fed. Reg. at 21,407.

the implementation of corrective action measures that provide no meaningful environmental benefit. Therefore, the above-referenced provisions should be added to 40 C.F.R. § 257.97 to reduce unnecessary regulatory burdens.

C. Allowance for Alternative Points of Compliance and Site-Specific Groundwater Monitoring Constituents

The Final Rule does not allow facilities flexibility to utilize site-specific conditions to determine the appropriate point of compliance for groundwater. Nor does the Rule allow for site-specific modifications to the list of constituents subject to groundwater monitoring. Instead, the Rule requires in all circumstances that the point of compliance be at the edge of the CCR unit—even where this makes little practical sense—and mandates that all constituents in Appendix III and IV be monitored.[55]

Many comments on the 2010 proposal requested that EPA provide facilities the option to determine the appropriate point of compliance for the groundwater monitoring system based on site-specific conditions.[56] In particular, based on the option included in the MSWLF regulations,[57] commenters requested that the CCR Rule allow for a point of compliance that is no more than 150 meters from the waste management unit boundary and located on land owned by the owner of the CCR unit, taking into account site-specific factors. Commenters also requested,

---

[55] *See* 40 C.F.R. §§ 257.91(a)(2), 257.94(a).
[56] *See* 80 Fed. Reg. at 21,397-98.
[57] 40 C.F.R. § 258.40(d)

again based on the MSWLF program, that a facility be able to tailor the constituents subject to groundwater monitoring based on site-specific conditions (for example, if a modified list of parameters provided for a reliable indicator of potential releases from the unit). EPA rejected both of these suggestions in the Final Rule, however, explaining that "in the absence of a mandated state oversight mechanism to ensure that the suggested modifications are technically appropriate, these kinds of provisions can operate at the expense of protectiveness."[58]

With the ability of the states and EPA to implement the Rule through site-specific permit programs properly administered by a regulatory authority, this concern no longer exists. Therefore, the Rule should be revised to include the provisions already in the MSWLF program providing a permitting authority (1) the option to determine the appropriate point of compliance for the groundwater monitoring system based on site-specific conditions, and (2) the ability to tailor the constituents subject to groundwater monitoring based on site-specific conditions. This will achieve burden reduction by allowing permit writers to determine, based on site-specific characteristics such as groundwater hydrology, local geological characteristics, and proximity to surface water and drinking water receptors, the most efficient placement of monitoring wells and to avoid monitoring for specific constituents that are not of concern or relevant to the site. These provisions should

[58] 80 Fed. Reg. at 21,398.

be added to 40 C.F.R. § 257.91, § 257.94, and § 257.95, respectively, in order to reduce unnecessary regulatory burdens.

D. Ability of Unlined CCR Surface Impoundments to Operate While Undertaking Corrective Action

Under the CCR Rule, an unlined surface impoundment that triggers corrective action—*i.e.*, detects a statistically significantly increase over an applicable groundwater protection standard—*must* cease the receipt of CCR within 6 months and commence closure with *no* opportunity to continue operation of the CCR unit by taking corrective action to remedy the release through engineering controls.[59] Importantly, though, EPA acknowledged "that it may be possible at certain sites to engineer an alternative to closure of the unit that would adequately control the source of contamination and would otherwise protect human health and the environment."[60] Nonetheless, EPA declined to allow facilities to pursue this option, explaining that "the efficacy of those engineering solutions will necessarily be determined by individual site conditions" and "[a]s previously discussed, the regulatory structure under which this rule is issued effectively limits the Agency's ability to develop the type of requirements that can be individually tailored to accommodate particular site conditions."[61]

---

[59] 40 C.F.R. § 257.95(g)(5). Units that have triggered forced closure are provided an opportunity to continue operations for a limited period of time if there is no available disposal capacity for the CCR. *Id.* § 257.103.

[60] 80 Fed. Reg. at 21,371.

[61] *Id.*

Again, with the enactment of legislation authorizing the implementation of the CCR Rule through enforceable state CCR permits that can be tailored to take into consideration individual site conditions, EPA's reasoning no longer exists for establishing a blanket prohibition on allowing unlined surface impoundments that have triggered corrective action to employ engineering controls to address the source and continue operating in a manner that protects human health and the environment. EPA should amend the Rule to explicitly grant state permitting programs the authority to allow unlined surface impoundments undertaking corrective action to demonstrate that such units can continue to operate during corrective action in a manner that is protective of human health and the environment. This option should be added to 40 C.F.R. § 257.101(a)(1) in order to reduce unnecessary regulatory burdens.

E. Adjustments to Post-Closure Care Period

The 2010 proposal included a provision that would have allowed facilities to conduct post-closure care for less than 30 years if the owner/operator was able to demonstrate that the reduced period was sufficient to protect human health and the environment.[62] This option for a reduced post-closure care time period is available under both EPA's MSWLF and Subtitle C hazardous waste programs.[63] EPA

[62] 75 Fed. Reg. at 35,253 (proposed 40 C.F.R. § 257.101(b)(1)).
[63] *See* 40 C.F.R. §§ 258.61(b)(1), 264.117(a)(2)(i)).

removed this option from the Final Rule, however, "due to the lack of guaranteed state oversight for this rule."[64]

But now that the states and EPA can issue individual permits based on site-specific characteristics, this concern no longer exists. Therefore, EPA should revise the Rule to include a provision allowing for a determination that a decreased period of post-closure care, as opposed to the mandatory 30-year period, is sufficient to protect human health and the environment. This provision should be added to 40 C.F.R. § 257.104(c) to reduce unnecessary regulatory burdens.

F. Repeal The Rule's Regulation of Inactive Surface Impoundments

For the first time in its 35-year implementation of the RCRA program, EPA made the unprecedented decision in the CCR Rule to regulate "inactive units"—that is, impoundments that had ceased receiving CCR before the effective date of the CCR Rule.[65] EPA does *not* regulate "inactive" units under its Subtitle C hazardous waste program but rather relies on its statutory "imminent and substantial endangerment" authorities under RCRA and CERCLA to address any potential risks from inactive hazardous waste surface impoundments.

EPA's asserted regulatory jurisdiction over inactive CCR surface impoundments is not authorized by law. As discussed in more detail below in

[64] 74 Fed. Reg. at 21,426.

[65] The regulation of inactive surface impoundments has been challenged by the industry petitioners in the CCR Litigation.

USWAG's request for EPA to seek to hold the CCR Litigation in abeyance, RCRA is written in the present tense and its regulatory scheme is organized in a way that contemplates coverage of only those facilities that continue to operate and receive waste after the effective date of the applicable regulations. But even if some question remains on this jurisdictional issue (which USWAG believes that it does not for the reasons discussed below), the regulation of inactive CCR surface impoundments is clearly not mandated by the statute, but rather was a policy decision by the former EPA administration.

USWAG believes that EPA's policy decision to regulate inactive surface impoundments was misguided and consequently has many counterproductive and burdensome consequences without a corresponding environmental benefit. This provision is imposing hundreds of millions of dollars of inflexible, one-size-fits-all remediation costs on the power industry, overriding state risk-based cleanup programs. It is also one of the reasons why the Rule's costs far exceed its benefits. Therefore, EPA should repeal the provisions at 40 C.F.R. §§ 257.50(c) and 257.100 subjecting inactive surface impoundments to regulation under the Rule. EPA and the states can address any remaining risks from these inactive units in a more cost-effective manner under RCRA's imminent and substantial

endangerment provision (and EPA also can do so under CERCLA's imminent and substantial endangerment provision).[66]

G. Clarification on Using the "Closure-in-Place" Option

The CCR Rule authorizes owners or operators of CCR surface impoundments to close their impoundments by either (1) leaving the CCR in place after dewatering and/or stabilizing the wastes sufficient to support a final cover system and conducting 30 years of post-closure groundwater monitoring (referred to as "closure-in-place") or (2) removing the CCR and decontaminating the CCR unit and releases from the unit (referred to as "closure-by-removal").[67] Impoundments that undergo closure-by-removal are exempt from undertaking post-closure care.

Importantly, the Rule does not mandate the use of the closure-by-removal option in any particular set of circumstances, but, rather, leaves to the owner or operator the choice of using either closure option. Indeed, EPA has made it clear that if the relevant performance standard is met, both closure options are equally protective. Because the costs of closure-by-removal (commonly referred to by EPA as "clean closure") can be far greater than closure-in-place, however, the Agency correctly expects most facilities to close CCR surface impoundments under the closure-in-place option. EPA stated in the Final Rule that "most

[66] 42 U.S.C. § 9606(a).
[67] 40 C.F.R. § 257.102.

facilities will likely *not* clean close their CCR units given the expense and difficulty of such an operation."[68]

Thus, nothing in the plain text of the CCR Rule requires a particular closure option to be employed in any particular set of circumstances. In fact, EPA explicitly states that it "did not propose to require clean closure *nor to establish restrictions on the situations in which clean closure would be appropriate*."[69]

Nonetheless, certain environmental interest groups contend that the closure-by-removal option *must* be selected in circumstances where CCR is in contact with the groundwater, and that the Rule's equally protective and less costly closure-in-place option cannot be used in these circumstances. Indeed, an environmental organization recently filed a Notice of Intent ("NOI") to bring a RCRA citizen suit against a USWAG member based solely on the facility's closure plan, which indicates the facility intends to close an impoundment under the closure-in-place option where CCR allegedly is in contact with groundwater.[70]

Although the CCR regulations are explicitly clear that an owner or operator can choose which closure option is appropriate for its particular units, environmental organizations are seizing upon a recent EPA guidance document referencing, as an example, the use of "clean closure" in circumstances when CCR

---

[68] 80 Fed. Reg. at 21,412 (emphasis added).

[69] *Id.* (emphasis added).

[70] *See* April 11, 2017 RCRA NOI from the Southern Environmental Law Center to EPA, the North Carolina Department of Environmental Quality, and Duke Energy.

is in contact with the groundwater as somehow suggesting that the Agency's position is that closure-by-removal is *mandated* under these circumstances.[71] This position is flatly at the odds with the plain language of the Rule and would impose staggering and unnecessary costs on the power industry to close CCR surface impoundments under the Rule. Indeed, the closure-in-place option specifically contemplates that CCR will remain in the unit and that any potential releases from the unit following closure—including releases from CCR in contact with groundwater—will be addressed, as necessary, through the Rule's post-closure care groundwater monitoring and corrective action requirements.

To eliminate any possible confusion regarding EPA's position on this critically important issue, and to eliminate the inappropriate reliance on EPA's example by environmental organizations seeking to increase unnecessarily and dramatically the costs of closing CCR surface impoundments, USWAG requests that EPA clarify its recent guidance addressing this matter. In particular, the Agency should make it clear that either of the Rule's closure options, including the closure-in-place option, can be employed to close a CCR surface impoundment where CCR may be in contact with groundwater.

---

[71] *See* Relationship Between the Resource Conservation Act's Coal Combustion Residuals Rule and the Clean Water Act's National Pollutant Discharge System Permit Requirements, Closure Requirements, available at https://www.epa.gov/coalash/relationship-between-resource-conservation-and-recovery-acts-coal-combustion-residuals-rule#Closure.

Such a clarification is appropriate under all of the Administration's Executive Orders on regulatory reform. Moreover, it is specifically called for under EO 13783, under which EPA is directed to review and modify, among other things, "guidance" that potentially burdens the development or use of domestically produced energy resources, including in particular on coal resources.[72]

H. Confirming Beneficial Use of CCR to Close CCR Units

The CCR Rule does not apply to the "beneficial use of CCR," as such term is defined in the CCR Rule.[73] This is because EPA concluded that such practices do not pose the type of risk that warrant regulation under the Rule.[74] With one limited exception, the Rule does not prohibit any specific activities from qualifying as a beneficial use of CCR—including the beneficial use of CCR for purposes of closing a CCR unit.

As a result, owners/operators of CCR units clearly are authorized to use CCR for a number of purposes during the process of closing a CCR unit, including waste stabilization, structural fill, and grading or contouring the slope for the final cover system. There is nothing unique about any of these practices that would prevent them from meeting the Rule's beneficial use conditions. Such practices are environmentally beneficial, as they conserve the use of natural resources (such

[72] EO 13783 § 1(c)
[73] 40 C.F.R. § 257.53.
[74] 80 Fed. Reg. at 21,327.

as soil) that would otherwise have to be utilized for closure. And in fact, the Rule's preamble specifically identifies structural fill and waste stabilization/solidification as potential beneficial uses.[75]

Nonetheless, subsequent to the promulgation of the CCR Rule, EPA has been ambiguous regarding the appropriateness of beneficially using CCR for closing CCR units. There should be no ambiguity with respect to the environmentally sound and cost-effective use of CCR in lieu of virgin materials for the closure of CCR units. Therefore, EPA should eliminate any ambiguity and confirm that the exclusion for CCR beneficial use includes beneficially using CCR to close CCR landfills and surface impoundments.[76]

I. CCR Beneficial Use at Clay Mine Sites

As explained above, the regulatory text of the CCR Rule places no limitations on what activities can constitute beneficial use, with the only exception being the placement of CCR in a "sand and gravel pit or quarry."[77] The phrase "sand and gravel pit or quarry," in turn, is defined as "an excavation for the extraction of aggregate, minerals or metals."[78] Based on this language, EPA has taken a position prohibiting the environmentally sound and beneficial practice of

---

[75] *See id.* at 21,353.

[76] This clarification should also make clear that that beneficially using CCR to close units not regulated under the rule (i.e., inactive landfills) does not cause those units to become subject to regulation.

[77] *See* 40 C.F.R. § 257.53 (definition of "Beneficial use of CCR").

[78] *Id.* (definition of "Sand and gravel pit or quarry").

using CCR to reclaim clay mines on the grounds that the placement of CCR in a clay mine cannot be a beneficial use, irrespective of purpose or function, because a clay mine is or was a site used for the extraction of minerals—*i.e.*, clay.[79]

This interpretation is needlessly prohibiting a cost-effective and environmentally sound CCR beneficial use practice and is imposing unnecessary disposal costs on CCR when the CCR can otherwise be beneficially used to reclaim clay mines in lieu of using virgin materials. EPA itself recognizes that clay is an adequate "liner" for preventing the migration of CCR contaminants.[80] EPA should therefore clarify in the CCR regulations that the definition of "sand and gravel pit or quarry" does not include clay mines and thereby provide owners/operators of such sites with the opportunity, as is the case with other CCR beneficial use structural fill activities, to demonstrate that the use of CCR to reclaim such sites meets the CCR Rule's beneficial use criteria.

---

[79] EPA listed the Brickhaven No. 2 Mine Tract A, a former clay mine being reclaimed with CCR, on its initial draft open dump inventory. The site was subsequently removed from the final open dump inventory because the owner/operator posted a CCR Rule-compliant public website and fugitive dust control plan. *See* EPA Finalized Initial Open Dump Inventory as of January 12, 2017, available at https://www.epa.gov/coalash/compliance-data-and-information-websites-required-disposal-coal-combustion-residuals-ccr.

[80] Existing CCR surface impoundments are considered "lined" if constructed with a minimum of two feet compacted soil with a hydraulic conductivity of no more than $1x10^{-7}$ cm/sec. *See* 40 C.F.R. § 257.71(a)(1)(i).

J. State-Approved Liner Systems

In promulgating the CCR Rule, EPA established prescriptive liner design criteria that unfortunately failed to include liner systems for CCR units that state regulatory bodies have found to protect adequately human health and the environment.[81] This means, for example, some CCR units that are considered to be "lined" under applicable state CCR requirements are nonetheless classified as "unlined" under the CCR rule. This subjects those CCR units to extremely burdensome requirements not imposed on lined units, including, in some circumstances, mandatory closure requirements.[82]

Given that the WIIN Act now allows the CCR Rule to be implemented through enforceable state permit programs, this disregard for acceptable state liner requirements is at odds with the Administration's principles of federalism and imposes unnecessarily burdensome requirements on CCR units. Therefore, EPA should modify the Rule at 40 C.F.R. § 257.71 to allow for a determination that a CCR unit with an existing state-approved or -accepted liner system qualifies as a lined CCR unit under the Rule.

---

[81] 80 Fed. Reg. at 21,370 (noting that the state of Florida's criteria for a liner system does not qualify as a "liner" under the federal CCR Rule).

[82] *See id.* at 21,371.

K. Correction to Definition of Beneficial Use

In promulgating the definition of "beneficial use" at 40 C.F.R. § 257.53, a clear mathematical error was made in calculating the volume of CCR that triggers the need to make an environmental safety demonstration when using CCR in an unencapsulated manner.[83] Although the rulemaking record shows that the volume threshold triggering this requirement should have been 75,000 tons, EPA mistakenly calculated the number to be 12,400 tons.[84] The Agency's failure to correct this figure, despite its awareness of the error, unnecessarily burdens power companies attempting to beneficially use CCR. EPA should therefore amend the definition of "beneficial use of CCR" at 40 C.F.R. § 257.53 such that the fourth condition applies only to unencapsulated uses exceeding 75,000 tons of CCR.[85]

REQUEST TO HOLD CCR LITIGATION IN ABEYANCE

As explained above, given that certain of the provisions of the Rule identified in this Petition for reconsideration are the subject of ongoing litigation,[86]

---

[83] When unencapsulated use of CCR involves placement on the land of 12,400 tons or more in non-roadway applications, the user must demonstrate that environmental releases to groundwater, surface water, soil and air are comparable to or lower than those from analogous products made without CCR, or that environmental releases to groundwater, surface water, soil and air will be at or below relevant regulatory and health-based benchmarks for human and ecological receptors during use. 40 C.F.R. § 257.53 (definition of "Beneficial use of CCR").

[84] *See* April 1, 2015 Letter from Headwaters Resources, Inc. to EPA, Docket No. EPA-HQ-RCRA-2009-0640-12147 (identifying an error in the calculation of the "smallest size landfill," which was EPA's basis for the 12,400 ton volume limitation).

[85] The 12,400 ton limitation has been challenged by industry petitioners in the CCR Litigation.

[86] *Utility Solid Waste Activities Group, et al. v. EPA, et al.*, No. 15-1219.

it is appropriate for EPA to seek to hold the case in abeyance while the Agency reconsiders and/or modifies its positions in the litigation. If the Agency ultimately modifies its positions with regard to the challenges raised by industry petitioners, industry petitioners would support a voluntary remand of those issues to the Agency.

In particular, five industry petitioners, including USWAG, and eight environmental group petitioners have challenged certain portions of the Final Rule in the United States Court of Appeals for the District of Columbia Circuit. Industry petitioners have argued that elements of the Rule exceed EPA's statutory authority, were promulgated without notice and comment, and/or are arbitrary and capricious, while environmental petitioners argue that elements of the Rule are too lenient and are arbitrary and capricious. All the petitions have been consolidated and briefing is complete, but the Court has not yet set a date for oral argument.[87]

For all the reasons identified in this Petition, it is appropriate for EPA to seek to hold the case in abeyance.[88] This would allow EPA to reconsider its

[87] EPA entered into a settlement agreement with USWAG and environmental petitioners agreeing to a remand on certain aspects of their respective challenges to the Rule. The settlement requires EPA to engage in a new round of rulemaking that will require EPA to undergo notice-and-comment rulemaking to potentially revise the CCR Rule on certain key issues, including (1) clarifying the degree to which non-groundwater releases are subject to the Rule's corrective action provisions; (2) develop vegetative cover requirements for CCR units; (3) evaluate and undertake a rulemaking as appropriate to include the consideration of non-CCR wastewaters in the Rule's alternative closure provision; and (4) whether to add boron to the Rule's list of Appendix IV constituents.

[88] The other industry petitioners in the CCR litigation have represented to USWAG that they agree with this position.

position on these issues in light of the WIIN Act and the President's Regulatory Reform Executive Orders and modify such positions to the extent permitted by law and supported by a reasoned explanation.[89]

The Agency has recently taken similar action to hold in abeyance pending litigation involving the prior EPA Administration's position on regulations impacting the power and other industry sectors.[90] For example, the Agency recently filed a motion to hold in abeyance litigation challenging an EPA rule involving the regulation of hazardous air pollutants from coal- and oil-fired electric utility power plants[91] to allow the new Administration time to reassess its position on the Rule in light of EO 13783.[92] In filing this motion, EPA specifically referenced its obligation under EO 13783 to review for possible

---

[89] *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Motor Vehicle Mfrs. Ass'n of the U.S., Inc., et al. v. State Farm Mut. Auto. Ins. Co., et al.*, 463 U.S. 29, 42 (1983).

[90] *See e.g.*, "Respondent EPA's Motion to Continue Oral Argument," in *Walter Coke, Inc., et al., v. EPA*, No. 15-1166 (D.C. Cir.); *see also* Notice of Executive Order and Motion to Hold Case in Abeyance, *American Petroleum Institute. et al. v. EPA*, No. 13-1108 (and consolidated cases) (D.C. Cir.) (citing *Nat'l Cable & Telecomm. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005) ("EPA's interpretations of statutes it administers are not 'carved in stone' but must be evaluated 'on a continuing basis,' for example, 'in response to . . . a change in administrations."). *See also Nat'l Ass'n of Home Builders v. EPA*, 682 F.3d 1032, 1038, 1043 (D.C. Cir. 2012) (a revised rulemaking based "on a reevaluation of which policy would be better in light of the facts" is "well within an agency's discretion," and "[a] change in administration brought about by the people casting their votes is a perfectly reasonable basis for an executive agency's reappraisal of the costs and benefits of its programs and regulations.").

[91] Supplemental Finding That It Is Appropriate and Necessary to Regulate Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units, 81 Fed. Reg. 24,420 (Apr. 25, 2017).

[92] *See* Respondent EPA's Motion to Continue Oral Argument in *Murray Energy Corp., et al. v. EPA, et al.*, No. 16-1127 (and consolidated cases) (D.C. Cir.) (filed April 18, 2017).

reconsideration *any* rule that could "potentially burden the development and use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear resources."[93] The CCR Rule unquestionably falls within the category of a rule that could potentially burden the development and use of domestically produced coal, oil and natural gas resources and therefore warrants similar reconsideration by the Agency.

All of the issues raised by industry petitioners in their challenge to the CCR Rule warrant reevaluation and modification by the new Administration. One issue in particular, however, warrants reevaluation and repeal pursuant to the President's Regulatory Reform policies: the Rule's regulation of "inactive" CCR surface impoundments—*i.e.*, impoundments where facility owners/operators ceased placing CCR *before* the effective date of the Rule.[94] In some cases, a regulated "inactive" impoundment ceased receiving CCR *years* before the effective date of the Rule.

As explained above, the regulation of inactive disposal units under RCRA is unprecedented. EPA readily acknowledges that it does *not* regulate "inactive" units under its Subtitle C hazardous waste program or under its MSWLF program (40 C.F.R. Part 258).[95] Indeed, EPA expressly "acknowledged that [regulating

---

[93] *Id.*
[94] *See* 40 C.F.R. §§ 257.50(c), 257.100.
[95] 80 Fed. Reg. at 21,342.

inactive surface impoundments] represented a departure from the Agency's long-standing implementation of the [hazardous waste] regulatory program under subtitle C," and that "EPA has generally interpreted [RCRA] to require a permit only if a facility treats, stores, or actively disposes of the wastes after the effective date of its designation as a hazardous waste."[96]

Despite this long standing practice of not regulating inactive units under RCRA, the prior EPA Administration nonetheless asserted that it was appropriate, for the first time, to exercise jurisdiction over inactive CCR surface impoundments under the CCR Rule because of EPA's allegation that the risks from inactive CCR surface impoundments are equivalent to the risks of active CCR surface impoundments.[97] Thus, EPA's asserted jurisdiction over inactive CCR surface impoundments in the CCR Rule is *not* mandated by the statute, but rather was solely a policy decision by the former EPA Administration.[98]

But this policy decision is not authorized under RCRA. As detailed in USWAG's briefs, EPA is statutorily constrained under RCRA Subtitle D to regulate "sanitary landfills," which are defined as units for the "disposal" of solid waste. Under RCRA's statutory text, legislative history, and case law, the term "disposal" encompasses units that are presently receiving solid waste. Therefore,

---

[96] *Id.*
[97] *Id.*
[98] *Id.*

the CCR Rule can only regulate those units that were receiving CCR as of the effective date of the Rule.

Instead, Congress gave EPA, states, and citizens specific authority to address any concerns with "past disposal" activities at inactive units under RCRA's imminent and substantial endangerment provisions.[99] These provisions have been utilized since RCRA's inception over 35 years ago to address potential concerns with inactive solid and hazardous waste units. EPA has never suggested that these pre-existing statutory provisions have been ineffective or somehow insufficient to address the risks from such units, including inactive CCR surface impoundments.

Instead of EPA utilizing its existing statutory authorities to address on a site-specific basis the potential risk posed by inactive CCR impoundments, the Rule subjects all of these units to a one-size-fits-all set of mandated remediation criteria with no ability to tailor any potential response to the unique features and potential risks of the unit. This is completely antithetical to EPA's historic practice of using its RCRA imminent hazard authorities to address these sites on a unit-specific basis, which provides for a more cost-effective and tailored response mechanism.

---

[99] *See* 42 U.S.C. § 6973(a) (authorizing EPA to address the "*past* or present disposal" of any solid waste, including CCR, that may present an imminent and substantial endangerment to health or the environment); *see also Id.* § 6972(a)(1)(b) (authorizing any person, including the states, to bring an action for "*past* or present" disposal of solid waste which may present an imminent and substantial endangerment to health or the environment).

This means the power industry is needlessly incurring hundreds of millions of dollars in costs in complying with inflexible, one-size-fits-all standards for units that may not pose a risk to human health and the environment. Where a specific inactive impoundment poses an unreasonable risk, this risk would be better addressed using the more cost-effective and targeted imminent and substantial endangerment provisions.

The regulation of inactive impoundments is therefore one of the key provisions in the Rule where the costs far exceed the benefits. Because this particular CCR provision is undeniably an undue burden on the development and use of domestic energy resources—at both coal-fired facilities *and* oil- and gas-fired facilities with inactive CCR surface impoundments—it is appropriate for reconsideration and rescission under the President's Regulatory Reform orders, including EO 13777, 13771, and 13783.

Other issues challenged in the litigation as arbitrary and capricious also warrant reconsideration and modification by the new Administration, including, among others:

i. CCR Storage: On-site storage of CCR destined for beneficial use is considered a regulated CCR landfill, even though the exact same storage activities are excluded from regulation if conducted off-site;

ii. Beneficial Use Volume Threshold: the Rule imposes additional requirements on the beneficial use of CCR in amounts of more than 12,400 tons, even though EPA acknowledged that this volume limitation was based on a mathematical error;

iii. Seismic Location Restriction: the Rule imposes an unreasonable short deadline for meeting the seismic location restriction. EPA also failed to provide an adequate basis for applying the seismic location restriction to expansions of existing CCR landfills;

iv. Alternative Closure: the Rule imposes an absolute prohibition on considering cost or convenience in determining whether a unit can qualify for an extended closure schedule; and

v. Risk-Based Compliance Alternatives: as explained above, the Rule fails to include any risk-based compliance alternatives.[100]

For all the above reasons, EPA should seek to hold the litigation in abeyance while EPA reconsiders its position on the issues raised by industry petitioners in their challenge to the CCR Rule.

CONCLUSION

The CCR Rule affects both the utility and coal industries and also affects the large and small businesses that support and rely upon those industries. It is causing significant adverse impacts on coal-fired generation in this country due to the excessive costs of compliance—even EPA acknowledges the costs of the Rule outweigh its benefits. Those impacts are being, and will be, felt in communities around the country where those industries operate. Reconsideration will enable the Agency to take all of these impacts into account to the full extent

[100] Industry petitioners also are challenging elements of the Rule on grounds that EPA failed to provide adequate notice and comment, including (i) EPA's imposition of requirements on the beneficial use of CCR; (ii) the requirement for owners/operators of surface impoundments to certify compliance with specified dam safety factors not set forth in the proposed rule; and (iii) the requirement that the base of existing CCR surface impoundments be at least five feet above the uppermost aquifer underlying the impoundment.

allowed by law, as contemplated by recent Executive Orders and the changed statutory structure under which the Rule is to be implemented.

For all the foregoing reasons, EPA should grant this Petition, take action to extend the Rule's upcoming compliance deadlines, promptly undertake to initiate a new rulemaking to reflect the required changes identified in this Petition, and seek to hold the CCR Litigation in abeyance to allow the new EPA Administration to reassess its position in the litigation in light of this Petition, the WIIN Act, and the President's Executive Orders on regulatory reform.

Dated: May 12, 2017

UTILITY SOLID WASTE ACTIVITES GROUP

By _____
Counsel

Douglas Green
Venable LLP
600 Massachusetts Avenue, N.W.
Washington, D.C. 20001
202-344-4483
dhgreen@venable.com

Margaret Fawal
Venable LLP
600 Massachusetts Avenue, N.W.
Washington, D.C. 20001
202-344-4791
mkfawal@venable.com

Appendix A

Use of Background Concentration as Groundwater Protection Standard for Appendix IV Constituents without Federal Maximum Contaminant Levels (MCLs)

Prepared for
Utility Solid Waste Activities Group
Ash Management Committee

May 2, 2017

GRADIENT

www.gradientcorp.com
20 University Road
Cambridge, MA 02138
617-395-5000

Table of Contents

Page

1 Introduction 1

2 Risk-based safety determinations and corrective action assessments are a cornerstone of US EPA regulatory programs 2

3 Corrective actions to achieve background would require significantly more treatment with added cost without providing any health benefit 4
- 3.1 Cobalt 5
- 3.2 Lithium 5
- 3.3 Molybdenum 5
- 3.4 Lead 6

4 Remediation of arsenic, which is likely key risk driver at most sites, will likely remediate lithium, molybdenum, and cobalt below risk-based levels 7

5 Using health based-benchmarks for a subset of constituents and background for another subset will cause constituents without MCLs to disproportionately trigger correction action 9

6 The Water Infrastructure Improvements for the Nation Act (WIIN) Act creates a permitting program that can support the use of health-based benchmarks 10

7 Conclusions 11

References 12

1 Introduction

In 2015, the Federal Coal Combustion Residual Rule (CCR) promulgated a new groundwater monitoring program for CCR disposal facilities. The program consists of a tiered system of monitoring requirements. Under the program, utilities are required to monitor a specific set of chemical constituents (commonly referred to as Appendix III constituents). If any Appendix III constituents are detected at statistically significant levels (SSLs) above background concentrations, then assessment monitoring is triggered. Under the assessment monitoring program, a different series of constituents (referred to as Appendix IV constituents) is monitored; the detection of any Appendix IV constituent at a statistically significant increased (SSI) concentration relative to its groundwater protection standard (GWPS) triggers groundwater corrective action and remediation to achieve the GWPS.

The CCR Rule stipulates that the relevant GWPS for each Appendix IV constituent is the federally established Maximum Contaminant Level (MCL); for constituents that do not have established MCLs, the site-specific background groundwater concentration is the relevant GWPS. The Appendix IV constituents without MCLs include cobalt, molybdenum, lithium and lead.

Using the background concentration as a GWPS for constituents without an MCL is problematic; such an approach causes constituents without MCLs to trigger corrective action disproportionately and requires more stringent clean-up requirements. In addition, such an approach runs antithetical to other US EPA's relevant regulatory programs in which protecting public health is based on the use of risk-based benchmarks.

This memo provides a regulatory and technical basis for why using background as a GWPS for constituents without an MCL is inconsistent with current US EPA regulatory policy, and causes excessive resource expenditure without providing any added public health benefit. Key conclusions include:

- The establishment of GWPS at background for Appendix IV constituents without MCLs is inconsistent with US EPA policy of establishing and using health-based remediation standards for RCRA cleanups.
- Requiring remediation for Appendix IV constituents without MCLs to background, when groundwater levels for these constituents are *below* established EPA health-based standards, results in excessively costly- and resource-intensive corrective action, without providing any public health benefit.
- Technologies employed to remediate arsenic, which is the key risk driver in the CCR rule, will generally also remediate the Appendix IV constituents without MCLs to their respective health-based levels. However, additional and more extensive treatment will be required for these Appendix IV constituents if their GWPS is background.
- Using background as the GWPS for Appendix IV constituents without MCLs, will result in scenarios where corrective action is triggered solely because the Appendix IV constituent is above background, but still below applicable health-based levels. This will result in a large expenditure of resources and costs without resulting in any added protection to human health.

2 Risk-based safety determinations and corrective action assessments are a cornerstone of US EPA regulatory programs

Using risk assessment to establish safe levels of exposures to chemicals in water, food, soil, and air is a central tenant of US federal and state regulatory agencies, including US EPA. In fact, US EPA provides leadership in risk assessment principles and implementation and has produced a multitude of guidance documents that put forth best risk assessment practices in general and under more specific environmental assessment conditions (*e.g.*, US EPA, 1989, 2007a, 2012a, 2016a). Many different programs at US EPA use these principles to establish concentrations of chemicals in environmental media that are protective of public health, including the Office of Water for establishing MCLs, the Office of Pesticides for determining safe levels of pesticides on plants and in soil, and the Office of Air for setting National Ambient Air Quality Standards, among many others. Moreover, as explained below, risk-based remedial actions are integral both to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), (*i.e.*, Superfund program) and the Resource Conservation and Recovery Act (RCRA) (Herman and Laws, 1996).

CCR disposal is currently regulated under the Resource Conservation and Recovery Act (RCRA). In its communication outreach, US EPA described the importance of risk assessment for RCRA and its key functions:

> Risk information is an essential factor in determining which industrial wastes are judged to be hazardous wastes and should therefore be managed under the RCRA hazardous waste system. Risk assessment is also used in developing waste management programs for nonhazardous wastes. Risk information is used in targeting waste minimization efforts, issuing operating permits, determining the need for cleanup actions at permitted facilities, and setting cleanup goals. Risk assessment is also used in cost-benefit analysis for major rules and regulations and to chart strategic directions for the RCRA program (US EPA, 2001).

Of particular relevance to the CCR Rule are the risk-based policies and resources for the protection and remediation of impacted groundwater that US EPA has developed. Specifically, US EPA has established Regional Screening Levels (RSLs) to assess potential human health risks from chemicals in soil, water, and air. The RSLs are derived using conservative exposure assumptions and toxicity factors (which are also usually developed by US EPA) that represent a Reasonable Maximum Exposure (RME) scenario for long-term or chronic exposures (US EPA, 2016c). US EPA routinely updates these values to reflect the best available science. For the protection of groundwater, the RSLs consider all routes of exposure, including drinking water ingestion, dermal exposure during bathing, and inhalation exposures if the constituent is volatile. These values assist risk assessors with determining whether levels of constituents at a site may warrant further investigation or cleanup, or whether no further investigation is required (US EPA, 2016c).

If further investigation is warranted, more sophisticated risk evaluation approaches may be needed. Under the Superfund Program, US EPA has issued robust guidance over several decades for developing risk-based clean-up goals for groundwater that protect public health. Using this guidance in conjunction with US EPA policy, **it is important to appreciate that the majority of (if not all) site clean-ups/corrective actions**

involve cleaning up to a risk-based value, not background. In fact, background is usually set as a goal only if achieving the risk-based value is implausible because it falls below background (US EPA, 2002).

The specific explanation given in the CCR Rule for deviating from US EPA's risk-based approach and using background concentrations as cleanup goals instead of health-based groundwater benchmarks for Appendix IV constituents without MCLs is that "it was unlikely that a facility would have the scientific expertise necessary to conduct a risk assessment, and was too susceptible to potential abuse" (US EPA, 2015a). However, such a statement is not supportable, given how integral risk assessment is to RCRA regulatory programs and that US EPA RSLs are available for all of the Appendix IV constituents (see Table 3.1 for a summary of the RSLs and Section 3.4 for more discussion on lead health-based benchmarks). Even under a self-implementing program, these RSLs are readily available and can be used to conservatively determine if there is a potential risk that may warrant action.

3 Corrective actions to achieve background would require significantly more treatment with added cost without providing any health benefit

Aside from inconsistency with standard US EPA practice and policy, using background as clean-up goal will be excessively costly and resource-intensive, without providing any public health benefit. Using this approach, sites in corrective action may be required to remediate groundwater to levels that are many times lower than established health-based benchmarks (up to 100 times lower[1]). Table 3.1 presents a comparison of the US EPA-developed RSLs for these constituents to the respective typical (median)[2] background concentrations in groundwater obtained from the US Geological Survey. As presented in Table 3.1, background concentrations of these constituents in groundwater are 7-100 times below the health-based benchmarks (*i.e.*, RSLs) developed by US EPA.

Table 3.1 Comparison of US EPA Health-based Criteria and Generic Background Levels

Constituent[a]	US EPA Tap Water RSL[b] (µg/L)	USGS Median GW Concentrations[c] (µg/L)	Fold Difference
Cobalt	6	0.17	35
Lithium	40	6	7
Molybdenum	100	1	100

Notes:
a) Lead was not included in this table. The US EPA Tap Water RSL for lead is not a health-based value, because US EPA has not established toxicity criteria (an RfD or CSF) with which to calculate screening criteria for lead, as they have for other constituents. While having some health basis, this value is based on the best treatment technology available to remove lead from drinking water, considering cost. Refer to Section 3.4 for more information on an appropriate health-based benchmark for lead.
b) US EPA, 2016d.
c) USGS, 2011.
CSF = Cancer Slope Factor; GW = Groundwater; HA = Health Advisory; HRL = Health Reference Level; RfD = Reference Dose; RSL = Regional Screening Level; US EPA = US Environmental Protection Agency; USGS = US Geological Survey.

The sections below provide a brief summary of each of the constituents highlighting the additional remediation that would be required to achieve background instead of the RSL. This information is summarized in Table 3.2. For this analysis, data from the Electric Power Research Institute (EPRI) Characterization of Field Leachates at Coal Combustion Product Management Sites (2006) was used to approximate field ash leachate concentrations (2006; Table 4-1). This data is based on a dataset consisting of 67 samples from surface impoundments and landfills and includes data collected from multiple sources including wells screened within CCR, drive point piezometers, seep samplers, core extracts, samples from leachate collection systems, and pond water samples collected from near the CCR-water interface, sluice lines, and impoundment outfalls. Because a significant portion of this dataset comes from impoundment

[1] Not including lead, because the drinking water standard for lead is not health-based.
[2] Note that data from the USGS report were used to provide perspective on typical background concentrations cobalt, lithium, and molybdenum. Under the rule, site-specific background concentrations would need to be established to determine if corrective action was warranted.

water samples which likely contain lower CCR constituent concentrations than interstitial water samples from within the CCR, this dataset is likely biased low, and thus, conservative. Nonetheless, data presented in this report are consistent with data used by US EPA in the 2014 Final Human and Ecological Risk Assessment for Coal Combustion Residuals (US EPA, 2014). The median CCR constituent concentrations used in the analyses below are meant to approximate typical leachate concentrations that exist across CCR management units, but it should be noted that the data were generated from a sub-set of facilities and median estimates may change (up or down) given additional data.

3.1 Cobalt

Cobalt is an essential element, forming part of the B12 vitamin, and necessary for maintaining normal biological function. The recommended amount of daily B12 is about 6 µg (ATSDR, 2004). This dietary pathway is reported to be the largest source of cobalt exposure in the general population (ATSDR, 2004). Estimated intake rates range from 5-40 µg/day (0.07-0.57 µg/kg-day for a normal adult), and an average person consumes about 11 µg/day of cobalt from food (ATSDR, 2004). US EPA has developed a health-based RSL for cobalt of 6 µg/L. The cobalt RSL assumes that a 15-kg child will drink 0.78 L of water containing cobalt per day and bathe in water containing cobalt for 32 minutes each day (US EPA, 2016c).

As noted in Table 3.1, the median background concentration of cobalt in groundwater is 35 times lower than the RSL developed by US EPA. The median concentration of cobalt in CCR ash leachate (1 µg/L) is 6 times lower than the health-based cobalt RSL developed by US EPA. Thus, at the majority of CCR ash sites, no remediation would be required to achieve health-based benchmarks and protect human health. In contrast, in order to remediate median cobalt levels to background (*i.e.*, reduce levels from 1 µg/L to 0.17 µg/L), groundwater concentrations would need to be reduced by about 80% (about 6-fold).

3.2 Lithium

Lithium is a strategic metal that is naturally present at low concentrations in soil and water. Estimated dietary intake rates range from 0.24-1.5 µg/kg-day.[3] The US EPA has developed a health-based RSL for lithium of 40 µg/L (US EPA, 2012b). The lithium RSL assumes that a 15-kg child will drink 0.78 L of water containing lithium per day and bathe in water containing lithium for 32 minutes each day (US EPA, 2016c).

As noted in Table 3.1, the median background concentration of lithium in groundwater is over 6 times lower than the health based value developed by US EPA. The median concentration of lithium in CCR ash leachate (129 µg/L) exceeds the health-based lithium RSL (40 µg/L) developed by US EPA. Thus, a 70% (3-fold) reduction in lithium concentrations would be required at CCR ash sites to achieve health-based benchmarks and protect human health. In contrast, in order to remediate median lithium levels to background groundwater concentrations (*i.e.*, reduce levels from 129 µg/L to 6 µg/L), the lithium concentrations would need to be reduced by about 95% (nearly 22-fold).

3.3 Molybdenum

Molybdenum is an essential element and is necessary for normal biological function. As an essential metal, the body is able to regulate molybdenum and limit its toxicity under higher than normal exposure conditions. In recognition of the essentiality of molybdenum, the Institute of Medicine (IOM) of the

[3]Although one source reports a significantly higher daily intake for lithium of 33-80 µg/kg-day for ingestion from food and municipal water (Moore, 1995, as cited in US EPA, 2008).

National Academies has developed an estimated average requirement (EAR) and recommended dietary allowance (RDA) for molybdenum. Based on studies that examined molybdenum excretion over a large dose range, IOM established an EAR of 34 µg/day for adults (IOM, 2001). Based on this analysis, IOM also established an RDA of 45 µg/day for adults (IOM, 2001). Although molybdenum is essential for certain biological functions, it is associated with specific toxic effects at high doses, which is true for all chemicals, including other essential elements. US EPA has developed an RSL of 100 µg/L (US EPA 2016d). The molybdenum RSL relies on the same assumptions articulated above for cobalt and lithium.

As noted in Table 3.1, the median background concentration of molybdenum in groundwater is 100 times lower than the health based value developed by US EPA. The median concentration of molybdenum in CCR ash leachate (405 µg/L) exceeds the health-based molybdenum RSL (100 µg/L) developed by US EPA. Thus, a 75% (4-fold) reduction in molybdenum concentrations would be required at CCR sites to achieve health-based benchmarks and protect human health. In contrast, in order to remediate median molybdenum levels to background groundwater concentrations (*i.e.*, reduce levels from 405 µg/L to 1 µg/L), the molybdenum concentrations would need to be reduced by about 99.8% (405-fold).

3.4 Lead

The regulation of lead in groundwater is unique. While there is some health basis for drinking water standard for lead, this value is also driven by a treatment technique requiring that water systems minimize exposure to lead in drinking water resulting from water corrosivity (US EPA, 2007b). The drinking water standard for lead is exceeded if the lead concentration in more than 10% of the tap water samples collected during the sampling period is greater than 15 µg/L. Thus, the drinking water standard for lead may not be suitable for selection as a cleanup value at CCR ash sites.

Instead, US EPA risk assessment methodology routinely relies on modeling to determine risk levels and appropriate cleanup values for lead. Specifically, the US EPA uses the Adult Lead Model (ALM) or child Integrated Exposure Uptake Biokinetic (IEUBK) Model (US EPA, 1994, 2003, 2010) as appropriate to develop acceptable lead levels in groundwater on a site-specific basis. These models calculate a level based on the probability of a child or a developing fetus having a blood lead level greater than 10 µg/dL.

While there is no readily available benchmark for lead remediation goals for CCR ash sites, and developing a site-specific value can be complex, it is noteworthy that the median concentration of lead in CCR ash leachate is generally low or not detectable (median = <0.20 µg/L) and thus corrective actions involving lead would be rare.

Table 3.2 Reduction to Achieve Health-based Values *vs* Background

Constituent	Median CCR Leachate Concentrations[a] (µg/L)	GWPS Option		Fold Reduction Needed		% Reduction Needed	
		US EPA Tap Water RSL[b] (µg/L)	USGS Background Groundwater Concentration[c] (µg/L)	Health-based	Background	Health-based	Background
Cobalt	1	6	0.17	NR	6	NR	83%
Molybdenum	405	100	1	4	405	75%	99.8%
Lithium	129	40	6	3	22	69%	95%
Lead	<0.20	15	0.07	NR	NR	NR	NR

Notes: CCR = Coal Combustion Residual Rule; GWPS = Groundwater Protection Standard; NR – No Reduction Needed; RSL = Regional Screening Level; USGS = United States Geological Survey.
Sources: a) EPRI, 2006; b) US EPA, 2016d; c) USGS, 2011.

4 Remediation of arsenic, which is likely key risk driver at most sites, will likely remediate lithium, molybdenum, and cobalt below risk-based levels

In general, the corrective action process and treatment technology design is a site-specific process that should be conducted based on site conditions. However, conventional technologies that remove arsenic, a key risk driver at many sites, may be able to partly remove other Appendix IV constituents including those without an established MCL, particularly if the level of treatment efficiency needed is in a similar range. For example, the Treatment Technology Summary for Critical Pollutants of Concern in Power Plant Wastewaters report by EPRI (2007) described a case study where a bioremediation technology was used for arsenic and selenium removal. The results showed that the treatment system also removed more than 90% of cobalt and molybdenum. Thus, if treating for arsenic, this level of treatment efficiency may be enough to meet the RSLs for the Appendix IV constituents without any additional cost. In contrast, if there is a large margin between the level of remediation required for arsenic compared to the other Appendix IV constituents without MCLs, it is likely that, based on the current CCR rule requirements, constituent-specific treatment systems in addition to conventional technologies used for arsenic treatment would be needed.

Table 4.1 demonstrates that if RSLs are used as the GWPS for constituents without MCLs, the level of remediation required to remove arsenic will be similar or greater than the level needed for molybdenum lithium, and cobalt (2.5 fold decrease needed for arsenic *vs* 0-4.1 fold decrease needed for other constituents). Consequently, remediation technologies that target arsenic and partly remove other constituents will likely also be effective in reducing these constituents below the RSLs. In contrast, if background is used as the GWPS for constituents without MCLs, the level of remediation required between arsenic and other constituents is much more substantial (2.5-fold decrease needed for arsenic *vs* 5.9 to 405-fold decrease needed for other constituents), such that remediating for arsenic will be ineffective in reducing the other constituents to background and additional treatments will be required.

Table 4.1 Groundwater Corrective Action Treatment Efficiency Required to Achieve GWPS

Constituent	Fold Reduction Required (Ratio of Median Leachate Concentration to GWPS using RSLs for constituents without MCLs)
Arsenic	2.5[a]
Antimony	---[b]
Barium	---[b]
Beryllium	---[b]
Cadmium	---[b]
Chromium	---[b]
Mercury	---[b]
Selenium	---[b]
Thallium	---[b]
Cobalt	---[b]
Lithium	3.2
Molybdenum	4.1

Notes: GWPS = Groundwater Protection Standard; MCL = Maximum Containment Level; RSL = Regional Screening Level.
a) GWPS is based on the MCL.
b) For these constituents, the leachate concentration is already below GWPS
c) GWPS is based on typical groundwater background concentration (USGS, 2011).

5 Using health based-benchmarks for a subset of constituents and background for another subset will cause constituents without MCLs to disproportionately trigger correction action

The preceding sections provided information on the implications regarding the remediation of Appendix IV constituents if background is used as the GWPS. Another aspect of using background as the GWPS relates to an earlier step in the groundwater monitoring requirement—the triggering of assessment monitoring and subsequent corrective action. Although which and how many constituents trigger assessment monitoring will be site-specific, Table 5.1 provides perspective on how the GWPS (*i.e.*, background *vs* a health-based value) affects the proportion of samples that can trigger assessment monitoring and corrective action for specific key constituents. The present analysis is restricted to arsenic, which is likely to trigger a substantial number of assessment monitoring and corrective actions as well as the Appendix IV constituents without MCLs. It should be noted that the percentages listed in Table 5.1 are calculated using the same EPRI (2006) data described in Section 2 and are based on detectable samples only. The percentage of samples with constituents not detected in groundwater is also reported in the table.

As presented in Table 5.1, using background as the GWPS for Appendix IV constituents instead of a health-based value (*e.g.*, MCL) will increase the number of times assessment monitoring and subsequent corrective action is initiated. These values demonstrate how a scenario could occur where assessment monitoring and corrective action is completely driven by constituents that lack MCLs that are present above background but below health-based values. This translates into resource intensive groundwater remedies that provide no added protection to public health. As an example using EPRI (2006) leachate data to approximate utility-wide groundwater monitoring concentrations, one could expect molybdenum samples to trigger assessment monitoring and subsequent corrective action approximately 76% of the time if a health-based benchmark is used as the GWPS. In contrast, one could expect corrective action to be triggered over 95% of the time if background is used as the GWPS.

Although this analysis is based on a small data set and caution should be used to directly infer actions across facilities, these results suggest that increases in the number of samples that can trigger assessment monitoring and corrective action if background were used as the GWPS could be significant and result in an initiated corrective action at a substantial number of facilities. This is would involve a large expenditure of resources and cost that would not result in any added protection to human health.

Table 5.1 Approximation of the Percentage of Samples that will Trigger Corrective Action under Different Potential GWPSs

	Percentage of Detections	Using Health-based Standard as GWPS for all Constituents	Using Background as GWPS for All Constituents without MCLs
Arsenic	100	70[a]	70[a]
Cobalt	68	38	94
Lithium	87	85	95
Molybdenum	>95	76	>95

Notes: GWPS = Groundwater Protection Standard; MCL = Maximum Containment Level.
a) GWPS for arsenic is the MCL under both scenarios.

6 The Water Infrastructure Improvements for the Nation Act (WIIN) Act creates a permitting program that can support the use of health-based benchmarks

When the 2015 CCR Rule was passed, enforcement authority was not assigned to the federal or state government (US Congress, 2016). This lack of direct oversight is one of the key reasons that US EPA opted to use background as the GWPS for constituents when an MCL was not available. As mentioned in Section 2, the 2015 CCR Rule stated that independent development of a health-based benchmark for constituents without MCLs "was determined to be inappropriate in a self-implementing rule, as it was unlikely that a facility would have the scientific expertise necessary to conduct a risk assessment, and was too susceptible to potential abuse" (US EPA, 2015b).

Since the passage of the 2015 CCR Rule, however, new legislation promulgated under the WIIN Act has amended the Federal CCR rule to allow for US EPA-approved state permitting programs. Such a process would allow for the development and regulatory approval of more site-specific health based benchmarks. The creating of state permits to oversee CCR Rule enforcement, which will include compliance with groundwater monitoring requirements, will be similar to other state-run permit programs that ensure facilities develop and meet appropriate risk based standards.

7 Conclusions

Using background concentrations as GWPSs for Appendix IV constituents without MCLs has far-reaching cost and resource allocation implications for CCR disposal facilities. The use of background concentrations as a GWPS for some constituents and MCLs for others results in disparate treatment of constituents and triggers costly corrective action remedies that will not provide any public health benefit. The available health-protective benchmarks for Appendix IV constituents (*i.e.* RSLs) and well-established US EPA risk assessment methodology for using or developing more site-specific benchmarks as a basis for GWPS, adequately provides for the long-term protection of human health.

References

Agency for Toxic Substances and Disease Registry (ATSDR). 2004. "Toxicological Profile for Cobalt." 486p., April.

Electric Power Research Institute (EPRI). 2006. "Characterization of Field Leachates at Coal Combustion Product Management Sites: Arsenic, Selenium, Chromium, and Mercury Speciation." Report to US Dept. of Energy (US DOE) EPRI 1012578. 192p.

Electric Power Research Institute (EPRI). 2007. "Treatment Technology Summary for Critical Pollutants of Concern in Power Plant Wastewaters." 1012549. 88p.

Herman, SA; Laws, EP. [US EPA, Office of Enforcement and Compliance Assurance; US EPA, Office of Solid Waste and Emergency Response (OSWER)]. 1996. Memorandum to RCRA/CERCLA National Policy Managers, Regions I-X re: Coordination between RCRA corrective action and closure and CERCLA site activities. 6p., September 24. Accessed on April 27, 2017 at https://www.epa.gov/sites/production/files/2013-10/documents/rcracorraction-mem.pdf.

Institute of Medicine (IOM). 2001. Dietary reference intakes for vitamin A, vitamin K, arsenic, boron, chromium, copper, iodine, iron, manganese, molybdenum, nickel, silicon, vanadium, and zinc. Standing Committee on the Scientific Evaluation of Dietary Reference Intakes, Food and Nutrition Board. National Academy Press, Washington, DC, 773p. Accessed at http://www.nal.usda.gov/fnic/DRI//DRI_Vitamin_A/full_report.pdf.

US Congress. 2016. "An Act to provide for improvements to the rivers and harbors of the United States, to provide for the conservation and development of water and related resources, and for other purposes [Water Infrastructure Improvements for the Nation Act]." S.612. 277p., January 4. Accessed on April 12, 2017 at https://www.congress.gov/bill/114th-congress/senate-bill/612/text#toc-H91A0B3DCF1D14C6C9258 8DDAA897B03B.

US EPA. 1989. "Risk Assessment Guidance for Superfund (RAGS). Volume I: Human Health Evaluation Manual (Part A) (Interim final)." Office of Emergency and Remedial Response, Washington, DC. NTIS PB90-155581; EPA-540/1-89-002. 287p., December.

US EPA. 1994. "Guidance manual for the Integrated Exposure Uptake Biokinetic Model for Lead in children." Technical Review Workgroup for Lead. Report to US EPA, Office of Emergency and Remedial Response, OERR Publication 9285.7-15-1, EPA 540-R-93-081, NTIS PB93-963510, 1994.

US EPA. 2001. "Risky Business? An Overview of Risk Assessment and RCRA." Office of Solid Waste and Emergency Response (OSWER), EPA530-F-00-032. 4p., February.

US EPA. 2003. "Recommendations of the Technical Review Workgroup for Lead for an approach to assessing risks associated with adult exposures to lead in soil." Technical Review Workgroup for Lead, Report to US EPA, Office of Solid Waste and Emergency Response/Office of Emergency and Remedial Response, EPA-540-R-03-001, OSWER Directive 9285.7-54, January.

US EPA. 2007a. "Framework for Metals Risk Assessment." Office of the Science Advisor. EPA 120/R-07/001. 172p., March. Accessed on March 08, 2011 at http://www.epa.gov/raf/metalsframework/pdfs/metals-risk-assessment-final.pdf.

US EPA. 2007b. "National primary drinking water regulations for lead and copper: Short term regulatory revisions and clarifications (Final rule)." *Fed. Reg.* 72(195):57782-57820. 40 CFR 141, 142, October 10.

US EPA. 2008. "Provisional Peer Reviewed Toxicity Values for lithium (CAS No. 7439-93-2)." National Center for Environmental Assessment (NCEA), Superfund Health Risk Technical Support Center, 31p., June 12.

US EPA. 2009. "Contaminant information sheets for the final CCL 3 chemicals." Office of Water, Office of Groundwater and Drinking Water, EPA 815-R-09-012, 216p., August.

US EPA. 2010. "Integrated Exposure Uptake Biokinetic Model For Lead in Children, Windows Version (IEUBKwin v.1.1 Build 11) - 32-Bit Version." February. Accessed on March 21, 2011 at http://www.epa.gov/superfund/lead/products.htm#ieubk.

US EPA. 2012a. "Framework for Human Health Risk Assessment to Inform Decision Making (EPA External Review Draft)." Risk Assessment Forum. EPA-601-D12-001. 85p., July 12. http://epa.gov/raf/files/framework-document-7-13-12.pdf.

US EPA. 2012b. "2012 edition of the Drinking Water Standards and Health Advisories." Office of Water, EPA 822-S-12-001, 20p., April.

US EPA. 2015a. "Hazardous and solid waste management system; Disposal of coal combustion residuals from electric utilities (Final rule)." *Federal Register.* 80(74), pp. 21302-21501, April 17. 40 CFR Parts 257 and 261.

US EPA. 2015b. "Hazardous and solid waste management system; Disposal of coal combustion residuals from electric utilities (Final rule)." Fed. Reg. 80(74):21302-21501. 40 CFR Parts 257 and 261. April 17.

US EPA. 2016a. "Methodology for Evaluating Beneficial Uses of Industrial Non-Hazardous Secondary Materials." Office of Land and Emergency Management, Office of Resource Conservation and Recovery EPA 530-R-16-011. 15p., April.

US EPA. 2016b. "Subpart E - Ground-water monitoring and corrective action: Assessment monitoring program." 40 CFR 258.55. 3p. Accessed on April 27, 2017 at https://www.gpo.gov/fdsys/pkg/CFR-2016-title40-vol27/pdf/CFR-2016-title40-vol27-sec258-55.pdf.

US EPA. 2016c. "Regional Screening Levels (RSLs) - user's guide." 124p., May. Accessed at https://www.epa.gov/risk/regional-screening-levels-rsls-users-guide-may-2016.

US EPA. 2016d. "Regional Screening Level (RSL) tables (TR=1E-6, HQ=1) (composite tables)." 82p., May. Accessed at https://www.epa.gov/sites/production/files/2016-06/documents/composite_sl_table_run_may2016.pdf.

US Geological Survey (USGS). 2011. "Trace elements and radon in groundwater across the United States, 1992-2003." USGS Scientific Investigations Report 2011–5059, 131p. Accessed at https://pubs.usgs.gov/sir/2011/5059/pdf/sir2011-5059_report-covers_508.pdf.

In the United States Environmental Protection Agency

AES Puerto Rico LP's Petition for Rulemaking to Reconsider Provisions of the Coal Combustion Residuals Rule, 80 Fed. Reg. 21,302 (Apr. 17, 2015), and Request to Hold in Abeyance Challenge to the Coal Combustion Residuals Rule, No. 15-1219, et al. (D.C. Cir.)

INTRODUCTION

AES Puerto Rico LP ("AES-PR") hereby petitions the United States Environmental Protection Agency ("EPA" or "Agency") pursuant to 5 U.S.C. § 553(e) and 42 U.S.C. § 6974 for a rulemaking to reconsider one aspect of EPA's rule regulating coal combustion residuals ("CCR") produced at electricity generation stations. *See* 40 C.F.R. Part 257 and Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals, 80 Fed. Reg. 21,302 (Apr. 17, 2015), (the "CCR Rule" or "Rule"). Specifically:

First, AES-PR seeks a rulemaking to reconsider a single aspect of the CCR Rule: to reconsider how the Rule regulates the storage of CCR at a facility (on-site) as a "CCR pile" before the CCR is delivered to a third party for beneficial use or disposal (off-site). Currently, the Rule imposes costly, unnecessary and arbitrary burdens on on-site storage because it defines a "CCR pile" to be a "CCR landfill" and therefore subject to onerous regulatory requirements. Those burdens should be eliminated, consistent with the President's recent Executive Orders directing agencies to reduce the burden of federal regulations.[1]

Second, to allow EPA time to consider this and other petitions and to complete the transition to permit programs, EPA should also take immediate action to extend the CCR Rule's upcoming compliance deadlines. An extension would ensure the regulated community does not expend limited resources on elements of the CCR Rule that EPA may modify during the regulatory reform process mandated by the President and in the course of developing the new permit program required by Congress in the December 2016 changes to the Resource Conservation and Recovery Act ("RCRA").[2]

Third, AES-PR has challenged EPA's "CCR pile" in a petition for review of the CCR Rule now consolidated with other petitions for review pending before the U.S. Court of Appeals for the D.C. Circuit.[3] AES-PR requests that EPA ask the D.C. Circuit to hold the consolidated challenges to the Rule in abeyance, so that the Agency can consider whether it

---

[1] *See* Letter from M. Mata, AES-PR to S. Dravis, EPA (May 15, 2017) (discussing Executive Orders and commenting to EPA's Regulatory Reform Task Force on need to repeal or revise "CCR pile" requirement)

[2] RCRA was amended in the Water Infrastructure Improvement for the Nation Act ("WIIN Act").

[3] *AES Puerto Rico LP v. EPA*, No. 15-1229, consolidated with *Utility Solid Waste Activities Group v. EPA*, No. 15-1219 (D.C. Cir.) (and Nos. 15-1221, 15-1222, 15-1223, 15-1227, and 15-1228) ("CCR Litigation").

will choose to revise its positions in the CCR Litigation in light of the recent Executive Orders, as well as the changes to RCRA.[4]

BACKGROUND

CCR Rule. EPA's CCR Rule regulates coal combustion residuals ("CCR") produced by the electric utility sector. *See* 40 C.F.R. Part 257. The CCR Rule causes significant economic and operational impacts on coal-fired power generation, including AES-PR.

Among other requirements, the CCR Rule regulates the disposal of CCR. For land disposal, the Rule establishes minimum federal criteria for determining which new and existing disposal sites would qualify as "CCR landfills" and may receive CCR. *See e.g.*, 40 C.F.R. §§ 257.60-.64 (location restrictions), 257.70 (design criteria). These criteria are based on EPA's standards for municipal solid waste landfills under RCRA Subtitle D, such as an impervious liner, leachate collection, and groundwater monitoring. Permitted Subtitle D landfills are also authorized by the Rule to receive CCR. *E.g.*, 80 Fed. Reg. at 21341-42.

In addition, the Rule includes various operating requirements for CCR landfills, such as mandated inspections and fugitive dust control; groundwater monitoring and corrective action requirements; closure requirements, including (i) closure with CCR in place in conformance with specified standards, followed by post-closure care or (ii) closure by removing the CCR from the unit and certifying compliance with the mandated groundwater protection standards; and recordkeeping and reporting requirements demonstrating compliance with the criteria that must be posted to a publicly available website. *E.g.*, 40 C.F.R. §§ 257.80 (air criteria), 257.81 (run-on and run-off controls) 257.84 (inspections) 257.90-.98 (groundwater monitoring and corrective action) 257.103-.104 (closure and post-closure care) and 257.105-.107 (recordkeeping and internet requirements).

Certain of the Rule's operating criteria have already taken effect, including fugitive dust controls, regular inspections and the requirement to prepare closure and post-closure plans. However, the Rule's most burdensome requirements, including the groundwater monitoring requirements, which can trigger closure and corrective action rules, are scheduled to go into effect in less than five months, on October 17, 2017. 40 C.F.R. § 257.90(b)(1) (establishing deadline).

AES Puerto Rico. AES-PR is a leading provider of low-cost electricity for Puerto Rico. It owns and operates a state-of-the-art, coal-fired electricity generating facility located in Guayama, with a generating capacity of 454.3 megawatts (net). At a cost of $800 million, AES-PR is one of the largest public-private infrastructure investments in the history of Puerto Rico. The plant has over 110 employees and contributes upwards of $100 million to the

[4] *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Motor Vehicle Manufacturers Ass'n of the United States, Inc. v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 42 (1983); *see also Nat'l Ass'n of Home Builders v. EPA*, 682 F.3d 1032, 1038, 1043 (D.C. Cir. 2012) (a revised rulemaking based "on a reevaluation of which policy would be better in light of the facts" is "well within an agency's discretion," and "[a] change in administration brought about by the people cast their votes is a perfectly reasonable basis for an executive agency's reappraisal of the costs and benefits of its programs and regulations'") (quoting *State Farm*, 463 U.S. at 59 (Rehnquist, J., concurring in part)).

island's economy each year.[5] This contribution is critical, particularly given the dire economic situation imperiling the island.[6]

The AES-PR plant includes state-of-the-art emission controls, using circulating fluidized bed technology, which allows it to produce lower NOx emissions. In addition, the action of the fluidized bed when mixed with limestone or other sulfur-absorbing materials greatly reduces SO_2 emissions. EPA authorized these and other emission-controls as best available control technology under the Clean Air Act.[7] AES-PR is also a "zero liquid discharge" facility, as all process water from operations is recycled or reused.

The Commonwealth government, through the Puerto Rico Electric Power Authority ("PREPA"), distributes all electricity in Puerto Rico. Accordingly, AES-PR operates under a Power Purchase Agreement ("PPA") with PREPA. Under the PPA, PREPA purchases the power from AES-PR and then distributes it through the Puerto Rico grid. AES-PR represents approximately 17 % of the electricity consumed on the island and has been the lowest cost, most reliable source of baseload power for Puerto Rico since it started commercial operations in November 2002.

In the course of providing this essential electricity to the citizens of the island, like all coal-fired power plants, AES-PR produces CCR. AES-PR uses much of its CCR to produce a manufactured aggregate known as AGREMAX™ ("Agremax"). To produce Agremax, AES-PR mixes and hydrates the coal ash in an on-site mill, and the resulting mixture is then compacted and cured. This process of hydration, compaction and curing physically converts the coal ash into a hardened, manufactured aggregate, which can be further processed to reduce it to the appropriate size for beneficial use. In 2004, experts at the Texas A&M Transportation Institute performed tests on the aggregate and confirmed that it has the necessary physical, mechanical, and chemical properties for effective use in a range of applications, including road base and structural applications.[8] The effectiveness of these uses are well documented and have been specifically recognized by EPA, including in the CCR Rule. *See* 80 Fed. Reg. at 21,309 ("As of 2012, CCR beneficial uses (i.e., industrial

---

[5] *See* INFORME DE AUDITORÍA CP-10-02 4 de agosto de 2009 AUTORIDAD DE ENERGÍA ELÉCTRICA DE PUERTO RICO (Unidad 3075 – Auditoría 12867) *available at* http://www.ocpr.gov/informes_en_PDF/pdf_2009_2010/cp/CP-10-02.pdf .

[6] https://www.nytimes.com/2017/05/03/business/dealbook/puerto-rico-debt.html?_r=0

[7] *See* W. Muszynski, EPA Region 2 to S. Slusser, AES Puerto Rico, Prevention of Significant Deterioration Permit for the Proposed AES Puerto Rico Cogeneration Plant (AES-PRCP) Administrative Permit Modification (Oct. 29, 2001), available at http://www.epa.gov/region2/air/permit/AES10292001.pdf. The Facility also has a Clean Air Act Title V Operating Permit issued by the Puerto Rico Environmental Quality Board. *See* Puerto Rico EQB, Title V Operating Permit No. PFE-TV-4911-30-0703-1130 (Nov. 15, 2011), *available at* http://www2.pr.gov/agencias/jca/Documents/Permisos%20y%20Formularios/Calidad%20de%20Aire/Permisos%20de%20Operaci%C3%B3n%20T%C3%ADtulo%20V%20Finales/AES%20FINAL%20Permit.pdf.

[8] *See* S. Kochyil and D. N. Little, Physical, Mechanical and Chemical Evaluation of Manufactured Aggregate (2004) (the AES Puerto Rico "manufactured aggregate has excellent properties for use as a fill or structural fill" and "may serve successfully as a subbase or base layer in pavements") *available at* http://www.agremax.com/Downloads/Final%20Report%20-%20TTI.pdf.

applications) involved about 52 million tons annually").[9] Agremax can also be used as daily cover or to stabilize liquids at a landfill.

"CCR Pile" Provision Challenged by AES-PR. Like all power plants that produce electricity using coal, the company faces significant burdens from the EPA's CCR Rule. As noted, in particular, the Rule has defined a stockpile of CCR temporarily stored on-site before the CCR is delivered off-site to be a "CCR pile" that must satisfy the requirements of a "CCR landfill." 40 C.F.R. § 257.53. This imposes costly – and unnecessary – regulatory burdens on electricity providers, like AES-PR, because requiring the CCR producer to handle its on-site CCR inventory as if it were operating a landfill greatly increase the cost to produce baseload electricity using coal. EPA should remove or reduce these substantial regulatory costs.

As such, AES-PR urges EPA to reconsider and reopen the CCR Rule in order to repeal or narrow the burdens imposed on power providers that store CCR temporarily on-site. Repealing or limiting the "CCR pile" requirements will reduce the costs and burdens imposed on U.S. energy production. Moreover, during reconsideration, AES-PR urges the Agency to extend the next compliance deadlines for "CCR piles" and hold AES-PR's D.C. Circuit petition in abeyance. With AES-PR (and many other coal-fired power plants) poised to make major investments to comply with CCR rule requirements, these requirements should be on hold while EPA conducts its review.

I. EPA SHOULD RECONSIDER AND REPEAL OR REDUCE THE BURDENSOME CCR RULE REQUIREMENTS GOVERNING THE ON-SITE STORAGE OF CCR

There are multiple aspects of the Rule that warrant repeal or revision, as industry-wide stakeholders have explained in a recently filed petition for rulemaking.[10] AES-PR's petition is focused on the following critical issues:

A. EPA should reconsider the way it regulates on-site storage of CCR

1. EPA should revise the Rule to allow temporary on-site storage on the ground of CCR without triggering Rule requirements

Foremost, EPA should revise the way in which it regulates the on-site storage of CCR under the CCR Rule. According to the Rule:

> CCR pile or pile means any noncontainerized accumulation of solid, non-flowing CCR that is placed on the land. CCR that is beneficially used offsite is not a CCR pile.

---

[9] *See also* Proposed Rule, *Hazardous and Solid Waste Management System; Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals from Electric Utilities*, 75 Fed. Reg. 35,128, 35,254 (June 21, 2010); *Notice of Regulatory Determination on Wastes from the Combustion of Fossil Fuels*, 65 Fed. Reg. 32,214, 32,229 (May 22, 2000); *Final Regulatory Determination on Four Large-Volume Wastes from the Combustion of Coal by Electric Utility Power Plants*, 58 Fed. Reg. 42,466 (Aug. 9, 1993).

[10] *See* Utility Solid Waste Activities Group Petition for Rulemaking to Reconsider Provisions of the Coal Combustion Residuals Rule, 80 Fed. Reg. 21, 301 (Apr. 17, 2015) and Request to Hold in Abeyance Challenge to Coal Combustion Residuals Rule, No. 15-1219, et al. (D.C. Cir.) (filed May 12, 2017) ("USWAG Petition").

40 C.F.R. § 257.53. The Rule further defines a "CCR landfill" to include a "CCR pile." *Id.* ("CCR landfill" includes CCR piles). Consequently, any inventory of any CCR of any volume or quality that is produced and stored on the ground for any length of time before delivery off-site for disposal or beneficial use, is regulated under the Rule as if the utility itself were operating a disposal site. *Id*

EPA should reconsider this regulatory approach due to the unnecessary burdens it imposes and the negligible benefits it provides. By treating an on-site inventory of CCR as if it were a landfill, EPA is placing significant additional burdens on operating facilities that only temporarily store CCR prior to off-site delivery for final use or disposal. As noted above, these additional burdens include groundwater monitoring, closure and potentially corrective action requirements, as well as others. 40 C.F.R. §§ 257.90 (groundwater monitoring), 257.96, .98 (corrective action), and 257.102, .104 (closure). These entail significant investments by facilities, requiring hiring of consulting engineers to develop plans and potentially substantial implementation costs to effect closure.

The Rule purports to exempt from its CCR landfill requirements, those CCR piles that are "containerized." However, this exemption does not provide sufficient relief, as it also imposes substantial and unnecessary burdens on temporary storage of CCR. According to EPA's preamble to the CCR Rule, in order for a CCR inventory to be considered "containerized" the measures "could include placement of the CCR on an impervious base such as asphalt, concrete, or a geomembrane; leachate and run-off collection; and walls or wind barriers." 80 Fed. Reg. at 21,356. If an impervious base and leachate collection are required, these mechanisms are significant additional burdens that are similar to the requirements for a landfill and often cost millions of dollars to install and maintain. Walls and wind barriers could also impose significant additional burdens. Further, each measure of "containerization" is undefined, and is thus susceptible to different interpretations and, worse, regulatory fiat.

In addition to reducing burdens on energy production, excluding CCR that is destined for off-site use or disposal from the CCR Rule is sound environmentally. CCR is not a hazardous waste and its constituents are naturally occurring and commonly found in our environment.[11] Moreover, CCR stored on-site is typically further processed at a facility before it is placed in on-site storage. Like AES-PR, many utilities convert CCR to a manufactured product for a range of beneficial uses, such as a manufactured aggregate. Inventories of natively quarried aggregate are commonly stored on the ground without the extraordinary regulatory burdens imposed by the CCR Rule.[12] CCR that is processed into

[11] Indeed, the concentrations of constituents in CCR are similar to concentrations in background soils in the U.S., including Puerto Rico. *See* Coal Ash Material Safety: A Health Risk-Based Evaluation of USGS Coal Ash Data from Five US Power Plants. American Coal Ash Association (ACAA, 2012) available at https://www.acaa-usa.org/Portals/9/Files/PDFs/ACAA_CoalAshMaterialSafety_June2012.pdf; Comparison of Coal Combustion Products to Other Common Materials. Electric Power Research Institute, Report No. 1020556 (Sept. 2010), available for download at http://www.epri.com/; Agency for Toxic Substances and Disease Registry, Centers for Disease Control, Petitioned Public Health Assessment Soil Pathway Evaluation, Isla de Vieques Bombing Range, Vieques, Puerto Rico (2003), *available at* http://www.atsdr.cdc.gov/HAC/PHA/reports/isladevieques_02072003pr/printview.html; US Geological Survey, Geochemical and Mineralogical Maps for Soils of the Conterminous United States (2014), *available at* http://pubs.usgs.gov/of/2014/1082/.

[12] Gravel pits, quarries and aggregate plants comply with air quality and stormwater management rules (as does AES-PR), but are not subject to the extensive additional requirements of the CCR Rule.

aggregate should not be treated differently and should therefore be excluded from the requirements of the CCR Rule. Further, like any aggregate material stored at a plant site, long-established Clean Water Act and Clean Air Act regulations would regulate the storage pile and be more than adequate to address the potential for runoff to surface water or fugitive air emissions, if any. Hence, excluding from the CCR Rule those CCR that are destined for off-site use or disposal, would also serve to eliminate duplicate regulatory requirements imposed by the CCR Rule.

2. At a minimum, EPA should confirm that CCR stored on the ground on-site prior to delivery for beneficial use off-site is not a CCR pile

At a minimum, EPA should reconsider its interpretation of a "CCR pile" and affirm that CCR that are stored on the ground *on-site* at a generating facility prior to delivery of the CCR *for beneficial use off-site* is not a CCR pile and therefore not subject to the Rule. Wherever they are stored, CCR that are to be beneficially used should not be regulated as if they had been disposed of in a landfill. This is a sensible and straightforward way for the Agency to reduce unnecessary regulatory burdens and promote the beneficial use of CCR.

This should be clear, because as written, the Rule provides that storage before beneficial use should not be regulated. As detailed above, in the definition of "CCR pile" the Rule states "CCR that is beneficially used off-site is not a CCR pile." *Id.* It therefore should be the case that any CCR that are temporarily stored before beneficial use off-site are not subject to the burdens of being regulated as a landfill.

However, in the preamble to the CCR Rule, EPA issued a contrary interpretation that rewrote its own plain language. Specifically, EPA stated that only CCR that are stored on the ground as inventory *after* it is transferred off-site would be considered "CCR that is beneficially used off-site." 80 Fed. Reg. at 21,356.[13] By contrast, the *exact same inventory* of the *exact same CCR* placed on the ground *on-site* at the CCR generating facility *before it is delivered would be* regulated as a "CCR pile" subject to all of the burdensome regulatory requirements of a landfill. 80 Fed. Reg. at 21,356. In fact, the on-site inventory would be considered a CCR pile *even if* the CCR has already "been designated by the CCR facility to be transferred to another location for subsequent beneficial use … in the near future." 80 Fed. Reg. at 21,356. Therefore, even if the generating facility has determined that it is not going to discard the CCR, EPA has said the facility must treat the CCR inventory as if it had been disposed of in a landfill.

That interpretation should be reversed. Given that EPA has already found that storage *off-site* prior to beneficial use did *not* warrant regulation, there is no legitimate justification for treating *on-site* storage *of the exact same material* differently. At a minimum, EPA should revise the CCR Rule to confirm that CCR that is stored on the ground on-site prior to beneficial use is not a CCR pile.

[13] EPA also limited the volume that could meet the exclusion to 12,400 tons. The 12,400 ton limit, which is found in the CCR Rule's definition of "beneficial use," 40 C.F.R. § 257.3, is not justified, as it is based on a mathematical error, which EPA has acknowledged. *E.g.*, Brief of Respondent, Environmental Protection Agency, *Utility Solid Waste Activities Group, et al., v. EPA*, No. 15-1219 (consolidated) at 54-55 (filed Apr. 18, 2016).

B. Reconsidering how EPA regulates CCR stored on-site squares with the Administration's policies to reduce regulatory burdens on energy producers like AES-PR

Reconsidering how EPA regulates CCR stored on-site would be fully consistent with the President's recent Executive Orders directing federal agencies to reduce the costs of unnecessary and burdensome regulations. In Executive Order 13777, *Enforcing the Regulatory Agenda* (Feb. 24, 2017) ("EO 13777"),[14] President Trump directed federal agencies to reduce unnecessary regulatory burdens on the American people. EO 13777 directed each federal agency to create a Regulatory Reform Task Force ("RRTF") to "evaluate existing regulations and make recommendations to the agency head regarding their repeal, replacement, or modification, consistent with applicable law." *Id.* § 4. In undertaking this task, the RRTF is charged with identifying regulations that are unnecessary or ineffective, impose costs that exceed benefits, and/or create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies. Measures identified for reform should reflect the Administration's core priorities, such as to reduce the scope and cost of regulations, *see* Executive Order 13771, Reducing Regulations and Controlling Regulatory Costs (Jan. 30, 2017), and to reduce the burdens on the production of energy in the United States. *See* Executive Order 13783, Promoting Energy Independence and Economic Growth (Mar. 28, 2017).[15]

Every year, millions of tons of CCR are produced, stored temporarily, delivered to customers, and then used beneficially (or disposed of in landfills).[16] Requiring CCR producers across the U.S. to handle that CCR inventory as if it were already in a landfill – or "containerize" it with costly additional measures – imposes unnecessary regulatory burdens that needlessly increase the costs to the utilities that produce baseload energy using coal.

C. EPA should extend the compliance deadlines while the Agency considers revisions to the CCR Rule

To allow time to consider these and other proposed reforms to the CCR Rule, it is critical that EPA promptly take action to extend compliance dates established in the Rule. In particular, EPA should immediately extend the time schedules in 40 C.F.R. §§ 257.90(b) and 257.90(e) for initiating groundwater monitoring – which is due to commence in October 2017. By acting immediately to extend these compliance deadlines, EPA will minimize a utility's investment of their limited capital resources on requirements that EPA may change during EPA's regulatory review.

Moreover, an extension will allow time for EPA and states (which includes Puerto Rico) to develop a permit program to implement the CCR Rule in accordance with the recent amendments to RCRA Subtitle D.[17] States may now seek EPA's approval to administer the

---

[14] *See* 82 Fed. Reg. 12285 (Mar. 1, 2017).

[15] *See* 82 Fed. Reg. 16093 (Mar. 31, 2017).

[16] American Coal Ash Association, Beneficial Use of Coal Combustion Products: An American Recycling Success Story 7, https://www.acaa-usa.org/Publications/Production-Use-Reports.

[17] *See* RCRA § 4005(d) ("State Programs for Control of Coal Combustion Residuals."). The changes were made in the WIIN Act.

CCR Rule directly through a state permit program. If a state does not apply or EPA denies a state's application, EPA can implement the Rule through a federal permit program.[18] This statutory change transforms the CCR Rule from a self-implementing program, into a rule that will be implemented through either a state or EPA permit program, much like traditional federal environmental laws. EPA originally included, but then removed site-specific, risk-based provisions from the Final Rule because there was no permit program.[19] EPA should reconsider its regulation of temporary on-site storage in this more flexible context, as it considers state permit program applications.

II. EPA SHOULD ASK THE COURT TO HOLD IN ABEYANCE THE CCR PETITIONS FOR REVIEW PENDING IN THE DC CIRCUIT

As explained above, AES-PR has petitioned for review of the "CCR pile" provision in consolidated litigation pending before the U.S. Court of Appeals for the D.C. Circuit.[20] AES-PR and other industry petitioners have argued that elements of the rule exceed EPA's statutory authority, were promulgated without notice and comment, and/or are arbitrary and capricious. A group of environmental NGOs has also filed a petition for review. All the petitions have been consolidated and briefing is complete, but the Court has not yet set a date for oral argument.

For the reasons outlined in this Petition, AES-PR requests that EPA ask the Court to hold in abeyance AES-PR's petition, as well as the remainder of the CCR Litigation, while the Agency reconsiders its position. This would allow EPA to reconsider and modify its position, to the extent permitted by law. Indeed, the Agency has taken similar action to ask the courts to hold in abeyance pending litigation while EPA reconsiders the Obama Administration's positions on regulations, including rules affecting the power sector.[21] In

---

[18] *See* RCRA § 4005(d)(2)(B).

[19] *See* 80 Fed. Reg. at 21,371 (setting criteria that must operate "in the absence of any guaranteed regulatory oversight (i.e., a permitting program)").

[20] *See* CCR Litigation, *supra* at n.2.

[21] *See e.g.*, Respondent EPA's Motion to Continue Oral Argument, *Walter Coke, Inc. v. EPA*, No. 15-1166 (D.C. Cir.) (filed Apr. 18, 2017) ("In light of the recent change in administration, EPA requests continuance of the oral argument to give the appropriate officials adequate time to fully review the SSM Action. EPA intends to closely review the SSM Action, and the prior positions taken by the Agency with respect to the SSM Action may not necessarily reflect its ultimate conclusions after that review is complete."); Notice of Executive Order and Motion to Hold Case in Abeyance, *American Petroleum Institute v. EPA*, No. 13-1108 (and consolidated cases) (D.C. Cir.) (requesting abeyance and that "once EPA has determined whether it will initiate a rulemaking … the parties can consider what course is appropriate for whatever remains of Petitioners' challenges") (citing *Nat'l Cable & Telecomm. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005) ("EPA's interpretations of statutes it administers are not 'carved in stone' but must be evaluated 'on a continuing basis,' for example, 'in response to . . . a change in administrations."); Respondent EPA's Motion to Continue Oral Argument, *Murray Energy Corp. v. EPA*, No. 16-1127 (and consolidated cases) (D.C. Cir.) (filed Apr. 18, 2017) (asking the court to "allow the new Administration adequate time to review the Supplemental Finding to determine whether it will be reconsidered"); Respondents' Motion to Hold Proceedings in Abeyance While the Agency Undertakes Reconsideration, *Southwestern Electric Power Co., v EPA*, No. 15-60821 (5th Cir.) (filed Apr. 14, 2017) (seeking abeyance because "EPA's reconsideration of the rule might result in further rulemaking that would revise or rescind the rule at issue in these proceedings and thereby obviate the need for judicial resolution of some or all of the issues raised in the parties' briefs.")

several instances, the courts have already granted EPA's request.[22]

If EPA modifies the CCR pile requirements as outlined, AES-PR would then join EPA in supporting a remand of AES-PR's petition for review. AES-PR has also joined the USWAG Petition, which makes a similar request for all industry petitioners.[23]

CONCLUSION

The CCR Rule is causing significant adverse impacts on coal-fired generation in this country by imposing excessive costs of compliance. Among many burdensome provisions, the burdens imposed on a "CCR pile" are particularly acute, especially in Puerto Rico – which is facing severe economic challenges. Reconsideration will enable the Agency to consider these and other impacts as contemplated by recent Executive Orders and in view of the new permitting structure required by the Congress.

For all the foregoing reasons, EPA should grant this Petition, take action to suspend and/or extend the Rule's upcoming compliance deadlines, promptly initiate a new rulemaking to reflect the required changes, and ask the Court to hold the CCR Litigation in abeyance to allow the new Administration to reassess its position in the litigation.

Dated: May 31, 2017

AES PUERTO RICO LP

By: _____

Samuel Boxerman
Sidley Austin LLP
1501 K. Street, N.W.
Washington, D.C. 20005
202-736-8547
sboxerman@sidley.com

[22] *E.g.*, Order, *Walter Coke, Inc. v. EPA*, No. 15-1166 (D.C. Cir. Apr. 24, 2017) (granting EPA motion to continue oral argument and hold case in abeyance); Order, *Southwestern Electric Power Co., v EPA*, No. 15-60821 (5th Cir. Apr. 24, 2017) (granting EPA motion to continue oral argument and hold case in abeyance); Order, *Murray Energy Corp. v. EPA* , No. 16-1127 (D.C. Cir. Apr. 27, 2017) (granting EPA motion to continue oral argument and hold case in abeyance); *Murray Energy Corp. v. EPA*, No. 15-1385 (D.C. Cir. Apr. 11, 2017) (removing case from oral argument calendar eight days before scheduled argument date); Order, *North Dakota v. EPA*, No. 15-1381 (D.C. Cir. Mar. 30, 2017) (removing case from oral argument calendar in light of EPA review of underlying rule and motion to hold cases in abeyance).

[23] *See* USWAG Petition, *supra* at 45-52.

Attachment 5 - QFR49 impoundment summary

Summary of 113 inactive surface impoundments

Plant Name	Unit Name	Address	City	State	Zip
Ames Electric Services Power Plant	Ash Pond	200 E 5th St	Ames	IA	50010
Arapahoe	North Ash Pond	2601 S. Platte River Dr.	Denver	CO	80223
Arapahoe	Polishing Impoundment	2601 S. Platte River Dr.	Denver	CO	80223
Arapahoe	South Ash Pond	2601 S. Platte River Dr.	Denver	CO	80223
Austin Northeast	NE Plant Pond	Austin	Austin	MN	55912
B L England	Slag Ponds	900 North Shore Road	Beesley's Point	NJ	8223
Baldwin Energy Complex	East Fly Ash Pond	10901 Baldwin Rd Box146	Baldwin	IL	62217
Baldwin Energy Complex	Old East Fly Ash Pond	10901 Baldwin Rd Box146	Baldwin	IL	62217
Big Bend	East Coalfield Stormwater Pond	13031 Wyandotte Road	Apollo Beach	FL	33572
Big Bend	South Economizer Ash Pond	13031 Wyandotte Road	Apollo Beach	FL	33572
Black Dog	Ash Pond 1	1400 Black Dog Road	Burnsville	MN	55101
Black Dog	Ash Pond 2	1400 Black Dog Road	Burnsville	MN	55101
Black Dog	Ash Pond 3	1400 Black Dog Road	Burnsville	MN	55101
Blue Valley	Bottom Ash Pond	21500 E. Trurnan Rd.	Independence	MO	64056
Blue Valley	North Fly Ash Pond	21500 E. Truman Rd.	Independence	MO	64056
Blue Valley	South Fly Ash Pond	21500 E. Truman Rd.	Independence	MO	64056
Bremo Bluff	East Ash Pond	1038 Bremo Road	Bremo Bluff	VA	23022
Bremo Bluff	North Ash Pond	1038 Bremo Road	Bremo Bluff	VA	23022
Bremo Bluff	West Ash Pond	1038 Bremo Road	Bremo Bluff	VA	23022
Bull Run	Fly Ash Stilling Pond 2C and Sluice C	1265 EDGEMOOR RD.	Clinton	TN	37716
Bull Run	Main Ash Pond	1265 EDGEMOOR RD.	Clinton	TN	37716
Cane Run	Ash Treatment Basin	5252 Cane Run Road	Louisville	KY	40216
Cherokee	East Ash Impoundment	6198 Franklin St	denver	CO	80216
Chesapeake	Bottom Ash Pond	2701 VEPCO St	Chesapeake	VA	23323
Clay Boswell	Old Bottom Ash Pond	1200 NW 3rd St	Cohasset	MN	55721
Cliffside	Inactive Units 1-4 Basin	Duke Power Rd #1002	Cliffside	NC	28024
Cliffside	Inactive Units 5 Basin	Duke Power Rd #1002	Cliffside	NC	28024
Clinch River	Pond 1	State Route 82	Cleveland	VA	24225
Coffeen	Ash Pond No. 2	134 CIPS Lane	Coffeen	IL	62017
Columbia (MO)	CCR Surface Impoundment	1501 Business Loop 70 E	Columbia	MO	65205
Columbia (WI)	COL Secondary Pond	W8375 Murray Rd	Pardeville	WI	53954

Coronado	CGS Ash Slurry Settling Ponds	Hwy 191 7 miles nof St. Johns	St Johns	AZ	85936
Crisp Plant	Plant Crisp Ash Pond	961 Powerdam Road	Warwick	GA	31796
Cross	Gypsum Pond	553 Cross Station Road	Cross	SC	29436
Cumberland	Bottom Ash Pond	815 Cumberland City Rd.	Cumberland City	TN	37050
Cumberland	Stilling Pond	815 Cumberland City Rd.	Cumberland City	TN	37050
Dale	Dale Station Ash Pond #2	1925 Ford Road	Winchester	KY	40391
Dale	Dale Station Ash Pond #4	1925 Ford Road	Winchester	KY	40391
Duck Creek	Ash Pond No. 1	17751 N. Cilco Road	Canton	IL	61520
Duck Creek	Ash Pond No. 2	17751 N. Cilco Road	Canton	IL	61520
F B Culley	West Ash Pond	3700 Darlington Road	Newburgh	IN	47630
Fox Lake	FOX Ash Pond	844 125th St	Sherburn	MN	56171
Gadsden	Ash Pond	1000 Goodyear Ave	Gadsden	AL	35903
General James M Gavin	Fly Ash Pond	Ohio Route 7	Cheshire	OH	45620
George Neal North	Surface Impoundment 1-3A	1151 - 260 St	Sergeant Bluff	IA	51052
Gibson	East Settling Basin	R 1 Box 300	Owensville	IN	47665
Gibson	South Settling Basin	R 1 Box 300	Owensville	IN	47665
Hammond	Ash Pond 3	5963 Alabama Hwy., SW.	Rome	GA	30129
Iatan	Ash Impoundment	20250 Hwy 45 N	Weston	MO	64098
J R Whiting	Pond 6	4525 E. Erie Rd.	Erie	MI	48133
Jack McDonough	Ash Pond 1	5551 South Cobb Drive	Smyrna	GA	30080
Jack McDonough	Ash Pond 2	5551 South Cobb Drive	Smyrna	GA	30080
Jack McDonough	Ash Pond 3	5551 South Cobb Drive	Smyrna	GA	30080
Jack McDonough	Ash Pond 4	5551 South Cobb Drive	Smyrna	GA	30080
Jack Watson	Ash Pond 1	Lorraine Road	Gulfport	MS	39501
James River Power Station	East Pond	5701 S. Kissick	Springfield	MO	65804
James River Power Station	West Pond	5701 S. Kissick	Springfield	MO	65804
Jeffrey Energy Center	Bottom Ash Pond	25905 Jeffrey Rd., PO Box 40	St. Mary's	KS	66536
Jim Bridger	Jim Bridger FGD Pond 1	35 Miles East of Rock Springs	Point of Rocks	WY	82942
John E Amos	Fly Ash Pond	U.S. Route 35	St Albans	WV	25213
John Sevier	Bottom Ash Pond	Hwy 70 S PO Box 2000	Rogersville	TN	37857
John Twitty Energy Center	East Pond	5100 W Farm Road 164	Springfield	MO	65807
John Twitty Energy Center	West Pond	5100 W Farm Road 164	Springfield	MO	65807
Kingston	Sluice Trench and Ballfield East of S	Swan Pond Rd. PO Box 2000	Kingston	TN	37763
Kingston	Stilling Pond	Swan Pond Rd. PO Box 2000	Kingston	TN	37763

Lawrence Energy Center	Ash Pond Area 2	1250 N 1800 Rd	Lawrence	KS	66049
Leland Olds	Pond 2 Surface Impoundment	4001 Highway 200 A	Stanton	ND	58571
Leland Olds	Pond 3 Surface Impoundment	4001 Highway 200 A	Stanton	ND	58571
McManus	AP-1	1 Crispen Island Drive	Brunswick	GA	31523
Meramec	CCR Unit MCPE	8200 Fine Rd	St. Louis	MO	63129
Michigan City	MCGS Primary Settling Pond 2	100 N. Wabash	Michigan City	IN	46360
Milton L Kapp	KAP Main Ash Pond	2001 Beaver Channel Parkway	Clinton	IA	52732
Missouri City	Missouri City Ash Pond	22225 210 Hwy.	Missouri City	MO	64072
Monroe	Bottom Ash Impoundment	3500 Front St	Monroe	MI	48161
Muskogee	Emergency Ash Basin	5501 Three Forks Road	Fort Gibson	OK	74434
Naughton	Naughton FGD Pond 1	Hwy 189, 7 miles SW Kemmerer	Kemmerer	WY	83101
Naughton	Naughton FGD Pond 2	Hwy 189, 7 miles SW Kemmerer	Kemmerer	WY	83101
Nelson Dewey	Slag Pond	11999 County Highway VV	Cassville	WI	53806
New Madrid	Lined Ash Pond	41 St. Jude Industrial Park	New Madrid	MO	63869
Ottumwa	OGS Zero Liquid Discharge Pond	20775 Power Plant Road	Ottumwa	IA	52501
Pawnee	Bottom Ash Storage Pond	14940 County Road 24	Brush	CO	80723
Possum Point	Surface Impoundment A	19000 Possum Point Road	Dumfries	VA	22026
Possum Point	Surface Impoundment B	19000 Possum Point Road	Dumfries	VA	22026
Possum Point	Surface Impoundment C	19000 Possum Point Road	Dumfries	VA	22026
Possum Point	Surface Impoundment D	19000 Possum Point Road	Dumfries	VA	22026
Possum Point	Surface Impoundment E	19000 Possum Point Road	Dumfries	VA	22026
Powerton	Former Ash Basin	Rt 29 & Manito Rd	Pekin	IL	61554
PSEG Hudson Generating Station	Bottom Ash Pond	Duffield and Van Keuren Avenue	Jersey City	NJ	7306
PSEG Hudson Generating Station	North Fly Ash Pond	Duffield and Van Keuren Avenue	Jersey City	NJ	7306
PSEG Hudson Generating Station	South Fly Ash Pond	Duffield and Van Keuren Avenue	Jersey City	NJ	7306
PSEG Mercer Generating Station	South Fly Ash Pond	Lamberton Road	Hamilton Township	NJ	8611
PSEG Mercer Generating Station	North Fly Ash Pond	Lamberton Road	Hamilton Township	NJ	8611
R Gallagher	Secondary Settling Pond	30 Jackson St	New Albany	IN	47200
Reid Gardner	Surface Impoundment B-1	I-15, Exit 88 Hidden Valley Rd	Moapa	NV	89025
Reid Gardner	Surface Impoundment B-2	I-15, Exit 88 Hidden Valley Rd	Moapa	NV	89025
Reid Gardner	Surface Impoundment B-3	I-15, Exit 88 Hidden Valley Rd	Moapa	NV	89025
Reid Gardner	Surface Impoundment E-1	I-15, Exit 88 Hidden Valley Rd	Moapa	NV	89025
Sikeston Power Station	Fly Ash Pond	1551 West Wakefield St	Sikeston	MO	63801
St Clair	Scrubber Impoundment	4901 Pointe Dr	East China Twp	MI	48054

Sutherland	Polishing Pond	3001 E. Main St Rd	Marshalltown	IA	50158
Sutherland	SGS Main Pond	3001 E. Main St Rd	Marshalltown	IA	50158
Sutherland	SGS North Primary Pond	3001 E. Main St Rd	Marshalltown	IA	50158
Sutherland	SGS South Primary Pond	3001 E. Main St Rd	Marshalltown	IA	50158
Syl Laskin	Ash Pond Cell E	PO Box 166	Hoyt Lakes	MN	55705
Thomas Hill	Cell 2 West	5693 Highway F	Clifton Hill	MO	65244
Valmont	Settling Impoundment	1800 N. 63rd St.	Boulder	CO	80302
W H Weatherspoon	1979 Ash Basin	491 Power Plant Road	Lumberton	NC	28358
Walter Scott Jr Energy Center	North Surface Impoundment	7215 Navajo St.	Council Bluffs	IA	51501
Whitewater Valley	CCR Disposal Area	2000 US 27 SOUTH	RICHMOND	IN	47375
Whitewater Valley	P Ponds	2000 US 27 SOUTH	RICHMOND	IN	47375
Winyah	Slurry Pond 2	3097 Penny Royal Road	Georgetown	SC	29440
Wood River	West Ash Pond 2W	#1 Chessen Lane	Alton	IL	62002
Yates	Ash Pond 1	708 Dyer Road	Newnan	GA	30264

Attachment 6 - QFR98 Transmittal Email from OGD Director - 11.9.2017

From: Polk, Denise
Sent: Thursday, November 09, 2017 3:28 PM
To: DAA-Career; ARA; Grants GMOs; Grants JROs; Pumphrey, William; Keesee, Peyton; OGD_Grant_Reports; Williams, Michael; Durand, Jessica; Cooper, Marian; Bell, Matthew; Gentry, James; Moore, Deon
Cc: Sylvester, Kenneth; Neal, Kerry; Konkus, John; Grantham, Nancy; Milbourn, Cathy; Jones, Laurice
Subject: Effective Monday, November 13, 2017 - Revised Guidance for Managing OGD's Grant Reports and Points of Contact for Communications
Attachments: Revised Guidance for Managing OGD Grant Reporting 11-3-17.docx

Greetings,

Attached is revised Guidance for Managing OGD's Grant Reports, which will become effective on **Monday, November 13, 2016.** These changes reflect slight modifications to the current grant reporting process since the original June 30, 2017 guidance release. We have also updated the Point of Contact (POC) information, which is provided below for your convenience.

In keeping with our normal process, when OGD receives the pending reports from the OPA requesting additional information, the reports will be emailed to the Grants Management Officers (GMOs), Junior Resource Officials (JROs), Las Vegas Finance Center (LVFC), Assistant Regional Administrators (ARAs) and the Senior Resource Officials (SROs) to ensure a timely review and engagement with OPA. Within two business days of receipt, OGD will send emails directly to the GMO, JRO, LVFC, ARA and/or SRO, as appropriate, identifying the actions that are specific to their AASHIP. This communication is intended to provide you a snapshot of the actions that require follow-up for your AASHIP. OGD encourages your grants/program office to make immediate contact with OPA so that any questions or concerns can be quickly addressed. Please share the revised guidance and the POC information with the designated person that will engage OPA to resolve the matter.

Points of Contacts (POCs) for the OGD Grant Reports Process

The OGD_Grant_Reports@epa.gov email address is managed by Michael Williams (Primary POC) and Jessica Durand (Back-Up POC). Michael and Jessica's contact information is provided below along with other individuals involved with this process.

OGD - Grant POCs	Email Address	Telephone Number
Michael Williams, Training Staff	Williams.Michael@epa.gov	202-564-1068
Jessica Durand, Policy Specialist	Durand.Jessica@epa.gov	202-564-5317
Laurice Jones, Director, National Policy, Training and Compliance Division (NPTCD)	Jones.Laurice@epa.gov	202-564-0223
Kenneth Sylvester (Ken), Special Assistant to the OGD Director	Sylvester.Kenneth@epa.gov	202-564-1902
Denise A. Polk, Director, OGD	Polk.Denise@pa.gov	202-564-5306
Kerry Neal, Deputy Director, OGD	Neal.Kerry@epa.gov	202-564-3766
OGD - Competition POCs		

Internal Use Only

Elizabeth January, Policy Specialist	January.Elizabeth@epa.gov	617-918-8655
Bruce Binder, Competition Advocate	Binder.bruce@epa.gov	202-564-4935
Office of Public Affairs POCs		
John Konkus, Deputy Associate Administrator for Public Affairs	Konkus.John@epa.gov	202-564-2187
Nancy Grantham, Director of Public Affairs	Grantham.Nancy@epa.gov	202-564-6879
Cathy Milbourn, Public Affairs Specialist	Milbourn.Cathy@epa.gov	202-564-7849

Please let me know if you have any questions or concerns. Wishing you all an enjoyable holiday weekend!

Denise A. Polk, Director
Office of Grants and Debarment (OGD)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Stop: 3901R
Washington, DC 20460

(202) 564-5306 (Phone)
(202) 306-1056 (Cell)
Email: Polk.Denise@epa.gov

Internal Use Only

Attachment 7 - QFR98 Revised Guidance for Managing OGD Grant Reporting 11-13-17

Effective Date: November 13, 2017

Guidance for Managing OGD's Grant Reports

1) Reports Issued (in order of award phase)
   a) Pending New, Supplemental and Incremental Amendment Grant Report (Weekly on Mondays): Identifies only new, supplemental and incremental grant funding amendment actions submitted by the program office to the grants office for processing, but not yet awarded. [1] This report will exclude the program codes identified below since OPA has approved these actions to move forward, but these actions for those program codes are still subject to press release.
   b) For Press Release-Pending New, Supplemental and Incremental Amendment Grant Report (Weekly on Mondays): Identifies new awards and supplemental, and incremental grant funding amendment actions submitted by the program office to the grants office for processing. This report will **ONLY** be emailed to the appropriate person in the Office of Public Affairs (OPA) to identify opportunities for press releases.
   c) Non-Profit and Universities Pending New, Supplemental and Incremental Grant Report (Weekly after Pending New and Supplemental Amendment Grant Report is reviewed by OPA): Identifies new awards and supplemental and incremental grant funding amendment actions submitted by the program office to the grants office for processing, but not yet awarded. This report will **ONLY** be emailed to the appropriate person in OPA.
   d) Congressional Report (Daily and Weekly every Monday): Identifies signed grant awards currently in the congressional notification stage. These grant awards were signed the day before the report is issued.
2) The OPA will review the Congressional Report, Pending New, Supplemental and Incremental Amendment Grant Report, and the Non-Profit and Universities Report as described directly below. The Press Release-Pending New, Supplemental and Incremental Amendment Grant Report will be reviewed by the appropriate person in OPA for press release purposes only.
3) Within 3 business days of receipt of the applicable report, OPA will identify their response to the items in the report and notify Denise Polk, Kenneth Sylvester, and OGD at OGD_Grant_Reports@epa.gov. If OGD does not receive a response from OPA within the 3 business days, OGD will contact OPA to determine how to proceed with respect to the actions in the report.
   a) The email address, OGD_Grant_Reports@epa.gov, will be used for all reporting purposes.
4) Within 1-2 business days of notification from OPA, OGD will contact individual POCs (LVFC, Regions, Programs, and GMOs) to notify them of specific actions requiring additional follow-up, as appropriate.
   a) POCs will reach out to OPA directly to address any questions.
   b) POCs provide resolution status to OPA, OGD_Grant_Reports@epa.gov, and the OGD POCs.
   c) POCs have a deadline of 2 business days to provide status update and/or resolution to OGD.
   d) OGD will document communications in appropriate spreadsheet maintained in NPTCD's SharePoint site.
   e) OPA will notify OGD via email that the matter has been resolved and the actions can move forward.
   f) OGD documents resolution in appropriate spreadsheet and will notify appropriate POCs of final resolution via email address OGD_Grant_Reports@epa.gov, which will then provide final instructions.
5) Within 1-2 business days of reports being issued, OGD will notify all POCs that all actions except those placed specifically on hold can move forward.
6) For grants actions identified for press release, the appropriate OPA staff will be copied on the email communication.

---

[1] All new, incremental and supplemental grant actions with Program Codes V and VC (Superfund), F5 and CS (SRF), and BG (PPGs) have clearance to move forward, but may be identified by OPA for a press release. All other new, incremental and supplemental actions will be reviewed and must be cleared by OPA prior to moving forward.

Effective Date: November 13, 2017

Special Instructions for GMOs:

1. To ensure IGMS grant actions accurately and timely correspond to the pending reports, OGD requests that you adhere to the following guidance below:

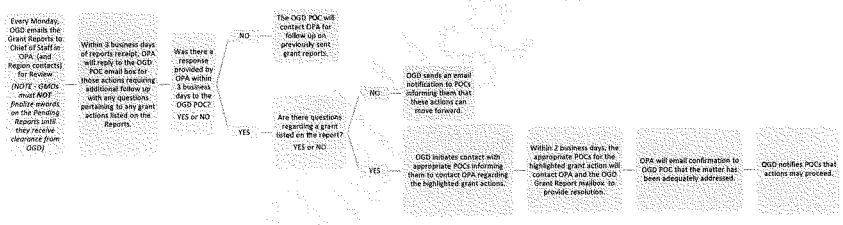
IGMS Funding Package (FP) Date Field

- **ALL** actions must have a valid date entered in the IGMS "Funding Pkg Date" (FPD) field within the "Draft Award Document". This will allow OGD to accurately and timely link the pending report data to the grant information in IGMS.
- OGD requests that when an action is received by the program office that the FPD be entered immediately upon receipt or as soon as practicable.
- It is not recommended that the FPD be modified once entered because it will negatively affect the pending reports for data tracking purposes (so please do not change the date after it has been entered).
- The requirement to add the FPD should include non-monetary actions (such as time extensions, rebudgeting, etc.) in the event they are tracked again in the future.
- For some grant actions, the FPD is automatically populated, while other actions require manual entry. So be sure to check that this field is complete.
- If you are unsure of the FPD, OGD recommends the following:
    a. For New grant actions, the FPD should be the receipt date of either the notification of the finalized Funding Recommendation or Commitment Notice(s) whichever is later.
    b. For Supplemental actions, the FPD should be the receipt date of either the notification of the finalized Funding Recommendation, Change Request or Commitment Notice(s) whichever is later.
    c. For Incremental actions, the FPD should be the receipt date of either the notification of the finalized Change Request or Commitment Notice(s) whichever is later.
    d. For non-monetary (no cost) actions, the FPD should be the receipt date of the notification of the finalized Change Request.

2. Non-monetary actions, including decrease amendment actions, do not require OPA review and have clearance to move forward; therefore, these actions will not appear on any report.
3. The program and/or grants offices should accurately and specifically describe the nature and intent of the project being performed (e.g. address drought relief, reduce carbon footprint, etc). The key point is to connect the project description language to EPA's core environmental programs. In other words, drought or extreme weather patterns could impact drinking water availability or water quality; air quality may be impacted by wildfires.

Effective Date: November 13, 2017

OGD Grant Award Reporting Flow Chart Communication Process*



*This flow chart relates to only the Grant Award process. Solicitations are not covered in this process.

Senator BARRASSO. Thank you very much, Mr. Pruitt. We appreciate your being here.

With my time, let me ask one question and reserve the balance of my time to interject as needed during the discussion.

I would say to our Republican members, in order to assist Senator McCain, Senator Inhofe is going to be chairing the Senate Armed Services Committee hearing today. I know a number of you are members of that committee. So if it is OK with my colleague counterparts here, I would ask that he be allowed to go out of order when he arrives, and then he can quickly return to the Armed Services Committee. Thank you very much.

Administrator Pruitt, I want to thank you again for implementing a new vision at the EPA that takes State input seriously. We are certainly feeling that at home in Wyoming. Wyoming has a very experienced Department of Environmental Quality. Wyoming strives to use the best representative air quality data available to make sound regulatory decisions on issues like ozone protection, regional haze, and permits for industrial facilities. I think it is very critical to have good data.

So as a result, Wyoming spends a lot of time and resources to review data and determine when so-called exceptional events occur, as they do. An exceptional event might be a wildfire causing air pollution levels to seem high. Under the Clean Air Act, States and EPA are supposed to exclude data collected during these exceptional events, because they don't represent everyday circumstances.

So from 2011 to 2014 my State identified many exceptional events that we asked the EPA to recognize these events and exclude the data from these time periods from regulatory decisions. Well, in 2016 the EPA refused to act, and there were 46 of these Wyoming identified exceptional events between 2011 and 2014.

Because this previous Administration failed to act, my home State faces real consequences. So the failure to act is going to make it seem like there are violations of air quality that have occurred, creating the perception that there are air quality problems, when there really are not. This could lead EPA to base future decisions on bad data, and it could interfere with permitting and put some restrictions on Wyoming's economy.

So I sent a recent letter to you, explaining the situation that the EPA had not yet acted on our filing. I just ask, if you had a timeline for when the EPA will be acting on Wyoming's 46 exceptional event filings and any thoughts on that.

Mr. PRUITT. Mr. Chairman, I think a couple things I would say, and you are speaking with, I think, particular emphasis on ozone. As you know, we are in the process of designating attainment and non-attainment with respect to ozone now. That has been priority. We will finish that in April. There are around 50 or so areas that have not been designated yet that we endeavor to finish by April of this year.

I think what is important when you think about ozone, there has been a lot of focus on whether the parts per billion—75 parts per billion, reducing it to 70 parts per billion, was a wise decision. That has not been our focus. Our focus has been on more the issues and implementation that you have raised.

You mentioned exceptional events; there were others. Background levels—in addition to international global transport, we have some tremendous challenges with international air transport on ozone we also need to somehow consider, as we engage in the designation process.

So we are earnestly looking at those implementation issues, Mr. Chairman, in addition to finishing that designation process by mid-April. And your exceptional events question is very, very important as we engage in implementation going forward.

Senator BARRASSO. Thank you. I will reserve the remainder of my time.

Senator Carper.

Senator CARPER. Thanks, Mr. Chairman.

Welcome, Mr. Pruitt. You have repeatedly stated that you want to follow the rule of law and work with States to protect our environment. Sadly, you fail at both when it comes to clean air. The Clean Air Act requires EPA to partner with the States to address cross-State air pollution. These protections are critical for downwind States like Delaware and our neighbors. They are critical for downwind States, not just like Delaware, but others up and down the east coast. We are located at what I call the end of America's tailpipe.

Instead of working with States to address this pollution, your actions are actually making the problem worse. For example, you rejected a request from northeastern States to coordinate with upwind States to reduce ozone pollution. You have also failed to answer at least six State petitions—several of which are from Delaware—that ask EPA to require upwind power plants to install or consistently operate already installed pollution controls.

Last week you issued a memorandum to allow industry to increase air emissions of toxic chemicals like arsenic, like mercury, like lead, and impact the health of millions of people and further burdening States dealing with cross-State pollution. Later on we will get to some questions that are not yes or no questions; I have a limited amount of time.

Let me start off with a series of yes or no questions. Just answer them yes or no if you will, please. Later on you will have a chance to expand.

Let me start off; yes or no, Mr. Pruitt, did EPA do an analysis of the health effects of last week's decisions, including an analysis of the potential increased risk of cancer? Did you?

Mr. PRUITT. Are you referring to the once in, always in decision, the policy decision from last week, Senator?

Senator CARPER. Yes.

Mr. PRUITT. Yes, that was a policy decision that we have authority to make and the interpretation of statute.

Senator CARPER. Yes or no, it is my question.

Mr. PRUITT. As I indicated, Senator, that is a policy decision that we made. As far as the once in, always status of determining whether someone qualifies at certain levels under statute. So that was a decision that was made outside of the program Office of Air. It was a policy office decision.

Senator CARPER. I find it—well, I will ask another question.

Yes or no, did EPA do an analysis that shows exactly what facilities are likely to increase the toxic air pollution due to the action taken last week?

Mr. PRUITT. Senator, that decision was a decision that took major emitters, as you know, under the statute, there are major emitters, and what I would call minor emitters.

Senator CARPER. I am sorry, I don't have a lot of time. I am asking for a simple yes or no, otherwise I will run out of time.

Mr. PRUITT. Those are not yes or no answers, Senator. I have to explain what we were doing with that decision.

Senator CARPER. OK. I find it incredible that EPA did this seemingly without knowing or caring about potential health effects of its action.

Again, yes or no, will you revoke this memorandum until the analysis is actually completed and the public has had a chance to comment on it? Will you?

Mr. PRUITT. If I may, Senator, I can explain our decision from last week, if you want me to. If not, we can continue. But that is a decision. I can't give you a yes or no answer.

Senator CARPER. Thank you very much.

Mr. Pruitt, I wasn't too happy when the Obama EPA asked for a 6 month delay to answer Delaware's cross-State air pollution petitions. However, your Administration seems to be ignoring those petitions altogether. The law requires an answer from the EPA in 60 days. You and your team had over a year to answer. Again, this is a simple yes or no, will you commit to answering the petitions already submitted to EPA by Delaware and other States that request EPA's help on cross-State air pollution within the next 30 days? Will you do that?

Mr. PRUITT. I commit to you that we will get an answer to you very, very expeditiously. It is important, Senator, you are right.

Senator CARPER. Will you do that within 30 days? Is that asking too much?

Mr. PRUITT. We will endeavor to respond within that timeframe.

Senator CARPER. Thank you.

Mr. Pruitt, both the Bush administration and the Obama administration EPA concluded that global warming pollution from cars and SUVs was dangerous. This is known as the Endangerment Finding. Federal Appeals Court also upheld its finding after you and others tried to overturn it.

When you appeared before us during your confirmation hearing a year ago, you agreed that the Endangerment Finding was "the law of the land." You often say that "rule of law matters." In fact, you actually made similar statements in comments no fewer than a dozen times.

But since your confirmation hearing, it seems you have changed your tune. For example, last July you told Reuters that there might be a legal basis to overturn EPA's decision. You also stated in October and December of last year that the process EPA used to make the decision was flawed.

Mr. Pruitt, the White House—Trump White House—has said it wants EPA and the Transportation Department to negotiate what I would describe as a win-win on CAFE and tailpipe standards with California. That means that the policy of the Trump adminis-

tration must be to leave the Endangerment Finding alone, because the Endangerment Finding is what gives EPA and California the authority to write these rules in the first place.

Another yes or no, Mr. Pruitt, for as long as you are Administrator, do you commit not to take any steps to repeal or replace the so-called Endangerment Finding? Do you?

Mr. PRUITT. Senator, as I indicated in my confirmation hearing, that is something that is likely——

Senator CARPER. My time is just about expired. Please, yes or no.

Mr. PRUITT. But Senator, the CAFE standards that you refer to——

Senator CARPER. Yes or no?

Mr. PRUITT. We are working through that process.

Senator CARPER. Do you plan on taking any steps to repeal or replace the so-called Endangerment Finding, yes or no?

Mr. PRUITT. We have made no decision or determination on that.

Senator CARPER. One last question.

Well, I will just stop there. My time is expired. We will have a second round.

Thank you very much.

Senator BARRASSO. Thank you, Senator Carper.

Senator Fischer.

Senator FISCHER. Thank you, Mr. Chairman, and thank you, Administrator, for being here today.

EPA's back to basics agenda has resulted in economic viability across the Nation, while still ensuring the EPA's primary mission of protecting our environment is upheld. I thank you for that.

In 2017 Nebraska hit a jobs milestone, with an unemployment rate of 2.7 percent, which was reported last December. Mr. Chairman, I would ask unanimous consent to submit for the record an article from the Lincoln Journal Star highlighting Nebraska's unemployment standing as the fourth lowest in the Nation.

Senator BARRASSO. Without objection, so ordered.

[The referenced information follows:]

http://journalstar.com/business/local/nebraska-lincoln-area-unemployment-rates-fall/article_10f104a6-4a34-5f13-8c33-72b6889e559b.html

EDITOR'S PICK

Nebraska, Lincoln-area unemployment rates fall

MATT OLBERDING Lincoln Journal Star Jan 23, 2018 Updated Jan 23, 2018

State and local unemployment rates both fell in December compared with a year ago, and the state announced that it hit a jobs milestone last year.

Nebraska's unemployment rate was 2.7 percent in December, the same as it was in November but down from 3.3 percent in December 2016.

Employment was up by more than 4,000 from a year ago, while unemployment fell by more than 5,700 people.

The number of jobs in the state in December was 1,037,248, which was an increase of more than 10,000 from a year ago.

The 1 million job mark in December helped the state hit a significant milestone.

"This is the first time that Nebraska had more than one million jobs in each month of the year," Commissioner of Labor John Albin said in a news release. He called 2017 a "strong year" for non-farm employment.

In the Lincoln area, unemployment rose in December compared with November, but it was down from a year ago. The rate of 2.4 percent compared with 2.1 percent in November and 2.8 percent in December 2016.

There were 1,350 more people employed in the Lincoln area than there were a year ago and nearly 650 fewer unemployed. There were 194,519 jobs locally, 3,666 more than a year ago.

The local and state unemployment rates continued to be well below the national rate, which was 4.1 percent in December. Albin said Nebraska's rate was fourth-lowest among the states. Hawaii, which had an all-time record low rate of 2 percent in December, had the lowest rate in the country.

Reach the writer at 402-473-2647 or molberding@journalstar.com.

On Twitter @LincolnBizBuzz.

MORE INFORMATION

Senator FISCHER. Administrator, this is a direct correlation to your efforts at the EPA to streamline the regulatory process that has for many years negatively impacted job creators' ability to hire workers because they were forced to allocate resources to comply with many cumbersome regulations. This past year has been a welcome change for Nebraska's public power utilities, our farmers, and our ranchers, manufacturers, and small business owners.

I am encouraged by the EPA's recent decision to revisit the 2017 Regional Haze rule, which was issued in the final days of the Obama administration. If implemented, that rule would take authority away from the States and impose a one size fits all Federal implementation plan that simply doesn't make sense. Many rural utilities have been adversely affected by past regional haze actions.

During the prior Administration, EPA repeatedly second guessed States' plans—including Nebraska's 2012 plan—and instead imposed Federal plans that forced the installation of unnecessary and costly controls that went well beyond what the States had demonstrated what was needed. As you know, Nebraska is the only 100 percent public power State in the country. That means that any cost that is incurred by the utility from regulations gets passed on to every single one of our citizens. It is very important to me that you get this rule right.

So can you describe what additional efforts EPA is taking to improve the next phase of the Regional Haze program and the timeline for those actions, and how will the EPA respect States and also make sure that electricity is not made more costly through these unnecessary regulations?

Mr. PRUITT. Senator, thank you for the question. I would say to you that one of the interesting pieces of information that I discovered upon arriving at the agency was a collection of about 700 or so State implementation plans that had been prepared by States all over the country where resources, expertise had been deployed to improve air quality across the full spectrum of programs, from NAAQS—excuse me, from Regional Haze across the spectrum. There was a backlog with no response. We put an emphasis on that, and that backlog is being addressed.

But to the question about regional haze, regional haze is a portion of our statute that I think even provides more primacy to the States. As you know, the only requirement is to reach natural visibility by the year 2064. So while the States are taking steps to reach that level by that point, they have tremendous latitude on how they achieve it.

So we are revising all those SIPs, looking at those State implementation plans, to which you refer, making sure that States are submitting plans that will reached objectives by that timeframe, as you have indicated in statute.

Senator FISCHER. I thank you for your commitment to that and always taking into consideration the time and the expertise that States put forward on those plans.

I would now like to turn to a topic that you are well aware of, and that is the 2015 WOTUS rule. I applaud you and the Administration's commitment to rescind the rule and focus on providing American businesses and families with really a clear definition of WOTUS that does not go beyond Federal authority. Can you share

with us what the next steps are in the EPA's process for repealing this rule?

Mr. PRUITT. Yes, Senator.

And Senator Carper, this really goes to some things that you mentioned in your opening statement as well.

This is not deregulation, when I am talking about WOTUS or even the Clean Power Plan. We are not deregulating in the traditional sense. We are providing regulatory certainty, because there are steps being taken to provide a substitute, a replacement for WOTUS. There are steps being taken to provide a substitute, a replacement to the CPP that we are in the midst of presently.

So with respect to WOTUS, we have a withdrawal proposal that is out in the marketplace that will deal with that 2015 rule to provide certainty. Then we have a step two process that is ongoing to replace a substitute definition with what the textual and statute and case law says is waters of the United States. So we are working through that process.

I anticipate that proposal, Senator, coming out some time in April, May of this year, the proposed substitute. Then hopefully finalizing that by the end of 2018.

Senator FISCHER. Thank you, Administrator. I look forward to reviewing that.

Senator BARRASSO. Thank you, Senator Fischer.

Senator Cardin.

Senator CARDIN. Administrator Pruitt, first of all, thank you for being here.

Let me just preface my comments with your statements in regard to lead in drinking water. There is strong bipartisan support to help eliminate lead in drinking water. We hope that we can have an actionable agenda to accomplish that in a bipartisan way.

I am going to use my time to follow up on our confirmation hearings, to talk about the Chesapeake Bay. You are not going to be surprised to know that. We have one new addition to our Committee; my colleague from Maryland, Chris Van Hollen, is on the Committee. So you are going to get more than just one Senator, and I also want to thank Senator Carper for his interest in the Bay, as one of the Bay States, and Senator Capito and Senator Gillibrand.

So we have synergy here in our Committee as it relates to the Bay, and we make progress. The Bay is in better shape today as a result of the Bay Program. The recreational values, economic values, land values, public health have all been improved.

So I hope I will have a chance to ask you three questions. If I don't have enough time, I will do the rest for the record, dealing with the Chesapeake Bay program budget submitted by the Administration, the Chesapeake Bay Office, EPA's office in Annapolis, and the support for the Bay Journal.

So first, in regard to the appropriation level. The Committee's fiscal year 2017 budget passed by Congress was $73 million. Our appropriation committees are working up numbers for fiscal year 2018 that are comparable. This Committee, on a bipartisan basis, passed an authorization bill after the President's budget submission at $90 million. We need your help as an advocate. I remember our conversation, as the Chairman talked about, programs of which

are State up, they are local government to the Federal Government, asking for the Federal Government's participation. That is the Bay Program. This is a local program in which the Chesapeake Bay Office is the glue that keeps it together so we have an independent observer and enforcer that we do what we say we are going to do.

So can we get some help from you with OMB to get the money in the President's budget?

Mr. PRUITT. I seek to be persuasive there, Senator, but sometimes I am not as persuasive as I endeavor to be. But as I mentioned to Senator Van Hollen during the appropriations process, I will say the same thing to you. It is important. I believe there has been tremendous success achieved through the program. I really appreciate Congress' response during the budgeting process, and I will continue to work with you through that to ensure that we address those issues that you have raised.

Senator CARDIN. Thank you.

I want to talk about the Chesapeake Bay Office, the EPA's office, which is located in Annapolis, today. It is co-located with USDA, U.S. Forest Service, NOAA, USGS. And there is a synergy in this office.

Now, as I understand it, there is some concern by GSA particularly in that it is located in the flood plain. So there may very well be a need to relocate; we fully understand that. But I would ask that you get engaged on this. I think keep the synergies with the other Federal agencies is important, and having a location near the Chesapeake Bay is symbolic and important.

The location that EPA was looking at was to move the EPA office alone to Fort Meade, which is Federal facilities, and I can understand the cost issue of locating in a Federal facility. The problem is that it is not near the Bay. And second, it is behind the fence line, which for DOD has a significant cost. Because every person who visits the EPA office has to go through the security network, which is already overtaxed because of budget concerns and the number of tenants that are located at Fort Meade.

Would you work with us to get a more reasonable answer to EPA's location with other agencies, so that we can accomplish the purpose of the Federal partnership with the other agencies?

Mr. PRUITT. Absolutely, Senator. I was actually briefed on this in anticipation of our hearing. As we talked about it, if there are issues there at the current facility, we need to try to work through those issues to keep the facility there as best we can. So absolutely, you can count on my participation and cooperation with you and the other agencies.

Senator CARDIN. Understand that DOD does not want EPA behind a fence line. There is a cost issue there. So I just hope they would be sensitive to that, even though it may not come out directly of the EPA budget.

Mr. PRUITT. I will.

Senator CARDIN. I appreciate that.

The last thing, on the Bay Journal, we talk about this being a public-private partnership, the Bay. And it is; we have tremendous public support for the Bay programs in all of the jurisdictions here.

And the significant part of the cost burdens are shouldered by the private sector.

But public information about the Bay is very, very important. The leading source of that is the Bay Journal. It receives one-third of its funding through the EPA. And it is currently in a 6 year grant from the EPA, I think year 2. As I understand it, a decision was made to cut off the funding as early as February 1st. I would just urge you to give us time to make sure that this program continues, because it is an important part of our public-private partnership.

Mr. PRUITT. It is under reconsideration, Senator, even in anticipation of this hearing. I think that was a decision that, I learned of that decision after the fact. I think it was probably a decision that should not have been made in the way that it was. So it is under reconsideration already.

Senator CARDIN. Thank you.

Thank you, Mr. Chairman.

Senator BARRASSO. Thank you, Senator Cardin.

Senator Moran.

Senator MORAN. Chairman, thank you for having this hearing.

Administrator Pruitt, thank you for your attendance.

Let me start with CRCLA. I have sponsored legislation in the past to exempt ag emissions or reporting requirements under CRCLA and EPCRA. And I support this Committee moving forward on a bill to provide certainty to ag producers.

But in addition to the uncertainty and unnecessary burden, threat of citizen lawsuits that requirements would add to our farmers and ranchers, I am also concerned about privacy, privacy of farmers and ranchers. Most producers live on their farm or ranch, so any public disclosure about this, the data, private information is problematic.

I secured report language in an Interior appropriations bill directing EPA to safeguard the privacy information. I would ask you, Mr. Administrator, if the EPA is required by the court to collect emission reports before Congress acts, what assurances can you give Kansas farmers and ranchers that any sensitive information required on those reports, including their farm location, would be protected from the public?

Mr. PRUITT. You know, Senator, thank you, it's a very important area, as you indicate, with both EPCRA and CRCLA. There is more latitude that we have, probably under CRCLA statute, than we do under EPCRA presently. But we are looking at all options available to us to provide clarity. But also, I think opportunity for farmers and ranchers to know that as information is collected—if in fact it is—that privacy concerns will be addressed.

So it is a very important issue and something that I think Congress does need to look at, very, very expeditiously. I think our team has been visiting with members of the Senate to that end, and I am hoping that we can address it legislatively. But until that occurs, we are taking all steps available to us to address these issues.

Senator MORAN. Thank you. If there are particular issues that you would like to raise with me, I would be happy to have this further conversation.

Let me turn to another topic. Thank you for your efforts to approve an RFS pathway for the production of advanced biofuels from sorghum oil. Once that is finalized, the pathway will result in the production of up to 20 million additional gallons of advanced biofuels.

The comment period on that proposed rule closed on Friday. I appreciate the progress being made, but want to continue to urge you to act quickly. You and I have talked about the pathway on the phone on two occasions. But we want to see that Kansas sorghum farmers and sorghum ethanol facilities can utilize and benefit from that pathway. Can you provide me with an estimated timeline for reviewing and submitting comments and finalizing the rule?

Mr. PRUITT. You know, as you indicated, the period closed this past week. I am not aware of the number of comments that came in, Senator, so it is very difficult to say how long the process is. But I understand the urgency, and it is something we are focused upon it from a program office perspective.

Senator MORAN. Would you ask your team to get back with me?

Mr. PRUITT. I will.

Senator MORAN. Thank you.

And then finally, just a more general question, the voices of farmers and ranchers, it seems to me, are often left out of the decisionmaking process at EPA. I appreciate that you personally have developed a much stronger working relationship with the agriculture community. If in the future, we have different Administrations in charge of EPA, we may revert back to the old ways in which farmers and ranchers are once again left out of a seat at the table.

Can you talk to me about the changes you have instituted at EPA that you believe will be carried forward beyond your tenure? What are the long term effects of your actions to make sure that agriculture is considered?

Mr. PRUITT. Well, as you know, I have an agriculture advisor that interfaces with those stakeholders on an ongoing basis. That person, that position will continue post my time at the EPA.

We also have something called the smart sector strategy. It is an effort on our part to work with those across various issues from air, water, chemicals, across all the things that we regulate to deal with issues prospectively and proactively as opposed to just responding to rules. So the ag sector is in that smart sector strategy. And so hopefully that will live on as well. But that is something that we have instituted.

Senator MORAN. Thank you, Mr. Administrator.

Mr. Chairman, thank you very much.

Senator BARRASSO. Senator Booker.

Senator BOOKER. Thank you very much.

Thank you very much for being here, Mr. Pruitt. I echo the concerns, it really would be helpful if you were here more often.

First and foremost, just talking about Superfunds, I was alarmed—I know this is a budget recommendation about the 30 percent cut; this is an area that needs a lot more attention, and in the last Congress I asked for information about Superfunds, are we driving them down. But actually, they are increasing, the number of these contaminated sites are increasing in our country.

And you know this, I am sure, but 11 million people—including about 3 million children—live within a mile of a Superfund site. We have a lot of data now, longitudinal data coming out of Princeton, that shows that people living around Superfund sites, children born, have higher, significantly higher rates of birth defects, significantly higher rates of autism.

But Superfund sites don't just contaminate the ground and the water. We know that these birth defects and serious problems could come from a lot of other contaminants in the air and the like.

But there is an urgent risk from a study that I know you are familiar with, about a recent analysis that showed that 327 Superfund sites are at risk of flooding due to some of the impacts that we see with the climate changing. Thirty-five of those flood prone Superfund sites are located in New Jersey, and it is a big concern in my State.

Last week one of the EPA's top career Superfund staffers told the House Energy and Commerce Committee, "We have to respond to this climate challenge. That is just part of our mission set. So we need to design remedies that account for that. We don't get to pick where Superfund sites are; we deal with the waste where it is."

So with this increased flooding that we are seeing, we really have the urgency—the threat—of these Superfund sites growing. So do you agree that we must design remedies for these Superfund sites, the 327 that right now are at imminent risk of flooding?

Mr. PRUITT. Well, absolutely. In fact, we had a decision recently, Senator, down in Houston, called the San Jacinto site, that the dioxin that was in the inner harbor area, and the remedy that had been deployed for the last 10 years was simply covering with rocks on top of it. And we came in and provided a more permanent solution to the tune of $150 million.

Senator BOOKER. I am sorry to interrupt you, and I am interested in hearing about Houston.

Mr. PRUITT. But that is——

Senator BOOKER. Yes, so if you could maybe get me in writing some of what you are trying to do to remediate these 327 sites, and some sense of a timeline and the resources that might be needed if there needs to be congressional action.

Mr. PRUITT. Yes.

Senator BOOKER. Thank you very much.

Have you directed your staff to do some kind of analysis on these sites?

Mr. PRUITT. We have taken the Superfund portfolio, and we have as a priority to identify not just those 327, but of all the sites, what poses immediate risk to health. So across the full spectrum.

Senator BOOKER. I would love to get, for QFR, sort of understanding your approach to this imminent health crisis.

The next issue—we have talked about this—is environmental justice. It is an issue that I have been doing a lot more traveling on and seeing the most unconscionable realities in places like Alabama and North Carolina and other States. I am not sure—what I am really concerned about is how much you are taking into account the environmental burdens that are disproportionately impacting communities of color, indigenous communities, and low income communities.

One example is on December 19th the EPA initiated a rulemaking process to revise protections provided to Agricultural Workers Protection Standard. The Worker Protection Standard is a primary set of Federal standards to protect over 2 million farm workers, including half a million children, from the hazards of working with pesticides. Among the other problematic changes that I am seeing is the EPA is now considering lowering the minimum age requirement that prohibits children from handling dangerous pesticides if they are under 18 years old. The protection was put in place because pesticides can increase the risk of cancer for children, whose brains are still developing, and more.

I don't know if you believe this personally, but do you think that children handling dangerous pesticides is a good idea? This rule seems to be placed for a reason. You know probably about Executive Order 12898, which requires the EPA to identify and address disproportionately high and adverse human health effects that affects, disproportionately affects minorities. It is an Executive Order that looked at minorities and low income communities being disproportionately impacted. It is one of those Executive Orders around the issue of environmental justice. And again, these are communities disproportionately harmed.

As my time is expiring, I really, and I will ask this for QFR, if I can just finish my question, you decided to move forward with this process to potentially weaken these agriculture protections that hold the notice that you have here, not only the requirements for minimum age, but also the designated representative requirement, which often, populations that might not be English fluent, having that designated representative is often their best chance of getting an advocate. I am really worried about the weakening of the rules.

You cite the Executive Order, President Trump's Executive Order on deregulation. But you don't have anything in here about expressing concerns about disproportionate impact on low income folks and minorities. So just for the record, Mr. Chairman, and I recognize your indulgence here, would you please be able to provide for me in the record how you are considering the disproportionate impact on minorities when it comes to this advertised rule change that really raises alarms with me that these vulnerable populations will be disproportionately hurt, whether it is children that might be handling these chemicals, or the lack of advocacy that might exist for one of the more vulnerable populations we see in America, which is farm workers.

Mr. PRUITT. Senator, as you know, that is a proposal. So we are in the process of taking comments on that now, so that many of those issues will be addressed and unpacked during that process.

Senator BOOKER. Well, consider this my comment, sir.

Mr. PRUITT. But on environmental justice generally, I want you to know, that as an example, East Chicago, with respect to the Superfund site there, I think you and I have talked about this during the confirmation hearing process. I very much believe that we need to make sure that as we make decisions on key issues, like East Chicago and the Superfund space, I spent time there listening to the stakeholders and making decisions one on one. So it is a

very important aspect. We will get the information to you on the other.

Senator BOOKER. Will you come to New Jersey, for some visits to the Superfund sites?

Mr. PRUITT. Absolutely. Yes.

Senator BARRASSO. Thank you, Senator.

Senator Ernst.

Senator ERNST. Thank you, Mr. Chair, and thank you, Administrator Pruitt, for being here today and taking the time to answer our questions. I really do appreciate that.

As you know, Americans do expect good governance from all of us. They expect accessibility, participation, responsiveness, and accountability. Since taking the reins at the EPA, you have shown that you are not afraid to engage with the American population. You just gave that example of going out, visiting those sites for Superfunds. You have also shown that you are willing to hear firsthand the concerns of Americans, while getting those that are affected an opportunity to engage in the decisionmaking process. So thank you for that.

In addition to the Superfund issue that you just address, in August of last year you traveled to Des Moines, Iowa, and you met with over 50 stakeholders from across the ag industry at the Farm Bureau. We left that roundtable really encouraged by what we heard and what we were able to engage in, knowing that we do now have a partner in EPA.

Under your leadership, EPA has taken necessary actions to walk back and repeal destructive Obama era rules, as discussed earlier today, like WOTUS and like the Clean Power Plan. Those are all things that have harmed our farmers and ranchers and our constituents at large in Iowa.

Most importantly, you followed the rule of law and fulfilled the Administration's promise, protecting high quality American jobs by providing key commitments to maintain the letter and the spirit of the Renewable Fuel Standard. Today I want to thank you again on behalf of Iowa's farmers and rural communities.

All of these actions have created certainty, they have kick started economic growth and generated countless jobs across the country. Your back to basics approach has helped Iowa's unemployment rate dip below 3 percent for the first time since the year 2000. So thank you for that.

During a more recent trip to Iowa, on December 1st, you noted that EPA was actively exploring whether it possessed the legal authority to issue a nationwide RVP, or Reid Vapor Pressure waiver. Three months ago you sent a letter to a group of Senators, myself included, stating you would look at ways EPA could fix the restriction preventing E–15 from being sold during our summer months.

Can you give me an update on where this stands, and do you today have clarification on whether or not the agency can extend the RVP waiver to ensure that our consumers have year round access?

Mr. PRUITT. So, Senator, thank you for your comments. With respect to the RVP issue, as you know, it is not really a policy issue. It truly is a determination about the legal authority on whether it can be granted nationally or not. It is my understanding that Sen-

ator Fischer actually has some proposed legislation on that particular issue.

Senator ERNST. Yes, she does.

Mr. PRUITT. And we have talked about that. But the process internally, to determine the legal authority, continues. I am hopeful that we will have a conclusion on that soon. I mentioned that to—I made a second trip to Iowa in the fourth quarter of last year and shared that with stakeholders there. It is very important. And we are working to get an answer as soon as we can.

Senator ERNST. Do you have a projected timeframe?

Mr. PRUITT. No, but we can get that to you. I will get a follow up from this meeting and provide that to you.

Senator ERNST. OK, because that will be very important to us as we move through a lot of discussions between the consumers, between those that are producing E–15 and of course, those in the Administration. So we look forward to having that answer very soon.

Mr. PRUITT. Yes, Senator.

Senator ERNST. Last August, while you were in Des Moines, you also touched on the potential benefit of moving Federal agencies or various departments out of Washington, DC, and into the countryside and across the country where an agency's decision are actually felt. This could be a relatively simple way to shift economic activity to hard pressed communities and prevent harmful rules and regulations from even being considered.

With a more decentralized EPA, do you feel misguided policies, such as WOTUS, could have been prevented? And do you support relocating Government functions outside of the Washington, DC, metro area?

Mr. PRUITT. Well, Senator, and Mr. Chairman and Ranking Member Carper and others, this is a very important question with respect to how we do business and how we deliver services as an agency. About half of our employees are located in those 10 regions across the country, and half are here in Washington, DC. One of the things that ought to engage in as far as a collaborative discussion is whether it makes sense to locate operational units in each of the State capitals across this country to ensure that there is a focus on issues that are specific to that State, whether it is Superfund, air issues, water issues, the rest.

So I really believe that this is a discussion, we have just begun this discussion internally. But I would welcome the input of members of this Committee as well as Congress on what makes sense there, as relates to better delivering services across the States and the country.

Senator ERNST. And I appreciate that so much, Administrator. I do believe, having that easier access, the access closest to the people, is the best way that our Federal Government can work. Thank you very much.

Thank you, Mr. Chair.

Senator BARRASSO. Thank you very much, Senator.

Senator Duckworth.

Senator DUCKWORTH. Thank you, Mr. Chairman.

I hope, Administrator Pruitt, that you would then continue to reconsider a shut down of the EPA office in Chicago, Region 5, which,

I believe there was a memo stating that you wanted to potentially shut down that office and move it to Kansas, leaving no EPA offices in the entire Midwest-Great Lakes Region.

Mr. PRUITT. That is inaccurate, Senator.

Senator DUCKWORTH. Well, I hope that it stays inaccurate, and that you don't shut down that office.

Mr. PRUITT. I am not sure where that came from.

Senator DUCKWORTH. It came from a memo from the EPA.

Last month, before the House Energy and Commerce Committee, you said regarding lead in our drinking water, that it is one of the greatest environmental threats that I think we face as a country. You have repeatedly referenced your war on lead and said that you wanted to eradicate lead poisoning in the next 10 years, which was music to my ears.

During your nomination hearing I had asked you if you knew what the safe blood lead level was for children. You had stated at the time that you were not familiar with the latest science on lead exposure. Given your comments on your war on lead, I take it since then you have familiarized yourself with what the safe blood lead exposure is for children. Can you state for the record what that level is?

Mr. PRUITT. Well, EPA has a level of 15 parts per billion. There are States that are considering lowering that. But from my perspective, Senator, as I indicated, I don't think there is a safe level, and we need to eradicate it from our drinking water.

Senator DUCKWORTH. The right answer is zero, according to scientific literature. So it would be wonderful if you could take what your opinion is and actually apply it at EPA. I am really glad that you have reviewed the science literature since we last spoke a year ago; the last time we saw you in this Committee, you said you didn't know.

Unfortunately, your rhetoric doesn't match your actions. Over the last several months, the Administration has taken several steps that will make it harder—not easier—to limit lead exposure. For example, the EPA had planned to update the Lead and Copper Rule in 2017, and finalize it in 2018 under the Obama administration. Since taking over as Administrator, you have instead decided to kick the can down the road by at least 2 years. And now, during your war on lead, we can expect updates to the rule not in 2018, but 2020.

This doesn't sound much like a war on lead. Yes or no, will you direct EPA to finalize this rule in 2018 instead of waiting 2 whole years, as recently announced?

Mr. PRUITT. Yes, Senator, I think that, as you know it is a 1991 lead and copper rule, it has been in just——

Senator DUCKWORTH. No, no, no. Yes or no. Yes or no. Yes or no.

Mr. PRUITT. Mr. Chairman, may I ask——

Senator DUCKWORTH. I am happy for you to elaborate in writing for the record, I just don't have much time.

Is that all right, Mr. Chairman, if he would elaborate in writing for the record?

Senator BARRASSO. We will take this as a question for response and——

Mr. PRUITT. It is. And the agency has been working for a decade to update the rule, Senator.

Senator DUCKWORTH. OK, thank you.

Mr. PRUITT. And I can tell you, it is a priority for this Administration to update the rule.

Senator DUCKWORTH. Well, then a 2 year deal is not acceptable. Because every day I have children who are exposed to lead, and they don't have 700 days to wait. The President's fiscal year 2018 budget proposal, which outlines the Administration's 10 year policy priorities, called for the elimination of EPA's lead risk reduction program that trains contractors and educates the public about safely removing lead paint from homes. The budget, in reality, also cuts millions of dollars in grant money to States and tribes to address lead risk.

This does not sound like a war on lead. Again, given your war on lead, your words, yes or no, will you commit to prioritizing this program and make sure it is fully funded?

Mr. PRUITT. We are working to update the lead and copper rule expeditiously. We are also working with this body, hopefully, to engage in an infrastructure spend on eradicating lead from our drinking water.

Senator DUCKWORTH. What about the EPA's lead risk reduction program that the President attempts to cut in his fiscal year 2018 budget, actually eliminates?

Mr. PRUITT. It is a point of emphasis for us to update the rules and take an aggressive posture to eradicate lead.

Senator DUCKWORTH. So you will not fight to keep the EPA's lead risk reduction program, is what you are saying?

Mr. PRUITT. I didn't say that, Senator.

Senator DUCKWORTH. So you will fight to keep the program, as opposed to the President's budget, which seeks to eliminate it?

Mr. PRUITT. We will continue discussions with this body to properly fund it, as you decide.

Senator DUCKWORTH. Will you speak with the President and say, don't cut this program? His budget eliminates it.

Mr. PRUITT. Well, as you know, your marked up version of the budget is $7.9 billion. So that is not in the marked up budget, I think.

Senator DUCKWORTH. So you are not going to fight for the EPA's lead risk reduction program. For something that is a priority for you, remember, war on lead, get rid of it in 10 years, not enough to fight for it.

Senator PRUITT. We will continue to work with the agency to fund that, yes.

Senator DUCKWORTH. OK.

I am also alarmed to see that the Trump budget slashes funding for the Office of Ground and Drinking Water, which is responsible for implementing our lead and drinking water program. How about this priority? Will you prioritize this program to ensure that it is fully funded? The Ground and Drinking Water Program, the Office of Ground and Drinking Water. And surely, the Office of Ground and Drinking Water is consistent with your back to basics vision for EPA.

Mr. PRUITT. Very important, and we will continue the dialogue with Congress on that issue.

Senator DUCKWORTH. What about the White House? Will you fight for this program?

Mr. PRUITT. I will continue to work with this body to make sure——

Senator DUCKWORTH. OK, I am going to have to take that as a no, because you are not answering my question.

I am out of time. I yield back, Mr. Chairman.

Senator BARRASSO. Thank you, Senator.

Senator Inhofe.

Senator INHOFE. Thank you.

I get the impression they don't like you.

[Laughter.]

Mr. PRUITT. At least one.

Senator INHOFE. Well, anyway, you have been doing a great job.

I do have something for the record I wanted to put in, Mr. Chairman. It is an article out of the Oklahoman. It talks about all the improvements in the economy that are coming with getting rid of some of these very punitive regulations that we have been going through. I want to ask unanimous consent this be made a part of the record.

Senator BARRASSO. Without objection, so ordered.

[The referenced information follows:]

Oklahoma jobless rate improves

by David Dishman Published: January 23, 2018 12:09 PM CDT *Updated: January 23, 2018 5:19 PM CDT*

Unemployment is down in Oklahoma when comparing December 2016 to December 2017.

The rate changed from 4.8 percent in December 2016 to 4.1 percent in December 2017, according to preliminary numbers released by the U.S. Labor Department.

"Jobs up, unemployment down, wages up — that's the direction we are trending right now," said Lynn Gray, Oklahoma Employment Security Commission director of economic research and analysis.

The unemployment rate represented a slight change from November, when the rate was 4.2 percent in Oklahoma.

Nationally, the unemployment rate was unchanged from November to December, remaining at 4.1 percent. In December 2016, the U.S. jobless rate was 4.7 percent.

Employers across the country added 148,000 jobs in the past month.

Preliminary estimates for the number of unemployed declined throughout the state by 1,207, according to the Oklahoma Employment Security Commission. In the past year, the total number dropped from 88,312 to 76,004.

"You've got a decline in the number of unemployed individuals between November and December," Gray said. "Since these are seasonally adjusted, you can more comfortably compare month-to-month."

Hawaii, Mississippi and California each recorded record lows for unemployment rate. Hawaii's rate was 2 percent, Mississippi's was 4.6 percent and California's was 4.3 percent. These rates were the lowest in the respective states since records began in 1976.

Alaska recorded the highest rate of unemployment in the nation, at 7.3 percent.

http://newsok.com/oklahoma-jobless-rate-improves/article/5580542

Senator CARPER. I will ask unanimous consent to insert for the record a report from Moody's which suggests something a bit different. Thank you.

Senator BARRASSO. Without objection.

[The referenced information follows:]

MOODY'S
INVESTORS SERVICE

Announcement: Moody's: Climate change is forecast to heighten US exposure to economic loss placing short- and long-term credit pressure on US states and local governments

Global Credit Research - 28 Nov 2017

New York, November 28, 2017 -- The growing effects of climate change, including climbing global temperatures, and rising sea levels, are forecast to have an increasing economic impact on US state and local issuers. This will be a growing negative credit factor for issuers without sufficient adaptation and mitigation strategies, Moody's Investors Service says in a new report.

The report differentiates between climate trends, which are a longer-term shift in the climate over several decades, versus climate shock, defined as extreme weather events like natural disasters, floods, and droughts which are exacerbated by climate trends. Our credit analysis considers the effects of climate change when we believe a meaningful credit impact is highly likely to occur and not be mitigated by issuer actions, even if this is a number of years in the future.

Climate shocks or extreme weather events have sharp, immediate and observable impacts on an issuer's infrastructure, economy and revenue base, and environment. As such, we factor these impacts into our analysis of an issuer's economy, fiscal position and capital infrastructure, as well as management's ability to marshal resources and implement strategies to drive recovery.

Extreme weather patterns exacerbated by changing climate trends include higher rates of coastal storm damage, more frequent droughts, and severe heat waves. These events can also cause economic challenges like smaller crop yields, infrastructure damage, higher energy demands, and escalated recovery costs.

"While we anticipate states and municipalities will adopt mitigation strategies for these events, costs to employ them could also become an ongoing credit challenge," Michael Wertz, a Moody's Vice President says. "Our analysis of economic strength and diversity, access to liquidity and levers to raise additional revenue are also key to our assessment of climate risks as is evaluating asset management and governance."

One example of climate shock driving rating change was when Hurricane Katrina struck the City of New Orleans (A3 stable). In addition to widespread infrastructure damage, the city's revenue declined significantly and a large percentage of its population permanently left New Orleans.

"US issuer resilience to extreme climate events is enhanced by a variety of local, state and federal tools to improve immediate response and long-term recovery from climate shocks," Wertz says.

For issuers, the availability of state and federal resources is an important element that broadens the response capabilities of local governments and their ability to mitigate credit impacts. As well, all municipalities can benefit from the deployment of broader state and federal aid, particularly disaster aid from the Federal Emergency Management Agency (FEMA) to help with economic recovery.

Moody's analysts weigh the impact of climate risks with states and municipalities' preparedness and planning for these changes when we are analyzing credit ratings. Analysts for municipal issuers with higher exposure to climate risks will also focus on current and future mitigation steps and how these steps will impact the issuer's overall profile when assigning ratings.

The report "Environmental Risks -- Evaluating the impact of climate change on US state and local issuers," is available to Moody's subscribers at http://www.moodys.com/researchdocumentcontentpage.aspx?docid=PBM_1071949.

****

NOTE TO JOURNALISTS ONLY: For more information, please call one of our global press information hotlines: New York +1-212-553-0376, London +44-20-7772-5456, Tokyo +813-5408-4110, Hong Kong +852-3758-1350, Sydney +61-2-9270-8141, Mexico City 001-888-779-5833, São Paulo 0800-891-2518, or Buenos Aires 0800-666-3506. You can also email us at mediarelations@moodys.com or visit our web site at

www.moodys.com.

This publication does not announce a credit rating action. For any credit ratings referenced in this publication, please see the ratings tab on the issuer/entity page on www.moodys.com for the most updated credit rating action information and rating history.

Kenneth Kurtz
Senior Vice President
Public Finance Group
Moody's Investors Service, Inc.
One Front Street
Suite 1900
San Francisco, CA 94111
U.S.A.
JOURNALISTS: 1 212 553 0376
Client Service: 1 212 553 1653

Michael Wertz
Vice President - Senior Analyst
Public Finance Group
JOURNALISTS: 1 212 553 0376
Client Service: 1 212 553 1653

Releasing Office:
Moody's Investors Service, Inc.
250 Greenwich Street
New York, NY 10007
U.S.A.
JOURNALISTS: 1 212 553 0376
Client Service: 1 212 553 1653

MOODY'S
INVESTORS SERVICE

© 2018 Moody's Corporation, Moody's Investors Service, Inc., Moody's Analytics, Inc. and/or their licensors and affiliates (collectively, "MOODY'S"). All rights reserved.

CREDIT RATINGS ISSUED BY MOODY'S INVESTORS SERVICE, INC. AND ITS RATINGS AFFILIATES ("MIS") ARE MOODY'S CURRENT OPINIONS OF THE RELATIVE FUTURE CREDIT RISK OF ENTITIES, CREDIT COMMITMENTS, OR DEBT OR DEBT-LIKE SECURITIES, AND MOODY'S PUBLICATIONS MAY INCLUDE MOODY'S CURRENT OPINIONS OF THE RELATIVE FUTURE CREDIT RISK OF ENTITIES, CREDIT COMMITMENTS, OR DEBT OR DEBT-LIKE SECURITIES. MOODY'S DEFINES CREDIT RISK AS THE RISK THAT AN ENTITY MAY NOT MEET ITS CONTRACTUAL, FINANCIAL OBLIGATIONS AS THEY COME DUE AND ANY ESTIMATED FINANCIAL LOSS IN THE EVENT OF DEFAULT. CREDIT RATINGS DO NOT ADDRESS ANY OTHER RISK, INCLUDING BUT NOT LIMITED TO: LIQUIDITY RISK, MARKET VALUE RISK, OR PRICE VOLATILITY. CREDIT RATINGS AND MOODY'S OPINIONS INCLUDED IN MOODY'S PUBLICATIONS ARE NOT STATEMENTS OF CURRENT OR HISTORICAL FACT. MOODY'S PUBLICATIONS MAY ALSO INCLUDE QUANTITATIVE MODEL-BASED ESTIMATES OF CREDIT RISK AND RELATED OPINIONS OR COMMENTARY PUBLISHED BY MOODY'S ANALYTICS, INC. CREDIT RATINGS AND MOODY'S PUBLICATIONS DO NOT CONSTITUTE OR PROVIDE INVESTMENT OR FINANCIAL ADVICE, AND CREDIT RATINGS AND MOODY'S PUBLICATIONS ARE NOT AND DO NOT PROVIDE RECOMMENDATIONS TO PURCHASE, SELL, OR HOLD PARTICULAR SECURITIES. NEITHER CREDIT RATINGS NOR MOODY'S PUBLICATIONS COMMENT ON THE SUITABILITY OF AN INVESTMENT FOR ANY PARTICULAR INVESTOR. MOODY'S ISSUES ITS CREDIT RATINGS AND PUBLISHES MOODY'S PUBLICATIONS WITH THE EXPECTATION AND UNDERSTANDING THAT EACH INVESTOR WILL, WITH DUE CARE, MAKE ITS OWN STUDY AND EVALUATION OF EACH SECURITY THAT IS UNDER CONSIDERATION FOR PURCHASE, HOLDING, OR SALE.

MOODY'S CREDIT RATINGS AND MOODY'S PUBLICATIONS ARE NOT INTENDED FOR USE BY RETAIL INVESTORS AND IT WOULD BE RECKLESS AND INAPPROPRIATE FOR RETAIL INVESTORS TO USE MOODY'S CREDIT RATINGS OR MOODY'S PUBLICATIONS WHEN MAKING AN INVESTMENT DECISION. IF IN DOUBT YOU SHOULD CONTACT YOUR FINANCIAL OR OTHER PROFESSIONAL ADVISER.

ALL INFORMATION CONTAINED HEREIN IS PROTECTED BY LAW, INCLUDING BUT NOT LIMITED TO, COPYRIGHT LAW, AND NONE OF SUCH INFORMATION MAY BE COPIED OR OTHERWISE REPRODUCED, REPACKAGED, FURTHER TRANSMITTED, TRANSFERRED, DISSEMINATED, REDISTRIBUTED OR RESOLD, OR STORED FOR SUBSEQUENT USE FOR ANY SUCH PURPOSE, IN WHOLE OR IN PART, IN ANY FORM OR MANNER OR BY ANY MEANS WHATSOEVER, BY ANY PERSON WITHOUT MOODY'S PRIOR WRITTEN CONSENT.

CREDIT RATINGS AND MOODY'S PUBLICATIONS ARE NOT INTENDED FOR USE BY ANY PERSON AS A BENCHMARK AS THAT TERM IS DEFINED FOR REGULATORY PURPOSES AND MUST NOT BE USED IN ANY WAY THAT COULD RESULT IN THEM BEING CONSIDERED A BENCHMARK.

All information contained herein is obtained by MOODY'S from sources believed by it to be accurate and reliable. Because of the possibility of human or mechanical error as well as other factors, however, all information contained herein is provided "AS IS" without warranty of any kind. MOODY'S adopts all necessary measures so that the information it uses in assigning a credit rating is of sufficient quality and from sources MOODY'S considers to be reliable including, when appropriate, independent third-party sources. However, MOODY'S is not an auditor and cannot in every instance independently verify or validate information received in the rating process or in preparing the Moody's publications.

To the extent permitted by law, MOODY'S and its directors, officers, employees, agents, representatives, licensors and suppliers disclaim liability to any person or entity for any indirect, special, consequential, or incidental losses or damages whatsoever arising from or in connection with the information contained herein or the use of or inability to use any such information, even if MOODY'S or any of its directors, officers, employees, agents, representatives, licensors or suppliers is advised in advance of the possibility of such losses or damages, including but not limited to: (a) any loss of present or prospective profits or (b) any loss or damage arising where the relevant financial instrument is not the subject of a particular credit rating assigned by MOODY'S.

To the extent permitted by law, MOODY'S and its directors, officers, employees, agents, representatives, licensors and suppliers disclaim liability for any direct or compensatory losses or damages caused to any person or entity, including but not limited to by any negligence (but excluding fraud, willful misconduct or any other type of liability that, for the avoidance of doubt, by law cannot be excluded) on the part of, or any contingency within or beyond the control of, MOODY'S or any of its directors, officers, employees, agents, representatives, licensors or suppliers, arising from or in connection with the information contained herein or the use of or inability to use any such information.

NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE ACCURACY, TIMELINESS, COMPLETENESS, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY SUCH RATING OR OTHER OPINION OR INFORMATION IS GIVEN OR MADE BY MOODY'S IN ANY FORM OR MANNER WHATSOEVER.

Moody's Investors Service, Inc., a wholly-owned credit rating agency subsidiary of Moody's Corporation ("MCO"), hereby discloses that most issuers of debt securities (including corporate and municipal bonds, debentures, notes and commercial paper) and preferred stock rated by Moody's Investors Service, Inc. have, prior to assignment of any rating, agreed to pay to Moody's Investors Service, Inc. for appraisal and rating services rendered by it fees ranging from $1,500 to approximately $2,500,000. MCO and MIS also maintain policies and procedures to address the independence of MIS's ratings and rating processes. Information regarding certain affiliations that may exist between directors of MCO and rated entities, and between entities who hold ratings from MIS and have also publicly reported to the SEC an ownership interest in MCO of more than 5%, is posted annually at www.moodys.com under the heading "Investor Relations — Corporate Governance — Director and Shareholder Affiliation Policy."

Additional terms for Australia only: Any publication into Australia of this document is pursuant to the Australian Financial Services License of MOODY'S affiliate, Moody's Investors Service Pty Limited ABN 61 003 399 657AFSL 336969 and/or Moody's Analytics Australia Pty Ltd ABN 94 105 136 972 AFSL 383569 (as applicable). This document is intended to be provided only to "wholesale clients" within the meaning of section

761G of the Corporations Act 2001. By continuing to access this document from within Australia, you represent to MOODY'S that you are, or are accessing the document as a representative of, a "wholesale client" and that neither you nor the entity you represent will directly or indirectly disseminate this document or its contents to "retail clients" within the meaning of section 761G of the Corporations Act 2001. MOODY'S credit rating is an opinion as to the creditworthiness of a debt obligation of the issuer, not on the equity securities of the issuer or any form of security that is available to retail investors. It would be reckless and inappropriate for retail investors to use MOODY'S credit ratings or publications when making an investment decision. If in doubt you should contact your financial or other professional adviser.

Additional terms for Japan only: Moody's Japan K.K. ("MJKK") is a wholly-owned credit rating agency subsidiary of Moody's Group Japan G.K., which is wholly-owned by Moody's Overseas Holdings Inc., a wholly-owned subsidiary of MCO. Moody's SF Japan K.K. ("MSFJ") is a wholly-owned credit rating agency subsidiary of MJKK. MSFJ is not a Nationally Recognized Statistical Rating Organization ("NRSRO"). Therefore, credit ratings assigned by MSFJ are Non-NRSRO Credit Ratings. Non-NRSRO Credit Ratings are assigned by an entity that is not a NRSRO and, consequently, the rated obligation will not qualify for certain types of treatment under U.S. laws. MJKK and MSFJ are credit rating agencies registered with the Japan Financial Services Agency and their registration numbers are FSA Commissioner (Ratings) No. 2 and 3 respectively.

MJKK or MSFJ (as applicable) hereby disclose that most issuers of debt securities (including corporate and municipal bonds, debentures, notes and commercial paper) and preferred stock rated by MJKK or MSFJ (as applicable) have, prior to assignment of any rating, agreed to pay to MJKK or MSFJ (as applicable) for appraisal and rating services rendered by it fees ranging from JPY200,000 to approximately JPY350,000,000.

MJKK and MSFJ also maintain policies and procedures to address Japanese regulatory requirements.

Senator INHOFE. OK. I walked in just at the tail end of somebody else's who is not here now inquisitions of you talking about the regulations. You know, I remember so well, because I was all during the Obama administration, I was either the Chairman or the Ranking Member of this Committee. And that guy sitting right behind you and I used to look at what was happening to our economy, which is in the process of being reversed right now. But he was implying that some of the poorest, the most vulnerable people are the ones who are being—that we are trying somehow, or that you are trying somehow, to punish. And I want to just remind you that we had a guy, I remember so well, Harry Alford, he was the President of the National Black Chamber of Commerce, he provided some of the most powerful testimony that I have ever heard when it comes to the effects of the Clean Power Plan and some of the other regulations, but he was referring specifically to that, would have on the Black and Hispanic poverty, including job losses and increased energy costs when it comes to regulations that you have been quoted as saying, and who benefits, the elites, the folks who can least afford those kinds of decisions pay the most.

So I would ask you, how is the EPA working to ensure that the most vulnerable communities are being considered and that the agency's cost benefit calculations are accurately portraying realities on the ground?

Mr. PRUITT. Well, Senator, good morning to you. I think your question goes to the heart of the cost of electricity, largely, and our power grid. And there are issues around that that obviously go to cost. We can't consider cost in our NAAQS program, but we can these other provisions that impact the cost of electricity. So we endeavor to make sure that our cost-benefit analysis is considerate of those things, and to make sure that we are making informed decisions as we finalize our rules.

Senator INHOFE. Well, he was very emphatic as to who is paying the price on these. And I think sometimes that previous Administration forgot those individuals. There are people out there paying all they can pay to try to keep—try to eat and keep their house warm. And that is one of the things that we have observed.

I was happy to see that you ended the practice of sue and settle. Oklahoma has been on the wrong end of this tactic used by the Obama administration, which was nothing more than a way to create regulations behind closed doors without public input or even input from affected parties. Can you explain more about how you see this being a positive environmental outcome?

Mr. PRUITT. Yes. The sue and settle practice I mentioned in my opening comment, Senator, with respect to regulation through litigation, it is something that is not unique to the EPA. It is something that has happened at other Federal agencies. Justice is also involved in a reform effort there. But I think what is important to note that as we engage in regulation, regulation is intended to be—there are laws of general applicability. And when you go into a litigation, and you negotiate a consent decree with one party that affects others, that is not transparency, and it is also not, I think, fundamental to the APA and the opening process to rulemaking.

So that was the motivation in addressing the sue and settle phenomena, the regulation through litigation. We have stopped that at

the agency. That doesn't mean that we won't ever enter into consent decrees or settle cases. It just means as we do it we will publish those settlements up to 30 days for people to provide comment and interested parties that want to be aware of that can be aware of it and participate as necessary.

Senator INHOFE. Well, Mr. Pruitt, I wasn't here during your opening statement, so I missed it. That was a very good explanation.

Let me—in an interview with the National Review last month, you stated that we still have a lot of work to do on clean air. But that was for the last decade. The EPA was so focused on CO_2 that we have let a lot of other things slide. From my view as Chairman and the Ranking Member of this Committee for the Obama administration, I agree with you that his singular focus on regulating a naturally occurring gas as a pollutant came at a heavy cost. Now that you have been Administrator for nearly a year, what areas of environmental protection were neglected by the previous Administration? Do you have any that come to your mind?

Mr. PRUITT. Well, the attainment issues specifically. We still have 40 percent roughly of our country that live in areas that don't meet the air quality standards, about 120 million people. I think as I look at the investment, for instance, counties that are making decisions collecting data, a lot of times we are using model data as opposed to monitored data. And that is primarily for a cost issue. So I think as we talk about the budget through this process, I think it is important to maybe look at ways that we can help States and counties put more monitors in place to get real time data to ensure that we are making real time decisions in air quality. That is something I would love to work with Congress to achieve.

Senator INHOFE. Yes.

Well, right now I am chairing the Senate Armed Services Committee, and I have to get back to that. But I appreciate the fact that you are here. But why in the world did you agree to 2 and a half hours?

Senator BARRASSO. That is an end point, but we possibly will be done before that, Senator Inhofe. If you have a chance to come back, come back.

Mr. PRUITT. Senator, you used to blame Ryan Jackson for a few things. I will do the same.

[Laughter.]

Senator INHOFE. I hope you get further than that in.

[Laughter.]

Senator BARRASSO. Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Chairman.

Mr. Pruitt, welcome to the Committee.

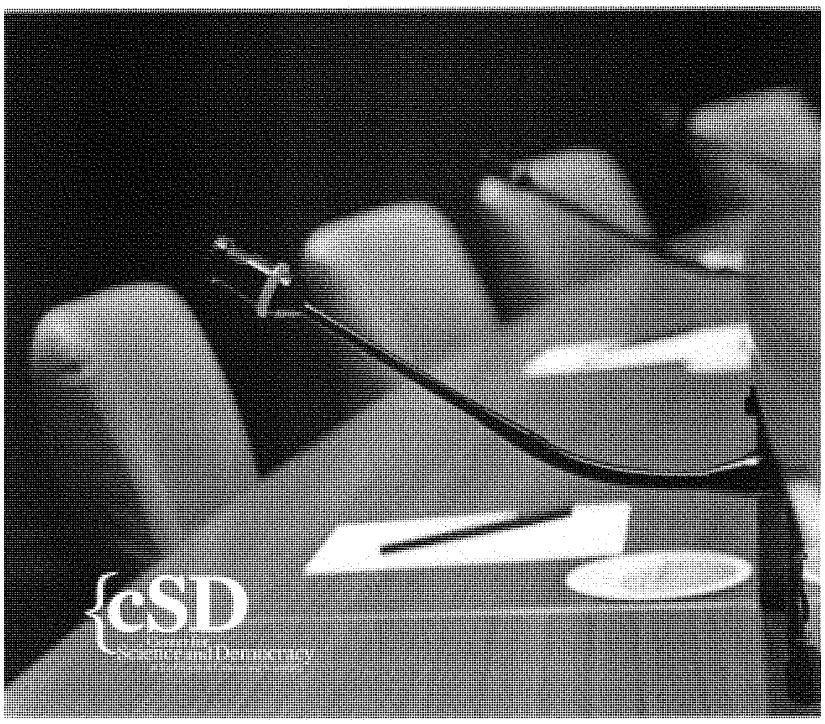
Let me start by asking unanimous consent to put three documents in the record. One is a report entitled Abandoning Science Advice by the Center for Science and Democracy. With it are two internal documents from the EPA that chronicle how political appointees are stacking the scientific advisory committees with industry representatives, in this case the Clean Air Scientific Advisory Committee.

Senator BARRASSO. Without objection.

[The referenced material follows:]

Abandoning Science Advice

One Year in, the Trump Administration Is Sidelining Science Advisory Committees

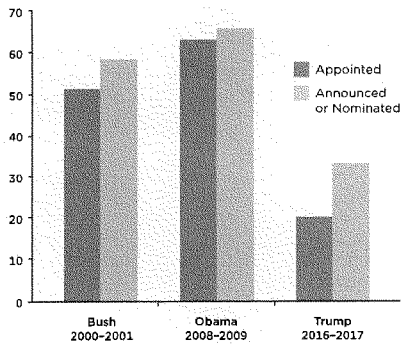


The Trump administration's relationship with science and evidence is strained.

At several federal agencies, political appointees have misrepresented scientific information, overruled the recommendations of scientific experts, scrubbed scientific content from websites, and even forbidden some staff from describing their work as "science-based" in budget documents (Carter et al. 2017; Sun and Eilperin 2017). These actions are well documented, but less attention has been paid to a related challenge: the state of science advice that the White House and federal agencies need on an ongoing basis.

When making important decisions, all modern presidents and their appointees at federal agencies have relied on scientific advice from entitites such as the presidential science advisor, the White House Office of Science and Technology Policy (OSTP), the President's Council of Advisors on Science and Technology (PCAST), and advisory committees within federal agencies. Breaking with four decades of precedent, President Trump has failed to nominate a presidential science advisor. The OSTP, which the advisor would direct, sits mostly dormant, with a skeletal staff of 38 in contrast to its 130 staff members in 2016 (Marshall 2017). While President Trump commissioned PCAST by executive order on September 29, he took no further action to appoint advisors in 2017 (*Federal Register* 2017a). By contrast, President Obama nominated PCAST's co-chairs before his first inauguration and the rest of the committee just three months into his first term so that the council could meet three times during the year (White House 2017; White House 2009; Kintisch and Mervis 2009). President George W. Bush nominated the science advisor and PCAST chair six months into his first term and appointed PCAST members in December of his first year (Lane 2001; White House 2001). As of December 31, 2017, President Trump had filled 20 of the 83 government posts that the National Academies of Science designate as "scientist appointees" (Partnership for Public Service and *Washington Post* 2017; NAS 2008). At this point in their respective administrations, President Barack Obama had filled 63 such positions and President George W. Bush had filled 51 (Figure 1).

FIGURE 1. **Presidential First-Year Appointments to Science Positions**



Not only has President Trump failed to nominate a presidential science advisor, but he also has filled only 20 of 83 top government science positions, far fewer than his two predecessors in their first year as president.

SOURCES: PARTNERSHIP FOR PUBLIC SERVICE AND *WASHINGTON POST* 2017; NAS 2008.

To examine whether the neglect of scientific advice extends beyond top-level appointments, the Union of Concerned Scientists (UCS) analyzed the record of the government's network of science advisory committees. The analysis included meeting and membership data from 73 advisory committees designated as "scientific and technical" across 24 departments, agencies, and subagencies within the Department of Commerce (DOC), the Department of the Interior (DOI), and the Department of Energy (DOE), as well as the Food and Drug Administration (FDA), the Centers for Disease Control and Prevention (CDC), and the Environmental Protection Agency (EPA). We also interviewed 33 current and former committee members. (Full methodology and detailed results available online at *www.ucsusa.org/scienceadvice*.)

The UCS research reveals the Trump administration's sidelining of scientific advice is considerably more widespread than previously recognized. Among the findings:

- Science advisory committees at the DOE, the DOI, and the EPA have met less often in 2017 than at any time since 1997, when the government began collecting such data.
- Fewer experts serve on science advisory committees at the DOE, the EPA, and the DOC than at any time since 1997.

- The total number of science advisory committee meetings in 2017 at the agencies UCS analyzed decreased 20 percent from 2016 and membership decreased 14 percent. This compares with a 4 percent decrease in meetings and a 7 percent decrease in membership during President Obama's transition year and 38 percent and 0.8 percent decreases, respectively, in President G.W. Bush's transition year.
- In 2017, nearly two-thirds (62 percent) of the 73 science advisory committees at the 24 agencies analyzed met less frequently than their charters direct.

Further, actions at some agencies are likely to reduce both the quality and quantity of scientific advice. For example:

- The EPA dismissed experienced experts from its Science Advisory Board. In an unprecedented move, EPA Administrator Scott Pruitt banned all experts who receive agency grants from serving as advisors on any committee.
- Secretary of Energy Rick Perry failed to reconstitute the Secretary of Energy Advisory Board, the agency's longstanding flagship advisory committee.
- The DOI froze membership on its more than 200 federal advisory committees, including nine scientific committees, at a time when the agency was making critical land-management decisions, including a review of national monuments.
- The DOL halted the work of several Occupational Health and Safety Administration (OSHA) advisory committees.
- The FDA disbanded its Food Advisory Committee.
- The DOI disbanded a climate science advisory committee as did the Commerce Department's National Oceanic and Atmospheric Administration (NOAA).

Why Advisory Committees Matter

The neglect of independent scientific advice seriously endangers the nation. Such advice is crucial to the federal government's ability to make informed decisions on matters that have enormous consequences for public health and safety. Policymakers regularly turn to science to help them determine government responses to complex challenges, from the outbreak of deadly diseases to environmental and national security threats. From the discovery of lifesaving vaccinations to the development of the Internet, scientists advising the federal government have an indisputable record of helping make Americans safer, healthier, more prosperous, and better informed.

> ***The UCS research reveals a clear pattern: the Trump administration's sidelining of scientific advice is considerably more widespread than previously recognized.***

Of the roughly 1,000 advisory committees currently in operation, the federal government designates over 200 as "scientific and technical" in nature, comprised of independent experts from academia, state and local government, industry, and nonprofits (GSA 2017). The president, Congress, and federal agencies can commission such committees and empanel them to examine and make recommendations about particular short-term problems, such as disease epidemics, and perennial issues, such as nuclear safety (Ginsberg and Burgat 2016). Official charters, renewed every two years, govern the committees and dictate their missions, procedures, and meeting frequency.

The thousands of independent experts called upon to serve on the government's network of science advisory committees weigh evidence and debate issues ranging from the safety and effectiveness of new drugs to the best course of action for minimizing lead exposure from drinking water. These scientists and technical specialists, often serving without pay or receiving only modest stipends, provide an important vehicle for providing decisionmakers with robust, professional, and up-to-date scientific advice.

Advisory committees play an important role in alerting federal officials to the policy implications of the latest scientific research, with consequences that can be a matter of life and death. This was the case in the 1970s, when policies required a phase-out of the use of lead in paint and gasoline, based on research into the neurological effects of lead on children. Research on infectious diseases has saved innumerable lives by helping governments prevent future outbreaks or craft responses to them. Research on chemicals and metals has dramatically improved the quality of our air, water, and soil. In 2004, an FDA advisory committee weighed evidence of an elevated risk of suicidal thinking in children and adolescents who took a class of popular antidepressants. It then recommendedthat the FDA employ its most serious

warning label in order to reduce the risk of such tragic deaths among youth (Newman 2004; FDA 2004).

Science advisory committees provide a transparent and objective eye that helps the public know when the government is making sound, science-based decisions. And it helps us know when to hold the government accountable when it fails to protect the public interest.

Findings: A Pattern of Neglect, Agency by Agency

The UCS investigation of federal advisory committees finds that the Trump administration systematically sidelines science to an unprecedented extent by neglecting valuable input from the nation's established network of federal science advisory committees.

Analyzing data from a government-run database mandated by the 1972 Federal Advisory Committee Act (FACA), we find that the number of federal science advisory committee meetings decreased substantially over the past year, as did the number of committee members (Figure 2). From 2016 to 2017, the number of science advisory committee meetings across all agencies examined decreased 20 percent; the number of members decreased by 14 percent. During the Obama administration's first year, the number of meetings actually increased slightly and membership decreased only 7 percent.

Agencies vary, yet there was an aggregate pattern of failure to adhere to committees' chartered missions. Advisory committee members report that meetings are routinely cancelled or rescheduled at the last minute, sometimes repeatedly. Some advisory committees had similar issues in the Bush and Obama administrations, but the trends appear to have worsened during the Trump administration.

In several cases, members report that brief telephone conference calls—as short as 15 minutes—have replaced in-person meetings. The aggregate data support anecdotal reports. For example, the vast majority of science advisory committees at the FDA (71 percent), the EPA (70 percent), and DOI (67 percent) failed to meet in 2017 as frequently as their charters dictate (Figure 3).

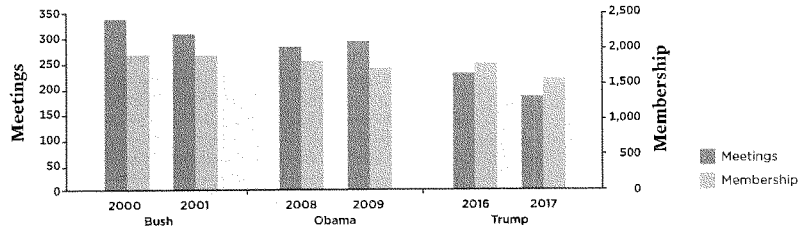
THE ENVIRONMENTAL PROTECTION AGENCY: ERODING IMPARTIAL SCIENCE ADVICE

At the EPA, the number of science advisory committee meetings held and the current number of committee members stand at their lowest levels since the government began collecting such records in 1997. More than two-thirds of the EPA's science advisory committees failed to meet as often as their charters direct.

Yet those numbers fail to capture the breadth of actions that EPA Administrator Scott Pruitt has taken to disrupt and politicize advisory committee work.

In October 2017, Administrator Pruitt announced that scientists currently receiving EPA grants could not serve on any agency advisory committee, including the Science Advisory Board (SAB), the Clean Air Scientific Advisory Committee (CASAC), or the Board of Scientific Counselors (BOSC). This policy, issued with little justification and without precedent, creates a double standard: it forces out scientists who receive EPA funding, while tribal and state

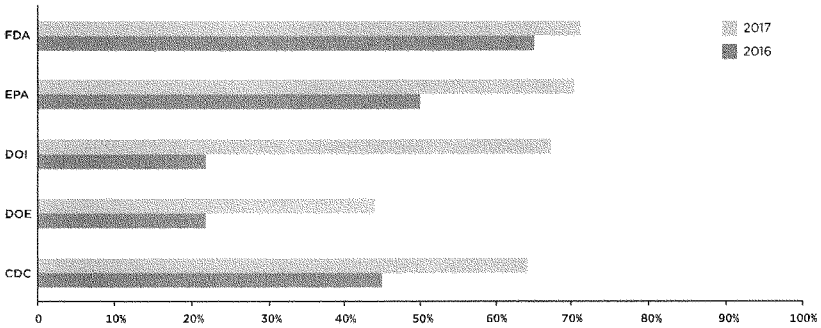
FIGURE 2. Total Scientific Advisory Committee Meetings and Membership during Presidential Transition Years



Science advisory committee meetings and membership have decreased in number in 2017 compared with 2016, slowing committee work to help agencies decide on emerging scientific and technical issues. While less activity is common in the first year of a new administration, the differences between 2016 and 2017 are greater than those of the Clinton-to-G.W. Bush and Bush-to-Obama transitions.

SOURCE: GSA 2017

FIGURE 3. **Percentage** of Science Advisory Committees That Failed to Meet as Often as Their Charters Directed



Overall, the number of science advisory committee meetings is down in 2017. At four key agencies, over half of committees met less often than their charters direct.

SOURCE: GSA 2017.

entities receiving EPA funding and industry scientists face no such restriction (Friedman 2017).

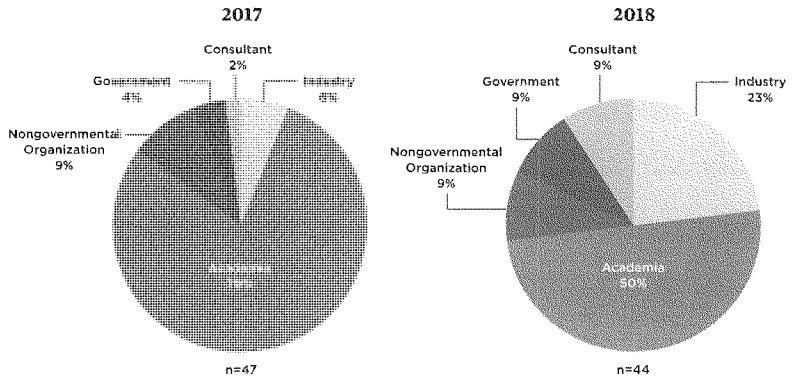
Until this move, the agency had relied on independent experts, regardless of whether they received agency grants—grants that often have little to do with the range of topics on which members advise. Of course, qualified industry scientists have long served on advisory committees as well, but Administrator Pruitt's policy shifts the balance on advisory committees away from unconflicted academic experts toward industry experts.

Also breaking with precedent is the decision to not renew the terms of six individuals who had been fully vetted and were qualified to serve on the EPA Science Advisory Board. One of those individuals, Charles Werth, a distinguished professor of environmental health engineering at the University of Texas, Austin, said, "It was my impression that there's more turnover on the board this year because of the desire of the administrator to have more industry representation. . . . It is certainly a break from the past and a changing of the board's representation" (Werth 2017). After implementing the new policy, Administrator Pruitt moved swiftly to triple the number of industry representatives on the SAB (Figure 4, p. 6) (Reed 2017).

Administrator Pruitt's shakeup of EPA advisory committees began in May 2017, when he failed to renew nine members of the Board of Scientific Counselors, which reviews the work of EPA's research scientists on chemical safety, air pollution, fracking, and a variety of other critical topics (Eilperin and Dennis 2017). Pruitt continued to reshape the committee in June, notifying 38 of the 49 executive committee and subcommittee members that their terms would not be renewed (renewals are typical) and cancelling board meetings for the rest of the year. As economist and BOSC member Peter B. Meyer noted, this interruption will cost the agency valuable guidance in shaping its agenda: "Cost-effectiveness of research will suffer, as will science" (Mooney and Eilperin 2017).

The EPA's politicization of the Science Advisory Board, Clean Air Scientific Advisory Committee, and Board of Scientific Counselors has drawn considerable criticism, and similar actions have occurred at less-known EPA advisory committees as well. For example, the Science Advisory Committee on Chemicals, directed to meet three to four times a year, has not met once since Congress mandated its creation in 2016 to provide advice on chemicals regulated under the 1976 Toxic Substances Control Act. The new committee replaced the former Chemical Safety Advisory Committee and expanded its membership (EPA 2017a; EPA 2017b; Former CSAC member 2017). There is concern among members of the former committee that the appointment of Nancy Beck—previously a staff person at the industry's American Chemistry Council—to lead the EPA office overseeing the committee will affect how it functions (Former CSAC member 2017).

FIGURE 4. The Changing Makeup of the EPA Science Advisory Board



EPA Administrator Pruitt's attacks on scientific and evidence-based guidance have distorted the composition of his agency's Science Advisory Board. By forcing academic scientists with EPA grants off the committee, he decreased the 2018 representation of academic advisors 40 percent compared with 2017. Over the same period, industry representation has tripled.

SOURCES: EPA 2017C; GSA 2017

THE DEPARTMENT OF THE INTERIOR: MANDATING DISREGARD

In May 2017, the Department of the Interior announced a formal review of the "charter and charge" of the department's advisory committees and postponed all scheduled meetings through fall 2017 (Eilperin and Dennis 2017). This edict resulted in the fewest number of meetings of the agency's science advisory committees since recordkeeping began in 1997 (GSA 2017).

Among other committees, the freeze applied to all of the Bureau of Land Management's resource advisory councils, including the Utah Resource Advisory Council, which met once (in February 2017). This means that President Trump's decision in fall 2017 to drastically reduce the size of national monuments in Utah proceeded without benefit of the Interior Department's expert advice (Dawsey and Eilperin 2017).

At the end of the review process, the DOI terminated the Advisory Committee on Climate Change and Natural Resource Science and dismissed its members. Created in 2013, the committee had advised the secretary of the interior on managing natural resources in the face of climate change (Doyle and Patterson 2017). According to conservation biologist Paul Beier, Regents' Professor at Northern Arizona University and a former committee member, "Until the change of administration, I felt that our voice was valued. It was a very rewarding experience. I felt like we were making a difference" (Beier 2017). The committee had been slated to hold its first meeting under the Trump administration in spring 2017, but the freeze of all advisory committees came less than a week before that meeting would have taken place (Former ACCNRS member 2017).

THE DEPARTMENT OF ENERGY: NEGLECT FROM THE TOP DOWN

In 2017, the Department of Energy's science advisory committees held fewer meetings than in any year since 1997. Some 44 percent of the agency's scientific committees failed to hold the number of charter-prescribed meetings.

The Secretary of Energy Advisory Board (SEAB), a particularly strong example of an effective independent advisory committee, was left to languish in 2017. For nearly three decades, all but one Department of Energy secretary had used the SEAB extensively. This high-level committee produced detailed reports on such issues as high-speed computing, the

future of energy technologies, and the effectiveness of the DOE's 17 national laboratories.

At the start of the Trump administration, as is customary in presidential transitions, all but one of the SEAB's 19 members wrote to Energy Secretary Perry offering to resign (Kickro and Marshall 2017). The DOE website continues to list all 19 as committee members, but they report no contact from the administration in the past year (DOE 2017; Former SEAB member 2017a; Former SEAB member 2017b). Responding to our inquiry about the SEAB's status, the DOE's deputy committee management officer emailed, "The Secretary of Energy Advisory Board was sunset in January 2017, and there are no plans to reconstitute it at the moment" (Butler 2017).

"I've worked for four secretaries of energy," one of the 19 former members noted. "All of them used this committee for advice on a wide range of topics. And yet I have had absolutely no communication from the committee since Trump was inaugurated. They didn't even respond to my letter offering to resign" (Former SEAB member 2017a).

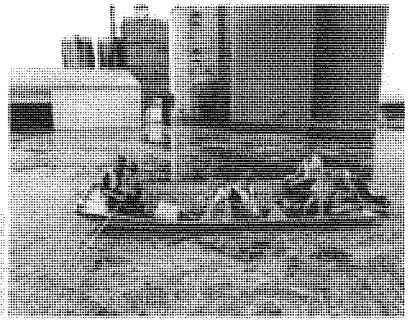
THE FOOD AND DRUG ADMINISTRATION: IDLING SCIENCE ADVISORY COMMITTEES

At the Food and Drug Administration, 71 percent of science advisory committees (22 out of 31) met less frequently than their charters prescribe. Roughly one-third failed to meet at all in 2017. (2016 was only slightly more functional: 64 percent of committees failed to meet the prescribed number of times.) On the other hand, some advisory committees, such as the FDA's Vaccines and Related Biological Products Advisory Committee and the Pediatrics Advisory Committee, continue to meet regularly, and even more often than in the past (Member of VRBPAC 2017; Member of PAC 2017).

Some advisory committee members report that FDA Commissioner Scott Gottlieb appears to be interested in expert advice, noting that he has not terminated the FDA Science Board, which advises him on emerging scientific issues and challenges (Member of FDA Science Board 2017a). However, when the board met by phone in December 2017, with Commissioner Gottlieb participating, there was no agenda and the meeting lasted less than 15 minutes, according to another member. "In this administration, they have made little or no use of the committee thus far," the member noted. "The bottom line is we've been idle" (Member of FDA Science Board 2017b).

In December 2017, the FDA disbanded its longstanding Food Advisory Committee. This body had operated for 25 years as the agency's only advisory committee dedicated to food-related science policy. Its 17 members had advised the FDA commissioner on emerging issues in food science, nutrition, and food safety (*Federal Register* 2017b). Although

The Secretary of Energy Advisory Board, seen here touring the National Renewable Energy Laboratory in 2014, is a vital contributor to independent science in our government. Secretary of Energy Rick Perry has not reconstituted this high-level committee, breaking with three decades of precedent.



The National Climate Assessment analyzes the impact of climate change on agriculture, energy production, human health and welfare, and much more. In 2017, the Department of Commerce quietly disbanded a committee designed to advise the federal government on how to make this often technical information more useful for businesses, state and local governments, and members of the public, reducing federal assistance for people directly affected by climate change.

it had not met in 2016 either, the loss of the committee still represents a noteworthy signal from the current administration. Former committee member Urvashi Rangan noted, "The advisory committee was incredibly important and represents a significant loss to the FDA, which needs the input of multiple experts in order to ensure that they're doing the best work and operating in the public interest" (Rangan 2017).

THE CENTERS FOR DISEASE CONTROL AND PREVENTION: CENSORSHIP BUT A MIXED PICTURE

In December 2017, the Centers for Disease Control and Prevention made headlines when it and at least one other Department of Health and Human Services agency received directives prohibiting the use of seven words, including "diversity," "vulnerable," and "science-based," in agency budget documents (Sun and Eilperin 2017). Nonetheless, the CDC's science advisory committees are among the most active of the agencies reviewed. Of the CDC's 11 scientific committees, more than half matched their charter-prescribed meeting numbers, and their membership numbers stand on par with previous years.

A notable exception is the Advisory Committee to the Director (ACD), a flagship committee of public health experts and medical professionals tasked with recommending priorities for agency activities, addressing health disparities, and helping the agency fulfill its mission more effectively (CDC 2017). While the committee met in April 2017, its October meeting was canceled, ostensibly to provide more orientation time for CDC Director Brenda Fitzgerald, even though she assumed her position in July. "Things are being held up" as a result, according to one member. "There are working groups that are completing their projects, but acting on those projects or recommendations is held up. We can't move anything along unless we have a full committee meeting." It also means that the current chair's term will expire before ever meeting with the new CDC director (Member of ACD 2017). The implications are troubling, given the CDC's vital role in protecting the nation against disease outbreaks, tracking opioid overdoses, reducing teen pregnancy, and slowing HIV transmission.

THE DEPARTMENT OF COMMERCE: SIDELINING THE NATIONAL CLIMATE ASSESSMENT

Most science advisory committees at the Department of Commerce, including those at the National Oceanic and Atmospheric Administration and the US Census Bureau, appear to meet as often as their charters prescribe, although total membership is down 13 percent from 2016. However, in August 2017, the department quietly disbanded the Advisory Committee for the Sustained National Climate Asessment as it failed to renew the charter of this key committee on climate change.

Established in 2015, the panel advised the federal government on improving the National Climate Assessment's scientific information on the ongoing impact of climate change, with the goal of making the assessment more useful for businesses, the public, and state and local governments. Its disbanding could hinder actions based on future editions of the National Climate Assessment (Eilperin 2017). Rush Holt, CEO of the American Association for the Advancement of Science, called the committee's removal "yet another example of the administration's increasingly blatant attempts to ignore and dismiss scientific information" (AAAS 2017).

THE DEPARTMENT OF LABOR: PARALYSIS BY REEVALUATION

The Occupational Safety and Health Administration (OSHA), part of the Department of Labor, has five advisory committees; four failed to meet in 2017. While these are not designated as "science advisory committees" (and thus fall outside many of this report's metrics), their work bears deeply on science policy. This is especially the case for the National Advisory Committee on Occupational Safety and Health (NACOSH) and the Whistleblower Protection Advisory Committee (WPAC), neither of which met in 2017, a rare occurrence for NACOSH since it was formed in 1970 and unprecedented for WPAC.

NACOSH advises the secretary of labor and the secretary of health and human services on best practices for implementing OSHA's standards to reduce work-related deaths,

> ***The UCS review of science advisory committees reveals a pattern of neglect and disrespect. Many committees have been suspended, disbanded, or otherwise left to sit idle.***

injuries, and illnesses and on the relevant agencies' research needs. Charged with meeting two to four times per year, it was not active in 2017 (DOL n.d. a). During a recent conference call on NACOSH's status, OSHA told committee members that they would not meet until the new OSHA director was confirmed. In the meantime, the process of bringing on new members was put on hold even though half of their terms expired at the end of 2017. According to one NACOSH member, "We can't meet in the new year [2018] either because we will not have a quorum" (Member of NACOSH 2017).

The mission of the Whistleblower Protection Advisory Committee, founded in 2012, is to improve the fairness, efficiency, and transparency of whistleblower investigations (DOL n.d. b). Soon after the Trump administration took office, committee members found out that no meetings would be scheduled until after Congress confirmed a new secretary of labor. In December 2017, members received notice that, due to President Trump's Executive Order 13781, "Comprehensive Plan for Reorganizing the Executive Branch," issued in March 2017, the Department of Labor was evaluating all of its activities, including its advisory committees. It is not known when the agency-wide review will be complete (Member of WPAC 2017a).

Given recent reports of reprisals against federal employees, the WPAC is more important than ever (Clement 2017). Members believe the administration would not risk a likely backlash from attempting to disband the committee, but they also report indications that its work will have a low priority in the Trump administration (Member of WPAC 2017b).

Conclusion

The UCS review of science advisory committees throughout the federal government reveals a pattern of neglect and disrespect. Many committees have been suspended, disbanded, or otherwise left to sit idle. These findings suggest that the Trump administration in its first year has substantially underutilized the government's network of science advisors, sidelining an important check on government decisionmaking. Committee members with extensive experience advising the government describe 2017 as "not normal" and "a break with the past" (Former CASAC member 2017; Werth 2017). Several express frustration that their committees' work has stalled (Former FDA Food Advisory Committee member 2017; Member of WPAC 2017b). "The politicization is frightening," says a former CASAC member. "Politics shouldn't be involved in this science-based process" (Former CASAC member 2017).

The administration's actions are spurring strong responses from elected officials, the scientific community, and the general public. For example, members of Congress have called on the Government Accountability Office to investigate Administrator Pruitt's EPA-wide directive on advisory committees (Whitehouse et al. 2017). One member of EPA's Science Advisory Board, Robyn Wilson, dismissed a recipient of a current EPA grant, has pushed back, refusing to resign from the board (Dennis and Eilperin 2017). And scientific societies are forming "shadow" advisory committees to monitor the activities of now-politicized committees (Sedlak 2017).

In response to the documented indications of a science advisory system in serious decline, the Union of Concerned Scientists makes three recommendations for immediate action:

- Current and former science advisors should speak out when they discover that federal agencies and orhers in the government are sidelining important scientific work and findings.
- The Government Accountability Office should ascertain whether federal agencies are appropriately carrying out the Federal Advisory Committee Act, especially given EPA Administrator Pruitt's directive on advisory committee eligibility.
- Congress should hold hearings on the status of science advisory committees tthroughout the government to investigate wherher they are serving the puhlic interest by functioning as directed hy law.

***Genna Reed** is a science and policy analyst in the Center for Science and Democracy at the Union of Concerned Scientists (UCS). **Seth Shulman** is the UCS editorial director. **Peter Hansel** is a research consultant who worked with the Center for Science and Democracy. **Gretchen Goldman** is the center's research director.*

219

ACKNOWLEDGMENTS

This report was made possible by the generous support of the Bauman Foundation, the Broad Reach Fund, the Doris Duke Charitable Foundation, the John D. and Catherine T. MacArthur Foundation, the John Merck Fund, the David and Lucile Packard Foundation, the Rauch Foundation, the Rockefeller Foundation, the Wallace Research Foundation, the Walton Family Foundation, the Wilburforce Foundation, and UCS members. The authors would like to thank the UCS investigative team—Jacob Carter, Gretchen Goldman, Matt Heid, Derrick Jackson, Seth Michaels, Ellen Negin, Suzanne Shaw, and Jean Sideris—for helping to conceive and shape this report. Many UCS staff members reviewed, edited, and otherwise assisted in its development and production: Emily Berman, Cynthia DeRocco, Michael Halpern, Seth Michaels, Kathleen Rest, Andrew Rosenberg, Suzanne Shaw, and Bryan Wadsworth. The authors would also like to express our gratitude to the dozens of current and former federal advisory committee members who took the time to speak with us about their public service and provided us with much of the content for this report. Finally, we would like to thank Mary S. Miller for copyediting the report and David Gerratt for layout and design.

REFERENCES

American Association for the Advancement of Science (AAAS). 2017. AAAS statement on Trump Administration disbanding National Climate Assessment Advisory Committee, August 22. Online at *https://mcmprodaaas.s3.amazonaws.com/s3fs-public/AAAS%20Statement%20on%20Trump%20Administration%20Disbanding%20National%20Climate%20Assessment%20Advisory%20Committee.pdf*, accessed December 30, 2017.

Beier, P. 2017. Phone interview with the authors, July 19. Paul Beier is a conservation biologist, regents' professor at Northern Arizona University, and a former member of the Department of the Interior's Advisory Committee on Climate Change and Natural Resource Science.

Butler, L. 2017. Email correspondence with the authors, September 13. LaTanya Butler is deputy committee management officer of the Department of Energy.

Carter, J., G. Goldman, G. Reed, P. Hansel, M. Halpern, and A. Rosenberg. 2017. *Sidelining science since day one: How the Trump administration has harmed public health and safety in its first six months*. Cambridge, MA: Union of Concerned Scientists. Online at *www.ucsusa.org/sites/default/files/attach/2017/07/sidelining-science-report-ucs-7-20-2017.pdf*, accessed December 18, 2017.

Centers for Disease Control and Prevention (CDC). 2017. Advisory charter. Updated February 23. Online at *www.cdc.gov/about/advisory/advcharter.htm*, accessed December 18, 2017.

Clement, J. 2017. I'm a scientist. I'm blowing the whistle on the Trump Administration. *Washington Post*, July 19. Online at *www.washingtonpost.com/opinions/im-a-scientist-the-trump-administration-reassigned-me-for-speaking-up-about-climate-change/2017/07/19/389b8dce-6b12-11e7-9c15-177740635e83_story.html?utm_term=.81e0b89559e6* (subscription required), accessed December 29, 2017.

Dawsey, K. and J. Eilperin. 2017. Trump shrinks two huge national monuments in Utah, drawing praise and protests. *Washington Post*, December 4. Online at *www.washingtonpost.com/politics/trump-scales-back-two-huge-national-monuments-in-utah-drawing-praise-and-protests/2017/12/04/758c85c6-d908-11e7-b1a8-62589434a581_story.html?utm_term=.22341221d2b9* (subscription required), accessed December 18, 2017.

Dennis, B. and J. Eilperin. 2017. "Mr. Pruitt is welcome to officially fire me"- as EPA carries out controversial policy, one scientist balks. *Washington Post*, November 10. Online at *www.washingtonpost.com/news/energy-environment/wp/2017/11/10/epa-extends-controversial-conflict-of-interest-policy-to-nearly-two-dozen-advisory-boards/?utm_term=.adf93fc00339* (subscription required), accessed December 18, 2017.

Doyle, M. and B. Patterson. 2017. Climate advisory group died quietly. *E&E News*, August 17. Online at *www.eenews.net/stories/1060058869*, accessed December 18, 2017.

Eilperin, J. 2017. The Trump administration just disbanded a federal advisory committee on climate change. *Washington Post*, August 20. Online at *www.washingtonpost.com/news/energy-environment/wp/2017/08/20/the-trump-administration-just-disbanded-a-federal-advisory-committee-on-climate-change/?utm_term=.0a84408644c2* (subscription required), accessed December 18, 2017.

Eilperin, J. and B. Dennis. 2017. EPA dismisses half of key board's scientific advisers; Interior suspends more than 200 advisory panels. *Washington Post*, May 8. Online at *www.washingtonpost.com/news/energy-environment/wp/2017/05/07/epa-dismisses-half-of-its-scientific-advisers-on-key-board-citing-clean-break-with-obama-administration/?utm_term=.d4c6b72fea3b* (subscription required), accessed December 18, 2017.

Environmental Protection Agency (EPA). 2017a. Science Advisory Committee on Chemicals Basic Information. Online at *www.epa.gov/tsca-peer-review/science-advisory-committee-chemicals-basic-information*, accessed December 18, 2017.

Environmental Protection Agency (EPA). 2017b. Chemical Safety Advisory Committee (CSAC) Basic Information. Online at *www.epa.gov/tsca-peer-review/chemical-safety-advisory-committee-csac-basic-information*, accessed December 18, 2017.

Environmental Protection Agency (EPA). 2017c. Members of the Science Advisory Board. Online at *https://yosemite.epa.gov/sab/sabpeople.nsf/WebExternalCommitteeRosters?OpenView&committee=BOARD&secondname=Science%20Advisory%20Board*, Accessed December 18, 2017.

Federal Register. 2017a. Presidential documents: Executive Order 13811 of September 29, 2017, continuance of certain federal advisory committees. 82(191). October 4. Online at *www.gpo.gov/fdsys/pkg/FR-2017-10-04/pdf/2017-21555.pdf*, accessed December 18, 2017.

Federal Register. 2017b. Advisory Committee; Food Advisory Committee; Termination; Final Rule. National Archives and Records Administration. 82(238). December 13. Online at *www.gpo.gov/fdsys/pkg/FR-2017-12-13/pdf/2017-26829.pdf*, accessed December 18, 2017.

Former member of the Advisory Committee on Climate Change and Natural Resource Science, US Department of the Interior (ACCNRS). 2017. Phone interview with the authors, July 12.

Former member of the Chemical Safety Advisory Committee, Environmental Protection Agency (CSAC). 2017. Phone interview with the authors, December 15.

Former member of the Clean Air Scientific Advisory Committee, Environmental Protection Agency (CASAC). 2017. Phone interview with the authors, December 13.

Former member of the Food Advisory Committee, Food and Drug Administration. 2017. Phone interview with the authors, December 13.

Former member of the Secretary of Energy Advisory Board (SEAB). 2017a. Phone interview with the authors, December 15.

Former member of the Secretary of Energy Advisory Board (SEAB). 2017b. Phone interview with the authors, December 15.

Friedman, L. 2017. Pruitt bars some scientists from advising E.P.A. *New York Times*, October 31. Online at *www.nytimes.com/2017/10/31/climate/pruitt-epa-science-advisory-boards.html?_r=0* (subscription required), accessed December 18, 2017.

General Services Administration (GSA). 2017. FACA Database. Online at *www.facadatabase.gov*, accessed December 18, 2017.

General Services Administration (GSA). No date. The Federal Advisory Committee Act (FACA) brochure. Washington, DC. Online at *www.gsa.gov/portal/content/101010*, accessed December 13, 2017.

Ginsberg, W. and C. Burgat. 2016. *Federal advisory committees: An introduction and overview*. Congressional Research Service Report R44253, October 27. Online at *www.everycrsreport.com/reports/R44253.html*, accessed December 13, 2017.

Kickro, R. and C. Marshall. 2017. Top advisory groups dormant at DOE, White House. *E&E News*, May 11. Online at *www.eenews.net/stories/1060054375/*, accessed December 18, 2017.

Kintisch, E. and J. Mervis. 2009. Holdren named Science Adviser, Varmus, Lander to co-chair PCAST. *Science* 323(5910): 22–23. Online at *http://science.sciencemag.org/content/323/5910/22*, accessed December 18, 2017.

Lane, E. 2001. Bush picks BNL's Marbuger; Lab chief nominated for national science adviser. *Newsday*, June 26, A28.

Marshall, C. 2017. Climate, energy jobs vanish at science office. *E&E News*, August 4. Online at *www.eenews.net/stories/1060058414/print*, accessed December 21, 2017.

Member of the Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention. 2017. Email correspondence with the authors, December 15.

Member of the Food and Drug Administration Pediatrics Advisory Committee (PAC). 2017. Phone interview with the authors, October 18.

Member of the National Advisory Committee on Occupational Safety and Health (NACOSH). 2017. Email correspondence with the authors, December 22.

Member of the Science Board, Food and Drug Administration. 2017a. Phone interview with the authors, December 15.

Member of the Science Board, Food and Drug Administration. 2017b. Email correspondence with the authors, December 15.

Member of the Vaccines and Related Biological Products Advisory Committee, Food and Drug Administration (VRBPAC). 2017. Phone interview with the authors, October 20.

Member of the Whistleblower Protection Advisory Committee (WPAC). 2017a. Phone interview with the authors, December 12.

Member of the Whistleblower Protection Advisory Committee (WPAC). 2017b. UCS phone interview, December 12.

Mooney, C. and J. Eilperin. 2017. EPA just gave notice to dozens of scientific advisory board members that their time is up. *Washington Post*, June 20. Online at *www.washingtonpost.com/news/energy-environment/wp/2017/06/20/trump-administration-to-decline-to-renew-dozens-of-scientists-for-key-epa-advisory-board/?utm_term=.56ee408a72ff* (subscription required), accessed December 18, 2017.

National Academy of Sciences (NAS). 2008. *Science and technology for America's progress: Ensuring the best presidential appointments in the new administration*. Washington, DC: National Academies Press. DOI:10.17226/12481.

Newman, T.B. 2004. A black-box warning for antidepressants in children? *New England Journal of Medicine* 351(16):1595–1598.

Partnership for Public Service and *Washington Post*. 2017. Tracking how many key positions Trump has filled so far. Online at *www.washingtonpost.com/graphics/politics/trump-administration-appointee-tracker/database* (subscription required), accessed December 18, 2017.

Rangan, U. 2017. Personal communication with the authors, December 14. Urvashi Rangan is a former member of the FDA Food Advisory Committee.

Reed, G. 2017. Scott Pruitt deals yet another blow to independent science advice at the EPA. Union of Concerned Scientists. Blog, October 31. Online at *https://blog.ucsusa.org/genna-reed/scott-pruitt-deals-yet-another-blow-to-independent-science-advice-at-the-epa*, accessed December 18, 2017.

Sedlak, D. 2017. Lending an eye to a beleaguered guardian of the environment. *Environmental Science & Technology*, November 30. Online at *http://pubs.acs.org/doi/10.1021/acs.est.7b06119*, accessed December 18, 2017.

Sun, L.H. and J. Eilperin. 2017. Words banned at multiple HHS agencies include "diversity" and "vulnerable." *Washington Post*, December 16. Online at *www.washingtonpost.com/national/health-science/words-banned-at-multiple-hhs-agencies-include-diversity-and-vulnerable/2017/12/16/9fa09250-e29d-11e7-8679-a9728984779c_story.html?utm_term=.bcd9e30ae1bf* (subscription required), accessed December 18, 2017.

US Congress. 1972. *The Federal Advisory Committee Act*. Public law 92-463, 92nd Congress, October 6.

US Department of Energy (DOE). 2017. 2015–2017 Secretary of Energy Advisory Board members. Online at *https://energy.gov/seab/2015-2017-secretary-energy-advisory-board-members*, accessed December 21, 2017.

US Department of Labor (DOL). No date a. National Advisory Committee on Occupational Safety and Health. Online at *www.osha.gov/dop/nacosh/nacosh.html*, accessed December 29, 2017.

US Department of Labor (DOL). No date b. Whistleblower Protection Advisory Committee Charter. Online at *www.whistleblowers.gov/wpac/wpac_charter*, accessed December 18, 2017.

US Food and Drug Administration (FDA). 2004. "Black box" warning for antidepressants. *ScieneeDaily*, December 3. Online at *www.sciencedaily.com/releases/2004/12/041203100252.htm*, accessed December 21, 2017.

Werth, C. 2017. Personal communication with the authors, December 15. Charles Werth is a former member of the EPA Science Advisory Board.

The White House. 2001. Nominations and PCAST appointments, December 12. Online at *https://georgewbush-whitehouse.archives.gov/news/releases/2001/12/20011212-10.html*, accessed December 18, 2017.

The White House, Office of Science and Technology Policy: PCAST past meetings. 2017. Online at *https://obamawhitehouse.archives.gov/administration/eop/ostp/pcast/meetings/past*, accessed December 18, 2017.

The White House, Office of the Press Secretary. 2009. President Obama announces members of Science and Technology Advisory Council, April 27. Online at *https://obamawhitehouse.archives.gov/the-press-office/2015/11/16/president-obama-announces-members-science-and-technology-advisory*, accessed December 18, 2017.

Whitehouse, S., T.R. Carper, E.J. Markey, B. Schatz, B. Sanders, J. Shaheen, M.J. Hirono, G.C. Peters, S. Brown, and A. Franken. 2017. Letter to Government Accountability Office Comptroller General Gene L. Dondaro, November 9. Online at *www.whitehouse.senate.gov/imo/media/doc/2017%2011%2009%20GAO_federal%20advisory%20committees%20(002).pdf*, accessed December 18, 2017.

Abandoning Science Advice

One Year in, the Trump Administration Is Sidelining Science Advisory Committees

The Trump administration's sidelining of scientific advice is considerably more widespread than previously recognized.

Traditionally, independent experts inform national policymaking by advising the federal government on a wide range of scientific and technical issues. The work that federal agencies do to protect public health such as monitoring pollution, evaluating chemical hazards, preventing the spread of disease, tracking and managing natural disasters and enforcing laws like the Clean Air Act depends on scientific input. There are more than 1,000 federal advisory committees across the government, over 200 of which provide advice specifically on scientific and technical issues. Committee members ensure that agencies rely on the best available science, playing a crucial role in the government's scientific process.

However, a Union of Concerned Scientists (UCS) analysis finds that the Trump administration in its first year has neglected science advisory committees that play critical roles, diminished activity at committees in many agencies, and changed committees' membership in ways that tilt toward increased representation of industry interests and decreased representation of the public interest. Analyzing data from 73 committees across 24 departments, agencies, and subagencies this research confirms troubling trends away from evidence-based decisionmaking. Drops in membership and number of meetings of the analyzed advisory committees during President Trump's first year in office represent a greater loss of activity than in the first years of two previous administrations. With independent and informed science advice in the government as crucial as ever, all voices must continue raising the political price of sidelining science.

Union of Concerned Scientists

FIND THIS DOCUMENT AND APPENDICES ONLINE: www.ucsusa.org/scienceadvice

The Union of Concerned Scientists puts rigorous, independent science to work to solve our planet's most pressing problems. Joining with people across the country, we combine technical analysis and effective advocacy to create innovative, practical solutions for a healthy, safe, and sustainable future.

NATIONAL HEADQUARTERS
Two Brattle Square
Cambridge, MA 02138-3780
Phone: (617) 547-5552
Fax: (617) 864-9405

WASHINGTON, DC, OFFICE
1825 K St. NW, Suite 800
Washington, DC 20006-1232
Phone: (202) 223-6133
Fax: (202) 223-6162

WEST COAST OFFICE
500 12th St., Suite 340
Oakland, CA 94607-4087
Phone: (510) 843-1872
Fax: (510) 451-5783

MIDWEST OFFICE
One N. LaSalle St., Suite 1904
Chicago, IL 60602-4064
Phone: (312) 578-1750
Fax: (312) 578-1751

WEB: www.ucsusa.org

PRINTED ON RECYCLED PAPER USING VEGETABLE-BASED INKS

© JANUARY 2018 UNION OF CONCERNED SCIENTISTS

Senator WHITEHOUSE. Thank you.

Mr. Pruitt, you were confirmed about a year ago, in February. And about a year before that, in February 2016, you went on a radio talk show at a radio station called KFAQ in Tulsa. The show's host is a man named Pat Campbell. I don't know if you remember that.

Mr. PRUITT. I appeared on that program a few times. So I don't remember the particular program you are referencing.

Senator WHITEHOUSE. Well, the reason I mention it is that we have a transcript of the interview that you provided. And I don't know if this is what you had in mind when you said you were interested in reaching common ground. But I can assure you that there are a great many Americans who share the concerns that you expressed in that interview.

The first one is this one; you told Mr. Campbell, "I believe that Donald Trump in the White House would be more abusive to the Constitution than Barack Obama. And that is saying a lot." Do you recall saying that?

Mr. PRUITT. I don't, Senator.

Senator WHITEHOUSE. Would you——

Mr. PRUITT. And I don't echo that today at all.

Senator WHITEHOUSE. I guess not. We have—I am having technical difficulties. So anyway, that was one statement. Then the interview continued, and Mr. Campbell said the following: "Everything that we loathe and detest about Barack Obama and the abuses of power, Donald Trump is the same thing except he's our bully." Your answer to that, "That's right."

As the interview continued, Mr. Campbell talked about his dad, who, as I recall from the interview, was a veteran and was now elderly, had served our country. Mr. Campbell said, "I had a conversation with my dad not long ago." And he went on to say, "He summed up Donald Trump in one word. He said"—this is Mr. Campbell referring to his dad—"He said he's dangerous." You said, "You know, your dad is very astute."

We are going to hear from the President tonight. I think the President is going to be speaking to a country in which millions of people share your concerns of February 4th, 2016, about a President who you believed then would be abusive to the Constitution, a bully and dangerous.

In my minute remaining, I would like to ask you about your schedule, because you have an unusual propensity for not releasing what is going on on your schedule. I direct you to Friday, May 5th, when you spent the day in Tulsa, Oklahoma. That night you were scheduled to give a keynote address at a fundraiser for the Oklahoma Republican Party. Because of the Hatch Act, you canceled that event. You are not allowed to go and do fundraising for parties in the position that you are in. That was the original reason for your trip to Tulsa that day.

The only thing that shows on your schedule for that day is lunch with a guy named Sam Wade. It seems to me like it is an awful long way to go at taxpayer expense to Tulsa for lunch with one guy. Could you please let us know what all else you did that day? Specifically, did you go to the Oklahoma Republican Party fundraiser? And because my time is up, that can be a question for the record.

Senator BARRASSO. Thank you, Senator Whitehouse.

Senator Boozman.

Senator BOOZMAN. Thank you, Mr. Chairman.

Mr. Chairman, I have a letter that the Arkansas Department of Environmental Quality sent me yesterday in support of EPA's recent decision to approve Arkansas' revised Regional Haze State Implementation Plan. To quote the letter, "Arkansas applauds the EPA's recent improvements in regard to fostering increased cooperation with the States in order to achieve environmental goals in a sensible and practical manner." I would like unanimous consent to enter that.

Senator BARRASSO. Without objection.

[The referenced information follows:]

January 29, 2018

The Honorable John Boozman
U.S. Senate Committee on Environment and Public Works
141 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator:

Since the appointment of Administrator Scott Pruitt, the State of Arkansas has experienced a significant improvement in its relationship with the Environmental Protection Agency (EPA) throughout a number of areas. As a state regulator, I understand the importance of the relationship the states have with their federal counterparts regarding environmental issues. The states require meaningful, sustained, and timely engagement with EPA. Arkansas applauds EPA's recent improvements in regard to fostering increased cooperation with the states in order to achieve environmental goals in a sensible and practical manner.

The State of Arkansas has made significant improvements in air quality. Arkansas is now in attainment with all national ambient air quality standards and remains below its 2018 reasonable progress goals for visibility improvement at its two Class I Areas: Upper Buffalo and Caney Creek Wilderness Areas. Despite these successes, EPA under the prior administration imposed a federal plan for regional haze that required more than two billion dollars of controls on Arkansas facilities with no discernible visibility impact. Since this costly regulatory action, Administrator Pruitt has halted EPA's previous pattern of excessive regulation and has taken steps toward returning states to their roles as the primary drivers of air regulation.

The Arkansas Department of Environmental Quality (ADEQ) is nearing finalization of the Arkansas Regional Haze State Implementation Plan (SIP), completion of which the ADEQ has been working toward since its initial submittal in 2008. Once approved by EPA, the Arkansas Regional Haze SIP will complete the State requirement to promulgate a Regional Haze SIP and allow affected facilities to forego installation of more than two billion dollars in controls in favor of a more flexible SIP that will still achieve the goals of the program.

EPA has already proposed approval of a key portion of the Regional Haze SIP for nitrogen oxides less than three months after State submittal. This quick review and proposed action by EPA indicates that EPA is prioritizing a timely review and approval process of state environmental agency submittals. Once finalized by EPA, this part of the SIP will allow facilities to meet certain regional haze requirements for nitrogen oxides through an interstate trading program rather than through capital investments that would have been paid for by Arkansas ratepayers.

Similarly, ADEQ has experienced marked improvement in cooperation with regard to water quality obligations. On July 20, 2017, EPA Administrator Scott Pruitt announced the approval of Arkansas's 2016 303 (d) list. This approval marked the first EPA-approved list of impaired waters for the State of Arkansas since 2008. The approval of the 2016 list allows significant economic and environmental decisions to be made based on water quality data reflective of existing conditions and has been of great benefit to Arkansas.

The approval of Arkansas's 2016 303(d) list is critically important to the communities of Arkansas. Counties, cities, municipalities, facilities, agencies, and other organizations are restricted to water quality specifications based on the most recent EPA-approved 303(d) list. Before the approval of the 2016 impaired waters list, permitted entities were held to limits that may have no longer been reflective of current water quality conditions. State and federal funding for conservation programs is also prioritized based on the most current EPA-approved list. An up-to-date, approved list is vital to ensuring that the efforts of state and federal agencies are focused on appropriate locations, allowing for effective resource allocation throughout Arkansas.

Another example of improved cooperation between Arkansas and EPA is the recent completion of a brownfield site in Forrest City, Arkansas. Because of the Brownfields Program, a former television manufacturing plant in Forrest City, Arkansas is being converted into a cotton processing plant that is projected to create 800 jobs. The $410 million renovation project began in late 2017. The Brownfields Program is essential to revitalizing underutilized land and provides far-reaching benefits to communities throughout Arkansas. The program has the potential to jumpstart local economies, create job opportunities, and raise property values. Since the inception of the Brownfields Program in 1995, the State of Arkansas has returned forty-five properties and over 1000 acres to beneficial use.

In recalibrating the federal-state relationship, the EPA has also worked to involve the State of Arkansas early and often when conducting inspections of hazardous waste facilities in Arkansas. There has been a shift toward collaborative decision making on whether the State or the EPA should take the lead on enforcement resulting from EPA inspections and toward joint input for training curricula. This movement toward cooperative federalism is crucial for the development of responsive, efficient, and effective protection of the environment and public health.

Finally, EPA recently announced its appointments to three important scientific committees: the Science Advisory Board, the Board of Scientific Counselors, and the Clean Air Scientific Advisory Committee. ADEQ's Chief Technical Officer, Dr. Bob Blanz, was selected to serve on both the Science Advisory Board and the Board of Scientific Counselors. ADEQ was encouraged that EPA not only appointed Dr. Blanz, but also individuals from other geographically diverse state agencies with expertise and experience in various environmental areas. Arkansas welcomes this signal from EPA that it is taking steps to improve the balance of its panels, boards, and committees by adding more state voices to improve understanding of the challenges states are facing and to better inform the science with local, on-the-ground experience.

Arkansas encourages the EPA to continue fostering its relationship with states consistent with the examples presented above and to prioritize the completion of projects with benefits to states and local communities. I look forward to working with Administrator Pruitt as we continue to evaluate and true up our appropriate state/federal roles in the evolving "cooperative federalism" construct.

Sincerely,

Becky W. Keogh
ADEQ, Director

Senator BOOZMAN. Thank you, Mr. Chairman.

Administrator, I was very happy to see the EPA approved Arkansas' revisions to the Regional Haze State Implementation Plan. Many in Arkansas are thrilled that we now have an EPA that is willing to listen to the States and are excited to proceed toward the goal of improving air quality.

In the past we have had a situation where the EPA wanted to hear input as long as the State agreed with them. If not, then they got themselves in trouble. Can you explain your approach to cooperative federalism and the change that we are seeing in that regard?

Mr. PRUITT. You know, I think, Senator, with respect to the Regional Haze Program, I appreciate your comments. Arkansas has worked very diligently to submit a plan that is approvable under the statute. I think that would be something I would highlight for you, is that the agency needs to take a more proactive approach working with States in submission of plans to actually recognize their expertise and resources at the local level to achieve those outcomes. And then help provide clarity in the timing as far as getting that done.

I think in the past we had an effort of displacing State authority there, and issuing Federal implementation plans at the expense of those State plans. I think the opposite should be true. We should work with those States, let them adopt the plans that are particular to the issues that they face, and provide the type of support that helps them achieve that.

Senator BOOZMAN. Good. So working with all the States in that regard. What else, since your confirmation, have you done to reach out to other stakeholders besides the States?

Mr. PRUITT. Well, I think one of the things that is so different, DNRs, EEQs across the country, Departments of Natural Resources or Departments of Environmental Quality, obviously vary by State. But their interaction with the Governors is different. So we have worked very diligently with Governors—both Democrat and Republican Governors—to ensure that issues that the State faces, they are aware of those issues, that, from our perspective, and we are learning from them, and making sure that their respective executive branch agencies are working with us to achieve that, too.

So it is an effort to work with Governors in addition to those agency partners that we have worked with for a number of years.

Senator BOOZMAN. Very good. The folks on the left have spent a lot of resources selling a narrative that you've locked career employees out of meetings, don't heed their input when considering the direction of the EPA. Are these allegations accurate? And——

Mr. PRUITT. They're inaccurate. They're inaccurate. You know, some of the things that I have heard with respect to not bringing notepads, I am very encouraging of the folks taking notes during meetings. Because I forget things often, and we want to make sure we are keeping track of where we are heading on issues. So I am not sure where those things came from, but they are in fact inaccurate.

Senator BOOZMAN. What does that, again, these false claims, what does that do to morale in the office?

Mr. PRUITT. Well, look, I think that we had a lot of work to do, a lot of opportunities to do good things, and we try to stay focused on that. I try to stay focused myself, and then working with those career employees; yesterday we had our SES conference that I attended. I talked about the importance of establishing goals and metrics, keeping track of those, and celebrating successes. And I think for too long, the agency has not been willing to state goals, where are we going to be in air attainment 5 years from now, setting that out there on the horizon and working to achieve that.

And I think that is something, both in the water space, across all the program offices, we need to do better at.

Senator BOOZMAN. Very good.

I would like to just reinforce Senator Inhofe's words, discussion about sue and settle, how important that is. And can you again tell us how that is actually helping the environment versus hurting the environment and getting rid of that?

Mr. PRUITT. Primarily, when you, again, enter into a negotiation through litigation and a consent decree comes out of that that doesn't involve voices from across the country, it is short shrifted. For instance, there have been examples where States have endeavored to intervene, and those discussions are part of the core process and have been denied. And then an agreement is reached, and then it is foisted or forced upon those States.

So it is kind of subverted, the voice of those stakeholders, at the State level, among others. That is not a good way of doing business.

Senator BOOZMAN. Thank you very much.

Senator BARRASSO. Senator Markey.

Senator MARKEY. Thank you, Mr. Chairman, very much.

Earlier, you did not answer Senator Carper on whether EPA performed an analysis of the health impacts of your decision last week to allow significantly more amounts of extremely dangerous pollutants to be put into our air. Your decision means that industrial facilities like power plants, or chemical facilities, or hazardous waste incinerators will no longer be required to use state of the art technology—the gold standard—to reduce these harmful emissions.

This should be a very simple answer. There are 187 dangerous pollutants covered by this policy that you have rolled back. Let's just go through a few of these. Arsenic. Do you believe that more arsenic pollution is harmful to the public?

Mr. PRUITT. Yes.

Senator MARKEY. Do you believe that more mercury pollution is harmful to the public?

Mr. PRUITT. I do.

Senator MARKEY. Do you believe that more lead pollution is harmful to the public health?

Mr. PRUITT. Yes, Senator.

Senator MARKEY. Do you believe that more benzene pollution is harmful to the public health?

Mr. PRUITT. Yes, sir.

Senator MARKEY. Well, your decision allows more of these pollutions, more of these toxics to go into the atmosphere, to go into the air, to go into the water, to go into the environment. Children will be exposed to these pollutants; seniors will be exposed to these pol-

lutants. We should have a gold standard of pollution control in this country. That is what the EPA should ensure is on the books.

But you are going to replace the gold standard with a lead standard. And that will not be good for the health of the children in our country. The President has a slogan of MAGA. But here it is going to mean Make Arsenic Great Again.

So this is not good for our country. It is not where we should be heading. That decision is an historically bad one from last week. I urge you to reconsider it immediately.

On the question of fuel economy standards, you say that you are reviewing them right now in response to Senator Carper. The head of EPA's Air Office, Bill Wehrum, recently said that he has no interest whatsoever in withdrawing California's ability to regulate from a good, solid public policy standpoint; the very best outcome for all of us to achieve is one national program. Do you agree with that?

Mr. PRUITT. One national program is essential.

Senator MARKEY. One national program is essential. And do you support, once again, the maintenance, the retention, of the California waiver, which Massachusetts uses, and many other States also use? Do you——

Mr. PRUITT. California, yes, there are ongoing discussions with CARB in California, the agency that oversees these matters. It is our hope that we can come to a resolution as we visit about these standards in April of this year. Senator, federalism doesn't mean that one State can dictate to the rest of the country, that we recognize California's special status on the statute. And we are working with them to find consensus around these issues.

Senator MARKEY. Well, Massachusetts is part of that waiver, as are the States of many of the members of this Committee. And we want to retain that ability to have the highest standards possible. Yes, we do want there to be harmonization. It happened under the Obama EPA and Department of Transportation. But we are increasingly fearful that there will be a rollback of the fuel economy standard.

So there is one thing that I would like you to keep in mind. We still import 3 million barrels of oil a day from Saudi Arabia, Libya, Kuwait, Iraq, Qatar. We should not be importing oil from these countries if we can increase our fuel economy standards. Fracking is reducing our dependence, but so is the fuel economy standard.

And we cannot have no retreat. Because we are sending young men and women in uniform over to the Middle East to continue to protect that oil coming in from the Middle East, we have a moral responsibility to put the fuel economy standards of our vehicles at the highest possible level. I just want the EPA and the Trump administration to understand that these young men and women are over there, not exclusively, but in part to protect that supply of oil.

We will never be energy independent; we will never produce all the oil that we need in our country. At 10 million barrels a day, 13 million barrels a day, we are still consuming 19 million or 20 million barrels a day. Fuel economy standards will back out 2.5 million barrels a day. We should honor that commitment, and you should honor what Massachusetts and California and the other States want to accomplish.

Mr. PRUITT. If I may, Senator, I think the issue that you have raised is important, but also the harmonization with DOT. As you know, there are joint equities there between DOT and EPA. We are working diligently with them to harmonize these efforts, again, to provide clarity on these issues. So it's State, it's federalism, and it's also interagency at the Federal level.

Senator MARKEY. The most important equities are those young men and women we send over to the Middle East to protect that oil. We should just ensure those standards stay as high as possible.

Senator BARRASSO. The Senator's time has expired.

Senator Carper.

Senator CARPER. I will ask unanimous consent, if I could, just following on to Senator Markey's comments and questions, to submit for the record if I could, Mr. Chairman, the Bush Regional Record, as the Bush Regional office concern stated several years ago with respect to air toxic rollbacks. Thank you.

Senator BARRASSO. Thank you, Senator Carper.

[The referenced information follows:]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

December 13, 2005

MEMORANDUM

SUBJECT: Regional Comments on Draft OIAI Policy Revisions

FROM: Michael S. Bandrowski, Chief
Air Toxics, Radiation and Indoor Air Office
Region IX

TO: David Cozzie, Group Leader
Minerals and Inorganic Chemicals Group
Office of Air Quality Planning and Standards

Thank you for allowing the Regional Offices the opportunity to comment on the draft proposed changes to the General Provisions of 40 CFR Part 63, intended to replace EPA's Once-in-Always-In (OIAI) policy established in a May 16, 1995, memorandum entitled, "Potential to Emit for MACT standards – Guidance on Timing Issues," from John S. Seitz to the Regional Air Directors. A draft copy of the proposed changes, dated November 16, 2005, was received by Region IX on November 30, 2005, and we shared this copy with the Regional Offices. As sub-lead Region for air toxics, we have summarized and consolidated the feedback received from the Regional Offices, and are forwarding these Regional comments and concerns through this memo. Eight Regions provided comments. For your convenience, the original comments from each Regional Office are included as attachments to this memo.

Over the years, many questions and implementation issues have arisen that have initiated the reconsideration of the OIAI policy. The new revisions being planned by OAQPS would essentially negate the original policy, and this change would be codified in the 40 CFR Part 63 General Provisions. This change in policy would have major implications for implementation and enforcement of the maximum achievable control technology (MACT) standards. The Regional Offices, therefore, appreciate the opportunity to review and comment on HQ drafts before the revisions are proposed in the Federal Register for public comment. However, we are disappointed that OAQPS formulated revisions to the OIAI policy without seeking Regional input and was reluctant to share the draft policy with the Regional Offices. This trend of excluding the Regional Offices from involvement in rule and policy development efforts is disturbing. We are

requesting that OAQPS establish a means for Regional input during the development of future policies and rules.

With regard to the OIAI policy, all the Regional Offices that submitted comments acknowledged the need for a change from the 1995 guidance in limited circumstances. For example, if EPA finalizes the delisting of methyl ethyl ketone as a hazardous air pollutant (HAP), it would be logical for EPA to allow existing major sources of HAPs to reevaluate their PTE, excluding emissions of methyl ethyl ketone. Likewise, if a source eliminates, or significantly reduces their use of HAPs, then it would be reasonable for EPA to allow such a source to reevaluate MACT standard applicability. In addition, certain pollution prevention benefits may follow in circumstances where a source has an incentive to obtain actual reductions in emissions of HAPs equivalent to or greater than the level required by the MACT standard with less burden and cost. Overall, the Regions support the intent behind the draft proposed amendments to provide incentive to companies for engaging in emission-reducing activities. Several Regions also explicitly stated their support of revising the policy through a public rulemaking process and encouraging sources to explore different control technologies and pollution prevention options to reduce emissions and potential to emit (PTE). One Region was supportive of the change in policy as drafted. However, all other Regional Offices expressed varying degrees of concern about allowing any source to take synthetic minor limits at any time, for any reason. The concerns are described below, followed by suggestions for addressing these concerns while still encouraging existing MACT sources to take actions towards pollution prevention. Our comments are organized as follows:

CONCERNS
- Health and Emission Concerns
- Permitting and Compliance Concerns

ALTERNATIVE APPROACHES
GENERAL EDITS AND COMMENTS

CONCERNS

Health and Emissions Concerns

1. *Reversal of Position with Inadequate Justification*

The May 16, 1995, Seitz memo regarding potential to emit for MACT standards states:

> EPA believes that this once in, always in policy follows most naturally from the language and structure of the statute. In many cases, application of MACT will reduce a major emitter's emissions to levels substantially below the major thresholds. Without a once in, always in policy, these facilities could "backslide" from MACT control levels by obtaining potential-to-emit limits, escaping applicability of the MACT standard, and increasing emissions to the major-source threshold (10/25 tons per year).

> Thus, the maximum achievable emissions reductions that Congress mandated for major sources would not be achieved. A once in, always in policy ensures that MACT emissions reductions are permanent, and that the health and environmental protection provided by MACT standards is not undermined. (See page 9)

Elsewhere, the Seitz memo states:

> In the absence of a rulemaking record supporting a different result, EPA believes that once a source is required to install controls or take other measures to comply with a MACT standard, it should not be able to substitute different controls of measures that happen to bring the source below major source levels. (See page 5)

While it is true that policy is not set in stone, and that policy decisions may be reversed, the preamble, as currently drafted, does not set forth an adequate rulemaking record to justify this drastic change in interpretation. In 1995, EPA believed that the OIAI policy follows "most naturally" from the language and structure of the statute, and that allowing facilities to backslide would undermine the maximum achievable emissions reductions mandated by Congress. Now, in 2005, EPA is claiming that "there is nothing in the statute which compels the conclusion that a source cannot attain area source status after the first compliance date of a MACT standard" (see page 15 of the draft proposed changes). In order to provide an adequate rulemaking record, the preamble should more clearly articulate why EPA no longer believes that the OIAI policy flows naturally from the statute.

2. *Increased HAP Emissions Resulting from Abandoning MACT Control Levels*

The Clean Air Act requires the maximum degree of reduction in emissions of HAPs from sources subject to the MACT standards. The reductions anticipated through the MACT program will not be achieved through the strategy described in the draft rule proposal. A key concern is that the draft proposal allows facilities to obtain synthetic minor permits after the MACT standard compliance date by taking potentially less protective requirements than the MACT standard would otherwise require them to install. The proposal, as written, would be detrimental to the environment and undermine the intent of the MACT program.

Many MACT standards require affected facilities to reduce their HAP levels at a control efficiency of 95% and higher. In many instances, the MACT requirements could lead to greater reductions when compared to sources accepting synthetic minor limits of 24 tons per year (tpy) for a combination of HAPs and 9 tpy for a single HAP. Clearly, the intent in promulgating MACT standards was to reduce emissions to the extent feasible, not just to the minor source level. However, under the current draft proposal, the reductions that were intended to be achieved through the MACT standards would be offset by synthetic minor limits that allow sources to emit HAPs at levels higher than those allowed by the MACT standard. The cost of the increased HAP emissions would be borne by the

communities surrounding the sources. On pages 15 and 16 of the draft preamble, EPA states:

> A concern has been raised that sources that are currently well below the major source threshold will increase emissions to a point just below the threshold. We believe these concerns are unfounded. While this may occur in some instances, it is more likely that sources will adopt PTE limitations at or near their current levels to avoid negative publicity and to maintain their appearance as responsible businesses.

This statement is unfounded and overly optimistic. Regional experience indicates that sources requesting synthetic minor limits to avoid a MACT standard typically request, and are frequently given, limits of at least 24 tpy for a combination of HAPs and 9 tpy for a single HAP. The Regional Offices anticipate that many sources would take limits less stringent than MACT requirements, if allowed. Thus, the cumulative impact of many "area" sources whose status is derived *after* the MACT compliance date could be significant. This change in policy would offset the intended environmental benefits of the MACT standards. Although the draft changes could serve to alleviate some possible inequity under the current OIAI policy, or encourage some sources to further reduce emissions to achieve area source status, EPA should look closely at this issue to determine whether the likely benefits would be greater than the potential environmental costs. This analysis should occur before the proposal is put forth for public comment. One Region suggested that EPA should not enact a policy allowing facilities to qualify out of the MACT standards until a strong area source toxics program is in place, or until state, local and tribal air quality agencies have programs that can provide an equivalent level of protection.

A related concern with regard to the draft changes as written is that a facility, by changing from a major source to an area source, and back again, could virtually avoid regulation and greatly complicate any enforcement against them. Take, for example, a facility that is covered by a MACT standard, and has three years from the date that the rule is promulgated to come into compliance. Three years go by, and just before the end of that time period, the facility announces its area source status. If an area source regulation exists, there may also be some equivalent waiting period before the facility is required to comply with the area source requirements. If the facility later announces that it is, after all, a major source, then it may again enter a grace period, possibly up to another 3 years, before it is subject to the MACT standard requirements. Thus, by continually going back and forth between major and area source status, a facility could be a major source for most of its operating life and never have to comply with the MACT standard requirements. The 1995 OIAI policy recognizes this and states, "The EPA believes the structure of section 112 strongly suggests certain outer limits for when a source may avoid a standard through a limit on its potential to emit." This type of problem must be addressed if the OIAI policy is changed.

3. *Residual Risk*

Section 112(f) of the Clean Air Act requires that EPA examine risks remaining after implementation of the MACT standards. It is unclear from the preamble of this draft rulemaking how EPA envisions this draft rulemaking will affect or interact with the residual risk efforts currently underway at EPA. If there is a likelihood that this proposal will increase residual risks, EPA should examine whether sources that will be obtaining synthetic minor limits under this rulemaking may later need to take additional measures under the residual risk rules. This interface should be discussed in the preamble.

Permitting and Compliance Concerns

1. *Delayed Compliance*

The draft rule proposal does not address how to treat a facility seeking synthetic minor status after failing to comply with the MACT standard requirements by the initial compliance date. Any violations should be resolved before allowing a permit revision to facilitate area source status. If this issue is not addressed in the rule, then facilities may choose to delay compliance if they believe they can achieve area source status after the compliance date without any consequences.

2. *Violation of a Synthetic Minor Limit*

The draft rule proposal does not address how a source should be treated if it accepts synthetic minor limits to get out of a MACT standard and later violates those limits. Under the current General Provisions and most, if not all, MACT standards, an area source that subsequently increases its actual or potential emissions of HAPs to at or above the major source threshold would thereafter be subject to the MACT standard. EPA should clarify whether a source that violates its synthetic minor limits would be expected to comply with the MACT thereafter, by when compliance must be achieved, and how the source should be treated during such situations.

3. *Process for Removing MACT Requirements from Existing Title V Permits*

The Clean Air Act requires all major sources to obtain a Part 70 operating permit. Section 501(2) provides that any source that is major under section 112 will also be major under title V. Therefore, sources that are currently considered major for the purposes of a MACT standard are required to have a title V permit that contains applicable MACT requirements. The draft rule does not address the permitting process that a source must go through in order to have MACT requirements removed from its title V permit once it takes synthetic minor limits. EPA should clarify minimum requirements that are expected to be met by sources, including the type of permitting action required (i.e. Administrative, Minor, or Significant). Also, if a source is still subject to title V after taking synthetic minor limits (i.e. the source is required to obtain a title V permit for reasons other than MACT applicability), the preamble should recommend or require that the source have its synthetic minor limits added to the permit at the same time. The

preamble should address the mechanism for adding synthetic minor limits to title V permits, as well, where appropriate.

4. *Mechanism for Obtaining Synthetic Minor Limits*

It is unclear what mechanism is envisioned and viable for sources to obtain the synthetic minor limits. The draft preamble, on page 18, states:

> Most, if not all, permitting authorities have created and instituted enforceable permitting mechanisms such as federally enforceable state operating permits or conditional major operating permits, in lieu of title V permits, that allow sources to limit their potential to emit HAP emissions so as to avoid having to comply with major source requirements of one type or another.

In reality, few states have federally enforceable state operating permits programs, and we are not aware of many other mechanisms for adding such synthetic minor limits. The preamble should provide more detail regarding the mechanisms available for implementing such limits, and should also discuss whether title V permits (particularly for sources on tribal lands) may be used as the sole mechanism to limit PTE.

5. *Enforceability of Synthetic Minor Limits*

There are several concerns regarding the enforceability of these synthetic minor limits. First, EPA should not endorse the use of PTE limits enforceable by states only to avoid applicability of federal rules, such as the MACT standards. Second, there are concerns about the lack of clear-cut requirements regarding practicable enforceability and fear that significant time and energy will be spent debating the enforceability of synthetic minor limits with permitting authorities. Third, significant resources will need to be expended defending the enforceability of these limits in responding to title V public petitions in instances where a source is required to obtain a title V permit revision to incorporate the synthetic minor limits. Finally, the draft proposed rule does not provide clear guidelines regarding appropriate monitoring for these synthetic minor limits. Many of the environmental benefits that are achieved by the comprehensive monitoring and reporting requirements of the MACT standards will be lost in the process. The preamble should state what type of monitoring is acceptable for demonstrating compliance with synthetic minor limits, for instance, by requiring the same level of compliance assurance as is required by title V. One Region suggested adding a clear definition in the regulatory text for "practicably enforceable permit limits" that specifies sufficient monitoring, recordkeeping, reporting, and actual PTE limits.

6. *Notification of Area Source Status*

The new section 63.1(c)(6) should require notification to EPA when a major source becomes an area source.

ALTERNATIVE APPROACHES

Based on the concerns outlined above coupled with the desire to provide incentives for sources to engage in pollution prevention activities, the Regions are offering the following suggestions for potential alternative approaches for this rulemaking. We believe it is important to consider these alternatives, and other viable approaches, in order to continue achieving the intended maximum emissions reductions of HAPs, while still providing incentive for sources to implement pollution prevention practices. We recommend that EPA request public comment on these alternative approaches.

1. Finalize Pollution Prevention Rulemaking

The preamble of the draft rule mentions the proposed pollution prevention rule amendments (68 FR 26249, May 15, 2003), which were intended to provide regulatory relief to facilities that use pollution prevention to achieve and maintain HAP emission reductions equivalent to, or better than, the MACT level of control required under the NESHAP. EPA proposed two options in the proposed pollution prevention rule amendments. First, if a facility completely eliminates all HAP emissions from all of its emissions sources regulated by the MACT standard, then it could request to be no longer subject to that MACT standard. Second, if a facility that is subject to a MACT standard uses pollution prevention to reduce its HAP levels to less than the emission levels required by the MACT standard, then that facility could request alternative compliance requirements that would amount to some regulatory relief. To provide the desired regulatory relief sought by the current draft proposal, EPA should consider finalizing the proposed pollution prevention rule amendments in lieu of, or in addition to, the strategy described in the draft proposed amendments to the General Provisions of 40 CFR Part 63.

2. *Examine Appropriateness of Synthetic Minor Limits Standard-by-Standard*

There may be certain MACT standards where it would be appropriate and beneficial to allow a source to take synthetic minor limits and to thus comply with MACT requirements via pollution prevention activities rather than by employing prescriptive control technologies -- for instance, source categories that lend themselves to replacing HAP-containing materials with non-HAP materials. However, there are many source categories for which this approach does not provide environmental benefits, such as those categories for which the MACT standard requires the installation of controls to minimize emissions of HAP byproducts. A more justifiable and environmentally protective approach would be to examine and modify MACT standards on a case-by-case basis.

3. *Restrict Instances in which a Source May Take a Synthetic Minor Limit*

Another alternate approach would be to proceed with a general rule, such as the one proposed, but to limit instances in which a source could take synthetic minor limits after the compliance deadline of the MACT standard. Suggested allowable instances include sources that eliminate or reduce the use of HAP materials, maintain a level of control

equivalent to the MACT level of control, or are subject to categories where area source MACT requirements have been promulgated.

4. *Case-by-Case Determinations by the Administrator*

Another alternate approach could be to revise the 1995 guidance or the General Provisions of 40 CFR Part 63 to allow sources the opportunity to petition the Administrator to request synthetic minor limits after the compliance deadline of the MACT.

5. *Alternative Compliance Options under the MACT*

Another recommendation is to consider revising the MACT standards to allow sources to take synthetic minor limits after the compliance deadline, but to continue to require some monitoring and recordkeeping pursuant to the MACT standard. In other words, allow sources to take a synthetic minor limit as an alternate compliance option while maintaining compliance assurance.

GENERAL EDITS AND COMMENTS

New area sources

Unlike the OIAI policy, the draft proposal does not distinguish between new and existing sources. The preamble should clarify that 40 CFR 63.6(b)(7) requires a new or reconstructed area source that becomes major to comply with the relevant standard upon startup.

Specific MACT standards

1. *Degreasers*

One Region mentioned that sources subject to the Halogenated Solvent MACT standard (Subpart T) have previously requested to take limits on PTE after the compliance date to be deferred from title V permit requirements. On March 23, 2000, William Harnett issued a clarifying memo to the OIAI policy that explains that these degreasers may not take restrictions on PTE after the compliance date to be deferred from title V. Language should be added to the preamble about the halogenated solvent rule to make it clear that these sources may now take PTE limits to avoid title V.

2. *Dry Cleaners*

One Region mentioned that the Dry Cleaning MACT standard (Subpart M) specifies two categories of area sources: large area sources and small area sources. Did the OIAI policy apply to large area sources? Will these sources be affected by the draft proposed changes? If so, how?

Inconsistency with other programs

On November 29, 2005, EPA published in the Federal Register the final phase 2 rule to implement the 8-hour ozone National Ambient Air Quality Standard. See 70 FR 71611. In this notice, EPA indicates that sources that were required to obtain title V permits because they were major under the now-revoked 1-hour ozone standard are still required to have a title V permit, even though they are no longer major under the 8-hour ozone standard. The policy indicated in the draft revisions to the General Provisions of 40 CFR Part 63 may be seen as inconsistent with the phase 2 implementation rule for the 8-hour ozone standard. EPA may want to address the two approaches in the preamble to this proposed rule change.

Page 1

1. *MACT Acronym*

The 1995 guidance is referred to as a memorandum entitled "Potential to Emit for Maximum Achievable Control Technology (MACT) Standards..." The term "Maximum Achievable Control Technology" is not actually spelled out in the subject of the guidance (it is only abbreviated). Since this is a title, in quotes, "Maximum Achievable Control Technology" should not be spelled out here.

2. *Confusing Sentences*

The last two sentences on page 1 are confusing and should be revised to read: "These amendments would replace a policy described in a May 16, 1995, EPA memorandum ('Potential to Emit...,' May 16, 1995, from John Seitz...to EPA Regional Air Division Directors). This memorandum ~~and~~ specif~~y~~ies how a major source may become an area source by limiting its potential to emit...HAP...to below the major source thresholds of 10..tpy...or 25 tpy...before the first major compliance deadline. If today's proposed action is finalized, a ~~A~~ source attaining..."

Page 5

Regulated Entities

The second to last sentence on page 5 reads "Categories and entities potentially regulated by this action include all major sources..." Given that some sources currently complying with MACT standards may actually be minor sources (i.e. they've reduced emissions to below the major source threshold at some point after becoming subject to the MACT), this sentence should be revised to read "...include all sources subject to MACT requirements for major sources."

Page 13

Confusing Example

The preamble gives an example at the bottom of page 13 of a source with post-MACT emissions above major source levels. According to the preamble, this source will not reduce emissions of one HAP that is not regulated by the MACT unless it is allowed to obtain synthetic minor limits to avoid MACT. This example is confusing. It is also unlikely that this is a common situation, and therefore should not be used as an example in the preamble to justify the rulemaking. Finally, the example raises the question of why the MACT standard is not being revised to require control of this one HAP or whether this HAP will be required to be controlled by another MACT standard with a future effective date.

Page 14

1. *Confusing Example*

The example given at the top of page 14 is fairly confusing on first read and should be clarified if possible.

2. *Clarification*

The second to last sentence on page 14 states: "A major source, therefore, could initially be subject to a MACT standard, apply MACT, and in doing so become an area source." The preamble is unclear as to whether it is addressing PTE or actual emissions. The sentence suggests that a source's actual emissions are enough to make it an area source; the preamble should make it clear that complying with a MACT standard alone is probably not sufficient to limit PTE, and that a source would most likely also need to take limits on production or hours of operation.

Page 18

Practicable Enforceability

On page 18, the preamble states, "These permitting mechanisms are practicably enforceable in that they provide for sufficient monitoring, recordkeeping, and reporting..." However, because we are not being prescriptive in exactly what mechanisms or permitting programs are to be used in limiting PTE, we should not make presumptions about the adequacy of monitoring, recordkeeping, and reporting. Instead we should state that "These permitting mechanisms may be practicably enforceable if they provide for sufficient monitoring..."

Attachments

Senator BARRASSO. And I would like to use a little of my time to interject and respond to comments on the EPA's once in, always in policy. Because in 2017 the State of Connecticut supported the EPA's decision to withdraw the policy. As a matter of fact, the State of Connecticut said, "Such a policy discourages pollution prevention efforts and often forces business owners with very small actual hazardous pollutant emissions to expend significant resources not consistent with air emission and health benefits achieved. State and Federal regulatory agencies." This is the State of Connecticut going on, "State and Federal regulatory agencies also must expend significant resources on compliance and enforcement efforts for these facilities with small actual emissions often gaining little in air quality improvement."

So I ask unanimous consent that the entire statement be included in the record.

[The referenced information follows:]

Connecticut Department of
ENERGY &
ENVIRONMENTAL
PROTECTION

79 Elm Street • Hartford, CT 06106-5127 www.ct.gov/deep Affirmative Action/Equal Opportunity Employer

May 15, 2017

Scott Pruitt, EPA Administrator
United States Environmental Protection Agency Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, DC 20460

RE: ***Docket ID No. EPA-HQ-OA-2017-0190; Evaluation of Existing Regulations, Executive Order 13777***

Dear Administrator Pruitt:

Under the Clean Air Act Amendments of 1990 (CAA), the primary responsibility of the United States Environmental Protection Agency (EPA) is to provide leadership for the development of cooperative Federal and State programs to control air pollution and protect public health. States are dependent on EPA's leadership to set and implement national standards in a timely manner, address mobile source emissions, and resolve interstate transport of air pollutants to create a national level playing field for air quality.

The President's Executive Order 13777 provides an opportunity to identify the many ineffective and obsolete air quality programs that consume State and Federal agency resources with little air quality benefit. Some specific areas that we recommend for replacement or modification to improve efficiency and air quality outcomes are the following:

- Create a full ozone transport remedy under CAA section 110(a)(2)(D). To date, EPA's partial remedies to air transport under the Clean Air Interstate Rule and Cross-State Air Pollution Rule have imposed significant administrative burdens on many states while leaving many northeastern states, such as Connecticut, continuing to suffer the health impacts of transported air pollutants. EPA should cease current efforts to create yet another partial remedy and completely resolve the transport problem.
- Update the federal aftermarket catalytic converter policy. EPA's current policy for aftermarket catalytic converters[1] does not reflect the significant changes in automotive technologies and vehicle emission standards. An updated policy would reduce emissions of nitrogen oxides (NOx) from mobile sources significantly, thereby reducing burdens on public health and assisting states in their efforts to comply with federal ozone standards.

---

[1] *Notice of Proposed Enforcement Policy regarding the "Sale and Use of Aftermarket Catalytic Converters,"* 51 FR 28114 (August 5, 1986).

- Update the federal consumer product and architectural coatings programs. The federal consumer product and architectural coatings programs[2] are nearly 20 years old and fail to reflect current product ingredients and volatile organic compound (VOC)-reduction potential. Updated programs would yield significant reductions in emissions of VOC, thereby reducing burdens on public health and assisting states to comply with federal ozone standards.
- Issue control technique guidelines as national regulations. EPA's current two-step process of issuing "control technique guidelines" in the form of recommendations for states and then requiring states to adopt the guidelines as regulations so the requirements apply to regulated facilities is inefficient and unfair. States that are slow adopters benefit from the resources saved in not adopting regulations while the transported pollutants harm downwind states. If the guidelines were issued as regulations and applied directly to the regulated facilities, VOC reductions would be achieved more quickly, more uniformly and absent much unnecessary administrative and enforcement action.
- Eliminate the "once in, always in" policy[3] for MACT sources located at facilities with *potential* emissions that exceed major source thresholds for hazardous air pollutants. EPA's 1995 policy, still in effect, requires that a facility with *potential* emissions that exceed a major source threshold for hazardous air pollutants to always be subject to a "maximum achievable control technology" (MACT) standard of control and carry the additional burden of obtaining a Title V permit, an expensive and complicated obligation that continues in future years. Even if the facility owner subsequently takes action to reduce the facility's *potential* hazardous air pollutant emissions to a level below the major source threshold, the facility owner still must comply with the MACT standards and maintain a Title V permit. Such a policy discourages pollution prevention efforts and often forces business owners with very small *actual* hazardous pollutant emissions to expend significant resources not consistent with the air emission and health benefits achieved. State and federal regulatory agencies also must expend significant resources on compliance and enforcement efforts for these facilities with small actual emissions, often gaining little in air quality improvement.

Connecticut depends on EPA's leadership to provide healthy air to our citizens. We remain committed to the strong partnership we have forged over the years in our fight for clean air. To that end, we would be happy to provide additional information concerning our recommendations.

Sincerely,

Robert J. Klee
Commissioner

---

[2] National Volatile Organic Compound Emission Standards for Consumer Products, 40 CFR 59, Subpart C; and National Volatile Organic Compound Emission Standards for Architectural Coatings, 40 CFR 59, Subpart D.

[3] John S. Seitz, *Potential to Emit for MACT Standards – Guidance on Timing Issues*. May 16, 1995

Senator BARRASSO. Senator Rounds.

Senator CARPER. If I could just say, it would be interesting to know if the current Governor of Connecticut shares those same views. We will have to find out. Thank you.

Senator BARRASSO. Senator Rounds.

Senator ROUNDS. Thank you, Mr. Chairman.

Administrator Pruitt, Senator Markey and I actually served together for the last 2 years on a subcommittee with oversight of the EPA. One of the items that I think we would both agree on, coming from different political approaches, was still the idea that sound science was going to be critical in our discussions.

I would like to go back just a little bit; we have had Senator Markey make his statements and express his concerns versus the existing, as he identifies it, a gold standard. But I didn't hear the opportunity for you to respond and to share your thoughts on this. I would like to give you an opportunity to share your thoughts and perhaps analyses on the decision that you have made and the reasoning behind it.

Mr. PRUITT. Yes, the Chairman, I think—thank you, Senator—and I think the Chairman just made reference to that, too, with his comments. The once in always in decision was really about incentivizing investment by a company to achieve their outcomes for the environment. Under statute, there are entities called major emitters. All this policy says is those major emitters make investment and achieve the outcomes to improve air quality, or whatever their objective is, is they meet those standards, they ought to be rewarded and not have to be treated as a major emitter if they are no longer in that category.

Senator, the issue is, if you are a company, and you invested hundreds of millions of dollars to improve outcomes, and you were considered a major emitter before, you ought to be considered a minor emitter under the statute, once you make those investments. This rewards investment and conduct to achieve better outcomes.

So my response to you, with respect to all those pollutants, is absolutely what I believe, that I believe that we can achieve better outcomes through this kind of policy by rewarding investment and encouraging companies to do that.

Senator ROUNDS. I'd like to take another step down that same line, and that is with regard to sound science. We had a lot of discussion about the need to return back. Many of us feel that in some cases, on either side of the aisle, we either win or we lose when more information is interjected. I think we take our chances, and we look at the best sound science available to us.

Would you explain the steps that you have taken to make sure that the agency decisionmaking is based on the most current, best available science? Can you elaborate on how your new guidance on the role of scientific advisory boards and conflict of interest will enhance the use of sound science at the agency?

Mr. PRUITT. As you are aware, Senator, and members of the Committee are aware, we have 22 advisory committees that are at the agency: the Science Advisory Board, the CASAC, BOSC, the Board of Science Counselors are 3 of those 22. And members of those committees historically have been able to serve while receiving grants and also providing independent counsel under the stat-

ute to the agency as far as rulemaking. That is something from my perspective that is not consistent with providing independence, if they are receiving a grant, and there are oversight responsibilities at the agency with those members that serve on those advisory committees at the same time that they are rendering counsel on the others.

So we established a policy that if you want to continue receiving a grant providing hope to the agency on that side of the ledger, you can continue or you can continue serving as a member of the committee, but you can't do both. Because that goes to the independence of the review with respect to the integrity of that process. So that was the heart of the policy initiative that we adopted.

Senator ROUNDS. Thank you.

There has been a lot of discussion back and forth about biofuels and all sorts of items like that. I am just curious—I have focused on, particularly in South Dakota, corn ethanol is a critical part of our economic activity. We also think we have a long term opportunity to add corn ethanol as a very valuable octane enhancer with regard to liquid fuels.

I am just curious, I think it is an item that I suspect you spend some time on with regard to all of those issues. I would just like your thoughts. Are we reasonable in a discussion long term about the viability and the need for octane enhancements with regard to fuel standards and so forth coming of age?

Mr. PRUITT. I think this goes a little bit to the questions that the Senator just raised on fuel efficiency standards, on CAFE review. I think the agency long has not been considerate of the fuel side of the ledger as far as how to achieve better outcomes. High octane is one of those. Europe has looked at that rather extensively, implementing that rather extensively. We have not. It has been one of the design element of the vehicles, which obviously is important. The fuel side is equally important.

So as we go through the CAFE process, we are in fact looking at those kinds of issues.

Senator ROUNDS. OK, and that includes the ability and the most efficient ways of delivering octane from any one of a number of different sources, including ethanol in the future.

Mr. PRUITT. Yes. We are agnostic about the source. It is more of just a high octane kind of approach generally.

Senator ROUNDS. Thank you.

Thank you, Mr. Chairman.

Senator BARRASSO. Thank you, Senator Rounds.

Senator Merkley.

Senator MERKLEY. Thank you, Mr. Chairman.

During the time that you have now been Director, the agency has taken 15 actions related to air quality. Fifteen of those diminish air quality, and zero of them improve air quality. And yet I heard from you quite a bit today about your interest in air quality. But right now you are zero for 15.

So my question is, how many of those 15 actions were supported by the American Lung Association, which has made air quality a significant part of its advocacy effort?

Mr. PRUITT. I am not sure, Senator.

Senator MARKLEY. Well, it is zero. As you would expect, since 15 actions have diminished air quality. And how many of them have been supported by the American Academy of Pediatrics?

Mr. PRUITT. I am not sure.

Senator MARKLEY. Well, do you want to take a guess?

Mr. PRUITT. I am sure you will advise me.

Senator MARKLEY. Well, if I was giving you advice, I would say, actually run the agency to improve air quality, rather than to diminish it in areas such as ozone and smog and methane and mercury. And the list goes on and on.

Mr. PRUITT. One of those issues, Senator, is an example on ozone. We are implementing the 2015 standard as we speak. On methane, I have indicated that——

Senator MARKLEY. Well, I will have you submit your extensive answer for the record, because I know you are very good at filibustering, but we would like to cover as much material for the public as possible. I will note on ozone, you delayed defending and complying with the ozone rule on April 7th, 2017.

But let's turn to asbestos. To my colleague, you answered that there were a number of items you thought didn't contribute to health when you increased the amount of pollution. How about asbestos? Have you increased the amount of asbestos pollution? Does it contribute to Americans' health?

Mr. PRUITT. No. It is something we ought to seek to do all we can to eradicate.

Senator MARKLEY. Thank you. That really is supported by the scientists. The Center for Disease Control reports that malignant mesothelioma is a neoplasm associated with occupational environmental inhalation exposure to asbestos. It makes sense that you would have that position. Patients have a median survival of approximately 1 year from time of diagnosis.

So in this particular area, the President has been very clear about his position, which is the opposite of your position. So I just want to be absolutely clear. You disagree with the President when he says that asbestos is 100 percent safe?

Mr. PRUITT. Well, disposal issues with respect to asbestos I think are some of our initial challenges, and we are working through those.

Senator MARKLEY. I am not asking about disposal. I am asking if you agree or disagree with the President when he says asbestos is 100 percent safe.

Mr. PRUITT. Senator, I think I have indicated to you that asbestos, it is actually one of the priority chemicals we are reviewing with respect to the TSCA program.

Senator MARKLEY. Thank you. And in that regard, there is a group that is a major importer of asbestos into our country; 95 percent is imported. It is seeking an exemption from the asbestos standard, whatever that might be that eventually comes out of the EPA. Are you inclined to grant an exemption for the group that imports 95 percent of the asbestos into the United States?

Mr. PRUITT. Senator, that is something I would have to look into, the status of that petition. I am not familiar with the status at this time.

Senator MERKLEY. OK. But conceptually, the standard doesn't mean much if 95 percent of the imports of the asbestos is exempted from the standard.

Mr. PRUITT. Yes, as I indicated, I would have to check on the status and report back to you.

Senator MERKLEY. Well, I encourage you also to look at Canada and to look at Brazil, which have reached the logical conclusion, where we started from, that asbestos is hazardous, and they have banned it. Also, there is an emphasis at the EPA now to only look at the production of new items that have asbestos in them, while ignoring the vast amount of asbestos that is already in the environment and causing significant problems, because it frays, and it therefore causes contamination. Containment is not complete.

Will you commit to taking on asbestos, both with the new asbestos that is being put into products but also in terms of the existing asbestos?

Mr. PRUITT. It is one of those priority chemicals that we are reviewing under TSCA, Senator, and I can tell you that the legacy issues that you make reference to is very important. That is the reason I mentioned disposal earlier.

Senator MERKLEY. A recent report noted that although it is one of the priority chemicals that it and nine other of the priority chemicals are being slow walked in the agency. Are you slow walking the priority pollutants for Americans?

Mr. PRUITT. No, Senator. As you know, under the TSCA law, we had obligations last year to adopt three rules consistent with implementation. We achieved those. We have actually added resources in the office to address a backlog of chemical review. So no, it has been an absolute priority during our first year.

Senator MERKLEY. Well, outside observers are finding the opposite. So I do hope that we will get details from you showing that in fact you are working hard. This is a singular bipartisan accomplishment of this Committee, getting the TSCA Act passed. And it would be nice to see it implemented aggressively.

Thank you.

Senator BARRASSO. Thank you, Senator Merkley.

Senator Van Hollen.

Senator VAN HOLLEN. Thank you, Mr. Chairman.

Thank you, Administrator Pruitt. I appreciate the exchange you had with Senator Cardin on the Chesapeake Bay. I am still hoping you will prevail upon the Administration to put the $73 million or more in for the Bay program.

You would agree, would you not, that it is important that EPA's decisions be based on the facts, be based on merit, be based on the law and not on politics? Would you agree with that?

Mr. PRUITT. Absolutely, Senator, in the sense that as we do rulemaking, as you know, we have to build a record. And the record is based upon——

Senator VAN HOLLEN. I don't mean just that, though. I mean in your procurement, in your contracts, wouldn't you agree it needs to be based on the law and the merits, not on politics?

Mr. PRUITT. I believe generally what you are saying, yes.

Senator VAN HOLLEN. Generally?

Mr. PRUITT. Yes. I am not—I meant——

Senator VAN HOLLEN. Well, it disturbed me to find this report back in December, it was headlined "EPA Contractor has spent past year scouring the agency for anti-Trump officials." In an exchange with one of my colleagues on the Republican side who asked you about EPA employees and morale, you said you don't think there is any reason for bad morale. Are you familiar with this article?

Mr. PRUITT. I am not.

Senator VAN HOLLEN. It is a New York Times piece.

Mr. PRUITT. I am not, Senator.

Senator VAN HOLLEN. Well, you should be, because Senator Whitehouse and Senator Harris have written you a letter about it that you haven't responded to. What the article stated was that the EPA contracted on a no bid basis with an entity called Definers Public Affairs. Are you familiar with that entity?

Mr. PRUITT. I am familiar with the clipping service that we have. I think that is what that is. So I am familiar with that entity.

Senator VAN HOLLEN. That is right. So this is a clipping service, the co-founders of the clipping service are both well known Republican operatives. And they got a no bid contract. Can you commit to the Committee that you will be responding to the letters from Senators on this Committee regarding what happened in this case?

Mr. PRUITT. Yes. Yes. It is my understanding that the contract was actually $87,000 less than what had been paid the year before for clipping service.

Senator VAN HOLLEN. That is right. Is it appropriate that this entity was doing searches on EPA employees to determine whether or not they were "part of the resistance"?

Mr. PRUITT. And I am not familiar with that happening. But I will say this to you, the contract has actually been terminated to date. But we will provide additional information to you.

Senator VAN HOLLEN. OK. The reason it really caught my eye was in connection with something that Senator Cardin raised. I appreciate your mentioning that the decision to end the contract for the Chesapeake Bay Journal, known as the Bay Journal, is being reconsidered. It should not have gotten to this point. It worries me, as a window into politicization at the EPA, that is captured in this other article as well. Because what happened in that case was it was shortly after the Bay Journal published an article. And there are lots of articles and opinion pieces in the Bay Journal. Shortly after they published an article questioning and criticizing the Administration's position on some environmental issues, especially climate change, and the impact that could have on the Chesapeake Bay. I encourage you to go to the Naval Academy, because there they talk about the risks of rising sea level in Annapolis, on their operations there and around the world.

But the Bay Journal had a piece in there, and it was shortly after that that its contract was terminated despite a good performance review from EPA in April. And the retired head of the Bay program, just earlier this month, in an interview to Energy and Environment Daily, said that it was politics that killed the funding for the Bay Journal.

Have you looked into this issue at all?

Mr. PRUITT. As I shared with your colleague, Senator Cardin, about this, it is something that is under reconsideration. I am familiar with it at this point. We are taking steps to address it.

Senator VAN HOLLEN. OK. Well, Senator Cardin and I wrote to you back in October on this issue. We would appreciate a written response as well.

But in an exchange that the folks at the Bay Journal had with the EPA folks making the decision, specifically John Konkus, who was on the phone with them, who is your Assistant Administrator for Public Affairs, he reportedly said the following. This is John Konkus: "Well, everybody knows that the American public doesn't trust the press, and he saw no reason for us to fund the Bay Journal."

Is that a position that EPA takes regarding its review of contracts like this?

Mr. PRUITT. I think I have indicated, Senator, that the contract is under reconsideration, and we are going to deal with it fairly.

Senator VAN HOLLEN. I understand. But you understand that this is now under litigation. And my concern is a broader issue, right? We should never have gotten to this point. We should not get to the point where EPA is making politically driven decisions on contracts where EPA is previously, ever, on political grounds. This is one where EPA found them to be in full performance.

So I just hope you will work with us to get all the documents regarding this decision. It is a small contract. It is meaningful to the Bay Journal, which assembles a lot of this information. But I am most worried about it, also in combination with other stories about political decisions in contracting coming out of the EPA.

So Mr. Chairman, I hope we will agree on a bipartisan basis that no agency should be basing its decision on politics. Again, I appreciate your review of this decision. But we really need to get to the bottom of how it happened so that there is integrity in the process. Thank you.

Senator BARRASSO. Thank you, Senator Van Hollen.

Senator Sullivan.

Senator SULLIVAN. Thank you, Mr. Chairman.

Administrator Pruitt, good to see you. I am glad you are here. I heard it has been going great.

It is good to have you here on a regular basis, so I appreciate that. I also appreciate the meeting you and Senator Whitehouse and I had recently. I am not sure if he mentioned it. I am actually serious; we had a very good meeting over in your office, the three of us and your staffs.

Great to see Senator Van Hollen here in a Committee that actually gets a lot of stuff done. We welcome him.

I do want to mention on that issue of marine debris that you and Senator Whitehouse and I talked about, we do want to look at opportunities for the EPA—in addition to NOAA and other Federal agencies—to play an important role on that. It is a very strong—there is a lot of strong bipartisan support on this issue, which is a huge environmental issue. It impacts my State, it impacts Rhode Island, it impacts every State, really, not just States with coastlines but every State in the country. I know we had a lot of follow

up from our meeting, but I appreciate your working with me and Senator Whitehouse on that.

I also appreciate, at the outset, the Chairman mentioned some of the things you have done. Your focus, as you said, during your confirmation hearing, on the rule of law process, which is important, certainly important in my State. You made some decisions recently with regard to Pebble Mine and others that I think you are focused a lot on that process.

And on the WOTUS rule. Some of the complaints here, on this side, the vast majority of the States in America, Democrat and Republican-led States, were opposed to the WOTUS rule. I think there were 30 States that sued the Federal Government. There was no process. That was a huge Federal overreach. I appreciate your drawing that back. You have the vast support of the majority of the States and American citizens on that one. I just want to thank you on that.

I do want to mention another one that is actually very important to me, and I am really glad that you highlighted it. Two, actually, in your opening testimony. You mentioned lead with regard to water infrastructure, water and sewer. I think that is important. And I think you can get a lot of bipartisan support on that.

I do want to remind you, though—and we have talked about it a lot—after the Flint, Michigan, scandal, really, occurred, a lot of people were talking about how we need to address aging infrastructure. My own view, though, is we need to address communities who have no infrastructure first, like over 30 communities in Alaska that don't have water or sewer systems, that don't have clean water, that still use what are called honey buckets, which don't smell good; they don't small like honey. It is actually American citizens removing their own human waste from their house because they don't have sewer systems, and putting them in a lagoon. American citizens. It is a disgrace.

We passed a bill, a bipartisan bill last year, last Congress in this Committee that significantly advances funding for that, for communities that don't have water and sewer. In America? In America. Thousands of my constituents. I certainly want your support on that. Can you comment on that? I would like you to get to that before you get to the lead issue. Because it is a disgrace, right? Whether you live in Alaska or—no American citizen should live in a community where it is essentially like a third world country.

Mr. PRUITT. Yes. I think this, Senator, actually goes to part of the President's infrastructure proposal. As I think you are aware, 25 percent of the moneys that are a part of the infrastructure package are going to go to rural communities across the country. I think water infrastructure is terribly important, as you have identified. So I think the infrastructure opportunity we have, as we go to the first quarter and second quarter of this year, hopefully we will be able to address those issues in that package.

But I do think with respect to lead, it is also an infrastructure issue, aging infrastructure. But those rural communities that even have it also need upgrades and corrosion control measures and the rest. So there are opportunities across the spectrum with respect to these matters.

Senator SULLIVAN. Great. Let me just touch on another one. I would like to be able to work with you and your team on an issue that you raised here, on abandoned mines. With regard to abandoned mines, it is actually not just abandoned mines in America. We have a significant challenge with our good neighbors to the north, not really to my north, they are actually to my State's east, Canada, where there are trans-boundary mines that impact the waters and fishing and tourism of southeast Alaska. These are mines that are in Canada, some of which have been abandoned, some of which have recently had huge spills, like the Mount Polley Mine in British Columbia.

I am actually going to be heading to Canada this weekend to meet with senior officials there with my Lieutenant Governor to talk about this trans-boundary mine issue and others. But having the full weight of the Federal Government, the State Department, and the EPA helping us on this—well, to be perfectly honest, Canada has not acted like a good neighbor on this. They are ignoring our concerns, and they are very legitimate concerns.

So if I could get your commitment to help me and my State with regard to not just abandoned mines, which I think is a great topic to focus on, but trans-boundary mining in Canada, which negatively impacts, certainly has the potential to negatively impact, clean water in America. Can I get your commitment to work with us on that, and the State Department, on that issue?

Mr. PRUITT. Yes, and we should work with Ambassador Craft as well on those issues.

We have similar challenges on the southern border, not with respect to mines, but in Tijuana and California, with respect to water issues, sewage issues, with Mexico. So we do have some boundary issues that are very, very important, air and water, that we need to work with our neighbors to improve outcomes.

Senator SULLIVAN. Great. I look forward to working with you on that. Thank you very much.

Senator BARRASSO. We are heading now into the second round of questions, the 2 minute round of questioning.

Senator Carper would be first, although if you wanted to relinquish your time and call on Senator Whitehouse.

Senator WHITEHOUSE. Thank you. Two minutes is short, so I will try to be as quick as I can.

I mentioned the May 5th day that you were going down to speak to the Republican fundraiser in Oklahoma. Do you recall off the top of your head right now whether you actually went to that? Do you remember?

Mr. PRUITT. I did not attend, Senator. We did in fact receive an ethics review of that, and I was actually authorized to go. But when the event was publicized, they did it incorrectly.

Senator WHITEHOUSE. Would you tell us what you actually did that day?

Mr. PRUITT. I am sorry?

Senator WHITEHOUSE. Would you tell us what you actually did that day, and unblock your schedule?

Mr. PRUITT. Yes, we will provide the information pursuant to——

Senator WHITEHOUSE. Unredacted.

Mr. PRUITT. That is something that we will coordinate with this body.

Senator WHITEHOUSE. OK. Because I don't see why you would block out parts of your schedule. That is all we have, is the lunch.

Mr. PRUITT. And again, Senator——

Senator WHITEHOUSE. It is a long way to go for lunch with one man.

Mr. PRUITT. I did not attend that event, so the day could have been rescheduled entirely as far as activities.

Senator WHITEHOUSE. Well, we would never know it, because it is all redacted and blacked out. We don't see that.

Mr. PRUITT. We will look and see how productive we were that day.

Senator WHITEHOUSE. I would appreciate it.

The second thing is that I had a request in to you regarding the EPA scientists who were instructed not to speak and then withdrew themselves from the speaking role at the Narragansett Bay Conference. You may recall that, because it kicked up a big fuss in my area. And it even kicked up quite a national fuss as well, because it was a patent case of scientists being told not to speak about something that they had worked on for years.

What you answered in response to our questions about that was, "This will not happen again." And I am delighted that this will not happen again. I think you are right, that it should not happen again. What we have not been given is any explanation of how it happened, who told whom what. Could you please—I mean, I don't know why it is hard to get an answer, but will you guarantee that you will tell us how that happened and give us an actual explanation, looking back at how this happened, who told who what, what were the e-mail chains, whatever the story was? Let's get it out there.

Mr. PRUITT. And Senator, yes, in response to your other question, I am advised by staff that they did communicate to your office that I did not attend that event that you asked about. So that has been confirmed.

Senator WHITEHOUSE. Great. So now the question boils down to unblocking your schedule for that day.

Mr. PRUITT. We will work on those issues.

Senator WHITEHOUSE. I think that is a very soft yes. We will see where we go.

Senator BARRASSO. Senator Ernst.

Senator ERNST. Thank you very much.

And in your testimony, Administrator, you have highlighted how EPA is committed to undoing regulation that is strangling economic growth and job creation. I travel all 99 counties in Iowa, so I hear this from businesses and manufacturers who are experiencing now tremendous growth as a direct result from undoing some of those burdensome regulations.

How will the EPA continue to chart a path forward by returning power to the States and maintaining this economic growth trend?

Mr. PRUITT. Senator, that is the reason I mentioned in my opening comments the importance of the three principles, from rule of law to process to federalism. That isn't just simply academic. It is not just obligatory to say that. It is actually essential to how we

do business. Because when we adopt rules that are untethered to statutes, that means there is uncertainty. And most of the folks across the country that are regulated, they want to know what is expected of them, that it is grounded in the statutes that you have passed and that they can allocate resources to achieve those outcomes.

So those are very important principles, fundamental principles to achieve clarity, certainty, confidence in the American people that what we are doing is well grounded in both science and the law and that they can take confidence in our actions.

Senator ERNST. And in the remaining 45 seconds that we have left, I would like to allow you that time to answer any questions that maybe you didn't have enough time to answer.

Mr. PRUITT. You know, Senator, I think overall, sometimes on these issues around the environment, there are passionate issues on both sides. That is the reason I keep talking about civility and I keep talking about this approach doing business that tries to find the pro-jobs and pro-environment combination. We don't have to choose between the two. We as a country have always done that well. We don't celebrate our progress and our success enough.

We have reduced those pollutants under the Clean Air Act that we regulate under the National Ambient Air Quality Program by over 65 percent. We have made wonderful progress there. We in fact have reduced our CO_2 as a country by over 14 percent from the years 2000 and 2014. And it is largely through innovation technology, Senator Carper. Obviously, there are Government regulations involved, in the mobile sources, particularly. But it is a partnership, it is an approach that we as a country, I think, are setting the pace. It is striking the balance between a growing economy and protecting our environment, being good stewards of our environment going ahead.

Senator ERNST. And I appreciate that very much. Thank you for your partnership.

Senator BARRASSO. Thank you, Senator Ernst.

Senator Duckworth.

Senator DUCKWORTH. Thank you, Mr. Chairman.

Mr. Pruitt, I am holding in my hands a memorandum from the EPA dated March 21st, which is after you were confirmed as its head. I would like this memorandum submitted for the record, I ask unanimous consent.

Senator BARRASSO. Without objection.

[The referenced material was not received at time of print.]

Senator DUCKWORTH. Thank you.

It is titled Fiscal Year 2018 President's Budget, Major Policy and Final Resource Decisions. It communicates final resource levels and policy guidance to support the Environmental Protection Agency's fiscal year 2018 President's budget submission. In it, it lists elimination of the Great Lakes Restoration Program, numerous programs that we talked about, including my previous mentioning of the statement about shutting down EPA Office Region 5 as a rent cost avoidance measure, listing Potomac Yards North, Region 1, Region 5, and Region 9. You might want to make yourself familiar with this particular memorandum, as it is being submitted for the record.

I would like to go back to your travel, Mr. Pruitt. In addition to your hefty domestic travel schedule, you have taken at least four foreign trips, to include a recent trip to Morocco at a cost to taxpayers of $40,000, where according to the Washington Post you spent 4 days promoting the sale of American natural gas. Now, while your home State of Oklahoma is the third largest producer of natural gas in the country, I don't understand what the sale of natural gas has to do with the EPA's mission.

This is certainly inconsistent with your claim to bring back the basics, the vision of EPA. Natural gas, in case you were unaware, is under the jurisdiction of the U.S. Department of Energy. And promotion of natural gas is the kind of thing that the Secretary of Energy would do, or perhaps someone running for Governor of Oklahoma or some other elected office there, but not consistent with what the head of the EPA should be doing.

So will you provide this Committee, yes or no, with a detailed schedule of your meetings and receipts for international travel you have taken since being confirmed?

Mr. PRUITT. I will do so, because it will show that I have attended two countries, not four. So I am not sure where you got your information.

Senator DUCKWORTH. Well, the last two were canceled, Japan and Israel, during the shutdown.

Mr. PRUITT. We will provide that to the Committee, yes.

Senator DUCKWORTH. Wonderful; thank you. And can I assume that like all decent Americans, you did not find Morocco, a North African nation, to be a shithole when you visited?

Senator BARRASSO. The Senator's time has expired.

Senator DUCKWORTH. Thank you, Mr. Chairman.

Senator BARRASSO. Senator Gillibrand.

Senator GILLIBRAND. Thank you, Mr. Chairman.

Administrator Pruitt, as we have discussed previously, I am really concerned about the levels of a toxic PFOA and PFOS that have been found throughout New York State, from Hoosick Falls in upstate New York to Newburgh on Long Island. Just over a year and a half ago Congress granted EPA the authority to regulate the safety of chemicals when it revised the Toxic Substances Control Act, TSCA.

In that law, Congress instructed the EPA to consider the risks from all of the uses of a chemical that are "intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of." Your agency recently finalized its TSCA implementation rules. Despite Congress' very clear direction, those rules ignored the public's exposure to the past uses of chemicals called legacy uses. However, legacy uses pose risks to public health, because the past manufacturing and disposal of those chemicals can still contaminate groundwater as is currently the case with PFOA in Hoosick Falls, New York.

This means that EPA will likely not study the health risks from widespread exposure to chemicals like PFOA under the TSCA law. You have said that "any action by the EPA that exceeds the authority granted to it by Congress by definition cannot be consistent with the agency's mission." EPA's decision to choose to ignore the

clear intent of Congress is therefore not consistent with the agency's mission.

Will you please direct EPA to revise the TSCA implementation rules to comply with Congress' direction that all uses of a chemical, including legacy uses, are studied?

Mr. PRUITT. We are in fact going to look at foreseeable uses, as you have indicated. I am very concerned; PFOA and PFOS have not been manufactured or distributed since the early 2000s. So all the issues we have with PFOA and PFOS are in fact legacy issues.

Senator GILLIBRAND. Legacy, all of it.

Mr. PRUITT. And we are very much going to focus on that.

Senator GILLIBRAND. OK.

On the Hudson River, specifically, I would like to begin by saying that I was very glad to see yesterday's announcement that EPA is broadening the scope of its Hudson River cleanup analysis to look at sediment samples from the upper Hudson, the flood plain, and assess the impacts of contamination from the lower Hudson. As you know, the EPA is currently in the process of finalizing the 5 year review that examines the effectiveness of dredging for removing PCBs from the Hudson River.

I am very concerned that in the draft review report, EPA determined that while the remedy is not currently protective of human health and the environment, no additional PCB removal is needed, even though restrictions on the consumption of fish from the river are expect to remain for more than 50—five-oh— years. New York State and the U.S. Fish and Wildlife Service, both natural resources trustees for the Hudson River, strongly disagree with EPA's analysis. Will you incorporate the new sampling data in the 5 year review analysis?

Mr. PRUITT. We in fact are reviewing those samples as we speak. And so there has been no final determination on that. And I am concerned, as you are, there has actually been PCBs found in the flood plain.

Senator GILLIBRAND. Yes.

Mr. PRUITT. In the 40 miles that has already been dredged. So there is much work left to be done before we get clarity on that issue.

Senator GILLIBRAND. And will you personally review the final report before it is released to the public and ensure that all the concerns raised by the trustees and the public are fully addressed?

Mr. PRUITT. Yes, I will.

Senator GILLIBRAND. OK, third topic. In December EPA released a list of 21 Superfund sites that need immediate, intense action. Not a single one of the sites on the list is in New York State, despite the fact that there are currently 86 Superfund sites in our State. EPA has offered no detailed explanation of how it arrived at this list.

Additionally, it is my understanding that when a Freedom of Information Act request was filed, asking for documents associated with EPA's Superfund Task Force, the response was that not a single document from this 107 member task force existed, other than the final public memo. So that obviously is not true.

Will you commit to producing all documents related to how EPA developed the 42 specific recommendations on how to improve the

Superfund program and the immediate intense action list of Superfund sites within 15 business days?

Mr. PRUITT. We will deliver them to you by the end of the week.

Senator GILLIBRAND. Great. Given your focus on interest in Superfund sites, do you believe it is wise to cut the budget for EPA's Superfund program?

Mr. PRUITT. As indicated, Senator, with respect to the budgeting process, I have made it clear to this body, as well as to the House, that we will continue to work with you to make sure priorities are funded. I am concerned about orphan sites across the country in the Superfund portfolio. I think there are greater challenges beyond money, but money matters to our success in that side of our responsibility. So yes, we will continue the discussion with you.

Senator GILLIBRAND. Thank you.

Thank you, Mr. Chairman.

Senator BARRASSO. Thank you very much.

Before turning to Senator Inhofe, it was interesting, there was this full page article in the Washington Post, Friday, January 26th, 2018, about going through the work that the Administrator is doing with regard to Superfund, with maps of before and after, basically talking about the exceptionally good job that is being done by the Administrator of the EPA in addressing Superfunds. I don't know if you had seen that article, but I would recommend it to your attention.

Mr. PRUITT. If I may, Mr. Chairman, just for a second, in that regard, I think the sites that we highlighted in the last year, they are not meant to be exclusive. Those are sites that we see that immediate progress can be made within a timeframe. So that list will continue to be populated with new sites. So it is not an exclusionary list at all. It was a matter of providing focus to our Land and Emergency Management Office on getting achievement in each of those respective areas.

Senator CARPER. Mr. Chairman.

Mr. Chairman, I would ask unanimous consent to submit for the record Superfund materials, including several news articles about EPA's Superfund activities, including an article that found that the majority of the Superfund cleanups touted by Mr. Pruitt was the work of the Obama administration.

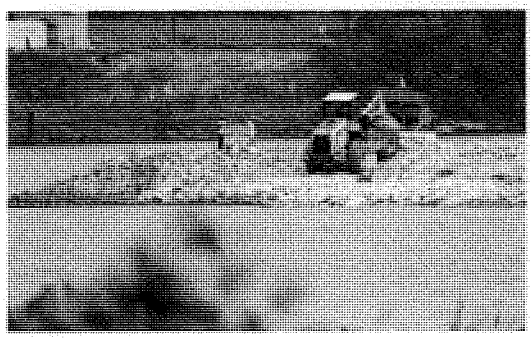
Thank you, Mr. Chairman.

Senator BARRASSO. Without objection.

[The referenced information follows:]

AP

EPA official speaks on risk of climate change to toxic sites



By MICHAEL BIESECKER
Jan. 19, 2018

https://apn

RELATED TOPICS
Climate
Climate change
Scott Pruitt
North America
Environment
Jerry McNerney
Donald Trump

More from Politics

WASHINGTON (AP) — A top manager who supervises the Environmental Protection Agency program responsible for cleaning up the nation's most contaminated properties and waterways told Congress on Thursday that the government needs to plan for the ongoing threat posed to Superfund sites from climate change.

The testimony by EPA Principal Deputy Assistant Administrator Barry Breen before a House oversight subcommittee conflicts with the agency's policy positions under President Donald Trump, who has called climate change a hoax. Breen's boss, EPA Administrator Scott Pruitt, is an ardent fossil fuel promoter who questions the validity of mainstream climate science.

Successfully manage CDM in the cloud
Overcome implementation challenges.
COAL
Get report

During a hearing Thursday, Rep. Jerry McNerney, a California Democrat, asked Breen whether extreme weather events like hurricanes and wildfires could damage the highly toxic sites and cause contamination to spread.

"We have to respond to climate change, that's just part of our mission set," replied Breen, a career official who leads EPA's Office of Land and Emergency Management. "So we need to design remedies that account for that. We don't get to pick where Superfund sites are. We deal with the waste where it is."

There are more than 1,300 Superfund sites in the U.S.

Under the Obama administration, EPA issued a robust plan for prioritizing cleanup and protection of toxic sites located in flood zones and areas vulnerable to sea level rise. However, a Superfund Task Force appointed by Pruitt last year issued a 34-page list of recommendations that makes no mention of climate change, flooding risks from stronger storms or rising seas.

EPA spokesman Jahan Wilcox did not respond to questions Thursday about whether Pruitt agreed with Breen's testimony or precisely what the agency is currently doing to address to risks posed to Superfund sites by climate change.

The Associated Press first reported in September that more than a dozen Superfund sites in the Houston area were flooded by heavy rains from Hurricane Harvey. Spills of potentially hazardous waste were reported at two of those sites, including a release of cancer-causing dioxin into the San Jacinto River.

A subsequent AP review of EPA records and census data revealed that more than 2 million Americans live within a mile of 327 Superfund sites located in flood-prone areas or those at risk from rising sea levels.

The Government Accountability Office told Congress earlier this month it was assigning investigators to study the risks to human health and the environment posed to Superfund sites by natural disasters.

EPA's 2014 Climate Adaptation Plan noted that prolonged flooding at low-lying Superfund sites could cause extensive erosion, carrying away contaminants as waters recede.

Pruitt says he has made faster Superfund site cleanups a high priority for the agency. Pruitt's task force on the issue is led by Albert "Kell" Kelly, a former Oklahoma banker with no experience as an environmental regulator.

Kelly had been expected to testify at Thursday's hearing, but was replaced by Breen due to what EPA told the House committee was a scheduling conflict.

AP reported in August that Pruitt hired Kelly as a senior adviser at EPA after federal financial regulators cited Kelly for unspecified violations while serving as the top executive at a community bank in Oklahoma. Kelly previously served as chairman of Tulsa-based SpiritBank, which provided a $6.8 million financing when Pruitt and his business partners purchased Oklahoma City's minor league baseball team in 2003.

Asked by Democrats for details about why Kelly was barred by the Federal Deposit Insurance Corporation

from working for any U.S. financial institution, Breen said Thursday that Kelly had elected to settle the case against him and "is fully willing to discuss this matter."

An email and voicemail to Kelly seeking comment on Thursday received no response. Wilcox also did not respond to a request seeking details about why the FDIC barred Kelly from the banking industry.

—

Follow AP environmental writer Michael Biesecker at www.twitter.com/mbieseck

McConnell withdraws Trump

WASHINGTON (AP) — Senate Majority Leader Mitch

4 days ago

Ad Content

Free 'House Flipping' Event In Washington

Promoted: Fortune Builders

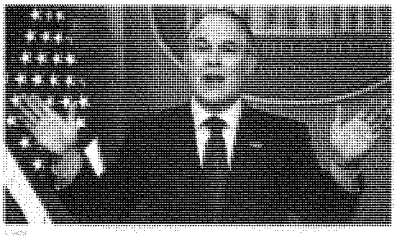
Code in Node.js, Java, Python, & Other Open Source Languages

Promoted: Microsoft Azure

EPA touts Superfund cleanups actually finished years ago

BY TIMOTHY CAMA - 01/05/18 04:10 PM EST

4,811



The Environmental Protection Agency (EPA) boasted this week about removing from its contaminated Superfund list sites whose cleanups were actually completed years ago.

An Associated Press analysis found that all seven of the sites that were partially or fully removed in 2017 were cleaned up before EPA Administrator Scott Pruitt took over the agency last year. But Pruitt sought to link the deletions to his work

to expedite Superfund cleanups and prioritize the program.

"We have made it a priority to get these sites cleaned up faster and in the right way," he said in a statement at the time, adding, "The Superfund program is carrying out the agency's mission of protecting human health and the environment more every day."

Superfund cleanups can take decades, and some of the sites taken off of the list had their work started in the 1980s.

There is often a delay in removing sites from the Superfund list due to administrative actions and pollution monitoring that must take place after work is complete, AP said.

Furthermore, the AP found that the pace of deletions by the Trump administration is, on average, slower than predecessors thus far.

The EPA took an average of more than 10 sites off the list during the Obama administration, including 11 in its first year. The Bush administration average was almost 18 and 30 in the first year, the AP found.

EPA spokesman Jahan Wilcox defended Pruitt's work.

"In 2016, President Obama's EPA cleaned up two Superfund sites, but rather than cherry-pick individual years, it would only be fair to judge us upon the completion of our tenure," he told AP. "Under Administrator Pruitt's leadership, we've completed the cleanup of seven toxic land sites and this is just the beginning."

The AP said the EPA did not respond to questions regarding steps the agency took under Pruitt to remove Superfund sites faster.

TAGS SCOTT PRUITT ENVIRONMENTAL PROTECTION AGENCY SUPERFUND

Senator BARRASSO. And without objection, I will submit this article.

[The referenced information follows:]

The Washington Post

Health & Science

At Superfund sites, Scott Pruitt could flip his industry-friendly script

By Brady Dennis and Juliet Eilperin January 23

Not long after Hurricane Harvey battered Houston last summer, Environmental Protection Agency Administrator Scott Pruitt stood on the banks of the San Jacinto River and surveyed a decades-old toxic waste site as divers checked whether the storm had unearthed dangerous chemicals.

Days later, he ordered two corporations to spend $115 million to excavate the contamination rather than leaving it covered. His dramatic decision put Pruitt in unfamiliar territory: Environmental activists cheered, while the targeted firms protested that the directive was not backed by science and could expose more people to health risks.

Pruitt's approach to the San Jacinto River Waste Pits, as well as to several other Superfund sites across the country, stands in stark contrast to the industry-friendly moves on everything from pesticide exposure to power plant pollution that have defined his first year at the EPA.

In pressing for aggressive, accelerated cleanups, he is butting heads with companies while siding at times with local environmental groups. His supporters, and Pruitt himself, say it is evidence he is reinvigorating a core function of the agency. His critics see it as a political move, an effort to protect himself against charges that he constantly favors corporate interests.

Yet Pruitt's attention is shifting the conversation in some beleaguered communities. Residents say they don't care what his motivations are — if they bring the results they have long sought.

"Scott Pruitt is probably the most important person right now in the lives of the people in this community," said Dawn Chapman, who lives with her husband and three children near a controversial site northwest of St. Louis.

The landfill there, known as West Lake, contains thousands of tons of radioactive waste from the World War II-era Manhattan Project. Chapman and other activists are pushing for significant excavation. Pruitt has promised them he will issue a decision within days.

There are signs he might seek more extensive — and expensive — removal than EPA staffers have recommended in the past. As is the case in Texas, the companies on the hook for the cleanup contend that years of scientific evidence show capping the waste in place would be safer, cheaper and completed sooner.

"Depending on the decision [Pruitt] makes," Chapman said, "he will probably forever remain the hero or the villain in the eyes of this community."

If he continues to propose aggressive actions across the country — his office last month published a list of 21 places in need of "immediate and intense attention" — it would represent one of the rare areas in which he has pushed to apply a cautionary approach when calculating the risk of exposure to environmental hazards.

Individuals familiar with the process, who spoke on the condition of anonymity to discuss internal deliberations, say Pruitt has asked agency staff briefing him on proposals at certain sites to flesh out more extensive remedies.

"In the briefings I've been in, he has set pretty high expectations for getting work done quickly. . . . The region will lay out a schedule. And he'll say, 'Can you do it sooner than that? Can you do it faster?'" said Jim Woolford, director of an EPA office that helps run the Superfund program. "It elevates the attention and the work that goes into making those decisions happen faster."

In short, Woolford added, "What gets watched is what gets done."

Peter deFur, who has consulted on Superfund for more than two decades, remains skeptical of the administrator's emphasis on speed.

"The whole thing just raises a big red flag to me," deFur said. While acknowledging that past EPA leaders have let some sites languish, he worries rushing to get locations off the program's National Priorities List could mean inadequate cleanups and expose communities to long-term harm.

Mathy Stanislaus, who oversaw the Superfund program in the Obama years, is wary of Pruitt's public posture. "Selecting a few remedies that are more expensive allows him to claim that he is protecting the environment," he said. "Politically, it's a counter against 'I'm just listening to industry.' "

With the San Jacinto site, one of the companies involved has questioned why Pruitt announced a final plan before all data on the hurricane's impact was in. "Removing the existing protective cap, which successfully withstood Hurricane Harvey, could result in significant damage to public health and the local environment," a spokesman for International Paper said in a statement. The other company that is liable is McGinnis Industrial Maintenance Corp.

Pruitt gave no ground in a recent interview with The Washington Post. "The [companies] are already barking about it, but they caused it," he said. "We're going to hold them accountable."

Still, Pruitt appears willing to alter Superfund plans to ease the burden on some firms. He is revisiting a decision the EPA finalized just before Barack Obama left office to clean up Portland Harbor in Oregon, which is projected to cost more than

$1 billion and take 13 years to complete.

During his first year in office, Pruitt has consistently listed the Superfund program as one of his top priorities, even as he has trimmed agency staff and rolled back a slew of other environmental regulations — and even as the Trump administration has proposed cutting the program's annual budget by 30 percent, or about $330 million.

At many contaminated sites Pruitt has singled out for attention, the EPA can legally force companies responsible for the pollution to pay for cleanups. At "orphan" sites, where the polluters have gone bankrupt, the federal government still shoulders most of the tab. The pot of available dollars keeps shrinking.

"This is about leadership and attitude and actually making decisions on how we're going to remediate these sites," Pruitt told the Post last year. In 2018, he said he hopes to remove as many as 22 sites from the more than 1,300 that remain on that National Priorities List.

Last spring, Pruitt issued a directive saying he planned to be directly involved in decisions about cleanups in excess of $50 million. He also established a Superfund task force to examine how to restructure the program in ways that favor "expeditious remediation," "reduce the burden" on firms responsible for such efforts and "encourage private investment" in the projects.

So far, however, Pruitt has few concrete results to tout.

The EPA this month heralded cleanups at seven toxic waste sites and credited Pruitt's leadership for their removal from the Superfund list. An Associated Press analysis noted the physical work at each was largely completed before President Trump took office.

Such cleanups are frequently massive projects that take decades. Although every administration can shape the outcome at a site, certain legal guidelines must be followed.

Among the nine criteria the EPA has to consider: Will the proposed approach protect human health and the environment? How permanent will the solution be? Will states and communities embrace it? What are the short-term risks?

Unlike with air and water pollution rules, which do not factor cost into the equation, the agency is required to show the proposed action is cost-effective given the public health risk posed under each specific scenario.

Albert "Kell" Kelly, the former Oklahoma banker whom Pruitt put in charge of revamping Superfund, said in an interview that Pruitt does not want "a shortcut of a remedy" with any case. "He wants to be sure that the remedy is a sound remedy for a long, long time."

The agency is laying the groundwork to defend Pruitt's decisions in court, Kelly said, with the administrator "trying to be very judicious in what he does."

Kelly has faced questions about his qualifications for the job, given his lack of environmental experience and his $125,000 fine last year from the Federal Deposit Insurance Corp. The FDIC also banned him from future banking activity.

He declined to elaborate on the FDIC settlement but called it a "highly frustrating" experience "which I could go into in depth, [but] I'm not sure that it's wise to do that."

As for his bona fides, "I never represented that I had an environmental science degree," Kelly noted, saying his main job on Superfund is to "bring parties together" and employ "management skills that, frankly, I've known for a long, long time."

The upcoming decision on West Lake will test not only those skills but also Pruitt's promises.

Both companies now responsible for the Missouri landfill, Republic Services and Exelon Corp., have urged the EPA to avoid widespread excavation that they say could stir up and spread dangerous pollutants. They back a solution similar to a George W. Bush administration plan to cap and monitor the site, which would be several hundred million dollars cheaper. Protracted litigation is likely if the agency rejects that idea.

The local activists who have spent years arguing for tougher action believe they have greater leverage with the Trump EPA.

"I have to give them credit. The experience has been night and day different," Dawn Chapman said. "I don't know what decision [Pruitt] is going to make at this site. But I do know that he will be the one to make it."

26 Comments

Brady Dennis is a national reporter for The Washington Post, focusing on the environment and public health issues.
Follow @brady_dennis

Juliet Eilperin is The Washington Post's senior national affairs correspondent, covering how the new administration is transforming a range of U.S. policies and the federal government itself. She is the author of two books—one on sharks, and another on Congress, not to be confused with each other—and has worked for the Post since 1998.
Follow @eilperin

Senator BARRASSO. Senator Inhofe.

Senator INHOFE. Thank you, Mr. Chairman.

Since we were in the other committee, not able to be here at this time, I was told there were a couple of things where you didn't have ample time to respond. Actually, there were two questions I was going to ask; I am going to go ahead, since I didn't get a chance to before. These were the subject matter that you didn't have time to respond to.

You have been vocal about the differences of the EPA being about stewardship versus prohibition. We have been through a period of prohibition. What is the difference, and how are you moving EPA from a policy of prohibition to stewardship?

Mr. PRUITT. Well, I think it is something that the American people, and I think this body, and as we do our work, we need to wrestle with what is true environmentalism. That is a very important question. I think as we ask and answer that question, to your question, Senator Inhofe, many look at that as a prohibition to say that even though we have been blessed with natural resources to, again, power the world and feed the world, that we put up fences and prevent the development of those resources. We just never have done that as a country. We have always been about implementing technology, innovation to achieve better outcomes as far as emission.

But the American people I think expect us to use the natural resources, focus on stewardship, and not let prohibition be our aim. So that is something we intend on talking about as an attitude as we go through 2018, and getting back to basics in these core, fundamental areas that we have already talked about as far as showing outcomes.

Senator INHOFE. What are some of the enforcement or response efforts that you believe show that you take your role as a steward of the environment under the law, that you take it seriously?

Mr. PRUITT. It is interesting, Senator Carper just made an entry in the record as far as the Superfund, and saying that that is the work of the previous Administration. Look, I mean, we take cases that come to us that the previous Administration began. But I will tell you, I am very proud of the work we have done over the last year getting accountability with respect to Superfund.

As an example, in Houston, Texas—I mentioned this earlier—there is a responsible party there that for years has simply put rocks on top of a site that has dioxin. And I went into Houston with our team in Region 6. We came up with a conclusion of $115 million, and we are enforcing it. The company has been very much barking or objecting to that. But we are given accountability with respect to cleanup.

So, Senator Carper, I think we as a team, I am very, very proud of the career employees as well as the appointees working together to achieve better outcomes in the Superfund area. That is one example of those.

Senator BARRASSO. Thank you, Senator Inhofe.

Senator CARPER. Could I just say something very briefly, this will be part of my time. To that point, as I understand, there are 300 Superfund sites yet to be cleaned up. We have an Administration——

Mr. PRUITT. More than that.

Senator CARPER. Over 300 yet to be cleaned up. We have an Administration that is asking for not more money to clean them up, but actually less money.

That is all. I yield back.

Senator BARRASSO. I still have a little time from my round.

Yes, sir.

Mr. PRUITT. There is actually 1,340-plus sites across the country that are yet to be remediated. Most of those sites have a responsible party—a company— that polluted that is responsible that has the money to do it. We have to have processes in place to hold them accountable to get those cleanups occurring. That is our focus, along with advising Congress on needs that we have on funding.

Senator BARRASSO. Senator Carper, we are going to head to Senator Merkley next.

Senator MERKLEY. Thank you.

Mr. Pruitt, you had talked quite a bit previously about having a Red Team, Blue Team exercise to examine the issue of climate change, global warming. Is that still part of your plan?

Mr. PRUITT. It is under consideration, Senator. The discussion is not whether, there are questions that we know the answer to, there are questions we don't know the answer to. For example, what is the ideal surface temperature in the year 2100 is something that many folks have different perspective on. So that Red Team, Blue Team exercise is an exercise to provide an opportunity to the American people to consume information from scientists that have different perspectives on key issues, and frankly could be used to build consensus in this body.

As you know, the Clean Air Act that was amended in 1990, as you look at it, many who are involved in that process recognize that CO_2 was not part of the discussion under Section 111. So we have much work to do legally and procedurally. But this is still under consideration.

Senator MERKLEY. So it is my understanding that the White House has asked the agency not to go forward with the Red Team, Blue Team.

Mr. PRUITT. That is untrue.

Senator MERKLEY. So the public reports were incorrect?

Mr. PRUITT. In this instance, yes.

Senator MERKLEY. Thank you.

Well, I will say that the perception of the Red Team, Blue Team was that your entire intention was to, on behalf of the Koch Brother cartel, continue to mislead American people about the very significant impacts of carbon pollution, casting doubt on established science, contrary to your contention that you like to listen to scientists. Is it in fact your sense that the scientific world is split down the middle on this question of whether carbon dioxide is warming the planet and causing significantly damage in many ways to rural America, to our farming, to our fishing, and to our forests?

Mr. PRUITT. This idea, the Red Team, Blue Team exercise, did not originate with me. It originated with the scientist from NYU called Steve Koonin, who actually worked for the Obama administration in the Department of Energy. This is something that we are

considering based upon that original publication in the Wall Street Journal.

Senator MERKLEY. I will be watching with interest whether you conduct it, if you do conduct it, because you are a year in, and we have not seen any evidence in a way that sheds additional information on important issues, as you have suggested. Or it is just another effort to confuse the public over well established scientific information.

Senator BARRASSO. Senator Merkley, thank you.

Senator Markey.

Senator MARKEY. Merkley, Markey. It took me 20 years to get Volkley, Markey in Massachusetts out of my life. And now Jeff and I have to have Merkley, Markey.

Senator INHOFE. Your time expired.

[Laughter.]

Senator BARRASSO. As you figure out your identity situation, I would submit to the record, Superfund has been a priority under Administrator Pruitt. Last week, the EPA announced a cleanup agreement for the Nation's largest Superfund site. The Montana Standard is reporting, and I am going to submit this to the record, "EPA Administrator Pruitt put both Butte and Anaconda, which is a separate Superfund site, on the emphasis list last month." This means that both sites are being fast tracked for completion and getting Pruitt's "immediate and intense attention." I would like to enter this into the record, without objection, an article from the Montana Standard, January 26th, 2018.

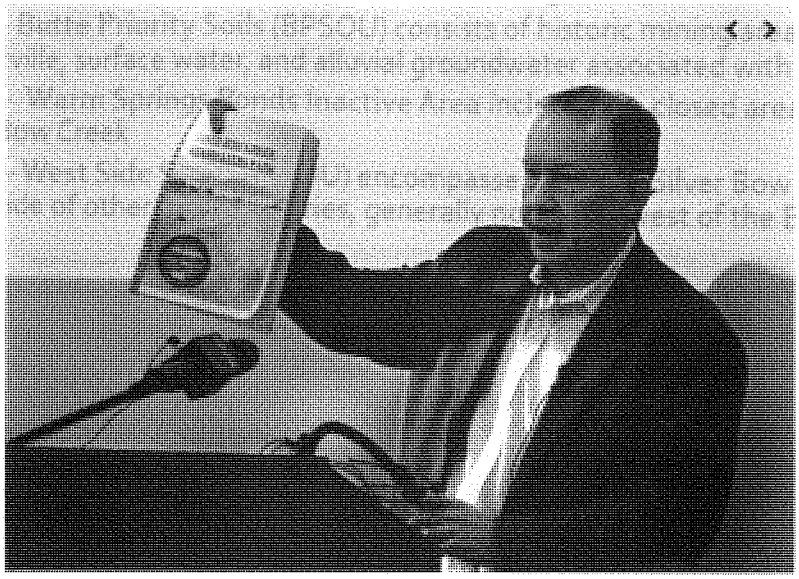
[The referenced information follows:]

http://mtstandard.com/news/local/epa-butte-hill-cleanup-agreement-reached/article_798fec1c-1635-5b00-8c83-2c01fb64e058.html

EDITOR'S PICK TOPICAL

EPA: Butte Hill cleanup agreement reached

SUSAN DUNLAP susan.dunlap@mtstandard.com Jan 26, 2018 Updated 14 hrs ago



EPA Regional Administrator Doug Benevento exhibits a book about a proposed Silver Bow Creek Headwaters Park compiled by the Restore Our Creek Coalition during his presentation in Butte Friday afternoon. He said the agreement in principle reached among the Butte Hill negotiators makes Restore Our Creek's vision "achievable."

Walter Hinick, The Montana Standard

The Environmental Protection Agency has reached a milestone agreement with all the parties on the Butte Hill Superfund cleanup, it announced Friday.

EPA has set a goal of having all the work on the nation's largest Superfund site complete by the end of 2024. That would initiate the delisting process from the National Priorities List.

The most notorious part of the larger Silver Bow Creek/Butte Area Superfund site — the Berkeley Pit — is included in that plan. That will "lift the stigma" of being a Superfund site, EPA Regional Administrator Doug Benevento said before a packed house Friday at the Butte-Silver Bow Public Archives.

EPA and the state are also working to bring "sunshine" to this week's agreement on the Butte Hill. Because of a federal court gag order, the 12 years' worth of talks over the Butte Hill have all taken place behind closed doors.

Benevento hopes to adjust that court order around the agreement so the people of Butte can know the details. Dan Villa, the state's budget director, said during the public meeting that the state would be talking to Judge Sam Haddon to see if the court order could be "loosened" as soon as possible.

Benevento gave a general time frame of spring or summer as to when he wants to see that accomplished.

He said all the parties involved agree that the public should be allowed to know more.

The confidentiality order affected how much Benevento could say about what the agreement actually means for Butte during his 1 ½-hour presentation. (See information box.)

But there will be a public process, giving residents an opportunity to weigh in on the details before anything becomes formalized and concrete, Benevento said. EPA doesn't expect the agreement to reach the final stage of getting signatures from all parties to the agreement until the end of 2018.

What EPA did reveal during the meeting is that there will be infrastructure built to control storm water along the creek. He specifically mentioned the tailings waste along George Street as well as Buffalo Gulch and Grove Gulch. Buffalo Gulch empties at Silver Bow Creek just east of South Montana Street. Grove Gulch reaches Silver Bow Creek just east of the Lexington Avenue Bridge.

The state has long maintained that all of these areas are problem spots where heavy metals are getting into the waterway.

Whether removal of the much-fought-over Parrot tailings — more than 100-year-old mining and smelting waste buried behind the Butte Civic Center — is part of the deal is unknown. But Benevento's list of what he could say will be done includes removing contaminated sediment, streambanks, and adjacent floodplain materials along Silver Bow Creek and Blacktail Creek.

That at least appears to suggest that additional issues such as Blacktail Berm, which is behind the Chamber of Commerce, and the Parrot tailings will be addressed under this agreement.

When Montana Standard editor David McCumber asked if the agreement addresses the "knowledge gap" that exists between now and 2006, when the cleanup's general terms were laid out in a record of decision, Montana Superfund Unit Manager Joe Vranka said he believed this week's agreement "satisfies everybody."

The state never agreed with the 2006 document because it said contamination flowing from the Parrot tailings waste would not reach Silver Bow Creek for 200 years. The state demonstrated in 2012 that the contamination was already 80 percent of the way to

Blacktail Creek.

Even if all the details are unknown, reaching the agreement is a major milestone in the 35-year-long cleanup of Silver Bow Creek and Butte. The confidential talks have included EPA, Atlantic Richfield Company, the county, the railroads, and state agencies.

Patricia Gallery, commercial director for Atlantic Richfield, traveled in from BP's Houston headquarters this week to participate in the talks. Atlantic Richfield is a subsidiary of oil giant BP. Gallery attended Benevento's presentation.

Gallery told The Montana Standard after the meeting that Atlantic Richfield has done "an enormous amount of work."

"But we recognize the job isn't done," she said. "We have a long way to go, but this is the final framework to finishing the remedy."

After so many years of a stalemate, the agreement comes just three months into Benevento's tenure in the top job for Region 8. Benevento made Butte's Superfund cleanup a priority as soon as he took his position in October.

EPA Administrator Scott Pruitt put both Butte and Anaconda, which is a separate Superfund site, on his "emphasis list" last month. That means that both sites are being fast-tracked for completion and are getting Pruitt's "immediate and intense attention."

"Cleaning up America's most contaminated sites has been a priority since the get-go of this administration, and the Silver Bow Creek Butte Area is no exception," Pruitt said this morning. "Today, EPA is taking the necessary steps to ensure a full, protective cleanup for these Montana communities to achieve better environmental and health outcomes."

Many of EPA's most outspoken critics expressed cautious hope after the meeting's end Friday. While Benevento stressed that EPA can't always "say yes" and that there are limitations to what the federal agency can accomplish, he said that the current

agreement "enables" the vision Restore Our Creek Coalition has long held at the heart of its mission — to remove the hazardous waste from Texas Avenue to George Street and construct a meandering creek through the center of the Flat.

Restore Our Creek Coalition spokesperson Northey Tretheway told the Standard after the meeting that he is "encouraged" by what he saw and heard during Benevento's presentation Friday.

Sister Mary Jo McDonald, who is a member of Silver Bow Creek Headwaters Coalition, said she is "very hopeful."

Retired state Project Manager Joe Griffin said he is "pleased."

"They laid out a real road map," Griffin said.

Benevento said he set the goal for all the cleanup work to be complete in the approximately 30-mile Superfund site by 2024 so that the Butte public could hold him accountable for that goal.

And if he is no longer on the job in 2024, the community can hold the next region administrator accountable for that timeline, he said. Benevento was appointed by President Donald Trump.

Butte-Silver Bow Chief Executive Dave Palmer said he believes the public "will be pleased" once all the details are known and that reaching the agreement this week "brings a little bit of finality" to the process.

"This is a good, comprehensive cleanup, and it insulates the taxpayers," Palmer said.

Gov. Steve Bullock, who made removing the Parrot tailings a priority two years ago, spoke of the sense of "certainty" this agreement brings.

"Butte has deserved certainty and action for decades, and I could not be more pleased that today, together with the EPA, we are delivering on both," Bullock said. "The citizens and community of Butte can finally rest assured we are on a path to get the job done once and for all."

Sen. Jon Tester, a Democrat, said via email that "this deal was a long time coming for Butte."

"I commend all the parties involved for working together to find a solution. I will hold the EPA accountable to deliver on its word and will work with the folks on the ground to ensure a transparent and efficient cleanup for Butte. The people of Butte America will ultimately be the judge of this agreement," Tester said in writing.

Sen. Steve Daines, a Republican, called the agreement "an important development for the Butte Superfund site."

"The people of Butte have waited long enough for this milestone. I will continue fighting to ensure Montana Superfund sites make the progress they need," Daines said via email.

Congressman Greg Gianforte, a Republican, called the announcement "a positive step in the effort to clean up Superfund in Butte." Benevento gave credit to Montana's elected officials for EPA's focused attention on Butte.

Benevento called reaching the agreement not the end, but the beginning. He said that if the agency can't get to the final agreement with signatures, EPA will issue an order to Atlantic Richfield, so the work will get done one way or another.

Benevento also stressed he wants EPA to do a better job of communicating in a way that works for Butte.

"This presentation is about starting a conversation," he said. "We won't be strangers."

What the agreement says

While EPA Region Administrator Doug Benevento could not give details of what the agreement in principle means for Butte, he gave some general conceptual ideas. This is what Benevento outlined during Friday's presentation at the Butte-Silver Bow Public Archives:

• Additional stormwater controls at locations along upper Silver Bow Creek (Northside Tailings, Diggings East), at Buffalo Gulch, and at Grove Gulch.

• Removal of contaminated sediments, streambanks, and adjacent floodplain materials along Silver Bow Creek and Blacktail Creek.

• Capture and treatment of additional contaminated groundwater along Blacktail Creek.

• Additional reclamation and capping work for waste sources under the Butte Reclamation Evaluation System for unreclaimed and insufficiently reclaimed source areas.

• A consent decree (the agreement) provides for agreement on cleanup and resolves legal disagreements.

• There will be public input for cleanup decisions and designs.

MORE INFORMATION

Senator MARKEY. Thank you, Mr. Chairman; I appreciate it.

Mr. Pruitt, it is my understanding that the EPA has finalized its conclusion that formaldehyde causes leukemia and other cancers, and that that completed new assessment is ready to be released for public review. But it is still being held up.

Can you give us a status update as to the EPA's handling of the formaldehyde issue and the conclusion that it in fact does cause leukemias and other cancers?

Mr. PRUITT. My understanding is similar to yours, but I will confirm that and provide the information to you from the program office.

Senator MARKEY. Will you commit to releasing that report, which is already completed, in a short period of time once you have reviewed it, if in fact meets the standards which your EPA staff has already established that it does cause——

Mr. PRUITT. Senator, I commit to you that I will look into that and make sure your office is aware of what we have and when we can release it.

Senator MARKEY. Can you get me an answer within 10 days?

Mr. PRUITT. Yes.

Senator MARKEY. Thank you.

And I have also sent you over a series of letters seeking information about several different policies and processes that have been put in place at the EPA. I have not received any response to those letters. I would ask that you also look at those letters and provide a response in the shortest possible time.

Mr. PRUITT. My very handy staff behind me indicates that we provided answers to 100 questions 1 week ago. So if there are additional questions beyond the 100 that you have already submitted, we will get that to you.

Senator MARKEY. OK, great, thank you.

Senator BARRASSO. Administrator Pruitt, last month I sent you a letter encouraging the EPA to withdraw its proposed rule on in situ uranium recovery, ISR.

Mr. PRUITT. I am sorry; I didn't hear you, Chairman.

Senator BARRASSO. Last month, I sent you a letter, EPA a letter, asking the EPA to withdraw its proposed rule on its in situ uranium recovery, ISR. The thing that is interesting about this rule, this is a rule that the Obama administration proposed on January 19th, 2017, 1 day before President Obama left office.

Since then, the Nuclear Regulatory Commission has come out—our Nation's principal regulator on these activities—and has stated there is no health or safety justification for this rulemaking by the EPA that came out 1 day before President Obama left office. The Nuclear Regulatory Commission went on to say, in almost 40 years of operational experience, Nuclear Regulatory Commission staff is aware of no documented instance of ISR, in situ uranium recovery, wellfield being a source of contamination of an adjacent or nearby aquifer or of a non-exempt portion of the same aquifer in which the ISR activities are being conducted. No documented instance.

Wyoming produces more uranium than any other State. Uranium production is vital to our energy and national security. When can we expect the EPA to decide whether or not to scrap this unnecessary regulation?

Mr. PRUITT. I will get information on that, Mr. Chairman, very quickly, and get it back to your office. I am not sure of the timing presently.

Senator BARRASSO. Senator Carper, do you have a final round of questions? I have one final question.

Senator CARPER. I do. I would ask unanimous consent, since no one else is going to come to have 5 minutes to ask these questions.

Senator INHOFE. Reserving the right to object, say that again?

Senator CARPER. Since no one else appears to be going to arrive, I would ask that I have 5 minutes to ask my last round of questions. And if Senator Inhofe would like to have another 3 minutes or so, that is fine by me. Whatever time the Chairman wants.

Senator INHOFE. Since I have been at the other committee hearing, have you had your second round? Are you taking your second round?

Senator CARPER. No, I have not.

Senator BARRASSO. He is taking a second round.

Senator CARPER. And you want to turn that into a 5 minute round?

Senator INHOFE. I object.

Senator CARPER. Why, thank you.

We have something called the Golden Rule—yes, go ahead.

Senator MARKEY. Just for 20 seconds, if the gentleman would yield. I just checked with my staff and there has been no answer to the questions which I posed to you, Mr. Administrator. So I would ask, again, that you respond to me in a timely fashion.

Senator CARPER. There is something called the Golden Rule, almost every Thursday when we gather in Senator Inhofe's office, we meet with the chaplain of the U.S. Senate, and he reminds us to treat other people the way we want to be treated. It is not only appropriate in a forum like this, it is also appropriate when we are considering pollution that is put up in the air in States to the west of downwind States, including all of us who live on the east coast.

To the extent that this EPA and this Administration believes that the Golden Rule is a good idea, I would ask that you consider applying the Golden Rule when it comes to cross-border pollution. When I was Governor of Delaware, I could literally shut down my State's economy—all the cars, vans, trucks off the road, shut down all of our businesses—we would still have been out of compliance for clean air because of all the stuff that is put up in the air in other States.

I don't like that, and frankly, I am not sure I like being denied the opportunity to actually go from 2 minutes to 5 minutes when we have plenty of time.

Senator INHOFE. Listen——

Senator CARPER. No, I will not.

Senator INHOFE. Mr. Chairman, since we have been, my name has been referred to, let me just respond and say that there are four committee hearings at the same time today. We are trying to balance. And if you continue one going longer, the ones who suffer, you are punishing, are the ones who have not had ample to time to even their first round of questioning in some of the other committees. So in sense of fairness, I would like to—there is going to be an end to this sometime.

Senator CARPER. Mr. Chairman, I want to ask unanimous consent to submit to the record the history of the Obama EPA's years long process to address the Waters of the U.S. Rule. This included hundreds of meetings across the country, including one in Delaware involving EPA, Army Corps of Engineers, farmers and builders. I think over 100, there were over a million public comments that were received during the course of the years long activity. I am told that those million or so comments were actually responded to.

Senator BARRASSO. Without objection.

[The referenced information follows:]

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

STATES OF NEW YORK, CALIFORNIA, CONNECTICUT, MARYLAND, NEW JERSEY, OREGON, RHODE ISLAND, VERMONT, and WASHINGTON; COMMONWEALTH OF MASSACHUSETTS; and the DISTRICT OF COLUMBIA,

Plaintiffs,

v.

E. SCOTT PRUITT, as Administrator of the United States Environmental Protection Agency; UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; RYAN A. FISHER, as Acting Assistant Secretary of the Army for Civil Works; and UNITED STATES ARMY CORPS OF ENGINEERS,

Defendants.

COMPLAINT

Case No. 1:18-cv-1030

Plaintiffs, the States of New York, California, Connecticut, Maryland, New Jersey, Oregon, Rhode Island, Vermont, and Washington, the Commonwealth of Massachusetts, and the District of Columbia (the States), each represented by its Attorney General, allege as follows against defendants E. Scott Pruitt, as Administrator of the United States Environmental Protection Agency (EPA); EPA; Ryan A. Fisher, as Acting Assistant Secretary for the United States Army Corps of Engineers (Army Corps); and the Army Corps (collectively, the agencies):

INTRODUCTION

1. In 2015, following a multi-year comment process and extensive scientific analysis, the agencies promulgated the Clean Water Rule to clarify which waters are protected by the Clean Water Act (CWA or Act), streamline and strengthen enforcement of antipollution laws, and protect the health and safety of this country's natural resources and drinking water supply.

2. The agencies have now suspended the Clean Water Rule—without consideration of the extensive scientific record that supported it or the environmental and public health consequences of doing so—by adding a new "applicability date" that delays the rule's applicability for two years and reinstates the definition of "waters of the United States" from the 1980s (Suspension Rule).

3. Reverting to the definition that pre-dated the 2015 Clean Water Rule is a wholesale, substantive redefinition of "waters of the United States" under the Act. The agencies have undertaken this redefinition with inadequate public notice and opportunity for comment, insufficient record support, and outside their statutory authority, illegally suspending a rule that became effective more than two years ago. And the agencies have codified this expansive redefinition under the guise of merely "preserving the status quo."

4. Accordingly, the States seek a declaration that the Suspension Rule is unlawful and an order vacating it.

NATURE OF THE ACTION

5. On February 6, 2018, the agencies issued the Suspension Rule, effectively repealing the agencies' 2015 Clean Water Rule by suspending the applicability of the Clean Water Rule for two years and replacing it with pre-existing regulations. *Definition of "Waters of the United States"—Addition of an Applicability Date to 2015 Clean Water Rule,* 83 Fed. Reg. 5200 (Feb. 6, 2018) (Suspension Rule). The agencies promulgated the Suspension Rule in violation of the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.* (APA) by failing to provide an opportunity for the States and general public to comment on the merits of either the Clean Water Rule or the preexisting regulations replacing it, by failing to consider the merits of either the Clean Water Rule or the preexisting regulations, and by failing to consider the substantive environmental and public health effects of their actions.

6. The CWA prohibits the discharge of pollutants, including dredged or fill material, into "the waters of the United States" unless authorized by a permit issued by EPA or the Army Corps. 33 U.S.C. §§ 1311(a), 1342, 1344, 1362(6),(12), 1362(7).

7. The Clean Water Rule, which took effect on August 28, 2015, defined "waters of the United States" to include both navigable waters and waters that impact the chemical, physical and biological integrity of navigable waters. *Clean Water Rule: Definition of "Waters of the United States,"* 80 Fed. Reg. 37,054 (June 29, 2015). The definition was intended to address ambiguities in preexisting

regulations (1980s regulations) by establishing a "clearer, more consistent, and easily implementable" definition of protected waters, thus reducing the need for burdensome, case-specific jurisdictional determinations. *Id.* at 37,054, 37,056-57.

8. The definition of waters of the United States is of fundamental importance to achieving the Act's overarching objective "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters," 33 U.S.C. §1251(a), because it establishes which waters are protected by the Act and are therefore subject to the Act's prohibition against discharges of pollutants, including dredge and fill material, without a permit.

9. The Clean Water Rule protected the States' environmental interests by strengthening and clarifying CWA protections of waters within the States' jurisdictions and by helping to ensure that polluted water from other states did not flow into their waters. The Suspension Rule harms the States' waters by limiting the Act's protections and by making implementation of the Act more difficult. The Suspension Rule also imposes economic burdens and costs upon the States and harms their proprietary interests.

10. The Clean Water Rule rests upon a massive factual record. It was developed with an extensive multi-year public outreach that elicited over one million public comments. 80 Fed. Reg. at 37,056-57. Consistent with the Act, the Clean Water Rule is based on the best peer-reviewed science and protects waters that if polluted are likely to have significant adverse impacts on the integrity of downstream waters.

11. The Suspension Rule adds an "applicability date" of February 6, 2020 to the Clean Water Rule, thus suspending the Clean Water Rule. *See* 83 Fed. Reg. at 5208. It replaces the Clean Water Rule with the 1980s regulations. *Id.* at 5201.

12. In promulgating the Suspension Rule, the agencies have violated the APA. The agencies' promulgation of the Suspension Rule exceeds the agencies' statutory jurisdiction, authority, and limitations, and is short of statutory right (5 U.S.C. § 706(2)(C)); violates the APA's procedural requirements (5 U.S.C. § 706(2)(D)); and is otherwise arbitrary, capricious, an abuse of discretion and not in accordance with law (5 U.S.C. § 706(2)(A)) because:

a) neither the CWA nor the APA, 5 U.S.C. § 705, authorized the agencies to suspend the Clean Water Rule for at least two years;

b) the agencies denied the public a meaningful opportunity to comment on the Suspension Rule by (i) instructing the public not to comment on the law and the facts justifying the Clean Water Rule or the 1980s regulations that replace it, and (ii) providing a comment period that was too short for an important and complex rule;

c) the agencies acted arbitrarily and capriciously and without a rational basis because (i) they failed to consider whether or how the Suspension Rule would meet the Act's objective of restoring and maintaining the integrity of the Nation's waters; (ii) they failed to consider the law and facts justifying the Clean Water Rule or its replacement with the 1980s regulations; (iii) they ignored or countermanded, without reasoned explanation, key factual and scientific findings

that they themselves reached just a few years earlier when they promulgated the Clean Water Rule to replace the 1980s regulations; (iv) they failed to reasonably discuss or consider alternatives; and (v) they failed to articulate a rational explanation for the Suspension Rule.

JURISDICTION AND VENUE

13. This action raises federal questions, and the Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 702. The States seek declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202, and 5 U.S.C. § 701 *et seq.*

14. Venue is proper within this federal district, pursuant to 28 U.S.C. §§ 1391(b) and 1391(e), because plaintiff State of New York resides within the district and defendants reside or may be found there.

THE PARTIES

15. Plaintiffs are sovereign states of the United States of America, except for the District of Columbia, which is a municipal corporation. Plaintiffs bring this action as *parens patriae* on behalf of their citizens and residents to protect public health, safety, welfare, their waters and environment, and their general economies. Each plaintiff also brings this action in its own sovereign and proprietary capacities.

16. Defendant E. Scott Pruitt is sued in his official capacity as Administrator of EPA.

17. Defendant EPA is the federal agency with primary regulatory authority under the CWA Act.

18. Defendant Ryan A. Fisher is sued in his official capacity as Acting Assistant Secretary of the Army for Civil Works within the Army Corps.

19. Defendant Army Corps has primary regulatory authority over the Act's Section 404 permit program for dredge and fill permits, codified at 33 U.S.C. § 1344.

STATUTORY AND REGULATORY FRAMEWORK

Suspension of a Final Regulation

20. Federal agencies may only act in accordance with specific statutory authority granted to them by Congress.

21. The CWA does not grant EPA or the Army Corps authority to suspend a final regulation.

The Administrative Procedure Act

22. Federal agencies are required to comply with the APA's rulemaking requirements.

23. Under the APA, a federal agency must publish notice of a proposed rulemaking in the Federal Register and "shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments." 5 U.S.C. § 553(b), (c).

24. "[R]ule making" means "agency process for formulating, amending, or repealing a rule." *Id.* § 551(5).

25. The opportunity for public comment under 5 U.S.C. § 553(c) must be meaningful, which means that the agency must allow comment on the relevant issues and provide adequate time for comment. A short comment period for an important and complex rule is insufficient.

26. An agency may only issue a rule after "consideration of the relevant matter presented" in public comments. 5 U.S.C. §§ 553(c).

27. An agency must publish a rule in the Federal Register "not less than 30 days before its effective date" except pursuant to certain exceptions, including good cause shown. 5 U.S.C § 553(d).

28. The APA does not authorize an agency to delay the effective date of a rule after the effective date has passed. *See* 5 U.S.C. § 705.

29. The APA does not require a rule to have an "applicability date."

30. The APA authorizes this Court to "hold unlawful and set aside agency, findings and conclusions" it finds to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

31. The APA also authorizes this Court to "hold unlawful and set aside agency" rules adopted "without observation of procedure required by law." 5 U.S.C. § 706(2)(D).

The Clean Water Act

32. The Act's "objective . . . is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a).

33. The Act's central requirement is that pollutants, including dredged and fill materials, may not be discharged from point sources into "navigable waters" without a permit. *Id.* §§ 1311(a), 1342, 1344, 1362(12). "Navigable waters" are defined as "the waters of the United States, including the territorial seas." *Id.* §1362(7). The Act does not define "waters of the United States." Permits control pollution at its source, and discharges of pollutants, including dredged and fill materials, into waters of the United States are prohibited unless they are in compliance with permit requirements. *See id.* § 1311(a); S. Rep. No. 92-414 at 77 (1972) ("[I]t is essential that discharge of pollutants be controlled at the source.").

34. Permits for the discharge of dredged and fill materials into waters of the United States are issued by the Army Corps under Section 404 of the Act, unless a state is authorized by EPA to operate this permit program for discharges within its borders. 33 U.S.C. § 1344(a), (h). Permits for the discharge of other pollutants are issued by EPA under Section 402 of the Act, unless EPA authorizes a state to operate this permit program for such discharges within its borders. 33 U.S.C. § 1342(a), (b).

35. Before the CWA was amended in 1972 to require that point sources have permits, water pollution controls targeted the pollution in receiving water bodies without specifically regulating the pollution sources. That made it difficult for the agencies and states to take action against polluters. Without the permit program agencies had to "work backward from an overpolluted body of water to determine which point sources are responsible and which should be abated."

Environmental Protection Agency v. State Water Resources Control Bd., 426 U.S. 200, 204 (1976).

36. The Act's permitting programs make enforcement simpler, only requiring proof that pollutants are discharged to a water of the United States from a point source in violation of a permit's terms (or without a permit).

37. The Act also establishes minimum pollution controls that are applicable nationwide, creating a uniform "national floor" of protective measures against water pollution. 33 U.S.C., §§ 1344(h)(1), 1370. Under the CWA, states are free to rise above this nationwide floor by implementing their own more stringent controls. *See id.* § 1370(1).

38. Because many of the Nation's waters cross state boundaries, and it is difficult for downstream states to control pollution sources in upstream states, the Act's nationwide controls are crucial for protecting downstream states from pollution originating outside their borders. Without those nationwide controls, upstream states can impose less stringent standards on point sources in their states. Those less stringent controls would harm the environmental and proprietary interests of downstream states. In addition, downstream states would be at a competitive disadvantage if they must impose more stringent controls than upstream states to protect the downstream states' waters and safeguard public health and welfare.

The 1980s Regulations

39. The agencies have defined "the waters of the United States" through regulation.

40. In 1977, the Army Corps issued regulations defining "waters of the United States." 42 Fed. Reg. 37,144 (July 19, 1977). EPA promulgated a revised definition in 1980, 45 Fed. Reg. 85,336, 85,346 (Dec. 24, 1980), and the Army Corps promulgated the very same definition in 1982, 47 Fed. Reg. 31,794 (July 22, 1982).

41. The 1980s regulations defined the "waters of the United States" to cover (1) waters used or susceptible of use in interstate or foreign commerce (*i.e.*, for transportation by vessels), commonly referred to as navigable-in-fact or "traditionally navigable" waters, (2) interstate waters, (3) the territorial seas, and (4) impoundments of jurisdictional waters, as well as other waters having a nexus with interstate commerce.

42. The regulatory definition remained essentially unchanged until 2015, when the agencies promulgated the Clean Water Rule.

43. Stakeholders have long criticized the 1980s regulations, as applied by the agencies, for their lack of clarity and consistency. *See* 82 Fed. Reg. 34,899, 34,901; 80 Fed. Reg. at 37,054. The regulations resulted in many complex case-by-case determinations by the agencies throughout the country, and led to confusing and inconsistent interpretations by the agencies and the federal courts as to which waters are "waters of the United States," and therefore within the Act's protections.

44. The Supreme Court interpreted "waters of the United States" in *Rapanos v. United States*, 547 U.S. 715 (2006) (*Rapanos*), where a property owner challenged the Army Corps' determination that he improperly filled wetlands without a permit. Justice Scalia, writing for a plurality of the Court, defined waters covered by the statute to include relatively permanent, standing or continuously flowing bodies of water connected to traditional navigable waters (*i.e.*, navigable-in-fact waters), as well as wetlands with a continuous surface connection to traditional navigable waters. 547 U.S. at 739. Justice Kennedy's concurring opinion set forth the "significant nexus" standard: if a wetland or water significantly affects the integrity of other waters "more readily understood as 'navigable,'" it is protected by the Act. *Id.* at 780.

45. After *Rapanos*, the lower federal courts continued to grapple with how to apply the 1980s regulations.

THE CLEAN WATER RULE

46. To remedy the ambiguity of the 1980s regulations, the agencies promulgated the Clean Water Rule, which defined "waters of the United States" under the Act based on "the text of the statute, Supreme Court decisions, the best available peer-reviewed science, public input, and the agencies' technical expertise and experience." 80 Fed. Reg. at 37,055. The Clean Water Rule became effective on August 28, 2015. *Id.* at 37,054.

47. When the agencies promulgated the Clean Water Rule, they found that the 1980s regulations:

> did not provide the public or agency staff with the kind of information needed to ensure timely, consistent, and predictable jurisdictional determinations. Many waters are currently subject to case specific jurisdictional analysis to determine whether a "significant nexus" exists, and this time and resource intensive process can result in inconsistent interpretation of CWA jurisdiction and perpetuate ambiguity over where the CWA applies. As a result of the ambiguity that exists under current regulations and practice following these recent [court] decisions, almost all waters and wetlands across the country theoretically could be subject to a case-specific jurisdictional determination.

Id. at 37,056.

48. The agencies explained that:

> The purposes of the [Clean Water Rule] are to ensure protection of our nation's aquatic resources and make the process of identifying 'waters of the United States' less complicated and more efficient. The rule achieves these goals by increasing CWA program transparency, predictability, and consistency . . . with increased certainty and less litigation.

79 Fed. Reg. at 22,190.

49. The Clean Water Rule establishes clear categories of waters within the CWA's jurisdiction as well as categories that are excluded from the CWA's jurisdiction, thereby reducing the need for case-specific jurisdictional determinations. 80 Fed. Reg. at 37,056.

50. The Clean Water Rule employs the "significant nexus" standard, consistent with Justice Kennedy's concurrence in *Rapanos.*

51. The agencies performed rigorous scientific review in crafting the Clean Water Rule to define jurisdictional waters as those waters that have a "significant

nexus" with the integrity of downstream navigable-in-fact waters. *See id.* at 37,057. In particular, they relied on a comprehensive report prepared by EPA's Office of Research and Development, entitled "Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence" (Science Report),[1] which reviewed more than 1200 peer-reviewed publications. The agencies also relied on EPA's Science Advisory Board's independent review of the Science Report. *Id.*

52. In developing the Clean Water Rule, the agencies also prepared an economic analysis of their proposed action. *See id.* at 37,101.

53. In developing the Clean Water Rule, the agencies clarified and tightened the definition of waters of the United States to cover waters with significant effects on the integrity of downstream waters and to exclude others lacking such effects.

54. The Clean Water Rule, reflecting longstanding consensus views of the agencies and stakeholders, retained several categories of protected waters from the 1980s regulations: (1) waters used or susceptible of use in interstate or foreign commerce (*i.e.*, for transportation by vessels), commonly referred to as navigable-in-fact or "traditionally navigable" waters, (2) interstate waters, (3) the territorial seas, and (4) impoundments of jurisdictional waters.

---

[1] U.S. EPA, *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence (Final Report)*, EPA/600/R-14/475F (Washington, D.C. 2015), *available at* https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=296414.

55. The agencies found that many waters not specifically listed in the 1980s regulations have a significant nexus to downstream waters, including headwater stream tributaries and certain waters in floodplains. In reliance on their scientific findings, the agencies expressly included such waters within the Clean Water Rule's protections.

56. The agencies explained that "wetlands and open waters in floodplains of streams and rivers and in riparian areas . . . have a strong influence on downstream waters," 79 Fed. Reg. at 22,196, and "[t]he body of literature documenting connectivity and downstream effects was most abundant for riparian/floodplain wetlands." Technical Support Document for the Clean Water Rule; Definition of Waters of the United States, May 27, 2015, Docket Id. No. EPA-HQ-OW-2011-0880, at 104.

57. In applying the significant nexus test, the Clean Water Rule also supplied precise definitions missing from the 1980s regulations for "tributaries" and "adjacent" waters protected by the Act, and definitions of waters not protected, thereby reducing the need for complex case-by-case administrative decisions and judicial review. The Clean Water Rule protected "adjacent waters," including those found within 100 feet of certain other covered waters or within specified portions of 100-year floodplains.

58. States, trade associations, environmental organizations, and others challenged the Clean Water Rule in several federal district courts and federal courts of appeals. Before becoming EPA Administrator, defendant E. Scott Pruitt, as

Oklahoma Attorney General, brought challenges to the Clean Water Rule, claiming that it exceeded the agencies' statutory and constitutional authority.

59. The petitions in circuit courts were consolidated in the Sixth Circuit, which issued a nationwide stay of the Clean Water Rule pending resolution of the merits. *Ohio v. United States Army Corps of Eng'rs* (*In re EPA & DOD Final Rule*), 803 F.3d 804 (6th Cir. 2015). In a ruling *sub nom. Murray Energy Corp. v. United States Dep't of Def.*, 817 F.3d 261 (6th Cir. 2016), the Sixth Circuit subsequently determined that it had jurisdiction over the petitions rather than the district courts.

60. The district court actions challenging the Clean Water Rule were dismissed or stayed pending resolution of proceedings in the Sixth Circuit and Supreme Court.

61. On January 22, 2018, the Supreme Court held unanimously that the Sixth Circuit lacked jurisdiction over the petitions for review challenging the Clean Water Rule and remanded the case to that court to dismiss the petitions for lack of jurisdiction. *Nat'l Ass'n of Manufacturers v. Department of Defense*, No. 16-299, 2018 U.S. LEXIS 761, at *31-*32 (Jan. 22, 2018).

THE PROPOSED REPEAL RULE

62. In July 2017, the agencies published a proposed rule to rescind the definition of "waters of the United States" contained in the 2015 Clean Water Rule, and replace it with the pre-existing definition contained in the 1980s regulations. *See Proposed Rule, Definition of "Waters of the United States" – Recodification of Pre-Existing Rules*, 82 Fed. Reg. 34,899 (July 27, 2017) (the Proposed Repeal Rule).

The agencies characterized this proposal as the first step in a two-step process, with the second step to be a subsequent notice-and-comment rulemaking to re-evaluate the substantive definition of "waters of the United States." *Id.* at 34,901. The agencies called this proposal an "interim measure pending substantive rulemaking," and indicated that they were not seeking public comments concerning the pre-2015 definition of "waters of the United States, *id.* at 34,903 (agencies "are not soliciting comment on the specific content of those longstanding regulations") or "issues related to the 2015 [Clean Water] Rule," *id.* They also made clear that the Proposed Repeal Rule was not based on a substantive review of the definition of waters of the United States. *Id.*

63. The agencies stated that they were proposing to rescind the 2015 definition because, in the event that the Supreme Court ruled that the Sixth Circuit did not have original jurisdiction to review the Clean Water Rule, the Sixth Circuit's nationwide stay of the Clean Water Rule would be dissolved, leading to "inconsistencies, uncertainty, and confusion." *Id.* at 34,902. The agencies indicated that the Clean Water Rule would still be preliminarily enjoined in thirteen states pursuant to an order of the district court for North Dakota, but would apply in the rest of the nation. *Id.* at 34,902-03. They also expressed concern that other district court actions "would likely be reactivated." *Id.* at 34,903.

64. The agencies invited comments for the Proposed Repeal Rule through August 28, 2017. *Id.* at 34,899. They subsequently extended the comment period through September 27, 2017. *See "Definition of 'Waters of the United States'—*

Recodification of Pre-Existing Rules; Extension of Comment Period," 82 Fed. Reg. 39,712 (Aug. 22, 2017).

65. The agencies received over 680,000 comments on the Proposed Repeal Rule. They have not yet issued a final rule as part of the Proposed Repeal Rule rulemaking process.

THE SUSPENSION RULE

66. After the comment period closed on the Proposed Repeal Rule, and without further action on that proposal, the agencies published a different proposal to modify the 2015 Clean Water Rule—this time, by proposing to add an "applicability date" to the 2015 Clean Water Rule of "two years from the date of final action on this proposal." *Proposed Rule, Definition of "Waters of the United States" – Addition of an Applicability Date to 2015 Clean Water Rule*, 82 Fed. Reg. at 55,542 (Nov. 22, 2017) (the Proposed Suspension Rule).

67. An earlier version of the Proposed Suspension Rule announced by the agencies sought to delay the effective date of the Clean Water Rule—which was August 28, 2015—to a date two years from finalizing the proposed rule. The published version of the Proposed Suspension Rule instead characterized the delay as an "addition of an applicability date" to the Clean Water Rule.

68. The agencies did not withdraw the Proposed Repeal Rule upon publication of the Proposed Suspension Rule; rather, they stated that the Proposed Repeal Rule "remains under active consideration." *Id.* at 55,543.

69. As with the Proposed Repeal Rule, the agencies characterized the Proposed Suspension Rule as an interim measure prior to their anticipated "Step Two" rulemaking for developing a new substantive definition of the "waters of the United States." *Id.* at 55,542.

70. Like the Proposed Repeal Rule, the Proposed Suspension Rule also stated that the 1980s regulations would replace the Clean Water Rule during the suspension of the Clean Water Rule. *Id.* at 55,542-43.

71. The rationale for the Proposed Suspension Rule was similar to the rationale for the Proposed Repeal Rule. The agencies expressed concern that, if the Supreme Court held that the Sixth Circuit lacks original jurisdiction over challenges to the Clean Water Rule, the temporary nationwide stay of that rule "would expire, leading to possible inconsistencies, uncertainty, and confusion as to the regulatory regime that could be in effect pending substantive rulemaking." *Id.* at 55,543. They expressed concern about the district courts having control over whether the Clean Water Rule is stayed: "control over which regulatory definition of 'waters of the United States' is in effect while the agencies engage in deliberations on the ultimate regulation could remain outside of the agencies." *Id.* at 55,544. They also justified adding an applicability date on the ground that the Clean Water Rule did not have one. *Id.* at 55,543.

72. As with the Proposed Repeal Rule, the Proposed Suspension Rule did not include a substantive analysis of the objectives of the Clean Water Act, the law and facts justifying the Clean Water Rule, the merits of the 1980s regulations, or

the potential environmental and public health effects and foregone benefits of repealing the Clean Water Rule for two years.

73. The Proposed Suspension Rule also ignored or countermanded key factual and scientific findings reached by the agencies when they promulgated the Clean Water Rule without any explanation for doing so.

74. Also like the Proposed Repeal Rule, the Proposed Suspension Rule made clear that the agencies were not seeking substantive comment on either the Clean Water Rule or the 1980s regulations that would replace it. Instead, the agencies stated that they were deferring substantive comments until their "Step Two" rulemaking. *Id.* at 55,544-45.

75. The agencies provided only a twenty-one day comment period (which included the Thanksgiving holiday) for the Proposed Suspension Rule, a much shorter period than the sixty-day comment period provided for the Proposed Repeal Rule.

76. The agencies justified that brief comment period on the ground that the Suspension Rule is a "narrowly targeted and focused interim rule" and "the request for comment is on such a narrow topic." *Id.* at 55,544.

77. During the short 21-day comment period, the agencies received 4,600 comments as compared to 680,000 comments on the Proposed Repeal Rule.

78. On December 13, 2017, many of the States filed comments with the agencies on the Proposed Suspension Rule, objecting to the proposal and requesting that the agencies withdraw it.

79. On February 6, 2018, the agencies published the Suspension Rule in essentially the same form as it was proposed. 83 Fed. Reg. 5200. The Suspension Rule adds an applicability date of February 6, 2020 to the Clean Water Rule. *Id.* at 5208.

80. In issuing the final Suspension Rule, the agencies relied principally on the rationale articulated in the Proposed Suspension Rule. They indicated that the lifting of the Sixth Circuit's nationwide stay of the Clean Water Rule as a result of the Supreme Court's January 22 ruling is "likely to lead to uncertainty and confusion as to the regulatory regime applicable, and to inconsistencies between the regulatory regimes applicable in different States pending further rulemaking by the agencies." *Id.* at 5202.

81. The final Suspension Rule took effect upon publication in the Federal Register on February 6, 2018. The agencies assert that the impending lifting of the Sixth Circuit stay constitutes "good cause" to dispense with the requirement under 5 U.S.C § 553(d) that a final rule may take effect no earlier than 30 days after its publication. *Id.* at 5203.

82. The Suspension Rule results in a wholesale substantive replacement of the Clean Water Rule, rendering the Clean Water Rule ineffective for two years.

THE SUSPENSION RULE HARMS THE STATES

83. The Suspension Rule irreparably harms the States' waters and the States' environmental, economic, and proprietary interests.

84. As the agencies themselves recognized when they adopted the Clean Water Rule, the 1980s regulations employed a limited, unclear, and difficult-to-administer definition of protected waters. As a result, the 1980s regulations do not provide the protection to the States' water quality that is provided by the Clean Water Rule.

85. The States are situated along the shores of the Atlantic and Pacific Oceans, the Chesapeake Bay and its tributaries, the Great Lakes, and Lake Champlain, and are downstream from and/or otherwise hydrologically connected with many of the Nation's waters. The States have authority to control water pollution generated by sources within their borders but are also impacted by water pollution from sources outside their borders over which they lack jurisdiction. The States rely on the Act and its uniform nationwide floor of pollution controls as the primary mechanisms for protecting them from the effects of out-of-state pollution. The Suspension Rule injures the States' waters by replacing the Clean Water Rule, which protected them from pollution occurring in upstream states, with the inadequate and ambiguous 1980s regulations.

86. The States rely on the Army Corps to operate the Act's Section 404 permitting program that regulates dredging and filling of waters within their borders. The less protective definition of waters of the United States under the 1980s regulations means there will be more dredging and filling of waters within the States without the protections of the CWA's Section 404 permitting program, to the detriment of the physical, chemical and biological integrity of the States' waters.

87. The Suspension Rule puts the States at an unfair economic disadvantage in competition with other states. To mitigate out-of-state pollution, under the 1980s regulations the States face having to impose disproportionately strict controls on pollution generated within their borders, thereby raising the costs to States and the costs of doing business in them.

88. The Suspension Rule impairs the States' proprietary interests. The States own, operate, finance, or manage property within their borders, including lands, roads, bridges, universities, office buildings, drinking water systems, sewage and stormwater treatment or conveyance systems, and other infrastructure and improvements. The Suspension Rule results in inadequate and ineffective protection of waters under the Act, and is likely to cause damage to State properties as well as increase costs of operating and managing them.

89. The requested relief, if granted, will redress the injuries to the States' interests caused by the Suspension Rule.

FIRST CLAIM FOR RELIEF

(Administrative Procedure Act – Not in
Accordance With Law and Beyond
Statutory Authority)

90. The States incorporate by reference in this claim the allegations in all preceding paragraphs of the complaint.

91. Under the APA, courts must "compel agency action unlawfully withheld or unreasonably delayed," and "hold unlawful and set aside" agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance

with law," or that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706.

92. The Clean Water Act does not give the agencies authority to suspend the Clean Water Rule.

93. The APA, 5 U.S.C. § 705, did not give the agencies authority to suspend the Clean Water Rule after its effective date passed.

94. The agencies' promulgation of the Suspension Rule is in excess of statutory jurisdiction, authority, or limitations, or is short of statutory right.

95. The Suspension Rule is unlawful and must be set aside. 5 U.S.C. § 706(2)(C).

SECOND CLAIM FOR RELIEF

(Administrative Procedure Act –
Without Observance of Procedure
Required by Law)

96. The States incorporate by reference in this claim the allegations in all preceding paragraphs of the complaint.

97. Under the APA, a federal agency must publish notice of a proposed rulemaking in the Federal Register and "shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments" 5 U.S.C. §§ 553(b), (c). A federal agency must provide this opportunity for public comment when it seeks to formulate, amend, or repeal a rule. *See* 5 U.S.C. § 551(5).

98. The Suspension Rule effectively repeals the 2015 Clean Water Rule by reinstating the pre-2015 regulatory definitions for a two-year period.

99. The opportunity for public comment under 5 U.S.C. § 553(c) must be meaningful, which means that the agency must allow comment on the relevant issues and provide adequate time for comment. A short comment period for an important and complex rule is insufficient.

100. When an agency suspends a rule, the law and facts justifying the rule and the effects of doing so are relevant issues.

101. When an agency proposes to replace a rule with prior regulations, the effectiveness and conformance to law of the prior regulations is a relevant issue.

102. The agencies failed to provide a meaningful opportunity for public comment on the Suspension Rule by instructing the public not to comment substantively on any matters regarding the definition of waters of the United States, including issues related to the 1980s regulations and the Clean Water Rule.

103. The definition of "waters of the United States" is a complex matter of great importance to the public.

104. The agencies failed to provide a meaningful opportunity for public comment on the Suspension Rule by allowing only a short, ill-timed comment period.

105. A final rule must be published in the Federal Register not less than thirty days before its effective date except pursuant to certain exceptions, including good cause. 5 U.S.C § 553(d).

106. The agencies did not have good cause to make the Suspension Rule effective upon publication in the Federal Register.

107. The Suspension Rule is unlawful and must be set aside because it is without observance of procedure required by law and not in accordance with law. 5 U.S.C. §§ 553(b), (c); 706(2)(A), (2)(D).

THIRD CLAIM FOR RELIEF

(Administrative Procedure Act – Arbitrary and Capricious Action)

108. The States incorporate by reference in this claim the allegations in all preceding paragraphs of the complaint.

109. Promulgation of a regulation is arbitrary and capricious if the agency fails to consider relevant issues or fails to articulate a rational explanation for the rule.

110. Where an agency proposes to suspend a rule and replace it with prior regulations, the agency must consider the objectives of the statute under which the rule was promulgated, the law and facts justifying the proposal, and the effectiveness of the prior regulations.

111. When an agency proposes to suspend a rule, the agency may not ignore or countermand its earlier factual and scientific findings without a reasoned explanation for doing so.

112. When the agencies promulgated the Suspension Rule, they did not consider whether or how the Suspension Rule would meet the Act's objective of restoring and maintaining the integrity of the Nation's waters.

113. When the agencies promulgated the Suspension Rule, they did not consider the law and facts justifying the Clean Water Rule or the 1980s regulations that would replace it.

114. When the agencies promulgated the Suspension Rule, they ignored or countermanded key factual and scientific findings reached by them when they promulgated the Clean Water Rule without a reasoned explanation for doing so.

115. When the agencies promulgated the Suspension Rule, they did not reasonably consider or discuss alternatives.

116. When the agencies promulgated the Suspension Rule, they failed to articulate a rational explanation for it.

117. Because, among other things, the agencies failed to consider all of the relevant issues and offer a rational explanation for the Suspension Rule, the Suspension Rule is unlawful and must be set aside because it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

PRAYER FOR RELIEF

WHEREFORE, the States respectfully request that the Court issue a judgment and order:

a) holding the Suspension Rule unlawful, setting it aside, and vacating it;

b) declaring that the Suspension Rule is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; in excess of statutory

jurisdiction, authority, or limitations, or short of statutory right; and without observance of procedure required by law;

c) awarding the States their reasonable fees, costs, expenses, and disbursements, including attorneys' fees, associated with this litigation under the Equal Access to Justice Act, 28 U.S.C. §2412(d); and

d) awarding the States such additional and further relief as the Court may deem just, proper, and necessary.

DATED: February 6, 2018

Respectfully submitted,

FOR THE STATE OF NEW YORK

ERIC T. SCHNEIDERMAN
Attorney General

By: _____

PHILIP BEIN (PB1742)
TIMOTHY HOFFMAN
MONICA WAGNER
Assistant Attorneys General
Environmental Protection Bureau
Office of the Attorney General
The Capitol
Albany, NY 12224
(518) 776-2413
Philip.Bein@ag.ny.gov

FOR THE STATE OF CALIFORNIA

XAVIER BECERRA
Attorney General
SARAH E. MORRISON
Supervising Deputy Attorney General

By: Tatiana K. Gaur
Tatiana K. Gaur*
Deputy Attorney General
Attorneys for Plaintiff
State of California, by and through
Xavier Becerra, Attorney General
Environment Section
300 South Spring Street
Los Angeles, CA 90013
(213) 269-6329
Tatiana.Gaur@doj.ca.gov

FOR THE STATE OF CONNECTICUT

GEORGE JEPSEN
Attorney General

By: Rob Snook
Matthew I. Levine (ML2346)
Robert Snook (RS3666)
Assistant Attorneys General
Office of the Attorney General
PO Box 120, 55 Elm Street
Hartford, CT 06141-0120
(860) 808-5250
Matthew.Levine@ct.gov
Robert.Snook@ct.gov

FOR THE DISTRICT OF COLUMBIA

KARL A. RACINE
Attorney General
ROBYN BENDER
Deputy Attorney General
Public Advocacy Group
CATHERINE A. JACKSON
Chief, Public Integrity Section

By: /s/ Brian Caldwell
Brian R. Caldwell*
Assistant Attorney General
Office of the Attorney General
of the District of Columbia
441 Fourth Street N.W., Ste # 600-S
Washington, D.C. 20001
Tel: (202) 727-6211
brian.caldwell@dc.gov

FOR THE STATE OF MARYLAND

BRIAN FROSH
Attorney General

By: /s/ Leah J. Tulin
Leah J. Tulin*
Assistant Attorney General
Office of the Attorney General
200 Saint Paul Place, 20th Floor
Baltimore, Maryland 21202
(410) 576-6962
ltulin@oag.state.md.us

FOR THE COMMONWEALTH OF MASSACHUSETTS

MAURA HEALEY
Attorney General

By: _____
Seth Schofield*
Assistant Attorney General
Nora Chorover*
Special Assistant Attorney General
Energy and Environment Bureau
One Ashburton Place, 18th Floor
Boston, MA 02108
(617) 963-2428
Seth.Schofield@state.ma.us
Nora.Chorover@state.ma.us

FOR THE STATE OF OREGON

ELLEN F. ROSENBLUM
ATTORNEY GENERAL

By _____
Paul Garrahan*
Attorney-in-Charge,
Natural Resources Section
Oregon Department of Justice
1162 Court St. NE
Salem, OR 97301-4096
(503) 947-4593
paul.garrahan@doj.state.or.us

FOR THE STATE OF NEW JERSEY

GURBIR S. GREWAL
Attorney General

By: /s/ Gwen Farley
GWEN FARLEY, Esq. (GP0434)
Deputy Attorney General
David C. Apy
Assistant Attorney General in Charge
Environmental Practice Group
Division of Law, Director's Complex
R.J. Hughes Justice Complex
25 Market Street, P.O. Box 112
Trenton, N.J. 08625
(609) 292-8567
David.Apy@law.njoag.gov

FOR THE STATE OF RHODE ISLAND

PETER KILMARTIN
Attorney General

By: /s/ Gregory S. Schultz
Gregory S. Schultz*
Special Assistant Attorney General
Rhode Island Department of Attorney General
150 South Main Street
Providence, RI 02903
(401) 274-4400
gSchultz@riag.ri.gov

FOR THE STATE OF VERMONT

THOMAS J. DONOVAN, JR.
Attorney General

By: _____
Benjamin D. Battles (BB5387)
Solicitor General
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001
(802) 828-5944
benjamin.battles@vermont.gov

FOR THE STATE OF WASHINGTON

ROBERT W. FERGUSON
Attorney General

By: /s/ Ronald L. Lavigne
Ronald L. Lavigne*
Senior Counsel
2425 Bristol Court SW, 2nd Fl.
Olympia, WA 98504
(305) 586-6751
RonaldL@ATG.WA.GOV

* Not yet admitted to the Bar of this Court

Senator CARPER. Thank you, Mr. Chairman.

I have one more question I want to ask. This gives the following on implementing TSCA.

Mr. Pruitt, you have said on numerous occasions, "The only authority that any agency has in the executive branch is the authority given to it by Congress." When Congress was negotiating the final text of the Toxic Substances Control Act, EPA came to Congress and asked for specific provisions that would allow the agency to move forward with bans for some uses of three highly toxic chemicals. Congress agreed, and that language was included in the final law.

One of those chemicals, a paint stripper called methylene chloride, is so dangerous that it has killed dozens of people, even when they were wearing protective gear. EPA proposed rules banning these chemicals more than a year ago. But more recent reports indicate that EPA may delay action on the uses of these chemicals for several more years, which almost certainly will mean that more people will get sick and probably some of them will die.

Yes or no, Mr. Pruitt; to wrap it up, will you commit to use the authority given to EPA by Congress and the Toxic Substances Control Act and finalize these bans within the next 30 days? Will you?

Mr. PRUITT. It's my understanding that is actually on the priority list as far as the chemicals that are we reviewing. TCE and others. So that is something that I will clarify and confirm with the agency. But that was my understanding.

Senator CARPER. I hope that means yes.

Mr. Chairman, I would like to ask unanimous consent to submit for the record more materials describing Mr. Pruitt's record at the EPA. Thank you.

Senator BARRASSO. Without objection.

[The referenced information follows:]

HEALTH

A Strong Case Against a Pesticide Does Not Faze E.P.A. Under Trump

By RONI CARYN RABIN MAY 15, 2017

Chlorpyrifos is still on the market as an agricultural pesticide, routinely sprayed on common crops like apples, oranges, strawberries and broccoli. Gerry Broome/Associated Press

Some of the most compelling evidence linking a widely used pesticide to

developmental problems in children stems from what scientists call a "natural" experiment.

Though in this case, there was nothing natural about it.

Chlorpyrifos (pronounced klor-PYE-ruh-fahs) had been used to control bugs in homes and fields for decades when researchers at Columbia University began studying the effects of pollutants on pregnant mothers from low-income neighborhoods. Two years into their study, the pesticide was removed from store shelves and banned from home use, because animal research had found it caused brain damage in baby rats.

Pesticide levels dropped in the cord blood of many newborns joining the study. Scientists soon discovered that those with comparatively higher levels weighed less at birth and at ages 2 and 3, and were more likely to experience persistent developmental delays, including hyperactivity and cognitive, motor and attention problems. By age 7, they had lower IQ scores.

The Columbia study did not prove definitively that the pesticide had caused the children's developmental problems, but it did find a dose-response effect: The higher a child's exposure to the chemical, the stronger the negative effects.

That study was one of many. Decades of research into the effects of chlorpyrifos strongly suggests that exposure at even low levels may threaten children. A few years ago, scientists at the Environmental Protection Agency concluded that it should be banned altogether.
Yet chlorpyrifos is still widely used in agriculture and routinely sprayed on crops like apples, oranges, strawberries and broccoli. Whether it remains available may become an early test of the Trump administration's determination to pare back environmental regulations frowned on by the industry and to retreat from food-safety laws, possibly provoking another clash with the courts.

In March, the new chief of the E.P.A., Scott Pruitt, denied a 10-year-old petition brought by environmental groups seeking a complete ban on chlorpyrifos. In a statement accompanying his decision, Mr. Pruitt said there "continue to be considerable areas of uncertainty" about the neurodevelopmental effects of early life exposure to the pesticide.

Even though a court last year denied the agency's request for more time to review the scientific evidence, Mr. Pruitt said the agency would postpone a final determination on the pesticide until 2022. The agency was "returning to using sound science in decision-making — rather than predetermined results," he added.

Agency officials have declined repeated requests for information detailing the scientific rationale for Mr. Pruitt's decision.

Lawyers representing Dow and other pesticide manufacturers have also been pressing federal agencies to ignore E.P.A. studies that have found chlorpyrifos and other pesticides are harmful to endangered plants and animals.

A statement issued by Dow Chemical, which manufactures the pesticide, said: "No pest control product has been more thoroughly evaluated, with more than 4,000 studies and reports examining chlorpyrifos in terms of health, safety and environment."

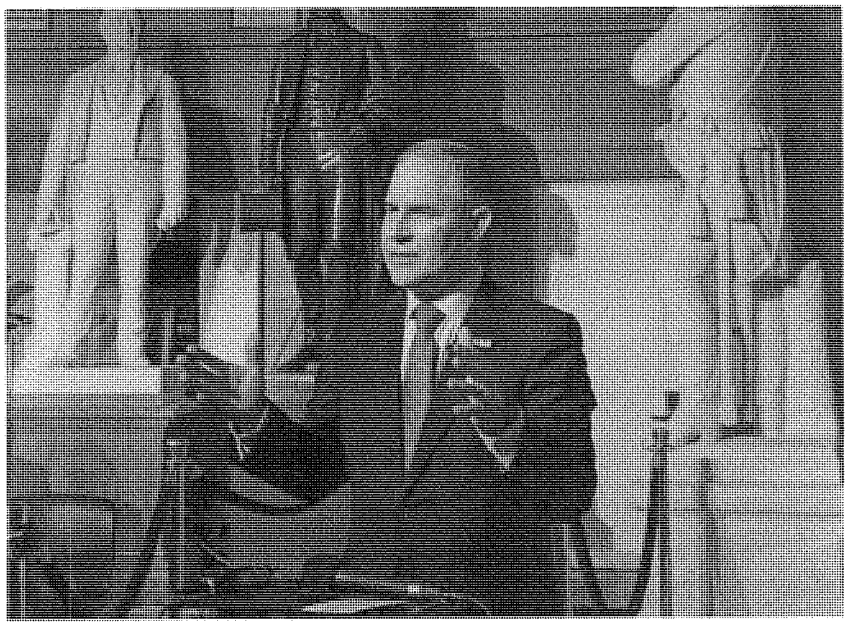
A Baffling Order

Mr. Pruitt's decision has confounded environmentalists and research scientists convinced that the pesticide is harmful.

Farm workers and their families are routinely exposed to chlorpyrifos, which leaches into ground water and persists in residues on fruits and vegetables, even after washing and peeling, they say.

Mr. Pruitt's order contradicted the E.P.A.'s own exhaustive scientific analyses, which had been reviewed by industry experts and modified in response to their concerns.

In 2015, an agency report concluded that infants and children in some parts of the country were being exposed to unsafe amounts of the chemical in drinking water, and to a dangerous byproduct. Agency researchers could not determine any level of exposure that was safe.



In March, Scott Pruitt, the new administrator of the Environmental Protection Agency, denied a petition brought by environmental groups seeking a complete ban on chlorpyrifos. Stephen Crowley/The New York Times

An updated human health risk assessment compiled by the E.P.A. in November found that health problems were occurring at lower levels of exposure than had previously been believed harmful.

Infants, children, young girls and women are exposed to dangerous levels of chlorpyrifos through diet alone, the agency said. Children are exposed to levels up to 140 times the safety limit.

"The science was very complicated, and it took the E.P.A. a long time to figure out how to deal with what the Columbia study was saying," said Jim Jones, who ran the chemical safety unit at the agency for five years, leaving after President Trump took office.

The evidence that the pesticide causes neurodevelopmental damage to

children "is not a slam dunk, the way it is for some of the most well-understood chemicals," Mr. Jones conceded. Still, he added, "very few chemicals fall into that category."

But the law governing the regulation of pesticides used on foods doesn't require conclusive evidence for regulators to prohibit potentially dangerous chemicals. It errs on the side of caution.

The Food Quality Protection Act set a new safety standard for pesticides and fungicides when it was passed in 1996, requiring the E.P.A. to determine that a chemical can be used with "a reasonable certainty of no harm."

The act also required the agency to take the unique vulnerabilities of young children into account and to use a wide margin of safety when setting tolerance levels.

Children may be exposed to multiple pesticides that have the same toxic mechanism of action at the same time, the law noted. They're also exposed through routes other than food, like drinking water.

Environmental groups returned last month to the United States Court of Appeals for the Ninth Circuit, asking that the E.P.A. be ordered to ban the pesticide. The court has already admonished the agency for what it called "egregious" delays in responding to a petition filed by the groups in 2007.

The E.P.A. responded on April 28, saying it had met its deadline when Mr. Pruitt denied the petition.

Erik D. Olson, director of the health program at Natural Resources Defense Council, one of the groups petitioning the E.P.A. to ban chlorpyrifos, disagreed.

"The E.P.A. has twice made a formal determination that this chemical is not safe," Mr. Olson said. "The agency cannot just decide not to act on that. They have not put out a new finding of safety, which is what they would have to do to allow it to continue to be used."

Devastating Effects

Chlorpyrifos belongs to a class of pesticides called organophosphates, a

diverse group of compounds that includes nerve agents like sarin gas.

It acts by blocking an enzyme called cholinesterase, which causes a toxic buildup of acetylcholine, an important neurotransmitter that carries signals from nerve cells to their targets.

Acute poisoning with the pesticide can cause nausea, dizziness, convulsions and even death in humans, as well as animals.

The use of chlorpyrifos has been declining in California, where farmers have responded to rising demand for organic produce and to concerns about organophosphates. Lucy Nicholson/Reuters, via Newscom

But the scientific question has been whether humans, and especially small

children, are affected by chronic low-level exposures that don't cause any obvious immediate effects — and if so, at what threshold these exposures cause harm.

Scientists have been studying the impact of chlorpyrifos on brain development in young rats under controlled laboratory conditions for decades. These studies have shown that the chemical has devastating effects on the brain.

"Even at exquisitely low doses, this compound would stop cells from dividing and push them instead into programmed cell death," said Theodore Slotkin, a scientist at Duke University Medical Center, who has published dozens of studies on rats exposed to chlorpyrifos shortly after birth.

In the animal studies, Dr. Slotkin was able to demonstrate a clear cause-and effect relationship. It didn't matter when the young rats were exposed; their developing brains were vulnerable to its effects throughout gestation and early childhood, and exposure led to structural abnormalities, behavioral problems, impaired cognitive performance and depressive-like symptoms.

And there was no safe window for exposure. "There doesn't appear to be any period of brain development that is safe from its effects," Dr. Slotkin said.

Manufacturers say there is no proof low-level exposures to chlorpyrifos causes similar effects in humans. Carol Burns, a consultant to Dow Chemical, said the Columbia study pointed to an association between exposure just before birth and poor outcomes, but did not prove a cause-and-effect relationship.

Studies of children exposed to other organophosphate pesticides, however, have also found lower IQ scores and attention problems after prenatal exposure, as well as abnormal reflexes in infants and poor lung function in early childhood.

"When you weigh the evidence across the different studies that have looked at this, it really does pretty strongly point the finger that organophosphate pesticides as a class are of significant concern to child neurodevelopment," said Stephanie M. Engel, an associate professor of epidemiology at University of North Carolina at Chapel Hill.

Dr. Engel has published research showing that exposure to organophosphates during pregnancy may impair cognitive development in children.

But Dr. Burns argues that other factors may be responsible for cognitive impairment, and that it is impossible to control for the myriad factors in children's lives that affect health outcomes. "It's not a criticism of a study — that's the reality of observational studies in human beings," she said. "Poverty, inadequate housing, poor social support, maternal depression, not reading to your children — all these kinds of things also ultimately impact the development of the child, and are interrelated."

While animal studies can determine causality, it's difficult to do so in human studies, said Brenda Eskenazi, director of the Center for Environmental Research and Children's Health at the University of California, Berkeley.

"The human literature will never be as strong as the animal literature, because of the problems inherent in doing research on humans," she said.

With regard to organophosphates, she added, "the animal literature is very strong, and the human literature is consistent, but not as strong."

If the E.P.A. will not end use of the pesticide, consumer preferences may.

In California, the nation's breadbasket, use of chlorpyrifos has been declining, Dr. Eskenazi said. Farmers have responded to rising demand for organic produce and to concerns about organophosphate pesticides.

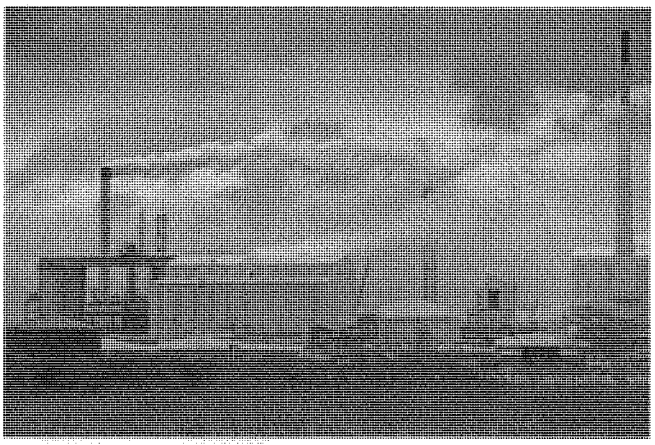
She is already concerned about what chemicals will replace it. While organophosphates and chlorpyrifos in particular have been scrutinized, newer pesticides have not been studied so closely, she said.

"We know more about chlorpyrifos than any other organophosphate; that doesn't mean it's the most toxic;" she said, adding, "There may be others that are worse offenders."

Correction: May 18, 2017

An article on Tuesday about the pesticide chlorpyrifos described acetylcholine incorrectly. It is an ester of choline and acetic acid, not a protein. The article also misstated part of the name of a court that was asked to ban the pesticide. It is the United States Court of Appeals for the Ninth Circuit, not the Ninth District.

Follow @NYTHealth on Twitter. | Sign up for the Science Times newsletter.



Dan Kitwood/Getty

As the Arkema crisis is unfolding, an EPA chemical plant safety rule is on hold. The critical situation at a chemical plant compromised by Hurricane Harvey's flooding is all over the news, and rightfully so. Two small containers of highly volatile organic peroxides have already exploded, and residents living within a 1.5-mile radius of the Houston-area plant were asked to evacuate. Fifteen local sheriff's deputies went to the hospital after getting close to the plant, though all have been released. And Arkema officials say that the worst may not be over. A larger explosion could still occur.

In a statement, the Environmental Protection Agency said it had deployed an aircraft to secure chemical information from the smoke cloud and has sent air monitoring personnel to the scene, as well as a disaster response coordinator. "We will consider using any authority we have to further address the situation to protect human health and the environment," Administrator Scott Pruitt said in a statement.

But as the crisis is unfolding, we shouldn't forget that Pruitt's EPA is delaying an Obama-era chemical safety plant rule that would soon have covered this very plant. In June, the EPA announced it would delay implementation of what environmental groups call the Chemical Disaster Rule for two years. Pruitt's reason, of course, was industry concerns—specifically, the concerns that it would be hard for companies to implement,

and that disclosure of their chemicals could be a national security threat.

The rule, which is actually an amendment to the federal Risk Management Program, was intended to improve accident preparation at facilities. Former EPA Administrator Gina McCarthy told me it was "specifically designed to make sure that large chemical facilities and refineries do more to ensure they are prepared for emergencies and provide local communities with the information they need to deal with potential explosions and releases just like the ones we are seeing today."

Here are some of the specifics, via *ThinkProgress*' Natasha Geiling:

> [The rule] required facilities to conduct root-cause analyses in the event of a chemical release or explosion, to pinpoint exactly what led to the incident. The rule also required facilities to contract with an independent third-party to perform a compliance audit after any incident that caused death, injury, or significant damage.
>
> Under the Obama administration's rule, regulated facilities would have to provide local emergency responders with the facility's emergency response plan and would have to conduct annual exercises to test the facility's ability to effectively communicate with both emergency responders and the public in the event of a release or explosion.
>
> Finally, the rule required that chemical facilities share chemical hazard information with the public upon request, and that the companies provide notification of the availability of such information on their website, via social media, or some other public platform.

Just to be completely clear: The EPA's decision to delay this particular rule is in no way affecting the situation at the Arkema plant. But environmental groups are pointing to Arkema as an example of what could happen in the future without the regulations. "The Arkema disaster is just the kind situation that the Chemical Disaster Rule is meant to mitigate," said Gordon Sommers, an Earthjustice attorney suing the EPA over its delay of

the regulation. "The last thing that a community battling hurricanes and floods needs is a hazardous chemical release on top of that, but unfortunately that extra threat is what many communities in Texas and Louisiana face because the Trump Administration is delaying chemical disaster prevention measures."

On Thursday the White House announced that the president would donate $1 million of his personal fortune to hurricane relief efforts. But if you were expecting to hear Trump's EPA pledge to implement the Chemical Disaster Rule, you'll have to keep on waiting.

January 22, 2018

Alex Shephard
14 minutes ago

Drew Angerer/Getty

The government shutdown has revealed the GOP's true position on the DREAMers. The shutdown has entered its third day and the two parties are at an impasse. Republicans say they won't consider immigration reform until Democrats help them reopen the government. Democrats say they won't reopen the government until Republicans pledge to hold a vote to protect those 800,000 undocumented immigrants brought to the United States as children.

Both sides are blaming each other, but the cause for this logjam is simple. In September, President Trump ended DACA but claimed that he wanted to protect the DREAMers. Most Republicans have publicly maintained that they do not want to see these people deported. But at the same time, they have used the DREAMers as hostages, threatening to abandon them if Democrats don't agree to a string of tougher immigration measures.

The closer Congress gets to a March deadline to resolve the issue, the more valuable that bargaining chip becomes. If they hammer out an agreement to the DACA issue now, they will lose the leverage to extract more severe concessions from Democrats.

Republicans, in other words, are trying to have it both ways. They don't

want to seem heartless, so they publicly maintain that they are negotiating in good faith to protect the DREAMers. But they also want to keep their legal status in limbo for as long as possible. The Republicans are less interested in the fate of these 800,000 individuals than in using them to get hardline policies on immigration.

January 19, 2018

Emily Atkin
3 days ago

Bryan R. Smith/Getty

Trump has tried to restrict science almost 100 times already. There are 91 entries on Columbia Law School's "Silencing Science Tracker," a searchable database released Friday that intends to document every instance of information censorship or restriction since President Donald Trump was elected. If this is an accurate tally, that means there's been some kind of attempt to limit government scientific information once every week in Trump's America.

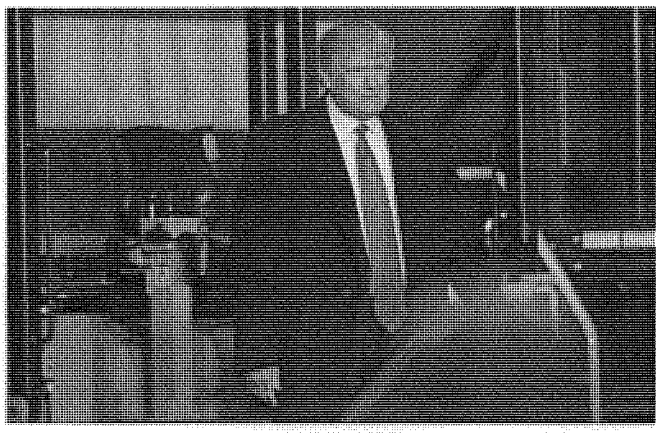
The online resource is a joint project of Columbia's Sabin Center for Climate Change Law and the Climate Science Legal Defense Fund, a non-profit originally created in 2011 to defend scientists from what at the time seemed like the biggest threat facing the climate science community: legal attacks against individual scientists by conservative groups. The group's priorities have shifted somewhat since Trump's election. "Political and ideological attacks on science have a long and shameful history, and such attacks are the most dangerous when carried out or condoned by government authorities," said Lauren Kurtz, CSLDF's executive director.

To be included in the Silencing Science Tracker, a federal government action must have the effect of "prohibiting scientific research, education or discussion, or the publication or use of scientific information," the site says. The tracker divides actions into six broad categories, and includes Trump's

appointments of unqualified nominees to science-related posts, the removal of various climate references from executive agency websites, and suspensions on scientific research. The category with the most entries is "government censorship," which includes 40 instances when the administration changed website content, restricted public communication by scientists, or made data more difficult to access.

Trump isn't censoring all government science, though. This week, NASA released global temperature data showing 2017 to be the second-hottest year on record.

Alex Shephard
3 days ago



Jeff Swensen / Getty

If the government shuts down, Donald Trump is to blame. With hours to go until the government shuts down, surprisingly little is happening in Washington. Negotiations are at a standstill and neither party seems to be facing the potential crisis with any sense of urgency. Instead, Republicans and Democrats are testing out messaging blaming the other party for the disaster to come.

There is, with any shutdown, more than enough blame to go around. But this mess is particularly one of Donald Trump's making. The stage was set when Trump unnecessarily announced that he was ending the DACA program that protected undocumented immigrants who were brought to the United States at a young age. While various proposals have been floated to protect these young immigrants—a move that, at least publicly, has broad bipartisan support—Trump has sided with Republican hardliners, demanding that funding for a border wall be included in any package that codifies DACA and keeps the government open. On Thursday he even negotiated directly with the House's Freedom Caucus on a continuing resolution.

The odd thing about all of this is that last week Trump got what he had professed to want—a deal that would protect DACA *and* include wall funding. For Republicans, it was a big win. Despite having little leverage, they were able to extract a number of concessions, including over $1 billion

in funding for the wall. This is exactly the kind of face-saving compromise that is supposed to win out in these situations.

But Trump tore that deal up for not having enough wall funding. He has now created a situation in which he will shut down the government over the issue—putting hundreds of thousands temporarily out of work and leaving hundreds of thousands of immigrants in the lurch. Republicans, who control both chambers of Congress, deserve a great deal of blame for their lack of internal discipline and their refusal to compromise with Democrats. But they're in this situation because of President Trump's impulsive, self-defeating acts.

Sarah Jones
3 days ago

Donald Trump has a crippling fear of sharks. Thanks to Stormy Daniels, whose real name is Stephanie Clifford, we at last know the president's kryptonite: sharks. Trump hates sharks, according to a 2011 *In Touch* interview with Daniels. *The Guardian* has the summary:

> According to Clifford, Trump invited her to his hotel room at a celebrity golf tournament in Nevada in 2006. When she arrived there, she said, he was wearing "pajama pants" and watching the

> Discovery Channel's yearly Shark Week on television.
>
> "The strangest thing about that night – this was the best thing ever," Clifford said, describing the businessman's fasciation with a special about a shipwreck. "It was like the worst shark attack in history. He is obsessed with sharks. Terrified of sharks.
>
> "He was like, "I donate to all these charities and I would never donate to any charity that helps sharks. I hope all the sharks die.' He was like riveted. He was like obsessed. It's so strange, I know."

In fact, before he decided to run for president, he almost played the president in Syfy's *Sharknado 3: Oh Hell No!* Perhaps instead of pretend-killing a shark, Trump, a climate change denier, became president so he could actually kill sharks by allowing the oceans to boil. But the sharks aren't going anywhere, as Trump himself once admitted:

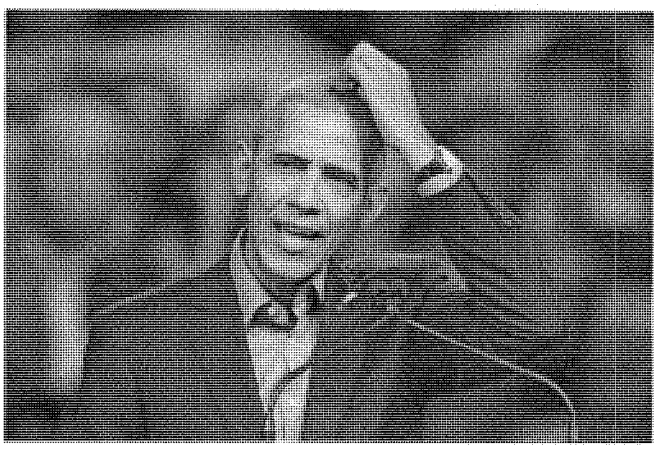
> Sorry folks, I'm just not a fan of sharks - and don't worry, they will be around long after we are gone.
> — Donald J. Trump (@realDonaldTrump) July 4, 2013

Sharks are magnificent beasts that frankly deserve more than one week a year dedicated to them. That Trump fears them so much should only increase their reputation. At the very least, this has the makings of a solid premise for a new *Sharknado* movie where the sharks save America.

email address Sign Up

January 18, 2018

Graham Vyse
4 days ago



JIM WATSON / Getty Images

Barack Obama has a Donald Trump dilemma. The former president generally laid low during Donald Trump's first year in the White House. He issued statements on policy issues, campaigned for Governor Ralph Northam in Virginia, and recorded a robocall for Senator Doug Jones in Alabama. Mostly, though, Obama counseled Democrats behind the scenes.

"But with the midterms approaching," Politico reported on Thursday, "people close to him say he'll shift into higher gear: campaigning, focusing his endorsements on down-ballot candidates, and headlining fundraisers. He'll activate his 15,000-member campaign alumni association for causes and candidates he supports — including the 40 who are running for office themselves. He's already strategizing behind the scenes with Democratic National Committee chair Tom Perez and Eric Holder, who's chairing his redistricting effort."

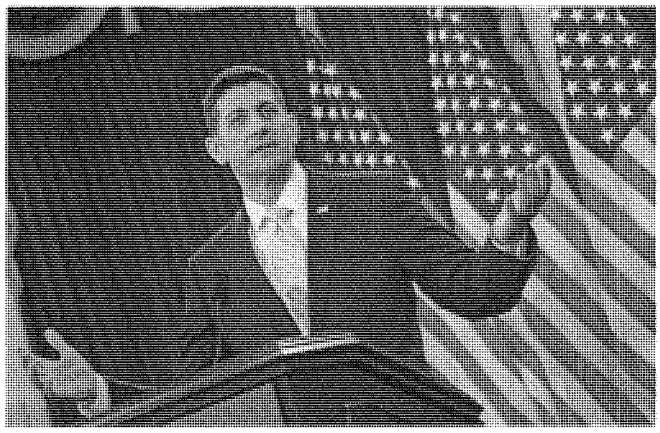
"Throughout," Politico added, "Obama is determined not to become the foil

that he can see President Donald Trump clearly wants, and resist being the face of the Resistance for his own party." The former president is expected to wait until this fall to resume campaigning, and continue to avoid speaking his successor's name in public, "barring a major national crisis that he'd set as his standard for going directly Trump, aware that he can only cross that barrier once for it to have real meaning." Obama feels "vindicated" that his absence last year allowed a new generation of Democrats to raise their profile.

You can understand his dilemma: Obama remains the most unifying figure in a Democratic Party still somewhat divided by Hillary Clinton's presidential primary fight with Bernie Sanders. No Democrat, with the possible exception of former First Lady Michelle Obama, more effectively criticized Trump in 2016, which is why I initially thought he should shun the political norm that former presidents don't criticize their successors directly.

But one of the benefits of the Democratic Party lacking a clear leader is Trump doesn't have a clear foil. He launches an attack on New York Senator Kirsten Gillibrand one day and Massachusetts Senator Elizabeth Warren the next. He's still tweeting about "Crooked Hillary." Perhaps, then, Obama is justified in treading carefully. He's valuable to rally Democrats in this crucial year, but right to let the party look to the future.

Sarah Jones
4 days ago



Win McNamee/Getty Images

If CHIP loses funding, the Republican Party is to blame. A government shutdown looms, and the GOP's solution has been to ask Democrats to choose between equally inhumane proposals. At Vox, Dylan Scott explains:

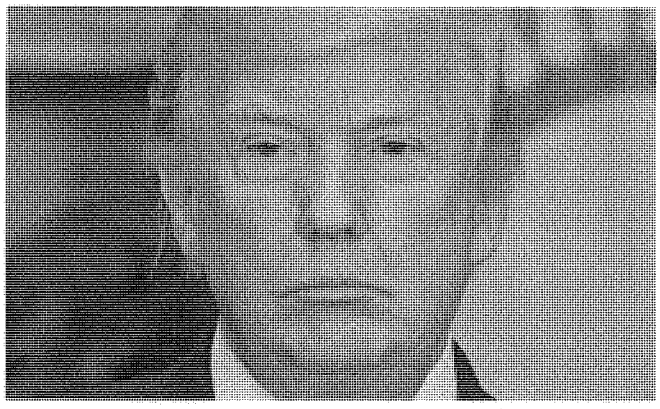
> So Republicans, after months of criticism and a stalemate over how to pay for CHIP, have decided to turn the tables: They attached a six-year CHIP extension to their short-term spending bill in an attempt to deter Democrats from shutting down the federal government this week over the Deferred Action for Childhood Arrivals program, which the two parties still haven't agree on how to fix.

If Democrats reject this—and so far the party seems united in its determination to do just that—the government shuts down. Keep in mind that the Children's Health Insurance Program, which provides health coverage to some 10 million kids, is nearly universally popular, and that extending it costs the government little; extending now, in fact, would actually save the government money. So the usual fiscal excuses don't apply.

The GOP's willingness to hold CHIP hostage is instructive: It opposes welfare for reasons that have nothing to do with the deficit. It's easy to hold

something hostage when you know it matters more to everyone else than it does to you.

Alex Shephard
4 days ago



Donald Trump will never give up on The Wall. On Wednesday, Chief of Staff John Kelly sat down with Fox News's Bret Baier and made the case that he was the adult in the room. The gist was that the president may be uninformed and immature, but Kelly was informed and mature. To illustrate this fact, Kelly used his conversations with Congress about Trump's central campaign promise: The Wall.

> As we talked about things—where this president is and how much he wants to deal with this DACA issue and take it away—I told them that, you know, there's been an evolutionary process that this president has gone through as a campaign. And I pointed out to all of the members that were in the room that they all say things during the course of campaigns that may or may not be fully informed. But this president, if you've seen what he's done, he has changed the way that he's looked at a number of things. ... So he has evolved in the way he's looked at things. Campaign to governing are two different things, and this president is very, very flexible in terms of what is within the realm of the possible.

Trump responded by implicitly blasting his chief of staff for suggesting that he has "evolved" on the issue.

> The Wall is the Wall, it has never changed or evolved from the first

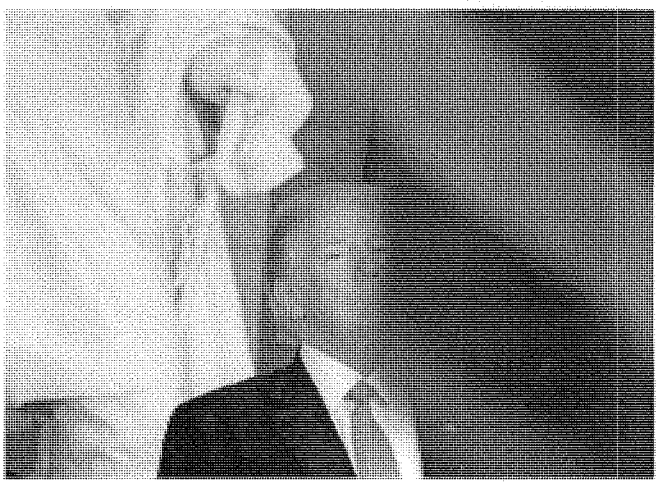
> day I conceived of it. Parts will be, of necessity, see through and it was never intended to be built in areas where there is natural protection such as mountains, wastelands or tough rivers or water.....
>
> — Donald J. Trump (@realDonaldTrump) January 18, 2018

> ....The Wall will be paid for, directly or indirectly, or through longer term reimbursement, by Mexico, which has a ridiculous $71 billion dollar trade surplus with the U.S. The $20 billion dollar Wall is "peanuts" compared to what Mexico makes from the U.S. NAFTA is a bad joke!
>
> — Donald J. Trump (@realDonaldTrump) January 18, 2018

The Wall was a quintessential campaign promise in that it was largely symbolic. Insisting that the United States (or, sometimes, Mexico) build a costly and expensive border wall was a supposed "common sense" proposal—never mind that it's ineffective—meant to illustrate the difference between Trump and the bureaucrats dictating immigration policy. But Trump has never grasped the subtlety of his own messaging and has continued to insist on a literal wall.

The irony of these tweets is that it's clear that Trump *still* isn't "fully informed" about his signature promise or who will pay for it. There has been an expectation that, at some point, the president would have to recognize its infeasibility. But it looks like that won't happen anytime soon.

Emily Atkin
4 days ago



Mark Wilson/Getty Images

Why is Trump censoring some agencies' climate science, but not

others'? NASA and the National Oceanic and Atmospheric Administration are holding an annual joint press conference on Thursday to announce global temperature data for the year 2017. Every year, the conclusion is pretty much the same: The planet is too hot, it's getting hotter, and humans are to blame. This year's announcement is no different. According to NASA, 2017 was the second-hottest year on record; according to NOAA, it's the third hottest. (Both agencies say that the five warmest years on record have all occurred since 2010.)

While this annual announcement is predictable, this year was the first time the government's temperature data was released under President Donald Trump. Some wondered whether Trump, a climate-science denier, would attempt to censor or alter this data. Would he order scientists to soften information that might undermine his policy agenda, like President George W. Bush did? Would he prevent government scientists who compiled the data from speaking with certain media outlets, which Bush also did?

In short: No. Thursday's announcement went off without controversy. The data was released. The scientists were made available for questions. I asked whether Trump's people were involved in the data's analysis or release. "We've done this exactly the way we've always done," NASA climatologist Gavin Schmidt said. "We've had no imput from any political appointees."

On the one hand, this is good news—just as it was when Trump didn't censor a major federal report in November that detailed humans' responsibility for global warming. Political officials from the Trump administration may still be interfering with science at regulatory agencies at regulatory agencies like the Environmental Protection Agency and the Department of Interior, but at least they've left non-regulatory science agencies like NASA and NOAA alone.

And yet, one can't help but wonder why Trump is leaving NASA and NOAA alone. The Bush administration interfered with regulatory and non-regulatory science agencies alike because it wanted the public to think that its environmental and public health policies were based on solid evidence.

They feared what would happen if NASA or NOAA contradicted them on climate science. They considered science a powerful tool in shaping public opinion.

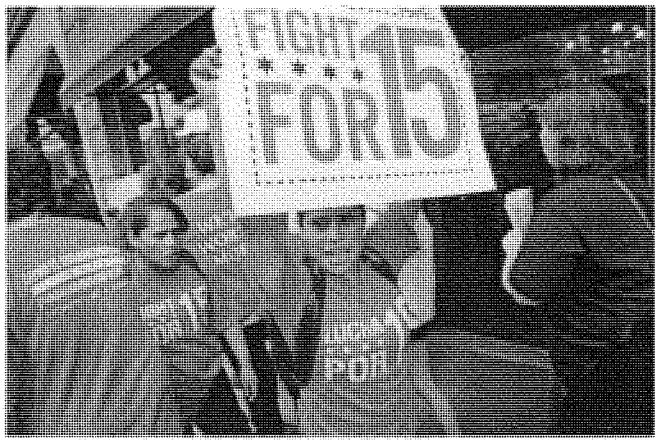
But when it comes to climate and the environment, Trump officials are only interfering with agencies like EPA and Interior, where sound science is often a legal requirement for regulatory decisions. In other words, the Trump administration recognizes that science is powerful in a legal sense, but seems less interested in using science to shape public opinion.

At any time you like, you can visit a website controlled by Donald Trump and learn not only that the planet is rapidly warming, but that there's a scientific consensus that humans are the primary cause. You can watch stunning videos of ice melt in Greenland and Antarctica. From 1880 to the present day, you can watch the earth turn from a blue marble to an orange sphere freckled with red.

And yet, 32 percent of Americans still don't believe global warming is caused by human activity; 38 percent don't believe that changes are happening now; and climate change remains at the near-bottom of the public's priority list. If the scientists who put a man on the moon and orbited a satellite around Saturn can't change that, it's hard to see what could.

January 17, 2018

Sarah Jones
5 days ago



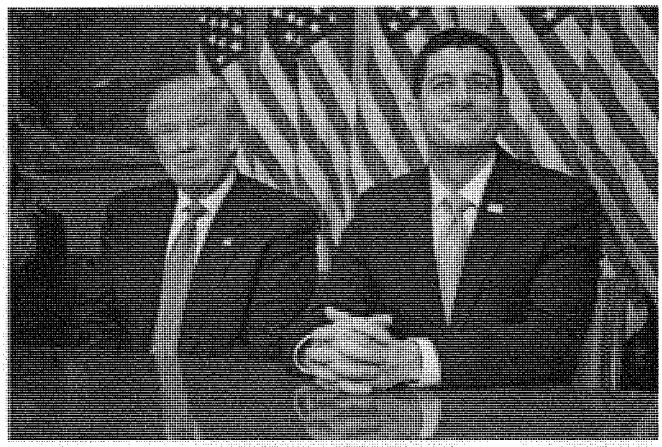
Scott Olson/Getty Images

Trump's war against workers continues. According to the Economic Policy Institute, the Department of Labor has proposed a rule that would allow employers to take employee tips, and does not require them to redistribute the funds. The biggest losers, EPI calculates, would be women:

> In other words, nearly 80 percent of the tips that would be taken by employers as a result of this rule would come out of the pockets of women and their families. (The specific share, calculated from unrounded numbers, is 78.7 percent.) Because women are both more likely to be tipped workers and to earn lower wages, this rule would disproportionately harm them.

No word yet on how Ivanka Trump, who has presented herself as a prominent defender of working women, has taken this news. But the Department of Labor's latest bit of rule-making isn't an isolated incident. The administration wants to adjust the salary threshold for an Obama-era overtime rule; if it succeeds in raising the threshold, lower-wage workers will find themselves in possession of shrinking bank accounts. Trump also used his executive authority to roll back a number of regulations that would have protected worker safety. As his son Eric reminded us Wednesday morning, green is the only color Trump sees.

Alex Shephard
5 days ago



Zach Gibson/Getty

Republicans are this close to shooting themselves in the foot. Congress has until Friday to reach a budget deal that would keep the government open. But with the clock ticking, a deal does not seem close. President Trump's "shithole" comments have set negotiations back in the Senate on provisions related to DACA. In the House, meanwhile, Republicans are effectively negotiating with themselves. But in both chambers, the same fundamental dynamic is playing out. Republicans control the government, but hardline factions within the party, which are decrying any immigration compromise included in the spending bill as "amnesty," are effectively holding the negotiations hostage.

In the Senate, these tensions boiled over on Tuesday in a hearing with Homeland Security Secretary Kirstjen Nielsen. While Democrats grilled Nielsen about what was said in the "shithole" meeting, Republican Lindsey Graham, who had reached an immigration deal with Democrat Dick Durbin last week, said that the shutdown negotiations had turned into a "shitstorm." His colleague Tom Cotton, meanwhile, criticized the Durbin-Graham compromise as "mass amnesty."

In the House, things are even worse. Unlike the Senate, there are enough Republicans in the House to pass a bill without Democratic votes. But the ultra-conservative House Freedom Caucus has once again emerged as a roadblock. On Tuesday evening, conservatives in the House revolted

against a compromise bill pushed by Paul Ryan that would extend government funding for another month and include funding for the Children's Health Insurance Program (CHIP) for six years—a compromise that could win support from Democrats in both chambers and avert a shutdown.

Conservatives are pushing a deal that would fund the government for a month and the Pentagon for a year—a deal that would make hardliners less willing to budge if the government were to shut down in a month over DACA. But Senate Democrats, who are increasingly pushing for a fix for DACA now, have no reason to take that deal.

All of these factors—Trump's "shithole" comments, Democratic anxiety over DACA, the revolt of Republican hardliners—have made a government shutdown more likely than it was a week ago, when a compromise seemed near. With two days to go until the deadline, there's little bringing the factions within the Republican Party together.

Facebook | Twitter | Instagram | LinkedIn

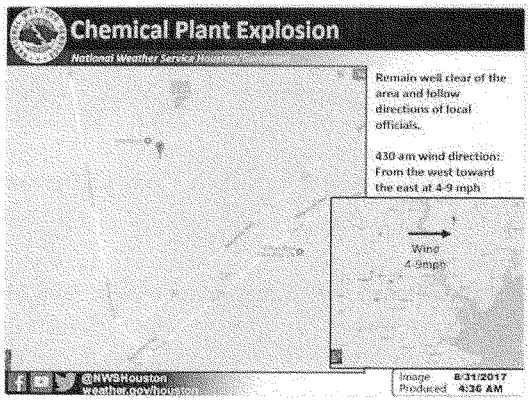
Copyright 2018 © New Republic. All rights reserved.

EDITION
US

David Halperin, Contributor Attorney, advocate, writer at RepublicReport.org

Burning Houston Chemical Plant Highlights Trump-Pruitt Refusal To Improve Chemical Safety

08/31/2017 12:28 pm ET | Updated Sep 01, 2017



This morning a flooded chemical plant in Crosby, Texas, 20 miles from Houston, continues to burn, after explosions there overnight sent plumes of smoke into the air. The plant, which has lost electric power, is owned by France's Arkema Group, one of the world's biggest chemical companies. An Arkema spokeswoman told the Associated Press that the fire "will be explosive and intense in nature." Richard Rennard, an Arkema executive, told reporters near the site this morning that smoke from the fire could cause irritation to skin, lungs, and eyes and that anyone exposed should "call their doctor or seek medical advice." Brock Long, the Federal Emergency Management Agency head, said that the "the plume is incredibly

dangerous." Residents around the area already had been evacuated because of the potential plant danger.

The Harris County Sheriff's office tweeted that one if its deputies was "taken to hospital after inhaling fumes from Archem plant in Crosby." The sheriff later said that deputy and 14 other first responders were treated and released.

The plant manufactures organic peroxides — compounds used to make countertops, paints, construction materials, and other products.

There is powerful scientific evidence that climate change is making rainstorms more powerful and destructive. So many are pointing out that actions by President Trump and APA administrator Scott Pruitt to cancel U.S. initiatives to combat climate change — withdrawing from the Paris accord and dumping a range of Obama-era environmental regulations — look particularly foolish in the wake of the terrible destruction caused by Harvey.

But the Arkema fires highlights one more area where Trump-Pruitt environmental decisions endanger the American people — and could increase the suffering and destruction in the wake of natural disasters like Harvey. Because in June, Pruitt's EPA announced it was delaying for 20 months an Obama rule aimed at improving safety at U.S. chemical plants, while it revisits the wisdom of the rule.

In April I testified at an EPA hearing on the delay of the chemical safety rule, presenting a joint statement from me and from Major General Randy Manner, US Army (Ret), a former acting director of the Defense Threat Reduction Agency, and Lieutenant General Russel L. Honoré, US Army (Ret), the former commander of Joint Task Force Katrina, who is now in Houston talking about the relief effort.

General Honore, General Manner, and I told the EPA that for decades, our country has failed to squarely address the dangers of hazardous chemical facilities — from oil refineries to water treatment plants. We noted that a chemical explosion or release could be triggered by an accident, a deliberate attack, or a natural disaster — and that such an incident could kill thousands of people. Millions of our citizens live and work near these dangerous facilities.

The Obama EPA rule, issued on January 13, was the product of extensive deliberation — three years of discussions with chemical companies, plant workers, affected communities,

first responders and others. The rule strengthens the federal Risk Management Program (RMP), which addresses some 12,500 facilities that use or store large quantities of highly toxic or highly flammable chemicals.

The AP reports this morning that the EPA had required the Arkema plant now burning to develop and submit a plan under the RMP program, "because it has large amounts of sulfur dioxide, a toxic chemical, and methylpropene, a flammable gas." RMP plans must explain the risks of a potential release, including worst-case scenarios, and outline how the company would respond. The AP report says, "In its most recently available submission from 2014, Arkema said potentially 1.1 million residents could be impacted over a distance of 23 miles (37 kilometers) in a worse case, according to information compiled by a nonprofit group and posted on a website hosted by the Houston Chronicle. But, Arkema added, it was using 'multiple layers of preventative and mitigation measures' at the plant, including steps to reduce the amount of substances released, and that made the worst case 'very unlikely.'" (Note: Here is that website.)

The AP further reported, "Daryl Roberts, the company's vice president of manufacturing, technology and regulatory services in the Americas, did not dispute that worst-case scenario but said that assumed all the controls in place failed and strong winds blew directly toward Houston, the nation's fourth-largest city. 'We have not modeled this exact scenario but we are very comfortable with this 1.5-mile radius,' Roberts told the AP. He added that it mostly resembled less serious scenarios that would affect a half-mile radius and a few dozen people."

Even that version of the risks doesn't sound comforting, on top of all the dangers and hardships the people of the Gulf region face right now.

The Arkema plant is no outlier. Across our country, hazardous chemical facilities are, in effect, as Senator Barack Obama said in 2006, "stationary weapons of mass destruction" — capable, if triggered, of causing the same kinds of harm as chemical weapons.

We know the risk because there have been major incidents, like the 2013 West, Texas, ammonium nitrate explosion. That tragedy, which some federal investigators concluded was sabotage, killed 15 Americans and injured 160 more. It highlighted the failure by many in the chemical industry to minimize and safely secure toxic materials, and our government's failure to create comprehensive and fair rules to protect against such incidents.

West, Texas, was not the only warning. From 2004 to 2013 there were some 1,500 chemical releases or explosions, causing 17,000 injuries and 58 deaths. There have been hundreds more incidents since then, with more casualties.

We know the dangers, also, from the 1984 pesticide plant disaster at Bhopal, India, which caused 20,000 deaths. The Bhopal plant was owned by a U.S. company, Union Carbide. If that plant had been located in the U.S. and 20,000 people had died here, we would have fixed this problem long ago.

Terrorists could trigger a chemical plant attack in our country, with consequences like Bhopal, or worse. 9-11 hijacker Mohammed Atta, before he flew a jet into the World Trade Center, reportedly had been scouting U.S. chemical plant sites.

In 2003, the government's National Infrastructure Protection Center warned that U.S. chemical plants could be terrorist targets. Security experts have warned of the relative ease with which determined attackers could thwart plant security. The potential for cyber attacks makes the challenge even more serious.

The EPA has identified 466 chemical facilities that each put 100,000 or more people at risk of a poison gas disaster. In 2004, the Homeland Security Council projected that a major attack would kill 17,500 people and injure tens of thousands.

This is an urgent national security or homeland security issue. Yet the Trump Administration has simply yielded to the demands of Koch Industries and others in the chemical industry lobby, blocking an urgent, common sense rule to placate wealthy patrons, just as Pruitt has dumped rules to curb global warming and toxic pollution at the behest of the fossil fuel industry and other polluters.

Chemical industry lobbying already kept important protections out of the Obama rule. In particular, community, labor, and environmental groups had strongly urged that plants be required to move to safer technologies where feasible, as some responsible companies, such as Clorox, already have done voluntarily.

But the Obama rule did provide some common sense safety reforms. One can't say now, without more information, that these reforms, once implemented, would have prevented today's Arkema explosion. But the rule blocked by Pruitt would require plants like Arkema's to

engage in more coordination with local first responders to plan for incidents and make it easier for community members to learn about plant dangers. The rule also would require such plants to evaluate whether they need greater safety improvements and emergency preparedness, such as storing fewer chemicals, improving storage safety, and strengthening backup power so electricity would be maintained in a storm. And the rule would have required, for three industries with the most serious accident records — refineries, paper mills, and chemical manufacturers — to analyze whether it was feasible to move to safer technologies and materials.

Today's chemical plant explosion highlights the dangers of our chemical plants in the wake of a natural disaster and the urgent need to do more to make our plants safer. Instead, Donald Trump and Scott Pruitt have heightened those dangers.

This article also appears on HuffPost.

ChemicalWatch

NGO platform: Making America toxic again

Global Business Briefing, March 2017 / New TSCA/LCSA, TSCA, United States

By Ken Cook, Environmental Working Group President

https://chemicalwatch.com/54510/ngo-platform-making-america-toxic-again

It's easy to forget what America was like before President Richard Nixon established the Environmental Protection Agency in 1970. The country's landscape was marred by oil slickened rivers that caught on fire, smog so thick it obscured city skylines, and unregulated chemical plants that spewed life-threatening toxic pollution into the air and water.

Now, much of the progress accomplished over nearly 50 years is threatened by President Trump and his new EPA administrator, Scott Pruitt. The nation's drinking water and air quality, safeguards against pesticides and oversight of big polluters are at great risk. It is not hyperbole to say that Americans are facing the greatest political challenge to our environmental health ever.

As attorney general of Oklahoma, Mr Pruitt did nothing to clean up the state's serious problem of chicken manure pollution in water. He filed or joined more than a dozen lawsuits against the EPA's rules on clean air and drinking water. He rejects the overwhelming scientific consensus that carbon dioxide emissions are causing catastrophic climate change.

At his confirmation hearing, he couldn't even say if banning leaded gasoline was a good idea. Mr Pruitt now holds the most important environmental job in the world, yet his record and rhetoric confirm that Mr Trump picked him to dismantle the EPA, not lead its efforts to protect public health.

Fast start

And they are making a fast start. Mr Pruitt and the Trump administration are already working at a breakneck pace, weakening safeguards intended to cut mercury, lead and other air pollutants that lower IQ and cause asthma attacks in children. They're also working to erode rules designed to prevent pollution of drinking water supplies from factories and farms.

The White House is moving forward with plans to cripple the EPA, proposing to cut the agency's annual budget by more than $2bn and reduce staff by one-fifth. These massive cuts will hobble the agency's ability to protect Americans from exposures to toxic chemicals, and will ultimately jeopardise the health of tens of millions of Americans, including children.

TSCA at risk?

Last year Congress passed the new Frank R Lautenberg Chemical Safety for the 21st Century Act – it was the first update of the nation's primary toxic substances law, the Toxic Substances Control Act, or TSCA, since 1976. In November, the EPA named the first ten highly toxic substances it planned to evaluate. Many of these chemicals have been linked to cancer and can be found in everything from cosmetics to insulation, paint strippers and household cleaning products. If the EPA gets it wrong with these first ten, there could be serious consequences for current and future generations of Americans.

The agency designated asbestos as one of the top chemicals for review and regulation under the new law. As a real estate developer, Mr Trump praised the notorious carcinogen as "the greatest fire-proofing material ever used".

The EPA first moved to ban asbestos more than 25 years ago, but was overruled by a federal court in 1991. Finally, the EPA has strengthened authority to take decisive action against this deadly substance that continues to kill up to 15,000 Americans each year, and join the other 58 nations that have already banned asbestos.

Other priority chemicals targeted by the EPA for action include 1,4-dioxane, found in cosmetics, and tetrachloroethylene, common in dry-cleaning chemicals. Like asbestos, both are strongly associated with causing cancer in humans.

Targets

Mr Pruitt – who at his confirmation hearing wouldn't commit to prioritising an asbestos ban – has not yet set his sights on TSCA and the EPA's new found powers to protect the public from toxic chemicals. But no one should think for a second that he and Mr Trump will leave the chemical safety law off their list of targets.

If they turn their rhetoric into reality, the EPA could be starved of the resources it needs to evaluate and regulate these and many other toxic chemicals. Under an administration that seems

unlikely to act aggressively to restrict toxic chemicals, it's more important than ever for consumers to vote with their wallets.

A number of manufacturers are making market-changing decisions in response to growing consumer demand for nontoxic substances in products and healthier ingredients in food. In February, Unilever announced a bold new initiative to provide detailed information on fragrance ingredients for all products in its multibillion-dollar portfolio of personal care brands.

Last year, Procter & Gamble – the multinational manufacturer of family, personal care and household products – made public a list of more than 140 chemicals it does not use in any fragrances in its brands.

Progress

When consumers support companies and retailers that are making strides to improve products, progress in environmental health protection can occur even in the absence of government safeguards.

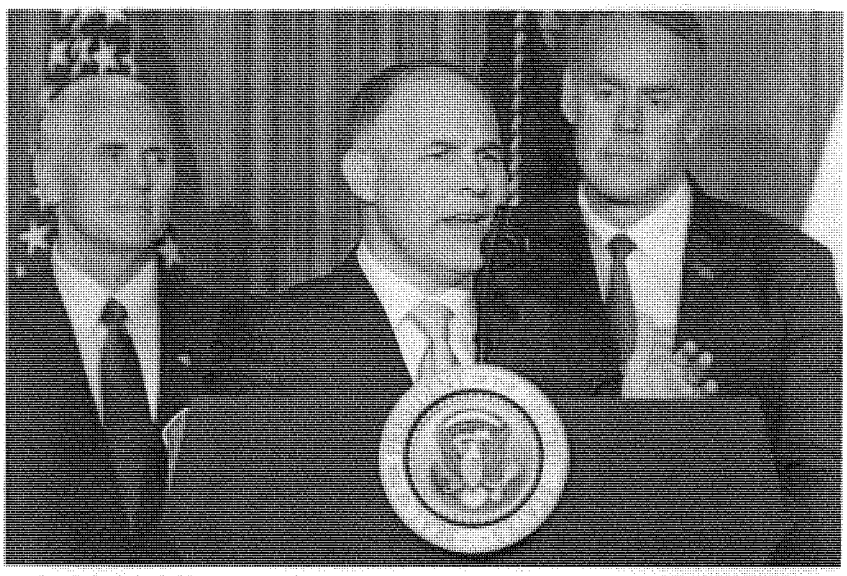
Consumer action can't completely make up for the need for changes in government policy, but they send a signal to Mr Trump, Mr Pruitt and other elected enemies of public health that no one voted for dirty air, contaminated water or consumer products containing hazardous chemicals

The views expressed in contributed articles are those of the expert authors and are not necessarily shared by Chemical Watch.

POLITICS

E.P.A. Chief, Rejecting Agency's Science, Chooses Not to Ban Insecticide

By ERIC LIPTON MARCH 29, 2017



Scott Pruitt, the head of the Environmental Protection Agency, on Tuesday. Mr. Pruitt rejected a petition filed a decade ago by two environmental groups asking that the agency ban all uses of chlorpyrifos. Jim Watson/Agence France-Presse — Getty Images

WASHINGTON — Scott Pruitt, the head of the Environmental Protection Agency, moved late on Wednesday to reject the scientific conclusion of the agency's own chemical safety experts who under the Obama administration recommended that one of the nation's most widely used insecticides be permanently banned at farms nationwide because of the harm it potentially causes children and farm workers.

The ruling by Mr. Pruitt, in one of his first formal actions as the nation's top environmental official, rejected a petition filed a decade ago by two environmental groups that had asked that the agency ban all uses of chlorpyrifos. The chemical was banned in 2000 for use in most household settings, but still today is used at about 40,000 farms on about 50 different types of crops, ranging from almonds to apples.

Late last year, and based in part on research conducted at Columbia University, E.P.A. scientists concluded that exposure to the chemical that has been in use since 1965 was potentially causing significant health consequences. They included learning and memory declines, particularly among farm workers and young children who may be exposed through drinking water and other sources.

But Dow Chemical, which sells the product under the trade name Lorsban, along with farm groups that use it, had argued that the science demonstrating that chlorpyrifos caused such harm is inconclusive — especially when properly used to kill crop-spoiling insects.

An E.P.A. scientific review panel made up of academic experts last July also had raised questions about some of the conclusions the chemical safety staff had reached. That led the staff to revise the way it had justified its findings of harm, although the agency employees as of late last year still concluded that the chemical should be banned.
Mr. Pruitt, in an announcement issued Wednesday night, said the agency needed to study the science more.

"We need to provide regulatory certainty to the thousands of American farms that rely on chlorpyrifos, while still protecting human health and the environment," Mr. Pruitt said in his statement. "By reversing the previous administration's steps to ban one of the most widely used pesticides in the world, we are returning to using sound science in decision-making — rather

than predetermined results."

The United States Department of Agriculture, which works close with the nation's farmers, supported Mr. Pruitt's action.

"It means that this important pest management tool will remain available to growers, helping to ensure an abundant and affordable food supply for this nation," Sheryl Kunickis, director of the U.S.D.A. Office of Pest Management Policy, said in a statement Wednesday.

Dow Agrosciences, the division that sells the product, also praised the ruling, calling it in a statement "the right decision for farmers who, in about 100 countries, rely on the effectiveness of chlorpyrifos to protect more than 50 crops."

But Jim Jones, who ran the chemical safety unit at the E.P.A. for five years, and spent more than 20 years working there until he left the agency in January when President Trump took office, said he was disappointed by Mr. Pruitt's action.

"They are ignoring the science that is pretty solid," Mr. Jones said, adding that he believed the ruling would put farm workers and exposed children at unnecessary risk.

The ruling is, in some ways, more consequential than the higher profile move by Mr. Trump on Tuesday to order the start of rolling back Obama administration rules related to coal-burning power plants and climate change.

In rejecting the pesticide ban, Mr. Pruitt took what is known as a "final agency action" on the question of the safety and use of chlorpyrifos, suggesting that the matter would not likely be revisited until 2022, the next time the E.P.A. is formally required to re-evaluate the safety of the pesticide.

Mr. Pruitt's move was immediately condemned by environmental groups, which said it showed that the Trump administration cared more about catering to the demands of major corporate players, like Dow Chemical, than the health and safety of families nationwide.

"We have a law that requires the E.P.A. to ban pesticides that it cannot

determine are safe, and the E.P.A. has repeatedly said this pesticide is not safe," said Patti Goldman, managing attorney at Earthjustice, a San Francisco-based environmental group that serves as the legal team for the Natural Resources Defense Council and the Pesticide Action Network of North America, which filed the petition in 2007 to ban the product.

The agency had been under court order to issue a ruling on the petition by Friday. The environmental groups intend to return to the Ninth Circuit Court of Appeals in San Francisco to ask judges to order the agency to "take action to protect children from this pesticide" Ms. Goldman said on Wednesday.

Correction: March 29, 2017

An earlier version of this article misstated part of the name of an environmental advocacy group. It is the Natural Resources Defense Council, not the National Resources Defense Council.

A version of this article appears in print on March 30, 2017, on Page A21 of the New York edition with the headline: E.P.A. Chief Won't Ban Insecticide Thought to Be Risky. Order Reprints | Today's Paper | Subscribe

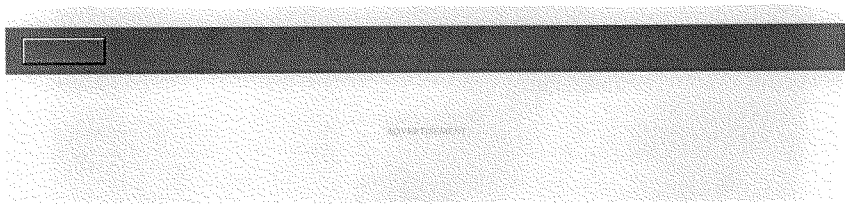
RELATED COVERAGE

Trump Leaves Science Jobs Vacant, Troubling Critics MARCH 30, 2017

NEWS

World

U.S.

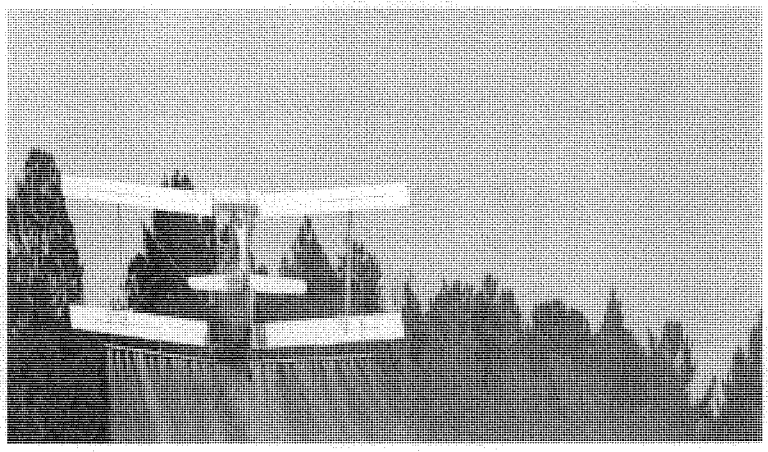


BUSINESS

EPA chief met with Dow Chemical CEO before deciding not to ban toxic pesticide

By ASSOCIATED PRESS

JUN 30, 2017 | 5:00 PM



EPA chief met with Dow Chemical CEO before deciding not to ban toxic pesticide

A crop duster sprays a field just outside Headland, Ala., in 2009. (Dave Martin / Associated Press)

The Trump administration's top environmental official met privately with the chief executive of Dow Chemical shortly before reversing his agency's push to ban a widely used pesticide that health studies showed can harm children's brains, newly released records reveal.

Environmental Protection Agency Administrator Scott Pruitt's schedule shows he met with Dow CEO Andrew Liveris for about half an hour March 9 during a conference held at a Houston hotel. Twenty days later, Pruitt announced his decision to deny a petition to ban Dow's chlorpyrifos pesticide from being sprayed on food even though a review by his agency's scientists concluded that ingesting even minuscule amounts of the chemical can interfere with the brain development of fetuses and infants.

The EPA released a copy of Pruitt's March meeting schedule this month after several Freedom of Information Act requests.

Asked in April whether Pruitt had meet with Dow executives or lobbyists before his decision, EPA spokesman J.P. Freire replied: "We have had no meetings with Dow on this topic."

ADVERTISEMENT

The EPA did not respond this week to questions about what Pruitt and Liveris discussed during their March 9 meeting, or whether the two had also met on other occasions.

Liveris has close ties to the Trump administration. He heads a White House manufacturing working group, and Dow wrote a $1-million check to help underwrite the president's inaugural festivities.

The American Academy of Pediatrics has urged Pruitt to take chlorpyrifos off the market. The group representing more than 66,000 pediatricians and pediatric surgeons said Tuesday that it is “deeply alarmed” by Pruitt's decision to allow the pesticide's continued use.

"There is a wealth of science demonstrating the detrimental effects of chlorpyrifos exposure to developing fetuses, infants, children and pregnant women," the academy said in a letter to Pruitt. "The risk to infant and children's health and development is unambiguous."

The Associated Press reported in April that Dow was lobbying the Trump administration to "set aside" the findings of federal scientists that organophosphate pesticides, including chlorpyrifos, are also harmful to about 1,800 critically threatened or endangered species.

Read more: Dow Chemical is pushing Trump administration to ignore studies of toxic pesticide » »

U.S. farmers spray more than 6 million pounds of chlorpyrifos each year on citrus fruits, apples, cherries and other crops, making it one of the most widely used pesticides in the world.

First developed as a chemical weapon before World War II, chlorpyrifos has been sold by Dow as a pesticide since the mid-1960s. It has been blamed for sickening dozens of farmworkers in recent years. Traces have been found in waterways, threatening fish, and experts say overuse of the pesticide could make targeted insects immune to it.

Under pressure from federal regulators over safety concerns, Dow withdrew chlorpyrifos for use as a home insecticide in 2000. The EPA placed "no-spray" buffer zones around sensitive sites, such as schools, in 2012.

But environmental and public health groups said those proposals don't go far enough and filed a federal lawsuit seeking a national ban on the pesticide.

In October 2015, the Obama administration proposed revoking the pesticide's use in response to a petition from the Natural Resources Defense Council and Pesticide Action Network North America. A risk assessment memo issued in November by nine EPA scientists concluded: "There is a breadth of information available on the potential adverse neurodevelopmental effects in infants and children as a result of prenatal exposure to chlorpyrifos."

ALSO

California lists Roundup ingredient as a chemical linked to cancer; Monsanto vows to fight

https://www.apnews.com/a388836864624989b804d04160b6486e

Link copied!

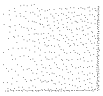
RELATED TOPICS

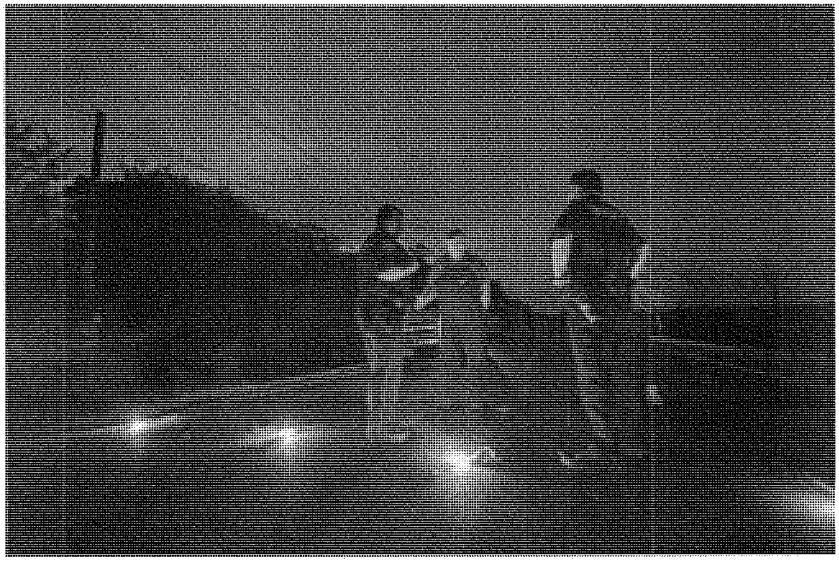
- Houston
- Scott Pruitt
- North America
- Environment
- Business
- Texas

More from
Politics

- Houston
- Scott Pruitt
- North America
- Environment
- Business
- Texas
- Politics

EPA delayed chemical safety rule after industry complaints





A man talks with officers at a roadblock less than three miles from the Arkema Inc. chemical plant Thursday, Aug. 31, 2017, in Crosby, Texas. The Houston-area chemical plant that lost power after Harvey engulfed the area in extensive floods was rocked by multiple explosions early Thursday, the plant's operator said. The Arkema Inc. plant had been left without refrigeration for chemicals that become volatile as the temperature rises. (AP Photo/Gregory Bull)

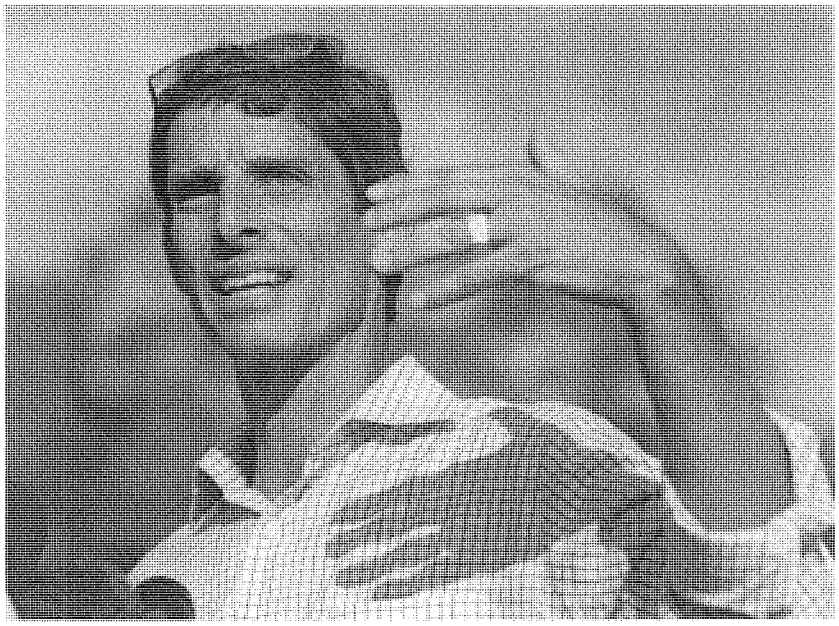
1.
2.
3.

By MATTHEW DALY

Aug. 31, 2017

Mike Cossey, of Bureau Veritas, uses an air monitor to check the quality of air at a police roadblock marking the 1.5-mile perimeter of the evacuation area around the Arkema Inc. chemical plant Thursday, Aug. 31, 2017, in Crosby, Texas. The Houston-area chemical plant that lost power after Harvey engulfed the area in extensive floods was rocked by multiple explosions early Thursday, the plant's operator said. The Arkema Inc. plant had been left without refrigeration for chemicals that become volatile as the temperature rises. (AP Photo/Gregory Bull)

×

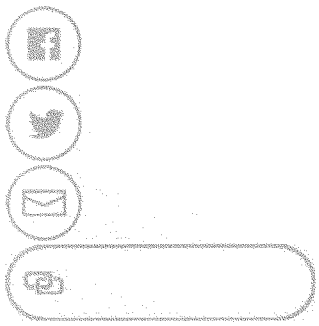


Richard Rennard, president of the acrylic monomers division at Arkema, talks to the media about the explosion of organic peroxide inside the plant Thursday, Aug. 31, 2017, in Crosby, Texas. Explosions and fires rocked a flood-crippled chemical plant near Houston early Thursday, sending up a plume of acrid, eye-irritating smoke and adding a new hazard to Hurricane Harvey's aftermath. (Godofredo A. Vasquez/Houston Chronicle via AP)

EPA delayed chemical safety rule after industry complaints

By MATTHEW DALY

Aug. 31, 2017



https://www.apnews.com/a388836864624989b804d04160b6486e

Link copied!

WASHINGTON (AP) — The Trump administration delayed an Obama-era rule that would have tightened safety requirements for companies that store large quantities of dangerous chemicals such as the chemical plant near Houston that exploded early Thursday.

The Environmental Protection Agency rule would have required chemical plants, including the now-destroyed Arkema Inc., plant outside Houston, to make public the types and quantities of chemicals stored on site. The rule was developed after a fertilizer plant in West, Texas, exploded in 2013, killing 15 people.

EPA Administrator Scott Pruitt prevented the safety rule from taking effect until 2019 to allow the agency time to reconsider industry objections. Chemical companies, including Arkema, said the rule could make it easier for terrorists and other criminals to target refineries, chemical plants and other facilities.

Environmental groups and 11 states are fighting the delay in court.

Arkema has not released a full list of chemicals stored at the plant, although officials said the substances that caught fire were organic peroxides, a family of volatile compounds used for making a variety of products, including pharmaceuticals and construction materials.

Mathy Stanislaus, a former EPA assistant administrator who helped draft the rule for the Obama administration, said it probably would not have prevented the explosion but could have greatly reduced the risk to first responders. The Harris County sheriff says 15 deputies sought medical attention for eye irritation after the fire, although most were quickly treated and released.

"There was a gap in specific knowledge. People need to know what chemicals (are being stored) and what kind of precautions are in place," Stanislaus said in an interview Thursday.

Stanislaus, who led the EPA's Office of Land and Emergency Management during the Obama administration, disputed critics who said the rule would have made it easier for terrorists to gain information about hazardous chemicals.

The rule "struck a balance" between the public's right to know important safety information and national security concerns, he said.

An EPA spokeswoman said the agency's Risk Management Program rule continues to be in effect and requires facilities

that use extremely hazardous substances to develop plans that identify potential effects of a chemical accident, steps to prevent an accident and emergency response procedures.

"The agency's recent action to delay the effectiveness of the 2017 amendments had no effect on the major safety requirements that applied to the Arkema Crosby plant at the time of the fire," spokeswoman Amy Graham said.

EPA is providing assistance and resources to the first responders in Harris County and the Federal Emergency Management Agency, Pruitt said in a statement. Data received from an aircraft that surveyed the scene early Thursday "indicates that there are no concentrations of concern for toxic materials reported at this time," he said.

The EPA issued a final rule in January, seven days before President Barack Obama left office. The EPA said at the time that the rule would help prevent accidents and improve emergency preparedness by allowing first responders better data on chemical storage.

A coalition of business groups opposed the rule, saying it would impose significant new costs without specific safety benefits. The rule "may actually compromise the security of our facilities, emergency responders and our communities," groups including the American Chemistry Council, the American Fuel & Petrochemical Manufacturers and American Petroleum Institute said.

Arkema also lobbied against the rule, telling the EPA in a May 2016 letter that the proposal "will likely add significant new costs and burdens" and "could create a risk to our sites and to the communities surrounding them."

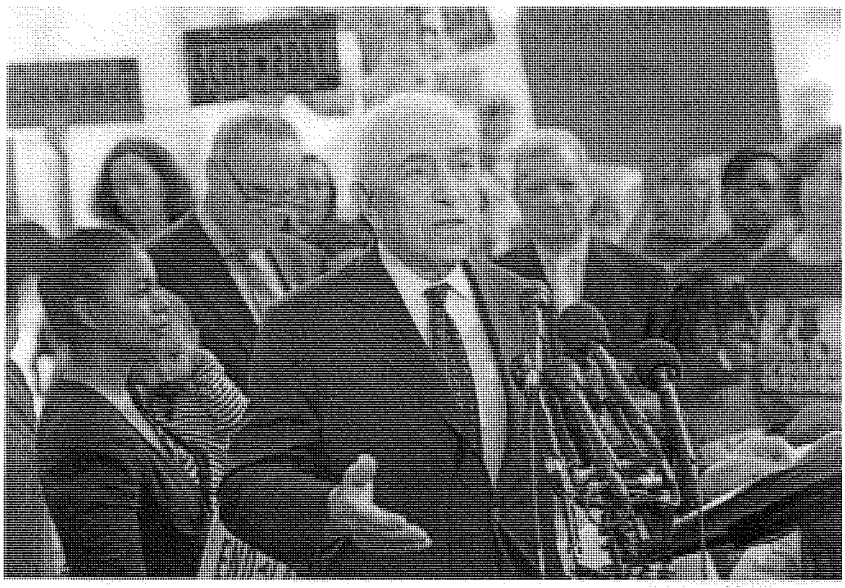
Stanislaus called the rule "a modest first step" to address safety for first responders and localities. The rule came after a three-year process that included eight public hearings and more than 44,000 public comments, he said.

Follow Matthew Daly: http://twitter.com/MatthewDalyWDC

HEALTH

E.P.A. Delays Bans on Uses of Hazardous Chemicals

By **SHEILA KAPLAN** DEC. 19, 2017



Senator Frank Lautenberg, Democrat of New Jersey, on Capitol Hill in 2012, a year before his death. He urged the stricter regulation of toxic chemicals. Chris Maddaloni/CQ Roll Call, via Getty Images

The Environmental Protection Agency will indefinitely postpone bans on certain uses of three toxic chemicals found in consumer products, according to an update of the Trump administration's regulatory plans.

Critics said the reversal demonstrated the agency's increasing reluctance to use enforcement powers granted to it last year by Congress under the Toxic Substances Control Act.

E.P.A. Administrator Scott Pruitt is "blatantly ignoring Congress's clear directive to the agency to better protect the health and safety of millions of Americans by more effectively regulating some of the most dangerous chemicals known to man," said Senator Tom Carper, Democrat of Delaware and the ranking minority member on the Senate Environment and Public Works committee.

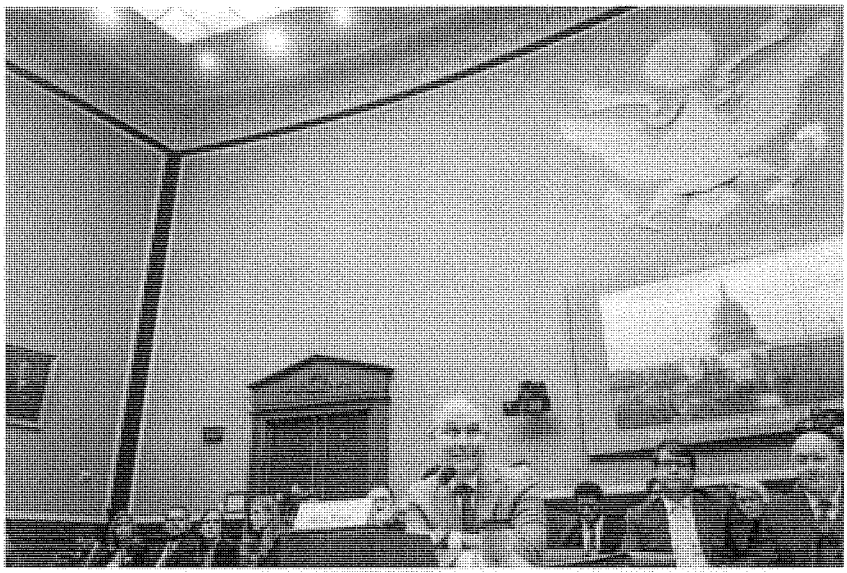
The E.P.A. declined to comment. In a news release earlier this month, the agency wrote that its "commonsense, balanced approach carefully protects both public health and the environment while curbing unnecessary regulatory burdens that stifle economic growth for communities across the country."

Agency officials dropped prohibitions against certain uses of two chemicals from the administration's Unified Agenda of Regulatory and Deregulatory Actions, which details short- and long-term plans of the federal agencies. The third ban was dropped in the spring edition of that report.
The proposed bans targeted methylene chloride and N-methylpyrrolidone (NMP), ingredients in paint strippers, and trichloroethylene (TCE), used as a spot cleaner in dry-cleaning and as a degreasing agent.

Under an overhaul of the Toxic Substances Control Act last year, the E.P.A. initially is reviewing the risks of ten chemicals, including other uses of these three. The updated law is known as the Frank R. Lautenberg Chemical Safety for the 21st Century Act, named after the late New Jersey senator who had long championed an overhaul of the loophole-ridden toxic substances law.

The revised law had strong bipartisan support. The Senate passed the measure on a voice vote; the House approved it 403 to 12. The intention was to give the E.P.A. the authority necessary to require new testing and

regulation of thousands of chemicals used in everyday products, from laundry detergents to hardware supplies.



E.P.A. Administrator Scott Pruitt testifying before a House committee earlier this month. The E.P.A. has declined to propose bans on certain uses of three toxic chemicals. Pete Marovich/Getty Images

In a compromise that disappointed some environmental advocates, the law required the E.P.A. to examine about 20 chemicals at a time, for no longer than seven years per chemical. But the law expressly allowed for faster action on high-risk uses of methylene chloride, NMP and TCE.

Public health experts had been pushing for faster review of methylene chloride-based paint strippers after several deaths from inhalation, among them a 21-year-old who died recently after stripping a bathtub.

It has been several years since the E.P.A. first declared these applications of the three chemicals to be dangerous. The agency itself has found TCE "carcinogenic to humans by all routes of exposure" and has reported that it

causes developmental and reproductive damage.

"Potential health concerns from exposure to trichloroethylene, based on limited epidemiological data and evidence from animal studies, include decreased fetal growth and birth defects, particularly cardiac birth defects," agency officials noted in 2013.

Methylene chloride is toxic to the brain and liver, and NMP can harm the reproductive system.

Michael Dourson, President Trump's nominee to oversee the E.P.A.'s chemical safety branch, in 2010 represented the Halogenated Solvents Industry Alliance before the E.P.A., which was considering restrictions on TCE.

Mr. Dourson, who withdrew his name from consideration last week, had been working as an E.P.A. adviser while awaiting confirmation. The agency did not respond to a query about whether Mr. Dourson had been involved in the evaluation of TCE.

The E.P.A. now describes the enforcement actions regarding TCE, methylene chloride and NMP as "long-term actions" without a set deadline.

"The delays are very disturbing," said Dr. Richard Denison, lead senior scientist of the Environmental Defense Fund. "This latest agenda shows that instead of using their expanded authorities under this new law, the E.P.A. is shoving health protections from highly toxic chemicals to the very back of the back burner."

Representative Frank Pallone, Democrat of New Jersey and the ranking minority member of the House Energy and Commerce committee, agreed, saying, "These indefinite delays are unnecessary and dangerous."

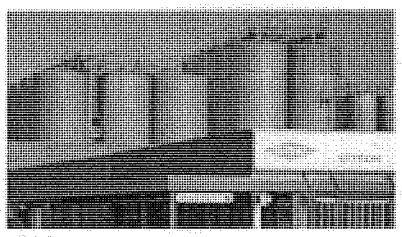
"The harmful impacts of these chemicals are avoidable, and E.P.A. should finalize the proposed rules as soon as possible," he added.

A version of this article appears in print on December 20, 2017, on Page A16 of the New York edition with the headline: In Reversal, Chemicals Are Cleared For Use. Order Reprints | Today's Paper | Subscribe

EPA delays chemical safety rule until 2019

BY TIM HENRY - 09/12/17 11:36 AM EDT

1,366 SHARES



The Environmental Protection Agency (EPA) will delay implementation of an Obama-era chemical safety rule for nearly two years while it reassesses the necessity of the regulation.

The EPA announced on Monday that Administrator Scott Pruitt signed a directive last Friday delaying the chemical plant safety standards until at least Feb. 20, 2019.

The move comes after the EPA delayed the regulation in March amid discussions over the rule's impact on businesses.

"We are seeking additional time to review the program, so that we can fully evaluate the public comments raised by multiple petitioners and consider other issues that may benefit from additional public input," Pruitt said in a statement.

Obama regulators in December finalized a rule beefing up safety standards at chemical production plants, calling for new emergency requirements for manufacturers regulated by the EPA.

Officials moved to overhaul chemical safety standards after a 2013 explosion at a chemical plant in Texas killed 15 people. Their rule would require companies to better prepare for accidents and expand the EPA's investigative and auditing powers.

But chemical companies wrote in a letter to Pruitt shortly after his February confirmation that the rule would raise "significant security concerns and compliance issues that will cause irreparable harm."

The EPA sought public comment in March on a proposal to delay the rule while considering those objections. The agency said it received 54,117 comments before Pruitt formally moved to delay the rule.

TAGS ENVIRONMENTAL PROTECTION AGENCY SCOTT PRUITT CHEMICAL SAFETY

DON'T MISS A BEAT - SIGN UP FOR OUR DAILY EMAIL

EXCLUSIVE NEWS JAN 17 2018, 11:31 AM ET

EPA eases path for new chemicals, raising fears of health hazards

by SUZY KHIMM

SHARE

WASHINGTON — The Environmental Protection Agency is shifting course under the Trump administration on how it assesses new chemicals for health and environmental hazards, streamlining a safety review process that industry leaders say is too slow and cumbersome.

But some former EPA officials, as well as experts and advocates, say the agency is skipping vital steps that protect the public from hazardous chemicals that consumers have never used before, undermining new laws and regulations that Congress passed with overwhelming bipartisan support in 2016.

According to these critics, that could mean that manufacturers might get approval to introduce a new chemical for one purpose, without getting a thorough, timely review of the chemical's safety if it is later used for a different purpose. Asbestos, for example, was commonly used in building insulation before the EPA cracked down on its use, but the carcinogenic chemical is still found in brake pads for automobiles — posing hazards for garage mechanics — and is widely used to manufacture chlorine.

This Aug. 29, 2017 file photo shows the TPC petrochemical plant, with downtown Houston in the background. David J. Phillip / AP file

In recent months, the EPA has quietly overhauled its process for determining whether new chemicals — used in everything from household cleaners and industrial manufacturing to children's toys — pose a serious risk to human health or the environment. Among other changes, the agency will no longer require that manufacturers who want to produce new, potentially hazardous chemicals sign legal agreements that restrict their use under certain conditions.

Such agreements, known as consent orders, will still be required if the EPA believes that the manufacturer's intended use for a new chemical poses a risk to the public health and the environment. But the agency won't require consent orders when it believes there are risks associated with "reasonably foreseen" uses of the new chemical — ones that go beyond what a manufacturer says it's intending to do, but which the agency believes are reasonable to anticipate in the future.

Instead the EPA will rely on a broader measure, known as significant new-use rules, to regulate chemicals that are likely to pose a risk if they're used for a different purpose. The agency typically has to issue these rules whenever they want to restrict the broad use of potentially hazardous chemicals, since consent orders

apply only to a single manufacturer.

Eliminating consent orders in these cases would be "more efficient," said Jeff Morris, director of the EPA's toxics program. He laid out the agency's shift to significant new use rules at a public meeting in early December: "It's our belief that they could be equally protective but eliminate this one step."

Chemical industry lobbyists had pushed for the change, arguing that the EPA's rising use of consent orders was unwarranted. Chemical manufacturers "are burdened by the delay of waiting for EPA to draft the orders, negotiating them with EPA, and then waiting for EPA to issue the orders," the American Chemistry Council, the industry's largest trade association, told the agency days before President Donald Trump took office.

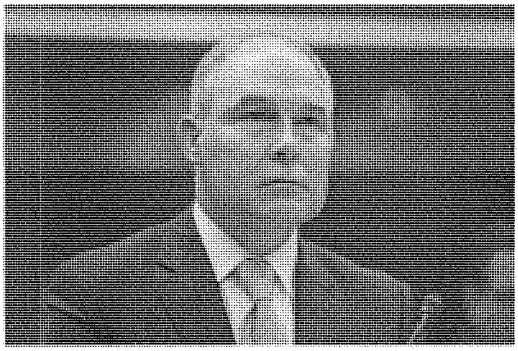
But consumer advocates, along with some former agency officials and research experts, believe that EPA's moves are sabotaging a safety review process that Congress had taken great pains to bolster. Richard Denison of the Environmental Defense Fund, an advocacy group, points out that the 2016 law requires the EPA to assess the broad use of chemicals because manufacturers frequently find different uses for hazardous substances over time, as in the use of asbestos.

"EPA is explicitly disavowing and downplaying a tool that's really been a cornerstone of new chemical regulation," said Bob Sussman, a former EPA attorney under Obama and counsel for the Safer Chemicals, Healthy Families coalition, which represents environmental and public health advocates. "We believe EPA is taking a big step backward in the protection of health and the environment without an offsetting benefit."

'Playing a dangerous game'

Under EPA administrator Scott Pruitt's leadership, the agency has taken major industry-friendly steps to loosen its regulation of legacy chemicals. Last year, the EPA delayed bans on chemicals already in widespread use, including a lethal substance in paint strippers and a pesticide linked to developmental disabilities in children.

But the agency is also overhauling its process of reviewing new, unproven chemicals that have yet to hit the marketplace. The changes come in the wake of intense lobbying by the chemical industry, which complained that the EPA was taking too long to clear innovative new products for commercial use that the industry considered safe.



Environmental Protection Agency (EPA) Administrator Scott Pruitt testifies about the fiscal year 2018 budget during a Senate Appropriations Subcommittee on Interior, Environment, and Related Agencies hearing on Capitol Hill in Washington on June 27, 2017. Saul Loeb / AFP - Getty Images file

"We were very concerned as an industry — that was one of our top priorities when I talked to the administration," said Robert Helminiak, a lobbyist for the Society of Chemical Manufacturers and Affiliates, who met with Pruitt last year.

When the Trump administration took office, the EPA was facing a serious backlog of new chemicals awaiting safety reviews. About 600 cases had piled up

after Congress approved the sweeping reforms to the 1976 Toxic Substances Control Act (TSCA), which passed in June 2016 after decades of deliberation and was called the Frank R. Lautenberg Chemical Safety for the 21st Century Act, after the Democratic senator from New Jersey.

For the first time, the EPA under the act was required to make an explicit determination that a new chemical was safe before it could be sold to consumers, using stricter criteria to evaluate their health and environmental risks. The new law also required the EPA to evaluate the risks of chemicals already in commercial use, by specific deadlines.

At the urging of industry, Pruitt promised to expedite the post-Lautenberg review process for new chemicals "to make the process faster and more efficient, while ensuring chemical safety." With great fanfare, he announced the EPA had cleared its backlog in August and unveiled its early reforms to the safety review process.

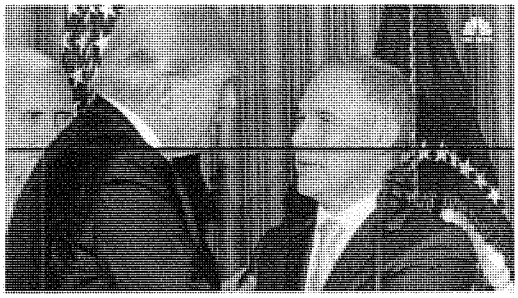
But some public-health experts and former officials say that the EPA's efforts to streamline the program are undermining its newly expanded authority to require testing when it believes there is insufficient data, or when future uses may pose a risk.

"What I'm observing is an effort by the agency and also some in the industry to turn back the clock and behave as though the Lautenberg Act was never passed in the first place," said Lynn Goldman, dean of George Washington University's school of public health and a former EPA official under Clinton. "The agency has been granted more authority to do testing, then it put hands in its pockets and said it doesn't want to use this authority."

Critics say there's a big difference between the consent orders they want the EPA to issue and the agency's proposed alternative. Consent orders often

include mandatory testing of new chemicals for potential health and environmental hazards. By contrast, significant new-use rules typically don't require testing, though they can recommend that it should happen in the future if a manufacturer wants to use a restricted chemical.

At that point, however, the harm may have already been done, says Veena Singla, an environmental health researcher at the University of California, San Francisco. "Chemicals do end up being used for many different applications than what the manufacturer originally thought or intended," she said. "After the fact, we've seen what the problem is: The chemical is out there."



How Much Has the EPA Changed One Year Since the Election? 2:41

The Trump administration says that its safety reviews will be just as robust under its changes to the program. If a manufacturer wants to use a chemical for a new purpose that might be risky — say, by putting the substance in water — it's still legally required to seek the EPA's approval if there are significant new-use restrictions in place. The EPA can then mandate more testing at that point, said Morris: "The end result is that there would be the same amount of testing."

But public-health advocates say there's no guarantee that the EPA will require the same testing further down the line, arguing that consent orders provide far more

assurance that the agency is properly scrutinizing toxic substances. They now fear that the EPA will go even further to relax the law: The agency is currently deciding whether it will allow manufacturers to commercialize new chemicals while it is still hammering out the rules restricting future, reasonably foreseen uses — something that industry groups are currently pushing for.

If the EPA lets these chemicals on the marketplace early, then it will be "blatantly violating the law" that Congress passed to tighten these safety reviews, said Sen. Tom Udall, D-N.M., who co-authored the Lautenberg Act and help push it into law after Lautenberg's death in 2013.

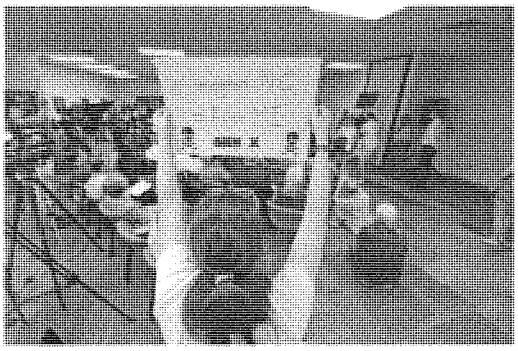
The new law requires the EPA "to review the safety of all uses of a new, and potentially dangerous, chemical before allowing it to be sold to consumers, not just selective uses," said Sen. Tom Carper, D-Del., the top-ranking Democrat on the Senate Environment and Public Works Committee. If the agency allows a chemical to be sold before putting all its restrictions into place, that "contradicts the spirit and letter of the law," he added.

"This may please Pruitt's corporate allies, but it is playing a dangerous game, with the safety of millions of Americans at stake," Udall said.

'Regrettable substitutions'

Consumer advocates say that it's critical for the EPA to be aggressive about putting the 2016 law into effect, given the agency's past failures to protect the public from toxic chemicals.

Older flame retardants linked to cancer were phased out in the 1970s, only to be replaced by new flame retardants that were also linked to cancer, hormone disruption and development problems, despite passing the EPA's safety review process.



Protestor Cathy McFeeters holds a sign up at the New Hanover County Government Complex on June 15, 2017 during a press conference after officials from Chemours Company meet with Wilmington area officials about GenX, a chemical the company's plant in Fayetteville has been releasing into the Cape Fear River. The river water is used for drinking water in much of Southeastern North Carolina. Ken Blevins / The Star-News via AP

Other "regrettable substitutions" include bisphenol-S, which was intended to be a safe replacement for BPA; and GenX, a substitute for a carcinogenic substance used to make Teflon, only to be later linked to cancer as well. Right before Trump took office, the federal government agreed to pay more than $2 billion to veterans who developed leukemia, liver cancer and Parkinson's disease after exposure to water contaminated with trichloroethylene and other chemicals at a North Carolina military base.

Such horror stories helped build broad bipartisan support for the 2016 overhaul, which Congress passed on a nearly unanimous vote. Under the old regime, the EPA didn't have to sign off on new chemicals if it concluded that they were likely to be safe. If the manufacturer never heard anything from the agency within 90 days, it could go ahead and start making its new product. Under the new law, the EPA has to make an affirmative decision that a new chemical is safe before it can be commercialized — the crux of its new safety review process.

Getting to market sooner

The chemical industry, however, insists that the 2016 overhaul was never intended to make radical reforms across the board. The new law "really doesn't do very much for new chemicals — the process was the part of TSCA that was really working pretty well," Helminiak said.

Before the EPA had unveiled its Trump-era changes, industry groups argued that the agency was taking a needlessly draconian approach toward new chemicals reviews, requiring consent orders where none were necessary. When a manufacturer wants the EPA to approve a new chemical, it describes its intended use for the substance. So the EPA "accomplishes nothing useful" by subjecting them to consent orders for other purposes they have no intention of pursuing, the American Chemistry Council (ACC) said in January. Instead, it would simply burden manufacturers with onerous testing requirements and other conditions that make it harder for them to sell innovative new products, industry groups said.

The EPA's new approach is likely to reduce the testing that manufacturers who first bring these new chemicals to market are required to do. Using significant new-use rules (SNURs) "reduces the testing that the EPA is seeking to impose, because testing is rarely required in a SNUR," said Richard Engler, a former EPA scientist who now works for Bergeson & Campbell, a law firm that represents chemical manufacturers. "If someone is of the view that every consent order should have testing in it, then yes, switching to SNURs is going to produce less data," Engler said, though he believes EPA's new approach will be just as protective.

But industry groups say the agency still hasn't gone far enough to speed up the safety review process, warning that the latest reforms could bring their own delays.

Significant new-use rules can take far longer to finalize than consent orders, since they are regulations subject to a public notice and comment period. If the EPA determines that a new chemical is safe for its intended use, a manufacturer should be able to start making and selling that product immediately, without waiting for the EPA to finalize its new rules for separate, reasonably foreseeable uses, said the ACC's Michael Walls: "There's got to be a way to get to market earlier."

Denison of the Environmental Defense Fund warns the EPA against giving the green light too early. Even if a company sticks to the use of a chemical that the agency has deemed safe, it can't predict what other parties might do with it once it's on the market, said Denison: "Companies say they can't control how chemicals are being used."

'This EPA has worked very well with industry'

The EPA says that it's still deliberating how long manufacturers will have to wait to bring their new chemicals to market. "This is an area that we are discussing," Morris said in December.

Consumer advocates fear the EPA will ultimately heed industry's call. Under the new administration, industry heavyweights have been able to appeal directly to their former colleagues: Trump appointee Nancy Beck, a former senior executive at the ACC, is now a top deputy for the EPA's chemical safety office. Trump's nominee to lead the office, Michael Dourson, spent decades conducting industry-friendly research for the ACC and Dow Chemical, among others. He worked as a senior EPA adviser for months before withdrawing his nomination in December, under fire for his industry ties.

In this video grab, Nancy Beck speaks about the use of science in the rule-making process on March 9, 2017 in Washington. U.S. Senate Committee Channel

In recent months, the agency has worked closely with the ACC to revamp the paperwork that manufacturers must submit to get new chemicals approved. With the group's help, the EPA consulted three industry giants — Dow Chemical, Procter & Gamble, and the BASF Corporation — to revise its new chemical application process.

"It's always important to get feedback from companies using the document," David Tobias, an EPA scientist, said at the agency's December meeting. "We've already made some changes based on this consultation." (The EPA declined to specify the changes it's made and said it is working with "a variety of stakeholders" on the new chemicals program.)

Industry groups say they're hardly getting a free pass: From their perspective, the EPA hasn't hesitated to tighten its scrutiny of new chemicals, placing more stringent restrictions on their use and expanding the scope of their reviews. But they acknowledge that Pruitt's EPA has been receptive to their concerns.

"This EPA has worked very well with industry," Helminiak said. "They really have certainly listened to what the specialty chemical industry has to say."

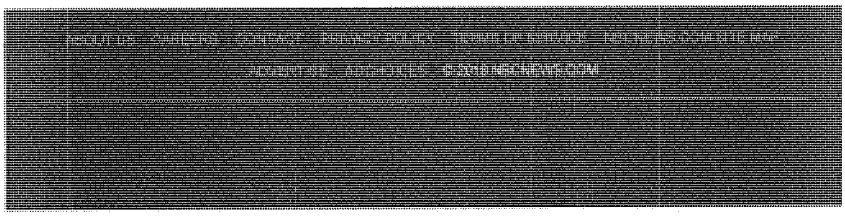
CORRECTION (11:30 a.m., Jan. 17, 2018): An earlier version of this article misstated a chemical that was considered a "regrettable substitution" for another chemical by advocates. It was bisphenol-S that replaced BPA, not the other way around. The article also misstated the chemical that contaminated a North Carolina military base. It was trichloroethylene, not GenX.

SUZY KHIMM

TOPICS NEWS, U.S. NEWS

FIRST PUBLISHED JAN 17 2018, 4:28 AM ET

NEXT STORY Satanic Temple challenges Missouri's abortion law on religious grounds



We've made some changes to EPA.gov. If the information you are looking for is not here, you may be able to find it on the EPA Web Archive or the January 19, 2017 Web Snapshot.

United States
Environmental Protection
Agency

Search EPA.gov

CONTACT US SHARE

News Releases

News Releases from Headquarters

EPA Eliminates New-Chemical Backlog, Announces Improvements to New Chemical Safety Reviews

Administrator Pruitt Strengthens TSCA New Chemical Review Program to Ensure Safety, Transparency and Continuous Improvements

08/07/2017

Contact Information:
(Press@epa.gov)

WASHINGTON (August 7, 2017) – Following through with Administrator Pruitt's commitment to eliminating the backlog of new chemical cases that were stuck in EPA's review processes upon his

confirmation, Administrator Pruitt is reporting that the backlog is eliminated.

"EPA has a tremendous responsibility to review new chemicals intended to enter the U.S. market for safety," said EPA Administrator Scott Pruitt. "EPA can either be a roadblock to new products, or it can be supporter of innovation and ever-improving chemical safety. I am happy to report that the backlog of new chemical reviews is eliminated. With the ongoing commitment of the staff working on TSCA reviews, and input from stakeholders, our goal is to ensure a new chemicals program that is both protective of human health and the environment, while also being supportive of bringing new chemicals to market."

The Toxic Substances Control Act (TSCA), amended by the 2016 Lautenberg Chemical Safety Act, ensures that EPA must make an affirmative safety determination before a new chemical can come to market. EPA can request more information from chemical companies if it needs more information to make a safety determination.

When Administrator Pruitt was confirmed, over 600 new chemicals were 'stuck' in the EPA review process. The current caseload is back at the baseline and now in line with the typical active workload. Administrator Pruitt committed to being a partner in the regulatory process, and ensuring safety for health and the environment, while also seeking ways to allow new chemicals to enter the market quickly, once EPA is assured that the chemical is not likely to present unreasonable risk for the intended and reasonably foreseen uses.

In addition to announcing the elimination of the backlog, EPA Administrator Pruitt is committing the Agency to a more predictable and transparent process for making safety determinations through a commitment to following operating principles; continuously improving; and, increasing the transparency in the decision-making for new chemical safety determinations.

"Not only do I support reducing the backlogs that have built up at this Agency, I also encourage continuous improvement and increased transparency," said EPA Administrator Scott Pruitt.

Additional Details of New Measures to Strengthen EPA's New Chemicals Review

EPA is committing to the following operating principles in its review of new chemicals:

- Where the intended uses in premanufacture notices (PMNs) or other Section 5 notices (such as low volume exemption (LVE) requests) raise risk concerns, EPA will work with submitters, and, if the submitters submit timely amended PMNs addressing those concerns, EPA will generally make determinations based on those amended submissions.
- Where EPA has concerns with reasonably foreseen uses, but not with the intended uses as described in a PMN or LVE application, as a general matter, those concerns can be addressed

through significant new use rules.

- As described in the risk evaluation rule EPA Administrator Scott Pruitt signed on June 22, 2017, identification of reasonably foreseen conditions of use will be fact-specific. It is reasonable to foresee a condition of use, for example, where facts suggest the activity is not only possible, but, over time under proper conditions, probable.
- The purpose of testing in a Section 5 order is to reduce uncertainty in regard to risk. Specifically, it is to address risk concerns that gave rise to a finding of "may present unreasonable risk" or another Section 5 finding other than "not likely to present unreasonable risk." In addition, consistent with the statute, any request for testing by EPA will be structured to reduce and replace animal testing as appropriate.

EPA supports continued improvement of EPA's TSCA new chemicals program, including:

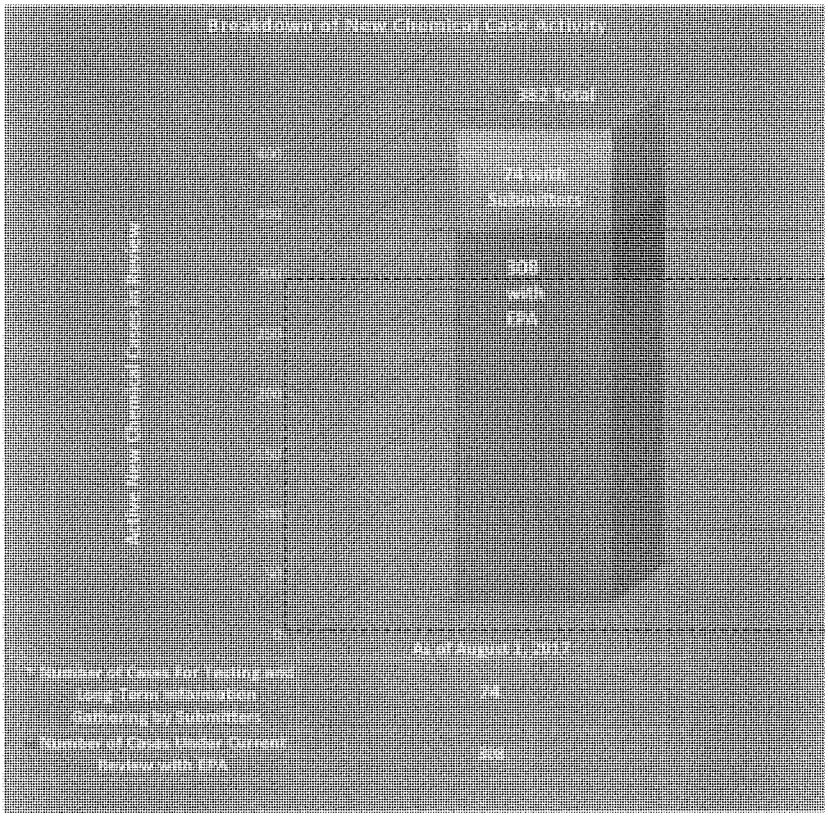
- Redeploying staff to increase the number of Full-Time Equivalent (FTE) staff working on new chemicals.
- Initiating a LEAN exercise to streamline work processes around new chemicals review.
- Institutionalizing a voluntary pre-submission consultation process so that submitters have a clear understanding of what information will be most useful for EPA's review of their new chemical submission, and of what they can expect from EPA during the review process. While such engagement prior to submission is an additional up-front time and resource commitment by submitters and EPA, it should more than pay for itself with faster, better-informed EPA reviews.

EPA needs to be more transparent in how it makes decisions on new chemicals under TSCA:

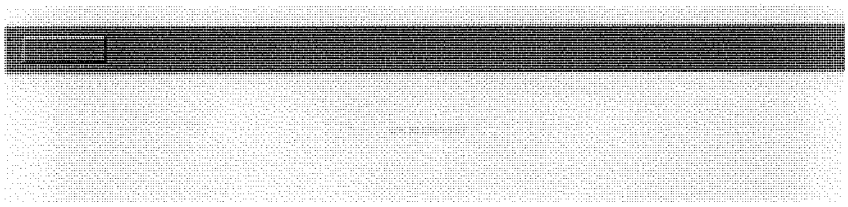
- In Fall 2017, EPA's Office of Pollution Prevention and Toxics (OPPT) intends to release, for public comment and stakeholder engagement, draft documents that will provide the public with more certainty and clarity regarding how EPA makes new chemical determinations and what external information will help facilitate these determinations.
- EPA will facilitate a public dialogue on the Agency's goal of continued improvement in the new chemicals review program.
- EPA will continue posting weekly web updates of program statistics, so that manufacturers and the public can determine the disposition of cases as quickly as possible.

For more information on the TSCA program, please visit:

https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/statistics-new-chemicals-review



Contact Us to ask a question, provide feedback, or report a problem.



OP-ED

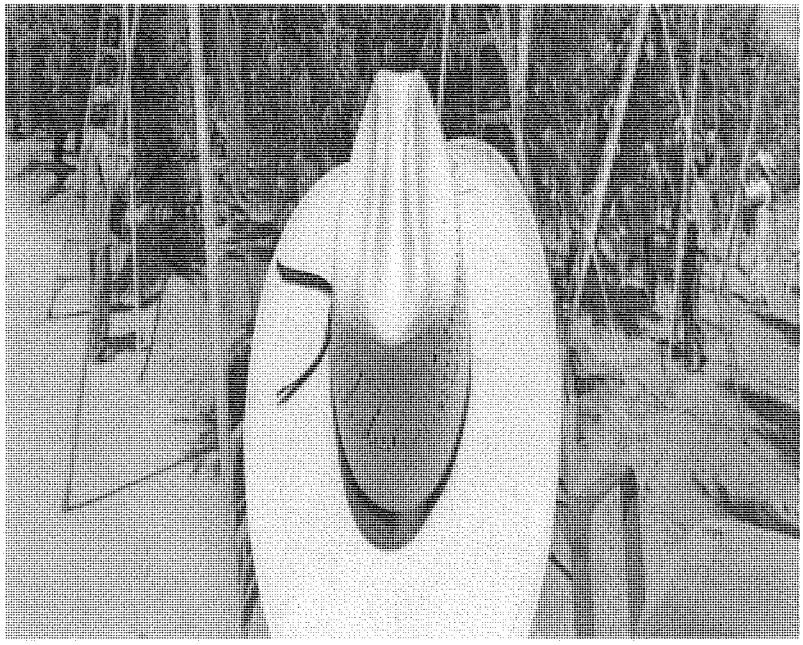
OP-ED

EPA scientists said ban the pesticide chlorpyrifos. Scott Pruitt said no

By CARL F. CRANOR

JUN 07, 2017 | 4:00 AM

EPA scientists said ban the pesticide chlorpyrifos. Scott Pruitt said no



The Trump administration announced it won't ban chlorpyrifos, a common pesticide used on food, reversing efforts by the Obama administration to bar the chemical. Above, a foreman watches workers pick fruit in an orchard in Arvin, Calif. (Damian Dovarganes / Associated Press)

Miners carried canaries into coal mines; if the canary died it was an early warning of the presence of toxic gases that could also asphyxiate humans or explode. The Trump administration has decided to use children and farmworkers as 21st century canaries, continuing their exposure to a pesticide named chlorpyrifos that has been linked to serious health concerns.

The toxicity of this commonly used pesticide was demonstrated in early May when chlorpyrifos sprayed on a Bakersfield orchard drifted into a neighboring cabbage field, sickening a dozen farmworkers. One was hospitalized.

ADVERTISEMENT

This is the same chemical that Scott Pruitt, the new administrator of the Environmental Protection Agency, refused to ban in March, despite the advice of EPA scientists.

In November 2016, EPA scientists reported that residues of chlorpyrifos on food crops exceed the federal safety standards for pesticides. Their analysis also found that in areas of extensive but permitted chlorpyrifos use, exposure to the chemical from drinking water exceeds levels safe for human consumption. Workers "who mix, load and apply chlorpyrifos pesticide products," according to the analysis, face particular risks.

In utero exposures and early life exposures are particularly worrisome because our brains have only one chance to get it right.

Share quote & link

Chlorpyrifos is sprayed on turf and on agricultural fields, sometimes close to schools or residential areas. It is used on golf courses, playgrounds, row crops and fruit trees. Those

working or playing in these areas come into direct contact with the pesticide.

Those of us who don't come in direct contact with sprayed locations have likely ingested chlorpyrifos on produce we buy at the supermarket. (Washing produce with water modestly reduces residues; adding vinegar to the water is more effective.) When the pesticide is sprayed, it typically drifts to nearby areas — as demonstrated in the Bakersfield incident — contaminating streams, rivers, drinking water and people.

The health problems associated with chlorpyrifos are varied. It is an endocrine disrupter, which means it could be implicated in breast cancer, and it may also double the risk of lung cancer. It is also one of 12 well-understood and carefully studied neurotoxicants that can adversely affect brain development.

That means it puts children at special risk. In utero exposures and early life exposures are particularly worrisome because our brains have only one chance to get it right. If brain development is disrupted, the result can be greater or lesser lifelong deficits and dysfunctions.

Children are generally more susceptible to adverse effects from toxic substances. An exposure that might not harm an adult will harm a child because of his or her smaller size. In utero, the fetus is vulnerable as its organ systems develop from a few cells to millions of cells. And children have lesser defenses because several protective mechanisms are not as well developed as in adults.

A UC Davis study, based on in-depth surveys of the parents of autistic children in California, found an increased risk of autism spectrum disorder among families living within a mile of agricultural fields during the mothers' pregnancies. A UC Berkeley study of mothers and children in Salinas identified poorer intellectual development in children resulting from high in utero exposures to chlorpyrifos, including a seven-point drop in IQ, poorer working memory, verbal comprehension and perceptual reasoning by age 7. Even the very architecture of exposed children's brains changes, according to Columbia University researchers.

When Pruitt overturned the recommendation of the EPA's scientists regarding the banning of chlorpyrifos he expressed concern that there must be "sound science" about the pesticide's adverse health effects. Did he not respect the process, the data? He didn't make it clear.

And hidden in Pruitt's statement is a worrisome implication: Before banning toxicants — and even perhaps reducing risks associated with them — there must be highly certain, doubt free, ideal evidence about their effects. Anything less and the products can remain on the market.

But that is a choice, one that does not serve the public. Good, highly certain evidence from independent scientists and EPA scientists shows that chlorpyrifos is toxic to people and puts them at risk for serious health effects. Pruitt's decision favors farmers who want to use the pesticide and companies who want to sell it. It makes those who work in California's fields or grow up next to them expendable, coal-mine canaries for toxicants that can affect us all.

Carl F. Cranor is a philosophy professor at UC Riverside, specializing in moral choices at the intersection of law and environmental dangers. His books include "Legally Poisoned: How the Law Puts Us at Risk from Toxicants" and "Tragic Failures: How and Why We are Harmed by Toxic Chemicals.

Follow the Opinion section on Twitter @latimesopinion **and Facebook**

Today's Headlines Newsletter
Delivered weekdays

A digest of essential news, insight and analysis from L.A. Times editors.

ENTER YOUR EMAIL ADDRESS

Where is Trump's infrastructure plan? Republicans grow tired of waiting.

- Facebook
- Twitter
- Google+

- Email
- Comment
- Print

A man talks with officers at a roadblock less than three miles from the Arkema Inc. chemical plant Thursday, Aug. 31 in Crosby, Texas. | Gregory Bull/AP

Houston left with a toxic mess as Trump relaxes rules

By BEN LEFEBVRE and ALEX GUILLÉN

08/31/2017 08:00 PM EDT

Share on Facebook Share on Twitter

Explosions and fires at a Houston-area chemical plant triggered an evacuation Thursday in a region still in chaos from Hurricane Harvey — and generated new criticism of President Donald Trump's efforts to repeal the industry's safety rules.

Thursday morning's blasts at the plant came just a day after a federal court refused to force the Environmental Protection Agency to implement an Obama-era chemical safety regulation that the Trump administration has delayed until 2019. The site's owner, Arkema, has complained about the burdens of the rule, which the EPA created after a 2015 explosion at a Texas fertilizer plant killed 15 people, injured about 200 others and destroyed hundreds of homes.

Story Continued Below

The rule in question probably wouldn't have prevented Thursday's explosions, but it's aimed at reducing the likelihood of future accidents — and ensuring that emergency responders and the public know what types of dangerous substances they might be exposed to. Firefighters and other emergency crews lack much of that crucial information about the plants and factories now awash with floodwater.

"It's extremely frustrating, it's disheartening, it's unfair to the communities that face these risks," Bakeyah Nelson, executive director of Air Alliance Houston, said of the regulatory rollbacks the administration is pushing. "Not just in a natural disaster-type situation, but on a daily basis."

Collapsed chemical tank roofs, machinery malfunctions and other accidents in the Houston area have sent more than 1,000 tons of dangerous chemicals into the air following days of pummeling from Harvey, according to a POLITICO analysis of incident filings with the Texas Commission on Environmental Quality. Sometimes, toxic chemicals sit in huge storage tanks that border residents' backyards.

Refiners said they won't know the extent of the damage until the waters recede and they can get back into the plants. But emergency crews will have to perform their duties in toxic surroundings, said James Norton, a former deputy assistant secretary at the Department of Homeland Security under President George W. Bush.

Morning Energy newsletter

The source for energy and environment news — weekday mornings, in your inbox.

Email Your email...

By signing up you agree to receive email newsletters or alerts from POLITICO. You can unsubscribe at any time.

"I'd put it on the scale of 9/11 health risk," said Norton, now the head of the consulting group Play-Action Strategies. "There was a similar challenge in Katrina, as the standing water around the city kind of became a chemical sludge. The risk in Houston is greater."

The swath of the Gulf Coast that Harvey tore apart is home to more than 300 hazardous chemical sites, according to data from the Sierra Club, including more than 230 chemical plants and over 30 refineries. And just clearing the damage will pose health problems. Texas' famously lax site regulations and inspection rates will make normally straightforward emergency response problematic, as firefighters and others may not know whether a storage site's equipment is up to date or even what chemicals it's storing, said Elena Craft, a senior health scientist at the Environmental Defense Fund in Austin.

"Emergency responders don't have the information they need about what's being stored at the facilities," Craft said. "And because these facilities have flooded, and underground tank contents are coming up, all of that will magnify what we had with Katrina."

Another worry is air pollution worsened by the volatile organic compounds and nitrogen oxide that refineries and chemical plants are spewing, which Craft said may endanger flood victims who suffer from asthma and other respiratory or cardiac problems. The Texas environmental commission has forecast that air quality in Houston will be "unhealthy for sensitive groups" at least through the weekend.

Thursday's fires broke out in the early morning at the plant in Crosby, about 20 miles northeast of Houston, according to county officials. Arkema has blamed the incident on power outages and backup systems failures caused by the historic flooding triggered by the storm, which made landfall on Friday as a Category 4 hurricane.

The Arkema plant produces organic peroxides, which are used to make plastics and fiberglass but must be kept refrigerated.

Harris County evacuated everyone in a 1.5-mile radius, and several sheriff's deputies who had breathed the smoke were sent to the hospital before being cleared, county Sheriff Ed Gonzalez said in a news conference. Gonzalez downplayed the incident, saying the officers were "basically standing over a barbecue pit and getting smoke in our eyes. That's basically what occurred."

Two raw materials stored on site and covered by EPA's risk management rules, sulfur dioxide and a chemical called 2-methylpropene, are stored safely and are not considered at risk, Arkema executive Richard Rennard said.

EPA dispatched a sniffer plane equipped with sensors to detect chemical and radiological materials. It found "no concentrations of concern for toxic materials" as of Thursday morning, Administrator Scott Pruitt said in a statement.

Harvey triggers spike in hazardous chemical releases

By BEN LEFEBVRE

Separately, the federal Chemical Safety Board is investigating the fire, board Chairwoman Vanessa Sutherland said at a news conference Thursday afternoon. CSB investigators will not visit the site until it is deemed safe, but they are obtaining documents about what types of chemicals were used and stored at the plant.

Trump's proposed budget for next year would eliminate all funding for the board, which issues safety recommendations but cannot directly enforce regulations.

Meanwhile, county emergency workers acknowledged they have no idea what other chemical plants in the area might pose an immediate risk.

"We are personally not monitoring" the status of chemicals kept in other plants in Harvey's path, said Bob Royall, the county's assistant chief of emergency operations. "That is industry's responsibility."

Public health advocates say the incident adds to the need for carrying out the Obama administration rule, which would require companies to provide more public information about the chemicals they're storing, encourage them to look for safer alternatives and mandate third-party safety audits.

"The longer EPA delays the chemical disaster rule, the longer those types of assessments and investments will be delayed," Nelson said. "We're in a crisis situation here, and making policies or creating policies or buckling to industry pressure has real everyday life-or-death impacts to people."

Nelson's group has led a lawsuit trying to overturn Pruitt's delay of the safety rule, which was finalized in the last days of the Obama administration but never took effect.

Arkema criticized the rule last year, telling EPA that the independent audits would "add significant new costs and burdens" but "may not necessarily provide new or additional safety benefits." It also raised security-related concerns about sharing some information with responders and the public.

The Trump administration placed the regulation on ice shortly after taking office. EPA said in June that it would delay the rule until 2019 at the earliest while it reviews the program and potentially revises it.

In a statement, EPA noted that previous risk management rules are still in effect, and said Arkema's Crosby plant updated its emergency plan in 2014. EPA also noted that no major updates would have taken effect until next year anyway.

In The Arena

Harvey Is What Climate Change Looks Like

By ERIC HOLTHAUS

"The Agency's recent action to delay the effectiveness of the 2017 Amendments had no effect on the major safety requirements that applied to the Arkema Crosby plant at the time of the fire," EPA said.

The Obama administration rule allowed between one and four years for facilities to meet various requirements under the update — meaning that the Arkema plant probably wouldn't have been affected even if the regulation were in place.

"Realistically, it probably wouldn't have prevented anything right now in this instance," said Gordon Sommers, an Earthjustice attorney working on the lawsuit against Pruitt's stay. "But we're seeing more and more of these massive weather events, and this certainly illustrates the need for that rule."

Royall said the explosions reported at the plant were more like "small container ruptures that may have a sound of a pop or something of that nature. This is not a massive explosion."

He said the burning peroxides, which are stored in refrigerated 18-wheel truck trailers, emit gases that expand and rupture the trailers' relief valves before eventually burning.

Arkema's Rennard said the company expects another eight trailers to similarly go up in flames in the coming days, although he warned that the high oxygen content of the peroxides could still lead to an explosion.

"We don't want people returning back to their homes thinking it's over. It's not over," Rennard said, adding: "I think we've been a responsible neighbor, and I think we're responding to this the best way we can."

While the rule remains on ice, the lawsuit over Pruitt's delay is ongoing.

The D.C. Circuit Court of Appeals said Wednesday that public health groups had failed to meet the high bar for reinstating the rule, which would have relied in part on showing both a public interest and a threat of irreparable harm. But the judges placed the lawsuit on a fast track that could see a decision by late this year or in early 2018.

"We will certainly use this as an opportunity to continue to highlight the necessity and the critical nature of having this rule in place," Nelson said.

Share on Facebook Share on Twitter

This article tagged under:

- Environment
- Texas
- Environmental Protection Agency
- Natural Disasters
- FEMA
- Hurricane Harvey

Missing out on the latest scoops? Sign up for POLITICO Playbook and get the latest news, every morning — in your inbox.

Show Comments

- Most Read

The Toxic Chemical Industry Is Having a Really Great Year

The Senate's EPA spending bill would kill a program that assesses health risks posed by chemicals, the latest in a long line of recent gifts to the industry.

BY **EMILY ATKIN** November 21, 2017

The scariest part about the 2014 chemical spill in West Virginia was that, in the beginning, no one really knew anything about the chemical that poisoned their drinking water. Ten thousand gallons of a licorice-scented chemical called MCHM had leaked from a

storage container into the Elk River, a tap water source for 300,000 people in Charleston. Schools closed, hospitals evacuated patients, and the local economy of the state's most populated city came grinding to a halt. For weeks, citizens were unsure whether they had been exposed to unsafe levels of the chemical, and what exactly MCHM would do to their bodies if they consumed it.

West Virginians did eventually get a clearer picture of MCHM. Tom Burke, who served as the Environmental Protection Agency's chief science adviser under President Obama, thinks that's partially because of an EPA program called the Integrated Risk Information System (IRIS), which assesses the health risks of thousands of chemicals across the country. "When there is a mystery like West Virginia, it's those world-class scientists in the IRIS program that do the exposure assessment and risk analysis that lead to future decision-making about the chemical," he told me. Congress is well aware of its value. "From the dusts of the World Trade Center and the faucets of Flint; to the toxic waters of Katrina and Harvey; [IRIS scientists] are there, working selflessly to protect our nation's environment and public health," Burke said in September before a House Science Committee hearing on the program. "Our health depends on them."

We may not be able to depend on them for much longer. On Monday, the Republican-controlled Senate released a spending bill that eliminates IRIS. The bill asserts that IRIS's functions would be maintained, just transferred to the agency's Toxic Substances Control Act (TSCA) program. But Burke and others say the TSCA program is not large or well-funded enough to handle all the different types of chemical risk assessments IRIS does. "EPA's ability to conduct risk evaluations under the new TSCA would be severely curtailed by the loss of both expertise and capacity that reside in the IRIS program," wrote Richard Denison, a senior

scientist at the Environmental Defense Fund.

But this is good news for companies that produce and disseminate chemicals. IRIS scientists' findings have huge financial implications for polluters. When chemicals get into the air, soil, or water, regulators often base their cleanup requirements on what IRIS scientists say is safe. And chemical industry–funded scientists have been recently accusing the program of misconduct, claiming IRIS scientists exaggerate the health risks of certain chemicals. (One asserted that formaldehyde is not carcinogenic when inhaled.) A recent report also found that the IRIS program was operating more efficiently and more transparently than ever. That will surely cease being the case if the program is transferred to TSCA.

The Senate's spending bill is just the latest victory for the chemical industry, which since Donald Trump's inauguration has had a lot to celebrate. Freed from the Obama administration's clampdown on safety, companies that produce essential but oftentimes toxic substances are seeing their stocks rally. Pesticides and chemicals banned for their poisonous nature are being newly reviewed; safety regulations are being relaxed; and industry representatives are being chosen for top government positions.

Indeed, the industry is getting exactly what it paid for—but at what cost to public health?

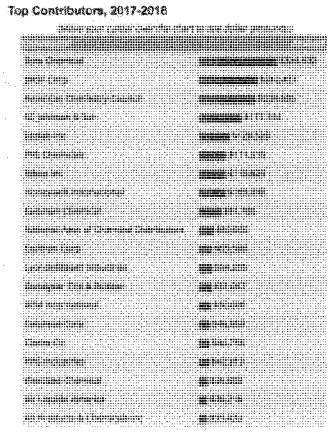
The most telling two paragraphs about the Trump administration's approach to chemical safety are contained within *New York Times* reporter Eric Lipton's damning investigation into the topic. Given several examples of how recent EPA decisions on chemicals could pose risks to human health and

the environment, a spokesperson lashed back:

> "No matter how much information we give you, you would never write a fair piece," Liz Bowman, a spokeswoman for the EPA, said in an email. "The only thing inappropriate and biased is your continued fixation on writing elitist clickbait trying to attack qualified professionals committed to serving their country."
>
> Before joining the EPA, Ms. Bowman was a spokeswoman for the American Chemistry Council.

In Trump's federal government, industry players decide what's best for protecting human health and the environment. The *Times* piece points to the example of former American Chemistry Council executive Nancy Beck, now a top deputy at EPA's toxic chemical office. In her brief tenure, she has ordered risk re-evaluations of numerous chemicals previously found to be linked to health problems like cancer and birth defects. In addition, the person who oversees chemical safety at the EPA is Michael Dourson, the "voice of the chemical industry" who spent his career questioning the harmfulness of industry products. Trump also personally selected Dow Chemical CEO Andrew Liveris to head his now-defunct American Manufacturing Council, which Trump was forced to disband after mass resignations.

These players' presence "is already visible in virtually every decision being made" at EPA, Denison told ThinkProgress earlier this month. One of EPA Administrator Scott Pruitt's



Campaign contributions from the chemical industry for 2017-2018 have heavily favored Republicans so far. opensecrets.org

first actions was to cancel an expected ban on chlorpyrifos, a pesticide that EPA's own scientists warned could cause brain damage in children. After Beck took charge of the EPA's toxics office, her first major action was to weaken a key chemical safety law. A congressionally mandated chemical review, which was supposed to reevaluate risks of asbestos and several other highly toxic substances, has been limited by the Trump administration. And Pruitt also halted an Obama-era rule intended to prevent chemical manufacturers from emitting excess pollution.

The $800 billion chemical industry is finally getting what its been attempting to buy from Republicans for decades. "Since 1990, Republicans have received nearly three-quarters of the $141 million contributed by the industry," according to OpenSecrets, which also notes that chemical industry was one of the only sectors to give more to John McCain than Barack Obama during the 2008 presidential election. "Since then, it has shown an even stronger preference for Republicans, who received 77 percent of its political donations during the 2012 cycle."

It's true that Hillary Clinton got a bit more money from chemical

industry players during the 2016 election than Trump. But Trump received more money after the election from one chemical company than both candidates received from the entire industry during the election. Dow Chemical, which sells approximately 5 million pounds of chlorpyrifos per year, donated $1 million to Trump's inauguration.

Emily Atkin is a staff writer at the *New Republic*. @emorwee

Read More Climate Change, Politics, Environment, Donald Trump, Environmental Protection Agency, Scott Pruitt, Senate, Budget

email address Sign Up

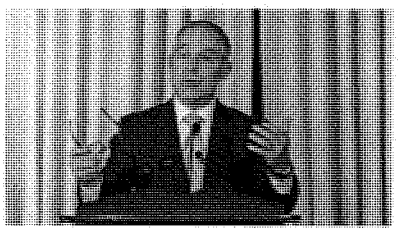
Facebook Twitter Instagram LinkedIn

Copyright 2018 © New Republic. All rights reserved.

Trump's EPA chief met with chemical CEO before dropping pesticide ban: report

BY JACQUELINE THOMSEN - 09/27/17 10:10 PM EDT

25,946 SHARES



Environmental Protection Agency Administrator Scott Pruitt met privately with the CEO of a top chemical company before deciding to drop a ban on a widely used pesticide that has been shown to harm children's brains, The Associated Press reported Tuesday.

Pruitt, President Trump's top environmental official, reportedly met with the CEO of Dow Chemical, Andrew Liveris, for 30 minutes at a Houston hotel on March 9, according to records obtained by the AP.

Pruitt announced later that month that he would no longer pursue a ban on Dow's chlorpyrifos pesticide being used on food. An EPA review found that even minuscule amounts of the pesticide could impact fetus and infant brain development.

An EPA spokeswoman told the AP that Pruitt and Liveris were "briefly introduced" at the conference, where both were speaking.
"They did not discuss chlorpyrifos," the spokeswoman said. "During the same trip he also met with the Canadian minister of natural resources, and CEOs and executives from other companies attending the trade show."

Pruitt also reportedly attended a larger group meeting with two other Dow executives, but the spokeswoman said they didn't discuss the pesticide there.

The Pesticide Action Network and the Natural Resource Defense Council both sued the EPA days after Pruitt's decision. "President Trump and his EPA flouted court orders and EPA's scientific findings that chlorpyrifos puts children, farmworkers, their families and many others at risk," Patti Goldman, the Earthjustice managing attorney handling the case, said in a statement at the time.

The American Academy of Pediatrics also called for the pesticide to be taken off the market, sending a letter to Pruitt on Tuesday saying they were "deeply alarmed" by his decision to allow the pesticide to continue to be used.

YOUR EMAIL

Menu Subscribe Subscriber Log In

INCREASE FONT SIZE

POLITICS Posted April 7, 2017

Trump's EPA moves to defund programs that protect children from lead-based paint

The administration wants states to deal with the problem while cutting money to be given to them for lead eradication.

BY CHRIS MOONEY, JULIET EILPERIN THE WASHINGTON POST

Share

Environmental Protection Agency officials are proposing to eliminate two programs focused on limiting children's exposure to lead-based paint – which is known to cause damage to developing brains and nervous systems.

The proposed cuts, outlined in a 64 page budget memo revealed by The Washington Post on Friday, would roll back programs aimed at reducing lead risks by $16.61 million and more than 70 employees, in line with a broader project by the Trump administration to devolve responsibility for environmental and health protection to state and local governments.

Old housing stock is the biggest risk for lead exposure – and the EPA estimates that 38 million U.S. homes contain lead-based paint.

Environmental groups said the elimination of the two programs, which are focused on training workers in the safe removal of lead-based paint and public education about its risks, would make

it harder for the EPA to address the environmental hazard.

One of the programs falling under the ax requires professional remodelers to undergo training in safe practices for stripping away old, lead-based paints from homes and other facilities.

The training program for remodelers was set up under a 2010 EPA regulation that aims to reduce exposure to toxic lead-paint chips and dust by requiring renovators to be certified in federally approved methods of containing and cleaning up work areas in homes constructed before 1978.

The rule applies to a broad range of renovations, including carpet removal and window replacement, in homes inhabited by pregnant women and young children.

Some operators in the home renovation industry have criticized the rule as too costly, noting that some customers simply opt to hire contractors who deliberately skirt the federal standards.

Lead is a potent neurotoxin, and particularly harmful to children and the elderly. Its many dangers in gasoline, paint, and drinking water have been scientifically documented over many decades, which has led to stronger regulatory protections.

In a 2014 report, the Centers for Disease Control found that 243,000 children had blood lead levels above the danger threshold – and that permanent neurological damage and behavior disorders had been associated at even lower levels of lead exposure.

"The most common risk factor is living in a housing unit built before 1978, the year when residential use of lead paint was banned in the United States," the CDC found.

EPA spokeswoman Julia Valentine said in an email that the two programs facing cuts are "mature," and that the goal of their elimination is to return "the responsibility for funding to state and local entities."

The Lead Risk Reduction Program, which would be cut by $2.56 million and 72.8 full-time equivalent employees, is charged with certifying renovators who work in buildings that may contain lead-based paint and upholding federal safety standards for such projects. Located in the agency's Office of Chemical Safety and Pollution Prevention, the lead risk reduction program also helps educate Americans about how to minimize their exposure to lead in their homes.

The second cut, a much deeper $ 14.05 million, would zero out grants to state and tribal programs that also address lead-based paint risks.

"The basis for the EPA reduction is that states can do this work, but then we're going to take away the money we're going to give to states," said Jim Jones, who headed the EPA Office of Chemical Safety and Pollution Prevention, which administers the lead-based paint program, in the Obama years. "I think it's just one of many examples in that budget of the circular thinking there that just doesn't hold together."

But the National Association of the Remodeling Industry, which represents some of the industry's biggest players, welcomed the plan to abolish the two programs. The association's chief executive, Fred Ulreich said in a statement that the group "has long supported moving" the Lead Renovation, Repair and Painting Program "from EPA down to the individual states."

Fourteen states – Alabama, Delaware, Georgia, Iowa, Kansas, Massachusetts, Mississippi, North Carolina, Oklahoma, Oregon, Rhode Island, Utah, Washington and Wisconsin – currently run programs to train contractors how to properly handle renovations involving lead paint, according to the EPA's website. The rest rely on the federal government to provide training.

Ulreich said in his statement that his group "believes that the program can be better run and enforcement can be more vigorous the closer it is to the local contractors."

But Ulreich added that the group would object to states who seek to run a lead "abatement program." The group has successfully delayed a program in Maryland that goes further than the current federal requirements when it comes to lead paint removal.

Erik Olson, who directs the Natural Resources Defense Council's health program, said in an interview that the move leaves children in dozens of states unprotected.

"If the state doesn't have a program, which is true in most states, and if the EPA doesn't have a program, how are you going to have compliance with the lead rules?" Olson asked. "Basically, this is the guts of the program that protects kids from lead poisoning from paint."

State efforts to reduce lead risks have had mixed results. In 2004, New Jersey created the Lead Hazard Control Assistance Fund, which was supposed to provide loans and grants to homeowners and landlords to help them remove lead-based paint from aging housing stock. The program was supposed to be funded by sales tax revenue from cans of paint, which was expected to be $7 million to $14 million every year.

Instead, over the next dozen years the legislature and Democratic and Republican governors diverted more than $50 million from the fund toward payment of routine bills and salaries.

The EPA's Valentine said in an email that the agency is "working towards implementing the president's budget based on the framework provided by his blueprint" and "while many in Washington insist on greater spending, EPA is focused on greater value and real results."

"Administrator EPA in a more effective, more focused, less costly way as we partner with states to fulfill the agency's core mission," she added.

The cuts to the lead-paint programs would not directly affect EPA programs related to lead in drinking water, as in the case of Flint, Michigan. Those programs fall under the agency's Office of Water. But the EPA memo does propose reducing funding and staff for the agency's drinking water programs as well.

Changes to how the federal government addresses lead paint could affect hundreds of thousands of renovators, noted Remodeling magazine editor in chief Craig Webb.

The latest U.S. Census classified 78,000 firms as being in residential remodeling, with 278,921 employees. But since the 2010 rule also affects many siding, painting and wall covering contractors, as well as individual proprietors, the total number could be much higher.

The EPA announced in November 2016 that they had pursued more than 100 enforcement actions for lead-based paint hazards – much of those focused on the nation's largest companies.

In 2014, Lowe's home improvement chain agreed to pay $500,000 and create a compliance program across its 1,700 stores as part of a settlement agreement with the EPA.

Lowe's had "failed to provide documentation showing that the contractors it hires to perform renovation projects for Lowe's customers had been certified by EPA, had been properly trained, had used lead-safe work practices, or had correctly used EPA-approved lead test kits at renovation sites," the agency charged. (The company did not respond to a request for comment Tuesday.)

Later, Sears reached a similar settlement with the agency. Sears also declined to comment for this story.

The National Association of Home Builders has objected to EPA's regulation, charging that it is

"an inefficient tool for achieving the environmental and health goals of the underlying statute and rule."

On Tuesday, association spokeswoman Elizabeth Thompson said in an email, "At this point, it is premature to comment until something official has been announced."

READ OR POST COMMENTS

Share

Send questions/comments to the editors.

Want the news vital to Maine?

Our daily headlines email is delivered each morning.

Enter email address here

I UNDERSTAND THE TERMS OF SERVICE

Sign up

MORE LIKE THIS

RECENT STORIES MOST READ

Government shutdown forces postponement of Monday's oil and gas drilling meeting in Augusta

Two arrested on Turnpike after large drug seizure

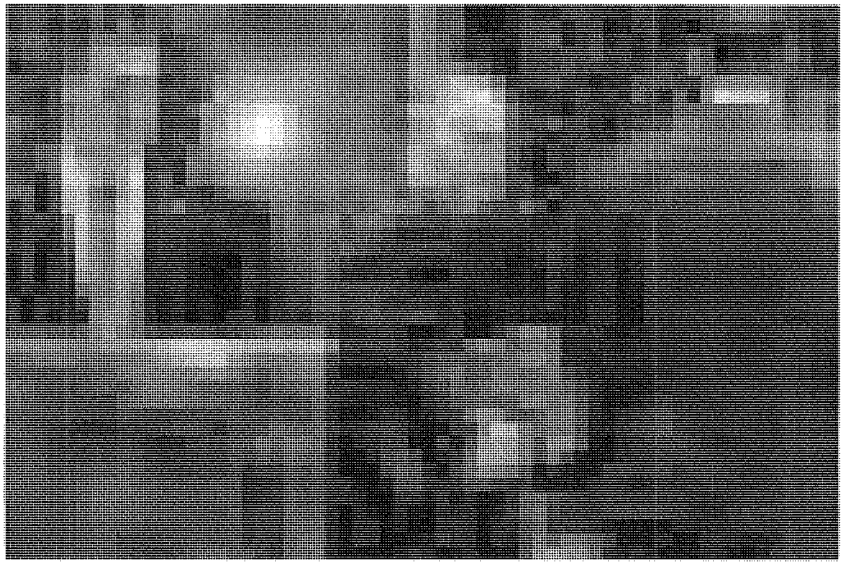
Sections

The Washington Post
Democracy Dies in Darkness

Monkey Cage Analysis

Why did Scott Pruitt refuse to ban a chemical that the EPA itself said is dangerous?

By Aseem Prakash and Nives Dolšak April 12, 2017



On March 29, Scott Pruitt, the new head of the Environmental Protection Agency, denied a petition asking for a ban on the use of an insecticide called Chlorpyrifos. The petitioners, Pesticide Action Network and the Natural Resources Defense Council, cited studies show that Chlorpyrifos can have serious health consequences, such as damaging the nervous system of infants and children.

Understanding why the EPA denied this petition means focusing on two related factors: the relative powerlessness of the communities affected by Chlorpyrifos and the relative invisibility of the health problems associated with it.

What is Chlorpyrifos?

Chlorpyrifos is an insecticide used on corn, soybeans, broccoli, apples, and other row crops as well as on turf, in greenhouses, and other places. It has been in use since 1965, and by some estimates there are about 44,000 farms that use about 6-10 million pounds of Chlorpyrifos each year.

Chlorpyrifos belongs to the same chemical family as sarin nerve gas and works by attacking the nervous system. Under the Federal Food, Drug, and Cosmetic Act, the EPA is charged with establishing maximum limits for insecticide residues in food substances. Given Chlorpyrifos' toxicity, the EPA requires "workers handling and applying Chlorpyrifos to wear additional personal protective equipment (chemical resistant gloves, coveralls, respirators), and restricting entry into treated fields for 24 hours up to five days."

Why were these groups calling for a ban?

Epidemiological evidence suggests that Chlorpyrifos can cause brain damage to children and even to the unborn. A California study found that pregnant women who lived near fields where Chlorpyrifos was sprayed "were three times more likely to give birth to a child who would develop autism."

In 2000, Dow Agro Sciences and six other manufacturers of Chlorpyrifos reached an agreement with the EPA to voluntarily discontinue its use for most residential purposes. Carol Browner, then EPA Director, noted that "poison control centers received about 800 calls a year, many involving children, for exposure to products containing Chlorpyrifos."

Nevertheless, these companies have lobhied the EPA to continue to use Chlorpyrifos in agricultural operations. This is why in 2007,

environmental groups petitioned the EPA to ban its use in agricultural use as well. When the EPA dragged its feet, these groups approached the courts, which ordered the EPA to rule on the petition by March 2017.

What did the EPA do?

The EPA denied the petition to ban Chlorpyrifos. This is arguably part of the Trump Administration's efforts to reduce the regulatory burden on companies. As Pruitt noted: "we need to provide regulatory certainty to the thousands of American farms that rely on Chlorpyrifos, while still protecting human health and the environment ... By reversing the previous Administration's steps to ban one of the most widely used pesticides in the world, we are returning to using sound science in decision-making – rather than predetermined results."

While Pruitt emphasized "sound science," the EPA's own internal research notes the harmful effect of this pesticide. Of course, there is a debate about how to balance protecting public health and putting additional regulations on industry. Pruitt's decision suggests that a ban on Chlorpyrifos does not pass his cost-benefit test.

Why did the EPA do this?

But this begs the question of how costs and benefits are calculated, and who bears these costs. As much scholarship has found, poor and marginalized communities tend to be disproportionately exposed to pollution. In part this is because areas with more pollution tend to have cheaper land and housing, which makes them more attractive to poor people. The poor and marginalized also have little political power and thus offer less resistance.

The same logic holds in this case. When the EPA banned the use of Chlorpyrifos for residential purposes, this benefited a wide cross-section

of people whose health might suffer if this chemical were sprayed on their lawns.

By contrast, the use of Chlorpyrifos in agriculture primarily affects the people who live near farmland. These families are disproportionately Latino and some studies report that Latino children are disproportionately affected by pesticide exposure. Many of the people affected cannot vote because they are guest workers or undocumented. Consequently, they have less political power and this means that firms and the EPA may be less attentive to the harmful consequences of pesticide use on their health.

A second issue is that some of the health effects of Chlorpyrifos are not immediately visible. Less visible environmental problems tend to receive less attention from companies and regulators. This is one reason why water pollution gets neglected in relation to air pollution. The slow effort to remove lead from drinking water is a case in point. Without dramatic events like river catching fire or smog enveloping cities, it is easier for Americans to take a clean environment for granted and consider the environment a low-priority issue.

Of course, the politics surrounding Chlorpyrifos could change. The issue was discussed on a recent episode of Bill Maher's television show, lending it greater visibility. But overall the Chlorpyrifos episode shows how mostly invisible problems affecting marginalized communities often get less attention — absent external publicity or political mobilization.

Nives Dolšak is professor in the School of Marine and Environmental Affairs at the University of Washington.

Aseem Prakash is professor of political science, the Walker Family

Professor and the founding director of the Center for Environmental Politics at the University of Washington.

Most Read Politics

1 Analysis
Your guide to the anti-FBI conspiracy theories rooting through conservative media

2 Mueller seeks to question Trump about Flynn and Comey departures

3 Trump will tell globalists at Davos that his nationalist agenda is working

4 Potential citizenship question in 2020 Census could shift power to rural America

5 Analysis
The timing of Trump's political grilling of Andrew McCabe is the most problematic of all

TRUMP RULES

Why Has the E.P.A. Shifted on Toxic Chemicals? An Industry Insider Helps Call the Shots

A scientist who worked for the chemical industry now shapes policy on hazardous chemicals. Within the E.P.A., there is fear that public health is at risk. (At right, a signing ceremony for new rules on toxic chemicals.)

By **ERIC LIPTON** OCT. 21, 2017

WASHINGTON — For years, the Environmental Protection Agency has struggled to prevent an ingredient once used in stain-resistant carpets and nonstick pans from contaminating drinking water.

The chemical, perfluorooctanoic acid, or PFOA, has been linked to kidney cancer, birth defects, immune system disorders and other serious health problems.

So scientists and administrators in the E.P.A.'s Office of Water were alarmed in late May when a top Trump administration appointee insisted upon the

rewriting of a rule to make it harder to track the health consequences of the chemical, and therefore regulate it.

The revision was among more than a dozen demanded by the appointee, Nancy B. Beck, after she joined the E.P.A.'s toxic chemical unit in May as a top deputy. For the previous five years, she had been an executive at the American Chemistry Council, the chemical industry's main trade association.

The changes directed by Dr. Beck may result in an "underestimation of the potential risks to human health and the environment" caused by PFOA and other so-called legacy chemicals no longer sold on the market, the Office of Water's top official warned in a confidential internal memo obtained by The New York Times.

Dr. Bob testifying at a Senate hearing in March. She joined the E.P.A. in May after working as an executive at the American Chemistry Council, the chemical industry's main trade association. U.S. Senate Committee Channel

The E.P.A.'s abrupt new direction on legacy chemicals is part of a broad initiative by the Trump administration to change the way the federal government evaluates health and environmental risks associated with hazardous chemicals, making it more aligned with the industry's wishes. It is a cause with far-reaching consequences for consumers and chemical companies, as the E.P.A. regulates some 80,000 different chemicals, many of them highly toxic and used in workplaces, homes and everyday products. If chemicals are deemed less risky, they are less likely to be subjected to heavy oversight and restrictions.

The effort is not new, nor is the decades-long debate over how best to identify and assess risks, but the industry has not benefited from such highly placed champions in government since the Reagan administration. The

cause was taken up by Dr. Beck and others in the administration of President George W. Bnsh, with some success, and met with resistance during the Obama administration. Now it has been aggressively revived under President Trump by an array of industry-backed political appointees and others.

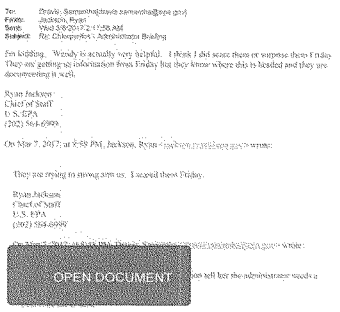
Dr. Beck, who has a doctorate in environmental health, comes from a camp — firmly backed by the chemical industry — that says the government too often directs burdensome rules at what she has called "phantom risks."

Other scientists and administrators at the E.P.A., including Wendy Cleland-Hamnett, until last month the agency's top official overseeing pesticides and toxic chemicals, say the dangers are real and the pushback is often a tactic for deflecting accountability — and shoring up industry profits at the expense of public safety.

DOCUMENT

E.P.A.'s Decision Not to Ban Chlorpyrifos

The New York Times requested copies of email correspondence related to the March 2017 decision by the E.P.A. to reject a decade-old petition to ban chlorpyrifos, a widely used pesticide that research suggests may cause developmental delays in children exposed to it in drinking water or in farming communities. Here are those documents.


To: [redacted]
From: Jackson, Ryan
Sent: Wed 3/8/2017 2:17:58 AM
Subject: Re: Chlorpyrifos - Administrator Briefing

Im kidding. Wendy is actually very helpful. I think I did scare them or surprise them Friday. They are getting up information from Friday but they know where this is headed and they are documenting it well.

Ryan Jackson
Chief of Staff
U.S. EPA
(202) 564-6999

On Mar 7, 2017, at 8:58 PM, Jackson, Ryan [redacted] wrote:

They are trying to snow-jam us. I warned them Friday.

Ryan Jackson
Chief of Staff
U.S. EPA
(202) 564-6999

[redacted] wrote:

OPEN DOCUMENT

[redacted] tell her the administrator needs a

Since Mr. Trump's election, Dr. Beck's approach has been unabashedly ascendant, according to interviews with more than two dozen current and former E.P.A. and White House officials, confidential E.P.A. documents, and materials obtained through open-record requests.

In March, Scott Pruitt, the E.P.A. chief, overrode the recommendation of Ms. Hamnett and agency scientists to ban the commercial use of the pesticide chlorpyrifos, blamed for developmental disabilities in children.

The E.P.A.'s new leadership also pressed agency scientists to re-evaluate a plan to ban certain uses of two dangerous chemicals that have caused dozens of deaths or severe health problems: methylene chloride, which is found in paint strippers, and trichloroethylene, which removes grease from metals and is used in dry cleaning.

"It was extremely disturbing to me," Ms. Hamnett said of the order she received to reverse the proposed pesticide ban. "The industry met with E.P.A. political appointees. And then I was asked to change the agency's stand."

The E.P.A. and Dr. Beck declined repeated requests to comment that included detailed lists of questions.

"No matter how much information we give you, you would never write a fair piece," Liz Bowman, a spokeswoman for the E.P.A., said in an email. "The only thing inappropriate and biased is your continued fixation on writing elitist clickbait trying to attack qualified professionals committed to serving their country."

Before joining the E.P.A., Ms. Bowman was a spokeswoman for the American Chemistry Council.

The conflict over how to define risk in federal regulations comes just as the E.P.A. was supposed to be fixing its backlogged and beleaguered chemical regulation program. Last year, after a decade of delays, Congress passed bipartisan legislation that would push the E.P.A. to determine whether dozens of chemicals were so dangerous that they should be banned or restricted.

The E.P.A.'s Top 10 Toxic Threats, and Industry's Pushback

The chemical safety law was passed after Congress and the chemical industry reached a consensus that toxic chemical threats — or at least the fear of them — were so severe that they undermined consumer confidence in products on the market.

But now the chemical industry and many of the companies that use their

compounds are praising the Trump administration's changed direction, saying new chemicals are getting faster regulatory reviews and existing chemicals will benefit from a less dogmatic approach to determining risk.

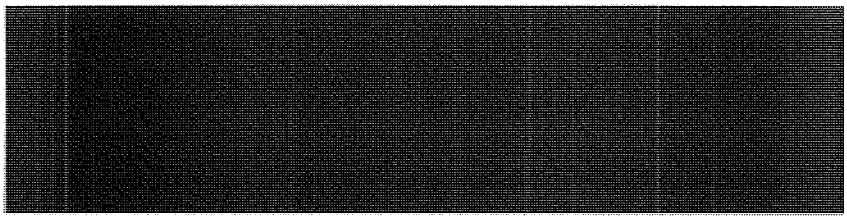
"U.S. businesses, jobs and competitiveness depend on a functioning new chemicals program," Calvin M. Dooley, a former congressman who is president of the American Chemistry Council, said in a statement. It was issued in June after Dr. Beck, his recent employee, pushed through many industry-friendly changes in her new role at the E.P.A., including the change in tracking legacy chemicals such as PFOA.

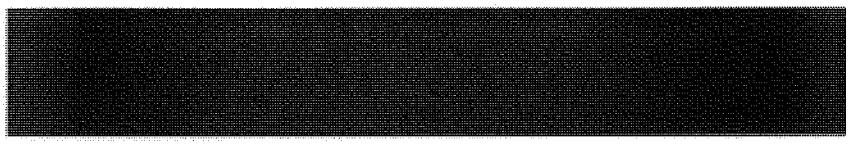
Anne Womack Kolton, a vice president at the council, said on Wednesday that Dr. Beck's appointment was a positive development.

"We, along with many others, are glad that individuals who support credible science and thorough analysis as the basis for policymaking have agreed to serve," she said in an email. "Consistency, transparency and high quality science in the regulatory process are in everyone's interests."

The Trump administration's shift, the industry has acknowledged, could have financial benefits. Otherwise, the industry may lose "millions of dollars and years of research invested in a chemical," the American Chemistry Council and other groups wrote in a legal brief defending the changes Dr. Beck had engineered.

But consumer advocates and many longtime scientists, managers and administrators at the E.P.A. are alarmed by the administration's priorities and worry that the new law's anticipated crackdown on hazardous chemicals could be compromised.





Dr. Beck, left, and Ms. Hamnett, center, who clashed over changes to new toxic chemical rules, attended a signing ceremony with Mr. Pruitt. Video by U.S. Environmental Protection Agency. Video by U.S. Environmental Protection Agency

"You are never going to have 100 percent certainty on anything," Ms. Hamnett said. "But when you have a chemical that evidence points to is causing fatalities, you err more on the side of taking some action, as opposed to 'Let's wait and spend some more time and try to get the science entirely certain,' which it hardly ever gets to be."

The divergent approaches and yearslong face-off between Ms. Hamnett and Dr. Beck parallel the story of the chemical industry's quest to keep the E.P.A.'s enforcement arm at bay.

The two women, one a lawyer from New Jersey, the other a scientist from Long Island, have dedicated their lives to the issue of hazardous chemicals. Each's expertise is respected by her peers, but their perspectives couldn't be more dissimilar.

Ms. Hamnett, 63, spent her entire 38-year career at the E.P.A., joining the agency directly from law school as a believer in consumer and environmental protections. Dr. Beck, 51, did a fellowship at the E.P.A., but has spent most of her 29-year career elsewhere: in a testing lab at Estée Lander, as a toxicologist in the Washington State Health Department, as a regulatory analyst in the White House and most recently with the chemical industry's trade group.

Ms. Hamnett in Falls Church, Va. Last month, she retired as the top official overseeing pesticides and toxic chemicals at the E.P.A. "I had become irrelevant," she said about changes there under the Trump administration.
Jared Soares for The New York Times

Before Mr. Trump's election, Ms. Hamnett would have been regarded as the hands-down victor in their professional tug of war. Her decision to retire in September amounted to a surrender of sorts, a powerful acknowledgment of the two women's reversed fortunes under the Trump administration.

"I had become irrelevant," Ms. Hamnett said.

Her farewell party in late August was held in the wood-paneled Map Room on the first floor of the E.P.A. headquarters, the same room where Mr. Trump had signed an executive order backed by big business that called for the agency to dismantle environmental protections.

Dr. Beck was among those who spoke. She thanked Ms. Hamnett for her decades of service. "I don't know what I am going to do without her," she said, according to multiple people who attended the event.

Ms. Hamnett, in an interview, said she had little trouble envisioning the future under the new leadership. "It's time for me to go," she said. "I have done what I could do."

'Unreasonable Risk of Injury'

Chemical regulation was not part of the E.P.A.'s original mission. But several environmental disasters in the early 1970s prompted Congress to extend the agency's authority.

Industrial waste, including highly toxic PCBs, led to fish kills in the Hudson River. Chemicals from flame retardants were detected in livestock in Michigan, contaminating food across the state. And residents in Niagara Falls, N.Y., first started to notice a black, oily liquid in their basements, early hints of one of the worst environmental disasters in United States history: Love Canal.

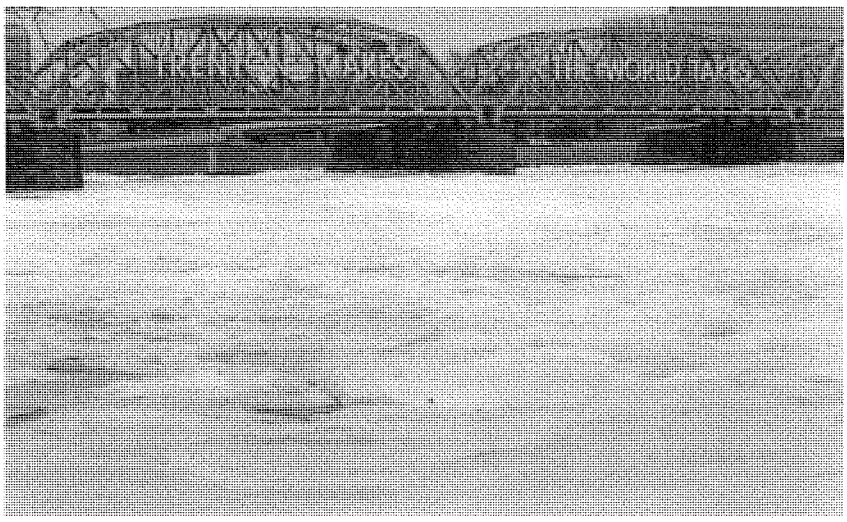
President Gerald R. Ford signed the Toxic Substances Control Act in October 1976, giving the E.P.A. the authority to ban or restrict chemicals it deemed dangerous. It was hailed as a public health breakthrough.

"For the first time, the law empowers the federal government to control and even to stop production or use of chemical substances that may present an unreasonable risk of injury to health or environment," a federal report said.

A few years later, after graduating from George Washington University Law School in 1979, Ms. Hamnett landed at the E.P.A. She arrived fully embracing its enhanced mission.

She had grown up in Trenton, where the words "Trenton Makes, the World

Takes" are affixed in neon to the side of a railroad bridge spanning the Delaware River.



A bridge over the Delaware River in Trenton, N.J., says, "Trenton Makes, the World Takes." The Roebling Steel Company plant brought prosperity to the region, but also contaminated soil and groundwater with hazardous chemicals.
Mel Evans/Associated Press

Her childhood memories included passing by the 200-acre Roebling Steel Company plant — named after the designer of the Brooklyn Bridge. At its peak, the plant was Trenton's largest employer, and it helped spread prosperity to the region.

But the company was also a chronic polluter. For decades, it dumped arsenic, chromium, lead and other hazardous chemicals, contaminating soil and groundwater. Ultimately, the pollution was so pervasive that the E.P.A. declared the property a Superfund cleanup site.

It was this legacy, as well as the congressional directive to the E.P.A. to protect the public from harm, that Ms. Hamnett said guided her.

During the Bush administration, she was drawn into a contentious debate

involving lead paint that highlighted her resolve — and that of her opponents.

Few environmental hazards are as well understood as the dangers of lead in paint. Since it was first used in homes in the United States, more than a century ago, it has poisoned children. Even after it was banned in the late 1970s, it remained a threat, particularly when renovations took place in the tens of millions of homes with lead-based paint.

The E.P.A. set out to establish standards governing home renovations, and Ms. Hamnett came to the discussions with a strong perspective.

"What is the effect of exposure likely to be?" she recalled asking. "If it is likely to be a severe effect and result in a significant number of people exposed, if so, I am going to err on the side of safety."

While the evidence was solid that lead caused learning disabilities and other problems for children, it was less definitive on whether it was also a factor in adult diseases.

To Ms. Hamnett and her colleagues, the results of multiple studies were compelling enough to establish an apparent link to cardiovascular disease in adults. They concluded in a report in 2006 that there was "stronger evidence for a relationship between lead exposure and blood pressure for adults," citing it as a factor for aggressive safety requirements.

The home renovation industry filed protests over the "inappropriate and costly" rule with the Bush administration and Congress. Taking up its cause was a White House official with a reputation for assessing risk much differently: Dr. Beck.

Throwing 'Sand in the Gears'

As the Bush administration took office, John D. Graham, who ran the White House office overseeing regulations, unveiled a plan to ease the government's burden on business by reining in "the regulatory state."

To that end, Mr. Graham hired scientists to review major federal regulations and make recommendations about their worthiness, something the E.P.A.

itself had done over the years.

Dr. Beck, Mr. Graham said, was an excellent addition to his staff.

She had grown up in Oyster Bay, N.Y., an affluent suburb on Long Island, earned an undergraduate microbiology degree in 1988 from Cornell and a doctorate from the University of Washington a decade later. Her dissertation, which examined how the sedative phenobarbital impacts the metabolism of the liver, started with words still relevant to her today: "Each day the human body is confronted with many potentially toxic substances in the form of food items, medicinal products and environmental agents."

She started her career at Estée Lauder, where she helped develop preservatives used to extend the shelf life of cosmetics, and also designed laboratory tests to determine if products caused adverse reactions when applied to skin.

When Mr. Graham hired her, she had been working as a science fellow at the E.P.A.'s center for environmental reviews. He described her as having "street smarts and thick skin," someone who did not need the limelight to be effective.

"Dr. Beck is easy to underestimate," Mr. Graham said in an email.

When the proposed lead paint rule came along in 2006, Dr. Beck, in her White House role, pressed Ms. Hamnett and others in the E.P.A. to revise the language to diminish the link to cardiovascular disease in adults, Ms. Hamnett recalled, before letting the rule go into effect.

That was one marker in Dr. Beck's journey to redefine the way the government evaluates risk. Though they repeatedly found themselves on opposite sides, Ms. Hamnett said that, in a way, she admired Dr. Beck's effort during those years.

She described Dr. Beck as a voracious reader of scientific studies and agency reports, diving deep into footnotes and scientific data with a rigor matched by few colleagues. She combed through thousands of comments submitted

on proposed rules. And she had a habit of reading the Federal Register, the daily diary of new federal rules.

All of it made Dr. Beck an intimidating and confident adversary, Ms. Hamnett recalled. "She's very smart and very well informed," she said.

But there was a destructive side to that confidence, others said. In particular, Dr. Beck was seen as an enemy of scientists and risk assessors at the E.P.A., willing to challenge the validity of their studies and impose her own judgment, said Robert M. Sussman, a lawyer who represented chemical industry clients during the Bush administration and later became an E.P.A. lawyer and policy adviser under the Obama administration.

"Her goal was to throw sand in the gears to stop things from going forward," said Mr. Sussman, who now is counsel to Safer Chemicals, Healthy Families, a coalition of consumer and environmental groups.

Jack Housenger, a biologist who served as the director of the E.P.A.'s pesticide program, had a more positive recollection. He said Dr. Beck asked reasonable questions about his findings related to a wood preservative used in playgrounds and outdoor decks that was being pulled from the market.

"She wanted us to present the uncertainties and ranges of risk," said Mr. Housenger, who retired this year. "She was trying to understand the methodology."

Paul Noe, a lawyer who worked with Dr. Beck during the Bush administration, also said her critics got her wrong.

"What you really want to do as a government is to set priorities," he said. "If you don't have a realistic way of distinguishing significant risks from insignificant ones, you are just going to get bogged down and waste significant resources, and that can impede public health and safety."

One of the harshest criticisms of Dr. Beck's tenure in the Bush White House came in 2007 from the nonpartisan National Academy of Sciences, which examined a draft policy she helped write proposing much stricter controls over the way the government evaluates risks.

"The committee agrees that there is room for improvement in risk

assessment practices in the federal government," the review said, but it described Dr. Beck's suggestions as "oversimplified" and "fundamentally flawed." It recommended her proposal be withdrawn.

DOCUMENT

E.P.A. and Toxic Chemical Rules

An internal struggle has broken out in the Environmental Protection Agency over how to regulate toxic chemicals. These documents tell the backstory of the tension, which emerged after the Trump administration named an industry insider as a top agency regulator.

Cc: Beck, Nancy <Beck.Nancy@epa.gov>; Blair, Susanna <Blair.Susanna@epa.gov>; Schmit, Ryan <schmit.ryan@epa.gov>; Jakob, Avinash <Jakob.Avinash@epa.gov>; Smith, Peter <Smith.Peter@epa.gov>; Chun, Melissa <Chun.Melissa@epa.gov>; Green, Teresa <Green.Teresa@epa.gov>; Strauss, Linda <Strauss.Linda@epa.gov>; Dunton, Cheryl <Dunton.Cheryl@epa.gov>; Morris, Jeff <Morris.Jeff@epa.gov>; Mottley, Tanya <Mottley.Tanya@epa.gov>; Cunningham-HQ, Barbara <Cunningham.HQ.Barbara@epa.gov>; Blanck, Christopher <Blanck.Chris@epa.gov>; Pierce, Allison <Pierce.Allison@epa.gov>; Doa, Maria <Doa.Maria@epa.gov>; Canavan, Sheila <Canavan.Sheila@epa.gov>; Henry, Tala <Henry.Tala@epa.gov>; Barone, Stan <Barone.Stan@epa.gov>; McKean, Kevin <McKean.Kevin@epa.gov>; Grant, Brian <Grant.Brian@epa.gov>; Owens, Nicole <Owens.Nicole@epa.gov>; Curry, Bridgid <Curry.Bridgid@epa.gov>; Cooperstein, Sharon <Cooperstein.Sharon@epa.gov>; OP AOP Calendar <OP_AOP_Calendar@epa.gov>; OCSPP-RCS <OC.PPSCS@epa.gov>
Subject: RE: 9/30/17: EXPEDITED Tier 2 Final Agency Review (SAN 5947) - Final Rule: Procedures for Chemical Risk Evaluation under Amended TSCA

Confidential Attorney Client Communication
Do Not Release Under FOIA

OGC concurs with comment on the FAR package for Final Agency Review (SAN 5947) - Final Rule: Procedures for Chemical Risk Evaluation under Amended TSCA.

Dr. Beck was so aggressive in second-guessing E.P.A. scientists that she became central to a special investigation by the House Committee on Science and Technology.

The committee obtained copies of her detailed emails to agency officials and accused her of slowing progress in confirming drinking-water health threats presented by chemicals like perchlorate, used in rocket fuel. "Suppression of Environmental Science by the Bush Administration's Office of Management and Budget," the committee wrote in 2009, before describing Dr. Beck's actions.

The opposition became so intense that Dr. Beck's efforts started to get shut down.

First, the new risk assessment policy she had proposed was formally withdrawn. Then, after Mr. Obama took office in 2009, Mr. Snssman recalled going to the White House along with Lisa P. Jackson, the new E.P.A. administrator, to ask for a commitment to curb Dr. Beck's power.

"We told them that we need the White House out of the E.P.A. science program," Mr. Sussman said. "We demanded that. And we got it."

Continuing the Fight

During Mr. Obama's first term, Dr. Beck left the White House for the American Chemistry Council, whose members include Dow, DuPont and dozens of other major manufacturers and chemical companies.

As the trade association's senior regulatory scientist, she was perfectly positioned to continue her second-guessing of the E.P.A.'s science.

Now her detailed criticisms of the agency came on trade association letterhead and in presentations at agency meetings and events.

"If the same person says the same thing three times, does this create a weight of evidence?" Dr. Beck said in a presentation in 2013, essentially mocking the scientific standards at the agency.

E.P.A. records show her challenging the agency's scientific conclusions related to arsenic (used to manufacture semiconductors), tert-Butanol (used in perfumes and as an octane booster in gasoline), and 1-bromopropane (used in dry cleaning).

Her point was often the same: Did the scientists producing work that federal regulators relied on adequately justify all of the conclusions about any risks?

"Scientists today are more prolific than ever," she said in a November 2014 presentation, later adding that "unfortunately, many of the scientific studies we read about in the news were not quite ready for prime time."

But at the same time, the industry was confronting a much larger existential problem.

E.P.A. and government-funded academic researchers were raising serious health questions about the safety of a range of chemicals, including flame retardants in furniture and plastics in water bottles and children's toys. Consumer confidence in the industry was eroding.

Some state legislatures, frustrated by the E.P.A.'s slow response and facing a consumer backlash, moved to increase their own authority to investigate and act on the problems — threatening the chemical industry with an

unwieldy patchwork of state rules and regulations.

Dr. Beck and other chemical industry representatives were dispatched to the E.P.A. and Congress to press for changes to the federal regulatory system that would standardize testing of the most worrisome existing chemicals and improve and accelerate the evaluation of new ones.

The resulting law, passed last year with Democratic and Republican support, gave both sides something they wanted. The chemical industry got pre-emption from most new state regulations, and environmentalists got assurances that new chemicals would be evaluated on health and safety risks alone, not financial considerations.

It was the most significant overhaul of the Toxic Substances Control Act since its enactment in the 1970s, and once again Ms. Hamnett was prepared to help shepherd it into place. The task was shaping up to be what she considered her final, crowning act at the E.P.A.

Ms. Hamnett was invited to the Eisenhower Executive Office Building, a part of the White House complex, to be present as Mr. Obama signed the bill into law. She was so excited that she arrived early and sneaked up to the stage to look at the papers Mr. Obama would be signing.

President Barack Obama signing a chemical safety bill in June last year. Zach Gibson for The New York Times

"Protecting people and the environment for decades to come," she said, recalling her thoughts, as she excitedly stood on the stage. "At least, that is what we planned."

Turning the Tables

They gathered in early June around a long conference table at the E.P.A. headquarters, the sunlight shining in from Constitution Avenue. In the crowd were Dr. Beck, Ms. Hamnett and other top agency officials charged with regulating toxic chemicals, as well as environmentalists worried about last-minute changes to rules being pushed by the chemical industry.

Olga Naidenko, an immunologist specializing in children's health, said she was struck by the head-spinning scene. Dr. Beck, who had spent years trying to influence Ms. Hamnett and others to issue rules friendly to the chemical industry, was now sitting at the conference table as a government decision

maker.

"I am running the show. I am now in the chair. And it is mine," Dr. Naidenko said, describing her impressions of Dr. Beck at the gathering.

The Obama-era leadership at the E.P.A., in its last weeks, had published drafts of two critical rules needed to start the new chemical program. The rules detailed how the agency would choose the most risky chemicals to be tested or evaluated and how the hazards should be judged.

It would be up to Mr. Pruitt, the new E.P.A. chief, and his team to complete the process in time for a June deadline, set in the legislation.

Dr. Naidenko, a staff scientist at the Environmental Working Group, was there to plead with the agency to ignore a request from the American Chemistry Council to make more than a dozen last-minute changes, some pushed by Dr. Beck while she was at the council.

Dr. Beck did not seem convinced, recalled Dr. Naidenko and one of her colleagues, Melanie Benesh, a lawyer with the same organization.

"Tell me why you are concerned. What is it about?" Ms. Benesh and Ms. Hamnett each said they recalled Dr. Beck saying.

In fact, behind the scenes, the deed was already done.

Before Dr. Beck's arrival, representatives from the E.P.A.'s major divisions had agreed on final wording for the rules that would be sent to the White House for approval. But they were told to wait until May 1, when Dr. Beck began her job as the acting assistant administrator for chemical safety.

Dr. Beck then spent her first weeks on the job pressing agency staff to rewrite the standards to reflect, in some cases, word for word, the chemical industry's proposed changes, three staff members involved in the effort said. They asked not to be named for fear of losing their jobs.

Dr. Beck had unusual authority to make it happen.

When she was hired by the Trump administration, she was granted the status of "administratively determined" position. It is an unusual classification that means she was not hired based on a competitive process — as civil servants are — and she was also not identified as a political appointee. There are only about a dozen such posts at the E.P.A., among the 15,800 agency employees, and the jobs are typically reserved for technical experts, not managers with the authority to give orders.

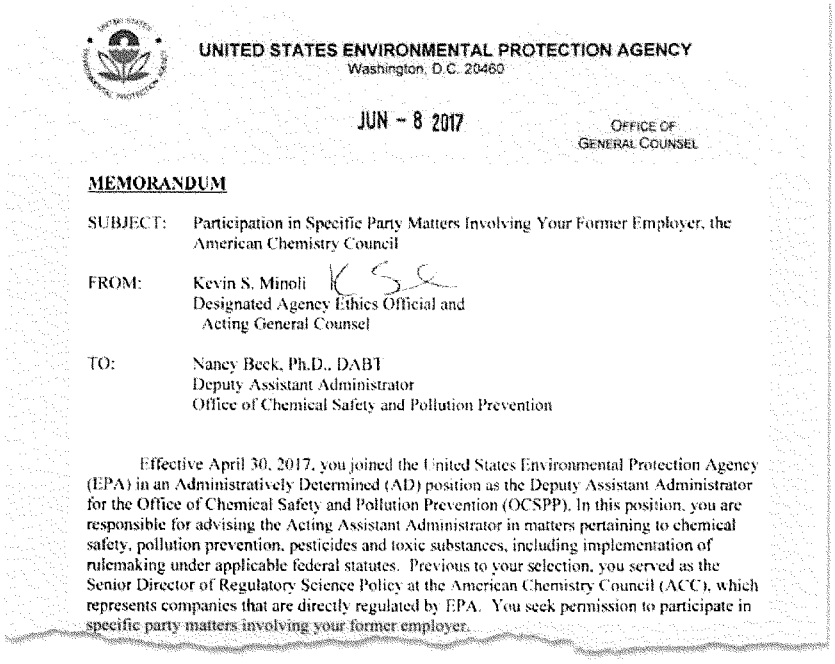
Crucially, the special status meant that Dr. Beck did not have to abide by the ethics agreement Mr. Trump adopted in January, which bars political appointees in his administration from participating for two years "in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts."

Her written offer of employment, obtained through a Freedom of Information Act request, also made it clear that Dr. Beck's appointment was junior enough not to require Senate confirmation, which would have almost certainly delayed her arrival at the agency and prevented her from making changes to the rules ahead of the June deadline.

None of these arrangements raised concerns with the E.P.A.'s acting general counsel, Kevin S. Minoli, who issued a ruling on her unusual employment status. Mr. Minoli saw Dr. Beck's background as a benefit, according to a memo he wrote that was reviewed by The Times.

"You have extensive prior experience with the regulated industry's perspective and are already familiar with (and may well have authored) A.C.C. comments now under consideration," he wrote, referring to the American Chemistry Council.

He added that Dr. Beck's "unique expertise, knowledge and prior experience will ensure that the agency is able to consider all perspectives, including that of the regulated industry's major trade association."



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

JUN - 8 2017

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Participation in Specific Party Matters Involving Your Former Employer, the American Chemistry Council

FROM: Kevin S. Minoli
Designated Agency Ethics Official and
Acting General Counsel

TO: Nancy Beck, Ph.D., DABT
Deputy Assistant Administrator
Office of Chemical Safety and Pollution Prevention

Effective April 30, 2017, you joined the United States Environmental Protection Agency (EPA) in an Administratively Determined (AD) position as the Deputy Assistant Administrator for the Office of Chemical Safety and Pollution Prevention (OCSPP). In this position, you are responsible for advising the Acting Assistant Administrator in matters pertaining to chemical safety, pollution prevention, pesticides and toxic substances, including implementation of rulemaking under applicable federal statutes. Previous to your selection, you served as the Senior Director of Regulatory Science Policy at the American Chemistry Council (ACC), which represents companies that are directly regulated by EPA. You seek permission to participate in specific party matters involving your former employer.

In a letter, an E.P.A. official addressed Dr. Beck's ability to be involved in matters affecting her former employer.

Others at the E.P.A., however, were stunned at the free pass given to Dr. Beck.

"It was a clear demonstration this administration has been captured by the industry," said Elizabeth Southerland, who served as the director of science and technology in the Office of Water until her retirement in July.

Getting Her Way

In the weeks leading up to the June deadline, Dr. Beck made clear what changes she wanted.

The conversations were polite, and Dr. Beck listened to counterarguments that Ms. Hamnett and her team made, Ms. Hamnett said. But in most cases, Dr. Beck did not back down, demanding a variety of revisions, particularly related to how the agency defined risks.

It all had a familiar ring. Ms. Hamnett and the others had fielded many of the same demands from the American Chemistry Council and from Dr. Beck herself when she worked there. Ms. Hamnett took detailed notes in spiral notepads, excerpts from which she showed The Times.

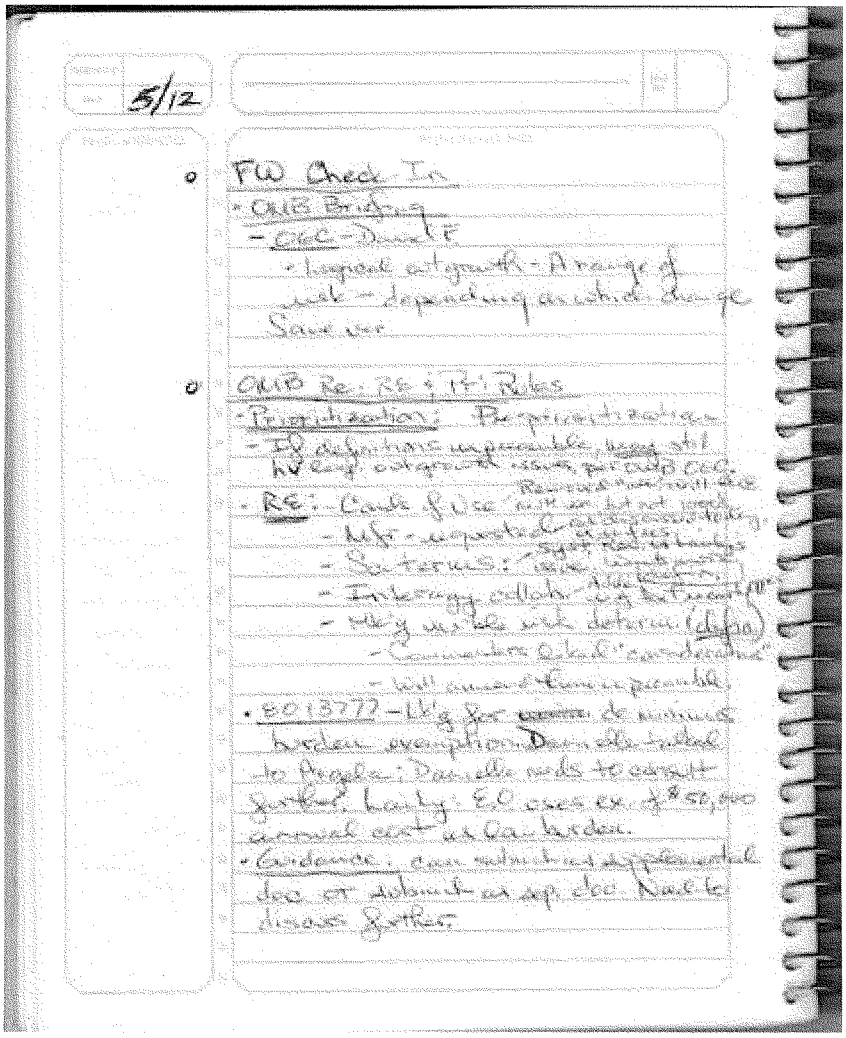
One area of contention was Dr. Beck's insistence that the E.P.A. adopt precise definitions of terms and phrases used in imposing rules and regulations, such as "best available science" and "weight of the evidence."

The agency had repeatedly rejected the idea, most recently in January, in part because the definitions were seen as a guise for opponents to raise legal challenges.

"These terms have and will continue to evolve with changing scientific methods and innovation," the agency said in a Jan. 17 statement in the Federal Register, three days before Mr. Trump was sworn in. "Codifying specific definitions for these phrases in this rule may inhibit the flexibility and responsiveness of the agency to quickly adapt to and implement changing science."

Another area of dispute involved the "all uses" standard for evaluating health threats posed by chemicals. Under that standard, the E.P.A. would consider any possible use of a chemical when determining how to regulate it; Dr. Beck, like the chemical industry, wanted the E.P.A. to limit the evaluations to specific intended uses.

"There is no way we can look at thousands of uses," Dr. Beck told Ms. Hamnett in one meeting in mid-May, according to Ms. Hamnett and her notes. "We can't chase the last molecule."



5/12

- FW Check In
  - OMB Briefing
    - OGC - Daniel F
      - Logical outgrowth - A range of risk - depending on which change
      Save ver

- OMB Re: RE & Pri Rules
  - Prioritization: Reprioritization
    - If definitions impossible, may still hv log. outgrowth issue, per OMB OGC.
  - RE: - Conds of Use [illegible]
    - Mfr - requested [illegible]
    - Sc terms: [illegible]
    - Interagy collab. [illegible]
    - Hk'g unable risk determ. (defin)
      - Commenters [illegible] "considerations"
      - Will amend them in preamble.
  - 8013777 - Lk'g for [illegible] de minimis burden exemption. Danielle talked to Angela: Danielle needs to consult further. Lanty: E.O. uses ex. of $50,000 annual cost as low burden.
  - Guidance: can submit as supplemental doc or submit as sep. doc. Need to discuss further.

Ms. Hamnett's notes from meetings where changes in toxic chemical rules were discussed at the request of Dr. Beck, who had a history of second-guessing the E.P.A.'s scientists.

As the June deadline under the new law approached, Dr. Beck took control of the rewriting herself, a highly unusual step at the E.P.A., where expert Civil Service employees traditionally hold the rule-writing pen.

Ms. Hamnett said she did not try to stop Dr. Beck given she had the support of the agency's new leadership.

Mr. Noe, the lawyer who worked with Dr. Beck during the Bush administration, was not involved in the rewriting of the new rules. But he said it was wrong to interpret Dr. Beck's actions as pro-industry; instead, he said, she was a defender of rigorous science.

"Anyone who would question Nancy's ability or integrity does not know her at all and just has a political ax to grind," he said.

Ms. Hamnett's handwritten notes, however, record increasingly urgent objections from across the agency, including from the Waste and Chemical Enforcement Division, the Office of Water and the Office of Geueral Counsel.

"Everyone was furious," said Ms. Southerland, the official from the Office of Water. "Nancy was just rewriting the rule herself. And it was a huge change. Everybody was stunned such a substantial change would be made literally in the last week."

The general counsel's objections to the substance of the changes were among the most alarming.

Laurel Celeste, an agency lawyer, questioned whether the last-minute changes would leave the agency's rule-making open to legal challenges. Her objections were outlined in a memo reviewed by The Times that was marked "confidential attorney client communication. Do not release under FOIA," referriug to the Freedom of Information Act.

Federal law requires rules to be a "logical outgrowth" of the administrative record. But Dr. Beck bad demanded changes that the staff had rejected,

meaning that the rule contained items that "differ so greatly from the proposal that they cannot be considered to be the 'logical outgrowth' of the proposal and the comments," Ms. Celeste said.

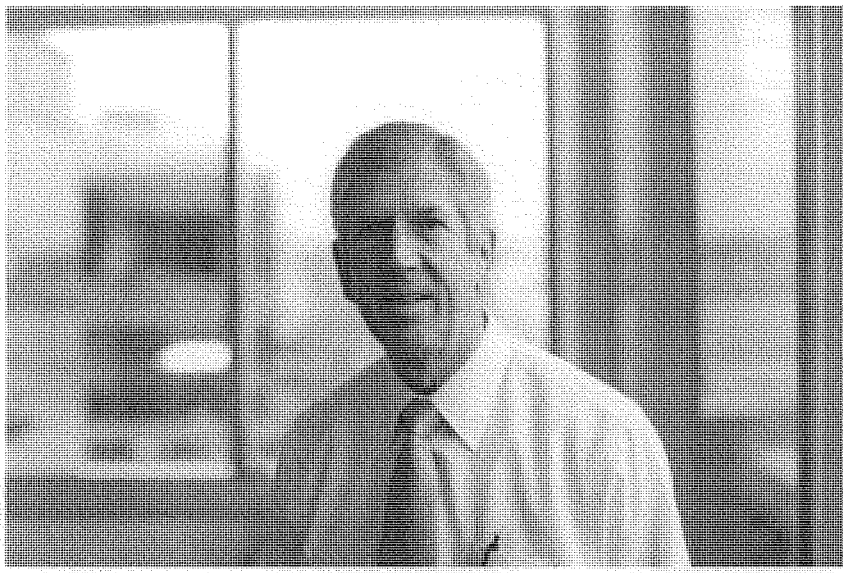
Her memo, sent by email on May 30 to Dr. Beck and more than two dozen agency scientists and staff members, also raised concerns about the preamble, an important piece of any regulation that must accurately reflect its contents.

"We are also concerned that, as currently drafted, the preamble lacks an adequate rationale for a number of final rule provisions that have changed significantly from the proposal," Ms. Celeste wrote.

The objections were strongly worded, but they fell short of an important legal threshold — the formal filing of a "nonconcurrence" memo — that would have triggered further review of Dr. Beck's actions. Several E.P.A. staff members said in interviews that they had been told by Mr. Pruitt's top deputies to air their concerns in so-called concur-with-comment memos, which put objections on the record but allowed the process to move forward.

The rules, with Dr. Beck's changes, were sent to the White House and approved by the June deadline. Mr. Pruitt assembled the team in late June for a brief ceremony to celebrate the completion of the work.

"Everybody here worked very, very hard," Ms. Hamnett said, as Mr. Pruitt signed his name, according to a video of the ceremony posted by the E.P.A.



Calvin M. Dooley, a former congressman who is president of the American Chemistry Council. In May, Dr. Beck, his former employer, pushed through many industry-friendly changes at the E.P.A. [illegible] The New York Times [illegible]

'Not One of My Best Days'

Environmentalists were dismayed, but Ms. Hamnett emerged from the whirlwind process with some confidence that all was not lost.

While she disagreed with a number of Dr. Beck's changes, she trusted that the E.P.A. staff would maintain its commitment to honor Congress's intent in the 2016 legislation. That would translate into a rigorous crackdown on the most dangerous chemicals, regardless of the changes.

But her confidence in the E.P.A.'s resolve was fragile, and it had been shaken by other actions, including the order Ms. Hamnett received to reverse course on banning the pesticide chlorpyrifos.

The order came before Dr. Beck's arrival at the agency, but Ms. Hamnett saw the industry's fingerprints all over it. Mr. Pruitt's chief of staff, Ryan

Jackson, instructed Ms. Hamnett to ignore the recommendation of agency scientists, she said.

The scientists had called for a ban based on research suggesting the pesticide might cause developmental disabilities in children.

Farm workers in a field picking berries. Chlorpyrifos, a pesticide blamed for developmental disabilities in children, is still widely used in agriculture. In March, Mr. Pruitt overrode agency scientists' recommendation to ban it.
Jim Wilson/The New York Times

To keep the pesticide on the market, under E.P.A. guidelines, the agency needed to have a "reasonable certainty" that no harm was being caused.

"The science and the law tell us this is the way to go," Ms. Hamnett said of a ban.

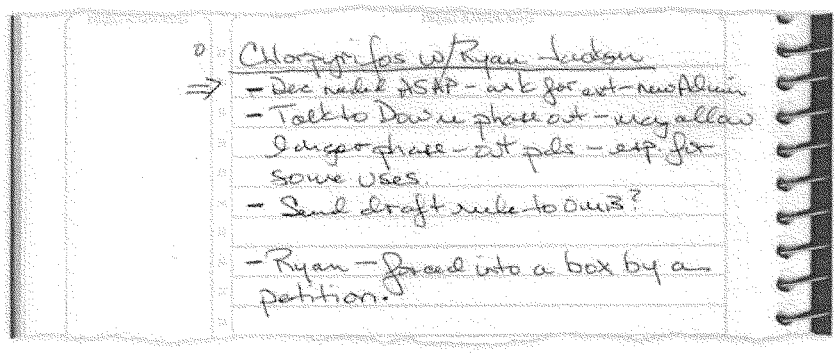
But the reaction from her superiors was not about the science or the law, she said. Instead, they queried her about Dow Chemical, the pesticide's largest

manufacturer, which had been lobbying against a ban.

The clash is recorded in Ms. Hamnett notebook as well as in emails among Mr. Pruitt's top political aides, which were obtained by The Times.

"They are trying to strong arm us," Mr. Jackson wrote after meeting with Ms. Hamnett, who presented him with a draft petition to ban the pesticide.

Mr. Jackson, Ms. Hamnett's notebook shows, then asked her to come up with alternatives to a ban. He asserted, her notes show, that he did not want to be "forced into a box" by the petition.



Ms. Hamnett recorded Mr. Jackson's reaction to a pesticide ban in her notebook.

"I scared them," Mr. Jackson wrote in an email to a colleague about his demands on Ms. Hamnett and her team.

As a possible compromise, Ms. Hamnett's team had been talking to Dow about perhaps phasing out the pesticide instead of imposing an immediate ban. But Dow, after Mr. Trump's election, was suddenly in no mood to compromise, Ms. Hamnett recalled. Dow did not respond to requests for comment.

She now knew, she said, that the effort to ban the pesticide had been lost, something Mr. Jackson's emails celebrated.

"They know where this is headed," Mr. Jackson wrote.

Just over a week later, Ms. Hamnett submitted a draft order that would deny the request for a ban.

"It was hard, very hard," she said, worrying that the pesticide would continue to harm children of farmworkers. "That was not one of my best days."

The episode is one reason she worries the E.P.A. will defer to the chemical industry as it begins to evaluate toxic chemicals under the standards created by the new law. She became particularly concerned because of a more recent exchange with Dr. Beck over methylene chloride, which is used in paint removers.

After more than a decade of research, the agency had concluded in January that methylene chloride was so hazardous that its use in paint removers should be banned.

Methylene chloride has been blamed in dozens of deaths, including that of a 21-year-old Tennessee man in April, who was overwhelmed by fumes as he was refinishing a bathtub.

"How is it possible that you can go to a home improvement store and buy a paint remover that can kill you?" Ms. Hamnett asked. "How can we let this happen?"

Furniture-refinishing companies and chemical manufacturers have urged the E.P.A. to focus on steps like strengthening warning labels, complaining that there are few reasonably priced alternatives.

Ms. Hamnett said Dr. Beck raised the possibility that people were not following the directions on the labels. She also suggested that only a small number of users had been injured. "Is it 1 percent?" Ms. Hamnett recalled Dr. Beck asking.

Ms. Hamnett said she was devastated by the line of questioning.

After years of successfully fending off Dr. Beck and her industry allies, the balance of power at the agency had shifted toward the industry.

Hello,
[illegible] not know me. However,

Why Has the E.P.A. Shifted on Toxic Chemicals? An Industry Insider Helps Call the Shots - The New York Times

I would expect that your job possibly has become more difficult under this new administration. I want you to know that I support you in any endeavors to help protect our environment from toxics and pesticides, backed up by actual scientific facts. I applaud you, and hope you other crewed.

Thank you, [redacted]

[redacted]

21 FEB 2017 PM 1

MAR 07 2017

Wendy Cleland Hamnett
US Environmental Protection Agency
Ofc of Chemical Safety and Pollution Prevention
MC 7101M
1200 Pennsylvania Ave. NW
Washington, DC 20460

A postcard received by Ms. Hamnett during the early months of the Trump administration, urging her to stay the course. The

https://www.nytimes.com/2017/05/21/us/trump-epa-chemicals-regulations.html[1/20/2018 12:11:49 PM]

sender's information has been redacted by The New York Times.

She had long planned to wrap up her work at the agency soon, as her husband, David, had retired three years ago. On Sept. 1, Ms. Hamnett turned in her badge and joined him.

Mr. Pruitt has selected a replacement for Ms. Hamnett: Michael L. Dourson, a toxicologist who has spent the last two decades as a consultant helping businesses fight E.P.A. restrictions on the use of potentially toxic compounds. He is already at work at the agency in a temporary post while he awaits Senate confirmation.

The American Chemistry Council, and its members, are among the top private-sector sponsors of Mr. Dourson's research. Last year, he collaborated on a paper that was funded by the trade group. His fellow author was Dr. Beck.

Sheila Kaplan contributed reporting.

Follow Eric Lipton on Twitter: @EricLiptonNYT.

A version of this article appears in print on October 22, 2017, on Page A1 of the New York edition with the headline: Chemical Industry Insider Now Shapes E.P.A. Policy. Order Reprints | Today's Paper | Subscribe

RELATED COVERAGE

The E.P.A.'s Top 10 Toxic Threats, and Industry's Pushback OCT. 21, 2017

Chemical Industry Ally Faces Critics in Bid for Top E.P.A. Post SEPT. 18, 2017

E.P.A. Chief, Rejecting Agency's Science, Chooses Not to Ban Insecticide MARCH 29, 2017

E.P.A. Promised 'a New Day' for the Agriculture Industry, Documents Reveal AUG. 18, 2017

Senator BARRASSO. And my final question is, can you just share a little bit maybe some of your goals and metrics you are going to set for yourself for the year ahead? I know this is something you and your team work on.

Mr. PRUITT. Yes, Senator. In fact, at the end of last year, we had solicited and surveyed each of our program offices in the agency to submit 5 year goals in air, water, across the full spectrum of our regulation. In that dialogue, we had a very collaborative discussion to set ambitious goals on attainment issues and other matters.

The metrics are really—if you don't set an aim, it has been said if you don't know where you are going, any road will take you there. I think that what we are trying to do is set aims and objectives in each of our key priority areas, from water to air to chemical, to Superfund, across the full spectrum, so that we can track day in and day out how we are making progress toward those objectives.

We have not done that before. In fact, before we arrived at the agency, we didn't know how long it took to do a permit under the Clean Water Act. We have collected that data, surveyed that, and it takes years for us to do that. States sometimes do it within 6 months to a year.

So we are trying to find out how good or not we are at certain things and then set objectives on how to improve and measure that daily to achieve outcomes.

Senator BARRASSO. Thank you very much, Administrator Pruitt. I appreciate your being here.

Members may submit questions in writing for the record by the close of business. We would like to hear back from you. That will go through February 13th.

I want to thank you for your time and your testimony.

The hearing is adjourned.

[Whereupon, at 12:26 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows:]

JOHN BARRASSO, WYOMING, CHAIRMAN

JAMES M. INHOFE, OKLAHOMA
SHELLEY MOORE CAPITO, WEST VIRGINIA
JOHN BOOZMAN, ARKANSAS
ROGER WICKER, MISSISSIPPI
DEB FISCHER, NEBRASKA
JERRY MORAN, KANSAS
MIKE ROUNDS, SOUTH DAKOTA
JONI ERNST, IOWA
DAN SULLIVAN, ALASKA
RICHARD SHELBY, ALABAMA

THOMAS R. CARPER, DELAWARE
BENJAMIN L. CARDIN, MARYLAND
BERNARD SANDERS, VERMONT
SHELDON WHITEHOUSE, RHODE ISLAND
JEFF MERKLEY, OREGON
KIRSTEN GILLIBRAND, NEW YORK
CORY A. BOOKER, NEW JERSEY
EDWARD J. MARKEY, MASSACHUSETTS
TAMMY DUCKWORTH, ILLINOIS
CHRIS VAN HOLLEN, MARYLAND

RICHARD M. RUSSELL, MAJORITY STAFF DIRECTOR
GABRIELLE BATKIN, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

January 19, 2018

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Administrator Pruitt:

I write to request your attention to two challenges associated with National Ambient Air Quality Standards (NAAQS) implementation across the country, including in my home State of Wyoming: exceptional events determinations and interstate transport of ozone.

First, EPA has not worked in full partnership with States in addressing "exceptional events" in the past. In 2016, EPA refused to act on a number of Wyoming's pending requests related to unique air quality events, as explained in the enclosed correspondence between Wyoming and EPA. Under Section 319 of the Clean Air Act (CAA), Congress created a process for addressing how "exceptional events" such as wildfires should be evaluated in air quality monitoring data. Wyoming's experience with the program illustrates the need for a shift in EPA's implementation approach. As a rural state with areas of high elevation and low population density, Wyoming faces issues different from many other parts of the country.

Second, EPA needs to revisit the methodology it has used to address interstate ozone transport, that is, whether and how emissions in one part of the country affect air quality elsewhere. On February 10, 2017, I raised concerns with EPA's treatment of ozone transport in the enclosed letter addressed to Reince Priebus. Despite a clear directive at the beginning of this Administration to freeze issuance of new regulations, EPA found that Wyoming had not adequately addressed ozone transport issues. In reaching that conclusion, EPA applied a methodology designed for eastern States to allege that emissions in Wyoming posed air quality problems in Colorado.

By January 30, 2018, please provide a status update on both of the issues above. First, what are the Agency's plans to act on pending exceptional events requests filed by Wyoming? Second, what are EPA's plans to address the February 2017 ozone transport finding?

I also request that you outline current or planned activities of the Ozone Cooperative Compliance Task Force, which was mentioned in an October 25, 2017 EPA report.[1] According to the report, the Task Force will address NAAQS implementation issues of national importance in the future.

[1] U.S. EPA, "Final Report on Review of Agency Actions that Potentially Burden the Safe, Efficient Development of Domestic Energy Resources Under Executive Order 13783" (Oct. 25, 2017), https://www.epa.gov/sites/production/files/2017-10/documents/eo-13783-final-report-10-25-2017.pdf.

PRINTED ON RECYCLED PAPER

Your consideration of these requests is greatly appreciated. If you or your staff require additional information, please contact Elizabeth Horner of the Committee on Environment and Public Works (Majority) staff at 202-224-6176.

Sincerely,

John Barrasso, M.D.
Chairman

Enclosures

KIRK SARRASSO, WYOMING, CHAIRMAN

[illegible]

[illegible]

[illegible]

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

February 10, 2017

The Honorable Reince Priebus
Assistant to the President & Chief of Staff
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear Mr. Priebus:

Thank you for your January 20, 2017, Executive Memorandum entitled "Regulatory Freeze Pending Review" (hereinafter "Priebus Memo"). This type of memo is a routine, but important step during a transition to allow an incoming President and his designees to review and assess any pending administrative actions. The Priebus Memo established a regulatory freeze on almost all pending matters as of noon on January 20, 2017.

Despite this clear directive, on Friday, February 3, 2017, the Environmental Protection Agency (EPA) published a final rule that disapproves parts of Wyoming's state implementation plan relating to interstate transport and the 2008 ozone standard, entitled "Approval and Disproval and Promulgation of Air Quality Implementation Plans; Interstate Transport for Wyoming," Final Rule, 82 Fed. Reg. 9142 (Feb. 3, 2017). I am surprised and concerned this rule was finalized after January 20, 2017 without going through a comprehensive review in accordance with the Priebus Memo.

It is our understanding that EPA told Wyoming officials that this rule was exempt from the Priebus Memo because the agency was acting pursuant to a judicial deadline of January 17, 2017. However, EPA is under no judicial deadline relating to this matter. EPA and the Sierra Club have *proposed* a consent decree to resolve a pending lawsuit relating to EPA approval of a number of state plans. The court has not yet entered that decree. Accordingly, EPA's disapproval of Wyoming's state implementation plan should have been subject to the Trump Administration's regulatory freeze, as provided under the Priebus Memo.

The action taken by EPA on February 3rd also raises significant policy concerns. Wyoming submitted its state implementation plan in February 2014 using EPA's 2013 guidance on plan development. In September 2015, the Sierra Club sued EPA regarding the agency's review of state plans. Wyoming had no notice of this lawsuit until June 2016. At that time, EPA published a notice in the Federal Register of its intent to settle the lawsuit by agreeing to deadlines for action on state plans, including that of Wyoming. Around the same time, again with no notice to Wyoming and other states, EPA replaced the 2013 guidance that Wyoming had relied upon. EPA's new methodology for evaluating ozone transport in the West uses a model developed for Eastern states that fails to account for Western topography and exceptional events,

PRINTED ON RECYCLED PAPER

such as wildfires. In November 2016, EPA proposed to disapprove Wyoming's plan to address the 2008 ozone standard. After sitting on Wyoming's submission for over two and a half years, EPA gave Wyoming only 30 days to comment. Wyoming asked for a 90-day extension to address EPA's new methodology. EPA denied that request, stating that it could not agree because the Sierra Club did not concur. This sequence of events left Wyoming with no opportunity to develop an approvable plan.

The actions described above took place during the Obama Administration. However, EPA continues to disregard Wyoming's legitimate concerns. EPA chose to violate the Priebus Memo by finalizing the disapproval of Wyoming's implementation plan instead of using its lawful discretion to work cooperatively with the state.

It is important that agencies such as the EPA follow the Priebus Memo and its strictures, to ensure that states such as Wyoming are not harmed by ill-conceived actions set in motion during the Obama Administration.

Sincerely,

John Barrasso, M.D.
Chairman
Committee on Environment and Public Works
United States Senate

cc: Don Benton, Senior White House Advisor, EPA

Department of Environmental Quality

To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

Matthew H. Mead, Governor

Todd Parfitt, Director

May 23, 2016

Monica Morales
Acting Director
Air Program
U.S. Environmental Protection Agency
Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

RE: Wyoming Department of Environmental Quality (WDEQ) Exceptional Events Demonstration Packages; 2011-2014

Dear Ms. Morales:

The State of Wyoming, Department of Environmental Quality – Air Quality Division (AQD) has reviewed your letter, and offers the following comments, regarding the Environmental Protection Agency (EPA) Region 8's preliminary review of, and decision to not act upon, WDEQ's exceptional event demonstration submittals for calendar years 2011-2014. The AQD appreciates EPA Region 8's notification of preliminary review, but ultimately finds the EPA's proposed inaction on WDEQ's request for concurrence on monitoring data flagged as influenced by exceptional events to be very disappointing. The AQD renews its requests for EPA Region 8 action.

The EPA's inaction – to shelve Wyoming's exceptional event submissions until the EPA views them as the subject of an attainment demonstration or other EPA regulatory decision – signals the EPA's general disregard for the significant time and staff resources committed by the AQD for each individual exceptional event demonstration. The EPA's response to Wyoming's submittals may discourage other state regulatory agencies from performing thorough, meticulous work on future exceptional event demonstrations under the presupposition that these demonstrations will be merely shelved once they reach federal review. This does not align with the objectives of the EPA or WDEQ, as both entities should be wholly committed to providing outstanding responsiveness on environmental policy issues.

Furthermore, the EPA's justification for inaction is also problematic. Although certain exceptional event demonstrations that appear on the enclosed table of WDEQ's 2011-2014 packages may not directly pertain to a specific pending regulatory decision – such as whether an area will be considered nonattainment – they nevertheless represent exceedances of the National Ambient Air Quality Standards (NAAQS) that the AQD has determined were caused by circumstances beyond regulatory control. Unless these flagged data demonstrations are approved by the EPA, they are ultimately considered to be "violations" – regardless of whether such a "violation" is warranted – and Wyoming is left with possible

undue consequences of delays to New Source Review permitting actions, performing follow-up casework with stakeholders, as well as the abiding perceptions of the general public. Additionally, the AQD and other state agencies face the burden of implementing federal policies that are developed on the basis of elevated monitored data – data that should have been excluded from emission inventories as a result of being properly classified as exceptional events – and therefore, exceptional event demonstrations that are not acted upon by the EPA still influence regulatory decisions that directly impact states. Whereas in the past, EPA Region 8 had conferred with the AQD in compiling this list of shelved exceptional event demonstrations, there was no two-way dialogue in this instance. The AQD does not believe this is a reasonable or efficient practice. The AQD respectfully requests that the EPA acts on WDEQ's concurrence requests or reopens its dialogue with WDEQ regarding which flagged monitored data will be considered for the EPA's full review.

Prior State Involvement in Demonstration Selection

As previously noted, the April 2016 letter from EPA Region 8 runs contrary to prior discussions between the EPA and the AQD regarding whether flagged data would be fully considered and reviewed by the EPA. The EPA's guidance on exceptional event demonstrations acknowledges that states should highlight the significance of each flagged event, and Wyoming has consistently followed this guidance by detailing the importance of certain demonstrations in its cover letter to the EPA. In this most recent instance, however, the AQD was merely informed that a series of 46 exceptional events – event demonstrations that AQD staff had invested significant time, resources, and analysis into compiling – would not be acted upon by the EPA unless the demonstrations became the subject of a future attainment demonstration or other specific EPA regulatory decision.

The EPA's practice is troublesome for the AQD on several fronts. It disregards a significant analytical and laborious effort undertaken by the AQD over the years – an effort that Wyoming undertook with the full expectation that the EPA would ultimately consider and act on the flagged data. The EPA's failure to act wastes state agency resources. The AQD maintains that, if it has technically demonstrable justification to compile an exceptional event demonstration, and if it has undertaken the effort in compiling that demonstration, then the EPA should fulfill its responsibility to take action. The EPA should honor the work undertaken by state agencies by providing its full consideration.

Concerns Regarding State-Level Regulatory Decisions

The AQD is in the unique position of having several industrial ambient monitors required through New Source Review permits that must meet EPA requirements, and therefore, data that are currently eligible for treatment under the Exceptional Event Rule. There have been several instances where data have been influenced by exceptional events at these monitors. In these instances, the AQD has demonstrated the regulatory significance of these events and has submitted demonstrations for review by the Region. The EPA's follow-through on the regulatory review process would lessen regulatory uncertainty by allowing a regulatory mechanism to demonstrate the effect of exceptional events upon ambient data used for permitting and regulatory decisions at the state level. This would benefit all regulatory entities involved, as it would allow for the AQD to operate as efficiently and decisively as possible in acting upon ambient monitored data.

Placing Undue Accountability on State Agencies

The EPA's approach is further problematic to the AQD because the state agency is ultimately left to deal with the lingering consequences of NAAQS "violations" that were entirely beyond the control of any regulatory entity. These consequences are not necessarily limited to specific EPA attainment or other regulatory determinations. The notion that only such pending regulatory determinations are relevant in evaluating flagged monitoring data is a significant misconception on the EPA's behalf.

While the EPA's evaluation of a certain exceptional event demonstration may not have specific bearing on whether or not a certain area is able to attain the NAAQS, these monitored data are nevertheless included in conjunction with national emission inventories and modeling exercises that are ultimately considered by the EPA in establishing policy and developing federal regulations. Exceptional event demonstrations make compelling cases that certain elevated monitored data should be disregarded when creating regulatory policy. When the EPA disregards and fails to act on these demonstrations, however, the consequence is the inclusion of inflated monitored data that misrepresents the prevailing air quality conditions. For example, the shelved data on Wyoming's exceptional event demonstration list from the 2012 summer is attributable to the omnipresence of wildfire emissions in the state, or transported into the state, due to an extraordinarily active wildfire season. The EPA's reluctance to act on Wyoming's exceptional event demonstration submissions ultimately means that these exceedances represent "violations" of the NAAQS – from a regulatory standpoint, and in the eyes of the public – even though these events were beyond regulatory control. This is simply an unfair and unsound practice and is ultimately counterproductive to the state, the EPA, and the public.

Additionally, the EPA's inaction is problematic because there are many circumstances where the consideration of exceptional event-influenced data would impact regulatory domains beyond NAAQS attainment. One such example is regional haze, where a wildfire-heavy summer – including wildfires burning in other states – would contribute significantly to pollutant levels in Wyoming and impact the presence of regional haze, despite the State of Wyoming having no capacity to control those emissions. This was, again, the case in 2012, where levels of $PM_{2.5}$ in Wyoming increased dramatically between June and September because of the omnipresence of wildfires – largely attributable to the extraordinarily dry meteorological conditions.

Although Wyoming still attained the primary annual arithmetic mean and the primary 24-hour average for both the 2006 and 2012 $PM_{2.5}$ NAAQS, the elevated $PM_{2.5}$ levels attributable to exceptional events still impacted the state's capacity to demonstrate that the state's overall marginal levels of $PM_{2.5}$ did not contribute significantly to regional haze. These exceptional events were significant in number (there were several multi-day wildfires throughout the summer) and had impacts beyond the State's regulatory capacity. Ultimately, the EPA's consideration of monitored data, bereft of exceptional event demonstrations results in a misrepresentation of the adequacy of existing state regulations and shifts state resources from addressing areas of concern to addressing situations that are not problematic.

Conclusion

The AQD hopes that its request and suggestions ensure that the EPA fully considers these exceptional event demonstrations. The EPA's action is extremely beneficial for the planning and submittal of regulatory documents that may be influenced – both in scope and in details – by the classification of exceptional events that impact monitored data, and consequentially impact the regulatory decisions that air agencies must make. It is important to the State of Wyoming that the EPA honors its commitment to act on these exceptional event demonstrations.

Thank you for the opportunity to reply to your letter. As always, the AQD is available to discuss any of the concerns outlined in this letter. Please feel free to contact the AQD at 307-777-7391.

Sincerely,

Nancy E. Vehr
AQD Administrator

Cc: Adam Clark, EPA Region 8
Cara Keslar, AQD
Amber Potts, AQD
Mike Morris, AQD

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region08

APR 2 7 2016

Ref: 8P-AR

Nancy Vehr, Administrator
Air Quality Division
Wyoming Department of Environmental Quality
200 West 17th Street
Cheyenne, Wyoming 82002

Received
APR 28 2016
Air Quality Division

Re: Wyoming Department of Environmental Quality (WDEQ) Exceptional Events Documentation Packages; 2011-2014

Dear Ms. Vehr:

This letter is in response to WDEQ's submittals of demonstrations of exceptional event influence on $PM_{2.5}$, PM_{10}, and ozone monitoring data for calendar years 2011-2014. The demonstration documents contain information regarding monitoring data flagged by WDEQ to indicate that PM_{10} National Ambient Air Quality Standards (NAAQS) exceedances were affected by high winds, $PM_{2.5}$ NAAQS exceedances were affected by wildfires, and ozone NAAQS exceedances were affected by stratospheric intrusions.

A preliminary review of the demonstrations submitted indicates that the flagged PM and ozone data may have been influenced by exceptional events; however, at this time the EPA will not take action on WDEQ's request for concurrence on the referenced data flags. The data are not anticipated to be involved in any pending regulatory decision by the EPA, therefore, the EPA is not making a concurrence decision on the demonstrations submitted. If at some point in the future the flagged data would be included in an attainment demonstration or involved in other regulatory decisions, the EPA would then undertake a full review of the submitted demonstrations to allow a concurrence decision at that time.

The enclosed table provides a summary of the flagged $PM_{2.5}$, PM_{10}, and ozone monitoring data WDEQ provided for the calendar years 2011-2014 subject to this letter. With this letter, the EPA is determining our review of the WDEQ 2011-2014 packages listed in the enclosed table to be complete. As always, the EPA staff are available to answer any questions your staff may have and to provide help where needed. For additional information, please feel free to contact me, or your staff may contact Kyle Olson, of my staff, at (303) 312-6002.

Sincerely,

Monica Morales

Monica Morales, Acting Director
Air Program

Printed on Recycled Paper

EE Date	Year	Location	Monitor ID	Parameter	Monitored Value
5/30/2011	2011	South Pass	56-013-0099-1	O_3	81 ppb
1/11/2012	2012	Naughton	56-023-0820-2	PM_{10}	312 $\mu g/m^3$
1/12/2012	2012	Naughton	56-023-0820-2	PM_{10}	167 $\mu g/m^3$
1/13/2012	2012	Naughton	56-023-0820-2	PM_{10}	325 $\mu g/m^3$
1/16/2012	2012	Naughton	56-023-0820-2	PM_{10}	179 $\mu g/m^3$
1/18/2012	2012	Naughton Mountain Cement	56-023-0820-2 56-001-0800-3	PM_{10} PM_{10}	174 $\mu g/m^3$ 170 $\mu g/m^3$
1/21/2012	2012	School Creek - 3	56-005-0086-1	PM_{10}	226 $\mu g/m^3$
		School Creek - 2	56-005-0087-1	PM_{10}	223 $\mu g/m^3$
		N Antelope/ Rochelle RO-1	56-005-0869-2	PM_{10}	200 $\mu g/m^3$
3/26/2012	2012	Mountain Cement	56-001-0800-3	PM_{10}	204 $\mu g/m^3$
4/12/2012	2012	Buckskin Mine N	56-005-1899-1	PM_{10}	180 $\mu g/m^3$
6/5/2012	2012	Wyodak	56-005-0901-1	PM_{10}	237 $\mu g/m^3$
		Bridger Coal JB-4	56-037-0860-1	PM_{10}	215 $\mu g/m^3$
6/6/2012	2012	Thunder Basin	56-005-0123-1	O_3	88 ppb
6/26/2012	2012	Pinedale	56-035-0101-1	$PM_{2.5}$	47.0 $\mu g/m^3$
6/28/2012	2012	Big Piney	56-035-0700-1	$PM_{2.5}$	53.8 $\mu g/m^3$
6/29/2012	2012	Lander	56-013-1003-1	$PM_{2.5}$	41.8 $\mu g/m^3$
		Casper	56-025-0001-1	$PM_{2.5}$	36.5 $\mu g/m^3$
		Big Piney	56-035-0700-1	$PM_{2.5}$	110.6 $\mu g/m^3$
6/30/2012	2012	Big Piney	56-035-0700-1	PM_{10}	190 $\mu g/m^3$
		Big Piney	56-035-0700-1	$PM_{2.5}$	143.7 $\mu g/m^3$
7/1/2012	2012	Big Piney	56-035-0700-1	$PM_{2.5}$	85.4 $\mu g/m^3$
7/2/2012	2012	Big Piney	56-035-0700-1	$PM_{2.5}$	97.4 $\mu g/m^3$
7/3/2012	2012	Big Piney	56-035-0700-1	$PM_{2.5}$	74.7 $\mu g/m^3$
7/4/2012	2012	Gillette Col.	56-005-0800-1	$PM_{2.5}$	56.5 $\mu g/m^3$
		Belle Ayr BA-4	56-005-0892-1	$PM_{2.5}$	55.3 $\mu g/m^3$
		Antelope 3	56-009-0819-1	$PM_{2.5}$	47.0 $\mu g/m^3$
		Big Piney	56-035-0700-1	$PM_{2.5}$	68.4 $\mu g/m^3$
7/5/2012	2012	Big Piney	56-035-0700-1	$PM_{2.5}$	38.6 $\mu g/m^3$
9/18/2012	2012	Wyoming Range	56-035-0097-1	$PM_{2.5}$	39.1 $\mu g/m^3$
9/20/2012	2012	Wyoming Range	56-035-0097-1	$PM_{2.5}$	52.3 $\mu g/m^3$

EE Date	Year	Location	Monitor ID	Parameter	Monitored Value
		Pinedale	56-035-0101-1	$PM_{2.5}$	44.8 $\mu g/m^3$
9/21/2012	2012	Rock Springs	56-037-0007-1	$PM_{2.5}$	37.6 $\mu g/m^3$
		Jackson Hole	56-039-1006-1	$PM_{2.5}$	39.2 $\mu g/m^3$
12/2/2012	2012	Buckskin Mine N	56-005-1899-1	PM_{10}	167 $\mu g/m^3$
12/20/2012	2012	N Antelope/ Rochelle RO-1	56-005-0869-2	PM_{10}	188 $\mu g/m^3$
3/4/2013	2013	Black Thunder	56-005-0891-2	PM_{10}	166 $\mu g/m^3$
3/17/2013	2013	Black Butte #10	56-037-0868-2	PM_{10}	261 $\mu g/m^3$
		Black Butte I-80	56-037-1868-1	PM_{10}	432 $\mu g/m^3$
6/13/2013	2013	Kemmerer Mine	56-023-0800-1	PM_{10}	273 $\mu g/m^3$
1/13/2014	2014	Black Butte #10	56-037-0868-2	PM_{10}	166 $\mu g/m^3$
2/21/2014	2014	Black Butte Lucite Hills	56-037-0852-1	PM_{10}	204 $\mu g/m^3$
3/17/2014	2014	Black Butte #10	56-037-0868-2	PM_{10}	202 $\mu g/m^3$
		Black Butte Lucite Hills	56-037-0852-1	PM_{10}	242 $\mu g/m^3$
4/28/2014	2014	Black Butte Lucite Hills	56-037-0852-1	PM_{10}	219 $\mu g/m^3$
7/14/2014	2014	Black Butte Lucite Hills	56-037-0852-1	PM_{10}	294 $\mu g/m^3$

JOHN BARRASSO, WYOMING, CHAIRMAN

JAMES M. INHOFE, OKLAHOMA
SHELLEY MOORE CAPITO, WEST VIRGINIA
JOHN BOOZMAN, ARKANSAS
ROGER WICKER, MISSISSIPPI
DEB FISCHER, NEBRASKA
JERRY MORAN, KANSAS
MIKE ROUNDS, SOUTH DAKOTA
JONI ERNST, IOWA
DAN SULLIVAN, ALASKA
RICHARD SHELBY, ALABAMA

THOMAS R. CARPER, DELAWARE
BENJAMIN L. CARDIN, MARYLAND
BERNARD SANDERS, VERMONT
SHELDON WHITEHOUSE, RHODE ISLAND
JEFF MERKLEY, OREGON
KIRSTEN GILLIBRAND, NEW YORK
CORY A. BOOKER, NEW JERSEY
EDWARD J. MARKEY, MASSACHUSETTS
TAMMY DUCKWORTH, ILLINOIS
KAMALA HARRIS, CALIFORNIA

RICHARD M. RUSSELL, MAJORITY STAFF DIRECTOR
GABRIELLE BATKIN, MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

December 14, 2017

The Honorable E. Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator Pruitt:

I am writing to restate my concerns about EPA's proposed rule on ground water and in situ uranium recovery (ISR) under 40 C.F.R. Part 192. EPA initially issued its rule on January 26, 2015. In 2016, I wrote to the Office of Management and Budget (twice) questioning EPA's justification for the rule and its cost-benefit analysis and called on the Obama Administration to withdraw the rule. On January 19, 2017 – the day before President Obama left office – EPA issued a second proposed rule. Since then, I have come to learn that the Nuclear Regulatory Commission (NRC) has had – *from this rulemaking's inception* – serious concerns with EPA's proposals. I share NRC's concerns about EPA's rule and ask that you withdraw the rule.

The NRC has substantive and jurisdictional concerns about EPA's proposals. After EPA issued its 2015 rule, NRC Commissioner William Ostendorff asked NRC's General Counsel whether the rule reaches beyond EPA's authority to set "generally applicable standards" for ground water protection under the Uranium Mill Tailings Radiation Control Act (UMTRCA). On May 18, 2015, the General Counsel submitted a 20-page memo to the Commission stating, among other things, that if promulgated, the rule would reach beyond EPA's authority in key areas. The rule – rather than setting generally applicable standards – would impose implementation standards, which the Act delegates to the NRC, not EPA. At Commissioner Ostendorff's initiative, the Commission voted, in June of 2015, to authorize the General Counsel to convey both substantive and jurisdictional concerns to EPA. NRC's General Counsel did so in a July 28, 2015 letter.

After EPA reproposed the rule in 2017, the NRC elaborated upon its concerns. The NRC staff submitted 25 pages of comments on the rule to the Commission. With the knowledge and implicit consent of the Commission, the NRC staff submitted the comments to EPA on July 18, 2017. The comments explain that the NRC and its Agreement States "have been safely, securely, and successfully regulating ISR facilities since the 1970's." They state that "[i]n almost 40 years of operational experience, the NRC staff is aware of no documented instance of an ISR wellfield being the source of contamination of an adjacent or nearby aquifer, or of the non-exempt portion of the same aquifer in which ISR activities are being conducted." They explain that there is "No Health or Safety Justification for [the] Rulemaking." Finally, the comments detail how the rule "encroaches upon NRC's jurisdiction, and includes requirements that are not technically feasible or are unreasonably burdensome on…licensees without providing any equivalent benefit."

Since March 2011, prices for natural uranium have fallen by roughly 70 percent. In 2017,

PRINTED ON RECYCLED PAPER

uranium producers in the U.S. are on track to produce the lowest amount of uranium since 1951 – *before* the U.S. had commercial nuclear power reactors. It is incumbent upon EPA to refrain from imposing regulations that are not technically feasible or are unreasonably burdensome on licensees. While Commissioner Ostendorff noted that the NRC has the authority to deviate from EPA's regulations on a site-specific basis should EPA exceed its authority under UMTRCA, he stated that this approach could easily lead to continuing conflict between the agencies and court challenges to NRC's actions. In order to end such conflict, I ask that, in addition to withdrawing EPA's rule, you sign a Memorandum of Understanding with the Commission clarifying EPA's authority to set generally applicable standards and NRC's authority to implement the standards.

Thank you in advance for your consideration and I look forward to your prompt response.

Sincerely,

John Barrasso, M.D.
Chairman

Enclosures (4)

OFFICIAL USE ONLY – DELIBERATIVE PROCESS MATERIAL

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

GENERAL COUNSEL

July 28, 2015

Avi S. Garbow, General Counsel
Environmental Protection Agency
1200 Pennsylvania Avenue
Mail Code 2310A
Washington D.C. 20460

Dear Mr. Garbow:

My office has recently reviewed the Environmental Protection Agency's (EPA) January 26, 2015 proposed rule, "Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings," which sets forth groundwater protection standards for uranium in-situ recovery facilities. The proposed rule would add a new Subpart F to EPA's regulations at 40 CFR Part 192. EPA's Part 192 regulations implement EPA's responsibilities under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA).

As explained below, we are concerned that, in certain respects, the EPA's proposed rule may encroach upon the Nuclear Regulatory Commission's (NRC) authority. Our agencies for many decades have worked closely together on EPA's rulemakings that pertain to the regulation of the commercial nuclear industry and we would like at an early date to meet with your staff to discuss our concerns.

As you know, section 275 of the Atomic Energy Act established a dual regulatory scheme over the uranium processing industry. EPA sets standards of general applicability for the protection of public health and the environment from the radiological and nonradiological hazards associated with uranium processing, and the NRC implements and enforces those standards. There are two provisions in EPA's proposed rule that we wish to discuss with you because they may encroach upon NRC's authority.

Proposed 40 CFR 192.52(c)(3)(i)-(ii) allows for the NRC or other regulatory agency (i.e., a NRC Agreement State) to establish "final alternate concentration limits" provided that groundwater stability, after uranium in-situ recovery operations had ceased, be demonstrated at a 95 percent confidence level, based upon quarterly sampling, for three consecutive years. This proposed provision appears to be beyond the UMTRCA authority to set general standards, as it can be construed as imposing either a management or an engineering method upon licensees. The very high statistical rigor (95 percent confidence level) imposed by the proposed provision relates to how the licensee will demonstrate compliance, which the NRC views as an implementation issue, and thus a NRC responsibility, rather than a general standard. In this regard, the NRC's statutory duty is to provide reasonable assurance. Reasonable assurance is not expressed in terms of a particular level of statistical rigor. Our concern with the proposed 95 percent confidence level is that such a level does not equate to reasonable assurance but to essentially, absolute assurance. In essence the proposed rule goes beyond establishing a general standard such that it affects how the standard is met – a role reserved for the NRC.

NOT FOR PUBLIC DISCLOSURE

OFFICIAL USE ONLY – DELIBERATIVE PROCESS MATERIAL

Moreover, a 95 percent confidence level is extremely difficult to demonstrate, leaving virtually no room for a margin of error. Given the difficulty in demonstrating compliance with a 95 percent confidence level, the provision may not be implementable in a meaningful way, and as such, the NRC may not be able to grant a final alternate concentration limits.

Proposed 40 CFR 192.53 establishes extensive monitoring requirements upon uranium in-situ recovery licensees. In particular, proposed 40 CFR 192.53(b) requires the monitoring of all constituents in the event an "excursion" is detected. Notably, the proposed provision does not account for the different speeds at which the various constituents may move through the aquifer—thus raising the question as to whether monitoring the slower-moving constituents is necessary. Similar to our concerns with the 95 percent confidence level requirement, this provision may be construed as imposing either a management or an engineering method upon licensees, and thus be beyond the scope of a general standard.

We also have substantive concerns with one provision. Following the three-year post-operational "stability phase" in which the licensee must demonstrate constituent stability at a 95 percent confidence level, the licensee must, under proposed 40 CFR 192.53(e)(iii), continue to monitor the site for an additional 30 years. Although establishing a monitoring period's term may be within the scope of general standard setting, a 30-year monitoring period may be longer than needed to assure protection of groundwater resources.

The NRC wishes to discuss its concerns more fully with your staff as part of EPA's development of a final rule. Please contact Andrew Pessin, of my office, at 301-415-1062. We look forward to working with you on this matter.

Sincerely,

Margaret M. Doane

Margaret M. Doane
General Counsel

cc: Janet G. McCabe, Acting Assistant Administrator for the Office of Air and Radiation

NOT FOR PUBLIC DISCLOSURE

July 17, 2017

NOTE TO COMMISSIONERS' ASSISTANTS

OCM/KLS

x Patrick Castleman
x Maxwell Smith
___ Richard Harper
___ Catherine Kanatas
___ Veronica Rodriguez
___ Lauren Gibson
x Alan Frazier
___ Samantha Crane
___ Clare Kasputys
___ Lindsey Hawkins
x Janet Lepre
x Nicole Riddick

OCM/JMB

x Amy Powell
x Jody Martin
___ Robert Krsek
X Lisa London
x Stacy Schumann
x Beth Brown

OCM/SGB

x Jason Zorn
x Steve Baggett
x Tracey Stokes
___ Nanette Valliere
x Kathleen Blake
x Sandra Cianci

FROM: Robert J. Lewis ***/RA/***
Assistant for Operations, OEDO

SUBJECT: UPDATE ON THE U.S. ENVIRONMENTAL PROTECTION AGENCY'S TITLE 40 OF THE CODE OF FEDERAL REGULATIONS PART 192 RULEMAKING ACTIVITIES (JULY 2017)

The purpose of this Commissioners' Assistants (CA) note is to provide the Commission offices with an update on the U.S. Environmental Protection Agency's (EPA) Title 40 of the *Code of Federal Regulations* (40 CFR) Part 192 rulemaking activities. In a previous CA note dated October 25, 2010 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML102950502), the staff informed the Commission that it was deferring its Title 10 of the *Code of Federal Regulations* Part 40 proposed rulemaking for ground water protection at uranium in situ recovery (ISR) facilities. The staff took this action after the EPA notified the U.S. Nuclear Regulatory Commission (NRC) staff that it was beginning its own rulemaking effort to promulgate generally applicable standards for ISR facilities.

P=> ML17179A384

NOT FOR PUBLIC DISCLOSURE

The Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA), which amended certain sections of the Atomic Energy Act of 1954 (AEA), as amended, allows the EPA to promulgate generally applicable standards for the protection of the environment from both radiological and non-radiological hazards associated with the processing, possession, transfer, and disposal of AEA section 11e.(2) byproduct material. The EPA implements UMTRCA through its regulations at 40 CFR Part 192. Under the UMTRCA scheme, the NRC implements and enforces these generally applicable standards, usually by promulgating a conforming regulation.

In a CA note dated May 19, 2017 (ADAMS Accession No. ML17117A412), the staff notified the Commission that the EPA had republished its proposed rule on 40 CFR 192 ("Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings," 82 FR 7400) for public comment with a comment period ending on July 18, 2017. The staff has reviewed the proposed rule and intends to submit the enclosed comments on that rulemaking to the EPA on or before July 18, 2017. The comments will become public when they are submitted via Regulations.gov to docket number EPA-HQ-OAR-2012-0788. The staff has coordinated with the Office of the General Counsel in preparing these comments, who has no legal objections.

Enclosure:
NRC Staff comments on EPA 40 CFR 192
Proposed Rule

cc: V. McCree, EDO
M. Johnson, DEDR
F. Brown, DEDM
R. Lewis, AO
H. Rasouli, DAO
M. Sampson, OEDO
M. Dapas, NMSS
S. Moore, NMSS
D. Collins, NMSS
K. Williams, NMSS
K. Morgan-Butler, NMSS
G. Comfort, NMSS
B. VonTill, NMSS
E. Striz, NMSS
A. Pessin, OGC
J. Olmstead, OGC

SECY
OGC
OCA
OCAA
OPA
OIP
OCFO
OCIO
EDO r/f

NOT FOR PUBLIC DISCLOSURE

U.S. Nuclear Regulatory Commission Staff's Comments on the U.S. Environmental Protection Agency's Proposed Rulemaking for 40 CFR Part 192, 82 FR 7400

General Comments

The U.S. Nuclear Regulatory Commission (NRC) staff appreciates the opportunity to provide input to the U.S. Environmental Protection Agency (EPA) on the issues and questions posed by the Notice of Proposed Rulemaking for Title 40 of the *Code of Federal Regulations* (40 CFR) Part 192, published in the *Federal Register* (FR) on Thursday, January 19, 2017, under Docket ID No. EPA-HQ-OAR-2012-0788.[1]

As discussed in more detail in the specific comments below, the NRC staff is concerned that the proposed rule relies on arguments that are not fully supported, encroaches upon NRC's jurisdiction, and includes requirements that are not technically feasible or are unreasonably burdensome on both NRC and Agreement State licensees without providing any equivalent benefit. The NRC's current regulations, at 10 CFR Part 40, Appendix A, and those of the various Agreement States, as supplemented by site-specific license conditions, guidance documents (e.g., NRC's "Standard Review Plan for In Situ Leach Uranium Extraction License Applications," NUREG-1569), and the operational experience and technical expertise of the regulatory agency staff, constitute a comprehensive and effective regulatory program for uranium in situ recovery operations (ISR) facilities. The NRC and the various Agreement States (operating under authority discontinued by the NRC pursuant to section 274 of the Atomic Energy Act of 1954, as amended (AEA)) have been safely, securely, and successfully regulating ISR facilities since the 1970's.

The NRC regulations at 10 CFR Part 40, Appendix A were promulgated for conventional uranium milling and are not specific to ISR facilities. Nevertheless, the NRC staff has concluded that its application of the 10 CFR Part 40, Appendix A regulations to ISR facilities meets the AEA standard of "adequate protection" of public health and safety and the environment. The basis for this conclusion is the established safety record of the NRC licensed ISR facilities. The NRC staff began a rulemaking specific to ISR facilities in 2006 for the purpose of standardizing existing NRC regulatory practices to ensure consistency in the NRC staff's evaluation and approval of ISR license applications. This rulemaking would have amended 10 CFR Part 40, Appendix A by codifying proven license conditions and staff practices, as reflected in guidance documents, into the 10 CFR Part 40, Appendix A regulations. By revising NRC's regulations to specifically address ISRs, the NRC staff concluded that the ISR licensing process would be more effective, consistent, and transparent. This rulemaking has been in abeyance since 2010 as a result of EPA's stated intention to promulgate generally applicable standards.

The NRC staff did not believe in 2006, when it initiated its rulemaking, and does not believe now, that ISR uranium activities that are operated under the existing regulatory framework have

[1] 82 FR 7400.

caused, or are likely to cause, any contamination by listed hazardous constituents[2] of adjacent or nearby aquifers or the non-exempt portion of the aquifer that is the subject of the licensed uranium ISR extraction activity. The NRC, through its requirements for extensive testing of licensee monitoring and private wells in and around its licensed ISR sites, has not found evidence to challenge that finding.

In addition, the NRC staff believes that EPA's proposed rule exceeds its authority to promulgate generally applicable standards in many areas and that EPA's existing generally applicable standards in 40 CFR Part 192, Subpart D, can continue to be readily applied to ISRs without need for this rulemaking. Moreover, the NRC staff has concluded that some of the specific technical requirements would be impracticable or unnecessarily cost prohibitive to implement without providing any significant benefit.

Issue Specific Comments

A. No Health or Safety Justification for Rulemaking

1. Groundwater Monitoring

Issue: The preamble justifies the rule, in part, by asserting that there has only been "limited post-restoration monitoring" of potential contaminants and as such, there is not enough data to determine that ISR wellfields are not a source of contamination for non-exempt aquifers.[3] The NRC staff disagrees as there is sufficient post-restoration monitoring data that demonstrates that ISR wellfields are not a source of contamination for non-exempt aquifers.

Comment: In almost 40 years of operational experience, the NRC staff is aware of no documented instance of an ISR wellfield being the source of contamination of an adjacent or nearby aquifer, or of the non-exempt portion of the same aquifer in which ISR activities are being conducted.

The NRC requires that its licensees, through license conditions, monitor a series of wells that surround and lie above and below the wellfield every two weeks during operations and throughout restoration to ensure that no undetected excursions occur. In addition, the NRC requires that its licensees monitor private wells located within one to two kilometers of each ISR wellfield (both those that are in an operating status as well as those undergoing restoration). These private wells can be located in aquifers above, under and around, but not within the ore zone aquifer of an ISR wellfield within the monitoring well ring. The private wells monitored include drinking water wells and livestock watering wells. Each licensee is required to sample the private wells on a quarterly basis for various radionuclides, including natural uranium and radium-226, both prior to and during wellfield operation. This data is provided to the NRC staff as part of a semi-annual report and is publicly available.

In December 2008, the Commission tasked the NRC staff with preparing a report that assessed the environmental impacts to groundwater from ISR wellfields. The NRC staff submitted its report to the Commission in July 2009 (NRC, 2009).[4] The report examined licensee monitoring

---

[2] Criterion 13 of 10 CFR Part 40, Appendix A lists the hazardous constituents that are subject to NRC's regulation. Other than Nitrate (as N), all of the constituents listed in proposed Table 1 to Subpart F are also listed in Criterion 13.
[3] 82 FR at 7404.
[4] NRC SECY-2009-016, "Staff Assessment of Groundwater Impacts from Previously Licensed In-Situ Uranium Recovery Facilities," July 10, 2009, available in NRC's Agencywide Documents Access and

data from private wells within and near the licensed boundaries of an ISR facility. Private wells are typically interspersed throughout and outside the licensed area of the ISR facility. The NRC staff notes that the external licensed boundaries of a typical ISR facility encompass an area of several square miles and usually includes several discrete wellfields, some of which are operating, while others may be undergoing restoration or are already in an approved, restored status. It is not uncommon for an operating wellfield to lie within a relatively close proximity to one or more restored wellfields or wellfields undergoing restoration.

The 2009 report analyzed the private well data (comprised of 44 wells across three ISR facilities) available and found that,

> Based on a review of historical licensing documentation, data from the [private well] monitoring at all existing ISR facilities indicate that no impacts attributable to an ISR facility were observed at the regional monitoring locations. In addition, the staff is unaware of any situation indicating that: (1) the quality of groundwater at a nearby water supply well has been degraded; (2) the use of a water supply well has been discontinued; or, (3) a well has been relocated because of environmental impacts attributed to an ISR facility.[5]

This report, together with continued private well monitoring data that has been provided semi-annually to the NRC staff since 2009, have shown no evidence of contamination at nearby private wells.

In addition, with respect to NRC-approved aquifer restorations at ISR wellfields, the NRC staff found that,

> The impacts to groundwater in the exempted aquifer met all regulatory standards for the state or EPA's underground injection control (UIC) program, met the quality designated for its class of use prior to ISR operations, have been shown to decrease in the future due to natural attenuation processes, and have been shown to meet drinking water standards at the perimeter of the exempted aquifer. Therefore, the impacts to the exempted aquifer for each of the approved restorations do not pose a threat to human health or the environment.[6]

More recently, the Crow Butte ISR facility in Crawford, Nebraska, was the subject of litigation before the NRC's Atomic Safety and Licensing Board (ASLB) when the licensee applied to renew its operating license. In a December 2016 decision, the ASLB found that,

> Despite the fact that excursions have occurred at the Crow Butte facility, we find that there is no evidence that those excursions resulted in the transport of contaminants outside of the License Area. This finding is supported by operational monitoring data

---

Management System (ADAMS), #ML091770402. The report, entitled "Data on Groundwater Impacts at the Existing ISR Facilities," is an enclosure to SECY-2009-0016.

[5] *Id.*, Enclosure at 5. The report used the term "regional monitoring" to refer to the "private well monitoring."

[6] *Id.*, Enclosure at 3.

> collected during Crow Butte's mining operations that span more than 20 years. The total effect of: (1) the close proximity of the monitoring wells, (2) the low flow rate from the well field, and (3) the use of bleed water that removes more liquid from the aquifer than is reinjected, make it unlikely that there will be an undetected excursion.[7]
>
> [* * * * * * *]
>
> In regards to overall impacts on private wells from excursions, we find that the water quality monitoring data from private wells shows the groundwater contamination has not exceeded radiological background levels. This data, in conjunction with the fact that all but one of the private wells are placed in the Upper Brule Aquifer, also demonstrates that vertical excursions, spills, leaks and Crow Butte operations in general, have not adversely impacted the Upper Brule Aquifer.[8]

The Crowe Butte decision is illustrative. Based upon its operational experience, the NRC staff is aware of no contamination from an ISR wellfield, including restored wellfields, to a non-exempt aquifer.

Private well monitoring continues to be conducted at the three ISR facilities in which 11 wellfields were approved for restoration by NRC in the 2003-2006 timeframe, as there are operating wellfields or wellfields undergoing restoration in close proximity to these restored wellfields. To date, this private well monitoring data has shown no evidence of radiological contamination and as such, provides no technical basis to establish significant risk from operating or restored wellfields to groundwater.

In addition, long-term monitoring (2005-2015) of a restored wellfield has been conducted by Power Resources, Inc. in two perimeter ring monitoring wells at its ISR wellfield, Highlands Mine Unit (MU)-A in Wyoming. This monitoring was required for the approval of the MU-A restoration by the Wyoming Department of Environmental Quality (NRC, 2004).[9] The NRC staff's review of this perimeter ring well monitoring data has shown no increase in hazardous constituents (radium-226, uranium, selenium) or non-hazardous constituents (chloride, total dissolved solids, total alkalinity, potential of hydrogen (pH), iron, manganese), which were monitored over the 10 year period. Based upon the 2009 report and the available 10 year monitoring data at a restored ISR wellfield, the NRC staff disagrees with the preamble statement and finds that there is significant and consistent data, including post-wellfield restoration monitoring data, which demonstrates that no contamination of a non-exempt aquifer has occurred.

---

[7] *Crow Butte Resources, Inc.* (License Renewal for the In Situ Leach Facility, Crawford, Nebraska), LBP-16-13, __ NRC __, __ (December 6, 2016), (slip op. at 113).

[8] *Id.*

[9] NRC Technical Evaluation Report, "Review of Power Resources Inc.'s A-Wellfield Ground Water Restoration Report for the Smith Ranch-Highland Uranium Project," June 29, 2004, available in ADAMS, #ML0418404701.

2. Excursion vs. Contamination

Issue: The proposed rule defines the term "excursion" as

> The movement of fluids containing lixiviant or uranium byproduct materials from the production zone into surrounding groundwater. An excursion is considered to have occurred when two indicator parameters (e.g., chloride, conductivity, total alkalinity) exceed their respective upper control limits in any excursion monitoring well, or, as determined by the regulatory agency, when one indicator parameter significantly exceeds its upper control limit in any excursion monitoring well.[10]

Comment: The definition of the term "excursion" should be revised by deleting the sentence that states "[t]he movement of fluids containing lixiviant or uranium byproduct materials from the production zone into surrounding groundwater." The term "excursion," as characterized by the NRC staff is the early detection of unplanned lixiviant migration from the wellfield production zone. Specifically, an excursion is the detection within an ISR wellfield monitoring well of the presence of certain lixiviant constituents which are identified as early indicator parameters (e.g., chloride, alkalinity, conductivity) because they are present in large concentrations in the lixiviant and move at or near the same speed as the groundwater. Excursions are not hazardous by themselves nor are they evidence of actual or likely contamination of the non-exempt portion of the aquifer subject to ISR extraction or of an adjacent or nearby aquifer by hazardous constituents. If an excursion is detected, then under the current regulatory regime and the conditions of the ISR license, the licensee must take the appropriate actions to regain control over the groundwater flow (e.g., by adjusting the extraction and injection rates). By promptly taking corrective action to maintain the groundwater flow within the wellfield, the licensee will prevent much slower moving, and hazardous lixiviant constituents, such as uranium, radium, arsenic, and selenium, from contaminating the non-exempt portion of the subject aquifer or an adjacent or nearby aquifer.

Moreover, the phrase "into the surrounding groundwater," as used in the definition of "excursion" and in other preamble passages,[11] is vague and suggests that contamination has crossed into the non-exempt portion of the subject aquifer or into an adjacent or nearby aquifers. The NRC staff considers the boundary of an ISR wellfield to be the outer ring of monitoring wells surrounding the production zone. This outer monitoring well ring encompasses the production zone as well as portions of the wellfield that are not part of the production zone (typically, the edge of the production zone is 300 to 500 feet from the outer monitoring well ring). The boundaries of the exempt aquifer, as approved by EPA under the Safe Drinking Water Act, fully encompass the wellfield (i.e., the outer monitoring well ring) and extend beyond it, currently by a distance of 100 to 180 feet. Thus, the "surrounding groundwater" referred to in the proposed rule's definition is within both the wellfield and the exempt aquifer. As such, the NRC staff recommends that the phrase "surrounding groundwater" be deleted in the definition of excursion and in other preamble passages.

The NRC staff acknowledges that its operational experience with licensing and regulating uranium ISR facilities shows that excursions have occurred at ISR wellfields. This operational experience, however, has shown no evidence that contamination has crossed into the non-exempt portion of the subject aquifer or into adjacent or nearby aquifers. Thus an ISR wellfield

---

[10] 82 FR at 7427.
[11] *E.g.*, 82 FR at 7420.

monitoring well that detects an "excursion," is therefore not synonymous with actual or likely "contamination" of a non-exempt aquifer and the definition of "excursion" should be revised accordingly.

3. No Evidence of Contamination Detection beyond the Exempt Aquifer Boundary

Issue: The preamble states that EPA's UIC Program has received and evaluated data for "at least one ISR facility" that is "consistent with an excursion beyond the boundary of the exempt aquifer, leading to elevated uranium levels outside the ISR facility."[12] The statement incorrectly suggests that operations at an ISR wellfield resulted in uranium contamination in an adjacent or nearby aquifer.

Comment: The NRC staff is aware of no documented instance of an ISR wellfield being the source of uranium or other contamination of an adjacent or nearby aquifer, or of the non-exempt portion of the same aquifer in which ISR activities are being conducted (NRC, 2009).[13] According to one of the technical documents supporting the proposed rule, the Background Information Document (BID),[14] the ISR facility referred to in the preamble is the Uranium Resources, Inc. (URI) Kingsville Dome ISR facility located approximately eight miles southeast of Kingsville, Texas. The Kingsville Dome ISR facility is licensed by the State of Texas, as Texas is an Agreement State under section 274 of the AEA. The Texas Commission on Environmental Quality (TCEQ) is the applicable Texas Agreement State regulatory agency.

In August 2014, TCEQ received a complaint alleging that ISR activities at Kingsville Dome contaminated a nearby, privately-owned water well and TCEQ's Critical Infrastructure Division, Office of Compliance and Enforcement subsequently investigated the complaint. Although the well, identified by TCEQ as water well (WW)-24, had samples showing high levels of uranium, TCEQ stated that no excursions were detected in the Kingsville Dome monitoring wells nearest the facility's mining unit closest to WW-24.[15] TCEQ also stated it was not able to conclude "that high levels of uranium concentration in water collected from these sources are caused by URI's mining activities."[16] TCEQ states that naturally occurring uranium located in a sand approximately 700 to 745 feet below ground level, identified as the "AA" layer, was the likely cause for fluctuation of uranium values in WW-24 and the other nearby private wells that were sampled.[17] In this regard, the TCEQ report stated that WW-24 likely drew water from the "highly mineralized 'AA' sand."[18] The TCEQ report further noted that the AA layer is so deep that URI has not mined it "due to economic constraints."[19] In a letter to URI, dated October 13, 2015, TCEQ stated that "[t]he investigation included groundwater sampling and records review. No violations were found as a result of the investigation."[20]

---

[12] *Id.*, at 7404.
[13] *See also Crow Butte Resources, Inc.* (License Renewal for the In Situ Leach Facility, Crawford, Nebraska), LBP-16-13, __ NRC at __, (December 6, 2016), (slip op. at 113).
[14] 82 FR at 7404.
[15] TCEQ, Investigation Report (September 14, 2015), at 12. The thirteen page report itself is untitled but in two October 13, 2015 transmittal letters to both the complainant and URI, TCEQ identifies the report as an "Investigation Report."
[16] *Id.*
[17] *Id.*, at 3 and 12.
[18] *Id.*, at 4 and 12.
[19] *Id.*, at 3. Above the "AA" layer are, from the deepest, the "A," "B," and "C" layers of sand, all of which have been the subject of URI's ISR activities. *Id.*
[20] TCEQ letter, "Complaint Investigation, Kingsville Dome Facility, Kleberg County, Texas, TCEQ Permit No. UR02827, Regulated Entity Number: RN102380763," October 13, 2015.

4. Cost and Benefit Analysis

Issue: Under the described "summary of costs and benefits" in section I.D of the proposed rule, EPA describes the purported benefits of the rule as being the avoidance of potential costs through earlier detection of contamination plumes. As part of the discussion in the preamble, EPA assumes the likelihood that the proposed rule would prevent contamination, but that current requirements would not, range from 20 to 80 percent. The NRC staff believes these costs to be overstated and that EPA does not provide sufficient credit for the existing NRC regulatory framework.

Comment: The NRC staff agrees with the general theme that the costs of an undetected contamination event could be considerable and should be avoided. EPA estimates the benefit of avoided costs from their rule would range from $23.7 million to $608 million based upon the size of the plume. Calculation of these benefits are discussed in greater detail in EPA's supporting draft document "Economic Analysis: Proposed Revisions to the Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings Rule (40 CFR Part192)," dated December 2016. However, EPA states that it is unable to quantify the number or characteristics of contamination episodes that could occur in the absence of the proposed rule, therefore the EPA is unable to estimate the nationwide cost savings.

The NRC staff disagrees that EPA's proposed rule would result in significantly greater detection of contamination nor would the avoided costs be as high as identified by EPA. As stated earlier, in almost 40 years of operational experience, the NRC staff is aware of no documented instance of an ISR wellfield being the source of contamination of an adjacent or nearby aquifer, or of the non-exempt portion of the same aquifer in which ISR activities are being conducted. Although many wellfields have been restored, these restored wellfields are in close proximity to operating wellfields under the control of the same ISR licensee. As such, the NRC has continued to collect excursion monitoring data and radiological data in and around the licensed site (e.g. from private wells). To date, the NRC has not identified any instances of contamination moving past the exempt aquifer area. As a result the NRC staff has no reason to conclude that contamination of a non-exempt aquifer, whether detected or undetected, is likely to occur. Similarly, the NRC staff concludes that the EPA's economic analysis lacks sufficient data to demonstrate that the proposed rule's requirements would prevent the likelihood of contamination by a range of 20 to 80 percent when compared to the likelihood of contamination under existing regulatory programs. In short, the economic analysis fails to give proper credit to the existing NRC regulatory regime, which to date, has been successful in preventing contamination of a non-exempt aquifer.

Issue: The modeling of contaminant plumes provided by EPA are worst case scenarios based upon unrealistic assumptions.

Comment: EPA's supporting draft document "Economic Analysis: Proposed Revisions to the Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings Rule (40 CFR Part 192)," dated December 2016 bases its cost analysis on numerical groundwater flow and fate and transport models of contaminant plumes described in a second supporting document, "Ground Water Modeling Studies at In-Situ Leaching Facilities and Evaluation of Doses and Risks to Off-Site Receptors from Contaminated Ground Water." This modeling effort provided the bases for estimating economic costs to clean up a contamination plume discovered after license termination by simulating the remobilization of uranium (Appendix C of the report) after restoration. As described in the "Economic Analysis: Proposed Revisions to the Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings Rule (40 CFR Part 192)" report, the economic analysis is based on a plume entirely within the exempted

aquifer, whereas the preamble to the proposed rule suggests plume migration to the surrounding underground sources of drinking water (USDWs).[21] Furthermore, EPA used the uranium maximum contaminant level (MCL) as the remediation standard for the plume. The proposed groundwater constituent concentration standards, however, are the *highest* level of the pre-operational background or health based levels; or an alternate concentration level.[22] Using the MCL unrealistically forced a higher remediation cost. Finally, in the economic analysis, EPA bases their costs in part on the benefit of using a 30 year monitoring period which is no longer part of the re-proposed rule.

B. Jurisdictional Issues

1. Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) Does Not Provide Express Authority to Preserve Future Uses of Groundwater

Issue: As set forth in its preamble, the proposed rule's purpose is to preserve groundwater resources, particularly for future uses. The preamble identifies a range of multiple future groundwater uses, including human drinking water, water for livestock, irrigation, and wildlife support. The preamble states that section 275 of the AEA (42 U.S.C. § 2022) is the applicable authority under which EPA would promulgate this rule. The preamble indicates that EPA is relying upon UMTRCA as the statutory basis to preserve these future potential uses of groundwater.[23]

Comment: The NRC staff believes that the appropriate statutory vehicle to preserve future potential uses of groundwater is the Safe Drinking Water Act (SDWA), not UMTRCA. In accordance with its SDWA UIC regulations, EPA has sole authority to exempt an aquifer from the protections of the SDWA—under current law, no other agency of the United States government nor any State or local government can exempt an aquifer from SDWA protection.[24] EPA's exemption of the aquifer from the SDWA must be granted before the injection of lixiviant under the EPA UIC Class III injection well permit[25] can occur.[26] UMTRCA (or more specifically, the AEA, as amended by UMTRCA) provides no authority to protect groundwater for any use before this injection of lixiviant occurs. UMTRCA only becomes relevant after the EPA has made an affirmative determination to exempt an aquifer from SDWA protection followed by the EPA or State approval of a Class III injection permit for the uranium ISR extraction.

---

[21] 82 FR at 7424.
[22] *Id.* at 7428 (proposed 40 CFR 192.52(c)(1)).
[23] The preamble states "UMTRCA provides authority that can be used to protect aquifers during and after uranium recovery operations, regardless of whether the aquifer meets the definition of an underground source of drinking water [USDW] as defined in the EPA's UIC regulations or is exempted from the protections of SDWA because it meets the existing regulatory criteria for exemption." *Id.*, at 7403.
[24] 40 CFR 144.7(b)(2) ("No designation of an exempted aquifer submitted as part of a UIC program shall be final until approved by the Administrator as part of a UIC program"); *see also* Office of Water, EPA Memorandum, "Enhancing Coordination and Communication with States on Review and Approval of Aquifer Exemptions Requests Under SDWA," July 24, 2014, p. 1 ("EPA is responsible for the final review and approval of all aquifer exemption requests, based on the regulatory criteria in 40 CFR 146.4").
[25] Wells used for uranium ISR extraction are categorized as Class III wells per 40 CFR 144.6(c)(2).
[26] 40 CFR 144.31 ("Unless an underground injection well is authorized by rule under subpart C of this part, *all injection activities including construction of an injection well are prohibited until the owner or operator is authorized by permit.* An owner or operator of a well currently authorized by rule must apply for a permit under this section unless well authorization by rule was for the life of the well or project") (emphasis added).

Under EPA regulations, one of the requirements for exempting an aquifer is that the aquifer "cannot now and *will not in the future serve* as a source of drinking water."[27] If EPA determines that a given aquifer has the potential to be used as a future source of drinking water, it cannot, by its own regulation, exempt that aquifer. Thus, unless EPA changes its SDWA regulations, or provides an exemption to the current SDWA regulations for a specific application, an aquifer, once exempt, can never be used as a drinking water source. Any suggestion in the preamble to the contrary should be clarified. For example, the preamble states

> By altering the chemical composition of groundwater, ISR creates reasons to be concerned about impacts to groundwater, *which may be used for human drinking water,* as well as for other purposes, such as livestock watering, crop irrigation and wildlife support.[28]

This and similar statements contravene EPA's 40 CFR 146.4 and other SDWA regulations and as such, should be deleted or otherwise clarified.

Issue: The other groundwater uses listed in the preamble, namely, water for livestock, irrigation, and wildlife support, are typically regulated by State and local authorities under State law. The proposed rule's preamble, however, states

> [s]ince UMTRCA provides authority that can be used to protect aquifers during and after uranium recovery operations, regardless of whether the aquifer meets the definition of an USDW as defined in EPA's UIC regulations or is exempted from the protections of the SDWA, the scope of UMTRCA's protection should be reflected in the regulatory text of these standards rather than relying on the SDWA UIC exemption regulations.[29]

Comment: Contrary to this and similar statements in the preamble, it is the NRC staff's view that UMTRCA provides no express authority to preserve the groundwater targeted for ISR Class III injection as a USDW or for the other potential purposes described in the preamble. Other than the statement that UMTRCA provides such authority and references to the general statutory language of AEA section 275,[30] there is no explanation in the preamble, either by reference to the statutory language, legislative history, or case law that shows how UMTRCA provides any such authority. The NRC staff suggests that if EPA's intent is to preserve groundwater as a resource for the uses listed in the preamble, then EPA's easiest course and one which does not involve rulemaking, is to simply not grant any aquifer exemptions under its SDWA UIC authority.

If the purpose of this rulemaking is to preserve groundwater for such future uses, then UMTRCA is not the appropriate vehicle. Although UMTRCA provides authority to protect the general environment and public health and safety from the radiological and non-radiological hazards arising from processing 11(e)(2) byproduct material, it was never intended or designed to preserve potential future uses of an aquifer properly exempted from the protections of the SDWA by EPA. The preamble also does not explain why UMTRCA should be construed as a

---

[27] 40 CFR 146.4 (emphasis added).
[28] 82 FR at 7403 (emphasis added).
[29] *Id.*, at 7413.
[30] *E.g., id.*, at 7403.

"complement"[31] for, or an extension of, the SDWA, or as a land use or a resource preservation or protection statute. As EPA states in the preamble,

> The SDWA *does not prevent recovery and use of the water within exempted aquifers (including where ISR operations were previously conducted)* for private drinking water supply, public water supply, or other uses.[32]

Certainly, if the SDWA does not prevent "recovery and use of the water within exempted aquifers," then UMTRCA surely does not. With respect to active, UMTRCA Title II sites, the stated purpose of UMTRCA is to provide "a program to regulate mill tailings during uranium or thorium ore processing at active mill operations and after termination of such operations in order to stabilize and control such tailings in a safe and environmentally sound manner and to minimize or eliminate radiation health hazards to the public."[33] If UMTRCA were intended to preserve future uses of groundwater, the NRC staff believes that the statutory language and the legislative history would have so indicated and, perhaps, have provided a mechanism for preservation. In this regard, UMTRCA does not have language that is typically found in Federal land use or resource protection statutes, such as the Clean Water Act, which has the statutory charge to "*to restore and maintain* the chemical, physical, and biological integrity of the Nation's waters,"[34] or the Federal Land Policy and Management Act of 1976, which states, "the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their *present and future use is projected through a land use planning process* coordinated with other Federal and State planning efforts."[35] Finally, UMTRCA must be consistent with Resource Conservation and Recovery Act (RCRA) in regard to non-radiological hazards, and RCRA has no requirement for protection or preservation of a future use.

2. Meaning of phrase "Generally Applicable Standards"

EPA identifies the statutory authority for its 40 CFR Part 192 rulemaking as section 275 of the AEA (42 U.S.C. § 2022), as added by section 206 of UMTRCA.[36] UMTRCA established a dual regulatory scheme over the uranium milling industry between EPA and the NRC. Under this scheme, EPA sets "standards of general application" or "generally applicable standards"[37] for the,

> protection of the public health, safety, and the environment from radiological and non-radiological hazards associated with processing and with the possession, transfer, and disposal of [AEA Section 11e.(2)] byproduct material, ... at sites at which ores

---

[31] *Id.*, at 7413.
[32] *Id.*, at 7413 (emphasis added).
[33] 42 USC § 7901(b)(2).
[34] 33 USC § 1251(a) (emphasis added). Whether the groundwater resources of concern are waters of the United States, and thus subject to Federal jurisdiction, is beyond the scope of these comments.
[35] 43 USC § 1701(a)(2) (emphasis added).
[36] UMTRCA, Pub. L. 95-604, 92 Stat. 3021.
[37] AEA, Section 275b.(1) uses the term "standards of general application," whereas Section 275b.(2) uses the term "generally applicable standards." For brevity, the term "generally applicable standards" will be used from this point forward in this paper.

> are processed primarily for their source material content or which are used for the disposal of such byproduct material.[38]

The standards set by EPA for non-radiological hazards must be consistent with the standards required under RCRA.[39] The NRC or an NRC Agreement State (the "regulatory agency") is responsible for implementing EPA's standards of general application and is the sole regulatory authority for granting an operating license to uranium recovery facilities.[40]

According to the preamble, the proposed rule would promulgate three different types of groundwater protection standards for ISR facilities, namely, constituent concentration standards, initial stability standards, and long-term stability standards.[41] The preamble describes constituent concentration standards as "numerical concentration limits for a set of groundwater constituents that are present in or affected by ISR operations."[42] The proposed rule groundwater constituent standards are: (1) pre-operational background, (2) the numerical health based standards in referenced tables, or (3) an alternate concentration level.[43] An ISR licensee would need to meet these constituent concentration standards at various compliance points during the different phases of ISR wellfield operation, including the restoration phase. The proposed rule identifies 12 constituents that are the subject of the constituent concentration standards. Other than the express identification of the 12 constituents, these proposed standards are essentially equivalent to, if not the same as, those already in effect under current EPA regulations and are already implemented by NRC and Agreement States for ISR wellfields under NRC's regulations at 10 CFR Part 40, Appendix A (see NRC RIS-2009-005)[44] or the Agreement State equivalent to the NRC's 10 CFR Part 40, Appendix A regulations.

The NRC staff has no objection to such constituent concentration standards as their promulgation falls clearly within the EPA's generally applicable standards setting authority and are already used by NRC and the Agreement States. As explained below, however, the NRC staff continues to have both technical and jurisdictional objections to the initial stability standards and long-term stability standards. In particular, the NRC staff believes that the initial stability standards and long-term stability standards are not generally applicable standards but are implementation criteria, and as such, encroach upon NRC's authority and impair the NRC's ability to effectively regulate its ISR licensees. The initial stability standards and long-term stability standards that are of particular concern are the 95 percent confidence level requirement for a statistical trend analysis and the requirements for geochemical modeling (including the statements in the preamble showing EPA's expectations of such modeling). In addition, the NRC staff has concerns about the definition and use of the term "point of exposure."

The NRC staff acknowledges that the term "generally applicable standards" is not defined in the statutory language of the AEA or by its UMTRCA amendment. The term is, however, defined by

---

[38] AEA, Section 275b.(1); 42 U.S.C. § 2022(b)(1) (alteration added).
[39] AEA, Section 275b.(2); 42 U.S.C. § 2022(b)(2).
[40] AEA, Section 275d.; 42 U.S.C. § 2022(d).
[41] 82 FR at 7405 and 7407.
[42] *Id.*, at 7407
[43] *Id.*
[44] "RIS" is the NRC acronym for "Regulatory Issue Summary," a form of generic communication that the NRC issues to its regulated community. RIS-2009-05 clarified that the NRC's 10 CFR Part 40, Appendix A regulations were applicable to uranium ISR wellfields. RIS-2009-05, April 29, 2009, p. 3 ("Accordingly, the requirements in Criterion 5B(5) of Appendix A apply to restoration of groundwater at uranium ISR facilities").

the Reorganization Plan No. 3 of 1970, which established EPA, and is further described in the legislative history of UMTRCA.

Reorganization Plan No. 3 of 1970

EPA's authority to promulgate generally applicable standards, at least for radiological material, is prescribed by what is essentially EPA's organic authority, namely, the Reorganization Plan No. 3 of 1970 (Reorganization Plan).[45] Section 1 of the Reorganization Plan established the EPA. Section 2 transferred various authorities from other federal agencies to the EPA. Section 2(a)(6) transferred to the EPA Administrator certain "functions" of the former Atomic Energy Commission (AEC). Section 2(a)(6) states:

> (a) There are hereby transferred to the Administrator:
>
> [* * *]
>
> (6) The functions of the Atomic Energy Commission under the Atomic Energy Act of 1954, as amended, administered through its Division of Radiation Protection Standards, *to the extent that such functions of the Commission consist of establishing generally applicable environmental standards for the protection of the general environment from radioactive material. As used herein, standards mean limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment* outside the boundaries of locations under the control of persons possessing or using radioactive material.[46]

Thus, the Reorganization Plan provided EPA with an express transfer of AEA authority to set generally applicable standards "for the protection of the general environment from radioactive material." The Reorganization Plan, however, expressly prescribed this standard setting authority by defining the term "standards" to mean "limits on radiation exposures or levels, or concentrations or quantities of radioactive material"—essentially, numerical limits.

The use of the phrase "generally applicable environmental standards" in the Section 2(a)(6) provision is virtually identical to UMTRCA's language, namely, "standards of general application for the protection of the public health, safety, and the environment from radiological and non-radiological hazards."[47] Further, case law suggests that Congress intended that UMTRCA's "generally applicable standards" have the same meaning as the Reorganization Plan's "generally applicable environmental standards."[48]

---

[45] Reorg. Plan No. 3 of 1970, 35 FR 15623 (October 6, 1970), 84 Stat. 2086 (December 2, 1970). The Reorganization Plan No. 3 of 1970 is codified in 5 U.S.C. Appendix 1.
[46] Reorg. Plan No. 3 of 1970, § 2(a)(6) (emphasis added).
[47] AEA § 275(b)(1)), 42 U.S.C. § 2022(b)(1).
[48] *See NRDC v. EPA*, 824 F.2d 1258, 1278 (1st Cir. 1987) (in interpreting EPA regulations promulgated under the Nuclear Waste Policy Act, 42 U.S.C. § 10141 (NWPA), the court construed the NWPA's statutory language in accordance with Section 2(a)(6) of the Reorganization Plan No. 3 of 1970, and stated "[m]oreover, if Congress disagreed with this definition of the general environment from the reorganization plan (which defined the duties of the EPA), Congress would not have used the same terminology (i.e., the term 'general environment') that was used in the reorganization plan") (alterations added).

UMTRCA's Legislative History Shows that EPA Generally Applicable Standard-Setting Authority is Bound by Reorganization Plan No. 3 of 1970, Section 2(a)(6)

UMTRCA's legislative history shows that Congress was aware of and considered section 2(a)(6) of the Reorganization Plan No. 3 of 1970 when it enacted UMTRCA in 1978. In fact, the legislative history shows that Congress structured UMTRCA's grant of authority to the EPA Administrator upon this very provision. During the consideration of the various bills that led to UMTRCA's enactment, Section 2(a)(6) was referred to several times in the statements of both the NRC Chairman and the EPA Deputy Assistant Administrator for Radiation Programs. In an August 2, 1978 statement made before the House Subcommittee on Energy and Power, Committee on Interstate and Foreign Commerce, then NRC chairman, Dr. Joseph M. Hendrie, stated that "[t]he EPA would establish ambient environmental radiation standards for this new class of byproduct material under Atomic Energy Act authority transferred to EPA under Reorganization Plan No. 3 of 1970."[49]

Similarly, William D. Rowe, Deputy Assistant Administrator for Radiation Programs, EPA, stated on the same date before the same subcommittee,

> However, any such legislative proposal should also provide the EPA to promulgate general environmental standards for such [byproduct] material so that there will be *consistency with the present authority of the Atomic Energy Act and Reorganization Plan No. 3 of 1970 which gives EPA such authority over present licensable material.*[50]

In response to a question from the Committee counsel, Mr. David B. Finnegan, asking what the phrase "generally applicable standards" encompasses, Dr. Rowe stated,

> General [sic] applicable standard is defined in the Atomic Energy Act. This is where the language comes from, *and it is the section that we use to set the standards outside the boundaries.*[51] *It covers standards which can be quantities, concentrations, and it is particularly defined here as concentrations or quantities of material into the general environment. That is how it has been defined.*[52]

Although Dr. Rowe stated that the term "general applicable standard" was defined in the AEA, he was, as shown by his earlier statement, likely referring to Section 2(a)(6) of the 1970 Reorganization Plan, which transferred AEA authority to EPA. Regardless, Dr. Rowe's statement shows that the EPA considered that the term "generally applicable standards" referred to a specified, numerical limit, namely, a concentration or a quantity of radioactive material.

---

[49] *Uranium Mill Tailings Control Act of 1978: Hearing on H.R. 11698, H.R. 12229, H.R. 12938, H.R. 12535, H.R. 13049, H.R. 13650, and H.R. 13382 Before the Subcomm. On Energy and Power, H. Comm. On Interstate and Foreign Commerce*, 95th Cong. 343 (1978). The Committee on Interstate and Foreign Commerce bill version would become UMTRCA.
[50] *Id.*, at 366 (emphasis added).
[51] As explained below, the phrase "outside the boundaries" was a point of contention between the EPA and the NRC during the development of UMTRCA.
[52] *Uranium Mill Tailings Control Act of 1978: Hearing on H.R. 11698, et al*, 95th Cong. 393 (emphasis added) (alteration added).

In response to Dr. Rowe's statement, Mr. Finnegan then asked about using the UMTRCA legislation to apply the Reorganization Plan definition of a generally applicable standard when setting such standards to control non-radiological hazards,

> Can I suggest to you that the statute be drafted in such a way that EPA would have authority to establish by rule the standards to protect the public and the environment, and I am asking if this is what you are looking for, from radiological hazards associated with the processing and transfer of byproduct material in the possession or control of any licensee ... *including the establishment of limits on the exposure or levels or concentrations or quantities of hazards and for standards for the nonradiological hazards* in accordance with the requirements of [RCRA]. Is that essentially what you are looking for as far as legislation in this area?[53]

Dr. Rowe responded affirmatively.[54] Thus, this dialogue shows a legislative intent to apply the Reorganization Plan's Section 2(a)(6) generally applicable standards criteria of numerical limits to the non-radiological hazards covered by the UMTRCA legislation.

In addition to the above statements, there are two House reports, one from each of the committees that considered the UMTRCA legislation, that show Congress intended to apply the Section 2(a)(6) criteria to the EPA's promulgation of generally applicable standards under AEA section 275, for both radiological and non-radiological hazards.[55] The Committee on Interior and Insular Affairs' report states,

> It is the responsibility of the Environmental Production Agency to establish generally applicable standards and criteria for the protection of the general environment, considering radiological and nonradiological aspects of tailings. The EPA standards and criteria should be developed to limit the exposure (or potential exposure) of the public and to protect the general environment from either *radiological or nonradiological substances* to acceptable levels through such means as *allowable concentrations in air or water, quantities of the substances released over a period of time, or by specifying maximum allowable doses or levels to individuals in the general population.*[56]

This report language, together with the dialogue between Mr. Finnegan and Dr. Rowe, demonstrate Congress' intent that EPA's generally applicable standards under UMTRCA, for both radiological and non-radiological materials, be in the form of numerical limits, namely, limits on concentrations of radiological and non-radiological material, quantities of such material, or allowable doses or levels to individuals from such material.

The Committee on Interstate and Foreign Commerce report stated that both committees held "considerable discussions with the EPA and NRC and developed these provisions" and was

---

[53] *Id.* (emphasis added) (alteration added).
[54] *Id.*
[55] The two respective House committees were the Committee on Interstate and Foreign Commerce and the Committee on Interior and Insular Affairs.
[56] H.R. Rep. No. 95-1480, Part 1, at 16-17 (1978) (emphasis added).

"satisfied with this resolution of a very difficult problem."[57] Based upon the testimonies of Chairman Hendrie, Dr. Rowe and Floyd Galpin, another EPA witness, the primary dispute between the EPA and the NRC concerned whether EPA's generally applicable standards would be prescribed by the "outside the boundaries" of the licensed site language, as set forth in Section 2(a)(6) of the Reorganization Plan, or would apply inside the boundaries as well.[58] Congress resolved the dispute in favor of EPA, allowing application of the EPA generally applicable standards within the boundaries of the licensed facility, with the proviso, as set forth in an August 9, 1978 letter from then EPA Administrator Douglas M. Costle, that the NRC would establish management requirements for the licensed facility.

The Interstate and Foreign Commerce committee report quotes the pertinent part of Mr. Costle's letter, which states,

> We agreed that *NRC would establish management requirements for the uranium mill tailings*; that such requirements would be comparable, to the maximum extent practicable, to requirements applicable to the possession, transfer, and disposal of similar hazardous material under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976; and that in establishing general management requirements, the NRC would obtain the concurrence of EPA.
>
> Under both titles, *EPA would retain its generally applicable standards-setting authority under the Atomic Energy Act of 1954, as amended.*[59]

Administrator Costle's letter states that EPA shall "retain" its AEA "generally applicable standards-setting authority." Given the statements of Chairman Hendrie, Dr. Rowe, and Mr. Finnegan, the retention by EPA of its AEA generally applicable standards setting authority is best construed to mean section 2(a)(6) of the Reorganization Plan with its definition of the term "standards" being only in the form of numerical limits.

According to the legislative history, the only portion of section 2(a)(6) of the Reorganization Plan provision that is rendered inapplicable by UMTRCA is the very last part of the last sentence of the provision, which states "outside the boundaries of locations under the control of persons possessing or using radioactive material."[60] It is noteworthy that EPA challenged the "outside the boundaries" language of section 2(a)(6) and persuaded Congress to legislatively overturn it.[61] The legislative history shows no such similar effort by EPA with respect to expanding the

---

[57] *Id.*, Part 2, at 46.

[58] *Uranium Mill Tailings Control Act of 1978: Hearing on H.R. 11698, et al,* 95th Cong. 396-98.

[59] H.R. Rep. No. 95-1480, Part 2, at 46 (emphasis added). The report further stated that the committee "stresses that the EPA standards are not to be site-specific."

[60] UMTRCA, of course, only applies to those facilities involved in the processing of 11(e)(2) byproduct material. As such, the Section 2(a)(6) "outside the boundaries" language is still applicable to all other nuclear fuel cycle facilities. *See e.g.,* 40 CFR 190.10.

[61] The dispute between the EPA and NRC's predecessor agency, the Atomic Energy Commission (AEC), over setting standards for fuel cycle facilities, essentially within the boundaries of a licensed site, predate the UMTRCA legislation. In a December 7, 1973 memorandum to the EPA Administrator and to the AEC Chairman, the Director, Office of Management Budget resolved the dispute in favor of the AEC, stating that "EPA has construed too broadly its responsibilities, as set forth in Reorganization Plan No. 3 of 1970, to set 'generally applicable environmental standards for the protection of the general environment from radioactive material.'" OMB Memorandum Regarding Responsibility for Setting Radiation Protection

meaning of the term "standards" to be more than the setting of numerical limits. Indeed, the above legislative history, including the cited portions of Mr. Costle's August 9, 1978 letter, shows that Congress and the EPA considered the numerical limit definition of the term "standards" to be appropriate.

In this regard, Supreme Court precedent shows that courts attach "great weight" to the testimonies of agency officials, especially when such officials work closely in developing the legislative language with Congressional committees.[62] Thus, upon the basis of this legislative history, the intent of UMTRCA was that the EPA would set generally applicable standards in accordance with its standing AEA authority as prescribed in the Reorganization Plan (that is standards consisting of numerical limits), that such standards would apply both inside the boundaries of the licensed site as well as in the general environment, and the NRC (or the Agreement State) would implement such standards. In short, numerical limits on exposures or levels, or concentrations or quantities of material are the only types of standards that EPA can impose under UMTRCA (AEA section 275).

EPA Cites No Basis to Support Its Interpretation of the Reorganization Plan Provision

The proposed rule's preamble does not expressly reference the Reorganization Plan. In response to comments "critical of EPA's authority to require corrective action programs," however, the preamble states,

> While the term "standard" includes numerical limitations, such as the concentration based limits for the listed constituents in groundwater, the EPA has long interpreted this term to also encompass the actions a source must take to reduce, remediate or otherwise avoid release of pollutants. The EPA notes that the existing rule, in subpart D, includes similar non-numerical standards to those included in this proposed rule. For example, 40 CFR 192.32(a)(2)(iii) requires affected sources to implement detection monitoring programs, while 40 CFR 192.32(a)(3)(i) requires uranium mill tailings piles or impoundments to have a permanent barrier.[63]

Although EPA may have interpreted these provisions to go beyond the setting of numerical limits, it cites no legal basis to support this interpretation.

The preamble cites two 1985 Tenth Circuit decisions, involving an industry challenge to EPA's first AEA section 275 rulemaking, in 1983, to support the EPA's position that its proposed rule provisions are a proper issuance of generally applicable standards, *American Mining Congress et al. v. Thomas*, 772 F.2d 617 (10th Cir. 1985) ("*AMC I*") and *American Mining Congress et al.*

Standards (December 7, 1973) *reprinted in* NRC NUREG-0980, vol. 1, No. 11 (2015). The memorandum stated that "[o]n behalf of the President ... the decision is that AEC should proceed with its plans for issuing uranium fuel cycle standards, ... that EPA should discontinue its preparations for issuing, now or in the future, any standards for types of facilities; and that EPA should continue, under its current authority [i.e., the Reorganization Plan], to have responsibility for setting standards for the total amount of radiation in the general environment from all facilities combined in the uranium fuel cycle." *Id.*

[62] The Supreme Court stated that "we attach 'great weight' to agency representations to Congress when the administrators 'participated in drafting and directly made known their views to Congress in committee hearings.'" *United States v. Vogel Fertilizer Co.*, 455 U.S. 16, 31, 102 S.Ct. 821, 830, 70 L.Ed.2d 792 (1982), *quoting Zuber v. Allen*, 396 U.S. 168, 192, 90 S.Ct. 314, 327, 24 L.Ed.2d 345 (1969).

[63] 82 FR at 7419.

v. Thomas, 772 F.2d 640 (10th Cir. 1985) ("*AMC II*").[64] These two Tenth Circuit decisions, however, did not consider the numerical limits prescription of section 2(a)(6) of Reorganization Plan No. 3 of 1970. Only one of the Tenth Circuit decisions, *AMC I*, referenced the Reorganization Plan provision and only for the proposition that UMTRCA had removed the "outside the boundaries" limitation from the AEA authority transferred to EPA by the Reorganization Plan, as applied to activities concerning the possession and use of AEA section 11e.(2) byproduct material.[65]

Indeed, all of the challenged standards in the *AMC I* case were standards that set numerical limits.[66] The preamble to EPA's 1983 rule shows a relatively contemporaneous understanding of the limits of EPA's UMTRCA authority. The 1983 rule's preamble made a distinction from an earlier 1980 NRC UMTRCA rulemaking by stating "[w]e note that the NRC regulations specified design objectives; that is, the values specified were to be achieved based on average performance; whereas these EPA rules specify standards, *which designers must plan not to exceed*, with a reasonable degree of assurance."[67] The use of the phrase "must plan not to exceed" is informative as it is typically used in concert with a numerical limit. Similarly, the 1983 rule's preamble stated that "UMTRCA gives the NRC and the Agreement States the responsibility to decide what methods will assure these standards are satisfied at specific sites."[68]

The NRC staff acknowledges that EPA promulgated at least one standard that was not a numerical limit in its 1983 rulemaking, namely, the requirement for the use of liners at new waste depositories and to new portions of existing waste depositories. That requirement was one of the requirements challenged in *AMC II*, and is discussed further below. The NRC staff notes, however, that the *AMC II* petitioners did not appear to challenge the liner standard as violating the numerical limits prescription of the "standards" definition in Section 2(a)(6) of the Reorganization Plan—at least the published decision makes no reference to such a challenge. Here, the NRC staff finds relevant another Tenth Circuit decision, *Quivira Mining Co. v. EPA*, issued 1 year prior to *AMC I* and *AMC II*, which stated that "the Reorganization Act plainly provides that a reorganization plan may not create new agency functions,"[69] and the previously cited 1987 First Circuit decision, *NRDC v. EPA*, which stated that the Reorganization Plan No. 3 of 1970 "defined the duties of the EPA."[70] Moreover, the past promulgation of regulations by EPA does not provide an adequate basis to promulgate regulations, now or in the future, that exceed or are inconsistent with the Reorganization Plan's "numerical limit" definition of "standards."

---

[64] *Id.*, at 7418-19 and 7422.
[65] *AMC I*, 772 F.2d at 630 ("The American Mining Congress argues that this strict distinction between the EPA operating outside site boundaries and the NRC operating on-site has been maintained in the UMTRCA").
[66] *E.g.*, *AMC I*, 772 F.2d at 623, n. 3 and 638 (various numerical concentration limits by milligrams/liter for a list of various constituents toxic substances that could be present in surface and ground water); *id.*, 772 F.2d at 624 ("radon-222 emission limits from tailings piles of 20 pCi/m^{2}s); and *id.* (radium-226 maximum concentration levels set at 5pCi/gram averaged over the first 15 centimeters of soil and at 15pCi/gram for soil layers more than 15 centimeters below the surface).
[67] 48 FR 45926, 45932 (October 7, 1983) (emphasis added).
[68] *Id.*, at 45933.
[69] *Quivira Mining Co. v. EPA*, 728 F.2d 477, 481 (10th Cir. 1984); *see also NRDC v. EPA*, 824 F.2d at 1278 (stating that the Reorganization Plan No. 3 of 1970 "defined the duties of the EPA").
[70] *NRDC v. EPA*, 824 F.2d at 1278.

UMTRCA's Legislative History Further Prescribes EPA's Generally Applicable Standard-Setting Authority

In addition to prescribing that generally applicable standards promulgated by EPA must be in the form of numerical limits, the legislative history indicates a further restriction upon EPA's AEA section 275 authority. In its report, the Committee on Interior and Insular Affairs stated that

> The EPA standards and criteria *should not interject any detailed or site-specific requirements for management, technology, or engineering methods on licensees* or the Department of Energy. Nor should EPA incorporate any requirements for permits or licenses for activities concerning uranium mill tailings which would duplicate NRC regulatory authority over the tailings sites.[71]

Thus, if the legislative history is given its proper effect, UMTRCA allows EPA to only promulgate generally applicable standards consisting solely of numerical limits, and further, such standards cannot interject any detailed or site-specific requirements for management, technology or engineering methods. The NRC staff comments below describe how the initial and long-term stability standards, particularly, the 95 percent confidence level requirement and the geochemical modeling requirement, are not generally applicable standards under UMTRCA (AEA, section 275).

C. 95 Percent Confidence Level

Proposed rule provisions 40 CFR 192.52(c)(2) (initial stability standards) and (c)(3)(i) (long-term stability standards) require that the regulatory agency ensure that licensees must provide it with a minimum of "three consecutive years of quarterly monitoring results with no statistically significant increasing trends that would exceed the constituent concentration standards at the 95 percent confidence level."[72] EPA asserts that this requirement is necessary to demonstrate both the initial and long-term stability of the groundwater quality. The NRC staff has significant jurisdictional and technical concerns with EPA's attempt to impose any sort of groundwater stability standard, including but not limited to the 95 percent confidence level requirement.

In the preamble, EPA states that the 95 percent confidence level requirement is a "generally applicable stability standard" as it is used to "define stability" and further, that the "confidence level [is] a measure of stringency of the standard."[73] According to the preamble, the purpose of this stability standard is to ensure "full restoration" across all wellfields and "to confirm that the restoration was successful and likely to persist."[74] The preamble asks for comments on "alternative approaches that would present a rigorous benchmark against which to measure and ensure stability."[75]

From a jurisdictional perspective, this requirement goes well beyond a generally applicable standard and encroaches upon the NRC's authority as the regulatory agency. The NRC staff objects to the imposition of any confidence level requirement, regardless of the percentage target, as EPA has no authority to set such a standard and further, such a standard will require

---

[71] H. Rep. No. 95-1480, Part I, 95th Cong., 2nd Sess. at 17 (1978) (emphasis added).
[72] 82 FR at 7428. The quoted language is from proposed 40 CFR192.52(c)(2). The language for proposed 40 CFR 192.52(c)(3)(i) is essentially the same.
[73] *Id.*, at 7422.
[74] *Id.*
[75] *Id.*

the NRC to implement a specific methodology (in this case, mandating a strict statistical confidence level for a hypothesis test of a stability trend).

Under its AEA section 275 authority, as transferred to EPA by section 2(a)(6) of the Reorganization Plan, EPA can only set numerical limit standards—limits on exposures or levels, or concentrations or quantities of material. As noted above, the EPA's proposed constituent concentration standards fall within the scope of Reorganization Plan's definition of a generally applicable standard, and as such, the NRC staff has no objection to them. In contrast, a groundwater stability standard that attempts to regulate the "stringency of the standard," whether by imposing a 95 percent confidence level requirement or otherwise, are not limits on exposures or levels, or on concentrations or quantities of material. Rather, a statistical confidence level for a hypothesis test of a stability trend is a measure of the false positive rate (Type I error) of a trend being found to be significant when it is not (e.g., a 95 percent confidence level means that there is a five percent chance of detecting what appears to be a significant trend when, in fact, none exists). Neither the use of the phrase "confidence level" nor placing a specific percentage before that phrase, here 95 percent, brings this proposed rule provision within the scope of the Reorganization Plan's definition of the term "standards."

In addition to not being a numerical limit, the proposed rule's stability standards are not consistent with the direction in the UMTRCA legislative history that EPA "should not interject any detailed or site-specific requirements for management, technology, or engineering methods on licensees or the Department of Energy." A groundwater stability standard, and efforts to ensure stringency, concern how the presence of a trend is detected, established, and statistically evaluated. Sampling, measurement and related calculations, factoring in uncertainty given site-specific conditions, and how to perform such sampling, measurements, and calculations, and finally, determining what standards and methodologies are appropriate, are all implementation matters. In accordance with AEA section 275d., implementation matters are solely within the province of the regulatory agency, not EPA. Determining stability, including defining stability, and ensuring proper sampling and analysis to demonstrate such stability, are professional judgments made by the technical staff of the regulatory agency.

The preamble, in an attempt to distinguish the provision from this prescription in the legislative history, states that the "proposed stability standards do not prescribe what specific statistical methods, sampling methods, or monitoring equipment should be used to show 95 percent confidence."[76] The preamble then states, however, that "EPA expects that the regulatory agency would provide additional guidance regarding the statistical analysis required and the reasons for using a statistical test that facility operators and other stakeholders understand the reasons for using the statistical test, the concepts of Type 1 and Type 2 errors, the calculations required to perform the test, and how test results are interpreted" and then ties this statement to one of the technical documents supporting the proposed rule, the Background Information Document (BID).[77] According to the preamble, the BID includes "[i]nformation about what parameter is tested, the null and alternative hypotheses, *requirements for implementing the statistical tests and tables for interpreting test results.*"[78] Moreover, in Table 7.1 of the BID, EPA states that there are only two potential statistical methods available to adequately conduct a hypothesis test of a stability trend that supports a 95 percent confidence level: a regression trend test and the Mann-Kendall test.[79] The BID advocates exclusively for the Mann-Kendall

[76] *Id.* at 7419.
[77] *Id.* at 7422.
[78] *Id.* (emphasis added).
[79] The regression trend test is a parametric test which relies on a normal distribution of residuals (a "bell-shaped" curve), whereas the Mann-Kendall test is a non-parametric test.

test. Together, these preamble statements and the BID's clear preference for the Mann-Kendall test as the hypothesis test to be used to achieve the 95 percent confidence level, make this proposed rule provision a detailed standard.

In addition, imposing the 95 percent confidence level for a hypothesis test of a stability trend removes the regulatory agency's ability to apply its technical judgment and discretion and precludes or restricts the ability of the licensee to present alternatives such as the use of other appropriate methodologies for stability trend analysis such as linear regression or non-linear curve fitting, and groundwater fate and transport models. The NRC staff is aware of no analogous Federal regulation that mandates any statistical trend analysis as a groundwater protection standard, let alone a 95 percent confidence level.

The NRC staff disagrees with the preamble statement that the 95 percent statistical confidence level is "widely accepted and used in other environmental standards."[80] As explained above, there is a difference between using a confidence level for a test demonstrating compliance with or detecting exceedance of a constituent baseline standard, which is common (e.g. analysis of variance),[81] and using a confidence level for a hypothesis test of a constituent stability trend (e.g. Mann-Kendall). In the former case, current sample values are compared to baseline sample values (noted in BID Table 7.1, Phase 4) whereas in the latter case, an analysis of a trend with time is required (noted in BID Table 7.1, Phase 5). With respect to non-radiological hazards, UMTRCA requires consistency with the standards required under RCRA (AEA, section 275(b)(2)). In this regard, RCRA has no provisions requiring either a stability trend standard with a confidence level or modeling to demonstrate compliance with a constituent standard.

In addition, the NRC staff notes that the preamble states "that NRC staff has attempted to use the 95 percent confidence level for at least one facility."[82] Based upon NRC records, the NRC staff only applied a 95 percent confidence level for a hypothesis test of a stability trend to one licensee's request for approval of groundwater quality restoration (the restoration was not approved for several reasons, including the inability to meet the 95 percent confidence level). The staff did not apply the Mann-Kendall method nor use at least 3 years of data as recommended by EPA in the BID. The staff used a regression trend test with just 1 year of data, an approach the BID finds unsatisfactory. The staff applied the 95 percent confidence level only in this one instance on its own volition; it was not required by NRC license condition.

Moreover, the 95 percent confidence level requirement will compromise the NRC's ability to promulgate a conforming regulation as it may not be technically implementable. EPA states in its own supporting technical document (BID, p. 130), "[a]nalyses of quarterly sampling and assumptions about natural variability (Table 7-19 to 7-21, Section 7.7.2.2) suggest quarterly sampling to reach the required level of confidence about the presence or absence of trend may

---

[80] *Id.*, at 7417.

[81] The NRC staff is aware that an EPA RCRA regulation, 40 CFR 264.97(h)-(i), prescribes a 95 percent confidence level. This RCRA regulation, however, is not analogous to the proposed rule's 95 percent confidence level requirement for three reasons: 1) the RCRA regulation concerns the use of statistical tests of measured groundwater constituent concentrations (e.g., analysis of variance) to establish significant evidence of exceedance of groundwater standards (e.g., detection), which are not equivalent to a hypothesis test of a trend to show groundwater constituent concentration stability over a period of time; 2) the RCRA regulation provides for five options for statistical methods to be used to verify detection of an exceedance, including one proposed by the operator, and further, only two of the five require the 95 percent confidence level; and 3) under RCRA, unlike with UMTRCA, EPA has both standards-making and implementation authority.

[82] 82 FR at 7417.

require very long periods for post-restoration monitoring." The NRC staff has determined that Table 7-20 of the BID shows the 95 percent confidence level requirement for a hypothesis test of stability trend is impossible to meet within 3 years[83] for the majority of combinations of trend slope and variability of the constituent concentrations using the Mann-Kendall or regression trend test. Specifically, Table 7-20 shows that the 95 percent confidence level cannot be met for 66 percent of combinations of slope and variability of a given constituent. The inability to meet the 95 percent confidence level in these cases will cause substantial uncertainty in monitoring time frames. In order to meet the 95 percent confidence level requirement, licensees may have to conduct monitoring for time frames substantially longer than 3 years, thus significantly increasing the cost of the rule. Similarly, the regulatory agency will need to evaluate additional data and oversee the licensee for a longer timeframe. Moreover, it may be possible that stability is never demonstrated leading to regulatory stalemate and the inability to terminate the license.

Finally, the proposed rule's preamble states that the two 1985 Tenth Circuit decisions, *AMC I* and *AMC II*,[84] support EPA's position that the proposed standards are not "detailed" standards. The preamble cites the *AMC I* statement that the standards promulgated by EPA under AEA section 275 are "general in nature—they apply to all sites—we do not view them as site-specific 'management, technology or engineering methods."[85] The NRC staff, however, does not view the proposed standards in the January 2017 proposed rule as site-specific; rather, the NRC staff views the proposed standards as "detailed." The *AMC I* decision did not address whether the challenged standards were detailed, only that they were not site-specific.

The *AMC II* decision likewise does not support the EPA's argument that the proposed standards are not detailed. In *AMC II*, one of the requirements challenged by the petitioners concerned the use of a liner for new waste depositories and to new portions of existing waste depositories.[86] The *AMC II* court, in ruling that the liner requirement was not the imposition of a detailed requirement, stated that "[a]lthough the regulations require a 'liner' for new piles and extensions thereof, *we understand that term to refer to any impermeable barrier* the NRC may approve that will prevent seepage."[87] Unlike the requirements for the 95 percent confidence level and the geochemical modeling, which the NRC staff believes to be detailed requirements, the requirement for a liner is not the imposition of a detailed methodology given the wide variety of impermeable barrier types that may installed by a licensee.[88]

D. Geochemical Modeling Requirements

The proposed rule has several provisions that require geochemical modeling, namely, 40 CFR 192.52(c)(3)(ii), 40 CFR 192.53(d)(2)(ii)(A) and (d)(5). In connection to this geochemical

---

[83] Three years of quarterly sampling is the minimum term required under the proposed rule to demonstrate initial and long-term stability.
[84] *Id.*, at 7418-19 and 7422.
[85] *Id.*, at 7419 *quoting AMC I*, 772 F.2d at 630.
[86] *AMC II*, 772 F.2d at 647 *citing* 40 CFR 192.32(a)(1)-(2).
[87] *Id.*, 772 F.2d at 648 (emphasis added).
[88] *See* EPA, Risk Reduction Engineering Laboratory, Office of Research and Development, "Lining of Waste Containment and Other Impoundment Facilities," EPA/600/2-88/052 (September 1988). Chapter 4 of the document provides a detailed description of the wide variety of materials that can be used to manufacture liners.

modelling requirement, the preamble states that the licensee should include the following seven elements in its long-term stability assessment.[89] The seven elements are:

- Conceptual hydrogeochemical modeling for the mine unit/production zone;
- Ground water and solid (core) data used for geochemical model(s), including field parameters;
- Incorporation of ground water data in an initial geochemical model (*i.e.*, saturation indices calculations and assessment);
- Demonstration that stability (mainly reduction-oxidation or redox) conditions can be maintained in the production zone;
- Demonstration that ground water migrating into the production zone will not significantly change the geochemical stability within the production zone;
- Demonstration of alternative geochemical conditions that demonstrate stability (uranium and other elements); and
- Inter-relationships and contradictory claims (unintended consequences) for these various elements need to be identified and assessed in the context of the conceptual hydrogeochemical model.

Similar to the specific 95 percent confidence level requirement, the geochemical modeling requirements go well beyond an UMTRCA generally applicable standard and encroach upon the regulatory agency's authority. Moreover, the geochemical modeling, as characterized by the seven elements listed in the preamble are not technically implementable as standards and compromises the ability of the NRC to promulgate a conforming regulation.

As described above, EPA can only promulgate generally applicable standards that are numerical limits. A requirement to use geochemical modeling is not a standard that consists of a numerical limit. Moreover, the proposed geochemical modeling requirement encroaches upon NRC's authority as it is essentially an implementation requirement. Under the UMTRCA scheme, implementation of the generally applicable standards is a regulatory agency obligation. Whether to use geochemical modeling or another method as a means to demonstrate restoration is solely within the province of the regulatory agency. Likewise, if the regulatory agency decides to require that its licensees use geochemical modeling, the nature of that modeling is determined by the regulatory agency, not the seven elements listed in the preamble.

The complexity of these geochemical modeling and geochemical evaluation requirements are presented in Section 4.73 of the BID. These requirements will demand very detailed and non-standardized methods, which will be specific to each ISR site. Nor is the proposed rule consistent with RCRA, as RCRA does not require geochemical modeling or a geochemical evaluation of any type and only requires that there be no exceedance of a groundwater protection standard for 3 years (as shown by compliance monitoring, not a statistical trend analysis).

---

[89] 82 FR at 7410.

The seven elements listed in the preamble are beyond the scope of UMTRCA as they concern the stability of the subsurface conditions of depleted underground ore bodies, which is much broader than groundwater protection from ISR wellfields. For example, the second element states that the long-term stability assessment should include "ground water and solid (core) data used for geochemical model(s), including field parameters." In this regard, the NRC staff's definition of byproduct material excludes "underground ore bodies depleted by [uranium and thorium] extraction operations."[90] The AEA, as amended by UMTRCA, does not provide the NRC with any authority to regulate subsurface conditions or depleted underground ore bodies in the ISR wellfield. All but one of the seven of the preamble elements concern subsurface conditions of depleted underground ore bodies.

Seven Elements Not Technically Implementable

The proposed rule's geochemical modeling requirements, particularly, if the regulatory agency were to address the seven elements listed in the preamble, will require specific detailed methods all of which are subject to tremendous uncertainty and none of which have been standardized for implementation or to demonstrate compliance. In fact, all of the elements listed in the preamble are currently the subject of research for potential application to ISR wellfields (e.g., Dangelmayr et al., 2017).[91] Therefore, no standard methods are even known or established for addressing these model elements for any listed constituent in Table 1 of the proposed rule at ISR wellfields. In addition, it is widely understood that all geochemical modeling is highly uncertain and non-unique because of the inherent uncertainty in the choice of conceptual models; limited availability and quality of input data; variability in modeling codes/solvers and their performance; limited availability of observation data for calibration and lack of standard methods for calibration. The EPA's BID document states that "[m]odeling of any type does not lead to a unique solution."[92] The EPA BID document lists the same limitations of geochemical modeling including insufficient input data, uncertainty and variability in results, misinterpretation of results and differences between modeled and actual field conditions.[93] The NRC staff concludes that the tremendous uncertainty and lack of standard methods for the proposed rule's geochemical modeling regulatory standard will make it impossible to establish conforming regulations to which a licensee can demonstrate compliance.

E. Other Concerns

1. Point of Exposure

Issue: The "points of exposure" reference in the proposed 40 CFR 192.54(a)(3), which states that "points of exposure" are located in the wellfield, encroaches upon the NRC's authority to review and approve the location of a point of exposure—an action that must be based upon a site specific determination.

Comment: In its prior January 2015 proposed rule, the EPA defined the point of exposure as "Intersection of a vertical plane with the boundary of the exempted aquifer."[94] This definition

---

[90] 10 CFR § 40.4 (alteration added).

[91] Dangelmayr, M.A. et al., "Laboratory column experiments and transport modeling to evaluate retardation of uranium in an aquifer downgradient of a uranium in-situ recovery site," Applied Geochemistry, 80 (2017), pp.1-13.

[92] BID at 82.

[93] *Id.*

[94] 80 FR 4156, 4184 (January 26, 2015).

was not objectionable. Because EPA has now removed all references to exempt aquifers from its current proposed rule, however, defining a "point of exposure" in the wellfield encroaches upon the regulatory agency's ability to implement its regulatory program.

The regulatory agency has sole authority to review and approve an alternate concentration level (ACL), which under the UMTRCA scheme is an implementation and a site-specific compliance mechanism. To approve an ACL, the regulatory agency must review and meet the requirements of the factors listed in proposed 40 CFR 192.54. These are the same factors that the regulatory agency currently uses in its regulations for granting an ACL for any constituent in an ISR wellfield restoration (RIS 09-005). The approval of an ACL requires a site-specific determination of the "point of exposure," which can only be made after the wellfield is restored and the regulatory agency is able to evaluate all of the pertinent factors based on that restoration outcome. An *a priori* determination of the "point of exposure" in the wellfield effectively prohibits the regulatory agency from approving an ACL as it is precluded from considering technical factors of natural attenuation (e.g. adsorption, decay, low flow aquifer) of the ACL to background concentrations at a downgradient "point of exposure" (i.e., outside of the wellfield at the exempt aquifer boundary) when establishing an ACL.

Any statement about the location of a point of exposure in the proposed rule is also contrary to the 10th Circuit ruling in *Environmental Defense Fund vs U.S. Nuclear Regulatory Commission* (866 F.2d 1263 (1989). In that case, the court held that AEA Section 84(c) (42 U.S.C. § 2114(c)), gave sole authority to the NRC to evaluate and approve ACLs.[95] If EPA proceeds with this rulemaking, then the definition of "point of exposure" and references to its location should be deleted.

2. Gross alpha particle activity

Issue: EPA's January 2015 proposed rule listed gross alpha particle activity (GAA) as one of the Table 1 groundwater constituents. Although GAA has been removed from Table 1 in the January 2017 proposed rule, EPA has requested comments on whether GAA should be included within Table 1.[96]

Comment: The NRC staff has significant technical concerns with the inclusion of GAA as a constituent in Table 1. GAA does not meet the proposed rule's definition of "constituent," which is "a detectable component within the groundwater."[97] Both government and industry use GAA as a screening parameter for the purpose of measuring the alpha particle activity of all alpha emitting constituents in a water sample. The measurement of GAA is subject to substantial error, bias and non-reproducibility (e.g., the same sample or duplicate samples will not produce similar results). A comprehensive report titled "Evaluation of Gross Alpha and Uranium Measurements for MCL Compliance" written for EPA by the Water Research Foundation (2010)[98], stated that "GAA is subject to various sources of bias and error which lead to substantially higher or lower values than the actual GAA and can cause duplicate

---

[95] *Environmental Defense Fund vs. the Nuclear Regulatory Commission*, 66 F.2d 1263 (10th Circuit 1989) "We ... hold that AEA Sec. 84(c) permits the NRC to approve, when the contrary is not practicable, licensee-proposed site-specific alternatives that are less stringent than the EPA general standards."
[96] 82 FR at 7411.
[97] *Id.*, at 7427.
[98] Water Research Foundation, "Evaluation of Gross Alpha and Uranium Measurements for MCL Compliance" (2010), *available at* http://www.waterrf.org/PublicReportLibrary/3028.pdf.

measurements to differ significantly." The report goes on to describe the measurement problems inherent to GAA as a consequence of sampling, sample holding time, and limitations of the standard methods and correction.

Although the NRC requires the measurement of GAA in its conforming 10 CFR Part 40 Appendix A regulations, it does so because the measurement of GAA is required in EPA's current 40 CFR Part 192 regulations for conventional mill tailings impoundments. However, the existing regulations for GAA were not required to establish statistically representative constituent concentration standards, meet stability standards, and conduct the required hypothesis tests of trend at any confidence level, or geochemical modeling and analysis as would be required in EPA's proposed rule.

The proposed rule's list of twelve constituents in Table 1 includes the major alpha emitters such as radium-226, radium-228, and uranium. Their inclusion reflects the improvement in technology to cost effectively separately measure major alpha emitters. As a result, the requirement to measure the GAA screening parameter provides no additional benefit, and will only incur unnecessary burdens and costs on the regulatory agency and licensees.

OFFICIAL USE ONLY – SENSITIVE INTERNAL INFORMATION-
LIMITED TO NRC UNLESS THE COMMISSION DETERMINES OTHERWISE

COMWCO-15-0001

June 10, 2015

MEMORANDUM TO: Chairman Burns
Commissioner Svinicki
Commissioner Baran

FROM: Commissioner Ostendorff */RA/*

SUBJECT: PROPOSED COMMISSION COMMUNICATION WITH THE ENVIRONMENTAL PROTECTION AGENCY TO ADDRESS 40 CFR PART 192 RULEMAKING

Background

On January 26, 2015, the Environmental Protection Agency (EPA) published a proposed rule setting forth groundwater protection standards for uranium in-situ recovery (ISR) facilities in 40 CFR Part 192. In response to my request, the General Counsel submitted a memorandum to the Commission on May 18, 2015, addressing the question whether the proposed rule reaches beyond EPA's statutory authority. The General Counsel concluded that if promulgated, the proposed rule would reach beyond EPA's authority in some key areas. Namely, rather than setting general standards, EPA's proposed rule imposes implementation standards, which fall under the NRC's statutory authority.

The General Counsel's memorandum advises that the NRC is not required to accept EPA's regulations when those regulations go beyond the establishment of general standards. Instead, the NRC may issue site-specific alternative approaches that deviate from EPA's standards. Such an approach could easily lead to continuing conflict between the agencies as well as court challenges to the NRC's actions that deviate from EPA's regulations.

Proposed Staff Direction

It is my understanding that the staff has not engaged with EPA on the issues outlined in the General Counsel's memorandum and has no plans to do so. It would be inappropriate to wait for the EPA to finalize its regulations before voicing the NRC's concerns, particularly when the staff envisions the need to deviate from EPA's standards. Therefore, the General Counsel should draft Commission correspondence to Administrator Regina McCarthy. The letter should summarize the key concerns raised in the General Counsel's May 18, 2015 memorandum.

OFFICIAL USE ONLY – SENSITIVE INTERNAL INFORMATION-
LIMITED TO NRC UNLESS THE COMMISSION DETERMINES OTHERWISE

NOT FOR PUBLIC DISCLOSURE

OFFICIAL USE ONLY – SENSITIVE INTERNAL INFORMATION-
LIMITED TO NRC UNLESS THE COMMISSION DETERMINES OTHERWISE

The General Counsel should provide the correspondence to the Commission within ten business days of the final Staff Requirements Memorandum.

SECY, please track.

cc: SECY
OGC
OEDO

NOT FOR PUBLIC DISCLOSURE

OFFICIAL USE ONLY – SENSITIVE INTERNAL INFORMATION-
LIMITED TO NRC UNLESS THE COMMISSION DETERMINES OTHERWISE

OFFICIAL USE ONLY-SENSITIVE INTERNAL INFORMATION-LIMITED TO NRC UNLESS THE COMMISSION DETERMINES OTHERWISE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Chairman Burns

SUBJECT: COMWCO-15-0001: PROPOSED COMMISSION COMMUNICATION WITH THE ENVIRONMENTAL PROTECTION AGENCY TO ADDRESS 40 CFR PART 192 RULEMAKING

Approved XX Disapproved XX Abstain ____ Not Participating ____

COMMENTS: Below XX Attached ____ None ____

I approve Commissioner Ostendorff's proposed direction to the General Counsel to draft correspondence to the Environmental Protection Agency (EPA) that summarizes the key concerns raised in the General Counsel's May 18, 2015 memorandum. However, as opposed to drafting the letter as Commission correspondence to EPA Administrator McCarthy, I find it more suitable in this circumstance that the letter be drafted as General Counsel correspondence to the appropriate individual at EPA.

NOT FOR PUBLIC DISCLOSURE

Entered in STARS
Yes ✓
No ____

Signature

30 June 2015
Date

OFFICIAL USE ONLY-SENSITIVE INTERNAL INFORMATION-LIMITED TO NRC UNLESS THE COMMISSION DETERMINES OTHERWISE

OFFICIAL USE ONLY-SENSITIVE INTERNAL INFORMATION-LIMITED TO NRC UNLESS THE COMMISSION DETERMINES OTHERWISE

NOT FOR PUBLIC DISCLOSURE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER SVINICKI

SUBJECT: COMWCO-15-0001: PROPOSED COMMISSION COMMUNICATION WITH THE ENVIRONMENTAL PROTECTION AGENCY TO ADDRESS 40 CFR PART 192 RULEMAKING

Approved XX Disapproved ____ Abstain ____

Not Participating ____

COMMENTS: Below XX Attached ____ None ____

I approve Commissioner Ostendorff's proposal that the General Counsel be directed to draft Commission correspondence to EPA Administrator McCarthy, expressing the key concerns raised in the General Counsel's May 18, 2015 memorandum for the purpose of ventilating these issues between our two agencies, which is best done now, during the proposed rule stage. I thank my colleague for directing the Commission's attention to this matter.

SIGNATURE

06/10/15
DATE

Entered in "STARS" Yes ✓ No ____

OFFICIAL USE ONLY-SENSITIVE INTERNAL INFORMATION-LIMITED TO NRC UNLESS THE COMMISSION DETERMINES OTHERWISE

OFFICIAL USE ONLY-SENSITIVE INTERNAL INFORMATION-LIMITED TO NRC UNLESS THE COMMISSION DETERMINES OTHERWISE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Commissioner Baran

SUBJECT: COMWCO-15-0001: PROPOSED COMMISSION COMMUNICATION WITH THE ENVIRONMENTAL PROTECTION AGENCY TO ADDRESS 40 CFR PART 192 RULEMAKING

Approved XX Disapproved ____ Abstain ____ Not Participating ____

COMMENTS: Below ____ Attached XX None ____

NOT FOR PUBLIC DISCLOSURE

Entered in STARS
Yes XX
No ____

Jeff Baran
Signature
6/30/15
Date

OFFICIAL USE ONLY-SENSITIVE INTERNAL INFORMATION-LIMITED TO NRC UNLESS THE COMMISSION DETERMINES OTHERWISE

Commissioner Baran's Comments on COMWCO-15-0001, "Proposed Commission Communication with the Environmental Protection Agency to Address 40 CFR Part 192 Rulemaking"

I appreciate Commissioner Ostendorff requesting a legal memorandum from the Office of the General Counsel regarding the Environmental Protection Agency's (EPA's) proposed rule to establish groundwater protection standards for uranium in-situ recovery (ISR) facilities in 40 CFR Part 192. The Office of the General Counsel "determined that there is no clear line between EPA's statutory authority and the NRC's statutory authority in the regulation of radiological and nonradiological hazards arising from ISR activities," but also concluded that some provisions of EPA's proposed rule, most notably the monitoring requirements, "arguably do not fall within the category of general standards" for which EPA has statutory authority. I agree with Commissioner Ostendorff that NRC should convey any jurisdictional concerns it has about the proposed rule before a final rule is promulgated and approve Commissioner Ostendorff's idea of sending a letter to EPA.

Because the NRC staff did not raise any jurisdictional concerns with EPA during the interagency review process or public comment period, I think it would be premature for NRC to raise this issue for the first time in a letter from the Chairman to the EPA Administrator. Therefore, I propose that NRC's General Counsel convey any jurisdictional concerns with EPA's proposed rule in a letter to EPA's General Counsel and/or Assistant Administrator for the Office of Air and Radiation. The letter should focus exclusively on jurisdictional issues addressed in the May 18, 2015, legal memorandum rather than the stringency of the proposed rule. The General Counsel should send the correspondence within ten business days of the final Staff Requirements Memorandum and provide the Commission with the letter for its information.

NOT FOR PUBLIC DISCLOSURE

OFFICIAL USE ONLY B SENSITIVE INTERNAL INFORMATION B
LIMITED TO NRC UNLESS THE COMMISSION DETERMINES OTHERWISE

July 15, 2015

MEMORANDUM TO: Margaret M. Doane,
General Counsel

FROM: Annette L. Vietti-Cook, Secretary /RA/

SUBJECT: STAFF REQUIREMENTS – COMWCO-15-0001 – PROPOSED COMMISSION COMMUNICATION WITH THE ENVIRONMENTAL PROTECTION AGENCY TO ADDRESS 40 CFR PART 192 RULEMAKING

The General Counsel should draft correspondence to the Environmental Protection Agency (EPA) that summarizes the key concerns raised in the General Counsel's May 18, 2015 memorandum. The letter should be drafted as General Counsel correspondence to EPA's General Counsel with copy to Assistant Administrator for the Office of Air and Radiation. The General Counsel should provide the Commission with the letter for its information.

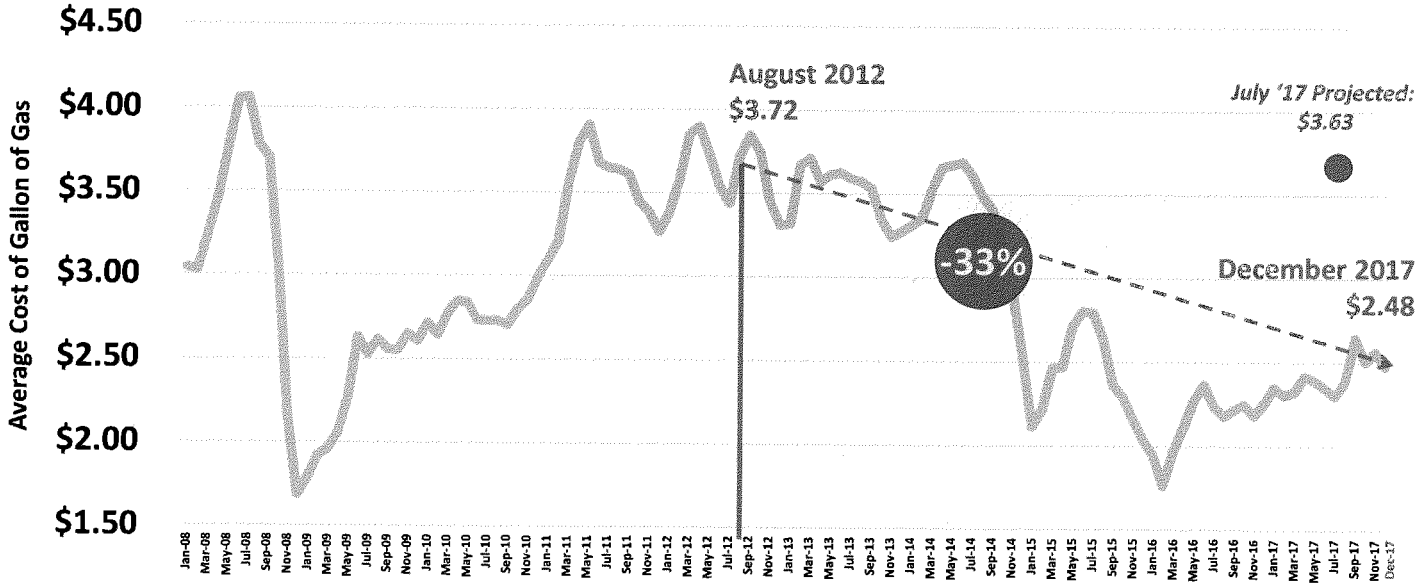
(OGC) (SECY Suspense: 7/29/15)

cc: Chairman Burns
Commissioner Svinicki
Commissioner Ostendorff
Commissioner Baran
EDO

NOT FOR PUBLIC DISCLOSURE

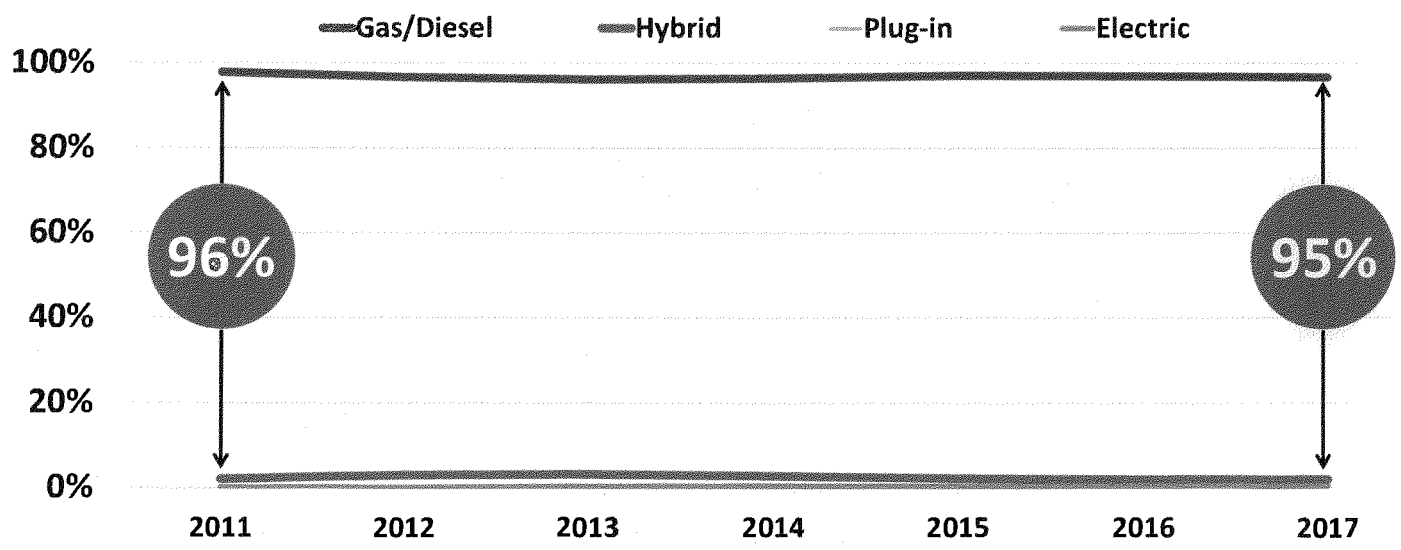
OFFICIAL USE ONLY B SENSITIVE INTERNAL INFORMATION B
LIMITED TO NRC UNLESS THE COMMISSION DETERMINES OTHERWISE

Cost of A Gallon of Gas: Projection v Reality



Source: EIA

Powertrain Share of Total Sales: 2011 - 2017



Source: Ward's Automotive

JOHN BARRASSO, WYOMING, CHAIRMAN

JAMES M. INHOFE, OKLAHOMA
SHELLEY MOORE CAPITO, WEST VIRGINIA
JOHN BOOZMAN, ARKANSAS
ROGER WICKER, MISSISSIPPI
DEB FISCHER, NEBRASKA
JERRY MORAN, KANSAS
MIKE ROUNDS, SOUTH DAKOTA
JONI ERNST, IOWA
DAN SULLIVAN, ALASKA
RICHARD SHELBY, ALABAMA

THOMAS R. CARPER, DELAWARE
BENJAMIN L. CARDIN, MARYLAND
BERNARD SANDERS, VERMONT
SHELDON WHITEHOUSE, RHODE ISLAND
JEFF MERKLEY, OREGON
KIRSTEN GILLIBRAND, NEW YORK
CORY A. BOOKER, NEW JERSEY
EDWARD J. MARKEY, MASSACHUSETTS
TAMMY DUCKWORTH, ILLINOIS
KAMALA D. HARRIS, CALIFORNIA

RICHARD M. RUSSELL, MAJORITY STAFF DIRECTOR
GABRIELLE batkin, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

January 9, 2018

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Administrator Pruitt:

We write to request that you rescind a current EPA policy that disincentivizes air emissions reductions. On November 15, 2017, the Committee held a hearing entitled, "Promoting American Leadership in Reducing Air Emissions Through Innovation." In testimony during that hearing, the so-called "once-in-always-in" policy under the Clean Air Act was identified as a policy that discourages emissions reductions.

The 1995 policy requires a source to comply with stringent emissions standards even if the source later lowers its emissions below the "major source" thresholds that triggered the standards in the first place. In the enclosed submissions to the November 15th hearing record, the National Association of Manufacturers and the American Coatings Association (ACA) highlighted the practical effects of the policy. As ACA explains, "resources spent on compliance could be used instead for [research and development], or modernization activities."

EPA can rescind this policy, which was issued under Section 112 of the Clean Air Act, without any legislative changes. As the Chairmen of the Committee and Subcommittee of jurisdiction over the Clean Air Act, we request that you incentivize additional hazardous air pollutant emissions reductions by promptly withdrawing this policy. If you have additional questions about the Committee's hearing that reviewed this issue, please contact Elizabeth Horner of the Committee's staff at 202-224-6176.

Sincerely,

John Barrasso, M.D.
Chairman

Shelley Moore Capito
Chairman
Subcommittee on Clean Air and
Nuclear Safety

Enclosures

PRINTED ON RECYCLED PAPER

NATIONAL ASSOCIATION OF
Manufacturers

Leading Innovation. Creating Opportunity. Pursuing Progress.

Testimony

of Ross Eisenberg
Vice President
Energy and Resources Policy
National Association of Manufacturers

before the Senate Committee on Environment and Public Works

on "Promoting American Leadership in Reducing Air Emissions Through Innovation"

November 15, 2017

TESTIMONY OF ROSS EISENBERG

BEFORE THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Hearing on:
"Promoting American Leadership in Reducing Air Emissions Through Innovation"

NOVEMBER 15, 2017

Good morning, Chairman Barrasso, Ranking Member Carper and members of the Environment and Public Works Committee. My name is Ross Eisenberg, and I am the vice president of energy and resources policy at the National Association of Manufacturers (NAM). The NAM is the nation's largest industrial trade association, representing nearly 14,000 small, medium and large manufacturers in every industrial sector and in all 50 states. I am pleased to represent the NAM and its members and provide testimony on manufacturers' continued commitment to reduce air emissions.

Manufacturers have sharply reduced our impact on the environment through a wide range of innovations, such as increasing energy efficiency, saving and recycling water and implementing successful initiatives to reduce pollution and waste. Through these traditional and innovative measures, manufacturers have helped to usher in a new era of a cleaner and more sustainable environment.

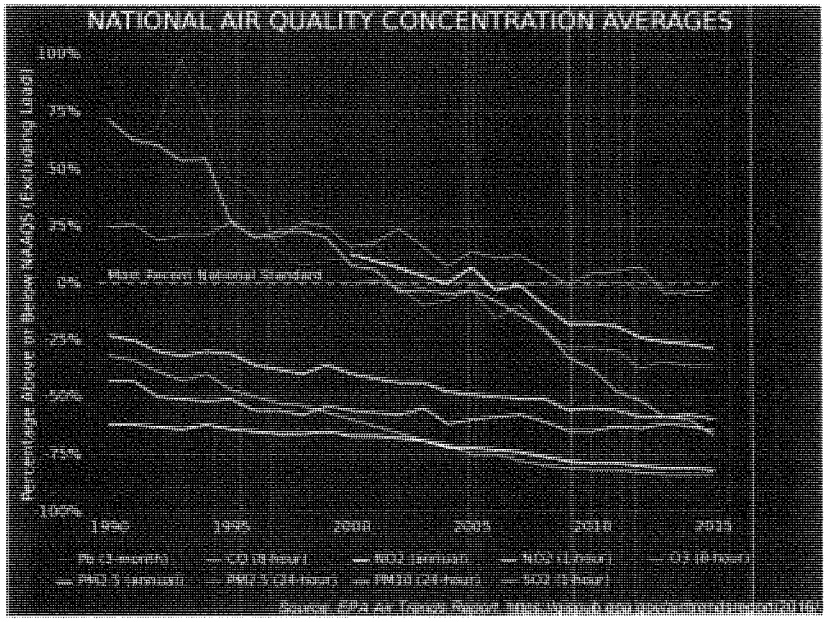
My written statement is broken into three parts. The first reviews air emission trends in the U.S. and the manufacturing sector. The second provides an overview of the technologies and innovative solutions manufacturers have developed to reduce their emissions. The third part identifies barriers that are

preventing manufacturers from doing even more to reduce emissions and increase efficiency.

Part One: U.S. and Manufacturing Sector Air Trends

A. Economy-Wide Emissions

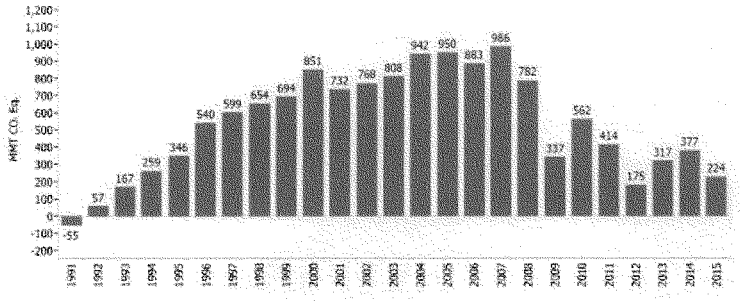
The story of U.S. air pollutant emissions is a positive one. Since 1990, a period spanning four different presidential administrations and 14 different Environmental Protection Agency (EPA) administrators, national pollutant concentrations have dropped dramatically. Carbon monoxide concentrations are down 77 percent; lead 99 percent; nitrogen dioxide 54 percent; ozone 22 percent; coarse particulate matter 39 percent; fine particulate matter 37 percent;



and sulfur dioxide 81 percent.[1]

On greenhouse gases (GHGs), the United States has made greater reductions over the past decade than any other nation on earth.[2] The following chart from the EPA's most recent *Inventory of U.S. Greenhouse Gas Emissions and Sinks* shows the positive trends.

Figure ES-3: Cumulative Change in Annual Gross U.S. Greenhouse Gas Emissions Relative to 1990 (1990=0, MMT CO_2 Eq.)



Source: Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2015

B. Manufacturing Sector Emissions

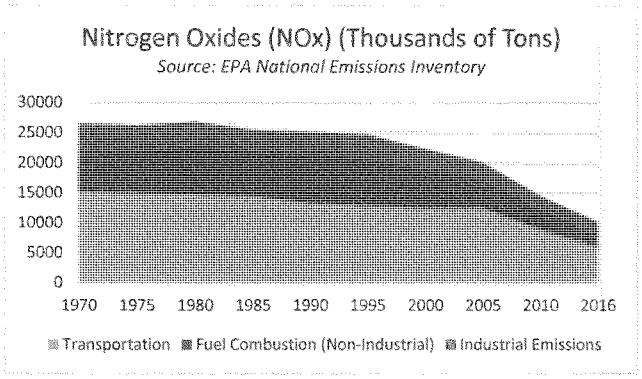
While it is useful to view the emissions reduction trends of the broader economy, it is worth focusing on the industrial sector's emissions and how they have decreased over time. For virtually every air pollutant regulated by the EPA, the manufacturing sector has made dramatic reductions over the past few decades. Today's manufacturing company is a sleek, technology-driven

[1] U.S. EPA, "Our Nation's Air: Status and Trends Through 2015," *available at* https://gispub.epa.gov/air/trendsreport/2016/.
[2] https://www.forbes.com/sites/rrapier/2016/06/19/the-u-s-leads-all-countries-in-lowering-carbon-dioxide-emissions/#7d6790375f48.

operation that looks nothing like the industrial facilities of the past. With that progress has come a smaller environmental footprint.

Nitrogen Oxides (NOx)

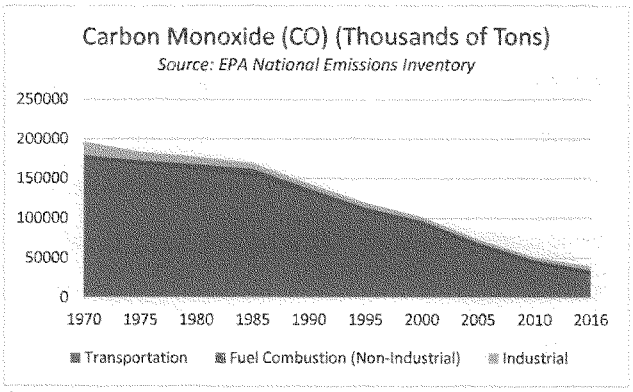
In the case of nitrogen oxides (NOx), a criteria pollutant and the primary precursor of ozone, industrial emissions have dropped by 53 percent since 1970. The vast majority of the decline has come from technologies to reduce NOx emissions at onsite industrial power generation facilities. Industrial NOx emissions have historically represented around 15 to 25 percent of total NOx emissions in the United States.



Carbon Monoxide (CO)

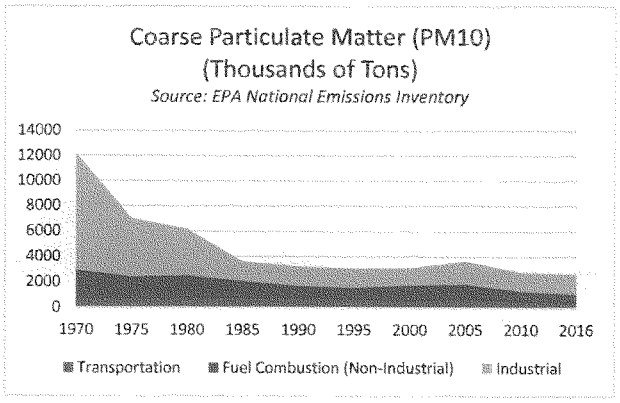
The manufacturing sector's carbon monoxide (CO) emissions have dropped 70 percent since 1970. Most of these reductions have come through improvements to the manufacturing process. The chemical sector has reduced its CO emissions a staggering 96 percent; metals processing has reduced its CO

emissions 83 percent; petroleum and related industries have reduced their CO emissions 61 percent; and waste disposal and recycling industries have reduced their CO emissions 70 percent. Overall, manufacturing CO emissions are relatively small compared to overall CO emissions. However, these emissions have also dropped dramatically over time, a 71 percent reduction.



Coarse Particulate Matter (PM10)

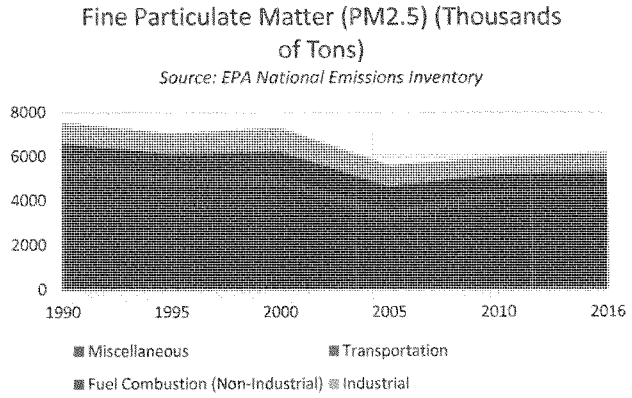
Manufacturers have reduced their emissions of coarse particulate matter, or PM10, by 83 percent since 1970. The vast majority of these reductions have come from changes to the manufacturing process across individual sectors. For instance, chemical manufacturers have reduced their PM10 emissions by 91 percent; metals processing has reduced its PM10



emissions by 96 percent; petroleum and related industries have reduced their PM10 emissions by 87 percent; and waste disposal and recycling industries have reduced their PM10 emissions by 70 percent. It is worth noting that the lion's share of PM10 emissions tracked by the EPA are not from industry, transportation or electricity production; they are what the EPA calls "miscellaneous" PM10, which include wildfires, windblown dust from open lands, wood burning stoves and fireplaces and dust from construction and agriculture. Miscellaneous PM10 represents almost 90 percent of total PM10 in the United States today.

Fine Particulate Matter (PM2.5)

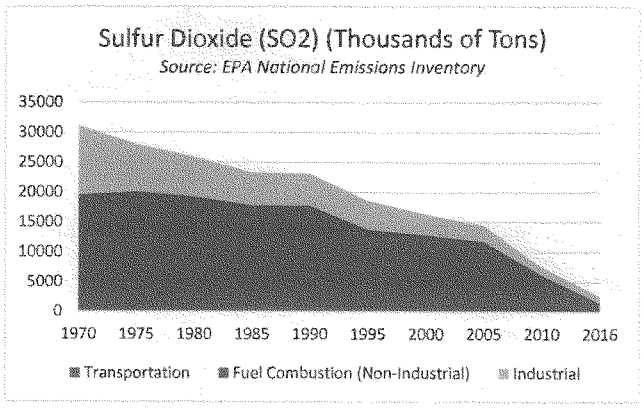
Like PM10, the bulk of the fine particulate emissions measured by the EPA are classified as "miscellaneous," meaning not from industrial, transportation or power generation sources. Overall, total PM2.5 emissions from industrial, transportation and power generation sectors have dropped by 25 percent since 1990, the first year the EPA began measuring this pollutant. The industrial sector has reduced its PM2.5 emissions 6 percent since 1990 and 23 percent since its peak in 1999 and



will continue to reduce its emissions significantly as manufacturers take steps to comply with the 2012 Boiler MACT regulation.

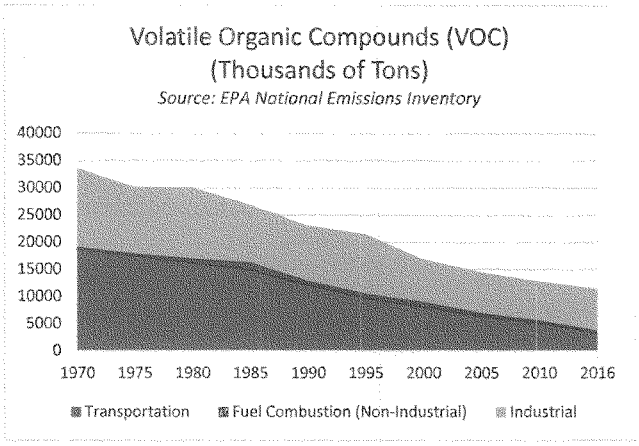
Sulfur Dioxide (SO2)

Sulfur dioxide (SO2) emissions have dropped precipitously over the past four decades. Since 1970, the industrial sector has reduced its SO2 emissions by 90 percent; electric utilities and other fuel combustion sources have reduced their SO2 emissions by 93 percent; and the transportation sector has reduced its SO2 emissions by 91 percent. Within manufacturing specifically, the chemical sector has reduced its SO2 emissions by 80 percent; metals processing has reduced its SO2 emissions by almost 98 percent; petroleum and related industries have reduced their SO2 emissions by 88 percent; and other industrial processes reduced their SO2 emissions by 80 percent. Manufacturers accomplished these dramatic reductions through technologies that allowed them to burn energy with less emissions, as well as technologies that reduced the SO2 emissions in the manufacturing process.



Volatile Organic Compounds (VOCs)

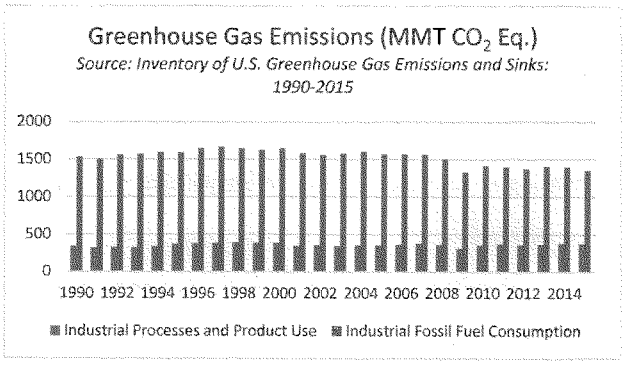
Emissions of volatile organic compounds (VOCs), which mix with NOx to form ground-level ozone, have also been reduced considerably. Since 1970, manufacturers have reduced their VOC emissions by 47 percent; the transportation sector has reduced its VOC emissions by 82 percent; and the power generation fleet has reduced its already-small emissions of VOCs by 26 percent. The vast majority of the manufacturing sector's VOC reductions have come through changes to the manufacturing process; the introduction of new chemicals, feedstocks and technologies; or reformulation of products. For instance, California's South Coast Air Management District reports that VOCs from architectural coatings in the Los Angeles area decreased more than 50 percent between 2008 and 2014.[3]



[3] http://www.paint.org/about-our-industry/environmental-footprint/.

Greenhouse Gases (GHGs)

The manufacturing sector emits greenhouse gases (GHGs) in two ways: during energy production and through industrial processes and product use. The good news is that the industrial sector actually produces *less* emissions than it did in 1990, a considerably different story compared to the broader U.S. economy.[4] Just over the past decade, manufacturers have reduced our GHG emissions by 10 percent while increasing our value to the economy by 19 percent. Many of those reductions have come from improved energy efficiency and changes to the mix of fuels manufacturers use.



Part Two: The Innovations Manufacturers Are Using to Clean Up the Air

The aforementioned charts are not meant to suggest that our environmental problems are over. Despite best-in-class efforts, the United States and the world continue to face serious environmental and sustainability challenges. There are forces far beyond the control of manufacturers in the United States that are driving changes to the global environment. The world's

[4] Inventory of U.S. Greenhouse Gas Emissions and Sinks, 1990-2015, *available at* https://www.epa.gov/sites/production/files/2017-02/documents/2017_complete_report.pdf.

population is expected to grow from 7.6 billion people today to 9.7 billion by 2050; 795 million people in the world do not have enough food to lead a healthy, active life; 1.3 billion people lack access to electricity; and droughts and other natural disasters threaten many already environmentally and economically stressed parts of the world. Mitigating the impacts of climate change, protecting the air, feeding the world's growing population and ensuring adequate supplies of drinking water are just a few of the significant issues facing current and future generations.

Manufacturers have demonstrated a commitment to protecting the environment through greater sustainability, increased energy efficiency and reducing emissions. We will continue to lead by minimizing environmental footprints, reducing emissions, conserving critical resources, protecting biodiversity, limiting waste and providing safe products and solutions so others in the economy can do the same.

For instance, to control SO2, acid gas and particulate matter emissions, manufacturers develop and install wet scrubbers, dry scrubbers with fabric filters, dry sorbent injection technologies and electrostatic precipitators. These technologies have been effective in controlling emissions on industrial boilers, at cement kilns, petroleum refineries, glassmaking facilities, lime kilns, coke manufacturing, chemical plants, pulp and paper facilities, brickmaking plants, asphalt and ferrous metals plants. Manufacturers have developed cost-effective

technologies that can remove up to 95 percent of PM, 95 percent of SO2 and 90 percent of acid gases.[5]

To control VOCs, manufacturers develop and install technologies such as ventilation air methane systems, afterburners, regenerative oxidizers, catalytic systems, recuperative oxidizers and absorbers. Controls are deployed over a wide range of industries—including petrochemical, chemical, pharmaceutical, wood products, painting, coating, electronics and oil and gas—and are capable of up to 99 percent VOC destruction.

To control NOx and CO, manufacturers develop and install Selective Non-Catalytic Reduction (SNCR) technologies, catalysts, Low-NOx Burners and Catalytic Reduction technologies. These are used on combustion sources, such as boilers, turbines, engines, process heat, iron and steel, lime kilns, glass and cement. These technologies control for CO up to 99 percent efficiency at more than 1,000 power plants and industrial boilers across the United States and can remove greater than 95 percent of NOx at temperatures ranging from 300°F to 2,000°F.

Controlling GHGs is a considerably different task than the conventional pollutants above. There is no ready-made, bolt-on technology solution to reduce GHGs from industrial operations or the products we manufacture. This is forcing manufacturers to get creative to achieve strong GHG reductions. Manufacturers of all shapes and sizes are setting GHG targets to 2020, 2025 and beyond—and

[5] *See, e.g.*, The Institute of Clean Air Companies, Domestic Conventional Pollutants Division and Emissions Management Division, Issue Brief, *available at* http://www.icac.com/?page=DomConvPollutants.

are often beating them several years early. They are doing this by innovating, taking risks, driving efficiencies, streamlining their processes and relying on internal experts who know their businesses best.

Every manufacturer's operation is unique. That diversity is part of the challenge, but it can also lead to breakthroughs and innovation. We asked our members to send us examples, in their own words, of success stories in deploying environmental solutions at their facilities. Here are their stories.

MGK is a Minneapolis-based manufacturer that develops branded and custom insect control solutions. It recently lowered the VOC load in its aerosol and liquid products by levels between 30 and 70 percent. Some of this was done by shifting from solvent-based formulas to water-based formulas, and some came from lowering the use of hydrocarbon propellants in aerosols. MGK also lowered conventional pollutant emission rates by adding scrubbers to its stacks and reduced its use of methylene chloride by amending its production process to require fewer clean-out events and finding alternate solvents to use in clean-outs.

Gerdau Long Steel North America is in the process of upgrading its steel mill in Rancho Cucamonga, California—the only steel mill in the state—with a $23 million emissions control system that will be used to meet new South Coast Air Quality Management District air emission regulations, which are some of the most stringent in North America. This state-of-the-art environmental control system project took two years to design, and the design process alone cost $2 million. When completed, the system will capture 99.9 percent of contaminants in

the emissions from the mill, making the Gerdau Rancho Cucamonga steel mill one of the world's greenest.

Xerox has taken strong steps to reduce its environmental footprint. The company has focused on reducing the emissions that originate from the production of imaging supplies, such as toner, photoreceptor drums and belts and fuser rolls. Xerox has managed to reduce emissions through process modification, lower production volumes of legacy products coated using organic solvents and producing components with longer life spans, which results in fewer replacement components produced. The release of materials used in Xerox's worldwide operations is evaluated annually and reported to government agencies under national toxic chemical release reporting regulations, such as the U.S. TRI, the Canadian National Pollution Release Inventory and the European Pollutant Release and Transfer Register. Releases for reporting year 2016 remained unchanged compared to 2015 levels and were 75 percent lower than 2007 levels.

Nucor pioneered a new way of steelmaking when it introduced the mini-mill, an electric arc furnace with a considerably smaller environmental footprint than a traditional blast furnace: per ton of steel, the mini-mill results in a 99.2 percent reduction in particulate matter, an 86 percent reduction in SO2, an 80 percent reduction in NOx, a 91 percent reduction in CO and a 71 percent reduction in VOCs.[6] The company recently introduced the micro-mill, a facility

[6] http://www.nucor.com/responsibility/sustainability/highlights/.

with an even smaller environmental footprint than mini-mills, and it announced this fall that it is seeking to build a new micro-mill in the United States.[7]

At the chemical manufacturer Olin Corporation, employees within manufacturing and engineering, logistics and supply chain are encouraged to conceptualize, develop and execute productivity enhancement projects each year. The top 60 projects that deliver significant productivity gains are then presented by the global project teams to the company's top leadership in a conference setting. Providing an opportunity to leverage ideas, share opportunities and recognize the efforts and achievements of the project teams, the event serves as both a valuable development opportunity for employees and helps build further best practices for productivity and efficient, sustainable manufacturing practices throughout the organization.

Air Products and Chemicals has reduced its hazardous air pollutant (HAP) emissions by 82 percent and SO2 emissions by 60 percent since 2010. The company also develops a wide range of products and technologies that help manufacturers reduce their own emissions. Air Products' Helia® advanced oxidation technology reduces VOC emissions from wastewater treatment plants; it produces hydrogen used in refining to produce cleaner transportation fuels and to power advanced fuel cell vehicles; and its biogas membrane separators purify methane from farm waste, manure and municipal waste and help turn it into energy.[8]

---

[7] https://www.prnewswire.com/news-releases/nucor-board-of-directors-approves-steel-bar-micro-mill-project-and-merchant-bar-operations-expansion-300520418.html.
[8] http://www.airproducts.com/~/media/Files/PDF/company/2017-sustainability-report.pdf?la=en.

Covestro, formerly Bayer MaterialScience, committed to reduce its 2005 carbon dioxide (CO_2) levels by 40 percent by 2020. The company has already beaten that goal and set a new goal to cut CO_2 emissions in half again by 2025. It accomplished this by making numerous production improvements at Covestro facilities across the globe, including a $120 million investment at its largest facility in Baytown, Texas, to improve energy efficiencies, minimize waste and reduce natural resource consumption. Covestro developed a new manufacturing process that allows it to replace petrochemical feedstock with CO_2 and recently opened a new plant that will utilize this technology to make polyurethane foam for mattresses and furniture.

In the fall of 2012, steel manufacturer ArcelorMittal partnered with the federal government to install a 38-megawatt combined heat and power system to utilize previously wasted blast furnace gas (BFG), a by-product of the iron making process, to produce electricity on-site at its Indiana Harbor, Indiana, complex, the largest steelmaking facility in North America. The $63.2 million waste energy recovery system captures approximately 46 billion cubic feet of BFG from the facility's No. 7 blast furnace and uses it to produce steam to generate electricity. The installation lowered the facility's annual energy costs by nearly $20 million and reduced annual CO_2 emissions by 340,000 tons. In addition, the project created approximately 360 manufacturing and construction jobs and helped retain 4,850 employees at the facility by lowering the production costs of steel by $5 per ton.

BASF's global leadership in emissions reduction technologies for the automotive industry began in the 1960s with the creation of the catalytic converter by scientists working in Iselin and Union, New Jersey. In 2002, BASF's scientists earned an award for their work on the three-way catalyst, a key contributor to cleaner air for billions of people in the United States and around the world. More recently, BASF has continued to move the industry forward with the development of a four-way conversion catalyst that will reduce emissions of PM in addition to CO, NOx and HCl. The three-way catalysts are produced at BASF's Huntsville, Alabama, facility, a site that walks the talk of environmental stewardship and recently celebrated the production of the 400 millionth catalyst. All 650 employees are actively engaged in not only producing sustainable solutions for the automotive industry but also ensuring their own operations are just as sustainable. This summer, they were certified a virtual zero waste to landfill facility, one of only three manufacturing facilities in all of North America that is currently valid to UL Environment's UL 2799 certification. Their overall material management and recycling activities saved more than 35,000 metric tons of CO_{2e} emissions and 1,500 metric tons of non-methane VOCs. Last month, they were awarded the Air Pollution Control Achievement Award by the city of Huntsville for their recent site-wide LED conversion lighting project, which saved more than 1,000,000 kilowatt-hours per year of electricity (a 57 percent reduction) and reduced greenhouse gas emissions by more than 730 metric tons per year.

Calgon Carbon Corporation is a global leader in innovative solutions, high-quality products and reliable services designed to protect human health and the environment from harmful contaminants in water and air. As a leading manufacturer of activated carbon, with broad capabilities in ultraviolet light disinfection, Calgon Carbon provides purification solutions for drinking water, wastewater, pollution abatement and a variety of industrial and commercial manufacturing processes. One of the company's signature achievements has been the development of activated carbon-based products to control mercury emissions from coal-fired power plants, industrial boilers and cement kilns. Although the status of the regulations was an uncertain and winding road over the past decade, Calgon Carbon proactively invested more than $30 million to develop a better understanding of the issue, new products that delivered necessary mercury capture performance and new production capacity to meet the uncertain future demand. These products are being used by electric utilities to comply with the Mercury and Air Toxics Standard Rule.

Global engine manufacturer Cummins has a long history of setting and exceeding energy and GHG reduction goals at its facilities and operations. At the company's high-horsepower engine plant and technical center in Seymour, Indiana, Cummins made a $5 million investment in advanced energy-efficiency technology called regenerative dynamometers, which convert engine power from test cells to electricity that can be used onsite and exported to the grid. This innovative approach to energy efficiency will help Cummins reduce electricity consumption by 14,000 MWh per year and reduce electricity costs by $1.2 million

per year. The ability to net-meter this energy and to sell energy back to the grid has allowed Cummins to make this investment worthwhile. Cummins' engine plant in Jamestown, New York, recently showcased its latest initiative, a $47 million block machining line that utilizes on-demand hydraulics, coolant and pneumatics to reduce energy consumption as it produces the company's high-efficiency diesel and natural gas heavy-duty engines. Among other improvements, the plant in recent years has also replaced nearly 3,000 fluorescent lights with advanced LED lighting and a Wi-Fi-enabled control system that can automatically shut the lights off in parts of the plant not in use. National Grid, one of the largest investor-owned energy companies in the world, partnered with Cummins to invest $692,000 into the project as part of an effort to incentivize customers to use energy-efficient lighting, controls, heating and air-conditioning equipment and more. The plant's roof, meanwhile, has a nearly 2MW solar panel installation that on a sunny day will produce more than 20 percent of the facility's electric power needs.

In 2013, ConocoPhillips' Eagle Ford fugitive emissions team began to identify and eliminate equipment emission sources, beginning with leaks from tank thief hatches, wellsite controllers and flares. The team uses infrared camera technology to find emission leaks and follows up to ensure problems are addressed. The program has evolved into a planned preventive maintenance program encompassing all field sites. The fugitive team or a follow-up crew repairs the leaks. Data are recorded in the SAP work order system, and a detailed worksheet documents the emission history and associated work

performed. Documentation includes confirmation that the observed problems were addressed. A preventive maintenance schedule ensures that every site is inspected at least once a year. This proactive model demonstrating an effective way to manage fugitive emissions has been adopted across the company's Lower 48 business unit. In addition, Eagle Ford Operations has installed automation and centralized alarming to proactively maintain lit flares. All flares are alarmed to register flare-outs and to signal the Eagle Ford Integrated Operations of the Future team of any incident.

Owens Corning has set an aggressive target for reducing its GHG emissions—50 percent below 2010 levels by 2020—and is taking its commitment one step further, reducing the embodied carbon emitted throughout the product lifecycle, including raw material extraction, transportation and manufacture. Just last week, the company announced three new types of insulation made with 100 percent–certified wind energy. These products are intended to give commercial architects and specifiers, builders and even homeowners the option of lower-carbon products to build greener structures.

Energy Transfer Partners (ETP) operates from the position that emission reductions are rooted in building and operating safe, well-maintained and reliable facilities to prevent accidents from happening. ETP has for several years utilized FLIR infrared cameras to survey for natural gas leaks at its natural gas compression stations and treating plants. The program originated as a safety initiative to ensure that hazardous conditions did not exist for employees and has also evolved into an operations reliability program to reduce lost product and

identify maintenance issues. ETP was surveying for natural gas leaks long before regulations were promulgated by the EPA. ETP also utilizes LIDAR aerial technology to survey pipelines for leaks. This early detection technology can identify very small leaks by measuring vegetation disturbance and/or using hydrocarbon detection. This program prevents larger spills and releases and reduces repair and cleanup costs that are associated with a pipeline failure. Finally, at ETP's King Ranch Gas Processing Plant, ETP's engineering and safety requirements led the company to replace two in-service Light Petroleum Distillate (LPD) tanks with state-of-the-art pressurized tanks. Replacement of the original tanks with new pressurized tanks essentially eliminated all VOC emissions associated with storage of the LPD product—a net reduction of approximately 10 tons per year of VOC.

Johnson Controls has made substantial emissions reductions across its U.S. manufacturing portfolio. A key part of this has been its engagement with the Department of Energy's (DOE) Better Plants program, which helps manufacturers improve the energy efficiency of their operations. The Better Plants program offers a variety of solutions and resources for partners, including materials, tools, webinars and on-site visits to help identify energy savings opportunities. Johnson Controls joined the DOE Better Buildings Better Plants Challenge in 2013, and it set a goal of a 25 percent reduction in energy intensity in 10 years, using a 2009 baseline, for its manufacturing facilities located in the United States. This year, Johnson Controls was recognized by the Better Plants program with two awards: (1) the Better Plants, Better Practice Award for

establishing a company-wide Energy Hunt program as part of the Johnson Controls Manufacturing System that resulted in a threefold increase in identified energy savings projects; and (2) the Better Plants Goal Achievement Award for achieving its 25 percent energy intensity reduction goal across its U.S. industrial facilities, three years ahead of schedule, with a 26 percent reduction by end of 2016. Johnson Controls has implemented its Energy Hunt program across its U.S. manufacturing locations, including plants in Delaware, Illinois, Kansas, Oklahoma and Oregon.

Illinois Tool Works (ITW), one of the world's leading diversified manufacturers of specialized industrial equipment, consumables and related service businesses, is taking steps to phase out the refrigerants containing high global warming potential (GWP) in the commercial kitchen appliances it manufactures. ITW began its equipment transition early and is ahead of schedule to meet EPA compliance dates, by either using refrigerant alternatives with a lower GWP value or developing products using "natural" refrigerants like propane that have no GWP impact if emitted into the atmosphere.

Schneider Electric, a leader in process efficiency and automation, is driving emissions savings at fifteen of its own U.S. plants, from Smyrna, Tennessee to its headquarters in Massachusetts, reducing the equivalent of 5,788 tons of carbon in 2016.[9] Schneider Electric has a sustainability objective of becoming carbon neutral by 2030. The company developed an Internet-of-Things, cloud-enabled platform called EcoStruxure to make buildings, power

[9] https://www.energy.gov/sites/prod/files/2017/05/f34/Schneider_Electric_EWA_Case_Study_5-12-17.pdf.

plants, and facilities smarter, improve processes, and save on down time, energy and water costs—a technology solution the company believes will be a useful compliance tool for power plant GHG policies. Schneider Electric recently helped implement enterprise-wide energy management solutions in 43 of Ford Motor Company's U.S. locations, leading to 40 percent energy efficiency savings.

Part Three: Barriers to Innovation and Progress in Reducing Emissions

The stories above, and the hundreds like them across the manufacturing sector, are impressive. However, there remain barriers to accomplishing even more. New Source Review, EPA policy on MACT standards, continuity problems for federal support programs and trade policy all present challenges that prevent manufacturers from making even deeper emissions reductions.

New Source Review

The New Source Review (NSR) program is a federal air permitting program under the Clean Air Act that applies to new facilities or major modifications to facilities. The purpose of NSR, according to the EPA, is to require industrial facilities "to install modern pollution control equipment when they are built or when making a change that increases emissions significantly."[10] In practice, however, NSR often stands in the way of efficiency upgrades and the installation of modern pollution control equipment.

[10] https://www.epa.gov/sites/production/files/2015-12/documents/nsrbasicsfactsheet103106.pdf.

For instance, if a manufacturer installs selective catalytic reduction technology to reduce NOx emissions, the component will trigger NSR for the entire source, requiring review of *all* emissions. Practically speaking, that means the manufacturer will need 12 to 18 months to obtain NSR permits, tying up investment capital and delaying the economic benefits from expansion projects. The program requires expensive air modeling that frequently delays projects and can cost $100,000 or more to complete. It can lead to citizen suits—not just during NSR but again during renewal of the facility's Title V operating permit—and enforcement actions. And that is assuming the manufacturer actually gets the permit.

EPA rules on netting of emissions under NSR unnecessarily delay, and sometimes prevent, manufacturers from replacing older fossil fuel boilers with newer, environmentally beneficial units. In addition, the EPA has required manufacturers to go through NSR when they replace relatively minor equipment (like a water pump) with a newer model, taking the position that only replacement with the original, inefficient, outdated part qualifies as "routine maintenance" that could avoid onerous permitting regulations.

The desire to avoid NSR can therefore create several perverse incentives: (1) an incentive for manufacturers to operate their plants exactly as they were built and only to replace parts with the exact same part that existed when the plant was built; and (2) an incentive to keep a plant's overall emissions high in order to "save" them for use in a future project. One manufacturer reports that customers have asked it to de-optimize performance in a suite of efficiency

upgrades in order to avoid triggering NSR. Any rule that results in companies affirmatively taking steps *not* to optimize efficiency puts those companies at a competitive disadvantage.

An NAM member company manufactures gas turbine upgrade technology that could improve the vast majority of in-service gas turbines by 2.6 percent and reduce their total CO_2 emissions per MWh by 6.5 percent; however, many manufacturers are choosing not to install this equipment simply because it triggers NSR. The same can be said for steam turbine upgrades, which would ensure higher grid efficiency, lower emissions and reduced wear and tear that is occurring from a rapidly changing electric grid.

NSR also presents a huge impediment to the installation of more efficient technologies that would ultimately combat climate change. An inability to define what is "routine maintenance" has resulted in NSR Notices of Violation being issued for environmentally beneficial projects like economizer replacement, steam turbine upgrades, feed water heater replacements and similar activities. In comments to the EPA's draft Clean Power Plan, the Utility Air Regulatory Group (UARG) cited *more than 400 instances* in which a regulated entity took on a project to improve the energy efficiency of a power generation unit, only to be targeted by the EPA or citizen suits alleging that it had violated NSR.[11]

This cannot possibly be what Congress intended. In response to recent stakeholder outreach by the Department of Commerce and the EPA on

[11] Comments of the Utility Air Regulatory Group on Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, Docket ID EPA-HQ-OAR-2013-0602-22768, Attachment A (Dec. 1, 2014).

regulatory impediments to manufacturing, commenters from aerospace, insulation, pulp and paper, hard rock mining, iron and steel, clean energy power generation, boiler manufacturing and many other sectors raised NSR as a serious regulatory impediment. The NAM urges this committee to work with the EPA to fix NSR so that it functions properly and does not stand in the way of efficiency upgrades or environmentally beneficial projects.

Maximum Available Control Technology (MACT) Once-In-Always-In Policy

The EPA's existing policy is that once a manufacturer is subject to a MACT standard, it will *always* be subject to that MACT standard and the regulatory obligations that go along with it—even if the manufacturer installs pollution control technologies that reduce its emissions below the threshold levels that originally triggered MACT applicability to begin with. Practically speaking, this means once a manufacturers' emissions are below the MACT-required limits, there are very few regulatory reasons why the manufacturer would drive them even lower.

Ups and Downs of Federal Programs and Partnerships

While a competitive market is generally the best way to encourage the development of transformational technologies, the reality is that both the public and private sectors have roles to play. For instance, the government can play a positive role in support of the research and development (R&D) of alternative energy sources or technologies at a pre-commercial stage. There is also an

important federal role to be played in basic R&D of new high-risk energy efficiency and waste minimization technologies in energy-intensive industries, particularly where private-sector incentives may be inadequate.

Over the past 15 years, Congress has repeatedly enacted and enhanced programs that provide assistance to manufacturers in modernizing their plants and the products they make in them. These programs, with names like ARPA-E, ATVM, DERA, Energy Star, Better Buildings and Better Plants, are all regularly used by manufacturers and contribute to many of the innovations described above. Scores of manufacturers participate in programs such as the EPA's Climate Leaders Program, the DOE's Better Buildings, Better Plants Challenge and the Clean Energy Manufacturing Initiative, and with the help of these programs, these companies have not only met but exceeded their emissions goals. Continuity challenges for these programs, which often become subjects of Congressional scrutiny, can stand in the way of long-term progress for the manufacturers that rely on them.

Environmental Goods Agreement

The world's most pressing environmental problems do not exist solely within our own borders. There is a trillion-dollar market for environmental goods, and manufacturers in the United States make some of the best pollution control technologies on the planet. Unfortunately, many of our trading partners charge tariffs as high as 50 percent on these goods. The NAM has been a longtime supporter of efforts by the U.S. Trade Representative to negotiate an

Environmental Goods Agreement (EGA). A properly structured EGA would create jobs for U.S. manufacturers, who could then sell their best-in-class pollution control technologies to the rest of the world.

In the EGA talks, the United States, China and 15 other World Trade Organization members are considering a list of more than 350 environmental products that the NAM hopes will form the basis for an ambitious agreement. In particular, NAM members are seeking an EGA that eliminates tariffs on products including air pollution equipment, catalytic incinerators, energy-efficiency materials, environmental monitoring equipment, renewable energy products and equipment, turbines for electrical power generation and water treatment equipment.

The benefits of a robust EGA to manufacturers in the United States are crystal clear: it will boost U.S. manufacturing and our broad environmental goals as a country, supporting jobs and growth throughout the supply chain. It will also be an important catalyst to increased trade and innovation in technologies that will improve the environment, from providing cleaner water to reducing pollution, and support the growth of the manufacturing industries that produce these technologies. In the United States, such technologies are manufactured throughout the country, providing well-paying jobs.

Conclusion

Manufacturers have established a strong record of environmental protection and strive to reduce the environmental footprint of our operations and

to become more sustainable. The results are already impressive, and they get better with each passing year. However, as my testimony shows, barriers still exist. The NAM hopes it can work with this committee to reduce these barriers and help solve the environmental challenges of current and future generations.

Senate Environment and Public Works Committee
Hearing entitled, *"Promoting American Leadership in Reducing Air Emissions Through Innovation"*
November 15, 2017
Questions for the Record for Ross Eisenberg

Chairman Barrasso:

1. Mr. Eisenberg, at the hearing, you said that it is time to modernize the Clean Air Act. How do we build trust in Congress that changes to the Clean Air Act could actually result in net environmental gains and emissions reductions? In addition to the provisions governing New Source Review, are there other parts of the Clean Air Act that need to be significantly amended due to implementation challenges or that are simply outdated?

Answer:

As my testimony demonstrated, our environmental indicators are steadily improving. However, they are coming at an ever-increasing cost. Federal environmental regulations—many based on statutes that are decades old—are increasingly rigid, costly and harm our global competitiveness. Several recent regulations threaten to set new records for compliance costs, collectively strapping manufacturers with hundreds of billions of dollars in new regulatory burdens per year. We have lost the critical balance in our federal environmental policies between furthering progress and limiting unnecessary economic impacts. The state of our national economy, the manufacturing sector and the environment are considerably different than they were 20, 30 or 40 years ago. However, we are still operating with policies designed to address the environmental challenges of a previous era. Manufacturers believe it is time to modernize our environmental policies to better reflect and address current issues, technologies and opportunities to ensure a more sustainable future.

The NAM recommends that Congress modernize outdated environmental laws written in the 1960s and 1970s and make them perform better, or require federal agencies to regulate environmental challenges better— or both. As you and Ranking Member Carper both recognized at the hearing, there is a significant amount of trust that needs to be rebuilt in order to accomplish this goal.

I believe the answer to this problem lies, at least in part, in data and transparency. One of the main reasons I used the first ten pages of my testimony to reconstruct the emissions data for manufacturing on a pollutant-by-pollutant basis is to provide an unbiased view of the data for the Committee. I had to construct each of these charts myself because they were not otherwise available on a public forum. I encourage the Committee and the EPA to commit to providing a steady stream of data, both on emissions trends and compliance, to help determine which programs are working and which programs need improvement. You cannot build a case for change unless you have the best available facts to support your position.

Congress should work with the Environmental Protection Agency to audit key programs under the Clean Air Act like NSR, NAAQS, Title V and NESHAPs. The goal should be to mine

the data and determine if the issues that have been raised are in fact borne out by the data. Congress should also empower the EPA to identify areas the Agency and/or states may not have the best data. For instance, some air permitting programs are done by hand and are not available online.

In addition to NSR, I believe the Committee should examine the NAAQS, NSPS and HAP programs. Not all situations will merit action. However, I do believe there are improvements available to programs like the NAAQS, which have been so successful that many pollutants are approaching background levels and the bulk of the compliance technologies have already been invented. The past two ozone NAAQS revisions have encountered the bizarre situation where even EPA admits that a large portion of the technologies needed for compliance do not exist.

The NAM specifically recommends the following:

- Modify the National Ambient Air Quality Standards (NAAQS) review cycle to more closely align with the pace of implementation of existing standards and consider cost and technological feasibility when conducting NAAQS policy assessments and during implementation.
- Require the Clean Air Scientific Advisory Committee (CASAC) to comply with Section 109(d) of the Clean Air Act and "advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance" of NAAQS.
- Amend Clean Air Act Section 179B to more clearly provide relief for states that cannot meet federal air quality standards due to contributions from emissions from outside the United States.
- Provide flexibility to NAAQS nonattainment areas so that offset requirements are tied to reasonable and available reduction opportunities, with consideration to reasonable cost thresholds.
- Simplify the New Source Performance Standards (NSPS) process to provide certainty for manufacturers that they are in compliance with the law. NSPS should be set using criteria that ensure optimal cost effectiveness and do not hinder economic growth. EPA should also allow adequate timing to demonstrate compliance once an NSPS is triggered.
- Base any Hazardous Air Pollutant (HAP) regulations on sound scientific data that clearly demonstrate a need to protect public health and consideration of welfare, energy and economic impacts. The EPA's inability to meet arbitrary deadlines should not trigger automatic regulation.

2. In your written testimony, you mention the "once-in-always-in" policy under the Section 112 program of the Clean Air Act. Can you explain how the current "once-in-always-in" policy works in more detail, and why it discourages emissions reductions at facilities? How would you recommend fixing the problem?

Answer:

"Once-in-Always-In" refers to a policy established by EPA that once a source emits enough above the threshold to become a "major source" subject to a MACT standard, it is *always* subject to the regulatory obligations that accompany a major source, even if it reduces its emissions below the threshold that triggered MACT major source applicability. This is a policy interpretation by EPA and is not mandated by the statute. EPA issued a proposal to eliminate the policy in the mid-2000s, but the policy was never finalized.

MACT requirements are often the most stringent in the Clean Air Act. If a major source is always a major source simply because it was once a major source, then manufacturers face the same regulatory burden regardless of whether they reduce emissions to the major source threshold or to a level substantially below the threshold. Manufacturers will continue to reduce their emissions because it is the right thing to do. That said, NAM believes if EPA were to abandon the once-in-always-in policy and instead allow facilities the benefit of being considered a minor source if they reduce emissions below the major source threshold, we could see even greater reductions of hazardous air pollutants.

December 6, 2017

The Honorable John Barrasso, Chair
Committee on Environment and Public Works
U.S. Senate
Washington, DC 20510

The Honorable Thomas Carper, Ranking Member
Committee on Environment and Public Works
U.S. Senate
Washington, DC 20510

RE: Promoting American Leadership in Reducing Air Emissions Through Innovation Hearing, November 15, 2017; Statement of Support on behalf of the American Coatings Association, Inc.

Dear Chairman Barrasso and Ranking Member Carper:

The American Coatings Association (ACA) is pleased to submit this statement of support for the Committee on Environment and Public Works hearing on "Promoting American Leadership in Reducing Air Emissions Through Innovation," and to showcase the efforts of the coatings industry in reducing air emissions.

ACA is a voluntary, non-profit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory and judicial issues, and provides a forum for the advancement and promotion of the industry through educational and professional development services. ACA's membership represents over 90% of the total domestic production of paints and coatings in the country.

ACA is eager to highlight the coatings industry's successes in reducing air emissions from our products and our facilities due to aggressive and robust research and development activities. Innovation has driven market demand for environmentally friendly products, which has resulted in significant reductions in both hazardous air pollutants (HAPS) and volatile organic compound (VOC) emissions from production in recent years. At our recent Coatings Industry Policy Summit, ACA sponsored a luncheon for congressional staff to specifically discuss these and other innovations by coatings manufacturers.

The Coatings Industry's Addresses Environmental Issues Proactively

The paint and coatings industry has taken steps for maximum environmental improvements by managing and minimizing toxins and wastes, reducing air emissions, and promoting product and environmental stewardship. Here is a short list of our environmental successes:

- More than 90% of architectural coatings sales in the United States are now for environmentally preferable water-based paint.
- VOC emissions from architectural coatings have drastically decreased over the last few decades, even while the use of architectural coatings has increased over the same period nationwide. California's South Coast Air Quality Management District estimates that VOCs from architectural coatings in the Los Angeles area — the air basin with the most severe air quality issues in the country — decreased by over 50% between 2008 and 2014.
- The U.S. Environmental Protection Agency's (EPA) Toxic Release Inventory (TRI) indicates releases by the paint and coatings sector decreased by 81% between 1990 and 2014. Toxicity-weighted results for air releases present an even more significant decline, decreasing 94% from 1990. Air toxics — also known as HAPs — decreased by 82% between 1990 and 2014, and toxicity-weighted air toxics releases declined by 94%.
- The paint and coatings industry reduced its total production waste by 48%, from 1995 to 2013, while increasing the percentage of the total waste it recycles by over 81% during that period.
- The paint, coatings, and adhesives manufacturing industry reduced its generation of Resource Conservation and Recovery Act (RCRA) hazardous waste in the United States by over one-third (34.8%) since 2001.
- 97% of all waste solvents from paint and coatings manufacturing facilities are reclaimed for future use.
- The total quantity of electricity purchased and used for heat and power — and as a result, greenhouse gas emissions — from the paint and coatings sector decreased by 17.8 % between 2007 and 2012.

Here are some real examples of how the coatings industry's research and development efforts have resulted in environmental gains, including reductions in air emissions in a variety of market sectors, as well as strides in sustainability.

Architectural Paints

- Many architectural paints — both interior and exterior — are now paint and primer in one product, which allows for a paint-job with fewer coats, translating to greater efficiency and environmental advantages. These combinations are designed to provide a high-quality application that is more durable and lasts longer, thereby reducing the frequency for repainting or multiple applications.

- Emulsion technology used in architectural paints allows for low-VOC, near odorless paints with high-scrub resistance, and come in a variety of finishes, from flat to semi-gloss sheens.

- Certain architectural paints use renewable, bio-based or recycled ingredients, such as recycled plastic and soybean oil, shifting away from organic solvents. Bio-based products are composed of agricultural, forestry, or marine materials. Such innovation has been recognized with the Presidential Green Chemistry Challenge Award.

- Specially formulated low-emitting interior coatings protect the health and comfort of sensitive populations, including children in schools and patients in hospitals.

Committee on Environment and Public Works
Hearing on "Promoting American Leadership in Reducing Air Emissions Through Innovation
November 15, 2017

Cool Roofs

- Cool roof coatings not only lower buildings' energy consumption and costs, but also overall temperature and stress on the power grid. This effort could help reduce New York City's greenhouse gas emissions 30% by 2030.

- According to the National Resources Defense Council, 'smart roofs' employing cool coatings technology substantially reduce energy costs and curb carbon pollution.

- The U.S. Department of Energy (DOE) estimates that replacing or resurfacing conventional roofing materials with improved reflective elastomeric roof coatings can reduce a commercial building's annual air conditioning energy use by up to 25%.

Aerospace Coatings

New technology in aerospace coatings can minimize drag in the air and eliminate debris build-up, both of which reduce airplane fuel consumption, and thereby, carbon footprint. Such savings have both an economic and environmental impact that cannot be understated: a 1% improvement in fuel efficiency in the aviation industry can lower fuel costs by $700 million a year, according to the International Air Transport Association (IATA). On average, airlines incur about $100 a minute per flight in total operating costs, IATA says. Therefore, even saving just one minute of flight time could reduce total industry operating costs by more than $1 billion a year and significantly reduce environmental emissions.

Automotive and Industrial Coatings

Many additives are made from bio-based molecules, especially those in automotive and industrial paints, and give those waterborne paints a better carbon footprint: they enable faster drying times and provide a smoother finish. When automakers paint cars, they typically pass them through an oven twice to speed the drying process. Such additives make it possible to eliminate one of the baking steps, thus reducing the overall energy consumed. Another benefit: the faster drying time can also increase the number of cars that can be painted during a work shift.

Marine

Special marine coatings called antifouling coatings help reduce the growth of marine organisms on immersed areas of ships, which reduces the ship's energy and fuel consumption. Antifouling coatings carry tremendous eco-efficiency benefits: when applied to tankers, bulk cargo and other vessel types, they can reduce greenhouse gas and other emissions by an average of 9% — no small feat, since shipping counts for an estimated 2-4% of global greenhouse gas emissions.

Communications

Optical fiber coatings make telephone and internet technology possible by protecting the glass fibers that transmit telecommunications signals. Such technology allows an estimated 3.9 million people to telecommute, reducing gasoline consumption by 840 million gallons and CO_2 emissions by almost 14 million tons.

Committee on Environment and Public Works
Hearing on "Promoting American Leadership in Reducing Air Emissions Through Innovation
November 15, 2017

Obstacle and Barriers to Manufacturing

These stories of innovation and environmental successes are amazing and there are many more examples in the coatings industry. Research and development, and quite frankly, innovation cannot occur without the appropriate regulatory schemes to facilitate these activities. As such, I would like to highlight several legislative and regulatory barriers that make such progress less likely.

Ozone standard
Implementation of the 2015 ozone standard required states to identify whether they are in attainment or in non-attainment by February 2017. Reviewing the ozone standard is a recurring mandate under the Clean Air Act.

EPA's 2015 final rule on the ozone standard is forcing many states that are currently "in attainment" to "non-attainment" status, triggering a requirement to revise their State Implementation Plans and adopt even stricter VOC emission regulations for coatings. This triggering event is being realized as ozone monitors across the country are demonstrating a marked improvement in air quality under the 2008 standard of 0.75 ppm. Indeed, the previous standard of 0.75 ppm was not yet fully implemented.

Cost to the Coatings Industry: EPA's final stringent ozone standards will limit business expansion in nearly every populated region of the United States and impair the ability of U.S. companies to create new jobs. EPA's lowered range adds unnecessary red tape for companies seeking to expand even in areas that can attain those standards. Increased costs associated with restrictive and expensive permit requirements will likely deter companies from siting new facilities in a nonattainment area. ACA shares the practical concerns of manufacturers regarding potential exorbitant costs that this regulation would create for the paint and coatings industry without commensurate benefits to public health or the environment. *A study conducted by the National Association of Manufacturers (NAM) and NERA Economic Consulting, estimated this final rule could cost the economy $140 billion per year, result in 1.4 million fewer jobs, and cost the average household $830 per year in the form of lost consumption — making this the "costliest regulation in history" and threatening manufacturing.*

Recommended Solution: ACA urges a two-step solution to this problem: 1) EPA should revert to the 2008 standard of 0.75 ppm and fully implement this standard so that the forward progress already achieved can be extended without unnecessarily burdening the paint and coatings industry with increased standards and costs for many years to come; and 2) the Clean Air Act should be amended to extend the time for review of the ozone standard to every 10 years. Currently, the law requires a review every five (5) years. Extending the review of the ozone standard to every 10 years will allow for more stability in the marketplace for formulators while still protecting human health and the environment.

Once in, Always in Policy
This "regulation" is a May 16, 1995 EPA memorandum titled, "Potential to Emit (PTE) for MACT Standards – Guidance on Timing Issues," from John Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), to Regional Air Division Directors — commonly known as the "Once in, Always in" memo — and may be found here: https://www.epa.gov/sites/production/files/2015-08/documents/pteguid.pdf.

Committee on Environment and Public Works
Hearing on "Promoting American Leadership in Reducing Air Emissions Through Innovation
November 15, 2017

A "major source" is defined as a source that has the potential to emit (PTE) hazardous air pollutants (HAP) up to 10 tons per year (tpy) of any single HAP or 25 tpy of any combination of HAPs. Sources below this threshold are considered "area sources."

Under the "once in, always in" policy, a major source may become an area source (i.e., minor source) by limiting its PTE HAP below the major source thresholds by no later than the first compliance deadline listed under the applicable Maximum Achievable Control Technology (MACT) standard (also referred to as National Emission Standards for Hazardous Air Pollutants or NESHAP). However, a source that fails to achieve "area source status" by the first MACT compliance deadline must remain subject to the MACT *even if it subsequently reduces HAP emissions below major source levels at a later date*. In other words, sources will always be subject to the MACT rules, regardless of whether the source is no longer a major source of HAP.

Note that that EPA published a proposed rule on January 3, 2007 to replace the "once-in always in" policy rule - (docket number EPA-HQ-OAR-2004-0094. https://www.epa.gov/ttn/atw/gp/fr03ja07.pdf). However, this rulemaking was never finalized.

The coatings manufacturing industry has substantially reduced the use of HAPs since the 1990s. In fact, many facilities subject to the Miscellaneous Coatings Manufacturing (MCM) and Miscellaneous Organic Chemical Manufacturing MACT (MON) MACTs are now "area source" facilities, but still must comply with the MCM requirements even though they are not major source facilities. While many coatings and resin manufacturing operations could reduce emissions prior to the first compliance date of the MCM and MON, other facilities could not. Facilities that could not reduce their emissions have since installed expensive thermal oxidation units.

This "policy" or "guidance" has been applied by EPA as a "rule," with binding effects on the regulated community, including very burdensome compliance costs. This guidance is outdated and unnecessary and imposes a substantial burden on industry that well exceeds any benefits. Industry resources spent on compliance could be used instead for R&D, or modernization activities. This policy also acts as a disincentive for industry, since facilities have no incentive to voluntarily reduce HAP emissions below major source thresholds.

Cost to the Coatings Industry: Thermal oxidation units require a significant capital investment (millions of dollars per facility) and annual operation and maintenance costs (several hundred thousand dollars per facility per year in fuel cost alone). These units consume large amounts of electricity and natural gas, which results in additional emissions of carbon dioxide, nitrogen oxides and carbon monoxide. *EPA has estimated that installation and operating of air pollution controls for the MCM and MON rules would require an overall energy demand increase of 5.83 trillion BTUs; a total capital expenditure of $184 million; yearly operating costs of nearly $91 million; and an increase in NOx, CO, SOx emissions of 987 tons per year.*

ACA and other organizations have flagged this policy and requested that EPA withdraw or rescind it.

Committee on Environment and Public Works
Hearing on "Promoting American Leadership in Reducing Air Emissions Through Innovation
November 15, 2017

Thank you for the opportunity to share some of the exciting innovations of coatings manufacturers as well as some of our challenges. Please do not hesitate to have your staff contact me should you have any questions or require additional information and these important topics.

Best regards,

Heidi K. McAuliffe, Esq.
Vice President, Government Affairs

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

February 1, 2018

OFFICE OF
AIR AND RADIATION

The Honorable John Barrasso, M.D.
Chairman
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Chairman Barrasso:

I am writing in response to your January 19, 2018, letter requesting attention to various National Ambient Air Quality Standards (NAAQS) implementation issues, including exceptional events determinations and interstate transport of ozone.

The U.S. Environmental Protection Agency's October 2017 *Final Report on Review of Agency Actions that Potentially Burden the Safe, Efficient Development of Domestic Energy Resources Under Executive Order 13783* outlined a variety of concerns identified by commenters regarding NAAQS implementation issues.[1] In order to address issues related to the ozone NAAQS, I formed the Ozone Cooperative Compliance Task Force. The Task Force is reviewing administrative options to enable states to enter into cooperative agreements with the EPA to provide regulatory relief and meaningfully improve ozone air quality. The Task Force is focused on: fully understanding the role of background ozone levels; appropriately accounting for international transport; and timely consideration of exceptional events demonstrations. Moreover, the EPA plans to work to streamline state implementation plan (SIP) approvals through a nationally consistent process. On January 8, the EPA provided a status report to the U.S. Court of Appeals for the D.C. Circuit indicating that the agency is continuing to review the 2015 ozone NAAQS to determine whether the standards should be maintained, modified, or otherwise reconsidered.

The EPA is committed to working with states like Wyoming to address challenges with exceptional event demonstrations under section 319(b) of the Clean Air Act (CAA). In September 2016, the EPA finalized revisions to the Exceptional Events Rule in an attempt to improve administrative efficiency and reduce burdens for the demonstration process. Under the new rule, the EPA has concurred on several ozone-related demonstrations in 2017 and looks forward to working closely with the Committee and the state of Wyoming to facilitate implementation in a manner consistent with cooperative federalism. The updated rule includes an initial notification process to enable early engagement as well as intended response timelines for an initial review of submitted demonstrations within 120 days and a complete review of final demonstrations within 12 months. The EPA has recently posted submitted materials and EPA reviews for successful

[1] *https://www.epa.gov/sites/production/files/2017-10/documents/eo-13783-final-report-10-25-2017.pdf.*

demonstrations under the revised rule,[2] as well as several tools which should improve the process (including a June 2017 Mitigation Plan checklist and an April 2017 *Best Practices for Preparation of Multi-Agency Exceptional Events Demonstrations*).[3] The EPA also intends to transition to a national electronic tracking system for exceptional events as well as develop additional implementation materials related to alternate paths for data exclusion (including for air quality data that may influence regulatory determinations or actions typically outside the scope of the exceptional events rule), stratospheric ozone intrusions, high wind events, and prescribed fires.

We look forward to working with the Committee and the state of Wyoming to ensure that the "Good Neighbor" provisions of the CAA's section 110 reflect regional differences. I intend to engage in a transparent process that will allow states to have a meaningful opportunity to understand their obligations with regard to reducing emissions that cause or contribute to nonattainment or interference with maintenance in other states through the SIP process. In October 2017, a memorandum from EPA's Office of Air Quality Planning and Standards provided supplemental information to states for development of Good Neighbor SIPs under the 2008 ozone NAAQS.[4] This updated modeling "indicates that there are no monitoring sites, outside of California, that are projected to have nonattainment or maintenance problems with respect to the 2008 ozone NAAQS of 75 ppb in 2023." The EPA also intends to work closely with states early this year to provide more information and flexibility as they look to address interstate transport issues under the 2015 ozone NAAQS.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Matthew Davis in the EPA's Office of Congressional and Intergovernmental Relations at davis.matthew@epa.gov or at (202) 564-1267.

Sincerely,

William L. Wehrum
Assistant Administrator

---

[2] *https://www.epa.gov/air-quality-analysis/exceptional-events-submissions-table-2016-rule.*
[3] *https://www.epa.gov/air-quality-analysis/exceptional-events-implementation-tools-templates-and-links.*
[4] *https://www.epa.gov/sites/production/files/2017-10/documents/final_2008_o3_naaqs_transport_memo_10-27-17b.pdf.*

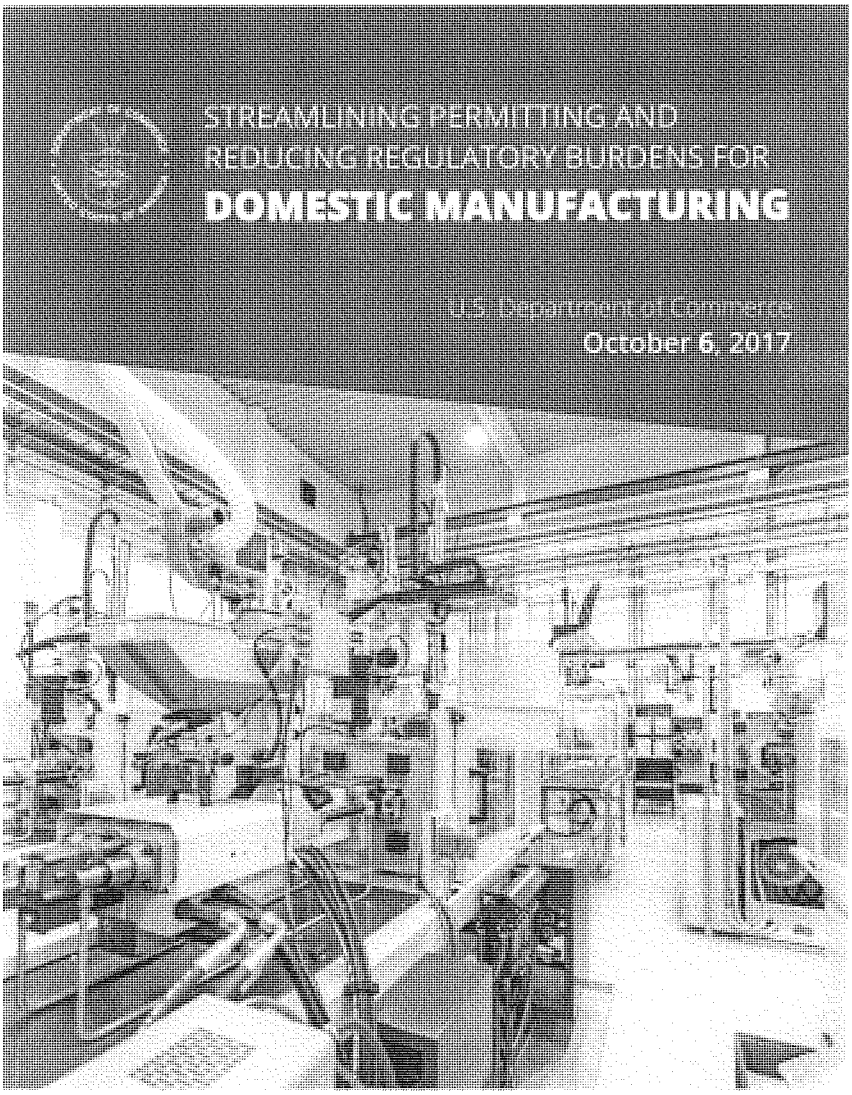

STREAMLINING PERMITTING AND
REDUCING REGULATORY BURDENS FOR
DOMESTIC MANUFACTURING
U.S. Department of Commerce
October 6, 2017

Table of Contents

Introduction 1
Summary of Recommendations 2
Issues Raised in Response to the RFI 4
Regulatory and Permitting Problems — Key Themes 4
Selection of Priority Specific Regulatory and Permitting Issues 6
Priority Regulatory and Permitting Issues 8
Overview of Regulatory Reform 29
Past Attempts at Regulatory and Permitting Reform 29
The Need for Collaboration between Regulators and Manufacturers 30
Review of Existing Regulations 34
Reforming the Permitting Process 35
New Rules: Improving the Rulemaking Process 41
Recommendations and Priority Areas for Reform 42
Priority Areas for Reform 43
Recommendations 48
Conclusion 49
Appendix 51

Introduction

Federal regulations impose enormous costs on America's businesses and working families. These costs burden virtually every sector of our economy, although the manufacturing sector is disproportionately hard hit. The direct costs on manufacturing companies were estimated by the National Association of Manufacturers (NAM) to be $138.6 billion as of 2014,[1] though this estimate does not include indirect negative effects on the U.S. economy such as reduced innovation and global competitiveness, lost investment, and significant job losses. Small businesses are also disproportionately burdened by excessive federal regulation.

As a nation, we can and must do better. That is why, on January 24, 2017, President Trump signed a Presidential Memorandum on *Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing*.[2] The Memorandum, which is one part of an Administration-wide regulatory reform agenda,[3] required the Secretary of Commerce, in coordination with other executive departments and agencies, to conduct outreach to stakeholders on the impact of federal regulations and permitting requirements on domestic manufacturing and to submit a report to the President setting forth a plan to streamline federal permitting processes and to reduce the regulatory burdens affecting domestic manufacturing.

For this report, the Department of Commerce sought input from stakeholders through a Request for Information (RFI) published in the Federal Register.[4] The RFI asked industry stakeholders to identify the most burdensome regulations and permitting requirements they face and requested feedback on how regulatory compliance and permitting could be simplified. This report reflects extensive, thoughtful comments received from U.S. manufacturers as well as upstream and downstream industries closely linked to the manufacturing sector.[5] It aggregates and summarizes many of the most important recommendations raised by industry and presents the Department's recommendations for streamlining the federal permitting processes and reducing the regulatory burdens that affect domestic manufacturing.

In response to the RFI, industry expressed clear support for the need to protect the environment, human health, and worker safety, but shared concrete, detailed concerns about how the federal government tries to achieve those objectives. Respondents identified numerous regulatory and permitting problems,

---

[1] W. Mark Crain and Nicole V. Crain, "The Cost of Federal Regulation to the U.S. Economy, Manufacturing, and Small Business," A Report for the National Association of Manufacturers, September 2014.
[2] 82 FR 8667 (January 24, 2017).

[3] President Trump has issued several executive orders that provide impetus and direction for regulatory reform efforts. These include EO 13771 on Reducing Regulation and Controlling Regulatory Costs, which directs departments and agencies to identify for elimination at least two regulations for every one new regulation issued; EO 13777, on Enforcing the Regulatory Reform Agenda, which requires agencies to designate a Regulatory Reform Officer (RRO) who is responsible for overseeing regulatory reform initiatives, and to establish a Regulatory Reform Task Force (RRTF); and EO 13683 which directs agencies to review regulations affecting the domestic energy industry and to appropriately reduce undue burdens to the development of domestic energy resources.
[4] 82 FR 12786 (March 7, 2017).

[5] This report focused on regulatory and permitting issues that directly impact the construction, operation or expansion of manufacturing plants. While focused on the manufacturing sector, upstream and downstream industries also submitted comments echoing the concerns of U.S. manufacturers and highlighting unique issues that they face. This report includes that input because regulatory barriers that adjoining industries experience can weaken production and investment in the domestic manufacturing sector.

including: onerous and lengthy permitting processes that increase cost, add uncertainty, and inhibit investment in new and existing manufacturing facilities; inadequately designed rules that are impractical, unrealistic, inflexible, ambiguous, or that show a lack of understanding of how industry operates; unnecessary aspects of rules, or unnecessary stringency, that are not required to achieve environmental or other regulatory objectives; overlap and duplication between permitting processes and agencies; and overly strict or punitive interpretations of guidance, policies or regulations that are often counter to a pro-growth interpretation. The Department identified 20 sets of regulations and permitting reform issues from the respondents as being a top priority for immediate consideration. See the section titled, "Recommendations and Priority Areas for Reform."

Despite numerous regulatory reform initiatives over the years, businesses continue to express concerns about increasing regulatory burdens. The fact that manufacturers continue to raise the same concerns, even after decades of regulatory reform efforts by the federal government, indicates a failure on the federal government's part to fully engage with regulated industries and fully understand the real-world impact of its regulations. There is a vital need for better dialogue and understanding between regulators and industry. In the meantime, the urgency for reform continues to grow. A 2017 NAM study states that most manufacturers perceive their regulatory burden to have increased significantly, such that reducing their current burden is at least as important as reducing the cost of new regulations.[6] We must do both.

Summary of Recommendations

The Department makes three major recommendations based on a thorough review of responses to the RFI.

Agency "Action Plans". Each agency's Regulatory Reform Taskforce (RRTF) should deliver to the President an "Action Plan" in response to all permitting and regulatory issues highlighted in the responses to the RFI, with particular attention to the "Priority Areas for Reform" section located at the end of the report.

Annual Regulatory Reduction Forum. There is no regular process for consultations with industry to identify specific actions the federal government can take to eliminate unduly burdensome regulations and accelerate permitting decisions. Thus, the Department recommends creating an annual, open forum for regulators and industry stakeholders to evaluate progress in reducing regulatory burdens.

Expanding the Model Process in FAST-41. The FAST Act[7] contains various provisions aimed at streamlining the environmental review process, with improved agency coordination through the creation of

[6] National Association of Manufacturers, "Holding US Back: Regulation of the U.S. Manufacturing Sector," prepared by Pareto Policy Solutions, LLC.

[7] Title 41 of the Fixing America's Surface Transportation Act of 2015 ("Fast-41", codified at 42 U.S.C. § 4370m) streamlines the Federal environmental review and permitting for certain infrastructure projects. FAST-41 created an interagency Federal Permitting Improvement Council (FPISC); established new procedures for interagency consultation and coordination practices; authorized agencies to collect fees to help speed the review and permitting process; and uses the Department of Transportation's "Permitting Dashboard" to track all covered projects.

a Coordinated Project Plan and a Permitting Dashboard. Covered projects will typically enjoy better coordination, transparency of approvals, and expedited permitting. The Department recommends that the Administration use existing authority to extend the use of streamlined permitting procedures in the FAST Act to any project that will result in a significant, immediate economic benefit to the United States. For example, consideration could be extended to funded, qualifying projects in a new "economically significant" category. Consideration should be extended to complex, funded manufacturing projects that are in late stages of development and that can demonstrate significant net direct and indirect benefits to the domestic economy. To be eligible for the current streamlining process, projects in this sector or category would still need to meet the definition of a "covered project" under FAST-41.

FAST-41 provides a model process that could be incorporated into other Federal legislation that governs Federal programs and requirements that apply to manufacturing facilities. To expand further the universe of manufacturing projects that benefit from streamlined regulatory approval processes, the Administration could work with members of Congress to both expand the definition of "covered project" under FAST-41 and to incorporate procedures similar to those found in FAST-41 in other legislation applicable to manufacturing projects.

The Department believes that these three recommendations, if executed promptly and with constant, aggressive leadership, will yield significant results. Set forth below is (i) a summary of issues raised in response to the RFI; (ii) an analysis relating to potential reforms; and (iii) specific recommendations and priority areas for reform.

Issues Raised in Response to the RFI

Regulatory and Permitting Problems — Key Themes

This section discusses priority regulatory and permitting issues that were identified from the RFI responses and related outreach.[8] Respondents did not question the need to protect the environment, human health, or worker safety but they expressed concern about how regulations are employed to achieve those objectives, including:

- Onerous and lengthy permitting processes that increase cost, add uncertainty, and inhibit investment in new and existing manufacturing facilities;
- Inadequately designed rules that are impractical, unrealistic, inflexible, ambiguous or lack understanding of how industry operates;
- Unnecessary aspects of rules, or unnecessary stringency, not required to achieve environmental or other regulatory objectives;
- Overlap and duplication between permitting processes and agencies; and
- Overly strict or punitive interpretations of guidance, policies or regulations that are often counter to a pro-growth interpretation.

Table 1 provides some examples of these issues:

[8] Responses to the RFI are collected under Docket ID DOC-2017-0001, at www.regulations.gov. Department of Commerce officials also attended a listening session organized by the National Association of Manufacturers (NAM) during which trade association representatives highlighted multiple regulatory and permitting issues. NAM, individual companies and trade associations later submitted comments detailing these issues to the public docket. Upon request, Department of Commerce officials also agreed to meet with company or trade association representatives that had submitted comments to the docket.

Table 1. Examples of Key Issues that Were Identified by Respondents		
Category	Problem	Examples from RFI Responses
Inadequate Rule Design	A regulation is written or implemented with a lack of "on the ground" knowledge about how the regulated industry operates,[9] is economically or technologically infeasible, or is based on unrealistic data or assumptions	National Ambient Air Quality Standards (NAAQS) — unrealistic assumptions on background levels; Crystalline Silica Exposure Standard
	There is a lack of clarity around the requirements needed to comply with the regulation	Clean Water Act (CWA) — Definition of Waters of the United States
	The regulation is inflexible or too prescriptive; overly strict interpretations of policy and guidance	New Source Review (NSR) Permitting Process — inflexibility in allowing for aggregation of emissions within a plant
	Overlap or duplication of rules	New Source Performance Standards (NSPS) and National Emissions Standards for Hazardous Air Pollutants (NESHAP) — overlap
	A better regulatory approach exists to achieve the objectives or the approach actually undermines key regulatory objectives	Resource Conservation and Recovery Act (RCRA) — inappropriate classification of certain waste streams as hazardous, which has perverse effect of discouraging recycling of this waste
	The regulation is outdated	Leak Detection and Repair Rules — outdated monitoring technology options
	Regulatory over-reach — goes beyond statute or rulemaking	New Source Performance Standards (NSPS) — enforcement beyond rules
	Complex, onerous, inefficient and lengthy processes, particularly permitting processes	New Source Review (NSR) Permitting Process
	Uncertainty, particularly permitting processes	Section 404 Wetlands Permitting Process (wide variation in duration)

Cumbersome Processes — Particularly Onerous Permitting Processes	Overlap, duplication or poor coordination between agencies, rules or permits	Title V permitting decisions can be a basis for "re-litigating" decisions already made under NSR pre-construction permitting processes
	Inconsistency, among agencies or between federal and state regulatory authorities, in application or enforcement of rules	CAA permits — EPA often intervenes in state decisions

Selection of Priority Specific Regulatory and Permitting Issues

The selection of priority regulatory and permitting issues in this section was based on the following criteria:

- The volume of responses citing a particular issue (see Table 2 below).
- The number of in-depth or broad scope responses that discussed the issue.
- Comments in the responses that highlighted an issue as of particular importance in terms of regulatory burden or estimated costs; for example, NSR/PSD under the Clean Air Act was often singled out as the most significant regulatory and permitting burden, and the ozone NAAQS standard and crystalline silica exposure standard were both highlighted as resulting in very high costs.
- Issues that were discussed in sufficient detail to identify the nature of the burden and point toward potential solutions and actionable recommendations.[10]
- Some issues were included (or considered) because they have been longstanding challenges.

[9] In response* to the following question: "The most challenging regulations to comply with are due to ____, the statement that most commonly represented the experience of manufacturers surveyed by NAM (41.7% of responses) was "regulatory agencies writing a final rule absent an adequate understanding of my business and my compliance challenges." (National Association of Manufacturers, "Holding US Back: Regulation of the U.S. Manufacturing Sector.").

[10] As an example, though there were numerous concerns expressed about recent changes to the Toxic Substances Control Act (TSCA), resulting from the Lautenberg Chemical Safety Act, the responses did not coalesce around a specific set of issues or recommendations.

Table 2. Most Frequently Cited Regulatory & Permitting Issues that Impact Manufacturing			
	Federal agency	Issue area	# Commenters
1	EPA	Clean Water Act (CWA): Wetlands Permits and Waters of The United States (WOTUS)	42
2	EPA	Clean Air Act (CAA): National Emissions Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS)	41
3	EPA	CAA: New Source Review and Prevention of Significant Deterioration Permits (NSR/PSD)	40
4	EPA	CWA: National Pollutant Discharge Elimination System (NPDES) Permits	31
5	EPA	CAA: Greenhouse Gas Requirements	29
6	EPA	CAA: National Ambient Air Quality Standards (NAAQS) (general)	28
7	EPA	Resource Conservation and Recovery Act (RCRA)	18
8	EPA	Risk Management Programs and Reduced Risk and Tech Review	19
9	EPA	Toxic Substances Control Act (TSCA)	18
10	Department of Labor (DOL)	Improve Tracking of Workforce Injuries and Illnesses	14
11	Departments of Interior and Commerce (DOI and DOC)	Endangered Species Act (ESA)	13
12	Securities and Exchange Commission (SEC)	Conflict Minerals Rule (Dodd-Frank)	12
13	EPA and others	National Environmental Policy Act (NEPA)	11

14	EPA	Regional Haze Requirements	10
15	DOL	Crystalline Silica Exposure	10
16	DOL	Overtime Rule	9
17	EPA	Comprehensive Environmental Response, Compensation & Liability Act (CERCLA)	9
18	EPA	Spill Prevention, Controls, and Countermeasures	9
19	Equal Employment Opportunity Commission (EEOC)	EEO-1 Form	7
20	Department of Health and Human Services (HHS)	Food Safety Modernization Act (FSMA)	5

Priority Regulatory and Permitting Issues

This report focuses on regulatory and permitting issues that directly affect the construction, operation or expansion of manufacturing plants. While some of these regulatory issues primarily affect the manufacturing sector, others affect businesses across multiple sectors. Several issues are highlighted due to their indirect impacts on manufacturing, a perceived high level of adverse impact on economic growth, and other factors. The following are priority regulatory and permitting issues identified by respondents to the RFI. Refer to the appendix for a list of respondents that are referenced in this report.

Clean Water Act: Wetland Permits and Waters of the United States (WOTUS) Rule

As part of the Clean Water Act (CWA), the Environmental Protection Agency (EPA) regulates discharges of pollutants into "waters of the United States." In 2015, EPA promulgated the Clean Water Rule[11], which was perceived by many respondents to have expanded the definition of waters of the United States — or at least added ambiguity to its definition — in ways that extend federal authority beyond the traditional limits. Different sources describe the expanded scope in different ways. For example, NAM states that it "extend(s) federal jurisdiction of CWA programs well beyond traditional navigable waters to ephemeral tributaries, flood plains, adjacent features and vaguely defined 'other waters'... For manufacturers, the

[11] 80 Fed. Reg. 37054 (June 29, 2015).

uncertainty of whether a pond, ditch or other low-lying or wet area near their property is now subject to federal CWA permitting requirements, can introduce new upfront costs, project delays and threats of litigation." (146-NAM) The U.S. Chamber of Commerce (CoC) states that it includes "ditches, canals, and even land that is dry most of the year, as long as water runs over that land sometime on its way to interstate waters." Many respondents expressed the view that the definition of "waters of the United States" set in the rule is too broad and that a narrower definition would be appropriate. (6-NFIB, 146-NAM)

The rule was stayed by the 6th Circuit Court of Appeals on October 9, 2015.[12] On February 28, 2017, the President issued Executive Order 13778 directing the EPA and the Army Corps of Engineers (Corps or USACE) to review the WOTUS rule. On March 6, 2017, the Corps and EPA published a notice announcing their intent to review the rule and seek to provide greater clarity concerning the definition of "waters of the United States."[13] On July 27, 2017, the EPA and the USACE published a proposed rulemaking to repeal the 2015 Clean Water Rule and reinstate the regulations in place prior to its issuance.[14] As indicated in the proposed withdrawal, the agencies are implementing EO 13778 in two steps to provide as much certainty as possible as quickly as possible to the regulated community and the public during the development of the ultimate replacement rule. In Step 1, the agencies are taking action to maintain the legal status quo of the rule in the Code of Federal Regulations, by recodifying the regulation that was in place prior to issuance of the 2015 Clean Water Rule. Currently, Step 1 is being implemented under the U.S. Court of Appeals for the Sixth Circuit's stay of the rule. In Step 2, the agencies plan to propose a new definition that would replace the approach in the 2015 Clean Water Rule with one that reflects the principles in EO 13778.

Clean Air Act: National Emissions Standards for Hazardous Air Pollutants and New Source Performance Standards

The National Emissions Standards for Hazardous Air Pollutants (NESHAP) of the Clean Air Act (CAA) limits emissions levels for specific pollutants from a variety of specific sources and manufacturing processes. The Air Permitting Forum (APF) provides a summary of how NESHAPs work:

> The CAA Section 112 program covers the regulation of hazardous air pollutants (a defined list) for various source categories. Initially, these NESHAPs were established based on a review of currently employed air pollution control technology applied to existing and new sources (referred to as Maximum Achievable Control Technology, or MACT). Then, after eight years, the statute requires EPA to conduct residual risk and technology reviews. EPA assesses the risk remaining after application of MACT controls and determines if it is acceptable. If not acceptable, further controls must be applied. EPA is also required [every eight years] to evaluate if advances in control

[12] Ohio v. United States Army Corps of Engineers (In re EPA & DOD Final Rule), 803 F.3d 804 (6th Cir. Oct. 9, 2015).

[13] 82 FR 12532 (March 6, 2017).

[14] 82 FR 34899 (July 27, 2017).

> technologies have occurred since the MACT and to determine if their application to the source category is appropriate. (170-APF).

Because the standards may apply to sources that are subject to another set of rules (the New Source Performance Standards (NSPS), discussed below) a number of respondents have suggested there are opportunities to consolidate and rationalize the requirements of these two sets of regulations. In addition, there are also a series of perceived "unnecessary burdens" specifically related to NESHAPs.

A number of respondents expressed concern about the residual risk and technology reviews (RTRs) as leading to unnecessary additional requirements with no (or limited) environmental benefit. For example, NAM provided the following illustrative example for a sandblasting operation:

> For one manufacturer, this means having a dedicated employee climb on the roof of eight different manufacturing plants at the required interval (daily/weekly/monthly/quarterly) to do multiple 15-minute observations on each roof, and perform visual observations of the on-site sandblasting booth at the required interval, only to document that zero visible emissions occurred at every observed location during every monitoring event. Since 2011, this manufacturer has made over 700 visual observations consuming over 1,000 man-hours to comply with this regulation, despite having not once observed a "visible emission" at any of the plants. (146-NAM)

Another example provided was secondary aluminum production, illustrating how regulations that emerged from an RTR led to rules that did not reflect real world operating conditions. This rule required "hooding" for new "round top furnaces," which was impractical because they were incongruent with the charging method for this type of furnace which requires an overhead crane and lifting of the lid. (101-AA)

One set of Maximum Achievable Control Technology (MACT) rulemakings for a particular source category (MACT for industrial and commercial boilers and process heaters) has received particular attention in recent literature, and in the RFI responses. The rulemakings for this source category have occurred over the last 20 years, and are being reviewed based on a 2016 court decision, which is causing the EPA to consider additional "best performing boilers."[15] The length and complexity of the rulemaking process has created uncertainty for manufacturers.[16] In addition, specific requirements were identified by some respondents as burdensome, such as in the case of steel facilities:

> The requirement to test/tune/test each burner of each applicable source is a burdensome exercise. At many steel making facilities there are multiple finishing lines with indirect heating furnaces that are comprised of hundreds of natural gas fired burners each below 5 MMBTU/hour. These units are considered cumulatively under the Boiler MACT and are therefore required to have annual tune-ups per 40 CFR. § 63.7515(d). The annual tune-ups require excessive line outages and man

[15] See, https://www.epa.gov/boilers.

[16] Paul R. Noe, "Smarter Regulation for the American Manufacturing Economy," American Forest and Paper Association, September 14, 2016.

> hours. The annual requirement for testing and tuning of the many small burners can range up to $100,000 for a company with the time, equipment and proper skills to conduct the tuning. For natural gas sources with burner sizes less than a certain threshold, reducing the frequency of these tune-ups to every five years would significantly reduce the cost burden. (92-AISI)

Another MACT-related issue raised by respondents relates to the "once-in-always-in" policy.[17]

The Clean Air Act defines emissions limits for specific types of stationary sources. These New Source Performance Standards (NSPS) are specific to approximately 90 different industries/manufacturing processes. NSPS applies to "new, modified and reconstructed" facilities. As an example, there is a NSPS standard for volatile organic compounds (VOCs) for surface coating processes for large appliances.[18]

For NSPS, the specific regulatory burdens cited often were not the rules themselves, but the potential for overlap and redundancy with related rules, such as National Emissions Standards for Hazardous Air Pollutants (NESHAPS, discussed above). NAM and IECA specifically suggest there are opportunities to rationalize the NSPS and NESHAP requirements, reporting and recordkeeping. (146-NAM, 89-IECA) Both sets of rules limit emissions from specific manufacturing processes, suggesting that there may be opportunities to integrate the two standards. NAM gives a specific example of the opportunity to rationalize 8 different regulations for different coatings processes. (146-NAM)

More frequently mentioned were examples of enforcement reaching beyond explicit NSPS standards. (89-IECA, 92-AISI, 112-SMA) AISI gives the example of the EPA using enforcement actions to limit fugitive emissions of particulate matter in steel making facilities that are not explicitly delineated in the NSPS. (92-AISI)

Clean Air Act: New Source Review and Prevention of Significant Deterioration Permits

The New Source Review (NSR) permitting program under the Clean Air Act was cited in many of the RFI responses as one of the most important opportunities to streamline permitting processes for manufacturers. An NSR "preconstruction" permit is required for new industrial facilities (and other new "major sources") or for "major modifications" of existing facilities.[19] The objectives of the program are to protect air quality by limiting increases in emissions and by ensuring that "advances in pollution control technology occur" as part of industrial expansion. The NSR program has different requirements depending on whether facilities are in "attainment" areas that are meeting National Ambient Air Quality Standards (NAAQS) for six specific "criteria" pollutants, or whether they are in non-attainment areas. Permits that are required to be obtained in

[17] Under the "once-in-always-in" policy, EPA requires that a major source, subject to the MACT technology standard, remains subject to that standard even if "the facility undertakes pollution prevention or installs control devices to reduce emissions below the major source applicability thresholds." (170-APF). That means a company is subject to a higher standard than is "justified' by their current emissions levels. Perversely, this creates a disincentive for companies to reduce emissions. (170-APF).

[18] New EPA NSPS for industrial surface coating for large appliances.

[19] For more information on NSR permitting, see www.epa.gov/NSR.

attainment areas are known as Prevention of Significant Deterioration (PSD) permits. Table 3 below outlines the broad requirements for NSR and PSD permits:

Table 3. Requirements for New Source Review and Prevention of Significant Deterioration Permits	
New Source Review (Nonattainment Area)	Prevention of Significant Deterioration (Attainment Area)
1. Installation of the Lowest Achievable Emission Rate or LAER ("meaning that the plant must install state-of-the-art pollution controls in order to match or exceed the emission rate achieved by the lowest emitting similar facility in the country") (48-AF)	1. Installation of the Best Available Control Technology or BACT (similar to LAER, but sometimes less stringent, and assessed on a case-by-case basis) (48-AF)
2. Emissions offsets (reductions) from other plants in the same area that yield a net air quality benefit for the region	2. An air impact analysis or modeling that demonstrates that the increase in emissions: 1) "will not result in changes in ambient air quality that would cause the area to exceed NAAQS for any pollutant, and 2) even if projected emissions will not violate NAAQS, they will not result in an increase in ambient concentrations of any pollutant that exceeds the allowable PSD 'increments' set by the CAA"
3. Alternative Sites Analysis	3. An additional impacts analysis (which "assesses the impacts of air, ground and water pollution on soils, vegetation, and visibility caused by any increase in emissions of any regulated pollutant" from the source)[20]
4. Opportunities for public comment	4. Opportunities for public comment
Sources: www.epa.gov/nsr, 48-AF, 92-AISI, 136-AFPM, EPA, Webinar Slides: Revisions to the Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas (GHG) Permitting Regulations and Establishment of a GHG Significant Emission Rate (SER): Proposed Rule, September 20, 2016[21]	

[20] For more information on NSR permitting, see www.epa.gov/NSR.

[21] 81 FR 68110 (October 3, 2016).

The NSR/PSD permitting processes are perceived by RFI respondents to be unnecessarily cumbersome and lengthy. The time required to obtain a preconstruction permit, once an application is received, can range from 9 months to as much as 2-3 years. (48-AF, 170-APF) This duration does not include the months (or even years) required to prepare the application, nor does it include potential delays that can lengthen the process or make its timing uncertain, such as the need to revise air quality modeling when a NAAQS standard is changed, or the possibility of an appeal or review by the EPA of a state decision to issue a permit. (170-APF, 10-PCBI, 89-IECA)

Respondents indicated the costs to prepare an application and construct air quality and dispersion models are significant, not to mention the costs of emissions offsets and what is sometimes perceived as "over-investment" in pollution control equipment due to the conservative assumptions built into these models. The result is that manufacturers avoid making investments to modernize facilities, improve processes or increase quality for fear of triggering an NSR/PSD requirement. (146-NAM, 10-PCBI)

A number of recommendations have been put forward to address various issues that arise under NSR/PSD:

- Turnaround Time. One proposal is to enforce reasonable turnaround times. (48-AF) According to a recent paper,[22] under the CAA, "EPA and other permitting agencies are required to either grant or deny an NSR permit within one year of receiving a permit application, but there is no practical way to enforce this deadline." In addition to setting firm deadlines, other suggestions include:
    - Limiting challenges or appeals, including limiting the ability of the EPA to review or reject the decision of a state permitting authority. (89-IECA, 170-APF, 10-PCBI)
    - Allowing some construction activities to commence that do not generate emissions, prior to receiving a permit. (146-NAM)
- Aggregation. There are also a set of rules regarding the "aggregation" of emissions (within a facility, over time within a facility, or across locations) that affect whether the need for a NSR/PSD permit process is triggered. A number of respondents made suggestions or encouraged approaches that allow flexibility for sources to aggregate emissions and thus demonstrate that total emissions are not increasing sufficiently to trigger an NSR/PSD process. (In some cases this would involve clarifying rules or "solidifying" past reforms already proposed.) These recommendations include:
    - Plant-Wide Applicability Limitations (PALs) — EPA could promote and facilitate "Plant-Wide Applicability Limitations (basically emissions limits that apply facility-wide) through a

[22] Art Fraas, John D. Graham, and Jeff Holmstead, "EPA's New Source Review Program: Time for Reform?" Environmental Law Reporter, 1-2017.

permitting process, allowing such a facility to change, modify and upgrade equipment and operations and add new equipment without triggering major modification NSR review, provided the changes do not result in exceeding the established PAL emissions limits." (92-AISI quote, also 170-APF)

  - Units that precede or follow the unit being modified should not be considered as part of emissions increases that might trigger NSR. (170-APF, 136-AFPM)

  - Clarifying the rules around definition of a project, and whether separate activities can be grouped together into a project for purposes of triggering NSR/PSD. (170-APF, 136-AFPM, 146-NAM)

- Rules that Avoid Triggering NSR. There were also recommendations relating to the rules that trigger NSR, such as:

  - Revisiting and expanding the definition of activities that are defined as "routine maintenance, repair and replacement," which are exempted from NSR/PSD requirements. (92-AISI, 170-APF)

  - Using actual emission increases versus theoretical or maximum "potential to emit" in calculations. (10-PCBI, 136-AFPM)

- Modeling. Numerous respondents identified the need to avoid delays and re-work in the application and air quality modeling process. (Note that a more general discussion of NAAQS and modeling is found in the section below.) Recommendations include:

  - Introducing guidance on modeling at the same time as NAAQS standards are revised, so there is clarity on modeling required as part of an NSR application. (92-AISI, 48-AF)

  - "Grandfathering" NSR applications that were submitted, but not yet approved, prior to a change to NAAQS standards, so companies do not have to revise the applications to conform to the new standards. (92-AISI, 48-AF)

- BACT and LAER determinations. Several respondents offered suggestions about how to improve the process of determining the required pollution control technology, which is perceived to be onerous and susceptible to delays:

  - PSD BACT determination should be based on proven, domestic technology that is in the same "industrial category" as the applicant and was in existence when the application was submitted (92-AISI, 10-PCBI) and should consider alternatives to the "top down" BACT analysis process. (170-APF)

- Emissions Credits or Offsets. Respondents also raised concerns that there can be challenges in obtaining emissions credits in non-attainment areas, and when they are available they can be very expensive. In one example, a relatively small new facility in Houston (emitting more than 100 tpy of Volatile Organic Compounds or NO_2) may need to spend between $32 million and $52 million for emissions offsets. (48-AF) Recommendations by respondents include:
    - Increased flexibility for buying offsets from outside the local areas where a new facility is being established. (48-AF)
    - Emission fees versus credits (which would require a statutory change). (48-AF) A recent paper on EPA's NSR program stated: "We propose a narrow statutory reform that could address these issues while still obtaining most or perhaps even more of the environmental benefits of the current program: allow permit applicants to pay emissions fees in lieu of meeting the current offset requirements, and require the state or local environmental agency to use these fees to pay for or subsidize emissions reductions that the agency believes will do the most good in terms of reducing environmental risks."[23] (48-AF)

The other major permit required by the CAA (beyond NSR/PSD) is the Title V operating permit for major (and some minor) sources, which incorporates all of the federal and state air pollution control requirements in one place. (170-APF). The operating permit must be renewed every 5 years.

Industry respondents suggested that it has become costly to obtain, maintain and renew operating permits. (170-APF) AISI reported "varied timelines for completing the Title V review and approval process, depending on the state regulatory agency and EPA Regional Office, taking up to three years to receive the final permit and costs of several million dollars for each operating permit needed." (92-AISI) And according to the Air Permitting Forum, "the cost of the program today is far more than was ever anticipated...given the enormous costs of the program, it is incumbent on the government to take whatever steps it can to streamline permitting and minimize costs." (170-APF)

Concerns were also raised that even when an NSR/PSD preconstruction permit already has been obtained, the Title V permit process provides another opportunity for NGOs or others to mount a legal challenge "on the same grounds that have already been adjudicated." (170-APF) Moreover, "Title V petitions often sit in a long queue at EPA, and then can end up back in court—duplicating costs for industry to defend its expansive and long-evaluated permits." (170-APF)

A related problem is the concern that the operating permit, which is intended to consolidate various regulatory requirements, is being used (e.g., by states) to add additional requirements or impede flexibility in meeting other requirements imposed by the CAA (e.g., such as using the permit language to limit the options for an appliance surface coating operation in meeting MACT standards for hazardous air pollutants

[23] Art Fraas, John D. Graham, and Jeff Holmstead, "EPA's New Source Review Program: Time for Reform? " Environmental Law Reporter, 1-2017.

(HAPs), which otherwise would be able to meet requirements by changing materials or adopting controls). (170-APF)

In addition to an overall desire to streamline the approval process, specific recommendations include: eliminating the ability of EPA or other stakeholders to "re-litigate" preconstruction NSR/PSD permit decisions during the Title V permitting process (170-APF); extending the term of the permit from 5 to 10 years (170-APF); and citing other requirements in the permit rather than recreating or summarizing those requirements in their entirety in the permit itself. (170-APF)

Historically, the CAA has exempted Start-up, Shutdown and Malfunctions (SSM) periods from the emissions restrictions that apply under normal operating periods. However, in response to recent court decisions, the EPA has reversed course, and proposed new rules (in 2016) to eliminate these exemptions and eliminate the "affirmative defense" provision for emergencies. Numerous industry respondents have urged that the SSM exemptions be restored (89-IECA, 170-APF, 92-AISI):

> "Unless EPA acts quickly, every manufacturing company in the country operating under a Title V air permit could be subjected to unnecessary citizen suits and potential civil penalties as they shut down and start-up their equipment to conduct maintenance activities and other planned and unplanned outages." (89-IECA)

It has also been suggested that other alternative approaches could be explored, such as developing a more "judicially sound affirmative defense concept" or "re-promulgating technology based emissions standards sufficient to cover emissions associated with SSM events." (101-AA)

Clean Water Act: National Pollutant Discharge Elimination System Permits

Section 402 of the CWA — known as a National Pollutant Discharge Elimination System (NPDES) — requires a permit to discharge pollutants from a "point source" into "waters of the United States." "The permit will contain limits on what you can discharge, monitoring and reporting requirements, and other provisions to ensure that the discharge does not hurt water quality or people's health."[24] An NPDES Storm-water program also requires a permit for some storm-water discharges, which are not considered point sources. Also under the CWA, a section 404 permit may be required for the discharge of dredge or fill material into "waters of the United States." Section 404 is managed by the EPA and US Army Corps of Engineers.

A primary concern expressed by RFI respondents was the complexity of these permitting processes, and the time required to obtain a permit. According to AISI, "[t]he 404 permitting process is currently one of the most ill-defined processes for a regulated party to understand and thus to predict permit timelines." (92-AISI). Respondents reported that Section 404 permits can take 1-4 years or more to obtain and NPDES permits require 6 months or more. (92-AISI) In reference to wetlands (Section 404) permitting, SMA stated

[24] See www.epa.gov/npdes for more information on the Section 404 permitting process.

that "USACE [US Army Corps of Engineers] permitting processes are slow, antiquated and expensive." (112-SMA) And regarding NPDES, the Aluminum Association's assessment is that the "antiquated permitting timeline embedded in these regulations costs business money and lost opportunities for growth." (101-AA)

Some of this long permitting cycle is driven by the complexity of the law and the permitting process, which requires permits for industrial discharges from point sources, often based on effluent guidelines for specific industrial processes (which are sometimes complicated by Total Maximum Daily Load limits on the amount of "pollutant a waterbody can receive"); a separate permit process for discharges that go into publicly owned treatment works (POTWs), for storm water, and for wetlands; a set of requirements for cooling intake water; and significant operational proscriptions and recordkeeping/reporting. (See www.epa.gov/npdes and 92-AISI; 112-SMA; 136-AFPM; 101-AA)

The recommendations by respondents generally revolve around streamlining the process, eliminating duplicative requirements, making the steps to obtain a permit more defined (with fewer open-ended steps), and shortening the process timeline. (92-AISI, 101-AA, 76-Boeing)

Clean Air Act: Greenhouse Gas Requirements

Greenhouse Gas (GHG) emissions are now regulated under the CAA, using PSD and Title V permitting processes.[25] The objective was to introduce "GHG emissions thresholds that define when permits under these permitting programs were required" for new or modified sources.[26] Litigation has caused a revision of the rules, which is still in progress.[27] The primary result of the decision was that the EPA "may not treat GHGs as an air pollutant for the specific purpose of determining whether a source is required to obtain a PSD or Title V permit."[28] In other words, a "BACT analysis for GHGs" is only required in cases "where another air pollutant triggers a review" and the requirement to obtain a PSD or Title V permit. (136-AFPM) A revised rule has been proposed, and final comments were due in December 2016.

Nevertheless, for major sources that require Title V and PSD permits for another pollutant, EPA can apply BACT requirements to GHGs above a specific threshold, which has been proposed at 75,000 tons per year (tpy) CO2e Significant Emission Rate (SER). The court decision referred to above also requires a justification for this threshold level. There is concern among a number of RFI respondents that this threshold level of GHG emissions is too low, and that the benefit in terms of a reduction in GHG emissions

[25] The EPA's original Greenhouse Gas Regulations consisted of the "Endangerment Finding" (74 FR 66523 (2009)), the "Triggering Rule" (75 FR 75004 (2010)), the "Tailpipe Rule" (75 FR 25324 (2010)), and the "Tailoring Rule" (75 FR 31514 (2010)).

[26] EPA "Revisions to the Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas (GHG) Permitting Regulations and Establishment of a GHG Significant Emission Rate (SER): Proposed Rule," Webinar, Sept. 20, 2016.

[27] *Utility Air Regulatory Group v. EPA; Coalition for Responsible Regulation v. EPA.*

[28] EPA "Revisions to the Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas (GHG) Permitting Regulations and Establishment of a GHG Significant Emission Rate (SER): Proposed Rule," Webinar, Sept. 20, 2016.

would not justify the additional regulatory burden. (89-IECA, 136-AFPM) Respondents, therefore, recommend the EPA prioritize an expedited and judicious review of SER thresholds for GHGs.

Clean Air Act: National Ambient Air Quality Standards

The EPA establishes National Ambient Air Quality Standards (NAAQS) for six "criteria" air pollutants (carbon monoxide, ozone, lead, nitrogen dioxide, particulate matter, and sulfur dioxide). Regions are designated as "attainment" areas (which meet the NAAQS standards), non-attainment regions, or unclassified. Non-attainment regions are considerably more restricted in allowable emissions, thus limiting the potential for new manufacturing plants and plant expansions. NAAQS standards have been continually ratcheted downward; the 2015 ozone regulation established a standard of 70 parts per billion (ppb), which revised a 2008 standard of 75 ppb that has not yet been fully implemented.[29] (89-IECA, 136-AFPM) At 70 ppb, respondents raised concerns that the level is approaching "background" levels of ozone. (48-AF,146-NAM, 112-SMA) Respondents also raised concerns that the pace at which the standard has been revised has not allowed sufficient time for implementation, and is further complicated by measurement and (again) air quality modeling issues — in particular accounting for ozone transported from international sources. (112-SMA,107-COC) As noted in a recent paper:

> Recent research has found that stratospheric intrusions and long-range transport—particularly in western states—have resulted in daily maximum eight-hour ozone levels of 70 ppb or more. With the ozone NAAQS at or below background, sources will find it impossible to show that they will not "contribute to" a violation of the standard. (48-AF)

Some observers recommended that implementation be delayed.[30]

Because of this increasingly restrictive standard, respondents specifically raised concerns that the current NAAQS standard for ozone is not practicable to implement, will shift numerous areas into a non-attainment designation, and will severely restrict the ability of manufacturing companies to establish new facilities or expand existing facilities in those regions. (136-AFPM, 112-SMA, 89-IECA)

Because of this narrow margin, numerous respondents identified the need for EPA to improve air quality and dispersion models. For example, one respondent stated:

> In conducting an analysis for the PSD program, facilities must use EPA-approved models to demonstrate that a project will not cause a violation of a NAAQS standard. The models' overly conservative algorithms and assumptions, however, can create a modeling result that rarely represents and often significantly overestimates monitored concentrations around the facility.

[29] A NAM-NERA 2014 report assessed the impact of a more stringent 60ppb standard that was contemplated at the time, and the analysis suggested the economic impact would be enormous: "...the potential emissions control costs would reduce U.S. Gross Domestic Product (GDP) by $270 billion per year on average over the period from 2017 through 2040... The potential labor market impacts represent an average annual loss of 2.9 million job-equivalents." (NERA Economic Consulting, "Assessing Economic Impacts of a Stricter National Ambient Air Quality Standard for Ozone," Prepared for NAM, July 2014). In contrast, the EPA estimated costs of $560M for what appears to be the final rule of 70ppb. (OMB, "2016 Draft Report").

[30] 146-NAM, Letter to National Economic Council, regarding regulations of concern, Business Roundtable, February 22, 2017.

> Reliance on modeling that over-predicts ambient concentrations can result in additional unwarranted costs by causing facilities to install beyond-BACT pollution control equipment, even though the assumptions used in the models and the predicted concentrations are not representative of real-world conditions. (170-APF)

Some of the specific suggestions to improve the approach involved re-examining assumptions about background concentration levels, the treatment of fugitive emissions, use of actual emissions rather than theoretical or maximum operating rates, employing probabilistic models, and reconsidering inappropriate "ambient air receptor" locations where individuals will not generally be exposed to emissions. (89-IECA, 92-AISI, 170-APF, 112-SMA, 136-AFPM)

Others recommended that changing the timetable for mandatory NAAQS reviews from every five years to every ten years would allow more time to meet the previous standard. (107-COC, 136-AFPM, 10 PA) In addition, the CoC notes that these "five-year deadlines are regularly exceeded by the EPA and inevitably result in 'sue-and-settle' agreements." Five-year review cycles have the potential to result in over regulation and constant changes requiring capital outlays from the private sector. Implementing the respondent's recommendation would require Congress to update the NAAQS review schedule to reflect a 10-year cycle. This update would allow for complete realization of environmental improvements, and would bring greater certainty to regulated operators.

Another frequent recommendation raised by respondents is to re-examine and clarify how to account for international and long-range transport of ozone, and for exceptional events. For example, the EPA has a policy which would allow it to "disregard exceedances of a NAAQS caused by certain types of exceptional events," such as stratospheric intrusions. However, it was suggested that in practice it is difficult to obtain EPA "recognition" of exceptional events in an NSR application. (48-AF) In light of this phenomenon, where meteorological conditions play a role in transporting extra-jurisdictional emissions, EPA should exclude those emissions from regulatory consideration, classifying them as "exceptional events." Respondents recommend that EPA employ all tools available to discount for "background" conditions and allow the maximum degree of flexibility afforded by statute.

Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act (RCRA) is a set of laws, regulations and policies that govern management and cleanup of solid, liquid, and gaseous hazardous waste.[31] Manufacturers are affected by RCRA because of the generation of waste streams in their factories. An issue identified by several respondents is the inappropriate classification of certain waste streams as hazardous, which impose burdensome additional requirements, and have the effect of discouraging recycling, reuse or reclamation. (146-NAM) For example, AISI has proposed that baghouse dust from electric arc furnaces (EAFs) be delisted as hazardous, which would open up additional recycling or reuse opportunities (without always employing an RCRA-permitted recycling operator). SMA similarly suggested that by-products from EAFs

[31] For more information, see https://www.epa.gov/rcra.

are sometimes classified as hazardous, resulting in more complex and burdensome management requirements, which again undermine the goal of recycling. (112-SMA) In 2015, EPA has added a restrictive criterion for "legitimacy" which results in unnecessary treatment and disposal of material that could be reused or recycled for other purposes.[32] Respondents recommend updating the rule to allow for more beneficial uses of substances where reuse or recycling can be justified by industry. Additionally, another respondent proposed an aggressive approach to delisting waste as "hazardous," where appropriate, which would reduce regulatory burden. (76-Boeing)

On November 28, 2016, the EPA published the Hazardous Waste Generators Improvement Rule.[33] According to 89-IECA it "causes waste generators who violate even one 'Condition for Exemption' from permitting to be treated as [full-fledged] waste treatment, storage, and disposal facilities requiring RCRA permits. Violation of a single minor condition can, therefore, mean that an otherwise exempt facility must obtain a RCRA permit and can be cited for violations of numerous regulations and permit conditions" (136-AFPM) or be subject to more onerous regulations. (89-IECA) It is recommended the rule be revised to allow some leeway on conditions of exemption and associated violations.

Risk Management Programs

Section 112(r) of the Clean Air Act addresses the prevention of accidental releases of hazardous substances. Respondents raised concerns that EPA's recently issued Risk Management Plan (RMP) rule (40 CFR, Part 68, finalized in 2017), which would add unnecessary or unreasonable additional burden for affected facilities.

For example, there is significant concern about duplication and conflicting requirements under the rule with Occupational Safety and Health Administration (OSHA) Process Safety Management standard. (136-AFPM, 43-Mosaic, 133-PIA) In addition, several elements of the new requirements were perceived as unnecessary or inflexible. One such area is the requirement for third party audits in certain circumstances (such as chemical release or instance of non-compliance). (136-AFPM, 109-Valero) One respondent suggested appropriately trained internal staff could perform audits, and also suggested the qualifications for third party auditors outlined in the regulations were too restrictive. (158-CKRC) An additional requirement highlighted was the need for a "resource-intensive inherently safer technology analysis" that according to one respondent "provides little value after a facility is already built" (136-AFPM), and which another respondent said will "increase compliance costs without improving safety." (109-Valero) Finally, several respondents expressed concern about reporting requirements that would release sensitive information that could be used for lawsuits or potentially even terrorist attacks. (146-NAM, 109-Valero, 136-AFPM) Legal action has been taken seeking reconsideration of the rule. (136-AFPM) On March 13, 2017, the EPA convened a proceeding to reconsider RMP Rule.[34] On June 14, 2017, the EPA published a final rule to

[32] 80 Fed. Reg. 1693-1814 (Jan. 13, 2015), revising 40 CFR. Parts 260 & 261.

[33] 81 FR 85732 (November 28, 2016).
[34] 82 Fed. Reg. 13968 (March 16, 2017).

further delay the effective date of the RMP Rule for 20 months until February 19, 2019, to allow adequate time for the reconsideration.[35]

Toxic Substances Control Act

The Toxic Substances Control Act of 1976 (TSCA) provides EPA with authority to require reporting, record-keeping and testing requirements, and to impose restrictions relating to chemical substances and/or mixtures. Certain substances are generally excluded from TSCA, including, among others, food, drugs, cosmetics and pesticides. The types of chemicals regulated by TSCA fall into existing (chemicals on the TSCA Inventory) and new, which is an important distinction as TSCA regulates each category differently. For new chemicals, manufacturers must submit a pre-manufacturing notification to EPA prior to manufacturing or importing new chemicals for commerce. TSCA also specifically addresses the production, importation, use, and disposal of specific chemicals including polychlorinated biphenyls (PCBs), asbestos, radon and lead-based paint. The most common issue with TSCA expressed by the respondents was the restrictions imposed on manufacturing and use of chemicals that have the potential to drastically and unnecessarily impact profit, productivity, competition and jobs. (37-ILMA, 39-IPC, 51-NSSGA, 56-CPA, 101-AA, 115-HSIA, 116-NAFO, 141-ACC, 151-PESA, 155-PMPA) It should be noted, however, that on June 22, 2016, the Frank R. Lautenberg Chemical Safety for the 21st Century Act, which amended TSCA, was signed into law, addressing some of the shortcomings in the original law and adding a mandatory duty to evaluate chemicals and a new risk-based safety standard.

Improve Tracking of Workforce Injuries and Illnesses

In May 2016, the Occupational Safety and Health Administration (OSHA) published its final rule to "Improve Tracking of Workplace Injuries and Illnesses."[36] However, manufacturers are concerned that this rule requires them to submit electronic records of workplace injuries and illnesses, which OSHA is planning to post on a public website. (92-AISI, 146-NAM, 107-COC) RFI respondents have voiced two objections to making the data publicly available: 1) the information may be used by union organizing campaigns, or as the basis of litigation on safety issues; 2) privacy concerns exist, as there may be identifying information included in the reporting that could expose sensitive, proprietary information. (92-AISI, 146-NAM, 107-COC) Also, there are requirements for establishing a reasonable system for workers to report injury or illness, along with provisions that prevent employers from retaliating against whistleblowers or in other ways discouraging injury or illness reporting.

Guidance issued on how to comply with the rules included language that suggested some safety performance incentives and drug testing programs might be construed as in violation of the rule, as they might deter reporting (to improve safety performance measures or to avoid post-accident drug testing).

---

[35] 82 Fed. Reg. 27133 (June 14, 2017).
[36] 81 FR 29623 (May 12, 2016).

(107-COC; 92-AISI; 39-IPC) Respondents would like the plan to post safety data online to be reconsidered, and to clarify the guidance so that it does not undermine safety incentive and drug testing programs.

Endangered Species Act

Specific concerns raised relating to the Endangered Species Act (ESA) fall primarily into three categories. First, federal agencies issuing permits must consult with the U.S. Fish and Wildlife Service when construction may affect an endangered or threatened species; this consultation adds considerably to permit time and complexity. (51-NSSGA, 84-Ameren, 114-AGC, 136-AFPM) Second, due to high volume, ESA rules such as the 2016 Critical Habitat Designations, have become "unreasonable." (86-IPAA, 114-AGC, 144-AFPA, 146-NAM, 152-AWC) Finally, concerns were raised that the ESA is being exploited by project opponents as a means of blocking permits. (75-SLMA, 107-COC, 126-API)

Conflict Minerals and Dodd-Frank

Section 1502 of the Dodd-Frank Act[37] mandates that the U.S. Securities and Exchange Commission (SEC) create rules[38] that require public companies that use conflict minerals (tantalum, tin, gold or tungsten) in the manufacture of their products to "undertake 'due diligence' on the source and chain of custody of its conflict minerals and file a Conflict Minerals Report" and publicly disclose this information.[39] The concern is that the mineral may have come from or near the Democratic Republic of the Congo and its use, therefore, is contributing to a humanitarian crisis. A significant issue is that the due diligence requirement is directed back on to suppliers, which are often small to medium sized manufacturers who cannot easily comply with this burden. (53-ACMA, 120-NTMA/PMA, 137-MEMA, 146-NAM) One respondent noted that both the Department of Commerce and the SEC stated they lacked the expertise in this type of back-to-the-mine-of-origin investigation, and given this, asks how small firms can be asked to do these types of investigations. (120-NTMA/PMA)

According to NAM, the "SEC estimates that it will take the average manufacturer 480 hours annually to comply with this regulation."[40] Another association stated, "a large Tier 1 supplier estimated that their expenditures have totaled about $3 million since the annual reporting requirements took effect. These costs include tracking the supply chains and processes of over 7,000 lower tier suppliers, evaluating the minerals tracking efforts of all suppliers, and categorizing the likelihood that a supplier's products contain conflict minerals. Additional costs are incurred because all findings from the company's suppliers must be manually entered into a database and categorized so that the information provided may be utilized by the Tier 1

[37] PL 111-203, Dodd-Frank Wall Street Reform and Consumer Protection Act, July 21, 2010.

[38] 17 CFR 240 and 249b.

[39] SEC Fact Sheet, https://www.sec.gov/opa/Article/2012-2012-163htm---related-materials.html.

[40] National Association of Manufacturers, "Holding US Back: Regulation of the U.S. Manufacturing Sector," prepared by Pareto Policy Solutions, LLC.

supplier in preparing filings."(137-MEMA) Many respondents suggested that the rule be suspended. (14-Chromaflo, 39-IPC, 53-ACMA, 71-Whirlpool, 107-COC, 120-NTMA/PMA, 137-MEMA; 146-NAM)

A second SEC issue was the CEO pay ratio disclosure provision required by Section 953(b) of the Dodd-Frank Act. This provision calls for public companies to disclose the ratio of employees' median pay to the compensation of a company's chief executive officer. The SEC finalized a rule for this provision in August 2015, and it becomes effective in 2018. NAM notes that this ratio is a "false and overly simplistic" metric of company compensation practices and it is burdensome due to the costs associated with calculating median pay. (146-NAM) The U.S. Chamber echoes those concerns and notes that some municipalities are "enacting a new tax based upon this ratio." (107-COC) NAM asks that the SEC reconsider the rule entirely.

National Environmental Policy Act

The National Environmental Policy Act (NEPA) requires that federal agencies consider significant environmental impacts in their decision-making, and established the President's Council on Environmental Quality (CEQ). Federal law requires permits for many kinds of industrial and commercial activity, and the issuance of such permits often triggers a requirement for NEPA analysis. This process can quickly become extremely lengthy and costly. For example, according to NAM:

> It (the NEPA) is often the largest, costliest, most time-consuming regulatory hurdle that project sponsors, developers, construction managers and engineers face before they can build. Philip Howard's 2015 report, "Two Years, Not Ten Years: Redefining Agency Approvals" explains that public project costs are increased by more [than] $3.7 trillion because of red tape. It is also a common target for abuse, as there are countless ways for federal and state agencies and external actors to throw a wrench in the process and delay completion of the review. The longer the delay, the more likely the developer walks away. Project opponents do not often need a [court] judgment on the merits of NEPA to win; the delay can be enough... A 2014 GAO report made several startling findings with respect to the administration of NEPA. [GAO found that the] Administration had no idea how long a typical NEPA review takes. GAO's best guess was an analysis by the National Association of Environmental Professionals (NAEP), which estimates that the average environmental impact statement (EIS) under NEPA takes 4.6 years, the highest it has ever been. NAEP also estimated that the time to complete an EIS increased by 34.2 days each year from 2000 to 2012. (146-NAM)

Another respondent wrote that, with respect to individual permits under CWA Section 404 for dredge and fill activities, this "process can take 4 years even if a full Environmental Impact Analysis is not required." (43-Mosaic) Other respondents also discussed the increased costs and significant manufacturing and construction delays as a result of NEPA. (10-PCBI, 42-Novelis, 43-Mosaic, 46-ATT, 71-Whirlpool, 83-TM, 86-IPAA, 96-NMA, 101-AA, 114-AGC, 115-HSIA, 125-BP, 136-AFPM, 146-NAM, 159-VI, 172-VI)

Regional Haze Requirements

In 1999, the EPA announced a major effort to improve air quality in national parks and wilderness areas. The Regional Haze Rule (RHR) calls on states, in coordination with the EPA, the National Park Service, U.S. Fish and Wildlife Service, the U.S. Forest Service, and other interested parties, to develop and implement air quality protection plans to reduce the pollution that causes visibility impairment. In 156 national parks and wilderness areas such as the Grand Canyon, Yosemite, the Great Smoky Mountains and Shenandoah National Park.

One of the most significant concerns with the RHR is that the requirement to reach "natural conditions" in visibility (defined as visibility in pre-industrial America) in the National Parks by 2064 may be unreasonable given the global nature of air quality and current operation and needs of our society. (148-TSGTA; see also 69-Domtar, 86-IPAA, 89-IECA, 100-ACA, 101-AA, 102-Renfro, 123-3M, 125-BP, 170-APF) To reach natural conditions, the EPA has been implementing restrictions in NOx emissions and emissions from electric generators, and forcing states to impose high cost, low benefit pollution controls. In doing this concerns were raised that EPA is interfering with implementation of this rule, for which States have the primary role in determining how best to make emissions reductions and define their own 'glide-path' to achieving the goal.

Crystalline Silica Standard

Silica can be found in a number of manufacturing operations, including foundries, glass making, paint manufacturing, porcelain manufacturing, and brick manufacturing. (107-COC) In 2016, an OSHA rule was finalized[41] which cut in half the permissible exposure to crystalline silica (for general industry and maritime) from 100 to 50 micrograms per cubic meter.[42] Compliance is required within 2 years after the effective date (2018).

Industry respondents suggest the standard is simply too stringent and will be difficult, costly or impossible with which to comply. According to NAM the rule requires "extensive and costly engineering controls...exposure monitoring, medical surveillance, work area restrictions, clean rooms and recordkeeping" (146-NAM) Respondents also state that the standard "could force manufacturers to shut their doors" or "could potentially cause several types of manufacturing to leave the United States." (146-NAM, 107-COC) The U.S. Chamber of Commerce indicates that the previous standard was highly effective, reducing deaths from exposure to silica by over 93% since 1968, and this new standard is being challenged in court (to determine if OSHA demonstrated "significant risk," and whether compliance with the rule "is technologically and economically feasible" — a "statutory requirement for an OSHA standard)." (107-COC) Respondents have suggested that the rule should be rescinded or reviewed.[43] (146-NAM, 107-COC)

---

[41] 81 FR 162885 (March 25, 2016).

[42] Paul R. Noe, "Smarter Regulation for the American Manufacturing Economy," American Forest and Paper Association, September 14, 2016.

[43] 146-NAM, 107-CoC, NFIB, Problem Regulations, January 24, 2017.

Department of Labor Overtime Rule

The new overtime rule raises the salary level required for exemption from overtime pay of salaried white collar employees from $23,660 to $47,476.[44] A number of respondents suggested that the salary level for this exemption was too high, the rule exceeded statutory authority, and the automatic escalation of this salary threshold over time would be too rapid. (146-NAM, 6-NFIB, 39-IPC, 107-COC, 120-NTMA/PMA) The rule has been preliminarily enjoined by a district court, and the federal government has appealed this decision.[45]

Comprehensive Environmental Response, Compensation, and Liability Act

The Comprehensive Environmental Response, Compensation, and Liability Act's (CERCLA) major emphasis is on the cleanup of inactive hazardous waste sites. CERCLA gives the President authority to clean up or ensure the cleanup of these sites through "removal" and/or "remedial" actions, generally referred to as "response" actions, to address threats to human health and environment. CERCLA provides for cost recovery from potentially responsible parties, including current and former owners and operators of the facility, along with parties that arranged for or transported hazardous substances to the facility. Agencies provide oversight when the cleanup is pursuant to an agency order or a federal consent decree. The National Oil and Hazardous Substances Pollution Contingency Plan (NCP) outlines CERCLA's implementing regulations. Agencies follow the procedures and standards detailed in the NCP when remediating these sites.

RFI respondents raise concerns that CERCLA requirements can be extremely expensive and duplicative with other regulations. (84-Ameren, 92-AISI, 96-NMA, 101-AA, 110-Freeport, 111-GAC, 131-NMMA, 159-VI, 160-TCC) As a separate point, one respondent further stated, "under this policy, EPA routinely requires cooperating private parties to pay for duplicative and unnecessary expenses that the Agency incurs—in addition to the substantial expenditures the private parties are already undertaking in order to remediate the site. EPA's duplicative oversight activities not only increase costs, but also impede the pace of remediation by adding layers of unnecessary review. In 2015, EPA billed private parties $106.4 million for agency oversight—a substantial amount of overhead costs and resources that are better spent directly on cleanup activities."[46]

Spill Prevention, Control, and Countermeasures

EPA, within the CWA, requires non-exempt facilities to prepare Spill Prevention, Control and Countermeasure (SPCC) plans to prevent the discharge of oil from non-transportation related onshore and offshore facilities into U.S. navigable waters or adjoining shorelines. The SPCC rule applies to owners or operators of non-transportation related facilities who drill, produce, store, process, refine, transfer,

---

[44] For more information, see https://www.dol.gov/whd/overtime/final2016/.

[45] *Nevada v. DOL*, E.D. Tex., No. 4:16-cv-00731, *motion granted* 11/22/15.

[46] U.S. Environmental Protection Agency, Superfund Remedial Annual Accomplishments, "Fiscal Year 2016 Superfund Remedial Program Accomplishments Report."

distribute, use or consume oil or oil products that meet at least one of the capacity thresholds and have the potential to discharge oil to U.S. navigable waters or adjoining shorelines.

One primary concern with SPCC is the overlap with other federal regulations. The most frequently raised overlap mentioned was the duplication of the SPCC with the Stormwater Pollution Prevention Plan (SWPPP). The duplicative effort required by these two regulations adds costs to the manufacturer and delays construction and operations. (37-ILMA, 76-Boeing, 101-AA, 106-AFS, 107-CoC, 114-AGC, 127-PCA) According to one respondent, "construction site operators are required to develop plans for preventing, containing, and cleaning up oil spills under the NPDES and SCPP regulations. If a construction site operator has a SWPPP that addresses oil storage and spill control, containment and cleanup measures, then EPA should allow the jobsite SWPPP to also satisfy the agency's SPCC requirements. Otherwise, this is double regulation — and each plan carries significant costs for the contractor to develop. The list of overlapping requirements includes documentation, management certification, site maps and diagrams, inspection and maintenance, recordkeeping, training, designated employees, notification procedures and response obligations. The U.S. Coast Guard also is involved in spill plans if the project is on/over water, which add further delays."

Equal Employment Opportunity Commission Reporting Requirements

The Equal Employment Opportunity Commission (EEOC) recently revised its EEO-1 reporting requirements so that beginning in 2018 employers must submit more comprehensive and detailed information that will be used to enforce prohibitions against employment discrimination and address discriminatory pay practices. Employers with 100 or more employees (both private industry and federal contractors) will be required to submit data on employees' W-2 earnings and hours worked by ethnicity, race, and sex, sorted into 10 job categories. Responding organizations are concerned with the additional time and resources that they will need to spend on this form and estimate that the number of reported entries will increase from less than 200 data points to over 3,000. (107-COC, 137-MEMA, 119-AGC, 77-CIRT, 66-ARTBA, 37-ILMA) Furthermore, responding organizations do not believe that the expanded data collection will provide useful information needed to enforce discriminatory pay practices. (107-COC, 137-MEMA, 119-AGC, 77-CIRT, 66-ARTBA,37-ILMA) Finally, the additional reporting may put a company at risk of publicly disclosing employees' private information and/or proprietary company information. (146-NAM, 66-ARTBA, 37-ILMA)

Food Safety Modernization Act

Over the last several years, the Food and Drug Administration (FDA), part of the Department of Health and Human Services (HHS), has issued several regulations to implement the Food Safety Modernization Act (FSMA). Some portions of the new regulations are complex, and a misinterpretation could cause potentially negative consequences for a company. One such regulation, Mitigation Strategies to Protect Food Against Intentional Adulteration (IA rule), is aimed at preventing intentional adulteration of food

intended to cause wide-scale harm to public health, including acts of terrorism targeting the food supply.[47] The regulation imposes significant new requirements on manufacturers of human food, including maintaining certain records. FDA should delay the compliance dates for the IA rule until it has revised the regulation to provide for more flexibility and greater focus on risk-based methods of preventing intentional adulteration of the food system. (98-IDFA)

As manufacturing and agricultural processing continually evolves, the FDA should ensure that regulatory requirements are flexible and able to adapt to science and innovation. Many agriculture processing companies sell secondary products (e.g., germ, feed, meal) from facilities which were not designed to handle these ingredients using the same standards for ingredients intended for human consumption. In the new FSMA foundational regulations, "manufacturing/processing" has been broadly defined around different activities conducted on food. The "farm" has a narrower definition. As a result, numerous activities that farms normally use to prepare a food crop for trade as Raw Agricultural Commodities (RAC) can be considered activities that transform the crop into a "processed food." A farm conducting these activities could be considered a manufacturer/processor and would be subject to food facility registration and to new requirements for "good manufacturing practices" and preventive controls. Current regulations will require some manufacturers to update facilities or adjust business practices to comply with good manufacturing requirements. There is a concern that such requirements are unnecessary and will result in lost jobs and lost opportunities for manufacturers. (146-NAM, 122-AHPA)

Additionally, the FSMA requires sellers (farmers and food processors) to obtain from their customers (downstream food processors and distributors) certain "written assurances" on an annual basis. With these written assurances in place, the sellers are provided a certain amount of regulatory relief — relief which in many cases is essential to the continued existence of their business, since according to respondents it is nearly impossible (not just inefficient or uneconomical) for the firm otherwise to comply with the applicable regulations. An analysis by the Grocery Manufacturers Association (GMA) determined that just the provisions in 21 CFR § 117.136 would require individual firms to obtain thousands or even millions of assurances every year. Therefore, the FDA should remove these unnecessary and burdensome provisions from the regulations. (70-GMA)

Commenters raised other concerns about FDA regulations, such as the Nutrition Labelling Standards. To provide consumers with clearer nutritional content information for food, based on updated nutrition research and public health information, the FDA issued a regulation in May 2016[48] that would require changes to the Nutrition Labeling, 21 CFR. §101.9 and Reference Amounts Customarily Consumed Per Eating Occasion (serving size) regulations, 21 CFR. § 101.12. These changes represent the first major update to the Nutrition Facts label in over 20 years and would require a massive overhaul to the food package label and information provided to consumers. FDA provided food manufacturers until July 26, 2018 to make this change even though FDA's own Regulatory Impact Analysis for this change estimated the cost to industry to comply in two years would be $4.6 billion, whereas the cost to comply in four years would be $2.8 billion.

[47] 81 FR 34165 (May 27, 2016).
[48] 81 FR 33741 (May 27, 2016).

In other words, just extending the compliance deadline from two to four years saves $1.8 billion. The challenge of compliance is compounded because FDA has yet to issue final guidance on the types of dietary fiber it considers to meet the new definition, 21 CFR §101.9(c)(6)(i), and information on calculating added sugars for some types of food, 21 CFR § 101.9(c)(6)(iii), which must be listed in the new label format. Additionally, the USDA is mandated by law to issue a regulation requiring the disclosure of the content of genetically modified ingredients in all foods by July 29, 2018, three days after the compliance deadline for the Nutrition Facts updates. FDA should extend the compliance date for this labeling update until May 2021 to ease the regulatory burden. Additional compliance time would allow companies to coordinate labeling updates, provide consumers with clear information to help them make healthy choices and avoid wasteful spending on duplicate relabeling schemes that would be required during the next four years. Additionally, USDA and FDA should work together on timing of compliance with these required changes so that manufacturers will only be required to make one label change. (98-IDFA, 146-NAM, 122-AHPA, 70-GMA, 74-Knouse) Other regulatory redundancies should also be eliminated between FDA, USDA, EPA, and other federal agencies. (53-ACMA, 74-Knouse, 64-TFI, 85-NOPA)

Overview of Regulatory Reform

Over the years, much effort has been spent on regulatory reform by think tanks, industry associations, and government agencies. Yet, for several reasons, the burden for manufacturers continues to grow. Through the process of writing this report it became clear to the Department that at the manufacturing plant level, there are significant opportunities for burden reduction. Respondents provided numerous examples of impractical, unrealistic, or onerous requirements and of processes that make permitting unnecessarily complex and time consuming.

Regulators and manufacturers working together can eliminate unnecessary regulatory burdens. These unnecessary burdens can be eliminated if regulators work with industry to apply commonsense and practicality to regulations and requirements to more closely reflect real world operating conditions. Responses revealed the need to reform the permitting process and existing rules and to reduce the current compliance burden without impacting benefits. Responses to the RFI revealed the need to also reform the process for new rulemakings.

Past Attempts at Regulatory and Permitting Reform

Over the years there have been many regulatory reform efforts. Prior reform efforts have prescribed principles for effective rulemaking, including the use of cost-benefit analysis (CBA), examining alternatives to regulations, and retrospective reviews. Yet the regulatory burden has only grown more onerous.

Factors that have undermined prior reform efforts include: indeterminate and underdeveloped cost-benefit models, methodologies and assumptions; a lack of agency effort to comply fully with all rulemaking requirements; and a lack of power and resources in oversight organizations to compel compliance with these principles.

Agency cost-benefit analyses sometimes lack transparency and make self-serving assumptions regarding important direct and readily quantifiable costs. Moreover, technically challenging and resource-intensive intangible, indirect, and cumulative impacts are often not meaningfully addressed. This includes opportunity costs such as impacts on innovation and productivity, despite the potentially far-reaching benefits.

Regulatory reforms also have required the consideration of alternatives — including market-based incentives (rather than a command and control approach). Despite these efforts, agencies tend to make assumptions that cast the politically preferred alternative in a favorable light. As a result of these factors, the cost-benefit models often fail in certain circumstances to capture the true costs of implementing regulation. For some important federal regulations (e.g., listing a species under the Endangered Species Act), a cost-benefit analysis is not required at all.[49]

Moreover, current application of principles of regulation often results in unnecessary, unreasonable, outdated, and impractical requirements that are of concern to manufacturers. Agencies frequently attempt

[49] Independent regulatory agencies are not required to provide a cost-benefit analysis.

to skirt the federal requirement to "maximize net benefits" prescribed in EO 12866[1] by over-weighting of qualitative benefits to justify quantitative costs. "Real-world" impacts of regulatory burdens are in many cases not adequately addressed. Regulatory agencies too often are not sensitive to concerns from manufacturers about overly cumbersome constraints and costs, a failure of agency culture and leadership.

The Need for Collaboration between Regulators and Manufacturers

Respondents provided a multitude of examples of unnecessary compliance burdens. Our review is not able to evaluate the substance of all the complaints or the soundness of all recommended solutions, but the large number of examples suggests there is a significant opportunity for regulatory reform.

Rather than consider the retrospective review process as a re-confirmation of the validity of a regulation, agencies should adopt the practice of working together with the regulated community — manufacturers, in this case — to understand real world burdens (including unintended ones) and to devise potential alternative, commonsense solutions collaboratively. Given the myriad challenges in creating a good rule, lookbacks with stakeholders could give agencies another opportunity to work toward the goal of avoiding regulations that impose unwarranted burdens.[50]

This suggestion fits with EO 13777[51]: "In performing the evaluation [of existing regulations], each Regulatory Reform Task Force shall seek input and other assistance... from entities significantly affected by Federal regulations..." In addition, former Office of Information and Regulatory Affairs (OIRA) head Cass Sunstein recently wrote: "Because the White House itself lacks the capacity to scrutinize the stock of existing regulations, the Trump administration was smart to call for task forces within each agency to do that — and to require them to engage with the public to see which regulations are really causing trouble."[52]

This is also very much in line with other nations' reform policies in which government works with the regulated community to identify unnecessary burdens. As one former UK government official said, "In the UK, by focusing on how we regulated, rather than just what we regulated, we were able to drive enormous cost reductions without sacrificing protections. By simplifying forms and processes, compliance became much less costly without any underlying regulatory changes or compromising mission."[53] This official also observes that the cultural change required to accomplish this reform should not be underestimated: "Those who work in regulatory policy often focus on designing new regulatory ideas. Typically, they don't systematically look for ways to reduce the costs of regulations that are already on the books."

RFI respondents also call for agencies to review existing regulations with stakeholders.[54] One association suggested that a better relationship with manufacturers may help agencies to reduce regulatory burden

---

[50] EO 12866: "Each agency shall tailor its regulations to impose the least burden on society...", September 30, 1993.

[51] EO 13777 (March 1, 2017).

[52] Cass R. Sunstein, "Trump's Safe and Sane 'Regulatory Reform' Idea," *Bloomberg*, March 3, 2017.

[53] Jitinder Kohli, "What President Trump Can Learn From The UK About Reducing Regulations," Forbes, January 27, 2017.
[54] For example, note the following RFI responses: 48-RFF with regard to EPA and NAAQS; 133- PIA with regard to EPA and flexible air permitting; and 53- ACMA with regard to EPA emission modeling (see Docket ID "DOC-2017-0001," at www.regulations.gov).

without sacrificing their missions: "state regulators [in Indiana, Louisiana, Ohio, and Texas are] more knowledgeable about ... steel manufacturing, or more willing to take the time to become knowledgeable... Armed with superior knowledge, state personnel often understand the impracticability or inapplicability of certain controls or requirements, and are more often open to allowing alternate compliance options that reach the same goal through the use of less burdensome means." (112-SMA)

Examples from RFI responses of commonsense suggestions for reform (that might surface during a collaborative lookback) include the following (organized by category):

Lack of Knowledge about How Industry Operates

- "EPA's Risk Management Program rule and other regulations require manufacturers to interact with Local Emergency Planning Committees (LEPCs). [But] there are no LEPCs in many areas. Of the 100 counties in North Carolina, for example, only 40 have functioning LEPCs." (53-ACMA)

- [Regarding OSHA's Hazardous Air Contaminants Standards; for employers seeking to meet through an engineering calculation or evaluation they conduct] "Powered ventilation is generally the most effective and widely used technology to limit exposures to hazardous airborne substances in composites manufacturing workplaces. PPE [personal protective equipment] is also employed when the nature of the work limits the ability of employers to achieve safe exposure levels via ventilation alone. However, several industry employers have been cited by OSHA for using PPE when they have not "proven" that engineering control would not be sufficiently effective...." (53-ACMA)

- "FDA regulatory provisions implementing the Food Safety Modernization Act (FSMA) require sellers (farmers and food processors) to obtain from their customers (downstream food processors and distributors) certain "written assurances" [re food safety hazards] on an annual basis... An analysis by the Grocery Manufacturers Association determined that just the provisions in [one of several specific regulations] would require individual firms to obtain thousands or even millions of assurances every year...." (122-AHPA)

- [Regarding Non-Complying Lots -- 40 CFR. § 770.20(f), which requires fabricators that received notification from a producer of panels that failed an emissions test, to inform customers that their finished products contained these panels.] "First, by the time the fabricator receives the panel producer's notification, the panels almost certainly no longer exist as panels. Instead, the fabricator will almost certainly have cut up the affected panels it received into component parts, incorporated those component parts into finished goods, and shipped those finished goods. Second, the affected panels are untraceable once they are incorporated into finished goods. A fabricator does not track which panels go into which finished goods... Third, in the fabrication process the panels are covered with veneers or other coatings. This means that it is no longer feasible to test the panels accurately for compliance with the emissions limits. Fourth, the fabricator's notification is very likely to be completely unnecessary, because by the time the customer receives its

notification, the affected panels will probably have aged to the point that they now meet the emissions limits." (67-AHFA)

- [Regarding CWA §316(b)- Cooling Water Intake Structures (CWIS) -- Entrainment "Best Technology Available" (BTA) for facilities withdrawing less than 125 MGD] "Facilities withdrawing less than 125 MGD are not required to submit entrainment information however the permitting authority is still required to make a determination about the BTA to minimize entrainment... Permitting authorities generally lack the technical expertise in such areas, so it requires the permittees to provide the permitting authority with adequate technical information to support the BTA determination. A 52-week entrainment study can range from $140,000 to $410,000." (147-US Steel)

- "([Regarding] Toxic Substances Control Act (TSCA) regulation... Chemical Data Reporting (CDR) regulations require exceptionally detailed monitoring, recording, and reporting of the chemical make-up of our members' steel and steel coatings, raw materials...) It is overly burdensome to the steel industry to report on the general safety of a product that has been widely produced for several centuries and whose chemical makeup is well known and that poses little risk from exposure." (92-AISI)

- "EPA should ensure remediation cleanup standards are reasonably achievable... for example cleanup standards may be set below background concentrations that can never be achieved at a cleanup site until sources in the wider area are controlled...." (76-Boeing)

- "FDA has formally acknowledged under various circumstances that reliance on batch records is an accurate and practical method for assuring that finished food products meet required compositional specifications for ingredients that are chemically complex or for which no validated test method exists... [But] during inspections of firms under 21 CFR Part 111, FDA often pushes firms to implement expensive chemical testing for such ingredients (which would cost at least hundreds and potentially thousands of dollars per batch of product) — or to prove that no such chemical test method exists (an exercise that is expensive and pointless, since it's impossible to prove a negative and it is very rare for valid test methods to exist for chemically complex food ingredients, especially in a chemically complex matrix)." (122-AHPA)

Inconsistent Enforcement

- "Differential enforcement of a regulatory requirement across geographies (i.e., inspectors interpreting a regulation differently in two different manufacturing locations) is so troubling to compliance officials."[55]

[55] National Association of Manufacturers, "Holding US Back: Regulation of the U.S. Manufacturing Sector," prepared by Pareto Policy Solutions, LLC.

- "Inconsistent Federal implementation of the RCRA Corrective Action process from region to region and site to site... causes... increased cost and lost opportunities due to unpredictable or longer time periods for addressing impacts to the environment." (147-US Steel)

Antiquated Rules

- "The current Leak Detection and Repair (LDAR) rules require point-by-point monitoring for leaks (Method 21) for every LDAR component (valves, pumps, compressor seals, pressure relief devices, etc.). This is very time consuming and inefficient. Infrared cameras (IR camera) are now voluntarily used in manufacturing to detect leaks much more quickly and efficiently. The use of these IR cameras should be a technology option to replace the current antiquated LDAR rules." (89-IECA)

Technology Requirement is Too Expensive or Unproven (Unrealistic Assumptions or Cost is Too High)

- "FDA regulation 21 CFR 111, Current Good Manufacturing Practice (cGMP) in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements, includes Section 111.605 (a) and (b) ... requires that all electronic records comply with 21 CFR 11, a burdensome and complex requirement to validate computer systems that was developed for drug manufacturers. The software and hardware validation requirements are costly, difficult to maintain, and fail to provide added security... Small and midsize dietary supplement manufacturers that lack the resources to validate computer systems are burdened with maintaining hard copies and using hand-written records, which is a costly, inefficient, and unnecessary clerical obligation...." (63-CRN)

- "The PSD BACT evaluation process, spelled out through EPA guidance, should not include unproven technologies employed in other countries that have not been demonstrated as commercially feasible or effective at controlling emission in the U.S. Requiring domestic facilities to conduct technology reviews and costly feasibility analyses of technologies utilized in countries that do not have the same rigorous air pollution control and permitting requirements, places unreasonable permitting demands and delays on the already lengthy U.S. permitting process." (92-AISI)

Complex, Onerous Processes, e.g., Unnecessary Recordkeeping

- "In past years we dedicated the majority of our environmental resources to emission reduction equipment that has dramatically reduced our impact on the environment. In more recent years, the majority of our environmental resources have been dedicated to monitoring and record keeping. Reducing the frequency of monitoring, and reducing the amount of recordkeeping and reporting would be very beneficial. We believe that we can adequately demonstrate ongoing and continuous compliance with reduced levels of monitoring and recordkeeping." (112-SMA)

- "For permitting projects... USEPA and States ask for endless pieces of information that are not necessary to issue a permit or approve a submittal; and are beyond what is required by statute and the implementing regulations. Frequently, the agencies indicate the information is needed to address questions or concerns from third parties—'we need this information because somebody may ask about it or because it would be nice to know.'" (147-US Steel)

- "Review and streamline data requirements to ensure that only data that is required for a permit decision is required to be submitted." (79-Northrup Grumman)

- "Record Keeping Mandate on EPA Air Permitted Standby Engines: 40 CFR Part 51 (Subpart A) ... Standby engines rarely operate but companies, by law, are required to report emissions data... in 2016, a company reported total emissions from emergency engines (generators and fire pumps) as follows. [Table shows emissions sum= 0.005716 tons per year) The company estimates that it takes $500 (5 times $100 per engine) per year to monitor, report, and do maintenance as EPA instructs them to do. Given the costs and given the emission volume, it cost about $90,000 per ton of emissions." (89-IECA)

Review of Existing Regulations

Reducing the existing regulatory burden is perceived by some respondents to be more critical than reforming the process of creating new regulations.[56] Retrospective reviews of existing regulations have been required since the Carter administration, but like reforms for rulemaking processes, retrospective reviews often do not receive appropriate emphasis.

The need for retrospective review is straightforward. Although public engagement is critical before rules are written, retrospective reviews give agencies and the regulated community an opportunity to assess a regulation's actual impact — costs and benefits — using real numbers and experiences. "Lookbacks" would allow agencies to examine unintended costs as well as identify (and ameliorate) unnecessarily burdensome compliance requirements.

There are many reasons why meaningful retrospective reviews are rare. The overriding reason is probably the same as for new rules (above): there are "insufficient incentives"[57] to overcome the strain on resources required to conduct these reviews. Some sources suggest that agencies are biased and that "External funds must be provided to give disinterested researchers an incentive to conduct unbiased and independent studies."[58]

---

[56] National Association of Manufacturers, "Holding US Back: Regulation of the U.S. Manufacturing Sector," prepared by Pareto Policy Solutions, LLC and NERA Economic Consulting, "Macroeconomic Impacts of Federal Regulation of the Manufacturing Sector." Prepared for the Manufacturers Alliance for Productivity and Innovation (MAPI), August 21, 2012.

[57] Winston Harrington, "Grading Estimates of the Benefits and Costs of Federal Regulations: A Review of Reviews," Resources for the Future (RFF) Discussion Paper, September 2006.

[58] Ibid.

Several models were suggested such as creating another non-partisan entity like the Congressional Budget Office (CBO) which avoids making policy recommendations and focuses on unbiased analysis; and, in this case, the new entity would identify regulations that are in need of reform or elimination.[59] Regulatory Reform Task Forces (RRTFs) have been formed (via EO 13777) within each agency and they can help play this role if members are given sufficient autonomy and capacity to focus primarily on regulatory reform activities. Because of the limited resources historically made available for reviewing existing regulations, and the tendency for agencies to be biased in favor of their respective regulatory authorities, constant attention and oversight of their efforts will be required in order to make sufficient progress.

President Trump's Executive Order 13771 also provides the forum and structure for an ongoing retrospective review by requiring agencies to implement a "2 for 1" (also known as "one-in, two-out," or Cut-Go) mandate that requires the elimination of regulations or costs of existing regulations to offset the burdens of a new regulation. Countries such as the United Kingdom, Canada, the Netherlands, and Australia have implemented a version of this program.[60] In Senate testimony, Senator Mark Warner claimed that the United Kingdom went from being the epitome of regulatory oppression to surpassing the United States in international competitiveness in part because of its ongoing PAYGO-type policies.[61]

Reforming the Permitting Process

According to respondents, "permitting requirements are numerous and quite onerous." (112-SMA) Permitting — particularly related to the Clean Air Act and Clean Water Acts — was the most frequently cited concern, and often identified as a top priority regulatory burden. The Clean Air Act New Source Review (NSR) program was described by many as the most significant permitting challenge and impediment to construction of new manufacturing plants and modernization of existing facilities.

Beyond the reforms to specific regulations and permitting processes called for in this report, there are two overarching problems that must be addressed throughout federal permitting. The first is overlap, duplication and lack of coordination among agencies, permitting processes, and reporting requirements. The second is uncertainty in the permitting processes.

Overlap, Duplication and Coordination

Many RFI respondents raised concerns that EPA "second-guesses" state decisions. (170-APF) "Even in cases where a state issues CAA permits under an EPA-approved [state implementation plan], there are instances when decisions made by the permitting authority are re- evaluated and revisited by EPA, duplicating the efforts of the agencies and adding uncertainty for the permittee." (126-API)

---

[59] Philip A. Wallach, "An Opportune Moment for Regulatory Reform", Brookings, April 2014.

[60] All 4 nations focus on cutting costs not number of regulations; Australia, Canada, and the Netherlands focus on red-tape or administrative costs; the United Kingdom's definition is broader but focuses heavily on red-tape.

[61] How Best to Advance the Public Interest: Hearing before the Committee on Homeland Security and Governmental Affairs, U.S. Senate, 112th Congress, (2011)

In addition, there were examples cited of "overlapping jurisdiction of federal agencies and programs" (146-NAM) such as:

- "Aspects of RCRA and CAA permits" (158-CKRC)
- "NSR and Title V permits can have significant overlap..." (109-Valero)
- "EPA and the U.S. Army Corps of Engineers: Water and wetlands." (146-NAM)
- "EPA's Integrated Risk Information System, EPA's risk evaluation programs under the Toxic Substances Control Act, the CDC's Agency for Toxic Substances and Disease Registry Toxicological Profiles program, and NIH's National Toxicology Program Office of Report on Carcinogens have largely redundant missions." (53-ACMA)

In some cases, multiple regulations or agencies require the same information: "Companies are often required to separately report the same information to multiple regulatory offices and programs, including at the federal, state and local level. For example, data on air emissions are typically reported as part of permit compliance reports, to state air emission inventories, and to EPA's Toxic Release Inventory program." (152-AWC)

A related issue is the lack of coordination of the review process when more than one agency is involved: "US Army Corps of Engineers has authority for Section 404 permitting. However, in order to get the permit, review and consultation is required for multiple other federal agencies... all raising issues about maintaining sufficient bird and fish habitat." (126-API)

Overlap, Duplication and Coordination — Potential Solutions. Many respondents suggested that federal agencies (primarily EPA) should defer to states in order to: "...reduce, if not eliminate, federal second-guessing. Substitute individual permit oversight with federal programmatic overview of state adherence to permitting requirements. States should be evaluated on how their program is performing, not micromanaged on each and every permit decision." (170-APF)

In other cases, where multiple agencies must be involved, many respondents suggested something similar to FAST-41 type provisions:

- "Designate Lead Agency to coordinate responsibilities among multiple agencies involved in project reviews."
- "Provide for concurrent reviews by agencies, rather than sequential reviews."[62] (107-COC)

[62] The Water Resources Reform and Development Act of 2014 is another FAST-41 type model for permitting reform according to 109-Valero: "...overhauled the Corps' planning process by creating a strict three-year deadline and $3 million federal cost limit for feasibility studies. It required different levels of Corps review to occur concurrently and eliminated duplicative requirements, such as multiple cost-estimates and a reconnaissance study. [Also] designated the Corps to be the lead agency coordinating reviews for civil works projects...."

Respondents also offered the following best practice examples:

- "Ohio EPA piloted a program in which it took normally sequential steps in permit processing and executed them in parallel, significantly reducing overall permit processing time." (170-APF)
- "Indiana Department of Environmental Management's air program processes construction permit applications and associated Title V permit modification for projects concurrently...." (147-US Steel)
- "The California Unified Program Agency (CUPA) consolidates hazardous waste and hazardous materials requirements of multiple programs into a single regulatory entity. The result is simplified permitting, reduced regulatory complexities and reduced management burden." (79-Northrup Grumman)

One association suggested a "reporting portal" to be created by EPA with state and local regulators to "allow manufacturers to report information needed by regulatory programs only once." (152-AWC)

Several RFI respondents suggested that a specific coordinator is needed, such as a federal office responsible for permit coordination (106-AFS), or an EPA ombudsman: "This supervisory body could [provide] the regulated community with a means for coordination across various environmental media (water, air, etc.) and across various agencies (e.g., EPA, Army Corps of Engineers, Fish & Wildlife), perhaps even including state and local agencies or authorities." (76-Boeing)

Uncertainty Related to Permit Processes

Permitting challenges are exacerbated by uncertainty, as addressed in many of the RFI respondents complaints. Uncertainty comes from inter-related issues driven by complexity such as "case-by-case" or "one-off" reviews, which often "reinvent the wheel." There is also a general lack of consistency, which then contributes to uncertain timelines, which itself is exacerbated by the threat of delay driven by public protest/litigation. This complex situation is then made more uncertain by lack of transparency/poor communication. While uncertainty is also a problem in non-permitting regulations (discussed above), it appears to be a significant and systemic problem in environment-related permitting: "Environmental permitting has many sources of uncertainty, including ... timing, procedures, the roles of various agencies in multi-agency review projects, and the data that the permitting authorities use and rely upon in making permitting decisions. Often, this variability is based on the views and expectations of a particular regional office or specific employee or office within EPA. Other times, the requirements can apply Agency-wide yet still create uncertainty. EPA, for example, is inconsistent in its data demands and the procedures by which it approves projects...." (112-SMA)

Environmental permitting is so complex that respondents described having to hire several consultants and lawyers to help "navigate" the "elaborate mazes" that permit regulations have become. (170-APF) Moreover, this appears to be true of "even simple modifications" to regulations. (112-SMA) One association wrote, "Obtaining a permit for just one CAA program alone (the NSR program) can require the permittee to

review nearly 700 posted guidance documents...." (170-APF) For manufacturing firms, the uncertainty of the permitting duration, which can take years, may be the greatest challenge. "The lack of certainty as to when the permit will be issued... create(s) significant burden, compliance difficulty, and business uncertainty...." (126-API) Permitting delays are partly driven by complexity and lack of coordination as discussed above. But some respondents blamed agency staff for contributing to the problem, claiming staff can "sit on an application until their allotted time is almost up before looking at it regardless of how minor or simple the task." (114-AGC) On the other hand, other respondents claimed that delays are sometimes due to insufficient staffing resources at permitting agencies. (79-Northrup Grumman; 126-API; 123-3M)

Delays are not only driven by the agency or agencies. Lawsuits or "not-in-my-backyard activism" (107-COC) are a significant permitting issue: "Even where a permit remains valid pending resolution of the litigation, significant uncertainty can be introduced into the process of building or expanding a facility and it can take years to resolve all issues." (136-AFPM) While this is not under the control of regulatory agencies, it does increase the uncertainty for manufacturers in making investment decisions.

Lastly, according to respondents, EPA's lack of straightforward communication adds to manufacturers' burden: "EPA does not provide clarity on its procedures and information requirements. These transparency problems are significantly compounded when EPA changes its requirements through Agency-generated guidance without notice to the applicants or the ability to comment on, or ask questions about, the guidance." (112-SMA) As one example, an association explained that a Congressional requirement that EPA publish all state implementation plans (SIPs) was put in place "because it was virtually impossible to determine which regulations were currently approved as part of the SIP. This lack of transparency serves to delay projects simply because discerning what regulations apply presents its own challenge."[63]

Uncertainty — Potential Solutions. FAST-41 is often praised as a step in the right direction for permitting reform. Established under Title 41 of the Fixing America's Surface Transportation (FAST) Act (42 U.S.C. § 4370m), FAST-41 was designed to improve the timeliness, predictability, and transparency of the federal environmental review and authorization process for "covered" infrastructure projects.[64]

FAST-41 created a new Federal Permitting Improvement Steering Council (FPISC), with representation from Deputy Secretary-level members and led by a presidentially-appointed Executive Director. It also created agency Chief Environmental Review and Permitting Officers (CERPOs). Covered projects voluntarily gain access to improved authorization and environmental review processes such as early consultation, coordinated projects plans, project timetables, public Dashboard tracking,[65] and dispute resolution procedures.

---

[63] CAA Section 110(h)(1), requires *"EPA to assemble and publish all"* SIPs; but EPA is not complying. (170-APF).

[64] For more information, see https://www.permits.performance.gov/about/fast-41.

[65] For more information, see https://www.permits.performance.gov/projects.

Covered projects are defined as any activity in the United States that requires authorization or environmental review by a federal agency involving:

- Construction of infrastructure in a designated sector
- That is subject to NEPA, and
    - Does not qualify for an abbreviated review process and is likely to cost more than $200M; or
    - Is of a size/complexity likely to benefit from enhanced oversight/coordination in the opinion of the Council, including:
        - Projects likely to require an Environmental Impact Statement
        - Projects likely to require reviews from more than two federal agencies.

Infrastructure includes (with some exemptions): manufacturing projects as well as renewable energy production, conventional energy productions, electricity transmission, surface transportation, aviation, ports and waterways, water resource projects, broadband, pipelines, aviation, and any other sector determined by a majority vote of the FPISC.

The initiative is new, with the inventory of existing covered projects just added to the Dashboard in September 2016. For that reason, one commenter recommended "revisit[ing] lessons learned from FAST 41 (sic) permit streamlining later when the FAST 41 program is more mature." (128-Pugh) At the same time, the U.S. Chamber of Commerce directly asked that "the administration's permit streamlining efforts are consistent with FAST-41 activities already being administered by the Office of Management and Budget." (107-COC). NAM noted the potential value of implementing in concert Executive Order 13766, "Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects," and FAST-41. (146-NAM)

Although manufacturing is a covered sector under FAST-41, given the short history of FAST-41 and the strict definition of covered projects, the manufacturing community has yet to share in its benefits. Several of FAST-41's key provisions (107-COC) would be extremely beneficial if they were to be applied to manufacturing industry permitting:

- "Establish a permitting timetable, including intermediate and final completion dates";
- "Require that agencies involve themselves in the [permitting review] process early and comment early, avoiding eleventh-hour objections that can restart the entire review timetable"; and
- "Reduce the statute of limitations to challenge a project review from six years to two years."

RFI respondents echoed these types of recommendations. Florida offers a best practice model, illustrating that an efficient permitting process is possible: "The SNAP (Simplified Nimble Accelerated Permitting) process, used by state and municipal agencies in central Florida engages in streamlined, efficient and rapid construction permitting… transform[ing] an onerous and time consuming process into a reasonably straightforward and user friendly permit acquisition process." (79-Northrup Grumman).

A frequently discussed provision of FAST-41 — the "searchable, online 'dashboard' to track the status of projects during the environmental review and permitting process" (107-COC) — addresses transparency. In addition, a respondent cited a similar best practice in this area by a federal agency: "The FCC has most of its experimental license application process available on-line. It is easy to see that an application is in the system, and any comments or requests are also visible. The history of most experimental licenses is available, going back several years." (79-Northrup Grumman)

To address over-complexity respondents suggested various types of permitting standardization as well as best practice examples:

- "Replace uncertain case-by-case permit review programs with standardized regulatory decisions that are periodically updated through rulemaking after public notice and comment." (112-SMA)
- "Develop pre-approved specifications for permits to simplify and shorten the permit process." (79-Northup Grumman)
- Offer "general permits that companies can opt into for standard pieces of equipment…." (170-APF)
- "U.S. EPA should promote and directly facilitate issuance of innovative air quality permits by state/regional permitting authorities, especially permits that "advance- approve" changes at manufacturing facilities." (123-3M)
- Streamlined permitting for "minor" projects are offered by the Pennsylvania Department of Environmental Protection (online self-registration forms using templates) and the State of Texas (permit-by-rule program). (158-CKRC)

In addition, one respondent suggested that "Federal agencies should implement Lean [Six Sigma] practices to streamline permitting" and noted that EPA regional offices are attempting to do this. The respondent goes on to say Lean practices can help agencies reduce uncertainty and inefficiency and shorten schedules and points to the Arizona Department of Environmental Quality as having had success with Lean efforts. (76-Boeing)

In addition to reducing the time limit for challenging a permit from 6 years to 2 years as described above, there were a few other recommendations as to how to improve the processes by which permitting decisions and projects can be opposed. One association related a case where a firm settled a lawsuit brought by an environmental group even though the regulatory agency had found that the facility had done nothing wrong. The association suggested: "The applicable provisions of the major environmental statutes must be revised

to introduce reasonable but tough thresholds to control the right of third parties to unreasonably intervene resulting in delays and expenses to industry. The thresholds must be based on local agency negligence, fraudulent/unlawful behavior or inappropriate influence." (89-IECA)

Also, because of the potential of a lengthy permitting process, lack of "grandfather" protection can be exploited by objectors and is a recommended reform: "Without [grandfather] protection, project opponents will have an incentive to delay the permitting process as long as possible in the hope that the area will be designated NA [nonattainment] before a final permit can be issued. A more consistent grandfathering approach would ensure that companies do not spend years trying to obtain a PSD permit, only to reach the end of the process and find they now need to get an NA NSR permit (with offsets that may not be available) rather than a PSD permit." (48-AF)

New Rules: Improving the Rulemaking Process

The Office of Information and Regulatory Affairs (OIRA) review of agency rules should be reaffirmed in a number of ways.

- Cost benefit analysis methods should be refined, and made more rigorous and enforced by OIRA, with a view toward continual improvement, including development of new methods and more thorough evidence bases.
- Cumulative costs should be rigorously weighed where appropriate.
- Regulations should not impede innovation.
- There should be meaningful public engagement prior to issuing significant proposed rules.
- Regulations should be more sensitive to the impact on small business.
- Regulations should only be enacted and enforced when there are adequate resources available for review, implementation and oversight.

Recommendations and Priority Areas for Reform

Through submitted comments, industry expressed clear support for the need to protect the environment, human health, and worker safety, but shared concrete, detailed concerns with how the federal government has set out to achieve those objectives through regulation, guidance documents, and other means. They identified numerous regulatory and permitting problems that include:

- Onerous and lengthy permitting processes that increase cost, add uncertainty, and inhibit investment in and expansion of manufacturing facilities;
- Inadequately designed rules that are impractical, unrealistic, inflexible, ambiguous or lack understanding of how industry operates;
- Unnecessary aspects of rules, or unnecessary stringency, that are not required to achieve environmental or other regulatory objectives;
- Overlap and duplication between permitting processes and agencies; and
- Overly strict or punitive interpretations of guidance, policies or regulations that are often counter to a pro-growth interpretation.

The Department identified twenty sets of regulations and permitting reform issues from the respondents as being a top priority for immediate consideration. Consistent with previous studies on the costs of federal regulations, comments on Environmental Protection Agency (EPA) rules dominated the responses from industry, and constitute the bulk of the Department's recommended Priority Areas for Reform.

Priority Areas for Reform
Clean Air Act

1. New Source Review (NSR) or Prevention of Significant Deterioration (PSD) permits:

    a. Enforce the one-year turnaround time on NSR/PSD permit applications.[66]

    b. Reduce statute of limitations on challenges or appeals to one year.[67]

    c. Allow non-emitting construction activities to commence prior to receiving a permit.[68]

    d. Consider options to revise the definition of Routine Maintenance, Repair & Replacement (RMRR) to provide more flexibility.[69]

    e. Promote and facilitate use of flexible permitting mechanisms associated with PSD and Title V including, but not limited to, plant-wide applicability limits (PALs) and alternative operating scenarios. As part of this, consider any regulatory or other changes (e.g., guidance) that could facilitate more widespread use of these flexible permitting tools.[70]

    f. Develop opportunities to streamline NSR applicability determinations and/or to reduce the number of facilities and projects that may be subject to NSR through evaluating and pursuing regulatory and guidance options for addressing aggregation, project netting, debottlenecking, and the methodology by which pre and post construction emissions are calculated.[71]

---

[66] EPA will coordinate with state and local air agencies, as well as EPA regional offices, to develop best practices, guidance, or regulatory revisions necessary to ensure that NSR permits are issued consistent with the 12-month timeline described in the CAA.

[67] EPA is pursuing regulatory action intended to streamline the Title V process. Congressional action would be required to reduce statute of limitations.

[68] EPA would need to review existing regulations and guidance and identify situations for which it would be appropriate to provide additional clarity and/or opportunities to begin construction without an NSR/PSD permit.

[69] Legislation would be required for a change to the statutory definition. Respondents recommended considering potential regulatory actions to provide clarification and flexibility.

[70] EPA could conduct outreach to educate sources and permitting agencies on the benefits of flexible permitting tools and also consider minor changes to PAL provisions to provide more incentives for sources to use PALs. The EPA intends to highlight and encourage use of flexible air permitting options.

[71] EPA should review existing regulations and guidance to identify opportunities to address these issues and provide more flexibility through regulatory actions. Litigation is pending over EPA's 2009 aggregation and project netting rule; this litigation is pending resolution of EPA's reconsideration process.

g. Issue guidance on modeling concurrent with promulgation of revised National Ambient Air Quality Standards (NAAQS), to ensure timely clarification on modeling required as part of a NSR application.[72]

h. Consider opportunities to "grandfather" NSR applications following revision of a NAAQS.[73]

i. Consider opportunities to emphasize key aspects of the Best Available Control Technology (BACT) analysis including, but not limited to, expectations regarding technology determinations.[74]

j. Consider opportunities to expand the purchasing offsets outside of the local areas as well as other offset related revisions which would provide increased flexibility and burden reduction.

2. Title V Operating Permits (incorporates all of the federal and state air pollution control requirements): Extend the term of the permit from 5 to 10 years.[75]

3. National Emissions Standards for Hazardous Air Pollutants (NESHAP):

   a. EPA should increase efforts to reduce costs and avoid duplicative requirements in conducting reviews of NESHAP standards.

   b. EPA should take steps to ensure that any new requirements considered under Residual Risk and Technology Reviews (RTRs) would not be redundant or unreasonably costly.[76]

4. Consider options to provide relief for facilities through affirmative defenses or other avenues to account for unforeseeable and uncontrollable emissions during periods of startup, shutdown, and malfunction (SSM). The EPA previously adopted an interpretation which exempted SSM periods from the emissions restrictions that apply under normal operating periods.[77]

5. National Ambient Air Quality Standards (NAAQS):

---

[72] EPA has committed to timely issuance of guidance.

[73] Existing regulations provide some opportunities for "grandfathering" NSR applications.

[74] EPA would need to evaluate what could be provided to streamline BACT determinations.

[75] The EPA is completing the petitions rulemaking that will revise part 70 to clarify and streamline the process by which EPA receives and reviews Title V petitions, thereby increasing transparency and efficiency for regulated entities and environmental agencies. This action will address how EPA intends to review Title V petitions in an effort to reduce opportunities to raise NSR issues in the context of Title V.

[76] Under its existing authorities EPA is taking action to harmonize NESHAP and NSPS obligations.

[77] Pending litigation in Walter Coke, Inc., et al. v. EPA, No. 15-1166 (D.C. Cir.) (challenge to SSM SIP) and in American Municipal Power v. EPA (Sup. Ct.). Whether such exemptions and affirmative defenses can be allowed under the CAA is central to the litigation.

a. EPA should develop options that consider "real-world measurements" instead of "probabilistic models" for the PSD program.[78]

b. Extend NAAQS reviews from 5 to 10 years.[79]

c. Ozone: Delay implementation of the 70 parts per billion (ppb) standard or retain the earlier 75 ppb standard. Observers stated the 70 ppb level is approaching "background" levels of ozone in certain areas.[80] The pace at which the standard is being tightened seems hurried; implementation is further complicated by measurement and air quality modeling issues, in particular accounting for ozone transported from international sources.

6. Consistent with its authorities under section 111 of the CAA, EPA should consider adding exemptions for research and development (R&D) related activities or otherwise streamline requirements for R&D activities for New Source Performance Standards.[81]

7. EPA should issue a Unified Coating Rule (UCR) that facilities could choose to meet (replacing the eight overlapping NSPS and NESHAP regulations that apply to coatings).[82]

Clean Water Act

8. Waters of the United States Rule: Reconsider the rule to define more narrowly "waters of the US" to exclude ephemeral tributaries. EPA and the U.S. Army Corps of Engineers (USACE) are reviewing the existing Clean Water Rule and its definitions of "navigable waters" as directed by Executive Order 13778. // On July 27, 2017, the EPA and the USACE published a proposed rulemaking to repeal the 2015 Clean Water Rule and reinstate the regulations in place prior to its issuance.[83] As indicated in the proposed withdrawal, the agencies are implementing EO 13778 in two steps to provide as much certainty as possible as quickly as possible to the regulated community and the public during the development of the ultimate replacement rule. In Step 1, the agencies are taking action to maintain the legal status quo of the rule in the Code of Federal

[78] The EPA is concerned that this approach would result in a directive that would impose greater costs on regulated facilities. This issue is similar to many raised in the NSR/PSD suggestion.

[79] Altering the NAAQS timeframe would require congressional action. EPA should consider opportunities to ensure that any forthcoming reviews are not redundant and are completed expeditiously.

[80] On-going litigation: Murray Energy Corporation et al. v. EPA, No. 15-1385 (and consolidated cases), (D.C. Cir.) (challenge to the 2015 ozone NAAQS).

[81] See 40 CFR sections 60.40(c) and (d); 60.292(d); and 60.332(h). EPA is evaluating its authority to exempt R&D related activities under section 111. The EPA has routinely considered adding exemptions for R&D related activities and has added specific R&D exemptions in the past.

[82] There is ongoing litigation regarding several NESHAP. EPA cannot provide specifics. EPA has court ordered deadlines to complete risk and technology reviews for several NESHAP that apply to certain coatings. EPA should consider options with an UCR to provide flexibility that encourages facilities to meet the rule by using pollution prevention approaches.

[83] 82 FR 34899 (July 27, 2017)

Regulations, by recodifying the regulation that was in place prior to issuance of the 2015 Clean Water Rule. Currently, Step 1 is being implemented under the U.S. Court of Appeals for the Sixth Circuit's stay of the rule. In Step 2, the agencies plan to propose a new definition that would replace the approach in the 2015 Clean Water rule with one that reflects the principles in EO 13778.

9. Section 404[84] and National Pollutant Discharge Elimination System (NPDES) permits: Provide permit applicants with clear descriptions of required steps and additional tools to assist them in completing the permitting process.[85]

Other

10. Resource Conservation and Recovery Act (RCRA): Inappropriate classifications of waste streams as "hazardous" prevent or discourage recycling, reuse or reclamation. Aggressively review lists of hazardous waste to consider delisting certain compounds/materials/liquids that could easily be reused or recycled, but for this classification.[86]

11. Revise the Crystalline Silica Standard. A 2016 Department of Labor (DOL) Occupational Safety and Health Administration (OSHA) rule was finalized which cut in half the permissible exposure to crystalline silica (for general industry and maritime) from 100 to 50 micrograms per cubic meter. Recommendation is to keep allowed level at 100 micrograms per cubic meter.[87] // DOL announced on April 6, 2017 that it would delay enforcement of the respirable crystalline silica standard for construction until September 23, 2017, to conduct additional outreach and provide educational materials and guidance for employers.

12. Revise the OSHA rule to Improve Tracking of Workplace Injuries and Illnesses by removing requirement to disclose records of workplace injuries and illnesses and to alleviate the duplicative nature of work-related injury information collection. Clarify in guidance that this rule should not undermine safety incentives and drug testing programs.[88] // DOL has proposed delaying until December 1, 2017 the initial reporting of data on workplace injuries and illnesses (Form 300A) in order to give the administration an opportunity to review the new electronic reporting requirements. The proposed five-month delay would be effective on the date of publication of a final rule in the

[84] Section 404 Permits are under the purview of the US Army Corps of Engineers.

[85] EPA and USACE should explore opportunities to truncate the permitting processes and elevate any barriers, such as needed regulatory changes, to senior leadership for consideration.

[86] In 2015 EPA published a comprehensive revision to its rules governing the recycling, reuse and reclamation of hazardous secondary materials, where these materials would otherwise become listed or characteristic hazardous wastes if discarded rather than recycled.

[87] Pending litigation. Could be modified or repealed by agency notice-and-comment rulemaking, but must remain consistent with underlying statutory provisions in the Occupational and Safety and Health Act, 29 U.S.C. § 655(b)(5).

[88] Could be modified through further notice-and-comment rulemaking (underlying statutory requirement that companies maintain certain injury records). This issue is pending litigation.

Federal Register. Furthermore, DOL has announced its intention to issue a proposal to reconsider, revise, or remove other provisions of the Improve Tracking of Workplace Injuries and Illnesses final rule, 81 FR 29624 (May 12, 2016).

13. Revise Section 1502 of Dodd-Frank Act. Remove the Securities and Exchange Commission (SEC) requirement on manufacturers to "undertake 'due diligence' on the source and chain of custody of its conflict minerals and file a Conflict Minerals Report" and to disclose publicly this information.[89] // On April 28, 2017, the SEC suspended enforcement of the rule until ongoing litigation [Nat'l Ass'n of Mfgrs v. SEC, No. 13-5252 (D.C. Cir. Apr. 14, 2014)] has concluded.

14. Rescind Section 953(b) of Dodd Frank Act which requires CEO pay ratio disclosure.[90] // On February 6, 2017, the SEC opened a 45-day comment period on unexpected challenges for compliance with the rule. Acting Chairman Michael Piwowar directed staff to reconsider the implementation of the rule based on any comments submitted and to determine as promptly as possible whether additional guidance or relief may be appropriate.

15. Do not implement Equal Employment Opportunity Commission's (EEOC) expanded requirements for hours and earnings data on EEO-1 forms. // On August 29, 2017, OMB issued a memo to the EEOC announcing a review and immediate stay of the effectiveness of those aspect of the EEO-1 form that were revised on September 29, 2016.[91]

16. Delay compliance dates for the Intentional Adulteration rule required by the Food Safety Modernization Act (FSMA). The Department of Health and Human Services, Food and Drug Administration (HHS, FDA) should rescind requirements to obtain written assurances from downstream customers on an annual basis, or alternatively consider revision of requirement to reduce frequency and burden.[92]

17. Extend compliance deadline on nutrition labeling standards from 2018/2019 to 2021. This will allow further time for the FDA to further clarify rules[93] and definitions regarding "dietary fiber" and "added sugar" required by the new label format. // On June 13, 2017, the FDA announced that the

---

[89] This would require a statutory change.

[90] This would require a statutory change.

[91] See https://www.reginfo.gov/public/jsp/Utilities/Review_and_Stay_Memo_for_EEOC.pdf.

[92] The current compliance dates are 3,4 or 5 years after the date of publication of the rule (May 27, 2016), depending on the size of the business. Administrative action would be required to effect a delay in the compliance dates for the Intentional Adulteration rule. Although FSMA required that FDA promulgate a final rule to protect food against intentional adulteration within 18 months of enactment of FSMA, the statute does not appear to specify compliance dates. Delaying compliance would require publishing a final rule; rescinding or revising the written assurance provisions would require rulemaking.

[93] The rule was promulgated pursuant to section 403(q) of the Federal Food, Drug, and Cosmetic Act, which requires certain nutrients to be included in nutrition labeling and authorizes the Health and Human Services Secretary to require other nutrients to be included if the Secretary determines that the information will assist consumers in maintaining healthy dietary practices.

compliance dates for the Nutrition Facts Label Final Rules will be extended. The FDA has not specified the length of the extension, but will announce new compliance dates in a future Federal Register Notices. FDA explained that additional time would provide manufacturers covered by the rule with necessary guidance from FDA, and would help them be able to complete and print updated nutrition facts panels for their products before they are expected to be in compliance.

Recommendations

The Department makes three broad recommendations.

Agency "Action Plans." Each agency's Regulatory Reform Taskforce (RRTF) should deliver to the President no later than December 31, 2017, an "Action Plan" to address the regulatory burden and permitting reform issues highlighted in the responses to the RFI. The relevant agencies should review all comments received in response to the Department's RFI, and particularly address the issues detailed in the section on "Priority Areas for Reform." RRTFs should prioritize a response to these particular items and should include in their action plan a description of specific actions that could be taken to lessen the burden created by the regulations mentioned in the RFI comments. In the first year, agency leadership should update the President regularly on the status of their efforts regarding these tasks. While the "Priority Areas for Reform" list is by no means comprehensive, it represents a targeted first step to quickly address the problem of over regulation.

Annual Regulatory Reduction Forum. The Department recommends creating an annual, open forum for regulators and industry stakeholders to evaluate progress in reducing regulatory burdens. There is a long-standing need for consultations with industry to identify specific actions the federal government can take to reduce unduly burdensome regulations and accelerate permitting decisions. Industry has repeatedly expressed its appreciation of the Trump Administration's regulatory reform effort and the trust it has in the Department of Commerce to listen and bring the voice of business to this effort. Because of this, the Department of Commerce recommends that it, along with other regulatory agencies, continually evaluate progress and re-attack the problem areas. Similar to Kentucky's "Red Tape Reduction Initiative," federal agencies should collect, review, and act on recommendations from industry. Input from these annual "check-ins" will guide the continuing burden reduction efforts of RRTFs and ensure regulators are moving in the right direction while allowing for policy changes as needed.

Expand the Model Process of FAST-41. The Department recommends further implementation of the streamlined permitting process created by "FAST-41."[94] The FAST Act contains various provisions aimed at streamlining the environmental review process, with improved agency coordination through creation of a Coordinated Project Plan and a Permitting Dashboard which serves as a centralized information page for pending projects, as well as opportunities to better coordinate with state environmental documentation.

[94] Title 41 of the Fixing America's Surface Transportation Act of 2015 ("Fast-41", codified at 42 U.S.C. § 4370m) streamlines the Federal environmental review and permitting for certain infrastructure projects. FAST-41 created an interagency Federal Permitting Improvement Steering Council (FPISC); established new procedures for interagency consultation and coordination practices; authorized agencies to collect fees to help speed the review and permitting process; and uses the Department of Transportation's "Permitting Dashboard" to track all covered projects.

The Federal Permitting Improvement Steering Council should consider including projects in an "economically significant" category. Those projects resulting in significant, immediate economic benefit to the United States should be considered for inclusion under this new category. Consideration should be extended to complex funded manufacturing projects that can demonstrate direct and indirect benefits to the domestic economy of significant value. To be eligible for the current streamlining process, projects in this sector or category would still need to meet the definition of covered project under FAST-41.

FAST-41 provides a model process that could be incorporated into other Federal legislation that governs Federal programs and requirements that apply to manufacturing facilities. To expand further the universe of manufacturing projects that benefit from streamlined regulatory approval processes, the Administration could work with members of Congress to both expand the definition of "covered project" under FAST-41 and to incorporate procedures similar to those found in FAST-41 in other legislation applicable to manufacturing projects. Expansion of the definition of covered projects to include those which result in immediate economic benefit to the United States would help to further goals of expanding the domestic economy and lessening permitting burdens for manufacturers seeking domestic expansion of their operations.

Conclusion

The domestic manufacturing sector and our broader economy are in desperate need of regulatory reforms in order to jump- start economic growth and create jobs, innovation and prosperity for all Americans. During the process of gathering information related to this report it has become apparent that we must make significant progress in improving the way government regulates the manufacturing sector. While environmental protections are of critical importance, many regulations are being enforced in a way that is limiting the growth of our economy and our global economic leadership, while in some cases regulations are providing no meaningful environmental or public health benefits. We believe prudent actions are advisable in order to return balance to regulatory procedures.

The Department believes that the recommendations contained in this report will provide a foundational base from which government can begin to approach this monumental task. These recommendations are consistent with all ongoing regulatory reform efforts, including those outlined in Executive Orders 13777[95] and 13766.[96] Working through their RRTFs, agencies must continue to shape more focused strategies for re-forming rules, guidance and policy to address the numerous challenges cited throughout this report. We hope that through highlighting these challenges it will become easier for regulatory agencies to clearly see contentious areas and work with the regulated community to resolve them in ways that unlock our economy's potential and advance the goal of job creation. Agencies must be willing to work with those subject to their rules, guidance and policy to find methods to implement existing statutes in ways that are less cumbersome and restrictive.

---

[95] EO 13777 (March 1, 2017).

[96] EO 13766 (January 24, 2017).

The Department looks forward to partnering with other federal agencies to continue this endeavor in the future. We are optimistic that with continued emphasis the federal government can make progress towards these goals.

Appendix

Abbreviations Used in References to RFI Responses		
RFI #	Abbreviation	Respondent
6	NFIB	Nat'l Federation of Independent Business
10	PCBI	Pennsylvania Chamber of Business and Industry
14	Chromaflo	Chromaflo Technologies
37	ILMA	Independent Lubricant Manufacturers Association
39	IPC	Association Connecting Electronics Industries
42	Novelis	Novelis
43	Mosaic	Mosaic Fertilizer
46	ATT	AT&T Services
48	AF	NSR Program paper: Art Frass, John Graham, Jeff Holmstead
51	NSSGA	National Stone, Sand and Gravel Association
53	ACMA	American Composites Manufacturers Association
56	CPA	Composite Panel Association
63	CRN	Council for Responsible Nutrition
64	TFI	The Fertilizer Institute
66	ARTBA	American Road and Transportation Builders Association
67	AHFA	Am. Home Furnishings Alliance, Kitchen Cabinet Intl. Assoc., Intl Wood Prods Assocs., Rec. Vehicle Ind. Assoc., Natl Retail Federation, Retail Industry Leaders Assoc.
69	Domtar	Domtar - Nekoosa Mill
70	GMA	Grocery Manufacturers Association
71	Whirlpool	Whirlpool
74	Knouse	Knouse Foods Cooperative Inc.
75	SLMA	Southeastern Lumber Manufacturers Association
76	Boeing	Boeing
77	CIRT	Construction Industry Roundtable
79	Northrup Grumman	Northrop Grumman Corporation
83	TM	Twin Metals

RFI #	Abbreviation	Respondent
84	Ameren	Ameren Corp
85	NOPA	National Oilseed Processors Association
86	IPAA	Independent Petroleum Association of America
89	IECA	Industrial Energy Consumers of America
92	AISI	American Iron and Steel Institute
96	NMA	National Mining Association
98	IDFA	International Dairy Foods Association
100	ACA	American Coatings Association
101	AA	Aluminum Association
102	Renfro	Renfro
106	AFS	American Foundry Society
107	COC	US Chamber of Commerce
109	Valero	Valero Companies
110	Freeport	Freeport-McMoRan
111	GAC	Graphic Arts Coalition
112	SMA	Steel Manufacturers Association; Specialty Steel Industry of North America
114	AGC	Associated General Contractors of America
115	HSIA	Halogenated Solvents Industry Alliance
116	HAFO	National Alliance of Forest Owners
119	AGC	Associated General Contractors of America
120	NTMA/PMA	National Tooling and Machining Association; Precision Metalforming Association
122	AHPA	American Herbal Products Association
123	3M	3M
125	BP	BP America
126	API	American Petroleum Institute
127	PCA	Portland Cement Association
128	Pugh	Theresa Pugh Consulting

RFI #	Abbreviation	Respondent
131	NMMA	National Marine Manufacturers Association
133	PIA	Plastics Industry Association
136	AFPM	American Fuel & Petrochemical Manufacturers
137	MEMA	Motor & Equipment Manufacturers Association
141	ACC	American Chemistry Council - Chemical Products and Technology Division
144	AFPA	American Forest & Paper Association
146	NAM	National Association of Manufacturers
147	US Steel	United States Steel Corporation
148	TSGTA	Tri-State Generation and Transmission Association
151	PESA	Petroleum Equipment and Services Association
152	AWC	American Wood Council
155	PMPA	Precision Machined Products Association
158	CKRC	Cement Kiln Recycling Coalition
159	VI	The Vinyl Institute
160	TCC	Troy Chemical Corporation
170	APF	Air Permitting Forum
172	VI	The Vinyl Institute

Note: The number associated with the respondents are the RFI ID# and can be used to access the responses, see Docket ID "DOC-2017-0001" at www.regulations.gov.

A complete list of respondents can be found at: https://www.commerce.gov/reducingburden

E&E Home | About | Contact | Start a Trial | Subscribe | Energywire | Climatewire | E&E Daily | Greenwire | E&E News PM | Reports

E&E NEWS

SEARCH: enter keyword go!

<< Back to E&E News index page.

COAL

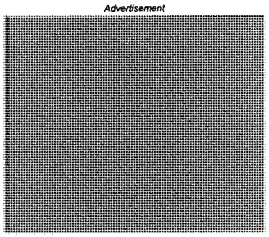
Bob Murray says Trump's at work on industry 'action plan'

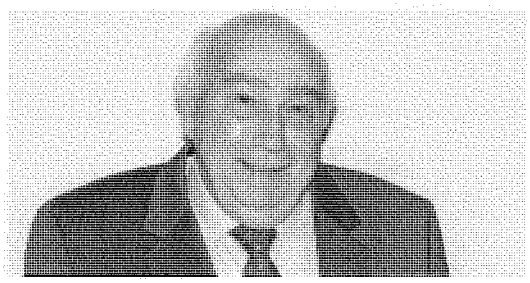
Hannah Northey, E&E News reporter

Greenwire: Tuesday, October 10, 2017

EMAIL PRINT

Advertisement





The Trump administration is moving quickly through coal magnate Bob Murray's wish list, including the decision today to scrap U.S. EPA's Clean Power Plan. Sen. Mark Kirk/Flickr

Coal company CEO Bob Murray handed the newly inaugurated President Trump with an "action plan" last January for reviving his slumping industry.

Nine months later, the Trump White House has worked its way through almost half of Murray's wish list.

"[President Trump has] gone down that action plan, not because of me but because of what they wanted to do," Murray said in a phone interview yesterday. "Cleaned up about a page and a half of those first 3 ½ pages."

The 77-year-old Murray Energy Corp. CEO declined to provide a copy of his action plan, but he highlighted a dozen or so policies he wants axed or whittled down. He expressed hope that the U.S. EPA endangerment finding on climate change is next on the administration's chopping block.

EPA Administrator Scott Pruitt — whom Murray calls a "star" — is poised to fulfill one of the coal executive's wishes today by moving to dismantle President Obama's Clean Power Plan. Murray said he doesn't want a replacement for the plan.

Murray also praises Energy Secretary Rick Perry, who recently asked the Federal Energy Regulatory Commission to impose energy market reforms to make stockpiling and burning fossil fuels more profitable. Perry's proposal, Murray said, is the strongest lifeline for coal mines and fossil plants.

COAL POLICY & PRODUCTION

RELATED HEADLINES

EPA
Pruitt was headed to ultra-efficient Japanese coal plant
Climatewire: Tuesday, January 23, 2018

AIR POLLUTION
Entergy vows 2021 closure of Ark. coal plants over haze rule
Greenwire: Friday, January 19, 2018

WHITE HOUSE
Trump wants to lead on 'clean coal.' Here's what that means
Climatewire: Tuesday, January 16, 2018

COAL
Could deregulation, tax reform prolong life of Mich. units?
Energywire: Tuesday, January 16, 2018

COAL ASH
Okla. on track to be first state to regulate disposal
Greenwire: Friday, January 12, 2018

"It's the single greatest action that has been taken in decades to support low-cost reliable electric power in the United States," he said. "It has to happen."

After declining to say whether he weighed in on Perry's proposal, Murray said FERC "will" act given the nation's grid-reliability crisis in the face of severe cold snaps like the 2014 polar vortex.

But Perry's request faces fierce opposition.

FERC's newest member, Republican Robert Powelson, a former regulator from the gas-rich state of Pennsylvania, said last week he would refuse to "blow up the markets" by implementing Perry's proposal. And former FERC Chairwoman Cheryl LaFleur, the panel's lone Democrat, welcomed his remarks.

Murray is putting his faith in FERC's new Republican chairman, Neil Chatterjee. Murray said he has a relationship with Chatterjee stemming from the new chairman's days as an aide to Senate Majority Leader Mitch McConnell, a Republican from the coal-heavy state of Kentucky.

"Let's hope [Chatterjee] supports the coal industry. He's indicated that he will," Murray said. "What we're asking them to do is get a reliable, resilient power grid, not blow up anything."

'Coal to him is working people'

Murray first met Trump at Trump Tower in May 2016, a few days after *The New York Times* ran a feature about the former coal boss, "A Crusader in the Coal Mine, Taking on President Obama."

"When I walked into his office, he picked up that paper and said, 'That's you,'" Murray recalled. "We had a 50-minute talk and have talked a lot since then."

Up to that point, Murray said he had supported Sen. Ted Cruz of Texas in the Republican presidential primary race but soon was swayed by Trump's focus on "working people," which included coal miners.

"Coal to him is working people," Murray said.

Trump indeed has taken on the woes of the coal industry — in both campaign promises and now his policy goals.

In addition to scrapping carbon regulations, lifting a ban on new federal coal leasing and dismantling a rule seeking to prevent polluted water from coal mines flowing into streams, Trump has also tapped Murray's longtime former lobbyist, Andrew Wheeler, to serve as No. 2 at EPA.

To be sure, Murray was dealt a blow earlier this year after the Trump administration declined a request he and FirstEnergy Corp. CEO Chuck Jones made to obtain a Department of Energy designation to stave off the closure of several FirstEnergy coal plants.

Murray Energy repeatedly warned White House officials it would go bankrupt without those plants, which sustain many of its mines in Appalachia.

But Murray now says Perry's FERC request would achieve the same result.

The coal executive expects a direct boost for his 13

A few of Murray's policy goals

- Invoke emergency authority under the Federal Power Act to prevent coal-fired power plants from permanently closing.
- Overturn the endangerment finding.
- Eliminate the coal combustion residuals rule.
- Bar additional taxes on the mining and use of coal.
- Eliminate tax credits for wind and solar.
- Get coal severance tax reductions in West Virginia.
- Obtain legislation to fund retiree liabilities for coal miners.
- End Mercury and Air Toxics Standards and ozone rules.
- Overhaul the "bloated" federal Mine Safety and Health Administration.
- Overturn or modify the recently enacted Cross-State Air Pollution Rule.
- Develop "clean coal combustion technologies" but not carbon capture and sequestration, which is "neither practical nor economic."
- Revise MSHA's "arbitrary" coal mine dust regulation.
- Eliminate the Fair Labor Standards Act overtime rule.
- Continue to appoint justices to the Supreme Court such as Judge Neil

mines when utilities like FirstEnergy that burn his fuel are compensated for storing 90 days' worth of fuel in barges, at mines and even on-site at the plants — all in the name of withstanding extreme weather events.

Gorsuch who will follow the Constitution "rather than attempt to redefine them as have the Obama-appointed justices."

— *Murray Energy Corp.*

"Some say it would be hard to have 90 days, but no, it's easy. You can store it in barges, you can store it at the mines, you can store it at the plants," Murray said. "It's an excuse when they say you can't do it. It's just an argument, an excuse."

Obama officials 'were outlaws'

A public critic of climate science, Murray rejects the finding that carbon dioxide is a pollutant.

As far as the father of three is concerned, humans aren't affecting the climate or hurricanes. Climate change, as he sees it, is more about politics and less about science.

For that reason, Murray says the Clean Power Plan should be scrapped with no replacement and the endangerment finding repealed.

Congress, he insist, never intended for CO2 to be regulated under the Clean Air Act and blames Supreme Court Justice Anthony Kennedy for enabling the regulation in 2007's *Massachusetts v. EPA*.

Although Murray's name appears on Pruitt's private calendar in March, the coal executive said he couldn't remember what they discussed and declined to provide details.

Murray was in attendance last week at the Trump International Hotel Washington D.C. where Perry spoke to the National Mining Association's board of directors meeting (*Greenwire*, Oct. 9).

Asked whether the Trump administration would move to reverse the endangerment finding, Murray said Pruitt in the past has signaled an openness to the idea.

"What he said was it's something that could be or should be reviewed, but he never told me with certainty what he was going to do," Murray said. "Never."

Murray said he's on board with Pruitt's desire to hold a televised debate on climate science with two teams of scientists, an effort that has yet to materialize.

Such debates, he said, could shed more light on the "science of so-called climate change" that Democrats claim is settled.

What doesn't fuel his interest is having an Obama-era Energy Department official, Steve Koonin, lead the effort, as some former transition officials have urged (*Climatewire*, Aug. 7).

"I'm skittish about anyone from the Obama administration. ... They were outlaws," Murray said. "Putting anyone from the Obama administration in charge of anything is still a scary specter."

Reporter Dylan Brown contributed.

Twitter: **@HMNorthey** | Email: **hnorthey@eenews.net**

Like what you see?
We thought you might.

Start a free trial now.

CNBC PRO | WATCHLIST

ENERGY

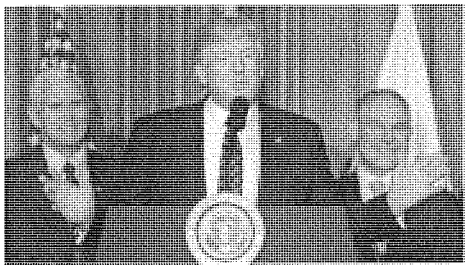
ENERGY | OIL AND GAS | UTILITIES | RENEWABLE ENERGY

Climate change deniers are plotting Trump's path to the holy grail of deregulation

- Climate change skeptics are methodically erecting a framework to make it easier for EPA Administrator Scott Pruitt to revoke the agency's endangerment finding.
- The 2009 determination says greenhouse gas emissions endanger public health and welfare and underpins many Obama-era environmental regulations.
- Revoking the endangerment finding would make it easier for President Trump to undo his predecessor's legacy on climate change.

Tom DiChristopher | @tdichristopher
Published 11:15 AM ET Wed, 22 Nov 2017 | Updated 1:20 PM ET Wed, 22 Nov 2017

CNBC



Jim Watson | AFP | Getty Images

President Donald Trump (C) speaks before signing the Energy Independence Executive Order at the Environmental Protection Agency (EPA) Headquarters in Washington, DC, March 28, 2017, with Vice President Mike Pence (L) and Environmental Protection Agency Administrator Scott Pruitt (R).

During a question-and-answer period at the America First Energy Conference in Houston this month, an audience member had an inquiry for panelists at a session billed as one of the day's most important.

Why not sue the Environmental Protection Agency over its efforts to reduce carbon dioxide emissions? After all, CO2 is essential to all life on earth, he noted.

Harry MacDougald, an attorney on the panel, smiled and pointed to David Schnare, a former member of President Donald Trump's EPA transition team who had a combative relationship with climate scientists during his

more than three decades at the agency. Schnare also smiled before leaning into the mic.

"We're going to do that. It won't be everybody on Earth, but ... I think we're going to look at specific farmers, large farmers who are harmed by reductions in CO2. I think that's where we're going," Schnare said.

"The endangerment finding is the root of all global warming evil at the EPA."

-Steven Milloy, author and former Trump EPA transition team member

The idea of suing the EPA on behalf of farmers is just one of several strategies that conservatives are pursuing in their quest for the holy grail of environmental deregulation. That prize is revoking the EPA's endangerment finding, the 2009 determination that requires the agency to regulate greenhouse gas emissions.

That finding says carbon dioxide and other greenhouse gas emissions from human activity, which trap heat in the atmosphere and warm the planet, endanger public health and welfare. The endangerment finding underpinned President Barack Obama's efforts to control emissions from automobiles, power plants, oil and gas wells and other sources.

It's little surprise, then, that the finding loomed over the entire America First Energy Conference, hosted by the Heartland Institute, a free-market think tank that has worked for years to undermine the consensus among climate scientists that human-caused emissions are the primary driver of global warming.

A major goal of the conference, preceded by a day of closed-door strategy sessions, was to continue assembling the scaffolding that will make it easier for EPA Administrator Scott Pruitt, himself a climate change skeptic, to tear down the endangerment finding. He has so far been reluctant to take up the task.

So long as the endangerment finding stands, the EPA is required to

regulate greenhouse gas emissions. If it can be struck down, the Trump EPA could potentially wipe the slate clear.

"The endangerment finding is the root of all global warming evil at the EPA," said Steven Milloy, another former Trump EPA transition team member and an author who runs the climate denial website junkscience.com.

Current and former coal executives told the conference that building or restoring coal-fired plants will remain impossible so long as the finding stands.

"Every day that goes by that endangerment is in place American society is at risk," said Heartland fellow and former Peabody Energy Senior Vice President Frederick Palmer. "Every day that goes by that people are still wanting to close coal plants, American society is at risk."

Groups like the Heartland Institute have found a sympathetic ear in Trump, who has dismissed climate change as a hoax and vowed to revive the coal industry.

The Trump administration is currently reviewing Obama-era emissions rules and is widely expected to issue far less stringent regulations. Those regulations are, in turn, expected to draw lawsuits from environmentalists who will surely point to the endangerment finding.

@realDonaldTrump: The concept of global warming was created by and for the Chinese in order to make U.S. manufacturing non-competitive.

David Doniger, director of the Natural Resources Defense Council's climate and clean air program, believes the endangerment finding will withstand any assault.

"It's built on a Mount Everest of peer-reviewed data," he said.

"Even if you were able to knock out one of them, the mountain would still stand. In fact, what they have to do is assemble a super Mount Everest of contrary evidence, and it doesn't exist."

Tearing down the endangerment finding

Rather than build that contrarian Everest, one strategy is to take apart the EPA's mountain stone by stone.

Richard Belzer, a regulatory economics consultant, encouraged conference attendees to exploit a system that lets Americans ask federal agencies to review and correct information they've disseminated to the public. The mechanism was put in place to weed out data that don't meet the agency's information quality standards.

The idea is to get the EPA to throw out hundreds of pieces of specific

evidence it used to make the endangerment finding. If climate skeptics can get the Trump EPA to call into question the data behind climate policy, then a judge who later hears arguments won't have to consider the complicated scientific evidence — only the fact that the agency rescinded that evidence.

"What information quality does is it provides a procedure whereby you can convert a scientific issue into a process issue that judges can understand. That is the key to making it successful," he said.

Others are targeting just a few pillars of the endangerment finding.

MacDougald, an attorney at Caldwell, Propst & DeLoach who has long fought the endangerment finding, filed a petition this year with the EPA that challenges the science behind the determination. He believes the EPA left itself vulnerable by focusing on three lines of evidence: its baseline understanding of climate, recent temperature records and climate models created with computers.

"It's a goal post that cannot be moved," MacDougald said. "That's where they've planted the flag and that's the hill they've picked to die on, so if you kill the three lines of evidence, you have killed the endangerment finding."

To be sure, these strategies would require that EPA officials and judges buy into contrarian claims that most of the scientific community dismisses as fringe views unsupported by evidence. But Pruitt has sought to elevate those views by calling for a debate between mainstream climate scientists and skeptics. He tapped the Heartland Institute to recruit climate change deniers for the debate.

Schnare, the former member of Trump's transition team, made another point at the conference: strategies that other administrations might immediately dismiss could be embraced by Trump.

Frustration with Trump

Still, there is frustration with the president. Schnare notes that just prior to the conference, the Fourth National Climate Assessment, issued by 13

federal agencies, concluded that human activity is almost certainly the primary cause of global warming since the mid-20th century.

He blames that in part on Trump's failure to nominate someone to lead the White House Office of Science and Technology Policy.

"This president has yet to get somebody into OSTP to get their hands around the bad science," he told the conference. "If you have that report sitting out there and then Scott Pruitt decides he's going to put a bunch of people in a room and come up with a different report, now you have competing reports," he told the conference.

Myron Ebell, who led Trump's EPA transiton team, also criticized the president for not quickly nominating people to positions where they can steer the agenda. He noted that Trump waited until last month to nominate Kathleen Hartnett White, a prominent climate change denier, to lead the White House Council on Environmental Quality.

"The major failing of the Trump administration is the totally dysfunctional personnel process," Ebell, director of the Center for Energy and Environment at the Competitive Enterprise Institute, told CNBC on the sidelines of the conference.

"It seems to stem directly from the president. He has said several times that he doesn't think we need to fill all these jobs, and ... at least some people in the White House think that they can run the entire government out of the White House. Well, that's incredibly naive."

This is the second in a series of reports from CNBC on the growing influence of climate change skeptics on environmental and energy policy under the Trump administration. Read the first report on how skeptics plan to pressure Trump here.

WATCH: US states and cities are still working on climate change efforts

Tom DiChristopher
Energy Reporter

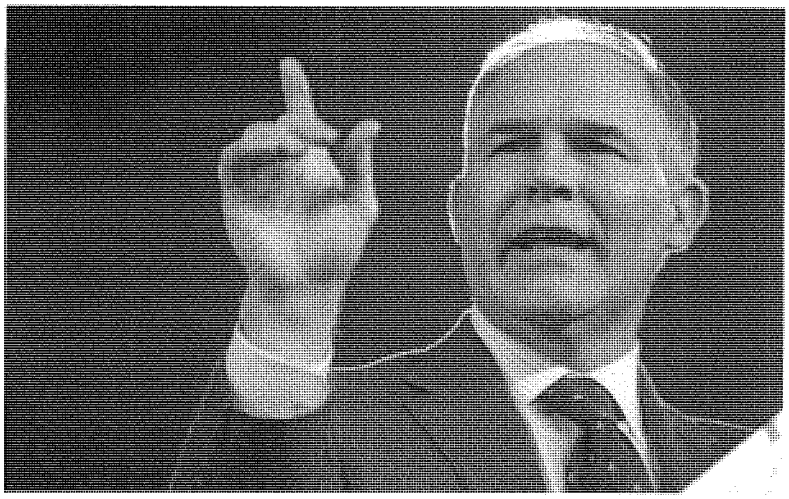
Subscribe

REUTERS

ENVIRONMENT

EPA Chief Pruitt Refuses to Link CO2 and Global Warming

Scott Pruitt cites a need to "continue the review and analysis" despite strong push back from scientists



Credit: Gage Skidmore Flickr (CC BY-SA 2.0)

ADVERTISEMENT

By Doina Chiacu and Valerie Volcovici

WASHINGTON (Reuters) - The new head of the Environmental Protection Agency said on Thursday he is not convinced that carbon dioxide from human activity is the main driver of climate change and said he wants Congress to weigh in on whether CO_2 is a harmful pollutant that should be regulated.

In an interview with CNBC, EPA Administrator Scott Pruitt said the Trump administration will make an announcement on fuel efficiency standards for cars

"very soon," stressing that he and President Donald Trump believe current standards were rushed through.

Pruitt, 48, is a climate change denier who sued the agency he now leads more than a dozen times as Oklahoma's attorney general. He said he was not convinced that carbon dioxide pollution from burning fossil fuels like oil, gas and coal is the main cause of climate change, a conclusion widely embraced by scientists.

"I think that measuring with precision human activity on the climate is something very challenging to do and there's tremendous disagreement about the degree of impact," he told CNBC.

"So no, I would not agree that it's a primary contributor to the global warming that we see," Pruitt said. "But we don't know that yet, we need to continue to debate, continue the review and analysis."

Trump campaigned on a promise to roll back environmental regulations ushered in by former President Barack Obama, including those aimed at combating climate change. He framed his stand as aimed at boosting U.S. businesses, including the oil and gas drilling and coal mining industries.

"We can he pro-growth, pro-jobs and pro-environment," Pruitt said Wednesday afternoon in a Houston speech at CERAWeek, the world's largest gatbering of energy executives.

Scientists immediately criticized Pruitt's statement, saying it ignores a large body of evidence collected over decades that shows fossil fuel burning as the main factor in climate change.

"We can't afford to reject this clear and compelling scientific evidence when we make public policy. Embracing ignorance is not an option," Ben Santer, climate

researcher at Lawrence Livermore National Laboratory, said in a statement.

The Supreme Court unleashed a fury of regulation and litigation when it ruled in 2007 that greenhouse gases are an air pollutant that can be regulated under the Clean Air Act. Two years later, the EPA declared carbon dioxide and five other heat-trapping gases to be pollutants.

Pruitt said the Supreme Court's decision should not have been viewed as permission for the EPA to regulate carbon dioxide emissions.

"Decisions were made at the executive branch level that didn't respect the rule of law," Pruitt said in his Houston speech.

REGULATING CO_2

Pruitt has previously said the EPA should not regulate CO_2 without a law passed by Congress authorizing it to do so. The Republican-controlled Congress could potentially issue a strong signal to the EPA that carbon dioxide should not be regulated by the agency, a move that would undermine many Obama-era rules aimed at curbing emissions.

"Administrator Pruitt is correct, the Congress has never explicitly given the EPA the authority to regulate carbou dioxide as a pollutant and the committee has no plans to do so," said Mike Danylak, spokesman for the Senate Environment and Public Works Committee, the panel that oversees the EPA.

When asked at his confirmation hearing in January whether he would uphold the EPA endangerment finding, Pruitt said it was the "law of the land" and he was obliged to uphold it for now.

Pruitt declined to respond to a question from a reporter after his Houston speech on whether he would now seek to overturn the endangerment finding.

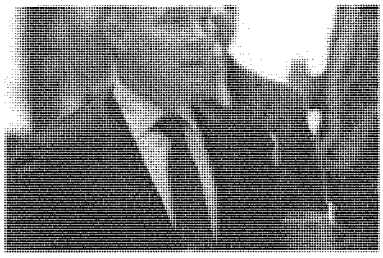
As Oklahoma's attorney general, Pruitt and another dozen attorney generals unsuccessfully challenged the endangerment finding in a federal appeals court.

"The mask is off. After obscuring his true views during his Senate confirmation hearings, Scott Pruitt has outed himself as a pure climate denier," said David Doniger, director of the climate program at the Natural Resources Defense Council.

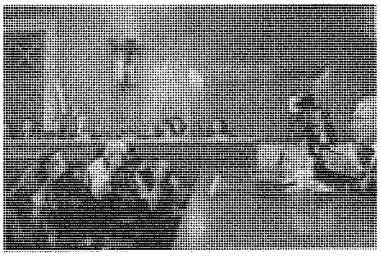
The new EPA chief said he was committed to ensuring thorough processes for environmental rules and regulations to reduce "regulatory uncertainty."

Pruitt added that he shared Trump's view that the global climate accord agreed by nearly 200 countries in Paris in 2015 was a "bad deal." Trump promised during his campaign for the White House to pull the United States out of the accord, but has since been mostly quiet on the issue.

READ THIS NEXT



Biofuels Industry May Have the Juice



Trump EPA Pick Expresses Doubts

Directory of sites Login Contact Support

World Business Markets Politics TV

Search...

#ENVIRONMENT JULY 11, 2017 / 6:53 PM / 6 MONTHS AGO

EPA chief wants scientists to debate climate on TV

Valerie Volcovici 5 MIN READ

WASHINGTON (Reuters) - The U.S. Environmental Protection Agency is in the early stages of launching a debate about climate change that could air on television – challenging scientists to prove the widespread view that global warming is a serious threat, the head of the agency said.

The move comes as the administration of President Donald Trump seeks to roll back a slew of Obama-era regulations limiting carbon dioxide emissions from fossil fuels, and begins a withdrawal from the Paris Climate Agreement - a global pact to stem planetary warming through emissions cuts.

"There are lots of questions that have not been asked and answered (about climate change)," EPA Administrator Scott Pruitt told Reuters in an interview late on Monday.

"Who better to do that than a group of scientists... getting together and having a robust discussion for all the world to see," he added without explaining how the scientists would be chosen.

Asked if he thought the debate should be televised, Pruitt said: "I think so. I think so. I mean, I don't know yet, but you want this to be open to the world. You want this to be on full display. I think the American people would be very interested in consuming that. I think they deserve it."

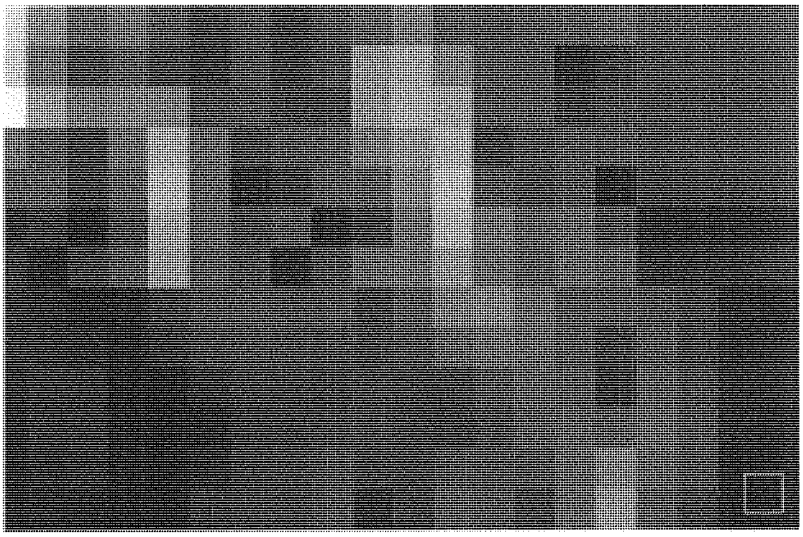
Pruitt, one of the most controversial figures in the Trump administration, has repeatedly expressed doubts about climate change – one of the main points of contention in his narrow confirmation by the Senate.

While acknowledging the planet is warming, Pruitt says he questions the gravity of the problem and the need for regulations that require companies to take costly measures to reduce their carbon footprint.

"It is a question about how much we contribute to it. How do we measure that with precision? And by the way, are we on an unsustainable path? And is it causing an existential threat?" he said in the interview.

Since taking up his role at EPA, he has emerged as one of the more prolific Trump cabinet appointees, taking steps to undo more than two dozen regulations, and influencing Trump's decision to pull the United States from the Paris climate change deal, agreed by nearly 200 countries in 2015.

Pruitt rejected global criticism of the United States for pulling out of the climate deal, which Trump has said would have cost America trillions of dollars without benefit.

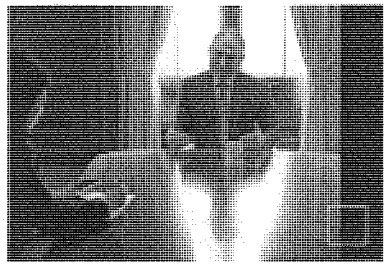


Environmental Protection Agency Administrator Scott Pruitt waves after an interview for Reuters at his office in Washington, U.S., July 10, 2017. REUTERS/Yuri Gripas

"We have nothing to be apologetic about," Pruitt said. "It was absolutely a decision of courage and fortitude and truly represented an America First strategy with respect to how we are leading on this issue."

Pruitt said the United States had already cut its carbon output to the lowest levels in nearly 25 years without mandates, thanks mainly to increased use of natural gas - which burns cleaner than coal.

"RED TEAM, BLUE TEAM" TACTICS



Slideshow (4 Images)

Pruitt said his desire for the agency to host an ongoing climate change debate was inspired by two articles published in April – one in the Wall Street Journal by theoretical physicist Steve Koonin, who served as undersecretary of energy under Obama – and one by conservative columnist Brett Stephens in the New York Times.

Koonin's article made the case that climate science should use the "red team-blue team" methodology used by the national security community to test assumptions. Stephens' article criticized claims of complete certainty in climate science, saying that it "traduces the spirit of science."

Pruitt said scientists should not scoff at the idea of participating in these debates.

RELATED COVERAGE

Transcript of Reuters interview with EPA Administrator Scott Pruitt

"If you're going to win and if you're so certain about it, come and do your deal. They shouldn't be scared of the debate and discussion," he said.

Pruitt said debate is not necessarily aimed at undermining the 2009 "endangerment finding," the scientific determination that carbon dioxide harms human health that formed the basis for the Democratic Obama administration's regulation of greenhouse gases. He said there may be a legal basis to challenge the finding but would prefer Congress weigh in on the matter.

In the interview, Pruitt added that he intended to deal "very aggressively" with automakers that use devices to cheat emissions tests, and would also seek to boost accountability for companies to clean up polluted sites under the Superfund program.

He said EPA was also not ready to decide yet on a change proposed by Trump's special adviser Carl Icahn to the U.S. biofuels program, that would shift the burden of blending biofuels like ethanol into gasoline away from refiners to companies further down the supply chain.

Editing by Richard Valdmanis and Marguerita Choy

Our Standards: The Thomson Reuters Trust Principles.

Apps Newsletters Reuters Plus Advertising Guidelines Cookies Terms of Use Privacy

All quotes delayed a minimum of 15 minutes. See here for a complete list of exchanges and delays.

© 2018 Reuters. All Rights Reserved.

E&E Home | About | Contact | Start a Trial | Subscribe | Energywire | Climatewire | E&E Daily | Greenwire | E&E News PM | Reports

E&E NEWS

SEARCH: enter keyword go!

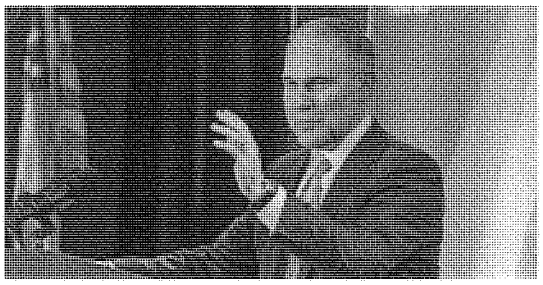
<< Back to E&E News index page.

EPA

Pruitt will launch program to 'critique' climate science

Emily Holden, E&E News reporter

Climatewire: Friday, June 30, 2017



U.S. EPA Administrator Scott Pruitt favors reopening the endangerment finding on greenhouse gases, according to Robert Murray, CEO of Murray Energy Corp. [illegible]

EMAIL PRINT

Advertisement

U.S. EPA Administrator Scott Pruitt is leading a formal initiative to challenge mainstream climate science using a "back-and-forth critique" by government-recruited experts, according to a senior administration official.

The program will use "red team, blue team" exercises to conduct an "at-length evaluation of U.S. climate science," the official said, referring to a concept developed by the military to identify vulnerabilities in field operations.

"The administrator believes that we will be able to recruit the best in the fields which study climate and will organize a specific process in which these individuals ... provide back-and-forth critique of specific new reports on climate science," the source said.

"We are in fact very excited about this initiative," the official added. "Climate science, like other fields of science, is constantly changing. A new, fresh and transparent evaluation is something everyone should support doing."

The disclosure follows the administration's suggestions over several days that it supports reviewing climate science outside the normal peer-review process used by scientists. This is the first time agency officials acknowledged that Pruitt has begun that process. The source said Energy Secretary Rick Perry also favors the review.

Executives in the coal industry interpret the move as a step toward challenging the endangerment finding, the agency's legal foundation for regulating greenhouse gases from cars, power plants and other sources. Robert Murray, CEO of Murray Energy Corp., said Pruitt

CLIMATE RESEARCH

RELATED HEADLINES

SCIENCE
Shrinking mountain glaciers are affecting people downstream
Climatewire: Tuesday, January 23, 2018

SCIENCE
Industrial pollution cools Earth. Here's why that's a bummer
Climatewire: Monday, January 22, 2018

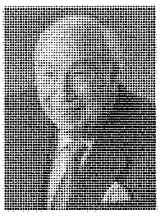
SATELLITES
Orbiters still tracking climate, but other research at risk
Climatewire: Monday, January 22, 2018

SCIENCE
Good news — and bad news — about rising temps
Climatewire: Thursday, January 18, 2018

SCIENCE
A space project loved by climate hawks and oil companies?
Climatewire: Wednesday, January 17, 2018

assured him yesterday that he plans to begin reviewing the endangerment finding within months.

"We talked about that, and they're going to start addressing it later this year," Murray said in an interview. "They're going to start getting a lot of scientific people in to give both sides of the issue."



Murray Energy Corp. CEO Robert Murray. Murray Energy Corp.

But another person attending the meeting said Pruitt resisted committing to a full-scale challenge of the 2009 finding. The administration source also said Pruitt "did not promise to try to rescind the endangerment finding."

Climate scientists express concern that the "red team, blue team" concept could politicize scientific research and disproportionately elevate the views of a relatively small number of experts who disagree with mainstream scientists (*Climatewire*, June 29).

Pruitt told about 30 people attending a board meeting of the American Coalition for Clean Coal Electricity yesterday morning that he's establishing a "specific process" to review climate science, the administration official said. Murray and two other people in the room interpreted Pruitt as saying he would challenge the endangerment finding.

Challenging the endangerment finding would be enormously difficult, according to many lawyers. The finding is built on an array of scientific material establishing that human health and welfare is endangered by a handful of greenhouse gases emitted by industry, power plants and cars. It stems from a Supreme Court ruling in 2007.

If Pruitt somehow succeeded in rolling back the finding — an outcome that many Republicans say is far-fetched — the federal government would no longer be required to restrict greenhouse gas emissions.

Power companies have told Pruitt they don't want him to wade into a protracted and public legal battle that he would likely lose. Many have said that if EPA rescinds its carbon standards for power plants — the Clean Power Plan — the agency should write a substitute rule and try to avoid court fights that might confuse their efforts to make long-term business plans (*Climatewire*, June 22).

Murray yesterday commended President Trump's announcement that he would try to boost some coal exports, but he said that ultimately what the sector needs is for EPA to nix the endangerment finding.

Perry also has touted carbon capture and sequestration technologies for coal plants, even as he questions whether climate science is settled.

Murray said carbon capture won't help, either.

"Carbon capture and sequestration does not work. It's a pseudonym for 'no coal,'" Murray said while waiting for a ride outside DOE headquarters. "It is neither practical nor economic, carbon capture and sequestration. It is just cover for the politicians, both Republicans and Democrats that say, 'Look what I did for coal,' knowing all the time that it doesn't help coal at all."

Murray acknowledged that the legal fight over the endangerment finding would be "tough." He thinks that's because climate activists and renewable power producers want to keep making money off climate change.

"All these people will be jumping on this on the other side because it's all about money, but it is not about America. America needs reliable, low-cost electricity, and that is a mix of different fuels," he said.

Murray also wants Perry to use emergency authority to stop coal and nuclear plant closures, although lawyers have said that is unlikely to happen (*Energywire*, June 19).

Still, Murray, who is close with the president, said he thinks Trump would be "receptive" to the

CLIMATE

E.P.A. Scrubs a Climate Website of 'Climate Change'

By LISA FRIEDMAN OCT. 20, 2017

WASHINGTON — The Environmental Protection Agency has removed dozens of online resources dedicated to helping local governments address climate change, part of an apparent effort by the agency to play down the threat of global warming.

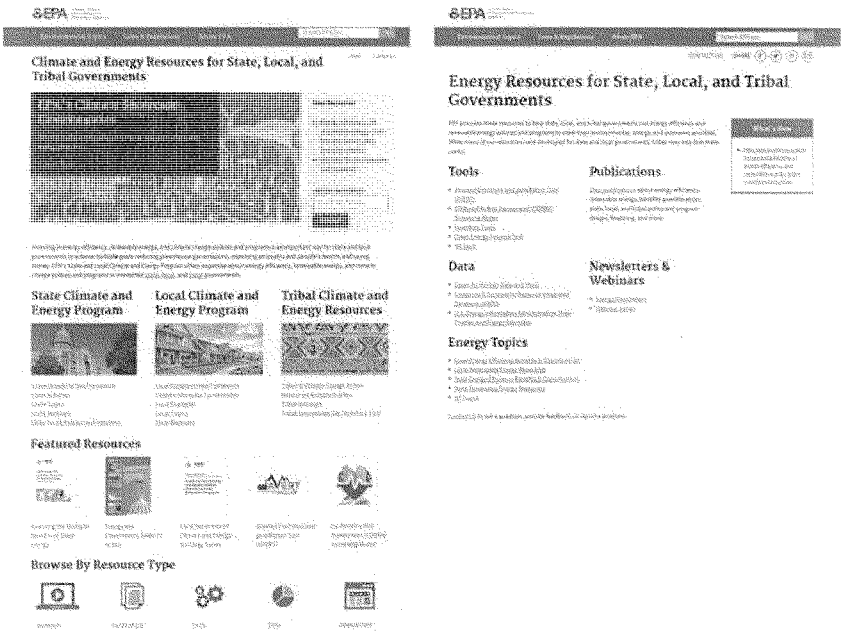
A new analysis made public on Friday found that an E.P.A. website has been scrubbed of scores of links to materials to help local officials prepare for a world of rising temperatures and more severe storms.

The site, previously the E.P.A.'s "Climate and Energy Resources for State, Local and Tribal Governments" has been renamed "Energy Resources for State, Local and Tribal Governments." About 15 mentions of the words "climate change" have been removed from the main page alone, the study found.

Among the now-missing pages are those detailing the risks of climate change and the different approaches states are taking to curb emissions. Also edited out were examples of statewide plans to adapt to weather extremes.

An E.P.A. spokesman said the original pages have been archived and remain available by searching through the agency's web archive, a link to which is at the top of its energy resources page.

The analysis, from the Environmental Data and Governance Initiative, which monitors changes to federal environmental agency websites, described the amount of removed data as "substantial." The energy resources website is the first site to which the E.P.A. has returned a large portion of material since pages dealing with climate science were removed from public view on April 28.



A screen grab provided by the Environmental Data and Governance Initiative showing before, left, and after images of the E.P.A.'s climate and energy website.

In the interim, a notice said "this page is being updated" and added that the site would be changed to reflect the agency's priorities under the Trump administration. When material was restored with changes in late July, the report said, the site had been cut to 175 pages from about 380.

"I think it's very alarming" said Adam Parris, who leads the Science and Resilience Institute at Jamaica Bay in New York. "These are not the kind of resources that are just basic climate science. These are the kind of resources it has taken years to develop across the federal family."

The report comes on the heels of a four-year blueprint of priorities the E.P.A. issued that does not include climate change. The 38-page draft strategic plan, issued for public comment this month, does not use the phrase.

Under the Obama administration's four-year strategic plan issued in 2014, "Addressing Climate Change and Improving Air Quality" was the E.P.A.'s first of five goals. Climate change was cited 43 times.

Gina McCarthy, administrator of the E.P.A. under Mr. Obama, said in a statement that one of the agency's most important jobs was to provide scientific and technical expertise so local officials could write appropriate policies. She said the now-discarded data was collected and shared over a number of years to help states, cities and towns build resilience to fiercer storms, floods, droughts and wildfires.

"There is no more significant threat than climate change and it isn't just happening to people in far-off countries — it's happening to us," Ms. McCarthy said. "It is beyond comprehension that E.P.A. would ever purposely limit and remove access to information that communities need to save lives and property. Clearly, this was not a technical glitch, it was a planned shutdown."

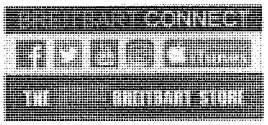
Toly Rinberg of the Environmental Data and Governance Initiative said that there was no evidence the E.P.A. had destroyed any records. The original pages are available from several sources, including the Internet Archive, which maintains a mirror of the E.P.A. website as it appeared near the end of the Obama administration.

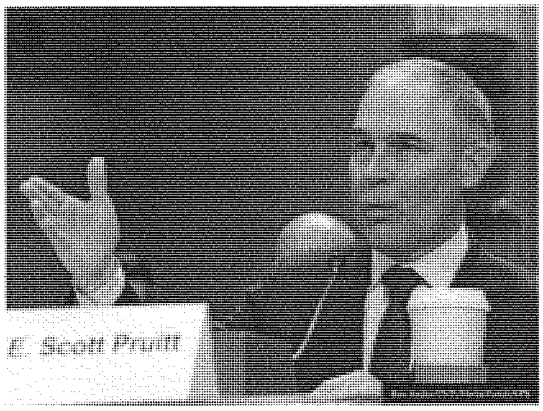
A number of resources, like emissions inventories, remain intact on the E.P.A. site.

A version of this article appears in print on October 21, 2017, on Page A10 of the New York edition with the headline: E.P.A. Scrubs a Climate Website of 'Climate Change,' an Analysis Finds.
Order Reprints | Today's Paper | Subscribe

RELATED COVERAGE

Exclusive: Scott Pruitt Promises 'EPA Originalism' in Donald Trump Administration





by CHARLIE SPIERING 28 Mar 2017 0

The newly appointed Environmental Protection Agency Administrator Scott Pruitt will welcome President Donald Trump to the massive EPA government building on Tuesday. The president will then sign an executive order that will start rolling back the Obama-era Clean Power Plan.

Trump's executive order will be another major step for Pruitt's effort to restore the EPA to its limited authorities.

"We're going to roll it back, those things that were unlawful, we're going to roll back those things that were an overreach, we're going to roll back the steps taken by the previous administration," Pruitt said in an interview with Breitbart News inside his office at the EPA federal building in Washington D.C. The enormous federal building is right across the street from the Old Post Office building, recently renovated into the Trump International Hotel.

MOST POPULAR

GOP Lawmakers: FBI Officials Peter Strzok and Lisa Page Texted About 'Secret Society' After Election
0 comments · 14 hours ago

Dreams of 'Speaker Pelosi' Return to Majority Shaken as Democratic Advantage on Generic Ballot Slips
0 comments · 2 hours ago

'We Are Outraged:' Illegal Alien Activists Turn on Democrats After Amnesty-or-Shutdown Fail
0 comments · 20 hours ago

Total and Complete Surrender: Democrats' Schumer Shutdown Cave Endangers Leftists, Emboldens GOP Walking into Midterm Elections
0 comments · 37 hours ago

Jeff Flake: Shutdown Deal Gives Dreamers 'Better Chance' of Getting Pathway to Citizenship
0 comments · 21 hours ago

Schumer: We're Reopening Government With Commitment to Vote on DACA If Deal Isn't Reached by February 8th
0 comments · 1 day ago

Live Updates – Schumer Amnesty Shutdown: Washington on Edge as Cliff Approaches
0 comments · 4 days ago

Democrats Cave on 'Schumer Shutdown,' Agree to Three-Week Spending Bill
0 comments · 24 hours ago

Donald Trump: Missing FBI Texts 'One of the Biggest Stories in a Long Time'

Trump's entry in the building will likely trigger renewed sadness for some agency bureaucrats who were reportedly in tears after Trump won the election.

In February, sources speaking to Inside EPA suggested that demoralized employees would be unlikely to attend an event with Trump and Pruitt, as they were deeply dissatisfied over the administration's proposed changes the agency. Trump's budget outline, released earlier this month, threatened to slash the department's funding by 31 percent. The executive order will not only order a review of the Clean Power Plan but also change Obama-era executive orders on climate change and carbon emissions regulations, a dramatic change from Obama's legacy that prioritized a regulatory agenda.

But Pruitt feels energized by the president's visit, kicking off a set of new priorities for the agency that he believes lost its way in the Obama years. As Trump's EPA administrator, Pruitt will also sign a series of rules and procedures during the president's visit to reform the agency.

Rescinding the Clean Power Plan, Pruitt explained was "a snapshot of the future" of how the Trump administration would approach regulatory reform.

Under the Obama administration, Pruitt said that the oil, coal, and natural gas industries were under federal "regulatory assault," which killed energy jobs around the country.

"I think the greatest impediment we've had on economic growth is regulatory uncertainty," he said. Trump, he explained, understood that the regulatory process had become so tangled that it was difficult for companies to invest and grow.

Pruitt's philosophy is an example of the Trump administration's goal to dismantle the federal government's overbearing bureaucracy, for the sake of boosting economic growth.

"We have situations here, and this is not just unique to the EPA, it's other agencies at the federal level as well that do permitting, where it takes eight or nine years to get a permit to do something," he said. "Well that's not a decision, that's obstructionism."

Pruitt explained that he wanted to restore confidence among businesses and workers in the energy industry, particularly in coal, natural gas, and oil.

"Agencies at the federal level are part of the executive branch, they exist to enforce the law, not make the law," he said.

Pruitt describes his philosophy as "EPA originalism." Part of his goal, he said, was to re-focus the agency toward Congress's original authorities. That's sending a different message to the industries regulated by the EPA.

"I can just tell you there's buoyancy, buoyancy across the country that there's a different attitude, a different belief, a different view," Pruitt said. "We can be both pro-growth and pro-environment, we've done it as a country throughout our existence."

Some of the rules passed by the Obama administration, Pruitt said, actually hurt the agency as they that were "untethered" to the legal statutes, often at the behest of well funded environmental groups that donated to Democrats. Some of those efforts were halted in court, creating more uncertainty about the agency's authority.

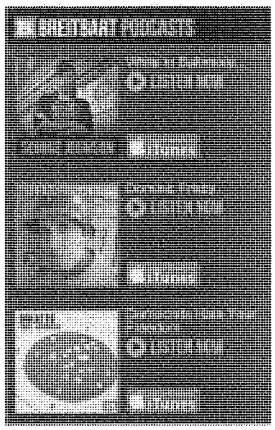
"When you look at the outcome of that kind of agenda, it was detrimental," he said.

As the Attorney General of Oklahoma, Pruitt led the legal charge against the EPA, arguing

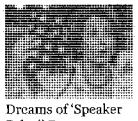
0 comments · 4 hours ago

Illegal Alien Uber Driver Charged with Four Rapes in Sanctuary State of California

0 comments · 2 hours ago



FROM THE HOMEPAGE



Dreams of 'Speaker Pelosi' Return to Majority Shaken as Democratic Advantage on Generic Ballot Slips

Donald Trump: Missing FBI Texts 'One of the Biggest Stories in a Long Time'

that the agency was overstepping it's authorities. He sued the agency 13 different times, putting many of the Obama-era rules in legal deadlock.

Pruitt also has a reputation of challenging environmentalist priorities like climate change, but his critics told Breitbart News columnist James Delingpole that repealing the EPA's Endangerment Finding on CO_2 emissions were not included in the Trump's executive order. Pruitt confirmed to Breitbart News that the executive order would not repeal the EPA's Endangerment finding, but he appeared open to addressing it in the future.

"I think that if there are petitions for reconsideration for the endangering findings, we'll have to address those at some point," he said. "I don't know if they've actually been filed in that regard, but our objective, and our role is to do what the law requires."

Pruitt believes that the agency should return its focus to tackling hig environmental cleanup projects.

Part of restoring the EPA's original mission, he explained, was refocusing the agency on the 1300 hazardous "superfund sites" designated by the agency as priority areas for cleanup.

"Many of those sites ... on this national priority list have been on that list for 30-40 years, that doesn't sound like a priority list to me," he said. He cited the Port of Portland in the state of Oregon and the mining cleanup in Butte, Montana as two examples of designated "superfund" agencies that need renewed attention.

"We need to get busy with some new ways to address those," Pruitt said.

Read More Stories About:

Big Government, Environment, Attorney General of Oklahoma, carbon emissions regulations, clean power plan, enviromental protection agency, EPA, James Delingpole, Scott Pruitt, Trump International Hotel, U.S. President Donald J Trump

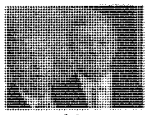
TWEET SHARE

Comment count on this article reflects comments made on Breitbart.com and Facebook. Visit Breitbart's Facebook Page.

Comments

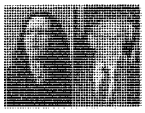
Donald Trump Dismisses 'Fake Reporting' and Backs Gen. John Kelly

Comments



Rep. Paul Gosar: Lindsey Graham and Dick Durbin's Bill Supports 'Open Borders and Unlimited Entry into This Country'

Comments

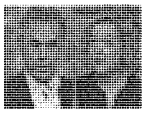


Oscar Nomination Snubs: James Franco, Steven Spielberg Shut Out of Top Awards

Comments

At Least One Dead, Multiple Injured in Kentucky High School Shooting

Comments



Jordan Peterson vs

Directory of sites Login Contact Support

World Business Markets Politics TV

Search...

#ENVIRONMENT JANUARY 10, 2018 / 2:43 AM / 13 DAYS AGO

Exclusive: Trump's EPA aims to replace Obama-era climate, water regulations in 2018

Reuters Staff 5 MIN READ

(The Jan. 9 was refiled to correct the year in penultimate paragraph to 1988, not 1998)

By Valerie Volcovici and David Shepardson

WASHINGTON (Reuters) - The U.S. Environmental Protection Agency will replace Obama-era carbon and clean water regulations and open up a national debate on climate change in 2018, part of a list of priorities for the year that also includes fighting lead contamination in public drinking water.

The agenda, laid out by EPA Administrator Scott Pruitt in an exclusive interview with Reuters on Tuesday, marks an extension of the agency's efforts under President Donald Trump to weaken or kill regulations the administration believes are too broad and harm economic growth, but which environmentalists say are critical to human health.

"The climate is changing. That's not the debate. The debate is how do we know what the ideal surface temperature is in 2100?... I think the American people deserve an open honest transparent discussion about those things," said Pruitt, who has frequently cast doubt on the causes and implications of global warming.

Pruitt reaffirmed plans for the EPA to host a public debate on climate science sometime this year that would pit climate change doubters against other climate scientists, but he provided no further

details on timing or which scientists would be involved.

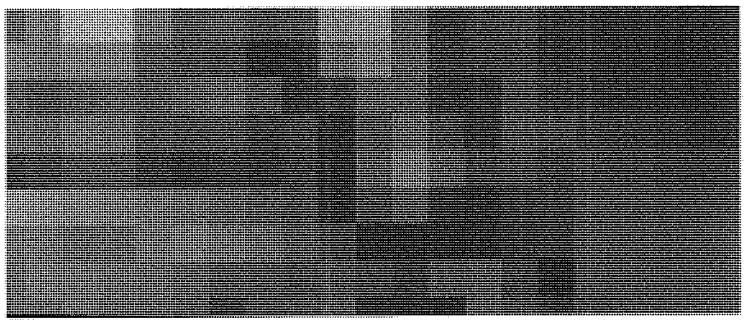
Pruitt said among the EPA's top priorities for 2018 will be to replace the Clean Power Plan, former President Barack Obama's centerpiece climate change regulation which would have slashed carbon emissions from power plants. The EPA began the process of rescinding the regulation last year and is taking input on what should replace it.

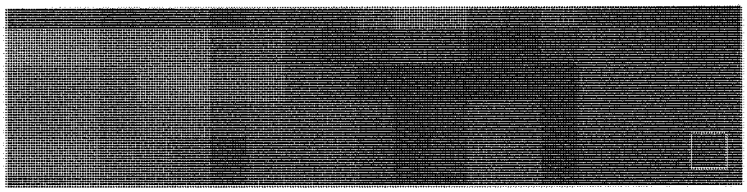
"A proposed rule will come out this year and then a final rule will come out sometime this year," he said. He did not give any details on what the rule could look like, saying the agency was still soliciting comments from stakeholders.

He said the agency was also planning to rewrite the Waters of the United States rule, another Obama-era regulation, this one defining which U.S. waterways are protected under federal law. Pruitt and Trump have said the rule marked an overreach by including streams that are shallow, narrow, or sometimes completely dry - and was choking off energy development.

Pruitt said that in both cases, former President Barack Obama had made the rules by executive order, and without Congress. "We only have the authority that Congress gives us," Pruitt said.

Pruitt's plans to replace the Clean Power Plan have raised concerns by attorneys general of states like California and New York, who said in comments submitted to the EPA on Tuesday that the administrator should recuse himself because as Oklahoma attorney general he led legal challenges against it.





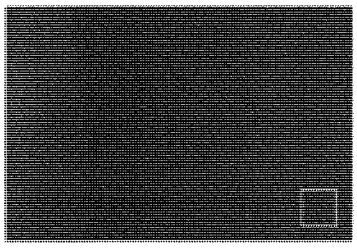
Environmental Protection Agency Administrator Scott Pruitt sits down for an interview with Reuters journalists in Washington, U.S., January 9, 2018. REUTERS/Kevin Lamarque

BIOFUELS AND STAFF CUTS

Pruitt said he hoped for legislative reform of the U.S. biofuels policy this year, calling it "substantially needed and important" because of the costs the regulation imposes on oil refiners.

The Renewable Fuel Standard, ushered in by former President George W. Bush as a way to help U.S. farmers, requires refiners to blend increasing amounts of biofuels like corn-based ethanol into the nation's fuel supply every year.

Refining companies say the EPA-administered policy costs them hundreds of millions of dollars annually and threatens to put some plants out of business. But their proposals to change the program have so far been rejected by the Trump administration under pressure from the corn lobby.



Slideshow (3 Images)

The EPA in November slightly raised biofuels volumes mandates for 2018, after previously opening the door to cuts.

The White House is now mediating talks on the issue between representatives of both sides, with input from EPA, and some Republican senators from states representing refineries are working on possible legislation to overhaul the program.

Pruitt said he also hoped Congress could produce an infrastructure package this year that would include replacing municipal water pipes, as a way of combating high lead levels in certain parts of the United States.

"That to me is something very tangible very important that we can achieve for the American people," he said.

Pruitt added that EPA also continuing its review of automobile fuel efficiency rules, and would be headed to California soon for more meetings with the California Air Resources Board to discuss them.

California in 2011 agreed to adopt the federal vehicle emission rules through 2025, but has signaled it would opt out of the standards if they are weakened – a move that would complicate matters for automakers serving the huge California market.

In the meantime, Pruitt said EPA is continuing to reduce the size of its staff, which fell to 14,162 employees as of Jan. 3, the lowest it has been since 1988, under Ronald Reagan when the employment level was 14,400. The EPA employed about 15,000 when Obama left office.

Nearly 50 percent of the EPA will be eligible to retire within the next five years, according to the agency.

Reporting by Valerie Volcovici and David Shepardson; Editing by Richard Valdmanis and Lisa Shumaker

Our Standards: The Thomson Reuters Trust Principles.

Apps Newsletters Reuters Plus Advertising Guidelines Cookies Terms of Use Privacy

All quotes delayed a minimum of 15 minutes. See here for a complete list of exchanges and delays.

© 2018 Reuters. All Rights Reserved.

InsideEPA.com

INTERVIEW

Transcript Of Jan. 11 Interview With EPA Air Chief Bill Wehrum

January 11, 2018

Newly confirmed EPA air chief Bill Wehrum sat down to speak with Inside EPA about his plans for the Office of Air and Radiation (OAR) and started off discussing his ambitious plan to repeal and replace the Clean Power Plan (CPP) utility sector greenhouse gas rule before the end of the year. EPA the same day announced three new listening sessions and a public comment period extension until nearly the end of April on its proposed CPP repeal.

What follows is a transcript of that interview, edited for clarity:

Inside EPA: And then you'll have a lot of comment and testimony to go through. And Scott Pruitt has said final rule by the fall. Is that actually doable?

Wehrum: Yes. Now remember we have two things going on here. So we have the proposed rescission on what these listening sessions are for. And then we have the [advance notice of proposed rulemaking (ANPR)] on a possible replacement. So no final decision has been made about what we're going to do, so what we've done is created a range of possible outcomes, anchored on one end by rescission but also reopen the possibility of doing something different.

Inside EPA: I thought the administrator has said there will be a replacement, but no? That's not decided?

Wehrum: No. What we are working diligently on is what a replacement might look like, and the ANPR is a key part of that.

Inside EPA: So it is still possible you could go through the ANPR process and decide you are not going to replace?

Wehrum: Yes, it's possible. It's within the range of possible outcomes. But what is important to say is we are actively considering the full range. So the administrator proposed rescission because he meant it, but we also have put the ANPR out on replacement because we mean that, so we create a range of possible outcomes, one of which is a replacement rule that looks different and probably more limited than what's in place now in the current CPP. But we'll look at the possibility of rescinding and doing nothing more. So that's why it is important to get public comment, that's why we decided to do additional listening sessions because it's a really important issue. And we've received a lot of good input so far through the process, but part of the input we received is people want additional opportunity, not just submitting public comment, but speaking on the record, so that's why the administrator decided to do three additional listening sessions.

Inside EPA: What is the timing on next steps for the ANPR?

Wehrum: Well, if we decide to continue on the track with possible replacement, then we would have to work diligently on a proposed replacement rule because to take final action by the end of the year, which the administration has said he wants to do, some final action, and I of course 100 percent fully support that. Then if we, you know, really want to keep the possibility of replacement in play we're going to have to put a proposal out mid year. So I again can tell you we're looking very hard at possible replacement, we're doing work on that. We'll take a look at the comments we receive on the ANPR, and it is possible if not likely that the next thing you see is some sort of proposed replacement. And then again that doesn't make a final decision because we'll have a proposed rescission and a proposed replacement out there. And then you know as the year progresses the administrator and administration have to make a decision about what they want to do.

Inside EPA: If decision is to go forward with proposed replacement, does that then foreclose a repeal of the endangerment finding?

Wehrum: No. So [when] the administrator thinks about these the endangerment issue and the CPP rulemaking, he thinks about them on two separate tracks. And in the CPP world what we want to do is make good, solid decisions about whether to do a replacement and if so what that looks like. . . . The administrator also firmly believes the science underlying the endangerment finding -- the process that EPA used to make the determination that's reflected in the endangerment finding -- he believes that process was flawed. And he believes it was flawed because a full range of opinions on the climate science were not allowed to be expressed and to the degree they were expressed, the full range of opinions were not given serious consideration when the endangerment finding was made. The administrator firmly believes that at a minimum he would like to provide an opportunity for those who did not feel they had a voice in the prior process to have a voice.

Inside EPA: Let's go down the road a little bit. Hypothetically, you're moving forward with a proposed CPP replacement, you're moving forward with a red team/blue team look at climate science and if you take those to their logical conclusions and you have a final CPP replacement, how then do you move forward with an endangerment finding repeal, [because] you couldn't have a CPP without [a finding]?

Wehrum: So far we haven't said repeal in the conversations about endangerment finding. So far I've talked about process. And so the administrator's first objective is to provide an opportunity for a complete process, a process focused on the full presentation and vetting of the climate science, and if we are able to create a process -- whether you call it red team/blue team, or ANPR, or by whatever mechanism by which that's done -- then you get to the point of deciding what if anything you want to do with what you've heard as a result of that process, or what we've heard.

Inside EPA: So it is possible they move forward concurrently?

Wehrum: Sure. Absolutely. And you only get to a connection if as a result of, if we engage in a process of vetting climate science, and if as a result of that process we are convinced that a different conclusion should be reached. That's when you need to think about what does that mean in the context of rules that depend on the endangerment finding, and the CPP is one of those rules. So we're a long way from being there, and we're not talking about that now. To the degree we're talking about endangerment, we're talking about . . . we need to create a process to allow for this more fulsome review.

Inside EPA: What are the plans for the new source side of the CPP?

Wehrum: That's funny. It's just a personal thing. When I talk about the CPP I am thinking about the whole suite of rules. I realize the prior administration coined that term to talk about just the existing source piece, so it's just a personal failure of mine to think a little more expansively when that term comes up. The answer is the new source rule, we will take a look at in conjunction with looking at the existing source rule. So the 111(b) as in boy rule, which is the new source rule, the modification rule and the reconstruction rule. We'll certainly take a look at those in conjunction with the review of the existing source rule.

Inside EPA: So at the same time then. Are you getting comments on the 111(b) part of it at all?

Wehrum: Well the ANPR is out there, and the ANPR just talks about the 'd' as in dog rule, the existing source piece. Honestly, I'm not sure if we've got anybody that's submitted comments saying, 'While you're at it, please look at the new source piece.' But my own perspective is, we need to take a look at it. For instance, the new source rule for wholly new power plants says partial [carbon capture and sequestration (CCS)] is part of the [best system of emission reduction (BSER)] determination, and I think we need to take a hard look at that because I'm not convinced that even partial CCS is technologically feasible or economically justified.

Inside EPA: Aside from the technical piece of the 'b' rule, it also is a prerequisite for a 'd' rulemaking.

Wehrum: Oh yes, absolutely.

Inside EPA: Where would that fall in the grand scheme of things? You have a proposed rescission and an ANPR all on 'd'. Where does 'b' fall in?

Wehrum: I'm not sure I fully understand the question but I'll take a whack at it. The 'b' rule exists to the degree it needs to exist as a predicate for the 'd' rule. It exists. And then what I'm saying is because it exists, we need to take a look at it because there are certain aspects to the 'b' rule that I don't necessarily agree with, like partial CCS is part of the BSER.

Inside EPA: That is separate litigation that . . . is stayed I think.

Wehrum: I'm not talking about litigation. That's recusal for me. So I can talk about general rules for any of this. I don't want to talk about litigation.

Inside EPA: Another question I want to ask you is what are you recused from, given your past work over the last eight years?

Wehrum: Certainly litigation that I was personally involved in or litigation that [his former firm] Hunton & Williams attorneys were counsel of record, and that is certainly the case for the CPP rule and the new source rules. My former client [Utility Air Regulation Group (UARG)] is a petitioner in all of that.

Inside EPA: But just the litigation side. You can separate litigation from the policy piece?

Wehrum: Yes. . . . On recusal I have worked very, very closely with our ethics office and take very seriously -- I said this in response to congressional questions I had during the confirmation process. That's a very political process. I want to emphasize, and I hope you can communicate this: I take really, really seriously and I worked very closely with the ethics office here at EPA to understand exactly where the lines exist and to make sure I absolutely don't cross those lines.

Inside EPA: Is there an ethics agreement you can release?

Wehrum: Yes. It's been requested and it will be released. And so I do have an ethics agreement.

Inside EPA: Someone asked through [Freedom of Information Act (FOIA)] request for it?

Wehrum: I'm not sure it was through FOIA. It is a public document and it will be made public. I don't control that. It will be made available.

Inside EPA: I have two related questions and I'm going to ask both and you can answer how you like. What's been going on so far is rolling back a lot of things that have been done, in the air office, the water office, a lot of power plant climate kinds of things, right? And which is something as, coming in Scott Pruitt has a reputation challenging EPA. The administration wants to cut the budget significantly. And I would like to ask, how do you see your role? [Some people were] so excited for you to get here. Do you see your role as more of a moderating force or as an executor of that agenda?

Wehrum: Laughs.

Inside EPA: I am serious.

Wehrum: Executor? Executor? I am very excited to be here. I am thrilled to have the opportunity, and it's a rare honor and opportunity to do this, and so that is not lost on me by any stretch. . . . It's a privilege to be here. . . . I'm going to do the best job I can. My general

philosophy is I'm looking ahead. I'm not looking backwards. I don't think my job is to come in and dismantle a bunch of stuff. My job is to come in and implement our programs as best we can implement our programs. And what I think is best is different from what the prior administration thought was best, and there will be some changes. But it's not because I am trying to come in and unwind everything. It's because I want to put the best program in place.

So I have six things. At the beginning of the new year I vetted them with the administrator, I talked with the administration, and now I'm rolling out within OAR the six biggest things I want to get done, frankly over the next year if at all possible. And by way of additional introduction, there's a million other things that happen in OAR and that doesn't mean we're going to ignore them. But there's certain key things I want to get done around here and thinking [about] the priority of my organization.

1 -- The Clean Power Plan

2 -- The Mercury & Air Toxics Standards (MATS)

3 -- Take a hard look at the 2015 ozone standard

4 -- The methane rulemaking

5 -- New Source Review (NSR) reform

6 -- GHG standards for cars and trucks

And that's not in order of priority. I have no favorite children here. They're all a top priority. So this is in response to -- to give you a sense of how I'm thinking about what I think are the biggest issues and how I will be managing them. It is also in response to your question about whether am I over here to unwind.

Most of the things on the list the Obama administration took some action on, so they're not on the list because my job is to unwind all that. They're on the list because I want to look ahead and figure out what's the best thing to be done.

So we talked about CPP. What's the best thing to be done and we've laid out a range of options from repeal to replace the existing rule, and we talked about the new source piece. So CPP as a priority, that's more specific to what I mean by that.

On MATS, the rule is in place and we have the appropriate and necessary determination made by the prior administration regarding the Supreme Court remand. But the litigation has been stayed and the administrator has said take a hard look at the appropriate and necessary determination. So when I think about MATS, it's two primary pieces.

What do we do on the appropriate and necessary determination? And to the degree we decide to stay the course with the rule, then there are things we need to do there, fixes. I mean with any big and complex rule there are fixes that need to be made. If we keep the rule in place, I'd like to think about doing RTR, residual risk and technology review, for that rule. And there's some more narrow but important things like the coal refuse industry has had an outstanding concern about how it applies to them. So there's a cluster of issues in MATS and exactly where we go, there's the threshold question about where we want to go.

The 2015 ozone standard, the administrator says he wants to take a hard look at it, and the litigation has been stayed as a result.

Inside EPA: What do you tell states now? What do they do?

Wehrum: Well at the same time we're going through the designations process, the standard is in place. [The legal challenge] has been stayed. Unless we decide to change or rescind, it's a currently applicable [national ambient air quality standard (NAAQS)], so at least for now the implementation process continues.

And so we're going to take a hard look at 2015 NAAQS and one possibility is we decide it needs to be revised or rescinded. That is just a possibility. I bave a lot to learn about the science behind the 2015 standard, and I have already started a series of briefings to try to get my arms around that science so I can advise the administrator on my recommendation to what I think we should do.

Inside EPA: When?

Wehrum: Very soon because, again, anything I want to do on any of these top priorities, I want to get done this year because we are already a year into the administration even though I haven't been there that long.

Inside EPA: I'd like to skip ahead in case we run out of time to the vehicle standards. Reuters reported on a meeting you had with California in December and you said you hoped whatever EPA does, California would follow. Do you really think if EPA relaxes the standard that California would do that too, given what California has said and the fact that California is moving forward on the next round?

Wehrum: So let's take a step back. It's a priority for us and it's a priority for the industry and it's a priority for people who care about these issues to, as much as possible, have one national standard. We can live in a world, you know, a two-car world but that's not ideal. So yes it's a priority for us to have one program and . . . necessarily that means we'd want to remain aligned with California and with our federal partners. We've already had a long series of conversations with [the National Highway Traffic Safety Administration (NHTSA)] and we're going to continue to work very closely going forward. We've had a few conversation with [the California Air Resources Board (CARB)] and we want them to be very frank conversations, so we've all agreed we're not going to share our deliberations and I'm not going to tell you the details of that. But the purpose of that conversation is to stay together, and if we can I'd very much like to stay together.

You have asked if we decide the standards need to be revised and perhaps less stringent do I think California could go along with that? And my answer is, I hope they would because if that's our decision it is a decision that has to be grounded in solid technical analysis and our best assessment of what's happening in the industry now, and what we think can reasonably happen over the period that we're planning, which is through 2025. So we're doing very detailed technical analysis as part of the administrator's commitment to reconsider the mid-term review. And once we are all comfortable internally within the federal family with the analysis we've done, at a point hopefully sometime soon we'll share what we think we know with the state of California. And if we think there's a solid case to make an adjustment, then I would certainly hope they would share our view of data and agree that's the right thing to do and stay together.

So I think it's a distinct possibility, and we're going to do our best to make a good decision in the first sense and do our best to try to keep the program together.

Inside EPA: Do you have any sense at this point, would it be a major revision or a minor revision?

Wehrum: I honestly don't have a sense.

Inside EPA: Because what I've heard from some of the auto guys is they don't want this blown up and they think they got a little over ambitious in what they're asking for and maybe they unleashed this thing that they would like to pull back a little bit.

Wehrum: Nobody's unleashed anything. We're all talking. We're talking with the auto industry, we're talking with California, we're talking amongst ourselves, I would talk with interested [non-governmental organizations (NGOs)] if they were interested in talking with me. I know there's a lot of third-party interest. Nobody from that community has asked to talk to me.

Inside EPA: You would meet with them?

Wehrum: Yes I'd be happy to talk to them.

Inside EPA: Will you release your schedule?

Wehrum: Yes. And again I don't completely control that because what we do for me needs to be consistent with the administrator and the other [assistant administrators (AAs)]. . . . So I made a commitment during the confirmation process, I was asked to share my schedule and I said yes, absolutely. It's public record. So how that gets done and how soon it gets done, it will not be immediately. There will be some time lag and some coordination to be done.

Inside EPA: Can you [discuss] NSR quickly? You have said you want to make piecemeal changes rather than broad reform.

Wehrum: NSR. This is an issue that's near and dear to my heart. I've done a lot of practice in this area outside of EPA and spent a lot of my time previously in my prior time at EPA on NSR reform. So I come back to EPA with a couple of distinct things in mind. One is there is obvious opportunity for additional improvement to this program. It' s big, it's complicated, it's been

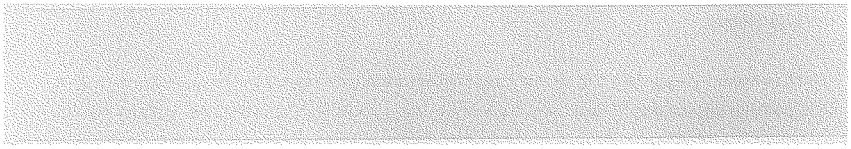
around for a long time and it can be better, so I want to make it better. Second thing I come to is we did NSR reform in a big way last time. Flagship rules. Major regulatory efforts. And this time around . . . I want to make significant improvement in this program, but I want to do it in a different way, and the way I want to do it is by focusing on narrower, more discrete issues that are easier to deal with individually and allow us to deal with more quickly than a major rulemaking.

And if we can accomplish a series of targeted changes over time, and we can look back at over time and say that series results in significant improvement to the program, not that any individual piece represents significant improvement but a series of those things combined will have made a big improvement.

Inside EPA: And you'll do this through rules and guidance?

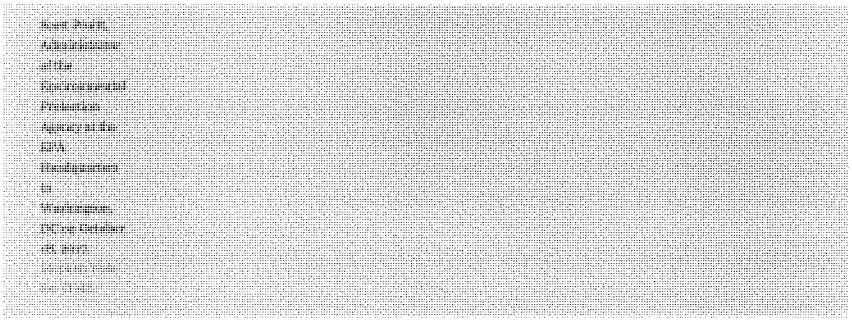
Wehrum: Yes. Last time I came in thinking anything worth doing should be done through regulation. I know I'm a little bit older, I'd like to think I'm a little bit wiser, and what I've come to realize is sometimes the best and easiest thing to do is issue a guidance document or an applicability determination and maybe what we do is follow it up with a targeted rulemaking. But there is a need, not just for certainty -- which is the value of putting all this in a regulation, it makes it as certain as it can be -- but also a need and a value for expeditious resolution of issues. And rulemaking takes time. So what I'm going to try to do is get a better balance between locking this in in the most clear and certain way that we can, and not taking too much time to do this.

SUBSCRIBE



POLITICS • ENVIRONMENT

Scott Pruitt Casts Doubt on EPA Document Showing the Dangers of Climate Change



By **JUSTIN WORLAND** October 20, 2017

Environmental Protection Agency chief Scott Pruitt questioned the legitimacy of a key scientific document on the dangers of climate change — but he does not plan to formally consider reversing it anytime soon.

The finding — a 2009 EPA document that said man-made climate change harms human health —

has had a major impact on EPA policy, driving Obama-era regulations on power plants. Because of a Supreme Court ruling, the document means the EPA must address climate change by regulating carbon-dioxide emissions. In an interview with TIME this week, Pruitt cast doubt on the validity of the EPA finding.

"Did this agency engage in a robust, meaningful discussion with respect to the endangerment that CO2 poses to this country?" Pruitt asked about the 2009 document, known as an "endangerment document." "I think by any definition of that process they didn't."

But Pruitt did not go so far as to say that he would seek to overturn the document's conclusions in an upcoming reevaluation of how the agency regulates carbon dioxide emissions, as some hardline conservatives had hoped. That means the EPA will remain legally required to reduce carbon emissions.

Still, regardless of those requirements, Pruitt has no intention of implementing strong climate regulations. Instead, he suggested to TIME that he plans to limit the scope of the EPA's climate rules through legal arguments that sidestep the need to question mainstream climate science. (He declined to rule out formally questioning climate science in the future.)

Read More: EPA Head Scott Pruitt Says Oil and Coal Companies He Met With Aren't 'Polluters'

Pruitt's primary target is the Obama administration's Clean Power Plan, which aimed to reduce carbon-dioxide emissions from power plants. Pruitt recently formalized his intent to scrap the Clean Power Plan, and will argue that the EPA does not have the authority to enforce it. That narrow legal argument may not become a rallying point for deniers of climate change, but it is easier to defend in court than a broader case that questions the science of global warming. "A lot of people start with the endangerment finding and the scientific questions about the underpinnings of that," Pruitt says. "They don't ask about what authority we have to do it... And both are very important."

Leaving the endangerment finding untouched means that legally Pruitt needs to replace the Clean Power Plan — or at least begin a process to do so. Speaking to TIME, Pruitt remained silent on the details of a potential replacement, saying that the agency would first evaluate its authority to regulate carbon dioxide emissions. Pruitt is planning separate processes to roll back the rule and figure out how to replace it.

Many environmental experts fear that Pruitt is trying to evade issuing a new rule altogether by dragging out the bureaucratic process. Pruitt offered a mixed message this week, saying that he believes "there is some modest authority...for us to take action" to regulate power plants but also that such authority is "yet to be determined."

Read More: Energy Companies Don't Like the Clean Power Plan — or President Trump's Plan to Kill It

"We've been spending many months evaluating Section 111 of the Clean Air Act to ask and answer the question what authority exists," says Pruitt. "That is ongoing and will be ongoing for months into the future."

Industry groups have called for the EPA to issue a replacement soon, saying a long process creates uncertainty that's bad for business. Environmental groups will inevitably sue if Pruitt declines to issue a replacement. The EPA's 2009 endangerment finding increases their chances of victory.

"Virtually everyone in the business community believes that EPA needs to issue a replacement rule," Jeff Holmstead, a former senior EPA official under George W. Bush who now represents energy companies, wrote in an email. "They think they would be better off with a reasonable regulation than with no regulation at all."

SHUTDOWN ALMOST OVER House votes to end government shutdown with passage of new temporary spending bill

Monday, January 22, 2018

Trump administration lining up climate change 'red team'

by John Siciliano | Jul 24, 2017, 12:02 AM

The Trump administration is in the beginning stages of forming an adversarial "red team" to play devil's advocate in a plan to debate the facts behind global warming and take on what skeptics call climate alarmism.

The White House and the Environmental Protection Agency are recruiting scientists by enlisting the help of the Heartland Institute, considered to be the lead think tank for challenging the majority of scientists on climate change.

The institute has its own red team, which is the antithesis to the United Nations' Intergovernmental Panel on Climate Change, which it calls, unabashedly, the Nongovernmental International Panel on Climate Change.

"The White House and the Environmental Protection

Agency have reached out to the Heartland Institute to help identify scientists who could constitute a red team, and we've been happy to oblige," Jim Lakely, the group's communications director, told the *Washington Examiner*.

"This effort is long overdue," he said. "The climate scientists who have dominated the deliberations and the products of the IPCC have gone almost wholly without challenge. That is a violation of the scientific method and the public's trust."

The Heartland Institute has been a long proponent of a red team "to critically examine what has become alarmist dogma rather than a sober evaluation of climate science for many years," Lakely said. "In fact, Heartland has worked closely with a red team that has been examining the science for several years: the Nongovernmental International Panel on Climate Change, or NIPCC."

What the Trump administration may pull together in creating its red team might look a little like what Heartland has created.

EPA Administrator Scott Pruitt "believes that we will be able to recruit the best in the fields which study climate and will organize a specific process in which these individuals ... provide back-and-forth critique of specific new reports on climate science," a senior administration official told the news service Climatewire late last month.

"We are, in fact, very excited about this initiative. Climate science, like other fields of science, is constantly changing. A new, fresh, and transparent evaluation is something everyone should support doing," the official said.

The Heartland team continues to publish reports challenging IPCC and other climate scientists, which it began eight years ago. The group has produced four

volumes of "Climate Change Reconsidered," with a fifth coming out later this year, Lakely said.

"Hundreds of scientists have reviewed and helped produce those volumes, which have been published by the Heartland Institute," Lakely said. The reports total more than 3,000 pages.

The irony behind the Trump administration taking up the approach is that it was suggested by a former Obama administration official, Steve Koonin, who suggested a red team-blue team approach to clear out the politics and address the science. Koonin teaches at New York University.

He suggested the idea in an April op-ed in the Wall Street Journal. The exercise would include a red team, representing climate skeptics, squaring off against a blue team, representing the majority of scientists who believe the Earth's temperature is warming because of increased greenhouse gas emissions caused by manmade activity.

The team approach was created by the military during the Cold War era to test assumptions about the Soviet Union's military capabilities. For climate change, it would offer an adversarial approach to challenge assumptions and form different conclusions when considering how much of warming is due to carbon dioxide emissions and how much is from natural changes.

"It's a great opportunity for this country to have a conversation about the climate and get the politics out of it and bring the scientists together," is how Energy Secretary Rick Perry floated it in June before a Senate Appropriations Committee hearing on the fiscal 2018 budget.

"As a matter of fact, the undersecretary of energy for President Obama, Steven Koonin, has said, who is a theoretical physicist and was over at the department

and knows this issue rather well, and he says it's probably time for us to have a conversation with all the politics out of room."

Perry was the first administration official to suggest the idea in public, although he suggested it hypothetically, with no plan to implement the team.

But EPA Administrator Scott Pruitt is setting the plan in motion.

"It's my understanding that Scott Pruitt is trying to hire Koonin to be in charge of the whole thing," said Myron Ebell, Trump's former EPA transition chief, who is environment director at the libertarian Competitive Enterprise Institute.

Neither the EPA nor Koonin returned calls to confirm his being tapped for the post of red team leader.

But Ebell points out the logic in having him participate. "He's an honest broker, right?" Ebell said. "He served in the Obama administration but he thinks we haven't had a sufficient debate. He would have a lot of credibility, I think, running the whole process.

"I don't know what they have in mind in how to do it, and I certainly don't know what Koonin has in mind," Ebell said. "In general, we need to go beyond what they establishment says whenever they're confronted, which is, 'You can trust us.' I don't think we can trust them."

Ebell says he would rather "trust, then verify," using former President Ronald Reagan's old adage when dealing with the Soviet Union. "I'm not saying the scientists are Soviets. I just think that's a good approach to take, particularly when the policies being advocated are going to cost trillions of dollars over the next several decades."

A group that is often tapped to bring different groups together to work out difficult political issues is not sure

about how the administration will shape the teams or what the goal of the process will be.

"It's still not entirely clear what the scope of the 'red team-blue team' exercise will be, but in our evaluation, human activity is having an impact on the climate," said Tracy Terry, director of the energy project at the Bipartisan Policy Center. "With climate change occurring, the exercise could be useful if it focuses on the range of potential impacts and best approaches to mitigation and adaptation."

A scientist with the environmental think tank World Resources Institute says it is clear that the approach is wrong.

"Indeed, it has been used by major companies in internal strategic exercises, but it is entirely inappropriate for science," Kelly Levin wrote in a recent blog post. "It has no place in determining the science of a changing climate."

Levin heads the group's program to track carbon emissions in the developing world.

"The overwhelming majority — 97 percent — of peer-reviewed papers in the literature support the consensus view that human activities have contributed to the majority of recent warming," with a "vanishing small proportion" of published research rejecting the scientific consensus, she said.

But "giving equal, 50-50 weight to both the red and blue teams in the exercise would mislead the public into thinking there is a debate when there isn't one," Levin said. "And the Trump administration is likely to stack the red team with fossil fuel industry interests, as it has done with its Cabinet positions."

Scott Pruitt | John Siciliano | Magazine | Energy and Environment | EPA | Climate Change | White House | News | Politics

LOGIN CARSHQ JOBSHQ HOMESHQ APARTMENTSHQ CLASSIFIEDS MARKETPLACE

Grand Forks Herald Search

NEWS
ENTERTAINMENT
LIFESTYLE
SPORTS
OBITUARIES
OUTDOORS
OPINION
MILESTONES

Severe Weather Announcements (1)

EPA chief Pruitt holds series of closed-door meetings in GF, Fargo

By **Andrew Haffner** on Aug 9, 2017 at 9:26 p.m.

LATEST

For female journalists, strip searches and segregation mar Pence's visit to Israel
14 min ago

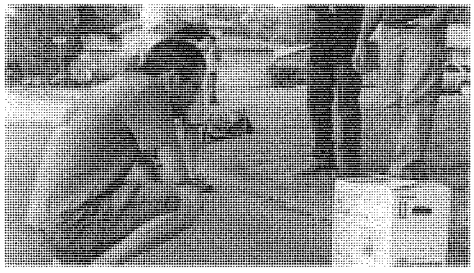
Kentucky governor: 1 dead in school shooting, 'multiple others' wounded
42 min ago

Hawaii governor didn't correct false missile alert sooner because he didn't know his Twitter password
1 hour ago

ND Country music festival could draw 10,000
1 hour ago

Commentary: Is Governor Doug Burgum all vision and no policy?
2 hours ago

Garage is total loss after parking complex



Mike Graalum considers a mock box of pesticides carried by a small group of protesters Wednesday outside the Energy and Environmental Research Center. The group had come in hopes of speaking with EPA Administrator Scott Pruitt, who was in Grand Forks as part of a regional talking tour. (Andrew Haffner/Grand Forks Herald)

fire
2 hours ago

more

EPA Administrator Scott Pruitt visited Grand Forks Wednesday as part of a series of closed meetings to discuss his agency's state-centric regulatory approach.

Pruitt was on tour in the Red River Valley to meet with representatives of the ag and energy industries and talk with stakeholders about his efforts to rescind and rewrite portions of the Waters of the U.S. rule expanded under President Barack Obama.

His schedule included stops in Fargo at North Dakota State University, at a farm west of Grand Forks and at the Energy and Environmental Research Center at UND. Pruitt was joined for the day by North Dakota Gov. Doug Burgum, Rep. Kevin Cramer, R-N.D., and Sen. John Hoeven, R-N.D. The events were held behind closed doors and members of the public and media were turned away by police.

With the ag and energy industries serving as pillars to

the North Dakota economy, EPA rules like WOTUS have been unpopular, considered by some to be federal overreach. In 2015, North Dakota joined a lawsuit with more than a dozen other states to block implementation of the expanded WOTUS rule.

At the EERC, Burgum, Cramer and Hoeven seemed happy with the prospect of a less adversarial relationship with the EPA under Pruitt's leadership. The men spoke of a sense of "partnership" with the new administrator that signaled an increase in state authority over environmental regulations.

In reference to the WOTUS rule, Hoeven connected that approach to the concept of federalism.

"The states are the laboratories of democracy and should have a very important role, as the governor can tell you, in determining how that's actually implemented," he said.

Burgum said he had felt in his dealings with the administrator a "real desire to listen" and learn from North Dakotans. The governor felt that Pruitt had walked away from the meetings with a better grasp of the importance of agriculture to the state, as well as a deeper understanding of the work being done at the EERC with carbon capture and sequestration technologies.

For most, Pruitt's desire to listen was strictly aimed at those invited to Wednesday's closed doors discussions. As in many of his other appearances across the country, Pruitt's visit to North Dakota was sealed off from the public and media.

The main meetings in Fargo and Grand Forks both featured an invitation-only roundtable discussion attended by Pruitt, the three politicians and local leaders. Both roundtables were followed by a scheduled 15-minute window of press access to Burgum, Cramer and Hoeven. Pruitt did not attend those sessions, and a representative from Hoeven's office said Pruitt was expected to leave Grand Forks immediately after finishing the visit at UND.

Pruitt's motorcade arrived in the mid-afternoon at the EERC. The vehicles drove past a handful of protesters gathered across the street from the center and parked in the rear lot of the building. Pruitt then exited a car and was escorted inside.

His visits were hosted by Burgum's office, which released notice to the press last week. In the initial media advisory, press was invited to attend the last 15 minutes of both roundtables. By Tuesday, that invitation had been rescinded. Pruitt spoke with a few media outlets Wednesday—including WDAY-TV in Fargo—but his press liaison did not respond to a Herald inquiry about speaking with the administrator in Grand Forks.

When two Herald reporters went to the EERC before the start of the event, they were asked by representatives of Pruitt to leave the grounds before EPA spokesman Jahan Wilcox threatened to call police, whom he referred to as "security."

A UND Police officer then arrived to insist the building and its grounds were private property before demanding the reporters move away from the

center's front door. An officer had earlier told a pair of protesters the same thing, asking them to cross a road away from the center. The EERC is not private property and is owned by UND.

Most of the protesters were members of the Dacotah chapter of the Sierra Club, a group which covers the state of North Dakota.

Betsy Perkins and Mike Lukes were among those waiting outside the EERC for Pruitt to arrive, as was Todd Leake, the chapter president and an area farmer. About seven protesters eventually assembled on North 23rd Street, hoping to talk to Pruitt about climate change and voice their support for the WOTUS rule.

Leake, who was not invited to either of Pruitt's meetings with ag representatives, brought along a box labeled "chlorpyrifos," referring to a pesticide that has had a checkered past with the EPA and acts as a neurotoxin in humans. Pruitt declined to ban the substance earlier this year, which prompted a recent U.S. Senate bill to push it out of use. As he stood across the street from the EERC, Leake said the pesticide is an unnecessary danger. He was frustrated to not get the opportunity to tell that to Pruitt.

"Nobody ever listens to the damn farmers about the dangerous stuff," Leake said.

Explore related topics: NEWS NEWS TAG 15 GRAND FORKS EPA SCOTT PRUITT

WOTUS ▸ WATERS OF THE U.S. ▸ KEVIN CRAMER ▸

DOUG BURGUM ▸ EERC ▸

ENERGY AND ENVIRONMENTAL RESEARCH CENTER ▸

JOHN ▸

Andrew Haffner

Andrew Haffner covers higher education and general assignment stories for the Grand Forks Herald. He attended the University of Wisconsin in Madison, where he studied journalism, political science and international studies. He previously worked at the Dickinson Press.

ahaffner@gfherald.com

(701) 780-1134

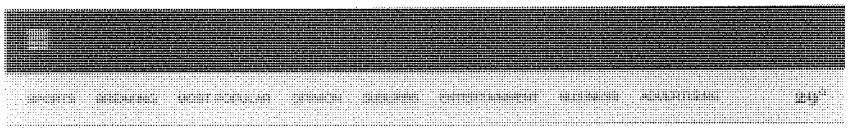
Account

Newspaper

Contact

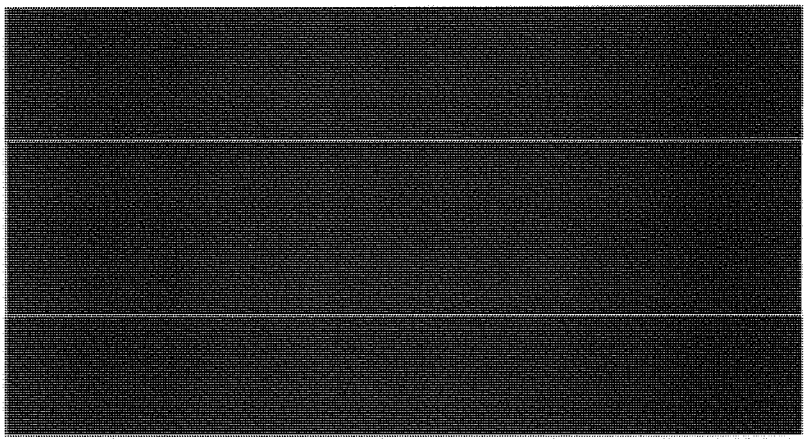
MORE

SOCIAL



News / Nation & World / National politics

EPA says Superfund Task Force created by Pruitt kept no records of meetings



In this June 2, 2017 file photo, Environmental Protection Agency administrator Scott Pruitt speaks in the Brady Press Briefing Room of the White House in Washington. Pruitt's Superfund Task Force left little paper trail beyond its recommendations report. (Pablo Martinez Monsivais / AP)

By **Michael Biesecker**
Associated Press

DECEMBER 20, 2017, 10:21 PM | WASHINGTON

The Environmental Protection Agency says an internal task force appointed to revamp how the nation's most polluted sites are cleaned up generated no record of its deliberations.

EPA Administrator Scott Pruitt in May announced the creation of a Superfund Task Force that he said would reprioritize and streamline procedures for remediating more than 1,300 sites. Pruitt, the former attorney general of Oklahoma, appointed a political supporter from his home state with no experience in pollution cleanups to lead the group.

The task force in June issued a nearly three dozen-page report containing 42 detailed recommendations, all of which Pruitt immediately adopted. The advocacy group Public Employees for Environmental Responsibility, known as PEER, quickly filed a Freedom of Information Act request seeking a long list of documents related to the development of Pruitt's plan.

After EPA didn't immediately release any records, PEER sued in federal court in Washington.

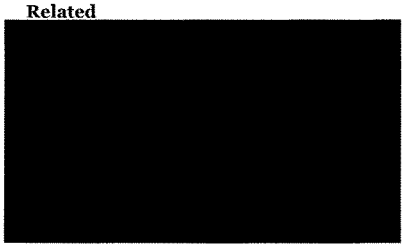
Now, nearly six months after the task force released its report, a lawyer for EPA has written PEER to say that the task force had no agenda for its meetings, kept no minutes and used no reference materials other than Pruitt's memo appointing them.

Further, there were no written standards for choosing the 107 EPA employees the agency says served on the task force.

"Task force members were all volunteers from EPA staff with no selection criteria," Johnny Walker, a Justice Department lawyer representing EPA, wrote to PEER last month. "Meeting minutes were not kept and materials (other tban the May 22, 2017 memorandum) were not presented to the Superfund Task Force."

According to EPA's lawyer, the task force also retained no work product other than its final report.

Related



Pruitt says EPA will create 'top 10' list of Superfund cleanup sites

Jeff Ruch, the executive director of PEER, said that seems unlikely.

"Pruitt's plan for cleaning up toxic sites was apparently immaculately conceived, without tbe usual trappings of human parentage," Ruch said. "It stretches credulity that 107 EPA staff members with no agenda or reference materials somehow wrote an intricate plan in 30 days."

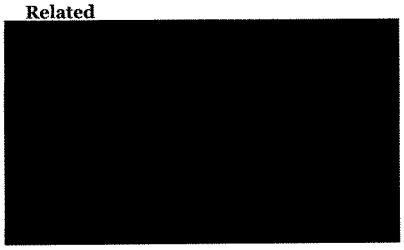
In a statement issued Wednesday after The Associated Press first reported on Walker's response in the FOIA lawsuit, EPA's press office sought to distinguish between the environmental agency and its legal representation.

"The communication at issue was sent by the Department of Justice, U.S. Attorney's

Office of D.C., as part of an ongoing effort to resolve litigation," said Jahan Wilcox, an EPA spokesman.

The Justice Department routinely represents executive agencies in legal disputes over FOIA requests. In his notice of appearance before the court in the PEER lawsuit, Walker described himself as "counsel for Defendant the United States Environmental Protection Agency."

Related



East Chicago Superfund site on list for accelerated cleanup

Wilcox did not respond to follow-up questions about whether the lawyer's representations were inaccurate or if EPA possessed additional records it has yet to disclose.

The recommendations adopted by Pruitt include prioritizing cleanup sites that can be redeveloped for new construction or where nearby residents are under threat from spreading pollution. EPA held no public hearings about the plan.

Pruitt has pledged to make mitigating decades-old pollution EPA's core mission, even as he has moved to block or delay Obama-era regulations aimed at curbing ongoing contamination from coal-fired power plants and fossil-fuel production.

President Donald Trump's proposed 2018 budget seeks to cut the program by 30 percent. Congress has not yet approved a budget for the current fiscal year, which began in October.

The task force was led by Albert "Kell" Kelly, whom Pruitt hired at EPA as a senior adviser at an annual salary of $172,100. Kelly was previously the chairman of Tulsa-based SpiritBank, where he worked as an executive for 34 years.

The Associated Press reported in August that Kelly was barred by the Federal Deposit Insurance Corporation from working for any U.S. financial institution after officials determined he violated laws or regulations, leading to a financial loss for his bank. The FDIC's order didn't detail what Kelly is alleged to have done. Without admitting

wrongdoing, he agreed to pay a $125,000 penalty.

Copyright © 2018, Chicago Tribune

This article is related to: U.S. Environmental Protection Agency, Scott Pruitt, Freedom of Information Act, U.S. Department of Justice

VIEW COMMENTS (4)

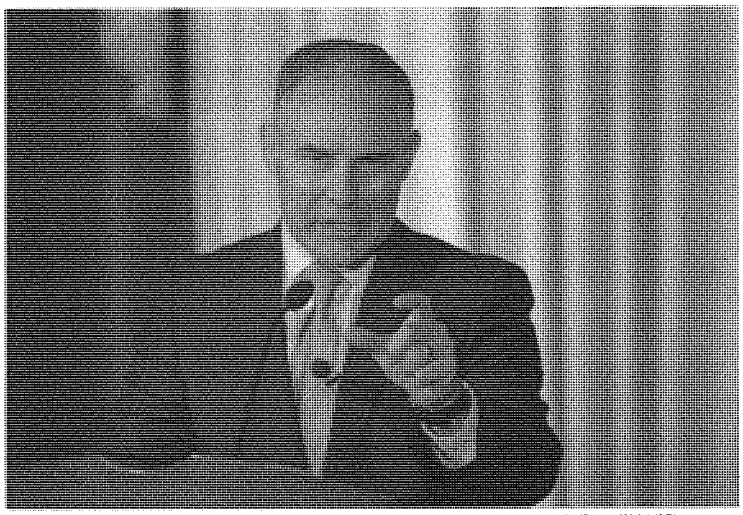
Sections

The Washington Post
Democracy Dies in Darkness

Energy and Environment

EPA spending almost $25,000 to install a secure phone booth for Scott Pruitt

By Brady Dennis September 26, 2017



Environmental Protection Agency Administrator Scott Pruitt will have a soundproof communication booth. (Susan Walsh/AP)

The Environmental Protection Agency is spending nearly $25,000 to construct a secure, soundproof communications booth in the office of Administrator Scott Pruitt, according to government contracting records.

The agency signed a $24,570 contract earlier this summer with Acoustical Solutions, a Richmond-based company, for a "privacy booth for the

administrator." The company sells and installs an array of sound-dampening and privacy products, from ceiling baffles to full-scale enclosures like the one purchased by the EPA. The project's scheduled completion date is Oct. 9, according to the contract.

Typically, such soundproof booths are used to conduct hearing tests. But the EPA sought a customized version — one that eventually would cost several times more than a typical model — that Pruitt can use to communicate privately.

"They had a lot of modifications," said Steve Snider, an acoustic sales consultant with the company, who worked with the agency on its order earlier this summer. "Their main goal was they wanted essentially a secure phone booth that couldn't be breached from a data point of view or from someone standing outside eavesdropping."

[EPA chief Pruitt met with many corporate execs. Then he made decisions in their favor.]

No previous EPA administrators had such a setup.

"What you are referring to is a secured communication area in the administrator's office so secured calls can be received and made," EPA spokeswoman Liz Bowman said in a statement. "Federal agencies need to have one of these so that secured communications, not subject to hacking from the outside, can be held. It's called a Sensitive Compartmented Information Facility (SCIF). This is something which a number, if not all, Cabinet offices have and EPA needs to have updated."

But according to former agency employees, the EPA has long maintained a SCIF on a separate floor from the administrator's office, where officials with proper clearances can go to share information classified as secret. The agency did not specify what aspects of that facility were outdated, or whether the unit inside Pruitt's office wonld meet the physical and technical specifications a SCIF generally is required to have.

In recent months, Pruitt and his top deputies have taken other steps aimed at heightening security. Some EPA employees have been asked to surrender their cellphones and other digital devices before meetings in the administrator's office, in much the same way visitors do when visiting the president in the Oval Office.

A senior administration official, who asked not to be identified to discuss internal procedures, said that practice was instituted to ensure that employees are focused on the discussion during meetings. However, Bowman said that "if anyone was

asked not to bring [phones], it was merely a professional courtesy — it is by no means a policy or directive."

[Scott Pruitt says it's not the time to talk climate change. For him, it never is.]

Pruitt also has shied away from using email at EPA, often preferring to deliver instructions verbally and hold face-to-face meetings. The shift stems in part from public disclosure by the New York Times in 2014 — following an open-records request of emails — of how Pruitt and other attorneys general had worked closely with the oil and gas industry to oppose Obama administration environmental safeguards.

Thousands more pages of emails from his time as Oklahoma's attorney general, released earlier this year after the Center for Media and Democracy sued for them to be made public, detailed an often-chummy relationship between Pruitt's office and Devon Energy, a major oil and gas exploration and production company based in Oklahoma City.

In addition, Pruitt has largely avoided the agency's decades-long practice of publicly posting the administrator's appointment calendars. Only last week were details on months worth of meetings released after media outlets filed repeated Freedom of Information Act requests for that information; they showed he has met regularly with corporate executives from the automobile, mining and fossil fuel industries — in several instances shortly before making decisions favorable to those interest groups.

Pruitt, who has become a polarizing and high-profile figure as he seeks to roll back Obama-era policies and shrink the EPA's footprint, has essentially tripled the personal security detail that served past administrators. The detail now includes about 18 people to cover round-the-clock needs and his frequent travel schedule. Such 24/7 coverage has prompted officials to rotate in special agents from around the country who otherwise would be investigating environmental crimes.

Acoustical Solutions has done work for various government entities over the years, including building soundproof wall barriers at the Defense Nuclear Facilities Safety Board and installing sound-damping wall and ceiling panels at the State Department, Agriculture Department and other agencies. Earlier this year, the Treasury Department turned to the company to provide a "sound enclosure" at the U.S. Mint in Denver.

Snider said the company also has installed numerous "audiometric" booths in other government agencies, such as Veterans Affairs, but those almost always are

used for hearing tests. The EPA's request was something different altogether, he said.

"This is a first," he said. "They are definitely using this booth in a way that wasn't necessarily intended. ... [But] for the criteria they had, it fit this product."

Juliet Eilperin contributed to this report.

Read more:

At EPA, guarding the chief pulls agents from pursuing environmental crimes

EPA under Trump shrinks to near Reagan-era staffing levels

EPA will reconsider Obama-era safeguards on coal waste

Thousands of emails detail EPA head's close ties to fossil fuel industry

How to Adult

A new video series from The Washington Post

We've made some changes to EPA.gov. If the information you are looking for is not here, you may be able to find it on the EPA Web Archive or the January 19, 2017 Web Snapshot.

United States
Environmental Protection
Agency

Search EPA.gov

CONTACT US SHARE

News Releases

News Releases from Headquarters

EPA Withdraws Information Request for the Oil and Gas Industry

03/02/2017

Contact Information:
U.S. EPA Media Relations

WASHINGTON -- The U.S. Environmental Protection Agency (EPA) is withdrawing its request that owners and operators in the oil and natural gas industry provide information on equipment and emissions at existing oil and gas operations. The withdrawal is effective immediately, meaning owners and operators – including those who have received an extension to their due dates for providing the information – are no longer required to respond.

At this time, EPA Administrator Scott Pruitt would like to assess the need for the information that the agency was collecting through these requests. This action also comes after the agency received a letter on March 1, 2017, from nine state Attorneys General and the Governors of Mississippi and Kentucky, expressing concern with the pending Information Collection Request for Oil and Gas

Facilities.

"By taking this step, EPA is signaling that we take these concerns seriously and are committed to strengthening our partnership with the states," said EPA Administrator Pruitt. "Today's action will reduce burdens on businesses while we take a closer look at the need for additional information from this industry."

Under the previous administration, EPA sent letters to more than 15,000 owners and operators in the oil and gas industry, requiring them to provide information. The information request comprised of two parts: an "operator survey" that asked for basic information on the numbers and types of equipment at all onshore oil and gas production facilities in the U.S., and a "facility survey" asking for more detailed information on sources of methane emissions and emission control devices or practices in use by a representative sampling of facilities in several segments of the oil and gas industry. EPA is withdrawing both parts of the information request.

More information: https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry/oil-and-gas-industry-information-requests

R035

Contact Us to ask a question, provide feedback, or report a problem.

Environmental Topics Laws & Regulations About EPA

Discover. Connect. Ask.

Ewire: Pruitt's secrecy draws criticism -- even from his friends

August 14, 2017

https://insideepa.com/daily-feed/ewire-pruitts-secrecy-draws-criticism-even-his-friends

As EPA Administrator Scott Pruitt rolls back major Obama-era climate and other environmental regulations, he is doing much of his work in secret, with the help of a small group of political appointees -- many of whom share a similar background in Oklahoma politics and staunch opposition to EPA.

The New York Times brings the dynamic to light, reporting that Pruitt limits access to the floor where his office is and that career employees are sometimes told to leave behind cellphones or not take notes when meeting with him. According to the Times, Pruitt also often does not use the phone in his office to take important phone calls.

As Inside EPA readers know, Pruitt's EPA had already taken steps to limit access, including by ending the typical practice of publicly posting the administrator's schedule. And shortly after taking office, the Trump administration began to remove pages from EPA's website, including many of the pages related to climate change, claiming it was redoing the website to reflect administration priorities.

But Pruitt's apparent cloak of secrecy is sparking criticism from many corners -- including current Republican senators and former Republican EPA administrators.

Sen. John Hoeven (R-ND) criticized Pruitt for holding a series of closed meetings when he visited North Dakota last week, according to the Bismark Tribune.

"I think [meetings] should be open," Hoeven told the paper after Pruitt held several closed meetings in North Dakota with local officials, as well as agriculture and energy industry representatives. "And when my office organizes them, that's how we do it."

According to the paper, "the level of privacy -- and the security it entailed -- led to a pair of Grand Forks Herald reporters who arrived ahead of Pruitt's appearance at the UND Energy and Environmental Research facility being ejected from the grounds of the campus building by UND Police."

That prompted a response from National Press Club President Jeff Ballou, who said his is "looking into" the incident.

Pruitt is also catching flak from William Ruckelhaus, who served as EPA chief in two Republican administrations, told the Times, "Reforming the regulatory system would be a good thing if there were an honest, open process. But it appears that what is happening now is taking a meat ax to the protections of public health and environment and then hiding it."

As an example, the Times relays an account of Pruitt's treatment of the Obama-era Clean Water Act (CWA) jurisdiction rule, which he is working to repeal and rewrite. EPA released in June a proposal to repeal the rule, and it included an updated economic justification.

Betsy Southerland, a former top water office official, told the Times that the office, under Pruitt's orders, produced -- in three days -- a new economic analysis of the jurisdiction rule rollback that gutted the benefits analysis the Obama administration had issued. "They produced a new cost-benefit analysis that showed no quantifiable benefit to preserving wetlands," Southerland said.

She and others said such a sudden shift was "highly unusual" since studies that estimate rules' economic impacts take months or years to produce, and include extensive written justifications. "Typically there are huge written records, weighing in on the scientific facts, the technology facts and the economic facts," she said. "Everything's in writing. This repeal process is political staff giving verbal directions to get the outcome they want, essentially overnight."

The play-by-play over the CWA jurisdiction rule could provide insight into how Pruitt plans to approach the deregulatory process for other major Obama-era regulations, including the Clean Power Plan (CPP). Sources have said EPA's proposal to repeal the CPP -- sent to the White House for interagency review June 8 -- is expected to include a redone economic justification that increases the cost to regulated entities of the rule.

Stay tuned to InsideEPA as we bring you the latest on the deregulatory process.

The Washington Post
Democracy Dies in Darkness

Opinions

Pruitt is turning his back on transparency at the EPA

Scott Pruitt, the administrator of the Environmental Protection Agency. (Andrew Harrer/Bloomberg)

By William D. Ruckelshaus November 1, 2017

William D. Ruckelshaus was administrator of the Environmental Protection Agency from 1970 to 1973 and from 1983 to 1985.

In May 1983, President Ronald Reagan asked me to lead the Environmental Protection Agency for a second time. The first time was when the EPA began. Reagan's first appointed administrator, Anne Burford, had lost the trust of the public and the confidence of Congress. There were serious questions about the management of the EPA's Superfund program and a too-cozy relationship with corporate executives and lobbyists.

On my first day back, I issued what is now called the "fishbowl memo," which laid out my commitment to openness at the agency. We started to release my full schedule and the publication of written communications on a daily basis. We held regular, brown-bag lunches with the reporters who covered the agency, and every reporter knew he or she could attend. Every other Wednesday, I would spend 90 minutes meeting with those reporters, answering questions. Nothing was off-limits. Everything was on the record.

Why was this so important?

Because the EPA is a public-health agency that is just as important to people's well-being as the Food and Drug Administration or the National Institutes of Health. The statutes the EPA administers are explicit and unmistakable: Set a safe level of exposure to (name your chemical or pollutant or pesticide) with an adequate margin of safety.

Is it safe to breathe this air? Is it safe to drink this water? Or to swim in it? Is that apple free of toxic chemicals? What is that old waste dump doing to the well water? These are the kinds of questions the EPA

answers for the American people.

For the agency to be effective in protecting health, it must first be trusted. People have to believe that when the EPA says something is safe, it is. Otherwise we'll have chaos.

People must believe that the EPA is acting in their interest, the public interest, not on behalf of a special or influential interest. That's why at a time of crisis for the EPA in 1983, the fishbowl memo was so important, why press access was so important.

Scott Pruitt, the current EPA administrator, is taking the absolute opposite approach.

Pruitt operates in secrecy. By concealing his efforts, even innocent actions create an air of suspicion, making it difficult for a skeptical public to give him the benefit of the doubt.

It's not that Pruitt is meeting too frequently with executives and lobbyists from the industries he regulates. Every EPA administrator does that and should do that. But there should be a public record about what was discussed at the meetings. Any access to a specific interest should be matched by the same grant to all interests. Most often the public hearing process will satisfy any need for individual meetings.

Becomiug an advocate for a specific industry raises serious questions that sow doubt about fairness and objectivity. The EPA should have no natural constituency but the public whose health it is mandated to protect.

Pruitt appears to be turning his back on a bipartisan tradition of transparent governance at the EPA. While no administration is perfect on this, Pruitt's history of working intimately with industry makes it all

the more important that he allay his critics' fears instead of intensifying them. And the consequence of such conduct is the slow, destructive erosion of public trust in the EPA.

Once trust is lost and warnings of unsafe air or contaminated water are ignored, Americans will pay the price. Without that trust, not only will people question whether they can believe their government but also business and industry will face public backlash. Boycotts and other attacks are no good for industry and may result in more regulation than warranted.

Industry leaders understand that a public regulatory agency gives their businesses a public license to operate. A strong, credible and fair regulatory regime is essential to the smooth functioning of our economy. Unless people believe their health and the environment are being safeguarded, they will withdraw their permission for companies to do business.

To Pruitt and President Trump, I suggest remembering Anne Burford's experience at the EPA. Remember that a loss of public trust can come back to haunt your administration.

Read more here:

The Post's View: The EPA rips up the Clean Power Plan

Tom Toles: Scott Pruitt pairs an exquisite gift of bad timing with egregious policy

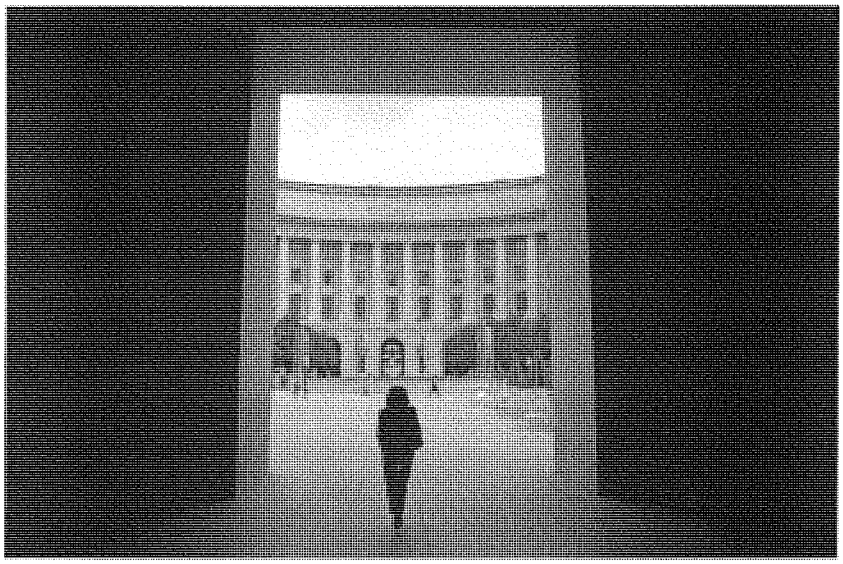
The Post's View: Scott Pruitt demonstrates what climate denial sounds like

Letters: The sad state of today's EPA

POLITICS

Scott Pruitt Is Carrying Out His E.P.A. Agenda in Secret, Critics Say

By CORAL DAVENPORT and ERIC LIPTON AUG. 11, 2017



The Environmental Protection Agency has become more secretive under the leadership of Scott Pruitt.
Tom Brenner/The New York Times

WASHINGTON — When career employees of the Environmental Protection Agency are summoned to a meeting with the agency's administrator, Scott Pruitt, at agency headquarters, they no longer can count on easy access to the floor where his office is, according to interviews with employees of the federal agency.

Doors to the floor are now frequently locked, and employees have to have an escort to gain entrance.

Some employees say they are also told to leave behind their cellphones when they meet with Mr. Pruitt, and are sometimes told not to take notes.

Mr. Pruitt, according to the employees, who requested anonymity out of fear of losing their jobs, often makes important phone calls from other offices rather than use the phone in his office, and he is accompanied, even at E.P.A. headquarters, by armed guards, the first head of the agency to ever request round-the-clock security.

A former Oklahoma attorney general who built his career suing the E.P.A., and whose LinkedIn profile still describes him as "a leading advocate against the EPA's activist agenda," Mr. Pruitt has made it clear that he sees his mission to be dismantling the agency's policies — and even portions of the institution itself.

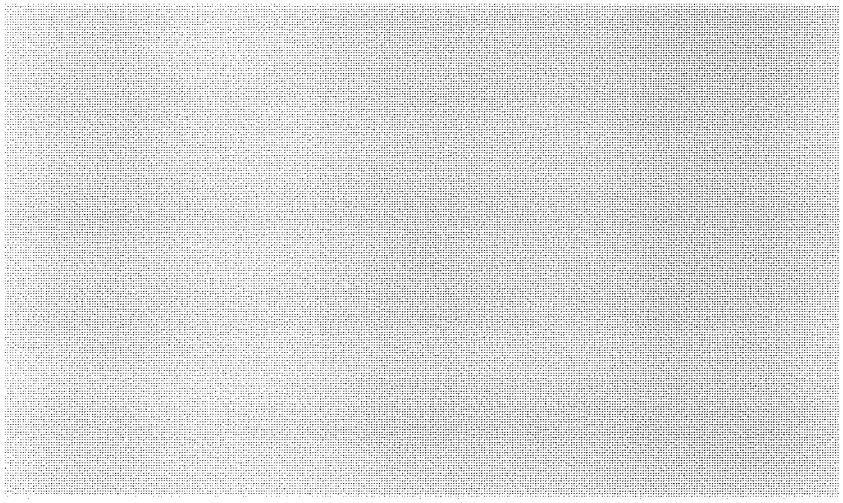
But as he works to roll back regulations, close offices and eliminate staff at the agency charged with protecting the nation's environment and public health, Mr. Pruitt is taking extraordinary measures to conceal his actions, according to interviews with more than 20 current and former agency employees.

Together with a small group of political appointees, many with backgrounds, like his, in Oklahoma politics, and with advice from industry lobbyists, Mr. Pruitt has taken aim at an agency whose policies have been developed and enforced by thousands of the E.P.A.'s career scientists and policy experts, many of whom work in the same building.

"There's a feeling of paranoia in the agency — employees feel like there's been a hostile takeover and the guy in charge is treating them like enemies," said Christopher Sellers, an expert in environmental history at Stony Brook University, who this spring conducted an interview survey with about 40

E.P.A. employees.

Such tensions are not unusual in federal agencies when an election leads to a change in the party in control of the White House. But they seem particularly bitter at the E.P.A.



A draft report by scientists from 13 federal agencies directly contradicts statements by Scott Pruitt, the E.P.A. administrator, that human contribution to climate change is uncertain. By A.J. CHAVAR, CHRIS CIRILLO, LISA FRIEDMAN and DAVE HORN on August 8, 2017. Photo by Al Drago for The New York Times. Watch in Times Video »

Embed

Allies of Mr. Pruitt say he is justified in his measures to ramp up his secrecy and physical protection, given that his agenda and politics clash so fiercely with those of so many of the 15,000 employees at the agency he heads.

"E.P.A. is legendary for being stocked with leftists," said Steven J. Milloy, a member of Mr. Trump's E.P.A. transition team and author of the book "Scare Pollution: Why and How to Fix the E.P.A." "If you work in a hostile environment, you're not the one that's paranoid."

Mr. Pruitt's penchant for secrecy is reflected not just in his inaccessibility and concern for security. He has terminated a decades-long practice of

publicly posting his appointments calendar and that of all the top agency aides, and he has evaded oversight questions from lawmakers on Capitol Hill, according to the Democratic senators who posed the questions.

His aides recently asked career employees to make major changes in a rule regulating water quality in the United States — without any records of the changes they were being ordered to make. And the E.P.A. under Mr. Pruitt has moved to curb certain public information, shutting down data collection of emissions from oil and gas companies, and taking down more than 1,900 agency webpages on topics like climate change, according to a tally by the Environmental Defense Fund, which did a Freedom of Information request on these terminated pages.

William D. Ruckelshaus, who served as E.P.A. director under two Republican presidents and once wrote a memo directing agency employees to operate "in a fishbowl," said such secrecy is antithetical to the mission of the agency.

"Reforming the regulatory system would be a good thing if there were an honest, open process," he said. "But it appears that what is happening now is taking a meat ax to the protections of public health and environment and then hiding it."

Mr. Ruckelshaus said such secrecy could pave the way toward, or exacerbate, another disaster like the contamination of public drinking water in Flint, Mich., or the 2014 chemical spill into the public water supply in Charleston, W.Va. — while leading to a dearth of information when such events happen.

"Something will happen, like Flint, and the public will realize they can't get any information about what happened or why," he said.

But Liz Bowman, a spokeswoman for the E.P.A., categorically denied the accounts employees interviewed for this article gave of the secrecy surrounding Mr. Pruitt.

Get the Morning Briefing by Email

What you need to know to start your day.

delivered to your inbox Monday through Friday.

Enter your email address Sign Up

You agree to receive occasional updates and special offers for The New York Times's products and services.

SEE SAMPLE | MANAGE EMAIL PREFERENCES | PRIVACY POLICY | OPT OUT OR CONTACT US ANYTIME

"None of this is true," she said. "It's all rumors."

She added, in an emailed statement, "It's very disappointing, yet not surprising, to learn that you would solicit leaks, and collude with union officials in an effort to distract from the work we are doing to implement the president's agenda."

Mr. Pruitt's efforts to undo a major water protection rule are one example of his moves to quickly and stealthily dismantle regulations.

The rule, known as Waters of the United States, and enacted by the Obama administration, was designed to take existing federal protections on large water bodies such as the Chesapeake Bay and Mississippi River and expand them to include the wetlands and small tributaries that flow into those larger waters.

It was fiercely opposed by farmers, rural landowners and real estate developers.

The original estimate concluded that the water protections would indeed come at an economic cost to those groups — between $236 million and $465 million annually.

But it also concluded, in an 87-page analysis, that the economic benefits of preventing water pollution would be greater: between $555 million and $572 million.

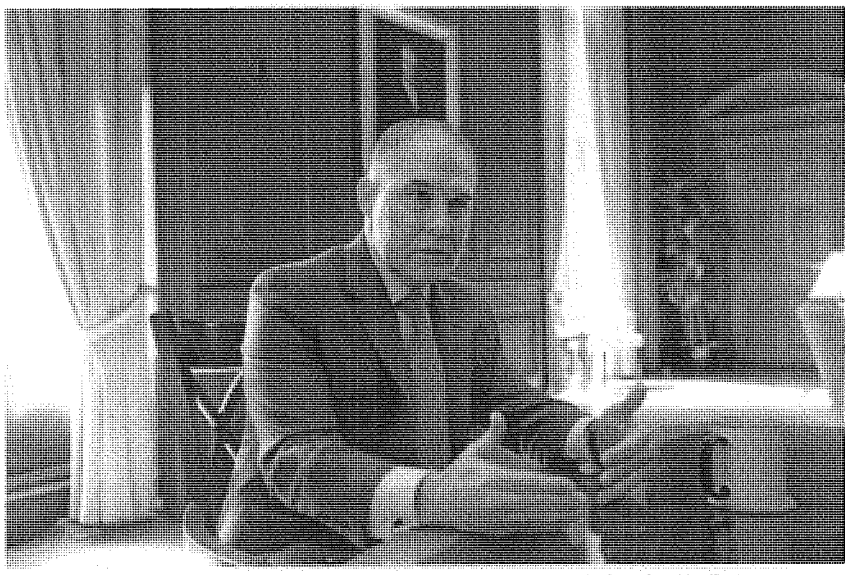
E.P.A. employees say that in mid-June, as Mr. Pruitt prepared a proposal to reverse the rule, they were told by his deputies to produce a new analysis of the rule — one that stripped away the half-billion-dollar economic benefits

associated with protecting wetlands.

"On June 13, my economists were verbally told to produce a new study that changed the wetlands benefit," said Elizabetb Southerland, who retired last month from a 30-year career at the E.P.A., most recently as a senior official in the agency's water office.

"On June 16, they did what they were told," Ms. Southerland said. "Tbey produced a new cost-benefit analysis that showed no quantifiable benefit to preserving wetlands."

Ms. Southerland and other experts in federal rule-making said such a sudden shift was highly unusual — particularly since studies that estimate the economic impact of regulations can take months or even years to produce, and are often accompanied by reams of paperwork documenting the process.



Scott Pruitt in his E.P.A. office. Employees say they can no longer count on easy access to the floor where his office is.
Yuri Gripas/Reuters

"Typically there are huge written records, weighing in on the scientific facts, the technology facts and the economic facts," she said. "Everything's in writing. This repeal process is political staff giving verbal directions to get the outcome they want, essentially overnight."

Jeffrey Ruch, the executive director of Public Employees for Environmental Responsibility, an organization representing government employees in environmental fields, said the E.P.A. could not allow changes like this to take place, or expect its employees to follow such directives.

"This is a huge change, and they made it over a few days, with almost no record, no documentation," Mr. Ruchs said, adding, "It wasn't so much cooking the books, it was throwing out the books."

Experts in administrative law say such practices skate up to the edge of legality.

While federal records laws prohibit senior officials from destroying records, they could evade public scrutiny of their decision-making by simply not creating them in the first place.

"The mere fact they are telling people not to write things down shows they are trying to keep things hidden," said Jeffrey Lubbers, a professor of administrative law at American University.

Mr. Pruitt had a reputation for being secretive before he ever came to the E.P.A.

While serving as Oklahoma's attorney general, he came under criticism for maintaining at least three separate email accounts, including one private account that he at times nsed for state government business.

During his Senate confirmation, he was asked about these multiple accounts, providing what some senators considered a misleading answer.

A subsequent lawsuit resulted in the release of some of these other emails, which Mr. Pruitt had asserted did not exist.

"He's got a serious problem because of his emails down in Oklahoma — he's

burned himself," said David Schnare, who worked at the agency from 1978 to 2011 and then on the Trump administration's E.P.A. transition team. "He doesn't want to take any risks."

Document: E.P.A.'s Scott Pruitt and Secrecy

Mr. Schnare, a conservative Republican who has backed President Trump's broader agenda, had taken on what was expected to be a more permanent role at the E.P.A.

But he resigned last month in protest of wbat he said is Mr. Pruitt's mismanagement of the agency.

Mr. Schnare noted that some previous E.P.A. administrators had been secretive — during the Obama administration, for example, Lisa Jackson, the E.P.A. administrator, came under criticism for using an email alias, "Richard Windsor," to conduct official business.

But Mr. Schnare said that Mr. Pruitt's methods stood out from all of his predecessors.

"My view was that under this administration we would be good at transparency, particularly in the regulatory area," he said. "But these guys aren't doing that."

Senator Thomas R. Carper of Delaware, the top Democrat on the committee overseeing federal government operations, has criticized Mr. Pruitt for embracing what he calls "a culture of secrecy around everything from his schedule to the way the agency makes scientific determinations."

Mr. Carper and other Senate Democrats have a dozen outstanding requests awaiting a response from Mr. Pruitt, and when responses do come, Mr. Carper said, they referred lawmakers to printouts of news releases instead of answering questions.

An E.P.A. spokesman disputed Mr. Carper's criticisms.

"Administrator Pruitt has responded to 14 of the 27 oversight letters, which often contain numerous in-depth questions and it takes time to provide an extensive and through response," he said, adding that he "has been incredibly responsive to Congress."

Mr. Pruitt and his staff are also subject to intense scrutiny from the public and the news media: The E.P.A., just in the last two months, has received more than 2,000 Freedom of Information requests, many of them focused on Mr. Pruitt, asking for every possible record related to his tenure, including text messages, telephone records and even his web browsing history.

Yet for E.P.A. employees, information about Mr. Pruitt's activities can be hard to obtain.

In April, for example, he traveled to Chicago to visit an E.P.A.-designated hazardous waste site.

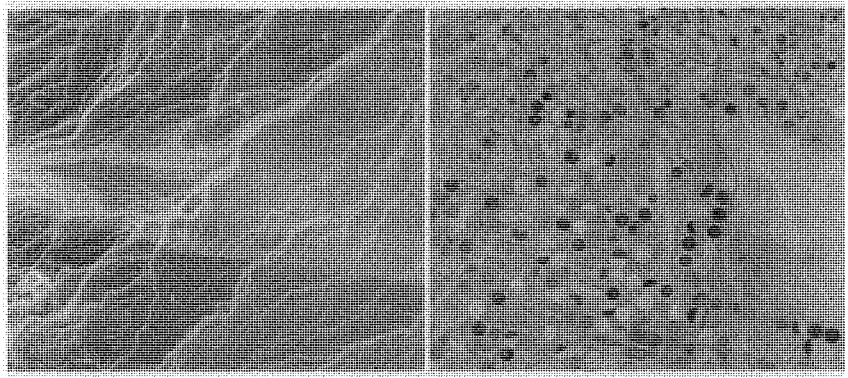
Bnt E.P.A. employees at the agency's Chicago office said they had no idea he was there — nor did he visit the Chicago branch of the agency, or meet with staff members.

"He won't meet with us or talk to us to make decisions about policy, and we don't even know when he's in town," said Nicole Cantello, a lawyer in the E.P.A.'s Chicago office and a leader of the employee union.

Correction: August 11, 2017

An earlier version of this article misstated part of the title of a book by Steven J. Milloy. It is "Scare Pollution: Why and How to Fix the E.P.A." not "Scare Pollution: How and Why to Fix the E.P.A." Also, the last name of the executive director of Public Employees for Environmental Responsibility was misspelled in an earlier version of this article. He is Jeffrey Ruch, not Ruchs.

Get politics and Washington news updates via Facebook, Twitter and the Morning Briefing newsletter.



PART 3

CHANGING THE DIGITAL CLIMATE

HOW CLIMATE CHANGE WEB CONTENT IS BEING CENSORED UNDER THE TRUMP ADMINISTRATION

Toly Rinberg, Maya Anjur-Dietrich, Marcy Beck, Andrew Bergman, Justin Derry, Lindsey Dillon, Gretchen Gehrke, Rebecca Lave, Chris Sellers, Nick Shapiro, Anastasia Aizman, Dan Allan, Madeleine Britt, Raymond Cha, Janak Chadha, Morgan Currie, Sara Johns, Abby Klionsky, Stephanie Knutson, Katherine Kulik, Aaron Lamalin, Kevin Nguyen, Eric Noll, Kendra Oustiche, Lindsay Poirier, Sara Rubinow, Justin Schell, Lizz Uhtee, Julia Upfal, Tyler Wedrosky, Jacob Wylie, EDGI

PART 3 | CHANGING THE DIGITAL CLIMATE

JANUARY 2018

DOWNLOAD PDF

QUOTES

DATA METHODS

COMMENTS

The Environmental Data & Governance Initiative (EDGI) is an organization comprised of academics and non-profit employees that promotes open and accessible government data and information along with evidence-based policy making.

"Changing the Digital Climate" is the third of a multi-part series on the early days of the Trump administration. In this series, EDGI authors systematically investigate historical precedents for Trump's attack on the EPA, consequences for toxic regulation and environmental justice, and changes to the public presentation of climate change.

TABLE OF CONTENTS

I. EXECUTIVE SUMMARY
II. INTRODUCTION
III. A BRIEF OVERVIEW OF CLIMATE DENIALISM IN THE U.S.
IV. THE ROLE OF THE FEDERAL GOVERNMENT IN CLIMATE RESEARCH AND POLICYMAKING
V. CHANGES TO FEDERAL WEBSITES PERTAINING TO CLIMATE CHANGE
- a. Altering the Presentation of Climate Change on the White House Website
- b. Altering Information on International Climate Change Agreements and Partnerships
- c. Renewable Energy Versus Job Growth
- d. Non-Renewable Energy Sources and Their Effects on the Environment and Human Health
- e. Language Shifts: "Resilience" and "Sustainability" Instead of "Climate Change"
- f. Changes to Agencies' Overall Presentation of Climate Change
  - i. Of All Agencies, the EPA has Removed the Most Climate Web Content

VI. IMPORTANCE OF ACCURATELY DESCRIBING FEDERAL WEBSITE CHANGES AND MEDIA PORTRAYAL
- a. Attribution of Changes
- b. Misuse of Language and Misunderstandings

VII. STATE AND LOCAL RESISTANCE TO TRUMP ADMINISTRATION

CLIMATE CENSORSHIP
VIII. CONCLUSIONS AND RECOMMENDATIONS
a. Significance of Website Changes and What's to Come
b. Digital Information Governance Practices

I. EXECUTIVE SUMMARY

EDGI's website monitoring working group monitors changes to tens of thousands of federal webpages that relate to environment, climate, and energy. In the first year of the Trump administration, we have observed alterations to many federal agency Web resources about climate change. Although there is no evidence of any removals of climate data, we have documented overhauls and removals of documents, webpages, and entire websites, as well as significant language shifts.

Key Findings:

- The Environmental Protection Agency's (EPA) removal and subsequent ongoing overhaul of its climate change website raises strong concerns about loss of access to valuable information for state, local, and tribal governments, and for educators, policymakers, and the general public.
- Several agencies removed or significantly reduced the prominence of climate change Web content, such as webpages, documents, and entire websites, and the White House omitted climate change as an issue highlighted on its website.
- The Department of State, Department of Energy (DOE), and the EPA removed information about the federal government's international obligations regarding climate change, downplaying U.S. involvement.
- Descriptions of agency priorities shifted to emphasize job creation and downplay renewable fuels as replacements for fossil fuels. At the DOE, mentions of "clean energy" and explanations of harmful environmental impacts of fossil fuels were also removed.
- Language about climate change has been systematically changed across multiple agency and program websites. In many cases, explicit mentions of "climate change" and "greenhouse gases" have been replaced by vaguer terms such as "sustainability" and "emissions".

While we cannot determine the reasons for these changes from monitoring websites alone, our work reveals shifts in stated priorities and governance and an overall reduction in access to climate change information, particularly at the EPA.

These documented changes matter **because they:**

- Make it more difficult for the scientists, policymakers, historians, and the public to access the results of years of scientific and policy research funded by tax dollars.
- Make it harder for state, local, and tribal governments to access resources designed to help them adapt to and mitigate the harms of climate change. For example, the EPA removed over 200 climate webpages for state, local, and tribal governments.
- Diminish our democratic institutions, such as notice-and-comment rulemaking, which depend on an informed public. The removal of the EPA's Clean Power Plan website has broad implications.
- Can confuse the public if significant changes are not sufficiently justified. Alterations to the U.S. Geological Survey's search engine generated public confusion.
- Contribute to broader climate denialist efforts that obscure and cast doubt on the scientific consensus on climate change, hampering critical efforts to mitigate and adapt to climate change.

What are EDGI's Recommendations?

- **Transparency**. Especially for major website overhauls, but for smaller updates to webpages as well, agencies should detail the scope of the pages that will be affected and clearly explain the reason for planned alterations in a public statement, well in advance of the changes actually being made.
- **Responsible Web archiving**. Federal agencies should not alter or reduce access to Web content before they have created a log to thoroughly document their intended changes and ensured that the content is preserved and, for significant alterations, made accessible through a public archive.
- **Valuing Web resources**. Web resources should be valued in terms of their educational importance, how much they enable historical understanding, and their advancement of scientific and policy research. Records schedules and records governance broadly should reflect these uses.
- **Distributed Web archiving**. Federal agencies should work with growing civil society movements to rethink the way we organize, steward, and distribute data, Web resources, and online information.
- **Environmental data justice**. Federal environmental agencies should work to create digital infrastructure through which communities can determine what kinds of data are collected and presented about them, in response to which issues. This includes proactive efforts to identify and accommodate those who access federal Web information, as well as offering communities the right to refuse consent to data collection.

II. INTRODUCTION

Would the U.S. government give up its role in combating climate change? This was one of the primary concerns expressed by climate policy experts, domestic and international leaders, and concerned citizens in the wake of the 2016 presidential election.[1] In addition to providing political and financial support for mitigation and adaptation globally, the U.S. government produces and funds much of the data upon which the global climate science community depends. Federal agencies serve a critical and authoritative role in analyzing and communicating climate science, which informs science-based policy. The U.S. has reduced its own contribution to climate change in recent years as companies, states, and the federal government have instituted new policies targeting greenhouse gas emissions.[2] For these reasons, and because of its economic and political leadership on the international stage more broadly, U.S. policy shifts have implications far beyond its borders.

As a candidate, Mr. Trump referred to climate change as "a hoax", and as President his actions have been consistent with that view.[3] The transition teams he selected for federal environmental agencies and his eventual cabinet choices, such as EPA Administrator Scott Pruitt, included many who deny the scientific consensus that humans are causing climate change.[4] Since taking office, both Administrator Pruitt[5] and Secretary of Energy Rick Perry[6] have affirmed their skepticism, rejecting the consensus that CO2 is the primary driver of climate change.

It is thus not surprising that there have been substantial climate policy shifts during the first year of the Trump administration. The reversal of regulations on coal mining, oil and gas drilling, and thousands of power plants began in March with a sweeping executive order, which also initiated a review of the Clean Power Plan.[7] On October 10, 2017, the EPA began its formal repeal of the plan.[8] President Trump decided to withdraw from the landmark Paris Agreement, meaning the U.S. is now the only country in the world not committed to "pursue efforts to limit the [global average] temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change," after Nicaragua and Syria announced that they would sign on to the accord.[9] In withdrawing, President Trump ignored climate experts who warn that increasing magnitudes of warming increase the likelihood of severe, pervasive, and irreversible consequences, including extreme weather events, drought and forest fires.[10] Going further, in the new National Security Strategy released in December 2017, the Trump administration broke norms by removing climate change from a list of global threats.[11]

Since President Trump's inauguration, EDGI has been monitoring tens of thousands

of federal environmental websites to assess changes to the public's access to information and Web resources, and track rhetorical shifts. This work is an unprecedented effort to hold the federal government accountable for changes in public access to information that could easily have evaded scrutiny in the past.

Federal websites are an important interface between the public and the government, helping people better understand climate change and ways to address it via adaptation and mitigation. These websites provide the public access to scientific results funded by their tax dollars, support democratic process by serving as an authoritative and easily accessible source for the public to educate themselves on key climate change issues, and provide a bulwark against efforts to obscure or cast doubt on accepted science on politically sensitive topics. Alterations to these federal websites can thus have very broad consequences.[12]

It is important to emphasize that EDGI's website monitoring efforts have thus far found no removal or deletion of climate data sets from federal websites under the Trump administration. Instead, we have found substantial shifts in whether and how the topic of climate change and efforts to mitigate and adapt to its consequences are discussed across a range of federal agencies' websites. Perhaps most importantly, we have found significant loss of public access to information about climate change.

In the sections that follow, we first provide a brief overview of climate denialism in the U.S. and describe the federal government's key role in national and international climate science as context for the changes EDGI has observed. We then present particular changes to federal websites, how shifts in language and access to information affect the public presentation of climate change, and how in some cases they have been misrepresented in the media. We then describe a range of ways in which state and local governments have resisted loss of public information on climate change, and conclude by addressing what is at stake when the information on federal websites is altered or removed and recommending more just and accountable practices for digital information governance.

III. A BRIEF OVERVIEW OF CLIMATE DENIALISM IN THE U.S.

The alteration of climate change content on federal websites extends a longer campaign to "manufacture doubt" on human-caused (or anthropogenic) climate change. Since the 1980s, fossil fuel interests, from companies and think tanks to

media and politicians, have drawn upon strategies forged by the tobacco and other threatened industries to cultivate public skepticism about climate change.[13] Over the past two decades, this campaign has gained in confidence, clout, and momentum, to the point that, even prior to the 2016 election, it had effectively precluded many meaningful legislative or policy changes to regulate fossil fuel emissions and encourage alternative energy sources, in order to protect industry profits.

The climate change denial movement in the U.S. has deep roots in older efforts by oil, gas, tobacco, and chemical industries to counter scientific research that raised hard questions about the products they sold. As Naomi Oreskes and Erik Conway have explained in compelling depth,[14] the post-World-War-II tobacco industry pioneered new ways of discrediting health studies that demonstrated the connection between tobacco use and cancer or other health risks. Seeking to intervene in the field of scientific debate itself, they funded counter-research by a shrinking number of sympathetic scientists, demanded a level of certainty that scientists rarely possess, and exaggerated the uncertainty of existing science. They also sought a broader public audience for their contrarian messages by creating echo chambers of think tanks and other organizations they quietly funded, as well as consolidating ties to media outlets.

All of these tactics have been taken up and amplified by the campaign to manufacture doubt about anthropogenic climate change, even as the supporting scientific evidence and consensus for it has become ever more solid.[15]

Contemporary alterations of climate information are not merely the culmination of a multi-decade crescendo of denialism but also part of a wider practice of censoring science that is seen to be at odds with short-term economic gains. In recent years, the actual or attempted muzzling of federal scientists in Canada, Australia, Great Britain, and the United States has been the most common means of science suppression.[16] In the case of the George W. Bush administration, such actions provided cover for political interference in the production of climate change reports and communication, despite the administration's acknowledgment of the importance of reducing greenhouse gas emissions.[17]

The alterations and removal of information that we document below clearly demonstrate that the once-fringe effort to seed doubts about climate science has been mainstreamed into the Executive Branch of the U.S. government. Climate deniers have won influential posts across all the major environmental agencies, and the agencies' websites increasingly reflect denialist beliefs. These changes matter because they make it easier to mislead the public about climate change, since federal websites have long been viewed as authoritative sources of environmental

information. Climate denialists' historic political achievement elevates the manufacture of doubt to the level of state-sponsored censorship.

IV. THE ROLE OF THE FEDERAL GOVERNMENT IN CLIMATE RESEARCH AND POLICYMAKING

The federal government's substantial climate-related Web presence is not surprising, given the extensive U.S. activities pertaining to climate change science and policy across many federal agencies, offices, and programs, as well as internationally through foreign assistance. According to the Office of Management and Budget, federal funding for climate science, technology, adaptation, and international assistance was $11.6 billion in 2014, an increase from $2.4 billion in 1993, with an additional $26.1 billion for climate change programs and activities provided by the American Recovery and Reinvestment Act in 2009.[18]

The EPA, for instance, is responsible for climate-related work that includes monitoring and data collection efforts as well as policy and adaptation assistance. The EPA's Greenhouse Gas Reporting Program[19] collects and publishes data regarding emissions from U.S. facilities that emit large quantities of greenhouse gases. The EPA's Office of Research and Development works to understand and provide sustainable solutions to the environmental and health impacts of climate change.[20] Other EPA efforts have included legislative analysis, economic modeling, and establishing frameworks for state, local, tribal, and international community climate action.[21]

The National Aeronautics and Space Administration and National Oceanic and Atmospheric Administration (NOAA) are responsible for major data collection operations, including numerous satellite programs.[22] The Department of the Interior (DOI) runs eight National Climate Change and Wildlife Science Centers across the country that assess the vulnerability of various species and habitats to climate change and connect models of climate change to ecological effects.[23] DOI's Bureau of Land Management (BLM) conducts Rapid Ecoregional Assessments to help communities better adapt to environmental change and works on climate change mitigation through renewable energy projects, particularly wind, solar, and geothermal.[24]

The DOE's 17 National Laboratories host cutting-edge climate and atmospheric research programs, in addition to advancing renewable energy and energy efficiency research.[25] The DOE's Office of Energy Efficiency and Renewable Energy, which promotes a global clean energy economy and supports the development of renewable technologies, received $2.89 billion for fiscal year 2017 and $2.03 billion the prior year.[26]

These are just some examples of the expansive scope of the federal government's involvement in climate research and policymaking. Federal websites reflect the government's investment in climate-related work, as well as the priorities of individual agencies and offices, and are treated as authoritative sources for data and information on climate change.

V. CHANGES TO FEDERAL WEBSITES PERTAINING TO CLIMATE CHANGE

EDGI has released a series of reports on changes to federal environmental websites during the first year of the Trump administration. Drawing on these reports, we herein summarize trends in how the treatment of climate change across federal websites has changed. While no datasets have been removed, we have found significant shifts in stated climate policies, how climate change is described, how adaptation and mitigation efforts are framed, and overall public access to information on climate change.

ALTERING THE PRESENTATION OF CLIMATE CHANGE ON THE WHITE HOUSE WEBSITE

The White House website was the first federal site to be changed under President Trump's tenure. President Obama's White House site was archived and remained accessible online, as was the case in the Clinton-Bush and Bush-Obama transitions,[27] and a new site was put in place by the Trump administration. The new website omitted major topics highlighted on the Obama-era site, including climate change.

Many press accounts misrepresented what had occurred, stating or implying that the

new administration had deleted information or data and failing to mention that the Obama administration site was archived and publicly available.[28] However, the changeover left the Web scattered with dead links to old White House pages referencing climate-related documents and information. Because these links were not set up to redirect to the new URLs in the archived Obama White House site, the information they contain is only available to people able to find the archives through some other means, significantly reducing the accessibility of these climate change resources.

In December 2017, President Trump launched a redesigned White House website. Almost a year into the new administration, the website, unlike President Obama's,[29] makes no mention of climate or climate change on its "Energy & Environment" page.[30]

The Office of Science, Technology, and Policy (OSTP), responsible for providing analysis of scientific and technological federal policies and programs to the President, has yet to rebuild its portion of the White House website,[31] which under President Obama included an "Initiatives" section on "Combating Climate Change."[32] The lack of a prominent OSTP Web presence may be explained by the fact that President Trump has yet to appoint a White House science advisor, who, among other duties, leads the Office.[33] On November 16, 2017, seven senators sent a letter to President Trump urging him to appoint a science advisor and fill other key open OSTP positions.[34]

The lack of White House attention to climate change from the outset of the Trump presidency and the continued disregard for these issues, coupled with the lack of key staff working on climate issues, send a clear signal that climate action is not a priority for this administration. Moreover, poor Web governance practice has broken links to Obama-era climate Web resources across federal and nonfederal websites, diminishing the public's ability to engage with information about U.S. climate efforts.

ALTERING INFORMATION ON INTERNATIONAL CLIMATE CHANGE AGREEMENTS AND PARTNERSHIPS

In response to growing concern over climate change, the international community has begun working together on mitigation and adaptation efforts such as reducing greenhouse gas emissions and maintaining economic security, and has established important treaties and agreements. Under the leadership of President Obama, the

U.S. helped negotiate and establish the Paris Agreement. President Obama's 2013 Climate Action Plan included bilateral initiatives with major emitting countries, including China and India, to address global climate change.[35]

Soon after Mr. Trump's inauguration, federal websites began downplaying U.S. involvement in international climate action and removing documents pertaining to international agreements. The State Department's Office of Global Change, for example, updated text and links and removed pages with reports pertaining to climate change. Notably, the 2010, 2014, and 2016 Climate Action Reports were removed from the State Department site (Figure 1).[36] Though the reports are stored in State Department website archives, their former URLs do not redirect to the archived pages' new URLs, as for the White House pages above, significantly reducing access to the reports. The production of these reports fulfills the U.S. government's obligation under the United Nations Framework Convention on Climate Change (UNFCCC)[37] to detail actions taken to mitigate effects of climate change. Their removal signals that the administration may pull out of the UNFCCC. Moreover, the removals obscure that such a commitment to the UNFCCC exists in the first place, making it more difficult for citizens to hold the administration accountable for abiding by international treaties and current U.S. government policy.

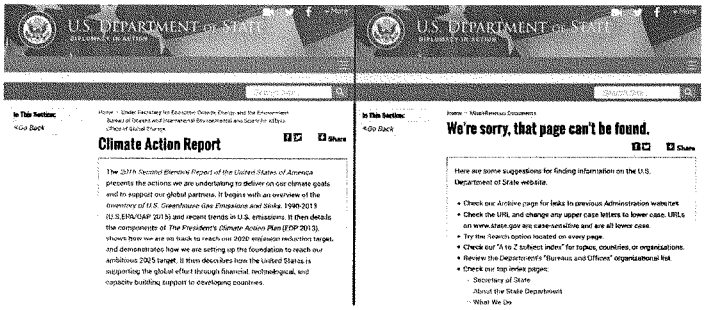


Figure 1: The State Department removed Climate Action Reports and pages describing them. Compare previous version from January 20, 2017 (left) and removed page from January 26, 2017 (right) on the Internet Archive's Wayback Machine; URL: https://www.state.gov/e/oes/climate/climateactionreport/index.htm; EDGI Report.

The Montreal Protocol is an international agreement, ratified by 196 countries including the U.S., to reduce the emission of ozone-depleting substances. Its hydrofluorocarbon (HFC) amendment is intended to reduce the use of HFCs, a particularly potent greenhouse gas. Pages describing the Montreal Protocol titled "Phasing Down HFCs" and "International Statements on HFCs"[38] were removed

from the State Department website. Informing the public about HFCs and efforts to curb their emissions is important as these gases are found in air conditioners and refrigerators and contribute to climate change thousands of times more than carbon dioxide on a molecule-to-molecule basis.[39] These pages, too, have been stored in the difficult-to-access State Department website archives. As with the Climate Action Reports described above, removing these pages reduces access to important information and obscures the current international commitments of the U.S. government to treaties already or soon to be in force.

The description of the State Department's Office of Global Change was also updated, removing a concluding sentence: "The working partnerships the United States has created or strengthened with other major economies has [sic] reinforced the importance of results-driven action both internationally and domestically and are achieving measurable impacts now to help countries reduce their long-term greenhouse gas emissions." It was replaced with a sentence mentioning "adaptation" and "sustainable landscapes".[40] Coupled with the page removals described above, this type of change in rhetoric significantly shifts the State Department's presentation of the impact and scope of international climate change agreements.

That the Office of Global Change site no longer links to a page about the Special Envoy of Climate Change is consistent with the State Department's move to eliminate the position.[41]

The EPA website also saw rapid changes relating to international climate relations. Within days of the inauguration, the EPA's "Federal Partner Collaboration" page describing its work with federal, state, tribal, local, and international partners on climate change was retitled "EPA Adaptation Collaboration", and significant sections on that page were removed or rewritten. Among the removals were links to webpages on President Obama's Climate Action Plan, an executive order on preparing for effects of climate change, the Council on Environmental Quality's climate change resilience efforts, and the tribal Environmental General Assistance Program. On the EPA's "International Climate Partnerships" page, a paragraph was removed that affirmed the U.S. commitment to the objectives of the UNFCCC, in particular to "stabilizing greenhouse gas concentrations in the atmosphere at a level that prevents dangerous human-induced interference with the climate system".[42]

The DOE page on climate change removed a video about the Paris climate accord as well as links to climate websites, such as NOAA's National Centers for Environmental Information and the National Climate Assessment, which describes impacts of climate change on the U.S.[43] These changes came shortly after Politico reported that DOE employees in the Office of International Climate and Clean Energy were told to avoid the terms "Paris Agreement", "climate change", and

"emissions reduction" in written communications.[44]

These DOE and EPA webpage changes, echoing the State Department's alterations to international climate change information, suggest a pervasive international agenda shift across federal agencies. While we cannot discern if these changes were directed from a centralized source, such as the Executive Branch, or if agencies independently decided to align with what they believed was the administration's policy, these systematic changes provided early signals of future international climate policy decisions, such as the eventual withdrawal from the Paris Agreement.

RENEWABLE ENERGY VERSUS JOB GROWTH

Investment in renewable energy can mitigate the negative effects of climate change and provide energy security, promote social and economic development, and reduce negative environmental and health impacts.[45] Yet under the Trump administration, descriptions of agency office priorities began to downplay the importance of renewable energy.

For example, the DOE's Energy Efficiency and Renewable Energy (EERE) office updated language and links on its Bioenergy, Wind Energy, and Vehicle Technology Office websites, reducing emphasis on renewable energy in favor of fossil fuels.[46] The sentence, "wind power is an emission-free and water-free renewable energy source that is a key component to the Administration's renewable electricity generation goals," was removed from the Wind Energy website. On the Vehicle Technology Office page, the phrase "transportation technologies that will reduce the use of petroleum" was changed to "transportation technologies that will strengthen US energy security, economic vitality, and quality of life." And the sentence, "through our efforts to develop biobased products and increase biopower generation, we're helping to replace the whole barrel of oil" was rewritten, omitting the clause, "we're helping to replace the whole barrel of oil" on a Bioenergy Technologies Office page.

The changes to these renewable energy pages also reflect an increased emphasis on U.S. jobs and economic growth. For example, the following sentences were added: "Wind energy currently supports more than 100,000 U.S. jobs, and wind turbine technician is the nation's fastest-growing occupation" and, on the Bioenergy page, "the potential production could, in turn, directly generate $30 billion in revenue and 1.1 million jobs in a variety of sectors including farming, plant operations, scientific research, and product and equipment design."

The DOE's Office of Technology Transition (OTT) was established in 2015 to

develop the agency's policy for improving the marketplace impact of its research investment and boosting private sector investment in renewable technologies. Within OTT, the Clean Energy Investment Center changed its name to the Energy Investor Center (EIC). The center's renaming occurred as the term "clean energy" was removed throughout the then CEIC page, and multiple links, including several pertaining to clean energy, were removed from an OTT page describing EERE's Technology-to-Market Program.[47] Reporting by The Washington Post found that these changes were initiated by the career staff and not by the Trump administration.[48] How the name and website changes reflect an altered agenda on renewable energy remains to be seen.

Under Secretary Ryan Zinke, the DOI's top-level energy page was rebranded to remove emphasis on renewable sources of energy.[49] The first paragraph on the previous version of the page used to warn that "our dependence on foreign oil threatens our national security, our environment and our economy." The page detailed a list of energy sources that the U.S. relies on, beginning with renewables and stating that, "as part of securing America's energy future, we must move our nation toward a clean-energy economy."

The new version of the page, titled "American Frontier," removed the detailed description of energy sources and seemed to put conventional sources of energy on equal footing with renewables. The connection between American energy policy and job growth was emphasized with the addition of the following sentences: "American energy resources create jobs and revenue. With proper policies that foster growth and local input, the Department provides opportunities for new jobs and revenue for state, local, federal, and Tribal governments." While the new page retained links to other DOI pages with resources on energy, both renewable and non-renewable, the shift in presentation and language distinctly supports the Trump administration's agenda to undercut the importance of renewable energy.

Also at the DOI, the BLM no longer lists "Clean and Renewable Energy" as a national priority, but instead highlights "Making America Safe Through Energy Independence" and "Getting America Back to Work".[50]

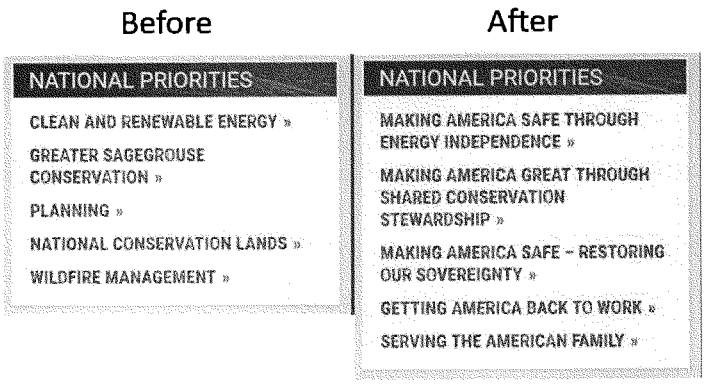


Figure 2: Change in the Bureau of Land Management's national priorities. Compare previous version from February 7, 2017 (left) and newer version from November 26, 2017 (right) on the Internet Archive's Wayback Machine; URL: https://www.blm.gov/about; EDGI Report.

These changes across the DOE and DOI Web domains present a consistent perspective: renewable energy sources should not be considered a replacement for fossil fuels and are valuable to the extent that they bolster the U.S. economy, not because of their environmental and climate benefits.

NON-RENEWABLE ENERGY SOURCES AND THEIR EFFECTS ON THE ENVIRONMENT AND HUMAN HEALTH

Across various federal agencies, descriptions of the effects of using non-renewable fuels, such as coal, oil, and natural gas, were altered, generally reducing the emphasis on their social and environmental costs.

Removal of sentences and graphs and subtle changes to language were observed on the Energy Information Administration's (EIA) Energy Kids website.[51] On a page discussing coal energy, a plot quantifying CO2 emissions by fuel type was removed, along with the following sentences: "In the United States, most of the coal consumed is used as a fuel to generate electricity. Burning coal produces emissions that adversely affect the environment and human health" (Figure 3). Across the website, the word "impacts" was systematically changed to "effects", for example: "impacts of

coal mining" became "effects of coal mining," and "reducing the environmental impacts of coal use" was changed to "reducing the environmental effects of coal use." Importantly, EIA is an independent part of the DOE, meaning its administrator does not need approval from any other government employee, not even the Executive Office, prior to releasing any publication.[52] In fact, after a ProPublica article attributed the changes to the Trump administration, EIA released a press statement explaining their independent position in the government and claiming that there was no external interference.[53]

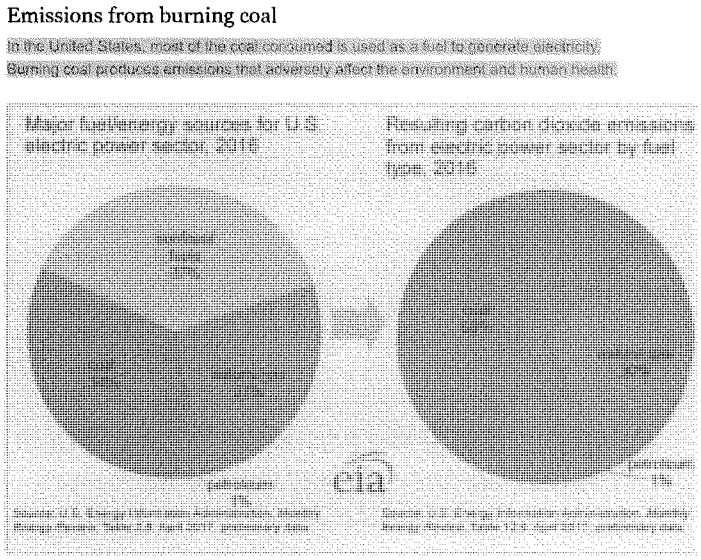


Figure 3: A sentence and graph about coal, major fuel sources, and carbon dioxide emissions removed from the Energy Information Administration's Energy Kids website. Compare previous version from January 29, 2017 and newer version from November 20, 2017 on the Internet Archive's Wayback Machine; URL: https://www.eia.gov/kids/energy.cfm?page=coal_home-basics; EDGI Report.

Every two years, the Government Accountability Office (GAO), also an independent agency, identifies program areas that are high risk due to "vulnerabilities to fraud, waste, abuse, and mismanagement, or are most in need of transformation," and maintains a list on its website. In the most recent assessment, the GAO changed the framework within which federal oil and gas resources are discussed and rewrote their page accordingly. Most notably, a section on environmental and public health risks from shale oil and natural gas production was removed, including the sentence

"Oil and natural gas development pose inherent environmental and public health risks, and studies have generally found that the potential long-term, cumulative effects of shale development have not been examined." Expanding the focus on job creation and economic benefits, the introduction now states that oil and gas resources "provide an important source of energy for the United States; create jobs in the oil and gas industry; and generate billions of dollars annually in revenues that are shared between federal, state, and tribal governments".[54]

These website changes come as civil society actions against fossil fuels pick up speed. Twenty-one youth plaintiffs are suing the federal government over climate change, arguing that supporting fossil fuels and greenhouse gas emissions has violated the youngest generation's constitutional rights.[55] In a reversal of last year's vote, ExxonMobil shareholders approved a proposal to disclose analyses of the ways in which global climate change guidelines will affect the oil company's business.[56] Discussions of climate change are happening all over the world, in corporate offices, in living rooms, and on the streets. However, that discussion is notably absent in the Executive Branch, and information to support those discussions is being reduced and obscured. The language changes and reduction in access to information detailed above undermine the open discussion of climate change and how fossil fuels impact the environment and society.

LANGUAGE SHIFTS: "RESILIENCE" AND "SUSTAINABILITY" INSTEAD OF "CLIMATE CHANGE"

In some cases, agency programs and offices have shifted the terminology that they use to present climate change to the public, often replacing straightforward language with vague terms.

An EPA program called Climate Ready Water Utilities was renamed Creating Resilient Water Utilities, maintaining the same acronym (CRWU) and URL. On the new program page, all 19 mentions of "climate" were removed. The program's earlier mission "to provide the water sector...with the practical tools,

training, and technical assistance needed to adapt to climate change by promoting a clear understanding of climate science and adaptation options" seems to have changed as well. The current CRWU webpage text states that the program "provides drinking water, wastewater and stormwater utilities with practical tools, training and technical assistance needed to increase resilience to extreme weather events".[57] Beyond messaging, it remains unclear whether and how CRWU's operations have

changed.

Also at the EPA, climate and emissions language was altered on the website of the SmartWay program, which was established to help companies improve supply chain sustainability by measuring and benchmarking freight transportation emissions. Terms like "sustainability" and "emissions" replaced mentions of "carbon." A section titled "The science is clear - greenhouse gas emissions from all sources must decrease," was entirely removed (Figure 4). Descriptions of the EPA's international work with the United Nations Environment Programme's Climate and Clean Air Coalition and links to the UN website were also removed (Figure 5).[58]

The science is clear—greenhouse gas emissions from all sources must decrease.

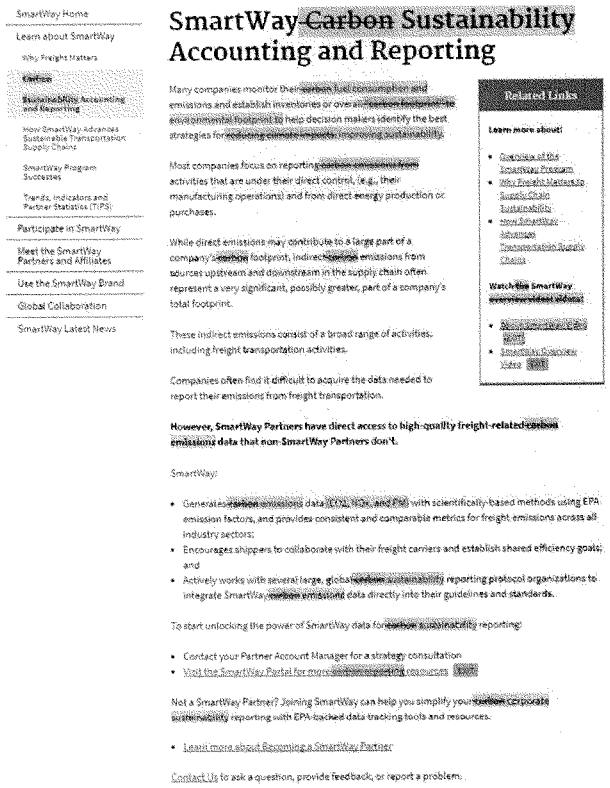
While economic development and expanded trade are raising living standards for many, unless we take action, the environmental impacts of increased global commerce will be significant.

The majority of greenhouse gases come from burning fossil fuels. The good news is that freight transportation is one area where proven technology, policy, and operational strategies exist to reduce fuel consumption, greenhouse gas emissions, and pollution and while still achieving sustainable economic growth.

Figure 4: Removal of entire section titled "The science is clear - greenhouse gas emissions from all sources must decrease" from the EPA's SmartWay website. Compare previous version from February 8, 2017 and newer version from September 12, 2017 on the Internet Archive's Wayback Machine; URL: https://www.epa.gov/smartway/why-freight-matters-supply-chain-sustainability; EDGI Report.

At the Department of Transportation (DOT), the Federal Highway Administration (FHWA) changed language, page titles, and employee descriptions across multiple pages for its program on the environmental effects of transportation. FHWA renamed what was previously known as "The Sustainable Transport and Climate Change Team" to "The Sustainable Transportation and Resilience Team" on December 15, 2016.[59] A spokesperson for the agency told the The Washington Post that the team name was changed "after several weeks of internal discussions by FHWA's Associate Administrator for Planning and Environment to more accurately reflect our agency's emphasis on resilience activities." The program's website, however, continued to be edited throughout the Trump administration's early months. Page banners were systematically changed from "Climate Change," "Climate Adaptation," and "Climate Mitigation" to "Sustainability." Page titles changed from "Climate Change and Transportation" to "Sustainable Transportation," "Adaptation" to "Resilience," and "Greenhouse Gas Mitigation & Energy" to "Energy and Emissions."

In descriptions of the team's duties, all four mentions of greenhouse gases, "GHG," were removed.[60]


SmartWay Home
Learn about SmartWay
Why Freight Matters
Carbon
Sustainability Accounting and Reporting
How SmartWay Advances Sustainable Transportation Supply Chains
SmartWay Program Successes
Trends, Indicators and Partner Statistics (TIPS)
Participate in SmartWay
Meet the SmartWay Partners and Affiliates
Use the SmartWay Brand
Global Collaboration
SmartWay Latest News

SmartWay Carbon Sustainability Accounting and Reporting

Many companies monitor their carbon fuel consumption and emissions and establish inventories or overall carbon footprint to environmental footprint to help decision makers identify the best strategies for reducing climate impacts, improving sustainability.

Most companies focus on reporting carbon emissions from activities that are under their direct control, (e.g., their manufacturing operations) and from direct energy production or purchases.

While direct emissions may contribute to a large part of a company's carbon footprint, indirect carbon emissions from sources upstream and downstream in the supply chain often represent a very significant, possibly greater, part of a company's total footprint.

These indirect emissions consist of a broad range of activities, including freight transportation activities.

Companies often find it difficult to acquire the data needed to report their emissions from freight transportation.

However, SmartWay Partners have direct access to high-quality freight-related carbon emissions data that non-SmartWay Partners don't.

SmartWay:

- Generates carbon emissions data (CO2, NOx, and PM) with scientifically-based methods using EPA emission factors, and provides consistent and comparable metrics for freight emissions across all industry sectors;
- Encourages shippers to collaborate with their freight carriers and establish shared efficiency goals; and
- Actively works with several large, global carbon sustainability reporting protocol organizations to integrate SmartWay carbon emissions data directly into their guidelines and standards.

To start unlocking the power of SmartWay data for carbon sustainability reporting:

- Contact your Partner Account Manager for a strategy consultation
- Visit the SmartWay Portal for more carbon reporting resources

Not a SmartWay Partner? Joining SmartWay can help you simplify your carbon corporate sustainability reporting with EPA-backed data tracking tools and resources.

- Learn more about Becoming a SmartWay Partner

Contact Us to ask a question, provide feedback, or report a problem.

Related Links

Learn more about:

- Overview of the SmartWay Program
- Why Freight Matters to Supply Chain Sustainability
- How SmartWay Advances Transportation Supply Chains

Watch the SmartWay overview video:

- Go to SmartWay Video (EDGI)
- SmartWay Overview Video (EDGI)

Figure 5: Language changes on the EPA's "SmartWay Carbon Accounting and Reporting" page. No previous version stored on Internet Archive's Wayback Machine and newer version from September 12, 2017; URL: https://www.epa.gov/smartway/smartway-sustainability-accounting-and-reporting; EDGI Report.

The term "greenhouse gases" has been removed or replaced on other agency websites as well. The State Department's Office of Global Change page was rewritten, now without mention of the term. On the EERE's Bioenergy Technology Office page, "greenhouse gases" was removed in multiple places and, in one instance, replaced by the term "harmful emissions." As not all emissions are

greenhouse gases, it may actually be more accurate to use the broader term, but the widespread removal and replacement of the term "greenhouse gases" may signify that agency officials want to distance their offices from association with climate change issues.

The Department of the Interior's Bureau of Indian Affairs Tribal Climate Resilience Program (TCRP) changed its name by removing the word "climate."[61] The program facilitates access to climate resources and provides funding opportunities to the 567 federally recognized tribes through competitive awards to study and plan for climate resilience. On the TCRP main page, the terms "climate" and "climate change" were completely removed from the main text and the sidebar. For example: "Climate Change Indicators" became "Environmental Indicators," the "Tribal Student Climate Change Photo Contest" was changed to the "Tribal Student Resilience Photo Contest," and the "Tribal Climate Change Adaptation Program Awards" are now titled "Tribal Resilience Program Awards."

The National Institute of Environmental Health Sciences changed the term "climate change" to "climate" on its Global; Environmental; Health; pages. Links; to; an; educational fact; sheet; titled "Climate; Change and Human Health"; were; removed,; reducing; access; to; the; resource.[62]

Rhetorical shifts on webpages are not changes in policy by themselves, but removing mentions of climate change and related terms obscures the public's understanding of the issue and reduces the informational resources available to them. Those who are not familiar with the common language replacements described above may misunderstand program and agency goals and intentions.

CHANGES TO AGENCIES' OVERALL PRESENTATION OF CLIMATE CHANGE

Many federal agencies have established prominent climate change sections on their websites to highlight their work and overall position on climate research and policy. Changes to these pages reflect large-scale shifts in agency missions and priorities on climate change.

The DOI substantially reformatted and removed informational text from its main climate change page. Among the removals was a portion of a paragraph warning that, "climate change affects every corner of the American continent. It is making droughts drier and longer, floods more dangerous and hurricanes more severe." A "Resources" section with six links to other government climate change pages was

added, increasing access to the corresponding pages, but providing no additional description or contextualizing information. On the other hand, an extensive section was removed that detailed the framework through which the DOI's bureaus coordinate on climate change issues, providing information and links pertaining to the "Climate Change Response Council," "Eight DOI Regional Climate Science Centers," and "A Network of Landscape Conservation Cooperatives."[63]

On another part of the DOI site, BLM entirely removed its climate change page (Figure 6). The page stated that "the BLM is adopting a landscape approach to more effectively manage the public lands during times of change" and provided examples of the approach by linking to resources about the Desert Renewable Energy Conservation Plan in California and BLM's Rapid Ecoregional Assessments. The page also linked to the DOI and other federal Web resources on climate change and renewable energy. The removed page further stated that in addition to adaptation strategies, BLM is working on climate change mitigation by "working with local communities, state regulators, industry, and other federal agencies in building a clean energy future by providing sites for environmentally sound development of renewable energy on public lands."[64]

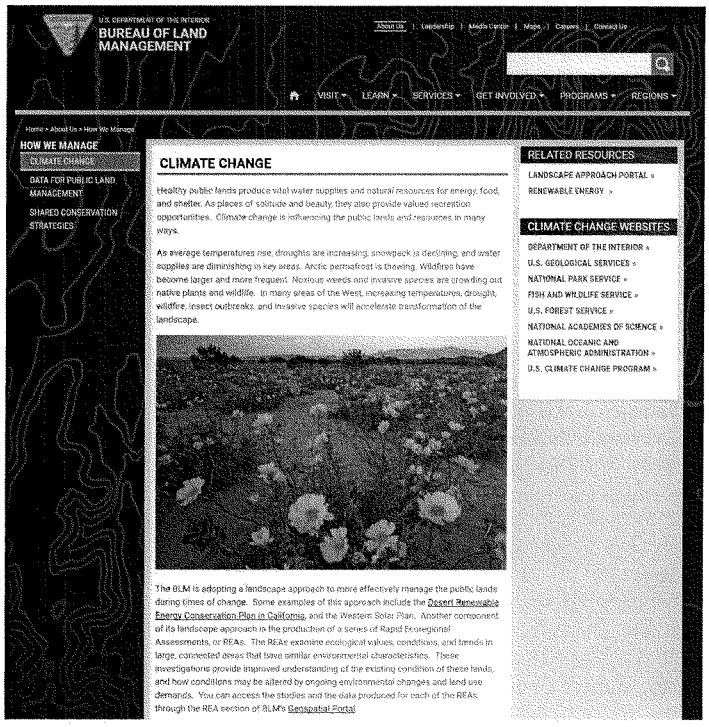


Figure 6: Removal of the Department of the Interior's Bureau of Land Management Climate Change page. Compare previous version from May 16, 2017 and removed page from November 12, 2017 on the Internet Archive's Wayback Machine; URL: https://www.blm.gov/about/how-we-manage/climate-change; EDGI Report.

In early December, the DOI's National Park Service removed 92 documents describing national parks' climate action plans from its website.[65] The plans, detailing how national parks are currently responding and will continue to respond to climate change, are prerequisite for becoming a Climate Friendly Park member. Following the release of EDGI's report and news media attention, NPS responded by stating that the plans had been removed in order to comply with provisions of Section 508 of the Rehabilitation Act of 1973, making "electronic information and technology accessible to people with disabilities."[66] The agency further stated that it intends to return compliant content by the government-wide January 18, 2018 deadline. While increasing usability standards is important for equitable content access, if compliant replacement content had been prepared in advance, the agency would not have had to make valuable resources unavailable simply to remain in compliance with law.

OF ALL AGENCIES, THE EPA HAS REMOVED THE MOST CLIMATE WEB CONTENT

The most significant reduction in access to an agency's climate change information occurred when the EPA made substantial alterations to its climate change website on Trump's 99th day in office, which was also the day before the People's Climate March.[67] As multiple EPA climate change subdomains began redirecting to a notice stating "this page is being updated," the EPA issued a statement announcing the overhaul of its website to "reflect the agency's new direction under President Donald Trump and Administrator Scott Pruitt."[68] The removed EPA climate change domains included extensive information on the EPA's work to mitigate climate change, as well as details of data collection efforts and indicators for climate change.

Almost all of the removed information could still be found on the January 19 snapshot, which is a mirror of the EPA's website from the last day of Administrator McCarthy's tenure that the EPA put up on its website and linked from its homepage on February 15th. The EPA overhaul notice included a link to the January 19 snapshot stating that the "screenshot of the last administration's website will remain available from the main page." This sentence originally included the words "as required by law," but they were removed within hours of the statement's release. The legal consideration here likely refers to the numerous Freedom of Information Act (FOIA) requests that were filed requesting historic versions of the EPA website. Indeed, if the EPA received three or more FOIA requests for the Obama-era EPA website, the "Beetlejuice" provision of the updated FOIA legislation would legally require the EPA to make the website snapshot accessible online.[69]

The EPA's notice that an overhaul was in progress did represent some degree of transparency, yet it failed to note which domains and pages were being removed or altered. Moreover, it was posted the same day that the overhaul began, preventing stakeholders from being able to download and archive valuable pages and information. Because URLs redirected to the overhaul notice and not to the new location of the pages in the January 19 snapshot, links to these pages from government and non-government websites throughout the country and the world suddenly ceased connecting people with useful climate change resources. And because no notice for the change was given, there was no time to alter these links, significantly reducing the public's access to these resources the day before the People's Climate March.

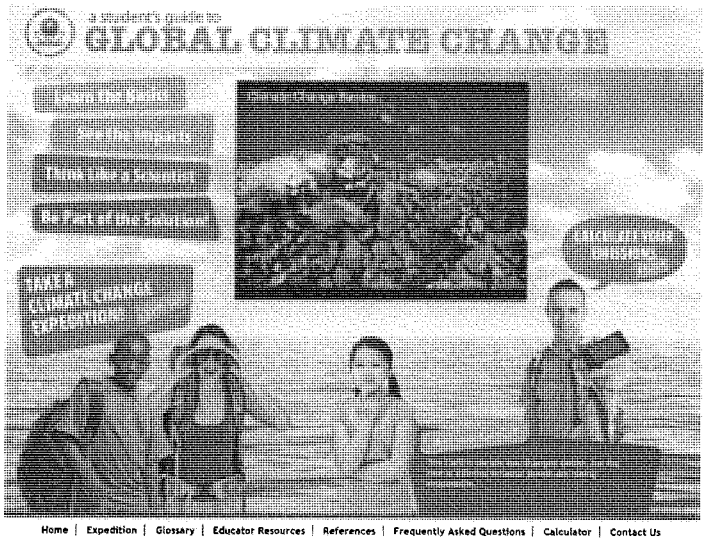


Figure 7: The EPA removed the entire Student's Guide to Global Climate Change website. Compare previous version from February 2, 2017 and redirect to notice page from April 30, 2017 on the Internet Archive's Wayback Machine; URL: https://www3.epa.gov/climatechange/kids/; EDGI Report.

While the EPA's January 19 snapshot made much of the removed climate change information available, even if access was significantly reduced for the reasons stated above, certain parts of the EPA's website were rendered completely inaccessible. One such example is the "Student's Global Guide to Climate Change" website (Figure 7), which was not accessible from either the EPA's live website or from the EPA's January 19 snapshot once the overhaul began, likely due to an error in copying over this portion of the website to the snapshot.[70] Missing information from the snapshot is problematic from a data preservation and accessibility standpoint and may have legal implications, as discussed above. This kind of poor management of Web resources has left dead links and inaccessible pages, and has generated confusion.

One of the websites removed on April 28 was titled "Climate and Energy Resources for State, Local, and Tribal Governments" and was 380 pages in size (Figure 8). In the first example of returned content, about three months after the removals, a new website titled "Energy Resources for State, Local, and Tribal Governments" was

[71]

launched, replacing the previous site. Over 200 webpages providing climate information were omitted from the new release and multiple pages, including the homepage, were substantially altered, removing mentions and descriptions of climate and climate change. Some webpages remain unchanged and have been moved from the previous to the new website. For example, all the Web tools, like the AVoided Emissions and geneRation Tool (AVERT), were preserved. Critically, all URLs from the previous website now redirect to the new website's homepage, which means that links to the previous website have lost their value and specificity.

The EPA has yet to clearly communicate its reason for what has turned out to be a major website overhaul. That content is being returned to the official EPA website but climate information is being systematically left out suggests an intention to manipulate the scientific and policy debate over climate change by restricting public access to information.

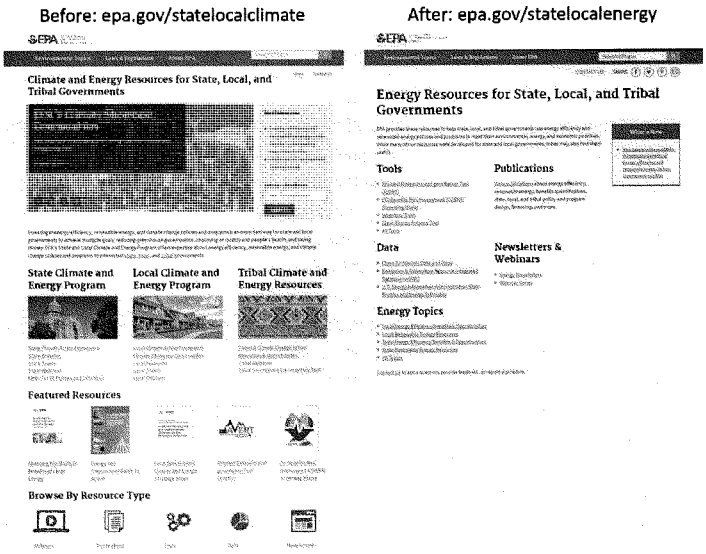


Figure 8: Replacement of the "Climate and Energy Resources for State, Local, and Tribal Governments" website with another that omits climate information. Compare previous version from April 13, 2017 (left) and newer version from September 25, 2017 (right) on the Internet Archive's Wayback Machine; Previous URL: https://www.epa.gov/statelocalclimate; Current URL: https://www.epa.gov/statelocalenergy; EDGI Report.

Following EDGI's reporting of the website replacement, seven Democratic senators wrote a letter to EPA Administrator Scott Pruitt asking that the previous "Climate and Energy Resources for State, Local, and Tribal Governments" website be returned and that an explanation for the initial removal be provided.[72] The EPA did not respond to the letter, which argued that "the decision to eliminate these federal resources puts lives at risk and will translate into increased future costs for the states, municipalities, and tribes that rely on these resources to respond to changing environmental conditions."

One example of how the loss of EPA climate change resources has substantive practical impacts is the targeted reduction of access to the EPA's Climate Change Adaptation Plans, through link and document removals.[73] The Plans, which are much more difficult to find now on the EPA's site, warned of the potential for hurricanes to flood Superfund toxic waste sites, as occurred during Hurricane Harvey in Texas. State officials, experts, and others responding to the hurricane and to future natural disasters have less access to the Plans' advice on how to prepare for flooding, made more severe by the earth's changing climate, and protect people against toxic chemical exposure.[74]

Beyond reducing access to actionable information, removing public Web resources can undermine democratic institutions such as notice-and-comment rulemaking.[75] Also among the April 28 removals, was the EPA's website for the Clean Power Plan, President Obama's defining regulation in the fight against climate change.[76] Months before the EPA's proposed repeal of the rule, the website was removed and its URL began redirecting to a single page about President's Trump Executive Order on Energy Independence, which called for a review of the Plan. The previous website hosted and aggregated resources for the public to understand the Clean Power Plan and for states to develop emissions plans. Spanish-language Web resources, like fact sheets and community information, were removed without being archived, likely due to the same errors as the Student's climate change site removal. The replacement page links to the Executive Order notice, the Federal Register, and related news releases, but provides almost no information justifying or explaining the shift in policy. The new page does not mention that a previous site existed and, importantly, does not point to the archived version of the Clean Power Plan website.

A student, policymaker, scientist, or member of the public interested in writing a public comment can make a difference as all comments need to be accounted for equally. However, removal of Web content and obfuscation of resources makes it more difficult for those interested in engaging in the rulemaking process to provide an informed, evidence-based comment. Anyone valuing the idea of democratic policymaking should demand that public Web resources relevant for regulations

should remain readily accessible to the public, whether regulations are being proposed or rolled back.

In most cases, the best and quickest way to learn about an agency's priorities, operations, and policy perspectives is to access its website. By restructuring websites and changing Web content, agencies are signaling what is and is not important to them and how they would like the public to engage. Removal of climate information disconnects the public from important resources for understanding climate science and policy, and inhibits informed actions they might take as a result. Moreover, if done without explanation, it isn't clear if alterations have an underlying scientific basis or are politically motivated.

VI. IMPORTANCE OF ACCURATELY DESCRIBING FEDERAL WEBSITE CHANGES AND MEDIA PORTRAYAL

Websites can change in a variety of ways,[77] from straightforward text edits to confusing webpage overhauls and URL redirects. It is also not always obvious who is responsible for making the changes and what the review process is before a change is published. Paying attention to these distinctions is important in order to make sure that focus remains on the correct issues.

The journalism community, in particular, has covered changes to federal websites since President Trump took office, working to contextualize the shifts in rhetoric and reduction in access to important digital resources as warning signs and indicators of changing policy. This reporting on issues of information and data governance and access is an important public service. However, journalists have occasionally misrepresented the nature of the changes that are occurring by attributing changes to political appointees without evidence and by using improper terminology or misunderstanding the nature of the changes.

ATTRIBUTION OF CHANGES

Without additional information, it is often impossible to tell whether changes were made by career agency employees, agency political appointees, members of the Trump administration, or anyone else. The distinction between self-censorship, in which career staff attempt to make their offices appear less at odds with the administration's stated policy goals, and changes that were ordered by political appointees at an agency or the White House, is not trivial.

In certain cases the Trump administration's involvement is clear, as in the White House website changeover and the overhaul of the EPA's climate change website, which was accompanied by a statement that the changes reflected "EPA's priorities under the leadership of President Trump and Administrator Pruitt."[78]

Reporting by The Washington Post, however, suggests that other changes, such as renaming of the DOE's "Clean Energy Investment Center" the "Energy Investor Center" and the associated changes to the Center's webpages, were an act of self-censorship. The Post writes, "Energy spokeswoman Lindsey Geisler said these changes were not ordered by the Trump administration but were made by career staff to 'better reflect the broader focus of the project, which includes all traditional and nontraditional energy sources.'"[79]

FHWA's rebranding of their program by switching "climate change" to "resilience" in their name occurred on December 13, 2016, before the inauguration, and was the result of weeks-long "internal discussions," according to one of their spokespeople. Though we cannot rule out early communication with transition team members or future Trump administration officials, the evidence suggests that the initiative to change originated from within FHWA and not the Trump administration.

While these cases were identified as originating from career officials, it has often been impossible to know the source of the orders for other website changes that have been covered by the media. Cases like this, however, demonstrate that we cannot assume that all website alterations originate from the administration or from political appointees.

The news media has sometimes attributed the changes to the Trump administration without corroborating evidence, which misleads the public and distracts from what may really be occurring. For example, a ProPublica article, originally titled "Child's Play: Team Trump Rewrites a Department of Energy Website for Kids," implied that the language changes on the EIA site were ordered by political appointees. ProPublica updated the article and its title to remove explicit attribution to the Trump administration after EIA, which is an independent agency whose publications are not subject to external review, responded by saying, "contrary to the headlines and content of the articles, EIA has never been contacted by anyone in the new

administration regarding the content of any part of EIA's website."[80] In another case of misleading reporting, a Guardian article titled "Trump is deleting climate change, one site at a time," which provided several examples of changes across federal agencies, overgeneralized by stating that "the administration has taken a hatchet to climate change language across government websites," not providing evidence for the administration's involvement or noting the possibility for self-censorship.[81] Getting the story right helps document the internal processes and shifts in priorities that are occurring at agencies and provides an important lead for future investigations.

MISUSE OF LANGUAGE AND MISUNDERSTANDINGS

In some cases, journalists have described website changes in imprecise and exaggerated language that can mislead readers about the severity of those alterations. On numerous occasions, articles refer to the removal of "data" in cases where that is not what really occurred.[82] The term "data" is often used loosely, leading readers to assume worst case scenarios, such as the removal of primary source data sets (e.g. files of buoy or satellite measurements) from websites, or even from government servers, which has not occurred. In fact, in essentially all cases thus far, the word "data" has been used to refer to either text on a webpage, a webpage, or a document that contains text and images, which would more accurately be described as Web information or content.

Moreover, the EPA, State Department, and White House, for example, all have publicly accessible archives of their Obama-era websites, so for many observed changes on those websites it is more correct to say that data or information has been made less accessible, or has been removed and archived, rather than stating that data or information has been "deleted," as some journalists have done.[83] Still, not all agency website archives represent a complete record, as demonstrated by the missing Students' website from the EPA's January 19 snapshot. Such cases could be referred to as page deletions and have, thus far, been the most substantial reductions in information access.

One Guardian article claimed that arctic "data" was "deleted" from government websites, merging both of the language errors described above.[84] In fact, the article's author was only referring to removals of President Obama's White House webpages and documents, which remain publicly archived. No evidence of data deletions was presented.

Distrust of agencies, coupled with confusing changes and lack of proactive agency explanation, has sometimes led to a public outcry based on incorrect reasoning. For example, after the U.S. Geological Survey (USGS) changed their search engine's properties, the number of results for the same search term dropped from the thousands to the hundreds.[85] Although the entire search engine was affected by these changes, the reduction in the number of search results for the term "climate change" was given special attention in a series of tweets. The social media response as well as subsequent news media coverage[86] confused a few important points. First, articles stated that information was taken offline, when there was no evidence that webpages, documents, or data were removed, only that the search results that linked to Web content were affected. Second, the specific focus on climate change implied that there was a targeted removal of climate information. That the entire search engine was affected refutes this implication. Third, there was no evidence that the Trump administration was directly involved and several USGS spokespeople stated on record that there was no political interference.

USGS failed to mitigate this confusion by not proactively announcing and explaining the changes to their search engine. But in order to hold USGS—as well as other agencies—accountable, we must have an accurate understanding of how changes to websites really affect public access to information.

* * * * *

Describing changes to federal websites accurately can be a subtle exercise, yet it is important to get it right for multiple reasons. Attributing changes to the wrong sources and/or using inaccurate language to describe website changes misrepresents the degree to which transformations are occurring at these agencies and distracts the public from the real concern of information and resource removal from websites. Furthermore, presenting wrong or misleading information drains the news media's bandwidth and wastes limited resources on error correction. Without accurate information, members of the public and advocacy groups who champion environmental and Web accountability via elected officials or legal proceedings may pursue the wrong ends. More generally, inaccurate reporting threatens public faith in the news media as an objective source of information about the new administration, and the lack of such a trusted source undermines democratic institutions.

VII. STATE AND LOCAL RESISTANCE TO

TRUMP ADMINISTRATION CLIMATE CENSORSHIP

The current administration has restricted U.S. efforts to address climate change through actions such as withdrawing from the Paris climate accord and attempting to repeal the Clean Power Plan. In response, many state and local governments are leveraging their own authority and influence to reduce carbon emissions. Fourteen states and the U.S. territory Puerto Rico have formed the United States Climate Alliance,[87] whose members are committed to upholding their state's responsibility under the Paris climate accord by decreasing their greenhouse gas emissions to 26-28% below their 2005 emissions by 2025. On the municipal level, 382 cities have joined the Climate Mayors[88] to uphold the Paris climate accord and more significantly address greenhouse gas emissions and sustainable practices. For instance, Los Angeles has committed to a 45% reduction below its 1990 emissions by 2025, and an 80% reduction by 2050.

Municipalities and states have long been at the forefront of innovatively addressing climate change issues, particularly when the federal government is unable to do so. Following the United States' failure to ratify the Kyoto Protocol in 2005, the U.S. Conference of Mayors created the U.S. Mayors Climate Protection Agreement,[89] which now has 1060 signatories, to reduce greenhouse gas emissions in each signed mayor's city in line with the Kyoto Protocol. Since the mid-2000s, several states have formed regional alliances to create greenhouse gas emissions reductions plans, such as the Regional Greenhouse Gas Initiative[90] in northeastern states and the Western Climate Initiative.[91] Today, many state and cities are banding together to address the changes in public access to environmental information detailed in this report.

The mayors and governors involved in efforts to preserve public access to information on climate change argue that an informed public is one of the first steps to protecting the environment and addressing climate change. People need to understand what climate change is, what we can do to slow it, and how we can mitigate its effects.

In California, the state senate sought to protect federal environmental and climate data by proposing a bill that would have required the Secretary for Environmental Protection to make available online federal scientific information and data that was deemed at risk.[92] While Governor Brown vetoed the bill due to concern about state authority to protect federal whistleblowers, he did announce his support for protecting and providing access to federal data and information.

Concerned by the possibility of lost climate information, the City of Chicago copied parts of the EPA's climate change website, and is currently hosting it at the URL http://climatechange.cityofchicago.org. A banner on the mirrored sites states that "while this information may not be readily available on the EPA's website, in Chicago we know climate change is real. We are joining cities around the country to make sure citizens have access to information on climate change." Chicago also established instructions and a data repository in GitHub so that other cities could copy and host the webpages; sixteen cities across the U.S. currently host this information on their local government websites.[93] This kind of action by local governments is crucial for holding the federal government accountable.

COMMENT: A PERSPECTIVE FROM LIONELD JORDAN, MAYOR OF FAYETTEVILLE, AR, ABOUT THE ROLE OF CITIES IN PRESERVING DIGITAL CLIMATE INFORMATION

Climate change poses a very serious threat not only in terms of sea level rise for coastal communities but also for the heartland of America. Heat and drought stress, along with flooding from more intense storms, are real climate change consequences that we are facing in Fayetteville, Arkansas. We are committed to working with leaders of other cities, states, universities, and businesses to identify these threats and to make our communities more resilient to them. This is a matter of national security and social justice. Through our work to develop Fayetteville's Energy Action Plan, we also recognize that reducing carbon emissions and combating climate change represents a significant economic opportunity for our city and our nation by investing in a low-carbon economy and creating good jobs in energy efficiency and renewable energy.

Preserving access to the Environmental Protection Agency's data and scientific assessments of climate change is fundamental to our understanding and collective will for action. This is true for the citizens of Fayetteville, Arkansas and across the United States. Policies on how to respond to climate change may be debatable but the underlying science on why climate change is happening and what impacts it may have are not.

VIII. CONCLUSIONS AND RECOMMENDATIONS

SIGNIFICANCE OF WEBSITE CHANGES AND WHAT'S TO COME

Federal websites are often the public's primary source of information about agency roles and priorities on issues and provide some of the richest educational materials on important science and policy topics, from climate change to environmental justice. When people visit federal websites, however, they see only the current version, not the record and progression of changes that lead up to it. They have no way to see how their access to information has been altered.

Our examination of changes across many federal agencies over the first year of the Trump administration demonstrates a systematic reduction in access to climate information and content. Links have been cut from pages or rendered useless, language has been changed to alter emphasis and drop mentions of climate-change-related topics, and entire climate websites have been removed and made significantly less accessible.

While we have not observed any removal of climate data, the trend of website alterations signals a change in approach to federal environmental, climate, and energy research, practice, and policy, deemphasizing the importance of renewable energy, the harms of continued use of non-renewable energy sources, and the potential detrimental effects of climate change overall. Moreover, these changes have made it harder for the public to gain access to years of well-researched and organized information paid for by their tax dollars, information that is crucial in helping inform the important discussions on how to best mitigate and adapt to the effects of climate change.

The altered and removed Web resources predominantly affect policymakers attempting to understand local, state, tribal, and international climate action. However, the changes also hamper those learning about climate science or educating others about it.

The result is an overall diminishment of democratic institutions like notice-and-comment rulemaking. Reduced access to public Web resources about agency regulations that are being proposed or repealed, and the benefits or harms of those regulations, inhibits people's ability to research relevant topics and provide informed comment. As every public comment needs to be addressed in the rulemaking process, providing open access to information contributes to an evidence-based policy discussion. The removal of the EPA's Clean Power Plan website in advance of

the Plan's proposed repeal, obscuring compiled state emission policy information from those interested in researching the Plan, is one example of how democratic policymaking is undermined.

Why are these federal agencies putting so much effort into "science cleansing" instead of using time and resources to fulfill agency responsibilities, such as protecting the environment and advancing energy security? Removing information regarding climate change from federal websites does not affect the reality of climate change, but may serve to obfuscate the subject and inject doubt regarding the scientific consensus that climate change is happening and that it is caused by human activity.

In the short term, revealing these rhetorical tactics and shining a spotlight on important information and data governance questions increases government accountability and informs the public of agency priorities under the Trump administration. Looking forward, however, if programs and offices are defunded, as Trump's proposed budget signals, then the continuity of data collection, research, and policymaking pertaining to climate change may be disrupted in long-lasting and harmful ways. More than just protecting the public presentation of climate change information, we must take great care to preserve our broad efforts to understand and respond to this threat in an informed manner and continue to bolster the important public discourse about how to best respond to the harms of climate change.

COMMENT: GRETCHEN GOLDMAN, UNION OF CONCERNED SCIENTISTS, RESEARCH DIRECTOR FOR THE CENTER FOR SCIENCE AND DEMOCRACY

Before President Trump was inaugurated, activists and scientists scrambled to archive data and webpages out of concern that the incoming administration could remove, tamper with, or otherwise upend the rich depositories of scientific information on federal agency websites. There was, after all, precedent for such behavior. Under past administrations, government scientific information has been politicized. And given Trump's statements as a candidate, there was no reason to assume his administration would respect scientific integrity and the role it plays in the federal scientific enterprise.

In the past year, the changes identified by EDGI and others on government webpages have been sporadic but significant. When material on climate change is removed from federal webpages, it matters. It prevents the public from accessing vital information about climate adaptation and other resources useful in preparing for climate-related impacts. It also sends a signal to the American public and international community about the priorities of the United States.

The scientific community gets the message loud and clear: study of climate change is no longer welcome within the government enterprise. Under the current administration, a federal scientist simply doing his or her job might be viewed as defiant or disloyal. Such an environment has a chilling effect on the entire scientific community. Researchers will now second-guess the direction of their research and the use of climate change in their work. This could vastly restrict the kind of research questions scientists ask and the areas of research they pursue. Indeed, we've already observed several cases of self-censorship where communication of scientific work has been altered to avoid reference to climate change, even without any direct political interference.

The frightening long-term consequence of such censorship is that we may have fewer scientists working on one of the most complex and urgent scientific problems of our time. We need scientists to continue studying climate change and other politically contentious scientific fields. Without current and robust scientific information feeding into policy processes, decision-makers will be ill-prepared to make evidence-based choices that determine our future.

Website changes thus have huge repercussions for us all. While a single change may seem relatively insignificant, each removal or alteration of scientific information brings us closer to a government based on fiction, not fact. Such a reality would be devastating for science and for our democracy.

DIGITAL INFORMATION GOVERNANCE PRACTICES

As scientists make progress in their research, new treaties are ratified or repealed, the federal budget is amended, and agency priorities are updated, these changes are reflected on federal websites. So what, then, differentiates the natural and healthy turnover of digital information from a regressive and revisionist restructuring of Web content?

In general, agencies and offices must take it upon themselves to determine how the presentation of Web information aligns with their mission and charters. They must critically ask if an alteration or removal of content will harm or benefit the public and the users of their sites. Moreover, public Web content should be valued not only for its utility for education, as well as scientific and policy research, but also for its historic worth. In the case of climate change, public information reflecting the overwhelming scientific consensus, and supporting the health and safety needs of communities, must be maintained.

Federal agencies are best positioned to oversee their websites and decide what to update, but in most cases these decisions are not made transparently in a way that the public can easily observe or even become aware of.

To address these information governance issues, there are several existing guidelines, regulations, and laws, in addition to new policies being proposed.[94] For instance, a current Office of Management and Budget memorandum on "Policies for Federal Agency Public Websites and Digital Services" states that "when significant changes occur, such as a website redesign, the organization must provide information to the public about the changes."[95] If passed, proposed legislation like the Preserving Data in Government Act[96] would require federal agencies to maintain public access to data sets and prohibit altering or removing data sets without sufficient public notice. New National Archives' Web records policy guidelines, updating the dated 2005 guidelines, would help ensure that agencies properly archive Web records, inform the public of important changes to Web content, and ensure continued accessibility of important records.[97]

More generally, we recommend the following practices for more just and accountable data and information stewardship:

- **Transparency**. Especially for major website overhauls, but for smaller updates to webpages as well, agencies should detail the scope of the pages that will be affected and clearly explain the reason for planned alterations in a public statement, well in advance of the changes actually being made.
- **Responsible Web archiving**. Federal agencies should not alter or reduce access to Web content before they have created a log to thoroughly document their intended changes and ensured that the content is preserved and, for significant alterations, made accessible through a public archive.
- **Valuing Web resources**. Web resources should be valued in terms of their educational importance, how much they enable historical understanding, and their advancement of scientific and policy research. Records schedules and records governance broadly should reflect these uses.
- **Distributed Web archiving**. Federal agencies should work with growing civil society movements to rethink the way we organize, steward, and distribute data, Web resources, and online information.
- **Environmental data justice**. Federal environmental agencies should work to create digital infrastructure through which communities can determine what kinds of data are collected and presented about them, in response to which issues. This includes proactive efforts to identify and accommodate those who access federal Web information, as well as offering communities the right to refuse consent to data collection.

FOOTNOTES

[1] Jasmine C. Lee and Adam Pearce, "How Trump Can Influence Climate Change," The New York Times, (December 8, 2016), https://www.nytimes.com/interactive/2016/12/08/us/trump-climate-change.html (Accessed December 19, 2017); Chris Mooney, "Withdrawing Obama climate plan would 'lead to more litigation,' AGs warn Trump," The Washington Post, (December 29, 2016), https://www.washingtonpost.com/news/energy-environment/wp/2016/12/29/withdrawing-obama-climate-plan-would-lead-to-more-litigation-ags-warn-trump (Accessed December 19, 2017).

[2] United States Environmental Protection Agency, "Climate Change Indicators: U.S. Greenhouse Gas Emissions," https://www.epa.gov/climate-indicators/climate-change-indicators-us-greenhouse-gas-emissions. Internet Archive, accessed December 14, 2017, https://web.archive.org/web/20171214172424/https://www.epa.gov/climate-indicators/climate-change-indicators-us-greenhouse-gas-emissions; CDP, "Climate action and profitability: CDP S 500 Climate Change Report 2014," September 22, 2014, https://www.issuelab.org/resource/climate-action-and-profitability-cdp-s-p-500-climate-change-report-2014.html (Accessed December 19, 2017); Center for Climate and Energy Solutions, "Greenhouse Gas Emissions Targets," September 2016, https://www.c2es.org/document/greenhouse-gas-emissions-targets/ (Accessed December 18, 2017); Thomas Damassa, Mengpin Ge, and Taryn Fransen, "The U.S. Greenhouse Gas Reductions Targets," World Resources Institute Factsheet, December, 2014, https://www.wri.org/sites/default/files/WRI14_Fact_Sheet_US_GHG_singles.pdf (Accessed December 19, 2017).

[3] Dylan Matthews, "Donald Trump has tweeted climate skepticism 115 times. Here's all of it," Vox, June 1, 2017, https://www.vox.com/policy-and-politics/2017/6/1/15726472/trump-tweets-global-warming-paris-climate-agreement (Accessed December 19, 2017).

[4] Brian Kahn, "What You Should Know About Trump's Cabinet and Climate," Climate Central, (November 30, 2016), http://www.climatecentral.org/news/trump-cabinet-climate-change-20920 (Accessed December 19, 2017).

[5] Tom DiChristopher, "EPA Chief Scott Pruitt says carbon dioxide is not a contributor to global warming," CNBC, (March 9, 2017), https://www.cnbc.com/2017/03/09/epa-chief-scott-pruitt.html (Accessed December 19, 2017).

[6] Steven Mufson, "Rick Perry just denied that humans are the main cause of climate change," Washington Post, (June 19, 2017), https://www.washingtonpost.com/news/energy-environment/wp/2017/06/19/trumps-energy-secretary-just-denied-that-man-made-carbon-dioxide-is-the-main-driver-for-climate-change (Accessed December 19, 2017).

[7] "Presidential Executive Order 13783 of March 28, 2017, Promoting Energy Independence and Economic Growth," (March 28, 2017), https://www.whitehouse.gov/presidential-actions/presidential-executive-order-promoting-energy-independence-economic-growth/.

[8] Lisa Friedman and Brad Plumer, "E.P.A. Announces Repeal of Major Obama-Era Carbon Emissions Rule," The New York Times, (October 9, 2017), https://www.nytimes.com/2017/10/09/climate/clean-power-plan.html (Accessed December 19, 2017).

[9] United Nations Treaty Collection, Chapter XXVII, Environment, 7.d, Paris, December 12, 2015, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY (Accessed December 24, 2017); Robinson Meyer, "Syria Is Joining the Paris Agreement. Now What?" The Atlantic, (Novemeber 8, 2017), https://www.theatlantic.com/science/archive/2017/11/syria-is-joining-the-paris-agreement-now-what/545261/ (Accessed December 19, 2017).

[10] Intergovernmental Panel on Climate Change, "Climate Change 2014: Impacts, Adaptation and Vulnerability; Summary for Policymakers;" Working Group II Contribution to the Fifth Assessment Report of the IPCC, https://www.ipcc.ch/pdf/assessment-report/ar5/wg2/ar5_wgII_spm_en.pdf.

[11] Julian Borger, "Trump drops climate change from US national security strategy," The Guardian, (December 18, 2017), https://www.theguardian.com/us-news/2017/dec/18/trump-drop-climate-change-national-security-strategy (Accessed December 19, 2017).

[12] Toly Rinberg and Andrew Bergman, "Censoring Climate Change," The New York Times, (November 22, 2017), https://www.nytimes.com/2017/11/22/opinion/censoring-climate-change.html (Accessed December 24, 2017).

[13] Particularly the Heritage Institute, the Competitive Enterprise Institute, and the George C. Marshall Institute.

[14] Naomi Oreskes and Erik Conway, Merchants of Doubt: How a Handful of Scientists Obscured the Truth on Issues from Tobacco Smoke to Global Warming (New York: Bloomsbury, 2010).

[15] Graham Readfearn, "Doubt over climate science is a product with an industry

behind it," The Guardian, March 5, 2015, https://www.theguardian.com/environment/planet-oz/2015/mar/05/doubt-over-climate-science-is-a-product-with-an-industry-behind-it (Accessed December 27, 2017).; The first Intergovernmental Panel on Climate Change (IPCC) report was released in 1990, with the fifth and most recent report (2014) concluding "human influence on the climate is clear, and recent anthropogenic emissions of greenhouse gases are the highest in history. Recent climate impacts have widespread impacts on human and natural systems." "Summary for Policymakers" http://ar5-syr.ipcc.ch/topic_summary.php (Accessed December 24, 2017).

[16] EDGI, "The EPA Under Siege," (June 19, 2017); also Euon J. Ritchie, Don A. Driscoll, and Martine Maron, "Communication: Science censorship is a global issue," Nature, (February 9, 2017), https://www.nature.com/articles/542165b (Accessed December 24, 2017).

[17] Union of Concerned Scientists and Government Accountability Project, Atmosphere of Pressure: Political Interference in Federal Climate Science, (February 2007), http://www.ucsusa.org/sites/default/files/legacy/assets/documents/scientific_integrity/atmosphere-of-pressure.pdf (Accessed December 24, 2017); The current administration by no means represents the most extreme attempt at science suppression in U.S. history. Take for example the actions of the governor of California at the turn of the 20th century, who was concerned that tourism and trade would be negatively impacted by the declaration of bubonic plague deaths in the growing metropolis of San Francisco. The governor, with the help of state legislators, proposed a bill that would illegalize the bacterial diagnostic methods needed to determine public health emergencies, a law that directly named a municipal scientist that "should be hanged." See Marilyn Chase,The Barbary Plague (New York: Random House, 2003), 80.

[18] "Climate Change Funding and Management," U.S. Government Accountability Office, http://www.gao.gov/key_issues/climate_change_funding_management/issue_summary#t=0. Internet Archive, accessed December 14, 2017, https://web.archive.org/web/20171214142411/http://www.gao.gov/key_issues/climate_change_funding_management/issue_summary.

[19] "Greenhouse Gas Reporting Program (GHGRP)," U.S. Environmental Protection Agency, https://www.epa.gov/ghgreporting. Internet Archive, accessed December 14, 2017, http://web.archive.org/web/20171214190108/https://www.epa.gov/ghgreporting.

[20] "Climate Change Research," U.S. Environmental Protection Agency, https://www.epa.gov/climate-research. Internet Archive, accessed December 14, 2017, http://web.archive.org/web/20171214165634/https://www.epa.gov/climate-research.

[21] "Climate Change," U.S. Environmental Protection Agency, https://www.epa.gov/climatechange. Internet Archive, accessed January 1, 2017, https://web.archive.org/web/20170101215407/epa.gov/climatechange.

[22] "NASA Science: Earth Science Missions," National Aeronautics and Space Administration, https://climate.nasa.gov/nasa_science/missions/. Internet Archive, accessed December 14, 2017, http://web.archive.org/web/20171214150403/https://climate.nasa.gov/nasa_science/missions/ and "NOAA-Data Access-Satellite Data," National Oceanic and Atmospheric Administration, https://www.ncdc.noaa.gov/data-access/satellite-data. Internet Archive, accessed December 14, 2017, http://web.archive.org/web/20171214142916/https://www.ncdc.noaa.gov/data-access/satellite-data

[23] https://nccwsc.usgs.gov/science.

[24] U.S. Bureau of Land Management, "CLIMATE CHANGE," https://www.blm.gov/about/how-we-manage/climate-change. Internet Archive, accessed December 31, 2016, https://web.archive.org/web/20161231164617/https://www.blm.gov/about/how-we-manage/climate-change.

[25] "National Laboratories," U.S. Department of Energy, https://energy.gov/national-laboratories. Internet Archive, accessed December 14, 2017, http://web.archive.org/web/20171214101858/https://energy.gov/national-laboratories;

"Climate Change," U.S. Department of Energy, https://energy.gov/science-innovation/climate-change. Internet Archive, accessed December 15, 2017, https://web.archive.org/web/20171215025634/https://energy.gov/science-innovation/climate-change.

[26] "EERE Budget Search," U.S. Department of Energy, Energy Efficiency & Renewable Energy, https://www5.eere.energy.gov/office_eere/program_budget_formulation.php. Internet Archive, accessed December 14, 2017, http://web.archive.org/web/20171214182735/https://www5.eere.energy.gov/office_eere/program_budget_formulation.php.

[27] National Archives and Records Administration, "Archived Presidential White House Websites," https://www.archives.gov/presidential-libraries/archived-websites (Accessed December 19, 2017).

[28] Alan Neuhauser, "Climate Change, Health Care Disappear from WhiteHouse.gov," U.S. News & World Report, (January 20, 2017), https://www.usnews.com/news/national-news/articles/2017-01-20/climate-change-health-care-disappear-from-white-house-website (Accessed December 19, 2017); Victoria Hermann, "I am an Arctic researcher. Donald Trump is deleting

my citations," The Guardian, March 28, 2017, https://www.theguardian.com/commentisfree/2017/mar/28/arctic-researcher-donald-trump-deleting-my-citations (Accessed December 19, 2017).

[29] "Energy & Environment," The White House, https://www.whitehouse.gov/issues/energy-environment. Internet Archive, accessed November 27, 2009, https://web.archive.org/web/20091127123323/http://www.whitehouse.gov/issues/energy-and-environment.

[30] "Energy & Environment," The White House, https://www.whitehouse.gov/issues/energy-environment. Internet Archive, accessed December 16, 2017, https://web.archive.org/web/20161110125140/https://www.whitehouse.gov/issues/energy-environment

[31] "Office of Science and Technology Policy," The White House, https://www.whitehouse.gov/ostp. Internet Archive, accessed December 17, 2017, http://web.archive.org/web/20171217133536/https://www.whitehouse.gov/ostp/.

[32] "Combating Climate Change," OSTP Initiatives, The White House, President Obama archives, https://obamawhitehouse.archives.gov/administration/eop/ostp/initiatives#Climate.

[33] Emily Atkin, "Can the White House Office of Science Survive Trump?" New Republic, (April 5, 2017), https://newrepublic.com/article/141630/can-white-house-office-science-survive-trump (Accessed December 24, 2017); Michael S. Lubell and Burton Richter, "Washington needs high-level science and technology expertise now!" The Hill, (May 26, 2017), http://thehill.com/blogs/congress-blog/technology/335300-washington-needs-high-level-science-and-technology-expertise (Accessed December 24, 2017).

[34] Jacqueline Alemany, "Donald Trump's Science is a Ghost Town," CBS News, November 21, 2017, https://www.cbsnews.com/amp/news/donald-trumps-science-office-is-a-ghost-town/; U.S. Senate; letter to President Donald Trump, (November 16, 2017), https://www.hassan.senate.gov/imo/media/doc/171116.WH.OSTP.Follow.Up.Ltr.pdf (Accessed December 24, 2017).

[35] "FACT SHEET: President Obama's Climate Action Plan," The White House, Office of the Press Secretary, (June 25, 2013), https://obamawhitehouse.archives.gov/the-press-office/2013/06/25/fact-sheet-president-obama-s-climate-action-plan (Accessed December 24, 2017).

[36] Dana Varinsky, "Data on climate change progress is disappearing from US State Department website," Business Insider, (January 31, 2017), http://www.businessinsider.com/climate-action-reports-disappeared-2017-1

(Accessed December 24, 2017); Andrew Bergman, Gretchen Gehrke, Rebecca Lave, Maya Anjur-Dietrich, and Toly Rinberg. "State Department and DOE Climate Change Webpage, Link, and Language Removals," Environmental Data & Governance Initiative Website Monitoring Report, (January 26, 2017), https://envirodatagov.org/wp-content/uploads/2017/07/WM-CCR-1-State-and-DOE-Climate-Change-Page-Removals-170129.pdf (Accessed December 24, 2017).

[37] "Article 4: Commitments" & "Article 12: Communication of Information Related to Implementation," United Nations Framework Convention on Climate Change, (1992), https://unfccc.int/resource/docs/convkp/conveng.pdf (Accessed December 24, 2017).

[38] "Article 2J: Hydrofluorocarbons," Handbook for the Montreal Protocol on Substances that Deplete the Ozone Layer, http://ozone.unep.org/en/handbook-montreal-protocol-substances-deplete-ozone-layer/41732; "Phasing Down HFCs," U.S. Department of State, https://www.state.gov/e/oes/hfcs/index.htm. Internet Archive, accessed January 14, 2017, https://web.archive.org/web/20170114033840/https://www.state.gov/e/oes/hfcs/index.htm; "International Statements on HFCs," U.S. Department of State, https://www.state.gov/e/oes/hfcs/254140.htm. Internet Archive, accessed January 13, 2017, https://web.archive.org/web/20170113152546/https://www.state.gov/e/oes/hfcs/254140.htm.

[39]Guus J.M.Veldersa, David W. Fahey, John S. Daniel, Stephen O. Andersen, and Mack McFarland, "Future atmospheric abundances and climate forcings from scenarios of global and regional hydrofluorocarbon (HFC) emissions," Atmospheric Environment, Volume 123, Part A, (2015): 200-209, http://www.sciencedirect.com/science/article/pii/S135223101530488X (Accessed December 19, 2017).

[40] Toly Rinberg, Maya Anjur-Dietrich, Andrew Bergman, Gretchen Gehrke, and Rebecca Lave, "Changes to the State Department's Office of Global Change Description," Environmental Data & Governance Initiative Website Monitoring Report, (April 12, 2017 [Original: February 10, 2017]), https://envirodatagov.org/wp-content/uploads/2017/07/WM-CCR-6-State-Office-of-Global-Change-Updated-170412.pdf (Accessed December 24, 2017).

[41] "Office of Global Change," https://www.state.gov/e/oes/climate/. Internet Archive, accessed December 19, 2017, https://web.archive.org/web/20171219191820/https://www.state.gov/e/oes/climate/; Elise Labott, Nicole Gaouette and Jeremy Herb, "First on CNN: Tillerson moves to ditch special envoys," CNN Politics, (August 29, 2017), http://www.cnn.com/2017/08/28/politics/tillerson-state-dept-envoys/index.html (Accessed December 24, 2017).

[42] Gretchen Gehrke, Maya Anjur-Dietrich, Andrew Bergman, Rebecca Lave, and Toly Rinberg, "Changes to EPA's Page on Federal Collaborations on Climate Change," Environmental Data & Governance Initiative Website Monitoring Report, (January 29, 2017), https://envirodatagov.org/wp-content/uploads/2017/07/WM-CCR-3-EPA-Climate-Collaborations-170131.pdf (Accessed December 24, 2017).

[43] Hanna Northey, "Update to agency website scrubs climate-related portions," ClimateWire, (April 6, 2017), https://www.eenews.net/climatewire/2017/04/06/stories/1060052708; Brian Kahn, "Energy Dept. Scrubs Paris Agreement from Climate Page," Climate Central, (April 7, 2017), http://www.climatecentral.org/news/energy-dept-scrubs-paris-agreement-from-climate-page-21327 (Accessed December 24, 2017).

[44] Eric Wolff, "Energy Department climate office bans use of phrase 'climate change'," Politico, (March 29, 2017), http://www.politico.com/story/2017/03/energy-department-climate-change-phrases-banned-236655 (Accessed December 24, 2017).

[45] "Special Report on Renewable Energy Sources and Climate Change Mitigation," Intergovernmental Panel on Climate Change, (2012), http://www.ipcc.ch/pdf/special-reports/srren/SRREN_Full_Report.pdf (Accessed December 24, 2017).

[46] Maya Anjur-Dietrich, Andrew Bergman, Gretchen Gehrke, Toly Rinberg, and Rebecca Lave, "Changes to DOE's Office of Energy Efficiency & Renewable Energy Wind Energy Technologies Office Web Pages," Environmental Data & Governance Initiative Website Monitoring Report, (April 19, 2017), https://envirodatagov.org/wp-content/uploads/2017/07/WM-CCR-12-EERE-Wind-Technologies-Office-170419.pdf (Accessed December 24, 2017); Maya Anjur-Dietrich, Andrew Bergman, Gretchen Gehrke, and Toly Rinberg, "Changes to DOE's Office of Energy Efficiency & Renewable Energy Vehicle Technologies Office Web Pages," Environmental Data & Governance Initiative Website Monitoring Report, (April 19, 2017), https://envirodatagov.org/wp-content/uploads/2017/07/WM-CCR-13-DOE-EERE-Vehicle-Technologies-Office-170419.pdf (Accessed December 24, 2017); Andrew Bergman, Toly Rinberg, Maya Anjur-Dietrich, Gretchen Gehrke, Liz Williams, Rebecca Lave, and Adam Wizon, "Changes to DOE's Office of Energy Efficiency & Renewable Energy Bioenergy Technologies Office Web Pages," Environmental Data & Governance Initiative Website Monitoring Report, (April 19, 2017), https://envirodatagov.org/wp-content/uploads/2017/07/WM-CCR-14-DOE-EERE-Bioenergy-Technologies-Office-170419.pdf (Accessed December 24, 2017).

[47] Maya Anjur-Dietrich, Andrew Bergman, Gretchen Gehrke, and Toly Rinberg, "Changes to the Department of Energy's Office of Technology Transitions Website," Environmental Data & Governance Initiative Website Monitoring Report Website Monitoring Report, (May 20, 2017), https://envirodatagov.org/wp-content/uploads/2017/07/WM-CCR-16-DOE-Office-of-Technology-Transitions-

170520.pdf (Accessed December 24, 2017).

[48] Chris Mooney and Lisa Rein, "Don't call it 'climate change': How the government is rebranding in the age of Trump," The Washington Post, (May 26, 2017), https://www.washingtonpost.com/news/energy-environment/wp/2017/05/26/just-dont-call-it-climate-change-rebranding-government-in-the-age-of-trump/?utm_term=.28716fbac65c (Accessed December 24, 2017).

[49] Sarah Emerson, "Fossil Fuels Lead the Interior Department's New Energy Webpage: The environmental agency's new energy webpage stresses 'removing burdensome regulations," Motherboard, (June 8, 2017), https://motherboard.vice.com/en_us/article/bj8v5v/fossil-fuels-lead-the-interior-departments-new-energy-webpage (Accessed December 24, 2017).

[50] Justin Schell, Andrew Bergman, Gretchen Gehrke, and Toly Rinberg, "Removal of a Climate Change Webpage from and Shift in Language on the Bureau of Land Management's Website," Environmental Data & Governance Initiative Website Monitoring Report, (January 4, 2018), https://envirodatagov.org/wp-content/uploads/2018/01/WM-CCR-21-BLM-Climate-Changes-180104.pdf (Accessed January 4, 2018).

[51] Maya Anjur-Dietrich, Andrew Bergman, Gretchen Gehrke, Rebecca Lave, and Toly Rinberg, "Changes to DOE Energy Information Administration (EIA) Kids Educatinoal Pages," Environmental Data & Governance Initiative Website Monitoring Report, (February 8, 2017), https://envirodatagov.org/wp-content/uploads/2017/07/WM-CCR-5-Changes-to-EIA-Kids-Educational-Pages-170208.pdf (Accessed December 24, 2017).

[52] "Department of Energy Organization Act: Sec. 205d," 95th U.S. Congress, Public Law 95-91 (August 4, 1977), https://www.gpo.gov/fdsys/pkg/STATUTE-91/pdf/STATUTE-91-Pg565.pdf (Accessed December 24, 2017).

[53] "EIA response to false claims in recent articles from ProPublica and The Atlantic," U.S. Energy Information Administration, (February 12, 2017), https://www.eia.gov/pressroom/releases/press444.php (Accessed December 24, 2017).

[54] Abby Klionski, Toly Rinberg, Maya Anjur-Dietrich, Andrew Bergman, and Gretchen Gehrke, "Removal and change of language and content on the Government Accountability Office's explanation of risk in the management of federal oil and gas resources," Environmental Data & Governance Initiative Website Monitoring Report, (March 28, 2017 [updated, April 4, 2017]), https://envirodatagov.org/wp-content/uploads/2017/07/WM-CCR-10-GAO-Oil-and-Gas-Updated-170404.pdf (Accessed December 24, 2017).

[55] Chelsea Harvey, "A landmark climate lawsuit against Trump is scheduled for trial next year. Here's what to expect," The Washington Post, (July 5, 2017),

https://www.washingtonpost.com/news/energy-environment/wp/2017/07/05/__trashed/?utm_term=.c134712b7340.

[56] Diane Cardwell, "Exxon Mobil Shareholders Demand Accounting of Climate Change Policy Risks," The New York Times, (May 31, 2017), https://www.nytimes.com/2017/05/31/business/energy-environment/exxon-shareholders-climate-change.html (Accessed December 24, 2017).

[57] Eric Nost, Toly Rinberg, Maya Anjur-Dietrich, Andrew Bergman, Gretchen Gehrke, and Rebecca Lave, "Change of language and content for EPA's Climate Ready Water Utilities program and web page," Environmental Data & Governance Initiative Website Monitoring Report, (March 28, 2017), https://envirodatagov.org/wp-content/uploads/2017/07/WM-CCR-9-EPA-Climate-Ready-Water-Utilities-170328.pdf (Accessed December 24, 2017).

[58] Tyler Wedrosky, Sara Johns, Maya Anjur-Dietrich, Andrew Bergman, Gretchen Gehrke and Toly Rinberg, "Changes to Language on the Environmental Protection Agency's SmartWay Program Website," Environmental Data & Governance Initiative Website Monitoring Report, (September 19, 2017), https://envirodatagov.org/wp-content/uploads/2017/09/WM-CCR-18-EPA-Smartway-Program-170919.pdf (Accessed December 24, 2017).

[59] Juliet Eilperin, "Federal Highway Administration changes mentions of 'climate change' to 'resilience' in transportation program," (February 17, 2017), https://www.washingtonpost.com/news/energy-environment/wp/2017/02/17/federal-highway-administration-changes-mentions-of-climate-change-to-resilience-in-transportation-program/?utm_term=.bfa06d4321a0 (Accessed December 24, 2017).

[60] Toly Rinberg, Chris Amoss, Maya Anjur-Dietrich, Andrew Bergman, Gretchen Gehrke, and Rebecca Lave, "Rewording of Language, Domain Names, and Titles on the Department of Transportation's Federal Highway Administration Environment Pages," Environmental Data & Governance Initiative Website Monitoring Report, (April 13, 2017), https://envirodatagov.org/wp-content/uploads/2017/07/WM-CCR-11-DOT-FHWA-Energy-Website-170413.pdf (Accessed December 24, 2017).

[61] Nidhi Subbaraman, "The Words 'Climate Change' Have Been Scrubbed From The Interior Department's Website About...Tribal Climate Programs," BuzzFeed News, (June 12, 2017), https://www.buzzfeed.com/nidhisubbaraman/tribal-climate-urls?utm_term=.vozzSAEqoj#.mdNXgQ1NvB (Accessed December 24, 2017).

[62] Jake Wylie, Maya Anjur-Dietrich, Andrew Bergman, Gretchen Gehrke, and Toly Rinberg, "Removals of Climate Change Mentions and Links from the National Institute of Environmental Health Sciences Website," Environmental Data & Governance Initiative Website Monitoring Report, (August 20, 2017),

https://envirodatagov.org/wp-content/uploads/2017/08/WM-CCR-17-NIH-Climate-Change-170820.pdf (Accessed December 24, 2017).

[63] Toly Rinberg, Maya Anjur-Dietrich, Andrew Bergman, and Gretchen Gehrke, "Confirmation of Changes to Department of the Interior's Climate Change Page," Environmental Data & Governance Initiative Website Monitoring Report, (April 28, 2017), https://envirodatagov.org/wp-content/uploads/2017/07/WM-CCR-15-DOI-Climate-Change-Confirmation-170428.pdf (Accessed December 24, 2017).

[64] Justin Schell, Andrew Bergman, Gretchen Gehrke, and Toly Rinberg, "Removal of a Climate Change Webpage from and Shift in Language on the Bureau of Land Management's Website," Environmental Data & Governance Initiative Website Monitoring Report, (January 4, 2017), https://envirodatagov.org/wp-content/uploads/2018/01/WM-CCR-21-BLM-Climate-Changes-180104.pdf (Accessed January 4, 2018).

[65] Toly Rinberg, Gretchen Gehrke, Andrew Bergman, Justin Schell, "Removal of Climate Action Plans and Links from the National Park Service's Climate Friendly Parks Program Website," Environmental Data & Governance Initiative, (May 21, 2017), https://envirodatagov.org/wp-content/uploads/2017/12/AAR-6-NPS-Climate-Action-Plans-171221.pdf (Accessed December 31, 2017).

[66] Toly Rinberg, Gretchen Gehrke, Andrew Bergman, and Justin Schell, "Climate Action Plans for National Parks Removed from Site Without Advance Explanation," Environmental Data & Governance Initiative Blog, (December 21, 2017), https://envirodatagov.org/climate-action-plans-for-national-parks-removed-from-site/ (Accessed December 31, 2017).

[67] Nicholas Fandos, "Climate March Draws Thousands of Protesters Alarmed by Trump's Environmental Agenda," The New York Times, (April 29, 2017), https://www.nytimes.com/2017/04/29/us/politics/peoples-climate-march-trump.html

[68] U.S. Environmental Protection Agency, "EPA Kicks Off Website Updates," (April 28, 2017), https://www.epa.gov/newsreleases/epa-kicks-website-updates (Accessed December 24, 2017).

[69] Sarah Lamdan, Andrew Bergman, Maya Anjur-Dietrich, Gretchen Gehrke, and Toly Rinberg, "Errors in January 19 snapshot of EPA.gov are problematic from transparency, data preservation, and information access standpoints and may have legal implications," Environmental Data & Governance Initiative Blog, (May 5, 2017), https://envirodatagov.org/errors-in-the-january-19-snapshot-of-epa-gov-are-problematic-from-transparency-data-preservation-and-information-access-standpoints-and-may-have-legal-implications/ (Accessed December 24, 2017).

[70] Toly Rinberg, Andrew Bergman, Maya Anjur-Dietrich, and Gretchen Gehrke, "Change; in; Access; to; the; EPA's; 'A; Student's; Guide; to; Global; Climate

Change'; Website," Environmental Data & Governance Initiative, (May 5, 2017), https://envirodatagov.org/wp-content/uploads/2017/07/WM-AAR-1-EPA-Students-Guide-to-Global-Climate-Change-170505.pdf (Accessed December 24, 2017).

[71] Toly Rinberg, Eric Nost, Andrew Bergman, and Gretchen Gerhke, "Assessment of Removals and Changes in Access to Resources on the EPA's "Climate and Energy Resources for State, Local, and Tribal Government" Website," Environmental Data & Governance Initiative Website Monitoring Report, (October 18, 2017), https://envirodatagov.org/wp-content/uploads/2017/10/AAR-5-EPA-State-Local-Climate-Energy-171018.pdf (Accessed December 24, 2017); Toly Rinberg, Andrew Bergman, and Eric Nost "EPA's Website Overhaul Continues: Climate Resources Left Out of the Update to the "Climate and Energy Resources for State, Local, and Tribal Governments" Website," Environmental Data & Governance Initiative Blog, (October 20, 2017), https://envirodatagov.org/epas-website-overhaul-continues/ (Accessed December 24, 2017).

[72] Senators Cory Booker, Tom Carper, Edward J. Markey, Sheldon Whitehouse, Kirsten Gillibrand, Bernard Sanders, Brian Schatz to EPA Administrator Scott Pruitt, (November 14, 2017), https://envirodatagov.org/wp-content/uploads/2017/11/Letter-from-7-Dem-Senators-to-EPA-171114.pdf (Accessed December 24, 2017).

[73] Marcy Beck, Andrew Bergman, Gretchen Gehrke, and Toly Rinberg, "Removal from the Greening EPA Website of a Climate Change Adaptation Web Resource, Links to Resources, and Mentions of EPA's Own Greening Performance Goals," Environmental Data & Governance Initiative Website Monitoring Report, (December 7, 2017), https://envirodatagov.org/wp-content/uploads/2017/12/WM-CCR-20-EPA-Greening-EPA-171207-Updated.pdf (Accessed December 24, 2017).

[74] Corbin Hiar, "Missing EPA report warned of flooding at Superfund dumps," E News, (September 18, 2017), https://www.eenews.net/stories/1060060957 (Accessed December 24, 2017).

[75] Office of the Federal Register, "A Guide to the Rulemaking Process", (January 2011), https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf (Accessed December 25, 2017).

[76] Toly Rinberg and Andrew Bergman, "How Pruitt Listens: Removing Clean Power Plan Web Resources Undermines Public," Union of Concerned Scientists Equation, (October 13, 2017), https://blog.ucsusa.org/science-blogger/how-pruitt-listens-removing-clean-power-plan-web-resources-undermines-public-engagement (Accessed December 24, 2017).

[77] Toly Rinberg and Andrew Bergman, "How; to; classify; changes; to;

government; websites," Sunlight Foundation Report, (October 5, 2017), http://sunlightfoundation.com/wp-content/uploads/2017/10/How-to-classify-changes-to-government-websites.pdf (Accessed December 24, 2017).

[78] Alan Neuhauser, "Climate Change, Health Care Disappear from WhiteHouse.gov," U.S. News & World Report, (January 20, 2017), https://www.usnews.com/news/national-news/articles/2017-01-20/climate-change-health-care-disappear-from-white-house-website (Accessed December 24, 2017); Chris Mooney and Juliet Eilperin, "EPA website removes climate science site from public view after two decades," The Washington Post, (April 29, 2017), https://www.washingtonpost.com/news/energy-environment/wp/2017/04/28/epa-website-removes-climate-science-site-from-public-view-after-two-decades/ (Accessed December 24, 2017).

[79] Chris Mooney and Lisa Rein, "Don't call it 'climate change': How the government is rebranding in the age of Trump," The Washington Post, (May 26, 2017), https://www.washingtonpost.com/news/energy-environment/wp/2017/05/26/just-dont-call-it-climate-change-rebranding-government-in-the-age-of-trump/ (Accessed December 24, 2017).

[80] "EIA response to false claims in recent articles from ProPublica and The Atlantic," U.S. Energy Information Administration, (February 21, 2017), https://www.eia.gov/pressroom/releases/press444.php (Accessed December 24, 2017).

[81] Oliver Milman and Sam Morris, "Trump is deleting climate change, one site at a time" The Guardian, (May 14, 2017), https://www.theguardian.com/us-news/2017/may/14/donald-trump-climate-change-mentions-government-websites (Accessed December 24, 2017).

[82] Example of an article repeatedly using the term "data" to refer to documents: Victoria Herrman, "I am an Arctic researcher. Donald Trump is deleting my citations," The Guardian, (March 28 2017), https://www.theguardian.com/commentisfree/2017/mar/28/arctic-researcher-donald-trump-deleting-my-citations (Accessed December 24, 2017); Example of an article overgeneralizing and calling various forms of Web content "data": Joshua Eaton, "Disappearing Data Project," ThinkProgress, (May 22, 2017), https://thinkprogress.org/disappearing-data-2d806ddc4388/ (Accessed December 24, 2017).

[83] Example of article claiming deleted Web content without clarifying the existence of Web archives: Oliver Milman and Sam Morris, "Trump is deleting climate change, one site at a time" The Guardian, (May 14, 2017), https://www.theguardian.com/us-news/2017/may/14/donald-trump-climate-change-mentions-government-websites (Accessed December 24, 2017).

[84] Victoria Herrman, "I am an Arctic researcher. Donald Trump is deleting my

citations," The Guardian, (March 28 2017), https://www.theguardian.com/commentisfree/2017/mar/28/arctic-researcher-donald-trump-deleting-my-citations (Accessed December 24, 2017).

[85] Toly Rinberg and Andrew Bergman, "Changes to USGS website highlight the importance of search for public access," Sunlight Foundation Blog, (September 22, 2017), https://sunlightfoundation.com/2017/09/22/changes-to-usgs-website-highlight-the-importance-of-search-for-public-access (Accessed December 24, 2017).

[86] Joe Romm, "Trump administration removes links to taxpayer-funded climate data on USGS website," ThinkProgress, (September 18, 2017), https://thinkprogress.org/trump-officials-erase-climate-data-2a4e4fe81f96/ (Accessed December 24, 2017); Brittany Patterson, "Thousands of webpages are gone. Agency blames search tool," E News, (September 19, 2017), https://www.eenews.net/climatewire/stories/1060061005 (Accessed December 24, 2017).

[87] "United States Climate Alliance: States United for Climate Action," U.S. Climate Alliance, https://www.usclimatealliance.org/, (Accessed December 24, 2017).

[88] "Cities adopt the Paris Climate Agreement goals," Climate Mayors, http://climatemayors.org/, (Accessed December 24, 2017).

[89] "Mayors Climate Protection Center," United States Conference of Mayors, https://www.usmayors.org/mayors-climate-protection-center/, (Accessed December 24, 2017).

[90] "RGGI, Inc.," Regional Greenhouse Gas Initiative, https://www.rggi.org/rggi, (Accessed December 24, 2017).

[91] "Western Climate Initiative, Inc.," Western Climate Initiative, Inc., http://www.wci-inc.org/, (Accessed December 24, 2017).

[92] SB-51, (California 2017), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB51 (Accessed December 24, 2017).

[93] "Climatechangeisreal," City of Chicago, https://chicago.github.io/climatechangeisreal/cities.html, (Accessed December 24, 2017).

[94] National Archives and Records Administration, "NARA Guidance on Managing Web Records," (January 2005), https://www.archives.gov/records-mgmt/policy/managing-web-records-index.html; Federal Records Act, 44 U.S.C. §§ 3101, (1950); Paperwork Reduction Act, 44 U.S.C. §§ 3501 (1980).

[95]Office of Management and Budget, "Policies for Federal Agency Public Websites and Digital Services," (November 8, 2016), https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/m-17-06.pdf (Accessed December 24, 2017)

[96] Preserving Data in Government Act of 2017, S.960, https://www.congress.gov/bill/115th-congress/senate-bill/960 (Accessed December 24, 2017).

[97] Sunlight Foundation, OpenTheGovernment, American Libraries Association to U.S. Chief Records Officer, Laurence Brewer, National Archives and Records Administration, "Improving Management of Federal Web Records," (November 14, 2017), http://www.ala.org/advocacy/sites/ala.org.advocacy/files/content/govinfo/Sign-ons/Improving%20Management%20of%20Federal%20Web%20Records%20transparency%20letter%20to%20NARA%20%281%29.pdf (Accessed December 24, 2017).

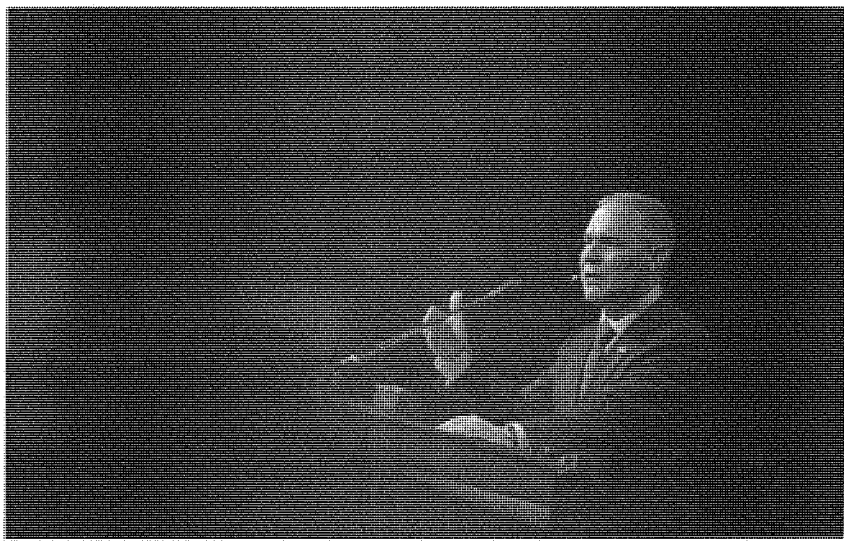
COMMENTS

This work is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License. The Environmental Data & Governance Initiative, 2017

Opinion OP-ED CONTRIBUTOR

Trump Should Fire the E.P.A.'s Scott Pruitt

By THOMAS H. KEAN NOV. 28, 2017



Scott Pruitt, administrator of the E.P.A., has built his political career by attacking clean-air and clean-water rules.
Aaron M. Sprecher/Bloomberg

President Richard Nixon, who joined with a Democratic Congress nearly 50

years ago to create the Environmental Protection Agency, said then that clean air and water were "the birthright of every American" and that restoring nature was "a cause beyond party and beyond factions."

Safeguarding our health and our environment has always enjoyed broad support in both political parties and among the American people. Thanks to the E.P.A.'s diligent work, our air and water are significantly cleaner, and because of that, Americans live longer, healthier lives. It is a heritage from which both parties can draw pride.

But that legacy is now in danger.

The current administrator of the E.P.A., Scott Pruitt, built his political career by attacking clean-air and clean-water rules. Now in charge of the agency, he is tearing down those protections, dismantling the E.P.A., appointing or nominating industry insiders to oversee their former businesses and blocking scientific input.

For the sake of our children's health, it's time for Scott Pruitt to go.

Mr. Pruitt is jeopardizing the health and well-being of Americans, and many suspect he is doing it to feed his own political ambition. "You must be running for the presidency," a conservative radio host said while interviewing Mr. Pruitt in August as he visited Iowa, the state with the first presidential caucuses. The more popular theory inside Washington is that he is lining up deep-pocketed backers to run in 2020 for the Senate seat held by the Oklahoma Republican James Inhofe, who is 83.

His taxpayer-funded weekend trips home to Oklahoma are being examined by the E.P.A.'s inspector general. His use of noncommercial and military flights to his home state and elsewhere at a cost to taxpayers of some $58,000 prompted questions from Senator Charles Grassley, Republican of Iowa, and others. (An E.P.A. spokesman has said that Mr. Pruitt's travel was related to agency business and that he had no political agenda.)
Whatever his political ambitions may be, Mr. Pruitt's regulatory rollbacks and delays have tangible health and safety risks. For example, he has put the brakes on a rule that had been sought by the Obama administration to make information about dangerous chemicals at plants more easily available to the public and local emergency responders. Mr. Pruitt fought the rule as

Oklahoma's attorney general, and in June, newly ensconced at the E.P.A., he delayed it by 20 months.

The postponement was no doubt good news to Arkema, a chemical company that had lobbied against the rule. Not long after, Arkema's chemical plant near Houston caught fire as a result of Hurricane Harvey, sending 15 public safety officers who inhaled smoke there to the hospital.

Sign Up for the Opinion Today Newsletter

Every weekday, get thought-provoking commentary from Op-Ed columnists, the Times editorial board and contributing writers from around the world.

Enter your email address | Sign Up

You agree to receive occasional updates and special offers for The New York Times's products and services.

SEE SAMPLE | MANAGE EMAIL PREFERENCES | PRIVACY POLICY | OPT OUT OR CONTACT US ANYTIME

Mr. Pruitt is also working to stifle the scientific advice that is so important for smart environmental policy. He has rigged the criteria for E.P.A. science advisory boards so that people funded by industry (or even by foreign governments) are more likely to qualify for appointment than academic experts. He has appointed as leaders of these panels people with industry ties and one who led the fight against tougher federal ozone standards.

And to satisfy his penchant for secrecy, he is installing — at a cost of nearly $25,000 to taxpayers — a secure phone booth in his Washington office to keep people, including staff members, in the dark. William Ruckelshaus, who served Presidents Nixon and Ronald Reagan as the E.P.A. administrator, has said that "Pruitt appears to be turning his back on a bipartisan tradition of transparent governance at the E.P.A."

For months, Mr. Pruitt refused to disclose where he was going or whom he was meeting with. Thanks to the Freedom of Information Act, we now know that he spends his days meeting with executives from companies, many with high-profile matters pending before the agency. He has elevated cronyism to new heights.

With Mr. Pruitt in charge, Americans are extremely dissatisfied with Mr.

Trump's handling of the environment — an approval rating of only 23 percent among independents, according to an August Fox News poll. Independents have long seen handling of the environment as a barometer of whether a candidate shares their values. When I was a governor, my environmental record cleaning up toxins and protecting wetlands was important for independent voters and helped me win re-election in New Jersey.

It's no wonder that the White House had a meeting to figure out how to fix its green image. But rebranding isn't enough.

President Trump needs a new leader at E.P.A. who listens to business but also respects the agency's mission to protect public health and the environment.

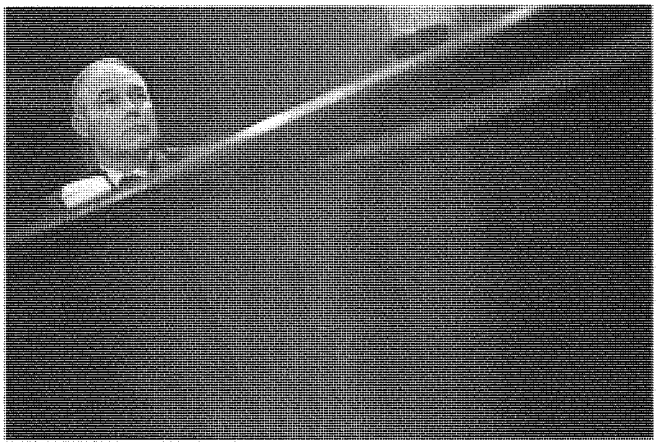
I was delighted to hear President Trump promise to protect clean air and clean water in his first address to Congress. I understand that he wants a new direction at the E.P.A., but that doesn't mean he should tolerate Mr. Pruitt's ethical lapses and lack of judgment.

President Trump should fire Scott Pruitt. Our children and grandchildren deserve better.

Thomas H. Kean, the Republican governor of New Jersey from 1982 to 1990, is the vice chairman of the Environmental Defense Fund.

Follow The New York Times Opinion section on Facebook and Twitter (@NYTopinion), and sign up for the Opinion Today newsletter.

A version of this op-ed appears in print on November 29, 2017, on Page A23 of the New York edition with the headline: Time to Fire Scott Pruitt At E.P.A. Today's Paper | Subscribe



Aaron P. Bernstein/Getty

What Is Scott Pruitt Hiding?

The EPA administrator's media aversion, unavailable public schedule, and a history of industry favors are raising red flags.

BY **EMILY ATKIN** | May 30, 2017

It wouldn't be hard today to find out what Gina McCarthy was doing on any given workweek from 2013 to 2016. The former Environmental Protection Agency administrator's daily schedule is still posted on the department's website, listing all "meetings attended by advocates, stakeholders, elected officials, and others

outside the Agency." So is her deputy's schedule, as well as the schedules of every assistant and regional administrator across the EPA. The reason, according to the website, is "to increase transparency in EPA's operations."

Scott Pruitt, the current EPA administrator appointed by President Donald Trump, does not have an accessible public schedule. On April 7, I filed a Freedom of Information Act request for copies of it. Nearly two months later, it has not been given an assignment date. I'm not the only one who has been blocked; several other journalists have filed similar requests that have gone unfilled, as has the Center for Biological Diversity, which recently filed a lawsuit seeking the documents.

Pruitt does post his day-to-day whereabouts on Twitter, which shows that he spent most of his three months in office meeting with energy and other industry groups, as well as congressional Republicans. But that's "not an appropriate substitute" for official documents, says Lisa Rosenberg, executive director of Open the Government, which advocates for government accountability. "It's self-selective," she said. "He doesn't have to tweet all of his meetings, whereas his official public schedule is comprehensive, and able to be accessed by FOIA."

Public appearances are also rare for the administrator, as are on-the-record briefings with journalists. When Pruitt does talk to journalists, it's generally to friendly ones, according to E&E News, which noted earlier this month that Pruitt's media appearances have been limited mostly to Fox News and its affiliates. (Pruitt also interviewed with a conservative North Dakota blogger, the media arm of the conservative Heritage Foundation, and conservative radio talk show host Hugh Hewitt).

> Rare on the record appearance by @epa administrator Pruitt cancelled tonight due to "scheduling conflict," per Hoover Institute
>
> — Valerie Volcovici (@ValerieVolco) May 18, 2017

It's still early in Pruitt's administration; it's possible that he's taking his time to get to know his staff and get comfortable with the press. But Pruitt has a history of evasiveness. As Oklahoma's attorney general, he routinely slow-walked records requests, and used a private email account to conduct government business (and subsequently lied about it). Furthermore, those slow-walked records from his actual government account showed that Pruitt was hiding what *The New York Times* called an "unprecedented, secretive alliance" with the oil company Devon Energy, in which Pruitt allowed Devon representatives to write letters to the EPA in Pruitt's name. In turn, Devon donated thousands to Pruitt's election efforts.

That was years before Pruitt became the EPA administrator. What is he hiding now?

Among environmentalists, there is a strong suspicion that Pruitt is being opaque for a reason. "He simply can't stand the heat of any actual look at his policies," read a recent Sierra Club blog post. The Center for Biological Diversity, in suing over Pruitt's schedule, expressed concern about what Pruitt's lack of transparency means for taxpayers. "Americans need to know if Pruitt is still playing patty-cake with the big polluters the EPA's supposed to protect us from," Meg Townsend, the organization's open government attorney, said in a statement about the lawsuit. "The agency's refusal to release these public documents suggests

Pruitt is back to cozying up to oil companies and pesticide makers, at the expense of the air we breathe and the water we drink."

"Americans need to know if Pruitt is still playing patty-cake with the big polluters the EPA's supposed to protect us from."

Combine that with a White House that refuses to release visitor logs, has scores of financial conflicts of interest, and is otherwise drowning in perpetual accusations of collusion and corruption, and you've got a recipe for high alert, at least among government accountability advocates. "There is a swathe of secrecy over the entire executive branch," Rosenberg said. "So we're all bit a sensitive."

It's not like Pruitt has joined an agency that, before his tenure, was perfectly accountable. "EPA has had issues with transparency for some time," Townsend told me. McCarthy's schedules were not always comprehensive; far from it. They listed only "meetings attended by advocates, stakeholders, elected officials, and others outside the Agency." Meetings with other EPA officials were not included, nor were read-outs of said meetings. On many days, nothing was listed; on others, events were sparse. (On January 13, 2016, for example, McCarthy's only scheduled event was Big Block of Cheese Day.)

Under President Obama, EPA did not set an example for openness, especially when it came to FOIA. In 2015, a federal judge blasted the agency for not complying with public records requests from a conservative group. As a House Oversight Committee report from 2016 noted, that judge criticized a "culture

of unrepentant noncompliance" with FOIA at EPA, "which resulted in the deletion of potentially responsive records and inexplicable delays." The report also called out EPA for hiding conversations with outside groups—particularly environmental groups—which conservatives accused EPA of colluding with. (There is, of course, a difference between an environmental protection agency having a close relationship with environmental protection interests and that same agency having a close relationship with polluters.)

For Townsend, that's the most important difference between Pruitt's administration and previous ones. "It's definitely gotten much worse" because of Pruitt's historically close relationship with industry, she said.

"The whole reason for transparency laws like FOIA is so there is a check on corruption," Rosenberg said. "The bottom line is figuring out whose interests are being served—the public's, or polluter's?" Former EPA Administrator Lisa Jackson made the case for transparency this way: "The American people will not trust us to protect their health or their environment if they do not trust us to be transparent and inclusive in our decision-making. To earn this trust, we must conduct business with the public openly and fairly."

Devon Energy already appears to believe Pruitt's time as administrator will serve its interests. According to *The New York Times*, the oil and gas company recently stepped away from an environmental settlement it had planned to sign with the Obama administration, believing it would get a better deal from Pruitt. Pruitt hasn't hidden that he plans to give polluters an easier time, which makes it all the more important to make sure he's not hiding anything else.

POLITICO

WHITE HOUSE

Where is Trump's Cabinet? It's anybody's guess.

Agency heads are carrying out the Trump administration's agenda largely in secret, in many cases shielding their schedules from public view.

By **EMILY HOLDEN** | 12/26/2017 05:05 AM EST | Updated 12/26/2017 07:37 PM EST

A review of the practices of 17 Cabinet heads found that at least eight routinely decline to release information on their planned schedules or travels. | POLITICO Illustration/Getty Images

The Cabinet members carrying out President Donald Trump's orders to shake up the federal government are doing so under an unusual layer of secrecy — often shielding their schedules from public view, keeping their travels under wraps and refusing to identify the people and groups they're meeting.

A POLITICO review of the practices of 17 Cabinet heads found that at least eight routinely decline to release information on their planned schedules or travels — information that was more widely available during the Obama and George W. Bush administrations. Four other departments — Agriculture, Labor, Homeland Security and Education — provide the secretaries' schedules only sporadically or with few details. The Treasury Department began releasing weekly schedules for Secretary Steven Mnuchin only in November.

In addition, at least six Cabinet departments don't release appointment calendars that would show, after the fact, who their leaders had met with, what they discussed and where they traveled — a potential violation of the Freedom of Information Act, which says agencies must make their records "promptly available to any person." Two departments — Education and the Environmental Protection Agency — have released some of those details after watchdog groups sued them.

This information clampdown is occurring with little oversight by Trump's White House, which said only that agencies should follow the law when it comes to deciding what information to release.

"The White House does not issue guidance specifically addressing the c Listen to Story
Hogan Gidley said in a statement. On the other hand, he added, "The White House expects federal agencies to comply with FOIA requests."

Government watchdog groups and activists who closely follow the departments' policies say the secrecy is more than just a Trumpian swipe at political enemies and a meddlesome news media: It's an attempt, they say, to conceal the special access that some powerful interests have gotten in shaping policies that directly affect them.

"How officials spend their time is the best window into what their priorities are," said Austin Evers, a former Obama State Department lawyer who heads the watchdog group American Oversight, which has sued for the calendars of EPA Administrator Scott Pruitt and Education Secretary Betsy DeVos. "When public officials resist public disclosure of what they do, people should be skeptical of what they're trying to hide."

Cabinet heads' schedules under wraps

President Donald Trump's Cabinet agencies vary widely in how much information they offer about their leaders' travel and meetings, with many providing either no or limited information ahead of time.

Department or Agency	Provides leader's schedule in advance
Agriculture	Yes, but limited
Commerce	No
Defense	Yes
Education	Yes, but limited
Energy	No
Environmental Protection Agency	No
Health and Human Services	No
Homeland Security	Yes, but limited
Housing and Urban Development	Yes
Interior	No
Justice	Yes
Labor	Yes, but limited
State	Yes
Transportation	No
Treasury	Yes
U.S. Trade Representative	No
Veterans Affairs	No

SOURCE: POLITICO research /Emily Holden and Bob King

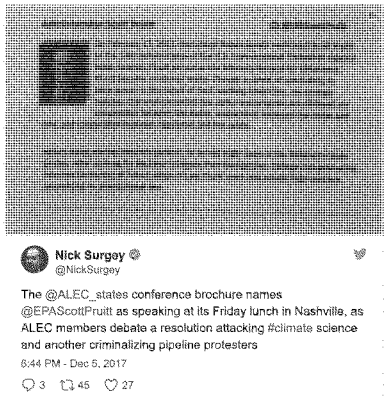
***

Criticisms that some agency heads are concealing meetings with businesses they're supposed to regulate have been leveled especially often against Pruitt, a former Oklahoma attorney general who has made it his explicit mission to ease regulatory burdens on industries including oil, gas, coal, auto manufacturing and agriculture.

Pruitt meets frequently with leaders of these and other industries, based on the three months of detailed calendar records that American Oversight managed to pry out of EPA under a court order. But the agency makes it difficult to track his activities in real time — refusing to provide schedules or advisories of his upcoming meetings, confirm his attendance at specific events, or say what city he plans to be in on a given day.

Recent events that EPA refused to disclose ahead of time include a speech Pruitt delivered at a fuel marketers' conference in Chicago co-sponsored by BP, whose U.S. oil and gas interests are governed by EPA regulations. Pruitt's staff wouldn't even say where he was headed that day, after POLITICO asked about a tip that he was seen sitting in first class on a Delta Air Lines flight.

Earlier this month, EPA wouldn't disclose information about a dinner discussion that Pruitt was holding with a pro-business think tank in D.C. It gave no advance notice that he was traveling to Morocco on a trip that included a discussion of the country's interest in importing U.S. natural gas, a fuel source his agency helps regulate. EPA also wouldn't confirm that Pruitt was scheduled to speak this month in Nashville before the American Legislative Exchange Council, a conservative policy organization — even though the printed program listed him as a lunchtime speaker. (ALEC later said Pruitt had canceled his appearance.)



Even after the fact, EPA resists releasing the detailed calendars that would make it easier for journalists and watchdogs to track how often Pruitt meets with business leaders before making decisions that benefit their bottom lines.

The records released to date offer some clues, however: In May, for instance, Pruitt met with executives from an automotive company, Fitzgerald Truck Sales, to discuss an Obama-era air pollution rule for refurbished heavy trucks, according to the calendars obtained by American Oversight. Six months later, Pruitt agreed to weaken the rules, as the company had requested.

The partial meeting records released to date reveal similar meetings Pruitt has held with auto executives affected by his upcoming decision on whether to ease greenhouse gas requirements for cars and trucks; coal mining and power executives opposed to Obama-era regulations on their industries; and developers who received Pruitt's approval to seek a permit for a proposed gold and mineral mine in Alaska, according to documents previously obtained and analyzed by The New York Times and The Washington Post.

Alarmed that many more such examples must exist, at least three watchdog and environmental groups have filed separate suits seeking detailed copies of Pruitt's calendars. The Times and reporter Eric Lipton filed a similar suit against EPA this month, arguing in court documents that calendars are "often the only way the public has visibility into who provides Administrator Pruitt with input as he devises policy positions that affect all Americans."

Pruitt "uses the word transparency a lot," said Ann Weeks, legal director for the Clean Air Task Force, an environmental group not involved in the suits. But she added, "To whom is the transparency being offered? Because it's not the American people because we're not able even to see who he's talking to."

EPA spokeswoman Liz Bowman calls the criticism baseless, arguing that the agency is providing more information to the public than past administrations, "despite lawsuits from The New York Times for the sake of scoring political points and making headlines." As evidence, she cites actions such as listing EPA's upcoming regulatory actions online — as required by law — as well as a posting a public online calendar for Pruitt that often omits the names of the people he's meeting with and the topic of discussion.

"The fact is that the current EPA is the most transparent EPA has been in years," Bowman said.

Pruitt isn't the only Cabinet member holding unpublicized meetings with businesses or groups who have a stake in his decisions.

While the Interior Department readily provides calendars after the fact for Secretary Ryan Zinke, it doesn't publish his schedule ahead of time for events such as a September speech to the National Petroleum Council, whose members include companies that drill for oil and gas on federal land. (He made headlines that day by declaring that 30 percent of Interior employees aren't "loyal" to his and Trump's agenda.) It also issued no advance notice of political fundraisers he attended in Alaska, Montana and the Caribbean that are now under investigation by government watchdogs.

In August, after Zinke's wife tweeted photos showing the couple relaxing along the Bosporus, an Interior spokesperson would not say when the secretary had left the U.S., when he was returning or whether the trip to Turkey was a vacation.

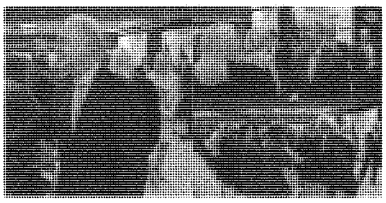
Lola Zinke
@LolaZinke

Love on the Bosporus #summer

1:56 AM - Aug 17, 2017

17 9 8

Similarly, when then-Health and Human Services Secretary Tom Price went to an Ohio drug manufacturer in April as part of a listening tour about the opioid epidemic, Price tweeted about the trip only after he had already visited. HHS' press office also didn't email national news organizations about the trip until two days later — after he published an op-ed in The Cincinnati Enquirer that mentioned it.



Tom Price, M.D.
@SecPriceMD

Traveled to OH today to visit Alkermes—a company playing a crucial role in our efforts to fight #opioid addiction. Thank you for hosting me.

4:14 PM - Apr 28, 2017

10 42 138

Since Sept. 29, when Price resigned following POLITICO's revelation that he had charged taxpayers for at least $1 million in private and military flights, HHS has refused to publish schedules for acting Secretary Eric Hargan. Department employees responding to POLITICO's request for Price's calendars have said they're swamped with FOIA requests they're working to fulfill.

The departments of Commerce, Energy, Transportation and Veterans Affairs and the office of U.S. Trade Representative Robert Lighthizer also do not release advance schedules for their leaders.

"These are top public officials who work for the U.S. citizens, and they have a right to know who they're meeting with and what they're doing," said Sean Moulton, the open government program manager at the Project on Government Oversight, a watchdog group.

***

Several of the Trump agencies' policies on releasing schedules and calendars are notably more restrictive than either the Obama or George W. Bush administrations — though they, too, faced criticism for lack of transparency.

Former Vice President Dick Cheney won a court battle to avoid having to disclose details about his energy task force's meetings with industry executives, rejecting a challenge by the Sierra Club and the conservative group Judicial Watch. Under Obama, The Associated Press sued the State Department for copies of former Secretary Hillary Clinton's calendars. The department said at the time that it was coping with a load of records requests but "does its best to meet its FOIA responsibilities."

More than 40 journalism and watchdog organizations also objected in 2015 to what they called a growing array of "constraints on information in the federal government" under Obama, including agencies that prohibited rank-and-file staff from talking to reporters.

Hiding information ultimately harms the agencies themselves, said Christine Todd Whitman, who led EPA during Bush's first term and said she posted her schedule for the entire EPA staff to see and made reporters aware when she was traveling.

"It all leads to an atmosphere of distrust, even if you're doing absolutely nothing wrong," Whitman said.

She added that she is wary of Pruitt's secrecy and has been "startled" by his frequent meetings with industry. "I worry about meeting with people who might have enforcement action coming before the agency, and, on the flip-side, seeming at this point to be locking out the environmentalists, because you've got to hear from both sides," she said.

Under Obama, Education Secretary Arne Duncan's staff emailed reporters a schedule of his upcoming week of activities, typically on Fridays. DeVos, in contrast, provides a much sparser public schedule that often omits meaningful details about the vast majority of her meetings.

The Department of Homeland Security also released weekly alerts during the Bush and Obama eras for the news media about the secretary's events, even if it wasn't always complete. Under Trump, DHS has yet to issue such schedules on a regular basis, although its staff will confirm information about specific events.

Obama Transportation Secretary Anthony Foxx not only provided his weekly schedule in advance but held monthly question-and-answer sessions with reporters. Trump's DOT chief, Elaine Chao, declines to provide advance schedules, and has yet to hold this type of session in Washington, D.C.

Bush's environmental agencies also publicized any events where leaders would speak publicly, said Jim Connaughton, who headed the White House Council of Environmental Quality at the time. And under Obama, then-EPA Administrator Gina McCarthy noted that her office provided a week-ahead guidance about her activities and regularly published her calendars after the fact.

"When we were delayed at all, we would certainly hear from reporters," McCarthy said.

But the Energy Department didn't publish then-Secretary Ernest Moniz's schedules when Obama was in the White House — and doesn't publish them for Secretary Rick Perry now. In both cases, however, DOE staff have sent advisories to the press for most of the secretaries' public events.

The Project on Government Oversight has called for years for Cabinet-level secretaries to at least publish their calendars online, calling it "the fundamental floor of what all agencies should be disclosing."

"It has been hit or miss, even under the Obama administration," Moulton said. But he said the Trump White House set the tone when it announced in April that it would refuse to publish its visitor logs on the grounds of "national security risks and privacy concerns," breaking with the Obama administration's policy. (POLITICO has responded by publishing its own unofficial White House visitor log, based on publicly available information.)

Agency officials offer varying explanations for not releasing this information, including a crush of backlogged FOIA requests, as well as previous statements by EPA and the Education Department that they're concerned about security. EPA staff says Pruitt has gotten an unusually high number of death threats — several times more than former Obama's agency chiefs received — while DeVos' staff notes that her public appearances have drawn protesters, including a crowd that briefly blocked her from entering a D.C. middle school in February.

All the President's Guests
By **ANDREW RESTUCCIA**, AIDAN QUIGLEY, **JON MCCLURE** and **LILY MIHALIK**

On the other hand, Cabinet members who have immense security concerns are more open about their plans, including Defense Secretary James Mattis and Secretary of State Rex Tillerson, whose offices issue daily advisories to the media about their public plans.

Pruitt and DeVos also don't lack for protection: Each has a round-the-clock security entourage, unusual by the standards of their predecessors. DeVos' security detail, projected to cost as much as $6.54 million during the current fiscal year, consists of U.S. marshals. Pruitt maintains tight secrecy even when he's in his headquarters a few blocks from the White House, according to news reports that say he restricts employees' access to his office area, ordered a $25,000 soundproof communications chamber installed in his office and recently had his office swept for bugs.

***

For some of Trump's Cabinet appointees, who include wealthy business executives with little exposure to the often-harsh scrutiny of public life, secrecy may be less about hiding a policy agenda than about discomfort with the spotlight.

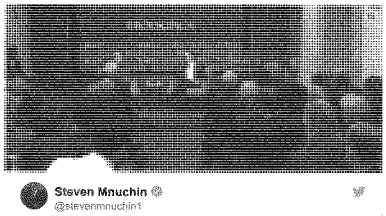
DeVos, the billionaire charter-school activist who never before held public office, puts some of her events on social media but leaves them out of her department's official communications with the news media.

People following her online might have known she had met with the Saudi education minister in October — based on a photo she posted on Flickr — but the department never issued any information about it or said what they had discussed. The state-run Saudi Press Agency was more forthcoming, disclosing that the leaders had talked about "the importance of educational cooperation" between their countries' universities.

In November, DeVos visited Gallaudet University in Washington, D.C., where she said in a later post on Instagram that she learned about education for the deaf and hard of hearing. The Education Department issued no advisories before or after the event.

DeVos' public schedule is riddled with so many omissions that U.S. News and World Report lamented in October that "civically engaged citizens" would have had no way of knowing she planned to speak at a Future Farmers of America convention in Indianapolis, attend a roundtable on students with disabilities or make a March visit to a Roman Catholic school in Orlando.

Mnuchin, the former Goldman Sachs partner turned Treasury secretary, was slow to begin releasing his weekly schedule — in contrast to former Obama Treasury Secretary Jack Lew, who put one out every day. In June, when Mnuchin talked regulations and tax reform with former Federal Reserve Chairman Ben Bernanke at the Brookings Institution, the public's first clue came when Mnuchin tweeted about it afterward.



Grateful to @BrookingsInst & @benbernanke for facilitating constructive conversation on financial regulation, economic growth and #TaxReform
8:22 AM - Jun 9, 2017
15 38 126

In late December, Labor Secretary Alexander Acosta issued only an after-the-fact news release when he visited hurricane-ravaged Puerto Rico and the U.S. Virgin Islands.

Some agencies, including the departments of Justice, Agriculture and Housing and Urban Development, provide partial guidance about their secretaries' schedules, either to the public or on background or off-the-record for the media. HUD, for example, usually provides reporters with an emailed heads-up about Secretary Ben Carson's official events, although it doesn't publicize all his appearances — his schedule didn't include his attendance at last month's opening of the Museum of the Bible in Washington, D.C., for instance.

Even the less-forthcoming agencies insist that they're following the law and keeping the public informed.

"Every official event that is open to the public is posted on the Secretary's public schedule," Education Department press secretary Liz Hill wrote in a response to questions. "There isn't a 'transparency issue' simply because members of the media want more of a head's up."

Even so, Hill confirmed that security is a factor as the department plans and issues information on DeVos' public schedule.

Pruitt's admirers even praise him for stiff-arming reporters' request for information: A story Dec. 15 in The Weekly Standard — which EPA's press office distributed by email hours later — lauded Pruitt's "fearless defiance of his political and media foes." The story's first paragraph notes that POLITICO and The New York Times ask EPA for Pruitt's upcoming schedule every week, and "the press office ignores the emails."

Sen. Jim Inhofe, a Republican ally from Pruitt's home state of Oklahoma, said the EPA chief has "a job to do and he doesn't want to be distracted on everything."

"He may be working on something that is the best interest in the United States that would not be doable if the other side were to find out about it," Inhofe said.

***

While the law doesn't compel agencies to create advance schedules for the news media, the Freedom of Information Act does require them to turn over records such as their leaders' appointment calendars after the fact. Congress has also directed agencies to automatically make available any records they anticipate would be in high demand — a category some legal experts say includes the calendars of agencies' top officials.
"People have a right to know what officials are doing day to day," said Kevin Goldberg, a lawyer focusing on First Amendment and FOIA issues at the Washington firm of Fletcher, Heald & Hildreth. He added, "There should be and there is a way to do this proactively. ... It doesn't seem to make sense that in 2017 we can't get that right."

Congress told agencies in a 2016 update to hew to a presumption of openness, but that command has been slow to take hold. Goldberg, whose clients include the American Society of News Editors and the Association of Alternative Newsmedia, said it's too soon to say whether the lag is because of typical bureaucratic inertia or ill intent from the Trump administration.

But Goldberg said the administration has sent some worrying signals. Those include the Justice Department's lag in carrying out a late-Obama-era proposal to implement a "release to one, release to all" policy for FOIA records. Under that policy, any documents an agency releases under FOIA would be automatically made available to everybody.

Margaret Townsend, a lawyer for the Center for Biological Diversity, one of the environmental groups suing EPA, argued that it's also illegal for agencies to create two sets of calendars — a bare-bones one for media and public consumption, and a more detailed set for internal use — and then refuse to provide the latter in response to FOIA requests. But EPA appears to be doing just that.

EPA has declined several requests to offer an on-the-record explanation of its refusal to release the calendars. In court documents responding to lawsuits, the agency described American Oversight's FOIA request as "overbroad" and said EPA staff had conversations about what the Environmental Defense Fund was seeking for several months before the activist group filed suit.

Moulton, of the Project on Government Oversight, called it "troubling" that agencies have forced groups to resort to litigation to obtain records that have long been recognized as subject to FOIA.

"There are simple and complex requests," he said. "This should be one of those simple requests."

Anthony Adragna, Caitlin Emma, Nick Juliano, Lauren Gardner, Kathryn Wolfe, Ben Lefebvre, Alex Guillén, Darius Dixon, Wesley Morgan, Jacqueline Klimas, Rachana Pradhan, Josh Gerstein, Ted Hesson, Lorraine Woellert, Patrick Temple-West, Doug Palmer, Adam Behsudi, Connor O'Brien, Catherine Boudreau, Helena Bottemiller Evich, Ian Kullgren, Michael Crowley, Victoria Guida, Adam Cancryn, Stephanie Beasley, P.J. Joshi, Eric Wolff and Andrew Restuccia contributed to this report.