

HEARING ON THE NOMINATIONS OF DOUGLAS BENEVENTO, NOMINEE TO BE DEPUTY ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY; THE HONORABLE DAVID A. WRIGHT, NOMINEE TO BE A MEMBER, U.S. NUCLEAR REGULATORY COMMISSION; AND CHRISTOPHER T. HANSON, NOMINEE TO BE A MEMBER, U.S. NUCLEAR REGULATORY COMMISSION

HEARING
BEFORE THE
COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE
ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

MARCH 11, 2020

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COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

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WEDNESDAY, MARCH 11, 2020

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, Inhofe, Capito, Braun, Rounds, Sullivan, Boozman, Ernst, Cardin, Whitehouse, Booker, Duckworth, and Van Hollen.

Senator BARRASSO. Good morning. Today we will consider the nominations of Douglas Benevento to serve as the Deputy Administrator of the Environmental Protection Agency and then David Wright and Christopher Hanson to be Commissioners of the Nuclear Regulatory Commission.

At this point, I would normally go through my full morning statement, as would Senator Carper. But with Senators Feinstein and Daines and Representative Duncan here, I know you have pressing schedules. So we will defer our opening statements until you would go ahead.

If that is all right with you, Senator Feinstein, we would be happy to call on you to begin at this time.

**STATEMENT OF HON. DIANNE FEINSTEIN,
U.S. SENATOR FROM THE STATE OF CALIFORNIA**

Senator FEINSTEIN. Thank you, Mr. Chairman. That is a first among a world of diminishing firsts. So I just want you to know, it is very, very gentlemanly like for you to do this.

Mr. Chairman, Mr. Inhofe, Ranking Member Carper, it is a great pleasure for me to introduce Chris Hanson this morning. Chris has diligently served the Senate and the people of California for over

6 years now. He has been a key member of my Energy and Water Appropriations staff.

During that time, he has advised me and the Senate Appropriations Committee on issues surrounding the Nuclear Regulatory Commission, including its budget, its oversight of nuclear reactor decommissioning at San Onofre in California, and issues related to proposed new reactor technology.

He has also overseen nuclear energy research and development, radioactive waste cleanup, nuclear weapons, non-proliferation, and naval reactor programs.

Prior to coming to the Senate, Chris worked at the Department of Energy, where he advised the Assistant Secretary of Nuclear Energy, and worked on appropriation issues for then-Secretary Steven Chu. In all, he has 25 years of experience working on the very issues at the heart of the Nuclear Regulatory Commission's mandate.

As members of this Committee know, the members and staff of the Energy and Water Appropriations Subcommittee seamlessly work together in order to produce a bipartisan bill each year. I am just delighted to work with Lamar Alexander.

Chris's expertise, his professionalism, and his quiet good nature are instrumental in our effort. He is respected and appreciated by members on both sides of the aisle.

It is not surprising, therefore, that Senator Alexander, our subcommittee chair, has sent a letter supporting Chris's nomination, which I very much appreciate. Senator Alexander and I have spoken about how much the subcommittee will miss Chris. But we are happy for him, and look forward to working with him in his new role, should he be confirmed.

In closing, I have every confidence that Chris will give his usual forethought and insight to the issues that come before the commission, and I know he and other commissioners will find him to be an absolute joy to work with.

I am going to miss him very much. But I look forward to his success in this new role, and continuing to serve the country, with all the expertise and professionalism he has shown us these past 6 years.

I was just delighted to meet his wife and three remarkable children, and just delighted that they can observe him this morning.

Thank you, Mr. Chairman and Ranking Member Carper, and members of the Committee.

Senator BARRASSO. Thank you so very much, Senator Feinstein, we appreciate your time being with us this morning. Thank you. Senator Daines.

**STATEMENT OF HON. STEVE DAINES,
U.S. SENATOR FROM THE STATE OF MONTANA**

Senator DAINES. Chairman Barrasso, Ranking Member Carper, thank you. It is truly my honor to introduce a long time colleague, a friend, and a fellow westerner, Mr. Doug Benevento.

Mr. Benevento formerly served as the Regional Administrator for Region 8, where his responsibilities included overseeing six States—along with Montana—and 27 tribal nations. It was during

that time I got to work closely with Doug and form a personal relationship.

In fact, Mr. Benevento joined me in Butte and Anaconda. Now, for some perspective on Montana politics, Butte and Anaconda are two strong traditional, Democrat, hard working kind of folks politically. I think they are a little skeptical of somebody coming from the Trump administration to work with these communities at first. But he came.

In fact, he was instrumental in bringing Administrator Wheeler to see Montana's Superfund sites first-hand. These are a couple of major Superfund sites that have been steady for years without getting resolution. This is the first time in decades that an EPA Administrator had come to Montana, and is indicative of the agency and the Administration's willingness to engage directly with these impacted communities.

I can say with certainty that never have I worked with a regional administrator more determined to be responsive to the needs of the community and finally clean up Superfund sites.

In fact, when Doug first assumed his role as Region 8 Administrator, the cleanup efforts at these Superfund sites in Anaconda and Butte were in utter disarray. Significant distrust, and rightfully so, between the EPA and Montana communities due to a history of broken promises, endless bureaucratic delays, precluded substantial progress on cleanup.

Mr. Benevento set about changing that immediately. On day one, he made an effort to earn Montana's trust, not always easy to do, listening not only to local leaders and stakeholders, but more importantly, the everyday folks who had been living under the Superfund burden since 1983.

Mr. Benevento's even temperament, his pragmatism, his willingness to engage in very difficult conversations, built much needed bridges between the agency and Montanans in Butte and Anaconda. He restarted negotiations by establishing a hard stance early on. He basically said, Listen, if there is not an agreement formed here, be prepared for the EPA to issue a unilateral order for cleanup.

This bold move brought stakeholders and local leaders back to the table. Once discussions were restarted, Mr. Benevento set a new standard for transparency and accessibility, implementing a new open door policy. He even provided his own cell phone number to the folks that could contact him directly. What a refreshing change coming from the EPA.

It was gestures like these that served as the building blocks for both Butte and Anaconda to come to resolution on Superfund remedial actions. I am pleased to report—let's talk about the result now—that since then, the EPA has released a proposed consent decree detailing final cleanup actions in Butte, and the final consent decree for Anaconda is scheduled to be released very shortly. That is a big deal.

There are certainly still hurdles ahead for both sites to be restored. But these accomplishments, and more importantly, the trust built, would not have been possible without Mr. Benevento's leadership.

These accomplishments in Montana are a direct result of the administration's dedication to clean up Superfund sites that have languished for decades. They have depressed our real estate price in these communities, homes are starting to come back up. Mr. Benevento's leadership, his administrative skills, his character, have made all the difference.

Mr. Benevento has my full support as Deputy Administrator for the Environmental Protection agency. I can say it is a bit of a regret that we have lost him from out west. But it is very good to see that he is now assuming more responsibility and leadership. We truly could have no better ally serving in this role.

I look forward to seeing him confirmed expeditiously so he can continue his good work.

Thank you, Mr. Chairman.

Senator BARRASSO. Thank you very much, Senator Daines. I know you have a very tight schedule, but I appreciate your being here this morning.

I am next going to turn to our friend, Jeff Duncan, who is in his fifth term in the Third District of South Carolina, someone much better known on the other side of the street than here.

But I will tell you, he has a great blog called Walk-On Legislator. He was a wide receiver for the Clemson football team, and they continue to excel, the good tradition that you brought to Clemson when you walked on.

We are grateful to have you here today. Thank you.

**STATEMENT OF HON. JEFF DUNCAN, U.S. REPRESENTATIVE
FROM THE STATE OF SOUTH CAROLINA**

Representative DUNCAN. Thank you, Chairman Barrasso and Ranking Member Carper, other members of the Committee.

I am honored to be here today to introduce and support my good friend, Hon. David A. Wright, to continue his service as a commissioner of the Nuclear Regulatory Commission.

I have known David personally for almost 20 years, and I believe Commissioner Wright's background as a public servant and his knowledge of the agency's subject matter more than qualifies him to continue his service on the commission.

David has ably served as a commissioner since he took office May 30th, 2018. I have no doubt that he will continue this success through a second term.

He grew up in South Carolina, and maintains a residence in Irmo, South Carolina. Most importantly, he is a graduate of Clemson University—go, Tigers.

Prior to his service on the NRC, Commissioner Wright had a distinguished career in public service as a city councilman, a mayor, and a member of the South Carolina House of Representatives.

After serving in the South Carolina State House, Commissioner Wright served on the South Carolina Public Service Commission in a variety of capacities, including as vice chairman and chairman. He was on the commission for almost a decade, from 2004 to 2013, where he earned high respect from his peers for being a balanced and fair regulator.

From 2011 through 2018, he served as president of the National Association of Regulatory Utility Commissioners, where he rep-

resented State economic regulators nationally. Following his public service, Commissioner Wright started his own small business where he focused on energy and water issues.

Throughout his career, he has approached difficult issues in a thoughtful and bipartisan manner, which is essential to performing the duties required by the commissioner.

South Carolina has a unique a complex history with nuclear power. We are a State with significant interest in the leadership of the NRC.

South Carolina is home to seven nuclear reactors, a nuclear fuel fabrication facility, a low level waste facility, and the Savannah River site. We are a leader in nuclear power, both on the civilian and defense side of operations.

Through Commissioner Wright's service at the State level, he has a deep understanding of the scope of issues that fall under the purview of the NRC. Commissioner Wright is committed to ensuring the health and public safety of not only South Carolinians, but of all Americans. His expertise in South Carolina, as well as his current work on the NRC throughout these past 2 years, demonstrate Commissioner Wright's masterful understanding of all things nuclear.

Thank you again, Chairman Barrasso and Ranking Member Carper, for the opportunity to introduce David. I have spent a lot of time with David over the years, at Clemson football games, in conversations during my State tenure in the legislature. I, along with the rest of the South Carolina delegation, fully support his confirmation to the NRC, and look forward to his many successes for the years to come.

With that, I thank you again, and I yield back.

Senator BARRASSO. Thank you so much for joining us, and for that very strong recommendation. Thank you.

Senator Gardner.

**STATEMENT OF HON. CORY GARDNER,
U.S. SENATOR FROM THE STATE OF COLORADO**

Senator GARDNER. Thank you, Mr. Chairman and Ranking Member.

Thank you very much for the opportunity to appear before you today to introduce a very good friend of mine, Doug Benevento, and of course, his wife, Gwen Benevento, and their two lovely children who are here with us today. Thank you very much for this opportunity.

It is my pleasure to introduce Doug Benevento, who has been nominated to serve as Deputy Administrator of the Environmental Protection Agency. I want to start out by congratulating Doug on this nomination.

It was welcome news any time, and it is always welcome news any time a Coloradan can serve in a leadership position in any Administration. I have always been of the mindset that we need more Colorado common sense in Washington. And this is one more step in that direction.

I have known Doug and his family for nearly 20 years, going back to our days as Senate staffers in Senator Wayne Allard's office

of Colorado. I actually came into the office, taking the position that he had in Senator Allard's office.

I attended law school with his wife, Gwen, who did much better than I did in law school.

Doug handled environmental and natural resource issues for Senator Allard, and that was the beginning of a very long career advocating for protecting the environment.

As a staffer, he helped Senator Allard secure expedited funding for the cleanup of the Rocky Flats Nuclear Weapons Plant. For those of you who were serving then, or those of you who were staffers with Doug Benevento at the time, you know what an incredible issue this was, and continues to be, for the State, a site northwest of Denver that began producing plutonium triggers for nuclear weapons in 1952.

When the site closed down in 1992, what followed was one of the most complex environmental cleanups the world has ever seen. A part of this reclaimed site is now a 5,000 acre wildlife refuge, with over 10 miles of hiking trails, thanks to Doug's work.

Following Doug's staffing experience on Capitol Hill, he went on to be the Executive Director of the Colorado Department of Public Health and Environment. I believe that is the largest State agency in Colorado, the principal State agency that the EPA interfaces with the State in Colorado.

During this time, in this role, the State successfully achieved compliance with Federal health based air quality standards. This experience also no doubt taught Doug the importance of having a healthy dialogue between States and the Federal Government as they work together on regulatory issues.

As the Region 8 EPA Administrator in 2017, Doug worked with agency leadership to secure accelerated funding for the Colorado Smelter Superfund site, a residential neighborhood with houses and yards contaminated by elevated levels of lead and arsenic near and in Pueblo, Colorado. The agency committed \$15 million a year through 2022 to ensure the cleanup of 770 yards and the interiors of 536 houses when the work is all done.

This was a huge deal for the city of Pueblo and the people of Pueblo in southern Colorado, an area that has long struggled with legacy pollution issues.

Doug also served in the private sector—incredible private sector experience—on the relevant issues under EPA's jurisdiction, which is often an enormous benefit for any individual in public service. When Doug was in the private sector, he worked on the transformation of our State's largest investor owned electric utility to produce cleaner energy and to reduce emissions.

Doug's service as a policy staffer on Capitol Hill, his service in State government, his time in the private sector, and his recent service at the highest levels of the EPA make him uniquely qualified for the post of Deputy Administrator of the Environmental Protection Agency.

I am incredibly honored to be here with his family; certainly before this Committee is an honor.

I thank my colleagues for their thoughtful consideration and hopeful favorable consideration of his nomination.

Thank you.

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

Senator BARRASSO. Thank you very much, Senator Gardner. I know you have a packed schedule, and we appreciate your being with us this morning.

At this point, I would like to welcome our three nominees to the Committee, and ask that you take your seats at the table. They will put name tags up there.

As you head up, I would just say that President Trump first nominated Doug Benevento to serve as Deputy Administrator of the Environmental Protection Agency on February 25th. The Deputy Administrator plays a central role in developing and implementing programs and activities focused on fulfilling the EPA's mission of protecting human health and the environment.

Mr. Benevento has spent his 30-year career working to protect public health and the environment. In a variety of positions, he has gained a wealth of experience developing, implementing, and complying with environmental laws and policies.

He currently serves as the Associate Deputy Administrator in the Environmental Protection Agency. In this role, he oversees the agency's 10 regions, and is responsible for improving coordination between these regions and the agency's national programs.

Mr. Benevento is well suited for this position, since he has previously served as the Environmental Protection Agency's Region 8 administrator. In that position, he helped foster positive and productive relationships with the States.

Prior to joining EPA, he served as an attorney in the private sector, as Executive Director of the Colorado Department of Public Health and the Environment, and on the legislative staff of Congressman—then-Senator—Wayne Allard of Colorado.

With credentials like these, it is no surprise that stakeholders from across the political spectrum have enthusiastically endorsed Mr. Benevento's nomination. Jim Martin, the former EPA Region 8 administrator during the Obama administration, wrote this: "I have known and worked with Doug for a number of years and in many capacities. Doug brings to every issue he encounters an open mind and a keen intellect. He is perfectly suited for this position."

Numerous others have also written in support, including the Mississippi Governor, Tate Reeves; former Colorado Governor Bill Owens; and Montana Attorney General Tim Fox.

I urge all my colleagues to support the nomination.

President Trump has also nominated David Wright to serve as a commissioner on the Nuclear Regulatory Commission for a 5-year term, expiring June 30th, 2025.

He is currently serving as a commissioner for the remainder of a 5-year term which will expire on June 30th of this year. In May 2018, the full Senate confirmed his nomination for the current term by voice vote.

Commissioner Wright is well qualified to continue serving as a commissioner. Prior to joining the Nuclear Regulatory Commission, Commissioner Wright served as chairman of the South Carolina Public Service Commission, president of the Southeastern Association of Regulatory Utility Commissioners, president of the National Association of Regulatory Utility Commissioners, a member of the

South Carolina House of Representatives, and councilman and mayor of the town of Irmo, South Carolina. He has also owned and operated several small businesses.

Greg White, the Executive Director of the National Association of Regulatory Utility Commissioners, wrote this in support of Commissioner Wright's nomination: "David has already demonstrated his commitment to the NRC's mission to ensure protection of public health and safety. His continued service on the commission will unquestionably further the agency's important public safety mission."

Today will be the commissioner's fourth time appearing before the Environment and Public Works Committee. Just last week, he testified on the Nuclear Regulatory Commission's budget. He has done a fine job as a commissioner and deserves to be confirmed to another term.

President Trump has also nominated Christopher Hanson to serve as a commissioner on the Nuclear Regulatory Commission. If confirmed, Mr. Hanson will serve a 5-year term expiring June 30th of 2024. Mr. Hanson has been nominated to fill a vacancy left when Commissioner Stephen Burns resigned in April of last year.

For the past 5 years, Mr. Hanson served as a minority professional staff member on the Senate Appropriations Committee's Energy and Water Subcommittee. In that capacity, he has worked for Ranking Member Feinstein.

Previously, he served in three roles as a civil servant at the Department of Energy, including as senior policy advisor in the Office of Nuclear Energy.

Confirming Commissioner Wright and Mr. Hanson will ensure that the Nuclear Regulatory Commission is fully staffed with all five commissioners.

At this time, I would like to invite Senator Carper to make any opening statement that he would like.

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

Senator CARPER. Thanks so much, Mr. Chairman.

We welcome each of our nominees here today.

Mr. Wright, thank you for coming by and visiting with us earlier this week.

Mr. Benevento, thank you very much for coming in and spending some time with us, too, and Mr. Hanson, to you as well.

I think some of you, at least Mr. Wright indicated he probably wouldn't have family members here today. But maybe alone, each of you will loan a couple of your relatives to him for the hearing.

I think that might be your wife sitting behind you, Chris. My three sons, your three sons, that is pretty good.

Mr. Benevento, I think that might be your wife and a couple of daughters back there. I just want to thank your daughters for cutting school today and wanting to spend some time with us and to have your back.

And the same for your sons, Chris.

I think the folks who have already spoken here to who know you far better than we ever will have given us really good insight. We appreciate what they have had to say about each of you.

Mr. Benevento has been working in various capacities at EPA, as we have heard, since almost the beginning of the Trump administration. Serving, before that, I think, as the head of EPA Region 8. He also spent, I understand, 6 years serving in leadership roles in Colorado's Department of Public Health and the Environment.

Who was the Governor then? Was it Bill Owens? Yes.

Before that, Mr. Benevento worked on environmental issues for Senator Wayne Allard, one of our former colleagues. I think I actually—my office is his old office. So when you met with us, you were really in his old office.

It is clear from a review of Mr. Benevento's qualifications that he is qualified for the job.

Senator Jon Tester also asked me to mention that he is sorry that he couldn't be here to express support for Mr. Benevento this morning. He does plan to place a hold on your nomination.

[Laughter.]

Senator CARPER. Not really.

Senator Tester is leading a VA—Veterans Affairs—hearing this morning. But he wanted me to share that he appreciated the leadership and engagement with local communities and solution oriented mindsets that Mr. Benevento brought to the table as head of Region 8. Jon doesn't always have compliments like that to lather on people. So enjoy the moment.

The concern that I and I imagine some of my colleagues share is that Mr. Benevento has spent the last couple of years working in an agency that is making some of the most controversial and potentially least environmentally protective decisions in the agency's history.

From its purposeless rollback of the Clean Car Standards to its ongoing efforts to undermine the legal underpinnings of the Mercury and Air Toxics Standards, standards that are widely supported not just by the power industry, but the environmental community far and wide, to the EPA's failure to quickly address PFAS contamination. EPA is making people question the environmental protection phrase in its name.

We need some folks working over there—actually there are plenty of people who work there who are strong environmentalists. But we need some people at the top who are also determined to make sure that environmental protection means what it says every day.

The agency's relentless assault on rules to protect health and the environment is matched only by the assault on the agency itself. We continue to hear about EPA career experts being sidelined and being relocated and deprived of basic worker protection and assurances.

While EPA is no longer plagued by the same steady stream of embarrassing ethical lapses that existed during the Pruitt era, I cannot say that any of the environmental outcomes have improved all that much.

Sadly, I also cannot say that—and I say that in spite of the good work of hundreds of thousands of EPA employees. But sadly, I cannot say that the agency's relationship with some of our offices has improved that much, either.

We are the oversight agency; we are the oversight committee for EPA and a number of other Federal agencies. We do oversight. We

do oversight through hearings like this, we do oversight through letters that we send, through questions that we ask.

Sadly, our oversight letters remain largely unanswered. That is just unacceptable. Republicans wouldn't like that if the shoe were on the other foot. And we don't like it that it is on our foot.

But Mr. Wheeler has apparently just hired a new chief of staff. His tweets proclaim that she believes the so-called—this is her quote—“loony left,” want to “implement a Soviet style takeover of our energy and our economy.” It goes on to say, “Democrat actions are corroding the democracy.” That is the chief of staff of our EPA Administrator.

I just want to say, Mr. Chairman, with the death of our late colleagues, John McCain, I am the last Vietnam veteran serving in the U.S. Senate. I served 5 years, three tours over there, during a hot war in southeast Asia. The names of 56,000 people with whom I served with that are dead that are on a wall down by the Lincoln Memorial.

Comments like the one from this chief of staff conflating climate action with communism aren't just intellectually baseless, they are dishonest. They are reprehensible, especially when you consider the military service record of our commander in chief during that same period of time.

Meanwhile, EPA is still refusing to release its own economic analysis on another front, its own economic analysis of my bipartisan bill with Senator John Kennedy to phase down—not phase out, not phase out HFCs, refrigerant and cooling that is a thousand times more dangerous than carbon dioxide for climate. Even though we have learned that analysis, we have learned from within EPA that the EPA's own economic analysis finds that our legislation would save consumers about \$3.7 billion over 15 years. And EPA won't release that information. That is not only unacceptable, that is just unimaginable.

I look forward to hearing how Mr. Benevento plans to address these issues, should he be confirmed.

With that having been said, I want to turn briefly to the two nominees before us for the Nuclear Regulatory Commission. As I have said before, I believe it is critical that the NRC have consistent leadership from both political parties, especially in the nuclear industry which faces an uncertain future.

I am heartened that the Administration has nominated the well qualified Christopher Hanson to be commissioner. Senator Feinstein has spoken of him; we have met with him; very impressive individual.

And the President has re-nominated David Wright as commissioner, too.

I will close with this. We don't agree on everything in this Committee. One of the things we agree on is the need for producing a lot less carbon and finding ways to create electricity without producing additional carbon. Nuclear energy provides 50 percent of the carbon-free electricity that we generate in this country. We need more of that, not less of that.

One of the ways we are going to get more of that is to make sure we have terrific commissioners, great staff at the NRC, doing their job every day to make sure that the plants, 90 some, almost 100

plants that are still out there continue, to operate efficiently and safely.

Thank you so much.

Senator BARRASSO. Thank you very much, Senator Carper.

As I get ready to turn to the nominees, I will remind each of you that your full written testimony will be made a part of the record. We look forward to hearing the testimony.

Before calling on anyone individually, I would like to point out the Committee has received letters and statements from more than 30 individuals in support of our first nominee—Mr. Benevento's—nomination is endorsed by the Environmental Protection Agency Region 8 Administrator under President Obama, the Environment and Natural Resources Advisor to former Democrat Governor John Hickenlooper, numerous leaders of State and tribal environmental protection departments, and other State and local officials.

Without objection, I ask unanimous consent to enter these letters into the record.

So done.

[The referenced information follows:]

News Releases from Headquarters>Office of the Administrator (AO)

Doug Benevento Nominated as EPA Deputy Administrator

02/13/2020

Contact Information:

EPA Press Office (press@epa.gov)

WASHINGTON (February 13, 2020) — Today, President Donald J. Trump announced his intention to nominate Douglas H. Benevento as deputy administrator for the U.S. Environmental Protection Agency (EPA).

Doug Benevento has spent much of his career working to help protect the environment. He served as EPA Region 8 Administrator from October 2017 through March 2019. He then moved to EPA Headquarters where he has served as Senior Counselor for Regional Management and State Affairs and later as Associate Deputy Administrator. He was previously executive director for the Colorado Department of Public Health and Environment, where he managed the state's environmental and public health programs. He also served as the Department's director of environmental programs, where he managed the state's air, water, waste, and consumer protection programs. From 2010 until 2017, Mr. Benevento was working on energy and environmental issues in the private sector at Xcel Energy in various roles, and practiced law at Greenberg Traurig. He also has a wonderful wife, Gwen and two daughters Anna and Kate.

"I have known and worked with Doug for many years and he is uniquely qualified for this important position," said **EPA Administrator Andrew Wheeler**. "I have the upmost confidence that he will succeed in helping me advance President Trump's agenda and the agency's mission of protecting human health and the environment."

His nomination is receiving high accolades from across the country:

U.S. Senator Cory Gardner (CO): "I want to congratulate Doug Benevento on his nomination to serve as the U.S. Environmental Protection Agency's Deputy Administrator. It's welcome news any time a Coloradan can serve in a leadership position across any administration because we need more Colorado in Washington. I have known Doug for nearly twenty years, and his appreciation for a clean environment and his pro-business background make him well suited for this important role. During his time at the Colorado Department of Public Health and Environment, the state successfully achieved compliance with federal health-based air quality standards. When Doug was in the private sector, he worked on the transformation of our state's largest investor-owned electric utility to produce cleaner energy and reduce emissions. I welcome Doug's nomination and look forward to his consideration in the U.S. Senate."

U.S. Senator Steve Daines (MT): "I want to congratulate Doug Benevento on his nomination to serve as Deputy Administrator of the EPA." Daines said. "Doug has been a great partner on important issues facing Montana including putting Montana's Superfund sites on a solution-

oriented glide-path to help many areas find a final resolution. He has a strong understanding of the West, and will bring a wealth of experience and knowledge to his new role."

Former Obama EPA Region 8 Administrator Jim Martin: "I have known and worked with Doug for a number of years and in many capacities. Doug brings to every issue he encounters an open mind and a keen intellect. He is perfectly suited for this position."

Mississippi Governor Tate Reeves: "Doug Benevento is a great choice to serve as Deputy Administrator for the U.S. Environmental Protection Agency. I look forward to working with Doug and the rest of the EPA to protect Mississippi's natural resources that we treasure in this beautiful state."

Navajo Nation Environmental Protection Agency Environmental Assistant Director Dariel Yazzie: "The Navajo Nation is both pleased with and supports the White House's decision to appoint Doug Benevento as the new Deputy Administrator of EPA. Early last year, as the Associate Deputy Administrator, Mr. Benevento spent considerable time touring the Navajo Nation in order to better understand the various environmental issues facing our Navajo people. In particular, Mr. Benevento was greatly concerned about the negative impacts to human health and the environment as a result of the 524 abandoned uranium mines scattered across Navajo lands. Since that visit, Mr. Benevento has continued to reach out, be accessible, and provide his support to the Navajo Nation. In light of this, not only does the Navajo Nation appreciate Mr. Benevento's support and advocacy, but even more so, we greatly value his friendship. Consequently, we extend our warmest congratulations to Mr. Benevento and his family as they begin this new chapter."

Montana Attorney General Tim Fox: "On behalf of the State of Montana, I wish to congratulate Doug Benevento on his nomination to the position of Deputy Administrator of the United States Environmental Protection Agency. Doug's initial position within EPA was as EPA Region 8 Administrator which includes Montana. The people of Montana appreciated his hands on approach to cleaning up legacy sites in Montana, and his personal touch and understanding of the significance of the EPA's work on our land, water, air and people. I thank President Trump for nominating Doug, and the U.S. Senate for confirming him to this important position."

Louisiana Coastal Protection and Restoration Authority Board Chairman Chip Kline: "Throughout his time as Chair of the RESTORE Council, Doug has shown a clear understanding and dedication to advancing the projects and programs needed to help the Gulf Coast fully recover from the BP Oil Spill. Under his leadership, we are implementing the largest ecosystem restoration project in the history of Louisiana's coastal program. Doug's new role as Deputy Secretary is not only a good thing for the Gulf Coast, but for the nation as a whole."

Texas Commission on Environmental Quality Chairman Jon Niermann: "I have appreciated Doug's responsiveness to states' issues and Texas looks forward to working with him in his new role."

Oklahoma Secretary of Energy & Environment Ken Wagner: "Oklahoma is thrilled with the nomination of Doug Benevento to be Deputy Administrator of US EPA. He's a proven leader and problem-solver, which was fully-evident during his time as Regional Administrator leading the mountain region. His common sense approach, along with a history of leading a state environmental agency, a US EPA Region, years as hill staffer, successful career in the private

sector, and his time at headquarters make him uniquely qualified to serve as Deputy to Administrator, Andrew Wheeler."

Wyoming Department of Environmental Quality Director Todd Parfitt: "I look forward to working with Doug in his new role at EPA. He demonstrated his knowledge of complex environmental challenges in Wyoming while he was the Region 8 Administrator. It will be nice to have someone who understands western issues in that position."

Mississippi Department of Environmental Quality Interim Executive Director Chris Wells: "Having worked closely with Doug on the work of the RESTORE Council, helping restore Gulf of Mexico resources injured by the Deepwater Horizon Oil Spill, I have seen first hand the value of Doug's experience and leadership abilities. Those abilities will serve him and EPA well in this new role. I look forward to continuing to work with him in the future."

Florida Department of Environmental Protection Secretary Noah Valenstein: "I couldn't be more pleased with the nomination of Doug Benevento as Deputy Administrator. Doug has always been a great supporter of Florida's environmental initiatives. I look forward to working with him in this new capacity to continue protection of our state's natural resources."

Montana Department of Environmental Quality Director Shaun McGrath: "We commend the choice of Doug Benevento for the Deputy Administrator role. He understands well the needs of states, particularly in the West, and he has been a collaborative partner in our dealings with him."

West Virginia Department of Environmental Protection Cabinet Secretary Austin Caperton: "Doug is certainly deserving of this appointment. He is a knowledgeable professional and always conducts himself accordingly. I look forward to working with him."

Alabama Department of Environmental Management Director Lance LeFleur: "Doug is an excellent choice for Deputy Administrator. We know him to be a seasoned no-nonsense professional who gets things done. He is accessible and a pleasure to work with. I look forward to continuing working with him on state issues."

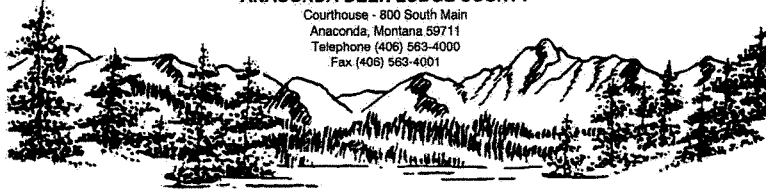
Jefferson County (CO) Commissioner Libby Szabo: "I have known and worked with Doug Benevento for many years and I know he would be a great Deputy Administrator of the EPA. He is a skilled professional and has vast experience in EPA-related issues. The Doug I know will put his heart and soul into this position, giving the work his very best. There is not anyone I think is more deserving of this position."

Former Colorado Governor Bill Owens: "Doug's nomination as Deputy EPA Administrator is good news for the country. His time in my Administration running the Department of Public Health and Environment demonstrated his commitment to environmental protection. Perhaps more importantly he will bring a western perspective to EPA. I wish my friend a speedy confirmation."

LAST UPDATED ON FEBRUARY 13, 2020

ANACONDA-DEER LODGE COUNTY

Courthouse - 800 South Main
Anaconda, Montana 59711
Telephone (406) 563-4000
Fax (406) 563-4001



February 26, 2020

Chairman John Barrasso
U.S Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510-6175

Dear Chairman Barrasso,

I write in support of Douglas Benevento's nomination to become the next Deputy Administrator of the Environmental Protection Agency (EPA).

As Regional Administrator, Mr. Benevento has served as an EPA staffer within our Region and brings a tremendous wealth of experience working in environmental policy from several different perspectives. He has been instrumental in moving Montana Superfund areas to agree on final resolutions with the EPA, DEQ, and local governments.

Since my election in 2017, my team and I have worked closely with Mr. Benevento on many Superfund issues affecting Anaconda, Montana and surrounding areas. I have found him to be knowledgeable and very professional. He has been a tremendous resource to Montana on environmental and energy policies.

I am confident that Mr. Benevento will do an unbelievable job at the EPA, helping to ensure the agency's mission of protecting the environment is maintained, while also ensuring the EPA continues as a partner in progress in responsible energy exploration and job creation.

Respectfully,

Bill T. Everett
Chief Executive Officer
Anaconda-Deer Lodge County



*Southern Ute Indian Tribe
Christine Sage, Chairman*



*Ute Mountain Ute Tribe
Manuel Heart, Chairman*

February 25, 2020

Senator John Barrasso, Chairman
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Barrasso,

We write in support of the nomination of Doug Benevento for the Deputy Administrator position at the Environmental Protection Agency.

Our Tribes first worked with Mr. Benevento when he was on the staff of former Colorado Senator Wayne Allard. Most recently, we had the opportunity to work with him as Region 8 Administrator of EPA. Not long after he arrived in the regional administrator's post, Mr. Benevento came to visit us, on our reservations, to discuss issues affecting the Tribes under EPA's jurisdiction. We greatly appreciated his sincere interest in partnering with us and his follow up.

At a time when public faith and trust in government is under stress, we believe that individuals like Doug Benevento are greatly needed in positions which have direct impact on state and local governments, large and small business and industry, Native American Tribes and all people of the United States. Mr. Benevento is energetic, responsive and genuine in his commitment to public service.

We strongly encourage the committee to favorably consider his nomination.

Sincerely,

Handwritten signature of Christine Sage in cursive.

Ms. Christine Sage, Chairman
Southern Ute Indian Tribal Council

Handwritten signature of Manuel Heart in cursive.

Mr. Manuel Heart, Chairman
Ute Mountain Ute Tribe



March 6, 2020

Chairman John Barrasso
U.S. Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510-6175

Dear Chairman Barrasso:

I write in support of Doug Benevento's nomination to become the next Deputy Administrator of the U.S. Environmental Protection Agency (EPA).

Mr. Benevento brings a wealth of relevant and solid experience to the position. His work history is notable, drawing extensive knowledge from his time in the private sector, as a state environmental protection administrator, an EPA Region 8 Administrator, and currently as a senior EPA official in Washington, DC.

He has a keen understanding of state needs and challenges, especially in the west, and has worked with the states to find timely common-sense environmental solutions. It has been my experience that Mr. Benevento is a problem solver who addresses the science of the issue, working with the states as essential partners in our shared endeavor to protect public health and the environment.

I am confident that, as Deputy Administrator, Mr. Benevento will continue to do an excellent job of helping to ensure the agency's mission of protecting public health and the environment while engaging states as crucial partners.

Sincerely,

A handwritten signature in black ink, appearing to read "L. David Glatt".

L. David Glatt, P.E.
Director
North Dakota Department of Environmental Quality

918 East Divide Avenue | Bismarck ND 58501-1947 | Fax 701-328-5200 | deq.nd.gov

Director's Office
701-328-5150

Division of
Air Quality
701-328-5188

Division of
Municipal Facilities
701-328-5211

Division of
Waste Management
701-328-5166

Division of
Water Quality
701-328-5210

Division of Chemistry
701-328-6140
2635 East Main Ave
Bismarck ND 58501

Don Brown

10092 County Road 36, Yuma, CO 80759
Cell 970-630-1193 dpbrown@anchorfarms.net

March 6, 2020
The Honorable John A. Barrasso III
Chairman of the Senate Committee on Environment and Public Works
United States Senate
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

Re: Mr. Douglas J Benevento, Nomination as Deputy Administrator for the U.S. Environmental Protection Agency

Chairman Barrasso,

As the former Colorado Commissioner of Agriculture within the Governor John Hickenlooper administration it is my great pleasure and honor to support the nomination of Mr. Doug Benevento, Associate Deputy Administrator of the U.S. Environmental Protection Agency (EPA), for the position of Deputy Director of the EPA. Mr. Benevento's broad range of administrative and practical experiences are unique in that he would bring to the agency the unprecedented blend of a private sector background along with state and federal government management experiences. All which would be a great asset to the EPA.

Mr. Benevento served as Regional Administrator of Region 8 for the EPA when I was serving as the Colorado Commissioner of Agriculture. I had numerous opportunities to work with him on various issues which had a significant impact on agriculture. I found him to be very responsive and more than willing to listen to my constituents' concerns. There was no question he was willing to make an effort to approach each situation with a commonsense, science based, nonpartisan approach which recognized that there is a balance and that not one size fits all.

There is no question that every region, as broad or as narrow as you choose to define region, has unique concerns and needs. Mr. Benevento is a product of the arid western United States and his appointment would bring perspectives based on real life experiences from that vast region to the senior level of the EPA. Diversity and experiences are critical in making sound policy decisions and he would provide that level of diversity and experiences.

Speaking from personal experience it is a difficult task to guide an agency through competing partisan interests, values and perceptions in a fashion that serves and recognizes the needs of all of the people that the agency represents and regulates. Mr. Benevento is a master at this difficult job having served in numerous administrative levels at the EPA but in particular he gracefully steered the Colorado Department of Public Health and Environment through tumultuous times while serving as CDPHE's Executive Director.

Mr. Benevento will be an excellent Deputy Director. True to his form he will serve with integrity.

Sincerely,

Don Brown
Colorado Commissioner of Agriculture 2015-2019

February 27, 2020

Liberal Studies Department
Montana Technological University
Butte, Montana 59701

Chairman John Barrasso
U.S. Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510-6175

Dear Chairman Barrasso,

As someone involved for decades in the Superfund cleanup in Butte, Montana, I had the good fortune to interact extensively with Doug Benevento both in person and via email. I found Mr. Benevento to be the most productive regional administrator with whom I ever interacted.

(A little about me and my involvement in Superfund. I am a professor at Montana Technological University in political science and public policy. I am a board member of the local EPA TAG group in Butte (CTEC) and vice president of our local Citizens for Labor and Environmental Justice. I have been a board member or officer in several statewide environmental groups and have also presented to two EPA Community Involvement Conferences in Seattle and Boston. So, I have more than a casual acquaintance with the EPA cleanup in Butte and the Clark Fork River cleanup.)

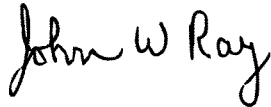
Specific Qualities Demonstrated by Doug Benevento's Performance at Region 8-EPA:

1. **Ability to get things done.** Under Doug's direction more progress was made in one year than in the previous 9 years of the cleanup. For example, getting the Consent Decree for Butte Priority Soils Superfund site in Butte languished for years; he started the process of bringing it to completion and now it is effectively done. It is often hard to motivate public agencies but he did it.
2. **Consensus builder.** In Butte he was able to bring together into productive relationships participants with a variety of perspectives on the Superfund cleanup—business, environmentalists, recreationists and local government. He won the respect of citizens who had long been wary of the EPA cleanup. It is not easy to achieve consensus on public policy issues but Doug demonstrated time and again his ability to forge agreement and consensus.
3. **Good listener.** Doug paid proper attention to all perspectives. He respected divergent viewpoints and displayed genuine empathy for all. He was recognized in the Butte

community as sincerely concerned about citizen input. His attention to public input went far beyond what is mandated in Superfund and I feel came from a sincere commitment to listening and respecting citizen input.

4. **Great understanding of the forces and factors that shape environmental decision making—economic, scientific, political and social.** EPA decisions are not just scientific decisions but involve a myriad of social and political forces. EPA decision making exists in a force-field of conflicting and competing interests. It is not easy to aggregate all of these perspectives into a coherent policy or decision but he accomplished that seemingly impossible task.
5. **Effective communicator of the EPA position.** He immersed himself in the local community and was skilled at presenting the agency position in a fair and competent manner. He did this by learning about our community—its history, its concerns, the people involved in the Superfund process and past experiences with EPA. In short he knew and respected his audience. But, and this is important, he was very willing to change or modify the EPA's position to accommodate and alleviate citizen concerns. Under his leadership, citizen input had efficacy.
6. **Very competent administrator.** Under his leadership, Region 8 greatly increased its operational accountability, effectiveness and efficiency. Not only was Mr. Benevento technically competent he also was viewed by EPA personnel with whom I interacted as a capable and fair administrator.

For all of these reasons, I can very strongly and without any reservations recommend Mr. Doug Benevento for the position of Deputy Administrator of the EPA.



Dr. John W. Ray, Professor
Liberal Studies Department
Montana Technological University
Butte, Montana 59701

(I am required by university policy to indicate that my citation of affiliation is for purposes of identification and does not necessarily reflect the position of Montana Technological University.)

March 3, 2020

Chairman John Barrasso,
Senate Committee on Environment and Public Works,
410 Dirksen Senate Office Building
Washington, D.C. 20510

Senator Barrasso,

I am writing to support Douglas Benevento as nominee for Deputy Administrator of the U.S. Environmental Protection Agency (EPA). I retired last May after a 32 where I started as a temporary hire and finished as a Senior Executive responsible for the Superfund Program and finally the Clean Air, Water, Hazardous Waste, Toxics, Pesticide, Tribal and State Assistance Programs. Through my career I worked with 6 different administrations and worked with the States of Wyoming, Colorado, Utah, Montana, South Dakota and North Dakota.

Early in my career I had the pleasure of working with Doug while he was Director of the Colorado Department of Public Health and the Environment. I worked with Doug to address air pollution issues along the front range of Colorado and to address legacy pollution issues at the Rocky Flats nuclear weapons plant. In these efforts to address Colorado specific pollution issues, I observed Doug to understand state and federal roles in environmental protection, and to successfully integrate those roles while recognizing industry interests. That skill set, the ability to recognize statutory responsibility, integrate state and federal roles and industry interests resulted in the reduction of air pollution along the front ranger and a former nuclear weapons plant becoming a National Wildlife Preserve.

Doug became the Regional Administrator of the Denver Office of the EPA in 2017 and stayed in this position into 2019. During this period, Doug worked to address the ozone nonattainment on the Uintah and Ouray Indian reservation, to successfully address participate pollution along the Wahsatch front and Salt Lake valley in Utah and successfully brought a defined final cleanup for the Butte Superfund site in Montana to the citizens of Butte. As the Senior Executive responsible for those environmental issues, I again observed Doug to have a complete and acute understanding of the environmental statutes, administration policy, state, local and industry interests. That ability and his experience guided our approach to those problems and resulted in implementation of successful, collaborative state, tribal and industry efforts to address those difficult problems.

As a former career EPA professional, I am confident Doug will be an asset to the Agency as the Deputy Administrator and will diligently work to protect public health and the environment consistent with statutory requirements while recognizing public policy and private interests and rights. I support Doug's nomination and hope he is confirmed to this position.

Sincerely,
Martin Hestmark



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

L. Scott Baird
Executive Director

Kim Shelley
Deputy Director

March 6, 2020

Chairman John Barrasso
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Chairman Barrasso,

On behalf the Utah Department of Environmental Quality I would like to express my support for Doug Benevento's nomination as the Deputy Administrator of the United States Environmental Protection Agency (EPA).

I had the pleasure of working with Doug while he served as the EPA Region 8 Administrator and can speak to his ability to both listen to, and understand the unique needs of states. Doug's previous experience as a state director was particularly useful in helping Utah navigate important issues related to regional haze and moving forward on several state implementation plans (SIPs).

In addition to his experience as a state director, Doug's understanding of issues facing western states is incredibly valuable in providing EPA a more wholistic view of environmental issues facing the nation.

I am confident that as Deputy Administrator Doug will drive critical improvements within the agency and increase the coordination and partnership needed with states to find practical solutions to get things done.

Doug is very deserving of this nomination and I look forward to working with him in this role.

Best Regards,

A handwritten signature in cursive script that reads "Scott Baird".

Scott Baird
Executive Director

195 North 1950 West • Salt Lake City, UT
Mailing Address: P.O. Box 144810 • Salt Lake City, UT 84114-4810
Telephone (801) 536-0095 • T.D.D. (801) 536-4284

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Chairman Barrasso

March 3, 2020

Senate Committee Environmental and Public Works

410 Dirkson Senate Office Building

Washington, D.C. 20510

Dear Chairman Barrasso,

I am writing this letter on behalf of Mr. Doug Benevento, who will be appearing before your committee. I first met Doug Benevento when he was appointed to be the EPA Administrator of Region 8 in Denver, Colorado. His assignment included 5 other states one of which was Montana. Butte, MT had been designated one of the largest Superfund sites in the United States. This designation had an adverse effect on our City and the economy of Butte was languishing.

Butte only began to have the proper attention for cleanup when Mr. Benevento visited as part of his new position with the EPA. Mr. Benevento met with the various groups in Butte that were working diligently to get the superfund cleanup. The integrity and honesty that Mr. Benevento exhibited was the beginning of the process that would allow the superfund cleanup to be started in earnest. Butte had been the subject of the cleanup process for over 30 years and was not close to a resolution that would begin the actual cleanup. Mr. Benevento told all involved to move to a resolution or he would order a unilateral order to get it accomplished. As a result of his courage and dedication to bring the parties to the table for honest negotiation the process was at last on the road to a possible conclusion. This was the first time a ray of hope was brought to the process. His desire to not only visit Butte but being willing to do what was necessary to bring about the Social Justice aspect of the necessary cleanup that Butte has been seeking for the cleanup of a 100 years of mining.

Mr. Benevento spent time here in Butte and guaranteed that this Community would have the ability to recover from all the past mining. Mr. Benevento was quick to work with the Community and always stayed true to his word. I feel fortunate to have met Doug and can honestly say that because of him our labors saw the necessary changes being made so that a new CD was presented to the Community in February 2020.

I am honored to recommend Doug Benevento for the Deputy position. If you need proof as to the quality individual you will be confirming I would welcome you to come to Butte, MT and I am sure we will be able to convince you that you have selected the right individual.

Sincerely yours,

Sister Mary Jo McDonald, SCL 438 West Porphyry Butte, MT 59701



BOARD OF COUNTY COMMISSIONERS
Terry A. Hart Garrison M. Ortiz Chris Wiseman
District 1 District 2 District 3

March 6, 2020

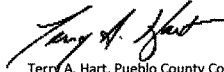
Chairman John Barrasso
U.S. Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510-6175

I am writing this letter to express my strong support for the nomination of Doug Benevento to become the next Deputy Administrator of the Environmental Protection Agency (EPA).

I have known Mr. Benevento for a number of years. I first met him when he served as the Executive Director of the Colorado Department of Public Health and Environment, and more recently, I have had the pleasure of working with him as the Region 8 Administrator for the EPA. In that latter capacity, he and I worked closely on the Colorado Smelter Superfund site located here in my community, Pueblo, Colorado. Doug worked with a number of our citizens on this project and with me and he listened to our concerns about the project. One of our primary concerns was the time projected to be needed to complete the sampling and cleanup of this site. Doug personally worked with the national EPA office in Washington DC to secure the funding necessary to achieve an expedited completion of the project. Our community was extremely pleased with the work that he gave to us on this project.

I have found Doug to be very personable, diligent, caring, responsive, and professional in the work that he has performed in our community. Thus, it is without reservation that I give my strong support for Doug Benevento to be the next Deputy Administrator of the EPA. I know he will do a great job at the EPA in that position and will work closely with us on our various projects in the future.

Sincerely,



Terry A. Hart, Pueblo County Commissioner, District 1
hart@pueblounty.us
719-583-6050

February 27th, 2020

Chairman John Barrasso
U.S. Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510-6175

Dear Senator Barrasso,

I am writing in support of Doug Benevento's nomination to become the next Deputy Director of the Environmental Protection Agency!

My name is Elton W. "Mick" Ringsak, and I currently live in Butte, Montana. In 2001 President George W. Bush did me the Honour of serving as his SBA Regional Administrator for the SBA in Region VIII. Casper Wyoming was the State District Office for the SBA,

Steve Despain was the outstanding Director and the Office was one of the best performing Office's in the Agency. I had the distinct Honour of meeting you on a few occasions when you were a State Senator, and also after you were appointed to the US Senate, to my delight, in 2007 and then elected to a 6 year term in 2008!

I spent 12 years in the Army Corps of Engineers and attained the rank of Major, I owned my own business in Butte, Montana from 1977 to 2015 with a 7 year break for service to country as the SBA Regional Administrator. For the last 5 years I have worked w/the State of Montana and Local Communities as a "Pro Bono" Advisor to small business development. In 55 years of working w/Local, State and Federal Officials at all levels, I have never met any Government Employee or individual in the private sector who measure up the level of performance, dedication to the job and service to our citizens and country then Douglas Benevento!

Doug is Patient, Resilient, Kind, Fair, Tenacious and has a Deep Sense of Duty! Doug exemplifies and sets the standard for what makes an Outstanding Civil Servant! I first met Doug shortly after he'd been appointed as the EPA Regional Administrator for Federal Region VIII!

You couldn't ask for a tougher assignment for any new EPA Regional Administrator. The Butte and Anaconda area holds the largest Superfund complex in the United States. It was on of the top 10 list of Superfund sites in the nation, and Doug had been charged with resolving the problems and getting the site de-listed! The PRP's (Principle Responsible Parties) had been deadlocked in Negotiations since 1983! While PRPs have long been identified – mostly, the Atlantic Richfield Co. – negotiations on consent decrees for two of the largest operable units – Butte Priority Soils and Anaconda – had been long-delayed, The sites have been listed for more than 35 years, but consensus between negotiators has been hard to come by – much less the communities themselves. Butte's consent decree negotiations had been on-again, off-again, for a dozen years.

Doug Benevento showed up in Butte and Anaconda his first week on the job in October 2017. (His predecessor at Region 8 in Denver took years to show up in Butte at any community meeting.) He walked into community meetings, introduced himself and spoke clearly and honestly. "I am going to do my best to help," he said. "But you need to know that you won't get everything you want."

People were struck by his sincerity and his kindness, but many adopted a wait-and-see attitude. In a place known for toughness, they did not mistake courtesy for weakness. They didn't have to "wait" long to "see" more of Benevento. He didn't just come once to make nice. He was back within a month. And

again within a few weeks. And Superfund negotiators, meanwhile, learned fast that he meant business. He was not subtle. "We're going to get this work done," he said. "If you can't agree, EPA will impose a unilateral administrative order." At the same time, he showed respect for the negotiators and repeatedly met with public groups, expressing confidence in them, and that the matter would get quickly and satisfactorily resolved.

In a time of headlines about just how much the President wished to cut EPA's budget, he presented a firm but optimistic demeanour. After all, this was a site with PRPs identified. He knew the clean-up here wasn't budget-dependent, and he also knew that his boss, then Administrator Scott Pruitt, wanted results he could show to the President, to Congress, and to the public.

Within three months, the progress Benevento sought was tangible. The Butte Hill consent-decree negotiations produced an agreement in principle, and one in Anaconda soon followed. Not only had he quickly brought the negotiating parties together, but he also engendered trust within the communities. A Consent Decree from all concerned party has been agreed too and will be signed within 50 days.

When Andrew Wheeler was named EPA administrator in 2019, he quickly tapped Benevento for the job of associate deputy administrator. Even with his myriad new duties, Benevento demonstrated that he cared about Butte, staying in touch with the people he'd become close to and monitoring progress closely. Summing up, Doug Benevento is an unusual federal official.

His knowledge, efficiency, directness and honesty have made a big difference to the people whose lives are affected by what the EPA does or doesn't do. I am proud to endorse his nomination as Deputy Administrator, and I'm confident that his already-distinguished career in public service will continue to the agency's and the country's benefit in this role.

Please give my best wishes to Senator Enzi and Congratulate him for me on his many years of service and a well deserved retirement!

Highest Regards,
YMH&OS
Elton W. Ringsak
ELTON W "MICK" RINGSAK
Presidential Appointee w/Bush43
Regional Administrator
United States Small Business Administration
Region VIII, Denver, CO 2001-2008

cc: Senator Kevin Cramer cc: Senator Mike Rounds



February 27, 2020

Chairman John Barrasso
U.S. Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510-6175

Dear Chairman Barrasso,

I am writing in support of Doug Benevento's nomination to become the next Deputy Administrator of the Environmental Protection Agency (EPA).

Mr. Benevento has spent most of his career working to protect the environment. He worked on energy and environmental issues in the private sector at Xcel Energy and while practicing law at Greenberg Traurig. He was executive director of the Colorado Department of Public Health and Environment, served as the Department's director of environmental programs, served as EPA Region 8 Administrator, then moved to EPA Headquarters where he served as Senior Counselor for Regional Management and State Affairs and finally as Associate Deputy Administrator.

I have known and worked with Doug since his appointment to the position of EPA Region 8 Administrator. I believe he is highly qualified for this important position.

I am confident Mr. Benevento will succeed in helping Administrator Wheeler advance the agency's mission of protecting human health and the environment, and I urge the U.S. Senate to confirm him to this important position.

Sincerely,

Director
701.328.8020 • lhelms@nd.gov • www.dmr.nd.gov



701.328-8020 • oilandgasinfo@nd.gov • www.dmr.nd.gov • 600 E Boulevard Ave, Dept. 405 • Bismarck, ND 58500

Bruce E. Hicks
ASSISTANT DIRECTOR
OIL AND GAS DIVISION

Lynn D. Helms
DIRECTOR
DEPT. OF MINERAL RESOURCES

Edward C. Murphy
STATE GEOLOGIST
GEOLOGICAL SURVEY



BUTTE-SILVER BOW
OFFICE OF THE CHIEF EXECUTIVE
Courthouse, 155 W. Granite Street, Suite 106
Butte, Montana 59701-9256

February 20, 2020

Chairman John Barrasso
U.S. Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510-6175

Dear Chairman Barrasso,

I write in support of Doug Benevento's nomination to become the next Deputy Administrator of the Environmental Protection Agency.

The City and County of Butte-Silver Bow has been dealing with Superfund issues for over 35 years. We were constantly hitting roadblocks in our road to reaching a consent decree. As the new Regional Director, Mr. Benevento arrived at one of our consent decree negotiation meetings and stated he wanted Butte-Silver Bow to be de-listed as a Superfund site by 2024.

Shortly thereafter, we had a conceptual agreement in place. Last week a press conference was held for the release of the consent decree for public review. This truly was a major milestone for us to hit. Without Mr. Benevento's leadership, I do not believe this would have been possible.

I am confident Mr. Benevento will do a fine job at the Environmental Protection Agency, helping to ensure the agency's mission of protecting the environment.

Sincerely,

A handwritten signature in black ink, appearing to read "Dave Palmer".

Dave Palmer
Chief Executive
City and County of Butte-Silver Bow





Office of the Mayor
Nicholas A. Gradisar

February 24, 2020

Senator John Barrasso, Chairman
Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso,

As the Committee prepares to consider the nomination of Doug Benevento to serve as Deputy Administrator of the Environmental Protection Agency, we want to offer our support for his appointment.

Several years ago, our community made a very difficult decision to request Superfund designation for a smelter site near one of our poorest neighborhoods. We knew such a designation would put a negative stamp on this community for a time. But we also knew that effective clean-up and redevelopment would not only remove that stamp but create a healthy environment for the area residents. Unfortunately, the clean-up and redevelopment is a long and expensive process.

Upon designation as Region 8 Administrator of EPA, Doug visited Pueblo and the Colorado smelter Superfund site. As a fellow Coloradan, he knew immediately that efficient and effective clean up was necessary to move this neighborhood and our community forward. As he had in his previous positions with former Senator Wayne Allard and at the Colorado Department of Public Health and Environment, Doug went to work on behalf of the people. He put his commitment to public service on full display and was persuasive in getting EPA headquarters to accelerate funding for the Colorado Smelter project. Our community is grateful for this demonstration of good government.

We encourage the committee to promptly give favorable consideration to Doug Benevento's nomination.

Sincerely,

A handwritten signature in black ink that reads "Nick Gradisar".

Nick Gradisar
Mayor

A handwritten signature in black ink that reads "Dennis Flores".

Dennis Flores
City Council President

JOHN BEL EDWARDS
GOVERNOR



CHUCK CARR BROWN, Ph.D.
SECRETARY

State of Louisiana
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF THE SECRETARY

February 24, 2020

The Honorable John Barrasso, Chairman
U.S. Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510-6175

Dear Chairman Barasso,

I am writing in support of the nomination of Douglas Benevento as the next Deputy Administrator of the Environmental Protection Agency (EPA).

Mr. Benevento has a lengthy resumé as an environmental regulator and lawyer, serving as EPA Region 8 Administrator from 2017-2019, followed by a stint as Senior Counselor for Regional Management and State Affairs, and later as Associate Deputy Administrator at EPA Headquarters. Mr. Benevento also served at the state level, as Executive Director for the Colorado Department of Public Health and Environment, where he managed the state's environmental and public health programs. His experience also includes serving as the Department's Director of Environmental Programs, where he managed the state's air, water, waste, and consumer protection programs.

I am currently in my second term as the Secretary of the Louisiana Department of Environmental Quality (LDEQ). I am also an active member of the Environmental Council of the States (ECOS). I have interacted with Mr. Benevento in both of these capacities. He is accessible, knowledgeable and has the experience to understand environmental challenges from both federal and state perspectives.

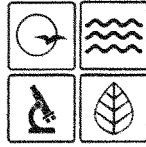
I look forward to working with Mr. Benevento in this new role as EPA and LDEQ work collaboratively to protect and improve the environment of Louisiana and the Gulf Coast region.

Sincerely,

A handwritten signature in black ink, appearing to read "Chuck Carr Brown".

Chuck Carr Brown, Ph.D.
Secretary

/g!



Missouri Department of dnr.mo.gov

NATURAL RESOURCES

Michael L. Parson, Governor

Carol S. Comer, Director

February 26, 2020

The Honorable John Barrasso
 United State Senate
 307 Dirksen Senate Office Building
 Washington, DC 20510

Dear Chairman Barrasso:

This letter is in support of the nomination of Douglas H. Benevento for the Deputy Administrator of the U.S. Environmental Protection Agency.

Doug has spent much of his career working to protect the environment. He has a wealth of environmental knowledge, having served as the Associate Deputy Administrator for EPA and Regional Administrator for EPA Region 8. In addition, Doug brings a broad base of experience to the job. His background in the private sector at Xcel Energy and history of practicing environmental law make him an excellent choice for this new role.

I first met Doug at an Environmental Council of the States conference a couple of years ago when he was serving as Region 8 Administrator. Despite the fact Missouri is in Region 7, Doug expressed interest in my perspective on the relationship between EPA and the state regulatory agencies. I left that meeting with his phone number and an invitation to call if I needed anything. Even after his promotion to Associate Deputy Administrator – with significantly increased responsibilities on a national scale – Doug continued to make himself available to me as an individual state director. His accessibility and attention to EPA's partners make him an ideal candidate for Deputy Administrator.

Doug Benevento has demonstrated his knowledge of complex environmental issues and has been a great partner to state environmental regulatory agencies. As the Director of the Missouri Department of Natural Resources, I welcome the opportunity to continue to work collaboratively with Doug to protect human health and the environment.

If I can be of further assistance, please contact me at carol.comer@dnr.mo.gov or 573-522-6221.

Sincerely,

Carol S. Comer
 Director





Senator Wayne Allard

U.S. Senate
1997-2009

U.S. House of Representatives
1991-1997

February 27, 2020

Chairman John Barrasso
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Barrasso

I am writing to express my strong support for Doug Benevento who worked for me while in the U.S. Senate and U.S. House of Representatives on a number of clean-up issues in Colorado. The clean-up issues were in Democrat house districts and our office worked under Mr. Benevento's direction closely with the respective Democrat staffs, local elected officials, concerned citizen groups and state and federal agencies.

Three of the clean-up sites were in the Denver and surrounding suburbs. Of those, two of the areas were related to military contractor management. Rocky Flats was involved with nuclear trigger manufacturing with ground water contamination concerns and the other was Rocky Mountain Arsenal with ground water contamination from traditional military weapon processing that was contaminating a municipal water supply. The third was from domestic waste that had not been properly processed.

Mr. Benevento was also involved with domestic clean-up issues in Pueblo involving municipal waste from an open pit operation.

His hard work with various interest groups has led to community support at two of the most complicated cleanups by providing for urban wildlife area designations at the Rocky Mountain Arsenal and Rocky Flats that saved tax dollars and led to practical resolutions.

Respectfully,

A handwritten signature in black ink that reads "Wayne Allard".

Dr. Wayne Allard, DVM
Former Colorado Senator and former City of Loveland health officer
Former Chair of Larimer County Board of Health
5328 Lighthouse point Court
Loveland, Colorado 80537



ARKANSAS
ENERGY & ENVIRONMENT

March 10, 2020

The Honorable John Barrasso, Chairman
United States Senate Committee on Environment and Public Works
307 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso,

I am pleased to offer my support for the confirmation of Doug Benevento as the Deputy Administrator of the United States Environmental Protection Agency. In my capacity as Secretary of Arkansas's Department of Energy and Environment and immediate Past President of the Environmental Council of the States, I am encouraged by the level of cooperation between the EPA and the states in the past several years. Mr. Benevento both acknowledges and embraces the cooperative-federalism model that is essential to the effective execution of environmental policy in our nation.

He is committed to understanding and representing the perspective of the sovereign states and ensuring that the substantial role of the states is reflected in environmental policy development and execution. I am impressed by Mr. Benevento's understanding of state-delegated programs and his unique perspective and experience having served as both a state and federal regulator. In recent months, Mr. Benevento has been fully engaged and cooperative with the states through the ECOS organization. The sometimes rocky but always crucial relationship between ECOS and EPA continues to improve under his leadership, and I am encouraged by his personal assurance that he will remain a fully engaged and cooperative advocate for the states.

Sincerely,

A handwritten signature in black ink that reads 'Becky W. Keogh'.

Becky W. Keogh
Secretary, Arkansas Department of Energy and Environment

Senator BARRASSO. Mr. Benevento, welcome to the Committee. If you would like to introduce your family first, and then proceed with your testimony.

STATEMENT OF DOUGLAS BENEVENTO, NOMINEE TO BE DEPUTY ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. BENEVENTO. Thank you, I do.

First, thank you, Mr. Chairman; thank you, Mr. Ranking Member.

I want to thank members of my family for being here. My mother, Nancy Paul, and my stepfather, Dave Paul, who flew out here from Colorado. It is wonderful to have them here.

Senator CARPER. Would you ask your mother to raise her hand? Thank you. Would you take an oath, I swear—

[Laughter.]

Mr. BENEVENTO. It is wonderful to have them here to support me.

Also here today is my wife, Gwen, and our two daughters, Anna and Kate. Anna just started high school, and Kate just started middle school. They are active in theater, are excellent students, and most importantly, are good and kind people.

When taking a job in public service, it is truly a family decision. It is that way for us. With me being gone for long stretches of time, Gwen has taken on additional burdens. She not only drops the kids off at school and picks them up, but she is also engaged with them in all of their extracurricular activities.

When she is not doing that, she is practicing law, having been named one of Denver's top lawyers last year. She is certainly the glue that holds us together.

Senator BARRASSO. We could have her on this Committee, one of the top lawyers in Denver. So you were smarter than Cory Gardner, actually, in law school.

[Laughter.]

Mr. BENEVENTO. I also want to thank Senators Gardner and Daines for introducing me.

Thank you, Mr. Chairman, and Mr. Ranking Member, and members of the Committee, for taking the time to consider my nomination. It is a great honor to have been nominated by President Trump to be deputy at the premier environmental organization in the world, the Environmental Protection Agency. It is also humbling to be sitting here in front of all of you today, when over 20 years ago, I used to sit in the chairs behind you as a staffer.

If confirmed for this position, I will focus my efforts on five priorities. First, supporting the Administrator and carrying out the mission of the agency to protect human health and the environment.

Second, continuing the agency's regulatory agenda of modernizing regulations to ensure they protect human health and the environment while also allowing for economic growth.

Third, working with the regions and the States on implementation of environmental laws.

Fourth, continuing to work with the Gulf Coast States and other Federal agencies on Gulf Coast restoration efforts.

Finally, working with career staff on work force development. We have a trust responsibility to do our part to ensure that the agency has a work force prepared to tackle future challenges.

I have spent my career in environmental protection in one form or another. Early on, I worked for Congressman and then-Senator Allard who taught me that listening to communities is perhaps the most important part of public service.

At the Colorado Department of Public Health and Environment, I learned the important role that States play in environmental protection. The States are at the forefront of protecting human health and the environment, and it is our job at EPA to partner with them to ensure that they are faithfully implementing Federal laws. Together, EPA and the States form a partnership that protects the American public.

Following those experiences, I practiced environmental law at Greenburg Traurig, and then worked at Xcel Energy, a large western and midwestern vertically integrated gas and electric utility, known for its all of the above energy strategy. The knowledge I gained from working at both places taught me the practical impact of EPA's decisions.

Most recently, I was Regional Administrator at EPA in the West. I value the experience of working with fellow westerners to solve difficult issues. We did that by cooperating and listening to each other, which is what we do out west. I look forward to bringing this perspective to this position if confirmed.

It is the cumulative lessons learned from these experiences that I bring to this position, and that, if confirmed, I believe can help promote EPA's mission of protecting human health and the environment.

Thank you, Mr. Chairman, and Mr. Ranking Member, Committee members. I look forward to answering your questions.

[The prepared statement of Mr. Benevento follows:]

**Statement of Douglas H. Benevento
Nominated to be Deputy Administrator
United States Environmental Protection Agency**

Good morning.

First, I want to thank Senators Gardner and Daines for their kind introductions, I appreciate and am honored to have their support in this process. I've known Cory for about 20 years, and we share a common background as former staffers for Senator Wayne Allard, whose seat Cory now occupies. I am also pleased that Senator Daines agreed to introduce me, I have spent a lot of time across Montana over the past three years at EPA and I am grateful for the guidance he has provided during that time.

Both senators have been strong advocates for their communities, whether that be in prioritizing a Superfund cleanup in Pueblo, Colorado or asking me to sit down with communities in places like Butte and Anaconda, Montana that have been waiting for years for clean up to be completed.

Before I go further, I want to thank members of my family for being here. My mother Nancy Paul and my stepfather Dave Paul who flew out here from Colorado, it is wonderful to have them here to support me.

Also here today is my wife Gwen and our two daughters, Anna and Kate. Anna just started high school and Kate just started middle school. They are active in theatre, are excellent students, and, most importantly, are good and kind people. When taking a job in public service it is truly a family decision and it was that way for us. With me being gone for long stretches of time, Gwen has taken on additional burdens. She not only drops the kids off at school and picks them up, but she is also engaged with them in all their extracurricular activities. When she is not doing that, she is practicing law, having been named one of Denver's top lawyers last year. She is the glue that holds us together.

Thank you, Mr. Chairman, Mr. Ranking Member, and members of the Committee, for taking the time to consider my nomination. It is a great honor to have been nominated by President Trump to be the Deputy at the premier environmental organization in the world, the Environmental Protection Agency. It is also humbling to be sitting here in front of all of you today, when over twenty years ago I used to sit in the chairs behind you as a staffer.

If confirmed for this position I will focus my efforts on five priorities:

1. Supporting the Administrator in carrying out the mission of the Agency to protect human health and the environment.
2. Continuing the Agency's regulatory agenda of modernizing regulations to ensure they protect human health and the environment and also allow for economic growth.
3. Working with the regions and states on the implementation of environmental laws.
4. Continuing to work with Gulf Coast states and other federal agencies on Gulf Coast restoration efforts.

5. Working with career staff on workforce development. We have a trust responsibility to do our part to ensure that the Agency has a workforce prepared to tackle future challenges.

I have spent my career in environmental protection in one form or another. Early on, I worked for Congressman and then-Senator Allard who taught me that listening to communities is perhaps the most important part of serving the public.

At the Colorado Department of Public Health and Environment, I learned the important role that states play in environmental protection. The states are at the forefront of protecting human health and the environment, and it is our job at EPA to partner with them to ensure that they faithfully implement federal laws. Together, EPA and the states form a partnership that protects the American public.

Following those experiences, I practiced environmental law at Greenberg Traurig and then worked at Xcel Energy, a large western and midwestern vertically integrated gas and electric utility known for its all-of-the-above energy strategy. The knowledge I gained from working at both places taught me the practical impact of EPA's decisions.

Most recently, I was a Regional Administrator at EPA in the west. I valued the experience of working with fellow westerners to solve difficult issues. We did that by cooperating and listening to each other, which is what we do out west. If confirmed, I look forward to bringing this perspective to the position.

It is the cumulative lessons learned from these experiences that I bring to this position and that, if confirmed, I believe can help promote EPA's mission of protecting human health and the environment.

Thank you, Mr. Chairman, Mr. Ranking Member and Committee Members. I look forward to answering your questions.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION 2
 290 BROADWAY
 NEW YORK, NY 10007-1866

JAN 31 2019

MEMORANDUM

SUBJECT: Memorandum of Agreement

FROM: Dore LaPosta, Director
 DECA *[Signature]*

Eric Schaaf, Regional Counsel *[Signature]*

TO: Peter D. Lopez, Regional Administrator
 EPA-Region 2

Attached for your signature is the Memorandum of Agreement (MOA) between EPA and the NJDEP for the Underground Storage Tank (UST) and Leaking Underground Storage Tank (LUST) programs. A previous MOA dated January 24, 2001, was effective for these programs. The revised MOA takes into account the regulatory and programmatic enhancements realized during the 17 years since the 2001 MOA was signed, in addition to the NJDEP's and EPA's experience in managing USTs and LUSTs over that time.

New Jersey has not applied for "State Program Approval" (SPA) for the Underground Storage Tanks program. As such, both New Jersey's UST regulations which appear to be consistent with EPA's regulations, and the federal UST regulations are independently enforceable in the State. NJDEP is expected to submit its SPA package in 2020 for EPA's review and action. However, as result of an EPA Inspector General's February 15, 2012 report regarding the effectiveness of EPA's UST inspection programs, EPA agreed to update UST MOAs with all states (including states have not yet received SPA) by October 13, 2018. Due to end of fiscal year workload and competing priorities, finalization of this MOA has slipped past this date.

Region 2 UST/LUST managers and ORC negotiated the revised MOA with UST/LUST management at NJDEP. The NJDEP Commissioner, Catherine McCabe, has signed the agreement. With your signature the revised MOA becomes effective.

Please contact either of us if you have any questions or comments regarding the MOA.

MEMORANDUM OF AGREEMENT
Between the
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 2
and the
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
For the Activities of the
UNDERGROUND STORAGE TANK PROGRAM
and the
LEAKING UNDERGROUND STORAGE TANK PROGRAM

I. GENERAL

A. Background

In 1984, Congress added Subtitle I to the Solid Waste Disposal Act (SWDA), which required EPA to develop a comprehensive regulatory program for Underground Storage Tank ("UST") systems storing petroleum or certain hazardous substances to protect the environment and human health from UST releases. EPA promulgated the UST regulations in 1988 (40 CFR Part 280). These regulations set minimum standards for new tanks and required owners and operators of existing tanks to upgrade, replace, or close them. In addition, owners and operators were required to monitor their UST systems for releases using release detection and maintain financial responsibility for petroleum USTs to ensure that the owner or operator is financially able to pay for any releases that occur. In 1988, EPA also promulgated regulations for state program approval (40 CFR Part 281). In 2005, the Energy Policy Act further amended Subtitle I of SWDA. The Energy Policy Act requires states that receive Subtitle I funding from EPA to meet certain requirements. Consequently, between 2006 and 2007, EPA published cooperative agreement guidelines for states regarding operator training, inspections, delivery prohibition, secondary containment, financial responsibility for manufacturers and installers, public record and state compliance reports on government UST systems. In 2015 EPA published Revisions to the UST regulations in the *Federal Register*. These revisions strengthen the 1988 federal UST regulations by increasing emphasis on properly operating and maintaining UST equipment, among other things. The revisions will help prevent and detect UST releases, which are a leading source of groundwater contamination. The revisions also amended the regulations for state program approval in 40 CFR Part 281. This is the first major revision to the federal UST regulations since 1988.

B. Scope

This Memorandum of Agreement (MOA or Agreement), between the U.S. Environmental Protection Agency Region 2 (EPA) and the New Jersey Department of Environmental Protection (State or NJDEP), establishes the respective roles and responsibilities of each agency with regard to the implementation of the federal UST Program and the Leaking Underground Storage Tank (LUST) Program. This Agreement becomes effective upon the signatures of the parties hereto and remains in effect unless modified by the mutual consent

of both parties, a party withdraws from the Agreement, and/or until EPA approves the state program under Section 9004 of SWDA, 42 USC § 6991c. NJDEP currently plans on seeking state program approval under Section 9004 of SWDA, 42 USC § 6991c.

This Agreement is entered into by the Commissioner of the NJDEP and the Regional Administrator, EPA Region 2. Any party to this Agreement may withdraw from this Agreement or initiate renegotiation of the Agreement by providing 60 days written notice to the other party.

Nothing in this MOA shall be construed as surrendering existing statutory or regulatory authority of the EPA or the NJDEP. Nothing in this MOA shall be construed to restrict in any way EPA's authority to fulfill its oversight and enforcement responsibilities under Subtitle I of SWDA. Nothing in this MOA shall be construed to contravene any provisions of 40 CFR Parts 280 and 281. This MOA does not impose legally binding requirements.

This MOA does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this Agreement, against NJDEP, EPA, their officials or employees, or any other person. This MOA does not direct or apply to any person outside of NJDEP and EPA.

C. Purpose

Under the federal UST regulations promulgated in 1988, EPA is identified as the implementing agency until the state has obtained program approval or the state is designated to act on behalf of EPA pursuant to an MOA. This MOA identifies specific activities that the state and EPA will carry out to implement the federal UST regulations.

EPA program funding may assist the state in implementing certain activities stated in this Agreement. However, nothing in this MOA, in and of itself, obligates EPA to expend appropriations or incur other financial obligations that would be inconsistent with Agency budget priorities. As required by the Antideficiency Act, 31 USC 1341 and 1342, all commitments made by EPA in this MOA are subject to the availability of appropriated funds.

D. Authority

Sections 2002, 9001, 9002, 9003, 9004, 9005, 9006, 9007, 9009, 9010, and 9012 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6991, 6991(a), 6991(b), 6991(c), 6991(d), 6991(e), 6991(f), 6991(h), 6991(i), and 6991(k). These sections direct EPA to promulgate requirements for detection, prevention, and correction of underground storage tank releases, and for demonstrating financial responsibility and to address other aspects of the UST and LUST programs. Section 9003 also provides a procedure by which the state may carry out correction action and enforcement activities for states that enter into a cooperative agreement with the Agency. Under Section 9004, the state may submit its UST program for EPA approval.

The Energy Policy Act requires states that receive RCRA Subtitle I funds from EPA to meet certain requirements. Consequently, between 2006 and 2007, EPA published grant guidelines for states (pursuant to Sections 9002, 9003, 9005, 9010, and 9012) regarding operator training, inspections, delivery prohibition, secondary containment, financial responsibility for manufacturers and installers, public record and state compliance reports on government UST systems.

E. Information Sharing

1. EPA will keep the State informed of the content and meaning of Federal statutes, regulations, guidelines, standards, policy decisions, directives, and any other factors that affect the federal program. EPA will also provide general technical guidance to the State. EPA will share with the State any national reports developed by EPA. EPA will make available to the State other relevant information as requested that the State needs to implement the federal program. EPA agrees normally to provide the State with copies of reports resulting from any compliance inspection and subsequent enforcement actions.
2. The State agrees to inform the Region of any proposed or adopted state program changes (preferably well in advance) that would affect the State's ability to help implement parts of the federal program. State program changes of concern include modification of the State's legal authorities (for example, statutes, regulations, and judicial or legislative actions affecting those authorities), modifications of memoranda of agreement or understanding with other agencies, and modifications of resource levels (for example, available or budgeted personnel and funds). The State will provide compliance monitoring and enforcement information to the Regional Administrator or designee. The State agrees to provide EPA, at its request, with copies of reports resulting from any compliance inspection and subsequent enforcement actions.
3. National Data. EPA maintains certain national data on USTs. These data are used to report to the President, the Congress, and the public on the achievements of the UST program and to support EPA's regulatory development efforts. Whenever EPA determines that it needs to obtain certain information, EPA will first seek to obtain this information from the State. The State agrees to provide the Regional Administrator or delegate with this information if readily available and as resources allow. If the State is unable to provide the underground storage tank information or if it is necessary to supplement the State information, EPA will engage in an alternate means of information collection after notifying the State. EPA will share with the State any national reports developed by EPA as a result of such information collection.
4. Confidentiality. The State will make available to EPA upon request any information obtained or used in the State's administration of the federal UST and LUST programs without restriction. If the UST owner/operator has submitted the information to the State under a claim of business confidentiality, the State will

clearly identify that claim of confidentiality to EPA in writing when providing the information. EPA will not disclose, copy, reproduce or otherwise make available to anyone any information obtained from the State that is subject to a claim of confidentiality without the UST owner's/operator's consent, unless otherwise required or allowed by law.

II. IMPLEMENTATION ACTIVITIES

Implementation activities are those tasks that will be conducted by the State or EPA pursuant to this MOA to implement the federal UST and LUST programs. The specific activities assumed by the State will be determined by State priorities and resources, and the status of the State's program development. The specifics of these activities are detailed in the State's LUST-Prevention and LUST-Corrective Action cooperative agreements. The State and EPA agree to assume responsibility for the following activities as specified below.

A. State-lead implementation activities

Assumption by the State of these activities in no way implies that the State program meets the no less stringent or adequate enforcement requirements of the State program approval process. This determination will be made by EPA in response to the State's application for program approval, should the State submit one.

1. 40 CFR part 280

The State will assume, unless otherwise specified, all responsibilities of the implementing agency as written in 40 CFR part 280.

2. Energy Policy Act of 2005

The NJDEP will:

- a. Ensure that UST inspectors are adequately trained so that each is able to identify and document violations of the State's UST regulations during on-site inspections and review of documents.
- b. Conduct inspections of each federally regulated UST system at least once every three years by the anniversary of the previous three-year inspection.
- c. Enforce violations of the State's promulgated UST Regulations. The State shall refer all identified violations of federal UST regulations for which it does not have enforcement authority to the Region which shall appropriately follow up, at its discretion.
- d. Meet the requirements as laid out in EPA grant guidelines on the Energy Policy Act of 2005 such as guidelines on secondary containment, operator training, public records and

delivery prohibition. (<http://www2.epa.gov/ust/energy-policy-act-2005-and-underground-storage-tanks-usts#grant>)

e. The State will strive to ensure that:

- (1) All releases from UST systems are promptly reported and assessed and further releases are stopped;
- (2) Actions are taken to identify, contain and mitigate any immediate health and safety threats that are posed by a release (such activities include investigation and initiation of free product removal, if present);
- (3) All releases from UST systems are investigated to determine if there are impacts on soil, groundwater, and any nearby surface waters. The extent of soil and groundwater contamination must be delineated when a potential threat to human health and the environment exists;
- (4) All releases from UST systems are cleaned up through soil and groundwater remediation and any other steps are taken, as necessary to protect human health and the environment; and
- (5) Adequate information is made available to the State to demonstrate that corrective actions are taken in accordance with the requirements of paragraph (e) of this section. This information must be submitted in a timely manner that demonstrates the corrective action's technical adequacy to protect human health and the environment.

f. In accordance with §280.67, the State must notify the affected public of all confirmed releases requiring a plan for soil and groundwater remediation, and upon request provide or make available information to inform the interested public of the nature of the release and the corrective measures planned or taken.

B. EPA-lead implementation activities

Unless otherwise stated, EPA-lead implementation activities described in this MOA will be initiated by EPA Region 2.

1. Establish policy for handling variances.

2. Enforcement

EPA reserves the right to act independently in any SWDA Subtitle I implementation and enforcement activity in the State. EPA will investigate and undertake enforcement actions as it deems appropriate. These actions may occur as consequences of planned activities (e.g., monitoring compliance with existing system leak detection phase-ins) or random inspections (e.g., site visits).

Prior to conducting UST compliance inspections or initiating enforcement actions within the State, EPA will generally notify the NJDEP at least 7 days prior, verbally or in writing, for the purpose of coordinating federal and State actions, except that EPA will not generally provide notice to the State prior to issuing field citations. The NJDEP reserves the right to act independently under State authority. EPA and the NJDEP will communicate and coordinate closely on enforcement, so that each agency will be aware of the other's enforcement activities.

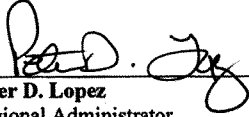
III. EPA OVERSIGHT

EPA oversight of the NJDEP's UST and LUST programs shall consist of the following elements:

- A. Review of cooperative agreement applications and cooperative agreement applications and workplans contained therein.
- B. Review of semi-annual reports of the State's UST and LUST programs to be submitted to EPA by the NJDEP.
- C. Review and evaluation of the State's UST enforcement and LUST remedial action policies.
- D. Review of other submittals required by UST or LUST Trust cooperative agreement workplans.
- E. At least one annual on-site meeting to discuss performance under the open cooperative agreements and this MOA.


IV. SIGNATURES

This MOA becomes effective upon execution of the signatures below.



Peter D. Lopez
Regional Administrator
U.S. Environmental Protection Agency
Region 2

3/12/19
Date



Catherine R. McCabe
Commissioner
New Jersey Department of Environmental Protection

3/5/19
Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 25 2018

Todd Parfitt
Director
Wyoming Department of Environmental Quality
200 West 17th Street
Cheyenne, Wyoming 82002


Dear Director Parfitt:

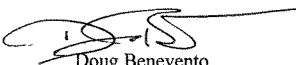
Please find attached the "Memorandum of Agreement Between the State of Wyoming and The United States Environmental Protection Agency Regarding Self-Audits Conducted Pursuant to State Law" that is ready to be executed. The Memorandum of Agreement (MOA) establishes procedures and policies for administration of the Wyoming Audit Privilege and Immunity Law (Self-Audit Law) and reflects our agreement to encourage greater compliance with laws and rules protecting public health and the environment by promoting greater self-policing in the regulated community.

The EPA values its partnership with Wyoming on environmental issues and is committed to providing Wyoming with the support and flexibility needed to effectively implement its Self-Audit Law.

We are grateful for the hard work and cooperation of Wyoming Department of Environmental Quality (WDEQ) officials and the EPA that led to the development of this MOA, and we look forward to working with WDEQ on implementing this MOA and in other efforts to ensure the health and safety of the people and environment of Wyoming. Please contact us if you have any questions, concerns, or ideas for further cooperation.

Sincerely,


Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance


Doug Benevento
Regional Administrator
EPA Region VIII

Attachment



Mark Gordon, Governor

Department of Environmental Quality

To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.



Todd Parfitt, Director

MEMORANDUM

To: Joint Minerals, Business and Economic Development Committee
From: Todd Parfitt, Director, Department of Environmental Quality
Date: October 30, 2019
Subject: Environmental Audit Report FY18-19

Environmental audits conducted under W.S. § 35-11-1105 and 1106

Land Quality Division – LQD had one company commence and complete a self-audit during this reporting period. The audit has been closed with all conditions being met.

Water Quality Division – During the reporting period, the WQD had three companies commence and complete environmental audits. Each audit involved Wyoming Pollution Discharge Elimination System (WYPDES) permitted facilities.

Air Quality Division – In 2018, 14 companies conducted audits, involving 791 facilities. One audit was not accepted as it fell out of the guidelines of the statute. In 2019, nine companies conducted audits of 369 facilities. Final values are still being calculated but at the time of this report, the combined average reduction in NOx and VOC emissions per company was 77 tons per years. The average cost to complete an audit was \$290,000.

Most environmental audit submissions are a result of new facility purchases or company restructures. Additionally, one company has requested consideration for the Chapter 8 Small Business Voluntary Disclosure Exemption.

Memorandum of Agreement with U.S. Environmental Protection Agency – In October 2018, the U.S. EPA formally recognized Wyoming's Environmental Audit Program and signed a Memorandum of Agreement confirming that Wyoming is the lead agency for state audits.

Attachments

- Memorandum of Agreement with U.S. Environmental Protection Agency

200 West 17th Street, Cheyenne, WY 82002 · <http://deq.wyoming.gov> · Fax (307)635-1784

ADMIN/OUTREACH (307) 777-7937	ABANDONED MINES (307) 777-8145	AIR QUALITY (307) 777-7391	INDUSTRIAL SITING (307) 777-7389	LAND QUALITY (307) 777-7756	SOLID & HAZ. WASTE (307) 777-7752	WATER QUALITY (307) 777-7781
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 25 1998

Todd Parfitt
Director
Wyoming Department of Environmental Quality
200 West 17th Street
Cheyenne, Wyoming 82002

Dear Director Parfitt:

Please find attached the "Memorandum of Agreement Between the State of Wyoming and The United States Environmental Protection Agency Regarding Self-Audits Conducted Pursuant to State Law" that is ready to be executed. The Memorandum of Agreement (MOA) establishes procedures and policies for administration of the Wyoming Audit Privilege and Immunity Law (Self-Audit Law) and reflects our agreement to encourage greater compliance with laws and rules protecting public health and the environment by promoting greater self-policing in the regulated community.

The EPA values its partnership with Wyoming on environmental issues and is committed to providing Wyoming with the support and flexibility needed to effectively implement its Self-Audit Law.

We are grateful for the hard work and cooperation of Wyoming Department of Environmental Quality (WDEQ) officials and the EPA that led to the development of this MOA, and we look forward to working with WDEQ on implementing this MOA and in other efforts to ensure the health and safety of the people and environment of Wyoming. Please contact us if you have any questions, concerns, or ideas for further cooperation.

Sincerely,

Handwritten signature of Susan Parker Bodine in black ink.

Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

Handwritten signature of Doug Benevento in black ink.

Doug Benevento
Regional Administrator
EPA Region VIII

Attachment



MEMORANDUM OF AGREEMENT

between

the State of Wyoming and the United States Environmental Protection Agency

regarding

Self-Audits Conducted Pursuant to State Law

I. PREAMBLE

This Memorandum of Agreement (MOA) is entered into by the State of Wyoming and the United States Environmental Protection Agency (EPA) - Region VIII (collectively, the parties), to establish procedures and policies for administration of the Wyoming Audit Privilege and Immunity Law (self-audit law). The parties agree to encourage greater compliance with laws and rules protecting public health and the environment by promoting a greater degree of self-policing in the regulated community. This Agreement is a companion document to be read in conjunction with the Wyoming Attorney General's letter opinion of July 10, 1997, for implementation of the self-audit law.

II. BACKGROUND: WYOMING STATE AUDIT PROGRAM

Wyoming's audit law provides incentives to regulated entities to self-disclose noncompliance with environmental requirements found through environmental audits. Wyo. Stat. Ann. §§ 35-11-1105 and 35-11-1106 (2017). The EPA's Audit Policy also provides incentives for self-disclosure of noncompliance. 65 Fed. Reg. 19,618 (Apr. 11, 2000). Generally, neither policy applies if the self-disclosure occurs after a facility is already under investigation for violations of the applicable environmental law.

According to the Wyoming Attorney General's letter opinion of July 10, 1997, regarding Wyoming's audit law, WDEQ retains the authority to obtain penalties and injunctive relief for violations of federally delegated programs. Specifically, that opinion states that "WDEQ retains all the authority it had prior to the passage of the audit privilege and immunity law to recover civil penalties for violations that result in significant economic benefit or that result in serious harm or present an imminent and substantial endangerment to public health or the environment under federally-delegated programs."

Wyoming's self-audit law meets minimum requirements for Federal delegation.

III. APPLICABILITY

Except for the Wyoming Attorney General's letter opinion of July 10, 1997, this document supersedes any prior agreements between EPA and Wyoming regarding implementation of the Wyoming self-audit law, and supersedes EPA penalty policies that would otherwise apply to civil

violations of Federal environmental statutes that Wyoming is authorized to administer where such violations are addressed under Wyoming's self-audit law.

This agreement does not apply to EPA's authorities to investigate and prosecute criminal violations.

IV. AGREEMENT

In no case shall EPA selectively target or investigate Wyoming entities solely on the basis that they have sought penalty immunity under Wyoming's self-audit Law.

In any case in which an entity conducts an audit under the Wyoming Audit Law EPA will not request an environmental audit report to initiate a civil investigation of the entity or the facilities that were the subject of the audit.

Nothing in this memorandum of agreement affects EPA's authority to obtain information from sources other than an audit report. Nor does this agreement preclude EPA's use of such independently obtained information, even if it also is included in an audit report.

EPA will closely communicate with upper management of WDEQ prior to conducting inspections or using EPA information gathering authorities to evaluate the compliance of Wyoming facilities with federal laws that Wyoming is authorized to implement. If, during such communication, EPA identifies a facility as being of interest to EPA, and such facility has participated in Wyoming's self-audit program, Wyoming shall notify EPA of that fact. Any dispute over whether EPA should undertake inspections or information gathering at a facility that participated in Wyoming's self-audit program shall be elevated to the Regional Administrator and the Director and, if necessary, the OECA Assistant Administrator.

If EPA determines that a facility that participated in Wyoming's self-audit program has violations of federal environmental statutes that Wyoming is authorized to implement that were not disclosed or were disclosed but have not been corrected or are not subject to an enforceable order requiring correction under Wyoming Statute § 35-11-1106 (2017), EPA may take an enforcement action after closely communicating with upper level management of WDEQ. In a circumstance where upper management in the Region and Wyoming do not agree on a matter, the matter shall be elevated first to the Regional Administrator and the Director and, if necessary, to the OECA Assistant Administrator, for a decision.

In general, EPA defers to state penalty mitigation for self-disclosures as long as state policy meets minimum requirements for Federal delegation. *See* 65 Fed. Reg. 19,624. In general, Wyoming's self-audit law waives penalties for violations that are self-disclosed. However, as stated in Wyoming Statute § 35-11-1106 (2017) and in the Wyoming Attorney General's letter opinion of July 10, 1997, Wyoming retains penalty authority for specific circumstances. EPA will defer to Wyoming's judgment on the assessment of penalties under its self-audit law except as described in this paragraph. EPA may consider asking Wyoming to seek penalties under its retained authorities where Wyoming's pattern and practice of penalty mitigation results in implementation of a federally delegated program that is less stringent than the federal program (see Wyo. Stat. Ann. § 35-11-1106(a)(iv)). If Wyoming rejects such a request, EPA retains authority to take direct action under its own authorities. However, prior to taking such an action, EPA will communicate closely with upper management of WDEQ and, if needed, will elevate any disagreements first to the Regional Administrator and the Director and, if necessary, to the OECA Assistant Administrator.

Nothing in this memorandum of agreement affects EPA's authority to seek injunctive relief to correct ongoing violations of federal law which are not already being addressed by Wyoming or to address an imminent and substantial endangerment.

Wyoming will develop a methodology to measure any increased participation in and compliance benefits from Wyoming's self-audit program.

V. AGREEMENT MODIFICATION

This Agreement may be modified by the Parties to ensure consistency with state programs and federal requirements for program delegation. Any revisions or modifications to this Agreement must be in writing and signed by all Parties in order to become effective. In the event the Wyoming self-audit law is amended EPA and Wyoming will confer and make any revisions necessary to this MOA.

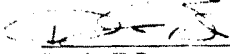
VI. GENERAL PROVISIONS

This Agreement does not create any substantive or procedural right, duty, obligation or benefit, implied or otherwise, enforceable by law or in equity, by persons who are not party to this agreement, against Wyoming or EPA, their officers or employees, or any other person. This Agreement does not direct or apply to any person outside of the State of Wyoming and EPA.


VII. TERMINATION

This Agreement may be terminated at any time by either Party after notice in writing is provided to the counterparty 60 days before the desired termination date. In the event the Agreement is terminated, EPA intends to continue to honor the terms of this MOA for those reporting entities that had final action taken by Wyoming prior to the termination date.

VIII. SIGNATORIES



Date
Douglas H. Benevento
Regional Administrator
U.S. Environmental Protection Agency
Region 8



Date
Todd Parfitt
Director
Wyoming Department of Environmental Quality



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 05 2018

Dave Glatt
Director
North Dakota Department of Environmental Quality
918 East Divide Avenue, 4th Floor
Bismarck, North Dakota 58501

Dear Director Glatt:

Please find attached the "Memorandum of Agreement Between the State of North Dakota and the U.S. Environmental Protection Agency regarding Self-Audits Conducted Pursuant to State Law" that is ready to be executed. The Memorandum of Agreement (MOA) establishes procedures and policies for administration of the North Dakota Environmental Audits Law (Self-Audit Law) and reflects our agreement to encourage greater compliance with laws and rules protecting public health and the environment by promoting greater self-policing in the regulated community.

The EPA values its partnership with North Dakota on environmental issues and is committed to providing North Dakota with the support and flexibility needed to effectively implement its Self-Audit Law.

We are grateful for the hard work and cooperation of North Dakota Department of Environmental Quality (NDDEQ) officials and the EPA that led to the development of this MOA, and we look forward to working with NDDEQ on implementing this MOA and in other efforts to ensure the health and safety of the people and environment of North Dakota. Please contact us if you have any questions, concerns, or ideas for further cooperation.

Sincerely,

Handwritten signature of Susan Parker Bodine.

Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

Handwritten signature of Gregory Sopkin.

Gregory Sopkin
Regional Administrator
EPA Region VIII

Enclosure



MEMORANDUM OF AGREEMENT

between

the State of North Dakota and the United States Environmental Protection Agency

regarding

Self-Audits Conducted Pursuant to State Law

I. PREAMBLE

This Memorandum of Agreement (MOA) is entered into by the State of North Dakota, through its Department of Environmental Quality (NDDEQ), and the United States Environmental Protection Agency (EPA) - Region VIII (collectively, the parties), to establish procedures and policies for administration of the North Dakota Environmental Audits Law (self-audit law). The parties agree to encourage greater compliance with laws and rules protecting public health and the environment by promoting a greater degree of self-policing in the regulated community. This Agreement is a companion document to be read in conjunction with the North Dakota Attorney General's letter opinion of February 5, 2019, for implementation of the self-audit law.

II. BACKGROUND: NORTH DAKOTA STATE AUDIT PROGRAM

North Dakota's self-audit law provides incentives to regulated entities to self-disclose noncompliance with environmental requirements found through environmental audits. N.D. Cent. Code § 32-40.2-01 (2019). The EPA's Audit Policy also provides incentives for self-disclosure of noncompliance. 65 Fed. Reg. 19,618 (Apr. 11, 2000). Generally, neither policy applies if the self-disclosure occurs after a facility is already under investigation for violations of the applicable environmental law.

According to the North Dakota Attorney General's letter opinion of February 5, 2019, regarding North Dakota's self-audit law, the NDDEQ retains the authority to obtain penalties and injunctive relief for violations of federally delegated programs. Specifically, that opinion states that North Dakota's self-audit law does not restrict North Dakota's ability to obtain injunctive relief, civil penalties for significant economic benefit, or criminal penalties. Further, the self-audit law does not apply where there is imminent and substantial harm to human health or the environment, nor does it grant privilege or immunity to "violations required to be reported by federally delegated programs."

North Dakota's self-audit law meets minimum requirements for Federal delegation.

III. APPLICABILITY

Except for the North Dakota Attorney General's letter opinion of February 5, 2019, this document supersedes any prior agreements between EPA and North Dakota regarding implementation of the North Dakota self-audit law, and supersedes EPA penalty policies that would otherwise apply to civil

violations of Federal environmental statutes that North Dakota is authorized to administer where such violations are addressed under North Dakota's self-audit law.

This agreement does not apply to EPA's authorities to investigate and prosecute criminal violations.

IV. AGREEMENT

In no case shall EPA selectively target or investigate North Dakota entities solely on the basis that they have sought penalty immunity under North Dakota's self-audit law.

In any case in which an entity conducts an audit under North Dakota's self-audit law, EPA will not request an environmental audit report to initiate a civil investigation of the entity or the facilities that were the subject of the audit.

Nothing in this memorandum of agreement affects EPA's authority to obtain information from sources other than an audit report. Nor does this agreement preclude EPA's use of such independently obtained information, even if it also is included in an audit report.

EPA will closely communicate with upper management of NDDEQ prior to conducting inspections or using EPA information gathering authorities to evaluate the compliance of North Dakota facilities with federal laws that North Dakota is authorized to implement. If, during such communication, EPA identifies a facility as being of interest to EPA, and such facility has participated in North Dakota's self-audit program, North Dakota shall notify EPA of that fact. Any dispute over whether EPA should undertake inspections or information gathering at a facility that participated in North Dakota's self-audit program shall be elevated to the Regional Administrator and the Director and, if necessary, the OECA Assistant Administrator.

If EPA determines that a facility that participated in North Dakota's self-audit program has violations of federal environmental statutes that North Dakota is authorized to implement that were not disclosed or were disclosed but have not been corrected or are not subject to an enforceable order requiring correction under North Dakota Century Code § 32-40.2-01 (2019), EPA may take an enforcement action after closely communicating with upper level management of NDDEQ. In a circumstance where upper management in the Region and North Dakota do not agree on a matter, the matter shall be elevated first to the Regional Administrator and the Director and, if necessary, to the OECA Assistant Administrator, for a decision.

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Nothing in this memorandum of agreement affects EPA's authority to seek injunctive relief to correct ongoing violations of federal law which are not already being addressed by North Dakota or to address an imminent and substantial endangerment.

North Dakota will develop a methodology to measure any increased participation in and compliance benefits from North Dakota's self-audit program.

V. AGREEMENT MODIFICATION

This Agreement may be modified by the Parties to ensure consistency with state programs and federal requirements for program delegation. Any revisions or modifications to this Agreement must be in writing and signed by all Parties in order to become effective. In the event the North Dakota self-audit law is amended EPA and North Dakota will confer and make any revisions necessary to this MOA.

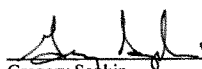
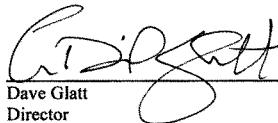
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This Agreement may be terminated at any time by either Party after notice in writing is provided to the counterparty 60 days before the desired termination date. In the event the Agreement is terminated, EPA intends to continue to honor the terms of this MOA for those reporting entities that had final action taken by North Dakota prior to the termination date.

VIII. SIGNATORIES

	10/7/19		10/7/19
Gregory Sopkin	Date	Dave Glatt	Date
Regional Administrator		Director	
U.S. Environmental Protection Agency		North Dakota Department of Environmental	
Region 8		Quality	



MEMORANDUM OF AGREEMENT

between

the State of North Dakota and the United States Environmental Protection Agency

regarding

Self-Audits Conducted Pursuant to State Law

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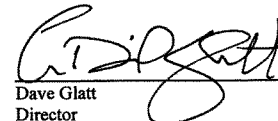
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VIII. SIGNATORIES

	10/7/19		10/7/19
Gregory Sopkin	Date	Dave Glatt	Date
Regional Administrator		Director	
U.S. Environmental Protection Agency		North Dakota Department of Environmental	
Region 8		Quality	

MEMORANDUM OF AGREEMENT
Between the
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 2
and the
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
For the Activities of the
UNDERGROUND STORAGE TANK PROGRAM
and the
LEAKING UNDERGROUND STORAGE TANK PROGRAM

I. GENERAL

A. Background

In 1984, Congress added Subtitle I to the Solid Waste Disposal Act (SWDA), which required the U.S. Environmental Protection Agency (EPA) to develop a comprehensive regulatory program for underground storage tank ("UST") systems storing petroleum or certain hazardous substances to protect the environment and human health from UST releases. EPA promulgated the UST regulations in 1988 (40 CFR Part 280). These regulations set minimum standards for new tanks and required owners and operators of existing tanks to upgrade, replace, or close them. In addition, owners and operators were required to monitor their UST systems for releases using release detection and maintain financial responsibility for petroleum USTs to ensure that they are financially able to pay for any releases that occur. The regulations in 40 CFR Part 280 also included provisions for responding to suspected and confirmed releases from leaking underground storage tanks (LUSTs) which required investigations and cleanups. In 1988, EPA also promulgated regulations for state program approval (40 CFR Part 281). In 2005, the Energy Policy Act further amended Subtitle I of SWDA. The Energy Policy Act requires states that receive Subtitle I funding from EPA to meet certain requirements. Consequently, between 2006 and 2007, EPA published cooperative agreement guidelines for states regarding operator training, inspections, delivery prohibition, secondary containment, financial responsibility for manufacturers and installers, public record and state compliance reports on government UST systems. In 2015 EPA published revisions to the UST regulations in the *Federal Register*. These revisions strengthen the 1988 federal underground storage tank (UST) regulations by increasing emphasis on properly operating and maintaining UST equipment, among other things. The revisions will help prevent and detect UST releases, which are a leading source of groundwater contamination. The revisions also amended the regulations for state program approval in 40 CFR Part 281. This is the first major revision to the federal UST regulations since 1988.

B. Scope

This Memorandum of Agreement (MOA or Agreement), between the EPA and the New York State Department of Environmental Conservation (State or NYSDEC), establishes the respective roles and responsibilities of each agency with regard to the implementation of the federal UST program and the LUST program. This Agreement becomes effective upon the

signatures of the parties hereto and remains in effect unless modified by the mutual consent of both parties, a party withdraws from the Agreement, and/or until EPA approves the State program under Section 9004 of SWDA, 42 USC § 6991c.

This Agreement is entered into by the Commissioner of the NYSDEC and the Regional Administrator, EPA Region 2. Any party to this Agreement may withdraw from this Agreement or initiate renegotiation of the Agreement by providing 60 days written notice to the other party.

Nothing in this MOA shall be construed as altering existing statutory or regulatory authority of the EPA or the NYSDEC. Nothing in this MOA shall be construed to restrict in any way EPA's authority to fulfill its oversight and enforcement responsibilities under Subtitle I of SWDA. Nothing in this MOA shall be construed to contravene any provisions of 40 CFR parts 280 and 281. This MOA does not impose legally binding requirements.

This MOA does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this Agreement, against NYSDEC, EPA, their officials or employees, or any other person. This MOA does not direct or apply to any person outside of NYSDEC and EPA.

C. Purpose

Under the federal UST regulations promulgated in 1988, EPA is identified as the implementing agency in a state until the state has obtained program approval or is designated to act on behalf of EPA pursuant to an MOA. This MOA identifies specific activities that the State and EPA will carry out to implement the federal UST regulations and the LUST program.

EPA program funding may assist the State in implementing certain activities stated in this Agreement. However, nothing in this MOA, in and of itself, obligates EPA to expend appropriations or incur other financial obligations that would be inconsistent with Agency budget priorities. As required by the Antideficiency Act, 31 U.S.C. 1341 and 1342, all commitments made by EPA in this MOA are subject to the availability of appropriated funds.

D. Authority

Sections 2002, 9001, 9002, 9003, 9004, 9005, 9006, 9007, 9009, 9010, and 9012 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6991, 6991(a), 6991(b), 6991(c), 6991(d), 6991(e), 6991(f), 6991(h), 6991(i), and 6991(k). These sections implement the UST/LUST programs, including directing EPA to promulgate requirements for detection, prevention, and correction of underground storage tank releases, and for demonstrating financial responsibility. Section 9003 also provides a procedure by which states may carry out corrective action and enforcement activities for states that enter into a cooperative agreement with the Agency. Under Section 9004, a state may submit its UST program for EPA approval.

The Energy Policy Act requires states that receive SWDA Subtitle I funds from EPA to meet certain requirements. Consequently, between 2006 and 2007, EPA published grant guidelines for states (pursuant to Sections 9002, 9003, 9005, 9010, and 9012) regarding operator training, inspections, delivery prohibition, secondary containment, financial responsibility for manufacturers and installers, public record and state compliance reports on government UST systems.

E. Information Sharing

1. EPA will keep the State informed of the content and meaning of Federal statutes, regulations, guidelines, standards, policy decisions, directives, and any other factors that affect the federal UST or LUST programs. EPA will also provide general technical guidance to the State. EPA will share with the State any national UST or LUST program reports developed by or for EPA. EPA will make available to the State other relevant information, as requested, that the State needs to implement the federal program.
2. The State agrees to inform (in advance wherever possible) EPA of any proposed or adopted State program changes that would affect the State's ability to help implement parts of the federal UST or LUST programs. State program changes of concern include modification of the State's legal authorities (for example, statutes, regulations, and judicial or legislative actions affecting those authorities), modifications of memoranda of agreement or understandings with other agencies, modifications of authorizations of local (county) programs, and modifications of resource levels (for example, available or budgeted personnel and funds). The State will provide, upon request, compliance monitoring and enforcement information to the Regional Administrator or designee. The State agrees to provide EPA, at its request, with copies of reports resulting from any compliance inspection and subsequent enforcement actions. Information will be handled in accordance with the Confidentiality provisions noted in (4) below, as applicable.
3. National Data. EPA maintains certain national data on underground storage tanks. These data are used to report to the President, the Congress, and the public on the achievements of the UST program and to support EPA's regulatory development efforts. Whenever EPA determines that it needs to obtain certain information that involves the UST or LUST programs in New York State, EPA will generally first seek to obtain this information from the State (unless EPA uses its statutory information request authorities). The State agrees to provide the Regional Administrator or designee with this information if readily available and as resources allow. If the State is unable to provide the underground storage tank information or if it is necessary to supplement the State information, EPA will engage in an alternate means of information collection after notifying the State. EPA will share with the State any national reports developed by EPA as a result of such information collection.

4. Confidentiality. The State will make available to EPA upon request any information obtained or used in the State's administration of parts of the federal UST and LUST programs unless restricted as noted below. If the UST owner/operator has submitted the information to the State under a claim of business confidentiality, the State will clearly identify that claim of confidentiality restriction to EPA in writing when providing the information. EPA will not disclose, or otherwise make available to the public any information obtained from the State that is subject to a claim of confidentiality without the State's or the UST owner's/operator's consent unless otherwise required or allowed by law. NYSDEC has informed EPA that certain information has been restricted at the state level in an agreement between NYSDEC and the New York State Division of Homeland Security and Emergency Services and that the State may not be able to share this restricted information with EPA unless arrangements can be made to limit the public availability of this information.

II. IMPLEMENTATION ACTIVITIES

Implementation activities are those tasks that will be conducted by the State or EPA pursuant to this MOA to implement the federal UST and LUST programs. The specific activities assumed by the State will be determined by State priorities and resources, and the status of the State's program development. The specifics of these activities are detailed in the State's LUST-Prevention and LUST-Corrective Action cooperative agreements. The State and EPA agree to assume responsibility for the following activities as specified below.

A. State-lead implementation activities

Assumption by the State of these activities in no way implies that the State program meets the no less stringent or adequate enforcement requirements of the State program approval process. This determination will be made by EPA in response to the State's application for program approval, should the State submit one.

1. 40 CFR part 280

The State will assume, unless otherwise specified in this MOA or as agreed upon in the future, all responsibilities of the implementing agency as written in 40 CFR part 280.

2. Energy Policy Act of 2005

The NYSDEC will:

- a. Ensure that UST inspectors are adequately trained so that each is able to identify and document violations of the State's UST regulations during on-site inspections and review of documents.

- b. Conduct inspections of each federally regulated UST system at least once every three years by the anniversary of the previous three-year inspection.
- c. Bring appropriate enforcement of violations of the State's regulations that mirror federal UST requirements. The State shall refer to EPA all identified violations of federal UST regulations for which it does not have enforcement authority. EPA shall follow up, at its discretion.
- d. Meet the requirements as laid out in EPA grant guidelines issued pursuant to the Energy Policy Act of 2005 including guidelines on UST inspections, secondary containment, operator training, public record and delivery prohibition.
- e. The State will strive to ensure that:
 - (1) All releases from UST systems are promptly reported and assessed and identified releases are stopped;
 - (2) Actions are taken to identify, contain and mitigate any immediate health and safety threats that are posed by a release (such activities include investigation and initiation of removal of free product if present);
 - (3) All releases from UST systems are evaluated to determine if there are impacts on soil and groundwater, and any nearby surface waters. The extent of soil and groundwater contamination must be delineated when a potential threat to human health and the environment exists;
 - (4) All releases from UST systems are cleaned up through soil and groundwater remediation and other steps are taken, as necessary, to protect human health and the environment; and
 - (5) Adequate information is made available to the State to demonstrate that corrective actions are taken in accordance with the requirements of paragraph (e) of this section. This information must be submitted in a timely manner that demonstrates the corrective action's technical adequacy to protect human health and the environment.
- f. In accordance with 40 CFR §280.67, the State must notify the affected public of all confirmed releases requiring a corrective action plan for soil and groundwater remediation, and upon request provide or make available information to inform the interested public of the nature of the release and the corrective measures planned or taken.

B. EPA-lead implementation activities

Unless otherwise stated, EPA-lead implementation activities described in this MOA will be initiated by EPA Region 2.

1. EPA will establish policy for handling any variances allowed in 40 CFR Part 280.
2. Enforcement.

EPA reserves the right to act independently in any SWDA Subtitle I implementation, investigation, and enforcement activity in the State. EPA will undertake enforcement actions as it deems appropriate. These actions may occur as consequences of planned activities (e.g., monitoring compliance with existing system leak detection phase-ins) or random inspections (e.g., site visits).

Prior to conducting UST compliance inspections or initiating enforcement actions within the State, EPA will generally notify the NYSDEC at least 7 days prior, preferably in writing, for the purpose of coordinating federal and State actions as appropriate, except that EPA will not generally provide notice to the State prior to issuing field citations. The NYSDEC reserves the right to act independently under State authority. EPA and the NYSDEC will communicate and coordinate closely on inspections and enforcement, so that each agency will be aware of the other's activities.


III. EPA OVERSIGHT

EPA oversight of the NYSDEC's UST and LUST programs shall consist of the following elements:

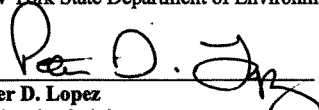
- A. Review of cooperative agreement applications and associated work plans.
- B. Review of semi-annual reports of the State's UST and LUST programs submitted to EPA by the NYSDEC.
- C. Review and evaluation of the State's UST enforcement and LUST remedial action policies.
- D. Review of other submittals required by UST or LUST cooperative agreement work plans.
- E. At least one annual in-person meeting to discuss performance under the open cooperative agreements and this MOA.

IV. SIGNATURES

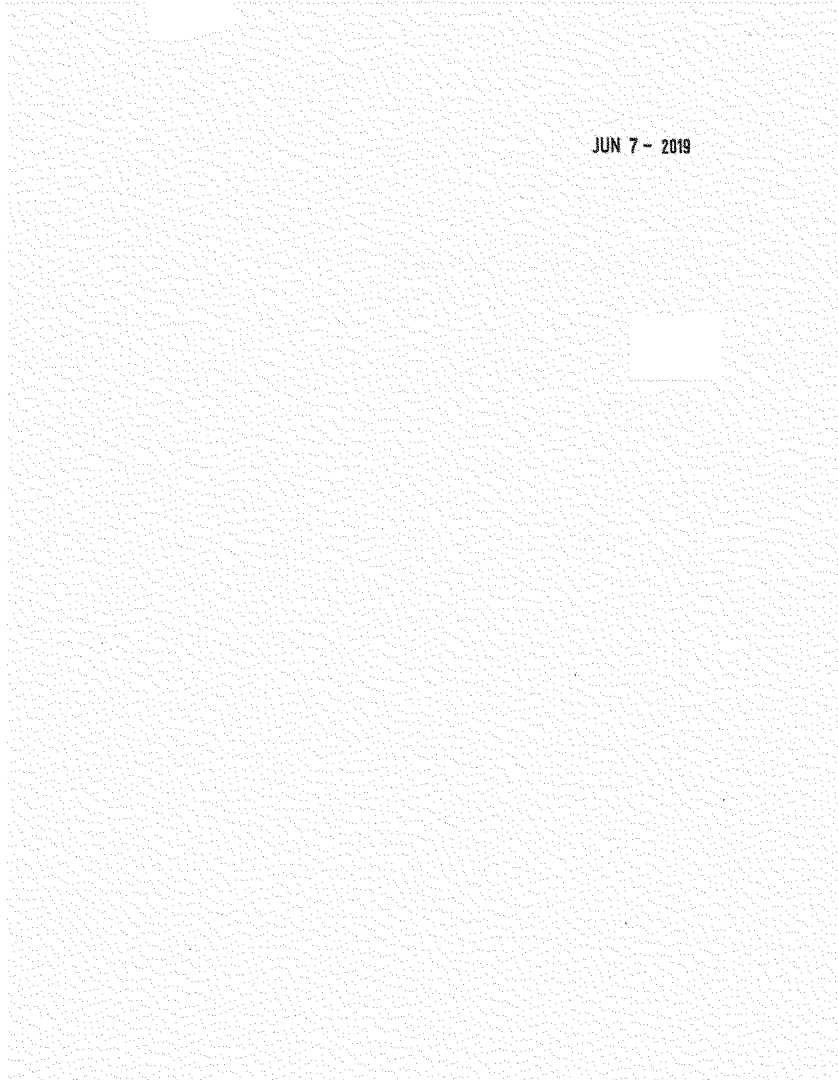
This MOA becomes effective upon execution of the signatures below.

 _____ 6/3/19
Date

Basil Seggos
Commissioner
New York State Department of Environmental Conservation

 _____ 6/10/19
Date

Peter D. Lopez
Regional Administrator
U.S. Environmental Protection Agency
Region 2



MEMORANDUM OF AGREEMENT
BETWEEN
THE PUERTO RICO ENVIRONMENTAL QUALITY BOARD
and
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
UNDERGROUND STORAGE TANKS PROGRAM
and
LEAKING UNDERGROUND STORAGE TANKS PROGRAM

I. BACKGROUND

In 1984, Congress modified the Resource Conservation and Recovery Act, which was an amendment to the Solid Waste Disposal Act (SWDA), to require EPA to develop a comprehensive regulatory program for underground storage tank ("UST") systems storing petroleum or certain hazardous substances to protect the environment and human health from UST releases. EPA promulgated the UST regulations in 1988 (40 CFR Part 280). These regulations set minimum standards for new tanks and required owners and operators of existing tanks to upgrade, replace, or close them. Among other obligations, owners and operators were required to monitor their UST systems for releases using release detection, and to maintain financial responsibility for petroleum USTs to ensure that they are financially able to pay for any releases that occur. In 1988, EPA also promulgated regulations for state program approval (40 CFR Part 281). In 2005, the Energy Policy Act further amended Subtitle I of SWDA. The Energy Policy Act requires states that receive Subtitle I funding from EPA to meet certain requirements. Consequently, between 2006 and 2007, EPA published grant guidelines for states regarding operator training, inspections, delivery prohibition, secondary containment, financial responsibility for manufacturers and installers, public record and state compliance reports on government UST systems. In 2015 EPA published Revisions to the UST regulations in the *Federal Register*. These revisions strengthen the 1988 federal underground storage tank (UST) regulations by increasing the emphasis on properly operating and maintaining UST equipment, among other things. The revisions will help prevent and detect UST releases, which are a leading source of groundwater contamination. The revisions also amended the regulations for state program approval in 40 CFR Part 281. This was the first major revision to the federal UST regulations since 1988.

EPA granted the Commonwealth of Puerto Rico State Program Approval ("SPA") effective March 31, 1998. However statutory changes made by the Energy Policy Act necessitate that all states which want to receive LUST Trust funds update their UST regulations and re-apply for SPA. A revision of the approved state programs is also being required by EPA pursuant to 40 CFR Part 281 so that state programs reflect the revised federal UST regulations.

1. Although technically Puerto Rico is a Commonwealth, the UST and LUST programs in Puerto Rico are administered as though it were a state.

II. AUTHORITIES AND PURPOSE

This Memorandum of Agreement (hereinafter "Agreement") establishes policies, responsibilities, and procedures pursuant to 40 CFR Part 281 for implementation of the Commonwealth of Puerto Rico's revised Underground Storage Tank Program (hereinafter "State Program" or "Commonwealth Program") being approved under Section 9004 of the Solid Waste Disposal Act as amended by various statutes, including most notably the Resource Conservation and Recovery Act (hereinafter such statutory authorities shall collectively be referred to as "RCRA" or "the Act"), 42 U.S.C. §6901 et seq.), This Agreement further sets forth the manner in which Puerto Rico and EPA will coordinate in the Commonwealth's administration of the Commonwealth's Program.

This Agreement is entered into by the Secretary of the Puerto Rico Environmental Quality Board (EQB, aka Junta de Calidad Ambiental (JCA) (hereinafter "the State" or "the Commonwealth")¹ and the Regional Administrator, EPA Region 2 (hereinafter "Regional Administrator" or "EPA"). Nothing in this Agreement shall be construed to contravene any provision of 40 CFR Parts 280 and 281.

The parties expect to review the Agreement jointly from time to time, possibly as often as once a year. This Agreement may be modified upon the initiative of either party in order to ensure consistency with Commonwealth program modifications or for other reasons. Any revisions or modifications must be in writing and must be signed by a senior official for the Commonwealth and by the Regional Administrator or assignee.

This Agreement with any subsequent modifications will remain in effect until such time as State Program Approval is withdrawn by EPA or responsibility for the UST program is voluntarily transferred to EPA according to the criteria and procedures established in 40 CFR Part 281.60 and 281.61. This Agreement shall apply to any successor agency to the Puerto Rico Environmental Quality Board.

III. POLICY

Each of the parties to this Agreement is responsible for ensuring that its obligations under Subtitle I of RCRA are met. Upon final approval by EPA in 1998, the Commonwealth assumed primary responsibility for implementing the Subtitle I Underground Storage Tank Program within its boundaries. EPA retains its responsibility to ensure full and faithful execution of the requirements of Subtitle I of RCRA, including direct implementation in the event the Commonwealth is unwilling or unable to act. The Secretary of EQB and the Regional Administrator agree to maintain a high level of cooperation and coordination between their respective staffs in a partnership to assure successful and effective administration of the Commonwealth program. In particular, the Commonwealth and EPA acknowledge that the Energy Policy Act of 2005 added additional requirements for the Commonwealth's receiving funding from EPA.

EPA will review the Commonwealth's program in order to evaluate its implementation by the Commonwealth, to assist the Commonwealth in implementing its program; to allow EPA to report to the President, the Congress, and the public on the achievements of the underground storage tank program; and to encourage the Commonwealth and EPA to agree on desirable technical support and targets for joint efforts to prevent and mitigate environmental problems associated with improper management of underground storage tanks. EPA oversight will be accomplished through written reporting requirements, compliance and enforcement overview, annual review of the Commonwealth's program, and compilation and review of other relevant information.

IV. COMMONWEALTH PROGRAM REVIEW

The Regional Administrator or assignee (such term to include EPA employees working on issues related to the UST and LUST programs) will assess the Commonwealth's administration and enforcement of its underground storage tank program on a continuing basis for consistency with Subtitle I requirements, with this Agreement, and with all applicable Federal requirements and policies, and for adequacy of enforcement. This assessment will be accomplished by EPA review of information submitted by the Commonwealth in accordance with this Agreement and an annual review of Commonwealth program activities. The Regional Administrator or assignees may also consider, as part of this regular assessment, written comments about the Commonwealth's program administration and enforcement that are received from regulated persons, the public, and Federal, Commonwealth, and local agencies. Copies of any such comments received by the Regional Administrator or assignees will normally be forwarded to the Commonwealth upon receipt by the EPA.

To ensure effective Commonwealth program review, the Commonwealth agrees to allow EPA access to all files and other information requested by the Regional Administrator or assignees and deemed necessary for reviewing Commonwealth program administration and enforcement.

Review of Commonwealth files may be scheduled as needed. Commonwealth program review meetings or calls between the Commonwealth and the Regional Administrator or assignees will be scheduled at reasonable intervals, not less than annually, to review specific operating procedures and schedules, to resolve problems and to discuss mutual program concerns. These meetings/calls will be scheduled at least 14 days in advance unless agreed to differently. A tentative agenda for the discussion will be prepared by EPA.

IV. INFORMATION SHARING

A. General

As the respective information needs of the Commonwealth and EPA evolve, changes to this section of the Agreement may be appropriate. During reviews of this agreement, the Commonwealth and Regional Administrator or assignees will carefully examine the following information sharing provisions for any necessary revisions.

B. EPA

1. EPA will keep the Commonwealth informed of the content and meaning of Federal statutes, regulations, guidelines, standards, policy decisions, directives, training opportunities, and any other factors that affect the Commonwealth program. EPA will also provide general technical guidance to the Commonwealth. EPA will share with the Commonwealth any national reports developed by EPA from the data submitted through Commonwealth's reporting requirements.
2. EPA will make available to the Commonwealth other relevant information, as requested, that the Commonwealth needs to implement its approved program.

C. Commonwealth

1. The Commonwealth agrees to inform the Region of any proposed or adopted program changes (in advance wherever possible) that would affect the Commonwealth's ability to implement the approved program. Commonwealth program changes of concern include modification of the Commonwealth's legal authorities (for example, statutes, regulations, and judicial or legislative actions affecting those authorities), modifications of memoranda of agreement or understanding with other agencies, and modifications of resource levels (for example, available or budgeted personnel and funds). The Commonwealth recognizes that Commonwealth program revisions must be made in accordance with the provisions of 40 CFR Part 281.
2. The Commonwealth will provide compliance monitoring and enforcement information to the Regional Administrator or assignee. The Commonwealth agrees to provide EPA, at its request, with copies of enforcement documents, reports or data resulting from any compliance inspection and/or subsequent enforcement actions.

D. National Data

EPA maintains certain national data on underground storage tanks. The data are used to report to the President, the Congress, and the public on the achievements of the underground storage tank program and to support EPA's regulatory development efforts. Whenever EPA determines that it needs to obtain certain information, EPA will first seek to obtain this information from the Commonwealth. The Commonwealth agrees to provide the Regional Administrator or assignee with this information if readily available and as resources allow. If the Commonwealth is unable to provide the underground storage tank information or if it is necessary to supplement the Commonwealth information, EPA may perform information collection including site visits after notifying the Commonwealth. EPA will share with the Commonwealth any national reports developed by EPA as a result of such information collection.

E. Confidentiality

The Commonwealth will make available to EPA upon request any information obtained or used in the administration of the Commonwealth program without restriction. If the UST owner/operator has submitted the information to the Commonwealth under a claim of business confidentiality, the Commonwealth will clearly identify that claim of confidentiality to EPA in writing when providing the information. EPA will handle the information in accordance with 40 CFR Part 22 and will not disclose, copy, reproduce or otherwise make available to anyone any information obtained from the Commonwealth that is subject to a claim of confidentiality without the UST owner's/operator's consent, unless otherwise required or allowed by law. If information is submitted to EPA under a claim of confidentiality, EPA may share such information with the Commonwealth to the extent allowed under the provisions of 40 CFR Part 2, including 40 C.F.R. § 2.305(h)(3).

V. COMPLIANCE MONITORING AND ENFORCEMENT

A. EPA

Nothing in this agreement shall restrict EPA's right to inspect or gather information from any federally regulated underground storage tank facility or bring enforcement action against any person believed to be in violation of the approved Commonwealth underground storage tank program. Before conducting an inspection of USTs at a facility, the Regional Administrator or assignee will normally give the Commonwealth at least 7 days' notice of EPA's intent to inspect. The Regional Administrator or assignee and Commonwealth may agree on a longer period of time in order to allow the Commonwealth the opportunity to conduct the inspection. If the Commonwealth performs a compliance inspection and submits a report and relevant data thereto within the time agreed upon by EPA and EQB, no EPA inspection will normally be performed, unless the Regional Administrator or assignee deems the Commonwealth report and data to be inadequate. In case of an imminent hazard to human health or the environment, the Regional Administrator or assignee may shorten or waive the notice period.

The Regional Administrator or assignee may take enforcement action against any person determined to be in violation of Subtitle I of RCRA in accordance with section 9006. EPA also retains its right to issue orders and bring actions under Sections 7003 or 9003(h) of RCRA and any other applicable Federal statute. With regard to Federal enforcement, it is EPA's policy not to take such action where the Commonwealth has taken timely and appropriate enforcement action. Before issuing a complaint or compliance order under Section 9006, EPA will give notice to the Commonwealth.

B. Commonwealth

The Commonwealth agrees to maintain a staffing level, including adequate technical support and legal personnel, capable of implementing an effective UST program and to conduct program development activities designed to improve the Commonwealth's program for monitoring the compliance by owners and operators of federally regulated UST facilities with applicable Commonwealth program requirements. EQB will maintain a separate account dedicated to

allocate revenues from permits, penalties and other fees for the administration of the UST and LUST Programs. The Commonwealth specifically agrees to assign a complement of attorneys from the EQB to assist in the timely and effective administration of the regulatory enforcement process. As part of the Commonwealth's enforcement program, the Commonwealth will conduct compliance inspections and use other mechanisms to assess compliance with UST regulations, compliance schedules, and all other Commonwealth program requirements. The Commonwealth agrees to develop an appropriate enforcement response against all persons in violation of UST regulations (including notification requirements), compliance schedules, and all other Commonwealth program requirements, including violations detected by Commonwealth compliance inspections and record reviews. The Commonwealth will maintain procedures for receiving and ensuring proper consideration of information about violations submitted by the public, and the Commonwealth will provide for public participation in its enforcement process through one of the options set out in 40 CFR 281.42. The Commonwealth agrees to retain all UST compliance and enforcement records for at least 3 years unless there is an enforcement action planned or pending. In that case, all records will be retained until two years after such action is resolved.

The EQB (or any successor agency) will:

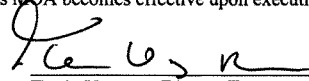
- a. Ensure that UST inspectors are adequately trained so that each is able to identify and document violations of the Commonwealth's UST regulations during on-site inspections and review of documents.
- b. Conduct inspections of each federally regulated UST system at least once every three years by the anniversary of the previous three-year inspection.
- c. Enforce violations of UST Regulations.
- d. Meet applicable requirements as specified in EPA grant guidelines on the Energy Policy Act of 2005 such as those regarding secondary containment, operator training, public record and delivery prohibition. (<http://www2.epa.gov/ust/energy-policy-act-2005-and-underground-storage-tanks-usts#grant>)
- e. The Commonwealth will use its best efforts to ensure that:
 - (1) All releases from UST systems are promptly assessed and further releases are stopped;
 - (2) Actions are taken to identify, contain and mitigate any immediate health and safety threats that are posed by a release (such activities include investigation and initiation of free product removal, if present);
 - (3) All releases from UST systems are investigated to determine if there are impacts on soil and groundwater, and any nearby surface waters. The extent of soil and groundwater contamination must be delineated when a potential threat to human health and the environment, including vapor intrusion into structures, exists.

- (4) All releases from UST systems are cleaned up through soil and groundwater remediation and any other steps are taken, as necessary to protect human health and the environment;
- (5) Adequate information is made available to the Commonwealth to demonstrate that corrective actions are taken in accordance with the requirements of paragraphs (1) through (4) of this section. This information must be submitted in a timely manner that demonstrates the corrective action's technical adequacy to protect human health and the environment.
- f. In accordance with §280.67, the Commonwealth must notify the affected public of all confirmed releases requiring a plan for soil and groundwater remediation, and upon request provide or make available information to inform the interested public of the nature of the release and the corrective measures planned or taken.

VI. BENEFICIARIES OF THIS AGREEMENT/ SIGNATURES

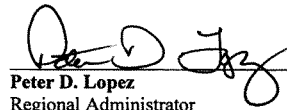
The terms set forth in this Agreement are intended solely for the purpose of memorializing the parties' understanding of their respective roles and commitments in the administration of the Commonwealth of Puerto Rico's Underground Storage Tank Program. They are not intended, and are not to be relied upon, to create any rights, substantive or procedural, enforceable at law or in equity, by any other party against the Commonwealth, EPA, and their officials or employees. The parties reserve the right to modify this agreement in accordance with its terms without public notice. This Agreement does not replace existing laws or regulations and does not apply to any person other than the Commonwealth or EPA and their agents.

This MOA becomes effective upon execution of the signatures below.



Tania Vazquez Rivera, Esq.
Secretary
Puerto Rico Environmental Quality Board

MAR 20 2019
Date



Peter D. Lopez
Regional Administrator
U.S. Environmental Protection Agency
Region 2

APR - 3 2019
Date

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE
UNITED STATES
ENVIRONMENTAL
PROTECTION AGENCY,
REGION 4
AND
THE
STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT**

I. PURPOSE/OBJECTIVES/GOALS:

The purpose of this Memorandum of Understanding (MOU) is to establish cooperation and coordination between the United States Environmental Protection Agency, Region 4 (the EPA) and the state of Florida Division of Emergency Management (DEM), for identifying and coordinating compliance monitoring, compliance assistance and Supplemental Environmental Project (SEP) participation pursuant to the Emergency Planning and Community Right to Know Act of 1986 ("EPCRA"), also known as Title III of the Superfund Amendments and Reauthorization Act of 1986 ("SARA Title III), the EPA Supplemental Environmental Projects Policy Update, effective March 10, 2015, and Florida Executive Orders 94-138 and 05-122.

The DEM enjoys a positive working relationship with the EPA and EPCRA regulated industries within the state of Florida. The DEM has worked extremely hard to foster these partnerships, and the MOU is intended to further strengthen these relationships by maximizing the cooperation and collaboration in the areas of Compliance Monitoring, Compliance Assistance, and SEPs.

II. BACKGROUND:

This MOU sets forth activities to be carried out by the EPA and DEM in furtherance of objectives of this MOU.

WHEREAS, EPCRA requires certain reporting by facility owners/operators to the Florida State Emergency Response Commission (SERC) and Local Emergency Planning Committee (LEPC); and

WHEREAS, the need exists for sharing certain information between the EPA and DEM, and coordination of compliance, and outreach activities.

THEREFORE, it is hereby agreed between the EPA and DEM as follows:

III. ACTIVITIES:**1. ACTIVITIES TO BE CONDUCTED BY EPA REGION 4**

- A. Maintain the lead on compliance inspections pertaining to EPCRA Sections 312 and 313. The EPA, as a courtesy and to the extent practicable, may notify the DEM in advance of conducting EPCRA inspections. To the extent practicable, and resources permitting, the EPA may prioritize requests from the DEM for conducting EPCRA compliance inspections and compliance assistance.
- B. Upon request from the DEM, the EPA may to the extent practicable and as allowed by applicable law and more particularly as discussed in Section 3(B) below, share information concerning alleged EPCRA violations that are uncovered during EPCRA compliance assistance visits at facilities in Florida.
- C. In accordance with the EPA's final Enforcement Response Policy and SEP policy, and in appropriate cases as determined by and within its discretion, the EPA may consider the inclusion of SEPs in settlement agreements involving facilities in Florida. The EPA recognizes the benefits SEPs may provide to the state of Florida, as well as to industries, citizens and businesses of the impacted community.

2. ACTIVITIES TO BE CONDUCTED BY THE DEM

- A. Assist the EPA with targeting EPCRA regulated facilities that are non-compliers in the state of Florida for compliance monitoring and enforcement, and compliance assistance by the EPA.
- B. Accompany the EPA during compliance assistance visits to EPCRA regulated facilities in the state of Florida. Notify the EPA of all non-compliant facilities based on information generated by Florida's annual fee system and from relevant SERC and LEPC records. Make available to the EPA any evidence of CERCLA 103 and EPCRA Section 304, 312, and 313 violations uncovered during normal record-keeping activities.
- C. Cooperate, to the extent necessary and permitted by law, in any EPCRA initiatives, specifically those involving EPCRA Sections 302, 303, 304, 311, 312 and 313.

3. MISCELLANEOUS

- A. The parties agree that the costs of all services will be borne by the party providing such.
- B. Any confidential information the parties may decide to share, shall be provided or disclosed only in accordance with the requirements of the Freedom of Information Act (FOIA), 40 C.F.R. Part 2, and Chapters 119 and 286 of the Florida Statutes. The parties understand and agree that either or both parties may be precluded from sharing certain information due to restrictions or requirements of applicable federal and state laws pertaining to confidentiality of information.
- C. This MOU is not a delegation of authority under EPCRA.
- D. For the purposes of this MOU, each agency agrees to establish a single point of contact. Each agency shall provide written notice of its established point of contact to the other agency within 20 days after this MOU becomes effective.
- E. This MOU may be terminated by either party by providing written notice at least 30 days prior to the termination date, or by mutual written agreement, and is automatically terminated upon the enactment of a law that is in conflict with this agreement.
- F. This MOU shall become effective upon the date of last signing by the parties' representatives; and shall expire five years thereafter. The parties agree to meet at least 30 days prior to the expiration date to discuss the MOU and any concerns related to its implementation, and to determine if the MOU should be renewed, amended, or terminated.
- G. The contact persons designated by the parties to this MOU agree to communicate informally on a regular basis, but at least once a month, to discuss problems or concerns that may arise during the duration of this MOU. Any modifications to this MOU shall only become valid when reduced to writing, signed by both parties, and attached to this MOU.
- H. Nothing in this MOU shall be construed to impose liability on the EPA or the State of Florida. Nothing in this MOU may be interpreted as a waiver of state sovereign immunity. Any provision of this MOU that is inconsistent with the State's sovereign immunity statutes shall be considered null and void.
- I. Neither party to this MOU has the authority to act on behalf of the other party. Parties to this MOU have no authority to bind the other party to any obligation, including compliance inspections, compliance assistance, enforcement and SEPs.

- J. This MOU is not intended to be enforceable in any court of law or dispute resolution forum. This MOU does not create any rights or benefits, substantive or procedural, enforceable by law or equity, by persons who are not party to this MOU, against the EPA or the DEM, their officers or employees, or any other person.
- K. This MOU does not direct or apply to any person outside of the EPA and the DEM. No person or entity not a party to this MOU can rely on this MOU to grant any rights or authority not granted by applicable state or federal law. The sole remedy for non-performance under this MOU shall be termination of the MOU, as expressed above.

AGREED TO:

U.S. Environmental Protection Agency
Region 4:

By: *Suzanne Rubini* Date: 7/21/2019

Suzanne G. Rubini,
Acting Director
Enforcement and Compliance
Assurance Division

State of Florida Division of
Emergency Management:

By: *Jared E. Moskowitz* Date: 7/2/19

Jared E. Moskowitz,
Director
Division of Emergency Management

MEMORANDUM OF AGREEMENT
Between the
U.S. ENVIRONMENTAL PROTECTION AGENCY
and the
VIRGIN ISLANDS DEPARTMENT OF PLANNING AND NATURAL RESOURCES
For the Activities of the
UNDERGROUND STORAGE TANK PROGRAM
and the
LEAKING UNDERGROUND STORAGE TANK PROGRAM

I. GENERAL

A. Background

In 1984, Congress added Subtitle I to the Solid Waste Disposal Act (SWDA), which required the U.S. Environmental Protection Agency (EPA) to develop a comprehensive regulatory program for Underground Storage Tank (UST) systems storing petroleum or certain hazardous substances to protect the environment and human health from UST releases. EPA promulgated the UST regulations in 1988 (40 CFR Part 280). These regulations set minimum standards for new tanks and required owners and operators of existing tanks to upgrade, replace, or close them. In addition, owners and operators were required to monitor their UST systems for releases using release detection, and maintain financial responsibility for petroleum USTs to ensure that they are financially able to pay for any releases that occur. The regulations in 40 CFR Part 280 also included provisions for responding to suspected and confirmed releases from leaking underground storage tanks (LUSTs) which required investigations and cleanups. In 1988, EPA also promulgated regulations for state program approval (40 CFR Part 281). In 2005, the Energy Policy Act further amended Subtitle I of SWDA. The Energy Policy Act requires states that receive Subtitle I funding from EPA to meet certain requirements. Consequently, between 2006 and 2007, EPA published cooperative agreement guidelines for states regarding operator training, inspections, delivery prohibition, secondary containment, financial responsibility for manufacturers and installers, public record and state compliance reports on government UST systems. In 2015 EPA published revisions to the UST regulations in the *Federal Register*. These revisions strengthen the 1988 federal underground storage tank (UST) regulations by increasing emphasis on properly operating and maintaining UST equipment, among other things. The revisions will help prevent and detect UST releases, which are a leading source of groundwater contamination. The revisions also amended the regulations for state program approval in 40 CFR Part 281. This is the first major revision to the federal UST regulations since 1988.

B. Scope

This Memorandum of Agreement (MOA or Agreement), between the EPA and the Virgin Islands Department of Planning and Natural Resources (Territory or VIDPNR), establishes the respective roles and responsibilities of each agency with regard to the implementation of

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the federal underground storage tank (UST) program and the leaking underground storage tank (LUST) program. This Agreement becomes effective upon the date of the last signature of the parties hereto and remains in effect unless modified by the mutual consent of both parties, a party withdraws from the Agreement, and/or EPA approves the state program under Section 9004 of SWDA, 42 USC § 6991c.

This Agreement is entered into by the Commissioner of the Virgin Islands Department of Property and Procurement on behalf of the VIDPNR, subject to the approval of the Governor of the Virgin Islands, and the Regional Administrator, EPA Region 2. Any party to this Agreement may withdraw from this Agreement or initiate renegotiation of the Agreement by providing 60 days written notice to the other party.

Nothing in this MOA shall be construed as surrendering existing statutory or regulatory authority of the EPA or the VIDPNR. Nothing in this MOA shall be construed to restrict in any way EPA's authority to fulfill its oversight and enforcement responsibilities under Subtitle I of SWDA. Nothing in this MOA shall be construed to contravene any provisions of 40 CFR parts 280 and 281. This MOA does not impose legally binding requirements.

This MOA does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this Agreement, against VIDPNR or EPA, their officials or employees, or any other person. This MOA does not direct or apply to any person outside of VIDPNR and EPA.

C. Purpose

Under the federal UST regulations promulgated in 1988, EPA is identified as the implementing agency in a state until the state has obtained program approval or the state is designated to act on behalf of EPA pursuant to an MOA. This MOA identifies specific activities that VIDPNR and EPA will carry out to implement the federal UST regulations and the LUST program in the U.S. Virgin Islands.

EPA program funding may assist the Territory in implementing certain activities stated in this Agreement. However, nothing in this MOA, in and of itself, obligates EPA to expend appropriations or incur other financial obligations that would be inconsistent with Agency budget priorities. As required by the Antideficiency Act, 31 USC 1341 and 1342, all commitments made by EPA in this MOA are subject to the availability of appropriated funds. All commitments made by VIDPNR in this MOA are subject to the availability of and appropriation of funds.

D. Authority

Sections 2002, 9001, 9002, 9003, 9004, 9005, 9006, 9007, 9009, 9010, and 9012 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6991, 6991(a), 6991(b), 6991(c), 6991(d), 6991(e), 6991(f), 6991(h), 6991(i), and 6991(k). These sections implement the UST/LUST programs, including directing EPA to promulgate requirements for detection, prevention, and correction of underground storage tank releases, and for demonstrating financial

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responsibility. Section 9003 also provides a procedure by which the state may carry out corrective action and enforcement activities for states that enter into a cooperative agreement with the EPA. Under Section 9004, a state may submit its UST program for EPA approval.

The Energy Policy Act requires states that receive Resource Conservation and Recovery Act (RCRA) Subtitle I funds from EPA to meet certain requirements. Consequently, between 2006 and 2007, EPA published grant guidelines for states (pursuant to Sections 9002, 9003, 9005, 9010, and 9012) regarding operator training, inspections, delivery prohibition, secondary containment, financial responsibility for manufacturers and installers, public record and state compliance reports on government UST systems.

E. Information Sharing

1. EPA will keep VIDPNR informed of the content and meaning of Federal statutes, regulations, guidelines, standards, policy decisions, directives, and any other factors that affect the federal UST or LUST programs. EPA will also provide general technical guidance to VIDPNR. EPA will share with VIDPNR any national UST or LUST program reports developed by EPA. EPA will make available to VIDPNR other relevant information, as requested, that VIDPNR needs to implement the federal program.
2. VIDPNR agrees to inform the EPA of any proposed or adopted territorial program changes that would affect the Territory's ability to help implement parts of the federal UST or LUST programs. Territorial program changes of concern include modification of the Territory's legal authorities (for example, statutes, regulations, and judicial or legislative actions affecting those authorities), modifications of memoranda of agreement or understanding with other agencies, and modifications of resource levels (for example, available or budgeted personnel and funds). VIDPNR will provide compliance monitoring and enforcement information to the Regional Administrator or designee. VIDPNR agrees to provide EPA, at its request, with copies of reports resulting from any compliance inspection and subsequent enforcement actions.
3. National Data. EPA maintains certain national data on underground storage tanks. These data are used to report to the President, the Congress, and the public on the achievements of the underground storage tank program and to support EPA's regulatory development efforts. Whenever EPA determines that it needs to obtain certain information that involves the UST or LUST programs in the U.S. Virgin Islands, EPA will generally first seek to obtain this information from VIDPNR (there may be times when, to build an enforcement case against an owner or operator of USTs for violations of the federal regulations, EPA will use its statutory information request authorities to request the information). VIDPNR agrees to provide the Regional Administrator or delegate with this information if readily available and as resources allow. If VIDPNR is unable to provide the underground storage tank information or if it is necessary to supplement the territorial information, EPA will engage in an alternate means of information

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collection after notifying VIDPNR. EPA will share with VIDPNR any national reports developed by EPA as a result of such information collection.

- 4. Confidentiality. VIDPNR will make available to EPA upon request any information obtained or used in VIDPNR's administration of the federal UST and LUST programs without restriction unless the transfer of information is precluded by Territorial law. If the UST owner/operator has submitted the information to VIDPNR under a claim of business confidentiality, VIDPNR will clearly identify that claim of confidentiality to EPA in writing when providing the information. EPA will not disclose, copy, reproduce or otherwise make available to the public any information obtained from VIDPNR that is subject to a claim of confidentiality without the UST owner's/operator's consent, unless otherwise required or allowed by law.

II. IMPLEMENTATION ACTIVITIES

Implementation activities are those tasks that will be conducted by VIDPNR or EPA pursuant to this MOA to implement the federal UST and LUST programs. The specific activities assumed by VIDPNR will be determined by territorial priorities and resources, and the status of the Territory's program development. The specifics of these activities are detailed in the VIDPNR's LUST-Prevention and LUST-Corrective Action cooperative agreements. VIDPNR and EPA agree to assume responsibility for the following activities as specified below.

A. Territory-lead implementation activities

Assumption by the Territory of these activities in no way implies that the Territory's program meets the no less stringent or adequate enforcement requirements of the state program approval process. This determination will be made by EPA in response to the Territory's application for program approval, should the Territory submit one.

- 1. 40 CFR part 280

VIDPNR will assume, unless otherwise specified, all responsibilities of the implementing agency as written in 40 CFR part 280.

- 2. Energy Policy Act of 2005

VIDPNR will:

- a. Ensure that UST inspectors are adequately trained so that each are able to identify and document violations of the Territory's UST regulations during on-site inspections and review of documents.

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- b. Conduct inspections of each federally regulated UST system at least once every three years by the anniversary of the previous three-year inspection.
- c. Enforce violations of the Territory's promulgated UST Regulations. VIDPNR shall refer all identified violations of federal UST regulations for which it does not have enforcement authority to the Region, which shall appropriately follow up, at its discretion.
- d. Meet the requirements as laid out in EPA grant guidelines issued pursuant to the Energy Policy Act of 2005, including guidelines on UST inspections, secondary containment, operator training, public record and delivery prohibition.
- e. VIDPNR will strive to ensure that:
 - (1) All releases from UST systems are promptly reported and assessed, and further releases are stopped;
 - (2) Actions are taken to identify, contain and mitigate any immediate health and safety threats that are posed by a release (such activities include investigation and initiation of free product removal, if present);
 - (3) All releases from UST systems are investigated to determine if there are impacts on soil and groundwater, and any nearby surface waters. The extent of soil and groundwater contamination must be delineated when a potential threat to human health and the environment exists.
 - (4) All releases from UST systems are cleaned up through soil and groundwater remediation and any other steps are taken, as necessary to protect human health and the environment;
 - (5) Adequate information is made available to VIDPNR to demonstrate that corrective actions are taken in accordance with the requirements of paragraph (e) of this section. This information must be submitted in a timely manner that demonstrates the corrective action's technical adequacy to protect human health and the environment.
- f. In accordance with 40 CFR §280.67, VIDPNR must notify the affected public of all confirmed releases requiring a plan for soil and groundwater remediation, and upon request provide or make available information to inform the interested public of the nature of the release and the corrective measures planned or taken.

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B. EPA-lead implementation activities

Unless otherwise stated, EPA-lead implementation activities described in this MOA will be initiated by EPA Region 2.

1. EPA will establish policy for handling variances allowed in 40 CFR Part 280.
2. Enforcement

EPA and VIDPNR will communicate and coordinate closely on enforcement, so that each agency will be aware of the other's enforcement activities. Generally, EPA will defer to VIDPNR's enforcement authority when VIDPNR has taken appropriate enforcement action. Prior to conducting UST compliance inspections or initiating enforcement actions within the Territory, EPA will generally notify the VIDPNR at least 7 days prior, verbally or in writing, for the purpose of coordinating federal and territorial actions, except that EPA will not generally provide notice to VIDPNR prior to issuing field citations.

VIDPNR reserves the right to act independently under territorial authority.

EPA reserves the right to act independently in any SWDA Subtitle I implementation and enforcement activity in the Territory. EPA will undertake enforcement actions as it deems appropriate. These actions may occur as consequences of planned activities (e.g., monitoring compliance with existing system leak detection phase-ins) or random inspections (e.g., site visits).

III. EPA OVERSIGHT

EPA oversight of the VIDPNR's UST and LUST programs shall consist of the following elements:

- A. Review of cooperative agreement applications and workplans contained therein;
- B. Review of semi-annual reports of the Territory's UST and LUST programs to be submitted to EPA by the VIDPNR;
- C. Review and evaluation of VIDPNR's UST enforcement and LUST remedial action policies;
- D. Review of other submittals required by UST or LUST cooperative agreement workplans;
- E. At least one annual on-site meeting to discuss performance under the open cooperative agreements and this MOA.

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IV. VIDPNR – U.S. EPA UST/LUST Memorandum of Agreement (MOA)

SIGNATURES

This MOA becomes effective upon execution of the signatures below.

Peter D. Lopez 9/3/19
Date

Peter D. Lopez
Regional Administrator
U.S. Environmental Protection Agency
Region 2

Jean-Pierre L. Oriol 16 Aug 2019
Date

Jean-Pierre L. Oriol
Commissioner
Virgin Islands Department of Planning and Natural Resources

Anthony D. Thomas 9/29/19
Date

Anthony D. Thomas
Commissioner
Virgin Islands Department of Property and Procurement

APPROVED:

Honorable Albert Bryan Jr. 9/26/19
Date

Honorable Albert Bryan Jr.
Governor
Virgin Islands Department of Planning and Natural Resources

APPROVED AS TO LEGAL SUFFICIENCY

Virgin Islands Department of Justice by:

Carl G. McDonald, Esq. 9/19/19
Date

CERTIFICATE OF APPROVAL

I hereby certify that this is a true and exact copy of MOU No. _____ entered into between the Virgin Islands Department of Planning and Natural Resources and the Department of Property and Procurement, and the United States Environmental Protection Agency.

Anthony D. Thomas
Commissioner
Virgin Islands Department of Property and Procurement

at
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Senate Committee on Environment and Public Works
Hearing entitled, "Hearing on Nominations"
March 11, 2020
Questions for the Record for Mr. Benevento

Ranking Member Carper:

1. When you led the Colorado Department of Public Health, you included environmentally beneficial projects -- known as supplemental environmental projects (SEPs) -- in enforcement settlements. For example, you oversaw two water quality enhancement projects involving the City of Colorado Springs, and you even issued a statewide policy in 2003 to encourage SEPs. At the federal level, SEPs have been supported by administrations of both parties in nearly 3,000 cases over the past 30 years.

Do you, as a matter of policy, support including SEPs in both administrative and judicial cases, and with state and local defendants, and will you encourage their use if confirmed?

I appreciate that Supplemental Environmental Projects (SEPs) have reduced emissions or exposures in communities impacted by environmental violations. However, in a memorandum dated March 12, 2020, Jeffrey Bossert Clark, Assistant Attorney General for the U.S. Department of Justice's Environment and Natural Resources Division, announced a new policy prohibiting the inclusion of SEPs in civil judicial consent decrees and settlement agreements, on the basis that SEPs violate the Miscellaneous Receipts Act (MRA), which requires that penalties be deposited in the U.S. Treasury and not diverted for other purposes.

In light of DOJ's new memorandum, EPA will no longer include SEPs in settlement agreements, with the exception of diesel emission reduction SEPs, which were specifically authorized by Congress. The new DOJ memorandum also does not preclude a settlement that includes a state only SEP, in cases involving state co-plaintiffs. Such SEPs do not implicate the MRA.

2. During your confirmation hearing on March 11, 2020, you touted the benefits of an October 2018 Memoranda of Agreement (MOA) with the State of Wyoming¹ that you signed as Regional Administrator to promote the use of the state's self-audit law, and you described how the MOA can serve as a model for other states. Although you correctly noted that self-auditing can be a valuable supplement to limited government enforcement resources that cannot detect every possible violation, you did not mention that EPA has had a self-audit policy for 25 years that -- like Wyoming's law -- waives civil penalties if regulated facilities detect, report, and fix their violations.

Instead, you expressed concern with an uncertain federal response to self-reported violations. You warned that "what is always looming out there, though, from a state

¹ https://www.epa.gov/sites/production/files/2018-10/documents/wyoming_audit_moa_-_final_version_for_signature_-_october_15_2018.pdf

official perspective is what will EPA do . . . EPA always has the ability to overfile or to come and take additional action” which “tends to damper a regulated facilities willingness to come forward if they don’t know what EPA is going to do.” You asserted that “EPA over the years has been hit or miss about whether they will accept a state’s decision to waive penalties or not.”

You explained that the Wyoming self-audit is designed to ensure that certainty for the regulated entity” such that if the state follows its own law, EPA will not assess additional penalties. You justified this approach by noting that since the self-audit MOA was entered into, Wyoming “has seen an increase in the number of facilities that are actually going out and looking for issues in their operations and fixing them, and the environmental benefit to the state of Wyoming has been great, so great that North Dakota also signed an MOU and there are several other states that are also looking at it.”²

Please respond to the following, for the time period January 20, 2017, to the date of your response unless otherwise specified:

- a. The number of each year’s overfilings since January 1, 2013, with “overfiling” meaning the initiation of a formal federal enforcement action seeking penalties or injunctive relief after the conclusion of a state enforcement action involving the same violations. For each overfiling case, please include:
 - i. Case Name
 - ii. Facility location(s)
 - iii. Statute(s)
 - iv. Identity of the federal violations that duplicated the state violations
 - v. Whether the violations were reported pursuant to a state self-audit law
- b. Identify and provide a copy of any other State-EPA agreements or understandings, including but not limited to the self-audit context, that EPA either has entered into or that EPA is developing, that discuss the state-federal relationship in enforcing environmental laws.
- c. Provide a copy of any methodologies and data that EPA or states, including but not limited to Wyoming and North Dakota, have developed to measure:
 - i. any increased participation in state self-audit programs
 - ii. the environmental benefits of state self-audit programs
 - iii. the environmental compliance rates in state self-audit programs.

The EPA has a longstanding policy of working cooperatively with its state partners. See Memorandum from William D. Ruckelshaus, Administrator, EPA Policy on Oversight of Delegated Environmental Programs (Apr. 4, 1984). In October 2018

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<https://bloximages.chicago2.vip.townnews.com/bismarcktribune.com/content/tncms/assets/v3/editorial/b/b1/bb17eca4-d952-5c79-94b3-e01cd931d743/5d9bcbe957ecc.pdf.pdf>

then-Acting Administrator Wheeler issued a memorandum as a complement to the 1984 policy, and to modernize its practices and ensure comprehensive, consistent and constructive approaches to the oversight of programs implemented by states and tribes. *See* Memorandum from Andrew R. Wheeler, Acting Administrator, Principles and Best Practices for Oversight of Federal Environmental Programs Implemented by States and Tribes (Oct. 30, 2018). In addition, the Office of Enforcement and Compliance Assurance issued a memorandum in July 2019 on working cooperatively with states in civil enforcement and compliance assurance work. *See* Memorandum from Susan Parker Bodine, Assistant Administrator, Enhancing Effective Partnerships Between the EPA and the States in Civil Enforcement and Compliance Assurance Work (July 11, 2019).

I am not aware of any instances since January 2013, in which the EPA “overfiled” on a state enforcement action. This statement is based on a staff search of the EPA’s Integrated Compliance Information System (ICIS) which tracks if a civil judicial case is an overfile of a state action, and an informal survey of enforcement managers.

Since January 2017, as noted in my testimony, the EPA has entered into separate Memoranda of Agreement (MOAs) with Wyoming and North Dakota to establish procedures and policies for administration of the audit privilege and immunity laws in those states. Under those agreements, the EPA recognizes that the States’ self-audit laws and policies encourage greater compliance with laws and rules protecting public health and the environment. The EPA is in discussions with some other states as well regarding entering into similar memoranda of agreement. Information about state audit privilege and immunity laws and self-disclosure laws and policies, including earlier MOAs, is available at <https://www.epa.gov/compliance/state-audit-privilege-and-immunity-laws-self-disclosure-laws-and-policies>.

Beyond MOAs related to state self-audit laws, the EPA regions enter into agreements with states regarding enforcement via different mechanisms. For example, some regions negotiate Performance Partnership Agreements with each of the states in their geographic boundaries to spell out expectations and commitments for the grant funds that the EPA provides the states, which can cover enforcement. Since PPAs are renewed on a regular basis (every 1, 2 or 3 years), Regions 1, 5, 8 and 10 and their state partners have renewed their PPAs since January 20, 2017. These documents are voluminous and include only a few paragraphs on enforcement. Here is a link to the Illinois PPA so you can see the enforcement language on pages 5-6. https://www2.illinois.gov/epa/about-us/Documents/FINAL_FY18_19_PPA.pdf

Other regions enter into a Memorandum of Understanding or Agreement with each of the states in their geographic boundaries to provide a vehicle to memorialize the respective commitments of the EPA and the state to protect human health and the environment. Since January 20, 2017, Region 2 has entered in MOAs with NY, NJ, PR and the VI for the UST/LUST program; Region 4 entered into an MOU with

Florida regarding implementation of EPCRA and the use of SEP Policy; and Region 3 is developing an MOU with Virginia and West Virginia.

Finally, from a national perspective, the EPA generally considers a state's audit program when it is reviewing a state's delegated program to ensure that it continues to be adequate. The EPA has not sought data to measure the success of state audit programs. Generally, we are not familiar with all the methods by which states may track participation in their own self-audit programs. The MOUs with Wyoming and North Dakota include a commitment by the state to develop a methodology to measure increased participation and compliance benefits related to the state self audit program. Attached is a report that the Wyoming Department of Environmental Quality sent to the Joint Minerals, Business and Economic Development Committee of the state legislature about FY18-19 participation in its program. The North Dakota MOU was signed on October 7, 2019, less than a year ago. Accordingly, we do not yet have any North Dakota data.

3. Throughout the Trump Administration, EPA has failed to provide adequate responses to dozens of requests for information and documents from myself and other Democratic Senators. Please provide complete responses to the following letters, which are a sub-set of the outstanding requests made of the Agency:

- a. October 9, 2018: Letter to then Acting Administrator Wheeler on litigation costs, signed by Senators Carper, Cardin, Sanders, Whitehouse, Merkley, Markey, Gillibrand, Booker, Duckworth, and Van Hollen.

We look forward to continuing to work with your staff to provide a response and any additional information as appropriate.

- b. November 15, 2018: Letter to then Acting Administrator Wheeler on the Clean Air Scientific Advisory Committee, signed by Senators Carper, Whitehouse, Markley, Hassan, Warren, Merkley, Gillibrand, Van Hollen, Wyden, Blumenthal, Harris, Booker, Shaheen, Hirono, Duckworth, and Schatz.

We look forward to continuing to work with your staff to provide a response and any additional information as appropriate.

- c. June 3, 2019: Letter to Administrator Wheeler on Section 401 of the Clean Water Act, signed by Senators Carper, Booker, and Duckworth.

The Agency provided a comprehensive response on September 26, 2019. We look forward to continuing to work with your staff to provide any additional information as appropriate.

4. Do you agree to provide complete, accurate and timely responses to new requests for information submitted to you by any Member of the Environment and Public Works Committee? If not, why not?

Yes. I commit to providing responses to requests for information as appropriate and in accordance with any applicable statutes or regulations.

5. In responding to oversight letters, will you commit to providing me with materials responsive at the same time or earlier than they are provided to House Committee Chairs or Freedom of Information Act (FOIA) requestors? If not, please explain why not.

Yes. I commit to providing responses to requests for information as appropriate and in accordance with any applicable statutes or regulations.

6. On December 3, 2019, EPA published a proposed rule³ that would modify EPA's Environmental Appeals Board (EAB) procedures in ways that will change nearly 30 years of practice rules governing EPA's administrative litigation program. The proposed rule, *Modernizing the Administrative Exhaustion Requirement for Permitting Decisions and Streamlining Procedures for Permit Appeals*, focuses on the permit appeals process, but it also would allow the General Counsel to "issue a dispositive legal interpretation in any matter pending before the EAB or on any issue addressed by the EAB" thereby also impacting administrative enforcement appeals. Some commenters, including the Harvard Law School's Environmental & Energy Law Program⁴ express concern that the proposal would "diminish the independence of the EAB and politicize the appeals process" by removing decision-making authority from senior career officials and vesting it in political appointees.⁵

- a. Please provide any notes, record, emails, or other documents since January 20, 2017, between EPA political officials, including but not limited to Andrew Wheeler, Doug Benevento, and Matthew Leopold and outside parties, including but not limited to Bill Wehrum (or his former colleagues at Hunton Andrews Kurth) and Jeff Holmstead (or his colleagues at Bracewell), concerning the development or consideration of EPA's proposed rule.

As documents responsive to your request are identified, we will provide information as appropriate to you on a rolling basis as they become available. I recognize the importance of the Committee's need to obtain information necessary to perform its legitimate oversight functions and I committed to continuing to work with your staff on how best to accommodate the Committee's interests.

³ <https://www.govinfo.gov/content/pkg/FR-2019-12-03/pdf/2019-24940.pdf>

⁴ <https://eelp.law.harvard.edu/>

⁵ <https://eelp.law.harvard.edu/2019/12/updates-to-the-environmental-appeals-board-procedures/>

- b. In establishing 12-year term limits for EAB judges (with no guarantee of renewal), identify the earliest dates upon which the three current career civil service judges could be required to vacate the bench if the proposal is finalized.

As members of the Senior Executive Service (SES), EAB judges are always subject to reassignment to any other SES position in the Agency for which they qualify, after approval from OPM and the Office of Presidential Personnel. See 5 U.S.C. § 3395 (“Reassignment and transfer within the Senior Executive Service”); 5 C.F.R. § 317.901; see also Guide to the Senior Executive Service, published by the Office of Personnel Management (March 2017), pages 8, 10. <https://www.opm.gov/policy-data-oversight/senior-executive-service/reference-materials/guidesesservices.pdf>. The proposal for 12-year terms is not a separate condition applied to SES employees. It simply provides transparency regarding a mechanism by which the Administrator could exercise his or her authority consistent with the applicable SES procedures.

Under the proposal, the date on which current EAB judges would up for renewal is set based on seniority. Under this proposal, the terms of each EAB judge are renewable. Each seat on the EAB would be designated a number based on the seniority of the Board’s current members. The seat of the longest serving judge would be designated as seat one, the second longest serving judge as seat two, the third longest serving judge as seat three, and the most recent judge as seat four. The term for the newly designated seat one would end three years after the effective date of the final rule. The process would then continue at three-year intervals, with seat two ending six years after the effective date, seat three ending nine years after the effective date, and seat four ending twelve years after the effective date. Thereafter, all terms will last for twelve years.

7. If you are confirmed, will you commit to protect the rights of all Environmental Protection Agency career employees to make lawful disclosures, including their right to speak with Congress?

Yes.

8. For decades, both Republican and Democratic administrations alike have had written policies limiting White House contacts with agencies that have investigatory and enforcement responsibilities. These policies have recognized that even a simple phone call from the White House to an agency inquiring about or flagging a specific matter can upset the evenhanded application of the law.

- a. Do you agree that it is essential that in making decisions, EPA enforcement officials must be shielded from political influence and spared even the appearance of being subject to political influence or considerations?

Congress vested most of EPA's enforcement authorities in the EPA Administrator and those authorities have been delegated further to the Assistant Administrator for the Office of Enforcement and Compliance Assurance and to Regional Administrators, and some have been further delegated, as appropriate. Persons with delegated enforcement authority are of course subject to management oversight. I agree that the White House should not inappropriately influence case specific enforcement matters.

- b. Will you commit to notifying this Committee within one week if any inappropriate communications on cases specific enforcement matters from White House staff to EPA staff, including you, occur?

I commit to quickly take all appropriate steps if an inappropriate communication on a case specific enforcement matter is brought to my attention.

9. Please provide me with a copy of the economic analysis of the Kennedy-Carper bill to phase down HFCs that EPA has prepared. While you stated during the hearing that this analysis "is still under review; it is not yet complete," that is not accurate. The analysis has been complete for some time, and demonstrates that the bill would result in \$3.7 billion in consumer savings over 15 years.

Any analysis of costs and benefits by EPA is still undergoing review and includes information that relates to a pending or contemplated executive action and is therefore deliberative and pre-decisional.

10. During the hearing, when I asked whether EPA would follow the terms of the Clean Air Act as they pertain to the interagency review of the draft final Safer Affordable Fuel Efficient (SAFE) Vehicles Rule, you stated "Yes, we will follow the Clean Air Act". Section 307 of the Clean Air Act states that "The drafts of the final rule submitted for such review process prior to promulgation and all such written comments thereon, all documents accompanying such drafts, and written responses thereto shall be placed in the docket no later than the date of promulgation."

- a. EPA has provided DOT with a hard copy of its comments on the DOT-authored draft final rule, but has not submitted an electronic copy for interagency review. Please confirm that the appropriate EPA staff in the Office of Air and Radiation have been instructed to submit those materials to the docket as is required under the law. Please also indicate which EPA official has been provided with this direction.

- b. DOT recently uploaded 187 pages worth of its draft final Environmental Impact Statement to the docket for interagency review, and EPA is preparing feedback on those materials. Please confirm that the appropriate EPA staff in the Office of Air and Radiation have been instructed to submit those materials to the docket when they are completed, as is required under the law. Please also indicate which EPA official has been provided with this direction.
- c. Please confirm that the appropriate EPA staff in the Office of Air and Radiation have been instructed to submit copies of all other feedback it provides to DOT or other federal officials on the SAFE Vehicles Rule to the docket prior to the finalization of the rule. Please also indicate which EPA official has been provided with this direction.

EPA and DOT are working together to promulgate the SAFE Vehicles rule jointly pursuant to their overlapping statutory obligations and authorities. EPA and DOT have continued this joint approach to setting standards first used by the previous Administration in its 2012 joint rulemaking. This joint approach is consistent with the law and with the Supreme Court's direction in *Massachusetts v. EPA* (2007) that EPA and DOT should "administer their obligations" in a manner that "avoid[s] inconsistency." As with all of EPA's rulemaking efforts, the Agency will comply with applicable statutory requirements.

- 11. During the hearing, in relation to several tweets written by EPA's incoming chief of staff, I stated that "with the death of our late colleagues, John McCain, I am the last Vietnam veteran serving in the U.S. Senate. I served five years, three tours over there, during a hot war in Southeast Asia. The names of 56,000 people with whom I served that are dead that are on a wall down by the Lincoln Memorial. Comments like the one from this chief of staff conflating climate action with communism aren't just intellectually baseless, they are dishonest. They are reprehensible, especially when you consider the military service record of our commander in chief during that same period of time."
 - a. Do you agree with the incoming chief-of-staff's March 11, 2020 tweet which said that "ban and control democrats" want to put American energy workers "out of business"? Do you think the language used in this tweet is appropriate coming from an incoming political appointee of any seniority or political party?

I am unfamiliar with the tweet you referenced; and therefore, cannot provide a comment on it.

- b. Do you agree with the incoming chief-of-staff's February 23 2019 tweet which said that "The looney left has lost their minds. Now they want to implement a Soviet-styled takeover of our energy and our economy. It didn't work in Venezuela and won't work here. It's time for us to join together and stop their radical agenda." Do you think the language used in this tweet is appropriate coming from an incoming political appointee of any seniority or political party?

I am unfamiliar with the tweet you referenced; and therefore, cannot provide a comment on it.

- c. Do you agree with the incoming chief-of-staff's March 9, 2019 tweet which said that "the Soviet Union. Venezuela. They both went bust when they ran out of other people's money to spend, But today's radicals in Washington won't let facts get in the way of their socialist agenda. We won't let the Green New Deal destroy America's economy." Do you think the language used in this tweet is appropriate coming from an incoming political appointee of any seniority or political party?

I am unfamiliar with the tweet you referenced; and therefore, cannot provide a comment on it.

- d. Do you agree with the incoming chief-of-staff's March 7, 2019 tweet which said that "The #GreenNewDeal reads like a Karl Marx wishlist that would devastate the American economy. The fact that mainstream 2020 Democratic candidates are embracing it is scary."

I am unfamiliar with the tweet you referenced; and therefore, cannot provide a comment on it.

- 12. On February 5, 2019, Senator Whitehouse and I sent a letter, along with a request for records, to Administrator Wheeler regarding interactions that EPA has had with the Environmental Council of the States (ECOS) within the past six months. To summarize our concerns, last summer, California and four automakers announced a voluntary agreement on vehicle greenhouse gas emissions. In response, the Trump Administration sent California two environmental enforcement letters that appeared to be both retaliatory and motivated by President Trump's tweets about the state. On September 26, 2019, ECOS sent Administrator Wheeler a letter criticizing EPA for its actions against California. We have received reports indicating that EPA political leaders took offense to this letter and in response took a number of retaliatory steps against ECOS.

- a. My office has heard from multiple sources that you personally threatened to withhold or delay ECOS's EPA grant funding until ECOS either retracted its statement criticizing EPA or issued a new statement highlighting the cooperation between EPA and ECOS and its members. Is this true?

The Agency has responded to this question, as detailed in the March 6, 2020 letter from EPA's Office of Congressional and Intergovernmental Affairs Associate Administrator Joseph Brazauskas. The Agency has a strong relationship with state leaders and continues to work with states on both policy and implementation. The EPA did not engage in any retaliatory action towards ECOS.

- b. Earlier this week, we received a partial response to our letter along with an initial production of responsive documents. Among the requested records that we have yet to receive is a listing of all financial disbursements that EPA has delivered to ECOS under the EPA-ECOS Cooperative Agreement, which includes the amounts disbursed, the dates the disbursements were made, and the project description for each disbursement, for each of the past three fiscal years. Please provide those records, along with any other outstanding responsive records that we requested in our February 5 letter.

As additional documents responsive to your request are identified, we will provide information as appropriate to you on a rolling basis as they become available. I recognize the importance of the Committee's need to obtain information necessary to perform its legitimate oversight functions and I committed to continuing to work with your staff on how best to accommodate the Committee's interests.

- c. According to your calendar, on Friday, October 4, 2019, from 10:30am to 11:00am, you organized a meeting with a subject line "ECOS Grant."
- i. Please describe in detail the discussion that occurred in this meeting, including the purpose and goals of the meeting, any decisions that were made at this meeting, and any actions items that were assigned out of this meeting.
- We discussed ECOS grants and approved an ongoing grant.**
- ii. Why did you feel that the subject of an ECOS Grant was important enough for you to call a meeting to discuss it? If your duties regularly require you to review individual grant awards, please provide other examples of meetings you have called where the sole subject is a single grant or a set of grants to an individual recipient.

My duties include operational activities inside the Office of the Administrator, including approving specific travel and

conferences. I have regular meetings to approve these activities as well as personnel actions across the Agency. The Office of Congressional and Intergovernmental Affairs, which is part of the Office of the Administrator, manages the coordination and approval of ECOS grants. Authority to provide grants to ECOS was given to EPA by Congress without any criteria. Therefore, senior review of how this grant is disbursed is appropriate.

- iii. In addition, please provide all records related to this meeting within your possession, along with any records related to this meeting within the possession of Robin Richardson, Melissa Saddler, Andrea Barbery, Brittany Carter, and Travis Voyles, all of whom were invited to attend this meeting according to your calendar entry.

As additional documents responsive to your request are identified, we will provide information as appropriate to you on a rolling basis as they become available. I recognize the importance of the Committee's need to obtain information necessary to perform its legitimate oversight functions and I committed to continuing to work with your staff on how best to accommodate the Committee's interests.

- iv. Did any non-EPA employees attend this meeting? If so, please provide their names and affiliations.

No.

- d. There also exists a calendar entry for Thursday, November 14, 2019 from 1:30pm to 2:30pm, which lists as its subject line "ECOS/ITRC Proposed Project Review." The entry shows that you organized this meeting.

- i. Please describe in detail the discussion that occurred in this meeting, including the purpose and goals of the meeting, any decisions that were made at this meeting, and any actions items that were assigned out of this meeting.

I am not certain this meeting occurred. While it is on my schedule, I have no recollection of that meeting.

- ii. In addition, please provide all records related to this meeting within your possession, along with any records related to this meeting within the possession of Robin Richardson, Melissa Saddler, Andrea Barbery, Megan Garvey, and Carrie Coxen, all of whom were invited to attend this meeting according to your calendar entry. Please include the "background materials" and "summary level

information we'll provide in advance" referenced in the notes of the calendar entry.

I have no records related to that meeting. As additional documents responsive to your request are identified, we will provide information as appropriate to you on a rolling basis as they become available. I recognize the importance of the Committee's need to obtain information necessary to perform its legitimate oversight functions and I committed to continuing to work with your staff on how best to accommodate the Committee's interests.

- e. There also exists a calendar entry on Thursday, November 14, 2019, from 12:00pm to 12:45pm, (Immediately before the ECOS/ITRC review meeting), which lists as its subject line "California SIP Backlog." The entry shows that you organized this meeting.

- i. Please provide an unreacted copy of this calendar entry (other than any personally identifiable information).

The meeting on Thursday, November 14, 2019, from 12:00pm to 12:45pm with subject line "California SIP Backlog" was to discuss the management of California's state implementation plan (SIP) backlog. The only portions redacted from that entry are the conference call in number and the meeting description: "To discuss how we are managing the California SIP backlog; discuss plan and progress we are making on reducing the California SIP backlog."

- ii. Please describe in detail the discussion that occurred in this meeting, including the purpose and goals of the meeting, any decisions that were made at this meeting, and any actions items that were assigned out of this meeting.

The meeting was a discussion of the state of California's state implementation plan (SIP) backlog and how the Agency is managing that backlog.

- iii. In addition, please provide all records related to this meeting within your possession, along with any records related to this meeting within the possession of Michael Stoker, Megan Garvey, Carrie Coxen, Cory Preston, Elizabeth Adams, Charles Munoz, Christopher Hage, Deborah Joran and David Harlow, all of whom were invited to attend this meeting according to your calendar entry.

As documents responsive to your request are identified, we will provide information as appropriate to you on a rolling basis as they become available. I recognize the importance of the Committee's need to obtain information necessary to perform its legitimate oversight functions and I committed to continuing to work with your staff on how best to accommodate the Committee's interests.

- f. In addition to potentially withholding grants funds from ECOS in retaliation for their letter that criticized EPA's actions, press reports have said that EPA recalled one its employees who was detailed to ECOS. Is this true? On what date was the employee a) expected to return to EPA per the terms of his detail and b) informed that his detail had ended?

The detail was for April 2019-April 2020. Due to increased workload at the agency, EPA staff was brought back at the end of November.

Senator Cardin:

- 13. In its draft **commentary**, EPA's Science Advisory Board found parts of the Dirty Water Rule proposal "in conflict with established science" and decrease "protection of our nation's waters." "The proposed definition of WOTUS is not fully consistent with established EPA-recognized science, may not fully meet the key objectives of the Clean Water Act—to restore and maintain the chemical, physical and biological integrity of the nation's waters'—and is subject to a lack of clarity for implementation," the board wrote. As you know, the Trump Administration released a final version of the replacement rule in January that further rolled back protections for wetlands and streams, as the SAB predicted. Do you feel the advisory board's commentary should have had an impact on the final regulation? If not, what does you see is its purpose?

The EPA appreciates the work and advice of the SAB. Staff from the EPA Office of Water fully participated in informational and more formal meetings and teleconferences with SAB representatives at their request in advance of the issuance of the proposed rule (e.g., February 16, 2018 and May 31, 2018), after publication of the proposed rule (e.g., April 25, 2019), and during the SAB's public meeting in Washington, DC, on June 6, 2019.

As the EPA and the Army made clear in both the proposal and the final rule, the agencies' revised definition of "waters of the United States" is primarily guided by the statutory authority delegated by Congress under the Clean Water Act and the legal precedent set by key Supreme Court cases. The agencies are precluded from exceeding their delegated authorities to achieve specific policy, scientific or other outcomes. In the Clean Water Act, Congress explicitly directed the agencies to protect "navigable waters." The Navigable Waters Protection Rule regulates these waters and the core tributary system that provides perennial or intermittent flow to them. The agencies' definition of "waters of the United States" is informed by science, but science cannot dictate where to draw the line between federal and state or tribal waters, as those are legal distinctions established within the overall framework and construct of the Clean Water Act.

My understanding is many of the comments raised in the SAB's commentary were raised by public commenters as part of the public notice process on the proposed "Step 2" rule to revise the WOTUS definition, and if not already addressed in the proposal, are addressed in the final Navigable Waters Protection Rule and associated supporting materials.

14. The Science Advisory Board has questioned EPA's proposed rule with the National Highway Traffic Safety Information Agency, the Safer Affordable Fuel-Efficient Vehicles Rule or "clean cars" rule. Please explain how EPA is responding to the concerns raised by the SAB, so that we can have confidence that the Agency's actions are supported by science and are not arbitrary and capricious.

EPA and NHTSA have received hundreds of thousands of comments in response to the SAFE Notice of Proposed Rulemaking. The Agencies are reviewing and considering all comments made during the public comment period, including those submitted by SAB.

15. Last week, EPA Administrator Andrew Wheeler testified to the Chesapeake Bay Program being a "tremendous success" while backing a budget proposal to slash funding for the watershed by 90 percent.
 - a. If confirmed as Deputy Administrator, will you commit to ensuring the continued success of the Bay Program with the appropriations Congress ultimately provides on a bipartisan basis?

Yes.

- b. How will you support all watershed states' achievement of their nutrient reduction goals for clean water under the Chesapeake Bay TMDL?

We will continue to work in partnership with the Chesapeake Bay states on implementation of Watershed Implementation Plans, including ensuring that the requirements of the TMDL are reflected in state and/or federal permits. We will also work with nonpoint sources, in collaboration with other federal agencies and states, to find ways to reduce nonpoint sources of contribution to pollution that ultimately impacts the Bay. Finally, we will expend whatever dollars Congress appropriates so that they have the greatest positive impact to the Bay.

16. Will you negotiate in good faith with EPA's federal employees on use of facilities, official time, and grievance procedures?

Yes, EPA is in active negotiations with all six of our union partners over collective bargaining agreements. EPA is committed to negotiating in good faith and is looking forward to reaching agreements with EPA unions to the benefit of both staff and the American taxpayer.

- c. How do you see the relationship between these policies and agency morale?

While EPA does not have a specific tool to measure employee perspectives on policies related to the use of facilities, official time, and grievance procedures, we can use our past scores on the Federal Employee Viewpoint Survey (FEVS) to provide an indication of the relationship between these policies and agency morale. Certainly, our policies pave the pathway for our employee experiences as dedicated federal employees supporting our mission to protect human health and the environment. In that regard, we are committed to working with our unions, stakeholders and policy makers to support our diverse and talented staff.

Based on two FEVS questions of "How satisfied are you with the policies and practices of senior management?" and "Physical conditions (for example, noise level, temperature, lighting, cleanliness in the workplace) allow employees to perform their jobs well," along with the FEVS Employee Engagement Index* as proxies:

For the past four years, EPA's overall positive employee engagement score has remained steady and is comparable to the governmentwide engagement average. Agency results have been consistent in employee satisfaction with the policies and practices of their senior leaders as well as with physical workplace conditions. Thus, we have seen both measures hold steady over the past four years.

*** The Employee Engagement Index is a measure of the workplace conditions that lead to employees' willingness to exert discretionary effort in their jobs. The Index measures employees' views of their supervisors, their leaders, and their individual work experiences.**

- d. How does agency morale affect the agency's ability to protect public health the environment?

EPA uses Employee Engagement to help gauge employee morale. Research, such as that done by Gallup, has shown that engagement has a direct impact on business outcomes. Proactive employee engagement leads to greater productivity and quality, and is correlated with reductions in turnover, safety incidents, and absenteeism. Our ability to sustain positive employee engagement allows us to continue to protect public health and the environment, which is our core mission.

17. How do you account for the EPA's slow rate of completion of Superfund site remediation?

A site cleanup is complete when it is deleted from the NPL, not when construction of the remedy is complete. In FY 2019, EPA deleted all or part of 27 sites from the NPL, the largest number of deletions in one year since 2001. Under President Trump's leadership, EPA has been able to delete more contaminated Superfund sites off the NPL in his first three years than the entire Obama first term. Deletion from the NPL is an important milestone because it allows a site to be eligible for Brownfields grants and indicates to communities that cleanup is complete and protective of human health and the environment. Deleting sites from the NPL can help revitalize communities and promote economic growth by signaling to potential developers and financial institutions that cleanup is complete. Years, and sometimes decades, of complex investigation and cleanup work has gone into getting sites ready for deletion. The work on almost all Superfund sites can span administrations.

Over the past two years, EPA's Superfund Task Force worked to improve the Agency's implementation of the Superfund Program in order to accelerate cleanups and shorten the path to redevelopment and safe, productive reuse. EPA continues to implement the Task Force improvements and performance measures to track how those changes improve the Superfund Program.

Over the last three years, there has been a significant increase in the number of ongoing construction projects, demonstrating the large amount of field work that EPA is conducting.

As outlined above, cleaning up Superfund Sites has been and remains a top priority of this Administration. "Construction complete" means that all remedial

construction projects have been completed at the site but not that cleanup is complete. For example, many sites require one or more specific projects to address soil contamination and one or more projects to address groundwater contamination. "Construction complete" is only achieved once all projects have been constructed, installed, or otherwise implemented. Yet, this construction status does not mean the site cleanup is completed. For example, after a water treatment plant is constructed, it may operate for many years to treat the contaminated water.

Many of the sites currently on the National Priorities List (NPL) are very large, complex and technically challenging and often require numerous construction projects that are frequently phased in or sequenced over a span of years to clean up the site. The number of construction completions has declined over time as work on Superfund sites has reduced the number of sites with construction waiting to be completed and as more of the remaining sites have more significant and complicated work. The number of construction completions has dropped over Superfund's 40-year history e.g. 1980s: average ~6 construction completions, 1990s: average ~63 construction completions, 2000s: average 41 construction completions, 2010s: average ~13 construction completions.

- e. What did you do to improve Superfund implementation as administrator of Region 8 and what would you expect to be able to do to enhance Superfund implementation as Deputy Administrator?

As Region 8 regional administrator, I took several steps to improve implementation of the Superfund program. The most important was meeting with an extraordinary group of career employees to evaluate the region's sites and explore what was going well and what was not. I then visited sites where progress had been slow and met with state and local officials as well as communities. Working with career staff, we established timelines for completion (i.e. moving to delisting) and what needed to be done to reach that goal. For example, at the Colorado Smelter site, I asked for more money for cleanup. Working with then Deputy Administrator Wheeler, we found the money to accelerate cleanup at the residential operable unit by a decade or more, which will expediate the protection of families in that community. In Butte and Anaconda, Montana money was not an issue, goal setting was, career staff knew what steps were necessary to take to advance cleanup at these sites and working together we put together a plan to complete cleanup so that we could begin delisting at both sites by 2024 and 2025 respectively.

To put the answers more succinctly, what is generally necessary to advance cleanup is:

- Community support
- Consistent focus
- Clear direction to staff
- Being advocate for whatever is necessary to address sites where risk is the greatest

As deputy administrator, I will encourage the regions to use the framework articulated above. I will work with regions to accelerate safe cleanup of sites and be an advocate for their sites at EPA Headquarters/Program Offices.

18. Do you accept the latest findings of the U.S. Global Research Program Fourth National Climate Assessment and the Intergovernmental Panel on Climate Change, and do you think that the reports should provide a basis for federal policy?

I have read the reports and have no basis for disputing their findings.

- f. Do you agree with the following statements?

The scientific statements below are key findings from the Fourth National Climate Assessment that underwent public review and comment, interagency review, and expert review by the NAS.

- i. The key finding of the National Climate Assessment on Human Health:
“Climate change threatens human health and well-being in many ways, including through more extreme weather events and wildfire, decreased air quality, and diseases transmitted by insects, food and water.”
- ii. The key finding of the National Climate Assessment on Infrastructure:
“Infrastructure is being damaged by sea level rise, heavy downpours, and extreme heat; damages are projected to increase with continued climate change.”
- iii. The key finding of the National Climate Assessment on Water Supply:
“Water quality and water supply reliability are jeopardized by climate change in a variety of ways that affect ecosystems and livelihoods.”

19. Do you think U.S. participation in the Paris Agreement helps or harms EPA’s ability to protect our environment?

The Agency continues to fulfill its statutory responsibilities including helping to implement multilateral environmental agreements to which the U.S. is a Party.

20. CEQ issued proposed revisions to NEPA regulations that would limit or eliminate analysis of climate change for fossil fuel projects. Do you think that environmental assessments of proposed major federal actions under the National Environmental Policy Act should take into account the project’s impact upon greenhouse gas emissions and climate change?

I commend CEQ’s efforts to comprehensively modernize its NEPA regulations – a task not done in 40 years. I recognize the important role EPA plays under NEPA in

reviewing and commenting on federal actions affecting the environment. I understand that CEQ is currently considering public comment on the proposed rule which include the degree of consideration greenhouse gases should receive as part of this review. I defer to CEQ for questions on their proposed rule.

Senator Cramer:

21. Mr. Benevento, I had the privilege of hosting a WOTUS roundtable with Administrator Wheeler in North Dakota last October. As you know as the former Region 8 Administrator, under the previous rule roughly 85 percent of my state's waters would have fallen under Federal jurisdiction. North Dakota found that totally unacceptable, successfully sued the Obama administration, and the 2015 rule was found illegal in federal court, a fact conveniently forgotten by many. Since the Administrator's visit, the EPA and Army Corps finalized the Navigable Waters Protection Rule. It is a marked improvement. However, as of your hearing date, the final rule had not been published in the Federal Register and therefore not in effect. With all the changes over the years, there is substantial uncertainty and confusion when the federal government makes jurisdictional determinations. I appreciate the good work that went into this final rule, but it is only good once it is in the Federal Register and once guidance has been distributed to those on the ground. With that in mind, when can we expect the final rule to be submitted in the Federal Register and how will you ensure that the intent of the rule is reflected in guidance?

I expect the final rule to be published in the Federal Register very soon. The final rule will take effect 60 days after publication. EPA recognizes the concern that may have raised regarding whether field implementation will ensure consistency with the test established in the Navigable Waters Protection Rule. I can assure you that any implementation guidance issued by the agencies will be consistent with the final rule.

22. Mr. Benevento, I appreciate the Trump Administration's position on cooperative federalism, including in the Regional Haze program. Administrator Wheeler released guidance in August 2019 to provide information about EPA's view of the discretion and flexibilities states have to develop Regional Haze state implementation plans. It seems like cost of compliance is only considered in dollars per pollutant reduction, but the cost of compliance can actually lead to plant closures. That seems like a steep price to pay for a visual improvement that is unnoticeable to the naked eye. Mind you, North Dakota is one of the few states that is in compliance with all of the National Ambient Air Quality Standards. I think in particular the electric industry has changed significantly and continues to do so since the last round of the Regional Haze program and that needs to be taken into account as well. First, is the Administrator's 2019 guidance the extent of the EPA's actions with regard to Regional Haze or are any further rulemakings or administrative actions being worked on? Second, please clarify whether Regional Haze was ever envisioned to put facilities out of business and to what extent cost of

compliance ought to be taken into account. Third, what flexibility can be provided to power plants and will you work with my constituents and the EPA Region 8 office to help provide it?

EPA finalized revisions to the Regional Haze Rule in January 2017 and released the final regional haze guidance document in August 2019. The regional haze guidance document supports key principles of program implementation for the second implementation period, including supporting states in developing State Implementation Plans (SIPs) for complying with the Clean Air Act's (CAA) visibility requirements; reducing state planning burdens; and leveraging emission reductions achieved through CAA and other programs that further improve visibility in protected areas. In addition, EPA continues to follow Administrator Wheeler's September 11, 2018, Regional Haze Reform Roadmap regarding the development of anticipated regulatory revisions and program implementation tools to help states develop approvable plans. We have publicly committed to undertake a notice-and-comment rulemaking, but we have not committed to a timeframe for revision of the Regional Haze Rule. We anticipate the rule revisions would substantively impact only the third and future planning periods.

The CAA identifies the cost of compliance as one of four factors that states must consider in determining whether emissions controls are necessary to make reasonable progress towards eliminating manmade visibility impairment in Class I areas. The other three factors are time necessary for compliance, energy and non-air environmental impacts, and remaining useful life of the source. The Regional Haze Rule, which implements these statutory requirements, does not mandate specific control decisions for specific sources. Rather, the Regional Haze Rule and the August 2019 guidance referenced above provide support for how states can undertake control measure analyses taking into consideration the four statutory factors for reasonable progress, which include cost of compliance. States have the flexibility to decide how to characterize the factors, but a state's approaches must be reasonable. Technically sound facts regarding costs, visibility benefits, and other factors will help states make well-reasoned decisions that are also technically sound.

The regional haze program is an iterative program that provides states with flexibility to develop a cohesive strategy that demonstrates reasonable progress over time. The August 2019 regional haze guidance is intended to provide information to states that they can then use in exercising their discretion in developing SIPs for the second implementation period. Importantly, there is no specified outcome or amount of emissions reduction or visibility improvement that is directed as the reasonable amount of progress for any Class I area. EPA's main goals in the near term are to support states in their SIP development processes and to provide technical and policy information for the upcoming second planning period. We want to support states' efforts and streamline the time and resources needed to meet the statutory and regulatory requirements under the regional haze program. EPA encourages states to discuss SIP development approaches with their EPA Regional office early in their process so that EPA can support states in the development of

approvable SIPs, including the analysis of potential emissions controls for power plants, where appropriate.

EPA is aware that in May of 2018, North Dakota sent letters to its power plants requesting that the facilities prepare four-factor analyses for their coal-fired electric generating units. Consistent with our Regional Haze Road Map, EPA recognizes that North Dakota has the lead role in implementing the Regional Haze Program, including in the review of the four-factor analyses and in determining any control measures necessary to achieve reasonable progress. In the spirit of collaboration and early engagement, our EPA Region 8 Office, working with EPA Headquarters, will continue to support the North Dakota Department of Environmental Quality in those efforts while respecting the flexibilities and discretion afforded to the states.

Senator Ernst:

23. There are currently 23 pending waiver petitions for 2019. Now that the administration is considering an appeal of this unanimous decision from the Tenth Circuit, can you commit to me that the EPA will not grant any of these pending 2019 small refinery exemptions until the legal action is settled?

This matter is currently in litigation, and we are not in a position to provide information on what future steps EPA will take on this matter.

Senator BARRASSO. Thank you very much for your testimony. Welcome to the Committee.

Mr. Wright, welcome back. You were here just last week. We appreciate your being here today. Proceed.

STATEMENT OF HON. DAVID A. WRIGHT, NOMINEE TO BE A MEMBER, U.S. NUCLEAR REGULATORY COMMISSION

Mr. WRIGHT. Thank you very much.

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

I appreciate the kind introduction of Congressman Jeff Duncan. Jeff is doing great things for his district back home in the great State of South Carolina and for our country. I am very proud to count him as one of my close friends as well.

I am also very grateful to have the support of all seven members of our State's delegation: Senators Lindsey Graham and Tim Scott, Congressmen Jim Clyburn, Joe Wilson, obviously Jeff Duncan, Tom Rice, Ralph Norman, Joe Cunningham, and William Timmons.

I would also like to say thank you to my family, who could not be here today. My mother, brothers and sisters, and three of my children live in South Carolina. My oldest son and his wife live in Arkansas. I want to thank them for supporting me over the last 2 years, because as we all know, as I serve, you are serving as well. So I want them to all know that I love them.

For the record, Mom really wanted to be here today. She was seated right behind me as I went through this process almost 3 years ago. Out of an abundance of caution, she decided that this is not the best time for her to be traveling.

Personally, I am grateful to President Trump for nominating me to a 5-year term on the commission. If confirmed, I look forward to continuing my work on the commission.

I also look forward to continuing to engage with this Committee. I am grateful for your commitment to your work and believe that your oversight of the NRC adds immeasurable value.

As you know, the NRC has an important public health and safety mission. Every day that I have been at the NRC has given me a greater appreciation of that mission and the dedicated staff that ensure we meet that mission. It is an honor to serve our country as an NRC commissioner, and I hope to continue to have that opportunity after June 30th.

It is a pleasure to serve with my colleagues on the commission, Chairman Svinicki, Commissioner Baran, and Commissioner Caputo. As I said at last week's oversight hearing, I have learned so much from each of them, and I appreciate their collegiality and insights on the matters before the commission.

If confirmed, I pledge to work collegially with my colleagues, including Mr. Hanson, if he is confirmed with me.

As you know, the commission has been involved in a number of important issues related to nuclear safety and security over the last 2 years. When considering these issues, safety is always my first thought and priority. I also strive to adhere to the NRC's principles of good regulation, especially the principles of independence, efficiency, and reliability.

To better understand the issues before me, I have visited the many types of facilities subject to NRC regulation and talked with the licensees and NRC staff at those facilities to understand the boots on the ground perspectives, the challenges and the issues.

Closer to home, I have made a practice of going cubicle by cubicle on every floor of the NRC, and I have visited NRC staff in each of the regional offices to learn about the people of the NRC and what is important to them. These interactions are extremely valuable to me, as the people of the NRC are its greatest asset.

Consistent with my open door policy, I have met with people of all backgrounds and opinion. I have found that doing so enriches my perspective as a regulator as well.

As this Committee knows, these are times of change at the NRC and in the industry we regulate. While we are preparing for a future that is not completely clear, we are taking concrete steps now to ensure that we are flexible enough to meet whatever challenge is ahead.

We are preparing for novel technologies while continuing to license existing technologies effectively and reliably. We are working to become a more modern, risk informed regulator, consistent with the direction the Nuclear Energy Innovation and Modernization Act and our own principles of good regulation.

As the NRC prepares for the future, one thing remains constant: our laser focus on important safety missions that we are responsible for, which is to provide reasonable assurance of adequate protection of public health and safety.

Chairman Barrasso, Ranking Member Carper, and members of the Committee, I appreciate the opportunity to appear today, and look forward to your questions.

[The prepared statement of Mr. Wright follows:]

**WRITTEN TESTIMONY
OF DAVID A. WRIGHT, COMMISSIONER
UNITED STATES NUCLEAR REGULATORY COMMISSION
TO THE
SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS**

MARCH 11, 2020

Thank you Chairman Barrasso, Ranking Member Carper, and esteemed members of the Committee. I appreciate the kind introduction and am very grateful to have the support of all seven members of my State's delegation. I would also like to say thank you to my family, who could not be here today. My mother, brothers and sisters, and three of my children live in South Carolina, and my oldest son and his wife live in Arkansas. Thank you for supporting me over the past two years because, as we all know, as I serve, you are serving as well. I want you to know that I love you all. For the record, mom really wanted to be here today. She was seated right behind me as I went through this process almost three years ago. Out of an abundance of caution, she decided that this is not the best time for her to be traveling. I am grateful to President Trump for nominating me to a five-year term on the Commission. If confirmed, I look forward to continuing my work on the Commission.

I also look forward to continuing to engage with this Committee. I am grateful for your commitment to your work and believe that your oversight of the NRC adds immeasurable value. As you know, the NRC has an important public health and safety mission. Every day that I have been at the NRC has given me a greater appreciation of that mission and the dedicated staff that ensure we meet this mission. It is an honor to serve our country as an NRC Commissioner, and I hope to continue to have that opportunity after June 30th.

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As you know, the Commission has been involved in a number of important issues related to nuclear safety and security over the last two years. When considering these issues, safety is always my first thought and priority. I also strive to adhere to the NRC's Principles of Good Regulation, especially the principles of Independence, Efficiency, and Reliability.

To better understand the issues before me, I have visited the many types of facilities subject to NRC regulation and talked with the licensees and NRC staff at those facilities to understand the boots on the ground perspectives, challenges, and issues. Closer to home, I have made a practice of going cubicle by cubicle on every floor at NRC Headquarters and visiting NRC staff in each of the regional offices to learn about the people of the NRC and what is important to them. These interactions are extremely valuable to me, as the people of the NRC are its

greatest asset. Consistent with my open-door policy, I have met with people of all backgrounds and opinion. I have found that doing so enriches my perspective as a regulator.

As this Committee knows, these are times of change at the NRC and in the industry we regulate. While we are preparing for a future that is not completely clear, we are taking concrete steps now to ensure that we are flexible enough to meet whatever challenge is ahead. We are preparing for novel technologies while continuing to license existing technologies effectively and reliably. We are working to become a more modern, risk-informed regulator, consistent with direction in the Nuclear Energy Innovation and Modernization Act and our own Principles of Good Regulation. As the NRC prepares for the future, one thing remains constant: our laser focus on our important safety mission, which is to provide reasonable assurance of adequate protection of the public health and safety.

Chairman Barrasso, Ranking Member Carper, and members of the Committee, I appreciate the opportunity to appear today, and I look forward to your questions.

Senate Committee on Environment and Public Works
Hearing entitled, "*Hearing on Nominations*"
March 11, 2020
Questions for the Record for Commissioner Wright

Senator Cardin:

QUESTION 1. In recent years, the NRC has launched two initiatives to modernize its regulatory approach and slim down: *Project Aim* and *Transformation*. What is the current progress of the NRC's efforts to modernize its regulatory approach through programs such as *Project AIM* and *Transformation*?

ANSWER.

Project Aim and NRC's Transformation are complementary efforts. Both have allowed the NRC to improve its ability to adapt through recognizing efficiencies, increasing agility, and modernizing the way it does business.

The NRC established Project AIM to enhance the agency's ability to plan and execute its mission in a more effective and efficient manner. In 2017, the NRC completed the major deliverables for each of the 19 discrete Project Aim tasks that addressed the NRC's need to improve efficiency and flexibility to right-size the agency, while retaining employees with the appropriate skills to accomplish its mission and streamline processes.

The agency continues to implement the principles of Project Aim and pursue additional activities that demonstrate the NRC's continuing commitment to effectiveness, agility, and efficiency. For example, the NRC standardized and centralized support staff functions of NRC headquarters and regional offices and established a common prioritization process to prepare the agency to evaluate emerging work more readily. We have also implemented an enhanced Strategic Workforce Planning process to improve workforce management.

The NRC's Transformation Initiative is focused on assessing how the NRC performs our work and is intended to advance the agency towards the vision of being a modern, risk-informed regulator, while helping to ensure the agency and its staff are in the best position to successfully meet the agency mission in future.

Transformation is occurring across the NRC at all levels of operation and significant progress has been made in the areas of strategic workforce planning and recruitment; use of risk insights in decision-making; mobile technology capabilities; and fostering a culture of innovation. Recently, new information technology platforms, productivity tools and connectivity solutions were released to help employees work smarter and better interface with external stakeholders and licensees. Additionally, regional offices adopted mobile technology capabilities to assist with real-time inspection planning and performance. The NRC also launched an organizational culture assessment and identified signposts and markers that will help the agency monitor future supply and demand for nuclear power and use of materials and adjust accordingly.

a. Are we in any danger of the NRC becoming too lean to conduct its oversight of the nuclear industry adequately?

ANSWER.

In my view, we currently have the resources we need to meet our mission. We are also implementing a Strategic Workforce Planning process to improve our efforts in developing and managing the NRC workforce and to balance near-term work with long-term staffing projections. This process informs the agency's efforts to recruit, retain, and develop a skilled and diverse workforce with the right skill sets to complete our expected work, including oversight of the nuclear industry.

However, there is a risk that we could face challenges in meeting our mission in the future without additional funding. Our agency relies on intellectual capital to fulfill its safety mission; thus, pay and benefit increases have an outsized effect on our budget. Additionally, given the agency's workforce demographics and projected attrition, the agency needs to hire new talent in the coming years to address critical skill gaps. Thus far, we have been able to absorb increases in salaries and benefits through attrition coupled with prudent hiring. However, in my view we have reached the limit of our ability to continue to absorb such increases while continuing to reduce our budget by several percent each fiscal year.

We also face challenges given the significant budgetary changes required by the Nuclear Energy Innovation and Modernization Act and we may need your help to address these challenges in the future.

- b. How is the NRC staff reacting to the agency's efforts to become more agile and risk-informed? Has it harmed morale at the agency?**

ANSWER.

My understanding is that there has been healthy dialogue regarding the agency's most recent efforts to become more agile and risk-informed. These efforts are aimed at allowing the NRC to focus its attention on the issues that are most important to the health and safety of the public. I have been told that some staff view these efforts as a change from past practice while others see the efforts as part of the NRC's long-standing approach to risk-inform our work, consistent with the NRC's Efficiency Principle of Good Regulation.

Across the NRC, senior executives, managers, and supervisors have been working to ensure that the staff shares a common understanding of what being risk-informed means and how it

translates to performing daily work. We have a team specifically addressing all concerns and views.

c. Has it compromised the NRC's ability to do its due diligence and ensure safety?

ANSWER.

Accepting risk in decision making has not compromised the NRC's ability to do its due diligence and ensure safe nuclear operations. Our efforts in this area further enhance NRC's regulatory effectiveness by concentrating the agency's activities on the most important issues. This helps ensure that agency resources, including staff effort, expertise, and time, are focused on those areas that are most risk significant. This is consistent with our mission and the NRC's Principles of Good Regulation.

QUESTION 2. According to the NRC's FY 2021 Congressional Budget Justification, since FY 2014, the agency budget has fallen by 17 percent and its workforce by 25 percent. Is the workload also decreasing at a similar rate?

ANSWER.

Since fiscal year 2014, the NRC has reduced its workforce to account for a decrease in workload resulting from potential applicants not pursuing new nuclear reactor builds, the early closure of operating reactors, and completion of post-Fukushima activities. At the same time, work has increased in some areas like decommissioning, subsequent license renewal, and advanced reactors. The NRC has been able to accommodate the additional decreases in its budget through organizational restructuring, added efficiencies in our licensing and oversight programs, and limiting the hiring of agency staff to those skills that are critical to the agency operations or not available within the existing agency workforce.

- a. **Or are there simply fewer employees now being asked to do more? Is this compromising the NRC's ability to do its work?**

ANSWER.

While there has been a decrease in NRC's staffing levels from 2014, this has not resulted in compromising the NRC's ability to fulfill its mission. The NRC's budget request reflects the FTE necessary to accomplish the expected workload.

- b. **Has the slimming down of the NRC led to more work getting deferred?**

ANSWER.

The NRC is appropriately resourced to accomplish its mission. The decrease in NRC's staff has not resulted in its regulatory oversight work being deferred. The NRC has taken steps through Project Aim and the Transformation Initiative to achieve efficiencies through restructuring, streamlining, re-baselining, and adopting innovative approaches to performing work. These efforts have provided for flexibility in reprioritizing work consistent with adjustments made in applicants' schedules.

- c. **Is there a growing backlog?**

ANSWER.

No. The NRC continues to meet the overall milestones for current application reviews and other scheduled oversight activities. The NRC has taken specific actions to address the previous licensing backlog to ensure greater discipline and management oversight. This has enhanced the agency's efficiency, effectiveness, and predictability, while maintaining a continued strong safety focus.

- d. **Is it taking longer to complete your work to keep us safe while also getting back to businesses in a reasonable timeframe?**

ANSWER.

The NRC continues to meet all milestones and schedules identified for regulatory activities as established by Congress and/or with applicants and licensees. The NRC continues to engage applicants and/or licensees in a timely manner when reviewing licensing requests to ensure any outstanding issues or requests for additional information are resolved effectively and efficiently.

Senator Cramer:

QUESTION 3.

Mr. Wright, while North Dakota does not have any nuclear facilities in the state, we receive reliable, baseload generation from North Dakota coal and two nuclear facilities in Minnesota operated by Xcel Energy. Coal and nuclear contribute to a reliable, affordable grid back home. They also frequently have to backfill energy losses when the wind is not blowing. We saw this most dramatically last winter, when coal and nuclear had to compensate for lost generation from wind and natural gas. It was too cold for wind turbines to operate and natural gas supply fell short as home heating demand increased. Thankfully coal and nuclear filled the gap; however, both of these sources of energy are often taken for granted. In the case of nuclear, as you know, it generates over half of our carbon free electricity and about 20 percent of our nation's total electricity. Utilities who possess a nuclear fleet rely on their generation to reduce their total carbon emissions while providing reliable power

to consumers. Can our nation reduce emissions and provide affordable and reliable power without our existing nuclear fleet?

ANSWER.

The NRC is an independent safety regulator and does not set the United States' energy policy or promote any particular technology. However, I recognize that nuclear energy is currently a significant generator of carbon-free electricity.

While we do not set energy policy or promote nuclear technology, the NRC must ensure that we have an effective framework to regulate the licensing of new technologies, including those that would reduce carbon emissions and provide affordable and reliable power. The NRC will continue to effectively regulate our currently licensed nuclear power plants and actively prepare to regulate new nuclear technologies that the Department of Energy and the industry are developing. The NRC has worked with outside experts to identify potential future scenarios and related insights that will inform our near- and mid-term planning related to workload, workforce issues, and opportunities to innovate. The NRC is taking concrete steps now to ensure that we are flexible enough to meet whatever challenge or innovate technology is ahead.

QUESTION 4. Many downplay nuclear generation without much of a positive outlook. I however am excited about the potential. Considering recent closures of nuclear facilities and the labyrinth of regulatory hurdles for new plants, do you believe nuclear generation has a positive future beyond the status quo?

ANSWER.

The NRC is prepared to continue to effectively license the current fleet of nuclear reactors and to safely, effectively, and efficiently license new nuclear technologies.

Consistent with the Nuclear Energy Innovation and Modernization Act and the NRC's Principles of Good Regulation, the NRC has and must continue to ensure that we have an effective framework to regulate the licensing of new technologies, especially those that could improve the safety and security of nuclear energy in this country. We have an obligation to all our stakeholders to implement a framework for advanced reactors that maintains safety without stifling innovation and the use of new technologies. The public deserves a predictable and efficient licensing process for advanced technologies.

The NRC has made significant progress in establishing performance metrics and milestones for licensing and other regulatory actions. The NRC is developing a regulatory framework for advanced nuclear technologies and is actively engaged in pre-application activities and reviews. Specifically, the NRC has received the first application for an advanced non-light water microreactor from Oklo, and the staff is engaged in pre-application meetings with several other developers including General Electric-Hitachi, Kairos Power, Terrestrial Energy, X-Energy, Westinghouse, TerraPower, and General Atomic.

The staff also recently issued an advanced safety evaluation report for the NuScale small modular reactor in December 2019 and is working to complete the final review of the design certification by the end of 2020. Additionally, the staff recently concluded that developing a Generic Environmental Impact Statement for advanced reactors is a viable alternative to support the NRC's regulatory decision-making and streamline the review process.

QUESTION 5. Do you believe there is a future for advanced nuclear, especially in rural, remote areas? If so, please explain.

ANSWER.

The NRC staff has been actively engaged with advanced reactor developers, Department of Energy, Department of Defense, and other stakeholders to identify and resolve any policy and licensing issues related to advanced reactors, including microreactors for deployment in rural, remote areas.

The NRC has also taken many steps to prepare for the review of advanced nuclear technology. This preparation includes the NRC's development of a regulatory strategy for the possible deployment of microreactors in remote communities. This strategy is part of the overall strategy for advanced reactors and implementation of the Nuclear Energy Innovation and Modernization Act. The NRC recently received Oklo's application to develop a non-light water microreactor to be constructed in Idaho Falls, Idaho.

QUESTION 6. The NRC operates on fees collected by nuclear plants. With plants slated for closure, NRC's recent budget asks for an increase rather than reflecting the expected reduction. That seems backwards. Shouldn't your budget be commensurate to how successfully you regulate the industry?

ANSWER.

The NRC regulates the nuclear industry successfully by focusing on our safety and security mission, regardless of the number of operating nuclear power plants. Regarding the NRC's fiscal year (FY) 2021 budget request, the request does reflect reductions for the expected closures of operating plants. The request also reflects reductions based on efficiencies the

NRC has gained in our licensing and oversight programs, as well as reductions tied to the completion of work in various areas. Notwithstanding these reductions, the NRC's budget request has increased overall because of the need for resources to support other mission-related work and ensure we can meet our important safety and security mission.

The NRC systematically accounts for the anticipated closure of operating reactors when formulating its budget by including a proportional reduction per site in the areas of oversight, licensing, rulemaking, research, event response, and investigations. In FY 2021, the NRC reduced its budget by \$1.5M, including eight full time equivalents, to account for the anticipated closure of the Duane Arnold Site at the end of the first quarter of the fiscal year.

The operating reactor budget also decreased in FY 2021 to account for efficiencies gained from the merger of the Offices of Nuclear Reactor Regulation and New Reactors, as well as efficiencies gained through recent changes in processing licensing actions. In addition, the operating reactor budget decreased because of reductions in research activities, the completion of post-Fukushima flooding and seismic probabilistic risk assessment reviews, completion of post-Fukushima related inspections, completion of the safety and environmental reviews of the subsequent license renewal applications for Turkey Point Nuclear Generating Station and Peach Bottom Atomic Power Station, and the anticipated completion of the safety and environmental reviews of the subsequent license renewal application for Surry Power Station.

These decreases to the operating reactor budget were offset by increases primarily to support three new subsequent license renewals applications for North Anna Power Station and two additional unspecified plants; the anticipated influx of accident tolerant fuel (ATF) topical reports; the development of licensing infrastructure for ATF, high burn-up and higher enrichment in both ATF and current fuel designs; the licensing and construction oversight of medical radioisotope

irradiation and processing facilities; and the anticipated transition of Vogtle Electric Generating Plant, Unit 3, to the Reactor Oversight Process.

QUESTION 7. **The recent NRC budget proposal also provides no funding for licensing a permanent repository for nuclear waste. The lack of action is costing taxpayers over \$2M per day and is forcing utilities to do onsite storage for its spent nuclear fuel in areas it was never intended, which is causing a great deal of frustration to local communities and tribes, particularly in Minnesota. We have a legal obligation to deal with this waste and we know we can in a responsible manner. Once a long-term solution is determined, will the NRC work expeditiously towards licensing these storage facilities? What kind of positive effect would long-term waste storage facilities have on our domestic nuclear fleet?**

ANSWER.

Yes, the NRC will work expeditiously towards reaching a licensing decision on any long-term solution regarding nuclear waste that is authorized and funded.

If long-term nuclear waste storage facilities become available, one positive effect could be that plants that have completed decommissioning and are operating only to maintain an Independent Spent Fuel Storage Installation (ISFSI) may be able to decommission the ISFSI, terminate their licenses, and release the land for other uses. I would emphasize, however, that the NRC's role is to ensure nuclear waste is stored safely, regardless of whether such facilities are authorized and funded.

Senator BARRASSO. Thank you very much, Mr. Wright.

Mr. Hanson, congratulations, and again, would you like to start by introducing your family and then proceeding with your testimony?

STATEMENT OF CHRISTOPHER T. HANSON, NOMINEE TO BE A MEMBER, U.S. NUCLEAR REGULATORY COMMISSION

Mr. HANSON. Thank you, Mr. Chairman.

Behind me is my wife, Anne; and next to her our youngest son, Theo; and our oldest, Sam; and finally, our son, Andrew. I am so pleased that they could be here.

Senator BARRASSO. Welcome to all of you.

Please proceed.

Mr. HANSON. Thank you.

Chairman Barrasso, Ranking Member Carper, and members of the Committee, thank you for the opportunity to appear before you today. I am honored to have been nominated by the President to serve on the Nuclear Regulatory Commission.

And thank you, Senator Feinstein, for your kind words of introduction.

Also a thank you to Senator Alexander for his letter of support. It has been a true honor and privilege to serve both of them on the Appropriations Committee for these last 6 years.

I would also like to thank my wife, Anne, for her steadfast love and support. As I mentioned, our three boys are here, Sam, Andrew, and Theo. Your mom and I are very proud of you guys.

Finally, a thank you to my parents, Tom and Linda, who are watching over the Internet in Michigan.

I grew up in southwest Michigan just a few miles from the Palisades Nuclear Power Plant. As the test of the plant's emergency alert system blared from telephone poles each month, I understood early on the value of a reliable, independent regulator to ensure that the communities surrounding our Nation's nuclear plants are safe.

My professional career has focused mainly on the nuclear sector in both the public and private spheres, from radioactive waste cleanup efforts to new nuclear construction to nuclear research and development, and finally to the Appropriations Committee in the U.S. Senate.

Early in my career, I served as a consultant to the National Governors Association's Federal Facilities Task Force, a forum for State governments to collectively interact with the Department of Energy on the cleanup of the nuclear weapons complex. That experience instilled in me a deep sympathy for State and local governments' desire to have input and influence on Federal decisions affecting their jurisdictions.

Later, I was a consultant to the Department of Energy on the economics and governance of uranium enrichment decontamination and efforts to close the fuel cycle through reprocessing and advanced reactor technologies. I also helped a major East Coast utility conduct a project risk assessment of new nuclear construction. Through these experiences, I gained an appreciation for how private sector entities make decisions about investments in nuclear

power and technology, and how Government programs can influence those decisions.

As a career civil servant in the Department of Energy, I managed the department's relationship with congressional appropriations committees, learning the value of congressional engagement and oversight in holding agencies accountable for policy and spending decisions.

For the past 6 years, I have served as professional staff on the Energy and Water Appropriations Subcommittee overseeing the NRC's budget and operations, nuclear energy research and development programs, as well as nuclear national security efforts. One of the most rewarding aspects has been the collegiality and close bipartisan working relationships among staff on the Committee.

If confirmed, I intend to bring these varied experiences to my tenure at the NRC, a passion for public participation and transparency, respect for private sector decisionmaking, appreciation of congressional oversight, and a commitment to collegiality.

The NRC faces a complex set of challenges in the coming years, overseeing increased plant closures, regulating a current fleet, ever more important to clean energy goals, and preparing to license a diverse array of new reactor technologies. With a deep commitment to public service and a safe nuclear industry, I feel I would be coming full circle with a position at the NRC.

In closing, I am humbled by the prospect of joining the other members of the Commission, including Commissioner David Wright, here today, each of whom brings a wealth of knowledge, experience, and insight to regulating the civilian use of nuclear materials and power.

Thank you, Mr. Chairman, and I look forward to your questions.
[The prepared statement of Mr. Hanson follows:]

**Statement of Christopher T. Hanson
Committee on Environment and Public Works
March 11, 2020**

Chairman Barrasso, Ranking Member Carper, and Members of the Committee, thank you for the opportunity to appear before you today. I'm honored to have been nominated by the President to serve our country on the Nuclear Regulatory Commission.

Thank you, Senator Feinstein for your kind words of introduction. And a thank you to Senator Alexander for his letter of support.

I'd like to thank Anne, my wife and partner of 25 years for her steadfast love and support. Also here are our sons, Sam, Andrew, and Theo. Your mom and I are enormously proud of you. Finally, a thank you to my parents, Tom and Linda, who are watching over the internet back in Michigan. Hi, mom.

I grew up in Southwest Michigan just a few miles from the Palisades Nuclear Generating Station. As the test of the plant's emergency alert system blared from telephone poles each month, I understood early on the value of a reliable, independent regulator to ensure that the communities surrounding the nation's nuclear plants are safe.

My professional career has spanned both the public and private sectors – from radioactive waste cleanup efforts to new nuclear construction to nuclear research and development. And finally to the Appropriations Committee here in the United States Senate.

Early in my career, I served as a consultant to the National Governors Association's Federal Facilities Task Force, a forum for state governments to collectively interact with the Department of Energy on cleanup of the Cold War nuclear weapons complex. That experience instilled in me a deep sympathy for state and local governments' desire to have input and influence on federal decisions affecting their jurisdictions.

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The NRC faces a complex set of challenges in the coming years – overseeing increased plant closures, regulating a current fleet ever more important to clean energy goals, and preparing to license a diverse array of new reactor technologies. With a deep commitment to public service and a safe nuclear industry, I feel I would be coming full circle with a role at the NRC.

In closing, I am humbled by the prospect of joining the other members of the Commission, including Commissioner David Wright, here today, each of whom brings a wealth of knowledge, experience, and insight to regulating the civilian use of nuclear materials and power.

Thank you, Mr. Chairman, and I look forward to your questions.

Senate Committee on Environment and Public Works
Hearing entitled, "Hearing on Nominations"
March 11, 2020
Questions for the Record for Mr. Hanson

Chairman Barrasso:

1. The Atomic Energy Act of 1954 requires the regulation of nuclear material to provide a "reasonable assurance of adequate protection" to public health and the environment.
 - a. What does "reasonable assurance of adequate protection" mean to you?

ANSWER: The NRC's mandate is to provide reasonable assurance of adequate protection of public health and safety in the civilian use of nuclear material. I see adequate protection as the minimum standard the NRC must require. Additional requirements would have to have benefits that outweigh their costs. Adequate protection does not mean zero risk. The NRC's regulations do not define adequate protection, but compliance with them should be presumed to assure adequate protection, at a minimum.

- b. If confirmed, how would this guide your decision making as an NRC Commissioner?

ANSWER: Because the adequate protection standard is not zero risk, the Commission has the responsibility to determine how much risk is acceptable and when adequate protection exists. I plan to use the adequate protection standard to guide my decisions, using input from the NRC staff, the general counsel, and the views of industry and public stakeholders.

2. Your testimony states, "I grew up in Southwest Michigan just a few miles from the Palisades Nuclear Generating Station. As the test of the plant's emergency alert system blared from telephone poles each month, I understood early on the value of a reliable, independent regulator to ensure that the communities surrounding the nation's nuclear plants are safe."

However, the NRC's regulatory programs are based on the fundamental principle that the safety of commercial nuclear power reactor operations is the primary responsibility of NRC licensees. For example, NRC licensees fund and maintain the community's emergency alert system.

- a. Do you agree with this fundamental principle? If not, please explain your position?

ANSWER: I do agree with the fundamental principle that the licensee has the day-to-day responsibility that the plant operates safely. Also, it is an NRC requirement that there be an emergency alert system and that it works properly. NRC's role is to establish safety and security requirements for the nuclear industry as a whole and to ensure that individual nuclear power plants comply with NRC rules and regulations.

3. If confirmed, how will you balance the input and recommendations of the NRC's career staff with the decision-making authority vested in you as a commissioner?

ANSWER: The NRC staff is what makes the NRC the "gold standard" for nuclear regulators around the world. I look forward to learning from their experience and expertise. At the same time, it is the Commission's responsibility to determine what constitutes reasonable assurance of adequate protection of the public health and safety. If confirmed, I intend to learn all I can from the staff and to question their recommendations in order to make informed decisions.

4. Two years ago, the Commission launched a "Transformation Initiative" to move the agency towards a modern, risk-informed regulatory approach. This is critical to improving the effectiveness of the organization to respond to an evolving nuclear industry. It is important that changes adopted under this initiative are sustainably incorporated into the agency's culture. A former NRC advisor once described the Commission like a balloon, as long as you apply pressure, the balloon will be changed; but as soon as the pressure is released, it goes right back to its original shape.

- a. What is your view of NRC's Transformation Initiative?

ANSWER: I view the Transformation Initiative as a means to prepare the NRC to license new technologies in a risk-informed, effective, and efficient manner, which is essential if there is going to be a nuclear industry in the future. It seems to me that changing the agency from the inside using the input of external stakeholders will ensure that safety remains the NRC's top priority as the agency evolves.

- b. If confirmed, how will you ensure changes resulting from the Transformation Initiative will endure?

ANSWER: If confirmed, I look forward to working with the NRC staff to implement their proposals as well as identify continuing improvements as the changes are implemented. The Commission's role in the transformation will be to lead in a manner that exemplifies the goals of the initiative, in particular, modeling the cultural shift to becoming a modern, risk-informed regulator.

5. Accident Tolerant Fuels (ATF) are expected to enhance the safety of operating nuclear power plants, as well as offer potential economic benefits resulting from increased time between refueling outages. The Commission must license the fuels for use to realize these benefits.

- a. If NRC approves ATF for use, should the NRC credit ATF's enhanced safety and performance into the regulatory requirements of nuclear power plants?

ANSWER: Depending on the type of accident tolerant fuel and its specific characteristics with regard to increased tolerance of accident conditions, yes, in general, NRC should evaluate crediting such specific fuel's enhanced safety and performance into regulatory requirements.

- b. If confirmed, will you prioritize activities to approve the use of ATF?

ANSWER: If confirmed, I intend to prioritize NRC activities that enable the safe licensing of Accident Tolerant Fuels, as I believe it presents a unique opportunity to reduce risk and cost of current fleet operations.

6. New Mexico Governor Lujan Grisham wrote the Commission to state her opposition to the licensing of a consolidated interim storage facility in her state. If confirmed, how would you consider the opposition of a state government into your decision to approve or disapprove an NRC license?

ANSWER: I understand that the NRC has regulations and procedures for registering concerns from outside entities regarding specific licensing actions. I also understand that NRC would typically consider the input of state governments insofar as the state must issue specific permits for the facility to proceed (such as water withdrawal permits or rights of way for utility infrastructure). I am not currently aware of other specific

conditions under which the NRC would consider state government input. I understand it is the NRC's role to determine whether a license should be issued based on the applicant's ability to comply with NRC regulations. It is not the NRC's role to set national policy on storage and disposal of spent nuclear fuel.

7. In a letter to Congress on March 19, 2018, the Commission stated the NRC does not have authority to issue a license to any entity other than the Department of Energy for a facility to permanently dispose of spent nuclear fuel and high-level radioactive waste. Do you agree with the Commission's position?

ANSWER: I understand that the Nuclear Waste Policy Act does not envision a licensee for permanent disposal of spent nuclear fuel and high-level radioactive waste outside of the Department of Energy.

8. The NRC's career staff recently recommended changes to the Commission's inspection programs. At a recent Committee hearing, a Commissioner expressed concern "about a lot of the proposals to reduce inspections in order to save money" and suggested changes are done "just to save money."

- a. Do you believe the NRC's career staff recommended changes to NRC's oversight and safety programs to "save money?"

ANSWER: I'm not aware of the impact on nuclear power plant operating costs of any particular regulatory proposal pending before the Commission. I understand that cost is a factor in developing and evaluating new regulations and changes to existing procedures and regulations.

- b. Do you believe it is proper for a Commissioner to question the motives of the NRC's career staff?

ANSWER: If confirmed, I do not intend to question the motives of NRC career staff or my fellow Commissioners, who, in previous interactions, I have found to be exemplary public servants.

- c. Will you commit that if you are confirmed as a Commissioner, you will respect the career staff's decision-making process?

ANSWER: In my interactions with NRC staff over the last six years, they have demonstrated a very high level of technical expertise, professionalism, and dedication to NRC's mission. If confirmed, I expect such interactions will continue and I will respect their decision-making process.

9. The need for a predictable regulatory framework is well known. However, predictability is just one component of a successful regulatory framework. Efficiency is one of NRC's Principles of Good Regulation. Regulatory decisions must also be made in a timely and affordable manner.

a. Do you recognize the need for an efficient, timely, and affordable process for NRC's permit, licensing, and certification decisions?

ANSWER: I recognize the importance of all Principles of Good Regulation: independence, openness, clarity, reliability, and efficiency. Efficiency is important so that regulatory decisions take no less or no more time or money than necessary to provide reasonable assurance of adequate protection.

b. If confirmed, how will you ensure NRC's licensing and regulatory processes are predictably efficient, timely, and affordable?

ANSWER: If confirmed, I plan to abide by the Principles of Good Regulation, and hold myself and the NRC staff to the standards and milestones that have been put in place to live up to those principles. Once all relevant information is available, I plan to make decisions expeditiously.

10. The Nuclear Energy Innovation and Modernization Act (NEIMA) requires the NRC to establish a regulatory framework to license and deploy advanced nuclear technologies. New nuclear reactors can be smaller, safer, and more efficient. The law requires the safety rules to reflect those attributes.

a. Do you support establishing safety regulations commensurate with the risk and performance of advanced nuclear technologies?

ANSWER: It is incumbent upon the developers of advanced nuclear technologies to demonstrate through a variety of methods how the technology in question meets NRC regulatory requirements. NRC is obligated to apply its regulations in

a clear and reliable manner, taking into account, where applicable, the improved safety characteristics of the technology under review.

- b. If confirmed, how will your decisions incorporate this principle?

ANSWER: If confirmed, I will work to ensure that NRC has the confirmatory data from reactor vendors, international partners, and Department of Energy laboratories needed to make licensing decisions consistent with the risk and performance of advanced technologies.

11. The NRC's fiscal year 2021 budget request for corporate support exceeds the limit set by NEIMA. If confirmed, will you support actions to reduce these costs to ensure compliance with the law?

ANSWER: I understand that in NEIMA, Congress intended to limit NRC corporate support spending at certain prescribed levels to the maximum extent practicable. NRC should seek out ways to conduct its business more efficiently and cost-effectively. NRC also needs a certain level of base corporate support in order to sustain ongoing fee-based regulatory actions. Furthermore, NRC should also make investments in its staff and overhead infrastructure to support future workloads and new ways of doing business.

12. The Government Accountability Office (GAO) has issued four reports since 2017 identifying the need to improve budget management at the NRC. [GAO-17-232, GAO-17-294, GAO-18-318, GAO-20-362]

- a. Are you familiar with these reports?

ANSWER: I am generally familiar with these reports.

- b. If so, please provide your response to GAO's findings and recommendations. If not, will you review the reports?

ANSWER: In general, GAO recommends that NRC follow its own Principles of Good Regulations in setting budgets and fee levels. GAO also recommended that NRC follow standard project management practices in deploying a new electronic billing system for licensees. I understand that NRC has taken steps to stabilize its budget structure in order to increase comparability across years. I also understand that NRC has expanded information available on how it sets fees. Based on my experience on the Appropriations Committee, these are important steps, but

increased transparency and clarity is needed so that Congress and licensees have confidence that NRC is using its resources efficiently and appropriately.

- c. If confirmed, how will you approach budget development, execution, and fee collection at the NRC?

ANSWER: If confirmed, I will work with my fellow Commissioners to ensure that NRC's fee setting and budget development and execution follow the Principles of Good Regulation, especially openness, clarity, and reliability.

- 13. American nuclear companies plan to license and deploy new technologies around the world. This highlights the need for international collaboration between national nuclear safety regulatory agencies. How should international regulators collaborate to license technologies that will be globally deployed and what is the appropriate role for the NRC?

ANSWER: One opportunity for collaboration among nuclear safety regulators may be in sharing empirical data around the performance of key safety related components. National nuclear laboratories in the United States, United Kingdom, South Korea, and elsewhere have conducted extensive irradiation tests and post-irradiation examinations on materials and components that can be shared, with the appropriate caveats for security and intellectual property, and used as a partial basis for licensing actions in multiple countries. I understand that the NRC is engaged in a wide range of bilateral or multilateral agreements through which it can share research and performance and confirmatory data where appropriate.

- 14. In 2015, the Commission approved the NRC career staff's recommendations related to a "fresh assessment of foreign ownership, control, or domination (FOCD) of utilization facilities." [SRM-SECY-14-0089]

- a. Are you familiar with the Atomic Energy Act's FOCD provision and how the NRC implements the policy?

ANSWER: I am not familiar with the Atomic Energy Act's FOCD provision. If confirmed I will examine this issue and be prepared to deliberate specific actions before the Commission.

- b. If confirmed, would you support the Commission's previous decision to take a fresh look at FOCD requirements based on current risks and opportunities?

ANSWER: In general, I support taking a fresh look at previous decisions based on current risks and opportunities. If confirmed I will examine this issue and be prepared to deliberate specific actions before the Commission.

15. The NRC has an established process to issue exemptions for emergency planning to align requirements commensurate with the reduced risk as reactors undergo decommissioning. This process has been consistently applied for the nine commercial power plants sites fully in the decommissioning process.

- a. Should requirements on decommissioned nuclear reactors reflect the facility's reduced risk?

ANSWER: I agree that the NRC should impose requirements commensurate with the risk posed by a facility. I understand that the NRC staff has performed a number of studies on the safety of spent fuel pools and dry cask storage to determine appropriate safety measures. The NRC has also required enhanced mitigation strategy capabilities since the events of Fukushima. I understand that the NRC uses this information when it evaluates exemption requests to determine that they do not present an undue risk to public health and safety and are consistent with the common defense and security. I agree that once the fuel has been removed from a reactor's core, it generally poses a lower risk than an operating reactor, and emergency planning requirements should change with the changed facility and risk profile.

- b. Do you agree that it is appropriate to continue this well-established process?

ANSWER: I agree that decommissioning reactors should not have to meet all of the same requirements as operating reactors. This could be accomplished through exemptions from license requirements or rulemaking.

16. The use of radiological material for medical purposes is extremely beneficial, especially to diagnose and treat cancer. Through the licensing and oversight of nuclear material, NRC plays a critical role to allow the use of radioactive material for medical applications.

- a. Are you familiar with NRC's role to regulate and oversee the medical use of radioactive materials?

ANSWER: I am generally familiar with NRC's role in regulating and overseeing the medical use of radioactive materials.

- b. Do you agree that it is important to continue producing isotopes and developing other radiological treatments for medical use?

ANSWER: I agree that it is important to continue to produce isotopes and other radiological treatments for medical use, particularly where there are no non-radiological substitutes available.

- c. If confirmed, how will your decisions regarding the medical use of nuclear material reflect the associated societal benefits of the technology?

ANSWER: I understand that NRC licenses the material that goes in medical devices and not the devices themselves. Therefore, NRC should apply clear and consistent requirements, including security requirements, to the possession and use of these materials to enable their continued use.

17. The Atomic Energy Act of 1954 grants the NRC the sole authority to license and oversee the safety of our nation's civilian nuclear power plants. The Federal Emergency Management Agency's (FEMA) Radiological Emergency Preparedness (REP) program provides a complementary role by interfacing with state, local, and tribal stakeholders to assure NRC licensees meet all offsite emergency preparedness (EP) requirements. Establishing emergency preparedness requirements is the responsibility of the NRC.

- a. Do you agree that the NRC maintains the sole regulatory authority to establish emergency planning requirements?

ANSWER: I understand that NRC has the sole regulatory authority to establish emergency planning requirements.

- b. If confirmed, will you ensure that risk-informed EP requirements are incorporated into the regulatory framework for advanced reactors, as directed by NEIMA?

ANSWER: The emergency planning requirements for advanced reactors should be commensurate with the risks posed by the technology as demonstrated by empirical data and rigorous computer modeling. If confirmed, I will work to ensure all emergency planning requirements for advanced reactors are risk-based.

18. The Commission has been examining how to allow the use of digital instrumentation and controls (I&C) since 1994. To date, the NRC has limited the use of digital I&C.

a. How do you view authorizing the use of digital I&C in nuclear power plants?

ANSWER: I generally favor the use of digital I&C in nuclear power plants, as analogous systems have been safely deployed in the aircraft and automotive sectors.

b. If confirmed, will you prioritize decisions that allow current licensees to safely utilize digital I&C?

ANSWER: If confirmed, I intend to look closely at this issue and better understand the challenges in licensing these technologies.

c. If confirmed, will you prioritize work to allow the safe use of digital I&C in advanced nuclear reactor designs?

ANSWER: If confirmed, I will work to ensure that the digital I&C systems that are inherent in advanced nuclear reactor designs are evaluated within that context for their performance and safety characteristics.

19. The NRC ended fiscal year 2019 with over \$60 million in carryover. The amount of carryover has increased over the past few years.

a. What is your view of this trend of increasing carryover funding?

ANSWER: Increasing carryover funding, in general indicates that NRC has been appropriated too much money by Congress or collected too much money from licensees for the projected workload.

b. If confirmed, what actions will you take to limit carryover?

ANSWER: If confirmed, I commit to working to improve the NRC's estimates and assumptions in its budget process. While the NRC will never be able to propose a budget that is precise to the penny, increased Commission scrutiny and improved planning estimates can decrease the amount of carryover.

20. One research study claims that a fire in a spent fuel pool could “dwarf the impact of Fukushima” and demands action be taken to address this risk. NRC’s technical staff disagree with the study’s findings because the likelihood of a spent fuel pool fire is extremely low. Other experts share NRC’s assessment.

- a. Do you agree with the NRC staff’s determination that the likelihood of a fire in a spent fuel pool is extremely low?

ANSWER: I agree that the likelihood of a fire in a spent fuel pool is extremely low.

- b. Do you believe the NRC needs to implement new requirements to address the potential of a fire in a spent fuel pool?

ANSWER: I am not familiar with the current requirements to address the potential of a fire in a spent fuel pool and therefore can not take a position on whether new requirements are needed.

- c. If confirmed, how will your regulatory approach incorporate probabilistic risk assessments and other quantitative approaches to event likelihood and consequence?

ANSWER: Probabilistic risk assessment is a powerful tool for assessing accident scenarios and performance parameters. It is most useful when informed by substantial quantitative data derived from experiments or field assessments. If confirmed, I will place a priority on ensuring that probabilistic risk assessments are informed by quantitative data derived from real-world analyses and observations.

21. The NRC launched the Independent Spent Fuel Storage Installation (ISFSI) Inspection Program Enhancement Initiative to develop a clear and comprehensive, risk-informed approach to ISFSI inspections that is consistent across all regions. The NRC staff recommended actions to enhance the existing program, such as focusing on the most safety significant items. The staff also recommended reducing the frequency of routine inspections, in part because fuel storage casks are continually monitored. Do you support aligning NRC’s inspection requirements based on an enhanced understanding of risk?

ANSWER: I support aligning inspection requirements based on an enhanced understanding of risk.

22. NRC's Principles of Good Regulation focus the Commission on ensuring safety and security while appropriately balancing the interests of the NRC's stakeholders.

a. Which of these principles are most important to you?

ANSWER: All of the Principles of Good Regulation are important for providing assurance of adequate protection. If confirmed, Openness and Reliability are likely to be most important to me.

b. If confirmed, how will your regulatory approach reflect these principles?

ANSWER: If confirmed, I plan to abide by all the Principles of Good Regulation, and hold myself and the NRC staff to the standards and milestones that have been put in place to live up to those principles. Openness is critical to maintaining public confidence in NRC's actions and its role as an independent regulator. Reliability ensures a level of predictability and certainty among licensees and the public about the basis for NRC actions.

23. Overall performance of our nation's nuclear power plants has steadily improved over the last two decades. The Institute of Nuclear Power Operations (INPO) recently testified that there is a correlation between a nuclear power plant's performance and safety. Do you agree with INPO's assessment?

ANSWER: While I do not have direct knowledge of INPO's conclusion or the data on which it is based, I generally agree that there is a correlation between nuclear power plant performance and safety.

24. The world has changed radically since the events of September 11, 2001. In the wake of that tragedy, U.S. nuclear power plants increased their security measures to make them the most heavily defended privately-owned facilities in the world.

a. What are your views regarding the necessary balance and division of responsibilities between the U.S. Government and the private sector?

ANSWER: Licensees are best situated to provide security for their facilities. I do not think the government should provide security forces at private facilities. At the same time, the government has access to intelligence information and data

from across the industry, so it is necessarily the government's role to set security requirements and ensure they are met.

- b. What are your views on the availability of federal, state, and local law enforcement, and whether NRC licensees should be able to rely on those agencies as part of their NRC-required protection strategies, in the unlikely event of an attack on a nuclear power plant?

ANSWER: When creating safety and security plans, it seems appropriate for licensees to consider the response from law enforcement agencies for overall strategies. While I am not familiar with how the NRC reviews licensees' security plans, it seems appropriate for the NRC to take this into account. I look forward to learning more about this issue, if confirmed.

25. The Backfit Rule requires that new or amended regulatory requirements on NRC licensees yield a substantial safety benefit and are cost-justified. The cost-benefit analysis should consider all available data, but reliance on qualitative factors should be used in a "judicious and limited manner to inform decision-making." The rule is essential for the agency to adhere to NRC's Principles of Good Regulation.

This Committee has documented concerns about the Commission's lack of adherence to the rule. The concerns include overreliance on qualitative factors, misapplying exceptions that permit new requirements without a cost-benefit analysis, and limited review by the NRC's Committee to Review Generic Requirements (CRGR).

The current Commission has acknowledged challenges with the application of this rule and recently taken steps to calibrate agency policy about its implementation. The Commission has also recognized the implications of "forward-fitting," in which staff imposes new requirements on the basis of compliance, without an adequate demonstration of the regulatory basis.

- a. Are you familiar with the NRC's Backfit Rule, recent agency precedent of its application, and current guidance on backfitting and forward fitting?

ANSWER: I am aware of the NRC's Backfit Rule, but I am not familiar with its details or implementation.

- b. If so, please provide your views on the issue. If not, will you commit to conducting a thorough review of the rule, recent agency action, and current guidance?

ANSWER: I commit to a thorough review of the rule and the agency's recent actions and guidance, if confirmed.

- c. Do you support the use of a rigorous cost-benefit analysis, when appropriate, to inform the NRC's regulatory decisions?

ANSWER: I support cost-benefit analyses where they are appropriate, which I understand for the NRC to be for requirements beyond reasonable assurance of adequate protection of public health and safety.

- d. Do you believe that the use of qualitative analysis should be limited in NRC's regulatory actions?

ANSWER: I am not familiar enough with the NRC's use of qualitative factors to have an opinion at this time, but I commit to reviewing the issue if confirmed.

- e. Please provide your view on the role of the CRGR.

ANSWER: I understand that the CRGR is a panel of NRC staff who review generic requirements for their compliance with the Backfit Rule. While I am not familiar with the specifics of how and when the CRGR is used, it seems to me to be a helpful resource for NRC decision making.

- f. If confirmed, will you be diligent in ensuring your actions, and the actions of NRC staff, are consistent with the Backfit Rule and current agency guidance?

ANSWER: I will commit to ensuring that my actions will be consistent with the Backfit Rule and its associated guidance.

- 26. The NRC has the sole authority to license and oversee the safety of our nation's civilian nuclear power plants. However, multiple states have attempted to influence the NRC's well-established regulatory process. If confirmed, how will you ensure the NRC preserves its authority to regulate and oversee the use of nuclear materials as authorized in the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974?

ANSWER: I understand that multiple states have a strong interest in influencing the decommissioning process for nuclear reactors. As you note, federal law preempts state statute in this area. NRC should have avenues to constructively engage state

governments on decommissioning and regulation of nuclear materials; however, except where delegated through the Agreement State program, NRC should retain clear regulatory authority.

27. During the Environment and Public Works Committee hearing on NRC's fiscal year 2021 budget request, it was suggested that any reduction in the NRC's budget will result in a reduction in nuclear safety. In 2005, the Commission was provided a total budget authority of \$669 million to oversee 103 operating power plants. This year, the Commission is provided \$855 million to oversee 96 operating power plants, down from a peak that exceeded \$1 billion.

a. Do you believe the Commission can reduce costs without reducing safety?

ANSWER: Based on the significant decrease in the NRC's budget over the past several years, it is clearly possible for the NRC to reduce its budget without reducing safe oversight of operating and decommissioning reactors and nuclear materials licensees, while also preparing to license the next generation of nuclear facilities.

b. If confirmed, will you work to reduce budget and staff resources commensurate with the reduced workload when nuclear power plants shut down?

ANSWER: If confirmed, I commit to ensuring that the NRC's budget reflects the agency's workload.

28. The NRC has a well-established process for renewing operating licenses for nuclear power plants. Of the 96 operating reactors, 88 have received an initial license renewal following this process. NRC staff determined that the Commission's process to approve an initial license renewal were appropriate to use when considering issuing a second, or subsequent license renewal. The Commission has granted a subsequent license renewal following this same process.

a. Do you agree that the well-established process for initial license renewals is adequate to use for subsequent license renewals?

ANSWER: I expect the process used by the NRC to renew reactor licenses for 20 years would be a solid foundation for renewing licenses for an additional 20

years. If confirmed, I look forward to learning about the subsequent license renewal process from the NRC staff.

- b. If confirmed, will you support an efficient and predictable process to approve subsequent license renewals?

ANSWER: If confirmed, I commit to supporting an efficient and predictable process for all licensing actions, including subsequent license renewals.

- 29. Do you believe it is appropriate for the NRC to periodically assess and adjust the level of oversight it provides to NRC licensees? Why or why not? What factors should the NRC consider when assessing the effectiveness and efficiency of its regulatory programs?

ANSWER: It is appropriate for NRC to periodically assess and update the level of oversight of licensees. NRC should take into account the accumulation of knowledge and experience both within NRC and among licensees as part of this assessment. Both licensees and the NRC have opportunities to share knowledge regarding performance and risk and should do so. Minimizing regulatory uncertainty through openness, clarity, and reliability is important; periodic assessments should be conducted in a way that is predictable and provides the greatest opportunity for input by a wide array of stakeholders.

- 30. During your confirmation hearing, you said that “if we can gather information about plant performance in a more efficient way, then I think those opportunities can and should be considered in ways that don’t undermine the knowledge base that we have.”

- a. Please expand on that statement.

ANSWER: Much of regulation is fundamentally about “how we know what we know”, in this case about nuclear plant operations and safety. Affordable digital systems and sensors provide an opportunity to monitor some safety significant systems more efficiently and cost effectively. Other systems may need to continue to be monitored by direct observation. As noted above, NRC should periodically evaluate and potentially update its requirements based on the most current understanding of performance and risk. Part of this evaluation should ask, “Do we still need all the information we have been gathering and are there new pieces of information that we need?” And secondly, “What is the most efficient way of gathering the information we need to provide reasonable assurance of

adequate protection?” Within those questions is a lot of trade space that maintains or strengthens the basis of knowledge for adequate protection.

- b. If confirmed, what will this mean in terms of your regulatory approach as a Commissioner?

ANSWER: If confirmed, I will be open to regulatory reforms that incorporate new technologies and approaches that maintain or enhance the current knowledge base about performance and risk.

- 31. The Atomic Energy Act of 1954 provides that “the development, use, and control of atomic energy shall be directed so as to make the maximum contribution to the general welfare.” The NRC is not responsible for promoting nuclear energy, but given the Atomic Energy Act’s language, do you believe that the NRC has a responsibility to regulate in a way that enables the use of civilian nuclear power so long as adequate protection of public health and safety and common defense and security is maintained? Why or why not?

ANSWER: I agree that the NRC’s mandate is to ensure reasonable assurance of adequate protection of the public health and safety and the common defense and security. I also agree that while the NRC does not promote nuclear energy, the NRC should not be a barrier to its development and operation. I see these NRC roles as compatible with the statutory direction.

- 32. The Office of Nuclear Reactor Regulation recently adopted the motto “We Make Safe Use of Nuclear Technology Possible.” What are your views on this statement, based on your understanding of the Atomic Energy Act of 1954 and the NRC’s overall mission?

ANSWER: I look forward to better understanding how this motto fits with NRC’s overall approach to regulation and the Transformation Initiative.

- 33. In your testimony, you stated that you would bring a “respect for private sector decision-making.”

- a. Please explain what this means to you.

ANSWER: As former Exelon chief executive officer John Rowe said, “Nuclear is a business, not a religion.” Respecting private sector decision-making means that businesses will make decisions in their own interests. As a regulatory body, NRC should not attempt to push those decisions in one direction or another.

b. If confirmed, how would your regulatory approach reflect this view?

ANSWER: NRC should follow its mandate to provide reasonable assurance of adequate protection for actions and technologies brought to the Commission by private businesses. It is also incumbent on the NRC to be as reliable and predictable as possible in its regulatory actions, so that private businesses can act with a minimum of uncertainty in the regulatory arena.

34. The Atomic Energy Act Of 1954 provides a role for the states in the oversight of radioactive materials, but prohibits the states from having a role in the radiological safety of nuclear power plants. What is your view on the role of the states in day-to-day operational safety of nuclear power plants and the decommissioning of nuclear power plants?

ANSWER: As I said in my opening statement, I am sympathetic to state and local governments’ desire to have input on federal decision making regarding nuclear matters. However, with regard to operational safety of nuclear power plants, the sole role of ensuring adequate protection of workers and the public does reside with the NRC. I understand that the role of state governments in the decommissioning of nuclear power plants within the context of the Atomic Energy Act is the subject of ongoing discussion. If confirmed, I commit to follow existing laws and regulations.

35. Of the voting papers currently pending before the Commission, which are your priorities?

ANSWER: Of the papers currently before the Commission, if confirmed, I intend to focus initially on the following:

- SECY-19-0117 – Technology-Inclusive, Risk-Informed, and Performance-Based Methodology to Inform the Licensing Basis and Content of Applications for Licenses, Certifications, and Approvals for Non-Light-Water Reactors
- SECY-18-0103 – Proposed Rule: Emergency Preparedness for Small Modular Reactors and Other New Technologies

36. What policy issues do you anticipate focusing on as a Commissioner?

ANSWER: If confirmed, I intend to focus on three issues: licensing of accident tolerant fuel, the nation's university research and test reactors as incubators for the next generation nuclear workforce, and the licensing of advanced reactors.

37. Based on your experience as a staff member for the Senate Appropriations Committee, what do you believe needs to be improved about the NRC's budget formulation and execution process?

ANSWER: The NRC has taken several steps to improve its budget formulation and execution processes in the last several years, including stabilizing its budget structure and the way it accounts for corporate support costs. However, additional steps could be taken to better plan workforce levels and workloads to reduce the amount of carryover from year to year.

38. Recent market challenges have resulted in the closure of multiple nuclear power plants prior to the end of their operating license.

a. Please describe your understanding of the current economic challenges of the U.S. nuclear fleet.

ANSWER: Economic challenges to the current fleet fall into three main categories: low natural gas prices, high-upfront capital costs for new nuclear construction, and lack of a consistent mechanism for compensating nuclear plants for clean energy benefits.

b. In your view, what role does overly burdensome regulation play in those challenges and what responsibility does the NRC have to reduce those burdens?

ANSWER: It is incumbent upon NRC to periodically evaluate its regulations in light of new information on performance and risks. On the basis of this evaluation, NRC should thoroughly consider opportunities to streamline its oversight procedures and requirements in light of its duty to provide reasonable assurance of adequate protection. While I understand NRC fees are a significant cost to operators, the other challenges addressed above drive utilities' decisions to close plants.

Senator Cardin:

39. The NRC's workforce is aging. More than half of the employees are over the age of 50, and nearly 30 percent are currently eligible to retire. Meanwhile, younger employees make up a shrinking percentage of the agency, with just 2 percent under the age of 30. The NRC has historically had a staff attrition rate below the federal government annual average of 5 to 6 percent. It now appears to be at 7 percent. We are extending licenses for reactors overwhelmingly built in the 60s and 70s that have been in operation well beyond their original *design-basis*. But the NRC demographic trends indicate that we are losing the staff who have spent much of their careers overseeing these reactors, with all of the scientific, legal, and institutional knowledge they have accumulated. Do you feel that we are in the right place as far as ensuring that this critical knowledge gets passed on to the next generation of regulators?

ANSWER: The NRC staff is what makes the NRC the "gold standard" for nuclear regulators around the world. Therefore, it is critically important that we create "generational overlap" at the NRC to ensure that the knowledge and experience of older workers are passed on in a systematic way to newer employees. It is also important that NRC have the systems and procedures in place to capture the knowledge from older workers to create a substantial resource for future employees. I understand that developing the workforce of the future through early-career and mid-career recruitment efforts is a high priority for the NRC. If confirmed, I look forward to learning more about these efforts and assisting the organization in any way I can in ensuring the workforce remains well-supported and exceptionally well prepared for the future.

Senator BARRASSO. Thank you very much, Mr. Hanson. Clearly, you understand the challenges that you are facing in the position for which we hope you become confirmed by the full Senate.

I do want to thank all the nominees for the testimony today and throughout the hearing, and with questions for the record the Committee members will have the opportunity to learn more about your commitment to public service of our great Nation. I am going to ask that throughout this hearing, you please respond to the questions today and those submitted in writing for the record.

I have to ask this following group of questions to each of you on behalf of the Committee. The first is, Do you agree, if confirmed, to appear before this Committee or designated members of this Committee and other appropriate committees of the Congress and provide information, subject to appropriate and necessary security protection, with respect to your responsibilities?

Mr. BENEVENTO. Yes.

Mr. WRIGHT. I do.

Mr. HANSON. Yes.

Senator BARRASSO. And do you agree to ensure that testimony, briefings, documents, and electronic and other forms of information are provided to this Committee and its staff and other appropriate committees in a timely manner?

Mr. BENEVENTO. Yes.

Mr. WRIGHT. Yes.

Mr. HANSON. Yes.

Senator BARRASSO. Do you know of any matters which you may or may not have disclosed that might place you in any conflict of interest if you are confirmed?

Mr. BENEVENTO. No.

Mr. WRIGHT. No.

Mr. HANSON. No.

Senator BARRASSO. We are now going to begin with a round of questions. We will do 5-minute rounds of questions.

I would like to start with you, Mr. Benevento. October 2018 you signed a memorandum of agreement with the Wyoming Department of Environmental Quality to promote the use of Wyoming's self-audit law. The self-audit law encourages facilities to come forward, work cooperatively with the State to address environmental issues.

Can you explain how this model can serve as an example for other States?

Mr. BENEVENTO. Yes, thank you, Mr. Chairman.

As you know, as you described, self-audit laws are designed to really encourage regulated entities to go out and find, fix, and report. It is what we call the virtuous cycle, where you are constantly looking for ways to improve your operations from an environmental perspective, so that you are constantly upgrading and doing what, frankly, the regulators can't do. We can't be everywhere at the same time.

In return for that, what the regulators do, or what the State and Federal regulators should do, is they look at whatever violation may be reported, then they assess whether a penalty, or if there are any other penalties or injunctive relief that would be necessary.

My experience having run the State department is when an entity comes in, they have found the problem, they have addressed it, and they have moved on that we generally would waive any penalties and make certain that the fixes they had put in place were appropriate.

What is always looming out there, though, from a State official perspective, is what will EPA do. So they come—and these are State laws—they come, and they report to the State. EPA always has the ability to over-file or to come and take additional action.

That tends to dampen a regulated entity's willingness to come forward if they don't know what EPA is going to do. Frankly, over the years, EPA has been hit or miss about whether they will accept a State's decision to waive penalties or not.

What this MOU is designed to do is to ensure that certainty for the regulated entity. What it really says is, Look, if an entity comes forward, if the State takes the appropriate action, if they basically follow their own law, we will not step over the top of them and issue additional penalties. This is really important.

The outcome in Wyoming has been great. The outcome in Wyoming, and I have spoken with Secretary Parfitt about this multiple times, from before there was the self-audit MOU to afterwards, they have seen an increase in the number of facilities that are actually going out and looking for issues in their operations and fixing them.

The environmental benefit to the State of Wyoming has been great, so great that North Dakota has also signed an MOU. There are several other States that are also looking at it.

It is a simple, common sense way for us to ensure that you have the help of the regulated industry in looking for problems in their facility, reporting them, and making sure that they are fixed, and doing it on a continuous basis.

Senator BARRASSO. Thank you.

Mr. Hanson, the Nuclear Regulatory Commission staff, they recently identified some opportunities to enhance and modernize the primary program that oversees our nuclear power plants. You talked about growing up near one.

The staff reviewed the last 20 years of operations by nuclear utilities and regulatory oversight of the plants. Based on this review, the staff made some recommendations to the commission for improving the programs.

Should the commission periodically review and update its requirements, based on the most current and reliable information? Any thoughts on what we need to do along those lines?

Mr. HANSON. Yes, thank you, Senator.

I think it should periodically review and update its regulations. I know the current effort, the reactor oversight program enhancement project, was based in looking at past performance data.

I think the key, and while I am not familiar with a lot of the specific elements of the ROP enhancement project, I think one of the key elements that we have to be cognizant of is, how do we manage information, how do we know what we know. If we can gather information about plant performance in a more efficient way, then I think those opportunities can and should be considered in ways that don't undermine the knowledge base that we have.

Senator BARRASSO. Mr. Benevento, just a quick short answer, if you could. Under your leadership as Executive Director of the Colorado Department of Public Health and the Environment, you played a critical role in the cleanup of plutonium and other contamination at the Department of Energy's Rocky Flats Plant Superfund.

Can you explain your involvement and how the cleanup really helped the State of Colorado?

Mr. BENEVENTO. Yes, sir. My involvement was, I worked at the behest of Senator Allard to expedite appropriations. So basically what we were doing, we asked for some of the money that we knew would come in later years earlier, so we could expedite the cleanup and save the taxpayer money and do it quickly. Also working with regulators on ensuring that they were providing sound, common sense regulatory requirements for the cleanup.

Senator BARRASSO. Great. Thank you very much.

Senator Carper.

Senator CARPER. Thanks, Mr. Chairman.

Earlier, the Chairman asked each of you this question. He said, do you agree to ensure that testimony, briefings, documents, and electronic and other forms of information are provided to this Committee and its staff and other appropriate committees in a timely manner. Each of you said yes. Each of you said yes. That is the right answer.

I just want to say, Mr. Benevento, I mentioned that EPA has been more unresponsive to requests for information since Administrator Wheeler took over. For example, EPA has been refusing to release an economic analysis of legislation that Senator Kennedy and I offered to phase down, not phase out, but phase down HFCs, which are 1,000 times or more dangerous than carbon dioxide with respect to climate. But the EPA has been refusing to release an economic analysis that shows that our legislation will save consumers up to \$3.7 billion over 15 years.

My question is, Mr. Benevento, I have been informed that EPA's Air Office has finished the analysis, which was also requested by Senator Kennedy. But other EPA political officials have refused to transmit it to his office. Will you commit to providing it to us by the end of this week?

Mr. BENEVENTO. Thank you for the question, Senator.

What I will commit to you is I will go back to the agency; I did go back to the agency after we spoke and asked about the status of that analysis. It is still under review; it is not yet complete. I will commit to you that I will go back, and I will again see, check on the progress of it and report back to you on what that progress is.

Senator CARPER. Yes. I will just be really blunt. Your progress in finding this analysis—we are told it is done. We are told by people within the agency it is done. It is ready to go. But it is not being released.

If we don't get it, I don't threaten—it is going to be hard for me. I want to support your nomination. I don't want to hold it; I don't want to impede it. But we want that information.

And if it is really true, there are \$3.7 billion of consumer savings that would flow from our legislation, we need to know that. We

need to know that. And we are going to count on you to really be truthful to the vow you just took.

Second question. I recently obtained a leaked version of the final draft rule that rolls back the vehicle greenhouse gas and fuel economy standards. In addition to the increased carbon pollution, the draft rule costs outweigh its benefits by more than \$40 billion and includes many other legally questionable elements.

There has been so much embarrassing media attention paid to EPA's criticism of the Transportation Department's work on this rule, that I have learned that EPA political officials have told career officials to stop documenting their feedback to the Transportation Department the way the law requires them to do.

Specifically, we have learned that EPA recently provided a paper copy of its criticisms to the Transportation Department, but did not share an electronic copy of the same material with the White House Office of Management and Budget.

Here is my question. Can you commit to us that you will ensure that this material, as well as any other material that EPA shares with the Transportation Department, as this rule is finalized, is placed into the White House rulemaking document as the Clean Air Act requires it to be?

Mr. BENEVENTO. Thanks, Senator.

As you know, we have been working on this rule. It is not yet complete. NHTSA is on the lead on this. I will commit to you that I will go back to the agency, I will look into this matter. We are still in the process of working on this rule, though, and it is not yet complete.

Senator CARPER. Well, will you make sure the EPA follows the Clean Air Act in this regard or not?

Mr. BENEVENTO. Yes, we will follow the Clean Air Act.

Senator CARPER. Thank you.

Mr. Hanson, the Chairman said to me as an aside he thought we were very fortunate that someone with your qualifications and background is willing and interested in serving in this capacity, along with Mr. Wright. I certainly agree with what he said to me.

I have a question. You have a real interest, as do we, in accident-tolerant fuels for nuclear power plants. Accident-tolerant fuels—in the next 5 years, the NRC faces the possibility of having to review license applications for widely different accident-tolerant fuel technologies and advanced reactors.

What do you see as the benefit of accident-tolerant fuels? In your view, how is the NRC working with industry, health groups, and other stakeholders to overcome any critical skill gap at the NRC that would be necessary to review these technologies?

Second, if confirmed, what more do you think you can do within the NRC on this issue as a commissioner?

Mr. HANSON. Thank you, Senator, for that.

The accident-tolerant fuel program at the Department of Energy is something I have been involved with for a number of years. It was a program Senator Feinstein started after the Fukushima accident, actually 9 years ago today, as a matter of fact. Not the program, the accident.

As a way for the current fleet to have better performing fuel in accident conditions, and as the department has gone along and

funded the research and development on that, they have not only realized certain safety benefits, but there have also been a number of performance benefits for reactor operations, as well, that have made that attractive economically for those.

My understanding at this time is that the NRC has been very engaged, that there have been a number of computer models that have been developed on the Department of Energy side that are being used by NRC to evaluate some of these concepts. It is a program that I remain very interested in and enthusiastic about, both for its safety benefits and its potential economic benefits for the current fleet.

At NRC, with regard to your second question, Senator, I think there are ongoing efforts in both personnel and regulation that can and should happen. I look forward to understanding the details around that, should I be confirmed. I think NRC has been—my understanding is they have been very, I don't want to say accommodating, but responsive to entities that have pursued this. I hope that can continue.

Senator CARPER. All right. Thanks very much.

Senator BARRASSO. Thank you, Senator Carper.

Before turning to Senator Inhofe, the Environmental Protection Agency's decision to review the CAFE standards, the Corporate Average Fuel Economy standards, I believe, is warranted.

In 2017, the Alliance of Automobile Manufacturers sent a letter to the agency. The letter said, if left unchanged, those standards could cause up to 1.1 million Americans to lose jobs due to lost vehicle sales. They said that low income households would be the hardest hit.

So I ask unanimous consent to enter this statement into the record.

Without objection, it will be done.

[The referenced information follows:]



AUTO ALLIANCE
DRIVING INNOVATION*

803 7th Street N.W., Suite 300 | Washington, DC 20001
202.326.5500 | www.autoalliance.org

February 21, 2017

G. Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 1101A
Washington, D.C. 20460

RE: Final Determination on the Appropriateness of the Model Year 2022-2025
Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm
Evaluation

Dear Administrator Pruitt,

I write on behalf of the Alliance of Automobile Manufacturers (Alliance), an association representing twelve leading manufacturers of cars and light trucks,¹ to request that the U.S. Environmental Protection Agency (EPA) withdraw the Final Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation (Final Determination) which was announced on January 13, 2017 but never published in the *Federal Register*.

For the auto industry, the Final Determination may be the single most important decision that EPA has made in recent history. The Alliance requests that EPA withdraw the Final Determination and resume the Midterm Evaluation, in accordance with its original timetable, to remedy the severe procedural and substantive defects that have infected the process to date. We explain, in more detail below, EPA's authority to withdraw the Final Determination and why that withdrawal is appropriate and essential.

1. EPA Should Exercise Its Authority to Withdraw the Final Determination

As you know, on January 20, the White House issued a memorandum to the heads of all executive departments and agencies instituting a freeze on regulatory activity, pending review by the Office of Management and Budget (OMB) Director.² The Alliance urges EPA to withdraw the Final Determination on its own initiative in accordance with the regulatory freeze. Irrespective of whether EPA considers the Final Determination a rule or an adjudication, the Final Determination should be reviewed

¹ Alliance members are BMW Group, FCA US LLC, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche Cars North America, Toyota, Volkswagen Group of America, and Volvo Car USA.

² See Memorandum for the Heads of Executive Departments and Agencies, Jan. 20, 2017, <https://www.whitehouse.gov/the-press-office/2017/01/20/memorandum-heads-executive-departments-and-agencies>.

and withdrawn. As the Alliance has noted, a wealth of precedents confirm that the Final Determination is a rule, and all rules not yet published in the *Federal Register* are subject to the regulatory freeze.³ Even if EPA continues to construe the Final Determination as an adjudication, however, it is still subject to the regulatory freeze as an “agency statement of general applicability and future effect ‘that sets forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue.’” The Final Determination reaffirms and reinstates industry-wide greenhouse gas emissions standards for all light vehicles sold in America for MY 2022-2025, and thereby establishes a policy on a regulatory issue of central importance to the auto industry.

Furthermore, EPA has ample authority to withdraw the Final Determination on its own initiative, irrespective of whether EPA considers it a rule or an adjudication. If the Final Determination is a rule, it is clearly a nonfinal one, because it has not been published in the *Federal Register*. See 5 U.S.C. § 553(d); *Kenecott Utah Copper Corp. v. U.S. Dep’t of Interior*, 88 F.3d 1191, 1209 (D.C. Cir. 1996). And, as a nonfinal rule, EPA can readily withdraw the Final Determination without engaging in notice-and-comment rulemaking. *Kenecott*, 88 F.3d at 1206.

Even if EPA continues to endorse the view that the Final Determination is an adjudication, however, EPA has broad inherent power to reconsider its decision “within the period available for taking an appeal.” *Am. Methyl Corp. v. EPA*, 749 F.2d 826, 835 (D.C. Cir. 1984). Agencies have long exercised this power to fix determinations like this one that suffer from “serious procedural and substantive deficiencies.” *Belville Min. Co. v. United States*, 999 F.2d 989, 998 (6th Cir. 1993). Regardless of how EPA classifies the Final Determination, EPA should promptly withdraw it in light of the many procedural and substantive flaws described below.

2. EPA Has Abrogated Its Commitment to a Robust Midterm Evaluation

As the Supreme Court has recognized, EPA’s regulatory efforts to address greenhouse gases have already produced “the single largest expansion in the scope of the [Clean Air Act] in its history.”⁴ In 2009, EPA issued an Endangerment Finding that motor vehicle greenhouse gas emissions contribute to climate change and thereby threaten public health and welfare. Thereafter, EPA and the National Highway Traffic Safety Administration (NHTSA) began jointly setting greenhouse gas emissions and fuel economy standards for new light-duty motor vehicles, starting with Model Year (MY) 2012-2016. Then, in 2012, EPA and NHTSA took the unprecedented step of

³ See Alliance Comments on Proposed Determination on Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation at 11-13, Dec. 30, 2016, Docket ID No. EPA-HQ-OAR-2015-0827; Memorandum for the Heads of Executive Departments and Agencies, Jan. 20, 2017.

⁴ *Utility Air Regulatory Group v. EPA*, 134 S. Ct. 2427, 2436 (2014) (internal quotation marks omitted).

setting joint greenhouse gas and fuel economy standards over a decade in advance for MY 2022-2025 vehicles. 77 Fed. Reg. 62,628 (Oct. 15, 2012). No agency ever had set emissions standards so far into the future, and all stakeholders understood that no one could accurately project the circumstances affecting the technological and economic feasibility of these standards.

The Alliance supported these efforts—but only on the condition that EPA and NHTSA would reassess standards as data became available to test their feasibility. That commitment was essential because of the great uncertainty regarding the feasibility of the future standards. Based on the projections in the 2012 rule, manufacturers must achieve an average 54.5 miles per gallon equivalent across their new vehicle fleets by 2025. Even today, no conventional vehicle today meets that target, and conventional vehicles comprise 96.5% of the new light-duty vehicle fleet. Only some non-conventional vehicles (i.e., hybrid, plug-in electric, and fuel-cell vehicles), which comprise fewer than 3.5% of today's new vehicles, currently can do so.⁵ Even under EPA's optimistic estimates, the automotive industry will have to spend a staggering \$200 billion between 2012 and 2025 to comply, making these standards many times more expensive than the Clean Power Plan.⁶

EPA and NHTSA committed to a robust Midterm Evaluation that would take a fresh look at these standards by April 2018. The agencies promised that this review would be collaborative, so that the industry could offer the agencies real-life data to adjust their model-driven forecasts. The agencies also committed to developing greenhouse gas emissions standards and fuel economy standards in tandem.⁷ And they repeatedly represented that they would not complete the Proposed Determination/Notice of Proposed Rulemaking until mid-2017 at the earliest.⁸ The industry took the agencies at their word, commissioning complex studies critical to assessing the MY 2022-2025 standards and the processes used by EPA in its analysis, that we had expected to add to the administrative record for the Midterm Evaluation in 2017.

On November 30, 2016, EPA abruptly abrogated these commitments. EPA issued a Proposed Determination that the MY 2022-2025 standards should go into force

⁵ "Light-Duty Automotive Technology, Carbon Dioxide Emissions, and Fuel Economy Trends: 1975 through 2016," at 118. U.S. Environmental Protection Agency. EPA-420-R-16-010, Nov. 2016.

⁶ See EPA Regulatory Impact Analysis for 2012-2016 rule (EPA-420-R-10-009, Apr. 2010) at <https://www.epa.gov/regulations-emissions-vehicles-and-engines/final-rule-model-year-2012-2016-light-duty-vehicle>; EPA Regulatory Impact Analysis for 2017-2025 rule (EPA-420-R-12-016, Aug. 2012) at <https://www.epa.gov/regulations-emissions-vehicles-and-engines/final-rule-model-year-2017-and-later-light-duty-vehicle>.

⁷ See 40 C.F.R. § 86.1818-12(h), 77 Fed. Reg. 62,784 (Oct. 15, 2012), 40 C.F.R. § 86.1818-12(h)(1)-(2); 81 Fed. Reg. 49,219 (July 27, 2016).

⁸ See Alliance Comments on Proposed Determination at 10, Dec. 30, 2016, Docket ID No. EPA-HQ-OAR-2015-0827.

without modification. EPA issued the Proposed Determination without coordinating with NHTSA. EPA demanded comments by December 30, 2016, even though the Proposed Determination was not published in the *Federal Register* until December 6. The public and industry had a mere 24 days, spanning a major national holiday, to comment on nearly 1,000 pages of documents, plus additional cited documents and computer modeling, regarding requirements that will profoundly affect the automobile industry and the more than 900,000 American workers it directly employs.⁹ After EPA denied requests by various stakeholders to extend the abbreviated comment period, we did our best to file substantive comments. EPA received more than 100,000 public comments, including 63 sets of comments from various organizations spanning hundreds of pages.¹⁰ Many objected that the comment period was inadequate. EPA denied all requests to extend the abbreviated comment period and yet EPA issued the Final Determination on January 13, 2017, just 14 days after the comment period closed. EPA brushed aside objections to its procedural shortcuts and never justified the need for such an abbreviated comment period. EPA also rejected commenters' substantive and technical concerns by resting on its earlier analysis.

3. EPA Should Withdraw the Final Determination Immediately

The Final Determination is the product of egregious procedural and substantive defects and EPA should withdraw it.¹¹ In EPA's rush to promulgate the Final Determination before the new administration took office, EPA bypassed required procedures, failing for instance to provide an adequate period for meaningful notice and comment. The Final Determination asserts that there was no need for more time because the Proposed Determination did not include much new material. But that contention is belied by EPA's acknowledgement that the Proposed Determination adjusted a number of EPA assumptions in response to commenters who pointed out errors at earlier stages. The industry also had an unacceptably short period to try to ascertain why EPA rejected many of its objections.¹² These procedural defects are significant irrespective of whether the Final Determination constitutes rulemaking or adjudication.

EPA's unilateral announcement of its Final Determination also constitutes a failure to harmonize its greenhouse gas emissions standards with NHTSA's fuel-economy standards, contrary to the letter and intent of EPA's own regulations. NHTSA has not yet reached a determination on its fuel economy standards and continues its

⁹ U.S. Department of Labor, Bureau of Labor Statistics, 2015, U.S. Vehicle and Equipment Manufacturing Employment equaled 909,700 people.

¹⁰ Final Determination, Response to Comments at 1-3.

¹¹ See Alliance Comments on Proposed Determination, Dec. 30, 2016, Docket ID No. EPA-HQ-OAR-2015-0827.

¹² See Final Determination, Response to Comments at 7.

Midterm Evaluation rulemaking activities. EPA's failure to act in coordination with NHTSA also casts serious doubt on the legitimacy of EPA's data and conclusions, given the substantial discrepancies between EPA's and NHTSA's analysis of the technologies and costs associated with the MY 2022-2025 standards.¹³

Furthermore, EPA's Final Determination that the MY 2022-2025 greenhouse gas standards should remain unchanged, is riddled with indefensible assumptions, inadequate analysis, and a failure to engage with contrary evidence. Here are just a few examples:

- EPA estimated that these standards will cost the industry at least \$200 billion. But EPA underestimated the burden. Contrary to EPA's assumptions, manufacturers will have to rely on much more expensive electrified technologies (i.e., hybrids and plug-ins), driving up vehicle prices and depressing auto sales.
- EPA refused to conduct an analysis of consumer acceptance and technology affordability needed for compliance, claiming this was too difficult.
- EPA refused to analyze substantively the economic impact of the MY 2022-2025 standards, instead making cursory assertions that downplayed the impact of its mandate on auto sales and employment.
- EPA refused to consider many of the Alliance's technical concerns even when supported by an outside consultant¹⁴, asserted the Alliance provided insufficient data, and then refused further meetings for clarification.

4. Studies and Data Highly Relevant to the Midterm Evaluation Have Not Been Submitted to EPA Because They Still Are Pending

It is particularly critical that EPA withdraw the current Final Determination and reopen the Midterm Evaluation process because analysis commissioned according to EPA's original timetable is ongoing and the Alliance expects that new information relevant to the Final Determination's underlying assumptions and resulting analysis will soon emerge. EPA's rushed timetable, coupled with its about-face on the timing of the Midterm Evaluation, prevented consideration of this information.

¹³ See Alliance Comments on US EPA, US DOT, California's Air Resources Board Draft Technical Assessment Report of Greenhouse Gas Emissions and Fuel Economy Standards for Model Year 2022-2025 Cars and Light Trucks at ES-9, Sept. 26, 2016, Docket ID No. EPA-HQ-OAR-2015-0827, NHTSA's costs are approximately 42% higher than EPA's (NHTSA Table ES-2 v. EPA ES-4 Table ES-1).

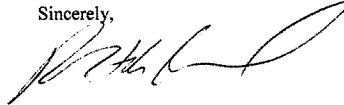
¹⁴ See Novation Analytics Comments on Draft Technical Assessment, Sept. 26, 2016; Docket ID No. EPA-HQ-OAR-2015-0827.

We urge EPA to reconsider imposing such a far-reaching mandate on an entire industry without adequately considering the consequences, and without giving stakeholders a meaningful opportunity to comment. The MY 2022-2025 standards threaten to depress an industry that can ill afford spiraling regulatory costs. If left unchanged, those standards could cause up to *1.1 million* Americans to lose jobs due to lost vehicle sales.¹⁵ And low-income households would be hit the hardest.¹⁶

The Alliance is not asking EPA to make a different Final Determination at this time. All we are asking is that EPA withdraw the Final Determination and resume the Midterm Evaluation, in conjunction with NHTSA, consistent with the timetable embodied in EPA's own regulations. We believe that, if carried out as intended, the Midterm Evaluation can lead to an outcome that makes sense for all affected stakeholders and for society as a whole.

The Alliance welcomes the opportunity for further dialogue about ways to rekindle the industry's longstanding cooperation with EPA on these issues.

Sincerely,



Mitch Bainwol
President and CEO

cc: Secretary Elaine Chao, DOT
Kevin Green, DOT
Bill Charnley, EPA
Chris Grundler, EPA
Michael Olechiv, EPA
Rebecca Yoon, NHTSA
James Tamm, NHTSA
Mike McCarthy, CARB
Annette Hebert, CARB

¹⁵ McAilinden, Sean, et al., *The Potential Effects of the 2017-2025 EPA/NHTSA GHG/Fuel Economy Mandates on the U.S. Economy*, Center for Automotive Research (Sep. 2016) at 49. Referring to the \$3.00 per gallon gasoline price \$6,000 technology cost scenario.

¹⁶ Walton, Tom, et al., *The Impact of Future Fuel Economy Standards on Low Income Households*, Defour Group LLC (Sep. 2016); Walton, Tom, et al., *Defour Group Response to EPA Rejoinders to Defour Group / Alliance of Automobile Manufacturers Submission Regarding the Regressivity/Affordability of EPA's Proposed Fuel Economy Standards*, (Dec. 2016).

Senator BARRASSO. Senator Inhofe.

Senator INHOFE. Thank you, Mr. Chairman.

First of all, it is unusual that we have three nominees and two very significant positions that I find myself in total agreement with all three of them, including, of course, the minority nominee. They are eminently qualified, and I look forward to very enthusiastically supporting all three of your nominations.

I would offer a second opinion. I would just make the statement, the EPA has been very responsive to the requests to which reference has been made.

Mr. Benevento, last month, we sat in my office and discussed some issues of importance to Oklahoma, including the future of the small refinery exemptions. I would like to follow up on that conversation.

I am encouraged that the Administration recently sought a 2-week extension of consideration of whether to appeal the 10th Circuit decision that invalidated certain SREs. I am hopeful that the administration would repeal this.

I would just ask the question; any comments you might want to make, Mr. Benevento, that you are going to be confirmed, and when that happens, you are going would you ensure that small refineries will get some form of relief.

We can think of a lot of different things that can come forth. But as a general rule, there are some things that can be upheld to the small refineries.

What thoughts do you have about that, and what kind of commitment would you make to that extent?

Mr. BENEVENTO. Thank you, Senator. So the 10th Circuit decision came out just about the time my nomination did. I haven't been involved in a lot of the discussions, or any of the discussions that have been happening internal at the agency since then.

But moving forward, what I can tell you is that I am happy to work with you and other members of the Committee and Congress, along with the Administrator, to ensure that whatever direction is ultimately determined, we move forward, and it is equitable to everybody.

Senator INHOFE. Including small refineries?

Mr. BENEVENTO. Yes, sir.

Senator INHOFE. Well, I appreciate that very much. I have no doubt that you will do that, because we have worked together in the past, and it is something that—a consideration that has to be made.

Commissioner Wright, in 2015, when I chaired this Committee, I scrutinized the NRC's budget and fee recovery practices. What I found out was that NRC budget had not decreased in keeping with the drop in new reactor licensing and premature closing of existing plants. So I introduced NEIMA, with its budgeting and fee reform provisions to improve the accuracy and fairness of their financial practices at the NRC.

I would like to ask you, is the NRC prepared to implement the NEIMA recommendations in fiscal year 2021 and begin budgeting more accurately and fairly?

Just kind of comment about that. And then anything else in the remaining time that you would like to add in terms of some of your priorities, I would appreciate hearing them.

Mr. WRIGHT. Senator, thank you for the question. The NEIMA implementation, I believe, is going well. We have made necessary adjustments to our budgeting and to the way we work on our reporting processes. We have already submitted, I believe, nine reports to Congress so far. I think we have another one coming in July as well.

I will tell you that we are challenged in certain areas because of some of the, the 5 percent reduction every year they have been going through even before I became a commissioner. And then to hit the cap.

So we want to make sure that we are making the necessary changes to our budget, so that we can hit that 30 percent corporate support cap, which, I share the Chairman's disappointment that we missed it a little bit this year. I think we were at 31.

Senator INHOFE. Yes.

Mr. WRIGHT. But I do think that the agency is doing everything, they are really making a game effort to do it.

The GAO report just came out recently here, and they did recognize that we are making some strides. There are a couple of things that still need to happen, and I agree with the recommendations that the GAO report suggested, too.

So there is more work to do. If we are challenged, I will commit to you and the other members of the Committee, we are going to come talk to you.

Senator INHOFE. OK.

Mr. Hanson, any comments as far as your priorities are concerned that you would like to share with us?

Mr. HANSON. Thank you, Senator. I think budget implementation and the reforms under NEIMA are important. I also think work force development is critically important, and maintaining the work force at the NRC.

Like a lot of Federal agencies, I understand they have an aging work force, or a work force that is increasingly eligible for retirement. So getting people in the door on the young side and enthusiastic about what is going on in the nuclear sector is critically important. And a life in public service.

I was recently at the University of Maryland, at their test reactor. I got to meet some of their engineering students down there. I think the Nation's test reactors at the universities—there are 36 of them—provide a really unique opportunity for students to get hands on experience and can hopefully serve as a pipeline to the NRC, in order to have that work force that is needed to keep the industry going and to license new technologies.

Senator INHOFE. Yes, work force is a problem. We have been dealing with that in a lot of other areas.

One of the problems is that we have arguably the best economy we have had in my lifetime. That makes the job market a little different than it used to be. So there is a lot of competition out there. You have a lot of work to do.

Thank you.

Mr. WRIGHT. That is right.

Senator INHOFE. Thank you, Mr. Chairman.

Senator BARRASSO. Thank you, Senator Inhofe.

Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Chairman.

Good morning, Mr. Benevento. I mentioned when we met that I was going to give you a compilation of economic reports warning of economic crashes that relate to climate change.

I am going to give you this. It includes peer reviewed economic studies. It includes a Nobel prize winning economist's sworn testimony. It includes reports by the Bank of England, the Bank of France, a consortium of central banks, the Bank of International Settlements, which is kind of the bank of sovereign and central banks, reports by Freddie Mac, by insurance publications, risk and assurance, by Moody's, by Standard and Poors, by First Street Foundation, by McKinsey, the consulting firm, by Blackrock.

What I am going to ask you to do, because you are a busy person, and I don't expect you to read this whole thing, what I am going to ask you to do is have somebody at EPA read it and summarize it for you. Ask for a report from somebody at EPA saying, What is this thing that Senator Whitehouse gave me, What are the conclusions we should draw from it.

Then I am going to ask you when that is done to let me know that that is done, so that I know it got done.

Will you do that for me, will you have someone at EPA summarize this compilation in a memo for you, and let me know when that is done?

Mr. BENEVENTO. Yes.

Senator WHITEHOUSE. Thank you.

Second ask. Senator Carper and I have asked the Inspector General of EPA to investigate Bill Wehrum for work he did at EPA that benefited a client of his from private practice. That is our allegation.

Because the allegedly corrupt work is still on the books at EPA, and because it affects policy, that IG investigation is still ongoing. Will you assure us that as the No. 2 at EPA, you will make sure that EPA cooperates with the Inspector General investigation?

Mr. BENEVENTO. We will cooperate with the IG.

Senator WHITEHOUSE. There is a new—you have a returning person coming back to EPA to be Mr. Wheeler's chief of staff. She has not been amenable or available to the Inspector General, because she has been out of EPA. When she is back, will you make sure that if she has any relevant evidence about this investigation that she cooperates with the Inspector General?

Mr. BENEVENTO. I will talk with Ms. Gunasekara when she comes back about that.

Senator WHITEHOUSE. It is appropriate for her to cooperate with an Inspector General investigation, is it not?

Mr. BENEVENTO. The Administrator has, I think, every year, the last couple of years, has put out a memo detailing his belief that we should be cooperating with the IG. We will do so, consistent with the Administrator's directive to all agency employees.

Senator WHITEHOUSE. Good. When Ms. Gunasekara was out of the agency, she set up a dark money operation, anonymous donor

funded operation, that worked in climate denial, in the environmental space.

She was also something called a senior fellow at something called the Texas Public Policy Foundation, which is a pretty notorious dark money funded climate denial shop. And also something called an advisor to the CO₂ Coalition, which is another notorious dark money funded climate denial shop.

Here is my question. Every employee at the EPA has an obligation of impartiality. It is an ethics rule. And it means that if you are making decisions that relate to people or interests or companies with whom you have a relationship, that relationship needs to be disclosed, and you need to take appropriate steps to make sure there is no conflict of interest.

Is that a pretty fair statement of that rule?

Mr. BENEVENTO. Yes. Yes.

Senator WHITEHOUSE. Generally.

Mr. BENEVENTO. Yes.

Senator WHITEHOUSE. How are you possibly going to know that she is in compliance with that rule if you don't know who was funding her through this period?

Mr. BENEVENTO. Our expectation is that all employees consult with career ethics counsel and receive guidance from them on what they can be involved in and what they can't.

Senator WHITEHOUSE. Here is the problem. You haven't updated your ethics rules. You don't even ask about dark money conflicts of interest. You are still using ethics rules that predate the explosion of dark money that has corrupted our politics.

So you actually don't know that information. And when you say, go to the ethics people, you are going into a fixed game, because they don't ask that question either, because you haven't updated the ethics rules.

So let me go back to my original question. How could you possibly know if she is behaving in violation of her duty of impartiality without knowing who her big funders were through this time when she was in her hiatus from the EPA?

Mr. BENEVENTO. We expect all employees to follow the ethics rules as they are written, and coordinate all their activities, their obligations, with career ethics counsel. That applies for all EPA employees.

Senator WHITEHOUSE. And you don't ask the right question through your career ethics counsel, so that becomes a self-fulfilling prophecy.

My time is up.

Senator BARRASSO. Thank you, Senator Whitehouse.

Senator Ernst.

Senator ERNST. Thank you, Mr. Chair.

Mr. Benevento, I will start with you, please, and focus on you, of course, with the EPA.

As you know, the 10th Circuit has found that the EPA abused the small refinery exemption program by granting SREs in an arbitrary and capricious manner. OK? Not my words. Arbitrary and capricious manner.

We have just heard from another Senator concerned about the oil industry. But I am concerned about my industry in Iowa that was

harmed by these illegal—not coming from me, coming from the 10th Circuit—illegal SREs.

These illegal SREs caused over 4 billion gallons of demand destruction for ethanol and biodiesel. It shut down numerous plants across the heartland, depressing commodity values in an already uncertain time for my farmers and my producers.

Can we agree that at this very moment, the 10th Circuit decision is the law of the land?

Mr. BENEVENTO. Senator, as I mentioned to Senator Inhofe, that decision, the timeline of that decision coming out in my nomination together—

Senator ERNST. Understood. But can we agree that this is the law of the land right now? It is a decision.

Mr. BENEVENTO. Yes, it is a 10th Circuit decision, and it is binding, yes, ma'am.

Senator ERNST. Yes. Thank you. There are currently 23 pending waiver petitions for 2019.

Now that the administration is considering an appeal, which is ongoing now, that decision has yet to be made from the 10th Circuit, can you commit to me that the EPA will not grant any of these pending small refinery exemptions of 2019 until the legal action is settled?

Mr. BENEVENTO. Thank you, Senator. While this review is ongoing, and I look forward to coming up to speed on it once my confirmation hearing is complete, I would want to get back to you with a response on how we were going to be managing the program on any matter after the hearing, perhaps with a QFR.

But I don't want to do is, as the review is ongoing, and there is a lot of—it is a very complex decision. I know our folks in OAR, as well as the lawyers at DOJ, are looking at it and trying to determine what exactly it means for us.

So I would like to—the best way to get back to you on that, to give you an answer that I think is going to be certain and going to be accurate, is to respond in writing.

Senator ERNST. I can appreciate the situation that you are in. I can tell you, our farmers and producers are tired of being yanked around by the EPA, and again, these illegal SREs.

And yes, there are some small refineries out there that should be granted waivers. I will give them that. But a number of these small refineries are actually owned by much larger oil companies like Exxon and Chevron. Those don't seem to be small refineries.

And a little additional information. The American Petroleum Institute is the only national trade association that represents all aspects of the oil and gas industry, America's oil and gas industry. They said the EPA should move immediately to apply the court's decision nationwide. Anything short of this will only further exacerbate the regulatory uncertainty.

So not only are we yanking our ethanol producers—America's farmers—around, but some of the folks in the oil industry are being yanked around as well.

So we need to move through this, not do the appeal, go ahead and apply the standard that the court came out with, and really focus, just as the Senator from Oklahoma suggested, looking at other ways that we can provide relief to the small refineries, out-

side of yanking around our producers and our farmers in the Midwest.

So you know where I stand on this. My folks back home know where I stand on this. We have had ethanol producers that have shut down. Not the threat of small refineries that might shut down some day. We have had ethanol plants shut down. We are following the law. We believe EPA should follow the law as well.

Thank you for your consideration, and guaranteed, we will follow up on that.

Mr. BENEVENTO. Thank you, Senator.

Senator BARRASSO. Thank you, Senator Ernst.

Senator Duckworth.

Senator DUCKWORTH. Thank you, Mr. Chairman.

I would like to follow up on my colleague from Iowa, since I am on the other side of the Mississippi in Illinois.

Mr. Benevento, you told Senator Inhofe that he would see a solution that is equitable for everyone, including small refineries. Would you like to explain to us or define to us what you consider to be a small refinery? Do you have a definition?

Mr. BENEVENTO. There is a statutory definition. There is a statutory definition for what constitutes a small refinery that we have applied in the past.

Senator DUCKWORTH. Including the ones that are actually owned by large oil concerns?

Mr. BENEVENTO. Yes.

Senator DUCKWORTH. Let's take a look at that again. I am confused. Has a decision been made or not been made regarding this appealing of the 10th Circuit Court decision?

Senator Ernst had mentioned back on Friday, and there is an article, Iowa's Starting Line, saying that President Trump was indicating that you are not going to appeal. That is what the Administrator had told me also, gave me his word that you were not going to appeal.

And now you are telling me, as of our meeting just the other day, that no decision has been made. So where is the Administration on this?

Mr. BENEVENTO. And I may have misspoken, Senator, so thank you for the opportunity to correct.

I have not been involved in this decisionmaking process. The 10th Circuit decision came down relatively recently, about the time that I was nominated. So I haven't been involved in the day to day conversations that have been going on. I can't shed any light on that for you at this hearing today.

Senator DUCKWORTH. When are you guys going to come up—I am hearing both sides. I am hearing that a decision has been made, a decision has not been made. Regardless, this is going to hurt our farmers.

I agree with Senator Ernst, we have producers who have gone out of business. We have farms that have gone bankrupt. We have ethanol producers that are no longer producing, have been shut down for 18 months.

I am very concerned that we are going to destroy the ethanol industry in this country, and that is a viable biofuel that moves us toward a carbon-neutral future. It is a promise the President made

to our farmers, time and time again. It is a betrayal to our farmers, what has been done with the RFS and ethanol.

Will you promise me that if you are confirmed, the EPA will suspend any action on pending and future small refinery exemption approval requests until this matter with the circuit court is fully resolved, whether that is simply through accepting the ruling or continuing the litigation? So no more approvals of any exemptions until this whole thing is resolved.

Mr. BENEVENTO. Senator, thank you. I commit that what I will do is go back to the agency and look into this matter. I would be happy to follow up with you after that.

Senator DUCKWORTH. So you are not going to make that commitment here today? You are just going to promise to go look into it. Which is what I have been hearing.

Meanwhile, the waivers—it is an easy thing to say. Don't grant any more waivers, since you are going to be appealing this ruling. Or if you are not going to appeal the ruling, then you don't need to grant any more waivers. So it is easy to just, let's stop granting these waivers until the Administration has made up its mind. What is tough about that?

Mr. BENEVENTO. I just don't think it would be prudent to be making regulatory decisions right here.

Senator DUCKWORTH. This is not a regulatory decision. This is not a regulatory decision. This is just suspending any future actions and granting any more small refinery waivers. You granted over 40 of them, an unheard-of number so far, driving our farmers into bankruptcy, driving our producers out of business. Why can't you wait the 2 weeks and not grant any more during the time period that you are making the decision?

Mr. BENEVENTO. Well, again, as I indicated to Senator Inhofe and Senator Ernst, this is a matter that I haven't been involved in as it has been developing at the agency. So I do need to go back and learn what is happening. Then I would be happy to follow up with you.

Senator DUCKWORTH. What is your advice going to be, your recommendation to the Administration on this issue? I know it is not your final decision. But I want to hear your views on this, and it is essential as to how the RFS program is going to be implemented. It is certainly a vital issue for my constituents in Illinois.

Mr. BENEVENTO. I understand, in your office, you were very clear on that as well, how important it is to your constituents. It was helpful to hear that.

What I am going to do after the confirmation hearing is go back and get fully briefed on the status of what we have been doing since the 10th Circuit decision. I would be happy to follow up with you after that.

Senator DUCKWORTH. I highly recommend that you put a moratorium on allowing any more refinery waivers in the meantime.

I am out of time, Mr. Chairman, thank you.

Senator BARRASSO. Thank you very much, Senator Duckworth.

Senator Carper.

Senator CARPER. Mr. Chairman, I would ask unanimous consent to insert into the record a recent letter sent by 15 auto makers, urging the Administration to pursue a more reasonable course of

action than the one they have decided to pursue with respect to clean car rollbacks. Thanks very much.

Senator BARRASSO. Without objection.

[The referenced information follows:]

June 6, 2019

The Honorable Donald J. Trump
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Mr. President:

Thank you for your efforts to support a vibrant and competitive auto industry in the United States by reopening the midterm evaluation for the CAFE and Greenhouse Gas rulemaking. Without question, market conditions have changed materially since 2011. Relative to expectations, fuel prices are far lower, consumers are buying more SUVs and pickups, and the adoption rate of alternative powertrain vehicles has been slower than anticipated. Thus, your decision to review and update future auto standards was the proper choice.

As you know from many conversations with us and others in the auto sector, the question of the right level of regulation is complex. What works best for consumers, communities, and the millions of U.S. employees that work in the auto industry is one national standard that is practical, achievable, and consistent across the 50 states. In addition, our customers expect continuous improvements in safety, efficiency, and capability. For these reasons, we support a unified standard that both achieves year-over-year improvements in fuel economy and facilitates the adoption of vehicles with alternative powertrains.

We strongly believe the best path to preserve good auto jobs and keep new vehicles affordable for more Americans is a final rule supported by all parties—including California. Such a final rule would provide the necessary structure and compliance tools to achieve annual fuel economy improvements midway between the existing standards and the preferred path outlined by your Administration last summer. The final rule would cover model years 2021-2026 and include flexibilities that promote advanced technology for the sake of long-term environmental gains and U.S. global competitiveness. We encourage both the federal government and California to resume discussions and to remain open to regulatory adjustments that provide the flexibility needed to meet future environmental goals and respond to consumer needs.

For our companies, a broadly supported final rule would provide regulatory certainty and enhance our ability to invest and innovate by avoiding an extended period of litigation and instability, which could prove as untenable as the current program. This would also preserve vehicle affordability and help advance our shared national interest in America's manufacturing and innovation leadership.

Striking the proper balance will not be easy, but we know with your leadership it can happen. We are eager to work with you to advance this outcome and strengthen our economy and technological leadership.

Once again, thank you for all you have done for our industry and your commitment to maintain our country's role as an automotive leader, bolster the U.S. economy, and support American workers and their families.

Sincerely,

Aston Martin Lagonda, Ltd.
BMW North America
Ford Motor Company
General Motors Company
Honda North America, Inc.
Hyundai Motor America
Jaguar Land Rover North America, LLC
Kia Motors America
Mazda North American Operations
Mercedes-Benz USA, LLC
Mitsubishi Motors North America, Inc.
Nissan North America, Inc.
Porsche Cars North America, Inc.
Subaru of America, Inc.
Toyota Motor North America, Inc.
Volkswagen Group of America
Volvo Car Corporation

CC: The Honorable Elaine L. Chao, Secretary of Transportation
The Honorable Andrew Wheeler, Administrator U.S. Environmental Protection Agency
The Honorable Lawrence Kudlow, Director National Economic Council

Senator BARRASSO. Thank you, Senator Carper.

I would like to note that last Friday there was an article that ran nationally with a headline President Trump Plans to Fight the Ruling Risking Refinery Biofuel Waivers. So if allowed to stand and applied nationally, the 10th Circuit's ruling would effectively end, in my opinion, hardship relief for small refineries. The ruling would put dozens of small refineries and tens of thousands of jobs at risk.

The Administration cannot let that happen. I support the President's decision to appeal the ruling, and ask unanimous consent to enter this article into the record.

Without objection, it is so done.

[The referenced information follows:]

Trump Plans to Fight Ruling Risking Refinery Biofuel Waivers

By [Jennifer A. Dlouhy](#), [Mario Parker](#), and [Jennifer Jacobs](#)

March 5, 2020, 7:13 PM EST

Updated on March 5, 2020, 11:28 PM EST

-
- ▶ Decision follows pressure from oil industry allies in Senate
 - ▶ Trump warned that ruling could bring job losses in key states
-

President Donald Trump has decided to defend in court the U.S. government's power to broadly waive biofuel requirements for many oil refineries.

The decision to appeal a federal court ruling imperiling those exemptions follows an intervention by Attorney General Bill Barr and an intense pressure campaign by oil-

state senators, including Ted Cruz, a Texas Republican. The plan was described by five people familiar with the matter who asked for anonymity before a formal announcement.

At issue is a January decision by a three-judge panel of the 10th Circuit Court of Appeals in Denver invalidating waivers exempting three refineries from requirements to blend biofuel into gasoline and diesel. Federal law authorizes those waivers for small refineries facing an economic hardship.

Yet the judges said the law also limits that relief to refineries getting “extensions” of previous waivers and pointed out that none of the three refineries at issue had “consistently received an exemption” in previous years.

The appeal plan would mark a reversal for the White House, where top officials as recently as a week and a half ago had planned to accept the ruling and apply it nationwide. That approach would have meant just a handful of U.S. refineries -- no more than seven -- would be eligible for the exemptions.

Previous Trump administration decisions on biofuel policy have been upended amid fierce lobbying.

Earlier: Trump to Pare Biofuel Waivers for Refineries on Court Ruling

But this move would be a victory for oil companies and their allies on Capitol Hill, who argued the waivers are essential to preserve the economic health of refineries and blue-collar jobs at the facilities. They have raised the specter of layoffs and plant closures in Wyoming, Texas and the political battleground state of Pennsylvania -- warning the White House in recent days that if the administration didn't fight the ruling, there could be repercussions for the president on Election Day in November.

Oil industry advocates argued to administration officials that the court's interpretation defies federal law that says refineries may seek relief “at any time,” conflicts with longstanding EPA practice and is at odds with a separate ruling by the 4th Circuit.

The Trump administration has until the end of Monday to appeal the ruling en banc -- asking the full 10th Circuit to consider the case. Even without the administration joining in, refiners involved in the case are expected to seek a rehearing.

An appeal would be a blow to producers of corn-based ethanol and soybean-based biodiesel, who have complained the Trump administration too freely handed out the waivers and undermined a 15-year-old federal law mandating the use of those plant-based alternatives. Biofuel allies have also warned Trump of political fallout -- in farm states, such as Iowa.

Nine biofuel and agriculture advocacy groups, including the Renewable Fuels Association and National Biodiesel Board, warned an appeal "would be viewed as a stunning betrayal of America's rural workers and farmers."

"We cannot stress enough how important this decision is to the future of the rural economy and to President Trump's relationship with leaders and voters across the heartland," the organizations said in a joint statement Thursday night.

(Updates with details on Barr, from second paragraph)

In this article

CL1

WTI Crude

31.35 USD/bbl. ▼ -1.63 -4.94%

XB1

Generic 1st 'XB' Future

90.87 USD/gal. ▼ -20.16 -18.16%

DL1

Generic 1st 'DL' Future

1.19 USD/gal. ▼ -0.03 -2.62%

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Senator BARRASSO. Senator Capito.

Senator CAPITO. Thank you, Mr. Chairman. I was going to begin by saying at the risk of alienating my two friends on the different side of this issue, I would like to make a statement about the small refinery exemption.

We do have one small refinery—you and I talked about this, Mr. Benevento, in my office—that really qualifies. It is not large; nobody has probably ever heard of the company. But it does employ several hundred West Virginians, and it is very significant, has a long history of being in this part of our State.

Unfortunately for this particular small refinery, they have a Federal court decision that says that their small refinery exemption application is worthy of reconsideration. Our frustration, my frustration that I have talked with Administrator Wheeler about, is that the EPA has failed to sufficiently reconsider this. So I would put that on your table.

I don't really need a response from you, except to acknowledge that you would—obviously, you are going to be looking into this, but that you would look at this specific case in terms of a reconsideration of its denial.

Mr. BENEVENTO. Yes, I will, thank you.

Senator CAPITO. Thank you.

I want to move to another issue that I have worked hard on in this Committee, and many of us are extremely concerned about. Again, I mentioned it to you in my office. This is the PFAS issue, the contamination that we have seen near our military bases because of the firefighting foam, which I shared with you at least one of our incidents of PFAS contamination was caused by that, or thought to be caused by that. We have really been pushing hard for EPA, we have had the Administrator here, he said, We are going to be working on a drinking water standard for PFAS to get the maximum contaminant level, which we have yet to see.

We have recently received assurances from the agency that they are going to move fast and furious, we hope, on establishing this MCL standard for PFAS. So this will be a crucial step for us and I think for the country. If you see more and more pervasive use, obviously, of the chemicals, but also a lot of unknowns, that is what we are trying to determine, using the science, to get to a safe level.

Again, this is a high priority for many of us here. Not just on the Senate side, but over on the House side. Certainly the Chairman has been involved with this and many others.

I don't know if you can add anything to that issue, what steps might be, what you would see in your new position to be able to be helpful here.

Mr. BENEVENTO. Thank you, Senator. We have taken a two-track approach to PFAS. One is outlined in the PFAS action plan, which outlines short term and long term steps that we are going to be taking to try and address this.

But at the same time, it has been really important—I worked on this, when I was a regional administrator, to address PFAS where it is found in the country, to make sure that we cut off all exposure.

Part of our plan, and part of the PFAS action plan, and part of the Administrator's commitment, was to set a maximum—or was to examine, go through the regulatory process of establishing a maximum contaminant level.

We have taken the first step in that; we have already made a regulatory determination that it warrants moving to the MCL process. We are doing that right now. We are doing that as quickly as possible. But it is important that we do it correctly. We need to make sure that the science warrants—we have the back up science, and we meet the legal statutory requirements to set an MCL. Because there will be entities out there that are going to be closely looking at what we are doing.

So we have taken that first step to setting the MCL. We are moving as quickly as science allows us to move and as quickly as the statute allows us to move.

Senator CAPITO. So here is what worries me, because in between the words of what science allows, and I emphasize the need for science in this area, we have been looking at this issue very aggressively for 4 to 5 years, when it was first determined that it was found near these bases with the firefighting foam. And trying to get remediations for small cities, which we were able to get for our small city of Martinsburg.

But I would just say that time is of the essence here. I think that this is so pervasive, and I don't know what the damage can be. But I can't run the risk of having a seat here and knowing that I have grandchildren, I have children, and I am not sure that their drinking water, the level of this particular chemical in their drinking water, is at a safe level. That is a major concern all across this country.

So I would just reemphasize, quicker is better, more aggressive is better, and using the science, yes. But also we all know things can get expedited and move faster if you have the passion behind it. So I would encourage you to move in that direction in your new position.

Thank you so much.

Mr. BENEVENTO. Thank you. And I just want to assure you, where we find PFAS, we are making sure to cut off exposure. Your point is a very good one, and we are diligently trying to do that.

Thank you.

Senator BARRASSO. Thank you, Senator Capito.

Senator Van Hollen.

Senator VAN HOLLEN. Thank you, Mr. Chairman.

Congratulations to all of you on the nominations.

Mr. Benevento, thank you for getting together yesterday. I want to follow up on some of that conversation, especially as it relates to the Chesapeake Bay.

Senator Cardin and I, of course, represent a big part of the Bay watershed. We have been working for decades now with the Federal Government, State governments, local governments, cooperating and trying to clean up the Bay.

We have the Chesapeake Bay Agreement; EPA plays a vital role. They are kind of the glue that holds it all together.

States submit, of course, their watershed implementation plans. We just saw those plans submitted late last year.

We looked at the State of Pennsylvania's plan; they were far short. EPA has found that they were far short in terms of preventing pollution from going into the Bay.

In one measure, the nutrients, they were only 75 percent toward the goal that we have to reach in order to meet the cleanup targets for 2025. And then even if you look at that plan that falls short, they don't have adequate financing.

So No. 1, will you work with us to make sure that the Chesapeake Bay gets the resources it needs from all the funding streams of Federal Government, EPA funding as well as out of the ag bill, and that we target those, especially upstream, where we have a lot of nonpoint source pollution?

Mr. BENEVENTO. We are happy to work with you, Senator, yes.

Senator VAN HOLLEN. So, Pennsylvania has actually applied for a number of grants. Some of them have been to the Department of Agriculture. They have been denied, even though they have a big need.

So I really—we need to make sure we have a commitment from EPA as the quarterback of this to work with the other agencies to get it done.

Now, the other question is, if they continue to fall short, do you agree that EPA has what we call backstop authority? In other words, do you agree that EPA has the legal authority to enforce Pennsylvania's compliance with the TMDL?

Mr. BENEVENTO. Yes, TMDLs are enforced, can be—I am a former State regulator, so some of this speaks to me a little bit. You do a water quality analysis, that results in a TMDL, then the TMDLs, of course, are the basis for permits that are issued. That is where EPA can step in, even if it is a State permit, and take a look at the permit to determine whether it is meeting what is in the TMDL.

Senator VAN HOLLEN. Right. Because there has been some ambiguity coming from EPA on this question. So this is an opportunity to clarify it.

Do you agree that EPA has the legal authority to hold Pennsylvania legally accountable toward meeting the targets that EPA believes are necessary to achieve the goals?

Mr. BENEVENTO. Within the confines of the Clean Water Act, we certainly have a lot of authority, yes.

Senator VAN HOLLEN. So just to press the point a little bit, do you agree that you could take Pennsylvania to court to enforce these provisions? Because if EPA says it doesn't have the authority, you know you are very likely to get a lawsuit quickly from the State of Maryland and others to enforce that authority.

So we are seeking clarification as to whether EPA will use its legal authorities to hold Pennsylvania responsible for meeting the targets if you are not satisfied that they are on track.

Mr. BENEVENTO. Yes, with the legal authorities that we have, we could hold a State permit, we could intervene in a State permit, yes.

Senator VAN HOLLEN. OK. The qualification of the permit is where we are going to have to maybe follow up.

So let me ask you about the telework, given the coronavirus. Agencies are obviously having to look at telework.

Mr. BENEVENTO. Yes.

Senator VAN HOLLEN. EPA, I know that you are now permitting more telework. But I am just reading a headline from June 26th, 2019, from the Government Executive, which is a publication that follows activities in the Federal Government.

Headline, EPA Unilaterally Imposes New Union Contract Slashing Telework, Easing Firing. This has been an ongoing subject of concern to EPA employees that this Administration came in and cut back on telework.

Were you part of that decision to cut back on telework?

Mr. BENEVENTO. No.

Senator VAN HOLLEN. Did you support the decision to cut back on telework?

Mr. BENEVENTO. I support the Administration, yes.

Senator VAN HOLLEN. So you supported their proposal to cut back on telework?

Mr. BENEVENTO. I mean, I support the policies of the Administration.

Senator VAN HOLLEN. So in 2017, the EPA Inspector General reported that EPA's existing telework policy at that time was working, that there were no performance issues.

Do you have any evidence to suggest that there were performance issues with the prior telework policy?

Mr. BENEVENTO. I don't have any evidence with me, no.

Senator VAN HOLLEN. OK. So you support the Administration's position, not based on any information, but just because it was the Administration's position, is that right?

Mr. BENEVENTO. Well, that was the policy that was put out. I was a regional administrator at the time, so we received the policy, and we implemented it.

Senator VAN HOLLEN. OK. So you reduced people's telework opportunities?

Mr. BENEVENTO. Yes, consistent with the direction that we received.

Senator VAN HOLLEN. And it was unilaterally imposed. Yes.

So now, obviously, given the current situation, people are looking at telework options. But we should also, on a bipartisan basis, the Congress has said the Federal Government needs to have an option of telework. Obviously, it needs to meet performance standards. So, very disappointed that EPA has gotten rid of the old one.

To the gentlemen for the NRC, thank you for being here.

Mr. Chairman, could I have just a moment?

Senator BARRASSO. Please, yes.

Senator VAN HOLLEN. I know that when you had the earlier virus, I think the H1N1, you actually put in place as an agency a plan that would protect your employees, but also make sure your critical mission continued.

Mr. Wright, I know you are there now. Are you taking measures right now to make sure we have plans in place?

Mr. WRIGHT. Senator, thank you for the question. Yes, we are focused on ensuring the safety of our people.

So we are broadly sharing and implementing the CDC control guidelines to try to control the spread of the virus, No. 1. We are also reviewing our continuity of operations plan. And just to your

concern about telework, about 74 percent of our people have telework agreements right now. So we are actively engaged on that issue.

Then for our licensees, they are also taking precautions that are consistent with the guidance that the industry is following. They have sequestration plans if they need to. They have restricted site access for people not to be on the site if they have been out of the country in the last 14 days or so. We do have plans in place.

Senator VAN HOLLEN. OK, thank you.

Mr. Hanson, thank you for your service up here on the Hill, and congratulations on the nomination.

Mr. HANSON. Thank you, Senator.

Senator BARRASSO. Senator Sullivan.

Senator SULLIVAN. Thank you, Mr. Chairman. I want to commend the nominees for their desire to serve their country, and their families who are all here supporting them. It is not always easy to do this. So we very much appreciate it.

Mr. Benevento, I am going to focus most of my questions on your upcoming role. I think you and I are meeting tomorrow, so I look forward to going into a little bit more detail. But for the record, I want to get a couple of things, a couple of commitments from you.

One of the good news stories on the environment in the last few years is the strong bipartisan cooperation we have seen with regard to cleaning up our oceans. Senator Whitehouse and I have been working on legislation, the Save Our Seas Act. The Chairman has been very supportive of this.

We had a Save Our Seas Act 2.0, which the Congressional Research Service called the most comprehensive ocean cleanup legislation ever, ever to come out of Congress. It passed the Senate 100 to zero 6 weeks ago. So we are going to try to get it through the House.

If confirmed, can I get your commitment to help implement this? It is something that the President and Administrator Wheeler have fully supported and backed. I just want to make sure I get your commitment on that as well.

Mr. BENEVENTO. Absolutely. It is an agency priority.

Senator SULLIVAN. Great. Thank you.

Similarly, it is a little bit more regional, but we have an issue in Alaska, southeast Alaska, what we refer to as our transboundary mining challenge. I am a strong resource development oriented Senator.

However, we do have a number of mines on the border between Alaska and Canada where there have been instances, one, the Tulsequah Chief Mine continues to spew toxic waste into the river. Three decades now, the Canadians won't clean it up.

I have raised it with the Prime Minister twice. Remarkably, his response is, Well, Senator, we didn't like that the Congress opened ANWR. It is kind of like, What the hell does that have to do with cleaning up the rivers in Alaska?

But anyway, we were expecting—and actually, the EPA has been helpful on this. You were conducting a gap analysis with regard to the environmental standards on the U.S. and British Columbia transboundary mining rivers. I was hoping to get a status update on this document that can be shared with Congress.

Do you know what the status of that is?

Mr. BENEVENTO. It is still being worked in our Office of International and Tribal Affairs. But I can get you a more detailed status analysis after the hearing.

Senator SULLIVAN. That would be good. It is important.

Again, we have had strong support from the Administration on this, much stronger than the previous Administration on holding the Canadians' feet to the fire about cleaning up some of these mines and making sure they don't pollute our rivers and oceans in Alaska.

Let me turn to another issue that really is important, and I would like to get your commitment on. One of the first pieces of legislation that I focused on, again, was in this Committee to develop a new program to help disadvantaged communities that lack water and sewer. I think it comes as a surprise to many Americans to know that certain communities—unfortunately over 30 in my State—don't have basic running water, flush toilets, basic things that most Americans just take for granted that they think everybody has.

Well, not everybody has them. I think everybody should. These are some of the most patriotic communities in America. They are primary Alaska Native communities. Alaska Natives serve at higher rates in the U.S. military than any other ethnic group in the country.

And yet a lot of these communities don't have flush toilets. They literally have to take a bucket, called a honey bucket, out of their house, and dump it into a lagoon full of waste. It is horrendous. We have much higher rates of diseases in children in these communities because of this.

So the Trump administration has kind of been up and down in funding this program. I want to get your commitment, I try to get it from every EPA Administrator and budget director, that you are going to help fund these programs that are very basic in terms of what most Americans would believe is just common hygiene that we all take for granted in most communities.

Can I get your commitment to work with me and this Committee on those issues?

Mr. BENEVENTO. Absolutely. As I think the Administrator has indicated, these are core issues for the agency. These are core—I mean, I ran a public health department. These are core public health issues. So absolutely, you have my commitment.

Senator SULLIVAN. Let me ask about one other one. The Administrator was up in Alaska in August, had great meetings. This issue came up a number of times. We have made some progress in this Committee, again, on legislation that I had. I want to thank the Chairman for his help on this.

In 1971, there was landmark legislation called the Alaska Native Claims Settlement Act. It provided Federal and State land to Alaska Native tribes and other entities in fee simple, a lot of land, 44 million acres. It kind of really energized our State in terms of our economy, in terms of what our Native communities were able to do with this land.

Unfortunately, a lot of that land that was transferred by the feds was contaminated, severely contaminated. So now the Alaska Native people were saddled with lands, but you couldn't use the lands.

Worse, there was a time that the Federal agencies were coming back to them saying, oh, by the way, we are going to sue you to clean up the dirty lands that we gave you that were polluted in the first place. Kind of ridiculous.

We got a law passed recently, legislation of mine that said, Of course they are not going to be liable. The land was given to them polluted.

But what we need to do is think about innovative ways to clean up this land, like you would on military bases or other places that are transferred to communities that are contaminated. It is not just going to be through dollars and cents; it is going to be through other innovative ways.

I have talked to the Administrator about a number of these. Can I get your commitment to work with me and this Committee on ways to clean up the ANSCA contaminated lands in Alaska?

Mr. BENEVENTO. Absolutely.

Senator SULLIVAN. Great.

Thank you, Mr. Chairman.

Senator BARRASSO. Thank you all.

If there are no more questions, I welcome back Senator Carper. I know we had hoped to end at about this time.

Do you have a final question?

Senator CARPER. One more.

Again, our thanks to each of you for being with us today, and to your families for supporting your loved ones and sharing them with us.

My wife and I have three sons. You have three sons. Mr. Benevento, you have two daughters. My hope is that I am going to live a long time, I hope all of us here do.

But the threat that we are faced with, our climate right now, this climate crisis, the people who really are at risk are my kids, ultimately their kids, your children, and your grandchildren.

We have some people who think we ought to close every nuclear power plant in the country, which I think is a crazy idea. That is not what we need to do.

The greatest source of carbon dioxide on our planet is our cars, trucks, vans, mobile sources. The auto industry has said basically that they can work, California and other States, on a reasonable path forward that creates jobs, economic opportunity, and actually reduces significantly emissions from mobile sources going forward. We ought to do that.

My wife just got back from a trip down to Antarctica a month or so ago. A week or two after she got back, they recorded a temperature in Antarctica of 63 degrees Fahrenheit. South Pole.

Two weeks later, it was 65 degrees Fahrenheit.

Two weeks later, it was 67. That is the hottest it has ever been down there. A piece of Antarctica the size of the District of Columbia, where we are, here today, literally fell into the ocean while my wife was there.

In Australia, we have some friends there, I know you do too; in Australia they had the fires back in January the size of the State

I was born in, West Virginia, as big as West Virginia. A billion or more animals and birds killed, five people killed. We have just gone through the last 5 years, hottest 5 years in history. This January was the hottest January in history.

We can do something about it, or not. Failure to act with some dispatch, it is on us. It is not all on EPA, it is not all on Congress. It is not all on business.

But every now and then, we can find a path forward, if the business community agrees on it and the environmental community agrees on it. In this case, two-thirds of the Senate agree on it. And that is the greenhouse gases that are in our air conditioners and our refrigerators, they are pretty good at keeping things cool inside. They are a thousand times more dangerous in terms of climate change than carbon dioxide.

We can do something about that, and we need to do something about that.

As you go about your responsibilities, I know you are probably getting certain signals from some folks in the White House, including the President, on what is inappropriate. He thinks climate change is a hoax. Well, it ain't.

I will just ask, when you are being leaned on from powerful people within the Administration that maybe you report to, do what I do. That is keep my kids in mind. I would just urge you to do the same thing.

Because what did President Macron say when he came to see us, he spoke at a joint session the Congress took 2 years ago, President Macron from France. He spoke in English, and he said these words, God only gives us one planet, he said; There is no Planet B. This is it, and we need to cherish it and take care of it.

Thank you.

Senator BARRASSO. Thank you very much, Senator Carper.

Just one final piece of information to submit for the record. The Executive Director of the Colorado Counties, Incorporated, John Swartout, and former Environment and Natural Resource Advisor to then-Democrat Governor of Colorado, John Hickenlooper, wrote in support of Mr. Benevento's nomination. He said, "I have always found Mr. Benevento to be professional, intelligent, knowledgeable, dedicated, and willing to work in a non-partisan way to enhance and protect the environment." He went on to say that, "One thing that has always impressed me is that he is willing to tackle the tough issues, make a difference, and get results."

Without objection, I will submit this to the record.

So done.

[The referenced information was not received at time of print.]

Senator BARRASSO. Finally, since there are no other members of the Committee here today, some members may have to submit questions in writing. They will be submitted by 4 p.m. on Friday, March 13th. I ask the nominees to respond to those questions by 4 p.m. on Thursday, March 19th.

I want to thank the nominees.

I congratulate you again on the nominations. Thank you for the time and the testimony today.

The hearing is adjourned.

[Whereupon, at 11:48 a.m., the hearing was adjourned.]

[Additional material submitted for the record follows:]

JEFF DUNCAN
3RD DISTRICT, SOUTH CAROLINA

COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON ENERGY
SUBCOMMITTEE ON ENVIRONMENT AND CLIMATE CHANGE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
DEPUTY REPUBLICAN WHIP
HOUSE ENERGY ACTION TEAM
CO-CHAIR

Congress of the United States
House of Representatives
Washington, DC 20515-4003

2229 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-5301

303 WEST BELTLINE BOULEVARD
ANDERSON, SC 29625
(864) 224-7401

100 PLAZA CIRCLE, SUITE A1
CLAYTON, SC 29525
(864) 681-1028

jeffduncan.house.gov

March 4, 2020

Honorable John Barrasso, Chairman
Honorable Tom Carper, Ranking Member
Committee on Environment and Public Works
United States Senate
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper,

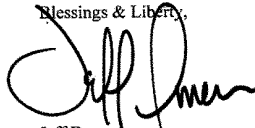
It is with pleasure that I express my support for the President's re-nomination of the Honorable David A. Wright to continue his service as a Commissioner of the Nuclear Regulatory Commission (NRC). South Carolina is a state with a great stake in the leadership of the NRC.

I have known David Wright personally for many years. I believe Commissioner Wright's background as a public servant and his knowledge of the agency's subject matter qualify him to continue his service on the Commission. David served on the South Carolina Public Service Commission from 2004 to 2013. From 2008 to 2009, Commissioner Wright was the President of the Southeastern Association of Regulatory Commissioners. In 2011 and 2012, he was President of the National Association of Regulatory Utility Commissioners. This experience, as well as his current work at the NRC, demonstrates Commissioner Wright's in-depth understanding of the nuclear industry and the challenges facing both it and the NRC.

With the magnitude of issues currently before the Commission, I believe that the NRC will benefit from Commissioner Wright's continued service on the Commission.

I encourage you to swiftly confirm the Honorable David A. Wright for an additional term as Commissioner of the NRC.

Blessings & Liberty,



Jeff Duncan
Member of Congress

Congress of the United States
Washington, DC 20515

March 6, 2020

The Honorable John Barrasso
Chairman
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20515

The Honorable Thomas R. Carper
Ranking Member
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20515

Dear Chairman Barrasso and Ranking Member Carper,

We write today as representatives of South Carolina's Congressional delegation in support for South Carolina native, David Wright, to be confirmed for his second term as a Commissioner of the Nuclear Regulatory Commission. David has ably served as a Commissioner since he took office on May 30, 2018.

South Carolina is home to seven nuclear reactors, a nuclear fuel fabrication facility, a low-level waste facility and the Savannah River Site. Commissioner Wright grew up in South Carolina and maintains a residence in Irmo, South Carolina. He is committed to ensuring the health and public safety of not only South Carolinians, but all Americans as he conducts his oversight and regulation of the industry.

Prior to his service on the Nuclear Regulatory Commission, David has had an illustrious career in public service as a councilman, mayor, and State House member. After serving in the South Carolina statehouse, David served on the South Carolina Public Service Commission for almost a decade and earned high respect from his peers for being a balanced and fair regulator. During this service, he also served as President of the National Association of Regulatory Utility Commissioners (NARUC), where he represented state economic regulators nationally.

Following his public service David started his own small business where he focused on energy and water issues. Throughout his career, Commissioner Wright has approached complex and difficult issues in a bipartisan and thoughtful manner which is essential to performing the duties required as a Commissioner. We fully support the confirmation of David Wright to the Nuclear Regulatory Commission and look forward to his positive work in the years to come.

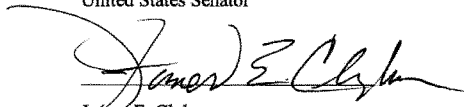
Sincerely,



Lindsey O. Graham
United States Senator



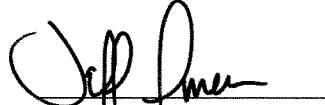
Tim Scott
United States Senator



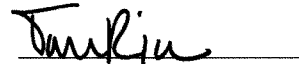
James E. Clyburn
Member of Congress




Joe Wilson
Member of Congress



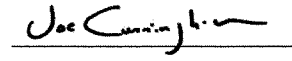
Jeff Duncan
Member of Congress




Tom Rice
Member of Congress



Ralph Norman
Member of Congress



Joe Cunningham
Member of Congress



William R. Timmons, IV
Member of Congress



N A R U C
National Association of Regulatory Utility Commissioners

March 5, 2020

Honorable John Barrasso, Chairman
Committee on Environment & Public Works
United States Senate
410 Dirksen Senate Office Building
Washington, DC 20510

Honorable Tom Carper, Ranking Member
Committee on Environment & Public Works
United States Senate
456 Dirksen Senate Office Building
Washington, DC 20510

**RE: Support for Confirmation of David A. Wright to an additional term as a
Commissioner on the Nuclear Regulatory Commission**

Dear Chairman Barrasso and Ranking Member Carper,

It is with great pleasure that I write to support the immediate confirmation of the Honorable David A. Wright to an additional term as a Commissioner of the Nuclear Regulatory Commission (NRC). The National Association of Regulatory Utility Commissioners (NARUC) represents state public service commissions in all 50 states, D.C., and U.S. territories. Those commissions oversee the crucial operations of energy, telecommunications, and water utilities in every jurisdiction. Our members are committed to serving the public interest by assuring the quality and effectiveness of utility regulation. NARUC continues to have a strong interest in effective NRC oversight of new and existing nuclear technologies.

Commissioner Wright's knowledge, collegiality and work ethic are well known around NARUC. David was very active in the association during his nine years as a South Carolina commissioner. He held several key leadership roles, including service as NARUC's President from 2011 to 2012, and as the President of a NARUC affiliate, the Southeastern Association of Regulatory Commissioners, from 2008 to 2009. Prior to that he spent eight years as a member of the South Carolina House of Representatives and logged time both as a councilman and Mayor of Irmo, South Carolina. In each of these roles, David demonstrated leadership, expertise, and a knack for working collegially with a broad range of stakeholders. Any casual observer must recognize that, since his confirmation to the NRC in May of 2018, David has already demonstrated his commitment to the NRC's mission to ensure protection of public health and safety. His continued service on the Commission will unquestionably further the agency's important public safety mission.

We urge your Committee, and the Senate, to immediately confirm the Commissioner Wright to an additional term as a Commissioner of the NRC.

Sincerely,

Greg R. White
Executive Director
National Association of Regulatory Utility Commissioners

Mitigating Strategies (MS) Order (EA-12-049) Compliance Status

- As of June 18, 2018, all operating power reactor units are in compliance with Order EA-12-049.
- The NRC staff performed inspections in accordance with NRC Inspection Manual Temporary Instruction 2515/191 (TI-191) after all units at a site were in compliance to verify that required FLEX equipment and connections are in place.
- As of June 28, 2019, the staff has completed TI-191 inspections at all operating power reactor sites.

Spent Fuel Pool Instrumentation (SFPI) Order (EA-12-051) Compliance Status

- As of June 30, 2017, all operating power reactor units are in compliance with Order EA-12-051.
- The NRC staff inspected for compliance with the SFPI Order in conjunction with the inspections for Order EA-12-049.

Severe Accident Capable Hardened Containment Vent System (HCVS) Order (EA-13-109) Compliance Status

- As of June 21, 2019, all 17 applicable operating boiling-water reactor sites subject to the order are in full compliance with the order.
- The NRC staff is performing inspections for compliance with the HCVS Order in accordance with NRC Inspection Manual Temporary Instruction 2515/193 (TI-193).
- A pilot TI-193 inspection was completed at Dresden on July 28, 2018. The staff has completed TI-193 inspections at 10 sites and expects to complete the inspections at the remaining 7 sites in calendar year 2020.

A table with the Order Compliance Status is provided on the following page. Site names that are highlighted in green have completed all post-Fukushima activities. The NRC has issued a completion letter to those sites highlighted in dark green.

Order Implementation Status for Operating Reactors – By Region

Region I				Region II				Region III				Region IV							
	MS	SFPI	HCVS		MS	SFPI	HCVS		MS	SFPI	HCVS		MS	SFPI	HCVS				
Bellevue Valley	1	Yes	Yes	NR	Browns Ferry	1	Yes	Yes	Yes	Brinkley	1	Yes	Yes	NR	APC	1	Yes	Yes	NR
Callaway	2	Yes	Yes	NR		2	Yes	Yes	Yes		2	Yes	Yes	NR		2	Yes	Yes	NR
Callaway	3	Yes	Yes	NR		3	Yes	Yes	Yes	Byron	1	Yes	Yes	NR	Callaway	1	Yes	Yes	NR
Callaway	3	Yes	Yes	NR	Brunswick	1	Yes	Yes	Yes	Callaway	2	Yes	Yes	NR	Columbia	1	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR		2	Yes	Yes	Yes	Callaway	3	Yes	Yes	NR	Columbia	2	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR		3	Yes	Yes	Yes	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR	Catawba	1	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR		2	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR		3	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR	Fairley	1	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR		2	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR		3	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR	Hatch	1	Yes	Yes	Yes	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR		2	Yes	Yes	Yes	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR		3	Yes	Yes	Yes	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR	McQueen	1	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR		2	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR		3	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR	North Anna	1	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR		2	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR		3	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR	Oconee	1	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR		2	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR		3	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR	Robinson	1	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR		2	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR		3	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR	St. Lucie	1	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR		2	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR		3	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR	Sequoyah	1	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR		2	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR		3	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR	Sumner	1	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR		2	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR		3	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR	Turkey Point	1	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR		2	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR		3	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR	Vogtle	1	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR		2	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR		3	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR	Watts Bar	1	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes
Callaway	3	Yes	Yes	NR		2	Yes	Yes	NR	Callaway	3	Yes	Yes	NR	Columbia	3	Yes	Yes	Yes

NR = Not Required

Flooding Hazard Reevaluation

- The licensees for all operating power reactor sites have completed their hazard reevaluation and have submitted their flood hazard reevaluation reports (FHRR).
- The NRC used a graded approach to address flood hazard results that exceed the current design basis.
- The licensees for 45* operating reactor sites completed focused evaluations (FE) to address local intense precipitation and to leverage available physical margin to protect against the reevaluated flood levels. All of the expected focused evaluation reports have been submitted. The NRC has completed its review of 41 of the focused evaluation reports.
- The licensees for 6 operating power reactor sites completed integrated assessments (IA) to address the reevaluated flooding hazard impact on their sites. All of the expected integrated assessment reports have been submitted. The NRC has completed its review of 3 of the integrated assessment reports.

Seismic Hazard Reevaluation

- The licensees for all operating power reactor sites have completed their hazard reevaluation and have submitted their Seismic Hazard and Screening Reports (SHSR).
- The NRC used a graded approach to address seismic hazard results that exceed the current design basis.
- The licensees for 34 operating power reactor sites completed the expedited seismic evaluation process (ESEP) screening and evaluation. All of the expected ESEP reports have been submitted and the NRC has completed its review of the ESEP reports.
- The licensees for 15* operating power reactor sites completed seismic probabilistic risk assessments (SPRA). All of the expected SPRA reports have been submitted. The NRC has completed its review of 8 of these SPRA reports.
- The NRC requested that the licensees for 49 operating power reactor sites submit one or more limited scope evaluations (i.e., high frequency evaluations and spent fuel pool evaluations). All of the limited scope evaluations have been submitted and the NRC has completed its review of these limited scope evaluations.

Mitigation Strategies Assessments

- As noted in the seismic hazard (ADAMS Accession No. ML19140A307, dated July 3, 2019) and flood hazard (ADAMS Accession No. ML19067A247, dated August 20, 2019) binning letters, the staff has suspended its review of the remaining MSAs based on the final approved MBDBE rule. For the reviews not yet completed, or not yet submitted, the staff will evaluate the mitigation strategies, as appropriate, as part of its review of FE, IA, or SPRA reports.
- Licensees are no longer expected to submit MSAs associated with their reevaluated hazards.

* The NRC granted Entergy's requests to defer the submittal dates for remaining seismic and flooding reevaluation activities for Indian Point and Palisades to dates beyond the planned permanent shutdown dates in 2021 and 2022.

A table with the status of the hazard reevaluations is provided on the following pages. Site names that are highlighted in green have completed all post-Fukushima activities. The NRC has issued a completion letter to those sites highlighted in dark green.

Flooding and Seismic Hazard Reevaluation Status for Operating Reactors – Regions I and II

Region I	Flood Hazard		Seismic Hazard				Region II	Flood Hazard		Seismic Hazard					
	FHRR	FE/A	SHSR	ESEP	LSE	SPRA		FHRR	FE/A	SHSR	ESEP	LSE	SPRA		
Beaver Valley	2	Yes	Yes	Yes	Yes	Yes	Browns Ferry	1	Yes	Yes	Yes	Yes	Yes	Yes	
Calvert Cliffs	1	Yes	Yes	Yes	Yes	Yes	NR	2	Yes	Yes	Yes	Yes	Yes	Yes	
FitzPatrick	3	Yes	Yes	Yes	Yes	Yes	NR	3	Yes	Yes	Yes	Yes	Yes	NR	
Gilboa	1	Yes	Yes	Yes	NR	Yes	NR	1	Yes	Yes	Yes	Yes	Yes	NR	
Hope Creek	2	Yes	Yes	Yes	NR	Yes	NR	2	Yes	Yes	Yes	Yes	Yes	NR	
Indian Point	2	Yes	Note 1	Yes	Yes	Note 1	Note 1	Farley	1	Yes	Yes	Yes	NR	NR	NR
Limerick	1	Yes	Yes	Yes	NR	Yes	NR	2	Yes	Yes	Yes	NR	NR	NR	
Millstone	2	Yes	Yes	Yes	NR	Yes	NR	Harris	1	Yes	Yes	Yes	NR	NR	
Nine Mile Point	2	Yes	Yes	Yes	NR	Yes	NR	2	Yes	Yes	Yes	Yes	Yes	NR	
Peach Bottom	2	Yes	Yes	Yes	Yes	Yes	Yes	Hatch	1	Yes	Yes	Yes	Yes	NR	
Salem	2	Yes	Yes	Yes	NR	Yes	NR	2	Yes	Yes	Yes	Yes	Yes	NR	
Seabrook	1	Yes	Yes	Yes	Yes	Yes	NR	McGuire	1	Yes	Yes	Yes	Yes	NR	
Susquehanna	1	Yes	NR	Yes	NR	Yes	NR	2	Yes	Yes	Yes	Yes	Yes	NR	
Three Mile Island	1	Yes	Yes	Yes	Yes	Yes	NR	3	Yes	Yes	Yes	Yes	Yes	NR	
								North Anna	1	Yes	Yes	Yes	Yes	Yes	NR
								2	Yes	Yes	Yes	Yes	Yes	NR	
								3	Yes	Yes	Yes	Yes	Yes	NR	
								Oconee	1	Yes	Yes	Yes	Yes	Yes	NR
								2	Yes	Yes	Yes	Yes	Yes	NR	
								3	Yes	Yes	Yes	Yes	Yes	NR	
								Robinson	1	Yes	Yes	Yes	Yes	Yes	NR
								2	Yes	Yes	Yes	NR	NR	NR	
								3	Yes	Yes	Yes	NR	NR	NR	
								St. Lucie	1	Yes	Yes	Yes	Yes	Yes	NR
								2	Yes	Yes	Yes	Yes	Yes	NR	
								3	Yes	Yes	Yes	Yes	Yes	NR	
								Sequoyah	1	Yes	Yes	Yes	Yes	Yes	NR
								2	Yes	Yes	Yes	Yes	Yes	NR	
								Summer	1	Yes	Yes	Yes	Yes	Yes	NR
								2	Yes	Yes	Yes	Yes	Yes	NR	
								Surry	1	Yes	Yes	Yes	NR	NR	NR
								2	Yes	Yes	Yes	NR	NR	NR	
								3	Yes	Yes	Yes	NR	NR	NR	
								4	Yes	Yes	Yes	NR	NR	NR	
								Vogtle	1	Yes	Yes	Yes	Yes	Yes	NR
								2	Yes	Yes	Yes	Yes	Yes	NR	
								3	Yes	Yes	Yes	Yes	Yes	NR	
								Watts Bar	1	Yes	Yes	Yes	Yes	Yes	NR
								2	Yes	Yes	Yes	Yes	Yes	NR	

NR = Not Required

Note 1: The NRC granted Entergy's request to defer the submittal date for remaining seismic and flooding reevaluation activities for Indian Point until August 1, 2020 (Unit 2) and August 1, 2021 (Unit 3).

Flooding and Seismic Hazard Reevaluation Status for Operating Reactors – Regions III and IV

Region III	Flood Hazard			Seismic Hazard			Region IV	Flood Hazard			Seismic Hazard				
	FHRR	FE/IA	SHSR	ESEF	LSE	SPRA		FHRR	FE/IA	SHSR	ESEF	LSE	SPRA		
Braidwood	1 2	Yes	Yes	Yes	NR	Yes	NR	AND	1 2	Yes	Yes	Yes	NR	Yes	NR
Byron	1 2	Yes	NR	Yes	NR	Yes	NR	Callaway	1 2	Yes	NR	Yes	Yes	Yes	Yes
Clinton	1 2	Yes	NR	Yes	NR	Yes	NR	Columbia	1 2	Yes	Yes	Yes	Yes	Yes	Yes
DC Cook	1 2	Yes	Yes	Yes	Yes	Yes	Yes	Gamache Peak	1 2	Yes	Yes	Yes	NR	NR	NR
Davis Besse	1 2	Yes	Yes	Yes	Yes	Yes	NR	Cooper	1 2	Yes	Yes	Yes	Yes	Yes	NR
Dresden	2 3	Yes	Yes	Yes	Yes	Yes	Yes	Diablo Canyon	1 2	Yes	Yes	Yes	NR	Yes	Yes
Duane Arnold	1 2	Yes	Yes	Yes	NR	Yes	NR	Grand Gulf	1 2	Yes	Yes	Yes	NR	NR	NR
Fermi	1 2	Yes	NR	Yes	Yes	Yes	NR	Palo Verde	1 2 3	Yes	Yes	Yes	NR	NR	NR
LaSalle	1 2	Yes	Yes	Yes	Yes	Yes	NR	River Bend	1 2	Yes	Yes	Yes	NR	Yes	NR
Monticello	1 2	Yes	Yes	Yes	Yes	Yes	NR	South Texas Project	1 2	Yes	NR	Yes	NR	NR	NR
Palisades	1 2	Yes	Yes	Yes	Yes	Yes	Note 2	Waldport	1 2	Yes	Yes	Yes	NR	Yes	NR
Perry	1 2	Yes	Yes	Yes	Yes	Yes	NR	Wolf Creek	1 2	Yes	Yes	Yes	Yes	Yes	NR
Point Beach	1 2	Yes	Yes	Yes	Yes	Yes	NR								
Prange Island	1 2	Yes	Yes	Yes	NR	NR	NR								
Quad Cities	1 2	Yes	Yes	Yes	NR	Yes	NR								

NR = Not Required

Note 2: The NRC has granted Entergy's request to defer the submittal date for the SPRA until December 31, 2022.

