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

Chairman Barrasso:

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

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

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

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

   In addition, within the next few weeks, the EPA expects to provide additional air quality modeling data for ozone, including projected ozone concentrations at potential nonattainment and maintenance receptor sites for the 2015 ozone NAAQS and projected upwind state contributions to those potential receptors. All states may use this forthcoming information as they develop or review state implementation plans that address the Clean Air Act good neighbor provision for the 2015 ozone NAAQS. We also intend to work closely with states to explore additional flexibilities

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as to how they use this information in developing their good neighbor SIP submittals for the 2015 NAAQS.

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

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

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

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

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

The revised Exceptional Events Rule includes an initial notification process to enable early engagement regarding whether events could qualify as exceptional and/or have regulatory significance, which in turn should help inform the state's decision regarding whether to submit an exceptional events demonstration. For those demonstrations with regulatory significance, the rule includes intended timelines for EPA to respond to submitted demonstrations within 120 days and to complete review of final demonstrations within 12 months.

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

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

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

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

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

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

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

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

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

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

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

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

Yes, I am committed that EPA will use the best available data, and collaborate with NHTSA, as EPA completes the Midterm Evaluation of the light-duty vehicle greenhouse gas standards for model years 2022-2025. In August 2017, EPA opened a new 60-day comment period to allow stakeholders to submit any comments, data, or information they believe relevant to my reconsideration of the Final Determination. EPA also held a public hearing on September 6, 2017. EPA received more than 290,000 comments, and is in the process of reviewing the new data and information, along with continued review of the body of research already in the record. My new decision on the Midterm Evaluation will be based on the best available data, and EPA will continue to collaborate with NHTSA.

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

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

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billion gallons, we estimated that approximately 2.6 billion gallons would be used to meet the advanced biofuel standard. As it did in evaluating the 2018 advanced biofuel standard, EPA will assess the supply of imported biodiesel in setting the 2019 advanced biofuel and 2019 BBD percentage standards. EPA will conduct a similar analysis when determining the 2020 BBD volume target.

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

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

   EPA provided GE with a response to its submission of the completion report within the agreed-upon timeframe, stating that the Agency is now carefully reviewing input provided by our state and federal partners at the end of 2017 regarding the Certification of Completion of the Remedial Action requested by GE. In addition, EPA recently began an analysis of sediment data collected by the New York State Department of Environmental Conservation (DEC) in late 2017, and we continue to consider the extensive input received from a wide range of stakeholders about the second Five-Year Review report, which was released for public comment in June

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

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

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

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2017. EPA will continue to work with our colleagues at DEC in analyzing and reaching scientific consensus on the new sediment data. Therefore, EPA will not have a decision regarding the issuance of the Certificate of Completion of Remedial Action until the data from these samples have been fully analyzed.

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

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

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

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

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

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

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

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Ranking Member Carper:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

       This content is still in our Web Content Management.

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

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

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

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

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

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

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

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

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

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

17. The Freedom of Information Act (FOIA) requires agencies to respond to a FOIA request within 20 days of receipt of the request. Although agencies are given some latitude to extend the response timeline in light of "unusual circumstances," EPA's failure to meet the deadlines specified in the Act has resulted in many FOIA requests left unanswered. That, in turn, has led to lawsuits against EPA for failure to meet the FOIA timeline.
    a. EPA currently submits open FOIA request logs to the Committee on a monthly basis, pursuant to an oversight letter sent to EPA on March 17, 2017. Beginning on the date of your next log submission, please also provide the number of currently open FOIA requests, the number of lawsuits that have been filed due to EPA's failure to comply with FOIA's deadlines, the number of FOIA lawsuits that have been completed, the number of lawsuits resulting in EPA providing the requested documents, and the cost of each lawsuit to the taxpayer.

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

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

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

[8] https://www.justice.gov/oip/oip-guidance/proactive_disclosure_of_non-exempt_information

A first party FOIA request is one where a requester is asking for records about themselves.

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

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

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

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

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

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

Particulate matter (PM), also known as particle pollution, is a complex mixture of extremely small particles and liquid droplets in the air. Once inhaled, these particles can affect the heart and lungs and cause serious health effects. The Clean Air Act requires EPA to review the NAAQS and their scientific basis at least every five years to determine whether standards are requisite to protect public health, with an adequate margin of safety. The fine PM NAAQS was last reviewed and revised in 2012. As part of that process, EPA developed an Integrated Science Assessment to summarize the science related to the health and ecological effects. This most recent assessment, released in December 2009, can be found on EPA's website at: https://www.epa.gov/isa/integrated-science-assessment-isa-particulate-matter.

The "Regulatory Impact Analysis for the Review of the Clean Power Plan: Proposal" presents analysis of the forgone social benefits of changes in non-CO2

[10] https://www.ncbi.nlm.nih.gov/pubmed/28408086
[11] "Estimates and 25-year trends of the global burden of disease attributable to ambient air pollution: an analysis of data from the Global Burden of Diseases Study 2015." See Table 2.
[12] http://herald-citizen.com/stories/ttu-investigating-fitzgerald-study,25943

emissions from the electricity sector in Section 3.4 (pages 42-55) and Section 7.5 (pages 122-124). For the 2016 oil and gas rule, EPA did not monetize changes in PM2.5 emissions or concentrations.

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

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

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

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

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

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

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

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

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

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

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

25. According to the most recent National Climate Assessment (NCA) released by the Trump Administration, climate change caused by emissions of heat-trapping gases "outweigh[s] other factors in determining burned area in the western U.S. from 1916 to 2003, a finding confirmed by 3000-year long reconstructions of southwestern fire history."[14] According to the NCA, "Numerous fire models project more wildfires as climate change continues," including "up to a 74% increase in burden area in California, with northern California potentially experiencing a doubling under a high emissions scenario toward the end of the century."[15] The NCA calls conifer forests in southern California "notably threatened" by

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

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

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

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

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

[16] NCA at 471.

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

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

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

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

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

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

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

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

       The Agency does not maintain this data.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[17] "EPA Administrator Scott Pruitt Urges Ranchers to File WOTUS Comments," https://www.youtube.com/watch?v=yTVd54WyhDQ.

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

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

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

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

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

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

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[18] "EPA Administrator Scott Pruitt Urges Ranchers to File WOTUS Comments," https://www.youtube.com/watch?v=yTVd54WyhDQ.

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

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

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

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

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

FGD wastewater and bottom ash transport water. EPA determined that the estimated foregone costs to industry warrant the postponement of compliance dates in the 2015 Rule.

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

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

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

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

conflict of interest issues and determines whether the appointee should issue a written recusal statement. If necessary, EPA Ethics drafts that document.

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

Please see Attachment 1.

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

Please see Attachment 1.

41. In response to questions from Senator Merkley, you testified that a "Red Team / Blue Team" exercise to re-examine the underpinnings of climate science is still "under consideration" at EPA. According to Jim Lakely, the communications director of the Heartland Institute, EPA has "reached out to the Heartland Institute to help identify scientists who could constitute a red team," and the Heartland Institute had been "happy to oblige."[19]
    a. Is Mr. Lakely telling the truth that EPA representatives reached out to the Heartland Institute for help identifying scientists who could participate in a Red Team/Blue Team exercise? If yes, why did EPA choose to contact the Heartland Institute?
    b. Have representatives of the Heartland Institute provided representatives of EPA with a list of "scientists who could constitute a red team"? If yes, who are the Heartland Institute's proposed participants?
    c. Have any EPA representatives consulted with any other organizations, corporations, or individuals about potential individuals who could participate in a Red Team/Blue Team exercise? If yes, provide the names of those organizations, corporations, or individuals consulted, and the names of any proposed participants.
    d. Do you know the names of any individuals or organizations who have contributed to the Heartland Institute? If yes, please provide the names of any such individuals or organizations with whom you have met in your capacity as EPA Administrator.
    e. Please provide a copy of all documents (including emails, white papers, meeting agendas, powerpoint presentations, memoranda and other materials) received or obtained by EPA related to the "Red Team/Blue Team" climate science effort.

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

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

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

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

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

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

The *Chattanooga Free Times* press report is partially accurate with respect to the prioritization of the of the cleanup of impacted properties under the time-critical removal process at the Southside Chattanooga Lead Site. In an effort to minimize

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

residents' exposure to highly contaminated soil, EPA's Superfund program is utilizing both removal and remedial cleanup authorities to expeditiously address the contamination at the Southside Chattanooga Lead Site. Currently, cleanup activities are being conducted under removal authorities. As a result, property cleanup is primarily based on detected lead concentrations above the removal management level of 1,200 milligrams per kilogram (mg/kg). In addition, special considerations are also provided to properties with children.

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

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

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

45. Coal ash is laden with toxic pollutants and heavy metals, and is second only to mine waste as the largest industrial waste stream in country. On April 17, 2015, the EPA published a final rule regulating the disposal of coal ash, also known as "coal combustion residuals" (CCR), from power plants.[21] Among other things, the CCR rule established vital rules to protect groundwater resources, to protect local communities from toxic windblown dust,[22] to reduce the risk of catastrophic failure (*i.e.*, collapse) of surface impoundments, and to maintain records of compliance with those rules. You became EPA Administrator on February 17, 2017. On April 17 and May 31, 2017, lawyers for power plants asked to you reconsider a laundry list of provisions in the CCR rule. On September 13, 2017, you replied that, "After reviewing your petitions, I have decided that it is appropriate and in the public interest to reconsider the provisions of the final rule addressed in your petitions, in light of the issues raised in your petitions, as well as the

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

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new authorities provided in the recently enacted Water Infrastructure Improvements for the Nation Act, Pub. L. No. 114-322, 130 Stat. 1628 (2016)."[23]

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

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

Provision	**Description**
Issues Before the Court	
40 CFR 257.50(c), 40 CFR 257.100	EPA Regulation of Inactive Surface Impoundments
40 C.F.R 257.53 – definition of beneficial use	The Criteria for Determining Whether Activities Constitute Beneficial Use or Disposal
40 CFR 257.95(h)(2)	Use of Risk-Based Alternative Standards for Remediating Constituents Without an MCL
40 CFR 257.53 – definition of CCR pile	The criteria for determining Whether a Pile will be Regulated as a Landfill or as Beneficial Use
40 CFR 257.96-98	Regulatory Procedures Used to Remediate Certain Non-Groundwater Releases
40 CFR 257.73(a)(4), 257.73(d)(1)(iv), 257.74(a)(4), 257.74(d)(1)(iv)	Requirements for Slope Protection on Surface Impoundments, Including Use of Vegetation
40 CFR 257.103(a) and (b)	Whether to Allow Continued Use of Surface Impoundments Subject to Mandated Closure if No Capacity for Non-CCR Wastestreams
40 CFR 257.50(e)	Regulation of Inactive Surface Impoundments, Including Legacy Ponds
40 CFR 257.100	Exemption for Certain Remediation and Post-Closure Requirements for Inactive Surface Impoundments that Close by April 17, 2018

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

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

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

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

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

    Yes, the agency will ensure that any state programs that are approved meet all of the requirements for approval under the WIIN Act, including that the be "at least as protective as the 2015 CCR rule or successor regulations." In order for EPA to approve a state program, the statute requires that a state provide "evidence of a permit program or other system of prior approval and conditions under State law for regulation by the State of coal combustion residuals units that are located in the State." See 42 U.S.C. 6945(d)(1)(A). As noted, the statute also requires that the

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

program be "at least as protective as" the federal CCR rule. Moreover, in EPA's Interim Final Coal Combustion Residuals State Permit Program Guidance Document, EPA states in many places that the state must submit evidence that their program is at least as protective as the federal CCR rule and that this determination is subject to public notice and comment. EPA has been working with our state partners to ensure that their programs meet the statutory standard.

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

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

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

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

50. One of the companies that requested you reconsider the 2015 CCR rule, AES-Puerto Rico, appears to maintain a five-story pile of coal ash in Guayama, Puerto Rico. Has EPA received complaints about fugitive emissions from this waste pile? Has EPA investigated whether Hurricane Maria affected this and other waste piles in Puerto Rico? Please provide a copy of all documents (including emails, white papers, meeting agendas, powerpoint presentations, memoranda and other materials) received or obtained by EPA

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regarding off-site migration of coal-ash caused by Hurricane Maria. What precautions is EPA taking to ensure that weather events do not cause the release of coal ash?

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

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

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Senator Booker:

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

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

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

52. On May 22, 2017, the Superfund Task Force was established to "provide recommendations…on how the Environmental Protection Agency (EPA) can streamline and improve the Superfund program." The report's recommendations were released in July 25, 2017. The EPA has stated that the Superfund Task Force kept no records of the analysis used to form recommendations for the Superfund program.

a. Is this correct? Did the Agency keep no records of the analysis used to form recommendations?
b. If it is correct, please provide justification or reasoning for the lack of record keeping when compiling a report that would shape the management of the Superfund program.

As I indicated at the hearing, the Agency does have records which will be provided to the committee.

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

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

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

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

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

redevelopment potential that the Agency should consider. Once EPA headquarters and the regions reached agreement, the list was made public.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

56. Proper financial management of the Superfund program is critical to its success. Since 1999, federal funding for the Superfund program has declined from about $2 billion to about $1.1 billion annually, and the rate of contamination threat reduction at Superfund sites has declined. During your hearing, you repeatedly stated that you had visited states throughout the country and discussed the Superfund and that the cleanup of sites would require "direction and leadership." The Chairman of the Superfund Task Force is charged with developing and implementing recommendations to improve the work of the Superfund program.

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a. Mr. Kelly had no previous experience in environmental policy or management when you named him to Chair the Superfund Task Force.
    i. What experience did he have that you believe qualified him to serve as Chair?
    ii. What experience does he have that you believe qualify him to serve as your Senior Advisor?
b. What responsibilities was Albert Kelly given as Chairman of the EPA Superfund Task Force during the production of the Superfund Task Force Recommendations? What is his role and responsibility as Chair now that the Task Force has released its recommendations?
c. What responsibilities was Albert Kelly given as Senior Advisor at the EPA? What specific policy areas and programs will he be responsible for in this role?

Mr. Kelly has years of leadership positions from our home state of Oklahoma that has suited him for his position to facilitate Superfund reform. During the production of the Superfund Task Force Recommendations, Mr. Kelly was my leading appointee who spearheaded the effort while compiling the suggestions of career staff. Since the production of the recommendations, he has lead the efforts to begin the implementation of the recommendations. Mr. Kelly remains the Chair of the Superfund Task Force, and is assigned other roles as requested and required.

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

In response to stakeholder concerns, in December 2017, EPA released a Federal Register Notice to initiate the process to revise certain requirements in the Worker Protection Standard (WPS) and Certification of Pesticide Applicators Rule. By the end of fiscal year 2018, EPA expects to publish a Notice of Proposed Rulemaking to solicit public input on possible revisions to the WPS requirements for minimum age, designated representatives, and application exclusion zones, and the minimum age requirement for certified applicators. While the agency seeks public input on these possible changes, the compliance dates for the two rules remain in effect. EPA remains committed to protecting agricultural workers who handle and apply pesticides. Any possible revisions included in the proposed rulemakings will comply with all applicable statutory requirements and executive orders, including Executive Order 12898.

58. Despite proposing drastic cuts to EPA's budget, you are spending taxpayer dollars on questionable expenses such as paying $25,000 to install a custom-made, soundproof phone booth in your office.

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a. Have you used this $25,000 phone booth for any calls with representatives of oil and gas companies?

No.

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

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

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

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

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Senator Boozman:

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

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

Senator Ernst:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Senator Fischer:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Senator Markey:

WEBSITE

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

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

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

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

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

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

ENFORCEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Please see the chart below in response to your question.

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

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

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

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

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

CLIMATE IN DRAFT STRATEGIC PLAN

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

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

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[32] Pruitt, Scott and Luther Strange. "The Climate-Change Gang." The National Review. May 17, 2016. Accessed January 31, 2018. http://www.nationalreview.com/article/435470/climate-change-attorneys-general

[33] DiChristopher, Tom. "EPA chief Scott Pruitt says carbon dioxide is not a primary contributor to global warming." CNBC. March 9, 2017. Accessed February 1, 2018. https://www.cnbc.com/2017/03/09/epa-chief-scott-pruitt.html

[34] Wuebbles, D.J., and D.W. Fahey, K.A. Hibbard, D.J. Dokken, B.C. Stewart, and T.K. Maycock (eds.) "Climate Science Special Report." U.S. Global Change and Research Program. November 2017. Accessed January 31, 2018. https://science2017.globalchange.gov/downloads/CSSR2017_FullReport.pdf

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

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

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

PERSONNEL

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

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

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

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

[35] Ibid.

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

TOXIC CHEMICALS

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

    Please see response to Question 10.

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

    There are no plans to move IRIS out of ORD.

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

    N/a. See 80a.

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

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

Senator Merkley:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

87. The EPA's scientific integrity policy encourages EPA scientists to engage with their peers in the industry, academia, government, and non-governmental organizations as long as it is consistent with their job duties. The policy explicitly states that this can include presenting their work at scientific meetings and actively participating in professional societies, and more. However, 3 EPA scientists that were scheduled to speak at a conference on climate change at Narragansett Estuary Bay were restricted [link:https://www.ucsusa.org/center-science-and-democracy/attacks-on-science/accumulating-evidence-federal-scientists-are-being#.WnDaRq6nFhF] from attending, in direct conflict with the agency's scientific integrity policy.
    a. Did you realize that this decision was in violation of the policy?

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

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

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

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

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

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

Meetings related to this issue are in the public record.

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

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

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

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

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

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

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

92. According to the Paperwork Reduction Act, 44 USC § 3506(d)(3), all agencies must "provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products." The news release announcing that the EPA was overhauling its website was published the same day that the EPA removed the vast majority of its climate change website, thousands of webpages -- the public did not

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have an opportunity to provide comment or express its concerns. How do you justify overtly disregarding this process and failing to notify the public?

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

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

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

    b. Whom did he supervise?

       Dr. Dourson did not have any supervisory responsibilities.

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

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

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

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

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

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

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

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

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

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

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

In the January 25, 2018, guidance memorandum titled "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act," EPA addressed the question of when a major source subject to a MACT standard may be reclassified as an area source and avoid being subject to major source requirements. The memo states that the plain language of the definitions of "major source" and "area source" in CAA section 112(a) compels the conclusion that a major source becomes an area source at such time as the source takes an enforceable limit on its potential to emit (PTE) hazardous air pollutants (HAP). Under this plain reading of the CAA, sources of HAP previously classified as "major sources" may be

reclassified as "area" sources when the facility limits its PTE below major source thresholds using a federally enforceable mechanism. There is no time limitation supported within the plain reading of the CAA Section 112 definitions of major and area source.

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

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

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

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

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

        Please see Attachments 6 and 7.

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

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

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

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Senator Sanders:

Climate Change

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

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

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

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

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

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

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

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

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

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

Lead

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

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

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

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

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

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

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

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

EPA Website

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

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

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

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

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

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

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

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

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

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

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

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

Renewable Energy

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

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

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

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

Senator Van Hollen:

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

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

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

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

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

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

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

As to your broader question, EPA strongly supports the President's infrastructure initiatives and associated efforts to significantly improve predictability, timeliness, and consistency in the permitting of urgently needed infrastructure projects. The Agency is working under the President's direction to streamline and improve EPA's

role in the review of new infrastructure projects to help to assure they are reviewed and permitting decisions are made without unnecessary delay.

Senator Wicker:

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

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

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

Chairman Barrasso:

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

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

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

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

   In addition, within the next few weeks, the EPA expects to provide additional air quality modeling data for ozone, including projected ozone concentrations at potential nonattainment and maintenance receptor sites for the 2015 ozone NAAQS and projected upwind state contributions to those potential receptors. All states may use this forthcoming information as they develop or review state implementation plans that address the Clean Air Act good neighbor provision for the 2015 ozone NAAQS. We also intend to work closely with states to explore additional flexibilities

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as to how they use this information in developing their good neighbor SIP submittals for the 2015 NAAQS.

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

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

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

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

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

The revised Exceptional Events Rule includes an initial notification process to enable early engagement regarding whether events could qualify as exceptional and/or have regulatory significance, which in turn should help inform the state's decision regarding whether to submit an exceptional events demonstration. For those demonstrations with regulatory significance, the rule includes intended timelines for EPA to respond to submitted demonstrations within 120 days and to complete review of final demonstrations within 12 months.

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

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

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

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

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

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

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

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

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

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

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

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

Yes, I am committed that EPA will use the best available data, and collaborate with NHTSA, as EPA completes the Midterm Evaluation of the light-duty vehicle greenhouse gas standards for model years 2022-2025. In August 2017, EPA opened a new 60-day comment period to allow stakeholders to submit any comments, data, or information they believe relevant to my reconsideration of the Final Determination. EPA also held a public hearing on September 6, 2017. EPA received more than 290,000 comments, and is in the process of reviewing the new data and information, along with continued review of the body of research already in the record. My new decision on the Midterm Evaluation will be based on the best available data, and EPA will continue to collaborate with NHTSA.

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

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

billion gallons, we estimated that approximately 2.6 billion gallons would be used to meet the advanced biofuel standard. As it did in evaluating the 2018 advanced biofuel standard, EPA will assess the supply of imported biodiesel in setting the 2019 advanced biofuel and 2019 BBD percentage standards. EPA will conduct a similar analysis when determining the 2020 BBD volume target.

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

Commented [FEHHE1]: OMB: Suggest that EPA reference the growing amount of oil production in the U.S. since EISA 2007 and that the U.S. is becoming more energy secure and independent in large part due to more domestic production.

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

   EPA provided GE with a response to its submission of the completion report within the agreed-upon timeframe, stating that the Agency is now carefully reviewing input provided by our state and federal partners at the end of 2017 regarding the Certification of Completion of the Remedial Action requested by GE. In addition, EPA recently began an analysis of sediment data collected by the New York State Department of Environmental Conservation (DEC) in late 2017, and we continue to consider the extensive input received from a wide range of stakeholders about the second Five-Year Review report, which was released for public comment in June

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

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

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

2017. EPA will continue to work with our colleagues at DEC in analyzing and reaching scientific consensus on the new sediment data. Therefore, EPA will not have a decision regarding the issuance of the Certificate of Completion of Remedial Action until the data from these samples have been fully analyzed.

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

Commented [FEHHE2]: DOJ: The original wording suggests that EPA has already decided to issue the Certificate of Completion. It is not a foregone conclusion that EPA will issue it; under the consent decree, EPA need only respond to GE's request to do so within one year.

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

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

    Commented [GCDE3]: Why doesn't EPA mention that PFOA and PFOS were included on the CCL list and are being evaluated for Regulatory Determination?

    Commented [FT(4R3]: EPA: While EPA is preparing to present the Administrator with a range of options on how to better deal with PFOA and PFOS including evaluating them for a Regulatory Determination we are not comfortable appearing to prejudge his determination and appearing to box in his policy options.

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

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

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

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

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Ranking Member Carper:

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

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

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

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

       Commented [WCSE5]: Non-responsive. Please revise.

       Commented [FT(6R5]: EPA: Maintaining consistency with ongoing conversations with the committee regarding this issue.

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

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

       Commented [WCSE7]: Non-responsive. Please revise.

       Commented [FT(8R7]: EPA: Maintaining consistency with ongoing conversations with the committee regarding this issue.

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

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

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

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

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

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

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

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

       NRC's 2009 report on *The Silver Book: Science and Decisions* recommended the use of a framework that "maximizes the utility of risk assessment," with a focus on assuring that risk assessments are well-tailored to the problems and decisions at hand so that they can inform the decision-making process most meaningfully. In response to this report, in 2014 EPA published the Human Health Risk Assessment Framework. OCSPP **ensures that our approaches are consistent with the EPA framework, which discusses the need for fit for purpose evaluations. Problem formulation entails an initial dialogue between scientists and risk managers and provides the regulatory context for the scientific analysis and helps define the scope of an analysis. The problem formulation stage involves consideration of the available information along with key gaps in data or scientific information. As such, the complexity and scope of systematic reviews will vary depending on the different risk management and statutory requirements and responsibilities of OCSPP. In**

Commented [WPAE9]: It is unclear whether any documentation exists. The answer should state explicitly.

Commented [WPAE10]: Do you mean OCSPP?

Commented [BJME11]: Note typo.

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

other words, an OCSPP systematic review is conducted as "fit-for-purpose" (NRC 2009) based on the pre-determined scope and purpose determined from problem formulation.

Commented [WPAE12]: Did the 2009 NRC document use the term "fit-for-purpose" in the systematic review context?

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

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

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

    Under TSCA Section 6(a), regulation of certain uses of methylene chloride, NMP, and TCE were proposed in 2016 and 2017. The agency is currently considering the comments received, including comments suggesting that EPA quickly finalize these actions and comments suggesting that these actions be evaluated as part of the

group of the first ten chemicals undergoing initial risk evaluations under the amendments to TSCA.

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

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

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

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

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

       This content is still in our Web Content Management.

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

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

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

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

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

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

       In implementing EO 13777, EPA hosted a series of public meetings and teleconferences to inform the Regulatory Reform Task Force. Information on these public meetings and teleconferences, including agendas, is accessible

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

through EPA's Regulatory Reform webpage: https://www.epa.gov/laws-regulations/regulatory-reform.

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

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

Commented [GCDE13]: If EPA is planning to provide them at a later date, that should be stated.

Commented [BSHE14]: Unclear what is meant here. Does this mean to say that the search could not be performed by the time the QFRs were submitted to congress, because such a search would take more time? Suggest clarifying.

Commented [FT(15R14]: EPA: Maintaining consistency with ongoing conversations with the committee regarding this issue and other document requests that are outstanding.

17. The Freedom of Information Act (FOIA) requires agencies to respond to a FOIA request within 20 days of receipt of the request. Although agencies are given some latitude to extend the response timeline in light of "unusual circumstances," EPA's failure to meet the deadlines specified in the Act has resulted in many FOIA requests left unanswered. That, in turn, has led to lawsuits against EPA for failure to meet the FOIA timeline.
    a. EPA currently submits open FOIA request logs to the Committee on a monthly basis, pursuant to an oversight letter sent to EPA on March 17, 2017. Beginning on the date of your next log submission, please also provide the number of currently open FOIA requests, the number of lawsuits that have been filed due to EPA's failure to comply with FOIA's deadlines, the number of FOIA lawsuits that have been completed, the number of lawsuits resulting in EPA providing the requested documents, and the cost of each lawsuit to the taxpayer.

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

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

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

[8] https://www.justice.gov/oip/oip-guidance/proactive_disclosure_of_non-exempt_information

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

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

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

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

Commented [GCDE16]: If EPA is going to provide the documents at a later date, that should be stated.

Commented [BSHE17]: Same comment as above. Suggest clarifying

Commented [FT(18R17]: EPA: Maintaining consistency with ongoing conversations with the committee regarding this issue and other document requests that are outstanding.

19. During the House Energy & Commerce subcommittee hearing on December 7, 2017, you testified that particulate matter is a "very important criteria pollutant" that should be regulated under the National Ambient Air Quality Standards (NAAQS) program. One study[10] found that PM2.5 "was the fifth-ranking mortality risk factor in 2015," and contributes to nearly 90,000 deaths in the US every year.[11]
    a. Do you agree with the general conclusion from this analysis that PM2.5 presents a serious public health concern? If not, please provide supporting evidence, including any research or analysis EPA has conducted, that supports your position.
    b. Please provide documentation supporting any analysis you have done to calculate the amount of PM2.5 pollution that will be created as a result of your actions to reverse, delay, or modify the Clean Power Plan, methane, and the Glider Kit rules. Please state whether you attempted to calculate the adverse human health effects that will be caused by your changes to the rules mentioned above.

[9] https://www.washingtonpost.com/national/health-science/first-class-travel-distinguishes-scott-pruitts-epa-tenure/2018/02/11/5bb89afc-0b7d-11e8-8b0d-891602206fb7_story.html?utm_term=.4c0713143235
[10] https://www.ncbi.nlm.nih.gov/pubmed/28408086
[11] "Estimates and 25-year trends of the global burden of disease attributable to ambient air pollution: an analysis of data from the Global Burden of Diseases Study 2015." See Table 2.

c. Do you think there is a tolerable level of PM2.5 that is appropriate for human exposure? If so, please specify it, and explain what evidence you have to support this.
d. Are you aware that a study conducted by Tom Brewer at Tennessee Tech University determining that trucks outfitted with glider kits are as clean as new diesel truck engines is now under investigation for "misconduct in research" by Tennessee Tech University?[12] This is the same study that was included in the glider industry's petition asking the EPA to repeal emission requirement for glider kits and cited in the EPA's November 16, 2017 proposal to repeal the Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits. Please describe how you plan to re-assess EPA's November 16, 2017 proposal in light of the potential misconduct associated with this study. If no such plans exist, why not?

Particulate matter (PM), also known as particle pollution, is a complex mixture of extremely small particles and liquid droplets in the air. Once inhaled, these particles can affect the heart and lungs and cause serious health effects. The Clean Air Act requires EPA to review the NAAQS and their scientific basis at least every five years to determine whether standards are requisite to protect public health, with an adequate margin of safety. The fine PM NAAQS was last reviewed and revised in 2012. As part of that process, EPA developed an Integrated Science Assessment to summarize the science related to the health and ecological effects. This most recent assessment, released in December 2009, can be found on EPA's website at: https://www.epa.gov/isa/integrated-science-assessment-isa-particulate-matter.

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

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

Commented [WCSE19]: Even if the agency's decision were a purely legal decision, the agency should still be doing the economic analysis to inform any policy decision. Suggest that EPA instead state that the agency is reviewing comments submitted on the proposed rule and is evaluating the agency's next steps. This will avoid stating something that is inconsistent with OMB Circular A-4 that agencies should do the analysis to support/inform their decisions.

Commented [WCSE20]: Suggest edits although EPA should verify that the statement is correct.

Commented [FT(21]: EPA: Response includes suggestion on reviewing comments/evaluating next steps.

20. In response to questions from Chairman Barrasso regarding the implementation of the 2015 National Ambient Air Quality Standard (NAAQS) for ground-level ozone, you commented that the EPA was "in the process of designating attainment and non-attainment [areas] with respect to ozone." You went on to state, "when you think about ozone, there has been a lot of focus on whether the parts per billion, 75 parts per billion, reducing it to 70 parts per billion, was a wise decision. That has not been our focus. Our focus has been on more the issues and implementation that you have raised."

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

a. Do you agree with EPA's conclusion in 2015 that the primary NAAQS standard for ground-level ozone should be set at a level of 0.070 parts per million (ppm) to protect health with an adequate margin of safety? If not, why not?
b. Do you agree with the underlying science data for the 2015 NAAQS for ground-level ozone that finds ambient ground-level ozone pollution above 0.070 ppm can trigger asthma attacks in children that have asthma? If not, why not?
c. Do you agree with EPA's assessment that once implemented, the public health benefits from the 2015 NAAQS for ground-level ozone will outweigh the costs? If not, why not?
d. Will you confirm that under your leadership, the EPA will not weaken the 2015 primary NAAQS standard for ground-level ozone set at 0.070 parts ppm?

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

Commented [BSHE22]: Suggested edits

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

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

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

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

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

[13] *See* 74 Fed. Reg. 66496, 66540 tbl.2 (Dec. 15, 2009).

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

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

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

Commented [FEHHE23]: CEQ

25. According to the most recent National Climate Assessment (NCA) released by the Trump Administration, climate change caused by emissions of heat-trapping gases "outweigh[s] other factors in determining burned area in the western U.S. from 1916 to 2003, a finding confirmed by 3000-year long reconstructions of southwestern fire history."[14] According to the NCA, "Numerous fire models project more wildfires as climate change continues," including "up to a 74% increase in burden area in California, with northern California potentially experiencing a doubling under a high emissions scenario toward the end of the century."[15] The NCA calls conifer forests in southern California "notably threatened" by the climate change caused by heat-trapping gases. According to the Trump Administration's NCA, California is also at extraordinary risk from seal-level rise and coastal damage. Without adaptive action, the Trump Administration expects that critical California infrastructure such as the San Francisco and Oakland airports "are at increased risk of flooding with a 16-inch rise in sea level in the next 50 years . . . ." Increasingly high numbers of Californians will be put at risk of flood, including highly vulnerable populations less able to prepare, respond, or recover from natural disaster. On an even more fundamental level, emissions of these heat-trapping gases pose an exceptionally high risk to the highly urbanized population of California due to increasing urban heat. According to the Trump Administration, heat stress has been the leading weather-related cause of death in the United States since 1986 (when record-keeping began).[16] Severe heat waves such as the 10-day California heat wave of 2006 trigger "escalating effects" that kill people, particularly the elderly and those in low-income communities. Heat waves can also cause respiratory stress by expediting chemical reactions that cause the formation of ground-level ozone.

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

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

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

Commented [FEHHE24]: CEQ

Commented [WCSE25]: Suggest also referencing environmental protection as this is the agency's mission. The agency has the ability to consider economic factors when weighing decisions about environmental protections.

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

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

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

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

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

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

Commented [BSHE26]: clarify

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

The EPA has not performed a source-by-source comparison of MACT and RACT standards where both apply. The RACT standards are established by states, not by EPA, and there is enough flexibility in the Clean Air Act in how a state may establish a RACT standard that there is no expectation of uniformity between the level of control or specific sources covered in different states. Specific to the ozone NAAQS program, EPA has established "presumptive RACT" for the key VOC emissions points present in about 44 source categories through the issuance of Control Techniques Guidelines (CTG). ~~However, these~~ CTGs ~~are only~~ provide guidance for states and do not dictate a source-specific outcome. States that contain certain ozone nonattainment areas and states in the Ozone Transport Region are reqired to submit a revision to new CTGs. ~~Where a MACT standard is providing emission reductions that also count towards RACT, it would be reasonable to expect states to continue to require those measures to ensure the presence of reductions that are needed for NAAQS attainment purposes and are achieved by controls to meet MACT that are already in place and paid for by the source. Replacing these MACT reductions through implementation of a different, less stringent RACT standard would likely require new reductions from other sources.~~

Commented [WCSE27]: If EPA issues a CTG, sources in the Ozone Transport Region of the country, which covers a broad swath of the East, are required to adopt RACT. Suggest mentioning this mandatory component here.

30. Studies have found that regulations may play some small part in reductions in the coal workforce; but automation, shifts in mining practices, and prices of natural gas are all major contributing factors to the decline of coal.

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a. How many coal mines have closed or gone bankrupt since you became EPA Administrator?

The Agency does not maintain this data.

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

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

Commented [FEHHE28]: DOJ: EPA examined (but never submitted to the court) individual plant/mine impacts under the court order in the *Murray Energy* section 321(a) litigation. Because that is the case, the agency should consider editing two sentences in the response as noted

Commented [FEHHE29]: CEQ

31. I remain concerned about the volatility in the Renewable Fuel Standard (RFS) compliance trading system used by EPA, known as the Renewable Identification Number (RIN) market and the impacts that RIN market manipulation is having on the economic stability of East Coast refineries.
    a. Currently, the EPA has a Memorandum of Understanding with the Commodity Futures Trading Commission (CFTC) on RIN market manipulation. In the past year, how often has EPA staff communicated with the CFTC on RIN market manipulation and what have you and your staff done with the CFTC to assess potential RIN market manipulation?

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

market. Given EPA's market oversight limitations, we intend to pursue continued collaboration with CFTC under the MOU.

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

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

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

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

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

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

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

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

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

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

Commented [BSHE30]: Can EPA also commit to an approximate timeframe for submitting the final regulation to interagency review (i.e. the timeframe that matches the unified agenda).

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

The scope of Clean Water Act jurisdiction under future regulation is currently under development. EPA and the Army have conducted and will continue to conduct a transparent and robust public engagement process, meeting and listening to stakeholders prior to issuing a proposal. EPA and the Department of the Army are currently considering suggestions from states, local government, tribes, and

other stakeholders about which waters should be jurisdictional under the Clean Water Act and which should not.

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

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

Commented [FEHHE31]: CEQ

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

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

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

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[17] "EPA Administrator Scott Pruitt Urges Ranchers to File WOTUS Comments," https://www.youtube.com/watch?v=vTVd54WyhDQ.
[18] "EPA Administrator Scott Pruitt Urges Ranchers to File WOTUS Comments," https://www.youtube.com/watch?v=vTVd54WyhDQ.

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

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

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

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

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

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

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

Commented [FEHHE32]: DOJ: Because the postponement of compliance deadlines in the 2015 Steam Electric Effluent Limitation Guidelines Rule is in litigation, please ensure that the statements in the response to question 39 are consistent with the administrative record for the postponement rule.

Commented [FT(33R32]: EPA: The responses to question 39 are consistent with the administrative record.

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

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

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

a. What is EPA's policy on the length of time an employee is allowed to serve under the SDWA authority without having to complete a financial disclosure form, or complete a recusal statement (if necessary)?

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

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

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

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

Please see Attachment 1.

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

Please see Attachment 1.

41. In response to questions from Senator Merkley, you testified that a "Red Team / Blue Team" exercise to re-examine the underpinnings of climate science is still "under consideration" at EPA. According to Jim Lakely, the communications director of the Heartland Institute, EPA has "reached out to the Heartland Institute to help identify scientists who could constitute a red team," and the Heartland Institute had been "happy to oblige."[19]
    a. Is Mr. Lakely telling the truth that EPA representatives reached out to the Heartland Institute for help identifying scientists who could participate in a Red Team/Blue Team exercise? If yes, why did EPA choose to contact the Heartland Institute?
    b. Have representatives of the Heartland Institute provided representatives of EPA with a list of "scientists who could constitute a red team"? If yes, who are the Heartland Institute's proposed participants?
    c. Have any EPA representatives consulted with any other organizations, corporations, or individuals about potential individuals who could participate in a Red Team/Blue Team exercise? If yes, provide the names of those organizations, corporations, or individuals consulted, and the names of any proposed participants.
    d. Do you know the names of any individuals or organizations who have contributed to the Heartland Institute? If yes, please provide the names of any such individuals or organizations with whom you have met in your capacity as EPA Administrator.
    e. Please provide a copy of all documents (including emails, white papers, meeting agendas, powerpoint presentations, memoranda and other materials) received or obtained by EPA related to the "Red Team/Blue Team" climate science effort.

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

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

The President's Budgets for FY 2018 and FY 2019 include proposals for significant staffing reductions and those levels were considerations in the establishment of internal planning targets which were to be revaluated ~~would be allocated to organizations~~ **after appropriations bills are passed and during the development of EPA's Operating Plan.** The effort is on-going. **Recent flat-lined appropriations in the majority of EPA's program projects, combined with payroll growth, have**

Commented [BSHE34]: Need to be clear that these are only proposals and EPA's operating decisions are based on enacted appropriations bills.

Commented [BSHE35]: I don't think that EPA's overall appropriations have been reduced "year over year"

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

created challenges in meeting program requirements that are addressed with contracts or with grants. Taken together, these trends mean the agency must carefully manage workforce levels. Specific impacts vary depending on organizations' current staffing levels and attrition rather than a set percentage.

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

Commented [BSHE36]: This is too close to saying that we are making FTE decisions based on the President's Budget.

Commented [FT(37R36]: EPA: This was a response at a point in time when we did not have an appropriation. We are still working out the resource allocations for the FY 2018 Operating Plan.

Commented [GALE38]: This is confusing. The write-up makes it sound like these are FTE targets without regard to enacted funding levels, which doesn't make sense. Or were these developed assuming flat-lined FY 2017 or similar? This needs to be clarified in the text.

Commented [FT(39R38]: EPA: Text modified above for clarification.

43. A recent report[20] indicates that, at a proposed superfund site in Chattanooga, EPA is only taking the most protective clean-up measures at properties where children currently live. EPA cannot possibly know whether families with children will one day move into homes that EPA isn't cleaning up because children don't *currently* live there. And EPA cannot possibly know which homes children visit frequently.
    a. Is the policy described in the report accurate? If not, please fully describe any inaccuracies.

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

b. If the policy described in the report is accurate, please provide all documents (including emails, memos, white papers, analysis, meeting minutes and correspondence) related to any policy decision that limits the most aggressive cleanup measures to sites that currently have children residing on the premises.

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

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

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

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

45. Coal ash is laden with toxic pollutants and heavy metals, and is second only to mine waste as the largest industrial waste stream in country. On April 17, 2015, the EPA published a final rule regulating the disposal of coal ash, also known as "coal combustion residuals" (CCR), from power plants.[21] Among other things, the CCR rule established vital rules to protect groundwater resources, to protect local communities from toxic windblown dust,[22] to reduce the risk of catastrophic failure (*i.e.*, collapse) of surface impoundments, and to maintain records of compliance with those rules. You became EPA Administrator on February 17, 2017. On April 17 and May 31, 2017, lawyers for power plants asked to you reconsider a laundry list of provisions in the CCR rule. On September 13, 2017, you replied that, "After reviewing your petitions, I have decided that it is appropriate and in the public interest to reconsider the provisions of the final rule addressed in your petitions, in light of the issues raised in your petitions, as well as the new authorities provided in the recently enacted Water Infrastructure Improvements for the Nation Act, Pub. L. No. 114-322, 130 Stat. 1628 (2016)."[23]

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

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

Provision	**Description**
Issues Before the Court	
40 CFR 257.50(c), 40 CFR 257.100	EPA Regulation of Inactive Surface Impoundments
40 C.F.R 257.53 – definition of beneficial use	The Criteria for Determining Whether Activities Constitute Beneficial Use or Disposal
40 CFR 257.95(h)(2)	Use of Risk-Based Alternative Standards for Remediating Constituents Without an MCL

[21] 80 Fed. Reg. 21,302 (Apr. 17, 2015).
[22] *See, e.g.*, Sabrina Shankman, *Is Coal Ash Killing This Oklahoma Town?*, INSIDE CLIMATE NEWS, June 13, 2016, *available at* https://insideclimatenews.org/news/10062016/coal-ash-killing-bokoshe-oklahoma-making-money-having-fun-cancer-asthma.
[23] https://insideepa.com/sites/insideepa.com/files/documents/sep2017/epa2017_1860.pdf

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40 CFR 257.53 – definition of CCR pile	The criteria for determining Whether a Pile will be Regulated as a Landfill or as Beneficial Use
40 CFR 257.96-98	Regulatory Procedures Used to Remediate Certain Non-Groundwater Releases
40 CFR 257.73(a)(4), 257.73(d)(1)(iv), 257.74(a)(4), 257.74(d)(1)(iv)	Requirements for Slope Protection on Surface Impoundments, Including Use of Vegetation
40 CFR 257.103(a) and (b)	Whether to Allow Continued Use of Surface Impoundments Subject to Mandated Closure if No Capacity for Non-CCR Wastestreams
40 CFR 257.50(e)	Regulation of Inactive Surface Impoundments, Including Legacy Ponds
40 CFR 257.100	Exemption for Certain Remediation and Post-Closure Requirements for Inactive Surface Impoundments that Close by April 17, 2018 Note: EPA completed reconsideration of the issues associated with this claim. See 81 Fed. Reg. 51,802 (August 5, 2016).
Appendix IV to 40 CFR 257.93(b), 257.94(b), 257.95(b), 257.95(d)(1)	Addition of Boron to the List of Constituents that Trigger Corrective Action
Issues Not Before the Court	
40 CFR 257.97	Whether to Allow Modification of the Corrective Action Remedy
40 CFR 257.90	Whether to Suspend Groundwater Monitoring Requirements Where "No Migration" Demonstration is Made
40 CFR 257.98(c)	Whether to Allow Alternate Period of Time to Determine Remediation is Complete
40 CFR 257.104	Whether to Allow Modification of the Post-Closure Care Period
40 CFR 257.101, 257.102	Whether to Allow CCR to be Used to Close Surface Impoundments Subject to Mandated Closure
40 CFR 257.53	Clarify Placement of CCR in Clay Mines

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

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

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

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

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

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

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

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

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

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

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

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

Senator Booker:

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

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

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

52. On May 22, 2017, the Superfund Task Force was established to "provide recommendations…on how the Environmental Protection Agency (EPA) can streamline and improve the Superfund program." The report's recommendations were released in July 25, 2017. The EPA has stated that the Superfund Task Force kept no records of the analysis used to form recommendations for the Superfund program.

a. Is this correct? Did the Agency keep no records of the analysis used to form recommendations?
b. If it is correct, please provide justification or reasoning for the lack of record keeping when compiling a report that would shape the management of the Superfund program.

As I indicated at the hearing, the Agency does have records which will be provided to the committee.

Commented [BJME40]: Are these internal/pre-deliberative documents? Why does EPA include explanations of how the two lists were generated when those were not included in the question? Should these paragraphs be moved to the next QFR?

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

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

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

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

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

redevelopment potential that the Agency should consider. Once EPA headquarters and the regions reached agreement, the list was made public.

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

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

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

Commented [BJME41]: As noted above, consider moving the paragraphs from the previous answer to this answer.

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

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

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

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

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

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

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

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

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

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

Commented [BJME42]: Will these updates be posted on the Superfund Task Force website? If so, consider including a sentence saying that with the link to the website.

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

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

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

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

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

56. Proper financial management of the Superfund program is critical to its success. Since 1999, federal funding for the Superfund program has declined from about $2 billion to about $1.1 billion annually, and the rate of contamination threat reduction at Superfund sites has declined. During your hearing, you repeatedly stated that you had visited states throughout the country and discussed the Superfund and that the cleanup of sites would require "direction and leadership." The Chairman of the Superfund Task Force is charged with developing and implementing recommendations to improve the work of the Superfund program.
    a. Mr. Kelly had no previous experience in environmental policy or management when you named him to Chair the Superfund Task Force.

i. What experience did he have that you believe qualified him to serve as Chair?
ii. What experience does he have that you believe qualify him to serve as your Senior Advisor?

b. What responsibilities was Albert Kelly given as Chairman of the EPA Superfund Task Force during the production of the Superfund Task Force Recommendations? What is his role and responsibility as Chair now that the Task Force has released its recommendations?
c. What responsibilities was Albert Kelly given as Senior Advisor at the EPA? What specific policy areas and programs will he be responsible for in this role?

Mr. Kelly has years of leadership positions from our home state of Oklahoma that has suited him for his position to facilitate Superfund reform. During the production of the Superfund Task Force Recommendations, Mr. Kelly was my leading appointee who spearheaded the effort while compiling the suggestions of career staff. Since the production of the recommendations, he has lead the efforts to begin the implementation of the recommendations. Mr. Kelly remains the Chair of the Superfund Task Force, and is assigned other roles as requested and required.

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

In response to stakeholder concerns, in December 2017, EPA released a Federal Register Notice to initiate the process to revise certain requirements in the Worker Protection Standard (WPS) and Certification of Pesticide Applicators Rule. By the end of fiscal year 2018, EPA expects to publish a Notice of Proposed Rulemaking to solicit public input on possible revisions to the WPS requirements for minimum age, designated representatives, and application exclusion zones, and the minimum age requirement for certified applicators. While the agency seeks public input on these possible changes, the compliance dates for the two rules remain in effect. EPA remains committed to protecting agricultural workers who handle and apply pesticides. Any possible revisions included in the proposed rulemakings will comply with all applicable statutory requirements and executive orders, including Executive Order 12898.

58. Despite proposing drastic cuts to EPA's budget, you are spending taxpayer dollars on questionable expenses such as paying $25,000 to install a custom-made, soundproof phone booth in your office.

a. Have you used this $25,000 phone booth for any calls with representatives of oil and gas companies?

No.

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

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

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

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

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Senator Boozman:

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

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

Senator Ernst:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Commented [BJME44]: Consider softening since there will be delays and a phase out period.

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Senator Fischer:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Senator Markey:

WEBSITE

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

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

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

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

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

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

ENFORCEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Please see the chart below in response to your question.

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

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

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

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

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

CLIMATE IN DRAFT STRATEGIC PLAN

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

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

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[32] Pruitt, Scott and Luther Strange. "The Climate-Change Gang." The National Review. May 17, 2016. Accessed January 31, 2018. http://www.nationalreview.com/article/435470/climate-change-attorneys-general

[33] DiChristopher, Tom. "EPA chief Scott Pruitt says carbon dioxide is not a primary contributor to global warming." CNBC. March 9, 2017. Accessed February 1, 2018. https://www.cnbc.com/2017/03/09/epa-chief-scott-pruitt.html

[34] Wuebbles, D.J., and D.W. Fahey, K.A. Hibbard, D.J. Dokken, B.C. Stewart, and T.K. Maycock (eds.) "Climate Science Special Report." U.S. Global Change and Research Program. November 2017. Accessed January 31, 2018. https://science2017.globalchange.gov/downloads/CSSR2017_FullReport.pdf

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

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

Strategic plans are drafted every five years to reflect new initiatives and projects of the Agency. Naturally the plan will be reflective of the current administration's priorities of refocusing the Agency on its core mission, restoring power to the states through cooperative federalism, and leading the Agency through improved processes and adherence to the rule of law.
~~We are constantly updating our website to reflect new initiatives and projects of the Agency. Of course the site will be reflective of the current administration's priorities – with that said, all the content from the previous administration is still easily accessible and publicly available through the banner across the top of the main page of the site.~~

Commented [BSHE45]: This answer appears to be in the wrong place. The question was about climate change references in EPA's Strategic Plan, not about EPA;s website.

PERSONNEL

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

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

Commented [BSHE46]: How did EPA arrive at this estimate? Could EPA please send the OMB RMO a breakdown of scientific vs. nonscientific positions by program project for the FY 2019 PB request.

Commented [FT(47R46]: EPA: This was a derived estimate based on total onboards (to include on-site contractors) in FY 2017 that we categorized as "scientists" projected onto the FY 2019 agency FTE ceiling. We do not have this information at the program project level.

Methodology: To arrive at this we looked at recent on-board data (including intermittent employees) and sorted based on "Position Title OPM" looking for "scientist" based on their description where 3 or greater employees fall under that position title. (Note there are over 1k and this is intended as estimate only). This yielded 7,956 of 13,990 (56.9%) onboards fitting this delineation as "scientists". Using that as a rate and applying it to the FTE ceiling for FY 2019 we get the estimate. We also did a similar exercise for contractors (limited to on-site contractors since they are the ones that we process through security and data was searchable).

[35] Ibid.

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

The Regional Science and Technology program performs laboratory analysis, field monitoring, and sampling investigations in order to provide credible scientific data on environmental pollutants and conditions to Agency policy makers. Under its Reform Plan, the Agency is working to develop a comprehensive enterprise-wide laboratory approach that will address many of the programs' traditional functions.

TOXIC CHEMICALS

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

Please see response to Question 10.

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

    There are no plans to move IRIS out of ORD.

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

    N/a. See 80a.

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

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

Senator Merkley:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

87. The EPA's scientific integrity policy encourages EPA scientists to engage with their peers in the industry, academia, government, and non-governmental organizations as long as it is consistent with their job duties. The policy explicitly states that this can include presenting their work at scientific meetings and actively participating in professional societies, and more. However, 3 EPA scientists that were scheduled to speak at a conference on climate change at Narragansett Estuary Bay were restricted [link:https://www.ucsusa.org/center-science-and-democracy/attacks-on-science/accumulating-evidence-federal-scientists-are-being#.WnDaRq6nFhF] from attending, in direct conflict with the agency's scientific integrity policy.
    a. Did you realize that this decision was in violation of the policy?

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

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

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

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

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

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

Meetings related to this issue are in the public record.

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

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

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

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

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

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

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

92. According to the Paperwork Reduction Act, 44 USC § 3506(d)(3), all agencies must "provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products." The news release announcing that the EPA was overhauling its website was published the same day that the EPA removed the vast majority of its climate change website, thousands of webpages -- the public did not

have an opportunity to provide comment or express its concerns. How do you justify overtly disregarding this process and failing to notify the public?

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

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

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

    b. Whom did he supervise?

       Dr. Dourson did not have any supervisory responsibilities.

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

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

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

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

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

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

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

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

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

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

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

In the January 25, 2018, guidance memorandum titled "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act," EPA addressed the question of when a major source subject to a MACT standard may be reclassified as an area source and avoid being subject to major source requirements. The memo states that the plain language of the definitions of "major source" and "area source" in CAA section 112(a) compels the conclusion that a major source becomes an area source at such time as the source takes an enforceable limit on its potential to emit (PTE) hazardous air pollutants (HAP). Under this plain reading of the CAA, sources of HAP previously classified as "major sources" may be

reclassified as "area" sources when the facility limits its PTE below major source thresholds using a federally enforceable mechanism. There is no time limitation supported within the plain reading of the CAA Section 112 definitions of major and area source.

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

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

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

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

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

    Please see Attachments 6 and 7.

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

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

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

Senator Sanders:

Climate Change

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

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

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

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

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

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

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

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

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

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

Lead

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

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

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

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

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

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

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

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

EPA Website

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

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

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

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

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

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

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

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

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

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

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

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

Renewable Energy

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

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

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

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

Senator Van Hollen:

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

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

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

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

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

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

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

Commented [FEHHE48]: CEQ

As to your broader question, EPA strongly supports the President's infrastructure initiatives and associated efforts to significantly improve predictability, timeliness, and consistency in the permitting of urgently needed infrastructure projects. The Agency is working under the President's direction to streamline and improve EPA's

role in the review of new infrastructure projects to help to assure they are reviewed and permitting decisions are made without unnecessary delay.

Senator Wicker:

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

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

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

Chairman Barrasso:

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

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

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

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

   In addition, within the next few weeks, the EPA expects to provide additional air quality modeling data for ozone, including projected ozone concentrations at potential nonattainment and maintenance receptor sites for the 2015 ozone NAAQS and projected upwind state contributions to those potential receptors. All states may use this forthcoming information as they develop or review state implementation plans that address the Clean Air Act good neighbor provision for the 2015 ozone NAAQS. We also intend to work closely with states to explore additional flexibilities

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as to how they use this information in developing their good neighbor SIP submittals for the 2015 NAAQS.

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

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

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

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

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

The revised Exceptional Events Rule includes an initial notification process to enable early engagement regarding whether events could qualify as exceptional and/or have regulatory significance, which in turn should help inform the state's decision regarding whether to submit an exceptional events demonstration. For those demonstrations with regulatory significance, the rule includes intended timelines for EPA to respond to submitted demonstrations within 120 days and to complete review of final demonstrations within 12 months.

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

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

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

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

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

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

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

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

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

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

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

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

Yes, I am committed that EPA will use the best available data, and collaborate with NHTSA, as EPA completes the Midterm Evaluation of the light-duty vehicle greenhouse gas standards for model years 2022-2025. In August 2017, EPA opened a new 60-day comment period to allow stakeholders to submit any comments, data, or information they believe relevant to my reconsideration of the Final Determination. EPA also held a public hearing on September 6, 2017. EPA received more than 290,000 comments, and is in the process of reviewing the new data and information, along with continued review of the body of research already in the record. My new decision on the Midterm Evaluation will be based on the best available data, and EPA will continue to collaborate with NHTSA.

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

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

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billion gallons, we estimated that approximately 2.6 billion gallons would be used to meet the advanced biofuel standard. As it did in evaluating the 2018 advanced biofuel standard, EPA will assess the supply of imported biodiesel in setting the 2019 advanced biofuel and 2019 BBD percentage standards. EPA will conduct a similar analysis when determining the 2020 BBD volume target.

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

Commented [FEHHE1]: OMB: Suggest that EPA reference the growing amount of oil production in the U.S. since EISA 2007 and that the U.S. is becoming more energy secure and independent in large part due to more domestic production.

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

   EPA provided GE with a response to its submission of the completion report within the agreed-upon timeframe, stating that the Agency is now carefully reviewing input provided by our state and federal partners at the end of 2017 regarding the Certification of Completion of the Remedial Action requested by GE. In addition, EPA recently began an analysis of sediment data collected by the New York State Department of Environmental Conservation (DEC) in late 2017, and we continue to consider the extensive input received from a wide range of stakeholders about the second Five-Year Review report, which was released for public comment in June

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

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

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

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2017. EPA will continue to work with our colleagues at DEC in analyzing and reaching scientific consensus on the new sediment data. Therefore, EPA will not have a decision regarding the issuance of the Certificate of Completion of Remedial Action until the data from these samples have been fully analyzed.

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

Commented [FEHHE2]: DOJ: The original wording suggests that EPA has already decided to issue the Certificate of Completion. It is not a foregone conclusion that EPA will issue it; under the consent decree, EPA need only respond to GE's request to do so within one year.

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

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

    Commented [GCDE3]: Why doesn't EPA mention that PFOA and PFOS were included on the CCL list and are being evaluated for Regulatory Determination?

    Commented [FT(4R3]: EPA: While EPA is preparing to present the Administrator with a range of options on how to better deal with PFOA and PFOS including evaluating them for a Regulatory Determination we are not comfortable appearing to prejudge his determination and appearing to box in his policy options.

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

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

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

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

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Ranking Member Carper:

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

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

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

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

       Commented [WCSE5]: Non-responsive. Please revise.

       Commented [FT(6R5]: EPA: Maintaining consistency with ongoing conversations with the committee regarding this issue.

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

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

       Commented [WCSE7]: Non-responsive. Please revise.

       Commented [FT(8R7]: EPA: Maintaining consistency with ongoing conversations with the committee regarding this issue.

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

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

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

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

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

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

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

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

       NRC's 2009 report on *The Silver Book: Science and Decisions* recommended the use of a framework that "maximizes the utility of risk assessment," with a focus on assuring that risk assessments are well-tailord to the problems and decisions at hand so that they can inform the decision-making process most meaningfully. In response to this report, in 2014 EPA published the Human Health Risk Assessment Framework. OCSPP ensures that our approaches are consistent with the EPA framework, which discusses the need for fit for purpose evaluations. Problem formulation entails an initial dialogue between scientists and risk managers and provides the regulatory context for the scientific analysis and helps define the scope of an analysis. The problem formulation stage involves consideration of the available information along with key gaps in data or scientific information. As such, the complexity and scope of systematic reviews will vary depending on the different risk management and statutory requirements and responsibilities of OCSPP. In

Commented [WPAE9]: It is unclear whether any documentation exists. The answer should state explicitly.

Commented [WPAE10]: Do you mean OCSPP?

Commented [BJME11]: Note typo.

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

other words, an OCSPP systematic review is conducted as "fit-for-purpose" ~~(NRC 2009)~~ based on the pre-determined scope and purpose determined from problem formulation.

Commented [WPAE12]: Did the 2009 NRC document use the term "fit-for-purpose" in the systematic review context?

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

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

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

    Under TSCA Section 6(a), regulation of certain uses of methylene chloride, NMP, and TCE were proposed in 2016 and 2017. The agency is currently considering the comments received, including comments suggesting that EPA quickly finalize these actions and comments suggesting that these actions be evaluated as part of the

group of the first ten chemicals undergoing initial risk evaluations under the amendments to TSCA.

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

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

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

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

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

       This content is still in our Web Content Management.

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

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

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

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

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

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

       In implementing EO 13777, EPA hosted a series of public meetings and teleconferences to inform the Regulatory Reform Task Force. Information on these public meetings and teleconferences, including agendas, is accessible

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

through EPA's Regulatory Reform webpage: https://www.epa.gov/laws-regulations/regulatory-reform.

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

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

Commented [GCDE13]: If EPA is planning to provide them at a later date, that should be stated.

Commented [BSHE14]: Unclear what is meant here. Does this mean to say that the search could not be performed by the time the QFRs were submitted to congress, because such a search would take more time? Suggest clarifying.

Commented [FT(15R14]: EPA: Maintaining consistency with ongoing conversations with the committee regarding this issue and other document requests that are outstanding.

17. The Freedom of Information Act (FOIA) requires agencies to respond to a FOIA request within 20 days of receipt of the request. Although agencies are given some latitude to extend the response timeline in light of "unusual circumstances," EPA's failure to meet the deadlines specified in the Act has resulted in many FOIA requests left unanswered. That, in turn, has led to lawsuits against EPA for failure to meet the FOIA timeline.
    a. EPA currently submits open FOIA request logs to the Committee on a monthly basis, pursuant to an oversight letter sent to EPA on March 17, 2017. Beginning on the date of your next log submission, please also provide the number of currently open FOIA requests, the number of lawsuits that have been filed due to EPA's failure to comply with FOIA's deadlines, the number of FOIA lawsuits that have been completed, the number of lawsuits resulting in EPA providing the requested documents, and the cost of each lawsuit to the taxpayer.

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

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

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

[8] https://www.justice.gov/oip/oip-guidance/proactive_disclosure_of_non-exempt_information

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

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

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

A Comprehensive search could not be performed by the submission of this document.

Commented [GCDE16]: If EPA is going to provide the documents at a later date, that should be stated.

Commented [BSHE17]: Same comment as above. Suggest clarifying

Commented [FT(18R17]: EPA: Maintaining consistency with ongoing conversations with the committee regarding this issue and other document requests that are outstanding.

19. During the House Energy & Commerce subcommittee hearing on December 7, 2017, you testified that particulate matter is a "very important criteria pollutant" that should be regulated under the National Ambient Air Quality Standards (NAAQS) program. One study[10] found that PM2.5 "was the fifth-ranking mortality risk factor in 2015," and contributes to nearly 90,000 deaths in the US every year.[11]
    a. Do you agree with the general conclusion from this analysis that PM2.5 presents a serious public health concern? If not, please provide supporting evidence, including any research or analysis EPA has conducted, that supports your position.
    b. Please provide documentation supporting any analysis you have done to calculate the amount of PM2.5 pollution that will be created as a result of your actions to reverse, delay, or modify the Clean Power Plan, methane, and the Glider Kit rules. Please state whether you attempted to calculate the adverse human health effects that will be caused by your changes to the rules mentioned above.

[9] https://www.washingtonpost.com/national/health-science/first-class-travel-distinguishes-scott-pruitts-epa-tenure/2018/02/11/5bb89afc-0b7d-11e8-8b0d-891602206fb7_story.html?utm_term=.4c0713143235
[10] https://www.ncbi.nlm.nih.gov/pubmed/28408086
[11] "Estimates and 25-year trends of the global burden of disease attributable to ambient air pollution: an analysis of data from the Global Burden of Diseases Study 2015." See Table 2.

c. Do you think there is a tolerable level of PM2.5 that is appropriate for human exposure? If so, please specify it, and explain what evidence you have to support this.

d. Are you aware that a study conducted by Tom Brewer at Tennessee Tech University determining that trucks outfitted with glider kits are as clean as new diesel truck engines is now under investigation for "misconduct in research" by Tennessee Tech University?[12] This is the same study that was included in the glider industry's petition asking the EPA to repeal emission requirement for glider kits and cited in the EPA's November 16, 2017 proposal to repeal the Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits. Please describe how you plan to re-assess EPA's November 16, 2017 proposal in light of the potential misconduct associated with this study. If no such plans exist, why not?

Particulate matter (PM), also known as particle pollution, is a complex mixture of extremely small particles and liquid droplets in the air. Once inhaled, these particles can affect the heart and lungs and cause serious health effects. The Clean Air Act requires EPA to review the NAAQS and their scientific basis at least every five years to determine whether standards are requisite to protect public health, with an adequate margin of safety. The fine PM NAAQS was last reviewed and revised in 2012. As part of that process, EPA developed an Integrated Science Assessment to summarize the science related to the health and ecological effects. This most recent assessment, released in December 2009, can be found on EPA's website at: https://www.epa.gov/isa/integrated-science-assessment-isa-particulate-matter.

The "Regulatory Impact Analysis for the Review of the Clean Power Plan: Proposal" presents analysis of the forgone social benefits of changes in non-CO2 emissions from the electricity sector in Section 3.4 (pages 42-55) and Section 7.5 (pages 122-124). For the 2016 oil and gas rule, EPA did not monetize changes in PM2.5 emissions or concentrations.

With respect to gliders, the agency is currently reviewing the comments submitted on the proposed rule and is evaluating next steps. Similarly, although the recent NPRM cited the Tennessee Tech University study, we referenced the study in our proposal but did not rely on it for our decisionmaking.

Commented [WCSE19]: Even if the agency's decision were a purely legal decision, the agency should still be doing the economic analysis to inform any policy decision. Suggest that EPA instead state that the agency is reviewing comments submitted on the proposed rule and is evaluating the agency's next steps. This will avoid stating something that is inconsistent with OMB Circular A-4 that agencies should do the analysis to support/inform their decisions.

Commented [WCSE20]: Suggest edits although EPA should verify that the statement is correct.

Commented [FT(21]: EPA: Response includes suggestion on reviewing comments/evaluating next steps.

20. In response to questions from Chairman Barrasso regarding the implementation of the 2015 National Ambient Air Quality Standard (NAAQS) for ground-level ozone, you commented that the EPA was "in the process of designating attainment and non-attainment [areas] with respect to ozone." You went on to state, "when you think about ozone, there has been a lot of focus on whether the parts per billion, 75 parts per billion, reducing it to 70 parts per billion, was a wise decision. That has not been our focus. Our focus has been on more the issues and implementation that you have raised."

[12] http://herald-citizen.com/stories/ttu-investigating-fitzgerald-study,25943

a. Do you agree with EPA's conclusion in 2015 that the primary NAAQS standard for ground-level ozone should be set at a level of 0.070 parts per million (ppm) to protect health with an adequate margin of safety? If not, why not?
b. Do you agree with the underlying science data for the 2015 NAAQS for ground-level ozone that finds ambient ground-level ozone pollution above 0.070 ppm can trigger asthma attacks in children that have asthma? If not, why not?
c. Do you agree with EPA's assessment that once implemented, the public health benefits from the 2015 NAAQS for ground-level ozone will outweigh the costs? If not, why not?
d. Will you confirm that under your leadership, the EPA will not weaken the 2015 primary NAAQS standard for ground-level ozone set at 0.070 parts ppm?

As previously stated, EPA's recent focus for the 2015 Ozone NAAQS has been on resolving implementation issues.

Commented [BSHE22]: Suggested edits

21. Under Clean Air Act section 111, can EPA base emissions guidelines on a "best system of emission reduction," if application of the measures comprising that best system of emission reduction would result in a source increasing total emissions of the regulated pollutant? Why or why not?

Traditionally NSPS standards have been sent as rate-based standards rather than total mass based standards and have not constrained overall emissions.

22. In determining the "best system of emission reduction" under Clean Air Act section 111, do you believe that EPA must consider the degree of air pollution reductions achieved? Why or why not?

While emission reductions are one element relevant to evaluating BSER, EPA anticipates that it will be receiving comments on this issue in connection with its current regulatory actions on the Clean Power Plan.

23. The 2009 Cause or Contribute Finding concluded that the combined emissions from new motor vehicles and new motor vehicle engines of six key well-mixed greenhouse gases—carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride (collectively, "GHGs")—contribute to greenhouse gas pollution that threatens public health and welfare. At the time, EPA cited data showing that in 2007, source categories regulated under CAA section 202(a) accounted for 23.3% of domestic GHG emissions, and the electricity sector accounted for 34.2% of domestic GHG emissions.[13] Do GHG emissions from the electricity sector cause or contribute significantly to greenhouse gas emissions that can reasonably be anticipated to endanger public health or welfare? If not, why not?

[13] *See* 74 Fed. Reg. 66496, 66540 tbl.2 (Dec. 15, 2009).

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To date, EPA has relied on the endangerment finding that it had previously made under CAA section 202(a)(1) with respect to GHG emissions from new motor vehicles for its decision to establish standards of performance for GHG emissions from Electric Generating Units (EGUs). In particular, EPA has asserted the 2009 finding as providing a "rational basis" for regulating GHG emissions from EGUs.

24. Do any parts of the Clean Air Act authorize EPA to decline to set 111 standards (or emission guidelines) for GHGs from stationary sources if there is an Endangerment Finding for GHGs entirely? If so, please specify them.

Section 111(b)(1)(A) of the Clean Air Act states the Administrator shall include a category of sources if in the Administrator's judgment it causes, or contributes significantly to, air pollution which may be reasonably be anticipated to endanger public health and welfare.

Commented [FEHHE23]: CEQ

25. According to the most recent National Climate Assessment (NCA) released by the Trump Administration, climate change caused by emissions of heat-trapping gases "outweigh[s] other factors in determining burned area in the western U.S. from 1916 to 2003, a finding confirmed by 3000-year long reconstructions of southwestern fire history."[14] According to the NCA, "Numerous fire models project more wildfires as climate change continues," including "up to a 74% increase in burden area in California, with northern California potentially experiencing a doubling under a high emissions scenario toward the end of the century."[15] The NCA calls conifer forests in southern California "notably threatened" by the climate change caused by heat-trapping gases. According to the Trump Administration's NCA, California is also at extraordinary risk from seal-level rise and coastal damage. Without adaptive action, the Trump Administration expects that critical California infrastructure such as the San Francisco and Oakland airports "are at increased risk of flooding with a 16-inch rise in sea level in the next 50 years . . . ." Increasingly high numbers of Californians will be put at risk of flood, including highly vulnerable populations less able to prepare, respond, or recover from natural disaster. On an even more fundamental level, emissions of these heat-trapping gases pose an exceptionally high risk to the highly urbanized population of California due to increasing urban heat. According to the Trump Administration, heat stress has been the leading weather-related cause of death in the United States since 1986 (when record-keeping began).[16] Severe heat waves such as the 10-day California heat wave of 2006 trigger "escalating effects" that kill people, particularly the elderly and those in low-income communities. Heat waves can also cause respiratory stress by expediting chemical reactions that cause the formation of ground-level ozone.

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[14] NCA at p. 468, *available at* http://s3.amazonaws.com/nca2014/high/NCA3_Climate_Change_Impacts_in_the_United%20States_HighRes.pdf.
[15] NCA at p. 468, *available at* http://s3.amazonaws.com/nca2014/high/NCA3_Climate_Change_Impacts_in_the_United%20States_HighRes.pdf.
[16] NCA at 471.

a. Do you agree that emissions of heat-trapping greenhouse gases cause compelling and extraordinary harm to the people and environment of California? If not, please explain why not, including whether you either i) do not accept the findings of the Trump Administration's NCA or ii) do not believe the impacts to California described in the NCA are compelling or extraordinary.
b. Do you agree that emissions of greenhouse gases from motor vehicles cause compelling and extraordinary harm to the people and environment of California? If not, please explain why not.

While there has been extensive research and a host of published reports regarding climate change, our understanding of the role of human activity is still improving. As an environmental regulator it is important for the agency to strive for a better understanding of the role of human activity with respect to climate change given the potentially significant influence on our country's domestic economic viability when protecting the environment.

Commented [FEHHE24]: CEQ

Commented [WCSE25]: Suggest also referencing environmental protection as this is the agency's mission. The agency has the ability to consider economic factors when weighing decisions about environmental protections.

26. Please list each of the meetings that Administrator Pruitt, Assistant Administrator Wehrum, David Harlow or other EPA political staff (including EPA transition team officials) have held with outside entities, since January 20, 2017, on the topic of changes or "reforms" to the New Source Review or Prevention of Significant Deterioration requirements under the Clean Air Act. Please provide all documents received from outside entities, as well as any email correspondence between EPA employees and outside entities, on this topic, since January 20, 2017.

This request is also the subject of ongoing FOIA requests. The agency is in the process of responding to those requests and will provide the information to the committee in a timely manner. In the interim, the Administrator's and Assistant Administrator's calendars are publically available at https://www.epa.gov/senior-leaders-calendars.

27. Please explain in detail how the policy options in the December 18, 2017 Advance Notice of Proposed Rulemaking regarding future rulemaking to reduce existing power plant greenhouse gas emissions would achieve the full range of public health, economic, and environmental benefits that would have resulted from Clean Power Plan.

The Advance Notice of Proposed Rulemaking on State Guidelines for Greenhouse Gas Emissions from Existing Sources (ANPRM) does not present specific policy options. Rather, the ANPRM solicits information from the public about a potential future rulemaking. As you are aware, the comment period closed on February 26, 2018. The agency has begun review of all comments that will inform any next steps to ensure that in any potential new proposed rule, benefits and costs will be appropriately analyzed.

28. In President Trump's June 1, 2017 statement announcing the United States would be withdrawing from the Paris Climate Accord, President Trump highlighted two studies - economic analysis from the National Economic Research Associates and a climate science study from MIT. These same studies were included in White House materials.
    a. Did you, or any other EPA political staff, provide White House staff or the President information on these two studies?
    b. Please provide a copy of all documents, (including but not limited to hand-written notes, paper files, emails, memos, white papers, telephone logs, presentations or meeting minutes) between and among any combination of you, other agency officials, other federal government officials, any state officials, and any non-governmental entities that inform, contribute to, direct, or are otherwise related to related to the Paris Climate Accord.

A Comprehensive search could not be performed by the submission of this document.

Commented [BSHE26]: clarify

29. How many facilities subjected to MACT standards are also subjected to Reasonably Available Control Technology (RACT) standards that are more stringent or the same requirements for volatile organic compounds? Are there some parts of the country that are not subject to RACT controls for volatile organic compounds? If so, please list those areas.

The EPA has not performed a source-by-source comparison of MACT and RACT standards where both apply. The RACT standards are established by states, not by EPA, and there is enough flexibility in the Clean Air Act in how a state may establish a RACT standard that there is no expectation of uniformity between the level of control or specific sources covered in different states. Specific to the ozone NAAQS program, EPA has established "presumptive RACT" for the key VOC emissions points present in about 44 source categories through the issuance of Control Techniques Guidelines (CTG). ~~However, these~~ CTGs ~~are only~~ provide guidance for states and do not dictate a source-specific outcome. States that contain certain ozone nonattainment areas and states in the Ozone Transport Region are reqired to submit a revision to new CTGs. ~~Where a MACT standard is providing emission reductions that also count towards RACT, it would be reasonable to expect states to continue to require those measures to ensure the presence of reductions that are needed for NAAQS attainment purposes and are achieved by controls to meet MACT that are already in place and paid for by the source. Replacing these MACT reductions through implementation of a different, less stringent RACT standard would likely require new reductions from other sources.~~

Commented [WCSE27]: If EPA issues a CTG, sources in the Ozone Transport Region of the country, which covers a broad swath of the East, are required to adopt RACT. Suggest mentioning this mandatory component here.

30. Studies have found that regulations may play some small part in reductions in the coal workforce; but automation, shifts in mining practices, and prices of natural gas are all major contributing factors to the decline of coal.

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a. How many coal mines have closed or gone bankrupt since you became EPA Administrator?

The Agency does not maintain this data.

b. Please provide a list of every coal mine and coal-fired plant that will remain open, be built, or be expanded as a result of the rescission of the Clean Power Plan, along with the expected number of jobs that will be retained or added as a result. On what basis was each EPA projection made?

EPA has not published any estimates of regulatory impacts on individual coal mining or coal-fired power plants. EPA has not yet prepared any estimates of the impacts on coal mining or coal-fired plants related to the proposed repeal of the Clean Power Plan. The coal impact analysis in the proposed repeal RIA was limited to presenting the coal impact analysis in the final RIA for the CPP promulgation in 2015. EPA's analyses of particular regulations affecting coal mines and coal-fired power plants do not estimate impacts on individual mines or specific power plants. EPA committed to evaluate the employment impacts of actions under the Clean Air Act within EPA's Final Report of Agency Actions that Potentially Safe, Efficient Development of Domestic Energy Resources under Executive Order 13783 (https://www.epa.gov/sites/production/files/2017-10/documents/eo-13783-final-report-10-25-2017.pdf).

Commented [FEHHE28]: DOJ: EPA examined (but never submitted to the court) individual plant/mine impacts under the court order in the *Murray Energy* section 321(a) litigation. Because that is the case, the agency should consider editing two sentences in the response as noted

Commented [FEHHE29]: CEQ

31. I remain concerned about the volatility in the Renewable Fuel Standard (RFS) compliance trading system used by EPA, known as the Renewable Identification Number (RIN) market and the impacts that RIN market manipulation is having on the economic stability of East Coast refineries.
    a. Currently, the EPA has a Memorandum of Understanding with the Commodity Futures Trading Commission (CFTC) on RIN market manipulation. In the past year, how often has EPA staff communicated with the CFTC on RIN market manipulation and what have you and your staff done with the CFTC to assess potential RIN market manipulation?

Under the MOU, CFTC looked into a claim by the Renewable Fuels Association (RFA). RFA asserted that some participants in the RIN market may have deliberately driven up RIN prices during a certain period to disrupt the RIN market, in order to support political gains to repeal/reform the RFS program. The RFA letter, dated August 31, 2016 was sent to both CFTC and EPA. To assist CFTC, the EPA provided RIN data from January 2010 to August 2016. CFTC reviewed this data and as noted by the CFTC Chairman Chris Giancarlo in his testimony to U.S. Senate Agricultural Committee on February 15, 2018 that CFTC did not find misbehavior in the

market. Given EPA's market oversight limitations, we intend to pursue continued collaboration with CFTC under the MOU.

b. In my conversations with CFTC officials, they indicate that you have not asked them to do much in assessing RIN market manipulation and suggested EPA is not collecting the right type of information to be able to assess potential manipulation. Why haven't you asked the CFTC to do more to help EPA prevent potential RIN market manipulation?

EPA is always looking for ways to improve implementation and transparency of the program, while balancing resource needs and our duty to protect confidential business information as required by our regulations. EPA will continue to work with CFTC and seek to utilize their market oversight expertise and authority.

c. I have asked the Federal Trade Commission (FTC) staff to offer their expertise to your staff. Has anyone at the EPA talked to FTC staff about ways the FTC can be helpful? Have you considered establishing a Memorandum of Understanding with the FTC to assist with RIN market manipulation?

On February 8, 2018, EPA and FTC held a meeting to initiate dialogue on this matter. On the call, the FTC discussed their authority and expertise, which are largely focused on investigating fraudulent reporting of information to governmental agencies and other acts with intent to deceive or gain advantage in market. FTC further differentiated their role compared to CFTC, who has authority to investigate participant behavior and market trends to identify potential market manipulation. EPA and FTC did not specifically discuss establishing an MOU, but did exchange information to facilitate future discussions.

d. Will you commit to working with my staff to do more to address market manipulation in the RIN market?

Although the EPA has not seen evidence of manipulation in the RIN market, EPA is not a commodity market regulatory agency, and thus we do not have expertise in this field. EPA has not EPA's authority and function is to implement the RFS program and address fraud in the program. For example, since 2013, over two dozen individual defendants have been sentenced for RFS related crimes and have received a combined total of over 168 years of incarceration and ordered to pay over $400 million in fines and restitution. Restitution in these cases and the tens of millions of dollars forfeited since have been restored to victims of RFS fraud. Claims of market manipulation prompted EPA to execute a memorandum of understanding (MOU) with the U.S. Commodity Futures Trading Commission (CFTC), who has the authority and expertise to investigate such claims.

e. Will you commit to implementing the RFS fairly in a way that ensures an even playing field among obligated parties?

Yes, EPA is committed to ensure an even playing field among all the parties participating in the RFS program. In fact, to protect the program's integrity and maintain a level playing field for regulated companies, EPA has pursued civil enforcement actions against renewable fuel producers, importers, and exporters that generated invalid RINs. In addition, since 2013, over two dozen individual defendants have been sentenced for RFS related crimes and ordered to pay over $400 million in fines and restitution. Restitution in these cases and the tens of millions of dollars forfeited have been since restored to victims of RFS fraud.

32. Under the Renewable Fuel Standard (RFS), biogas-generated electricity used to charge electric vehicles (EVs) is already an approved pathway and is eligible for the generation of cellulosic Renewable Identification Numbers (RINs). Applications for this pathway were submitted over a year and a half ago. Will you commit to approving an application for this pathway in the next 60 days?

In 2016, EPA proposed the Renewable Enhancement and Growth Support (REGS) Rule and identified a number of significant policy questions raised by different approaches to capturing RINs from renewable electricity used to charge electric vehicles. Since the REGS proposed rule comment period closed, OAR staff have been going through the many comments received, evaluating various conflicting implementation approaches raised in the comments, and exploring options for the complex issues associated with implementing the electric pathway. We continue to work towards a final decision on these important issues, which are a requisite before any final decisions on pending applications can be made.

Commented [BSHE30]: Can EPA also commit to an approximate timeframe for submitting the final regulation to interagency review (i.e. the timeframe that matches the unified agenda).

33. Aside from the type of water identified in *SWANCC v. Army Corps of Engineers*, which have no significant connection at all to navigable-in-fact waters, are there any categories of water bodies that you believe have such an insignificant relationship to navigable-in-fact waters that discharges into them should be exempt from the Clean Water Act? In those cases, would the federal Clean Water Act allow discharges of unlimited quantities of toxic poisons into those waterbodies, even if a portion of those poisons eventually flowed downstream to navigable-in-fact waters?

The scope of Clean Water Act jurisdiction under future regulation is currently under development. EPA and the Army have conducted and will continue to conduct a transparent and robust public engagement process, meeting and listening to stakeholders prior to issuing a proposal. EPA and the Department of the Army are currently considering suggestions from states, local government, tribes, and

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other stakeholders about which waters should be jurisdictional under the Clean Water Act and which should not.

34. The Obama Administration implemented its definition of "Waters of the United States" for several weeks in 2015. Has the EPA conducted any analysis of how easy or difficult it was to administer the Rule during that time? If not, why have you not conducted that analysis?

The EPA did not conduct an analysis of the administration of the 2015 Clean Water Rule during the approximately six weeks that it was in effect in 37 states. The Army Corps of Engineers has the day-to-day responsibility for conducting jurisdictional determinations with respect to the permitting program under section 404 of the Clean Water Act.

Commented [FEHHE31]: CEQ

35. In an interview with the National Cattlemen's Beef Association, you said that, "The Obama Administration reimagined their authority under the Clean Water Act and defined a 'water of the United States' as being a puddle …"[17] The Obama Administration rule expressly exempts "puddles" from the definition of "waters of the United States?" *See* 33 C.F.R. §328.3(b)(4)(vii).
    a. If you were previously aware of this exemption, why have you repeatedly mischaracterized the rule?
    b. If you were not previously aware of this exemption, do you retract your statement? If you will not retract your statement, please explain why.

Much of the concern raised about the 2015 Clean Water Rule focused on lack of clarity, uncertainty, and confusion in the implementation of this rule. While the Rule did exclude "puddles" from regulation, the Rule did not define the term. Many stakeholders ~~were~~ expressed concern~~ed~~ that the agencies would regulate features such as wet spots and tire ruts in farm fields because such features were not ~~included~~ expressly ~~identifed~~ as "puddles." ~~Correcting this lack of Providing~~ clarity and predictability ~~is a~~ are among the critical goals of the current rulemaking effort.

36. You also stated that the Obama Administration reimagined their authority under the Clean Water Act and defined a 'water of the United States' as being . . . ephemeral drainage ditches."[18] The Obama Administration rule expressly exempts "[d]itches with ephemeral flow that are not a relocated tributary or excavated in a tributary" "puddles" from the definition of "waters of the United States?" *See* 33 C.F.R. §328.3(b)(3)(i).
    a. If you were previously aware of this exemption, why have you repeatedly mischaracterized the rule?
    b. If you were not previously aware of this exemption, do you retract your statement? If you will not retract your statement, please explain why.

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[17] "EPA Administrator Scott Pruitt Urges Ranchers to File WOTUS Comments," https://www.youtube.com/watch?v=vTVd54WylDQ.
[18] "EPA Administrator Scott Pruitt Urges Ranchers to File WOTUS Comments," https://www.youtube.com/watch?v=vTVd54WylDQ.

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The 2015 Clean Water Rule would regulate ephemeral drainage ditches that are a relocated tributary or excavated in a tributary.

37. What specific provision of the Clean Water Act or Administrative Procedure Act gives EPA the authority to alter compliance dates, not merely effective dates, for standards lawfully promulgated under 33 USC 1311(b)(2)?

    EPA promulgated the 2015 Steam Electric ELG Rule pursuant to its legal authorities under the CWA, particularly sections 301(b), 304(b), 306, and 307(b) and (c) of the Act. Together, Sections 301(b) and 304(b) authorize EPA to establish effluent limitations guidelines based on Best Available Technology Economically Achievable. Section 306 authorizes EPA to establish Standards of Performance for New Sources, and Sections 304(b) and (c) authorize EPA to establish pretreatment standards for new and existing sources. Moreover, Section 304(m)(1)(A) and 301(d) authorize EPA to review its pretreatment standards for possible revision every year. EPA's authority for the Postponement Rule rests upon the same authorities as the 2015 Steam Electric ELG Rule and that meet the definition of "tributary" set forth in the rule.

38. The Clean Water Act prohibits compliance dates that extend more than three years from the issuance of new effluent guidelines (EGs). In what specific statutory provision did Congress allow EPA to flout that requirement by postponing until 2020 the compliance deadline of an EG issued in 2015?

    The statutory provisions in Section 301 requiring that effluent limitations be achieved no later than three years after promulgation, and in no case later than March 31, 1989, CWA section 301(b)(2)(C)-(F), could be read to apply only to BAT effluent limitations promulgated before 1989, with the statute being silent with regards to BAT effluent limitations promulgated thereafter. The statute also contemplates periodic review and revision of those guidelines, and implements those provisions through its CWA section 304(m) process. But the statute is silent about the deadline for effluent limitations and standards derived after 1989.

39. EPA explained that it is delaying the compliance deadlines of the steam electric power generating EGs because of costs to regulated industry. However, EPA estimated only 28% of coal-burning plants—and only approximately 12% of power plants overall—would incur any costs from the rule at all. Even among that small subset, almost all of those plants would incur costs less than 1% of the company's revenue.
    a. Do you disagree with those figures? If so, explain your disagreement.
    b. To what extent did you consider the EG's extensive public health benefits when deciding to delay the compliance deadlines?
    c. Do you believe that the incremental costs to industry outweighed the public health and environmental benefits of the EGs? If so, explain why.

EPA is currently collecting additional data on such things as changes that have taken place in the industry subsequent to the analysis supporting the 2015 Rule as part of its commitment to reconsider the technology bases of the new more stringent limits on the flue gas desulfurization (FGD) and bottom ash waste streams that were established in the 2015 Rule.

Commented [FEHHE32]: DOJ: Because the postponement of compliance deadlines in the 2015 Steam Electric Effluent Limitation Guidelines Rule is in litigation, please ensure that the statements in the response to question 39 are consistent with the administrative record for the postponement rule.

Commented [FT(33R32]: EPA: The responses to question 39 are consistent with the administrative record.

Extensive consideration was given to estimated public health benefits of the 2015 Rule, as well as the costs, and regulatory options. Petitioners raised serious concerns about the costs and impacts of the 2015 Rule. After considering those concerns, as well as public comment in response to EPA's June 2017 proposed rule to postpone certain compliance dates, EPA finalized a rule in September 2017 postponing certain 2015 Rule compliance dates, and announced EPA's intention to conduct a subsequent rulemaking potentially revising the limits for those wastestreams for which the compliance dates were postponed. EPA's action to postpone those compliance dates in the 2015 Rule was intended to preserve the status quo for FGD wastewater and bottom ash transport water while EPA completes its next rulemaking.

EPA acknowledges that postponement of the compliance dates may lead to a delay in the accrual of some of the benefits attributable to the 2015 Rule. The 2015 Rule assumed that steam electric plants would comply with the new, more stringent requirements no later than 2023, including implementation of new control technologies over a five-year compliance period, according to their permit renewal schedule. However, if EPA did not postpone the compliance dates, industry would likely incur these costs, irrespective of what EPA determines as the final limits for FGD wastewater and bottom ash transport water. EPA determined that the estimated foregone costs to industry warrant the postponement of compliance dates in the 2015 Rule.

40. The Safe Drinking Water Act permits EPA to "fill not more than thirty scientific, engineering, professional, legal, and administrative positions within the Environmental Protection Agency without regard to the civil service laws." 42 U.S. Code § 300j–10. These appointments may be made where the Administrator deems such action necessary to the discharge of his functions as they relate to Title XII of the Public Health Service Act (42 U.S.C. 300f et seq.) (relating to safety of public water systems). These individuals are exempted from certain other Executive Branch requirements, including the Trump Ethics Pledge. In an August 18, 2017 letter to GAO, Senator Whitehouse and I wrote: "EPA has utilized its SDWA authority to hire a number of non-Senate-confirmed political appointees, some of whom are serving in supervisory positions and in roles that raise ethical questions." Based on documents provided by EPA, it appears that some individuals may still be serving as administratively determined appointees. These appointees have been permitted to work on projects with essentially no check on their ethical or financial conflicts. Also, many of these appointees appear to have had EPA e-mail accounts that were created and used by them for weeks and even months before their stated appointment date -- in some cases nearly 4 months before.

a. What is EPA's policy on the length of time an employee is allowed to serve under the SDWA authority without having to complete a financial disclosure form, or complete a recusal statement (if necessary)?

All Administratively Determined (AD) appointees receive initial ethics training pursuant to 5 C.F.R. § 2638.304. While the regulation allows agencies up to three months to provide that training, EPA typically ensures that the new AD appointees receive the ethics training within their first two weeks. This training is conducted personally by EPA's ethics officials in the Office of General Counsel rather than online. EPA requires that all AD appointees complete the public financial disclosure report, the OGE 278, and adheres to the regulatory deadlines set forth at 5 C.F.R. § 2634.201(b), which requires filing within the first 30 days. Please note, however, that the Agency may grant filing extensions as set forth at 5 C.F.R. § 2634.201(f).

b. What safeguards are in place to ensure that employees hired under the SDWA authority do not work on matters that may trigger a conflict before they submit their financial disclosure form and complete any necessary recusal statement?

EPA Ethics delivers initial ethics training in person (or, for appointees who are in regional offices, via conference call or video conference) to all Administratively Determined (AD) appointees. In that training, they specifically address conflicts of interest and impartiality, and inform the appointee about recusal issues. When the appointee files the financial disclosure report, EPA Ethics can more accurately assess possible financial conflict of interest issues and determines whether the appointee should issue a written recusal statement. If necessary, EPA Ethics drafts that document.

c. For each appointee hired under the SDWA authority, please provide the date of their appointment; the date the appointment ended (if any); and the specific projects they worked on while serving as an administratively determined appointee.

Please see Attachment 1.

d. For each employee hired by the EPA under the SDWA authority, Schedule C authority, or as Non-Career SES, provide the date on which their EPA e-mail address was created, and the date of their appointment, whether they worked at EPA in any capacity prior to their appointment date and if so, what capacity.

Please see Attachment 1.

41. In response to questions from Senator Merkley, you testified that a "Red Team / Blue Team" exercise to re-examine the underpinnings of climate science is still "under consideration" at EPA. According to Jim Lakely, the communications director of the Heartland Institute, EPA has "reached out to the Heartland Institute to help identify scientists who could constitute a red team," and the Heartland Institute had been "happy to oblige."[19]
    a. Is Mr. Lakely telling the truth that EPA representatives reached out to the Heartland Institute for help identifying scientists who could participate in a Red Team/Blue Team exercise? If yes, why did EPA choose to contact the Heartland Institute?
    b. Have representatives of the Heartland Institute provided representatives of EPA with a list of "scientists who could constitute a red team"? If yes, who are the Heartland Institute's proposed participants?
    c. Have any EPA representatives consulted with any other organizations, corporations, or individuals about potential individuals who could participate in a Red Team/Blue Team exercise? If yes, provide the names of those organizations, corporations, or individuals consulted, and the names of any proposed participants.
    d. Do you know the names of any individuals or organizations who have contributed to the Heartland Institute? If yes, please provide the names of any such individuals or organizations with whom you have met in your capacity as EPA Administrator.
    e. Please provide a copy of all documents (including emails, white papers, meeting agendas, powerpoint presentations, memoranda and other materials) received or obtained by EPA related to the "Red Team/Blue Team" climate science effort.

Administrator Pruitt encourages an open, transparent debate on climate science – with a Red Team/Blue Team exercise being an option discussed to learn more about the questions around climate science.

42. A press report indicates that EPA's Office of the Chief Financial Officer established a target for Region 9 to reduce their FTEs by 10% by the end of FY18. Has the CFO or anyone in the Administrator's office provided other EPA regional offices or program offices with targets for reducing personnel by a specified percentage? If so, please provide each of the targets. Please also provide any document from the CFO or the Administrator's office communicating an FTE or staff reduction target to any EPA region or program office for FY18 or future fiscal years.

The President's Budgets for FY 2018 and FY 2019 include proposals for significant staffing reductions and those levels were considerations in the establishment of internal planning targets which were to be revaluated ~~would be allocated to organizations~~ after appropriations bills are passed and during the development of EPA's Operating Plan. The effort is on-going. Recent flat-lined appropriations in the majority of EPA's program projects, combined with payroll growth, have

Commented [BSHE34]: Need to be clear that these are only proposals and EPA's operating decisions are based on enacted appropriations bills.

Commented [BSHE35]: I don't think that EPA's overall appropriations have been reduced "year over year"

[19] http://www.washingtonexaminer.com/trump-administration-lining-up-climate-change-red-team/article/2629124

created challenges in meeting program requirements that are addressed with contracts or with grants. Taken together, these trends mean the agency must carefully manage workforce levels. Specific impacts vary depending on organizations' current staffing levels and attrition rather than a set percentage.

Office or Region	Starting point Onboard FTE (data as of 9/25/17)	Interim FTE Target for End of FY 2018
OA	362.6	340.3
OAR	1,106.7	1,085.2
OARM	652.0	646.8
OCFO	291.0	300.8
OCSPP	979.0	932.5
OECA	667.2	670.0
OEI	325.9	364.9
OGC	222.1	196.8
OIG	267.5	270.0
OITA	71.8	68.1
OLEM	468.5	456.4
ORD	1,619.9	1,463.7
OW	552.3	533.2
R01	514.9	535.9
R02	752.1	715.7
R03	764.7	713.5
R04	877.0	858.3
R05	1,008.1	979.5
R06	739.9	677.5
R07	445.6	449.0
R08	512.5	478.3
R09	699.5	652.1
R10	522.9	478.5
Total	**14,423.6**	**13,867.0**

Commented [BSHE36]: This is too close to saying that we are making FTE decisions based on the President's Budget.

Commented [FT(37R36]: EPA: This was a response at a point in time when we did not have an appropriation. We are still working out the resource allocations for the FY 2018 Operating Plan.

Commented [GALE38]: This is confusing. The write-up makes it sound like these are FTE targets without regard to enacted funding levels, which doesn't make sense. Or were these developed assuming flat-lined FY 2017 or similar? This needs to be clarified in the text.

Commented [FT(39R38]:

43. A recent report[20] indicates that, at a proposed superfund site in Chattanooga, EPA is only taking the most protective clean-up measures at properties where children currently live. EPA cannot possibly know whether families with children will one day move into homes that EPA isn't cleaning up because children don't *currently* live there. And EPA cannot possibly know which homes children visit frequently.
    a. Is the policy described in the report accurate? If not, please fully describe any inaccuracies.

[20] http://amp.timesfreepress.com/news/local/story/2018/jan/15/dozens-chattanooghomes-sitting-toxic-site/461286/?__twitter_impression=true

b. If the policy described in the report is accurate, please provide all documents (including emails, memos, white papers, analysis, meeting minutes and correspondence) related to any policy decision that limits the most aggressive cleanup measures to sites that currently have children residing on the premises.

The *Chattanooga Free Times* press report is partially accurate with respect to the prioritization of the of the cleanup of impacted properties under the time-critical removal process at the Southside Chattanooga Lead Site. In an effort to minimize residents' exposure to highly contaminated soil, EPA's Superfund program is utilizing both removal and remedial cleanup authorities to expeditiously address the contamination at the Southside Chattanooga Lead Site. Currently, cleanup activities are being conducted under removal authorities. As a result, property cleanup is primarily based on detected lead concentrations above the removal management level of 1,200 milligrams per kilogram (mg/kg). In addition, special considerations are also provided to properties with children.

On January 18, 2018, the site was proposed for listing on the National Priorities List (NPL). Inclusion of the site on the NPL will allow additional resources to be allocated to address the contamination under the remedial program. EPA expects that residential properties, regardless of nature of occupancy, with lead concentrations above the anticipated site-specific cleanup level (360 mg/kg) will be addressed under the remedial process.

44. The President issued an Executive Order saying that for every rule an agency writes, two rules have to be repealed such that the net costs to industry are zero. However, the White House issued guidance on implementing this executive order that says that rules that address critical health matters could be exempted from the two-for-one repeal requirement. Does EPA plan to exempt its rule revising the Lead and Copper Rule from the two-for-one Executive Order? If not, why not, since the Rule does relate to a critical health matter?

In reviewing an update to the Lead and Copper Rule, EPA assesses potential costs. Any decisions regarding costs will be based on the substance of the rule, which is still in the rulemaking process.

45. Coal ash is laden with toxic pollutants and heavy metals, and is second only to mine waste as the largest industrial waste stream in country. On April 17, 2015, the EPA published a final rule regulating the disposal of coal ash, also known as "coal combustion residuals" (CCR), from power plants.[21] Among other things, the CCR rule established vital rules to protect groundwater resources, to protect local communities from toxic windblown dust,[22] to reduce the risk of catastrophic failure (*i.e.*, collapse) of surface impoundments, and to maintain records of compliance with those rules. You became EPA Administrator on February 17, 2017. On April 17 and May 31, 2017, lawyers for power plants asked to you reconsider a laundry list of provisions in the CCR rule. On September 13, 2017, you replied that, "After reviewing your petitions, I have decided that it is appropriate and in the public interest to reconsider the provisions of the final rule addressed in your petitions, in light of the issues raised in your petitions, as well as the new authorities provided in the recently enacted Water Infrastructure Improvements for the Nation Act, Pub. L. No. 114-322, 130 Stat. 1628 (2016)."[23]

You appear to have granted reconsideration of every provision requested by the electric power sector in their two petitions for reconsideration. Is that a correct reading of your letter? If not, which provisions are you reconsidering?

EPA has agreed to reconsider a number of provisions of the CCR rule. The U.S. Court of Appeals for the D.C. Circuit ordered EPA to submit a status report indicating which provisions of the final CCR rule were being or were likely to be reconsidered by the agency and a timeline for their reconsideration. EPA filed that status report on November 15, 2017, indicating that the following provisions were or were likely to be reconsidered. These included issues that were before the Court as well as those that were not:

Provision	**Description**
Issues Before the Court	
40 CFR 257.50(c), 40 CFR 257.100	EPA Regulation of Inactive Surface Impoundments
40 C.F.R 257.53 – definition of beneficial use	The Criteria for Determining Whether Activities Constitute Beneficial Use or Disposal
40 CFR 257.95(h)(2)	Use of Risk-Based Alternative Standards for Remediating Constituents Without an MCL

[21] 80 Fed. Reg. 21,302 (Apr. 17, 2015).
[22] *See, e.g.*, Sabrina Shankman, *Is Coal Ash Killing This Oklahoma Town?*, INSIDE CLIMATE NEWS, June 13, 2016, *available at* https://insideclimatenews.org/news/10062016/coal-ash-killing-bokoshe-oklahoma-making-money-having-fun-cancer-asthma.
[23] https://insideepa.com/sites/insideepa.com/files/documents/sep2017/epa2017_1860.pdf

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40 CFR 257.53 – definition of CCR pile	The criteria for determining Whether a Pile will be Regulated as a Landfill or as Beneficial Use
40 CFR 257.96-98	Regulatory Procedures Used to Remediate Certain Non-Groundwater Releases
40 CFR 257.73(a)(4), 257.73(d)(1)(iv), 257.74(a)(4), 257.74(d)(1)(iv)	Requirements for Slope Protection on Surface Impoundments, Including Use of Vegetation
40 CFR 257.103(a) and (b)	Whether to Allow Continued Use of Surface Impoundments Subject to Mandated Closure if No Capacity for Non-CCR Wastestreams
40 CFR 257.50(e)	Regulation of Inactive Surface Impoundments, Including Legacy Ponds
40 CFR 257.100	Exemption for Certain Remediation and Post-Closure Requirements for Inactive Surface Impoundments that Close by April 17, 2018 Note: EPA completed reconsideration of the issues associated with this claim. See 81 Fed. Reg. 51,802 (August 5, 2016).
Appendix IV to 40 CFR 257.93(b), 257.94(b), 257.95(b), 257.95(d)(1)	Addition of Boron to the List of Constituents that Trigger Corrective Action
Issues Not Before the Court	
40 CFR 257.97	Whether to Allow Modification of the Corrective Action Remedy
40 CFR 257.90	Whether to Suspend Groundwater Monitoring Requirements Where "No Migration" Demonstration is Made
40 CFR 257.98(c)	Whether to Allow Alternate Period of Time to Determine Remediation is Complete
40 CFR 257.104	Whether to Allow Modification of the Post-Closure Care Period
40 CFR 257.101, 257.102	Whether to Allow CCR to be Used to Close Surface Impoundments Subject to Mandated Closure
40 CFR 257.53	Clarify Placement of CCR in Clay Mines

46. Please provide a copy of all documents (including emails, white papers, meeting agendas, powerpoint presentations, memoranda and other materials) received or obtained by EPA related to the April 17, 2017 petition for reconsideration from the Utility Solid Waste Group, and the May 31, 2017 petition for reconsideration from AES Puerto Rico.

    EPA received two documents related to the April 17, 2017, petition: (1) a petition and cover letter from AES Puerto Rico, and (2) a petition from USWAG. These documents are attached (Enclosures).

47. Section 2301 of the WIIN Act[24] allows EPA to approve state-administered CCR regulations to operate in lieu of certain federal CCR regulations. Will you ensure that any state programs you approve are at least as protective of human health and the environment as the EPA's 2015 CCR rule?

Yes, the agency will ensure that any state programs that are approved meet all of the requirements for approval under the WIIN Act, including that the be "at least as protective as the 2015 CCR rule or successor regulations." In order for EPA to approve a state program, the statute requires that a state provide "evidence of a permit program or other system of prior approval and conditions under State law for regulation by the State of coal combustion residuals units that are located in the State." See 42 U.S.C. 6945(d)(1)(A). As noted, the statute also requires that the program be "at least as protective as" the federal CCR rule. Moreover, in EPA's Interim Final Coal Combustion Residuals State Permit Program Guidance Document, EPA states in many places that the state must submit evidence that their program is at least as protective as the federal CCR rule and that this determination is subject to public notice and comment. EPA has been working with our state partners to ensure that their programs meet the statutory standard.

48. As a former state attorney general, you know that laws are only effective insofar as regulated entities believe they will actually be enforced. Could the unavailability of citizen enforcement make a state program less protective of human health and the environment, or is it irrelevant? Please fully explain your response.

Citizen enforcement of environmental laws can support governmental actions and foster deterrence and thus may be a relevant consideration when state legislatures are designing environmental programs. However, citizen suits also may take positions that are contrary to a state's interpretation of its own laws, creating confusion. Ultimately, a decision by a state legislature whether or not to include citizen suit provisions in their statutes should be left to that legislature, taking into account the needs of the state and the environmental program being addressed.

49. For each inactive surface impoundment currently subject to the 2015 CCR rule, please provide:
    a. The site's name;
    b. The site's location;
    c. The amount of coal ash disposed of in the site;
    d. The number of people living within 3 miles; and
    e. Any waterbodies or public water supplies located within 3 miles of the site.

[24] Codified at RCRA section 4005(d), 42 U.S.C. 6945(d).

Based on information that electric utilities posted on their CCR websites, EPA is aware of 113 inactive surface impoundments. The 2015 CCR rule defines an inactive surface impoundment as "a CCR surface impoundment that no longer receives CCR on or after October 19, 2015, and still contains both CCR and liquids on or after October 19, 2015." The attached table shows available information on the name and location of the 113 CCR units (Enclosure). EPA does not have the information to answer parts c through e of the question, as facilities are not required to report such information to EPA under the current regulations.

50. One of the companies that requested you reconsider the 2015 CCR rule, AES-Puerto Rico, appears to maintain a five-story pile of coal ash in Guayama, Puerto Rico. Has EPA received complaints about fugitive emissions from this waste pile? Has EPA investigated whether Hurricane Maria affected this and other waste piles in Puerto Rico? Please provide a copy of all documents (including emails, white papers, meeting agendas, powerpoint presentations, memoranda and other materials) received or obtained by EPA regarding off-site migration of coal-ash caused by Hurricane Maria. What precautions is EPA taking to ensure that weather events do not cause the release of coal ash?

On October 12, 2017, a team of EPA officials assessed the AES power plant to evaluate, among other things, potential spills or oil discharges, the stormwater collection and discharges system, and the wastewater treatment system. The assessment revealed that the power plant was structurally sound, oil spills were not observed from the diesel storage areas, and coal combustion residuals (CCR) had not migrated. EPA did not observe any discharge of CCR or Agremax material into wetlands. The stormwater management system implemented at the power plant appears to have prevented Agremax material and coal from discharging into the wetlands. A copy of the assessment information for the facility is enclosed.

It should be noted that the power plant had been shut down until just recently. Some structures, such as metal sidewalls and portions of the conveyors, were impacted by the storm and they were being repaired. The power plant remained out of operation until the Puerto Rico Electrical Power Authority (PREPA) requested that AES begin to produce power. AES began to producing power the week of February 12th, 2018.

Senator Booker:

51. The EPA has conceded that dangerous toxic and carcinogenic substances at dozens of Superfund sites are not adequately under control. The agency has also acknowledged that recent hurricanes have washed unknown amounts of chemicals from multiple Superfund sites into waterways. A recent analysis showed that 327 Superfund sites, 35 of which are in New Jersey, are at a risk of flooding due to climate change. In response to these findings, the Government Accountability Office (GAO) has agreed to investigate the risks to human health and the environment posed by natural disasters' impacts on Superfund sites.
    a. Do you agree that EPA must design Superfund remedies that account for climate change?
    b. Have you directed EPA staff to determine which Superfund sites may require additional remedies or precautions to be taken due to climate change?
    c. Can you please specify any additional resources that EPA may need to help remediate these sites?

    EPA agrees that to meet its mission of protecting human health and the environment, Superfund cleanup remedies must be designed to account for the impacts of extreme weather events. The agency's existing processes for site cleanup planning and implementation provide a robust structure that allows consideration of these impacts. EPA integrates extreme weather vulnerability analyses and adaptation planning throughout the Superfund process, including when conducting feasibility studies, remedial designs and remedy performance reviews. Due to wide variation in the location and geophysical characteristics of contaminated sites, the nature of remedial actions at those sites, and local or regional climate and weather regimes, a place-based strategy is the most effective method to achieve this.

    In 2012, the agency conducted a Superfund program assessment to: (1) identify extreme weather impacts most likely to affect remedies that are commonly used for contaminated groundwater, soil, or sediment; (2) evaluate associated vulnerabilities of the remedies; and (3) establish adaptation strategies for new and existing remediation systems. Since that time, EPA has been working to raise awareness among stakeholders, including Superfund site remedial project managers, about the importance of evaluating and addressing extreme weather vulnerabilities to ensure the continued protectiveness of remedies. The agency also continues to develop technical guidance, informational tools and training to assist site managers in integrating extreme weather vulnerability analyses and adaptation planning throughout the Superfund process.

52. On May 22, 2017, the Superfund Task Force was established to "provide recommendations…on how the Environmental Protection Agency (EPA) can streamline and improve the Superfund program." The report's recommendations were released in July 25, 2017. The EPA has stated that the Superfund Task Force kept no records of the analysis used to form recommendations for the Superfund program.

a. Is this correct? Did the Agency keep no records of the analysis used to form recommendations?
b. If it is correct, please provide justification or reasoning for the lack of record keeping when compiling a report that would shape the management of the Superfund program.

As I indicated at the hearing, the Agency does have records which will be provided to the committee.

Commented [BJME40]: Are these internal/pre-deliberative documents? Why does EPA include explanations of how the two lists were generated when those were not included in the question? Should these paragraphs be moved to the next QFR?

<u>Sites Targeted for Immediate Intense Action</u>: In developing the "immediate, intense action" list, senior career Superfund staff at EPA headquarters and in each region were consulted and identified potential sites that may be worthy of special attention now or in the future to advance those sites through the cleanup process. The recommended sites represent the EPA regions' best professional judgment where the Administrator's involvement would facilitate site progress. The Administrator reviewed the recommendations and personally selected the sites for inclusion. The list includes sites that require timely resolution of specific issues to expedite cleanup and redevelopment efforts. The specific issue or milestone that may benefit from the Administrator's attention is noted for each site on the list, which can be found on the EPA website at: <u>https://www.epa.gov/superfund/superfund-sites-targeted-immediate-intense-action</u>.

The list is designed to spur action at sites where opportunities exist to act quickly and decisively. The Administrator will receive regular updates on each of these sites. Further, the list is intended to be dynamic and sites will move on and off the list as appropriate. At times, there may be more or fewer sites based on where the Administrator's attention and focus is most needed.

<u>Redevelopment Focus List</u>: In formulating the redevelopment focus list, EPA headquarters staff reached out to the EPA regional Superfund Redevelopment Initiative (SRI) coordinators to inquire about sites where there has been a strong interest in reuse or at sites appearing to have the strongest near-term reuse potential. This inquiry formed an initial list. Consistent with the Task Force Recommendation #33: *Focus Redevelopment Efforts on 20 NPL Sites with Redevelopment Potential and Identify 20 Sites with Greatest Potential Reuse*, EPA headquarters staff then narrowed the list based on the following criteria:

- **Previous outside interest**
- **Transportation access**
- **Land values**
- **Other critical development drivers.**

This refined list of sites was shared with the Agency's regional Superfund offices, which vetted the sites with SRI experts, remedial project managers, attorneys and regional management. The regional offices also contacted property owners, as appropriate, to let them know that EPA was considering their sites for the list, and reached out to EPA's state counterparts to ask if they had additional sites with

redevelopment potential that the Agency should consider. Once EPA headquarters and the regions reached agreement, the list was made public.

The Redevelopment Focus List is intended to easily direct interested developers and potential owners to Superfund sites with redevelopment potential. EPA plans to focus redevelopment training, tools and resources towards the sites on this list. The Agency also plans to work with developers interested in reusing these and other Superfund sites; identify potentially interested businesses and industries to keep them apprised of redevelopment opportunities; and continue to engage with community groups in cleanup and redevelopment activities to promote the successful redevelopment and revitalization of their communities. This list is intended to be dynamic with sites moving on and off the list as appropriate.

The current list of sites may be found at: https://www.epa.gov/superfund-redevelopment-initiative/superfund-redevelopment-focus-list
For additional information about the Superfund Redevelopment Initiative, please go to: https://www.epa.gov/superfund-redevelopment-initiative

53. In response to the Superfund Task Force recommendations issued on July 25, 2017, you developed multiple priority lists of Superfund sites, including a list for sites targeted for "immediate, intense action" and the "Redevelopment Focus" list that highlights sites that can create potential commercial and development opportunities.
    a. How did you pick the sites to include on these lists? What specific criteria did you use?

    As to the Superfund Special Emphasis List, all 10 Regions were asked to submit their recommendations on sites that could benefit from attention and involvement. From the list submitted, the Agency selected the ones to be listed initially. EPA originally anticipated a list of 10 would be the metric. However, with discussion and review of those submitted, the list expanded to 21.

    As to the Redevelopment Site list, all 10 Regions again submitted recommendations for the list. The career staff in EPA's Office of Land and Emergency Management made the final recommendations to me.

    b. What process do you intend to use in removing and adding sites to these lists?

    As to the Superfund Special Emphasis List, the expected milepost or achievement needing attention is listed at the outset. Once that is achieved and absent a new milepost needing attention, the site would be deleted from the list. As to adding sites, the same process as originally employed will be replicated quarterly.

Commented [BJME41]: As noted above, consider moving the paragraphs from the previous answer to this answer.

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As to the Redevelopment List, a site will be removed once it has had an effective contract to reuse or it is apparent it is not viable, the site would be removed. Additions would come in the manner above with quarterly recommendations from the Regions to the career headquarters Superfund staff.

c. In what ways does the listing of these sites affect cleanup, construction, and revitalization efforts?

As to the Superfund Special Emphasis List, the listing has brought a focus and urgency to both the Potentially Responsible Parties and to those who are directly responsible to effect clean up and interact with the Potentially Responsible Parties. What the boss inspects, the employees respect. We have already seen sites stalled for years come to final pathway to resolution. Additionally, we have seen other sites move through my approval on to the remediation pathway.

As to the redevelopment list, this allows those parties interested in developing Superfund sites to focus on a few promising sites rather than sifting through 1344 sites. It also will allow potential third party dollars to be used in cleanup and more quickly return the property to productive use.

d. Do you plan to release a report or follow up on the progress made at the sites on these lists?

The status of the sites is monitored, particularly on the Special Emphasis List very frequently. We will update and revise after each quarter and will transparently report on additions and deletions, which will be available at https://www.epa.gov/superfund/superfund-task-force.

Commented [BJME42]: Will these updates be posted on the Superfund Task Force website? If so, consider including a sentence saying that with the link to the website.

54. The Diamond Alkali site in Newark, New Jersey is on your list of Superfund sites targeted for "immediate, intense action" – will you be working as quickly as possible to implement the Record of Decision for the lower 8 miles of the Passaic River?

Yes, EPA will continue to work as quickly as possible to implement the Record of Decision (ROD) for the lower 8.3 miles of the Passaic River. The designation as a special emphasis site is intended to maintain a focus on the high priority cleanup actions that are necessary as we continue to oversee the design work for the bank-to-bank dredging and associated work.

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After the ROD was signed in March 2016, EPA negotiated and signed a settlement agreement with Occidental Chemical Corporation (OCC) in September 2016 for OCC to perform the remedial design for the selected remedy. Signing a settlement agreement for a $165 million remedial design in six months was an unprecedented accomplishment for EPA. The schedule for the remedial design estimated in the ROD was approximately four years. More than one year into the design, OCC, under EPA oversight, is still on schedule to complete the design by 2020.

55. When you commissioned the Superfund Task Force on May 22, 2017, you nominated Albert Kelly, who previously was CEO and President of Oklahoma-based SpiritBank, as its Chairman. Thirteen days prior to his appointment, he was ordered by the Federal Deposit Insurance Corporation ("FDIC") to pay a civil penalty of $125,000 after he "enter[ed] into an agreement pertaining to a loan ... without FDIC approval." Two months later, the FDIC issued a lifetime ban prohibiting Mr. Kelly from managing financial institutions after determining that his violations "demonstrated ... unfitness to serve as a director, officer, [and] person participating in the conduct of the affairs or as an institution affiliated party of the bank, [or] any other insured depository institution."
    a. The FDIC has banned Albert Kelly from banking for life because he "demonstrated ... unfitness to serve as a ... person participating in the conduct of the affairs ... [of] any ... insured depository institution."
        i. Will he be managing or providing advice on Superfund program funding or any other program funding in his role as Senior Advisor?
        ii. If so, what is the nature of these responsibilities?
        iii. Will you ask him to recuse himself from any specific agency activities or issue areas as a result of the banking ban?
    b. Were you aware of the FDIC investigations when you named him as Chair of the Superfund Task Force?
    c. Were you aware of the FDIC investigations when you named him as Senior Adviser

There is no federal ethics correlation between the FDIC matter and Mr. Kelly's service to EPA.

56. Proper financial management of the Superfund program is critical to its success. Since 1999, federal funding for the Superfund program has declined from about $2 billion to about $1.1 billion annually, and the rate of contamination threat reduction at Superfund sites has declined. During your hearing, you repeatedly stated that you had visited states throughout the country and discussed the Superfund and that the cleanup of sites would require "direction and leadership." The Chairman of the Superfund Task Force is charged with developing and implementing recommendations to improve the work of the Superfund program.
    a. Mr. Kelly had no previous experience in environmental policy or management when you named him to Chair the Superfund Task Force.

i. What experience did he have that you believe qualified him to serve as Chair?
ii. What experience does he have that you believe qualify him to serve as your Senior Advisor?

b. What responsibilities was Albert Kelly given as Chairman of the EPA Superfund Task Force during the production of the Superfund Task Force Recommendations? What is his role and responsibility as Chair now that the Task Force has released its recommendations?
c. What responsibilities was Albert Kelly given as Senior Advisor at the EPA? What specific policy areas and programs will he be responsible for in this role?

Mr. Kelly has years of leadership positions from our home state of Oklahoma that has suited him for his position to facilitate Superfund reform. During the production of the Superfund Task Force Recommendations, Mr. Kelly was my leading appointee who spearheaded the effort while compiling the suggestions of career staff. Since the production of the recommendations, he has lead the efforts to begin the implementation of the recommendations. Mr. Kelly remains the Chair of the Superfund Task Force, and is assigned other roles as requested and required.

57. When you decided to move forward with the process to potentially weaken the Agricultural Worker Protection Standard requirements, what steps did you take to comply with Executive Order 12898, which requires EPA to identify and address the disproportionately high and adverse human health effects of its activities on minority and low income communities?

In response to stakeholder concerns, in December 2017, EPA released a Federal Register Notice to initiate the process to revise certain requirements in the Worker Protection Standard (WPS) and Certification of Pesticide Applicators Rule. By the end of fiscal year 2018, EPA expects to publish a Notice of Proposed Rulemaking to solicit public input on possible revisions to the WPS requirements for minimum age, designated representatives, and application exclusion zones, and the minimum age requirement for certified applicators. While the agency seeks public input on these possible changes, the compliance dates for the two rules remain in effect. EPA remains committed to protecting agricultural workers who handle and apply pesticides. Any possible revisions included in the proposed rulemakings will comply with all applicable statutory requirements and executive orders, including Executive Order 12898.

58. Despite proposing drastic cuts to EPA's budget, you are spending taxpayer dollars on questionable expenses such as paying $25,000 to install a custom-made, soundproof phone booth in your office.

a. Have you used this $25,000 phone booth for any calls with representatives of oil and gas companies?

No.

b. Will you provide to this committee within 10 days a log of all of the calls you have made from this phone booth?

This is a secure phone line and room to be used for secured conversations with administration officials. This was an update to the building. For the information of the Committee, the upgrades and maintenance to the two main North and South portions of this 1930's era grand building is approximately $6 million every year out of EPA's most recently annual appropriation of $7.9 billion.

59. Despite a tradition of EPA reimbursing the Justice Department for their work in holding polluters accountable for Superfund clean ups, it was recently reported that you may break with this precedent, directing your agency to not reimburse the DOJ for that work. Do you plan on withdrawing EPA funding for the Justice Department's Environment and Natural Resources Division?

Cleaning up the nation's Superfund sites and returning them to communities for beneficial use is one of EPA's top priorities. Under the President's Budget for EPA, up to $20 million will be provided for DOJ support for Superfund Enforcement to focus on the highest priority sites, particularly those that may present an immediate risk to human health and the environment.

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Senator Boozman:

60. Administrator Pruitt, I understand that EPA is currently reviewing procurement guidance for the federal government's purchasing of lumber and wood products. During the Obama Administration, EPA issued procurement guidelines for lumber and wood products that called for the use of wood and lumber certified by the Forest Stewardship Council, leaving out wood grown on forests certified by the two major forest certification systems in the U.S.: the American Tree Farm System and the Sustainable Forestry Initiative. This guidance would have excluded of 4 million acres of Arkansas timber eligible for federal procurement. Additionally, the Obama Administration's guidance runs directly counter to the regulations issued under USDA's BioPreferred program, a program created in the 2008 Farm Bill that sets federal purchasing requirements for all biobased products and specifically recognizes eligibility from all three systems. What are you doing to ensure the EPA does not arbitrarily pick winners and losers and prevent the federal government from purchasing American timber?

    EPA's previous action on this issue was carried out under the June 2015 "Implementing Instructions for Executive Order 13693: Planning for Federal Sustainability in the Next Decade," and was not an agency regulation. Based on stakeholder concerns and interagency discussions, the EPA recommendation for the lumber/wood product category was removed from the "Recommendations of Specifications, Standards, and Ecolabels for Federal Purchasing" in December 2016. Before further action on this product category, EPA will ensure coordination with the USDA Forest Service and USDA Natural Resources Conservation Service, Department of Energy, OMB, and CEQ to determine how forestry standards should best be evaluated. Once the federal agencies have had time to come to consensus, EPA would engage stakeholders to refine the guidelines pertinent to evaluating the lumber/wood recommendation. This process is intended to provide a transparent, fair, and consistent approach to updating the EPA recommendation of forestry certifications and assessing other commodities' extraction/harvesting related environmental impacts.

Senator Ernst:

61. In two separate interviews shortly after the time of this hearing, you stated the need for both RFS reform and RIN reform. During the confirmation process, you went to great length to explain your intention to uphold the RFS. Can you please explain what you think RFS reform entails? In Iowa, this is a flashpoint and the continued rhetoric used appears to contradict your promise to this Committee on the RFS.

    There has been a heightened interest from a broad range of stakeholders advocating for programmatic changes to the Renewable Fuel Standard (RFS) in order to expand the use of higher ethanol blends and stabilize the costs of compliance. The above referenced interviews were subsequent to a then-recent meeting with government leaders at the White House which included representatives from your office. As you may recall, concerns were expressed regarding the variability of Renewable Identification Number (RIN) values, the impact of those costs on obligated parties and the range of options government leaders and policy makers should consider to strengthen the long-term viability of the RFS program. My references to RFS or RIN reform in those interviews was merely a summation of those discussions and associated concerns.

62. Much has been said about finding a "win-win" on the RFS and RINs, albeit not by you, but by some Members of Congress. Would you agree that fixing the Reid vapor pressure issue on E15 is a "win-win"? Doing so would reduce RIN prices, which some refineries say they need, while also expanding the marketplace for biofuels.

    Expanding the 1.0 pound per square inch (psi) waiver for RVP to E15 has been and continues to be a part of RFS reform options expressed and supported by a range or stakeholders. Senator Fischer has shown great leadership in the Senate on this issue and, during the same interviews referenced in the preceding question, I discussed the prospect of granting this type of waiver and have been assessing the legal and technical considerations for an administrative action.

63. How aggressively will EPA pursue the RIN obligation from refineries that declare bankruptcy?

    We, along with our colleagues across the federal government, will monitor any such bankruptcy proceedings closely. However, we would treat each situation on a case-by-case basis, so I am not able to comment further on this matter.

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64. The Pesticide Registration Improvement Act (PRIA) was first enacted in 2003 and established a fee schedule for pesticide registrations. It lists specific time periods for EPA to make a regulatory decision on pesticide registration and tolerance actions submitted to the Agency. The goal of PRIA was to create a more predictable and effective evaluation system for affected pesticide decisions and couple the collection of individual fees with specific decision review periods. It also promoted shorter review periods for reduced-risk applications.

PRIA has been tremendously successful, providing hundreds of millions of dollars in funding to EPA and providing product developers with clarity on timelines for Agency actions, and facilitating investment in research and development of new products. Importantly, through these industry fees, it has also provided $1 million annually in worker protection and pesticide safety training.

PRIA has been reauthorized twice since it was first enacted – in 2007 and 2012 – each time by unanimous consent. It has been supported by large and small manufacturers of agricultural and non-agricultural products, antimicrobial products, biotech companies, and biopesticides, as well as labor and environmental advocates. The current law was set to expire on September 30, 2017; however, an extension was included in the CR that extends the authorization through February 8, 2018. H.R. 1029, the Pesticide Registration Enhancement Act, which would reauthorize these authorities, passed the House by voice vote on March 20, 2017, and was reported by the Senate Agriculture Committee on June 29, 2017.

a. Can you explain the likely impacts to worker protection programs and your ability to regulate pesticides if PRIA is not reauthorized?

PRIA provides approximately 33 percent of the funding for EPA's pesticide program activities. Currently operating under the third iteration of the statute, PRIA provides two funding sources to EPA's pesticide program:

- **One time registration service fees (i.e., PRIA fees) for the evaluation of new applications submitted to the EPA; and**
- **Annual FIFRA maintenance fees assessed to products currently in the marketplace, a significant portion of which are used to support the re-evaluation of pesticides in order to meet the statutory deadline of October 1, 2022, for completing the first round of registration review.**

PRIA's authorization expired on September 30, 2017, has been extended in short term reauthorizations in each continuing resolution, and is now authorized through March 23, 2018. Legislation reauthorizing PRIA is currently pending in Congress. If the authorization expiration date is not further extended or if PRIA is not reauthorized by that date, pesticide applications submitted after that date will no longer be subject to decision time periods. The two year sunset provision in FIFRA section 33(m) specifies fees be reduced in fiscal year 2018 by 40 percent below the levels in effect during fiscal year 2017, and by 70 percent in

fiscal year 2019. Effective September 30, 2019, fee requirements under PRIA would be terminated.

Additionally, if PRIA were not reauthorized, $2 million per year for worker protection activities, pesticide safety education programs, and partnership grants, monies that currently come from PRIA funds, would not be available and these programs would not be funded. These activities include:

- **Developing and administering a pesticide safety training program that will support a national network of pesticide safety trainers providing worker safety training to migrant and seasonal farmworkers and their families (National Farmworker Training Program);**
- **Developing pesticide education materials for workers, handlers, and trainers on how to comply with WPS (cooperative agreement with UC-Davis and Oregon State University); and**
- **Supporting National Pesticide Information Center (NPIC), a bi-lingual, factual source of information for professional and public audiences on pesticide-related issues.**

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b. What would be the impact to farmers across my state and the country?

PRIA provides predictability and regulatory certainty to all stakeholders regarding the timing of pesticide registration decisions. In the absence of PRIA, the statutory timelines would no longer exist and applications to register new pest control tools would be reviewed as resources were available. However, EPA would not be in a position to guarantee a registration decision timeline with any certainty. Farmers in need of new pest control tools would be greatly impacted as they may not be able to timely adopt new technologies to address their pest management needs.

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Senator Fischer:

65. In two recent television interviews, you discussed the need for RFS and RIN reform. Given your commitments made to this committee during the confirmation process that you would uphold the RFS, can you please elaborate on what you think RFS reform means?

    There has been a heightened interest from a broad range of stakeholders advocating for programmatic changes to the Renewable Fuel Standard (RFS) in order to expand the use of higher ethanol blends and stabilize the costs of compliance. The above referenced interviews were subsequent to a then-recent meeting with government leaders at the White House which included representatives from your office. As you may recall, concerns were expressed regarding the variability of Renewable Identification Number (RIN) values, the impact of those costs on obligated parties and the range of options government leaders and policy makers should consider to strengthen the long-term viability of the RFS program. My references to RFS or RIN reform in those interviews was merely a summation of those discussions and associated concerns.

66. How do you plan to approach the bankruptcy court case involving Philadelphia Energy Solutions? Do you intend to ask the refinery to honor their legal obligation?

    We, along with our colleagues across the federal government, will monitor any such bankruptcy proceedings closely. However, we would treat each situation on a case-by-case basis, so I am not able to comment further on this matter.

67. If PES is allowed to use bankruptcy to avoid their RFS obligation, do you expect other refineries to follow this path?

    We are aware that PES recently filed a plan of reorganization with a bankruptcy court in Delaware, and we, along with our colleagues across the federal government, are monitoring the bankruptcy proceedings closely. As this is the subject of ongoing court proceedings, I am not able to comment further on this matter.

68. I understand that several commercial-ready companies seeking approval of new cellulosic biofuel (D3) registrations have been told by U.S. Environmental Protection Agency (EPA) staff that the processing of such applications is currently on hold until EPA staff completes an internal review.

    Because of the investment and long-term planning required to undertake these projects, it is imperative that new production of qualified cellulosic biofuels is approved as efficiently as possible. This will allow these commercial-ready businesses to gain the value associated with the D3 RIN production during this time of tight margins in the

agriculture economy and signal to the marketplace that these gallons are valued, as the Renewable Fuel Standard (RFS) intends.

If EPA is currently delaying registration of new D3 production, the falsely low D3 production volume would affect not only today's market, but also the market for the coming year and beyond, through EPA's annual volumetric rulemaking for the RFS. This practice would systematically underestimate D3 production, and thereby undermine Congress's intent under the RFS to grow the cellulosic biofuel market.

Does EPA currently have new cellulosic registrations on hold until EPA staff completes an internal review?

Under the Renewable Fuel Standard (RFS) program, cellulosic ethanol produced from corn kernel fiber qualifies to generate cellulosic RINs under an existing approved fuel pathway if certain registration and reporting requirements are met. EPA has registered some ethanol facilities under this pathway and received additional applications that are currently under review at this time.

69. When does EPA anticipate completing this review, and what does it hope to accomplish through this review?

Facilities that are simultaneously processing corn starch and corn kernel fiber to produce a mixture of conventional ethanol and cellulosic ethanol. The regulations require use of a test method to identify the cellulosic converted fraction that has either been certified by a voluntary consensus standards body or is demonstrated to produce "reasonably accurate" results. Unfortunately, there is currently no analytical test method that is certified by a voluntary consensus body and no certified reference samples containing both cellulose and starch. This requires EPA to evaluate each company's application on its unique merits. Due to the complexity of these applications, EPA does not have a specific time to complete its review. However, EPA is committed to supporting efforts by the industry and other government/non-governmental parties to find a way forward.

70. What steps is EPA taking to ensure these actions do not negatively impact cellulosic biofuel volumes in the 2019 RVO rulemaking?

The registration process is designed to ensure that when RINs are generated the fuel on which they are based qualified for the corresponding category of renewable fuel. EPA takes this responsibility very seriously, and in some cases it takes considerable time to work through the technical issues, which may include developing new test procedures. In projecting cellulosic biofuel production for 2019 as part of the RVO process, EPA staff carefully monitor the status of pending facility registration requests to ensure that our projections of cellulosic RINs generated in 2019 are as accurate as possible. We also carefully consider the comments we receive on the

proposed rule and make amendments to our projection methodology and volume projections as appropriate.

Senator Markey:

WEBSITE

71. In all, more than 5,000 pages of scientific, policy, and educational material on climate change have been moved off the main website for the Environmental Protection Agency (EPA). This information has been largely relegated to a maze of archives and portals that is virtually inaccessible to the public. The EPA's mission states that the agency should ensure "all parts of society – communities, individuals, businesses, and state, local and tribal governments – have access to accurate information sufficient to effectively participate in managing human health and environmental risks."[25] Additionally, the Paperwork Reduction Act directs agencies to "provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products."[26] However, there was no notice of the changes made to the EPA website, leaving the public with no opportunity to weigh in on the Administrator's decision to move, hide, and archive information on the Clean Power Plan or on climate change.
    a. How does the decision to remove hundreds of webpages and post the notice on the same day comply with the EPA's mission?
    b. How does the decision to remove hundreds of webpages and post the notice on the same day comply with the Paperwork Reduction Act?
    c. Were you personally involved in directing the removal of any information from the EPA website? If so, please provide any correspondence or documentation relating to your personal involvement in the overhaul and censorship of the EPA website.

EPA is continually making changes to its website and other digital information resources to reflect and support the agency's current priorities and work. When we remove information from our main portal, www.epa.gov, the majority of the time we make sure it is still available to the public via our archive website, https://archive.epa.gov/. In addition, because of the public concern about access to information on our website last year, we created a snapshot website that contains the content that was on our main portal on January 12, 2017. The snapshot website can be searched here: https://19january2017snapshot.epa.gov/.

All changes to EPA's websites and digital resources are coordinated between the different offices at the agency. We do our best to make new information available to the public as soon as possible and then notify them of the changes.

[25] "Our Mission and What We Do." United States Environmental Protection Agency. Accessed February 1, 2018. https://www.epa.gov/aboutepa/our-mission-and-what-we-do
[26] 44 USC § 3506(d)(3)

72. The error page on the EPA website that the public reaches when trying to access former resources on climate change reads, "This page is being updated [...] We are currently updating our website to reflect EPA's priorities under the leadership of President Trump and Administrator Pruitt."
    a. Please provide a timeline for when this update will be complete, as well as a detailed list of all the pages that have been permanently removed from www.epa.gov and the changes made on those that remain in an altered form.
    b. Please explain how the priorities of President Trump and Administrator Pruitt necessitate the removal of pages like "What Climate Change Means for Massachusetts" from www.epa.gov.
    c. Please provide an accounting of the costs and employee hours associated with developing the resources that were removed, as well as with the process of moving and updating the website to "reflect EPA's priorities."

We are constantly updating our website to reflect new initiatives and projects of the Agency. Of course the site will be reflective of the current administration's priorities – with that said, all the content from the previous administration is still easily accessible and publicly available-through the banner across the top of the main page of the site.

ENFORCEMENT

73. Oklahoma recently suffered what may be the deadliest accident in the history of the shale industry, when five workers were killed by an explosion at a fracking site. The company that owns this site (Patterson-UTI) has reportedly experienced several other deadly safety incidents from 2010-2013. Oklahoma's regulators use an enforcement system that shuns fines in favor of working with violators, a strategy which you appear to have emulated during your tenure. For example, Devon Energy had admitted to illegally emitting hazardous chemicals, and was in discussions to pay a settlement of more than $100,000 and install mitigation technology. After your swearing it, Devon Energy informed the EPA that it was "re-evaluating its settlement posture" and now offered a settlement of around $25,000 with no commitment to install additional technology.[27]

    According to a New York Times analysis, compared to the first nine months of the Obama administration, you have: filed roughly 1,000 fewer new enforcement cases; sought 60 percent less in civil penalties; requested almost 90 percent fewer injunctive relief fixes, which prompt companies to cut pollution; and made it harder for EPA offices to request pollution tests.[28]

[27] Brook-Davison, Carrick. "RE: Revised Devon settlement proposal for the Beaver Creek Gas Plant." Guida, Slavich & Flores. February 22, 2017. Accessed February 1, 2018. https://www.documentcloud.org/documents/3727057-Devon-Fights-and-Now-is-Winning-Battle-Against.html#document/p1/a356485

[28] Lipton, Eric and Danielle Ivory. "Under Trump, E.P.A. Has Slowed Actions Against Polluters, and Put Limits on Enforcement Officers." The New York Times. December 10, 2017. Accessed February 1, 2018. https://www.nytimes.com/2017/12/10/us/politics/pollution-epa-regulations.html

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a. Please provide a list of companies and plants that received notices of violations from 2008-2017 under the Clean Water Act, the Clean Air Act, or the Resource Conservation and Recovery Act, but that have not yet had any EPA penalties levied upon them.

In some enforcement circumstances, the EPA issues a NOV to a facility owner/operator that the agency has identified as having one or more violations. However, not all statutes include provisions for issuance of an NOV or require issuance of an NOV. *Compare* Clean Air Act § 205(c)(1), 42 U.S.C. § 7523(c)(1) ("[T]he Administrator shall give written notice to the person to be assessed" a penalty) *with* Clean Water Act § 309, 33 U.S.C. § 1319 (no provision for written notice).

Since not all statutes include these provisions, the agency does not centrally track all NOVs in the agency's Integrated Compliance Information System (ICIS) enforcement and compliance database. Some information on NOVs is available in ICIS, but NOVs are not required to be entered. Additionally, because NOVs do not always result in the need for follow-up enforcement actions, *e.g.*, where the facility promptly returns to compliance, we do not have the ability to link NOVs to later enforcement actions.

b. Please provide a detailed list of cases where, under your leadership, the EPA withdrew or accepted lower civil monetary penalties than were recommended under the previous administration from 2008-2017 and the rationale for these decisions.

EPA's civil penalty policies provide the bases upon which EPA compromises claims and settles cases for less than the statutory maximum penalty. These policies can be found here https://www.epa.gov/enforcement/enforcement-policy-guidance-publications. The negotiation of penalties is based on these policies. The specifics of each case are confidential enforcement information. When an enforcement action is withdrawn or not pursued, that information is reported in ICIS. However, please note that these data are not certified and may not always be entered in a timely manner. We have provided below the total number of enforcement actions in ICIS reported as withdrawn or not pursued. Because the decision to withdraw a case may involve an enforcement-confidential determination, we have not provided a list of cases.

Actions Reported:	CY08	CY09	CY10	CY11	CY12	CY13	CY14	CY15	CY 16	CY 17
Total	64	126	65	105	95	57	57	26	31	23

74. The EPA recently released data that detailed the fines, penalties, and other commitments that the agency collected during fiscal year 2017.[29] According to the EPA's report, the number of new cases, defendants charged, and federal inspections and evaluations began by the agency in FY2017 were all at the lowest level in at least a decade. Despite this, the EPA still touted an increase in the total amount of criminal fines, including restitution and mitigation activities.
    a. Of the cases included in the FY17 reporting, what percentage of fines and restitutions, court ordered environmental projects, Superfund site commitments from liable parties, judicial penalties, injunctive relief, and other penalties were made before January 20, 2017?

The enforcement and compliance work accomplished in fiscal year 2017 included work performed under both the prior and current administrations. This administration is proud to highlight accomplishments and to honor EPA employees for all of the great work they did last fiscal year.

In response to your request for data on the percentage of FY17 fines, penalties, and other relief secured before and after January 20, 2017, please see the chart below.

Measure	Total FY 2017 Values October 1, 2016 - September 30, 2017	Values for October 1, 2016 - January 19, 2017	Percentage for October 1, 2016- January 19, 2017	Values for January 20, 2017 – September 30, 2017	Percentage for January 20, 2017 – September 30, 2017
Fines (Criminal)	$2,829,202,563	$8,716,000	0.3%	$2,820,486,563	99.7%
Restitution (Criminal)	$147,520,835	$84,755,737	57.5%	$62,765,098	42.5%
Court Ordered Environmental Projects (Criminal)	$3,092,631	$1,146,362	37.1%	$1,946,269	62.9%
Amount Committed by Liable parties to Clean Up for Superfund sites	$1,227,057,039	$68,586,500	5.6%	$1,158,470,539	94.4%
Amount Committed by Liable Parties to Reimburse the Government for Past Costs at Superfund Sites	$142,577,803	$22,398,806	15.7%	$120,178,997	84.3%
Judicial Penalties	$1,583,608,081	$51,310,581	3.2%	$1,532,297,500	96.8%
Administrative Penalties	$48,078,393	$13,206,031	27.5%	$34,872,362	72.5%
Injunctive Relief (Judicial and Administrative)	$19,971,202,303	$16,483,587,889	82.5%	$3,487,614,414	17.5%

[29] "Enforcement Annual Results for Fiscal Year 2017." Environmental Protection Agency. Accessed February 9, 2018. https://www.epa.gov/enforcement/enforcement-annual-results-fiscal-year-2017

Supplemental Environmental Projects (Judicial and Administrative)	$17,255,199	$4,013,347	23.2%	$13,241,852	76.8%

b. Of the cases included in the FY17 reporting, what percentage of civil and criminal cases, inspections/evaluations, complaints, and orders were initiated, opened, or filed after January 20, 2017?

Please see the chart below in response to your question.

Measure	FY 2017 Counts	Case Counts from January 20, 2017 - September 30, 2017	Percentage
Civil Judicial Referrals	114	81	71%
Criminal Cases Opened	115	70	61%
Inspections/Evaluations[30]	9,918	7,924	80%
Administrative Penalty Order Complaints (APOCs)	1,218	939	77%
Administrative Compliance Orders (ACOs)	606	476	79%
Final Administrative Penalty Orders (FAPOs)	1,255	972	77%
Complaints Filed With Court	83	43	52%

75. The EPA FY19 budget request included an 18 percent cut to civil enforcement and a 12 percent cut to criminal enforcement from the FY18 annualized Continuing Resolution (CR).
    a. As the number of new enforcement cases are already falling under your tenure, how does limiting the enforcement budget further facilitate your stated objective to "timely enforce environmental laws to increase compliance rates […] especially enforcement actions to address environmental violations?[31]
    b. How many full-time EPA employees working on civil, criminal, Superfund, and federal facilities enforcement do you expect to be supported by the FY19 budget request?

[30] The Inspection/Evaluation totals in this chart exclude manually reported SDWA UIC inspections because EPA does not maintain the date of these inspections. The FY 2017 total number of inspections reported for Annual Results, including SDWA UIC inspections, is 11,756 (9,918 + 1,838 manually reported SWDA UIC inspections.)
[31] "FY 2019 EPA Budget in Brief." United States Environmental Protection Agency. February 2018. Accessed February 13, 2019. https://www.epa.gov/sites/production/files/2018-02/documents/fy-2019-epa-bib.pdf

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EPA's enforcement efforts continue to be focused on achieving compliance, not on the number of individual actions taken. To achieve the desired outcome, EPA works in partnership with state and tribal agencies to assure compliance, protect public health and the environment, and ensure a level playing field for businesses. Recognizing that states are the primary implementers of our nation's environmental laws, EPA will focus where it can provide the most value including matters affecting multiple states or tribes, serving as a backstop when a state or tribe does not address serious noncompliance in a timely fashion, and assisting states and tribes when they lack the capability, resources, or will to address noncompliance.

In FY 2019, the agency is requesting 2,264.1 FTE for the civil, criminal, Superfund, and federal facilities enforcement programs.

CLIMATE IN DRAFT STRATEGIC PLAN

76. You have said that "scientists continue to disagree about the degree and extent of global warming and its connection to the actions of mankind."[32] With regard to human-produced carbon dioxide, in an interview with CNBC, you said that, "I would not agree that it's a primary contributor to the global warming that we see."[33] But the statutorily required National Climate Assessment's Climate Science Special Report that was released by the Trump Administration in November concluded that "human activities, especially emissions of greenhouse gases, are the dominant cause of the observed warming since the mid-20th century."[34] Last year was the second-hottest year in recorded history, according to the National Aeronautics and Space Administration, and saw record-breaking costs incurred by extreme weather and climate disasters.
    a. Do you disagree with the conclusion made in the Climate Science Special Report by our country's top scientists at 13 federal agencies, including your own, that human activities are the dominant cause of global warming, with "no convincing alternative explanation"?

       EPA recognizes the challenges that communities face in adapting to a changing climate. EPA works with state, local and tribal governments to improve infrastructure to protect against the consequences of climate change and natural disasters. EPA also promotes science that helps inform states, municipalities, and tribes on how to plan for and respond to extreme events and environmental emergencies. Moving forward, EPA will continue to advance its climate adaptation efforts, and have reconvened the cross-EPA Adaptation Working Group in support of those efforts.

[32] Pruitt, Scott and Luther Strange. "The Climate-Change Gang." The National Review. May 17, 2016. Accessed January 31, 2018. http://www.nationalreview.com/article/435470/climate-change-attorneys-general
[33] DiChristopher, Tom. "EPA chief Scott Pruitt says carbon dioxide is not a primary contributor to global warming." CNBC. March 9, 2017. Accessed February 1, 2018. https://www.cnbc.com/2017/03/09/epa-chief-scott-pruitt.html
[34] Wuebbles, D.J., and D.W. Fahey, K.A. Hibbard, D.J. Dokken, B.C. Stewart, and T.K. Maycock (eds.) "Climate Science Special Report." U.S. Global Change and Research Program. November 2017. Accessed January 31, 2018. https://science2017.globalchange.gov/downloads/CSSR2017_FullReport.pdf

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Human activity impacts our changing climate in some manner. The ability to measure with precision the degree and extent of that impact, and what to do about it, are subject to continuing debate and dialogue.

77. Despite these findings, and the conclusion that "[c]hanges in the characteristics of extreme events are particularly important for human safety,"[35] climate change did not appear in the EPA's Strategic Plan for 2018-2022, as published on February 12, 2018.
    a. Why does climate change not appear in the draft plan?
    b. Do you intend to address climate in other strategic planning documents, commensurate with the findings of the Climate Science Special Report? If not, why not?

Strategic plans are drafted every five years to reflect new initiatives and projects of the Agency. Naturally the plan will be reflective of the current administration's priorities of refocusing the Agency on its core mission, restoring power to the states through cooperative federalism, and leading the Agency through improved processes and adherence to the rule of law.
~~**We are constantly updating our website to reflect new initiatives and projects of the Agency. Of course the site will be reflective of the current administration's priorities – with that said, all the content from the previous administration is still easily accessible and publicly available through the banner across the top of the main page of the site.**~~

Commented [BSHE45]: This answer appears to be in the wrong place. The question was about climate change references in EPA's Strategic Plan, not about EPA;s website.

PERSONNEL

78. In the FY19 budget request, Science and Technology funding was cut from $708,975,000 in the FY 2018 annualized CR to $448,965,000—a decrease of 37 percent. The Regional Science and Technology funding was zeroed out entirely. This attack on science comes as more than 200 scientists have left the agency over the past year.
    a. How many full-time scientists will be supported at the EPA by the FY19 budget request?

Based on the distribution of scientific positions within the agency workforce, EPA would estimate that between 8,300 and 8,800 scientific positions would be supported through the FY 2019 Presidents Budget Request. This is an estimate extrapolated from on-board data that is current as of FY 2017 and includes non-federal positions. The actual number is dependent upon programmatic workforce decisions that remain to be made as well as factors such as attrition.

Commented [BSHE46]: How did EPA arrive at this estimate? Could EPA please send the OMB RMO a breakdown of scientific vs. nonscientific positions by program project for the FY 2019 PB request.

Commented [FT(47R46]: EPA: This was a derived estimate based on total onboards (to include on-site contractors) in FY 2017 that we categorized as "scientists" projected onto the FY 2019 agency FTE ceiling. We do not have this information at the program project level.

Methodology: To arrive at this we looked at recent on-board data (including intermittent employees) and sorted based on "Position Title OPM" looking for "scientist" based on their description where 3 or greater employees fall under that position title. (Note there are over 1k and this is intended as estimate only). This yielded 7,956 of 13,990 (56.9%) onboards fitting this delineation as "scientists". Using that as a rate and applying it to the FTE ceiling for FY 2019 we get the estimate. We also did a similar exercise for contractors (limited to on-site contractors since they are the ones that we process through security and data was searchable).

[35] Ibid.

b. Can you describe how the Regional Science and Technology capabilities will be fully replaced by the "ad hoc" efforts described in the Budget in Brief?

The Regional Science and Technology program performs laboratory analysis, field monitoring, and sampling investigations in order to provide credible scientific data on environmental pollutants and conditions to Agency policy makers. Under its Reform Plan, the Agency is working to develop a comprehensive enterprise-wide laboratory approach that will address many of the programs' traditional functions.

TOXIC CHEMICALS

79. During the hearing, you committed to updating my office on the status of the formaldehyde health assessment, which I understand has been completed by EPA staff but not yet released.
    a. What date was the draft assessment completed by EPA staff?
    b. What is the exact timeline for public release?
    c. What are the exact steps that EPA must take internally before the report is shared for interagency review?

Please see response to Question 10.

80. The Integrated Risk Information System (IRIS) provides the scientific research needed to effectively implement the Clean Air Act, Clean Water Act, Safe Drinking Water Act, Food Quality Protection Act, and the Toxic Substances Control Act (TSCA), among other laws that protect our nation's public health and environment. However, there have been repeated attacks made on IRIS's objectivity and independence, despite recent changes made to strengthen its scientific approach. There are reportedly around 30 people left working at IRIS, after a period of serious attrition similar to that seen within other EPA offices.
    a. Does the EPA plan on moving the IRIS program from the Office of Research and Development to the Office of Chemical Safety Pollution and Prevention (OCSPP) as reported, thereby placing it within the regulatory arm of the EPA and out of the science and research office?

    There are no plans to move IRIS out of ORD.

    b. If yes, please detail how the EPA would ensure that the scientific research remains independent, transparent, and non-politicized.

    N/a. See 80a.

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c. Please provide a list of dates and attendees of meetings you or senior political appointees have taken in which IRIS was discussed, as well as any communication or documents relating to these meetings.

We are working to gather this information with regard to EPA's IRIS meetings and will provide this information to you as soon as possible.

Senator Merkley:

81. Under your new policy, you exclude scientists who currently receive EPA grants from serving on EPA scientific advisory committees (link: https://www.epa.gov/sites/production/files/2017-10/documents/final_draft_fac_directive-10.31.2017.pdf).
    a. What is the legal basis for this new directive?
    b. What is your reasoning in exempting tribal, state, and local EPA grant recipients from the directive?
    c. How do you define conflicts of interest within the EPA advisory committees?
    d. Have you consulted with scientific societies, the National Academies, or other independent science organizations about the definition of conflicts of interest?
    e. How will your directive work to ensure that the agency's advisory committees are able to make objective recommendations based on the best available science?
    f. Can you provide an example of a time when a EPA grant recipient on a federal advisory committee provided "conflicted" advice to the administrator?
    g. Now that your directive has tripled the number of industry scientists on the SAB, how will you ensure that the EPA's science advice remains independent?

    Information responsive to these questions can be found in EPA guidelines and public documents, including:
    - https://www.epa.gov/faca/strengthening-and-improving-membership-epa-federal-advisory-committees
    - https://www.epa.gov/sites/production/files/2015-02/documents/ethicsadvisory.pdf
    - https://yosemite.epa.gov/sab/sabproduct.nsf/Web/ethics?OpenDocument

82. The policy excluding scientists does not affect individuals who have industry ties. For example, Dr. Tony Cox received money from American Chemistry Council, American Petroleum Institute, Engine Manufacturers Association, National Mining Association, and many others, yet you selected him to chair the Clean Air Scientific Advisory Committee (CASAC). Why are industry-funded individuals with apparent conflicts of interest more qualified to serve in these science committees than independent scientists?

    All EPA employees, including Special Government Employees, must abide by federal ethics laws and regulations, including the Standards of Ethical Conduct for Employees in the Executive Branch, 5 C.F.R. Part 2635, and the conflict of interest statutes codified in Title 18 of the United States Code. Agency policies, including ethics-related and conflict of interest guidelines, which can be found at:
    - https://www.epa.gov/faca/strengthening-and-improving-membership-epa-federal-advisory-committees
    - https://www.epa.gov/sites/production/files/2015-02/documents/ethicsadvisory.pdf
    - https://yosemite.epa.gov/sab/sabproduct.nsf/Web/ethics?OpenDocument

83. You took an unprecedented action and dismissed Dr. Donna Kenski from EPA CASC before her term expired, alleging that Kenski would not qualify under EPA's problematic new policy. Even so, Dr. Kenski's employer, the Lake Michigan Air Directors Consortium's EPA grant is routed through the state government, a category is exempted in the new policy. At the same time, Dr. Michael Honeycutt is allowed to chair the Scientific Advisory Board, even though he has received over $58 million in grants while leading the Texas Commission on Environmental Quality. Why does the same policy disqualifies Dr. Kenski while allowing Dr. Honeycutt to serve?

All EPA employees, including Special Government Employees, must abide by federal ethics laws and regulations, including the Standards of Ethical Conduct for Employees in the Executive Branch, 5 C.F.R. Part 2635, and the conflict of interest statutes codified in Title 18 of the United States Code. Agency policies, including ethics-related and conflict of interest guidelines, which can be found at:

- https://www.epa.gov/faca/strengthening-and-improving-membership-epa-federal-advisory-committees
- https://www.epa.gov/sites/production/files/2015-02/documents/ethicsadvisory.pdf
- https://yosemite.epa.gov/sab/sabproduct.nsf/Web/ethics?OpenDocument

84. You pledged repeatedly in front of this committee that since you are a lawyer and a prosecutor, you would defer to your career staff for science advice. Yet you replaced Dr. Kenski with Dr. Larry Wolk, whom according to your staff's memo, had "no direct experience in health effects of air pollution, epidemiology, toxicology." On Dr. Tony Cox, your staff raised conflict of interest and appearance of a lack of impartiality issues. Will you commit to follow the recommendations of EPA's career staff so no one appointed to the EPA's advisory committees are either unqualified or have conflicts of interests so that the committees can provide you with the best and sound science that you and the agency so desperately need?

The Agency is committed to selecting qualified and knowledgeable individuals to serve on advisory committees. All EPA employees, including Special Government Employees, must abide by federal ethics laws and regulations, including the Standards of Ethical Conduct for Employees in the Executive Branch, 5 C.F.R. Part 2635, and the conflict of interest statutes codified in Title 18 of the United States Code. Agency policies, including ethics-related and conflict of interest guidelines, which can be found at:

- https://www.epa.gov/faca/strengthening-and-improving-membership-epa-federal-advisory-committees
- https://www.epa.gov/sites/production/files/2015-02/documents/ethicsadvisory.pdf
- https://yosemite.epa.gov/sab/sabproduct.nsf/Web/ethics?OpenDocument

85. In your hearing in front of the House Energy & Commerce Committee, you said that EPA has issued $77 million in grant money to twenty members of the EPA scientific advisory committees. Please provide detailed information behind this statement, including the names of the 20 members, their affiliations, their EPA-funded projects and grant amount.

EPA makes grant awards publicly available. These databases can be found at:

- https://yosemite.epa.gov/oarm/igms_egf.nsf/Homepage?ReadForm
- https://cfpub.epa.gov/ncer_abstracts/index.cfm/fuseaction/search.welcome

86. During your nomination hearing, you said that you "have no first-hand knowledge" of the EPA's scientific integrity policy at the time. However, you did commit to "thoroughly reviewing" the policy and following "federal guidance regarding scientific integrity." The policy states that EPA scientists are free to "exercise their right to express their personal views provided they specify they are not speaking on behalf of…" the EPA (Link: https://www.epa.gov/sites/production/files/2014-02/documents/scientific_integrity_policy_2012.pdf). Have you reviewed and implemented this part of the policy? Can you affirm that EPA scientists and managers are free to exercise their right to express their personal views free from political interference, as guaranteed by this policy?

I am committed to upholding EPA's Scientific Integrity Policy, which ensures that the agency's scientific work is of the highest quality, is presented openly and with integrity, and is free from political interference. EPA scientists are supported in speaking directly to the science in their presentations, yet leave policy statements to the relevant programs. In their private capacity, EPA staff can freely exercise their right to express their personal views provided they specify that they are not speaking on behalf of the Agency.

87. The EPA's scientific integrity policy encourages EPA scientists to engage with their peers in the industry, academia, government, and non-governmental organizations as long as it is consistent with their job duties. The policy explicitly states that this can include presenting their work at scientific meetings and actively participating in professional societies, and more. However, 3 EPA scientists that were scheduled to speak at a conference on climate change at Narragansett Estuary Bay were restricted [link:https://www.ucsusa.org/center-science-and-democracy/attacks-on-science/accumulating-evidence-federal-scientists-are-being#.WnDaRq6nFhF] from attending, in direct conflict with the agency's scientific integrity policy.
    a. Did you realize that this decision was in violation of the policy?

    I am committed to upholding EPA's Scientific Integrity Policy. Procedures have been put in place to prevent such an occurrence in the future.

b. Will you commit to ensuring that this type of flagrant violation will not happen again under your watch?

I am committed to upholding EPA's Scientific Integrity Policy, which ensures that the Agency's scientific work is of the highest quality, is presented openly and with integrity, and is free from political interference.

c. In the spirit of upholding scientific integrity in EPA decision making, will you commit to not politically interfere in science-based policy decisions at the agency, yes or no?

I am committed to upholding EPA's Scientific Integrity Policy. The policy recognizes the distinction between scientific information, analyses, and results from policy decisions based on that scientific information. Policy makers within the Agency weigh the best available science, along with additional factors such as practicality, economics, and societal impact, when making policy decisions.

88. You decided to postpone steam electric power plant effluent guidelines rule in September. Who are the stakeholders that you met with prior to making this decision? Additionally, please provide the analyses that helped you make this decision.

Meetings related to this issue are in the public record.

As part of EPA's overall regulatory review and in response to a petition in April 2017, EPA announced a proposal to postpone certain compliance dates in the 2015 Steam Electric ELG Rule in order to give full consideration to those concerns. After reviewing thousands of public comments to EPA's June 2017 proposed rule to postpone those dates, EPA finalized a rule in September 2017, postponing certain compliance dates in the 2015 Rule and announcing our intention to conduct subsequent rulemaking to potentially revise the limits for those wastestreams whose compliance dates were postponed dates.

89. Please explain why the EPA removed methylene chloride, NMP, and TCE from the Unified Agenda of Regulatory and Deregulatory Actions.

Under TSCA section 6(a), regulation of certain uses of methylene chloride, NMP, and TCE were proposed in 2016 and 2017. These actions were listed as Long-Term Actions on the Unified Agenda, meaning they are under development, but EPA did not expect to have a regulatory action within the year following publication of the Unified Agenda. The agency is currently considering the comments received in response to the 2016 and 2017 proposals, including comments suggesting that EPA quickly finalize these actions and comments suggesting that these actions be evaluated as part of the group of the first ten chemicals undergoing initial risk evaluations under the amendments to TSCA.

90. During the hearing I asked if you were inclined to grant an exemption to asbestos used by the chloralkali industry, which imports 95% of asbestos into the United States. You said that you would have to look into the issue. Now that you have had more time to study the issue, are you going to exempt asbestos used by the chloralkali industry from regulation?

It is premature for EPA to determine whether asbestos used by the chloralkali industry will be subject to regulation under TSCA. As required by amended TSCA under section 6(b)(4)(A), EPA must first conduct a risk evaluation to determine whether the chemical substance presents an unreasonable risk of injury to health or the environment under its conditions of use. EPA initiated the risk evaluation for asbestos in December 2016. Subsequently, in June 2017, EPA published the scope document as per TSCA section 6(b)(4)(D) for the asbestos risk evaluation. In this scope document, EPA identified asbestos diaphragms used by the chloralkali industry to produce chlorine and caustic soda as a condition of use that would be included within the scope of the asbestos risk evaluation. This risk evaluation must be completed within three years of initiation, with a possible extension of 6 months. If EPA determines from the risk evaluation that the conditions of use of asbestos by the chloralkali industry present an unreasonable risk of injury to health or the environment, then regulation would be pursued under TSCA section 6(a).

91. EPA has reduced climate change website access to at least 5,000 pages, possibly many more, of scientific, policy, and educational material paid for by taxpayer dollars over the past year. In the one example of content being partially returned to the website, all of the more than 200 climate-related webpages were omitted from what was previously a 380-page website titled "Climate and Energy Resources for State, Local, and Tribal Governments," which has now been renamed simply "Energy Resources for State, Local, and Tribal Governments." How do you justify such overt censorship of taxpayer-funded information that was created to help state, local, and tribal decision-makers protect the well-being of their constituents? Will you return this content to the EPA website so that the public can benefit from it again?

We are constantly updating our website to reflect new initiatives and projects of the Agency. Of course the site will be reflective of the current administration's priorities – with that said, all the content from the previous administration is still easily accessible and publicly available-through the banner across the top of the main page of the site.

92. According to the Paperwork Reduction Act, 44 USC § 3506(d)(3), all agencies must "provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products." The news release announcing that the EPA was overhauling its website was published the same day that the EPA removed the vast majority of its climate change website, thousands of webpages -- the public did not

have an opportunity to provide comment or express its concerns. How do you justify overtly disregarding this process and failing to notify the public?

We are constantly updating our website to reflect new initiatives and projects of the Agency. Of course the site will be reflective of the current administration's priorities – with that said, all the content from the previous administration is still easily accessible and publicly available-through the banner across the top of the main page of the site.

93. While Dr. Michael Dourson was under consideration to be Assistant Administrator of the Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention (OCSPP), he was employed as a senior adviser at the EPA.
    a. What was Dr. Dourson's job title and type of appointment?

       Dr. Dourson was a Senior Advisor to the Administrator. His position was a Non-Career Senior Executive Service Limited Term position located in the Office of the Administrator. He has since left the agency.

    b. Whom did he supervise?

       Dr. Dourson did not have any supervisory responsibilities.

    c. Did you delegate any duties of the OCSPP to him? If so, what were they?

       Dr. Dourson did not have any OCSPP duties delegated to him.

    d. What projects did Dr. Dourson work on while at EPA and what was his role related to these projects?

       Dr. Dourson was a Senior Advisor to the Administrator, a position located in the Office of the Administrator. He advised on issues related to chemical safety.

    e. What monetary and non-monetary compensation did Dr. Douson receive while he was employed at EPA?

       A Comprehensive search could not be performed by the submission of this document.

    f. Please provide Dr. Dourson's daily schedule while he was at EPA.

       A Comprehensive search could not be performed by the submission of this document.

94. You claim that special interest groups have been circumventing the regulatory process through litigation, resulting in creation of regulation via consent decrees and settlement agreements. However, EPA has been making "policy decisions" of late that do just that--circumvent the rulemaking process. EPA's January 25 guidance allowing the downgrade of source status from "major" to "area" has a major impact on reporting and compliance requirements, yet this new benefit to industry did not undergo the required regulatory process under the Administrative Procedures Act.
    a. Please describe how EPA is increasing transparency and improving public engagement with respect to making the decision to downgrade source status for industries without a rulemaking, and how this is an improvement to public health and the environment.

EPA's issuance of the January 25, 2018 guidance memo provided the public with notice of EPA's plain language reading of the statutory terms "major source" and "area source". The public was notified of the memorandum through a notice published in the Federal Register on February 8, 2018. Further, EPA will be providing for public engagement through an opportunity for public comment on the plain language reading of the statute discussed in the January 25 memo. As stated in the memo, EPA expects to "publish a Federal Register notice to take comment on adding regulatory text that will reflect EPA's plain language reading of the statute as discussed in this memorandum." EPA staff are currently working on a proposed rule package. Finally, we disagree with the assertion that EPA somehow circumvented the regulatory process in issuing the memo. The January 25 guidance memo provides EPA's reading of the plain language of statutory terms in the Clean Air Act and withdrew a prior guidance memorandum that had been issued without notice and comment rulemaking. The Supreme Court (in Perez v. Mortgage Bankers Association, 135 S.Ct. 1199, 1206 (2015)) has recognized that EPA and other agencies may revise and withdraw policies issued through guidance without conducting a notice and comment rulemaking.

95. Facilities will now have the ability to downgrade to an area source without needing to comply with maximum achievable control technology (MACT) standards, which require control efficiencies of 95% and higher. Please explain how the emissions reductions from MACT standards will be achieved when you are allowing sources to be recategorized as area sources.

In the January 25, 2018, guidance memorandum titled "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act," EPA addressed the question of when a major source subject to a MACT standard may be reclassified as an area source and avoid being subject to major source requirements. The memo states that the plain language of the definitions of "major source" and "area source" in CAA section 112(a) compels the conclusion that a major source becomes an area source at such time as the source takes an enforceable limit on its potential to emit (PTE) hazardous air pollutants (HAP). Under this plain reading of the CAA, sources of HAP previously classified as "major sources" may be

reclassified as "area" sources when the facility limits its PTE below major source thresholds using a federally enforceable mechanism. There is no time limitation supported within the plain reading of the CAA Section 112 definitions of major and area source.

96. Historically, environmental organizations have sued EPA due to lack of agency action on implementation of critical environmental laws, resulting in court decisions that force EPA to take action...or as you refer to it, sue and settle. What other courses of action can special interest groups pursue when EPA does not meet statutory deadlines?

    EPA published its FY 2018-2022 Strategic Plan on February 12, 2018. Within that plan, EPA included a strategic measure (SM-19 within Objective 3.2) to meet 100% of legal deadlines imposed on EPA by September 30, 2022. You can view that plan here: https://www.epa.gov/sites/production/files/2018-02/documents/fy-2018-2022-epa-strategic-plan.pdf. Moreover, special interests groups, and others alike, can always choose to exercise the rights provided to them by the law.

97. In your Sue and Settle directive, you issued a memo to EPA managers (https://www.epa.gov/sites/production/files/2017-10/documents/signed_memorandum_in_support_of_consent_decree_and_settlement_agreement_oct162017.pdf) discussing how past practices of EPA have harmed the American public. In this memo, you say that EPA has met with outside groups behind closed door and excluded other interested stakeholders, essentially accusing EPA's Office of General Counsel of collusion. Is it your position that EPA lawyers are liable for collusion? If you believe that collusion has occurred, are you aware that many state bar associations consider collusion grounds for attorney discipline or even debarment? Was it your intention to endanger the status of all EPA attorneys?

    The Memorandum to which you are referring is not a set of conclusions made at the end of a case-by-case investigation, but rather describes general concerns of those outside of the agency who wanted to participate in the process for resolving a particular case but could not. As the related Directive explained, *"It has been reported*, however, that EPA has previously sought to resolve lawsuits through consent decrees and settlement agreements that appeared to be the result of collusion with outside groups." (Emphasis added.) While the words "It has been reported" do not also appear in the Memorandum, the intent of the statements was the same. It is not my position that EPA lawyers have violated their bar obligations.

98. It has been reported that the grant review process at EPA has been captured by political appointees.
    a. Can you please describe how the EPA is currently reviewing grants?

    Please see Attachments 6 and 7.

b. Why is the EPA specifically targeting grants that are dealing with climate change and climate impacts?

The purpose of the grant solicitation review process EPA has in place is consistent with previous administrations. Under our current grant solicitation review process, grant solicitations are prepared by program and regional staff, who then consult with a centralized review to ensure the expenditures of EPA funds are consistent with agency priorities. This process is similar in nature to long standing agency practice for grant awards, under which political appointees heading EPA program and regional offices consult with career staff as they approve or disapprove grants.

Further, the EPA solicitation review process only addresses competitive grants. State, tribal and local governments receive the vast majority of EPA grant funding on a non-competitive basis for continuing environmental programs and state revolving loan funds for water infrastructure projects. These funds are allocated based on statutory, regulatory or program policy formulas that take into account a variety of factors. The process EPA has established for reviewing competitive solicitations does not impact these grants.

Senator Sanders:

Climate Change

99. During a recent interview with KSNV TV, you stated:

> "Is (global climate change) an existential threat? Is it something that is unsustainable, or what kind of effect or harm is this going to have? I mean, we know that humans have most flourished during times of what? Warming trends. I think there's an assumption made that because the climate is warming, that (warming) is necessarily a bad thing. Do we really know what the ideal surface temperature should be in the year 2100? In the year 2018? I mean it's fairly arrogant for us to think that we know exactly what it should be in 2100."

The Trump Administration's *Climate Science Special Report*, the United Nation's Intergovernmental Panel on Climate Change's *Fifth Assessment Report*, and the Department of Defense's *National Security Implications of Climate-Related Risks and a Changing Climate* report all found with high confidence that global climate change and rising global temperatures are likely to cause rising sea levels and increase crop failures, hunger, illness, and extreme weather. The Department of Defense's report identified these factors as clear risks to the United States' national security.

In January, the National Oceanic and Atmospheric Administration published a technical report that predicted that rising global temperatures could cause global mean sea levels to rise over ten feet by 2100. This sea level rise would displace more than 30 million Americans and mostly or completely cover Cape Canaveral, the U.S. Naval Academy, the Massachusetts Institute of Technology, the John F. Kennedy International and San Francisco International airports, and the Mar-a-Lago resort, among other prominent localities. Given the level of destruction anticipated, would you consider these outcomes to "necessarily be a bad thing"?

In January, the peer-reviewed journal, *Nature Climate Change*, published a report predicting that 260,000 people around the world will die annually by 2100 due to decreasing air quality and rising global temperatures. If global climate change and decreasing air quality were to cause this level of increase in annual deaths, would you consider that outcome to "necessarily be a bad thing"?

In 2012, the independent humanitarian group DARA estimated that between 2012 and 2030, 150,000 people around the world will die annually due to infections and 360,000 people will die annually due to hunger and malnutrition related to rising global temperatures. If a warming climate were to cause this type of increase in illness, would you consider that outcome to "necessarily be a bad thing"?

The Union of Concerned Scientists estimates that if global warming emissions continue to grow unabated, the annual economic impact of more severe hurricanes, residential real-estate losses to sea-level rise, and growing water and energy costs could reach 1.9% of the U.S. GDP by 2100. They also estimate that a sea-level rise of 13-20 inches by 2100

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would threaten insured properties in U.S. Northeast coastal communities valued at $4.7 trillion. If a warming climate were to cause these types of economic impacts, would you consider that outcome to "necessarily be a bad thing"?

EPA recognizes the challenges that communities face in adapting to a changing climate. EPA works with state, local and tribal governments to improve infrastructure to protect against the consequences of climate change and natural disasters. EPA also promotes science that helps inform states, municipalities, and tribes on how to plan for and respond to extreme events and environmental emergencies. Moving forward, EPA will continue to advance its climate adaptation efforts, and have reconvened the cross-EPA Adaptation Working Group in support of those efforts.

Human activity impacts our changing climate in some manner. The ability to measure with precision the degree and extent of that impact, and what to do about it, are subject to continuing debate and dialogue.

Lead

100. You have stated that "[l]ead poisoning is an insidious menace that robs our children of their intellect and their future." This is especially true for children living in communities of color, who are most likely to suffer from lead exposure and poisoning. According to the Center for Disease Control, African American children are over three times as likely to have highly elevated blood-lead levels. African American and Latino communities are often more likely to live near active battery recyclers, industrial sites, or highways, and to live in older housing that are sources of high levels of lead. In addition, a 2012 study found that lead exposure resulted in greater cognitive detriment for children with a lower socioeconomic status. Scientists agree that there is absolutely no acceptable level of lead exposure for children.

Based on your own statement, will you commit to eradicating lead exposure for America's children? How will you work with other leaders in the Administration to ensure the safety of our children, including those in more vulnerable communities?

Since the 1970s, EPA and other federal agencies have implemented numerous actions resulting in a significant reduction of lead exposure throughout our country and significantly lower blood lead levels in children. According to the Centers for Disease Control and Prevention, no safe blood lead level in children has been identified and even low levels of lead in blood have been shown to affect IQ, ability to pay attention, and academic achievement. Now, tackling the problem at this stage will benefit from a coordinated federal-wide effort. To this end, EPA is collaborating with our federal partners to address the remaining exposures and to explore ways to increase our relationships and partnerships with states, tribes, and localities. As Co-chair of the President's Task Force on Environmental Health Risks and Safety Risks to Children, EPA Administrator Scott Pruitt recently hosted a meeting of principals from the 17 Federal departments and agencies on the

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President's Task Force. At the meeting, the Task Force members, including EPA Administrator Scott Pruitt, committed to make addressing childhood lead exposure a priority and to quickly develop a new federal strategy to reduce childhood lead exposures. At EPA, this includes identifying and seeking to appropriately address disproportionately high and adverse childhood lead exposure in minority and low-income communities.

101. In 2015, the Natural Resource Defense Council found that more than 18 million Americans were served by community water systems that had violated the EPA's Lead and Copper Rule, which limits the concentration of lead and copper in public drinking water. You estimated it would cost "as much as $30 billion or maybe upward of $50 billion" to replace all the lead service lines across the country, implying that this price tag is too high. However, Fitch Ratings, an independent credit rating agency, has estimated that the capital costs to replace these lines could be over $275 billion. Based on the discrepancy in these figures, please detail how you arrived at your estimate, and explain why it is so much lower than that of Fitch Ratings.

EPA's cost estimate to fully replace all lead service lines is $30-$47 billion.

The EPA cost estimate cost range accounts for uncertainty regarding the total number of lead service lines that remain in service. National surveys completed by the American Water Works Association indicate that between 6.5 and 10 million lead service lines may exist. The expense of a lead service line replacement can vary between $1,200 and $12,300, based on a number of factors, including the replacement technique, the length of the service line, if the replacement is coordinated with other infrastructure work, if the street needs to be cut and repaved, and if landscaping restoration is included. EPA estimates that an average lead service line replacement cost is $4,700 per line. Given the average cost of replacing a lead service line and the estimated range of lead service lines in the country, the total cost of replacing all lead service lines may range from $30 to $47 billion.

We would also note that Fitch Ratings retracted their initial cost estimate of $275 billion on March 8, 2016, just a few days after its initial reporting on March 4, 2016, and provided a revised estimate of "a few billion to $50 billion." Their updated cost estimate is in line with EPA's estimate.
https://www.freep.com/story/news/local/michigan/flint-water-crisis/2016/03/08/rating-agency-corrects-lead-pipe-replacement-estimate/81499712/

EPA Website

102. On April 28, 2017, the EPA removed its climate change website. To this day, the removed pages redirect to a notice stating, "we are currently updating our website to reflect EPA's priorities under the leadership of President Trump and Administrator Pruitt." The EPA did not announce the overhaul prior to its start date and has not yet provided a justification for the removals.

According to the Paperwork Reduction Act, all agencies must "provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products." The EPA's announcement regarding its website overhaul was published on the same day that the EPA removed the vast majority of its climate change website, and therefore the public did not have an opportunity to provide comment or express concerns.
Does the EPA generally take public comments into account when making these types of decisions?

Can you please explain how announcing an overhaul of the climate website on the same day changes were made constitutes "adequate notice" under the Paperwork Reduction Act?

We are constantly updating our website to reflect new initiatives and projects of the Agency. Of course the site will be reflective of the current administration's priorities – with that said, all the content from the previous administration is still easily accessible and publicly available-through the banner across the top of the main page of the site.

103. On February 2, 2018, the Associated Press reported that internal EPA emails, released following a Freedom of Information Act request by the Environmental Defense Fund, show that you personally monitored efforts to overhaul the EPA's climate change website. One email from Lincoln Ferguson, an EPA senior advisor for public affairs, states:

> "How close are we to launching this on the website? The Administrator would like it to go up ASAP. He also has several other changes that need to take place."

Did the EPA, under your leadership, remove the content of the EPA's climate change website and replace the removed pages with a notice stating "this page is being updated to reflect the agency's new direction under President Donald Trump and Administrator Scott Pruitt"?

Was this overhaul announced prior to its start date? If not, why not?
Please provide a specific time for the EPA's climate change website to come back online.

We are constantly updating our website to reflect new initiatives and projects of the Agency. Of course the site will be reflective of the current administration's priorities – with that said, all the content from the previous administration is still easily accessible and publicly available-through the banner across the top of the main page of the site.

104. Did the EPA, under your leadership, remove web resources providing information about the benefits of the Clean Power Plan months before the proposed rulemaking to withdraw the rule?

If so, did the EPA remove website information regarding what was, at the time, current EPA policy before initiating the appropriate rulemaking process?

We are constantly updating our website to reflect new initiatives and projects of the Agency. Of course the site will be reflective of the current administration's priorities – with that said, all the content from the previous administration is still easily accessible and publicly available-through the banner across the top of the main page of the site.

Renewable Energy

105. In October 2017, you said that if it were up to you, you would do away with the Renewable Electricity Production Tax Credit and the Investment Tax Credit for wind and solar. You stated:

> "I'd let (solar and wind) stand on their own and compete against coal and natural gas and other sources, and let utilities make real-time market decisions on those types of things as opposed to being propped up by tax incentives and other credits that occur, both in the federal and state level."

As you may know, the United States currently wastes billions of dollars each year subsidizing the fossil fuel industry. Since you believe energy tax credits should be eliminated to let technologies "stand on their own," do you also believe we should eliminate fossil fuel subsidies to let coal, oil and gas "stand on their own" as well? If so, what actions are you taking to eliminate the unfair subsidization of certain energy resources?

My personal view is that the federal government ought not use the tax code to pick winners and losers. As you may know, it is the province of the legislative branch to establish tax credits. EPA does not have a formal role in this process.

Senator Van Hollen:

106. You have noted repeatedly – more than a dozen times in your appearances before Congress and in your testimony for today– that EPA's only authority is the "rule of law" or "the authority given to it by Congress".

The updates to the Toxic Substances Control Act Congress enacted in 2016 directed EPA to assess the safety of new chemicals before they go onto the market. The law says that EPA, quote, "shall issue an order" regulating the chemical in order to protect against the danger the new chemical may pose.

On January 17th of this year, you told CBS News that EPA should not regulate new chemicals using orders even though the law clearly says otherwise. Your views appear to be in direct conflict with the law Congress wrote.

Mr. Pruitt, will you direct EPA staff to issue orders to regulate the safety of new chemicals under all circumstances in which the law says that orders are required?

As directed by Congress, under TSCA, EPA reviews new chemicals for unreasonable risk, and where necessary takes action to protect against such risk before a new chemical may be commercialized. Where EPA makes one of the determinations that call for an order under the statute – for example, that there is insufficient information to permit a reasoned evaluation of the chemical's effects – EPA will issue an order.

107. I appreciated your recent announcement that that you have decided not to abandon proposed EPA oversight of the massive Pebble Mine, leaving restrictions in place while the Agency receives more information on the potential mine's impact on the region's world-class fisheries and natural resources. Given EPA's role in this process, would you say that EPA can contribute valuable feedback to the development of projects, be they energy, mining, or transportation? Given EPA's valuable feedback, would you object to efforts to roll back EPA's responsibilities to provide input on infrastructure projects?

Regarding the Pebble Mine project, EPA's decision to suspend its proposal to withdraw the proposed determination under Clean Water Act section 404(c) does not impede the review of Pebble Limited Partnership's permit application by the Army Corps of Engineers under the normal Clean Water Act process. However, the Corps cannot issue a permit during the pendency of the section 404(c) process, and EPA will ensure protection of the world-class fishery in the Bristol Bay region. EPA looks forward to working with the Corps as the Corps assesses the permit application.

Commented [FEHHE48]: CEQ

As to your broader question, EPA strongly supports the President's infrastructure initiatives and associated efforts to significantly improve predictability, timeliness, and consistency in the permitting of urgently needed infrastructure projects. The Agency is working under the President's direction to streamline and improve EPA's

role in the review of new infrastructure projects to help to assure they are reviewed and permitting decisions are made without unnecessary delay.

Senator Wicker:

108. Do you support providing hardship exemptions from Renewable Fuel Volume Obligations (RVOs) for small refineries experiencing disproportionate economic impacts from high RIN prices?

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its renewable fuel volume obligations for a given year based on a small refinery's demonstration of "disproportionate economic hardship" in that year. The statute also directs EPA to consult with the Department of Energy (DOE) in evaluating small refinery exemption petitions. EPA will grant a hardship exemption if we conclude, after review of available information and in consultation with DOE, that a refinery will experience disproportionate economic hardship that can be relieved in whole or in part by removing its RFS obligations for that year.

Senate Committee on Environment and Public Works
"Oversight Hearing to Receive Testimony from Environmental Protection Agency Administrator Scott Pruitt"
Questions for the Record for Administrator Scott Pruitt
January 30, 2018

Chairman Barrasso:

1. At the beginning of this Administration, prior to your confirmation, EPA alleged that Wyoming contributed to ozone problems in Douglas County, Colorado under the 2008 ozone National Ambient Air Quality Standards (NAAQS). To reach this conclusion, EPA applied a methodology designed for Eastern states.

   Western states have different topographies, higher altitudes, and different weather patterns than Eastern states. In addition, Western states have higher frequencies of wildfires than the East. Under EPA's "one-size-fits-all" model, EPA projected that a tiny amount of emissions would move from Wyoming to Colorado. EPA then imposed additional regulatory burdens on Wyoming. I raised my serious concerns and objections to EPA's action in a recent letter to you on January 19, 2018 (attached).

   In your oral testimony, you stated that EPA is evaluating challenges with international air transport. In a February 1, 2018 response to my letter from Bill Wehrum, Assistant Administrator for the Office of Air and Radiation (attached), he stated EPA plans to work with states "early this year to provide more information and flexibility as [states] look to address interstate transport issues under the 2015 ozone NAAQS." Will EPA also address any remaining interstate transport issues concerning other NAAQS, including the 2008 ozone NAAQS issue identified in my letter? If so, do you have an anticipated timeline for addressing these issues?

   On October 27, 2017, EPA issued a memorandum providing information to assist states' efforts to develop, supplement, or resubmit their "good neighbor" state implementation plans (SIP) for the 2008 ozone National Ambient Air Quality Standards (NAAQS). We noted in this memorandum that states may be able to rely on the modeling information conveyed with the memorandum as part of a demonstration of compliance with the good neighbor requirements. We believe this information will be helpful to any state working to resolve its 2008 good neighbor status, including Wyoming.

   In addition, within the next few weeks, the EPA expects to provide additional air quality modeling data for ozone, including projected ozone concentrations at potential nonattainment and maintenance receptor sites for the 2015 ozone NAAQS and projected upwind state contributions to those potential receptors. All states may use this forthcoming information as they develop or review state implementation plans that address the Clean Air Act good neighbor provision for the 2015 ozone NAAQS. We also intend to work closely with states to explore additional flexibilities

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as to how they use this information in developing their good neighbor SIP submittals for the 2015 NAAQS.

EPA will continue to work with Wyoming to fully address their good neighbor transport requirements for both the 2008 and the 2015 ozone NAAQS.

2. During the hearing, I asked you about 46 outstanding exceptional events filings from the State of Wyoming that EPA has yet to act on. As I mentioned during the hearing, I expressed my concern with EPA's decision not to act on these filings in 2016. Do you have a date by which EPA anticipates it will act on Wyoming's 46 petitions that I highlighted?

   In an April 2016 letter to the Wyoming Department of Environmental Quality (WDEQ) regarding exceptional event demonstrations for calendar years 2011-2014, EPA Region 8 communicated that its review of the demonstrations submitted indicated that, although the flagged PM and ozone data in the demonstrations may have been influenced by exceptional events, the data were not anticipated to be involved in any pending regulatory decision by the EPA. The status of this data has not changed. Therefore, consistent with the approach articulated in the proposed and finalized in the 2016 revisions to the Exceptional Events Rule, the EPA has not made a concurrence/nonconcurrence decision on the demonstrations submitted. However, as noted in the April 2016 letter, and as is the case with the deferred Wyoming demonstrations, if at some point in the future the flagged data were to potentially influence an attainment demonstration or be involved in other regulatory decisions, the EPA would then undertake a full review of the submitted demonstrations to allow a concurrence/nonconcurrence decision at that time.

   If an air agency submits a demonstration that the EPA has determined to not have regulatory significance, then the EPA may respond to the air agency with a notification of "deferral." Deferred demonstrations are considered to be "closed out" (i.e., no longer pending). The EPA considers the 46 demonstrations referenced in the April 2016 letter to be "closed out," unless the flagged data would influence a regulatory decision.

   EPA Region 8 met with Wyoming's Air Director and the Manager for the Air Quality Resource Management Program on February 28, 2018, to discuss options for addressing future potential exceptional events Wyoming flags that may not have a regulatory use at the time the event is flagged. Follow-up discussions will occur over the next several months.

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The revised Exceptional Events Rule includes an initial notification process to enable early engagement regarding whether events could qualify as exceptional and/or have regulatory significance, which in turn should help inform the state's decision regarding whether to submit an exceptional events demonstration. For those demonstrations with regulatory significance, the rule includes intended timelines for EPA to respond to submitted demonstrations within 120 days and to complete review of final demonstrations within 12 months.

3. As you know, the U.S. Army Corps of Engineers is the agency that makes the vast majority of jurisdictional determinations to identify waters that are regulated under the Clean Water Act. However, according to testimony before this Committee on April 26, 2017, the Corps was not included fully in the process of developing the 2015 Waters of the U.S. (WOTUS) rule.

   In fact, the Corps did not believe that the rule and preamble, as ultimately finalized, "were viable from a factual, scientific, analytical, or legal basis" and "it would be incredibly difficult for Corps leaders, regulatory and legal staff to advance and defend this rule…."

   How will you ensure adequate coordination occurs between the EPA and Corps of Engineers in developing future regulations to delineate the jurisdiction of the Clean Water Act?

   Close coordination between EPA and the Department of the Army is a priority as we work to develop the joint rulemaking. EPA and the Army Corps of Engineers are working closely to implement the Presidential Executive Order on "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule." The agencies' leadership and staff routinely meet and work products are developed jointly.

4. Last year, this Committee heard testimony about barriers under the Clean Air Act to the adoption of technologies that would reduce emissions and/or improve efficiency at power plants and other industrial facilities. Witnesses repeatedly stated that the New Source Review (NSR) program discouraged such projects. I am encouraged that both you and Bill Wehrum, Assistant Administrator for the Office of Air and Radiation, have identified NSR reform as a top priority for the Agency.

   What can this Committee – and Congress as a whole – do to assist you in these efforts and develop bipartisan support for reforms moving forward?

At this time, EPA has not suggested specific legislative actions to reform the NSR program. However, EPA can provide technical assistance for any proposed legislative actions that the Committee develops. More broadly, the agency will continue to issue interpretive rules, guidance and policy memoranda, and, where appropriate, will conduct notice-and-comment rulemakings to reform NSR. These actions will provide increased regulatory certainty to covered entities encouraging investment in more efficient, environmentally beneficial technologies.

5. Last year, Congress passed the bipartisan Water Infrastructure for Improvements to the Nation (WIIN) Act. On September 14, 2017, EPA granted petitions to reconsider a final rule that regulates coal combustion residuals (CCR) as nonhazardous waste under the Resource Conservation and Recovery Act (RCRA). You stated the purpose of reconsideration is as follows: "In light of EPA's new statutory authority [under the WIIN Act], it is important that we give the existing rule a hard look and consider improvements that may help states tailor their permit programs to the needs of their states, in a way that provides greater regulatory certainty, while also ensuring that human health and the environment remain protected."

   I support EPA's commitment to assure that the CCR rule provides adequate flexibility and authority to states. Does EPA have an anticipated timeline for completing this reconsideration so that states and regulated entities have maximum flexibility and regulatory certainty as soon as possible?

   Yes, the agency does have a timeline for completing its reconsideration of the CCR rule. On March 1, 2018, EPA signed a proposal that includes regulatory language for those provisions where, as a result of its reconsideration, EPA has preliminarily determined that regulatory changes may be appropriate and is seeking public comment on those proposed changes. EPA anticipates the proposal will be ~~for~~ published in the Federal Register shortly. EPA further anticipates that it will complete its review of the remaining provisions under reconsideration, and, if it determines that regulatory changes are appropriate, will sign an additional proposal by September 30, 2018.

6. Over the last several years, increased efficiency of gas fueled vehicles and relatively low gas prices have led to fewer than projected consumer purchases of electric vehicles relative to gas fueled vehicles. Current data show how gas prices have been lower than projected in 2012 when vehicle standards were established by EPA and the Department of Transportation's (DOT) National Highway Traffic Safety Administration (NHTSA).

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In 2012, EPA issued standards for light-duty vehicles for MY 2017-2025, and committed to conduct a Midterm Evaluation (MTE) by April 1, 2018. I applaud the EPA's decision last year to reconsider the evaluation issued at the end of the last administration, which was issued under a rushed timeline and without adequate coordination with NHTSA. As you complete the MTE, will you commit to use the best available, current data and collaborate with NHTSA?

Yes, I am committed that EPA will use the best available data, and collaborate with NHTSA, as EPA completes the Midterm Evaluation of the light-duty vehicle greenhouse gas standards for model years 2022-2025. In August 2017, EPA opened a new 60-day comment period to allow stakeholders to submit any comments, data, or information they believe relevant to my reconsideration of the Final Determination. EPA also held a public hearing on September 6, 2017. EPA received more than 290,000 comments, and is in the process of reviewing the new data and information, along with continued review of the body of research already in the record. My new decision on the Midterm Evaluation will be based on the best available data, and EPA will continue to collaborate with NHTSA.

7. In 2016, the U.S. imported roughly 700 million gallons of biodiesel. Last year, EPA considered reducing the renewable fuel volume obligations (RVOs) for biomass-based diesel (BBD) for 2018 and 2019. EPA explained that it "could consider the availability of imports as one factor among others in determining whether to exercise its discretion to use the waiver authority." About the same time, the U.S. International Trade Commission imposed tariffs on imported biodiesel from Argentina and Indonesia. Imports of biodiesel from these two nations declined in 2017 and may decline further this year.
    a. How did EPA account for this foreseeable decrease in the supply of imported biodiesel when it set the 2019 RVOs for BBD?
    b. If U.S. BBD production does not materially increase in 2018, is EPA prepared to reduce the 2020 RVOs for BBD below 2019 levels? If not, why not?
    c. How does relying on imported biodiesel advance the Renewable Fuel Standard's purported objective of improving U.S. energy security?

Biodiesel and renewable diesel are both international markets. As such, any action, such as the tariffs mentioned, will have multiple ripple effects which may offset some or all of the direct impacts targeted. EPA has considered the uncertainty surrounding imported biofuel in setting the RFS standards. We also considered the potential for increased domestic production of biodiesel and renewable diesel, as well as increased imports from countries unaffected by the tariffs. Further, the BBD standard itself was not set at the limit of projected supply. In setting the volume target for BBD for 2019, EPA noted that the number of RINs anticipated to be available for compliance exceeded the volume required to meet the BBD standard. The advanced biofuel and total renewable fuel standards provide an incentive for additional biodiesel volume beyond what is required by the BBD standard. Specifically, while the 2019 BBD volume target was maintained at 2.1

billion gallons, we estimated that approximately 2.6 billion gallons would be used to meet the advanced biofuel standard. As it did in evaluating the 2018 advanced biofuel standard, EPA will assess the supply of imported biodiesel in setting the 2019 advanced biofuel and 2019 BBD percentage standards. EPA will conduct a similar analysis when determining the 2020 BBD volume target.

U.S. energy security includes a measure of the diversity of fuel sources as well as the geopolitical condition of the sources. Increasing diversity (such as through use of biofuels from a variety of countries) could reduce risks associated with a potential disruption of supply. Thus, while biofuel imports may not contribute to energy independence, they may still contribute to the energy security of the United States.

Commented [FEHHE1]: OMB: Suggest that EPA reference the growing amount of oil production in the U.S. since EISA 2007 and that the U.S. is becoming more energy secure and independent in large part due to more domestic production.

8. On December 23, 2016, GE submitted a completion report showing that it had completed implementation of EPA's plan for the cleanup of PCBs from the Hudson River. At that time, GE asked EPA to certify that the project is complete,[1] in accordance with a 2005 Consent Decree signed by GE and the EPA.[2] In that Consent Decree, EPA agreed to grant a certification of completion within 1 year of GE's submission of the completion report.[3] That has since passed, but to date the agency has yet to make a decision on the certificate of completion. When do you expect the agency to make a decision on the certificate of completion?

   EPA provided GE with a response to its submission of the completion report within the agreed-upon timeframe, stating that the Agency is now carefully reviewing input provided by our state and federal partners at the end of 2017 regarding the Certification of Completion of the Remedial Action requested by GE. In addition, EPA recently began an analysis of sediment data collected by the New York State Department of Environmental Conservation (DEC) in late 2017, and we continue to consider the extensive input received from a wide range of stakeholders about the second Five-Year Review report, which was released for public comment in June 2017. EPA will continue to work with our colleagues at DEC in analyzing and reaching scientific consensus on the new sediment data. Therefore, EPA will not

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[1] "EPA is currently reviewing GE's Remedial Action Completion Report, which the company submitted to EPA, the federal natural resource trustees and New York State in December 2016." Proposed Second Five Year Review Report (2017) at pg. 20 (https://www.epa.gov/sites/production/files/2017-06/documents/hudson_second_five-year_review_report.pdf)

[2] See Consent Decree (https://www3.epa.gov/hudson/consent_decree/consent_decree.pdf)

[3] Consent Decree (Pgs. 40-41): paragraph 57.b (GE GE "shall submit to EPA, for review and approval, a Remedial Action Report . . . request[ing] EPA's Certification of Completion of the Remedial Action"); 57.d ("If EPA concludes . . . that the Remedial Action has been performed in accordance with this Consent Decree, EPA will so certify in writing"); 57.e ("EPA will respond to such request [for Certification] no later than 365 days after EPA's receipt of the request")

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have a decision regarding the issuance of the Certificate of Completion of Remedial Action until the data from these samples have been fully analyzed.

It is important to note that ~~when issued, the Certification of Completion of the Remedial Action does not in any way suggest that the cleanup is~~ even if EPA certifies the Remedial Action to be completed, the cleanup will not be **finished. In the Record of Decision, EPA projected that construction of the remedy (including dredging, backfilling, and habitat reconstruction) would be performed over six years, to be followed by decades of "monitored natural attenuation" or "MNA," during which PCBs remaining in the river after dredging would gradually decrease until the remedial goals are achieved. MNA is also part of the cleanup, and during the entire period of MNA, GE is required to perform "Operation, Maintenance and Monitoring" of the remedy, which includes an extensive program that includes monitoring of sediments, water quality and fish, as well as monitoring of the caps that were installed on portions of the river bottom, and repairing those caps should any damage occur. Once all the work required by the consent decree is complete, the consent decree authorizes EPA to issue a further certification, known as a Certification of Completion of the Work. We do not anticipate issuing this certification before the remedial goals are achieved.**

Commented [FEHHE2]: DOJ: The original wording suggests that EPA has already decided to issue the Certificate of Completion. It is not a foregone conclusion that EPA will issue it; under the consent decree, EPA need only respond to GE's request to do so within one year.

9. In December 2017, EPA announced "a cross-agency effort to address per and polyfluoroalkyl substances (PFAS)."
    a. Is EPA collaborating with other federal agencies, state agencies, or other stakeholders on this initiative? If so, how are these entities contributing to EPA's cross-agency effort?

       EPA is actively collaborating with other federal, state, and local communities to provide tools and technical assistance to communities that are addressing PFAS contamination.As part of this effort, EPA has begun working with states and other federal agencies to develop toxicity values for additional PFAS chemicals, develop new methods for sampling PFAS chemicals in the environment, and identify treatment techniques to remove PFAS in drinking water and other environmental media. EPA is also working with stakeholders to identify best practices and develop risk communication tools to assist states, tribes and local communities address concerns with PFAS in the environment. In addition, EPA continues to conduct research to develop additional technical tools that will be helpful as the agency works with its partners to address this important issue.

       Commented [GCDE3]: Why doesn't EPA mention that PFOA and PFOS were included on the CCL list and are being evaluated for Regulatory Determination?

    b. Will EPA provide the public with updates on EPA's progress and an opportunity to comment on EPA's work? If so, when do you anticipate this taking place?

Yes, EPA will continue engaging with a broad set of stakeholders, including states and local communities. To date, EPA's communication efforts have included, but not limited to EPA's website (www.epa.gov/pfas), EPA hosted webinars, organizational meetings (for example the Spring 2018 Environmental Council of the States (ECOS) Meeting in March 2018), and community meetings in PFAS-impacted areas. EPA will provide additional engagement opportunities throughout the coming year.

c. How will EPA's cross-agency effort help inform ongoing and future state and local efforts to address PFAS?

EPA has brought together expertise from across the agency including top scientists from EPA's air, chemicals, land, research, and water offices. In addition to a cross-program effort, the agency has also tapped its regional offices to enhance cooperation with partners at the state and local levels and to provide on-the-ground knowledge about specific issues to address PFAS nationwide. By integrating cross-media expertise and experiences, EPA's PFAS team is well positioned to support and work side-by-side with our state, local and tribal partners to address state and local PFAS efforts.

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Ranking Member Carper:

10. EPA's February 1, 2018 Report to Congress on the Integrated Risk Information System (IRIS) states that EPA has already contracted with the National Academy of Sciences for peer review of the formaldehyde human health assessment.
    a. I have been informed that the human health assessment for formaldehyde was completed by IRIS staff months ago. Is that accurate?

       The National Academy of Science (NAS) identified numerous significant recommendations for improving the science that underlies the formaldehyde IRIS assessment. As noted by EPA staff during the February 2018 NAS workshop to review advances made to the IRIS process, the Agency is working to fully implement the NAS recommendation in all IRIS assessments released moving forward.

    b. If so, why has the health assessment not yet been released i) for intra-agency review, ii) inter-agency peer review, iii) for public comment and iv) to the NAS for peer review, and when will each such step occur?

       EPA is committed to ensuring that the IRIS program provides high-quality assessments that adhere to the highest standards of scientific review. Prior to releasing any assessment, EPA NCEA conducts a rigorous and robust review process to ensure that Agency decisions to protect human health are based on high quality science.

       Commented [WCSE4]: Non-responsive. Please revise.

    c. If not, please describe precisely what work remains to be completed before each step described above can occur, along with time estimates for each step.

       The Agency is moving away from a "one-size-fits-all" approach to hazard assessment towards assessment products that meet specific decision contexts. As such, any assessment will be evaluated to ensure that it can adequately meet Agency needs and support regulatory priorities in a timely manner.

       Commented [WCSE5]: Non-responsive. Please revise.

    d. Please provide me with an un-redacted copy of the current draft of the IRIS human health assessment for formaldehyde.

       The Agency does not release any products that have not undergone proper quality review.

11. From January 20, 2017 until the present, please provide information regarding all meetings (including conference calls) related to the formaldehyde human health assessment, including the date, attendee names (and for non-EPA employees, their affiliations) and copies of any materials prepared for or obtained from each such meeting. Please also provide the same information for meetings EPA staff may have attended related to formaldehyde more generally.

We are working to gather this information with regard to ORD's external meetings and will provide this information to you as soon as possible.

12. The Report to Congress states that the IRIS staff have operationalized the "systematic review" process used to determine which and how scientific studies can be relied upon to inform IRIS assessments.
    a. Please provide me with a copy of the document that captures these revisions.

       An overview of how the IRIS Program is operationalizing systematic review is described in a memo from the IRIS director, provided here (http://ofmpub.epa.gov/eims/eimscomm.getfile?p_download_id=534484). Additional information on how the IRIS Program is implementing and applying systematic review was presented at the NAS meeting in early February. Copies of presentations at that meeting are included here: http://nas-sites.org/dels/events/review-of-advances-made-to-the-iris-process-a-workshop/.

    b. Please additionally provide a copy of the document that describes the EPA Office of Chemical Safety and Pollution Prevention "fit for purpose" systematic review process that is referenced on page 19 of the December 12, 2017 EPA document entitled "Revised Glyphosate Issue Paper: Evaluation of Carcinogenic Potential[4]."

       OSCPPOCSCPP
       OSCPP ensures that our approaches are consistent with the EPA framework, which discusses the need for fit for purpose evaluations. Problem formulation entails an initial dialogue between scientists and risk managers and provides the regulatory context for the scientific analysis and helps define the scope of an analysis. The problem formulation stage involves consideration of the available information along with key gaps in data or scientific information. As such, the complexity and scope of systematic reviews will vary depending on the different risk management and statutory requirements and responsibilities of OCSPP. In other words, an OCSPP systematic review is conducted as "fit-for-purpose" (NRC 2009) based on the pre-determined scope and purpose determined from problem formulation.

Commented [WPAE6]: It is unclear whether any documentation exists. The answer should state explicitly.

Commented [WPAE7]: Do you mean OCSPP?

Commented [BJME8]: Note typo.

Commented [WPAE9]: Did the 2009 NRC document use the term "fit-for-purpose" in the systematic review context?

13. Please describe the timeline and full scope of the NAS review of the IRIS program described in the Report to Congress. Will the IRIS program's new "systematic review" process be included in the scope, and if not, why not?

    The NAS "Review of Advances Made to the IRIS Process" will assess changes that have been implemented or that are planned to be implemented by the EPA in response to recommendations made in previous NAS reports (2011 and 2014). The

[4] https://www.epa.gov/sites/production/files/2017-12/documents/revised_glyphosate_issue_paper_evaluation_of_carcinogenic_potential.pdf

primary focus of these reports was on the adaptation and implementation of systematic review principles to the IRIS assessment development process. The systematic review process, as applied in the IRIS Program, was described to the NAS committee during a 1.5 day workshop held February 1-2, 2018, included presentations and interactive sessions, and provided multiple opportunities for stakeholder input. The scope of the NAS review, as well as all NAS meeting summaries on this project, can be found on the NAS website http://www8.nationalacademies.org/cp/projectview.aspx?key=49904.

14. When Congress was negotiating the final text of the Toxic Substances Control Act (TSCA), EPA came to Congress and asked for specific provisions that would allow the agency to move forward with bans for some uses of three highly toxic chemicals. Congress agreed, and that language was included in the final law. One of those chemicals, a paint stripper called methylene chloride, is so dangerous that it has killed dozens of people, even when they were wearing protective gear. EPA proposed rules banning these chemicals more than a year ago. But more recent reports indicate that EPA may delay action on the uses of these chemicals for several more years, which almost certainly will mean that more people will get sick and probably some of them will die. When I asked you during the hearing whether you would commit to finalizing these bans within thirty days, you stated that "It's my understanding that is actually on the priority list as far as the chemicals that are we reviewing. TCE and others. So that is something that I will clarify and confirm with the agency. But that was my understanding." I believe you may have been referring to the *remaining* uses of these chemicals (i.e.the uses of the chemicals that are not covered by the proposed bans), which are on EPA's priority list for the first ten chemicals slated for review under TSCA. I was referring to the uses of these chemicals that EPA has *already* proposed to ban. Please provide the specific dates by which each of these proposed bans will be finalized.

    Under TSCA Section 6(a), regulation of certain uses of methylene chloride, NMP, and TCE were proposed in 2016 and 2017. The agency is currently considering the comments received, including comments suggesting that EPA quickly finalize these actions and comments suggesting that these actions be evaluated as part of the group of the first ten chemicals undergoing initial risk evaluations under the amendments to TSCA.

15. According to the Paperwork Reduction Act, 44 USC § 3506(d)(3), all agencies must provide "adequate notice" when "substantially modifying, or terminating significant information dissemination products." On April 28, 2017, EPA removed the vast majority – thousands of pages – of its climate change websites, and it appears that EPA did not provide the public an opportunity to comment or express its concerns.
    a. Please describe the "adequate notice" that you issued to the public prior to making any changes to the website, as required by the Paperwork Reduction Act. Please provide supporting documents, including documents memorializing the notice.

EPA is continually making changes to its website and other digital information resources to reflect and support the agency's current priorities and work. When we move information from our main portal, www.epa.gov, the majority of the time we make sure it is still available to the public via our archive website, https://archive.epa.gov/. In addition, because of the public concern about access to information on our website last year, as well as the receipt of a number of FOIA requests for access to information, we created a snapshot website that contains the content that was on our main portal on January 12, 2017. The snapshot website can be searched here: https://19january2017snapshot.epa.gov/.

b. Please provide a list of webpages (and a description of the information that was contained on each one) that were eliminated from the EPA website in 2017.

According to our available data sources, 2,224 pages were archived from www.epa.gov in 2017, representing about 3.5% of our www.epa.gov content. This response is limited to the primary public www.epa.gov webserver, but not other program-specific websites. These pages were unpublished due to:

- **regular website maintenance,**
- **content was superseded and replaced with newer information on the topic,**
- **content was duplicative or no longer relevant,**
- **comment period closed on Public Notices, and**
- **various other quality assurance reasons.**

This content is still in our Web Content Management.

16. On March 24, 2017, you issued an agency-wide memorandum[5] on implementation of Executive Order 13777[6], which announced members of EPA's Regulatory Reform Task Force, appointed Samantha Dravis to serve as EPA's Regulatory Reform Officer, directed certain program offices to recommend rules for repeal, replacement, or modification, and directed all program offices to seek public input on existing regulations and report findings to the Task Force by May 15, 2017. On April 13, 2017, EPA issued a Federal Register notice: Evaluation of Existing Regulations[7]. The comment period closed on May 15, 2017 and EPA received over 460,000 comments, which were published online. The Task Force also led implementation of the Section 2 review in Executive Order 13783, Promoting Energy Independence and Economic Growth. EPA subsequently published a report pursuant to EO 13783 in October 2017. It is unclear whether the Task Force has been active since then or was involved in projects outside of what is discussed above. Accordingly, with regard to the Task Force, please provide us with:

[5] https://www.epa.gov/laws-regulations/memorandum-executive-order-13777-enforcing-regulatory-reform-agenda
[6] https://www.federalregister.gov/documents/2017/03/01/2017-04107/enforcing-the-regulatory-reform-agenda
[7] https://www.federalregister.gov/documents/2017/04/13/2017-07500/evaluation-of-existing-regulations

a. A complete list of who has or is currently serving on the Task Force, including their professional title and office at EPA, and their dates of membership on the Task Force.

Samantha Dravis – Senior Counsel and Associate Administrator for the Office of Policy
Ryan Jackson – Chief of Staff, Office of the Administrator
Byron Brown – Deputy Chief of Staff for Policy, Office of the Administrator
Brittany Bolen – Deputy Associate Administrator for the Office of Policy

All members of EPA's Regulatory Reform Task Force have been members since Administrator Pruitt established the Task Force in a memorandum dated March 24, 2017.

b. Please state whether the Task Force has consulted with non-EPA employees during the course of its work and, if so, please provide a list of their names and employers, and on what rules they have been consulted.

The Task Force has been informed by the thousands of public comments received in response to EPA's request for input on regulations that may be appropriate for repeal, replacement, or modification, per EO 13777.

c. A list of meeting dates and topics for Task Force meetings held thus far and scheduled to be held this year. Please provide copies of any agendas that were circulated prior to each meeting.

In implementing EO 13777, EPA hosted a series of public meetings and teleconferences to inform the Regulatory Reform Task Force. Information on these public meetings and teleconferences, including agendas, is accessible through EPA's Regulatory Reform webpage: https://www.epa.gov/laws-regulations/regulatory-reform.

d. All documents created by or for the Task Force, (including emails, memos, white papers, meeting minutes, correspondence, and comments that cannot be found on the regulations.gov website).

A Comprehensive search could not be performed by the submission of this document.

Commented [GCDE10]: If EPA is planning to provide them at a later date, that should be stated.

Commented [BSHE11]: Unclear what is meant here. Does this mean to say that the search could not be performed by the time the QFRs were submitted to congress, because such a search would take more time? Suggest clarifying.

17. The Freedom of Information Act (FOIA) requires agencies to respond to a FOIA request within 20 days of receipt of the request. Although agencies are given some latitude to extend the response timeline in light of "unusual circumstances," EPA's failure to meet the deadlines specified in the Act has resulted in many FOIA requests left unanswered. That, in turn, has led to lawsuits against EPA for failure to meet the FOIA timeline.

a. EPA currently submits open FOIA request logs to the Committee on a monthly basis, pursuant to an oversight letter sent to EPA on March 17, 2017. Beginning on the date of your next log submission, please also provide the number of currently open FOIA requests, the number of lawsuits that have been filed due to EPA's failure to comply with FOIA's deadlines, the number of FOIA lawsuits that have been completed, the number of lawsuits resulting in EPA providing the requested documents, and the cost of each lawsuit to the taxpayer.

Monthly EPA posts on its web site a list of all FOIA request that were pending at the end of the previous month and the status of all FOIA request that were submitted during the previous month. This information can be found, respectively, at https://www.epa.gov/foia/all-foia-requests-pending-month and at https://www.epa.gov/foia/all-foia-requests-received-month. Regarding your request for information concerning the Agency's FOIA litigation, EPA currently has approximately 55 pending FOIA cases, about 45 of which allege that EPA did not complete its response to the FOIA request within the statutory timeframe.

b. Does EPA follow the "rule of three,[8]" which calls on agencies to post frequently requested records to its public website? If so, please identify where those records are posted. If not, please explain why not.

It is EPA's Policy to make all records released in response to a FOIA request available to the public, even if there is only one request for that information. EPA has released over one million records, through FOIAonline, since October 1, 2012. The one exception to this rule is first party FOIA requests. A first party FOIA request is one where a requester is asking for records about themselves.

c. Please provide any internal EPA guidance that exists on the use of FOIA redactions. Please provide documents confirming that staff responsible for redacting documents have received the appropriate training.

All EPA staff are required to take annual FOIA training. EPA's FY 2018 FOIA training is focused on the use of FOIA exemptions. In September 2017, the National FOIA Program, working with the Office of General Counsel, offered a multi-day training session on FOIA. The training covered the lifecycle of a FOIA. Over 170 FOIA professionals from throughout the Agency attended the training. Among other things, the training addressed use of Exemptions 4, 5 and 6.

[8] https://www.justice.gov/oip/oip-guidance/proactive_disclosure_of_non-exempt_information

18. During the hearing Senator Duckworth asked for "a detailed schedule of your meetings and receipts for international travel you have taken since being confirmed." You agreed to provide those documents. Since then, a report[9] detailed tax-payer funded travel you took internationally and domestically that included first-class tickets on commercial flights as well as travel on military jets. For each flight, international or domestic, that you have taken since you were confirmed, please provide the following information:
    a. Date of the flight, the departure city and airport, and destination city.
    b. Class (e.g. coach, business class, first class, or some other class of travel) and cost of the ticket.
    c. Source of funding for the ticket (e.g. federal taxpayers, the State of North Dakota, Heritage Foundation).
    d. For each non-commercial flight, please explain why a non-commercial flight was selected.
    e. Names of staffers who accompanied you on each trip, the cost of their flights, classes of their tickets, and the sources of funding for their tickets.
    f. Copies of all receipts of air travel for you and your accompanying staff.
    g. For any ticket issued to you or your accompanying staff that was not a coach-class ticket (or its equivalent), please explain why it was necessary to purchase that class of ticket.

A Comprehensive search could not be performed by the submission of this document.

Commented [GCDE12]: If EPA is going to provide the documents at a later date, that should be stated.

Commented [BSHE13]: Same comment as above. Suggest clarifying

19. During the House Energy & Commerce subcommittee hearing on December 7, 2017, you testified that particulate matter is a "very important criteria pollutant" that should be regulated under the National Ambient Air Quality Standards (NAAQS) program. One study[10] found that PM2.5 "was the fifth-ranking mortality risk factor in 2015," and contributes to nearly 90,000 deaths in the US every year.[11]
    a. Do you agree with the general conclusion from this analysis that PM2.5 presents a serious public health concern? If not, please provide supporting evidence, including any research or analysis EPA has conducted, that supports your position.
    b. Please provide documentation supporting any analysis you have done to calculate the amount of PM2.5 pollution that will be created as a result of your actions to reverse, delay, or modify the Clean Power Plan, methane, and the Glider Kit rules. Please state whether you attempted to calculate the adverse human health effects that will be caused by your changes to the rules mentioned above.

[9] https://www.washingtonpost.com/national/health-science/first-class-travel-distinguishes-scott-pruitts-epa-tenure/2018/02/11/5bb89afc-0b7d-11e8-8b0d-891602206fb7_story.html?utm_term=.4c0713143235
[10] https://www.ncbi.nlm.nih.gov/pubmed/28408086
[11] "Estimates and 25-year trends of the global burden of disease attributable to ambient air pollution: an analysis of data from the Global Burden of Diseases Study 2015." See Table 2.

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c. Do you think there is a tolerable level of PM2.5 that is appropriate for human exposure? If so, please specify it, and explain what evidence you have to support this.
d. Are you aware that a study conducted by Tom Brewer at Tennessee Tech University determining that trucks outfitted with glider kits are as clean as new diesel truck engines is now under investigation for "misconduct in research" by Tennessee Tech University?[12] This is the same study that was included in the glider industry's petition asking the EPA to repeal emission requirement for glider kits and cited in the EPA's November 16, 2017 proposal to repeal the Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits. Please describe how you plan to re-assess EPA's November 16, 2017 proposal in light of the potential misconduct associated with this study. If no such plans exist, why not?

Particulate matter (PM), also known as particle pollution, is a complex mixture of extremely small particles and liquid droplets in the air. Once inhaled, these particles can affect the heart and lungs and cause serious health effects. The Clean Air Act requires EPA to review the NAAQS and their scientific basis at least every five years to determine whether standards are requisite to protect public health, with an adequate margin of safety. The fine PM NAAQS was last reviewed and revised in 2012. As part of that process, EPA developed an Integrated Science Assessment to summarize the science related to the health and ecological effects. This most recent assessment, released in December 2009, can be found on EPA's website at: https://www.epa.gov/isa/integrated-science-assessment-isa-particulate-matter.

The "Regulatory Impact Analysis for the Review of the Clean Power Plan: Proposal" presents analysis of the forgone social benefits of changes in non-CO2 emissions from the electricity sector in Section 3.4 (pages 42-55) and Section 7.5 (pages 122-124). For the 2016 oil and gas rule, EPA did not monetize changes in PM2.5 emissions or concentrations.

With respect to gliders, the agency is currently reviewing the comments submitted on the proposed rule and is evaluating next steps. ~~because the Agency views the issue as one of legal authority, we did not conduct a new analysis of the impacts on PM2.5 emissions.~~ **Similarly, although the recent NPRM cited the Tennessee Tech University study, we** referenced the study in our proposal but **did not rely on it for our** decisionmaking proposal.

Commented [WCSE14]: Even if the agency's decision were a purely legal decision, the agency should still be doing the economic analysis to inform any policy decision. Suggest that EPA instead state that the agency is reviewing comments submitted on the proposed rule and is evaluating the agency's next steps. This will avoid stating something that is inconsistent with OMB Circular A-4 that agencies should do the analysis to support/inform their decisions.

Commented [WCSE15]: Suggest edits although EPA should verify that the statement is correct.

20. In response to questions from Chairman Barrasso regarding the implementation of the 2015 National Ambient Air Quality Standard (NAAQS) for ground-level ozone, you commented that the EPA was "in the process of designating attainment and non-attainment [areas] with respect to ozone." You went on to state, "when you think about ozone, there has been a lot of focus on whether the parts per billion, 75 parts per billion,

[12] http://herald-citizen.com/stories/ttu-investigating-fitzgerald-study,25943

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reducing it to 70 parts per billion, was a wise decision. That has not been our focus. Our focus has been on more the issues and implementation that you have raised."

a. Do you agree with EPA's conclusion in 2015 that the primary NAAQS standard for ground-level ozone should be set at a level of 0.070 parts per million (ppm) to protect health with an adequate margin of safety? If not, why not?
b. Do you agree with the underlying science data for the 2015 NAAQS for ground-level ozone that finds ambient ground-level ozone pollution above 0.070 ppm can trigger asthma attacks in children that have asthma? If not, why not?
c. Do you agree with EPA's assessment that once implemented, the public health benefits from the 2015 NAAQS for ground-level ozone will outweigh the costs? If not, why not?
d. Will you confirm that under your leadership, the EPA will not weaken the 2015 primary NAAQS standard for ground-level ozone set at 0.070 parts ppm?

As previously stated, EPA's recent focus for the 2015 Ozone NAAQS has been on resolving implementation issues.

Commented [BSHE16]: Suggested edits

21. Under Clean Air Act section 111, can EPA base emissions guidelines on a "best system of emission reduction," if application of the measures comprising that best system of emission reduction would result in a source increasing total emissions of the regulated pollutant? Why or why not?

Traditionally NSPS standards have been sent as rate-based standards rather than total mass based standards and have not constrained overall emissions.

22. In determining the "best system of emission reduction" under Clean Air Act section 111, do you believe that EPA must consider the degree of air pollution reductions achieved? Why or why not?

While emission reductions are one element relevant to evaluating BSER, EPA anticipates that it will be receiving comments on this issue in connection with its current regulatory actions on the Clean Power Plan.

23. The 2009 Cause or Contribute Finding concluded that the combined emissions from new motor vehicles and new motor vehicle engines of six key well-mixed greenhouse gases—carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride (collectively, "GHGs")—contribute to greenhouse gas pollution that threatens public health and welfare. At the time, EPA cited data showing that in 2007, source categories regulated under CAA section 202(a) accounted for 23.3% of domestic GHG emissions, and the electricity sector accounted for 34.2% of domestic GHG emissions.[13] Do GHG emissions from the electricity sector cause or contribute

[13] *See* 74 Fed. Reg. 66496, 66540 tbl.2 (Dec. 15, 2009).

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significantly to greenhouse gas emissions that can reasonably be anticipated to endanger public health or welfare? If not, why not?

To date, EPA has relied on the endangerment finding that it had previously made under CAA section 202(a)(1) with respect to GHG emissions from new motor vehicles for its decision to establish standards of performance for GHG emissions from Electric Generating Units (EGUs). In particular, EPA has asserted the 2009 finding as providing a "rational basis" for regulating GHG emissions from EGUs.

24. Do any parts of the Clean Air Act authorize EPA to decline to set 111 standards (or emission guidelines) for GHGs from stationary sources if there is an Endangerment Finding for GHGs entirely? If so, please specify them.

~~EPA has not taken a position with respect to this issue.~~ **Section 111(b)(1)(A) of the Clean Air Act states the Administrator shall include a category of sources if in the Administrator's judgment it causes, or contributes significantly to, air pollution which may be reasonably be anticipated to endanger public health and welfare.**

Commented [FEHHE17]: CEQ

25. According to the most recent National Climate Assessment (NCA) released by the Trump Administration, climate change caused by emissions of heat-trapping gases "outweigh[s] other factors in determining burned area in the western U.S. from 1916 to 2003, a finding confirmed by 3000-year long reconstructions of southwestern fire history."[14] According to the NCA, "Numerous fire models project more wildfires as climate change continues," including "up to a 74% increase in burden area in California, with northern California potentially experiencing a doubling under a high emissions scenario toward the end of the century."[15] The NCA calls conifer forests in southern California "notably threatened" by the climate change caused by heat-trapping gases. According to the Trump Administration's NCA, California is also at extraordinary risk from seal-level rise and coastal damage. Without adaptive action, the Trump Administration expects that critical California infrastructure such as the San Francisco and Oakland airports "are at increased risk of flooding with a 16-inch rise in sea level in the next 50 years . . . ." Increasingly high numbers of Californians will be put at risk of flood, including highly vulnerable populations less able to prepare, respond, or recover from natural disaster. On an even more fundamental level, emissions of these heat-trapping gases pose an exceptionally high risk to the highly urbanized population of California due to increasing urban heat. According to the Trump Administration, heat stress has been the leading weather-related cause of death in the United States since 1986 (when record-keeping began).[16] Severe heat waves such as the 10-day California heat wave of 2006 trigger "escalating effects" that kill people, particularly the elderly and those in low-income communities. Heat waves can also cause respiratory stress by expediting chemical reactions that cause the formation of ground-level ozone.

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[14] NCA at p. 468, *available at* http://s3.amazonaws.com/nca2014/high/NCA3_Climate_Change_Impacts_in_the_United%20States_HighRes.pdf.
[15] NCA at p. 468, *available at* http://s3.amazonaws.com/nca2014/high/NCA3_Climate_Change_Impacts_in_the_United%20States_HighRes.pdf.
[16] NCA at 471.

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a. Do you agree that emissions of heat-trapping greenhouse gases cause compelling and extraordinary harm to the people and environment of California? If not, please explain why not, including whether you either i) do not accept the findings of the Trump Administration's NCA or ii) do not believe the impacts to California described in the NCA are compelling or extraordinary.
b. Do you agree that emissions of greenhouse gases from motor vehicles cause compelling and extraordinary harm to the people and environment of California? If not, please explain why not.

While there has been extensive research and a host of published reports regarding climate change, ~~clear gaps remain including~~ our understanding of the role of human activity ~~and what we can do about it~~ is still improving. As an environmental ~~key~~ regulator~~y voice~~ it is important for the agency to strive for a better understanding of the role of human activity with respect to ~~these gaps~~climate change given the~~ir~~ potentially significant influence on our country's domestic economic viability when protecting the environment.

Commented [FEHHE18]: CEQ

Commented [WCSE19]: Suggest also referencing environmental protection as this is the agency's mission. The agency has the ability to consider economic factors when weighing decisions about environmental protections.

26. Please list each of the meetings that Administrator Pruitt, Assistant Administrator Wehrum, David Harlow or other EPA political staff (including EPA transition team officials) have held with outside entities, since January 20, 2017, on the topic of changes or "reforms" to the New Source Review or Prevention of Significant Deterioration requirements under the Clean Air Act. Please provide all documents received from outside entities, as well as any email correspondence between EPA employees and outside entities, on this topic, since January 20, 2017.

This request is also the subject of ongoing FOIA requests. The agency is in the process of responding to those requests and will provide the information to the committee in a timely manner. In the interim, the Administrator's and Assistant Administrator's calendars are publically available at https://www.epa.gov/senior-leaders-calendars.

27. Please explain in detail how the policy options in the December 18, 2017 Advance Notice of Proposed Rulemaking regarding future rulemaking to reduce existing power plant greenhouse gas emissions would achieve the full range of public health, economic, and environmental benefits that would have resulted from Clean Power Plan.

The Advance Notice of Proposed Rulemaking on State Guidelines for Greenhouse Gas Emissions from Existing Sources (ANPRM) does not present specific policy options. Rather, the ANPRM solicits information from the public about a potential future rulemaking. As you are aware, the comment period closed on February 26, 2018. The agency has begun review of all comments that will inform any next steps to ensure that in any potential new proposed rule, benefits and costs will be appropriately analyzed.

28. In President Trump's June 1, 2017 statement announcing the United States would be withdrawing from the Paris Climate Accord, President Trump highlighted two studies - economic analysis from the National Economic Research Associates and a climate science study from MIT. These same studies were included in White House materials.
    a. Did you, or any other EPA political staff, provide White House staff or the President information on these two studies?
    b. Please provide a copy of all documents, (including but not limited to hand-written notes, paper files, emails, memos, white papers, telephone logs, presentations or meeting minutes) between and among any combination of you, other agency officials, other federal government officials, any state officials, and any non-governmental entities that inform, contribute to, direct, or are otherwise related to related to the Paris Climate Accord.

A Comprehensive search could not be performed by the submission of this documentdocument.

Commented [BSHE20]: clarify

29. How many facilities subjected to MACT standards are also subjected to Reasonably Available Control Technology (RACT) standards that are more stringent or the same requirements for volatile organic compounds? Are there some parts of the country that are not subject to RACT controls for volatile organic compounds? If so, please list those areas.

The EPA has not performed a source-by-source comparison of MACT and RACT standards where both apply. The RACT standards are established by states, not by EPA, and there is enough flexibility in the Clean Air Act in how a state may establish a RACT standard that there is no expectation of uniformity between the level of control or specific sources covered in different states. Specific to the ozone NAAQS program, EPA has established "presumptive RACT" for the key VOC emissions points present in about 44 source categories through the issuance of Control Techniques Guidelines (CTG). However, these CTGs are only guidance for states and do not dictate a source-specific outcome. Where a MACT standard is providing emission reductions that also count towards RACT, it would be reasonable to expect states to continue to require those measures to ensure the presence of reductions that are needed for NAAQS attainment purposes and are achieved by controls to meet MACT that are already in place and paid for by the source. Replacing these MACT reductions through implementation of a different, less stringent RACT standard would likely require new reductions from other sources.

Commented [WCSE21]: If EPA issues a CTG, sources in the Ozone Transport Region of the country, which covers a broad swath of the East, are required to adopt RACT. Suggest mentioning this mandatory component here.

30. Studies have found that regulations may play some small part in reductions in the coal workforce; but automation, shifts in mining practices, and prices of natural gas are all major contributing factors to the decline of coal.

a. How many coal mines have closed or gone bankrupt since you became EPA Administrator?

The Agency does not maintain this data.

b. Please provide a list of every coal mine and coal-fired plant that will remain open, be built, or be expanded as a result of the rescission of the Clean Power Plan, along with the expected number of jobs that will be retained or added as a result. On what basis was each EPA projection made?

EPA has not ~~yet prepared~~ published **any estimates of** ~~the~~ regulatory **impacts on** individual **coal mining or coal-fired power plants**. ~~EPA has not yet prepared any estimates of the impacts on coal mining or coal-fired plants~~ **related to the proposed repeal of the Clean Power Plan. The coal impact analysis in the proposed repeal RIA was limited to presenting the coal impact analysis in the final RIA for the CPP promulgation in 2015. EPA's analyses of particular regulations affecting coal mines and coal-fired power plants do not estimate impacts on individual mines or specific power plants. EPA committed to evaluate the employment impacts of actions under the Clean Air Act within EPA's Final Report of Agency Actions that Potentially Safe, Efficient Development of Domestic Energy Resources under Executive Order 13783 (https://www.epa.gov/sites/production/files/2017-10/documents/eo-13783-final-report-10-25-2017.pdf).**

Commented [FEHHE22]: DOJ: EPA examined (but never submitted to the court) individual plant/mine impacts under the court order in the *Murray Energy* section 321(a) litigation. Because that is the case, the agency should consider editing two sentences in the response as noted

Commented [FEHHE23]: CEQ

31. I remain concerned about the volatility in the Renewable Fuel Standard (RFS) compliance trading system used by EPA, known as the Renewable Identification Number (RIN) market and the impacts that RIN market manipulation is having on the economic stability of East Coast refineries.
    a. Currently, the EPA has a Memorandum of Understanding with the Commodity Futures Trading Commission (CFTC) on RIN market manipulation. In the past year, how often has EPA staff communicated with the CFTC on RIN market manipulation and what have you and your staff done with the CFTC to assess potential RIN market manipulation?

    Under the MOU, CFTC looked into a claim by the Renewable Fuels Association (RFA). RFA asserted that some participants in the RIN market may have deliberately driven up RIN prices during a certain period to disrupt the RIN market, in order to support political gains to repeal/reform the RFS program. The RFA letter, dated August 31, 2016 was sent to both CFTC and EPA. To assist CFTC, the EPA provided RIN data from January 2010 to August 2016. CFTC reviewed this data and as noted by the CFTC Chairman Chris Giancarlo in his testimony to U.S. Senate Agricultural Committee on February 15, 2018 that CFTC did not find misbehavior in the

market. Given EPA's market oversight limitations, we intend to pursue continued collaboration with CFTC under the MOU.

b. In my conversations with CFTC officials, they indicate that you have not asked them to do much in assessing RIN market manipulation and suggested EPA is not collecting the right type of information to be able to assess potential manipulation. Why haven't you asked the CFTC to do more to help EPA prevent potential RIN market manipulation?

EPA is always looking for ways to improve implementation and transparency of the program, while balancing resource needs and our duty to protect confidential business information as required by our regulations. EPA will continue to work with CFTC and seek to utilize their market oversight expertise and authority.

c. I have asked the Federal Trade Commission (FTC) staff to offer their expertise to your staff. Has anyone at the EPA talked to FTC staff about ways the FTC can be helpful? Have you considered establishing a Memorandum of Understanding with the FTC to assist with RIN market manipulation?

On February 8, 2018, EPA and FTC held a meeting to initiate dialogue on this matter. On the call, the FTC discussed their authority and expertise, which are largely focused on investigating fraudulent reporting of information to governmental agencies and other acts with intent to deceive or gain advantage in market. FTC further differentiated their role compared to CFTC, who has authority to investigate participant behavior and market trends to identify potential market manipulation. EPA and ~~FDA~~ FTC did not specifically discuss establishing an MOU, but did exchange information to facilitate future discussions.

d. Will you commit to working with my staff to do more to address market manipulation in the RIN market?

Although the EPA has not seen evidence of manipulation in the RIN market, EPA is not a commodity market regulatory agency, and thus we do not have expertise in this field. EPA has not EPA's authority and function is to implement the RFS program and address fraud in the program. For example, since 2013, over two dozen individual defendants have been sentenced for RFS related crimes and have received a combined total of over 168 years of incarceration and ordered to pay over $400 million in fines and restitution. Restitution in these cases and the tens of millions of dollars forfeited since have been ~~since~~ restored to victims of RFS fraud. Claims of market manipulation prompted EPA to execute a memorandum of understanding (MOU) with the U.S. Commodity Futures Trading Commission (CFTC), who has the authority and expertise to investigate such claims.

e. Will you commit to implementing the RFS fairly in a way that ensures an even playing field among obligated parties?

Yes, EPA is committed to ensure an even playing field among all the parties participating in the RFS program. In fact, to protect the program's integrity and maintain a level playing field for regulated companies, EPA has pursued civil enforcement actions against renewable fuel producers, importers, and exporters that generated invalid RINs. In addition, since 2013, over two dozen individual defendants have been sentenced for RFS related crimes and ordered to pay over $400 million in fines and restitution. Restitution in these cases and the tens of millions of dollars forfeited have been since restored to victims of RFS fraud.

32. Under the Renewable Fuel Standard (RFS), biogas-generated electricity used to charge electric vehicles (EVs) is already an approved pathway and is eligible for the generation of cellulosic Renewable Identification Numbers (RINs). Applications for this pathway were submitted over a year and a half ago. Will you commit to approving an application for this pathway in the next 60 days?

In 2016, EPA proposed the Renewable Enhancement and Growth Support (REGS) Rule and identified a number of significant policy questions raised by different approaches to capturing RINs from renewable electricity used to charge electric vehicles. Since the REGS proposed rule comment period closed, OAR staff have been going through the many comments received, evaluating various conflicting implementation approaches raised in the comments, and exploring options for the complex issues associated with implementing the electric pathway. We continue to work towards a final decision on these important issues, which are a requisite before any final decisions on pending applications can be made.

Commented [BSHE24]: Can EPA also commit to an approximate timeframe for submitting the final regulation to interagency review (i.e. the timeframe that matches the unified agenda).

33. Aside from the type of water identified in *SWANCC v. Army Corps of Engineers*, which have no significant connection at all to navigable-in-fact waters, are there any categories of water bodies that you believe have such an insignificant relationship to navigable-in-fact waters that discharges into them should be exempt from the Clean Water Act? In those cases, would the federal Clean Water Act allow discharges of unlimited quantities of toxic poisons into those waterbodies, even if a portion of those poisons eventually flowed downstream to navigable-in-fact waters?

The scope of Clean Water Act jurisdiction under future regulation is currently under development. EPA and the Army have conducted and will continue to conduct a transparent and robust public engagement process, meeting and listening to stakeholders prior to issuing a proposal. EPA and the Department of the Army are currently considering suggestions from states, local government, tribes, and

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other stakeholders about which waters should be jurisdictional under the Clean Water Act and which should not.

34. The Obama Administration implemented its definition of "Waters of the United States" for several weeks in 2015. Has the EPA conducted any analysis of how easy or difficult it was to administer the Rule during that time? If not, why have you not conducted that analysis?

The EPA did not conduct an analysis of the administration of the 2015 Clean Water Rule during the approximately six weeks that it was in effect in 37 states. The Army Corps of Engineers has the day-to-day responsibility for conducting jurisdictional determinations with respect to the permitting program under section 404 of the Clean Water Act, ~~and the Army can speak to the status of actions taken during that time period.~~

Commented [FEHHE25]: CEQ

35. In an interview with the National Cattlemen's Beef Association, you said that, "The Obama Administration reimagined their authority under the Clean Water Act and defined a 'water of the United States' as being a puddle …"[17] The Obama Administration rule expressly exempts "puddles" from the definition of "waters of the United States?" *See* 33 C.F.R. §328.3(b)(4)(vii).
    a. If you were previously aware of this exemption, why have you repeatedly mischaracterized the rule?
    b. If you were not previously aware of this exemption, do you retract your statement? If you will not retract your statement, please explain why.

Much of the concern raised about the 2015 Clean Water Rule focused on lack of clarity, uncertainty, and confusion in the implementation of this rule. While the Rule did exclude "puddles" from regulation, the Rule did not define the term. Many stakeholders ~~were~~ expressed concerned that the agencies would regulate features such as wet spots and tire ruts in farm fields because such features were not ~~included~~ expressly identifed as "puddles." ~~Correcting this lack of~~ Providing clarity and predictability ~~is a~~ are among the critical goals of the current rulemaking effort.

36. You also stated that the Obama Administration reimagined their authority under the Clean Water Act and defined a 'water of the United States' as being . . . ephemeral drainage ditches."[18] The Obama Administration rule expressly exempts "[d]itches with ephemeral flow that are not a relocated tributary or excavated in a tributary" "puddles" from the definition of "waters of the United States?" *See* 33 C.F.R. §328.3(b)(3)(i).
    a. If you were previously aware of this exemption, why have you repeatedly mischaracterized the rule?
    b. If you were not previously aware of this exemption, do you retract your statement? If you will not retract your statement, please explain why.

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[17] "EPA Administrator Scott Pruitt Urges Ranchers to File WOTUS Comments," https://www.youtube.com/watch?v=vTVd54WyhDQ.
[18] "EPA Administrator Scott Pruitt Urges Ranchers to File WOTUS Comments," https://www.youtube.com/watch?v=vTVd54WyhDQ.

The 2015 Clean Water Rule would regulate ephemeral drainage ditches that are a relocated tributary or excavated in a tributary.

37. What specific provision of the Clean Water Act or Administrative Procedure Act gives EPA the authority to alter compliance dates, not merely effective dates, for standards lawfully promulgated under 33 USC 1311(b)(2)?

    EPA promulgated the 2015 Steam Electric ELG Rule pursuant to its legal authorities under the CWA, particularly sections 301(b), 304(b), 306, and 307(b) and (c) of the Act. Together, Sections 301(b) and 304(b) authorize EPA to establish effluent limitations guidelines based on Best Available Technology Economically Achievable. Section 306 authorizes EPA to establish Standards of Performance for New Sources, and Sections 304(b) and (c) authorize EPA to establish pretreatment standards for new and existing sources. Moreover, Section 304(m)(1)(A) and 301(d) authorize EPA to review its pretreatment standards for possible revision every year. EPA's authority for the Postponement Rule rests upon the same authorities as the 2015 Steam Electric ELG Rule and that meet the definition of "tributary" set forth in the rule.

38. The Clean Water Act prohibits compliance dates that extend more than three years from the issuance of new effluent guidelines (EGs). In what specific statutory provision did Congress allow EPA to flout that requirement by postponing until 2020 the compliance deadline of an EG issued in 2015?

    The statutory provisions in Section 301 requiring that effluent limitations be achieved no later than three years after promulgation, and in no case later than March 31, 1989, CWA section 301(b)(2)(C)-(F), could be read to apply only to BAT effluent limitations promulgated before 1989, with the statute being silent with regards to BAT effluent limitations promulgated thereafter. The statute also contemplates periodic review and revision of those guidelines, and implements those provisions through its CWA section 304(m) process. But the statute is silent about the deadline for effluent limitations and standards derived after 1989.

39. EPA explained that it is delaying the compliance deadlines of the steam electric power generating EGs because of costs to regulated industry. However, EPA estimated only 28% of coal-burning plants—and only approximately 12% of power plants overall—would incur any costs from the rule at all. Even among that small subset, almost all of those plants would incur costs less than 1% of the company's revenue.
    a. Do you disagree with those figures? If so, explain your disagreement.
    b. To what extent did you consider the EG's extensive public health benefits when deciding to delay the compliance deadlines?
    c. Do you believe that the incremental costs to industry outweighed the public health and environmental benefits of the EGs? If so, explain why.

EPA is currently collecting additional data on such things as changes that have taken place in the industry subsequent to the analysis supporting the 2015 Rule as part of its commitment to reconsider the technology bases of the new more stringent limits on the flue gas desulfurization (FGD) and bottom ash waste streams that were established in the 2015 Rule.

Commented [FEHHE26]: DOJ: Because the postponement of compliance deadlines in the 2015 Steam Electric Effluent Limitation Guidelines Rule is in litigation, please ensure that the statements in the response to question 39 are consistent with the administrative record for the postponement rule.

Extensive consideration was given to estimated public health benefits of the 2015 Rule, as well as the costs, and regulatory options. Petitioners raised serious concerns about the costs and impacts of the 2015 Rule. After considering those concerns, as well as public comment in response to EPA's June 2017 proposed rule to postpone certain compliance dates, EPA finalized a rule in September 2017 postponing certain 2015 Rule compliance dates, and announced EPA's intention to conduct a subsequent rulemaking potentially revising the limits for those wastestreams for which the compliance dates were postponed. EPA's action to postpone those compliance dates in the 2015 Rule was intended to preserve the status quo for FGD wastewater and bottom ash transport water while EPA completes its next rulemaking.

EPA acknowledges that postponement of the compliance dates may lead to a delay in the accrual of some of the benefits attributable to the 2015 Rule. The 2015 Rule assumed that steam electric plants would comply with the new, more stringent requirements no later than 2023, including implementation of new control technologies over a five-year compliance period, according to their permit renewal schedule. However, if EPA did not postpone the compliance dates, industry would likely incur these costs, irrespective of what EPA determines as the final limits for FGD wastewater and bottom ash transport water. EPA determined that the estimated foregone costs to industry warrant the postponement of compliance dates in the 2015 Rule.

40. The Safe Drinking Water Act permits EPA to "fill not more than thirty scientific, engineering, professional, legal, and administrative positions within the Environmental Protection Agency without regard to the civil service laws." 42 U.S. Code § 300j–10. These appointments may be made where the Administrator deems such action necessary to the discharge of his functions as they relate to Title XII of the Public Health Service Act (42 U.S.C. 300f et seq.) (relating to safety of public water systems). These individuals are exempted from certain other Executive Branch requirements, including the Trump Ethics Pledge. In an August 18, 2017 letter to GAO, Senator Whitehouse and I wrote: "EPA has utilized its SDWA authority to hire a number of non-Senate-confirmed political appointees, some of whom are serving in supervisory positions and in roles that raise ethical questions." Based on documents provided by EPA, it appears that some individuals may still be serving as administratively determined appointees. These appointees have been permitted to work on projects with essentially no check on their ethical or financial conflicts. Also, many of these appointees appear to have had EPA e-mail accounts that were created and used by them for weeks and even months before their stated appointment date -- in some cases nearly 4 months before.

a. What is EPA's policy on the length of time an employee is allowed to serve under the SDWA authority without having to complete a financial disclosure form, or complete a recusal statement (if necessary)?

All Administratively Determined (AD) appointees receive initial ethics training pursuant to 5 C.F.R. § 2638.304. While the regulation allows agencies up to three months to provide that training, EPA typically ensures that the new AD appointees receive the ethics training within their first two weeks. This training is conducted personally by EPA's ethics officials in the Office of General Counsel rather than online. EPA requires that all AD appointees complete the public financial disclosure report, the OGE 278, and adheres to the regulatory deadlines set forth at 5 C.F.R. § 2634.201(b), which requires filing within the first 30 days. Please note, however, that the Agency may grant filing extensions as set forth at 5 C.F.R. § 2634.201(f).

b. What safeguards are in place to ensure that employees hired under the SDWA authority do not work on matters that may trigger a conflict before they submit their financial disclosure form and complete any necessary recusal statement?

EPA Ethics delivers initial ethics training in person (or, for appointees who are in regional offices, via conference call or video conference) to all Administratively Determined (AD) appointees. In that training, they specifically address conflicts of interest and impartiality, and inform the appointee about recusal issues. When the appointee files the financial disclosure report, EPA Ethics can more accurately assess possible financial conflict of interest issues and determines whether the appointee should issue a written recusal statement. If necessary, EPA Ethics drafts that document.

c. For each appointee hired under the SDWA authority, please provide the date of their appointment; the date the appointment ended (if any); and the specific projects they worked on while serving as an administratively determined appointee.

Please see Attachment 1.

d. For each employee hired by the EPA under the SDWA authority, Schedule C authority, or as Non-Career SES, provide the date on which their EPA e-mail address was created, and the date of their appointment, whether they worked at EPA in any capacity prior to their appointment date and if so, what capacity.

Please see Attachment 1.

41. In response to questions from Senator Merkley, you testified that a "Red Team / Blue Team" exercise to re-examine the underpinnings of climate science is still "under consideration" at EPA. According to Jim Lakely, the communications director of the Heartland Institute, EPA has "reached out to the Heartland Institute to help identify scientists who could constitute a red team," and the Heartland Institute had been "happy to oblige."[19]
    a. Is Mr. Lakely telling the truth that EPA representatives reached out to the Heartland Institute for help identifying scientists who could participate in a Red Team/Blue Team exercise? If yes, why did EPA choose to contact the Heartland Institute?
    b. Have representatives of the Heartland Institute provided representatives of EPA with a list of "scientists who could constitute a red team"? If yes, who are the Heartland Institute's proposed participants?
    c. Have any EPA representatives consulted with any other organizations, corporations, or individuals about potential individuals who could participate in a Red Team/Blue Team exercise? If yes, provide the names of those organizations, corporations, or individuals consulted, and the names of any proposed participants.
    d. Do you know the names of any individuals or organizations who have contributed to the Heartland Institute? If yes, please provide the names of any such individuals or organizations with whom you have met in your capacity as EPA Administrator.
    e. Please provide a copy of all documents (including emails, white papers, meeting agendas, powerpoint presentations, memoranda and other materials) received or obtained by EPA related to the "Red Team/Blue Team" climate science effort.

Administrator Pruitt encourages an open, transparent debate on climate science – with a Red Team/Blue Team exercise being an option discussed to learn more about the questions around climate science.

42. A press report indicates that EPA's Office of the Chief Financial Officer established a target for Region 9 to reduce their FTEs by 10% by the end of FY18. Has the CFO or anyone in the Administrator's office provided other EPA regional offices or program offices with targets for reducing personnel by a specified percentage? If so, please provide each of the targets. Please also provide any document from the CFO or the Administrator's office communicating an FTE or staff reduction target to any EPA region or program office for FY18 or future fiscal years.

The President's Budgets for FY 2018 and FY 2019 include proposals for significant staffing reductions and those levels ~~are~~ would be allocated to organizations~~.~~ after appropriations bills are passed and during the development of EPA's Operating Plan. ~~In addition, r~~Recent flat-lined~~recent~~ ~~year over year~~ appropriations in the majority of EPA's program projects~~reductions~~~~reductions~~, combined with payroll growth, have created challenges in meeting program requirements that are

Commented [BSHE27]: Need to be clear that these are only proposals and EPA's operating decisions are based on enacted appropriations bills.

Commented [BSHE28]: I don't think that EPA's overall appropriations have been reduced "year over year"

[19] http://www.washingtonexaminer.com/trump-administration-lining-up-climate-change-red-team/article/2629124

addressed with contracts or with grants. Taken together, these trends mean the agency must carefully manage workforce levels. ~~To protect the agency staff from potential severe impacts once final funding is known, and to help organizations manage workforce decisions pending the final appropriation bill, the agency is prudently controlling hiring actions and particularly any external hiring.~~ **Specific impacts vary depending on organizations' current staffing levels and attrition rather than a set percentage.**

Commented [BSHE29]: This is too close to saying that we are making FTE decisions based on the President's Budget.

Commented [GALE30]: This is confusing. The write-up makes it sound like these are FTE targets without regard to enacted funding levels, which doesn't make sense. Or were these developed assuming flat-lined FY 2017 or similar? This needs to be clarified in the text.

Office or Region	Starting point Onboard FTE (data as of 9/25/17)	Interim FTE Target for End of FY 2018
OA	362.6	340.3
OAR	1,106.7	1,085.2
OARM	652.0	646.8
OCFO	291.0	300.8
OCSPP	979.0	932.5
OECA	667.2	670.0
OEI	325.9	364.9
OGC	222.1	196.8
OIG	267.5	270.0
OITA	71.8	68.1
OLEM	468.5	456.4
ORD	1,619.9	1,463.7
OW	552.3	533.2
R01	514.9	535.9
R02	752.1	715.7
R03	764.7	713.5
R04	877.0	858.3
R05	1,008.1	979.5
R06	739.9	677.5
R07	445.6	449.0
R08	512.5	478.3
R09	699.5	652.1
R10	522.9	478.5
Total	**14,423.6**	**13,867.0**

43. A recent report[20] indicates that, at a proposed superfund site in Chattanooga, EPA is only taking the most protective clean-up measures at properties where children currently live. EPA cannot possibly know whether families with children will one day move into homes that EPA isn't cleaning up because children don't *currently* live there. And EPA cannot possibly know which homes children visit frequently.
    a. Is the policy described in the report accurate? If not, please fully describe any inaccuracies.

[20] http://amp.timesfreepress.com/news/local/story/2018/jan/15/dozens-chattanooghomes-sitting-toxic-site/461286/?__twitter_impression=true

b. If the policy described in the report is accurate, please provide all documents (including emails, memos, white papers, analysis, meeting minutes and correspondence) related to any policy decision that limits the most aggressive cleanup measures to sites that currently have children residing on the premises.

The *Chattanooga Free Times* press report is partially accurate with respect to the prioritization of the of the cleanup of impacted properties under the time-critical removal process at the Southside Chattanooga Lead Site. In an effort to minimize residents' exposure to highly contaminated soil, EPA's Superfund program is utilizing both removal and remedial cleanup authorities to expeditiously address the contamination at the Southside Chattanooga Lead Site. Currently, cleanup activities are being conducted under removal authorities. As a result, property cleanup is primarily based on detected lead concentrations above the removal management level of 1,200 milligrams per kilogram (mg/kg). In addition, special considerations are also provided to properties with children.

On January 18, 2018, the site was proposed for listing on the National Priorities List (NPL). Inclusion of the site on the NPL will allow additional resources to be allocated to address the contamination under the remedial program. EPA expects that residential properties, regardless of nature of occupancy, with lead concentrations above the anticipated site-specific cleanup level (360 mg/kg) will be addressed under the remedial process.

44. The President issued an Executive Order saying that for every rule an agency writes, two rules have to be repealed such that the net costs to industry are zero. However, the White House issued guidance on implementing this executive order that says that rules that address critical health matters could be exempted from the two-for-one repeal requirement. Does EPA plan to exempt its rule revising the Lead and Copper Rule from the two-for-one Executive Order? If not, why not, since the Rule does relate to a critical health matter?

In reviewing an update to the Lead and Copper Rule, EPA assesses potential costs. Any decisions regarding costs will be based on the substance of the rule, which is still in the rulemaking process.

45. Coal ash is laden with toxic pollutants and heavy metals, and is second only to mine waste as the largest industrial waste stream in country. On April 17, 2015, the EPA published a final rule regulating the disposal of coal ash, also known as "coal combustion residuals" (CCR), from power plants.[21] Among other things, the CCR rule established vital rules to protect groundwater resources, to protect local communities from toxic windblown dust,[22] to reduce the risk of catastrophic failure (*i.e.*, collapse) of surface impoundments, and to maintain records of compliance with those rules. You became EPA Administrator on February 17, 2017. On April 17 and May 31, 2017, lawyers for power plants asked to you reconsider a laundry list of provisions in the CCR rule. On September 13, 2017, you replied that, "After reviewing your petitions, I have decided that it is appropriate and in the public interest to reconsider the provisions of the final rule addressed in your petitions, in light of the issues raised in your petitions, as well as the new authorities provided in the recently enacted Water Infrastructure Improvements for the Nation Act, Pub. L. No. 114-322, 130 Stat. 1628 (2016)."[23]

You appear to have granted reconsideration of every provision requested by the electric power sector in their two petitions for reconsideration. Is that a correct reading of your letter? If not, which provisions are you reconsidering?

EPA has agreed to reconsider a number of provisions of the CCR rule. The U.S. Court of Appeals for the D.C. Circuit ordered EPA to submit a status report indicating which provisions of the final CCR rule were being or were likely to be reconsidered by the agency and a timeline for their reconsideration. EPA filed that status report on November 15, 2017, indicating that the following provisions were or were likely to be reconsidered. These included issues that were before the Court as well as those that were not:

Provision	**Description**
Issues Before the Court	
40 CFR 257.50(c), 40 CFR 257.100	EPA Regulation of Inactive Surface Impoundments
40 C.F.R 257.53 – definition of beneficial use	The Criteria for Determining Whether Activities Constitute Beneficial Use or Disposal
40 CFR 257.95(h)(2)	Use of Risk-Based Alternative Standards for Remediating Constituents Without an MCL

[21] 80 Fed. Reg. 21,302 (Apr. 17, 2015).
[22] *See, e.g.*, Sabrina Shankman, *Is Coal Ash Killing This Oklahoma Town?*, INSIDE CLIMATE NEWS, June 13, 2016, *available at* https://insideclimatenews.org/news/10062016/coal-ash-killing-bokoshe-oklahoma-making-money-having-fun-cancer-asthma.
[23] https://insideepa.com/sites/insideepa.com/files/documents/sep2017/epa2017_1860.pdf

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40 CFR 257.53 – definition of CCR pile	The criteria for determining Whether a Pile will be Regulated as a Landfill or as Beneficial Use
40 CFR 257.96-98	Regulatory Procedures Used to Remediate Certain Non-Groundwater Releases
40 CFR 257.73(a)(4), 257.73(d)(1)(iv), 257.74(a)(4), 257.74(d)(1)(iv)	Requirements for Slope Protection on Surface Impoundments, Including Use of Vegetation
40 CFR 257.103(a) and (b)	Whether to Allow Continued Use of Surface Impoundments Subject to Mandated Closure if No Capacity for Non-CCR Wastestreams
40 CFR 257.50(e)	Regulation of Inactive Surface Impoundments, Including Legacy Ponds
40 CFR 257.100	Exemption for Certain Remediation and Post-Closure Requirements for Inactive Surface Impoundments that Close by April 17, 2018 Note: EPA completed reconsideration of the issues associated with this claim. See 81 Fed. Reg. 51,802 (August 5, 2016).
Appendix IV to 40 CFR 257.93(b), 257.94(b), 257.95(b), 257.95(d)(1)	Addition of Boron to the List of Constituents that Trigger Corrective Action
Issues Not Before the Court	
40 CFR 257.97	Whether to Allow Modification of the Corrective Action Remedy
40 CFR 257.90	Whether to Suspend Groundwater Monitoring Requirements Where "No Migration" Demonstration is Made
40 CFR 257.98(c)	Whether to Allow Alternate Period of Time to Determine Remediation is Complete
40 CFR 257.104	Whether to Allow Modification of the Post-Closure Care Period
40 CFR 257.101, 257.102	Whether to Allow CCR to be Used to Close Surface Impoundments Subject to Mandated Closure
40 CFR 257.53	Clarify Placement of CCR in Clay Mines

46. Please provide a copy of all documents (including emails, white papers, meeting agendas, powerpoint presentations, memoranda and other materials) received or obtained by EPA related to the April 17, 2017 petition for reconsideration from the Utility Solid Waste Group, and the May 31, 2017 petition for reconsideration from AES Puerto Rico.

    EPA received two documents related to the April 17, 2017, petition: (1) a petition and cover letter from AES Puerto Rico, and (2) a petition from USWAG. These documents are attached (Enclosures).

47. Section 2301 of the WIIN Act[24] allows EPA to approve state-administered CCR regulations to operate in lieu of certain federal CCR regulations. Will you ensure that any state programs you approve are at least as protective of human health and the environment as the EPA's 2015 CCR rule?

Yes, the agency will ensure that any state programs that are approved meet all of the requirements for approval under the WIIN Act, including that the be "at least as protective as the 2015 CCR rule or successor regulations." In order for EPA to approve a state program, the statute requires that a state provide "evidence of a permit program or other system of prior approval and conditions under State law for regulation by the State of coal combustion residuals units that are located in the State." See 42 U.S.C. 6945(d)(1)(A). As noted, the statute also requires that the program be "at least as protective as" the federal CCR rule. Moreover, in EPA's Interim Final Coal Combustion Residuals State Permit Program Guidance Document, EPA states in many places that the state must submit evidence that their program is at least as protective as the federal CCR rule and that this determination is subject to public notice and comment. EPA has been working with our state partners to ensure that their programs meet the statutory standard.

48. As a former state attorney general, you know that laws are only effective insofar as regulated entities believe they will actually be enforced. Could the unavailability of citizen enforcement make a state program less protective of human health and the environment, or is it irrelevant? Please fully explain your response.

Citizen enforcement of environmental laws can support governmental actions and foster deterrence and thus may be a relevant consideration when state legislatures are designing environmental programs. However, citizen suits also may take positions that are contrary to a state's interpretation of its own laws, creating confusion. Ultimately, a decision by a state legislature whether or not to include citizen suit provisions in their statutes should be left to that legislature, taking into account the needs of the state and the environmental program being addressed.

49. For each inactive surface impoundment currently subject to the 2015 CCR rule, please provide:
    a. The site's name;
    b. The site's location;
    c. The amount of coal ash disposed of in the site;
    d. The number of people living within 3 miles; and
    e. Any waterbodies or public water supplies located within 3 miles of the site.

[24] Codified at RCRA section 4005(d), 42 U.S.C. 6945(d).

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Based on information that electric utilities posted on their CCR websites, EPA is aware of 113 inactive surface impoundments. The 2015 CCR rule defines an inactive surface impoundment as "a CCR surface impoundment that no longer receives CCR on or after October 19, 2015, and still contains both CCR and liquids on or after October 19, 2015." The attached table shows available information on the name and location of the 113 CCR units (Enclosure). EPA does not have the information to answer parts c through e of the question, as facilities are not required to report such information to EPA under the current regulations.

50. One of the companies that requested you reconsider the 2015 CCR rule, AES-Puerto Rico, appears to maintain a five-story pile of coal ash in Guayama, Puerto Rico. Has EPA received complaints about fugitive emissions from this waste pile? Has EPA investigated whether Hurricane Maria affected this and other waste piles in Puerto Rico? Please provide a copy of all documents (including emails, white papers, meeting agendas, powerpoint presentations, memoranda and other materials) received or obtained by EPA regarding off-site migration of coal-ash caused by Hurricane Maria. What precautions is EPA taking to ensure that weather events do not cause the release of coal ash?

On October 12, 2017, a team of EPA officials assessed the AES power plant to evaluate, among other things, potential spills or oil discharges, the stormwater collection and discharges system, and the wastewater treatment system. The assessment revealed that the power plant was structurally sound, oil spills were not observed from the diesel storage areas, and coal combustion residuals (CCR) had not migrated. EPA did not observe any discharge of CCR or Agremax material into wetlands. The stormwater management system implemented at the power plant appears to have prevented Agremax material and coal from discharging into the wetlands. A copy of the assessment information for the facility is enclosed.

It should be noted that the power plant had been shut down until just recently. Some structures, such as metal sidewalls and portions of the conveyors, were impacted by the storm and they were being repaired. The power plant remained out of operation until the Puerto Rico Electrical Power Authority (PREPA) requested that AES begin to produce power. AES began to producing power the week of February 12th, 2018.

Senator Booker:

51. The EPA has conceded that dangerous toxic and carcinogenic substances at dozens of Superfund sites are not adequately under control. The agency has also acknowledged that recent hurricanes have washed unknown amounts of chemicals from multiple Superfund sites into waterways. A recent analysis showed that 327 Superfund sites, 35 of which are in New Jersey, are at a risk of flooding due to climate change. In response to these findings, the Government Accountability Office (GAO) has agreed to investigate the risks to human health and the environment posed by natural disasters' impacts on Superfund sites.
    a. Do you agree that EPA must design Superfund remedies that account for climate change?
    b. Have you directed EPA staff to determine which Superfund sites may require additional remedies or precautions to be taken due to climate change?
    c. Can you please specify any additional resources that EPA may need to help remediate these sites?

    EPA agrees that to meet its mission of protecting human health and the environment, Superfund cleanup remedies must be designed to account for the impacts of extreme weather events. The agency's existing processes for site cleanup planning and implementation provide a robust structure that allows consideration of these impacts. EPA integrates extreme weather vulnerability analyses and adaptation planning throughout the Superfund process, including when conducting feasibility studies, remedial designs and remedy performance reviews. Due to wide variation in the location and geophysical characteristics of contaminated sites, the nature of remedial actions at those sites, and local or regional climate and weather regimes, a place-based strategy is the most effective method to achieve this.

    In 2012, the agency conducted a Superfund program assessment to: (1) identify extreme weather impacts most likely to affect remedies that are commonly used for contaminated groundwater, soil, or sediment; (2) evaluate associated vulnerabilities of the remedies; and (3) establish adaptation strategies for new and existing remediation systems. Since that time, EPA has been working to raise awareness among stakeholders, including Superfund site remedial project managers, about the importance of evaluating and addressing extreme weather vulnerabilities to ensure the continued protectiveness of remedies. The agency also continues to develop technical guidance, informational tools and training to assist site managers in integrating extreme weather vulnerability analyses and adaptation planning throughout the Superfund process.

52. On May 22, 2017, the Superfund Task Force was established to "provide recommendations…on how the Environmental Protection Agency (EPA) can streamline and improve the Superfund program." The report's recommendations were released in July 25, 2017. The EPA has stated that the Superfund Task Force kept no records of the analysis used to form recommendations for the Superfund program.

a. Is this correct? Did the Agency keep no records of the analysis used to form recommendations?
b. If it is correct, please provide justification or reasoning for the lack of record keeping when compiling a report that would shape the management of the Superfund program.

As I indicated at the hearing, the Agency does have records which will be provided to the committee.

Commented [BJME31]: Are these internal/pre-deliberative documents? Why does EPA include explanations of how the two lists were generated when those were not included in the question? Should these paragraphs be moved to the next QFR?

Sites Targeted for Immediate Intense Action: In developing the "immediate, intense action" list, senior career Superfund staff at EPA headquarters and in each region were consulted and identified potential sites that may be worthy of special attention now or in the future to advance those sites through the cleanup process. The recommended sites represent the EPA regions' best professional judgment where the Administrator's involvement would facilitate site progress. The Administrator reviewed the recommendations and personally selected the sites for inclusion. The list includes sites that require timely resolution of specific issues to expedite cleanup and redevelopment efforts. The specific issue or milestone that may benefit from the Administrator's attention is noted for each site on the list, which can be found on the EPA website at: https://www.epa.gov/superfund/superfund-sites-targeted-immediate-intense-action.

The list is designed to spur action at sites where opportunities exist to act quickly and decisively. The Administrator will receive regular updates on each of these sites. Further, the list is intended to be dynamic and sites will move on and off the list as appropriate. At times, there may be more or fewer sites based on where the Administrator's attention and focus is most needed.

Redevelopment Focus List: In formulating the redevelopment focus list, EPA headquarters staff reached out to the EPA regional Superfund Redevelopment Initiative (SRI) coordinators to inquire about sites where there has been a strong interest in reuse or at sites appearing to have the strongest near-term reuse potential. This inquiry formed an initial list. Consistent with the Task Force Recommendation #33: *Focus Redevelopment Efforts on 20 NPL Sites with Redevelopment Potential and Identify 20 Sites with Greatest Potential Reuse*, EPA headquarters staff then narrowed the list based on the following criteria:

- **Previous outside interest**
- **Transportation access**
- **Land values**
- **Other critical development drivers.**

This refined list of sites was shared with the Agency's regional Superfund offices, which vetted the sites with SRI experts, remedial project managers, attorneys and regional management. The regional offices also contacted property owners, as appropriate, to let them know that EPA was considering their sites for the list, and reached out to EPA's state counterparts to ask if they had additional sites with

redevelopment potential that the Agency should consider. Once EPA headquarters and the regions reached agreement, the list was made public.

The Redevelopment Focus List is intended to easily direct interested developers and potential owners to Superfund sites with redevelopment potential. EPA plans to focus redevelopment training, tools and resources towards the sites on this list. The Agency also plans to work with developers interested in reusing these and other Superfund sites; identify potentially interested businesses and industries to keep them apprised of redevelopment opportunities; and continue to engage with community groups in cleanup and redevelopment activities to promote the successful redevelopment and revitalization of their communities. This list is intended to be dynamic with sites moving on and off the list as appropriate.

The current list of sites may be found at: https://www.epa.gov/superfund-redevelopment-initiative/superfund-redevelopment-focus-list
For additional information about the Superfund Redevelopment Initiative, please go to: https://www.epa.gov/superfund-redevelopment-initiative

53. In response to the Superfund Task Force recommendations issued on July 25, 2017, you developed multiple priority lists of Superfund sites, including a list for sites targeted for "immediate, intense action" and the "Redevelopment Focus" list that highlights sites that can create potential commercial and development opportunities.
    a. How did you pick the sites to include on these lists? What specific criteria did you use?

Commented [BJME32]: As noted above, consider moving the paragraphs from the previous answer to this answer.

As to the Superfund Special Emphasis List, all 10 Regions were asked to submit their recommendations on sites that could benefit from attention and involvement. From the list submitted, the Agency selected the ones to be listed initially. ~~We had~~EPA originally ~~thought~~ anticipated a list of 10 would be the metric. However, with discussion and review of those submitted, the list ~~initially~~ expanded to 21.

As to the Redevelopment Site list, all 10 Regions again submitted recommendations for the list. The career staff in EPA's Office of Land and Emergency Management~~Superfund~~ made the final recommendations to me.

    b. What process do you intend to use in removing and adding sites to these lists?

As to the Superfund Special Emphasis List, the expected milepost or achievement needing attention is listed at the outset. Once that is achieved and absent a new milepost needing attention, the site would be deleted from the list. As to adding sites, the same process as originally employed will be replicated quarterly.

As to the Redevelopment List, a site will be removed once it has had an effective contract to reuse or it is apparent it is not viable, the site would be removed. Additions would come in the manner above with quarterly recommendations from the Regions to the career headquarters Superfund staff.

c. In what ways does the listing of these sites affect cleanup, construction, and revitalization efforts?

As to the Superfund Special Emphasis List, the listing has brought a focus and urgency to both the Potentially Responsible Parties and to those who are directly responsible to effect clean up and interact with the Potentially Responsible Parties. What the boss inspects, the employees respect. We have already seen sites stalled for years come to final pathway to resolution. Additionally, we have seen other sites move through my approval on to the remediation pathway.

As to the redevelopment list, this allows those parties interested in developing Superfund sites to focus on a few promising sites rather than sifting through 1344 sites. It also will allow potential third party dollars to be used in cleanup and more quickly return the property to productive use.

d. Do you plan to release a report or follow up on the progress made at the sites on these lists?

The status of the sites is monitored, particularly on the Special Emphasis List very frequently. We will update and revise after each quarter and will transparently report on additions and deletions.

Commented [BJME33]: Will these updates be posted on the Superfund Task Force website? If so, consider including a sentence saying that with the link to the website.

54. The Diamond Alkali site in Newark, New Jersey is on your list of Superfund sites targeted for "immediate, intense action" – will you be working as quickly as possible to implement the Record of Decision for the lower 8 miles of the Passaic River?

Yes, EPA will continue to work as quickly as possible to implement the Record of Decision (ROD) for the lower 8.3 miles of the Passaic River. The designation as a special emphasis site is intended to maintain a focus on the high priority cleanup actions that are necessary as we continue to oversee the design work for the bank-to-bank dredging and associated work.

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After the ROD was signed in March 2016, EPA negotiated and signed a settlement agreement with Occidental Chemical Corporation (OCC) in September 2016 for OCC to perform the remedial design for the selected remedy. Signing a settlement agreement for a $165 million remedial design in six months was an unprecedented accomplishment for EPA. The schedule for the remedial design estimated in the ROD was approximately four years. More than one year into the design, OCC, under EPA oversight, is still on schedule to complete the design by 2020.

55. When you commissioned the Superfund Task Force on May 22, 2017, you nominated Albert Kelly, who previously was CEO and President of Oklahoma-based SpiritBank, as its Chairman. Thirteen days prior to his appointment, he was ordered by the Federal Deposit Insurance Corporation ("FDIC") to pay a civil penalty of $125,000 after he "enter[ed] into an agreement pertaining to a loan ... without FDIC approval." Two months later, the FDIC issued a lifetime ban prohibiting Mr. Kelly from managing financial institutions after determining that his violations "demonstrated ... unfitness to serve as a director, officer, [and] person participating in the conduct of the affairs or as an institution affiliated party of the bank, [or] any other insured depository institution."
    a. The FDIC has banned Albert Kelly from banking for life because he "demonstrated ... unfitness to serve as a ... person participating in the conduct of the affairs ... [of] any ... insured depository institution."
        i. Will he be managing or providing advice on Superfund program funding or any other program funding in his role as Senior Advisor?
        ii. If so, what is the nature of these responsibilities?
        iii. Will you ask him to recuse himself from any specific agency activities or issue areas as a result of the banking ban?
    b. Were you aware of the FDIC investigations when you named him as Chair of the Superfund Task Force?
    c. Were you aware of the FDIC investigations when you named him as Senior Adviser

There is no federal ethics correlation between the FDIC matter and Mr. Kelly's service to EPA.

56. Proper financial management of the Superfund program is critical to its success. Since 1999, federal funding for the Superfund program has declined from about $2 billion to about $1.1 billion annually, and the rate of contamination threat reduction at Superfund sites has declined. During your hearing, you repeatedly stated that you had visited states throughout the country and discussed the Superfund and that the cleanup of sites would require "direction and leadership." The Chairman of the Superfund Task Force is charged with developing and implementing recommendations to improve the work of the Superfund program.
    a. Mr. Kelly had no previous experience in environmental policy or management when you named him to Chair the Superfund Task Force.

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i. What experience did he have that you believe qualified him to serve as Chair?
ii. What experience does he have that you believe qualify him to serve as your Senior Advisor?

b. What responsibilities was Albert Kelly given as Chairman of the EPA Superfund Task Force during the production of the Superfund Task Force Recommendations? What is his role and responsibility as Chair now that the Task Force has released its recommendations?
c. What responsibilities was Albert Kelly given as Senior Advisor at the EPA? What specific policy areas and programs will he be responsible for in this role?

Mr. Kelly has years of leadership positions from our home state of Oklahoma that has suited him for his position to facilitate Superfund reform. During the production of the Superfund Task Force Recommendations, Mr. Kelly was my leading appointee who spearheaded the effort while compiling the suggestions of career staff. Since the production of the recommendations, he has lead the efforts to begin the implementation of the recommendations. Mr. Kelly remains the Chair of the Superfund Task Force, and is assigned other roles as requested and required.

57. When you decided to move forward with the process to potentially weaken the Agricultural Worker Protection Standard requirements, what steps did you take to comply with Executive Order 12898, which requires EPA to identify and address the disproportionately high and adverse human health effects of its activities on minority and low income communities?

In response to stakeholder concerns, in December 2017, EPA released a Federal Register Notice to initiate the process to revise certain requirements in the Worker Protection Standard (WPS) and Certification of Pesticide Applicators Rule. By the end of fiscal year 2018, EPA expects to publish a Notice of Proposed Rulemaking to solicit public input on possible revisions to the WPS requirements for minimum age, designated representatives, and application exclusion zones, and the minimum age requirement for certified applicators. While the agency seeks public input on these possible changes, the compliance dates for the two rules remain in effect. EPA remains committed to protecting agricultural workers who handle and apply pesticides. Any possible revisions included in the proposed rulemakings will comply with all applicable statutory requirements and executive orders, including Executive Order 12898.

58. Despite proposing drastic cuts to EPA's budget, you are spending taxpayer dollars on questionable expenses such as paying $25,000 to install a custom-made, soundproof phone booth in your office.

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a. Have you used this $25,000 phone booth for any calls with representatives of oil and gas companies?

No.

b. Will you provide to this committee within 10 days a log of all of the calls you have made from this phone booth?

This is a secure phone line and room to be used for secured conversations with administration officials. This was an update to the building. For the information of the Committee, the upgrades and maintenance to the two main North and South portions of this 1930's era grand building is approximately $6 million every year out of EPA's most recently annual appropriation of $7.9 billion.

59. Despite a tradition of EPA reimbursing the Justice Department for their work in holding polluters accountable for Superfund clean ups, it was recently reported that you may break with this precedent, directing your agency to not reimburse the DOJ for that work. Do you plan on withdrawing EPA funding for the Justice Department's Environment and Natural Resources Division?

Cleaning up the nation's Superfund sites and returning them to communities for beneficial use is one of EPA's top priorities. Under the President's Budget for EPA, up to $20 million will be provided for DOJ support for Superfund Enforcement to focus on the highest priority sites, particularly those that may present an immediate risk to human health and the environment.

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Senator Boozman:

60. Administrator Pruitt, I understand that EPA is currently reviewing procurement guidance for the federal government's purchasing of lumber and wood products. During the Obama Administration, EPA issued procurement guidelines for lumber and wood products that called for the use of wood and lumber certified by the Forest Stewardship Council, leaving out wood grown on forests certified by the two major forest certification systems in the U.S.: the American Tree Farm System and the Sustainable Forestry Initiative. This guidance would have excluded of 4 million acres of Arkansas timber eligible for federal procurement. Additionally, the Obama Administration's guidance runs directly counter to the regulations issued under USDA's BioPreferred program, a program created in the 2008 Farm Bill that sets federal purchasing requirements for all biobased products and specifically recognizes eligibility from all three systems. What are you doing to ensure the EPA does not arbitrarily pick winners and losers and prevent the federal government from purchasing American timber?

    EPA's previous action on this issue was carried out under the June 2015 "Implementing Instructions for Executive Order 13693: Planning for Federal Sustainability in the Next Decade," and was not an agency regulation. Based on stakeholder concerns and interagency discussions, the EPA recommendation for the lumber/wood product category was removed from the "Recommendations of Specifications, Standards, and Ecolabels for Federal Purchasing" in December 2016. Before further action on this product category, EPA will ensure coordination with the USDA Forest Service and USDA Natural Resources Conservation Service, Department of Energy, OMB, and CEQ to determine how forestry standards should best be evaluated. Once the federal agencies have had time to come to consensus, EPA would engage stakeholders to refine the guidelines pertinent to evaluating the lumber/wood recommendation. This process is intended to provide a transparent, fair, and consistent approach to updating the EPA recommendation of forestry certifications and assessing other commodities' extraction/harvesting related environmental impacts.

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Senator Ernst:

61. In two separate interviews shortly after the time of this hearing, you stated the need for both RFS reform and RIN reform. During the confirmation process, you went to great length to explain your intention to uphold the RFS. Can you please explain what you think RFS reform entails? In Iowa, this is a flashpoint and the continued rhetoric used appears to contradict your promise to this Committee on the RFS.

    There has been a heightened interest from a broad range of stakeholders advocating for programmatic changes to the Renewable Fuel Standard (RFS) in order to expand the use of higher ethanol blends and stabilize the costs of compliance. The above referenced interviews were subsequent to a then-recent meeting with government leaders at the White House which included representatives from your office. As you may recall, concerns were expressed regarding the variability of Renewable Identification Number (RIN) values, the impact of those costs on obligated parties and the range of options government leaders and policy makers should consider to strengthen the long-term viability of the RFS program. My references to RFS or RIN reform in those interviews was merely a summation of those discussions and associated concerns.

62. Much has been said about finding a "win-win" on the RFS and RINs, albeit not by you, but by some Members of Congress. Would you agree that fixing the Reid vapor pressure issue on E15 is a "win-win"? Doing so would reduce RIN prices, which some refineries say they need, while also expanding the marketplace for biofuels.

    Expanding the 1.0 pound per square inch (psi) waiver for RVP to E15 has been and continues to be a part of RFS reform options expressed and supported by a range or stakeholders. Senator Fischer has shown great leadership in the Senate on this issue and, during the same interviews referenced in the preceding question, I discussed the prospect of granting this type of waiver and have been assessing the legal and technical considerations for an administrative action.

63. How aggressively will EPA pursue the RIN obligation from refineries that declare bankruptcy?

    We, along with our colleagues across the federal government, will monitor any such bankruptcy proceedings closely. However, we would treat each situation on a case-by-case basis, so I am not able to comment further on this matter.

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64. The Pesticide Registration Improvement Act (PRIA) was first enacted in 2003 and established a fee schedule for pesticide registrations. It lists specific time periods for EPA to make a regulatory decision on pesticide registration and tolerance actions submitted to the Agency. The goal of PRIA was to create a more predictable and effective evaluation system for affected pesticide decisions and couple the collection of individual fees with specific decision review periods. It also promoted shorter review periods for reduced-risk applications.

    PRIA has been tremendously successful, providing hundreds of millions of dollars in funding to EPA and providing product developers with clarity on timelines for Agency actions, and facilitating investment in research and development of new products. Importantly, through these industry fees, it has also provided $1 million annually in worker protection and pesticide safety training.

    PRIA has been reauthorized twice since it was first enacted – in 2007 and 2012 – each time by unanimous consent. It has been supported by large and small manufacturers of agricultural and non-agricultural products, antimicrobial products, biotech companies, and biopesticides, as well as labor and environmental advocates. The current law was set to expire on September 30, 2017; however, an extension was included in the CR that extends the authorization through February 8, 2018. H.R. 1029, the Pesticide Registration Enhancement Act, which would reauthorize these authorities, passed the House by voice vote on March 20, 2017, and was reported by the Senate Agriculture Committee on June 29, 2017.

    a. Can you explain the likely impacts to worker protection programs and your ability to regulate pesticides if PRIA is not reauthorized?

    PRIA provides approximately 33 percent of the funding for EPA's pesticide program activities. Currently operating under the third iteration of the statute, PRIA provides two funding sources to EPA's pesticide program:

    - **One time registration service fees (i.e., PRIA fees) for the evaluation of new applications submitted to the EPA; and**
    - **Annual FIFRA maintenance fees assessed to products currently in the marketplace, a significant portion of which are used to support the re-evaluation of pesticides in order to meet the statutory deadline of October 1, 2022, for completing the first round of registration review.**

    PRIA's authorization expired on September 30, 2017, has been extended in short term reauthorizations in each continuing resolution, and is now authorized through March 23, 2018. Legislation reauthorizing PRIA is currently pending in Congress. If the authorization expiration date is not further extended or if PRIA is not reauthorized by that date, pesticide applications submitted after that date will no longer be subject to decision time periods. The two year sunset provision in FIFRA section 33(m) specifies fees be reduced in fiscal year 2018 by 40 percent below the levels in effect during fiscal year 2017, and by 70 percent in

fiscal year 2019. Effective September 30, 2019, fee requirements under PRIA would be terminated.

Additionally, if PRIA were not reauthorized, $2 million per year for worker protection activities, pesticide safety education programs, and partnership grants, monies that currently come from PRIA funds, would not be available and these programs would not be funded. These activities include:

- **Developing and administering a pesticide safety training program that will support a national network of pesticide safety trainers providing worker safety training to migrant and seasonal farmworkers and their families (National Farmworker Training Program);**
- **Developing pesticide education materials for workers, handlers, and trainers on how to comply with WPS (cooperative agreement with UC-Davis and Oregon State University); and**

Supporting National Pesticide Information Center (NPIC), a bi-lingual, factual source of information for professional and public audiences on pesticide-related issues.

Commented [BJME34]: Fix formatting to make this a bullet.

b. What would be the impact to farmers across my state and the country?

PRIA provides predictability and regulatory certainty to all stakeholders regarding the timing of pesticide registration decisions. In the absence of PRIA, the statutory timelines would no longer exist and applications to register new pest control tools would be reviewed as resources were available. However, EPA would not be in a position to guarantee a registration decision timeline with any certainty. Farmers in need of new pest control tools would be greatly impacted as they may ~~would~~ not be able to timely adopt new technologies to address their pest management needs.

Commented [BJME35]: Consider softening since there will be delays and a phase out period.

Senator Fischer:

65. In two recent television interviews, you discussed the need for RFS and RIN reform. Given your commitments made to this committee during the confirmation process that you would uphold the RFS, can you please elaborate on what you think RFS reform means?

    There has been a heightened interest from a broad range of stakeholders advocating for programmatic changes to the Renewable Fuel Standard (RFS) in order to expand the use of higher ethanol blends and stabilize the costs of compliance. The above referenced interviews were subsequent to a then-recent meeting with government leaders at the White House which included representatives from your office. As you may recall, concerns were expressed regarding the variability of Renewable Identification Number (RIN) values, the impact of those costs on obligated parties and the range of options government leaders and policy makers should consider to strengthen the long-term viability of the RFS program. My references to RFS or RIN reform in those interviews was merely a summation of those discussions and associated concerns.

66. How do you plan to approach the bankruptcy court case involving Philadelphia Energy Solutions? Do you intend to ask the refinery to honor their legal obligation?

    We, along with our colleagues across the federal government, will monitor any such bankruptcy proceedings closely. However, we would treat each situation on a case-by-case basis, so I am not able to comment further on this matter.

67. If PES is allowed to use bankruptcy to avoid their RFS obligation, do you expect other refineries to follow this path?

    We are aware that PES recently filed a plan of reorganization with a bankruptcy court in Delaware, and we, along with our colleagues across the federal government, are monitoring the bankruptcy proceedings closely. As this is the subject of ongoing court proceedings, I am not able to comment further on this matter.

68. I understand that several commercial-ready companies seeking approval of new cellulosic biofuel (D3) registrations have been told by U.S. Environmental Protection Agency (EPA) staff that the processing of such applications is currently on hold until EPA staff completes an internal review.

    Because of the investment and long-term planning required to undertake these projects, it is imperative that new production of qualified cellulosic biofuels is approved as efficiently as possible. This will allow these commercial-ready businesses to gain the value associated with the D3 RIN production during this time of tight margins in the

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agriculture economy and signal to the marketplace that these gallons are valued, as the Renewable Fuel Standard (RFS) intends.

If EPA is currently delaying registration of new D3 production, the falsely low D3 production volume would affect not only today's market, but also the market for the coming year and beyond, through EPA's annual volumetric rulemaking for the RFS. This practice would systematically underestimate D3 production, and thereby undermine Congress's intent under the RFS to grow the cellulosic biofuel market.

Does EPA currently have new cellulosic registrations on hold until EPA staff completes an internal review?

Under the Renewable Fuel Standard (RFS) program, cellulosic ethanol produced from corn kernel fiber qualifies to generate cellulosic RINs under an existing approved fuel pathway if certain registration and reporting requirements are met. EPA has registered some ethanol facilities under this pathway and received additional applications that are currently under review at this time.

69. When does EPA anticipate completing this review, and what does it hope to accomplish through this review?

Facilities that are simultaneously processing corn starch and corn kernel fiber to produce a mixture of conventional ethanol and cellulosic ethanol. The regulations require use of a test method to identify the cellulosic converted fraction that has either been certified by a voluntary consensus standards body or is demonstrated to produce "reasonably accurate" results. Unfortunately, there is currently no analytical test method that is certified by a voluntary consensus body and no certified reference samples containing both cellulose and starch. This requires EPA to evaluate each company's application on its unique merits. Due to the complexity of these applications, EPA does not have a specific time to complete its review. However, EPA is committed to supporting efforts by the industry and other government/non-governmental parties to find a way forward.

70. What steps is EPA taking to ensure these actions do not negatively impact cellulosic biofuel volumes in the 2019 RVO rulemaking?

The registration process is designed to ensure that when RINs are generated the fuel on which they are based qualified for the corresponding category of renewable fuel. EPA takes this responsibility very seriously, and in some cases it takes considerable time to work through the technical issues, which may include developing new test procedures. In projecting cellulosic biofuel production for 2019 as part of the RVO process, EPA staff carefully monitor the status of pending facility registration requests to ensure that our projections of cellulosic RINs generated in 2019 are as accurate as possible. We also carefully consider the comments we receive on the

proposed rule and make amendments to our projection methodology and volume projections as appropriate.

Senator Markey:

WEBSITE

71. In all, more than 5,000 pages of scientific, policy, and educational material on climate change have been moved off the main website for the Environmental Protection Agency (EPA). This information has been largely relegated to a maze of archives and portals that is virtually inaccessible to the public. The EPA's mission states that the agency should ensure "all parts of society – communities, individuals, businesses, and state, local and tribal governments – have access to accurate information sufficient to effectively participate in managing human health and environmental risks."[25] Additionally, the Paperwork Reduction Act directs agencies to "provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products."[26] However, there was no notice of the changes made to the EPA website, leaving the public with no opportunity to weigh in on the Administrator's decision to move, hide, and archive information on the Clean Power Plan or on climate change.
    a. How does the decision to remove hundreds of webpages and post the notice on the same day comply with the EPA's mission?
    b. How does the decision to remove hundreds of webpages and post the notice on the same day comply with the Paperwork Reduction Act?
    c. Were you personally involved in directing the removal of any information from the EPA website? If so, please provide any correspondence or documentation relating to your personal involvement in the overhaul and censorship of the EPA website.

EPA is continually making changes to its website and other digital information resources to reflect and support the agency's current priorities and work. When we remove information from our main portal, www.epa.gov, the majority of the time we make sure it is still available to the public via our archive website, https://archive.epa.gov/. In addition, because of the public concern about access to information on our website last year, we created a snapshot website that contains the content that was on our main portal on January 12, 2017. The snapshot website can be searched here: https://19january2017snapshot.epa.gov/.

All changes to EPA's websites and digital resources are coordinated between the different offices at the agency. We do our best to make new information available to the public as soon as possible and then notify them of the changes.

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[25] "Our Mission and What We Do." United States Environmental Protection Agency. Accessed February 1, 2018. https://www.epa.gov/aboutepa/our-mission-and-what-we-do
[26] 44 USC § 3506(d)(3)

72. The error page on the EPA website that the public reaches when trying to access former resources on climate change reads, "This page is being updated [...] We are currently updating our website to reflect EPA's priorities under the leadership of President Trump and Administrator Pruitt."
    a. Please provide a timeline for when this update will be complete, as well as a detailed list of all the pages that have been permanently removed from www.epa.gov and the changes made on those that remain in an altered form.
    b. Please explain how the priorities of President Trump and Administrator Pruitt necessitate the removal of pages like "What Climate Change Means for Massachusetts" from www.epa.gov.
    c. Please provide an accounting of the costs and employee hours associated with developing the resources that were removed, as well as with the process of moving and updating the website to "reflect EPA's priorities."

We are constantly updating our website to reflect new initiatives and projects of the Agency. Of course the site will be reflective of the current administration's priorities – with that said, all the content from the previous administration is still easily accessible and publicly available-through the banner across the top of the main page of the site.

ENFORCEMENT

73. Oklahoma recently suffered what may be the deadliest accident in the history of the shale industry, when five workers were killed by an explosion at a fracking site. The company that owns this site (Patterson-UTI) has reportedly experienced several other deadly safety incidents from 2010-2013. Oklahoma's regulators use an enforcement system that shuns fines in favor of working with violators, a strategy which you appear to have emulated during your tenure. For example, Devon Energy had admitted to illegally emitting hazardous chemicals, and was in discussions to pay a settlement of more than $100,000 and install mitigation technology. After your swearing it, Devon Energy informed the EPA that it was "re-evaluating its settlement posture" and now offered a settlement of around $25,000 with no commitment to install additional technology.[27]

    According to a New York Times analysis, compared to the first nine months of the Obama administration, you have: filed roughly 1,000 fewer new enforcement cases; sought 60 percent less in civil penalties; requested almost 90 percent fewer injunctive relief fixes, which prompt companies to cut pollution; and made it harder for EPA offices to request pollution tests.[28]

[27] Brook-Davison, Carrick. "RE: Revised Devon settlement proposal for the Beaver Creek Gas Plant." Guida, Slavich & Flores. February 22, 2017. Accessed February 1, 2018. https://www.documentcloud.org/documents/3727057-Devon-Fights-and-Now-is-Winning-Battle-Against.html#document/p1/a356485

[28] Lipton, Eric and Danielle Ivory. "Under Trump, E.P.A. Has Slowed Actions Against Polluters, and Put Limits on Enforcement Officers." The New York Times. December 10, 2017. Accessed February 1, 2018. https://www.nytimes.com/2017/12/10/us/politics/pollution-epa-regulations.html

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a. Please provide a list of companies and plants that received notices of violations from 2008-2017 under the Clean Water Act, the Clean Air Act, or the Resource Conservation and Recovery Act, but that have not yet had any EPA penalties levied upon them.

In some enforcement circumstances, the EPA issues a NOV to a facility owner/operator that the agency has identified as having one or more violations. However, not all statutes include provisions for issuance of an NOV or require issuance of an NOV. *Compare* Clean Air Act § 205(c)(1), 42 U.S.C. § 7523(c)(1) ("[T]he Administrator shall give written notice to the person to be assessed" a penalty) *with* Clean Water Act § 309, 33 U.S.C. § 1319 (no provision for written notice).

Since not all statutes include these provisions, the agency does not centrally track all NOVs in the agency's Integrated Compliance Information System (ICIS) enforcement and compliance database. Some information on NOVs is available in ICIS, but NOVs are not required to be entered. Additionally, because NOVs do not always result in the need for follow-up enforcement actions, *e.g.*, where the facility promptly returns to compliance, we do not have the ability to link NOVs to later enforcement actions.

b. Please provide a detailed list of cases where, under your leadership, the EPA withdrew or accepted lower civil monetary penalties than were recommended under the previous administration from 2008-2017 and the rationale for these decisions.

EPA's civil penalty policies provide the bases upon which EPA compromises claims and settles cases for less than the statutory maximum penalty. These policies can be found here https://www.epa.gov/enforcement/enforcement-policy-guidance-publications. The negotiation of penalties is based on these policies. The specifics of each case are confidential enforcement information. When an enforcement action is withdrawn or not pursued, that information is reported in ICIS. However, please note that these data are not certified and may not always be entered in a timely manner. We have provided below the total number of enforcement actions in ICIS reported as withdrawn or not pursued. Because the decision to withdraw a case may involve an enforcement-confidential determination, we have not provided a list of cases.

Actions Reported:	CY08	CY09	CY10	CY11	CY12	CY13	CY14	CY15	CY 16	CY 17
Total	64	126	65	105	95	57	57	26	31	23

74. The EPA recently released data that detailed the fines, penalties, and other commitments that the agency collected during fiscal year 2017.[29] According to the EPA's report, the number of new cases, defendants charged, and federal inspections and evaluations began by the agency in FY2017 were all at the lowest level in at least a decade. Despite this, the EPA still touted an increase in the total amount of criminal fines, including restitution and mitigation activities.
    a. Of the cases included in the FY17 reporting, what percentage of fines and restitutions, court ordered environmental projects, Superfund site commitments from liable parties, judicial penalties, injunctive relief, and other penalties were made before January 20, 2017?

The enforcement and compliance work accomplished in fiscal year 2017 included work performed under both the prior and current administrations. This administration is proud to highlight accomplishments and to honor EPA employees for all of the great work they did last fiscal year.

In response to your request for data on the percentage of FY17 fines, penalties, and other relief secured before and after January 20, 2017, please see the chart below.

Measure	Total FY 2017 Values October 1, 2016 - September 30, 2017	Values for October 1, 2016 - January 19, 2017	Percentage for October 1, 2016- January 19, 2017	Values for January 20, 2017 – September 30, 2017	Percentage for January 20, 2017 – September 30, 2017
Fines (Criminal)	$2,829,202,563	$8,716,000	0.3%	$2,820,486,563	99.7%
Restitution (Criminal)	$147,520,835	$84,755,737	57.5%	$62,765,098	42.5%
Court Ordered Environmental Projects (Criminal)	$3,092,631	$1,146,362	37.1%	$1,946,269	62.9%
Amount Committed by Liable parties to Clean Up for Superfund sites	$1,227,057,039	$68,586,500	5.6%	$1,158,470,539	94.4%
Amount Committed by Liable Parties to Reimburse the Government for Past Costs at Superfund Sites	$142,577,803	$22,398,806	15.7%	$120,178,997	84.3%
Judicial Penalties	$1,583,608,081	$51,310,581	3.2%	$1,532,297,500	96.8%
Administrative Penalties	$48,078,393	$13,206,031	27.5%	$34,872,362	72.5%
Injunctive Relief (Judicial and Administrative)	$19,971,202,303	$16,483,587,889	82.5%	$3,487,614,414	17.5%

[29] "Enforcement Annual Results for Fiscal Year 2017." Environmental Protection Agency. Accessed February 9, 2018. https://www.epa.gov/enforcement/enforcement-annual-results-fiscal-year-2017

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Supplemental Environmental Projects (Judicial and Administrative)	$17,255,199	$4,013,347	23.2%	$13,241,852	76.8%

b. Of the cases included in the FY17 reporting, what percentage of civil and criminal cases, inspections/evaluations, complaints, and orders were initiated, opened, or filed after January 20, 2017?

Please see the chart below in response to your question.

Measure	FY 2017 Counts	Case Counts from January 20, 2017 - September 30, 2017	Percentage
Civil Judicial Referrals	114	81	71%
Criminal Cases Opened	115	70	61%
Inspections/Evaluations[30]	9,918	7,924	80%
Administrative Penalty Order Complaints (APOCs)	1,218	939	77%
Administrative Compliance Orders (ACOs)	606	476	79%
Final Administrative Penalty Orders (FAPOs)	1,255	972	77%
Complaints Filed With Court	83	43	52%

75. The EPA FY19 budget request included an 18 percent cut to civil enforcement and a 12 percent cut to criminal enforcement from the FY18 annualized Continuing Resolution (CR).
    a. As the number of new enforcement cases are already falling under your tenure, how does limiting the enforcement budget further facilitate your stated objective to "timely enforce environmental laws to increase compliance rates […] especially enforcement actions to address environmental violations?[31]
    b. How many full-time EPA employees working on civil, criminal, Superfund, and federal facilities enforcement do you expect to be supported by the FY19 budget request?

[30] The Inspection/Evaluation totals in this chart exclude manually reported SDWA UIC inspections because EPA does not maintain the date of these inspections. The FY 2017 total number of inspections reported for Annual Results, including SDWA UIC inspections, is 11,756 (9,918 + 1,838 manually reported SWDA UIC inspections.)
[31] "FY 2019 EPA Budget in Brief." United States Environmental Protection Agency. February 2018. Accessed February 13, 2019. https://www.epa.gov/sites/production/files/2018-02/documents/fy-2019-epa-bib.pdf

EPA's enforcement efforts continue to be focused on achieving compliance, not on the number of individual actions taken. To achieve the desired outcome, EPA works in partnership with state and tribal agencies to assure compliance, protect public health and the environment, and ensure a level playing field for businesses. Recognizing that states are the primary implementers of our nation's environmental laws, EPA will focus where it can provide the most value including matters affecting multiple states or tribes, serving as a backstop when a state or tribe does not address serious noncompliance in a timely fashion, and assisting states and tribes when they lack the capability, resources, or will to address noncompliance.

In FY 2019, the agency is requesting 2,264.1 FTE for the civil, criminal, Superfund, and federal facilities enforcement programs.

CLIMATE IN DRAFT STRATEGIC PLAN

76. You have said that "scientists continue to disagree about the degree and extent of global warming and its connection to the actions of mankind."[32] With regard to human-produced carbon dioxide, in an interview with CNBC, you said that, "I would not agree that it's a primary contributor to the global warming that we see."[33] But the statutorily required National Climate Assessment's Climate Science Special Report that was released by the Trump Administration in November concluded that "human activities, especially emissions of greenhouse gases, are the dominant cause of the observed warming since the mid-20th century."[34] Last year was the second-hottest year in recorded history, according to the National Aeronautics and Space Administration, and saw record-breaking costs incurred by extreme weather and climate disasters.
    a. Do you disagree with the conclusion made in the Climate Science Special Report by our country's top scientists at 13 federal agencies, including your own, that human activities are the dominant cause of global warming, with "no convincing alternative explanation"?

    EPA recognizes the challenges that communities face in adapting to a changing climate. EPA works with state, local and tribal governments to improve infrastructure to protect against the consequences of climate change and natural disasters. EPA also promotes science that helps inform states, municipalities, and tribes on how to plan for and respond to extreme events and environmental emergencies. Moving forward, EPA will continue to advance its climate adaptation efforts, and have reconvened the cross-EPA Adaptation Working Group in support of those efforts.

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[32] Pruitt, Scott and Luther Strange. "The Climate-Change Gang." The National Review. May 17, 2016. Accessed January 31, 2018. http://www.nationalreview.com/article/435470/climate-change-attorneys-general

[33] DiChristopher, Tom. "EPA chief Scott Pruitt says carbon dioxide is not a primary contributor to global warming." CNBC. March 9, 2017. Accessed February 1, 2018. https://www.cnbc.com/2017/03/09/epa-chief-scott-pruitt.html

[34] Wuebbles, D.J., and D.W. Fahey, K.A. Hibbard, D.J. Dokken, B.C. Stewart, and T.K. Maycock (eds.) "Climate Science Special Report." U.S. Global Change and Research Program. November 2017. Accessed January 31, 2018. https://science2017.globalchange.gov/downloads/CSSR2017_FullReport.pdf

Human activity impacts our changing climate in some manner. The ability to measure with precision the degree and extent of that impact, and what to do about it, are subject to continuing debate and dialogue.

77. Despite these findings, and the conclusion that "[c]hanges in the characteristics of extreme events are particularly important for human safety,"[35] climate change did not appear in the EPA's Strategic Plan for 2018-2022, as published on February 12, 2018.
    a. Why does climate change not appear in the draft plan?
    b. Do you intend to address climate in other strategic planning documents, commensurate with the findings of the Climate Science Special Report? If not, why not?

We are constantly updating our website to reflect new initiatives and projects of the Agency. Of course the site will be reflective of the current administration's priorities – with that said, all the content from the previous administration is still easily accessible and publicly available-through the banner across the top of the main page of the site.

Commented [BSHE36]: This answer appears to be in the wrong place. The question was about climate change references in EPA's Strategic Plan, not about EPA;s website.

PERSONNEL

78. In the FY19 budget request, Science and Technology funding was cut from $708,975,000 in the FY 2018 annualized CR to $448,965,000—a decrease of 37 percent. The Regional Science and Technology funding was zeroed out entirely. This attack on science comes as more than 200 scientists have left the agency over the past year.
    a. How many full-time scientists will be supported at the EPA by the FY19 budget request?

Based on the distribution of scientific positions within the agency workforce, EPA would estimate that between 8,300 and 8,800 scientific positions would be supported through the FY 2019 Presidents Budget Request. This is an estimate extrapolated from on-board data that is current as of FY 2017 and includes non-federal positions. The actual number is dependent upon programmatic workforce decisions that remain to be made as well as factors such as attrition.

Commented [BSHE37]: How did EPA arrive at this estimate? Could EPA please send the OMB RMO a breakdown of scientific vs. nonscientific positions by program project for the FY 2019 PB request.

    b. Can you describe how the Regional Science and Technology capabilities will be fully replaced by the "ad hoc" efforts described in the Budget in Brief?

The Regional Science and Technology program performs laboratory analysis, field monitoring, and sampling investigations in order to provide credible scientific data on environmental pollutants and conditions to Agency policy makers. Under its Reform Plan, the Agency is working to develop a

[35] Ibid.

comprehensive enterprise-wide laboratory approach that will address many of the programs' traditional functions.

TOXIC CHEMICALS

79. During the hearing, you committed to updating my office on the status of the formaldehyde health assessment, which I understand has been completed by EPA staff but not yet released.
    a. What date was the draft assessment completed by EPA staff?
    b. What is the exact timeline for public release?
    c. What are the exact steps that EPA must take internally before the report is shared for interagency review?

    Please see response to Question 10.

80. The Integrated Risk Information System (IRIS) provides the scientific research needed to effectively implement the Clean Air Act, Clean Water Act, Safe Drinking Water Act, Food Quality Protection Act, and the Toxic Substances Control Act (TSCA), among other laws that protect our nation's public health and environment. However, there have been repeated attacks made on IRIS's objectivity and independence, despite recent changes made to strengthen its scientific approach. There are reportedly around 30 people left working at IRIS, after a period of serious attrition similar to that seen within other EPA offices.
    a. Does the EPA plan on moving the IRIS program from the Office of Research and Development to the Office of Chemical Safety Pollution and Prevention (OCSPP) as reported, thereby placing it within the regulatory arm of the EPA and out of the science and research office?

    There are no plans to move IRIS out of ORD.

    b. If yes, please detail how the EPA would ensure that the scientific research remains independent, transparent, and non-politicized.

    N/a. See 80a.

    c. Please provide a list of dates and attendees of meetings you or senior political appointees have taken in which IRIS was discussed, as well as any communication or documents relating to these meetings.

    We are working to gather this information with regard to EPA's IRIS meetings and will provide this information to you as soon as possible.

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Senator Merkley:

81. Under your new policy, you exclude scientists who currently receive EPA grants from serving on EPA scientific advisory committees (link: https://www.epa.gov/sites/production/files/2017-10/documents/final_draft_fac_directive-10.31.2017.pdf).
    a. What is the legal basis for this new directive?
    b. What is your reasoning in exempting tribal, state, and local EPA grant recipients from the directive?
    c. How do you define conflicts of interest within the EPA advisory committees?
    d. Have you consulted with scientific societies, the National Academies, or other independent science organizations about the definition of conflicts of interest?
    e. How will your directive work to ensure that the agency's advisory committees are able to make objective recommendations based on the best available science?
    f. Can you provide an example of a time when a EPA grant recipient on a federal advisory committee provided "conflicted" advice to the administrator?
    g. Now that your directive has tripled the number of industry scientists on the SAB, how will you ensure that the EPA's science advice remains independent?

    Information responsive to these questions can be found in EPA guidelines and public documents, including:
    - https://www.epa.gov/faca/strengthening-and-improving-membership-epa-federal-advisory-committees
    - https://www.epa.gov/sites/production/files/2015-02/documents/ethicsadvisory.pdf
    - https://yosemite.epa.gov/sab/sabproduct.nsf/Web/ethics?OpenDocument

82. The policy excluding scientists does not affect individuals who have industry ties. For example, Dr. Tony Cox received money from American Chemistry Council, American Petroleum Institute, Engine Manufacturers Association, National Mining Association, and many others, yet you selected him to chair the Clean Air Scientific Advisory Committee (CASAC). Why are industry-funded individuals with apparent conflicts of interest more qualified to serve in these science committees than independent scientists?

    All EPA employees, including Special Government Employees, must abide by federal ethics laws and regulations, including the Standards of Ethical Conduct for Employees in the Executive Branch, 5 C.F.R. Part 2635, and the conflict of interest statutes codified in Title 18 of the United States Code. Agency policies, including ethics-related and conflict of interest guidelines, which can be found at:
    - https://www.epa.gov/faca/strengthening-and-improving-membership-epa-federal-advisory-committees
    - https://www.epa.gov/sites/production/files/2015-02/documents/ethicsadvisory.pdf
    - https://yosemite.epa.gov/sab/sabproduct.nsf/Web/ethics?OpenDocument

83. You took an unprecedented action and dismissed Dr. Donna Kenski from EPA CASC before her term expired, alleging that Kenski would not qualify under EPA's problematic new policy. Even so, Dr. Kenski's employer, the Lake Michigan Air Directors Consortium's EPA grant is routed through the state government, a category is exempted in the new policy. At the same time, Dr. Michael Honeycutt is allowed to chair the Scientific Advisory Board, even though he has received over $58 million in grants while leading the Texas Commission on Environmental Quality. Why does the same policy disqualifies Dr. Kenski while allowing Dr. Honeycutt to serve?

All EPA employees, including Special Government Employees, must abide by federal ethics laws and regulations, including the Standards of Ethical Conduct for Employees in the Executive Branch, 5 C.F.R. Part 2635, and the conflict of interest statutes codified in Title 18 of the United States Code. Agency policies, including ethics-related and conflict of interest guidelines, which can be found at:

- https://www.epa.gov/faca/strengthening-and-improving-membership-epa-federal-advisory-committees
- https://www.epa.gov/sites/production/files/2015-02/documents/ethicsadvisory.pdf
- https://yosemite.epa.gov/sab/sabproduct.nsf/Web/ethics?OpenDocument

84. You pledged repeatedly in front of this committee that since you are a lawyer and a prosecutor, you would defer to your career staff for science advice. Yet you replaced Dr. Kenski with Dr. Larry Wolk, whom according to your staff's memo, had "no direct experience in health effects of air pollution, epidemiology, toxicology." On Dr. Tony Cox, your staff raised conflict of interest and appearance of a lack of impartiality issues. Will you commit to follow the recommendations of EPA's career staff so no one appointed to the EPA's advisory committees are either unqualified or have conflicts of interests so that the committees can provide you with the best and sound science that you and the agency so desperately need?

The Agency is committed to selecting qualified and knowledgeable individuals to serve on advisory committees. All EPA employees, including Special Government Employees, must abide by federal ethics laws and regulations, including the Standards of Ethical Conduct for Employees in the Executive Branch, 5 C.F.R. Part 2635, and the conflict of interest statutes codified in Title 18 of the United States Code. Agency policies, including ethics-related and conflict of interest guidelines, which can be found at:

- https://www.epa.gov/faca/strengthening-and-improving-membership-epa-federal-advisory-committees
- https://www.epa.gov/sites/production/files/2015-02/documents/ethicsadvisory.pdf
- https://yosemite.epa.gov/sab/sabproduct.nsf/Web/ethics?OpenDocument

85. In your hearing in front of the House Energy & Commerce Committee, you said that EPA has issued $77 million in grant money to twenty members of the EPA scientific advisory committees. Please provide detailed information behind this statement, including the names of the 20 members, their affiliations, their EPA-funded projects and grant amount.

EPA makes grant awards publicly available. These databases can be found at:

- https://yosemite.epa.gov/oarm/igms_egf.nsf/Homepage?ReadForm
- https://cfpub.epa.gov/ncer_abstracts/index.cfm/fuseaction/search.welcome

86. During your nomination hearing, you said that you "have no first-hand knowledge" of the EPA's scientific integrity policy at the time. However, you did commit to "thoroughly reviewing" the policy and following "federal guidance regarding scientific integrity." The policy states that EPA scientists are free to "exercise their right to express their personal views provided they specify they are not speaking on behalf of…" the EPA (Link: https://www.epa.gov/sites/production/files/2014-02/documents/scientific_integrity_policy_2012.pdf). Have you reviewed and implemented this part of the policy? Can you affirm that EPA scientists and managers are free to exercise their right to express their personal views free from political interference, as guaranteed by this policy?

I am committed to upholding EPA's Scientific Integrity Policy, which ensures that the agency's scientific work is of the highest quality, is presented openly and with integrity, and is free from political interference. EPA scientists are supported in speaking directly to the science in their presentations, yet leave policy statements to the relevant programs. In their private capacity, EPA staff can freely exercise their right to express their personal views provided they specify that they are not speaking on behalf of the Agency.

87. The EPA's scientific integrity policy encourages EPA scientists to engage with their peers in the industry, academia, government, and non-governmental organizations as long as it is consistent with their job duties. The policy explicitly states that this can include presenting their work at scientific meetings and actively participating in professional societies, and more. However, 3 EPA scientists that were scheduled to speak at a conference on climate change at Narragansett Estuary Bay were restricted [link:https://www.ucsusa.org/center-science-and-democracy/attacks-on-science/accumulating-evidence-federal-scientists-are-being#.WnDaRq6nFhF] from attending, in direct conflict with the agency's scientific integrity policy.
    a. Did you realize that this decision was in violation of the policy?

    I am committed to upholding EPA's Scientific Integrity Policy. Procedures have been put in place to prevent such an occurrence in the future.

b. Will you commit to ensuring that this type of flagrant violation will not happen again under your watch?

I am committed to upholding EPA's Scientific Integrity Policy, which ensures that the Agency's scientific work is of the highest quality, is presented openly and with integrity, and is free from political interference.

c. In the spirit of upholding scientific integrity in EPA decision making, will you commit to not politically interfere in science-based policy decisions at the agency, yes or no?

I am committed to upholding EPA's Scientific Integrity Policy. The policy recognizes the distinction between scientific information, analyses, and results from policy decisions based on that scientific information. Policy makers within the Agency weigh the best available science, along with additional factors such as practicality, economics, and societal impact, when making policy decisions.

88. You decided to postpone steam electric power plant effluent guidelines rule in September. Who are the stakeholders that you met with prior to making this decision? Additionally, please provide the analyses that helped you make this decision.

Meetings related to this issue are in the public record.

As part of EPA's overall regulatory review and in response to a petition in April 2017, EPA announced a proposal to postpone certain compliance dates in the 2015 Steam Electric ELG Rule in order to give full consideration to those concerns. After reviewing thousands of public comments to EPA's June 2017 proposed rule to postpone those dates, EPA finalized a rule in September 2017, postponing certain compliance dates in the 2015 Rule and announcing our intention to conduct subsequent rulemaking to potentially revise the limits for those wastestreams whose compliance dates were postponed dates.

89. Please explain why the EPA removed methylene chloride, NMP, and TCE from the Unified Agenda of Regulatory and Deregulatory Actions.

Under TSCA section 6(a), regulation of certain uses of methylene chloride, NMP, and TCE were proposed in 2016 and 2017. These actions were listed as Long-Term Actions on the Unified Agenda, meaning they are under development, but EPA did not expect to have a regulatory action within the year following publication of the Unified Agenda. The agency is currently considering the comments received in response to the 2016 and 2017 proposals, including comments suggesting that EPA quickly finalize these actions and comments suggesting that these actions be evaluated as part of the group of the first ten chemicals undergoing initial risk evaluations under the amendments to TSCA.

90. During the hearing I asked if you were inclined to grant an exemption to asbestos used by the chloralkali industry, which imports 95% of asbestos into the United States. You said that you would have to look into the issue. Now that you have had more time to study the issue, are you going to exempt asbestos used by the chloralkali industry from regulation?

It is premature for EPA to determine whether asbestos used by the chloralkali industry will be subject to regulation under TSCA. As required by amended TSCA under section 6(b)(4)(A), EPA must first conduct a risk evaluation to determine whether the chemical substance presents an unreasonable risk of injury to health or the environment under its conditions of use. EPA initiated the risk evaluation for asbestos in December 2016. Subsequently, in June 2017, EPA published the scope document as per TSCA section 6(b)(4)(D) for the asbestos risk evaluation. In this scope document, EPA identified asbestos diaphragms used by the chloralkali industry to produce chlorine and caustic soda as a condition of use that would be included within the scope of the asbestos risk evaluation. This risk evaluation must be completed within three years of initiation, with a possible extension of 6 months. If EPA determines from the risk evaluation that the conditions of use of asbestos by the chloralkali industry present an unreasonable risk of injury to health or the environment, then regulation would be pursued under TSCA section 6(a).

91. EPA has reduced climate change website access to at least 5,000 pages, possibly many more, of scientific, policy, and educational material paid for by taxpayer dollars over the past year. In the one example of content being partially returned to the website, all of the more than 200 climate-related webpages were omitted from what was previously a 380-page website titled "Climate and Energy Resources for State, Local, and Tribal Governments," which has now been renamed simply "Energy Resources for State, Local, and Tribal Governments." How do you justify such overt censorship of taxpayer-funded information that was created to help state, local, and tribal decision-makers protect the well-being of their constituents? Will you return this content to the EPA website so that the public can benefit from it again?

We are constantly updating our website to reflect new initiatives and projects of the Agency. Of course the site will be reflective of the current administration's priorities – with that said, all the content from the previous administration is still easily accessible and publicly available-through the banner across the top of the main page of the site.

92. According to the Paperwork Reduction Act, 44 USC § 3506(d)(3), all agencies must "provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products." The news release announcing that the EPA was overhauling its website was published the same day that the EPA removed the vast majority of its climate change website, thousands of webpages -- the public did not

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have an opportunity to provide comment or express its concerns. How do you justify overtly disregarding this process and failing to notify the public?

We are constantly updating our website to reflect new initiatives and projects of the Agency. Of course the site will be reflective of the current administration's priorities – with that said, all the content from the previous administration is still easily accessible and publicly available-through the banner across the top of the main page of the site.

93. While Dr. Michael Dourson was under consideration to be Assistant Administrator of the Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention (OCSPP), he was employed as a senior adviser at the EPA.
    a. What was Dr. Dourson's job title and type of appointment?

       Dr. Dourson was a Senior Advisor to the Administrator. His position was a Non-Career Senior Executive Service Limited Term position located in the Office of the Administrator. He has since left the agency.

    b. Whom did he supervise?

       Dr. Dourson did not have any supervisory responsibilities.

    c. Did you delegate any duties of the OCSPP to him? If so, what were they?

       Dr. Dourson did not have any OCSPP duties delegated to him.

    d. What projects did Dr. Dourson work on while at EPA and what was his role related to these projects?

       Dr. Dourson was a Senior Advisor to the Administrator, a position located in the Office of the Administrator. He advised on issues related to chemical safety.

    e. What monetary and non-monetary compensation did Dr. Douson receive while he was employed at EPA?

       A Comprehensive search could not be performed by the submission of this document.

    f. Please provide Dr. Dourson's daily schedule while he was at EPA.

       A Comprehensive search could not be performed by the submission of this document.

94. You claim that special interest groups have been circumventing the regulatory process through litigation, resulting in creation of regulation via consent decrees and settlement agreements. However, EPA has been making "policy decisions" of late that do just that--circumvent the rulemaking process. EPA's January 25 guidance allowing the downgrade of source status from "major" to "area" has a major impact on reporting and compliance requirements, yet this new benefit to industry did not undergo the required regulatory process under the Administrative Procedures Act.
    a. Please describe how EPA is increasing transparency and improving public engagement with respect to making the decision to downgrade source status for industries without a rulemaking, and how this is an improvement to public health and the environment.

EPA's issuance of the January 25, 2018 guidance memo provided the public with notice of EPA's plain language reading of the statutory terms "major source" and "area source". The public was notified of the memorandum through a notice published in the Federal Register on February 8, 2018. Further, EPA will be providing for public engagement through an opportunity for public comment on the plain language reading of the statute discussed in the January 25 memo. As stated in the memo, EPA expects to "publish a Federal Register notice to take comment on adding regulatory text that will reflect EPA's plain language reading of the statute as discussed in this memorandum." EPA staff are currently working on a proposed rule package. Finally, we disagree with the assertion that EPA somehow circumvented the regulatory process in issuing the memo. The January 25 guidance memo provides EPA's reading of the plain language of statutory terms in the Clean Air Act and withdrew a prior guidance memorandum that had been issued without notice and comment rulemaking. The Supreme Court (in Perez v. Mortgage Bankers Association, 135 S.Ct. 1199, 1206 (2015)) has recognized that EPA and other agencies may revise and withdraw policies issued through guidance without conducting a notice and comment rulemaking.

95. Facilities will now have the ability to downgrade to an area source without needing to comply with maximum achievable control technology (MACT) standards, which require control efficiencies of 95% and higher. Please explain how the emissions reductions from MACT standards will be achieved when you are allowing sources to be recategorized as area sources.

In the January 25, 2018, guidance memorandum titled "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act," EPA addressed the question of when a major source subject to a MACT standard may be reclassified as an area source and avoid being subject to major source requirements. The memo states that the plain language of the definitions of "major source" and "area source" in CAA section 112(a) compels the conclusion that a major source becomes an area source at such time as the source takes an enforceable limit on its potential to emit (PTE) hazardous air pollutants (HAP). Under this plain reading of the CAA, sources of HAP previously classified as "major sources" may be

reclassified as "area" sources when the facility limits its PTE below major source thresholds using a federally enforceable mechanism. There is no time limitation supported within the plain reading of the CAA Section 112 definitions of major and area source.

96. Historically, environmental organizations have sued EPA due to lack of agency action on implementation of critical environmental laws, resulting in court decisions that force EPA to take action...or as you refer to it, sue and settle. What other courses of action can special interest groups pursue when EPA does not meet statutory deadlines?

    EPA published its FY 2018-2022 Strategic Plan on February 12, 2018. Within that plan, EPA included a strategic measure (SM-19 within Objective 3.2) to meet 100% of legal deadlines imposed on EPA by September 30, 2022. You can view that plan here: https://www.epa.gov/sites/production/files/2018-02/documents/fy-2018-2022-epa-strategic-plan.pdf. Moreover, special interests groups, and others alike, can always choose to exercise the rights provided to them by the law.

97. In your Sue and Settle directive, you issued a memo to EPA managers (https://www.epa.gov/sites/production/files/2017-10/documents/signed_memorandum_in_support_of_consent_decree_and_settlement_agreement_oct162017.pdf) discussing how past practices of EPA have harmed the American public. In this memo, you say that EPA has met with outside groups behind closed door and excluded other interested stakeholders, essentially accusing EPA's Office of General Counsel of collusion. Is it your position that EPA lawyers are liable for collusion? If you believe that collusion has occurred, are you aware that many state bar associations consider collusion grounds for attorney discipline or even debarment? Was it your intention to endanger the status of all EPA attorneys?

    The Memorandum to which you are referring is not a set of conclusions made at the end of a case-by-case investigation, but rather describes general concerns of those outside of the agency who wanted to participate in the process for resolving a particular case but could not. As the related Directive explained, *"It has been reported*, however, that EPA has previously sought to resolve lawsuits through consent decrees and settlement agreements that appeared to be the result of collusion with outside groups." (Emphasis added.) While the words "It has been reported" do not also appear in the Memorandum, the intent of the statements was the same. It is not my position that EPA lawyers have violated their bar obligations.

98. It has been reported that the grant review process at EPA has been captured by political appointees.
    a. Can you please describe how the EPA is currently reviewing grants?

    Please see Attachments 6 and 7.

b. Why is the EPA specifically targeting grants that are dealing with climate change and climate impacts?

The purpose of the grant solicitation review process EPA has in place is consistent with previous administrations. Under our current grant solicitation review process, grant solicitations are prepared by program and regional staff, who then consult with a centralized review to ensure the expenditures of EPA funds are consistent with agency priorities. This process is similar in nature to long standing agency practice for grant awards, under which political appointees heading EPA program and regional offices consult with career staff as they approve or disapprove grants.

Further, the EPA solicitation review process only addresses competitive grants. State, tribal and local governments receive the vast majority of EPA grant funding on a non-competitive basis for continuing environmental programs and state revolving loan funds for water infrastructure projects. These funds are allocated based on statutory, regulatory or program policy formulas that take into account a variety of factors. The process EPA has established for reviewing competitive solicitations does not impact these grants.

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Senator Sanders:

Climate Change

99. During a recent interview with KSNV TV, you stated:

> "Is (global climate change) an existential threat? Is it something that is unsustainable, or what kind of effect or harm is this going to have? I mean, we know that humans have most flourished during times of what? Warming trends. I think there's an assumption made that because the climate is warming, that (warming) is necessarily a bad thing. Do we really know what the ideal surface temperature should be in the year 2100? In the year 2018? I mean it's fairly arrogant for us to think that we know exactly what it should be in 2100."

The Trump Administration's *Climate Science Special Report*, the United Nation's Intergovernmental Panel on Climate Change's *Fifth Assessment Report*, and the Department of Defense's *National Security Implications of Climate-Related Risks and a Changing Climate* report all found with high confidence that global climate change and rising global temperatures are likely to cause rising sea levels and increase crop failures, hunger, illness, and extreme weather. The Department of Defense's report identified these factors as clear risks to the United States' national security.

In January, the National Oceanic and Atmospheric Administration published a technical report that predicted that rising global temperatures could cause global mean sea levels to rise over ten feet by 2100. This sea level rise would displace more than 30 million Americans and mostly or completely cover Cape Canaveral, the U.S. Naval Academy, the Massachusetts Institute of Technology, the John F. Kennedy International and San Francisco International airports, and the Mar-a-Lago resort, among other prominent localities. Given the level of destruction anticipated, would you consider these outcomes to "necessarily be a bad thing"?

In January, the peer-reviewed journal, *Nature Climate Change*, published a report predicting that 260,000 people around the world will die annually by 2100 due to decreasing air quality and rising global temperatures. If global climate change and decreasing air quality were to cause this level of increase in annual deaths, would you consider that outcome to "necessarily be a bad thing"?

In 2012, the independent humanitarian group DARA estimated that between 2012 and 2030, 150,000 people around the world will die annually due to infections and 360,000 people will die annually due to hunger and malnutrition related to rising global temperatures. If a warming climate were to cause this type of increase in illness, would you consider that outcome to "necessarily be a bad thing"?

The Union of Concerned Scientists estimates that if global warming emissions continue to grow unabated, the annual economic impact of more severe hurricanes, residential real-estate losses to sea-level rise, and growing water and energy costs could reach 1.9% of the U.S. GDP by 2100. They also estimate that a sea-level rise of 13-20 inches by 2100

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would threaten insured properties in U.S. Northeast coastal communities valued at $4.7 trillion. If a warming climate were to cause these types of economic impacts, would you consider that outcome to "necessarily be a bad thing"?

EPA recognizes the challenges that communities face in adapting to a changing climate. EPA works with state, local and tribal governments to improve infrastructure to protect against the consequences of climate change and natural disasters. EPA also promotes science that helps inform states, municipalities, and tribes on how to plan for and respond to extreme events and environmental emergencies. Moving forward, EPA will continue to advance its climate adaptation efforts, and have reconvened the cross-EPA Adaptation Working Group in support of those efforts.

Human activity impacts our changing climate in some manner. The ability to measure with precision the degree and extent of that impact, and what to do about it, are subject to continuing debate and dialogue.

Lead

100. You have stated that "[l]ead poisoning is an insidious menace that robs our children of their intellect and their future." This is especially true for children living in communities of color, who are most likely to suffer from lead exposure and poisoning. According to the Center for Disease Control, African American children are over three times as likely to have highly elevated blood-lead levels. African American and Latino communities are often more likely to live near active battery recyclers, industrial sites, or highways, and to live in older housing that are sources of high levels of lead. In addition, a 2012 study found that lead exposure resulted in greater cognitive detriment for children with a lower socioeconomic status. Scientists agree that there is absolutely no acceptable level of lead exposure for children.

Based on your own statement, will you commit to eradicating lead exposure for America's children? How will you work with other leaders in the Administration to ensure the safety of our children, including those in more vulnerable communities?

Since the 1970s, EPA and other federal agencies have implemented numerous actions resulting in a significant reduction of lead exposure throughout our country and significantly lower blood lead levels in children. According to the Centers for Disease Control and Prevention, no safe blood lead level in children has been identified and even low levels of lead in blood have been shown to affect IQ, ability to pay attention, and academic achievement. Now, tackling the problem at this stage will benefit from a coordinated federal-wide effort. To this end, EPA is collaborating with our federal partners to address the remaining exposures and to explore ways to increase our relationships and partnerships with states, tribes, and localities. As Co-chair of the President's Task Force on Environmental Health Risks and Safety Risks to Children, EPA Administrator Scott Pruitt recently hosted a meeting of principals from the 17 Federal departments and agencies on the

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President's Task Force. At the meeting, the Task Force members, including EPA Administrator Scott Pruitt, committed to make addressing childhood lead exposure a priority and to quickly develop a new federal strategy to reduce childhood lead exposures. At EPA, this includes identifying and seeking to appropriately address disproportionately high and adverse childhood lead exposure in minority and low-income communities.

101. In 2015, the Natural Resource Defense Council found that more than 18 million Americans were served by community water systems that had violated the EPA's Lead and Copper Rule, which limits the concentration of lead and copper in public drinking water. You estimated it would cost "as much as $30 billion or maybe upward of $50 billion" to replace all the lead service lines across the country, implying that this price tag is too high. However, Fitch Ratings, an independent credit rating agency, has estimated that the capital costs to replace these lines could be over $275 billion. Based on the discrepancy in these figures, please detail how you arrived at your estimate, and explain why it is so much lower than that of Fitch Ratings.

EPA's cost estimate to fully replace all lead service lines is $30-$47 billion.

The EPA cost estimate cost range accounts for uncertainty regarding the total number of lead service lines that remain in service. National surveys completed by the American Water Works Association indicate that between 6.5 and 10 million lead service lines may exist. The expense of a lead service line replacement can vary between $1,200 and $12,300, based on a number of factors, including the replacement technique, the length of the service line, if the replacement is coordinated with other infrastructure work, if the street needs to be cut and repaved, and if landscaping restoration is included. EPA estimates that an average lead service line replacement cost is $4,700 per line. Given the average cost of replacing a lead service line and the estimated range of lead service lines in the country, the total cost of replacing all lead service lines may range from $30 to $47 billion.

We would also note that Fitch Ratings retracted their initial cost estimate of $275 billion on March 8, 2016, just a few days after its initial reporting on March 4, 2016, and provided a revised estimate of "a few billion to $50 billion." Their updated cost estimate is in line with EPA's estimate.
https://www.freep.com/story/news/local/michigan/flint-water-crisis/2016/03/08/rating-agency-corrects-lead-pipe-replacement-estimate/81499712/

EPA Website

102. On April 28, 2017, the EPA removed its climate change website. To this day, the removed pages redirect to a notice stating, "we are currently updating our website to reflect EPA's priorities under the leadership of President Trump and Administrator Pruitt." The EPA did not announce the overhaul prior to its start date and has not yet provided a justification for the removals.

According to the Paperwork Reduction Act, all agencies must "provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products." The EPA's announcement regarding its website overhaul was published on the same day that the EPA removed the vast majority of its climate change website, and therefore the public did not have an opportunity to provide comment or express concerns.
Does the EPA generally take public comments into account when making these types of decisions?

Can you please explain how announcing an overhaul of the climate website on the same day changes were made constitutes "adequate notice" under the Paperwork Reduction Act?

We are constantly updating our website to reflect new initiatives and projects of the Agency. Of course the site will be reflective of the current administration's priorities – with that said, all the content from the previous administration is still easily accessible and publicly available-through the banner across the top of the main page of the site.

103. On February 2, 2018, the Associated Press reported that internal EPA emails, released following a Freedom of Information Act request by the Environmental Defense Fund, show that you personally monitored efforts to overhaul the EPA's climate change website. One email from Lincoln Ferguson, an EPA senior advisor for public affairs, states:

> "How close are we to launching this on the website? The Administrator would like it to go up ASAP. He also has several other changes that need to take place."

Did the EPA, under your leadership, remove the content of the EPA's climate change website and replace the removed pages with a notice stating "this page is being updated to reflect the agency's new direction under President Donald Trump and Administrator Scott Pruitt"?

Was this overhaul announced prior to its start date? If not, why not?
Please provide a specific time for the EPA's climate change website to come back online.

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We are constantly updating our website to reflect new initiatives and projects of the Agency. Of course the site will be reflective of the current administration's priorities – with that said, all the content from the previous administration is still easily accessible and publicly available-through the banner across the top of the main page of the site.

104. Did the EPA, under your leadership, remove web resources providing information about the benefits of the Clean Power Plan months before the proposed rulemaking to withdraw the rule?

If so, did the EPA remove website information regarding what was, at the time, current EPA policy before initiating the appropriate rulemaking process?

We are constantly updating our website to reflect new initiatives and projects of the Agency. Of course the site will be reflective of the current administration's priorities – with that said, all the content from the previous administration is still easily accessible and publicly available-through the banner across the top of the main page of the site.

Renewable Energy

105. In October 2017, you said that if it were up to you, you would do away with the Renewable Electricity Production Tax Credit and the Investment Tax Credit for wind and solar. You stated:

> "I'd let (solar and wind) stand on their own and compete against coal and natural gas and other sources, and let utilities make real-time market decisions on those types of things as opposed to being propped up by tax incentives and other credits that occur, both in the federal and state level."

As you may know, the United States currently wastes billions of dollars each year subsidizing the fossil fuel industry. Since you believe energy tax credits should be eliminated to let technologies "stand on their own," do you also believe we should eliminate fossil fuel subsidies to let coal, oil and gas "stand on their own" as well? If so, what actions are you taking to eliminate the unfair subsidization of certain energy resources?

My personal view is that the federal government ought not use the tax code to pick winners and losers. As you may know, it is the province of the legislative branch to establish tax credits. EPA does not have a formal role in this process.

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Senator Van Hollen:

106. You have noted repeatedly – more than a dozen times in your appearances before Congress and in your testimony for today– that EPA's only authority is the "rule of law" or "the authority given to it by Congress".

The updates to the Toxic Substances Control Act Congress enacted in 2016 directed EPA to assess the safety of new chemicals before they go onto the market. The law says that EPA, quote, "shall issue an order" regulating the chemical in order to protect against the danger the new chemical may pose.

On January 17th of this year, you told CBS News that EPA should not regulate new chemicals using orders even though the law clearly says otherwise. Your views appear to be in direct conflict with the law Congress wrote.

Mr. Pruitt, will you direct EPA staff to issue orders to regulate the safety of new chemicals under all circumstances in which the law says that orders are required?

As directed by Congress, under TSCA, EPA reviews new chemicals for unreasonable risk, and where necessary takes action to protect against such risk before a new chemical may be commercialized. Where EPA makes one of the determinations that call for an order under the statute – for example, that there is insufficient information to permit a reasoned evaluation of the chemical's effects – EPA will issue an order.

107. I appreciated your recent announcement that that you have decided not to abandon proposed EPA oversight of the massive Pebble Mine, leaving restrictions in place while the Agency receives more information on the potential mine's impact on the region's world-class fisheries and natural resources. Given EPA's role in this process, would you say that EPA can contribute valuable feedback to the development of projects, be they energy, mining, or transportation? Given EPA's valuable feedback, would you object to efforts to roll back EPA's responsibilities to provide input on infrastructure projects?

Regarding the Pebble Mine project, EPA's decision to suspend its proposal to withdraw the proposed determination under Clean Water Act section 404(c) does not impede the review of Pebble Limited Partnership's permit application by the Army Corps of Engineers under the normal Clean Water Act process. However, the Corps cannot issue a permit during the pendency of the section 404(c) process, and Administrator Pruitt has made clear that EPA will ensure protection of the world-class fishery in the Bristol Bay region. EPA looks forward to working with the Corps as the Corps assesses the permit application.

Commented [FEHHE38]: CEQ

As to your broader question, EPA strongly supports the President's infrastructure initiatives and associated efforts to significantly improve predictability, timeliness, and consistency in the permitting of urgently needed infrastructure projects. The Agency is working under the President's direction to streamline and improve EPA's

role in the review of new infrastructure projects to help to assure they are reviewed and ~~approved~~ permitting decisions are made without unnecessary delay.

Senator Wicker:

108. Do you support providing hardship exemptions from Renewable Fuel Volume Obligations (RVOs) for small refineries experiencing disproportionate economic impacts from high RIN prices?

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its renewable fuel volume obligations for a given year based on a small refinery's demonstration of "disproportionate economic hardship" in that year. The statute also directs EPA to consult with the Department of Energy (DOE) in evaluating small refinery exemption petitions. EPA will grant a hardship exemption if we conclude, after review of available information and in consultation with DOE, that a refinery will experience disproportionate economic hardship that can be relieved in whole or in part by removing its RFS obligations for that year.

Message

From: Frye, Tony (Robert) [frye.robert@epa.gov]
Sent: 5/11/2018 7:33:02 PM
To: Shimmin, Kaitlyn [shimmin.kaitlyn@epa.gov]; Lyons, Troy [lyons.troy@epa.gov]
CC: Palich, Christian [palich.christian@epa.gov]
Subject: RE: QFRs from Adm. Pruitt EPW Hearing 01.30.2018
Attachments: 2018.05.11 - Administrator Pruitt QFRs EPW 01.30.2018.docx

Below (with the relevant question number):

1. At the beginning of this Administration, prior to your confirmation, EPA alleged that Wyoming contributed to ozone problems in Douglas County, Colorado under the 2008 ozone National Ambient Air Quality Standards (NAAQS). To reach this conclusion, EPA applied a methodology designed for Eastern states.

   Western states have different topographies, higher altitudes, and different weather patterns than Eastern states. In addition, Western states have higher frequencies of wildfires than the East. Under EPA's "one-size-fits-all" model, EPA projected that a tiny amount of emissions would move from Wyoming to Colorado. EPA then imposed additional regulatory burdens on Wyoming. I raised my serious concerns and objections to EPA's action in a recent letter to you on January 19, 2018 (attached).

   In your oral testimony, you stated that EPA is evaluating challenges with international air transport. In a February 1, 2018 response to my letter from Bill Wehrum, Assistant Administrator for the Office of Air and Radiation (attached), he stated EPA plans to work with states "early this year to provide more information and flexibility as [states] look to address interstate transport issues under the 2015 ozone NAAQS." Will EPA also address any remaining interstate transport issues concerning other NAAQS, including the 2008 ozone NAAQS issue identified in my letter? If so, do you have an anticipated timeline for addressing these issues?

   On October 27, 2017, EPA issued a memorandum providing information to assist states' efforts to develop, supplement, or resubmit their "good neighbor" state implementation plans (SIP) for the 2008 ozone National Ambient Air Quality Standards (NAAQS). We noted in this memorandum that states may be able to rely on the modeling information conveyed with the memorandum as part of a demonstration of compliance with the good neighbor requirements. We believe this information will be helpful to any state working to resolve its 2008 good neighbor status, including Wyoming.

   On March 27, 2018, EPA issued a memo that includes EPA's air quality modeling data for ozone for the year 2023 including projected ozone concentrations at potential nonattainment and maintenance receptor sites for the 2015 ozone NAAQS and projected upwind state contribution data. States may use this information as they develop or review state implementation plans to assure that emissions within their jurisdictions do not contribute significantly to nonattainment or interfere with maintenance of the 2015 ozone standards in other states. These plans are due in October 2018, and EPA will work closely with states, including Wyoming, as this deadline approaches.

   Regarding remaining issues with other NAAQS, the ozone air quality modeling shows that, with the Cross-State Air Pollution Rule Update ("CSAPR Update") in place, there would be no remaining nonattainment or maintenance areas in 2023 in relation to the 2008 Ozone NAAQS.

EPA will continue to work with Wyoming to fully address their good neighbor transport requirements for both the 2008 and the 2015 ozone NAAQS.

16. On March 24, 2017, you issued an agency-wide memorandum[1] on implementation of Executive Order 13777[2], which announced members of EPA's Regulatory Reform Task Force, appointed Samantha Dravis to serve as EPA's Regulatory Reform Officer, directed certain program offices to recommend rules for repeal, replacement, or modification, and directed all program offices to seek public input on existing regulations and report findings to the Task Force by May 15, 2017. On April 13, 2017, EPA issued a Federal Register notice: Evaluation of Existing Regulations[3]. The comment period closed on May 15, 2017 and EPA received over 460,000 comments, which were published online. The Task Force also led implementation of the Section 2 review in Executive Order 13783, Promoting Energy Independence and Economic Growth. EPA subsequently published a report pursuant to EO 13783 in October 2017. It is unclear whether the Task Force has been active since then or was involved in projects outside of what is discussed above. Accordingly, with regard to the Task Force, please provide us with:
    a. A complete list of who has or is currently serving on the Task Force, including their professional title and office at EPA, and their dates of membership on the Task Force.

       Ryan Jackson – Chief of Staff, Office of the Administrator
       Byron Brown – Deputy Chief of Staff for Policy, Office of the Administrator
       Brittany Bolen – Acting Associate Administrator, Office of Policy
       Samantha Dravis – formerly Senior Counsel and Associate Administrator, Office of Policy

       All members of EPA's Regulatory Reform Task Force have been members during their employment at the Agency since Administrator Pruitt established the Task Force in a memorandum dated March 24, 2017.

    b. Please state whether the Task Force has consulted with non-EPA employees during the course of its work and, if so, please provide a list of their names and employers, and on what rules they have been consulted.

       The Task Force has been informed by the thousands of public comments received in response to EPA's request for input on regulations that may be appropriate for repeal, replacement, or modification, per EO 13777.

[1] https://www.epa.gov/laws-regulations/memorandum-executive-order-13777-enforcing-regulatory-reform-agenda
[2] https://www.federalregister.gov/documents/2017/03/01/2017-04107/enforcing-the-regulatory-reform-agenda
[3] https://www.federalregister.gov/documents/2017/04/13/2017-07500/evaluation-of-existing-regulations

c. A list of meeting dates and topics for Task Force meetings held thus far and scheduled to be held this year. Please provide copies of any agendas that were circulated prior to each meeting.

In implementing EO 13777, EPA hosted a series of public meetings and teleconferences to inform the Regulatory Reform Task Force. Information on these public meetings and teleconferences, including agendas, is accessible through EPA's Regulatory Reform webpage: https://www.epa.gov/laws-regulations/regulatory-reform.

d. All documents created by or for the Task Force, (including emails, memos, white papers, meeting minutes, correspondence, and comments that cannot be found on the regulations.gov website).

A Comprehensive search could not be performed by the submission of this document.

2. Proper financial management of the Superfund program is critical to its success. Since 1999, federal funding for the Superfund program has declined from about $2 billion to about $1.1 billion annually, and the rate of contamination threat reduction at Superfund sites has declined. During your hearing, you repeatedly stated that you had visited states throughout the country and discussed the Superfund and that the cleanup of sites would require "direction and leadership." The Chairman of the Superfund Task Force is charged with developing and implementing recommendations to improve the work of the Superfund program.
   a. Mr. Kelly had no previous experience in environmental policy or management when you named him to Chair the Superfund Task Force.
      i. What experience did he have that you believe qualified him to serve as Chair?
      ii. What experience does he have that you believe qualify him to serve as your Senior Advisor?
   b. What responsibilities was Albert Kelly given as Chairman of the EPA Superfund Task Force during the production of the Superfund Task Force Recommendations? What is his role and responsibility as Chair now that the Task Force has released its recommendations?
   c. What responsibilities was Albert Kelly given as Senior Advisor at the EPA? What specific policy areas and programs will he be responsible for in this role?

Mr. Kelly has years of leadership positions from our home state of Oklahoma that has suited him to work with the Director of the Office of Superfund Remediation and Technology Innovation to facilitate Superfund reform. During the production of the Superfund Task Force Recommendations, Mr. Kelly was my leading appointee who spearheaded the effort while compiling the suggestions of career staff. Since the production of the recommendations up until his resignation from the Agency, he lead the efforts to begin the implementation of the recommendations.

Tony Frye
Special Assistant
Office of Congressional & Intergovernmental Affairs
Environmental Protection Agency
Phone: 202.564.0640
Cell: Personal Matters / Ex. 6

From: Shimmin, Kaitlyn
Sent: Friday, May 11, 2018 3:18 PM
To: Frye, Tony (Robert) <frye.robert@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>

Cc: Palich, Christian <palich.christian@epa.gov>
Subject: RE: QFRs from Adm. Pruitt EPW Hearing 01.30.2018

Tony, can you please pull the three questions that were changed from the last sign off into the body of the e-mail? Thank you!

Kaitlyn Shimmin
Special Assistant Congressional and Intergovernmental Affairs
Office of the Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460
O: (202) 564-4108
C: Personal Matters / Ex. 6
Shimmin.Kaitlyn@epa.gov

From: Frye, Tony (Robert)
Sent: Friday, May 11, 2018 3:16 PM
To: Lyons, Troy <lyons.troy@epa.gov>
Cc: Shimmin, Kaitlyn <shimmin.kaitlyn@epa.gov>; Palich, Christian <palich.christian@epa.gov>
Subject: QFRs from Adm. Pruitt EPW Hearing 01.30.2018

Hey Troy – Attached is the final version of the QFRs from Administrator Pruitt's EPW hearing on January 30th. Everything has been cleared internally and through OMB, including any relevant updates that needed to be made to conform with actions the Agency has taken since the hearing. Please take a look this weekend and let us know if you have any thoughts or edits. Our intention is to have everything finalized by **noon Monday, May 14th**, for submission back to the committee.

Thanks,
Tony

Tony Frye
Special Assistant
Office of Congressional & Intergovernmental Affairs
Environmental Protection Agency
Phone: 202.564.0640
Cell: Personal Matters / Ex. 6

Senate Committee on Environment and Public Works
"Oversight Hearing to Receive Testimony from Environmental Protection Agency Administrator Scott Pruitt"
Questions for the Record for Administrator Scott Pruitt
January 30, 2018

Chairman Barrasso:

1. At the beginning of this Administration, prior to your confirmation, EPA alleged that Wyoming contributed to ozone problems in Douglas County, Colorado under the 2008 ozone National Ambient Air Quality Standards (NAAQS). To reach this conclusion, EPA applied a methodology designed for Eastern states.

   Western states have different topographies, higher altitudes, and different weather patterns than Eastern states. In addition, Western states have higher frequencies of wildfires than the East. Under EPA's "one-size-fits-all" model, EPA projected that a tiny amount of emissions would move from Wyoming to Colorado. EPA then imposed additional regulatory burdens on Wyoming. I raised my serious concerns and objections to EPA's action in a recent letter to you on January 19, 2018 (attached).

   In your oral testimony, you stated that EPA is evaluating challenges with international air transport. In a February 1, 2018 response to my letter from Bill Wehrum, Assistant Administrator for the Office of Air and Radiation (attached), he stated EPA plans to work with states "early this year to provide more information and flexibility as [states] look to address interstate transport issues under the 2015 ozone NAAQS." Will EPA also address any remaining interstate transport issues concerning other NAAQS, including the 2008 ozone NAAQS issue identified in my letter? If so, do you have an anticipated timeline for addressing these issues?

   On October 27, 2017, EPA issued a memorandum providing information to assist states' efforts to develop, supplement, or resubmit their "good neighbor" state implementation plans (SIP) for the 2008 ozone National Ambient Air Quality Standards (NAAQS). We noted in this memorandum that states may be able to rely on the modeling information conveyed with the memorandum as part of a demonstration of compliance with the good neighbor requirements. We believe this information will be helpful to any state working to resolve its 2008 good neighbor status, including Wyoming.

   On March 27, 2018, EPA issued a memo that includes EPA's air quality modeling data for ozone for the year 2023 including projected ozone concentrations at potential nonattainment and maintenance receptor sites for the 2015 ozone NAAQS and projected upwind state contribution data. States may use this information as they develop or review state implementation plans to assure that emissions within their jurisdictions do not contribute significantly to nonattainment or interfere with maintenance of the 2015 ozone standards in other states. These plans are due in

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October 2018, and EPA will work closely with states, including Wyoming, as this deadline approaches.

Regarding remaining issues with other NAAQS, the ozone air quality modeling shows that, with the Cross-State Air Pollution Rule Update ("CSAPR Update") in place, there would be no remaining nonattainment or maintenance areas in 2023 in relation to the 2008 Ozone NAAQS.

EPA will continue to work with Wyoming to fully address their good neighbor transport requirements for both the 2008 and the 2015 ozone NAAQS.

2. During the hearing, I asked you about 46 outstanding exceptional events filings from the State of Wyoming that EPA has yet to act on. As I mentioned during the hearing, I expressed my concern with EPA's decision not to act on these filings in 2016. Do you have a date by which EPA anticipates it will act on Wyoming's 46 petitions that I highlighted?

   In an April 2016 letter to the Wyoming Department of Environmental Quality (WDEQ) regarding exceptional event demonstrations for calendar years 2011-2014, EPA Region 8 communicated that its review of the demonstrations submitted indicated that, although the flagged PM and ozone data in the demonstrations may have been influenced by exceptional events, the data were not anticipated to be involved in any pending regulatory decision by the EPA. The status of this data has not changed. Therefore, consistent with the approach articulated in the proposed and finalized in the 2016 revisions to the Exceptional Events Rule, the EPA has not made a concurrence/nonconcurrence decision on the demonstrations submitted. However, as noted in the April 2016 letter, and as is the case with the deferred Wyoming demonstrations, if at some point in the future the flagged data were to potentially influence an attainment demonstration or be involved in other regulatory decisions, the EPA would then undertake a full review of the submitted demonstrations to allow a concurrence/nonconcurrence decision at that time.

   If an air agency submits a demonstration that the EPA has determined to not have regulatory significance, then the EPA may respond to the air agency with a notification of "deferral." Deferred demonstrations are considered to be "closed out" (i.e., no longer pending). The EPA considers the 46 demonstrations referenced in the April 2016 letter to be "closed out," unless the flagged data would influence a regulatory decision.

   EPA Region 8 met with Wyoming's Air Director and the Manager for the Air Quality Resource Management Program on February 28, 2018, to discuss options for addressing future potential exceptional events Wyoming flags that may not have a regulatory use at the time the event is flagged. Follow-up discussions will occur over the next several months.

3. As you know, the U.S. Army Corps of Engineers is the agency that makes the vast majority of jurisdictional determinations to identify waters that are regulated under the Clean Water Act. However, according to testimony before this Committee on April 26, 2017, the Corps was not included fully in the process of developing the 2015 Waters of the U.S. (WOTUS) rule.

   In fact, the Corps did not believe that the rule and preamble, as ultimately finalized, "were viable from a factual, scientific, analytical, or legal basis" and "it would be incredibly difficult for Corps leaders, regulatory and legal staff to advance and defend this rule…."

   How will you ensure adequate coordination occurs between the EPA and Corps of Engineers in developing future regulations to delineate the jurisdiction of the Clean Water Act?

   Close coordination between EPA and the Department of the Army is a priority as we work to develop the joint rulemaking. EPA and the Army Corps of Engineers are working closely to implement the Presidential Executive Order on "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule." The agencies' leadership and staff routinely meet and work products are developed jointly.

4. Last year, this Committee heard testimony about barriers under the Clean Air Act to the adoption of technologies that would reduce emissions and/or improve efficiency at power plants and other industrial facilities. Witnesses repeatedly stated that the New Source Review (NSR) program discouraged such projects. I am encouraged that both you and Bill Wehrum, Assistant Administrator for the Office of Air and Radiation, have identified NSR reform as a top priority for the Agency.

   What can this Committee – and Congress as a whole – do to assist you in these efforts and develop bipartisan support for reforms moving forward?

   At this time, EPA has not suggested specific legislative actions to reform the NSR program. However, EPA can provide technical assistance for any proposed legislative actions that the Committee develops. More broadly, the agency will continue to issue interpretive rules, guidance and policy memoranda, and, where appropriate, will conduct notice-and-comment rulemakings to reform NSR. These actions will provide increased regulatory certainty to covered entities encouraging investment in more efficient, environmentally beneficial technologies.

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5. Last year, Congress passed the bipartisan Water Infrastructure for Improvements to the Nation (WIIN) Act. On September 14, 2017, EPA granted petitions to reconsider a final rule that regulates coal combustion residuals (CCR) as nonhazardous waste under the Resource Conservation and Recovery Act (RCRA). You stated the purpose of reconsideration is as follows: "In light of EPA's new statutory authority [under the WIIN Act], it is important that we give the existing rule a hard look and consider improvements that may help states tailor their permit programs to the needs of their states, in a way that provides greater regulatory certainty, while also ensuring that human health and the environment remain protected."

   I support EPA's commitment to assure that the CCR rule provides adequate flexibility and authority to states. Does EPA have an anticipated timeline for completing this reconsideration so that states and regulated entities have maximum flexibility and regulatory certainty as soon as possible?

   Yes, the agency does have a timeline for completing its reconsideration of the CCR rule. On March 1, 2018, EPA signed a proposal that includes regulatory language for those provisions where, as a result of its reconsideration, EPA has preliminarily determined that regulatory changes may be appropriate and is seeking public comment on those proposed changes. EPA anticipates the proposal will be published in the Federal Register shortly. EPA further anticipates that it will complete its review of the remaining provisions under reconsideration, and, if it determines that regulatory changes are appropriate, will sign an additional proposal by September 30, 2018.

6. Over the last several years, increased efficiency of gas fueled vehicles and relatively low gas prices have led to fewer than projected consumer purchases of electric vehicles relative to gas fueled vehicles. Current data show how gas prices have been lower than projected in 2012 when vehicle standards were established by EPA and the Department of Transportation's (DOT) National Highway Traffic Safety Administration (NHTSA).

   In 2012, EPA issued standards for light-duty vehicles for MY 2017-2025, and committed to conduct a Midterm Evaluation (MTE) by April 1, 2018. I applaud the EPA's decision last year to reconsider the evaluation issued at the end of the last administration, which was issued under a rushed timeline and without adequate coordination with NHTSA. As you complete the MTE, will you commit to use the best available, current data and collaborate with NHTSA?

   In August 2017, EPA opened a 60-day comment period to allow stakeholders to submit any comments, data, or information they believe relevant to my reconsideration of the Final Determination. EPA also held a public hearing on September 6, 2017. EPA received more than 290,000 comments, and reviewed the new data and information, along with continued review of the body of research already in the record. My new decision on the Midterm Evaluation was signed on April 2, 2018. I found that the model year 2022-2025 greenhouse gas standards are

not appropriate in light of the record before EPA and, therefore, should be revised. I believe this decision was based on the best available data, and is a product of close coordination with NHTSA.

7. In 2016, the U.S. imported roughly 700 million gallons of biodiesel. Last year, EPA considered reducing the renewable fuel volume obligations (RVOs) for biomass-based diesel (BBD) for 2018 and 2019. EPA explained that it "could consider the availability of imports as one factor among others in determining whether to exercise its discretion to use the waiver authority." About the same time, the U.S. International Trade Commission imposed tariffs on imported biodiesel from Argentina and Indonesia. Imports of biodiesel from these two nations declined in 2017 and may decline further this year.
    a. How did EPA account for this foreseeable decrease in the supply of imported biodiesel when it set the 2019 RVOs for BBD?
    b. If U.S. BBD production does not materially increase in 2018, is EPA prepared to reduce the 2020 RVOs for BBD below 2019 levels? If not, why not?
    c. How does relying on imported biodiesel advance the Renewable Fuel Standard's purported objective of improving U.S. energy security?

Biodiesel and renewable diesel are both international markets. As such, any action, such as the tariffs mentioned, will have multiple ripple effects which may offset some or all of the direct impacts targeted. EPA has considered the uncertainty surrounding imported biofuel in setting the RFS standards. We also considered the potential for increased domestic production of biodiesel and renewable diesel, as well as increased imports from countries unaffected by the tariffs. Further, the BBD standard itself was not set at the limit of projected supply. In setting the volume target for BBD for 2019, EPA noted that the number of RINs anticipated to be available for compliance exceeded the volume required to meet the BBD standard. The advanced biofuel and total renewable fuel standards provide an incentive for additional biodiesel volume beyond what is required by the BBD standard. Specifically, while the 2019 BBD volume target was maintained at 2.1 billion gallons, we estimated that approximately 2.6 billion gallons would be used to meet the advanced biofuel standard. As it did in evaluating the 2018 advanced biofuel standard, EPA will assess the supply of imported biodiesel in setting the 2019 advanced biofuel and 2019 BBD percentage standards. EPA will conduct a similar analysis when determining the 2020 BBD volume target.

U.S. energy security includes a measure of the diversity of fuel sources as well as the geopolitical condition of the sources. Increasing diversity (such as through use of biofuels from a variety of countries) could reduce risks associated with a potential disruption of supply. Thus, while biofuel imports may not contribute to energy independence, they may still contribute to the energy security of the United States. The U.S. is also becoming more energy secure and independent due to more domestic oil production, including a 50 percent increase in U.S. crude oil production over the last decade.

8. On December 23, 2016, GE submitted a completion report showing that it had completed implementation of EPA's plan for the cleanup of PCBs from the Hudson River. At that time, GE asked EPA to certify that the project is complete,[1] in accordance with a 2005 Consent Decree signed by GE and the EPA.[2] In that Consent Decree, EPA agreed to grant a certification of completion within 1 year of GE's submission of the completion report.[3] That has since passed, but to date the agency has yet to make a decision on the certificate of completion. When do you expect the agency to make a decision on the certificate of completion?

   EPA provided GE with a response to its submission of the completion report within the agreed-upon timeframe, stating that the Agency is now carefully reviewing input provided by our state and federal partners at the end of 2017 regarding the Certification of Completion of the Remedial Action requested by GE. In addition, EPA recently began an analysis of sediment data collected by the New York State Department of Environmental Conservation (DEC) in late 2017, and we continue to consider the extensive input received from a wide range of stakeholders about the second Five-Year Review report, which was released for public comment in June 2017. EPA will continue to work with our colleagues at DEC in analyzing and reaching scientific consensus on the new sediment data. Therefore, EPA will not have a decision regarding the issuance of the Certificate of Completion of Remedial Action until the data from these samples have been fully analyzed.

   It is important to note that even if EPA certifies the Remedial Action to be completed, the cleanup will not be finished. In the Record of Decision, EPA projected that construction of the remedy (including dredging, backfilling, and habitat reconstruction) would be performed over six years, to be followed by decades of "monitored natural attenuation" or "MNA," during which PCBs remaining in the river after dredging would gradually decrease until the remedial goals are achieved. MNA is also part of the cleanup, and during the entire period of MNA, GE is required to perform "Operation, Maintenance and Monitoring" of the remedy, which includes an extensive program that includes monitoring of sediments, water quality and fish, as well as monitoring of the caps that were installed on portions of the river bottom, and repairing those caps should any

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[1] "EPA is currently reviewing GE's Remedial Action Completion Report, which the company submitted to EPA, the federal natural resource trustees and New York State in December 2016." Proposed Second Five Year Review Report (2017) at pg. 20 (https://www.epa.gov/sites/production/files/2017-06/documents/hudson_second_five-year_review_report.pdf)

[2] See Consent Decree (https://www3.epa.gov/hudson/consent_decree/consent_decree.pdf)

[3] Consent Decree (Pgs. 40-41): paragraph 57.b (GE GE "shall submit to EPA, for review and approval, a Remedial Action Report . . . request[ing] EPA's Certification of Completion of the Remedial Action"); 57.d ("If EPA concludes . . . that the Remedial Action has been performed in accordance with this Consent Decree, EPA will so certify in writing"); 57.e ("EPA will respond to such request [for Certification] no later than 365 days after EPA's receipt of the request")

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damage occur. Once all the work required by the consent decree is complete, the consent decree authorizes EPA to issue a further certification, known as a Certification of Completion of the Work. We do not anticipate issuing this certification before the remedial goals are achieved.

9. In December 2017, EPA announced "a cross-agency effort to address per and polyfluoroalkyl substances (PFAS)."
    a. Is EPA collaborating with other federal agencies, state agencies, or other stakeholders on this initiative? If so, how are these entities contributing to EPA's cross-agency effort?

       EPA is actively collaborating with other federal, state, and local communities to provide tools and technical assistance to communities that are addressing PFAS contamination. As part of this effort, EPA has begun working with states and other federal agencies to develop toxicity values for additional PFAS chemicals, develop new methods for sampling PFAS chemicals in the environment, and identify treatment techniques to remove PFAS in drinking water and other environmental media. EPA is also working with stakeholders to identify best practices and develop risk communication tools to assist states, tribes and local communities address concerns with PFAS in the environment. In addition, EPA continues to conduct research to develop additional technical tools that will be helpful as the agency works with its partners to address this important issue.

    b. Will EPA provide the public with updates on EPA's progress and an opportunity to comment on EPA's work? If so, when do you anticipate this taking place?

       Yes, EPA will continue engaging with a broad set of stakeholders, including states and local communities. To date, EPA's communication efforts have included, but not limited to EPA's website (www.epa.gov/pfas), EPA hosted webinars, organizational meetings (for example the Spring 2018 Environmental Council of the States (ECOS) Meeting in March 2018), and community meetings in PFAS-impacted areas. EPA will provide additional engagement opportunities throughout the coming year.

    c. How will EPA's cross-agency effort help inform ongoing and future state and local efforts to address PFAS?

       EPA has brought together expertise from across the agency including top scientists from EPA's air, chemicals, land, research, and water offices. In addition to a cross-program effort, the agency has also tapped its regional offices to enhance cooperation with partners at the state and local levels and to provide on-the-ground knowledge about specific issues to address PFAS nationwide. By integrating cross-media expertise and experiences, EPA's

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PFAS team is well positioned to support and work side-by-side with our state, local and tribal partners to address state and local PFAS efforts.

Ranking Member Carper:

10. EPA's February 1, 2018 Report to Congress on the Integrated Risk Information System (IRIS) states that EPA has already contracted with the National Academy of Sciences for peer review of the formaldehyde human health assessment.
    a. I have been informed that the human health assessment for formaldehyde was completed by IRIS staff months ago. Is that accurate?

       The National Academy of Science (NAS) identified numerous significant recommendations for improving the science that underlies the formaldehyde IRIS assessment. As noted by EPA staff during the February 2018 NAS workshop to review advances made to the IRIS process, the Agency is working to fully implement the NAS recommendation in all IRIS assessments released moving forward.

    b. If so, why has the health assessment not yet been released i) for intra-agency review, ii) inter-agency peer review, iii) for public comment and iv) to the NAS for peer review, and when will each such step occur?

       EPA is committed to ensuring that the IRIS program provides high-quality assessments that adhere to the highest standards of scientific review. Prior to releasing any assessment, EPA NCEA conducts a rigorous and robust review process to ensure that Agency decisions to protect human health are based on high quality science.

    c. If not, please describe precisely what work remains to be completed before each step described above can occur, along with time estimates for each step.

       The Agency is moving away from a "one-size-fits-all" approach to hazard assessment towards assessment products that meet specific decision contexts. As such, any assessment will be evaluated to ensure that it can adequately meet Agency needs and support regulatory priorities in a timely manner.

    d. Please provide me with an un-redacted copy of the current draft of the IRIS human health assessment for formaldehyde.

       The Agency does not release any products that have not undergone proper quality review.

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11. From January 20, 2017 until the present, please provide information regarding all meetings (including conference calls) related to the formaldehyde human health assessment, including the date, attendee names (and for non-EPA employees, their affiliations) and copies of any materials prepared for or obtained from each such meeting. Please also provide the same information for meetings EPA staff may have attended related to formaldehyde more generally.

    We are working to gather this information with regard to ORD's external meetings and will provide this information to you as soon as possible.

12. The Report to Congress states that the IRIS staff have operationalized the "systematic review" process used to determine which and how scientific studies can be relied upon to inform IRIS assessments.
    a. Please provide me with a copy of the document that captures these revisions.

       An overview of how the IRIS Program is operationalizing systematic review is described in a memo from the IRIS director, provided here (http://ofmpub.epa.gov/eims/eimscomm.getfile?p_download_id=534484). Additional information on how the IRIS Program is implementing and applying systematic review was presented at the NAS meeting in early February. Copies of presentations at that meeting are included here: http://nas-sites.org/dels/events/review-of-advances-made-to-the-iris-process-a-workshop/.

    b. Please additionally provide a copy of the document that describes the EPA Office of Chemical Safety and Pollution Prevention "fit for purpose" systematic review process that is referenced on page 19 of the December 12, 2017 EPA document entitled "Revised Glyphosate Issue Paper: Evaluation of Carcinogenic Potential[4]."

       OCSPP does not have a document on systematic review. Per the referenced page 19 of the "Revised Glyphosate Issue Paper: Evaluation of Carcinogenic Potential" document, "consistent with NRC's recommendations, EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) is *currently developing* systematic review policies and procedures."

       NRC's 2009 report on *The Silver Book: Science and Decisions* recommended the use of a framework that "maximizes the utility of risk assessment," with a focus on assuring that risk assessments are well-tailored to the problems and decisions at hand so that they can inform the decision-making process most meaningfully. In response to this report, in 2014 EPA published the Human Health Risk Assessment Framework. OCSPP ensures that our approaches are consistent with the EPA framework, which discusses the need for fit for purpose evaluations. Problem formulation entails an initial dialogue between

[4] https://www.epa.gov/sites/production/files/2017-12/documents/revised_glyphosate_issue_paper_evaluation_of_carcinogenic_potential.pdf

scientists and risk managers and provides the regulatory context for the scientific analysis and helps define the scope of an analysis. The problem formulation stage involves consideration of the available information along with key gaps in data or scientific information. As such, the complexity and scope of systematic reviews will vary depending on the different risk management and statutory requirements and responsibilities of OCSPP. In other words, an OCSPP systematic review is conducted as "fit-for-purpose" based on the pre-determined scope and purpose determined from problem formulation.

13. Please describe the timeline and full scope of the NAS review of the IRIS program described in the Report to Congress. Will the IRIS program's new "systematic review" process be included in the scope, and if not, why not?

    The NAS "Review of Advances Made to the IRIS Process" will assess changes that have been implemented or that are planned to be implemented by the EPA in response to recommendations made in previous NAS reports (2011 and 2014). The primary focus of these reports was on the adaptation and implementation of systematic review principles to the IRIS assessment development process. The systematic review process, as applied in the IRIS Program, was described to the NAS committee during a 1.5 day workshop held February 1-2, 2018, included presentations and interactive sessions, and provided multiple opportunities for stakeholder input. The scope of the NAS review, as well as all NAS meeting summaries on this project, can be found on the NAS website http://www8.nationalacademies.org/cp/projectview.aspx?key=49904.

14. When Congress was negotiating the final text of the Toxic Substances Control Act (TSCA), EPA came to Congress and asked for specific provisions that would allow the agency to move forward with bans for some uses of three highly toxic chemicals. Congress agreed, and that language was included in the final law. One of those chemicals, a paint stripper called methylene chloride, is so dangerous that it has killed dozens of people, even when they were wearing protective gear. EPA proposed rules banning these chemicals more than a year ago. But more recent reports indicate that EPA may delay action on the uses of these chemicals for several more years, which almost certainly will mean that more people will get sick and probably some of them will die. When I asked you during the hearing whether you would commit to finalizing these bans within thirty days, you stated that "It's my understanding that is actually on the priority list as far as the chemicals that are we reviewing. TCE and others. So that is something that I will clarify and confirm with the agency. But that was my understanding." I believe you may have been referring to the *remaining* uses of these chemicals (i.e.the uses of the chemicals that are not covered by the proposed bans), which are on EPA's priority list for the first ten chemicals slated for review under TSCA. I was referring to the uses of these chemicals that EPA has *already* proposed to ban. Please provide the specific dates by which each of these proposed bans will be finalized.

Under TSCA Section 6(a), regulation of certain uses of methylene chloride, NMP, and TCE were proposed in 2016 and 2017. The agency is currently considering the comments received, including comments suggesting that EPA quickly finalize these actions and comments suggesting that these actions be evaluated as part of the group of the first ten chemicals undergoing initial risk evaluations under the amendments to TSCA.

15. According to the Paperwork Reduction Act, 44 USC § 3506(d)(3), all agencies must provide "adequate notice" when "substantially modifying, or terminating significant information dissemination products." On April 28, 2017, EPA removed the vast majority – thousands of pages – of its climate change websites, and it appears that EPA did not provide the public an opportunity to comment or express its concerns.
    a. Please describe the "adequate notice" that you issued to the public prior to making any changes to the website, as required by the Paperwork Reduction Act. Please provide supporting documents, including documents memorializing the notice.

       EPA is continually making changes to its website and other digital information resources to reflect and support the agency's current priorities and work. When we move information from our main portal, www.epa.gov, the majority of the time we make sure it is still available to the public via our archive website, https://archive.epa.gov/. In addition, because of the public concern about access to information on our website last year, as well as the receipt of a number of FOIA requests for access to information, we created a snapshot website that contains the content that was on our main portal on January 12, 2017. The snapshot website can be searched here: https://19january2017snapshot.epa.gov/.

    b. Please provide a list of webpages (and a description of the information that was contained on each one) that were eliminated from the EPA website in 2017.

       According to our available data sources, 2,224 pages were archived from www.epa.gov in 2017, representing about 3.5% of our www.epa.gov content. This response is limited to the primary public www.epa.gov webserver, but not other program-specific websites. These pages were unpublished due to:

       - **regular website maintenance,**
       - **content was superseded and replaced with newer information on the topic,**
       - **content was duplicative or no longer relevant,**
       - **comment period closed on Public Notices, and**
       - **various other quality assurance reasons.**

       This content is still in our Web Content Management.

16. On March 24, 2017, you issued an agency-wide memorandum[5] on implementation of Executive Order 13777[6], which announced members of EPA's Regulatory Reform Task Force, appointed Samantha Dravis to serve as EPA's Regulatory Reform Officer, directed certain program offices to recommend rules for repeal, replacement, or modification, and directed all program offices to seek public input on existing regulations and report findings to the Task Force by May 15, 2017. On April 13, 2017, EPA issued a Federal Register notice: Evaluation of Existing Regulations[7]. The comment period closed on May 15, 2017 and EPA received over 460,000 comments, which were published online. The Task Force also led implementation of the Section 2 review in Executive Order 13783, Promoting Energy Independence and Economic Growth. EPA subsequently published a report pursuant to EO 13783 in October 2017. It is unclear whether the Task Force has been active since then or was involved in projects outside of what is discussed above. Accordingly, with regard to the Task Force, please provide us with:
    a. A complete list of who has or is currently serving on the Task Force, including their professional title and office at EPA, and their dates of membership on the Task Force.

       Ryan Jackson – Chief of Staff, Office of the Administrator
       Byron Brown – Deputy Chief of Staff for Policy, Office of the Administrator
       Brittany Bolen – Acting Associate Administrator, Office of Policy
       Samantha Dravis – Senior Counsel and Associate Administrator, Office of Policy

       All members of EPA's Regulatory Reform Task Force have been members during their employment at the Agency since Administrator Pruitt established the Task Force in a memorandum dated March 24, 2017.

    b. Please state whether the Task Force has consulted with non-EPA employees during the course of its work and, if so, please provide a list of their names and employers, and on what rules they have been consulted.

       The Task Force has been informed by the thousands of public comments received in response to EPA's request for input on regulations that may be appropriate for repeal, replacement, or modification, per EO 13777.

[5] https://www.epa.gov/laws-regulations/memorandum-executive-order-13777-enforcing-regulatory-reform-agenda
[6] https://www.federalregister.gov/documents/2017/03/01/2017-04107/enforcing-the-regulatory-reform-agenda
[7] https://www.federalregister.gov/documents/2017/04/13/2017-07500/evaluation-of-existing-regulations

c. A list of meeting dates and topics for Task Force meetings held thus far and scheduled to be held this year. Please provide copies of any agendas that were circulated prior to each meeting.

In implementing EO 13777, EPA hosted a series of public meetings and teleconferences to inform the Regulatory Reform Task Force. Information on these public meetings and teleconferences, including agendas, is accessible through EPA's Regulatory Reform webpage: https://www.epa.gov/laws-regulations/regulatory-reform.

d. All documents created by or for the Task Force, (including emails, memos, white papers, meeting minutes, correspondence, and comments that cannot be found on the regulations.gov website).

A Comprehensive search could not be performed by the submission of this document.

17. The Freedom of Information Act (FOIA) requires agencies to respond to a FOIA request within 20 days of receipt of the request. Although agencies are given some latitude to extend the response timeline in light of "unusual circumstances," EPA's failure to meet the deadlines specified in the Act has resulted in many FOIA requests left unanswered. That, in turn, has led to lawsuits against EPA for failure to meet the FOIA timeline.
    a. EPA currently submits open FOIA request logs to the Committee on a monthly basis, pursuant to an oversight letter sent to EPA on March 17, 2017. Beginning on the date of your next log submission, please also provide the number of currently open FOIA requests, the number of lawsuits that have been filed due to EPA's failure to comply with FOIA's deadlines, the number of FOIA lawsuits that have been completed, the number of lawsuits resulting in EPA providing the requested documents, and the cost of each lawsuit to the taxpayer.

    Monthly EPA posts on its web site a list of all FOIA request that were pending at the end of the previous month and the status of all FOIA request that were submitted during the previous month. This information can be found, respectively, at https://www.epa.gov/foia/all-foia-requests-pending-month and at https://www.epa.gov/foia/all-foia-requests-received-month. Regarding your request for information concerning the Agency's FOIA litigation, EPA currently has approximately 55 pending FOIA cases, about 45 of which allege that EPA did not complete its response to the FOIA request within the statutory timeframe.

b. Does EPA follow the "rule of three,[8]" which calls on agencies to post frequently requested records to its public website? If so, please identify where those records are posted. If not, please explain why not.

It is EPA's Policy to make all records released in response to a FOIA request available to the public, even if there is only one request for that information. EPA has released over one million records, through FOIAonline, since October 1, 2012. The one exception to this rule is first party FOIA requests. A first party FOIA request is one where a requester is asking for records about themselves.

c. Please provide any internal EPA guidance that exists on the use of FOIA redactions. Please provide documents confirming that staff responsible for redacting documents have received the appropriate training.

All EPA staff are required to take annual FOIA training. EPA's FY 2018 FOIA training is focused on the use of FOIA exemptions. In September 2017, the National FOIA Program, working with the Office of General Counsel, offered a multi-day training session on FOIA. The training covered the lifecycle of a FOIA. Over 170 FOIA professionals from throughout the Agency attended the training. Among other things, the training addressed use of Exemptions 4, 5 and 6.

18. During the hearing Senator Duckworth asked for "a detailed schedule of your meetings and receipts for international travel you have taken since being confirmed." You agreed to provide those documents. Since then, a report[9] detailed tax-payer funded travel you took internationally and domestically that included first-class tickets on commercial flights as well as travel on military jets. For each flight, international or domestic, that you have taken since you were confirmed, please provide the following information:
    a. Date of the flight, the departure city and airport, and destination city.
    b. Class (e.g. coach, business class, first class, or some other class of travel) and cost of the ticket.
    c. Source of funding for the ticket (e.g. federal taxpayers, the State of North Dakota, Heritage Foundation).
    d. For each non-commercial flight, please explain why a non-commercial flight was selected.
    e. Names of staffers who accompanied you on each trip, the cost of their flights, classes of their tickets, and the sources of funding for their tickets.
    f. Copies of all receipts of air travel for you and your accompanying staff.
    g. For any ticket issued to you or your accompanying staff that was not a coach-class ticket (or its equivalent), please explain why it was necessary to purchase that class of ticket.

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[8] https://www.justice.gov/oip/oip-guidance/proactive_disclosure_of_non-exempt_information

[9] https://www.washingtonpost.com/national/health-science/first-class-travel-distinguishes-scott-pruitts-epa-tenure/2018/02/11/5bb89afc-0b7d-11e8-8b0d-891602206fb7_story.html?utm_term=.4c0713143235

A Comprehensive search could not be performed by the submission of this document.

19. During the House Energy & Commerce subcommittee hearing on December 7, 2017, you testified that particulate matter is a "very important criteria pollutant" that should be regulated under the National Ambient Air Quality Standards (NAAQS) program. One study[10] found that PM2.5 "was the fifth-ranking mortality risk factor in 2015," and contributes to nearly 90,000 deaths in the US every year.[11]
    a. Do you agree with the general conclusion from this analysis that PM2.5 presents a serious public health concern? If not, please provide supporting evidence, including any research or analysis EPA has conducted, that supports your position.
    b. Please provide documentation supporting any analysis you have done to calculate the amount of PM2.5 pollution that will be created as a result of your actions to reverse, delay, or modify the Clean Power Plan, methane, and the Glider Kit rules. Please state whether you attempted to calculate the adverse human health effects that will be caused by your changes to the rules mentioned above.
    c. Do you think there is a tolerable level of PM2.5 that is appropriate for human exposure? If so, please specify it, and explain what evidence you have to support this.
    d. Are you aware that a study conducted by Tom Brewer at Tennessee Tech University determining that trucks outfitted with glider kits are as clean as new diesel truck engines is now under investigation for "misconduct in research" by Tennessee Tech University?[12] This is the same study that was included in the glider industry's petition asking the EPA to repeal emission requirement for glider kits and cited in the EPA's November 16, 2017 proposal to repeal the Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits. Please describe how you plan to re-assess EPA's November 16, 2017 proposal in light of the potential misconduct associated with this study. If no such plans exist, why not?

Particulate matter (PM), also known as particle pollution, is a complex mixture of extremely small particles and liquid droplets in the air. Once inhaled, these particles can affect the heart and lungs and cause serious health effects. The Clean Air Act requires EPA to review the NAAQS and their scientific basis at least every five years to determine whether standards are requisite to protect public health, with an adequate margin of safety. The fine PM NAAQS was last reviewed and revised in 2012. As part of that process, EPA developed an Integrated Science Assessment to

[10] https://www.ncbi.nlm.nih.gov/pubmed/28408086
[11] "Estimates and 25-year trends of the global burden of disease attributable to ambient air pollution: an analysis of data from the Global Burden of Diseases Study 2015." See Table 2.
[12] http://herald-citizen.com/stories/ttu-investigating-fitzgerald-study,25943

summarize the science related to the health and ecological effects. This most recent assessment, released in December 2009, can be found on EPA's website at: https://www.epa.gov/isa/integrated-science-assessment-isa-particulate-matter.

The "Regulatory Impact Analysis for the Review of the Clean Power Plan: Proposal" presents analysis of the forgone social benefits of changes in non-CO2 emissions from the electricity sector in Section 3.4 (pages 42-55) and Section 7.5 (pages 122-124). For the 2016 oil and gas rule, EPA did not monetize changes in PM2.5 emissions or concentrations.

With respect to gliders, the agency is currently reviewing the comments submitted on the proposed rule and is evaluating next steps. Similarly, although the recent NPRM cited the Tennessee Tech University study, we referenced the study in our proposal but did not rely on it for our decision making.

20. In response to questions from Chairman Barrasso regarding the implementation of the 2015 National Ambient Air Quality Standard (NAAQS) for ground-level ozone, you commented that the EPA was "in the process of designating attainment and non-attainment [areas] with respect to ozone." You went on to state, "when you think about ozone, there has been a lot of focus on whether the parts per billion, 75 parts per billion, reducing it to 70 parts per billion, was a wise decision. That has not been our focus. Our focus has been on more the issues and implementation that you have raised."
    a. Do you agree with EPA's conclusion in 2015 that the primary NAAQS standard for ground-level ozone should be set at a level of 0.070 parts per million (ppm) to protect health with an adequate margin of safety? If not, why not?
    b. Do you agree with the underlying science data for the 2015 NAAQS for ground-level ozone that finds ambient ground-level ozone pollution above 0.070 ppm can trigger asthma attacks in children that have asthma? If not, why not?
    c. Do you agree with EPA's assessment that once implemented, the public health benefits from the 2015 NAAQS for ground-level ozone will outweigh the costs? If not, why not?
    d. Will you confirm that under your leadership, the EPA will not weaken the 2015 primary NAAQS standard for ground-level ozone set at 0.070 parts ppm?

As previously stated, EPA's recent focus for the 2015 Ozone NAAQS has been on resolving implementation issues.

21. Under Clean Air Act section 111, can EPA base emissions guidelines on a "best system of emission reduction," if application of the measures comprising that best system of emission reduction would result in a source increasing total emissions of the regulated pollutant? Why or why not?

Traditionally NSPS standards have been sent as rate-based standards rather than total mass based standards and have not constrained overall emissions.

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22. In determining the "best system of emission reduction" under Clean Air Act section 111, do you believe that EPA must consider the degree of air pollution reductions achieved? Why or why not?

While emission reductions are one element relevant to evaluating BSER, EPA anticipates that it will be receiving comments on this issue in connection with its current regulatory actions on the Clean Power Plan.

23. The 2009 Cause or Contribute Finding concluded that the combined emissions from new motor vehicles and new motor vehicle engines of six key well-mixed greenhouse gases—carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride (collectively, "GHGs")—contribute to greenhouse gas pollution that threatens public health and welfare. At the time, EPA cited data showing that in 2007, source categories regulated under CAA section 202(a) accounted for 23.3% of domestic GHG emissions, and the electricity sector accounted for 34.2% of domestic GHG emissions.[13] Do GHG emissions from the electricity sector cause or contribute significantly to greenhouse gas emissions that can reasonably be anticipated to endanger public health or welfare? If not, why not?

To date, EPA has relied on the endangerment finding that it had previously made under CAA section 202(a)(1) with respect to GHG emissions from new motor vehicles for its decision to establish standards of performance for GHG emissions from Electric Generating Units (EGUs). In particular, EPA has asserted the 2009 finding as providing a ''rational basis'' for regulating GHG emissions from EGUs.

24. Do any parts of the Clean Air Act authorize EPA to decline to set 111 standards (or emission guidelines) for GHGs from stationary sources if there is an Endangerment Finding for GHGs entirely? If so, please specify them.

Section 111(b)(1)(A) of the Clean Air Act states the Administrator shall include a category of sources if in the Administrator's judgment it causes, or contributes significantly to, air pollution which may be reasonably be anticipated to endanger public health and welfare.

25. According to the most recent National Climate Assessment (NCA) released by the Trump Administration, climate change caused by emissions of heat-trapping gases "outweigh[s] other factors in determining burned area in the western U.S. from 1916 to 2003, a finding confirmed by 3000-year long reconstructions of southwestern fire history."[14] According

[13] *See* 74 Fed. Reg. 66496, 66540 tbl.2 (Dec. 15, 2009).
[14] NCA at p. 468, *available at* http://s3.amazonaws.com/nca2014/high/NCA3_Climate_Change_Impacts_in_the_United%20States_HighRes.pdf.

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to the NCA, "Numerous fire models project more wildfires as climate change continues," including "up to a 74% increase in burden area in California, with northern California potentially experiencing a doubling under a high emissions scenario toward the end of the century."[15] The NCA calls conifer forests in southern California "notably threatened" by the climate change caused by heat-trapping gases. According to the Trump Administration's NCA, California is also at extraordinary risk from seal-level rise and coastal damage. Without adaptive action, the Trump Administration expects that critical California infrastructure such as the San Francisco and Oakland airports "are at increased risk of flooding with a 16-inch rise in sea level in the next 50 years . . . ." Increasingly high numbers of Californians will be put at risk of flood, including highly vulnerable populations less able to prepare, respond, or recover from natural disaster. On an even more fundamental level, emissions of these heat-trapping gases pose an exceptionally high risk to the highly urbanized population of California due to increasing urban heat. According to the Trump Administration, heat stress has been the leading weather-related cause of death in the United States since 1986 (when record-keeping began).[16] Severe heat waves such as the 10-day California heat wave of 2006 trigger "escalating effects" that kill people, particularly the elderly and those in low-income communities. Heat waves can also cause respiratory stress by expediting chemical reactions that cause the formation of ground-level ozone.

a. Do you agree that emissions of heat-trapping greenhouse gases cause compelling and extraordinary harm to the people and environment of California? If not, please explain why not, including whether you either i) do not accept the findings of the Trump Administration's NCA or ii) do not believe the impacts to California described in the NCA are compelling or extraordinary.
b. Do you agree that emissions of greenhouse gases from motor vehicles cause compelling and extraordinary harm to the people and environment of California? If not, please explain why not.

While there has been extensive research and a host of published reports regarding climate change, our understanding of the role of human activity is still improving. As an environmental regulator it is important for the agency to strive for a better understanding of the role of human activity with respect to climate change given the potentially significant influence on our country's domestic economic viability when protecting the environment.

26. Please list each of the meetings that Administrator Pruitt, Assistant Administrator Wehrum, David Harlow or other EPA political staff (including EPA transition team officials) have held with outside entities, since January 20, 2017, on the topic of changes or "reforms" to the New Source Review or Prevention of Significant Deterioration requirements under the Clean Air Act. Please provide all documents received from outside entities, as well as any email correspondence between EPA employees and outside entities, on this topic, since January 20, 2017.

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[15] NCA at p. 468, *available at* http://s3.amazonaws.com/nca2014/high/NCA3_Climate_Change_Impacts_in_the_United%20States_HighRes.pdf.
[16] NCA at 471.

This request is also the subject of ongoing FOIA requests. The agency is in the process of responding to those requests and will provide the information to the committee in a timely manner. In the interim, the Administrator's and Assistant Administrator's calendars are publically available at https://www.epa.gov/senior-leaders-calendars.

27. Please explain in detail how the policy options in the December 18, 2017 Advance Notice of Proposed Rulemaking regarding future rulemaking to reduce existing power plant greenhouse gas emissions would achieve the full range of public health, economic, and environmental benefits that would have resulted from Clean Power Plan.

    The Advance Notice of Proposed Rulemaking on State Guidelines for Greenhouse Gas Emissions from Existing Sources (ANPRM) does not present specific policy options. Rather, the ANPRM solicits information from the public about a potential future rulemaking. As you are aware, the comment period closed on February 26, 2018. The agency has begun review of all comments that will inform any next steps to ensure that in any potential new proposed rule, benefits and costs will be appropriately analyzed.

28. In President Trump's June 1, 2017 statement announcing the United States would be withdrawing from the Paris Climate Accord, President Trump highlighted two studies - economic analysis from the National Economic Research Associates and a climate science study from MIT. These same studies were included in White House materials.
    a. Did you, or any other EPA political staff, provide White House staff or the President information on these two studies?
    b. Please provide a copy of all documents, (including but not limited to hand-written notes, paper files, emails, memos, white papers, telephone logs, presentations or meeting minutes) between and among any combination of you, other agency officials, other federal government officials, any state officials, and any non-governmental entities that inform, contribute to, direct, or are otherwise related to related to the Paris Climate Accord.

    A Comprehensive search could not be performed by the submission of this document.

29. How many facilities subjected to MACT standards are also subjected to Reasonably Available Control Technology (RACT) standards that are more stringent or the same requirements for volatile organic compounds? Are there some parts of the country that are not subject to RACT controls for volatile organic compounds? If so, please list those areas.

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The EPA has not performed a source-by-source comparison of MACT and RACT standards where both apply. The RACT standards are established by states, not by EPA, and there is enough flexibility in the Clean Air Act in how a state may establish a RACT standard that there is no expectation of uniformity between the level of control or specific sources covered in different states. Specific to the ozone NAAQS program, EPA has established "presumptive RACT" for the key VOC emissions points present in about 44 source categories through the issuance of Control Techniques Guidelines (CTG). CTGs provide guidance for states and do not dictate a source-specific outcome. States that contain certain ozone nonattainment areas and states in the Ozone Transport Region are reqired to submit a revision to new CTGs.

30. Studies have found that regulations may play some small part in reductions in the coal workforce; but automation, shifts in mining practices, and prices of natural gas are all major contributing factors to the decline of coal.
    a. How many coal mines have closed or gone bankrupt since you became EPA Administrator?

       The Agency does not maintain this data.

    b. Please provide a list of every coal mine and coal-fired plant that will remain open, be built, or be expanded as a result of the rescission of the Clean Power Plan, along with the expected number of jobs that will be retained or added as a result. On what basis was each EPA projection made?

       EPA has not published any estimates of regulatory impacts on individual coal mining or coal-fired power plants. EPA has not yet prepared any estimates of the impacts on coal mining or coal-fired plants related to the proposed repeal of the Clean Power Plan. The coal impact analysis in the proposed repeal RIA was limited to presenting the coal impact analysis in the final RIA for the CPP promulgation in 2015. EPA's analyses of particular regulations affecting coal mines and coal-fired power plants do not estimate impacts on individual mines or specific power plants. EPA committed to evaluate the employment impacts of actions under the Clean Air Act within EPA's Final Report of Agency Actions that Potentially Safe, Efficient Development of Domestic Energy Resources under Executive Order 13783 (https://www.epa.gov/sites/production/files/2017-10/documents/eo-13783-final-report-10-25-2017.pdf).

31. I remain concerned about the volatility in the Renewable Fuel Standard (RFS) compliance trading system used by EPA, known as the Renewable Identification Number (RIN) market and the impacts that RIN market manipulation is having on the economic stability of East Coast refineries.

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a. Currently, the EPA has a Memorandum of Understanding with the Commodity Futures Trading Commission (CFTC) on RIN market manipulation. In the past year, how often has EPA staff communicated with the CFTC on RIN market manipulation and what have you and your staff done with the CFTC to assess potential RIN market manipulation?

Under the MOU, CFTC looked into a claim by the Renewable Fuels Association (RFA). RFA asserted that some participants in the RIN market may have deliberately driven up RIN prices during a certain period to disrupt the RIN market, in order to support political gains to repeal/reform the RFS program. The RFA letter, dated August 31, 2016 was sent to both CFTC and EPA. To assist CFTC, the EPA provided RIN data from January 2010 to August 2016. CFTC reviewed this data and as noted by the CFTC Chairman Chris Giancarlo in his testimony to U.S. Senate Agricultural Committee on February 15, 2018 that CFTC did not find misbehavior in the market. Given EPA's market oversight limitations, we intend to pursue continued collaboration with CFTC under the MOU.

b. In my conversations with CFTC officials, they indicate that you have not asked them to do much in assessing RIN market manipulation and suggested EPA is not collecting the right type of information to be able to assess potential manipulation. Why haven't you asked the CFTC to do more to help EPA prevent potential RIN market manipulation?

EPA is always looking for ways to improve implementation and transparency of the program, while balancing resource needs and our duty to protect confidential business information as required by our regulations. EPA will continue to work with CFTC and seek to utilize their market oversight expertise and authority.

c. I have asked the Federal Trade Commission (FTC) staff to offer their expertise to your staff. Has anyone at the EPA talked to FTC staff about ways the FTC can be helpful? Have you considered establishing a Memorandum of Understanding with the FTC to assist with RIN market manipulation?

On February 8, 2018, EPA and FTC held a meeting to initiate dialogue on this matter. On the call, the FTC discussed their authority and expertise, which are largely focused on investigating fraudulent reporting of information to governmental agencies and other acts with intent to deceive or gain advantage in market. FTC further differentiated their role compared to CFTC, who has authority to investigate participant behavior and market trends to identify potential market manipulation. EPA and FTC did not specifically discuss establishing an MOU, but did exchange information to facilitate future discussions.

d. Will you commit to working with my staff to do more to address market manipulation in the RIN market?

Although the EPA has not seen evidence of manipulation in the RIN market, EPA is not a commodity market regulatory agency, and thus we do not have expertise in this field. EPA has not EPA's authority and function is to implement the RFS program and address fraud in the program. For example, since 2013, over two dozen individual defendants have been sentenced for RFS related crimes and have received a combined total of over 168 years of incarceration and ordered to pay over $400 million in fines and restitution. Restitution in these cases and the tens of millions of dollars forfeited since have been restored to victims of RFS fraud. Claims of market manipulation prompted EPA to execute a memorandum of understanding (MOU) with the U.S. Commodity Futures Trading Commission (CFTC), who has the authority and expertise to investigate such claims.

e. Will you commit to implementing the RFS fairly in a way that ensures an even playing field among obligated parties?

Yes, EPA is committed to ensure an even playing field among all the parties participating in the RFS program. In fact, to protect the program's integrity and maintain a level playing field for regulated companies, EPA has pursued civil enforcement actions against renewable fuel producers, importers, and exporters that generated invalid RINs. In addition, since 2013, over two dozen individual defendants have been sentenced for RFS related crimes and ordered to pay over $400 million in fines and restitution. Restitution in these cases and the tens of millions of dollars forfeited have been since restored to victims of RFS fraud.

32. Under the Renewable Fuel Standard (RFS), biogas-generated electricity used to charge electric vehicles (EVs) is already an approved pathway and is eligible for the generation of cellulosic Renewable Identification Numbers (RINs). Applications for this pathway were submitted over a year and a half ago. Will you commit to approving an application for this pathway in the next 60 days?

In 2016, EPA proposed the Renewable Enhancement and Growth Support (REGS) Rule and identified a number of significant policy questions raised by different approaches to capturing RINs from renewable electricity used to charge electric vehicles. Since the REGS proposed rule comment period closed, OAR staff have been going through the many comments received, evaluating various conflicting implementation approaches raised in the comments, and exploring options for the complex issues associated with implementing the electric pathway. We continue to work towards a final decision on these important issues, which are a requisite before any final decisions on pending applications can be made.

33. Aside from the type of water identified in *SWANCC v. Army Corps of Engineers*, which have no significant connection at all to navigable-in-fact waters, are there any categories of water bodies that you believe have such an insignificant relationship to navigable-in-fact waters that discharges into them should be exempt from the Clean Water Act? In those cases, would the federal Clean Water Act allow discharges of unlimited quantities of toxic poisons into those waterbodies, even if a portion of those poisons eventually flowed downstream to navigable-in-fact waters?

    The scope of Clean Water Act jurisdiction under future regulation is currently under development. EPA and the Army have conducted and will continue to conduct a transparent and robust public engagement process, meeting and listening to stakeholders prior to issuing a proposal. EPA and the Department of the Army are currently considering suggestions from states, local government, tribes, and other stakeholders about which waters should be jurisdictional under the Clean Water Act and which should not.

34. The Obama Administration implemented its definition of "Waters of the United States" for several weeks in 2015. Has the EPA conducted any analysis of how easy or difficult it was to administer the Rule during that time? If not, why have you not conducted that analysis?

    The EPA did not conduct an analysis of the administration of the 2015 Clean Water Rule during the approximately six weeks that it was in effect in 37 states. The Army Corps of Engineers has the day-to-day responsibility for conducting jurisdictional determinations with respect to the permitting program under section 404 of the Clean Water Act.

35. In an interview with the National Cattlemen's Beef Association, you said that, "The Obama Administration reimagined their authority under the Clean Water Act and defined a 'water of the United States' as being a puddle …"[17] The Obama Administration rule expressly exempts "puddles" from the definition of "waters of the United States?" *See* 33 C.F.R. §328.3(b)(4)(vii).
    a. If you were previously aware of this exemption, why have you repeatedly mischaracterized the rule?
    b. If you were not previously aware of this exemption, do you retract your statement? If you will not retract your statement, please explain why.

[17] "EPA Administrator Scott Pruitt Urges Ranchers to File WOTUS Comments," https://www.youtube.com/watch?v=yTVd54WyhDQ.

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Much of the concern raised about the 2015 Clean Water Rule focused on lack of clarity, uncertainty, and confusion in the implementation of this rule. While the Rule did exclude "puddles" from regulation, the Rule did not define the term. Many stakeholders expressed concern that the agencies would regulate features such as wet spots and tire ruts in farm fields because such features were not expressly as "puddles." clarity and predictability are among the critical goals of the current rulemaking effort.

36. You also stated that the Obama Administration reimagined their authority under the Clean Water Act and defined a 'water of the United States' as being . . . ephemeral drainage ditches."[18] The Obama Administration rule expressly exempts "[d]itches with ephemeral flow that are not a relocated tributary or excavated in a tributary" "puddles" from the definition of "waters of the United States?" *See* 33 C.F.R. §328.3(b)(3)(i).
    a. If you were previously aware of this exemption, why have you repeatedly mischaracterized the rule?
    b. If you were not previously aware of this exemption, do you retract your statement? If you will not retract your statement, please explain why.

The 2015 Clean Water Rule would regulate ephemeral drainage ditches that are a relocated tributary or excavated in a tributary.

37. What specific provision of the Clean Water Act or Administrative Procedure Act gives EPA the authority to alter compliance dates, not merely effective dates, for standards lawfully promulgated under 33 USC 1311(b)(2)?

EPA promulgated the 2015 Steam Electric ELG Rule pursuant to its legal authorities under the CWA, particularly sections 301(b), 304(b), 306, and 307(b) and (c) of the Act. Together, Sections 301(b) and 304(b) authorize EPA to establish effluent limitations guidelines based on Best Available Technology Economically Achievable. Section 306 authorizes EPA to establish Standards of Performance for New Sources, and Sections 304(b) and (c) authorize EPA to establish pretreatment standards for new and existing sources. Moreover, Section 304(m)(1)(A) and 301(d) authorize EPA to review its pretreatment standards for possible revision every year. EPA's authority for the Postponement Rule rests upon the same authorities as the 2015 Steam Electric ELG Rule and that meet the definition of "tributary" set forth in the rule.

[18] "EPA Administrator Scott Pruitt Urges Ranchers to File WOTUS Comments," https://www.youtube.com/watch?v=yTVd54WyhDQ.

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38. The Clean Water Act prohibits compliance dates that extend more than three years from the issuance of new effluent guidelines (EGs). In what specific statutory provision did Congress allow EPA to flout that requirement by postponing until 2020 the compliance deadline of an EG issued in 2015?

The statutory provisions in Section 301 requiring that effluent limitations be achieved no later than three years after promulgation, and in no case later than March 31, 1989, CWA section 301(b)(2)(C)-(F), could be read to apply only to BAT effluent limitations promulgated before 1989, with the statute being silent with regards to BAT effluent limitations promulgated thereafter. The statute also contemplates periodic review and revision of those guidelines, and implements those provisions through its CWA section 304(m) process. But the statute is silent about the deadline for effluent limitations and standards derived after 1989.

39. EPA explained that it is delaying the compliance deadlines of the steam electric power generating EGs because of costs to regulated industry. However, EPA estimated only 28% of coal-burning plants—and only approximately 12% of power plants overall—would incur any costs from the rule at all. Even among that small subset, almost all of those plants would incur costs less than 1% of the company's revenue.
    a. Do you disagree with those figures? If so, explain your disagreement.
    b. To what extent did you consider the EG's extensive public health benefits when deciding to delay the compliance deadlines?
    c. Do you believe that the incremental costs to industry outweighed the public health and environmental benefits of the EGs? If so, explain why.

EPA is currently collecting additional data on such things as changes that have taken place in the industry subsequent to the analysis supporting the 2015 Rule as part of its commitment to reconsider the technology bases of the new more stringent limits on the flue gas desulfurization (FGD) and bottom ash waste streams that were established in the 2015 Rule.

Extensive consideration was given to estimated public health benefits of the 2015 Rule, as well as the costs, and regulatory options. Petitioners raised serious concerns about the costs and impacts of the 2015 Rule. After considering those concerns, as well as public comment in response to EPA's June 2017 proposed rule to postpone certain compliance dates, EPA finalized a rule in September 2017 postponing certain 2015 Rule compliance dates, and announced EPA's intention to conduct a subsequent rulemaking potentially revising the limits for those wastestreams for which the compliance dates were postponed. EPA's action to postpone those compliance dates in the 2015 Rule was intended to preserve the status quo for FGD wastewater and bottom ash transport water while EPA completes its next rulemaking.

EPA acknowledges that postponement of the compliance dates may lead to a delay in the accrual of some of the benefits attributable to the 2015 Rule. The 2015 Rule assumed that steam electric plants would comply with the new, more stringent requirements no later than 2023, including implementation of new control technologies over a five-year compliance period, according to their permit renewal schedule. However, if EPA did not postpone the compliance dates, industry would likely incur these costs, irrespective of what EPA determines as the final limits for FGD wastewater and bottom ash transport water. EPA determined that the estimated foregone costs to industry warrant the postponement of compliance dates in the 2015 Rule.

40. The Safe Drinking Water Act permits EPA to "fill not more than thirty scientific, engineering, professional, legal, and administrative positions within the Environmental Protection Agency without regard to the civil service laws." 42 U.S. Code § 300j–10. These appointments may be made where the Administrator deems such action necessary to the discharge of his functions as they relate to Title XII of the Public Health Service Act (42 U.S.C. 300f et seq.) (relating to safety of public water systems). These individuals are exempted from certain other Executive Branch requirements, including the Trump Ethics Pledge. In an August 18, 2017 letter to GAO, Senator Whitehouse and I wrote: "EPA has utilized its SDWA authority to hire a number of non-Senate-confirmed political appointees, some of whom are serving in supervisory positions and in roles that raise ethical questions." Based on documents provided by EPA, it appears that some individuals may still be serving as administratively determined appointees. These appointees have been permitted to work on projects with essentially no check on their ethical or financial conflicts. Also, many of these appointees appear to have had EPA e-mail accounts that were created and used by them for weeks and even months before their stated appointment date -- in some cases nearly 4 months before.
    a. What is EPA's policy on the length of time an employee is allowed to serve under the SDWA authority without having to complete a financial disclosure form, or complete a recusal statement (if necessary)?

    All Administratively Determined (AD) appointees receive initial ethics training pursuant to 5 C.F.R. § 2638.304. While the regulation allows agencies up to three months to provide that training, EPA typically ensures that the new AD appointees receive the ethics training within their first two weeks. This training is conducted personally by EPA's ethics officials in the Office of General Counsel rather than online. EPA requires that all AD appointees complete the public financial disclosure report, the OGE 278, and adheres to the regulatory deadlines set forth at 5 C.F.R. § 2634.201(b), which requires filing within the first 30 days. Please note, however, that the Agency may grant filing extensions as set forth at 5 C.F.R. § 2634.201(f).

    b. What safeguards are in place to ensure that employees hired under the SDWA authority do not work on matters that may trigger a conflict before they submit their financial disclosure form and complete any necessary recusal statement?

EPA Ethics delivers initial ethics training in person (or, for appointees who are in regional offices, via conference call or video conference) to all Administratively Determined (AD) appointees. In that training, they specifically address conflicts of interest and impartiality, and inform the appointee about recusal issues. When the appointee files the financial disclosure report, EPA Ethics can more accurately assess possible financial conflict of interest issues and determines whether the appointee should issue a written recusal statement. If necessary, EPA Ethics drafts that document.

c. For each appointee hired under the SDWA authority, please provide the date of their appointment; the date the appointment ended (if any); and the specific projects they worked on while serving as an administratively determined appointee.

Please see Attachment 1.

d. For each employee hired by the EPA under the SDWA authority, Schedule C authority, or as Non-Career SES, provide the date on which their EPA e-mail address was created, and the date of their appointment, whether they worked at EPA in any capacity prior to their appointment date and if so, what capacity.

Please see Attachment 1.

41. In response to questions from Senator Merkley, you testified that a "Red Team / Blue Team" exercise to re-examine the underpinnings of climate science is still "under consideration" at EPA. According to Jim Lakely, the communications director of the Heartland Institute, EPA has "reached out to the Heartland Institute to help identify scientists who could constitute a red team," and the Heartland Institute had been "happy to oblige."[19]
    a. Is Mr. Lakely telling the truth that EPA representatives reached out to the Heartland Institute for help identifying scientists who could participate in a Red Team/Blue Team exercise? If yes, why did EPA choose to contact the Heartland Institute?
    b. Have representatives of the Heartland Institute provided representatives of EPA with a list of "scientists who could constitute a red team"? If yes, who are the Heartland Institute's proposed participants?
    c. Have any EPA representatives consulted with any other organizations, corporations, or individuals about potential individuals who could participate in a Red Team/Blue Team exercise? If yes, provide the names of those organizations, corporations, or individuals consulted, and the names of any proposed participants.

[19] http://www.washingtonexaminer.com/trump-administration-lining-up-climate-change-red-team/article/2629124

d. Do you know the names of any individuals or organizations who have contributed to the Heartland Institute? If yes, please provide the names of any such individuals or organizations with whom you have met in your capacity as EPA Administrator.
e. Please provide a copy of all documents (including emails, white papers, meeting agendas, powerpoint presentations, memoranda and other materials) received or obtained by EPA related to the "Red Team/Blue Team" climate science effort.

Administrator Pruitt encourages an open, transparent debate on climate science – with a Red Team/Blue Team exercise being an option discussed to learn more about the questions around climate science.

42. A press report indicates that EPA's Office of the Chief Financial Officer established a target for Region 9 to reduce their FTEs by 10% by the end of FY18. Has the CFO or anyone in the Administrator's office provided other EPA regional offices or program offices with targets for reducing personnel by a specified percentage? If so, please provide each of the targets. Please also provide any document from the CFO or the Administrator's office communicating an FTE or staff reduction target to any EPA region or program office for FY18 or future fiscal years.

The President's Budgets for FY 2018 and FY 2019 include proposals for significant staffing reductions and those levels were considerations in the establishment of internal planning targets which were to be revaluated after appropriations bills are passed and during the development of EPA's Operating Plan. The effort is on-going. Recent flat-lined appropriations in the majority of EPA's program projects, combined with payroll growth, have created challenges in meeting program requirements that are addressed with contracts or with grants. Taken together, these trends mean the agency must carefully manage workforce levels. Specific impacts vary depending on organizations' current staffing levels and attrition rather than a set percentage.

Office or Region	Starting point Onboard FTE (data as of 9/25/17)	Interim FTE Target for End of FY 2018
OA	362.6	340.3
OAR	1,106.7	1,085.2
OARM	652.0	646.8
OCFO	291.0	300.8
OCSPP	979.0	932.5
OECA	667.2	670.0
OEI	325.9	364.9
OGC	222.1	196.8
OIG	267.5	270.0
OITA	71.8	68.1
OLEM	468.5	456.4
ORD	1,619.9	1,463.7
OW	552.3	533.2
R01	514.9	535.9
R02	752.1	715.7
R03	764.7	713.5
R04	877.0	858.3
R05	1,008.1	979.5
R06	739.9	677.5
R07	445.6	449.0
R08	512.5	478.3
R09	699.5	652.1
R10	522.9	478.5
Total	**14,423.6**	**13,867.0**

43. A recent report[20] indicates that, at a proposed superfund site in Chattanooga, EPA is only taking the most protective clean-up measures at properties where children currently live. EPA cannot possibly know whether families with children will one day move into homes that EPA isn't cleaning up because children don't *currently* live there. And EPA cannot possibly know which homes children visit frequently.
    a. Is the policy described in the report accurate? If not, please fully describe any inaccuracies.
    b. If the policy described in the report is accurate, please provide all documents (including emails, memos, white papers, analysis, meeting minutes and correspondence) related to any policy decision that limits the most aggressive cleanup measures to sites that currently have children residing on the premises.

[20] http://amp.timesfreepress.com/news/local/story/2018/jan/15/dozens-chattanooghomes-sitting-toxic-site/461286/?__twitter_impression=true

The *Chattanooga Free Times* press report is partially accurate with respect to the prioritization of the of the cleanup of impacted properties under the time-critical removal process at the Southside Chattanooga Lead Site. In an effort to minimize residents' exposure to highly contaminated soil, EPA's Superfund program is utilizing both removal and remedial cleanup authorities to expeditiously address the contamination at the Southside Chattanooga Lead Site. Currently, cleanup activities are being conducted under removal authorities. As a result, property cleanup is primarily based on detected lead concentrations above the removal management level of 1,200 milligrams per kilogram (mg/kg). In addition, special considerations are also provided to properties with children.

On January 18, 2018, the site was proposed for listing on the National Priorities List (NPL). Inclusion of the site on the NPL will allow additional resources to be allocated to address the contamination under the remedial program. EPA expects that residential properties, regardless of nature of occupancy, with lead concentrations above the anticipated site-specific cleanup level (360 mg/kg) will be addressed under the remedial process.

44. The President issued an Executive Order saying that for every rule an agency writes, two rules have to be repealed such that the net costs to industry are zero. However, the White House issued guidance on implementing this executive order that says that rules that address critical health matters could be exempted from the two-for-one repeal requirement. Does EPA plan to exempt its rule revising the Lead and Copper Rule from the two-for-one Executive Order? If not, why not, since the Rule does relate to a critical health matter?

    In reviewing an update to the Lead and Copper Rule, EPA assesses potential costs. Any decisions regarding costs will be based on the substance of the rule, which is still in the rulemaking process.

45. Coal ash is laden with toxic pollutants and heavy metals, and is second only to mine waste as the largest industrial waste stream in country. On April 17, 2015, the EPA published a final rule regulating the disposal of coal ash, also known as "coal combustion residuals" (CCR), from power plants.[21] Among other things, the CCR rule established vital rules to protect groundwater resources, to protect local communities from toxic windblown dust,[22] to reduce the risk of catastrophic failure (*i.e.*, collapse) of surface impoundments, and to maintain records of compliance with those rules. You became EPA Administrator on February 17, 2017. On April 17 and May 31, 2017, lawyers for power plants asked to you reconsider a laundry list of provisions in the CCR rule. On

[21] 80 Fed. Reg. 21,302 (Apr. 17, 2015).
[22] *See, e.g.*, Sabrina Shankman, *Is Coal Ash Killing This Oklahoma Town?*, INSIDE CLIMATE NEWS, June 13, 2016, *available at* https://insideclimatenews.org/news/10062016/coal-ash-killing-bokoshe-oklahoma-making-money-having-fun-cancer-asthma.

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September 13, 2017, you replied that, "After reviewing your petitions, I have decided that it is appropriate and in the public interest to reconsider the provisions of the final rule addressed in your petitions, in light of the issues raised in your petitions, as well as the new authorities provided in the recently enacted Water Infrastructure Improvements for the Nation Act, Pub. L. No. 114-322, 130 Stat. 1628 (2016)."[23]

You appear to have granted reconsideration of every provision requested by the electric power sector in their two petitions for reconsideration. Is that a correct reading of your letter? If not, which provisions are you reconsidering?

EPA has agreed to reconsider a number of provisions of the CCR rule. The U.S. Court of Appeals for the D.C. Circuit ordered EPA to submit a status report indicating which provisions of the final CCR rule were being or were likely to be reconsidered by the agency and a timeline for their reconsideration. EPA filed that status report on November 15, 2017, indicating that the following provisions were or were likely to be reconsidered. These included issues that were before the Court as well as those that were not:

Provision	**Description**
Issues Before the Court	
40 CFR 257.50(c), 40 CFR 257.100	EPA Regulation of Inactive Surface Impoundments
40 C.F.R 257.53 – definition of beneficial use	The Criteria for Determining Whether Activities Constitute Beneficial Use or Disposal
40 CFR 257.95(h)(2)	Use of Risk-Based Alternative Standards for Remediating Constituents Without an MCL
40 CFR 257.53 – definition of CCR pile	The criteria for determining Whether a Pile will be Regulated as a Landfill or as Beneficial Use
40 CFR 257.96-98	Regulatory Procedures Used to Remediate Certain Non-Groundwater Releases
40 CFR 257.73(a)(4), 257.73(d)(1)(iv), 257.74(a)(4), 257.74(d)(1)(iv)	Requirements for Slope Protection on Surface Impoundments, Including Use of Vegetation
40 CFR 257.103(a) and (b)	Whether to Allow Continued Use of Surface Impoundments Subject to Mandated Closure if No Capacity for Non-CCR Wastestreams
40 CFR 257.50(e)	Regulation of Inactive Surface Impoundments, Including Legacy Ponds

[23] https://insideepa.com/sites/insideepa.com/files/documents/sep2017/epa2017_1860.pdf

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40 CFR 257.100	Exemption for Certain Remediation and Post-Closure Requirements for Inactive Surface Impoundments that Close by April 17, 2018 Note: EPA completed reconsideration of the issues associated with this claim. See 81 Fed. Reg. 51,802 (August 5, 2016).
Appendix IV to 40 CFR 257.93(b), 257.94(b), 257.95(b), 257.95(d)(1)	Addition of Boron to the List of Constituents that Trigger Corrective Action
Issues Not Before the Court	
40 CFR 257.97	Whether to Allow Modification of the Corrective Action Remedy
40 CFR 257.90	Whether to Suspend Groundwater Monitoring Requirements Where "No Migration" Demonstration is Made
40 CFR 257.98(c)	Whether to Allow Alternate Period of Time to Determine Remediation is Complete
40 CFR 257.104	Whether to Allow Modification of the Post-Closure Care Period
40 CFR 257.101, 257.102	Whether to Allow CCR to be Used to Close Surface Impoundments Subject to Mandated Closure
40 CFR 257.53	Clarify Placement of CCR in Clay Mines

46. Please provide a copy of all documents (including emails, white papers, meeting agendas, powerpoint presentations, memoranda and other materials) received or obtained by EPA related to the April 17, 2017 petition for reconsideration from the Utility Solid Waste Group, and the May 31, 2017 petition for reconsideration from AES Puerto Rico.

    EPA received two documents related to the April 17, 2017, petition: (1) a petition and cover letter from AES Puerto Rico, and (2) a petition from USWAG. These documents are attached (Enclosures).

47. Section 2301 of the WIIN Act[24] allows EPA to approve state-administered CCR regulations to operate in lieu of certain federal CCR regulations. Will you ensure that any state programs you approve are at least as protective of human health and the environment as the EPA's 2015 CCR rule?

[24] Codified at RCRA section 4005(d), 42 U.S.C. 6945(d).

Yes, the agency will ensure that any state programs that are approved meet all of the requirements for approval under the WIIN Act, including that the be "at least as protective as the 2015 CCR rule or successor regulations." In order for EPA to approve a state program, the statute requires that a state provide "evidence of a permit program or other system of prior approval and conditions under State law for regulation by the State of coal combustion residuals units that are located in the State." See 42 U.S.C. 6945(d)(1)(A). As noted, the statute also requires that the program be "at least as protective as" the federal CCR rule. Moreover, in EPA's Interim Final Coal Combustion Residuals State Permit Program Guidance Document, EPA states in many places that the state must submit evidence that their program is at least as protective as the federal CCR rule and that this determination is subject to public notice and comment. EPA has been working with our state partners to ensure that their programs meet the statutory standard.

48. As a former state attorney general, you know that laws are only effective insofar as regulated entities believe they will actually be enforced. Could the unavailability of citizen enforcement make a state program less protective of human health and the environment, or is it irrelevant? Please fully explain your response.

Citizen enforcement of environmental laws can support governmental actions and foster deterrence and thus may be a relevant consideration when state legislatures are designing environmental programs. However, citizen suits also may take positions that are contrary to a state's interpretation of its own laws, creating confusion. Ultimately, a decision by a state legislature whether or not to include citizen suit provisions in their statutes should be left to that legislature, taking into account the needs of the state and the environmental program being addressed.

49. For each inactive surface impoundment currently subject to the 2015 CCR rule, please provide:
    a. The site's name;
    b. The site's location;
    c. The amount of coal ash disposed of in the site;
    d. The number of people living within 3 miles; and
    e. Any waterbodies or public water supplies located within 3 miles of the site.

Based on information that electric utilities posted on their CCR websites, EPA is aware of 113 inactive surface impoundments. The 2015 CCR rule defines an inactive surface impoundment as "a CCR surface impoundment that no longer receives CCR on or after October 19, 2015, and still contains both CCR and liquids on or after October 19, 2015." The attached table shows available information on the name and location of the 113 CCR units (Enclosure). EPA does not have the information to answer parts c through e of the question, as facilities are not required to report such information to EPA under the current regulations.

50. One of the companies that requested you reconsider the 2015 CCR rule, AES-Puerto Rico, appears to maintain a five-story pile of coal ash in Guayama, Puerto Rico. Has EPA received complaints about fugitive emissions from this waste pile? Has EPA investigated whether Hurricane Maria affected this and other waste piles in Puerto Rico? Please provide a copy of all documents (including emails, white papers, meeting agendas, powerpoint presentations, memoranda and other materials) received or obtained by EPA regarding off-site migration of coal-ash caused by Hurricane Maria. What precautions is EPA taking to ensure that weather events do not cause the release of coal ash?

On October 12, 2017, a team of EPA officials assessed the AES power plant to evaluate, among other things, potential spills or oil discharges, the stormwater collection and discharges system, and the wastewater treatment system. The assessment revealed that the power plant was structurally sound, oil spills were not observed from the diesel storage areas, and coal combustion residuals (CCR) had not migrated. EPA did not observe any discharge of CCR or Agremax material into wetlands. The stormwater management system implemented at the power plant appears to have prevented Agremax material and coal from discharging into the wetlands. A copy of the assessment information for the facility is enclosed.

It should be noted that the power plant had been shut down until just recently. Some structures, such as metal sidewalls and portions of the conveyors, were impacted by the storm and they were being repaired. The power plant remained out of operation until the Puerto Rico Electrical Power Authority (PREPA) requested that AES begin to produce power. AES began to producing power the week of February 12th, 2018.

Senator Booker:

51. The EPA has conceded that dangerous toxic and carcinogenic substances at dozens of Superfund sites are not adequately under control. The agency has also acknowledged that recent hurricanes have washed unknown amounts of chemicals from multiple Superfund sites into waterways. A recent analysis showed that 327 Superfund sites, 35 of which are in New Jersey, are at a risk of flooding due to climate change. In response to these findings, the Government Accountability Office (GAO) has agreed to investigate the risks to human health and the environment posed by natural disasters' impacts on Superfund sites.
    a. Do you agree that EPA must design Superfund remedies that account for climate change?
    b. Have you directed EPA staff to determine which Superfund sites may require additional remedies or precautions to be taken due to climate change?
    c. Can you please specify any additional resources that EPA may need to help remediate these sites?

EPA agrees that to meet its mission of protecting human health and the environment, Superfund cleanup remedies must be designed to account for the impacts of extreme weather events. The agency's existing processes for site cleanup planning and implementation provide a robust structure that allows consideration of these impacts. EPA integrates extreme weather vulnerability analyses and adaptation planning throughout the Superfund process, including when conducting feasibility studies, remedial designs and remedy performance reviews. Due to wide variation in the location and geophysical characteristics of contaminated sites, the nature of remedial actions at those sites, and local or regional climate and weather regimes, a place-based strategy is the most effective method to achieve this.

In 2012, the agency conducted a Superfund program assessment to: (1) identify extreme weather impacts most likely to affect remedies that are commonly used for contaminated groundwater, soil, or sediment; (2) evaluate associated vulnerabilities of the remedies; and (3) establish adaptation strategies for new and existing remediation systems. Since that time, EPA has been working to raise awareness among stakeholders, including Superfund site remedial project managers, about the importance of evaluating and addressing extreme weather vulnerabilities to ensure the continued protectiveness of remedies. The agency also continues to develop technical guidance, informational tools and training to assist site managers in integrating extreme weather vulnerability analyses and adaptation planning throughout the Superfund process.

52. On May 22, 2017, the Superfund Task Force was established to "provide recommendations…on how the Environmental Protection Agency (EPA) can streamline and improve the Superfund program." The report's recommendations were released in July 25, 2017. The EPA has stated that the Superfund Task Force kept no records of the analysis used to form recommendations for the Superfund program.
    a. Is this correct? Did the Agency keep no records of the analysis used to form recommendations?
    b. If it is correct, please provide justification or reasoning for the lack of record keeping when compiling a report that would shape the management of the Superfund program.

As I indicated at the hearing, the Agency has responded to various requests for records regarding this issue to both Congress and inquiries received via Freedom of Information Act.

<u>Sites Targeted for Immediate Intense Action</u>: In developing the "immediate, intense action" list, senior career Superfund staff at EPA headquarters and in each region were consulted and identified potential sites that may be worthy of special attention now or in the future to advance those sites through the cleanup process. The recommended sites represent the EPA regions' best professional judgment where the Administrator's involvement would facilitate site progress. The Administrator reviewed the recommendations and personally selected the sites for inclusion. The list includes sites that require timely resolution of specific issues to expedite cleanup and redevelopment efforts. The specific issue or milestone that may benefit from the Administrator's attention is noted for each site on the list, which can be found on the EPA website at: <u>https://www.epa.gov/superfund/superfund-sites-targeted-immediate-intense-action</u>.

The list is designed to spur action at sites where opportunities exist to act quickly and decisively. The Administrator will receive regular updates on each of these sites. Further, the list is intended to be dynamic and sites will move on and off the list as appropriate. At times, there may be more or fewer sites based on where the Administrator's attention and focus is most needed.

<u>Redevelopment Focus List</u>: In formulating the redevelopment focus list, EPA headquarters staff reached out to the EPA regional Superfund Redevelopment Initiative (SRI) coordinators to inquire about sites where there has been a strong interest in reuse or at sites appearing to have the strongest near-term reuse potential. This inquiry formed an initial list. Consistent with the Task Force Recommendation #33: *Focus Redevelopment Efforts on 20 NPL Sites with Redevelopment Potential and Identify 20 Sites with Greatest Potential Reuse*, EPA headquarters staff then narrowed the list based on the following criteria:

- **Previous outside interest**
- **Transportation access**
- **Land values**
- **Other critical development drivers.**

This refined list of sites was shared with the Agency's regional Superfund offices, which vetted the sites with SRI experts, remedial project managers, attorneys and regional management. The regional offices also contacted property owners, as appropriate, to let them know that EPA was considering their sites for the list, and reached out to EPA's state counterparts to ask if they had additional sites with redevelopment potential that the Agency should consider. Once EPA headquarters and the regions reached agreement, the list was made public.

The Redevelopment Focus List is intended to easily direct interested developers and potential owners to Superfund sites with redevelopment potential. EPA plans to focus redevelopment training, tools and resources towards the sites on this list. The Agency also plans to work with developers interested in reusing these and other Superfund sites; identify potentially interested businesses and industries to keep them apprised of redevelopment opportunities; and continue to engage with community groups in cleanup and redevelopment activities to promote the successful redevelopment and revitalization of their communities. This list is intended to be dynamic with sites moving on and off the list as appropriate.

The current list of sites may be found at: https://www.epa.gov/superfund-redevelopment-initiative/superfund-redevelopment-focus-list
For additional information about the Superfund Redevelopment Initiative, please go to: https://www.epa.gov/superfund-redevelopment-initiative

53. In response to the Superfund Task Force recommendations issued on July 25, 2017, you developed multiple priority lists of Superfund sites, including a list for sites targeted for "immediate, intense action" and the "Redevelopment Focus" list that highlights sites that can create potential commercial and development opportunities.
    a. How did you pick the sites to include on these lists? What specific criteria did you use?

    As to the Superfund Special Emphasis List, all 10 Regions were asked to submit their recommendations on sites that could benefit from attention and involvement. From the list submitted, the Agency selected the ones to be listed initially. EPA originally anticipated a list of 10 would be the metric. However, with discussion and review of those submitted, the list expanded to 21.

    As to the Redevelopment Site list, all 10 Regions again submitted recommendations for the list. The career staff in EPA's Office of Land and Emergency Management made the final recommendations to me.

b. What process do you intend to use in removing and adding sites to these lists?

As to the Superfund Special Emphasis List, the expected milepost or achievement needing attention is listed at the outset. Once that is achieved and absent a new milepost needing attention, the site would be deleted from the list. As to adding sites, the same process as originally employed will be replicated quarterly.

As to the Redevelopment List, a site will be removed once it has had an effective contract to reuse or it is apparent it is not viable, the site would be removed. Additions would come in the manner above with quarterly recommendations from the Regions to the career headquarters Superfund staff.

c. In what ways does the listing of these sites affect cleanup, construction, and revitalization efforts?

As to the Superfund Special Emphasis List, the listing has brought a focus and urgency to both the Potentially Responsible Parties and to those who are directly responsible to effect clean up and interact with the Potentially Responsible Parties. What the boss inspects, the employees respect. We have already seen sites stalled for years come to final pathway to resolution. Additionally, we have seen other sites move through my approval on to the remediation pathway.

As to the redevelopment list, this allows those parties interested in developing Superfund sites to focus on a few promising sites rather than sifting through 1344 sites. It also will allow potential third party dollars to be used in cleanup and more quickly return the property to productive use.

d. Do you plan to release a report or follow up on the progress made at the sites on these lists?

The status of the sites is monitored, particularly on the Special Emphasis List very frequently. We will update and revise after each quarter and will transparently report on additions and deletions, which will be available at https://www.epa.gov/superfund/superfund-task-force.

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54. The Diamond Alkali site in Newark, New Jersey is on your list of Superfund sites targeted for "immediate, intense action" – will you be working as quickly as possible to implement the Record of Decision for the lower 8 miles of the Passaic River?

Yes, EPA will continue to work as quickly as possible to implement the Record of Decision (ROD) for the lower 8.3 miles of the Passaic River. The designation as a special emphasis site is intended to maintain a focus on the high priority cleanup actions that are necessary as we continue to oversee the design work for the bank-to-bank dredging and associated work.

After the ROD was signed in March 2016, EPA negotiated and signed a settlement agreement with Occidental Chemical Corporation (OCC) in September 2016 for OCC to perform the remedial design for the selected remedy. Signing a settlement agreement for a $165 million remedial design in six months was an unprecedented accomplishment for EPA. The schedule for the remedial design estimated in the ROD was approximately four years. More than one year into the design, OCC, under EPA oversight, is still on schedule to complete the design by 2020.

55. When you commissioned the Superfund Task Force on May 22, 2017, you nominated Albert Kelly, who previously was CEO and President of Oklahoma-based SpiritBank, as its Chairman. Thirteen days prior to his appointment, he was ordered by the Federal Deposit Insurance Corporation ("FDIC") to pay a civil penalty of $125,000 after he "enter[ed] into an agreement pertaining to a loan ... without FDIC approval." Two months later, the FDIC issued a lifetime ban prohibiting Mr. Kelly from managing financial institutions after determining that his violations "demonstrated ... unfitness to serve as a director, officer, [and] person participating in the conduct of the affairs or as an institution affiliated party of the bank, [or] any other insured depository institution."
    a. The FDIC has banned Albert Kelly from banking for life because he "demonstrated ... unfitness to serve as a ... person participating in the conduct of the affairs ... [of] any ... insured depository institution."
        i. Will he be managing or providing advice on Superfund program funding or any other program funding in his role as Senior Advisor?
        ii. If so, what is the nature of these responsibilities?
        iii. Will you ask him to recuse himself from any specific agency activities or issue areas as a result of the banking ban?
    b. Were you aware of the FDIC investigations when you named him as Chair of the Superfund Task Force?
    c. Were you aware of the FDIC investigations when you named him as Senior Adviser

There is no federal ethics correlation between the FDIC matter and Mr. Kelly's service to EPA.

56. Proper financial management of the Superfund program is critical to its success. Since 1999, federal funding for the Superfund program has declined from about $2 billion to about $1.1 billion annually, and the rate of contamination threat reduction at Superfund sites has declined. During your hearing, you repeatedly stated that you had visited states throughout the country and discussed the Superfund and that the cleanup of sites would require "direction and leadership." The Chairman of the Superfund Task Force is charged with developing and implementing recommendations to improve the work of the Superfund program.
    a. Mr. Kelly had no previous experience in environmental policy or management when you named him to Chair the Superfund Task Force.
        i. What experience did he have that you believe qualified him to serve as Chair?
        ii. What experience does he have that you believe qualify him to serve as your Senior Advisor?
    b. What responsibilities was Albert Kelly given as Chairman of the EPA Superfund Task Force during the production of the Superfund Task Force Recommendations? What is his role and responsibility as Chair now that the Task Force has released its recommendations?
    c. What responsibilities was Albert Kelly given as Senior Advisor at the EPA? What specific policy areas and programs will he be responsible for in this role?

Mr. Kelly has years of leadership positions from our home state of Oklahoma that has suited him to work with the Director of the Office of Superfund Remediation and Technology Innovation to facilitate Superfund reform. During the production of the Superfund Task Force Recommendations, Mr. Kelly was my leading appointee who spearheaded the effort while compiling the suggestions of career staff. Since the production of the recommendations up until his resignation from the Agency, he lead the efforts to begin the implementation of the recommendations.

57. When you decided to move forward with the process to potentially weaken the Agricultural Worker Protection Standard requirements, what steps did you take to comply with Executive Order 12898, which requires EPA to identify and address the disproportionately high and adverse human health effects of its activities on minority and low income communities?

In response to stakeholder concerns, in December 2017, EPA released a Federal Register Notice to initiate the process to revise certain requirements in the Worker Protection Standard (WPS) and Certification of Pesticide Applicators Rule. By the end of fiscal year 2018, EPA expects to publish a Notice of Proposed Rulemaking to solicit public input on possible revisions to the WPS requirements for minimum age, designated representatives, and application exclusion zones, and the minimum age requirement for certified applicators. While the agency seeks public input on these possible changes, the compliance dates for the two rules remain in effect. EPA remains committed to protecting agricultural workers who handle and apply pesticides. Any possible revisions included in the proposed rulemakings will comply

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with all applicable statutory requirements and executive orders, including Executive Order 12898.

58. Despite proposing drastic cuts to EPA's budget, you are spending taxpayer dollars on questionable expenses such as paying $25,000 to install a custom-made, soundproof phone booth in your office.
    a. Have you used this $25,000 phone booth for any calls with representatives of oil and gas companies?

       No.

    b. Will you provide to this committee within 10 days a log of all of the calls you have made from this phone booth?

       This is a secure phone line and room to be used for secured conversations with administration officials. This was an update to the building. For the information of the Committee, the upgrades and maintenance to the two main North and South portions of this 1930's era grand building is approximately $6 million every year out of EPA's most recently annual appropriation of $7.9 billion.

59. Despite a tradition of EPA reimbursing the Justice Department for their work in holding polluters accountable for Superfund clean ups, it was recently reported that you may break with this precedent, directing your agency to not reimburse the DOJ for that work. Do you plan on withdrawing EPA funding for the Justice Department's Environment and Natural Resources Division?

    Cleaning up the nation's Superfund sites and returning them to communities for beneficial use is one of EPA's top priorities. Under the President's Budget for EPA, up to $20 million will be provided for DOJ support for Superfund Enforcement to focus on the highest priority sites, particularly those that may present an immediate risk to human health and the environment.

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Senator Boozman:

60. Administrator Pruitt, I understand that EPA is currently reviewing procurement guidance for the federal government's purchasing of lumber and wood products. During the Obama Administration, EPA issued procurement guidelines for lumber and wood products that called for the use of wood and lumber certified by the Forest Stewardship Council, leaving out wood grown on forests certified by the two major forest certification systems in the U.S.: the American Tree Farm System and the Sustainable Forestry Initiative. This guidance would have excluded of 4 million acres of Arkansas timber eligible for federal procurement. Additionally, the Obama Administration's guidance runs directly counter to the regulations issued under USDA's BioPreferred program, a program created in the 2008 Farm Bill that sets federal purchasing requirements for all biobased products and specifically recognizes eligibility from all three systems. What are you doing to ensure the EPA does not arbitrarily pick winners and losers and prevent the federal government from purchasing American timber?

    EPA's previous action on this issue was carried out under the June 2015 "Implementing Instructions for Executive Order 13693: Planning for Federal Sustainability in the Next Decade," and was not an agency regulation. Based on stakeholder concerns and interagency discussions, the EPA recommendation for the lumber/wood product category was removed from the "Recommendations of Specifications, Standards, and Ecolabels for Federal Purchasing" in December 2016. Before further action on this product category, EPA will ensure coordination with the USDA Forest Service and USDA Natural Resources Conservation Service, Department of Energy, OMB, and CEQ to determine how forestry standards should best be evaluated. Once the federal agencies have had time to come to consensus, EPA would engage stakeholders to refine the guidelines pertinent to evaluating the lumber/wood recommendation. This process is intended to provide a transparent, fair, and consistent approach to updating the EPA recommendation of forestry certifications and assessing other commodities' extraction/harvesting related environmental impacts.

Senator Ernst:

61. In two separate interviews shortly after the time of this hearing, you stated the need for both RFS reform and RIN reform. During the confirmation process, you went to great length to explain your intention to uphold the RFS. Can you please explain what you think RFS reform entails? In Iowa, this is a flashpoint and the continued rhetoric used appears to contradict your promise to this Committee on the RFS.

    There has been a heightened interest from a broad range of stakeholders advocating for programmatic changes to the Renewable Fuel Standard (RFS) in order to expand the use of higher ethanol blends and stabilize the costs of compliance. The above referenced interviews were subsequent to a then-recent meeting with government leaders at the White House which included representatives from your office. As you may recall, concerns were expressed regarding the variability of Renewable Identification Number (RIN) values, the impact of those costs on obligated parties and the range of options government leaders and policy makers should consider to strengthen the long-term viability of the RFS program. My references to RFS or RIN reform in those interviews was merely a summation of those discussions and associated concerns.

62. Much has been said about finding a "win-win" on the RFS and RINs, albeit not by you, but by some Members of Congress. Would you agree that fixing the Reid vapor pressure issue on E15 is a "win-win"? Doing so would reduce RIN prices, which some refineries say they need, while also expanding the marketplace for biofuels.

    Expanding the 1.0 pound per square inch (psi) waiver for RVP to E15 has been and continues to be a part of RFS reform options expressed and supported by a range or stakeholders. Senator Fischer has shown great leadership in the Senate on this issue and, during the same interviews referenced in the preceding question, I discussed the prospect of granting this type of waiver and have been assessing the legal and technical considerations for an administrative action.

63. How aggressively will EPA pursue the RIN obligation from refineries that declare bankruptcy?

    We, along with our colleagues across the federal government, will monitor any such bankruptcy proceedings closely. However, we would treat each situation on a case-by-case basis, so I am not able to comment further on this matter.

64. The Pesticide Registration Improvement Act (PRIA) was first enacted in 2003 and established a fee schedule for pesticide registrations. It lists specific time periods for EPA to make a regulatory decision on pesticide registration and tolerance actions submitted to the Agency. The goal of PRIA was to create a more predictable and effective evaluation system for affected pesticide decisions and couple the collection of individual fees with specific decision review periods. It also promoted shorter review periods for reduced-risk applications.

    PRIA has been tremendously successful, providing hundreds of millions of dollars in funding to EPA and providing product developers with clarity on timelines for Agency actions, and facilitating investment in research and development of new products. Importantly, through these industry fees, it has also provided $1 million annually in worker protection and pesticide safety training.

    PRIA has been reauthorized twice since it was first enacted – in 2007 and 2012 – each time by unanimous consent. It has been supported by large and small manufacturers of agricultural and non-agricultural products, antimicrobial products, biotech companies, and biopesticides, as well as labor and environmental advocates. The current law was set to expire on September 30, 2017; however, an extension was included in the CR that extends the authorization through February 8, 2018. H.R. 1029, the Pesticide Registration Enhancement Act, which would reauthorize these authorities, passed the House by voice vote on March 20, 2017, and was reported by the Senate Agriculture Committee on June 29, 2017.

    a. Can you explain the likely impacts to worker protection programs and your ability to regulate pesticides if PRIA is not reauthorized?

    PRIA provides approximately 33 percent of the funding for EPA's pesticide program activities. Currently operating under the third iteration of the statute, PRIA provides two funding sources to EPA's pesticide program:

    - **One time registration service fees (i.e., PRIA fees) for the evaluation of new applications submitted to the EPA; and**
    - **Annual FIFRA maintenance fees assessed to products currently in the marketplace, a significant portion of which are used to support the re-evaluation of pesticides in order to meet the statutory deadline of October 1, 2022, for completing the first round of registration review.**

    PRIA's authorization expired on September 30, 2017, has been extended in short term reauthorizations in each continuing resolution, and is now authorized through March 23, 2018. Legislation reauthorizing PRIA is currently pending in Congress. If the authorization expiration date is not further extended or if PRIA is not reauthorized by that date, pesticide applications submitted after that date will no longer be subject to decision time periods. The two year sunset provision in FIFRA section 33(m) specifies fees be reduced in fiscal year 2018 by 40 percent below the levels in effect during fiscal year 2017, and by 70 percent in

fiscal year 2019. Effective September 30, 2019, fee requirements under PRIA would be terminated.

Additionally, if PRIA were not reauthorized, $2 million per year for worker protection activities, pesticide safety education programs, and partnership grants, monies that currently come from PRIA funds, would not be available and these programs would not be funded. These activities include:

- **Developing and administering a pesticide safety training program that will support a national network of pesticide safety trainers providing worker safety training to migrant and seasonal farmworkers and their families (National Farmworker Training Program);**
- **Developing pesticide education materials for workers, handlers, and trainers on how to comply with WPS (cooperative agreement with UC-Davis and Oregon State University); and**
- **Supporting National Pesticide Information Center (NPIC), a bi-lingual, factual source of information for professional and public audiences on pesticide-related issues.**

b. What would be the impact to farmers across my state and the country?

PRIA provides predictability and regulatory certainty to all stakeholders regarding the timing of pesticide registration decisions. In the absence of PRIA, the statutory timelines would no longer exist and applications to register new pest control tools would be reviewed as resources were available. However, EPA would not be in a position to guarantee a registration decision timeline with any certainty. Farmers in need of new pest control tools would be greatly impacted as they may not be able to timely adopt new technologies to address their pest management needs.

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Senator Fischer:

65. In two recent television interviews, you discussed the need for RFS and RIN reform. Given your commitments made to this committee during the confirmation process that you would uphold the RFS, can you please elaborate on what you think RFS reform means?

    There has been a heightened interest from a broad range of stakeholders advocating for programmatic changes to the Renewable Fuel Standard (RFS) in order to expand the use of higher ethanol blends and stabilize the costs of compliance. The above referenced interviews were subsequent to a then-recent meeting with government leaders at the White House which included representatives from your office. As you may recall, concerns were expressed regarding the variability of Renewable Identification Number (RIN) values, the impact of those costs on obligated parties and the range of options government leaders and policy makers should consider to strengthen the long-term viability of the RFS program. My references to RFS or RIN reform in those interviews was merely a summation of those discussions and associated concerns.

66. How do you plan to approach the bankruptcy court case involving Philadelphia Energy Solutions? Do you intend to ask the refinery to honor their legal obligation?

    We, along with our colleagues across the federal government, will monitor any such bankruptcy proceedings closely. However, we would treat each situation on a case-by-case basis, so I am not able to comment further on this matter.

67. If PES is allowed to use bankruptcy to avoid their RFS obligation, do you expect other refineries to follow this path?

    We are aware that PES recently filed a plan of reorganization with a bankruptcy court in Delaware, and we, along with our colleagues across the federal government, are monitoring the bankruptcy proceedings closely. As this is the subject of ongoing court proceedings, I am not able to comment further on this matter.

68. I understand that several commercial-ready companies seeking approval of new cellulosic biofuel (D3) registrations have been told by U.S. Environmental Protection Agency (EPA) staff that the processing of such applications is currently on hold until EPA staff completes an internal review.

    Because of the investment and long-term planning required to undertake these projects, it is imperative that new production of qualified cellulosic biofuels is approved as efficiently as possible. This will allow these commercial-ready businesses to gain the value associated with the D3 RIN production during this time of tight margins in the

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agriculture economy and signal to the marketplace that these gallons are valued, as the Renewable Fuel Standard (RFS) intends.

If EPA is currently delaying registration of new D3 production, the falsely low D3 production volume would affect not only today's market, but also the market for the coming year and beyond, through EPA's annual volumetric rulemaking for the RFS. This practice would systematically underestimate D3 production, and thereby undermine Congress's intent under the RFS to grow the cellulosic biofuel market.

Does EPA currently have new cellulosic registrations on hold until EPA staff completes an internal review?

Under the Renewable Fuel Standard (RFS) program, cellulosic ethanol produced from corn kernel fiber qualifies to generate cellulosic RINs under an existing approved fuel pathway if certain registration and reporting requirements are met. EPA has registered some ethanol facilities under this pathway and received additional applications that are currently under review at this time.

69. When does EPA anticipate completing this review, and what does it hope to accomplish through this review?

Facilities that are simultaneously processing corn starch and corn kernel fiber to produce a mixture of conventional ethanol and cellulosic ethanol. The regulations require use of a test method to identify the cellulosic converted fraction that has either been certified by a voluntary consensus standards body or is demonstrated to produce "reasonably accurate" results. Unfortunately, there is currently no analytical test method that is certified by a voluntary consensus body and no certified reference samples containing both cellulose and starch. This requires EPA to evaluate each company's application on its unique merits. Due to the complexity of these applications, EPA does not have a specific time to complete its review. However, EPA is committed to supporting efforts by the industry and other government/non-governmental parties to find a way forward.

70. What steps is EPA taking to ensure these actions do not negatively impact cellulosic biofuel volumes in the 2019 RVO rulemaking?

The registration process is designed to ensure that when RINs are generated the fuel on which they are based qualified for the corresponding category of renewable fuel. EPA takes this responsibility very seriously, and in some cases it takes considerable time to work through the technical issues, which may include developing new test procedures. In projecting cellulosic biofuel production for 2019 as part of the RVO process, EPA staff carefully monitor the status of pending facility registration requests to ensure that our projections of cellulosic RINs generated in 2019 are as accurate as possible. We also carefully consider the comments we receive on the

proposed rule and make amendments to our projection methodology and volume projections as appropriate.

Senator Markey:

WEBSITE

71. In all, more than 5,000 pages of scientific, policy, and educational material on climate change have been moved off the main website for the Environmental Protection Agency (EPA). This information has been largely relegated to a maze of archives and portals that is virtually inaccessible to the public. The EPA's mission states that the agency should ensure "all parts of society – communities, individuals, businesses, and state, local and tribal governments – have access to accurate information sufficient to effectively participate in managing human health and environmental risks."[25] Additionally, the Paperwork Reduction Act directs agencies to "provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products."[26] However, there was no notice of the changes made to the EPA website, leaving the public with no opportunity to weigh in on the Administrator's decision to move, hide, and archive information on the Clean Power Plan or on climate change.
    a. How does the decision to remove hundreds of webpages and post the notice on the same day comply with the EPA's mission?
    b. How does the decision to remove hundreds of webpages and post the notice on the same day comply with the Paperwork Reduction Act?
    c. Were you personally involved in directing the removal of any information from the EPA website? If so, please provide any correspondence or documentation relating to your personal involvement in the overhaul and censorship of the EPA website.

EPA is continually making changes to its website and other digital information resources to reflect and support the agency's current priorities and work. When we remove information from our main portal, www.epa.gov, the majority of the time we make sure it is still available to the public via our archive website, https://archive.epa.gov/. In addition, because of the public concern about access to information on our website last year, we created a snapshot website that contains the content that was on our main portal on January 12, 2017. The snapshot website can be searched here: https://19january2017snapshot.epa.gov/.

All changes to EPA's websites and digital resources are coordinated between the different offices at the agency. We do our best to make new information available to the public as soon as possible and then notify them of the changes.

[25] "Our Mission and What We Do." United States Environmental Protection Agency. Accessed February 1, 2018. https://www.epa.gov/aboutepa/our-mission-and-what-we-do
[26] 44 USC § 3506(d)(3)

72. The error page on the EPA website that the public reaches when trying to access former resources on climate change reads, "This page is being updated [...] We are currently updating our website to reflect EPA's priorities under the leadership of President Trump and Administrator Pruitt."
    a. Please provide a timeline for when this update will be complete, as well as a detailed list of all the pages that have been permanently removed from www.epa.gov and the changes made on those that remain in an altered form.
    b. Please explain how the priorities of President Trump and Administrator Pruitt necessitate the removal of pages like "What Climate Change Means for Massachusetts" from www.epa.gov.
    c. Please provide an accounting of the costs and employee hours associated with developing the resources that were removed, as well as with the process of moving and updating the website to "reflect EPA's priorities."

    We are constantly updating our website to reflect new initiatives and projects of the Agency. Of course the site will be reflective of the current administration's priorities – with that said, all the content from the previous administration is still easily accessible and publicly available-through the banner across the top of the main page of the site.

ENFORCEMENT

73. Oklahoma recently suffered what may be the deadliest accident in the history of the shale industry, when five workers were killed by an explosion at a fracking site. The company that owns this site (Patterson-UTI) has reportedly experienced several other deadly safety incidents from 2010-2013. Oklahoma's regulators use an enforcement system that shuns fines in favor of working with violators, a strategy which you appear to have emulated during your tenure. For example, Devon Energy had admitted to illegally emitting hazardous chemicals, and was in discussions to pay a settlement of more than $100,000 and install mitigation technology. After your swearing it, Devon Energy informed the EPA that it was "re-evaluating its settlement posture" and now offered a settlement of around $25,000 with no commitment to install additional technology.[27]

    According to a New York Times analysis, compared to the first nine months of the Obama administration, you have: filed roughly 1,000 fewer new enforcement cases; sought 60 percent less in civil penalties; requested almost 90 percent fewer injunctive relief fixes, which prompt companies to cut pollution; and made it harder for EPA offices to request pollution tests.[28]

[27] Brook-Davison, Carrick. "RE: Revised Devon settlement proposal for the Beaver Creek Gas Plant." Guida, Slavich & Flores. February 22, 2017. Accessed February 1, 2018. https://www.documentcloud.org/documents/3727057-Devon-Fights-and-Now-Is-Winning-Battle-Against.html#document/p1/a356485

[28] Lipton, Eric and Danielle Ivory. "Under Trump, E.P.A. Has Slowed Actions Against Polluters, and Put Limits on Enforcement Officers." The New York Times. December 10, 2017. Accessed February 1, 2018. https://www.nytimes.com/2017/12/10/us/politics/pollution-epa-regulations.html

a. Please provide a list of companies and plants that received notices of violations from 2008-2017 under the Clean Water Act, the Clean Air Act, or the Resource Conservation and Recovery Act, but that have not yet had any EPA penalties levied upon them.

In some enforcement circumstances, the EPA issues a NOV to a facility owner/operator that the agency has identified as having one or more violations. However, not all statutes include provisions for issuance of an NOV or require issuance of an NOV. *Compare* Clean Air Act § 205(c)(1), 42 U.S.C. § 7523(c)(1) ("[T]he Administrator shall give written notice to the person to be assessed" a penalty) *with* Clean Water Act § 309, 33 U.S.C. § 1319 (no provision for written notice).

Since not all statutes include these provisions, the agency does not centrally track all NOVs in the agency's Integrated Compliance Information System (ICIS) enforcement and compliance database. Some information on NOVs is available in ICIS, but NOVs are not required to be entered. Additionally, because NOVs do not always result in the need for follow-up enforcement actions, *e.g.*, where the facility promptly returns to compliance, we do not have the ability to link NOVs to later enforcement actions.

b. Please provide a detailed list of cases where, under your leadership, the EPA withdrew or accepted lower civil monetary penalties than were recommended under the previous administration from 2008-2017 and the rationale for these decisions.

EPA's civil penalty policies provide the bases upon which EPA compromises claims and settles cases for less than the statutory maximum penalty. These policies can be found here https://www.epa.gov/enforcement/enforcement-policy-guidance-publications. The negotiation of penalties is based on these policies. The specifics of each case are confidential enforcement information. When an enforcement action is withdrawn or not pursued, that information is reported in ICIS. However, please note that these data are not certified and may not always be entered in a timely manner. We have provided below the total number of enforcement actions in ICIS reported as withdrawn or not pursued. Because the decision to withdraw a case may involve an enforcement-confidential determination, we have not provided a list of cases.

Actions Reported:	CY08	CY09	CY10	CY11	CY12	CY13	CY14	CY15	CY 16	CY 17
Total	64	126	65	105	95	57	57	26	31	23

74. The EPA recently released data that detailed the fines, penalties, and other commitments that the agency collected during fiscal year 2017.[29] According to the EPA's report, the number of new cases, defendants charged, and federal inspections and evaluations began by the agency in FY2017 were all at the lowest level in at least a decade. Despite this, the EPA still touted an increase in the total amount of criminal fines, including restitution and mitigation activities.
    a. Of the cases included in the FY17 reporting, what percentage of fines and restitutions, court ordered environmental projects, Superfund site commitments from liable parties, judicial penalties, injunctive relief, and other penalties were made before January 20, 2017?

The enforcement and compliance work accomplished in fiscal year 2017 included work performed under both the prior and current administrations. This administration is proud to highlight accomplishments and to honor EPA employees for all of the great work they did last fiscal year.

In response to your request for data on the percentage of FY17 fines, penalties, and other relief secured before and after January 20, 2017, please see the chart below.

Measure	Total FY 2017 Values October 1, 2016 - September 30, 2017	Values for October 1, 2016 - January 19, 2017	Percentage for October 1, 2016- January 19, 2017	Values for January 20, 2017 – September 30, 2017	Percentage for January 20, 2017 – September 30, 2017
Fines (Criminal)	$2,829,202,563	$8,716,000	0.3%	$2,820,486,563	99.7%
Restitution (Criminal)	$147,520,835	$84,755,737	57.5%	$62,765,098	42.5%
Court Ordered Environmental Projects (Criminal)	$3,092,631	$1,146,362	37.1%	$1,946,269	62.9%
Amount Committed by Liable parties to Clean Up for Superfund sites	$1,227,057,039	$68,586,500	5.6%	$1,158,470,539	94.4%
Amount Committed by Liable Parties to Reimburse the Government for Past Costs at Superfund Sites	$142,577,803	$22,398,806	15.7%	$120,178,997	84.3%
Judicial Penalties	$1,583,608,081	$51,310,581	3.2%	$1,532,297,500	96.8%
Administrative Penalties	$48,078,393	$13,206,031	27.5%	$34,872,362	72.5%
Injunctive Relief (Judicial and Administrative)	$19,971,202,303	$16,483,587,889	82.5%	$3,487,614,414	17.5%

[29] "Enforcement Annual Results for Fiscal Year 2017." Environmental Protection Agency. Accessed February 9, 2018. https://www.epa.gov/enforcement/enforcement-annual-results-fiscal-year-2017

Supplemental Environmental Projects (Judicial and Administrative)	$17,255,199	$4,013,347	23.2%	$13,241,852	76.8%

b. Of the cases included in the FY17 reporting, what percentage of civil and criminal cases, inspections/evaluations, complaints, and orders were initiated, opened, or filed after January 20, 2017?

Please see the chart below in response to your question.

Measure	FY 2017 Counts	Case Counts from January 20, 2017 - September 30, 2017	Percentage
Civil Judicial Referrals	114	81	71%
Criminal Cases Opened	115	70	61%
Inspections/Evaluations[30]	9,918	7,924	80%
Administrative Penalty Order Complaints (APOCs)	1,218	939	77%
Administrative Compliance Orders (ACOs)	606	476	79%
Final Administrative Penalty Orders (FAPOs)	1,255	972	77%
Complaints Filed With Court	83	43	52%

75. The EPA FY19 budget request included an 18 percent cut to civil enforcement and a 12 percent cut to criminal enforcement from the FY18 annualized Continuing Resolution (CR).
    a. As the number of new enforcement cases are already falling under your tenure, how does limiting the enforcement budget further facilitate your stated objective to "timely enforce environmental laws to increase compliance rates [...] especially enforcement actions to address environmental violations?[31]
    b. How many full-time EPA employees working on civil, criminal, Superfund, and federal facilities enforcement do you expect to be supported by the FY19 budget request?

[30] The Inspection/Evaluation totals in this chart exclude manually reported SDWA UIC inspections because EPA does not maintain the date of these inspections. The FY 2017 total number of inspections reported for Annual Results, including SDWA UIC inspections, is 11,756 (9,918 + 1,838 manually reported SWDA UIC inspections.)
[31] "FY 2019 EPA Budget in Brief." United States Environmental Protection Agency. February 2018. Accessed February 13, 2019. https://www.epa.gov/sites/production/files/2018-02/documents/fy-2019-epa-bib.pdf

EPA's enforcement efforts continue to be focused on achieving compliance, not on the number of individual actions taken. To achieve the desired outcome, EPA works in partnership with state and tribal agencies to assure compliance, protect public health and the environment, and ensure a level playing field for businesses. Recognizing that states are the primary implementers of our nation's environmental laws, EPA will focus where it can provide the most value including matters affecting multiple states or tribes, serving as a backstop when a state or tribe does not address serious noncompliance in a timely fashion, and assisting states and tribes when they lack the capability, resources, or will to address noncompliance.

In FY 2019, the agency is requesting 2,264.1 FTE for the civil, criminal, Superfund, and federal facilities enforcement programs.

CLIMATE IN DRAFT STRATEGIC PLAN

76. You have said that "scientists continue to disagree about the degree and extent of global warming and its connection to the actions of mankind."[32] With regard to human-produced carbon dioxide, in an interview with CNBC, you said that, "I would not agree that it's a primary contributor to the global warming that we see."[33] But the statutorily required National Climate Assessment's Climate Science Special Report that was released by the Trump Administration in November concluded that "human activities, especially emissions of greenhouse gases, are the dominant cause of the observed warming since the mid-20th century."[34] Last year was the second-hottest year in recorded history, according to the National Aeronautics and Space Administration, and saw record-breaking costs incurred by extreme weather and climate disasters.
    a. Do you disagree with the conclusion made in the Climate Science Special Report by our country's top scientists at 13 federal agencies, including your own, that human activities are the dominant cause of global warming, with "no convincing alternative explanation"?

    EPA recognizes the challenges that communities face in adapting to a changing climate. EPA works with state, local and tribal governments to improve infrastructure to protect against the consequences of climate change and natural disasters. EPA also promotes science that helps inform states, municipalities, and tribes on how to plan for and respond to extreme events and environmental emergencies. Moving forward, EPA will continue to advance its climate adaptation efforts, and have reconvened the cross-EPA Adaptation Working Group in support of those efforts.

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[32] Pruitt, Scott and Luther Strange. "The Climate-Change Gang." The National Review. May 17, 2016. Accessed January 31, 2018. http://www.nationalreview.com/article/435470/climate-change-attorneys-general

[33] DiChristopher, Tom. "EPA chief Scott Pruitt says carbon dioxide is not a primary contributor to global warming." CNBC. March 9, 2017. Accessed February 1, 2018. https://www.cnbc.com/2017/03/09/epa-chief-scott-pruitt.html

[34] Wuebbles, D.J., and D.W. Fahey, K.A. Hibbard, D.J. Dokken, B.C. Stewart, and T.K. Maycock (eds.) "Climate Science Special Report." U.S. Global Change and Research Program. November 2017. Accessed January 31, 2018. https://science2017.globalchange.gov/downloads/CSSR2017_FullReport.pdf

Human activity impacts our changing climate in some manner. The ability to measure with precision the degree and extent of that impact, and what to do about it, are subject to continuing debate and dialogue.

77. Despite these findings, and the conclusion that "[c]hanges in the characteristics of extreme events are particularly important for human safety,"[35] climate change did not appear in the EPA's Strategic Plan for 2018-2022, as published on February 12, 2018.
    a. Why does climate change not appear in the draft plan?
    b. Do you intend to address climate in other strategic planning documents, commensurate with the findings of the Climate Science Special Report? If not, why not?

Strategic plans are drafted every five years to reflect new initiatives and projects of the Agency. Naturally the plan will be reflective of the current administration's priorities of refocusing the Agency on its core mission, restoring power to the states through cooperative federalism, and leading the Agency through improved processes and adherence to the rule of law.

PERSONNEL

78. In the FY19 budget request, Science and Technology funding was cut from $708,975,000 in the FY 2018 annualized CR to $448,965,000—a decrease of 37 percent. The Regional Science and Technology funding was zeroed out entirely. This attack on science comes as more than 200 scientists have left the agency over the past year.
    a. How many full-time scientists will be supported at the EPA by the FY19 budget request?

    Based on the distribution of scientific positions within the agency workforce, EPA would estimate that between 8,300 and 8,800 scientific positions would be supported through the FY 2019 Presidents Budget Request. This is an estimate extrapolated from on-board data that is current as of FY 2017 and includes non-federal positions. The actual number is dependent upon programmatic workforce decisions that remain to be made as well as factors such as attrition.

    b. Can you describe how the Regional Science and Technology capabilities will be fully replaced by the "ad hoc" efforts described in the Budget in Brief?

    The Regional Science and Technology program performs laboratory analysis, field monitoring, and sampling investigations in order to provide credible scientific data on environmental pollutants and conditions to Agency

[35] Ibid.

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policy makers. Under its Reform Plan, the Agency is working to develop a comprehensive enterprise-wide laboratory approach that will address many of the programs' traditional functions.

TOXIC CHEMICALS

79. During the hearing, you committed to updating my office on the status of the formaldehyde health assessment, which I understand has been completed by EPA staff but not yet released.
    a. What date was the draft assessment completed by EPA staff?
    b. What is the exact timeline for public release?
    c. What are the exact steps that EPA must take internally before the report is shared for interagency review?

    Please see response to Question 10.

80. The Integrated Risk Information System (IRIS) provides the scientific research needed to effectively implement the Clean Air Act, Clean Water Act, Safe Drinking Water Act, Food Quality Protection Act, and the Toxic Substances Control Act (TSCA), among other laws that protect our nation's public health and environment. However, there have been repeated attacks made on IRIS's objectivity and independence, despite recent changes made to strengthen its scientific approach. There are reportedly around 30 people left working at IRIS, after a period of serious attrition similar to that seen within other EPA offices.
    a. Does the EPA plan on moving the IRIS program from the Office of Research and Development to the Office of Chemical Safety Pollution and Prevention (OCSPP) as reported, thereby placing it within the regulatory arm of the EPA and out of the science and research office?

    There are no plans to move IRIS out of ORD.

    b. If yes, please detail how the EPA would ensure that the scientific research remains independent, transparent, and non-politicized.

    N/a. See 80a.

    c. Please provide a list of dates and attendees of meetings you or senior political appointees have taken in which IRIS was discussed, as well as any communication or documents relating to these meetings.

    We are working to gather this information with regard to EPA's IRIS meetings and will provide this information to you as soon as possible.

Senator Merkley:

81. Under your new policy, you exclude scientists who currently receive EPA grants from serving on EPA scientific advisory committees (link: https://www.epa.gov/sites/production/files/2017-10/documents/final_draft_fac_directive-10.31.2017.pdf).
    a. What is the legal basis for this new directive?
    b. What is your reasoning in exempting tribal, state, and local EPA grant recipients from the directive?
    c. How do you define conflicts of interest within the EPA advisory committees?
    d. Have you consulted with scientific societies, the National Academies, or other independent science organizations about the definition of conflicts of interest?
    e. How will your directive work to ensure that the agency's advisory committees are able to make objective recommendations based on the best available science?
    f. Can you provide an example of a time when a EPA grant recipient on a federal advisory committee provided "conflicted" advice to the administrator?
    g. Now that your directive has tripled the number of industry scientists on the SAB, how will you ensure that the EPA's science advice remains independent?

    Information responsive to these questions can be found in EPA guidelines and public documents, including:
    - **https://www.epa.gov/faca/strengthening-and-improving-membership-epa-federal-advisory-committees**
    - **https://www.epa.gov/sites/production/files/2015-02/documents/ethicsadvisory.pdf**
    - **https://yosemite.epa.gov/sab/sabproduct.nsf/Web/ethics?OpenDocument**

82. The policy excluding scientists does not affect individuals who have industry ties. For example, Dr. Tony Cox received money from American Chemistry Council, American Petroleum Institute, Engine Manufacturers Association, National Mining Association, and many others, yet you selected him to chair the Clean Air Scientific Advisory Committee (CASAC). Why are industry-funded individuals with apparent conflicts of interest more qualified to serve in these science committees than independent scientists?

    All EPA employees, including Special Government Employees, must abide by federal ethics laws and regulations, including the Standards of Ethical Conduct for Employees in the Executive Branch, 5 C.F.R. Part 2635, and the conflict of interest statutes codified in Title 18 of the United States Code. Agency policies, including ethics-related and conflict of interest guidelines, which can be found at:
    - **https://www.epa.gov/faca/strengthening-and-improving-membership-epa-federal-advisory-committees**
    - **https://www.epa.gov/sites/production/files/2015-02/documents/ethicsadvisory.pdf**
    - **https://yosemite.epa.gov/sab/sabproduct.nsf/Web/ethics?OpenDocument**

83. You took an unprecedented action and dismissed Dr. Donna Kenski from EPA CASC before her term expired, alleging that Kenski would not qualify under EPA's problematic new policy. Even so, Dr. Kenski's employer, the Lake Michigan Air Directors Consortium's EPA grant is routed through the state government, a category is exempted in the new policy. At the same time, Dr. Michael Honeycutt is allowed to chair the Scientific Advisory Board, even though he has received over $58 million in grants while leading the Texas Commission on Environmental Quality. Why does the same policy disqualifies Dr. Kenski while allowing Dr. Honeycutt to serve?

All EPA employees, including Special Government Employees, must abide by federal ethics laws and regulations, including the Standards of Ethical Conduct for Employees in the Executive Branch, 5 C.F.R. Part 2635, and the conflict of interest statutes codified in Title 18 of the United States Code. Agency policies, including ethics-related and conflict of interest guidelines, which can be found at:

- https://www.epa.gov/faca/strengthening-and-improving-membership-epa-federal-advisory-committees
- https://www.epa.gov/sites/production/files/2015-02/documents/ethicsadvisory.pdf
- https://yosemite.epa.gov/sab/sabproduct.nsf/Web/ethics?OpenDocument

84. You pledged repeatedly in front of this committee that since you are a lawyer and a prosecutor, you would defer to your career staff for science advice. Yet you replaced Dr. Kenski with Dr. Larry Wolk, whom according to your staff's memo, had "no direct experience in health effects of air pollution, epidemiology, toxicology." On Dr. Tony Cox, your staff raised conflict of interest and appearance of a lack of impartiality issues. Will you commit to follow the recommendations of EPA's career staff so no one appointed to the EPA's advisory committees are either unqualified or have conflicts of interests so that the committees can provide you with the best and sound science that you and the agency so desperately need?

The Agency is committed to selecting qualified and knowledgeable individuals to serve on advisory committees. All EPA employees, including Special Government Employees, must abide by federal ethics laws and regulations, including the Standards of Ethical Conduct for Employees in the Executive Branch, 5 C.F.R. Part 2635, and the conflict of interest statutes codified in Title 18 of the United States Code. Agency policies, including ethics-related and conflict of interest guidelines, which can be found at:

- https://www.epa.gov/faca/strengthening-and-improving-membership-epa-federal-advisory-committees
- https://www.epa.gov/sites/production/files/2015-02/documents/ethicsadvisory.pdf
- https://yosemite.epa.gov/sab/sabproduct.nsf/Web/ethics?OpenDocument

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85. In your hearing in front of the House Energy & Commerce Committee, you said that EPA has issued $77 million in grant money to twenty members of the EPA scientific advisory committees. Please provide detailed information behind this statement, including the names of the 20 members, their affiliations, their EPA-funded projects and grant amount.

EPA makes grant awards publicly available. These databases can be found at:

- **https://yosemite.epa.gov/oarm/igms_egf.nsf/Homepage?ReadForm**
- **https://cfpub.epa.gov/ncer_abstracts/index.cfm/fuseaction/search.welcome**

86. During your nomination hearing, you said that you "have no first-hand knowledge" of the EPA's scientific integrity policy at the time. However, you did commit to "thoroughly reviewing" the policy and following "federal guidance regarding scientific integrity." The policy states that EPA scientists are free to "exercise their right to express their personal views provided they specify they are not speaking on behalf of…" the EPA (Link: https://www.epa.gov/sites/production/files/2014-02/documents/scientific_integrity_policy_2012.pdf). Have you reviewed and implemented this part of the policy? Can you affirm that EPA scientists and managers are free to exercise their right to express their personal views free from political interference, as guaranteed by this policy?

I am committed to upholding EPA's Scientific Integrity Policy, which ensures that the agency's scientific work is of the highest quality, is presented openly and with integrity, and is free from political interference. EPA scientists are supported in speaking directly to the science in their presentations, yet leave policy statements to the relevant programs. In their private capacity, EPA staff can freely exercise their right to express their personal views provided they specify that they are not speaking on behalf of the Agency.

87. The EPA's scientific integrity policy encourages EPA scientists to engage with their peers in the industry, academia, government, and non-governmental organizations as long as it is consistent with their job duties. The policy explicitly states that this can include presenting their work at scientific meetings and actively participating in professional societies, and more. However, 3 EPA scientists that were scheduled to speak at a conference on climate change at Narragansett Estuary Bay were restricted [link:https://www.ucsusa.org/center-science-and-democracy/attacks-on-science/accumulating-evidence-federal-scientists-are-being#.WnDaRq6nFhF] from attending, in direct conflict with the agency's scientific integrity policy.
    a. Did you realize that this decision was in violation of the policy?

    I am committed to upholding EPA's Scientific Integrity Policy. Procedures have been put in place to prevent such an occurrence in the future.

b. Will you commit to ensuring that this type of flagrant violation will not happen again under your watch?

I am committed to upholding EPA's Scientific Integrity Policy, which ensures that the Agency's scientific work is of the highest quality, is presented openly and with integrity, and is free from political interference.

c. In the spirit of upholding scientific integrity in EPA decision making, will you commit to not politically interfere in science-based policy decisions at the agency, yes or no?

I am committed to upholding EPA's Scientific Integrity Policy. The policy recognizes the distinction between scientific information, analyses, and results from policy decisions based on that scientific information. Policy makers within the Agency weigh the best available science, along with additional factors such as practicality, economics, and societal impact, when making policy decisions.

88. You decided to postpone steam electric power plant effluent guidelines rule in September. Who are the stakeholders that you met with prior to making this decision? Additionally, please provide the analyses that helped you make this decision.

Meetings related to this issue are in the public record.

As part of EPA's overall regulatory review and in response to a petition in April 2017, EPA announced a proposal to postpone certain compliance dates in the 2015 Steam Electric ELG Rule in order to give full consideration to those concerns. After reviewing thousands of public comments to EPA's June 2017 proposed rule to postpone those dates, EPA finalized a rule in September 2017, postponing certain compliance dates in the 2015 Rule and announcing our intention to conduct subsequent rulemaking to potentially revise the limits for those wastestreams whose compliance dates were postponed dates.

89. Please explain why the EPA removed methylene chloride, NMP, and TCE from the Unified Agenda of Regulatory and Deregulatory Actions.

Under TSCA section 6(a), regulation of certain uses of methylene chloride, NMP, and TCE were proposed in 2016 and 2017. These actions were listed as Long-Term Actions on the Unified Agenda, meaning they are under development, but EPA did not expect to have a regulatory action within the year following publication of the Unified Agenda. The agency is currently considering the comments received in response to the 2016 and 2017 proposals, including comments suggesting that EPA quickly finalize these actions and comments suggesting that these actions be evaluated as part of the group of the first ten chemicals undergoing initial risk evaluations under the amendments to TSCA.

90. During the hearing I asked if you were inclined to grant an exemption to asbestos used by the chloralkali industry, which imports 95% of asbestos into the United States. You said that you would have to look into the issue. Now that you have had more time to study the issue, are you going to exempt asbestos used by the chloralkali industry from regulation?

It is premature for EPA to determine whether asbestos used by the chloralkali industry will be subject to regulation under TSCA. As required by amended TSCA under section 6(b)(4)(A), EPA must first conduct a risk evaluation to determine whether the chemical substance presents an unreasonable risk of injury to health or the environment under its conditions of use. EPA initiated the risk evaluation for asbestos in December 2016. Subsequently, in June 2017, EPA published the scope document as per TSCA section 6(b)(4)(D) for the asbestos risk evaluation. In this scope document, EPA identified asbestos diaphragms used by the chloralkali industry to produce chlorine and caustic soda as a condition of use that would be included within the scope of the asbestos risk evaluation. This risk evaluation must be completed within three years of initiation, with a possible extension of 6 months. If EPA determines from the risk evaluation that the conditions of use of asbestos by the chloralkali industry present an unreasonable risk of injury to health or the environment, then regulation would be pursued under TSCA section 6(a).

91. EPA has reduced climate change website access to at least 5,000 pages, possibly many more, of scientific, policy, and educational material paid for by taxpayer dollars over the past year. In the one example of content being partially returned to the website, all of the more than 200 climate-related webpages were omitted from what was previously a 380-page website titled "Climate and Energy Resources for State, Local, and Tribal Governments," which has now been renamed simply "Energy Resources for State, Local, and Tribal Governments." How do you justify such overt censorship of taxpayer-funded information that was created to help state, local, and tribal decision-makers protect the well-being of their constituents? Will you return this content to the EPA website so that the public can benefit from it again?

We are constantly updating our website to reflect new initiatives and projects of the Agency. Of course the site will be reflective of the current administration's priorities – with that said, all the content from the previous administration is still easily accessible and publicly available-through the banner across the top of the main page of the site.

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92. According to the Paperwork Reduction Act, 44 USC § 3506(d)(3), all agencies must "provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products." The news release announcing that the EPA was overhauling its website was published the same day that the EPA removed the vast majority of its climate change website, thousands of webpages -- the public did not have an opportunity to provide comment or express its concerns. How do you justify overtly disregarding this process and failing to notify the public?

    We are constantly updating our website to reflect new initiatives and projects of the Agency. Of course the site will be reflective of the current administration's priorities – with that said, all the content from the previous administration is still easily accessible and publicly available-through the banner across the top of the main page of the site.

93. While Dr. Michael Dourson was under consideration to be Assistant Administrator of the Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention (OCSPP), he was employed as a senior adviser at the EPA.
    a. What was Dr. Dourson's job title and type of appointment?

        Dr. Dourson was a Senior Advisor to the Administrator. His position was a Non-Career Senior Executive Service Limited Term position located in the Office of the Administrator. He has since left the agency.

    b. Whom did he supervise?

        Dr. Dourson did not have any supervisory responsibilities.

    c. Did you delegate any duties of the OCSPP to him? If so, what were they?

        Dr. Dourson did not have any OCSPP duties delegated to him.

    d. What projects did Dr. Dourson work on while at EPA and what was his role related to these projects?

        Dr. Dourson was a Senior Advisor to the Administrator, a position located in the Office of the Administrator. He advised on issues related to chemical safety.

    e. What monetary and non-monetary compensation did Dr. Douson receive while he was employed at EPA?

        A Comprehensive search could not be performed by the submission of this document.

f. Please provide Dr. Dourson's daily schedule while he was at EPA.

A Comprehensive search could not be performed by the submission of this document.

94. You claim that special interest groups have been circumventing the regulatory process through litigation, resulting in creation of regulation via consent decrees and settlement agreements. However, EPA has been making "policy decisions" of late that do just that--circumvent the rulemaking process. EPA's January 25 guidance allowing the downgrade of source status from "major" to "area" has a major impact on reporting and compliance requirements, yet this new benefit to industry did not undergo the required regulatory process under the Administrative Procedures Act.
    a. Please describe how EPA is increasing transparency and improving public engagement with respect to making the decision to downgrade source status for industries without a rulemaking, and how this is an improvement to public health and the environment.

EPA's issuance of the January 25, 2018 guidance memo provided the public with notice of EPA's plain language reading of the statutory terms "major source" and "area source". The public was notified of the memorandum through a notice published in the Federal Register on February 8, 2018. Further, EPA will be providing for public engagement through an opportunity for public comment on the plain language reading of the statute discussed in the January 25 memo. As stated in the memo, EPA expects to "publish a Federal Register notice to take comment on adding regulatory text that will reflect EPA's plain language reading of the statute as discussed in this memorandum." EPA staff are currently working on a proposed rule package. Finally, we disagree with the assertion that EPA somehow circumvented the regulatory process in issuing the memo. The January 25 guidance memo provides EPA's reading of the plain language of statutory terms in the Clean Air Act and withdrew a prior guidance memorandum that had been issued without notice and comment rulemaking. The Supreme Court (in Perez v. Mortgage Bankers Association, 135 S.Ct. 1199, 1206 (2015)) has recognized that EPA and other agencies may revise and withdraw policies issued through guidance without conducting a notice and comment rulemaking.

95. Facilities will now have the ability to downgrade to an area source without needing to comply with maximum achievable control technology (MACT) standards, which require control efficiencies of 95% and higher. Please explain how the emissions reductions from MACT standards will be achieved when you are allowing sources to be recategorized as area sources.

In the January 25, 2018, guidance memorandum titled "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act," EPA addressed the question of when a major source subject to a MACT standard may be reclassified as an area source and avoid being subject to major source requirements. The memo states that the plain language of the definitions of "major source" and "area source" in CAA section 112(a) compels the conclusion that a major source becomes an area source at such time as the source takes an enforceable limit on its potential to emit (PTE) hazardous air pollutants (HAP). Under this plain reading of the CAA, sources of HAP previously classified as "major sources" may be reclassified as "area" sources when the facility limits its PTE below major source thresholds using a federally enforceable mechanism. There is no time limitation supported within the plain reading of the CAA Section 112 definitions of major and area source.

96. Historically, environmental organizations have sued EPA due to lack of agency action on implementation of critical environmental laws, resulting in court decisions that force EPA to take action...or as you refer to it, sue and settle. What other courses of action can special interest groups pursue when EPA does not meet statutory deadlines?

    EPA published its FY 2018-2022 Strategic Plan on February 12, 2018. Within that plan, EPA included a strategic measure (SM-19 within Objective 3.2) to meet 100% of legal deadlines imposed on EPA by September 30, 2022. You can view that plan here: https://www.epa.gov/sites/production/files/2018-02/documents/fy-2018-2022-epa-strategic-plan.pdf. Moreover, special interests groups, and others alike, can always choose to exercise the rights provided to them by the law.

97. In your Sue and Settle directive, you issued a memo to EPA managers (https://www.epa.gov/sites/production/files/2017-10/documents/signed_memorandum_in_support_of_consent_decree_and_settlement_agreement_oct162017.pdf) discussing how past practices of EPA have harmed the American public. In this memo, you say that EPA has met with outside groups behind closed door and excluded other interested stakeholders, essentially accusing EPA's Office of General Counsel of collusion. Is it your position that EPA lawyers are liable for collusion? If you believe that collusion has occurred, are you aware that many state bar associations consider collusion grounds for attorney discipline or even debarment? Was it your intention to endanger the status of all EPA attorneys?

    The Memorandum to which you are referring is not a set of conclusions made at the end of a case-by-case investigation, but rather describes general concerns of those outside of the agency who wanted to participate in the process for resolving a particular case but could not. As the related Directive explained, *"It has been reported*, however, that EPA has previously sought to resolve lawsuits through consent decrees and settlement agreements that appeared to be the result of collusion with outside groups." (Emphasis added.) While the words "It has been

reported" do not also appear in the Memorandum, the intent of the statements was the same. It is not my position that EPA lawyers have violated their bar obligations.

98. It has been reported that the grant review process at EPA has been captured by political appointees.
    a. Can you please describe how the EPA is currently reviewing grants?

       Please see Attachments 6 and 7.

    b. Why is the EPA specifically targeting grants that are dealing with climate change and climate impacts?

       The purpose of the grant solicitation review process EPA has in place is consistent with previous administrations. Under our current grant solicitation review process, grant solicitations are prepared by program and regional staff, who then consult with a centralized review to ensure the expenditures of EPA funds are consistent with agency priorities. This process is similar in nature to long standing agency practice for grant awards, under which political appointees heading EPA program and regional offices consult with career staff as they approve or disapprove grants.

       Further, the EPA solicitation review process only addresses competitive grants. State, tribal and local governments receive the vast majority of EPA grant funding on a non-competitive basis for continuing environmental programs and state revolving loan funds for water infrastructure projects. These funds are allocated based on statutory, regulatory or program policy formulas that take into account a variety of factors. The process EPA has established for reviewing competitive solicitations does not impact these grants.

Senator Sanders:

Climate Change

99. During a recent interview with KSNV TV, you stated:

> "Is (global climate change) an existential threat? Is it something that is unsustainable, or what kind of effect or harm is this going to have? I mean, we know that humans have most flourished during times of what? Warming trends. I think there's an assumption made that because the climate is warming, that (warming) is necessarily a bad thing. Do we really know what the ideal surface temperature should be in the year 2100? In the year 2018? I mean it's fairly arrogant for us to think that we know exactly what it should be in 2100."

The Trump Administration's *Climate Science Special Report*, the United Nation's Intergovernmental Panel on Climate Change's *Fifth Assessment Report*, and the Department of Defense's *National Security Implications of Climate-Related Risks and a Changing Climate* report all found with high confidence that global climate change and rising global temperatures are likely to cause rising sea levels and increase crop failures, hunger, illness, and extreme weather. The Department of Defense's report identified these factors as clear risks to the United States' national security.

In January, the National Oceanic and Atmospheric Administration published a technical report that predicted that rising global temperatures could cause global mean sea levels to rise over ten feet by 2100. This sea level rise would displace more than 30 million Americans and mostly or completely cover Cape Canaveral, the U.S. Naval Academy, the Massachusetts Institute of Technology, the John F. Kennedy International and San Francisco International airports, and the Mar-a-Lago resort, among other prominent localities. Given the level of destruction anticipated, would you consider these outcomes to "necessarily be a bad thing"?

In January, the peer-reviewed journal, *Nature Climate Change*, published a report predicting that 260,000 people around the world will die annually by 2100 due to decreasing air quality and rising global temperatures. If global climate change and decreasing air quality were to cause this level of increase in annual deaths, would you consider that outcome to "necessarily be a bad thing"?

In 2012, the independent humanitarian group DARA estimated that between 2012 and 2030, 150,000 people around the world will die annually due to infections and 360,000 people will die annually due to hunger and malnutrition related to rising global temperatures. If a warming climate were to cause this type of increase in illness, would you consider that outcome to "necessarily be a bad thing"?

The Union of Concerned Scientists estimates that if global warming emissions continue to grow unabated, the annual economic impact of more severe hurricanes, residential real-estate losses to sea-level rise, and growing water and energy costs could reach 1.9% of the U.S. GDP by 2100. They also estimate that a sea-level rise of 13-20 inches by 2100

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would threaten insured properties in U.S. Northeast coastal communities valued at $4.7 trillion. If a warming climate were to cause these types of economic impacts, would you consider that outcome to "necessarily be a bad thing"?

EPA recognizes the challenges that communities face in adapting to a changing climate. EPA works with state, local and tribal governments to improve infrastructure to protect against the consequences of climate change and natural disasters. EPA also promotes science that helps inform states, municipalities, and tribes on how to plan for and respond to extreme events and environmental emergencies. Moving forward, EPA will continue to advance its climate adaptation efforts, and have reconvened the cross-EPA Adaptation Working Group in support of those efforts.

Human activity impacts our changing climate in some manner. The ability to measure with precision the degree and extent of that impact, and what to do about it, are subject to continuing debate and dialogue.

Lead

100. You have stated that "[l]ead poisoning is an insidious menace that robs our children of their intellect and their future." This is especially true for children living in communities of color, who are most likely to suffer from lead exposure and poisoning. According to the Center for Disease Control, African American children are over three times as likely to have highly elevated blood-lead levels. African American and Latino communities are often more likely to live near active battery recyclers, industrial sites, or highways, and to live in older housing that are sources of high levels of lead. In addition, a 2012 study found that lead exposure resulted in greater cognitive detriment for children with a lower socioeconomic status. Scientists agree that there is absolutely no acceptable level of lead exposure for children.

Based on your own statement, will you commit to eradicating lead exposure for America's children? How will you work with other leaders in the Administration to ensure the safety of our children, including those in more vulnerable communities?

Since the 1970s, EPA and other federal agencies have implemented numerous actions resulting in a significant reduction of lead exposure throughout our country and significantly lower blood lead levels in children. According to the Centers for Disease Control and Prevention, no safe blood lead level in children has been identified and even low levels of lead in blood have been shown to affect IQ, ability to pay attention, and academic achievement. Now, tackling the problem at this stage will benefit from a coordinated federal-wide effort. To this end, EPA is collaborating with our federal partners to address the remaining exposures and to explore ways to increase our relationships and partnerships with states, tribes, and localities. As Co-chair of the President's Task Force on Environmental Health Risks and Safety Risks to Children, EPA Administrator Scott Pruitt recently hosted a meeting of principals from the 17 Federal departments and agencies on the

President's Task Force. At the meeting, the Task Force members, including EPA Administrator Scott Pruitt, committed to make addressing childhood lead exposure a priority and to quickly develop a new federal strategy to reduce childhood lead exposures. At EPA, this includes identifying and seeking to appropriately address disproportionately high and adverse childhood lead exposure in minority and low-income communities.

101. In 2015, the Natural Resource Defense Council found that more than 18 million Americans were served by community water systems that had violated the EPA's Lead and Copper Rule, which limits the concentration of lead and copper in public drinking water. You estimated it would cost "as much as $30 billion or maybe upward of $50 billion" to replace all the lead service lines across the country, implying that this price tag is too high. However, Fitch Ratings, an independent credit rating agency, has estimated that the capital costs to replace these lines could be over $275 billion. Based on the discrepancy in these figures, please detail how you arrived at your estimate, and explain why it is so much lower than that of Fitch Ratings.

EPA's cost estimate to fully replace all lead service lines is $30-$47 billion.

The EPA cost estimate cost range accounts for uncertainty regarding the total number of lead service lines that remain in service. National surveys completed by the American Water Works Association indicate that between 6.5 and 10 million lead service lines may exist. The expense of a lead service line replacement can vary between $1,200 and $12,300, based on a number of factors, including the replacement technique, the length of the service line, if the replacement is coordinated with other infrastructure work, if the street needs to be cut and repaved, and if landscaping restoration is included. EPA estimates that an average lead service line replacement cost is $4,700 per line. Given the average cost of replacing a lead service line and the estimated range of lead service lines in the country, the total cost of replacing all lead service lines may range from $30 to $47 billion.

We would also note that Fitch Ratings retracted their initial cost estimate of $275 billion on March 8, 2016, just a few days after its initial reporting on March 4, 2016, and provided a revised estimate of "a few billion to $50 billion." Their updated cost estimate is in line with EPA's estimate.
https://www.freep.com/story/news/local/michigan/flint-water-crisis/2016/03/08/rating-agency-corrects-lead-pipe-replacement-estimate/81499712/

EPA Website

102. On April 28, 2017, the EPA removed its climate change website. To this day, the removed pages redirect to a notice stating, "we are currently updating our website to reflect EPA's priorities under the leadership of President Trump and Administrator Pruitt." The EPA did not announce the overhaul prior to its start date and has not yet provided a justification for the removals.

According to the Paperwork Reduction Act, all agencies must "provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products." The EPA's announcement regarding its website overhaul was published on the same day that the EPA removed the vast majority of its climate change website, and therefore the public did not have an opportunity to provide comment or express concerns.
Does the EPA generally take public comments into account when making these types of decisions?

Can you please explain how announcing an overhaul of the climate website on the same day changes were made constitutes "adequate notice" under the Paperwork Reduction Act?

We are constantly updating our website to reflect new initiatives and projects of the Agency. Of course the site will be reflective of the current administration's priorities – with that said, all the content from the previous administration is still easily accessible and publicly available-through the banner across the top of the main page of the site.

103. On February 2, 2018, the Associated Press reported that internal EPA emails, released following a Freedom of Information Act request by the Environmental Defense Fund, show that you personally monitored efforts to overhaul the EPA's climate change website. One email from Lincoln Ferguson, an EPA senior advisor for public affairs, states:

> "How close are we to launching this on the website? The Administrator would like it to go up ASAP. He also has several other changes that need to take place."

Did the EPA, under your leadership, remove the content of the EPA's climate change website and replace the removed pages with a notice stating "this page is being updated to reflect the agency's new direction under President Donald Trump and Administrator Scott Pruitt"?

Was this overhaul announced prior to its start date? If not, why not?
Please provide a specific time for the EPA's climate change website to come back online.

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We are constantly updating our website to reflect new initiatives and projects of the Agency. Of course the site will be reflective of the current administration's priorities – with that said, all the content from the previous administration is still easily accessible and publicly available-through the banner across the top of the main page of the site.

104. Did the EPA, under your leadership, remove web resources providing information about the benefits of the Clean Power Plan months before the proposed rulemaking to withdraw the rule?

If so, did the EPA remove website information regarding what was, at the time, current EPA policy before initiating the appropriate rulemaking process?

We are constantly updating our website to reflect new initiatives and projects of the Agency. Of course the site will be reflective of the current administration's priorities – with that said, all the content from the previous administration is still easily accessible and publicly available-through the banner across the top of the main page of the site.

Renewable Energy

105. In October 2017, you said that if it were up to you, you would do away with the Renewable Electricity Production Tax Credit and the Investment Tax Credit for wind and solar. You stated:

> "I'd let (solar and wind) stand on their own and compete against coal and natural gas and other sources, and let utilities make real-time market decisions on those types of things as opposed to being propped up by tax incentives and other credits that occur, both in the federal and state level."

As you may know, the United States currently wastes billions of dollars each year subsidizing the fossil fuel industry. Since you believe energy tax credits should be eliminated to let technologies "stand on their own," do you also believe we should eliminate fossil fuel subsidies to let coal, oil and gas "stand on their own" as well? If so, what actions are you taking to eliminate the unfair subsidization of certain energy resources?

My personal view is that the federal government ought not use the tax code to pick winners and losers. As you may know, it is the province of the legislative branch to establish tax credits. EPA does not have a formal role in this process.

Senator Van Hollen:

106. You have noted repeatedly – more than a dozen times in your appearances before Congress and in your testimony for today– that EPA's only authority is the "rule of law" or "the authority given to it by Congress".

The updates to the Toxic Substances Control Act Congress enacted in 2016 directed EPA to assess the safety of new chemicals before they go onto the market. The law says that EPA, quote, "shall issue an order" regulating the chemical in order to protect against the danger the new chemical may pose.

On January 17th of this year, you told CBS News that EPA should not regulate new chemicals using orders even though the law clearly says otherwise. Your views appear to be in direct conflict with the law Congress wrote.

Mr. Pruitt, will you direct EPA staff to issue orders to regulate the safety of new chemicals under all circumstances in which the law says that orders are required?

As directed by Congress, under TSCA, EPA reviews new chemicals for unreasonable risk, and where necessary takes action to protect against such risk before a new chemical may be commercialized. Where EPA makes one of the determinations that call for an order under the statute – for example, that there is insufficient information to permit a reasoned evaluation of the chemical's effects – EPA will issue an order.

107. I appreciated your recent announcement that that you have decided not to abandon proposed EPA oversight of the massive Pebble Mine, leaving restrictions in place while the Agency receives more information on the potential mine's impact on the region's world-class fisheries and natural resources. Given EPA's role in this process, would you say that EPA can contribute valuable feedback to the development of projects, be they energy, mining, or transportation? Given EPA's valuable feedback, would you object to efforts to roll back EPA's responsibilities to provide input on infrastructure projects?

Regarding the Pebble Mine project, EPA's decision to suspend its proposal to withdraw the proposed determination under Clean Water Act section 404(c) does not impede the review of Pebble Limited Partnership's permit application by the Army Corps of Engineers under the normal Clean Water Act process. However, the Corps cannot issue a permit during the pendency of the section 404(c) process, and EPA will ensure protection of the world-class fishery in the Bristol Bay region. EPA looks forward to working with the Corps as the Corps assesses the permit application.

As to your broader question, EPA strongly supports the President's infrastructure initiatives and associated efforts to significantly improve predictability, timeliness, and consistency in the permitting of urgently needed infrastructure projects. The Agency is working under the President's direction to streamline and improve EPA's role in the review of new infrastructure projects to help to assure they are reviewed and permitting decisions are made without unnecessary delay.

Senator Wicker:

108. Do you support providing hardship exemptions from Renewable Fuel Volume Obligations (RVOs) for small refineries experiencing disproportionate economic impacts from high RIN prices?

Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its renewable fuel volume obligations for a given year based on a small refinery's demonstration of "disproportionate economic hardship" in that year. The statute also directs EPA to consult with the Department of Energy (DOE) in evaluating small refinery exemption petitions. EPA will grant a hardship exemption if we conclude, after review of available information and in consultation with DOE, that a refinery will experience disproportionate economic hardship that can be relieved in whole or in part by removing its RFS obligations for that year.