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Committee on Environment
and Public Works Washington, D.C.

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HEARING ON THE NOMINATION OF ANDREW WHEELER TO BE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

WEDNESDAY, JANUARY 16, 2019

U.S. SENATE

Committee on Environment and Public Works

Washington, D.C.

The committee met, pursuant to notice, at 10:03.m. in room 406, Dirksen Senate Building, the Honorable John Barrasso [chairman of the committee] presiding.

Present: Senators Barrasso, Inhofe, Capito, Cramer, Braun, Rounds, Sullivan, Boozman, Wicker, Ernst, Carper, Cardin, Sanders, Whitehouse, Merkley, Booker, Markey, Duckworth, and Van Hollen.

STATEMENT OF THE HONORABLE JOHN BARRASSO, A UNITED STATES SENATOR FROM THE STATE OF WYOMING

Senator Barrasso. Good morning and welcome.

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

With that said, I call this hearing to order.

Today, we are going to consider the nomination of Andrew Wheeler to be Administrator of the Environmental Protection Agency.

Before I speak about Acting Administrator Wheeler's nomination, I want to take a moment to welcome the new members of our committee, Senators Braun and Cramer. Welcome to the committee. I know that your experience and expertise will strengthen our committee and bring fresh perspectives to our debates. Welcome.

I would also like to welcome back all of the old members of the committee. I look forward to working with each of you as we conduct the committee's business this Congress which brings us to the business of today's hearing.

President Trump has nominated Environmental Protection Agency Acting Administrator Andrew Wheeler to serve as the

Administrator of the agency. Mr. Wheeler has served as Deputy Administrator of the EPA since April 2018 when the Senate confirmed his nomination with bipartisan support.

Since July of last year, Mr. Wheeler has served as the Acting Administrator of EPA. I believe Acting Administrator Wheeler has done an outstanding job of leading the EPA these past six months. Under Acting Administrator Wheeler's leadership, the agency has taken a number of significant actions to protect our Nation's environment while also supporting economic growth.

Acting Administrator Wheeler has led efforts to issue common sense regulatory proposals like the Affordable Clean Energy Rule and the revised definition of Waters of the United States; implemented the committee's 2016 bipartisan reform of the Toxic Substances Control Act in an effective and efficient manner; reduced lead exposure, including through the Federal Lead Action Plan; provided greater regulatory certainty to States, to tribes, to localities and the regulated community; and has improved enforcement and compliance assistance.

Acting Administrator Wheeler is very well qualified to run the Environmental Protection Agency. Before his leadership roles at the agency, Mr. Wheeler spent 25 years working in the environmental field as a career employee with the Environmental Protection Agency, as this committee's Clean Air Subcommittee

staff director, as then the full committee staff director and chief counsel, and finally as a consultant for a large variety of energy and environmental clients.

Mr. Wheeler has received broad and bipartisan support. Former Democratic vice presidential candidate and U.S. Senator Joe Lieberman, who served as a member of this committee while Mr. Wheeler was staff director, stated when Wheeler was nominated for deputy director that "Mr. Wheeler conducted himself in a fair and professional manner. I hope his nomination will receive similarly fair consideration by the Senate." Ranking Member Carper said of Mr. Wheeler at one point, "I think having worked in the agency he actually cares about the environment, the air we breathe, the water we drink and the planet on which we live."

The EPA Administrator plays a central role in developing and implementing programs and activities focused on fulfilling the EPA's mission of protecting human health and the environment.

We know how well qualified Mr. Wheeler is and when confirmed, what a wealth of experience and expertise he is going to bring to this critically important job. I am going to work with committee members to move this important nomination forward.

I would now like to turn to the Ranking Member for his

statement.

[The prepared statement of Senator Barrasso follows:]

STATEMENT OF THE HONORABLE TOM CARPER, A UNITED STATES SENATOR FROM THE STATE OF DELAWARE

Senator Carper. Thank you, Mr. Chairman.

Mr. Wheeler, welcome. It is good to see you. Thanks for meeting with my staff and me yesterday and on past occasions as well.

Just one week ago, President Trump nominated you to be the Administrator of the Environmental Protection Agency, the agency you already lead as its Acting Administrator. If I am not mistaken, under the Federal Vacancies Act, you can continue to serve as both the EPA Acting Administrator and the President's nominee for 203 more days.

With many EPA staff members furloughed today, on the 26th day of President Trump's government shutdown, a number of Democratic members of this committee are concerned that we are rushing to move forward with your confirmation process.

I realize we do not all agree on this but my view is that EPA is shutdown largely because the President wants Congress to approve an additional $6.5 billion in funding for a 2,000 mile wall along our southern border with Mexico that the Mexicans were supposed to pay for.

Meanwhile, because of the continuing shutdown across our Country, our environment and public health are increasingly in jeopardy. With much of EPA shut down, rules are not being

written, drinking water and power plant inspections are not being performed, superfund sites are not being cleaned up, the safety of new chemicals is not being assessed, public meetings are being canceled and just as important, some 14,000 furloughed EPA employees are unsure if they will be able to afford their mortgages, daycare providers or grocery and electricity bills.

Some of those furloughed employees appear to have been asked to help prepare for this very hearing. Despite that, this committee is moving quickly to process your nomination.

I do not believe giving the acting administrators a speedy promotion is more urgent and more important than protecting the public from contamination to our air and water and lands. Our priority should be reopening our government, certainly reopening EPA and the other closed federal agencies.

The day after Mr. Wheeler was named EPA Acting Administrator last summer, I sent him a letter. In that letter, I reminded Mr. Wheeler of the challenge and opportunity he was granted to chart a new course for the agency after the scandal-plagued tenure of Scott Pruitt.

Mr. Wheeler is certainly not the ethically bereft embarrassment that Scott Pruitt proved to be. To be fair, he has engaged more frequently and substantively than Scott Pruitt with both Congress and EPA career staff.

I knew that Mr. Wheeler and I would not agree on every

issue. We do not, but I had hoped he would moderate some of Scott Pruitt's most environmentally destructive policies, specifically where the industry and the environmental community are in agreement.

Regrettably, my hopes have not been realized. In fact, upon examination, Mr. Wheeler's environmental policies appear to be almost as extreme as his predecessor's despite the promise Mr. Wheeler made when he first appeared before our committee.

For example, Mr. Wheeler said repeatedly that he agreed with a goal that many of us share, striking a deal between automakers and the State of California on fuel economy and greenhouse gas tailpipe standards.

I have just come from the auto show in Detroit on Monday. The entire auto industry, many members of Congress and other stakeholders have repeatedly asked for a compromise that would provide certainty and predictability for the industry.

However, instead of making a serious, vigorous effort to find a win-win outcome he envisioned, Mr. Wheeler signed off on a proposal that preempts California and freezes standards for the better part of a decade.

I learned that the Trump Administration now plans to finalize a 0.5 percent annual increase in the stringency of the standards, a rate that is ten times weaker than the current rules. This will only lead to extensive litigation and

uncertainty for our automakers. That is not a win-win outcome, really more a lose-lose.

There is another example of Mr. Wheeler's forgotten promises. Mr. Wheeler recently signed a proposal to remove the legal underpinnings of the mercury and air toxics standards. EPA decided it was no longer "appropriate and necessary" to protect the brains of infants from mercury and air toxic pollution emitted by electric utilities.

By using outdated data and deeming that some benefits like reductions in cancer, birth defects and asthma attacks are no longer important to consider, EPA is setting a dangerous precedent in putting the MATS rule in legal jeopardy. EPA has gone so far as to request public comment on whether the standards should be eliminated.

Mr. Wheeler says this action is necessary and that the proposal strikes a balance. I just do not think that is true. No court has ordered this action. No utilities are asking for this action. Their proposal is not needed to protect public health.

In fact, the utility industry is in full compliance with the EPA standards, full compliance at one-third of the expected cost. Think about that, one-third of the expected cost. Every stakeholder from coal-fired utilities to religious leaders to environmental organizations, to chambers of commerce urged this

Administration not to take this step.

Surprisingly, Mr. Wheeler has chosen to ignore the course of stakeholders who all hoped that he, EPA and this Administration would try a more responsible path.

A final example of Mr. Wheeler's failure to lead lies in the agency's reported opposition to submitting to the Senate for ratification the Kigali Treaty to phase out harmful refrigerants. Safer substitutes are made in Texas and Louisiana with American technology by American companies whose investments and jobs are at risk when China dumps cheaper, polluting products onto the market.

Ratification of this treaty is supported by a truly staggering list of stakeholders that range from the American Chemistry Council to the U.S. Chamber of Commerce to Freedom Works to the Sierra Club, almost everyone, it seems, except EPA.

Mr. Wheeler, when you worked with us in the Senate, you were able to identify areas where compromise was possible. It remains my hope that you can reverse course and commit to seize upon the policy "win-wins" like these and others that protect our environment and public health while protecting and providing industry with certainty they need and deserve.

That is what the American people expect and deserve from anyone who has been nominated to lead the Environmental Protection Agency. Based on what we have seen so far, without

such commitments, that is not the nominee that we have before us today. I say that with no joy.

Thank you.

[The prepared statement of Senator Carper follows:]

Senator Barrasso. Thank you, Senator Carper.

Senator Inhofe, would you like to introduce Mr. Wheeler?

STATEMENT OF THE HONORABLE JAMES INHOFE, A UNITED STATES SENATOR FROM THE STATE OF OKLAHOMA

Senator Inhofe. I would like to introduce Mr. Wheeler. I am honored that he invited me to do that. I am very excited about the prospects of taking his temporary job into a permanent job.

It may come as a shock to some of you that I do not totally disagree with my good friend, Senator Carper. I really think that in the midst of the Schumer shutdown is a good time to confirm some of these very important nominees. There is not one more important or a position that is more important than we have right now.

Back when President Trump nominated Andrew as Deputy Administrator, I said there was no one more qualified. Now that he has been Acting Administrator for the past six months, Andrew's ability to lead the agency has never been clearer.

After earning a law degree at Washington University in St. Louis at the School of Law, Andrew joined the EPA as a special assistant in the agency's Pollution Prevention and Toxics Office in 1991.

There have been a lot of years and a lot of experience. He was an EPA employee for four years, transitioning to the George H.W. Bush Administration and then to the Clinton Administration, earning three bronze medals for commendable service along the

way. For those of you who do not know, the bronze medal is given for "significant service or achievements in support of the agency's mission or for demonstration of outstanding accomplishments in supervision and leadership."

When Andrew left the agency, he brought that sense of service and leadership with him to the United States Senate where I had a front row seat to his high quality of character and witnessed the dedication he brings to every job and issue.

Andrew started in my personal office as chief counsel, transitioned to staff director for the U.S. Senate Subcommittee on Clean Air, Climate Change, Wetlands and Nuclear Safety. I was chairman of that subcommittee at that time.

In 2003, when I became chairman of this committee, Andrew became the chief counsel. Over the next six years, he would eventually become staff director and we worked closely together on highway bills, energy bills, the Diesel Emissions Reduction Act, the Clear Skies Act, and many other pieces of legislation.

Since leaving the U.S. Senate in 2009, Andy has continued to build on his reputation as a leader in energy and environmental policy and has brought this vast wealth of knowledge and expertise on environmental issues to the EPA.

The Senate confirmed him as deputy administrator in April of last year on a bipartisan basis and he became acting administrator in early July. I was lucky enough to attend his

welcome speech to the employees of the agency and saw a man who respected the agency and the work the career staffers do.

This is something that is unusual. I do not think Andrew knew I was there in the audience but there were a couple or 300 people from the EPA administration. All of them were there with the highest possible respect for Andrew Wheeler.

He has worked on the issues for his entire 28 year career. I am honored that he chose to spend half of that time with me. I believe that the U.S. Senate benefitted from his leadership. I know America will as well.

I remember looking at the expressions on the faces of the individuals out there thinking there is room at the top for me too. There were several hundred people in there who had a career such as Andrew had, starting at the bottom and here is the top. He has done a great job. I am very excited to look forward to working with him in a new capacity that I have not experienced before.

Thank you, Mr. Chairman.

[The prepared statement of Senator Inhofe follows:]

Senator Barrasso. Thank you very much, Senator Inhofe.

Now I would like to welcome our nominee to the committee, Andrew Wheeler, nominated to be Administrator of the Environmental Protection Agency.

I want to remind you that your full written testimony will be made a part of the record. We all look forward to hearing your testimony. I would invite you to introduce or reintroduce to the committee your family and then please proceed with your testimony.

STATEMENT OF ANDREW WHEELER, NOMINATED TO BE ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY

Mr. Wheeler. Thank you, Senator.

Joining me today is my nephew Luke Hooper and he brought along his parents with him and my sister, Liesle, and her husband, Tim. I also have two friends that I met on my first day in law school back in 1987, Judy Kim and Dawn Sydney. Dawn was at my confirmation hearing for the deputy administrator position and today she brought her mother with her, Betty Beveridge, who traveled from Florida to be here today. I want to thank them all for coming today.

Senator Barrasso. Thank you and welcome.

Mr. Wheeler. Good morning, Mr. Chairman, Ranking Member Carper, and members of the committee. Thank you, Senator Inhofe, for the introduction.

I am honored and grateful that President Trump has nominated me for the position of Administrator of the Environmental Protection Agency. There is no more important responsibility than protecting human health and the environment. It is a responsibility I take very seriously.

Since becoming the Acting Administrator, I have focused our efforts on providing greater certainty to the American public: certainty in our EPA programs; certainty to the States, tribes, and local governments; and certainty on how we communicate risk.

Personally, I have also worked to provide more certainty to Congress. Immediately after becoming the Acting Administrator, I reached out to the Chairs and Ranking Members of our authorizing and appropriating committees in both the House and the Senate. I have met in person or by phone with many of you on specific issues of concern and I will always make myself available.

The American public has a right to know the truth about the health risks they face in their daily lives and how we are responding. It is our responsibility to explain it to them clearly and consistently. This includes recognizing the progress we have made as a Nation and where more progress still needs to be made.

From 1970 to 2017, U.S. criteria air pollution fell by 73 percent while the economy grew over 260 percent. In addition, we are ranked number one in the world for access to safe drinking water. In addition, in 2018, we finalized 13 major deregulatory actions, saving Americans roughly $1.8 billion in regulatory costs.

Yet, there are Americans who have not shared in this progress. It is these Americans that President Trump and his Administration are focused on, Americans without access to safe drinking water or Americans living on or near hazardous sites, often unaware of the health risks they and their families face.

Many of these sites have languished for years, even decades.

How can these Americans prosper if they cannot live, learn, or work in healthy environments? The answer is simple. They cannot. President Trump understands this and that is why he is focused on putting Americans first.

The Superfund Program is a perfect example. In fiscal year 2018, EPA deleted all or part of 22 sites from the National Priorities List, the largest number of deletions in one year since fiscal year 2005. We are in the process of cleaning up some of the Nation's largest, most complex sites and returning them to productive use.

This past summer, I visited the Anaconda and Butte sites in Montana, the first visit to both sites by the head of EPA in nearly 20 years. We are finalizing cleanup plans that will return these lands to productive use, an action which has literally been stymied for decades.

This past September, EPA issued a Record of Decision requiring removal of the worst contaminated sediment, including mercury and PCBs, at the Berry Creek site in New Jersey. At the U.S. Smelter and Lead Refinery site in East Chicago, we were able to issue a proposed $25 million cleanup plan that will address lead-contaminated soil in Zone 1 of the site.

We have also made safe drinking water a top priority as well.

In May 2018, we convened the first ever National Leadership Summit to help States address the emerging risk associated with PFAS. We also hosted a series of visits in communities directly impacted by PFAS. Using information from these events and other public input, we will release a PFAS management plan in the very near future.

We are also taking important actions to protect our children from the dangers of lead exposure. We proposed stronger dust, lead and hazards standards and we are updating the lead and copper rule for the first time in over two decades. These actions and more are detailed in the new Federal Lead Action Plan announced in December.

In addition, we are using our grants and financing programs to help communities replace lead surface lines and upgrade their water infrastructure. Under President Trump, EPA has issued seven WIFEA loans totaling over $1.5 billion. Combined, these projects will help finance over $3.5 billion in infrastructure investments while creating over 6,000 jobs. That is just the beginning.

This past year, we invited an additional 39 projects from across the Nation to apply for the WIFEA loans that would help finance $12 billion in infrastructure and create up to 183,000 jobs.

On the air side, we have launched commonsense reforms such

as the Cleaner Trucks Initiative. By working closely with States and the private sector, we will reduce NOx emissions from heavy duty trucks which are not required by statute or court order but makes sense to do.

Finally, we proposed three major rulemakings on our new Waters of the U.S. definition, the Affordable Clean Energy Rule and the Safe Vehicles Rule in conjunction with the Department of Transportation.

Through our regulatory reforms, the Trump Administration is proving that burdensome federal regulations are not necessary to drive environmental progress. What makes our actions effective and durable is our commitment to vigorously enforce them

In fiscal year 2018, EPA enforcement actions required the treatment, disposal or elimination of 809 million pounds of pollutants and waste, almost twice as much compared to 2017. We also entered the largest settlement in the history of the enforcement of the Risk Management Program with responsible parties spending $150 million on major safety improvements.

I am proud of our accomplishments and I know that none of it would be possible without our talented and dedicated EPA career staff. Just last week, EPA and the Department of Justice announced a $490 million settlement with Fiat Chrysler for cheating U.S. emission standards.

For three years, Fiat Chrysler told us their vehicles were

compliant, yet it was EPA engineers in Ann Arbor who caught them cheating. Then they proved how they were cheating and that was no easy task.

Defeat devices are hidden in vehicle software which contains more than 100 million lines of code. To give you an idea of what the EPA staff had to deal with, an F-22 fighter jet has less than 2 million lines of code and a Boeing 787 has around 14 million lines of code.

I am proud and grateful for a talented career staff that was able to detect and expose these defeat devices. This is just one of many examples of the expertise our career staff brings to the agency and one of the many reasons that I miss our furloughed employees and look forward to getting them back to work as soon as possible.

Thanks to the hardworking public servants, pollution is on the decline. Our focus now is to accelerate this decline, particularly in communities where it poses the most immediate and lasting harm.

Thank you for your time. I look forward to answering your questions.

[The prepared statement of Mr. Wheeler follows:]

Senator Barrasso. Thank you very much for your testimony.

As mentioned, the hearing will include questions. There will be two five minute rounds of questions. I will start the second round after we close the first round. To be fair to all the members of the committee and to the witness, I ask Senators to please limit your questions in each round to five minutes.

Throughout the hearing and with the questions for the record, our committee members will have an opportunity to learn more about your commitment to public service and to our great Nation.

I would like to ask throughout the hearing that you would please respond to the questions today as well as those submitted for the record.

There are a couple of questions I have to ask as I do of all nominees and I did with you previously. These are on behalf of the committee.

Do you agree, if confirmed, to appear before this committee or designated members of this committee and other appropriate committees of the Congress and provide information subject to appropriate and necessary security protections with respect to your responsibilities?

Mr. Wheeler. I do.

Senator Barrasso. Do you agree to ensure that testimony, briefings, documents in electronic and other forms of

communication of information are provided to this committee and its staff and other appropriate committees in a timely manner?

Mr. Wheeler. I do.

Senator Barrasso. Do you know of any matters which you may or may not have disclosed that might place you in a conflict of interest if you are confirmed?

Mr. Wheeler. I do not.

Senator Barrasso. I will now begin my first round of questions. For the information of Senators, we will be having two rounds as I previously stated. Let me start with this.

The EPA is one of the federal agencies directly impacted by the partial government shutdown. Could you explain what actions you have taken to ensure that the EPA continues to fulfill the mission of protecting human health and the environment during this period?

Mr. Wheeler. Absolutely, Senator, thank you.

First, again I want to say I really am looking forward to our furloughed employees coming back to work.

We are still on the job in any emergency actions as well as any court-ordered actions. For example, we still have personnel on the ground in California dealing with the wildfires, people in Puerto Rico dealing with the hurricane, as well as other emergency responses that have been ongoing.

Since the shutdown, we have responded to seven new

emergency responses around the Country. We continue to monitor our hotline and tips lines. We are also fulfilling all of our court-ordered deadlines.

A perfect example is, as the shutdown has continued we are taking a look at what deadlines are coming up. We have five or six regulations that have court-ordered deadlines. One of them is on lead dust, some regulation which is due in June. I sat down with my senior staff last week and we charted out what the court-ordered deadlines are, working backwards on when we need to have people back on the job to take care of those. We recalled people this week to work on the lead dust regulation.

Out of 14,000 employees, we started with around 700 that were exempt from the furlough. We are at around 800 now. That varies on a day-to-day basis.

Senator Barrasso. The Clean Air Act requires the EPA grant relief to small refineries which suffered disproportionate economic hardship under the Renewable Fuel Standard, the RFS. The law explicitly states a small refinery may petition the EPA for hardship relief, and it says, "at any time."

Do you agree that the EPA does not have the authority to limit when small refineries can apply for that hardship relief?

Mr. Wheeler. That is correct. They can apply at any point.

Senator Barrasso. The law further states, "The EPA needs

to act within 90 days upon receiving a petition from a small refinery." Do you agree the EPA does not have the authority to delay decisions on small refinery petitions beyond the 90 days?

Mr. Wheeler. I agree that the petition first goes to the Department of Energy for technical review before it comes to the EPA.

Senator Barrasso. According to the EPA's online dashboard, there are at least 11 petitions that have been pending for more than 90 days. Is that correct?

Mr. Wheeler. I am not sure of the number.

Senator Barrasso. I never cease to be amazed by the power of innovation from energy production to manufacturing. Innovation has grown and improved the environment significantly. One key question is how we can harness that innovation to reduce greenhouse gas emissions and turn these emissions into useful products.

We have discussed that we can use carbon dioxide to get oil out of the ground, to construct building materials, and to make fuels. What role does the EPA play in supporting innovations that would reduce greenhouse gas emissions?

Mr. Wheeler. We have a lot of opportunities. We do that through our air program as well as all of our programs. We are looking to do innovation and encourage new innovation. I think it is important on the regulatory side that we do not try to tip

the scale one way or the other on, for example, energy sources. We want to encourage innovation in the marketplace and encourage new ideas to come forward.

Senator Barrasso. Thank you. I am going to reserve the balance of my time.

Senator Carper.

Senator Carper. Thank you, Mr. Chairman.

Mr. Chairman, I ask unanimous consent to submit for the record several articles and a letter that describes the current state of affairs at EPA during this government shutdown. While 95 percent of EPA employees are not receiving paychecks, EPA also is not fully carrying out its fundamental core mission. That is to protect human health and the environment.

This means that scientists may lose data collection opportunities related to the deadly California wildfires, there is no EPA supervision at too many of our Superfund sites and many more critical functions will not proceed until the EPA is funded.

That is my request.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Carper. I want to talk a little bit about PFOA, PFOS and the PFAS chemicals. The fact that we do not have a federal drinking water standard for those chemicals, flying in the face of the TSCA legislation, the toxic substances legislation, that we passed a couple of years ago, a number of the States have basically taken matters into their own hands. States that have set their own standards include California, Connecticut, Maine, Massachusetts, Minnesota, New Hampshire, New Jersey, North Carolina and Vermont.

Mr. Wheeler, my question is your PFAS management plan was supposed to come out, I think, last fall but has been delayed. I am asking you to commit to the members of this committee that EPA will set a drinking water standard for these chemicals within two years. Can you make that commitment today?

Mr. Wheeler. First of all, our PFAS management plan, we were hoping to unveil next week. With the shutdown, it is going to be delayed slightly. It is in the middle of interagency review.

We are looking at all of our statutes. I am not going to pre-judge anyone in particular because of the interagency review. All the other agencies have to sign off on the plan itself but we are looking at all of our statutes, and our enforcement abilities.

We have been enforcing on drinking water around the Country

at a number of sites and helping States.

Senator Carper. I am asking you if you can commit to two years. We are not talking two months or two weeks. I am asking you to make a commitment to us that EPA will set a drinking water standard for these chemicals within two years. Can you make that commitment today? If you cannot, just say I cannot make it.

Mr. Wheeler. I cannot make that commitment pending interagency review at this point.

Senator Carper. I just want to impart a sense of urgency on PFAS and, frankly, on the others. We only have five minutes and I have three minutes left.

Mr. Wheeler. You said 95 percent of EPA is not being paid. No one at EPA is getting paid today. I want to thank Congress for passing the legislation for back pay for everyone.

Senator Carper. Clean cars, I mentioned I was at the Detroit auto show. I have been going for a long, long time. There are representatives from ten auto companies. They all have one message for me, actually two or three.

One message is they want certain predictability. They are building more energy efficient cars. Their future is electric-powered vehicles; their future is hydrogen-powered vehicles. They need charging stations to be deployed, built across the Country. They need fueling stations to be built. They need a

tax credit extended for electric vehicles.

They do not want to end up in a lawsuit with California and 12 or 13 other States for the next four or five years. They need certainty and predictability. They want some near-term flexibility on the fuel efficiency standards and tailpipe emissions that were set in the last Administration. They want some flexibility in the near term and more rigor on the standards over the long term.

Why are you, why is EPA, why is California and these other 13 States, why are we unable to come to agreement on a deal that every auto company wants?

Mr. Wheeler. Senator, we talked about this yesterday and I have talked about this with you at least four or five times. I am not going to go through the entire back and forth we have had and the State of California.

Nobody wants a 50-State deal more than I do. That would be a successful program if we had a 50-State deal. I have not given up hope on that yet. We are also looking at the calendar. We know that we need to finalize our proposal by March 30. We are running short of time.

I have met with Mary Nichols from California three times in my office. We have had numerous conversations. My staff has worked with her staff for months now. We would love to have a 50-State solution.

Senator Carper. The greatest source of carbon emissions on our planet right now is mobile sources, our cars, trucks and vans. There is deal that is ready to be made, ready to be made. I am trying to impart some sense of urgency.

If I were you, I would have her in my office, I would be in California. I would be trying to make this deal. The idea that you are waiting for them or they are waiting for us, your job is to basically be the leader for fighting this battle.

I am told oceans are heating up by 40 percent faster on average than predicted by the global science community just five years ago. The year we just finished was the hottest year ever. I would urge you to feel a sense of urgency on this stuff, okay?

Let us talk about mercury. I will reserve the balance of my time to look at mercury.

Thank you.

Senator Barrasso. Thank you, Senator.

Senator Inhofe.

Senator Inhofe. Thank you, Mr. Chairman.

There is a lot of media spin and you heard it again just now over the recent report showing that CO2 emissions in the United States increased last year. A lot of the adversaries are wanting to blame the Administration's so-called rollback of the Clean Power Plan and the withdrawal from the Paris agreement, among other actions.

I would like to enter in the record a Forbes article that says this is not surprising given the unprecedented economic growth that the United States has seen in the last year and states "CO2 emissions in the United States are still down 11 percent since 2005."

Can you address this mischaracterization?

Senator Barrasso. Without objection.

[The referenced information follows:]

Mr. Wheeler. Yes, Senator. You are correct. Our CO2 emissions peaked in 2005 and have been on the decline since then. I was just briefed by my career staff yesterday morning on this. We believe we are going to continue to see it decline. The CO2 emissions for last year, we had an exceptionally hot summer and cold winter but we had, more importantly, an uptick in manufacturing and industrial output that brought up our CO2 emissions slightly but overall, we do not expect that to continue. We think the downward trend is going to continue in the long run.

Senator Inhofe. That economic growth has been phenomenal. I assume the ACE rule would continue the general downward trend in CO2?

Mr. Wheeler. It will. After ACE is fully implemented, we expect CO2 levels to decrease an additional 34 percent by 2005 levels from the electric power sector.

Senator Inhofe. Of all the regulations from the previous Administration, in my State of Oklahoma, the one the farmers of America, not just in my State of Oklahoma but throughout the Country, found the WOTUS rule to be the one that was the scariest of all. It is one you have reworked and I have heard nothing but praise about this.

I would like you to share with us the successes you have had in that particular rule. That is the one rule that means

the most to my Oklahoma farmers.

Mr. Wheeler. Thank you, Senator.

We put out our proposal in December. The overarching guiding principle that I gave the staff in crafting the WOTUS rule was that I believe any property owner should be able to stand on his or her property and be able to tell for themselves whether or not they have waters of the U.S. on their property without having to hire an outside consultant or an attorney.

I say that knowing that I used to be an outside consultant putting some people out of business, but I think people should be able to tell for themselves whether or not they have a wetland on their property.

I want to make the big distinction that usually is not discussed, particularly in the media, that we are working in partnership with the States. Even if a water is not a water of the United States, it does not mean it is not protected at the State level.

A lot of the waters that surround the wetlands that would no longer be considered a federal waterway under the new WOTUS proposal will still be protected under State laws and it does not impact our recovery efforts with our national priority areas such as the Chesapeake Bay, the Great Lakes, the Everglades, the Gulf Coast, or Puget Sound. All those recovery efforts will continue and this does not impact any of those.

Senator Inhofe. I appreciate that. I will share with you that the other day I was in western Oklahoma, our panhandle, a very arid area and their concern was if we had not done this, we would probably be considered a wetland.

I do not have to tell you my position on RFS but in light of the rumors about the possible actions the Administration is considering, I would like to take a moment to remind everyone that corn is not the only stakeholder in this program. You have the real world cost borne by not just refiners but also by consumers, by motorcyclists, both operators of lawn equipment for the use of gas blended with ethanol.

There is growing concern that the Administration is only listening to one side of the argument and that those arguments are not based on actual real world conditions. Will any reset rulemaking be based on market realities including the increased demand for zero that the market is seeing today?

Mr. Wheeler. We will take all those issues into consideration as part of the reset. We intend to move forward with the reset as well as the E15. The President is committed to the E15. For the last two years, we have RVOs, which is setting the levels for the renewable fuels for the next year. We have gotten both of those out on time, the first time that has ever happened in the history of the program.

We are committed to doing that again this year. They

provide certainty to the marketplace. It is very important, not just for the farmers, but also for the oil industry as well.

Senator Inhofe. It is very, very important and you are doing a great job.

Thank you.

Senator Barrasso. Thank you, Senator.

Senator Cardin is next but I think Senator Carper, you have a request.

Senator Carper. I have a unanimous consent request to submit for the record the recently released national climate assessment by 13 federal agencies under this Administration, including the EPA, that lay out the costs our Country will pay if we do nothing on climate change and you keep rolling back rules.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Cardin. Thank you, Mr. Chairman.

Mr. Wheeler, thank you for being here and thank you for your willingness to serve the public.

I really want to first underscore the point Senator Carper made regarding the shutdown. The shutdown is dangerous and is devastating to the individuals involved, their families, to paying their bills, but also to the missions these agencies have to carry out. You have a very large percentage of your workforce that is furloughed today without pay.

To me it is not possible under these circumstances for EPA to carry out their mission to protect our environment, clean air and clean water. You and I had a chance to talk about this in my office, but as you reach certain required deadlines, you need to have the personnel in place. It is going to be challenging to have workers work without pay but I want to underscore how tragic this shutdown is and support Senator Carper in that regard.

You talked about partnership with the States. I think there has been no better example of that than the Chesapeake Bay Program. We also had a chance to talk about this.

The Chesapeake Bay Program was developed by the States in partnership with the stakeholders, developers, local government, farmers, and private groups. It was based upon what every State can do based upon the science in collaboration in order to

improve the quality of the Bay.

The Washington Post over the weekend published that "The importance of the Chesapeake Bay health cannot be overstated." I agree with them completely.

The federal role is critically important because that is the umpire, the one that holds it together, using TMDLs to establish how we are making progress in every State doing what it says it can do and should do.

My first question to you is will you support the Chesapeake Bay Program and work collaboratively with the other federal agencies, State and local jurisdictions and stakeholders in protecting the Chesapeake Bay Watershed, including the partners of the program in the office today in Annapolis?

I want to point out that this committee has reauthorized the Chesapeake Bay Program, recommended that, and the Congress has fully funded the Chesapeake Bay Office.

Mr. Wheeler. Yes, Senator, I fully commit to that. As you may remember, I live in a Chesapeake Resource Protection Area in Virginia. I am personally very concerned about the Chesapeake Bay.

In my second week as a Deputy Administrator, I attended a Chesapeake meeting in D.C. and in the first month as Acting Administrator, I attended the large meeting in Baltimore with the governors of all the Chesapeake States. I think we had one

lieutenant governor there. I am very much committed to the Chesapeake Bay and to the Chesapeake Bay Program.

Senator Cardin. And for the federal office to be located in Annapolis?

Mr. Wheeler. Yes.

Senator Cardin. Thank you. I appreciate that.

I want to talk about some of the related issues with clean air that Senator Carper mentioned, the mercury standard. Let me start with that. By the way, I support Senator Carper in regard to the CAFE or auto emission standards. That is a huge issue with regard to clean air and concerning the Bay.

You mentioned the reduction of CO carbon emissions but remember that the auto industry is still one of the largest sources, so the CAFE standards are important.

In regard to mercury, quite frankly, I do not understand EPA's position. It seems to me that the mercury standards have worked. In your recent announcements, will there be any reduction in enforcement of the current mercury toxic standards?

Mr. Wheeler. We do not believe there will be. We believe that every piece of mercury-controlled equipment that is installed on a power plant today will remain under our proposal. The important thing to remember on the mercury regulation is that it has already been fully implemented but what we had was a Supreme Court case, the Michigan v. EPA case, which directed us

to go back and take a look at the cost benefit analysis that the Obama Administration conducted for the original MATS regulation. We did that.

At the same time, we also conducted the Risk Technology Review. By conducting both of those at the same time, also under a D.C. Circuit Court decision, we believe that although we do not find it appropriate and necessary, that under the Risk and Technology Review, the technologies that have already been implemented on the coal-fired power plants will remain in place.

That is our preferred option under the proposal. We are taking comment. We issued this right before the shutdown began. I do not believe it has been published in the Federal Register yet because the Federal Register is closed. As soon as it does, we are accepting comment on that. We would like to have comment but at the end of the day, I do not believe a single piece of mercury-controlled technology will be removed from any power plant, under our preferred option.

Senator Cardin. Lastly, under Section 4101 of the bipartisan WRDA bill, the EPA is to establish a Stormwater Infrastructure Funding Task Force composed of representatives of federal, State and local governments and non-profit entities to study ways to improve the availability of public and private sources for funding of the construction, rehab, operation and maintaining our stormwater infrastructure which is critical to

the Bay.

Are you committed to setting up that task force?

Mr. Wheeler. Yes. We have already started looking at how we can set that up. We believe it would have to be done under the FACA process but we are committed to getting that done.

Senator Cardin. Thank you.

Thank you, Mr. Chairman.

Senator Barrasso. Before turning to Senator Capito, Senator Inhofe, you have something you want to submit for the record?

Senator Inhofe. Yes, I do. Mr. Chairman, I would submit three things into the record. These are items into the record that highlight the flaw in the science and the assumptions that make up the Fourth National Climate Assessment released one by the Cato Institute, one by the competitive Enterprise Institute, and the last one an article by Nicolas Loris entitled, The Latest Climate Report Feeds into Alarmist Fearmongering.

Senator Barrasso. Without objection.

Senator Capito. Thank you, Mr. Chairman.

Thank you, Mr. Wheeler, for your willingness to serve. I know you have been a great Acting Administrator at the EPA and would certainly fill that role in a permanent capacity.

I would like to say to Senator Cardin that I echo his concerns being a State that is impacted by the Chesapeake

Watershed. West Virginia obviously has impacts there. I am fully supportive of any work that is being done that benefits not just Maryland but the whole region as well and Virginia as we discussed.

I would also like to make a comment about the shutdown. I am speaking for myself. I think a government that is shutdown, I have said, is a useless process. It is painful for your agency and others that are impacted and for the American people but it is fully within the realm of both Republican and Democratic colleagues to come to a reasonable conclusion. I implore the other side to come to the table.

I would like to ask you about some of the criticisms that have been launched against you and give you a chance to respond. Some of our colleagues have talked about the responsiveness of the EPA to congressional letters of inquiry. Could you flesh that out a little?

Yesterday, there was a letter published that talked about your negligence in recusing yourself certain matters. I would like to give you a chance to address those issues.

Mr. Wheeler. Thank you very much.

Senator Capito. If you can do it briefly, that would be great.

Mr. Wheeler. I believe we have been very responsive to the letters from Congress as well as FOIA. In particular, the

Administrator's office received a 400 percent increase in FOIA request during this Administration. We have added a lot of additional employees to process things like that.

On the recusal side, I have worked with the career ethics officials at the agency since day one. I have recused myself from any work involving my prior law firm and all of my prior clients under both the ethics regulations as well as the Trump Ethics Pledge. I have not violated that and I continue to consult with our career ethics officials on a regular basis.

Senator Capito. Thank you.

You and I have talked about PFAS and the concerns I have, not just for West Virginia but nationally. You mentioned the management plan will be coming out and that it has more than one agency weighing in on that.

I could not tell from your answer whether you are going to be setting a standard in that management plan or not?

Mr. Wheeler. We are going to be recommending and moving forward on a number of different areas under a number of different statutes. We are looking on the water side as well as the CERCLA superfund side and the TSCA Program as well.

When it comes out, this is going to be our management plan, a multimedia approach to dealing with PFAS and PFOA. I do not know the specifics of what is in the management plan because it is currently in interagency review.

Senator Capito. Okay.

Mr. Wheeler. We were hoping to release it next week but with the shutdown it is going to be slightly delayed.

Senator Capito. Another question I have is on the water management issues. There have been a series of reports in Appalachia saying that leakage out of our municipal and our rural systems of water in West Virginia is that 55 percent is lost at a significant cost to taxpayers, ratepayers and also to the environment.

For areas short on water, which does not happen to be ours, but for areas short on water, this has to be a daunting challenge for water systems all around the Country. I was wondering if this is something you could address at EPA? Are there specific programs there under the Drinking Water State Revolving Fund that we might have some possibility to help these systems get more efficient and be better stewards of the environment through the water systems?

Mr. Wheeler. I think there is. I think you are correct and under the State Revolving Loan Fund, I think we can be helpful. I would certainly be more than happy to work with you and your staff in trying to address those issues in West Virginia.

Senator Capito. It is obviously a country-wide issue. I think a lot of it has to do with the age of the systems, when

the systems were built, and how they have not been reconstituted.

Also, on the Clean Power Plan replacement, we heard there was an emissions rise in 2018 that was attributed, you said, to a cold winter and hot summer, and also to more economic activity?

Mr. Wheeler. Yes.

Senator Capito. You said you expect that to go down over time. What gives you the confidence, if this economy rolls the way we think it is going to, that will actually result?

Mr. Wheeler. We are beginning to see new investments and more energy efficiency not only in the electric power sector but also in automobiles where we still have the CAFE standards in place to reduced emissions going forward.

Once ACE is fully implemented, we will see 34 percent reductions in CO2 by the 2005 levels. We see across the board for all the industries we are working with also reductions in methane emissions as well, and we believe the CO2, greenhouse gas emissions will continue to go down.

Senator Capito. Thank you.

Senator Barrasso. Thank you, Senator Capito.

Senator Sanders.

Senator Sanders. Thank you for being with us, Mr. Wheeler.

President Trump has indicated his belief that climate

change is a hoax perhaps perpetrated by the Chinese. Do you agree?

Mr. Wheeler. I believe that climate change is real. I believe man has an impact on it.

Senator Sanders. The President has said that climate change is a hoax. Do you agree with him?

Mr. Wheeler. I have not used the hoax word myself.

Senator Sanders. Leading scientists around the world, looking at many, many hundreds of reports, have indicated that we have 12 years in order to stop the worst impacts of climate change. What they are talking about are rising sea levels, more drought, more extreme weather disturbances, more wildfires, more migrations of people.

Do you agree with the scientific community that climate change is a global crisis that must be addressed in an aggressive way?

Mr. Wheeler. I believe that climate change is a global issue that must be addressed globally. No one country can --

Senator Sanders. That was not my question. I do not have a lot of time and I would appreciate your answering the questions.

The scientific community has said climate change is one of the great crises facing our planet and if there is not unprecedented action to transform our energy system away from

fossil fuel to sustainable energy and energy efficiency, there will be irreparable damage in the United States and virtually every Country on earth. Do you agree with the scientific community?

Mr. Wheeler. I would not call it the greatest crisis, no, sir. I consider it a huge issue that has to be addressed globally.

Senator Sanders. I found it interesting, Mr. Wheeler, that you, as the nominee to be the head of the Environmental Protection Agency, in your opening statement, you did not mention the words "climate change." How does it happen that the nominee to be the head of the Environmental Protection Agency does not mention the words "climate change" at a time when the scientific community thinks climate change is the great environmental crisis facing this planet?

Should the American people have confidence that you are going to help us deal with this global crisis?

Mr. Wheeler. Yes, they should have confidence because we are moving forward to reduce CO2. Our ACE proposal will reduce CO2 approximately the same levels that the Clean Power Plan would have, if it had been implemented.

We are reducing CO2 from our CAFE standards and also addressing greenhouse gases through our methane program as well.

Senator Sanders. You are addressing?

Mr. Wheeler. Yes.

Senator Sanders. The scientific community tells us that we have a crisis and that we need unprecedented action to dramatically reduce carbon emissions, not only in this Country but around the world.

We are the strongest economy in the world. If the leadership of the Environmental Protection Agency in the United States says to China, Russia, India and countries all over the world, we have to move aggressively to protect this planet for our children and our grandchildren, we can have some impact on the entire international community. Are you prepared to do that?

Mr. Wheeler. We are implementing the laws that Congress has passed.

Senator Sanders. But you are the leader.

Mr. Wheeler. We will implement those.

Senator Sanders. That is not what I am talking about. We have people over here who do not believe that climate change is even real but you are the nominee for the leadership of the Environmental Protection Agency.

Will you provide the leadership in this Country and the world to say we are concerned about the future of this planet for our kids and our grandchildren?

Mr. Wheeler. We are concerned about the future of this

planet for our children and grandchildren and we are implementing the laws passed by Congress including the Clean Air Act. That is why we are moving forward with the ACE proposal to reduce CO2 from the electric power generating sector. We are moving forward with the safe CAFE proposal to reduce CO2 levels.

Senator Sanders. Is rising sea levels a concern or is that a hoax?

Mr. Wheeler. Rising sea levels is a concern and we believe in adaptation. We are looking at a number of things.

Senator Sanders. I am sorry, adaptation?

Mr. Wheeler. Adaptation to help our rising sea levels, absent additional congressional authority.

Senator Sanders. Here is the point. We have people here who do not believe in climate change but you are going to be the leader perhaps of the Environmental Protection Agency. We need your assistance now. Are rising sea levels real? What are we going to do to minimize that? Are the wildfires we have seen in California and elsewhere related to climate change, in your judgment?

Mr. Wheeler. There is probably some relation to climate change. I think the biggest issue with the wildfires has been forest management.

Senator Sanders. That is the biggest issue, not the droughts that we are seeing?

Mr. Wheeler. That is the biggest issue.

Senator Sanders. Not the droughts?

Mr. Wheeler. In my opinion, yes.

Senator Sanders. Thank you.

Senator Barrasso. Thank you, Senator Sanders.

We have already heard from Administrator Wheeler that he supports innovation as a means to reduce emissions. I recently wrote a New York Times op ed entitled Cut Carbon Through Innovation, Not Regulation. I look forward to working with Acting Administrator Wheeler to support innovation in ways that respect the law and do not unfairly punish businesses.

I ask unanimous consent to enter into the record the New York Times editorial of December 18, 2018, Cut Carbon Through Innovation, Not Regulation.

Senator Whitehouse. Without objection, as long as my response to it can also be put in the record.

Senator Barrasso. It was a very nice letter to the editor.

Senator Whitehouse. Thank you.

[The referenced information follows:]

Senator Sanders. By the way, Mr. Chairman, may I place an article in the record in response as well?

Senator Barrasso. Yes, without objection.

[The referenced information follows:]

Senator Barrasso. Senator Rounds.

Senator Rounds. Thank you, Mr. Chairman.

Mr. Wheeler, I am going to give you an opportunity to share a bit in terms of the approaches we need on an international basis but before we get into that, I would like some specific thoughts with regard to an item you do have control over and that is the nationwide plan to develop E15 markets.

Mr. Wheeler, last week, an EPA spokesman commented on the EPA's proposal to permit the sale of year-round E15, which are 15 percent ethanol and 85 percent regular petroleum products.

The quote that was given to us is this: "This is a priority for both President Trump and Acting Administrator Wheeler. The ongoing partial shutdown will not impede the EPA's ability to keep our deadline."

I think one of the concerns a lot of producers in the upper Midwest have with regard to ethanol is in order to get into the summer driving season, we really need to have the guidelines and rules laid out as quickly as possible.

Do you believe you will be able to commit to finalizing EPA's rule permitting year-round sale of E15 before the summer driving season starts?

Mr. Wheeler. As of today, yes, but I do caveat that with we are unable to work on it right now during the government shutdown.

Senator Rounds. Where are you in the process and when do you expect the proposed rule to be released? What is your best guess? I understand you have a government shutdown and you have to work around it as well.

Mr. Wheeler. I believe we were originally planning on issuing the proposal in February. I kept the EPA open an additional week longer than the rest of the Federal Government so we have not been shut down as long as some of the other federal agencies and departments.

It is not a day for day exchange as far as how much longer it will take us on the proposal but we may be slightly delayed at this point but we will get it done before the summer driving season provided we are back.

Senator Rounds. In a reasonable length of time?

Mr. Wheeler. Reasonable time.

Senator Rounds. Within the law, small petroleum refineries are offered the opportunity to request a rollback on their requirement to actually incorporate ethanol into their products. Right now that amounts to about a 2.25 billion gallon per year reduction in the total amount of ethanol that has been incorporated into the fuel supplies.

I do not think the original intent of Congress was that reduces the total amount of ethanol that is actually being marketed. Can you share with us your thoughts about the options

we have when we recognize the law allows those refineries to take a reduction or apply for a reduction?

What guidelines, alternatives or authority do you have to try to still meet the original goals for ethanol production while at the same time honoring the guidelines in the law that allows those smaller refineries a hardship exemption? Can that exemption be reduced if you feel you cannot meet the guidelines Congress established with regard to the RVOs?

Mr. Wheeler. As you know, Senator, we have had three court cases on the small refinery program instigated during the Obama Administration when they were not granting any small refinery exemptions. EPA has lost all three in the courts.

We are moving forward to implement the small refinery exemptions as included in the RFS program as part of the Energy Policy Act of 2005, Clean Air Act, but it has also been encouraged through the appropriations process. We have appropriations language telling us to implement the small refinery exemption program as well.

You are correct. There are two competing issues there. If you grant a small refinery, it takes barrels away from the overall RFS goal of 15 billion gallons. There is not a lot of leeway there for us. It depends somewhat on the timing of the applications.

If we were to reduce the 15 billion gallons by the amount

we grant, you would end up having a rolling impact on having more refineries being subjected to higher levels of the ethanol mandate and end up having even more refineries being eligible for the exemption.

We have tried to provide more transparency. We started the dashboard this past fall so that everyone understands what we are doing with the small refinery exemption. We are also taking a hard look at the overall numbers through our reset program. We intend to move forward with both the reset, the E15 and our RVOs. We are hoping to propose all three of those in February.

Senator Rounds. Very good. Thank you.

My time has expired. Thank you, Mr. Chairman.

Senator Barrasso. Senator Whitehouse.

Senator Whitehouse. Thank you very much.

Welcome, Mr. Wheeler. I wanted to let you know that I appreciate the polite and professional demeanor that you have brought to your task. Substantively, I continue to believe that you have your thumb, wrist, forearm and elbow on the scales in virtually every determination that you can in favor of the fossil fuel industry. I think that is very unfortunate.

I do think there is a baseline that we should work off of straight answers that re truthful and complete. I would note with respect to your recent answers to Senator Sanders about the CAFE standards, the Federal Register analysis, your analysis, of

the CAFE standard proposal you have increases CO2 emissions year after year after year after year up to 9 percent increased CO2 emissions by 2035 relative to the existing baseline.

I do not think it is fair to say you are taking action to help the carbon emissions problem when your proposal is worse than the baseline you began with of the Obama CAFE standards. I would put the page into the record, page 43327.

Similarly, you referred to your ACE Program replacing the Clean Power Plan as being something that would reduce carbon emissions. Again, your own analysis in the Federal Register, the government's own analysis in the Federal Register shows that compared to the Clean Power Plan, your proposal will raise carbon emissions, CO2 emissions, by tens of millions of tons every single year, including, for example, in 2030 raising it by 60 million tons in that year.

I would like to put those two pages into the record.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Whitehouse. When you were last here on November 8, 2017 for your confirmation hearing as Deputy, I asked what you knew about your client, Bob Murray's so-called action plan, that he was running around bragging was being implemented by Scott Pruitt and the Trump Administration.

Here is what you told me: "I did not work on the plan and I do not have a copy of it. I saw it briefly at the beginning of the year but I do not have a copy of it. I looked at it and handed it back to Bob Murray." I think the reasonable conclusion from that testimony is that you really only had a hand on it briefly and only saw it very briefly.

Scroll forward to December 6, 2017 when we learned by published reports on March 29, 2017, you attended a meeting between your client, Bob Murray and Energy Secretary, Rick Perry, where this action plan was discussed.

There you are and there is Murray. If we go on to the next photograph, you can see this action plan was right there in the room. It was a nice cozy meeting. Let's show the bear hug photo. That is really a sweet regulatory relationship.

Mr. Wheeler. For the record, that is not me, though.

Senator Whitehouse. No, no, that is your client, Mr. Murray.

We later obtained a copy of the Murray action plan which was in that room with Secretary Perry. It turns out it was also

provided to Vice President Pence and provided to former EPA Administrator Pruitt.

You arranged for Murray to meet with Perry. You tried to schedule a meeting with Pruitt but he fell ill and the meeting did not take place. Murray was scheduled to meet with Pruitt that same day.

Can you tell me now how many meetings with Trump Administration officials for Bob Murray did you arrange, attempt to arrange or attend, and with whom?

Mr. Wheeler. Yes, sir. First of all, I did not try to arrange the meeting with Scott Pruitt. Somebody else in my firm did that. The meeting with Secretary Perry, the purpose of that meeting was to talk about the relief and I forget what it was called at the time.

Senator Whitehouse. My question was quite specific which was how many meetings with Trump Administration officials did you arrange or attend for Mr. Murray?

Mr. Wheeler. The meeting with Secretary Perry and then I believe we had an additional meeting at the White House for the energy advisor there. I did not attempt to arrange or attend any meetings where Mr. Murray attended.

Senator Whitehouse. I am sorry, Mr. Wheeler. My time has expired. I do not want to play gotcha with you. What I do want is truthful, complete factual answers about this. I am going to

expand on these questions in questions for the record. I expect you to provide complete and truthful answers as if under oath here at the hearing. Is that understood between us?

Mr. Wheeler. Absolutely.

Senator Whitehouse. Thank you.

Senator Barrasso. Thank you, Senator Whitehouse.

Before heading to Senator Boozman, Senator Inhofe.

Senator Inhofe. Thank you.

There is an editorial in the Investor's Business Daily that looks at the government charts that map out trends in hurricanes, tornadoes, droughts, wildfires and all that. There is no upward trend in extreme weather but instead it shows there is no trend in any of them.

I would ask this be made a part of the record at this point.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Barrasso. Senator Boozman.

Senator Boozman. Thank you, Mr. Chairman.

Thank you for being here and your willingness to serve.

First of all, I want to thank you and your staff for your timely response. We have an issue going on in Bella Vista, Arkansas with a fire that has to do with a stump disposal. Your staff has been very, very good. This is the State's problem but you do have the expertise on staff to help them.

Senator Inhofe. Senator Boozman, could I interrupt for just a moment? I dropped the ball here. You had agreed to help out Senator Ernst by allowing her to go first. Would you still like to do that?

Senator Boozman. Go ahead.

Senator Ernst. I still have some time.

Senator Boozman. Okay. Are you sure?

Senator Ernst. Yes.

Senator Boozman. Like I said, thank you for doing that. I think it is a great example of the agency working with States in situations like that. We need more of that. Thank you very much.

Mr. Wheeler. Thank you, Senator.

Senator Boozman. Over the years, you were an integral part of helping this committee pass many important pieces of legislation. You understand the work that goes into getting

comprehensive bipartisan legislation passed, which this committee can be very proud of. We have passed a bunch of that.

How do you feel your role as a staff member on the EPW Committee has prepared you to bring people from all walks of life to the table to develop and implement important EPA regulations?

Mr. Wheeler. Thank you, Senator.

I think it has helped me a lot. I worked on several highway bills. I was the staff director for the 2005 highway bill that we did as well as several WRDA bills. I brought together people on both sides.

Oftentimes on the highway side, it was people from not necessarily different parties, but different sized States in different parts of the Country and learning about the issues that impact different States, small States, large States, populated States, and sparsely populated States. I am thinking of Alaska and Wyoming in particular.

It really does educate someone on how to address large scale problems that face the entire Country. That has helped me in my time so far at EPA.

Senator Boozman. Very good.

During the previous Administration, there was concern that rules were developed not based on sound science but on political ideology. Under your leadership, can we expect the EPA to be

more transparent regarding how rules are developed?

Further, as Administrator of the EPA, can we count on you to base all of your decisions on the rule of law and not on the Administration's or even your own political ideology?

Mr. Wheeler. Absolutely. We are following not just the statutes but also the Supreme Court cases as well. I know there are cases where people on the left are not happy that we are moving forward with the solutions and people on the right are not happy we are moving forward with the solutions. It is my job as Administrator to follow the law and follow Supreme Court cases.

Senator Boozman. Very good.

In your time at EPA and at the EPW Committee, you worked hard to improve environmental outcomes while providing regulatory certainty for the Country. Can you please explain the environmental and economic benefits regulatory certainty provides? That is what we hear so much that you can play with good or bad rules but if you do not know what the rules are, it is very, very difficult.

Mr. Wheeler. Absolutely. I think our proposal for WOTUS regulation is a perfect example of that. As I mentioned earlier, I think it is really important for a property owner to be able to stand on his or her own property and be able to tell whether or not they have federal water on their property.

By clearly defining what is and is not, in defining what is not a water of the U.S. is just as important as defining what is and would give that certainty to the American public and allow people to use their property and land, prosper and help the entire Country. I think that is key and important.

Senator Boozman. Criticism of EPA during the previous Administration was the agency's disconnect with rural America. Many hardworking Americans in rural States felt they did not have a voice and their opinions did not matter.

What have you done and what do you plan to do in the future to facilitate a stronger level of trust between EPA and rural America? You just mentioned Waters of the U.S.

Mr. Wheeler. I try to get out of D.C, out of the office as much as I can, and travel around the Country. I have met with farmers leading up to our WOTUS proposal. I met with farmers all over the Country.

I was out in California meeting with farmers, in Kentucky, Montana, and Tennessee. It is real important for me to hear from people as to what their issues are and what their concerns are about. The farmers and the agriculture community are good stewards of the land. We need to make sure we are working in conjunction with them to protect the land.

Senator Boozman. Thank you.

Thank you, Mr. Chairman.

Senator Barrasso. Thank you, Senator Boozman.

Senator Carper. Mr. Chairman?

Senator Barrasso. Senator Carper.

Senator Carper. Mr. Chairman, I ask unanimous consent to submit for the record an article and letter regarding EPA's dismissal of the Particulate Matter Review Panel and the agency's insistence on moving forward with its secret science proposal limiting scientist input for advisory panels while also attempting to ignore scientific studies where the underlying data has not been made public will greatly hinder EPA's ability to use the best available science to protect human health and the environment.

Thank you.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Barrasso. Senator Merkley.

Senator Merkley. Thank you, Mr. Wheeler.

Yesterday when we talked, I laid out all the things that are affecting Oregon through climate chaos, affecting our forests, our farming, and our fishing. I asked you how concerned are you about these impacts on my constituents, the people of the United States, and you shifted to saying "my job is to follow rules and work to obey lawsuits."

I came back to you again and I said again, these are tremendous impacts that we are seeing, hugely damaging. How concerned are you? You shifted to saying you are looking forward to going to Africa to talk about clean drinking water for Africans.

I am going to give you a third chance to answer this question. The calamities we are seeing are enormous in my State and across this Country, more powerful hurricanes, more devastating forest fires, more acidic waters affecting our shellfish industry, loss of water for irrigation from snow packs, and pine beetles that are eating up our forests.

On a scale of 1 to 10 with 10 being you stay awake nights worrying about it and 1 being it occasionally crosses your mind, how concerned are you about this devastating impact on our Nation and the world?

Mr. Wheeler. I would say I stay awake at night worrying

about a lot of things.

Senator Merkley. One to 10, please answer my question and not answer some other questions. On a 1 to 10 scale, how concerned are you?

Mr. Wheeler. Eight or 9.

Senator Merkley. Really? Then let us turn to the issue of ACE, the Affordable Clean Energy Plan. You told me this gets just as much carbon reduction as does the Clean Power Plan. However, your own agency says it will result in 3.5 percent higher CO2 production by 2030 than the Clean Power Plan.

Why did you come to my office and tell me it is the same when your agency experts say it will produce a lot more carbon dioxide?

Mr. Wheeler. My agency experts have told me that we are going to get a 34 percent reduction in CO2 based on 2005 levels once the ACE regulation is fully implemented.

Senator Merkley. Yes, but what you quoted to me was a comparison to the Clean Power Plan so when you shift statistics, that is not transparency and that is not integrity.

A study from Boston University, Harvard University and Syracuse University found that because ACE has no meaningful reductions in CO2, because it allows plants to bypass pollution controls, that in 20 States you have a significant increase in sulfur dioxide and nitrogen dioxide and you have, in 6 States,

an increase in CO2 as compared to no regulation at all.

How is does a plan have integrity when you get more reductions from no regulations than from your plan?

Mr. Wheeler. I believe that study just came out yesterday or today. I saw an article about it this morning. I have not had a chance to review it. I am not sure how they are calculating that but that is not what the career people at the agency are telling me about the ACE.

Senator Merkley. Let us turn to forest fires. It is really shocking to hear you say it is forest management. All the conditions of longer, hotter summers have tremendously increased the fire potential in our forests.

We saw it devastating Idaho, Montana, Washington, Oregon, and California under very different types of conditions. Is forest management an issue? Yes, which is why I advocate for thinning and fuels reduction but that is not the reason these fires are so much longer. It is because the summer season is so much hotter and longer. We have different types of storms that are starting a lot more fires.

I encourage you to actually become informed on this issue if you are going to comment publicly on it. Would you agree to actually read some of the literature on this?

Mr. Wheeler. I will agree to continue to read the literature on this, yes.

Senator Merkley. When I spoke to you yesterday, I asked if you were aware of how much carbon dioxide rates of production and levels of pollution have increased in your lifetime. Can you now share with the answer to that question?

Mr. Wheeler. I believe you told me it was close to 100 percent increase in CO2 since I was born.

Senator Merkley. No, that is not the case but 100 percent would be dramatic but it is not that dramatic. In your lifetime or my lifetime, I am a few years older than you, it is 100 points from about 314 to 414, 100 points or is it more like a 30 percent increase. That is a very significant change in the chemistry of our air on this planet.

The other thing I talked to you about was when you were born or I was born, it was about a rate of a third of a point per year and now it is aiming towards two and a half points per year. The rate of pollution, despite all the conversation we have been having is accelerating. This is of enormous concern, that the rate is actually accelerating despite the international conversations.

My time is up. I hope you will become more familiar with these issues. Our entire ecosystem and our rural agricultural base, which you have been talking about, our fishing, our farming and our forests, are at grave risk.

Mr. Wheeler. Thank you, Senator.

Senator Merkley. I do want to clarify I meant 100 points, not percent. That was a mistake.

Senator Barrasso. Thank you.

Senator Ernst.

Senator Ernst. Thank you, Mr. Chair.

Thank you, Mr. Wheeler. I do want to commend you because you have been actively engaged with me and my staff. I truly do appreciate the time you have taken to address some of our concerns.

I would like to just have you reaffirm for me today, and you know exactly the questions I am going to ask, the commitment that we will see E15 for our summer driving season.

Mr. Wheeler. Yes, we are still on schedule for that. It depends on if we are not able to work on it during the government shutdown. When I listed some of the States I visited and talked to farmers, I was obviously in Iowa talking to your farmers. I am sorry I did not mention that.

Senator Ernst. I do appreciate that, because I know the RFS is very important to our Iowa farmers as well as WOTUS. Thank you very much for working on that. We have had a very good response.

I do understand we are in a government shutdown. I hope we can resolve this very soon. Have you been able to take any steps that would mitigate any sort of delays we might see due to

the shutdown for the implementation of E15 year round?

Mr. Wheeler. I am afraid not on the E15. It is not a court-ordered deadline for us and it is not considered an emergency. At this point, we can only work on the court-ordered deadlines emergencies and the constitutional authorities such as assisting in my preparation for the confirmation hearing.

Senator Ernst. We know just this past Monday, the President also reiterated again that he wants to see E15 year round, so we will hope for the best as we work through the government shutdown.

When President Trump was elected, REM prices were more than a dollar at that time. During 2016 and 2017, we saw over four dozen small refinery exemption petitions granted during that time period.

In the last two years, REM prices have dramatically dropped so they are down to 10 cents and lower now. With the REM prices being so much lower today than they were two years ago, do you agree this means there is less economic hardship associated with having to purchase those REMs?

Mr. Wheeler. The REM prices are certainly one criteria that is looked at to determine the economic hardship. The analysis for that is conducted by the Department of Energy and they send their recommendations over to EPA.

Senator Ernst. In terms of addressing those sent over from

DOE, I do understand they evaluate for that hardship. I would say with REMs being a tenth of what they were many years ago, the prices, the DOE evaluates for the hardship and makes that recommendation to you at the EPA. What is the EPA's role in granting or denying a full or partial waiver? Can you describe that process to me?

Mr. Wheeler. It is done by our technical team and the Air Office where they review the information from the Department of Energy and they move forward with the recommendation to the Administrator for Air and onto myself for a recommendation on whether or not to grant a full, partial or no relief.

Senator Ernst. Can you assure me that you will be examining those exemptions and not giving blanket exemptions as it appears has been done in the past by your predecessor?

Mr. Wheeler. Yes, we will be examining each one individually to make sure each one is warranted individually.

Senator Ernst. Certainly we understand the potential for hardship out there but we do not agree that every exemption given in the past has been due to a hardship.

I have one minute left. I want to touch on WOTUS and again, thank you very much for working on that issue. Our Iowa farmers and ranchers are very, very appreciative of the work that has been done.

Can you elaborate on how the replacement rule provides more

clarity to our farmers and land owners than the original 2015 rule?

Mr. Wheeler. Absolutely. As I mentioned earlier, we specifically define what is a water of the United States and we also define what is not. We are very clear on what is and what is not.

Again, my overarching goal for the WOTUS program is so that the property owner can decide for themselves whether or not they have water of the U.S. without having to hire outside consultants or attorneys to do that for them.

Senator Ernst. I thank you for that.

I will give my time back. Thank you, Mr. Chairman.

Senator Barrasso. Thank you, Senator Ernst.

Senator Booker.

Senator Booker. Thank you, Mr. Chairman.

Thank you, Mr. Wheeler.

I know a lot of my colleagues have brought this up but you are aware of the Intergovernmental Plan on Climate Change?

Mr. Wheeler. Yes, sir.

Senator Booker. You disagree with the findings of it?

Mr. Wheeler. No, I have not disagreed with the findings.

Senator Booker. I guess I am asking are you aware.

Mr. Wheeler. I have not disagreed with the findings. I have been briefed once by my career staff. They gave me a

number of background information to read and we scheduled additional briefings on it for early January. Those have been postponed but no, I do not disagree with the findings.

I am still examining the findings, trying to understand what was in it and what was covered.

Senator Booker. I find that frustrating because of the urgency of the challenges we face before us. Again, the review talks about the emissions, the urgency to reduce greenhouse gas emissions and keeping warming below 1.5 degrees, and potentially catastrophic natural disasters, extreme heat, literally potentially seeing upwards of $1 trillion worth of damage to U.S. property.

What about the National Climate Assessment issued by the 13 federal agencies, including the EPA that was issued last November? Are you familiar with that, sir?

Mr. Wheeler. I am sorry I thought that was what you were asking me about?

Senator Booker. No, the ITCC report.

Mr. Wheeler. Oh, the ITCC. I am talking to my staff about the U.S. Government assessment.

Senator Booker. Again, sir, this is cross agencies that have concluded that we are going to suffer impacts, heat related deaths, coastal flooding, and infrastructure damage. In light of the ITCC scientists, the Federal Government scientists that

range from the United States military to your very own agency, the compelling and overwhelming science of this, there is this urgency to move as quickly as possible.

Yet, it seems in light of this the consistency of the different regulatory changes you are making fly in the face, and I know others of my colleagues have brought this up, but when it comes to the clean car standards, according to the EPA's own analysis of the proposal, you estimated over time your recommended approach would result in 7.4 billion tons of additional carbon pollution. Do you not agree with that?

Mr. Wheeler. My career staff has told that it is a slight incremental increase from what the Obama Administration's proposal was. I think a lot of people do not understand that under the Obama numbers, they offered a number of exemptions so that the actual number itself, the end effect would be lower.

Senator Booker. I am pulling from the EPA's own analysis. You may call it slight but 7.4 billion tons of additional carbon pollution, your Clean Power Plan repeal when it released its proposed Affordable Clean Energy Rule, repealing and replacing the Clean Power Plan, again, your own analysis from your own agency estimates this will lead to substantially higher levels of greenhouse gas warming.

If you go to your air pollution from oil and gas infrastructure, again, your own scientists, EPA releases its

proposed rules and looking at methane, one of the very powerful greenhouse gases, again your own analysis shows your weakening of this rule will lead to substantially more greenhouse gas pollution.

Your air pollution from landfills efforts, later in October, you released a proposed rule to delay for two years, if I am correct, the deadline for landfill mission guidelines that would limit these very dangerous methane emissions and other pollution.

Again, this two year delay seems to again add to that larger problem. It seems a consistency of actions you are taking to weaken rules undermining the sense of urgency that cross agencies are telling us we face growing challenges, not just now but really over the next 25 years.

I am just wondering if your mission at the EPA which is to protect human health and the environment, which you swore an oath to faithfully discharge these duties, yet you seem to be consistently doing things that undermines the health and safety of this Nation, the economic well being of our Nation and frankly, putting in further peril not just our Country but the planet.

I am trying to understand what is motivating this. I do not want to be cynical in that question but why are you pulling back on regulations that will ultimately help us to deal with

what our climate scientists say we need to do in terms of reducing the greenhouse gas emissions?

Mr. Wheeler. I believe we are moving forward on a proactive basis on the ACE regulation. I believe that is going to show a 34 percent reduction in CO2. In the course of the regulatory analysis for each of our regulations, we do a number of different scenarios, a number of different data runs. I would be happy to supply information to you in writing but my career staff tells me that our proposal is going to get us a 34 percent reduction in CO2 and the Obama proposal would have gotten between 33 and 35 percent reduction.

Senator Booker. I know my time has expired. I would like to introduce for the record the data from his own scientists that shows what he is saying just does not hold water and contradicts the claims he is making.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Barrasso. I would like to interject that the EPA's decision to withdraw this so-called Clean Power Plan I believe was the right one. Twenty-seven States challenged the Clean Power Plan in court. The Supreme Court stayed the rule; it was not just bad policy, it was against the law.

Senator Braun.

Senator Braun. Thank you.

It is good to be on a committee like this. It means a lot to me. I have been a steward of the land for over 30 years. I have always felt that conservatives need to do a better job of talking about conservation and talking about the things that we believe in that really make a difference.

I have been a tree farmer for nearly 30 years involved in agriculture. I used it in the campaign. I started the Ecology Club back in high school. What we are talking about here is important.

To me, I always view something in the process that you look at how you are going to accomplish the goal. I think clean air and clean water is important to everyone. I also look at the fact that over the weekend, and I know it has been discussed here before, I had three different farmers approach me about dealing with the technicalities of Waters of the U.S.

I am going to ask you a couple specific questions and then I want to get your viewpoint on how we navigate this dynamic of

wanting to adhere to what I think all of us believe in, clean air, clean water, good health and then the practicality of doing what you do through the EPA to make sure we take care of the big picture and not unduly complicate lives for people on the firing line.

Waters of the U.S., the ruling, as given in 2015, has it changed at all in the meantime or is it in the process of being looked at?

Mr. Wheeler. The 2015 Obama proposal was stayed by some courts, has been implemented by others. Right now we have a patchwork quilt of what is the current regulatory process for Waters of the United States which is why we came out with our proposal in December to rewrite and redo the Waters of the United States going forward.

I believe we are going to provide the certainty the American public needs in order to protect the waters of the United States.

Senator Braun. In my State of Indiana, is the regulation component being administered more through State agencies trying to figure out what the ruling is or the interpretation of it or is it being mandated more from the EPA?

In other words, I get the feeling in our case we might be not fully understanding what that regulation is and maybe being over bearing in the enforcement of it.

Mr. Wheeler. It is a rulemaking in conjunction with the Army Corps of Engineers. They are the ones that issue the permits on the ground and would be working with your constituents in Indiana. It varies from State to State right now based upon the district courts as far as which standard is in place, the prior to 2015 or the current 2015.

Senator Braun. What is your goal to have that fully clarified so farmers and State agencies know what is what?

Mr. Wheeler. We issued our proposal in December. It is out for public comment. I do not believe it has been published in the Federal Register because of the shutdown. Our goal is to have that rulemaking completed before the end of this year.

Senator Braun. Do you consider yourself a conservationist? How will you measure your own success in this job once you get into it?

Mr. Wheeler. I do consider myself a conservationist. I am an Eagle Scout, I am an avid hiker and camper. I still hike and still camp. When I met with you last week, I shared with you so far my favorite job in my life has been as a Boy Scout summer camp counselor for three summers when I was in college.

I am a big believer in the outdoors and I think success will be that we have moved the ball forward on reducing pollution. I will go back to what I said in the opening statement, helping communities that are ravaged by superfund

sites. It greatly impacts low income Americans, oftentimes and in most cases, minority communities, and try to help those communities.

Some of the superfund sites we have cleaned up and we are getting cleaned up are contaminated by lead. These are areas and communities where actually people and families are living today. To get those areas cleaned up so those children are not exposed to lead is very important.

There is one site in Colorado that I did not mention in my opening statement. It was on track to be cleaned up over I think 20 years. We are speeding that up. We are going to get that cleaned up in the next few years so that we will not have two generations of children growing up in low income housing subjected to lead in their ground.

Senator Braun. Thank you.

Mr. Wheeler. Thank you.

Senator Barrasso. Thank you very much.

Senator Duckworth.

Senator Duckworth. Thank you, Mr. Chairman.

Deputy Administrator Wheeler, as you know, I am very proud that my State is home to EPA's Region V office which features civil servants who are leaders in the fields of water quality, superfund cleanup and Great Lakes restoration.

I am, however, concerned that EPA Regional Administrator

Cathy Stepp and other political appointees are working to undermine that important work. An ATSDR report published last year indicated an elevated cancer risk in the community of Willowbrook, Illinois as a result of being next to a facility that uses ethylene oxide, a known carcinogen.

I do want to thank you for how accessible you have been to me and Senator Durbin on this issue, for numerous personal phone calls you got on, and meeting with us in person. Thank you for how accessible you have been. It has been a nice change from your predecessor.

However, recently my office received alarming information alleging that senior political appointees instructed EPA personnel not to inspect any facilities in Region V that emits ethylene oxide. Yesterday evening when we checked EPA's public enforcement tool, the Eco tool, we found there has been no ethylene oxide inspection across the Country in at least the last six months. This disclosure is incredibly disappointing to me.

The EPA Office of Inspector General should immediately begin an independent investigation into this allegation that political appointees within the EPA are issuing orders to not conduct ethylene oxide inspections.

Will you commit now to joining me in requesting that the EPA OIG initiate an investigation into this public health

matter?

Mr. Wheeler. First, Senator, I would like to talk to my staff and find out what is going on. This is news to me. I would like to know whether or not it is accurate before I go further with that.

Senator Duckworth. We ran the check just yesterday evening after you and I had spoken.

Will you at least commit to issuing a document retention order to all personnel in Region V and promise to me that EPA will monitor all facilities in my State that emit this carcinogen?

Mr. Wheeler. I know we are monitoring a number of facilities that release ethylene oxide not just in your region but across the Country. We are looking at all of them.

The Willowbrook facility that mentioned, we have had a couple of public meetings there where we have discussed the monitoring data with the residents of the community. We are looking at the emissions at other facilities around the Country. I know that is taking place.

Senator Duckworth. What about issuing a document retention order to all personnel as I will be requesting an IG inspection?

Mr. Wheeler. If there is an issue there, certainly we want those documents retained, not just for this but for anything. We maintain all of our documents.

Senator Duckworth. Thank you.

Right before the holidays and the government shutdown, you announced release of the Administration's long delayed Lead Action Plan. I was disappointed to see that this plan walks back earlier goals on eliminating lead exposure. In fact, the new plan has the objective to reduce children's exposure as opposed to eliminating their exposure in homes and child occupied facilities with lead-based hazards.

Will you commit EPA to the goal of eliminating, not just reducing but eliminating lead exposure in children?

Mr. Wheeler. It is certainly our goal to eliminate lead exposure in children and we do want to do that. We are moving forward with a number of regulatory programs to accomplish that, the Lead Dust Rule that I mentioned earlier, or Lead and Cooper Rule. This would be the first time in over 20 years. We take very seriously lead contamination at superfund sites around the Country.

Senator Duckworth. Thank you.

Will you immediately reinstate Dr. Ruth Etzel who lead the Office of Children's Health Protection and was abruptly put on leave?

Mr. Wheeler. I am sorry, what were you asking about Dr. Etzel?

Senator Duckworth. Will you immediately reinstate her?

Mr. Wheeler. She is on investigative leave because of allegations by her employees. I cannot go into more detail in a public setting because of personnel issues but I would be happy through the oversight function of the committee to brief you. I think we have to go through the Chairman to do that. I want to make sure my general counsel is involved to go into more detail about the circumstances around that.

Senator Duckworth. Thank you.

As some of my colleagues across the aisle have mentioned, the state of renewable fuels industry in this Country is at a turning point. Over the last six months, we have seen more ethanol plants sold, idled or closed than ever before.

Meanwhile, EPA is granting the world's largest refining companies the so-called hardship waivers. My colleague, Senator Ernst, brought up the issue of these hardship waivers.

These companies are earning record profits, billions with a B. The CEOs of these companies have even pointed to the fact they were able to obtain these hardship waivers on their earnings calls as contributing to their profitability.

You promised to finalize a waiver for E15 blends by May 31. Will you also promise that you will end this abuse of the hardship waivers by companies like Exxon or Chevron?

Mr. Wheeler. Senator, the hardship waiver is based on the refinery itself not the refiner. It is based on the actual

refinery. It does not matter who the parent company is. There could be a hardship at a refinery. We want to make sure that just because you are a large company, if a refinery is not economical, we do not want those shut down because of this program.

Oftentimes these small refineries are located in the Rocky Mountains and other areas where they are the only supplier of gasoline in their region. We have to base it according to both the statute and the regulations on the size of the refinery, not the refiner.

Senator Barrasso. The Senator's time has expired.

Senator Duckworth. Thank you, Mr. Chairman.

Senator Barrasso. Thank you. Senator Sullivan?

Senator Sullivan. Thank you, Mr. Chairman.

Mr. Wheeler, thank you for your service to our Country and your willingness to take on this job. I also want to thank your family. As you know, these jobs oftentimes entail the whole team, so thank you. I know some of them are here and we really appreciate you guys being here. I am sure you are proud of your spouse or your dad who is in the chair. Thank you.

I also appreciate the time you spent with me. I think one of the themes here is how responsive you are to Democrats and Republicans. That is a real important part of the job.

Our discussion yesterday had a number of Alaska-related

issues, the PM 2.5 non-attainment problem in Fairbanks and North Pole, Alaska working on clean water issues in my State, particularly in rural communities, cleaning up ANCSA, contaminated lands which the Ranking Member and I had a bill last year that passed that helped do that. Transmining issues are a big challenge in Alaska. I am not going to go into each of those.

One commitment I do want to get from you is to get up to Alaska soon after your confirmation. Can I get a commitment from you on that?

Mr. Wheeler. Yes, sir, I would be happy to.

Senator Sullivan. Maybe even if I invite you in the winter, it is 45 below in Fairbanks right now, so you have to be a little tough to come up.

Mr. Wheeler. August sounds great.

Senator Sullivan. Maybe I am not going to be so supportive. No, I am just kidding.

This is a confirmation hearing that is supposed to look at your past qualifications and experience for the job. What was your first job out of law school?

Mr. Wheeler. My first job was a career employee at EPA working in the Toxics Program.

Senator Sullivan. You were a career employee at the EPA. You did that for how long?

Mr. Wheeler. For four years.

Senator Sullivan. You received some awards I believe during that time?

Mr. Wheeler. I did. I received three bronze medals.

Senator Sullivan. What does that mean?

Mr. Wheeler. They were not gold or silver but they were still very important.

Senator Sullivan. You got medals though, right, from the EPA as a career employee?

Mr. Wheeler. Yes, a career employee.

Senator Sullivan. I think that is important. You would probably be one of the first career employees to run the agency, wouldn't you?

Mr. Wheeler. I believe Steve Johnson, an administrator under President Bush, was probably the first.

Senator Sullivan. Then you came to this committee which has oversight of the EPA and all the issues covered, how long were you at this committee?

Mr. Wheeler. Fourteen years.

Senator Sullivan. Fourteen years as counsel and staff director?

Mr. Wheeler. I was the staff director and chief counsel for the last six years that I worked here.

Senator Sullivan. Essentially, you were the main guy

running the committee, with the exception of the Senators?

Mr. Wheeler. I had a lot of help. There was a chairman with a gavel, yes.

Senator Sullivan. I think it was Senator Inhofe so I do not want to get in trouble here but you know what I mean.

We are talking almost 20 years in the public sector either at the EPA or at the committee overseeing the EPA, correct?

Mr. Wheeler. Correct.

Senator Sullivan. I think that is really strong qualifications for this job. Hopefully my colleagues on both sides of the aisle will at least acknowledge that because it is obvious. You come highly, highly qualified in the public sector. We appreciate that, your service to America.

Mr. Wheeler. Thank you, Senator.

Senator Sullivan. I hope the media that is watching this hearing will write about your almost 20 years of public sector because what they love to write about is "a lobbyist for a coal company." So you were a lobbyist.

Mr. Wheeler. I was.

Senator Sullivan. Can you talk about what you did in that job and I know Murray Energy comes up. What was your big issue with representing them? You represented a lot more?

Mr. Wheeler. Yes, I represented over 20 different clients during my time as a consultant. I ranged from companies to

trade associations to NGOs. I represented an air quality management district in California. For the last four years that I represented Murray Energy, the number one issue I was asked to work on each of those four years was to try to shore up the United Mine Workers pension and health care funds.

They were under-funded. We were successful on the health care side but we were not successful in getting the pension bill through Congress before I left but I am very proud of the service that I did there. I am very proud of the work I did.

Senator Sullivan. I hope our friends in the media might want to cover that issue as well. I am sure Senators Capito and Manchin also appreciate that hard work. We all do. I have coal miners in my State, I have miners in my State and they are great Americans.

Let me ask one final question. Oceans and ocean pollution and plastics is a huge issue, an issue we have made a lot of bipartisan progress on, pointing to Senator Whitehouse's empty seat. He and I had a bill last year that the President signed. The Trump Administration is doing great work on this, arguably much better than the previous Administration.

We are going to soon put forward our Safe Our Seas Act 2.0. Save Our Seas Act 1.0 was signed by the President just a couple months ago with Senator Whitehouse and I both in the oval office.

Do you have any ideas that we can move forward with on addressing the big challenges we have with ocean pollution, plastics and the role that you have already played in that regard with regard to the EPA?

Senator Barrasso. Perhaps the nominee could very briefly answer and in writing as well.

Senator Sullivan. Or maybe just commit to work with us just to keep it short.

Mr. Wheeler. I would be happy to commit to work with you. It is a very big problem internationally and something we are on top of.

Senator Sullivan. Great.

Thank you very much.

Senator Barrasso. I would like to interject that the nominee has received praise from the United Mine Workers of America. Cecil Roberts, the United Mine Workers International President has said the following of Mr. Wheeler, and I am going to submit the statement to the record. He said: "He will be a reasonable voice within the agency and will recognize the impact on both the workers and the mining communities directly affected as EPA develops future emissions regulations."

That will be submitted to the record without objection.

[The referenced information follows:]

Senator Barrasso. Senator Markey.

Senator Markey. Thank you, Mr. Chairman.

Mr. Wheeler, earlier you said that you thought we were having a climate issue and not a climate crisis. Is that correct?

Mr. Wheeler. I did say that, yes.

Senator Markey. Let me just begin by saying I think you are 100 percent wrong. We are having a climate crisis. How do I know? I know because 13 federal agencies, including your own, in November issued a report. Here is what all 13 federal agencies said: "Our efforts do not yet approach the scale necessary to avoid substantial damages to the economy, environment and human health."

How did President Trump respond when asked about the conclusion of the National Climate Assessment that your agency helped to produce that climate change could devastate the American economy? He said, "I don't believe it." Do you agree with Donald Trump?

Mr. Wheeler. I believe President Trump was referring to the media reports of the assessment itself. I questioned the media reports as well because they focused on the worst case scenario and also focused on one study that was actually not in the report. That is the study that said there would be a 10 percent hit to the GDP. I believe that was what he was

referring to and that was what I raised questions about after the assessment was released.

Senator Markey. So you do not agree with the broader conclusion that the actions we are taking do not approach the scale necessary to avoid substantial damage to our Country? You do not agree with that?

Mr. Wheeler. No, I did not say that, Senator.

Senator Markey. I am asking you that question. Do you agree with that conclusion?

Mr. Wheeler. I have been briefed by my career staff after the assessment came out and I have asked a number of questions. We have a number of follow-up briefings scheduled for them to go over the findings in the assessment.

Senator Markey. The report came out in November. You are the head of the EPA. We are heading to the end of January.

Mr. Wheeler. I did not review the report before it came out. There was no political interference in the assessment. We have been shut down for the last few weeks. I have been briefed by my staff once on the assessment and we have several briefings scheduled before I can make further public comment.

Senator Markey. That is not acceptable. You are looking to be confirmed as the head of the Environmental Protection Agency. We are having a hearing on your worthiness for this job and you very conveniently have not had enough time yet to review

whether or not there is an extra level of urgency to this problem.

You are saying it is a worst-case scenario they are talking about, so therefore you do not have to deal with it, but the worst-case scenario is your proposal to roll back the fuel economy standards in our Country.

The worst-case scenario is your proposal to roll back the rule to reduce emissions dramatically from the coal burning plants in our Country. That is where it is relevant that you are a former coal industry lobbyist who is sitting here. Your proposal to roll back those regulations is the worst case scenario, what you are proposing.

My question to you is in terms of fuel economy standards, we import 2.5 million barrels of oil a day from OPEC, 2.5 billion barrels a day. We have young men and women all over the Middle East protecting that oil coming in.

Do you think that is a worst case scenario or do you think that is something we should accept by not increasing the fuel economy standards because interestingly under the Obama standards, we back out 2.5 million barrels of oil a day every day that we would import from OPEC. Do you think that is a worst case scenario or do you think that is something we should maintain and increase as our goal, Mr. Wheeler?

Mr. Wheeler. Senator, first of all, we did not roll back

the Clean Power Plan because the Clean Power Plan never took effect. It was stayed by the Supreme Court. Our proposal follows the Clean Air Act, follows the court decisions.

Senator Markey. The effect of your decision is to not implement the Clean Power Plan. It dramatically reduces greenhouse gases.

Mr. Wheeler. It was stayed by the Supreme Court because it went outside the bounds of the Clean Air Act. We put forward a proposal that follows the Clean Air Act and follows the law.

Senator Markey. Here is the problem I have with you. In this hearing, you are putting up a smoke screen to ensure that there is an advancement of Donald Trump's dirty policies. The impact on ordinary families, their health, the health of our Country, the security of our Country is absolutely urgent.

The American people want higher fuel economy standards, they want higher standards for reducing pollutants going into the lungs of the people in our Country and what you are here doing is defending Donald Trump's policy. I don't believe it, he said. The American people believe it because they know it is American scientists that came to this conclusion, including your own.

You can say you have not had time to read it but that, in and of itself, from my perspective, is a disqualification for having the job which you are sitting here seeking to be

nominated for.

Mr. Wheeler. I did not say I did not read it. I said I that I have not finished being briefed on it by my staff.

Senator Barrasso. The Senator's time has expired.

I would like to interject. The EPA's decision to review the vehicle standards was the right one. In 2017, the Alliance of Automobile Manufacturers sent a letter to the EPA stating, "If left unchanged, these standards could cause up to 1.1 million Americans to lose their jobs due to lost vehicle sales and low-income households would be hit the hardest."

I ask unanimous consent to enter this statement into the record. Without objection, it will be done.

[The referenced information follows:]

Senator Barrasso. Senator Cramer.

Senator Carper. Mr. Chairman?

Senator Barrasso. Senator Carper.

Senator Carper. I would like to ask unanimous consent to submit for the record a letter I sent to Mr. Wheeler last month asking about the possible coordinated campaign between Mr. Wheeler wherein the White House to bury the results of the report mentioned by Senator Markey and other materials as well related to EPA's efforts to take us backward on climate change and the climate change crisis.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Barrasso. Senator Cramer.

Senator Cramer. Thank you, Mr. Chairman.

Thank you, Mr. Wheeler, for being here and your willingness to serve in this capacity. I believe when you and I sat down in my transitional office, I had not been appointed to this committee yet, but you were telling me it was the best committee in Congress.

Mr. Wheeler. I stand by that. It is the best committee in Congress.

Senator Cramer. I appreciate that.

Before I forget, up front, I want to also invite you to my State of North Dakota. You can come in August if you like but January and February are not quite as cold as Alaska but you could bring your family and go camping. We would love to have you and would especially invite you to the Energy and Environmental Research Center at the University of North Dakota where we could have a discussion on these and several other topics that are important.

I also want to thank you for your very good work on the rollback of Waters of the U.S. and coming up with what I am sure is a much more common sense and legal definition of Waters of the U.S. and the same with regard to the Clean Power Plan being replaced by ACE.

While I appreciate the passion from some on the other side,

I am quite certain that ignoring a Supreme Court stay is not in your authority, is it?

Mr. Wheeler. No, it is not. We have to follow the Supreme Court.

Senator Cramer. I would think so. Thank you for that.

I also want feedback a little bit on what Senator Ernst talked about with regard to the year round E15. That was something that I had advocated for a long time. Certainly she and others, not just advocates of ethanol, but I think as conservatives, we like to eliminate barriers to markets.

While some might argue over the RFS or the volume set, again, the law is the law. I think it was an appropriate move and I congratulate you and appreciate what you and the President did in making that commitment. With regard to the RFS, there are as many opinions and there are divergent opinions in North Dakota as you might imagine as there are in this room on the RFS and what it should do and what it should not do.

I would like to ask you though, what is your professional opinion on what happens in 2022 because I think sometimes we discuss this issue or pass each other without a clear understanding of what exactly the law does in 2022 and what options there are and what happens if we do nothing?

Mr. Wheeler. If Congress does nothing by 2022, then the implementation and operation of the program would be up to the

agency, up to the EPA. We could continue the program as is. There are a number of different options we could do. We have not started to look at what we might do in 2022. I know there is legislation at least in the House on extending the program further but we will have to make some decisions as far as what the RFS Program looks like post-2022.

Senator Cramer. Would it be your recommendation that Congress get together with all our divergent views and find a prescriptive solution that does not leave too much discretion over the course of Administration after Administration?

Mr. Wheeler. I think it is always helpful for Congress to write the legislation that directs the agency to implement the programs. I think where the agency, the EPA has gotten into trouble in the past in the Obama Administration with the Clean Power Plan is when they went beyond the law.

Senator Cramer. I agree. Thank you for that.

Now, just as a matter of following up a little bit on what Senator Sullivan was talking about, and I have sat here and I apologize, Mr. Chairman, for being late. I had my first day of presiding over the Senate this morning. And not nearly as exciting as this, I might add.

I am perplexed a little bit. Let's go back to what Senator Sullivan said. It occurred to me as he was talking, did those 18 years as a professional staff person at the EPA prepare you

well for your work in private industry?

Mr. Wheeler. It did. And I think my overall career, both implementing laws at the EPA and at the beginning of my career to helping to draft the laws here when I worked in the Senate to talking to a wide variety of different clients, potential clients, clients when I was in the private sector, to see how the regulations, the laws were impacting hard-working people who were trying to make a living.

Senator Cramer. And I would suspect that your further work in industry prepared you well for this job, and I want to appreciate that. With time running out, I would just like to propose some scenarios, like should we bar farmers from being Secretary of Agriculture? Should we bar doctors from being the head of Health and Human Services, or attorneys from being the Attorney General? Or bankers from being head of the Treasury Department and what-not? I just think this is a very funny path to go down, realizing this is my first confirmation hearing. Maybe I don't know everything I should.

Mr. Wheeler. I agree with you, I don't think we should ban farmers from being head of the USDA, or doctors at HHS and bankers of, whatever the banker's the head of.

[Laughter.]

Senator Cramer. Treasury. Thank you, I yield back, Mr. Chairman.

Senator Barrasso. Thank you so very much. Senator Van Hollen?

Senator Van Hollen. Thank you, Mr. Chairman, and welcome, Mr. Wheeler. I do want to associate myself with some of the comments made by the ranking member and others regarding climate change, auto emissions standards, mercury rules. And I do appreciate your working with Senator Cardin and I and others on the Chesapeake Bay and look forward to continuing that work together.

But I wanted to use my time today to talk about this shameful and unnecessary government shutdown. We are now 26 days into it, the longest government shutdown in U.S. history. My understanding is there are about 13,000 EPA employees that are currently furloughed. Is that correct? Approximately?

Mr. Wheeler. Approximately, yes, sir.

Senator Van Hollen. And that there are approximately 891 who are on the job, is that approximately right?

Mr. Wheeler. That sounds pretty exact, 891. It varies from day to day. We bring back people to work on specific issues.

Senator Van Hollen. Right. Including some that you brought on to prepare for this hearing, is that right?

Mr. Wheeler. Yes, Senator.

Senator Van Hollen. And you've worked at the EPA, you've

had experience. In your experience, are these hard-working, dedicated civil servants?

Mr. Wheeler. Yes, they are. I have full confidence in the EPA staff.

Senator Van Hollen. And have they shared, some of them, their stories of hardship with you, what they're experiencing now because of the shutdown?

Mr. Wheeler. Yes, and I was an EPA employee back in the 1990s when it was shut down, and I remember the frustration at the time. And my heart goes out to the EPA employees and all the other ones who are on furlough.

Senator Van Hollen. And I appreciate that, because they are definitely stuck in the middle of something they had nothing to do with. I just want to read some of the statements I am getting from EPA employees, I am sure you are as well. "I work for the EPA and have been furloughed." Then it goes on to say, "I have triplets that are in college and it is very tough to meet their education needs and pay our bills without my salary, which is the major income source for our family. My son has Crone's disease, requiring expensive medical treatments." She also goes on to say, "Our younger employees at EPA have just started out, and are unable to make rent and loan payments."

Here's another employee who's been furloughed. She actually may be here in the audience today. "I work for EPA. I

love my job, and feel like my program is important to protecting public health." She goes on to say, "My son is a junior in high school. I found out yesterday that fees for the AP exams are due January 31st. I don't see how I can afford to pay these fees. He is going to lose the opportunity to pass four AP tests. Ironically, one of them is U.S. Government."

Another one, 15-year old student, Montgomery County, Maryland, "I am a 15-year old student. My father, like many people in this area, is a federal employee working at the EPA. He has now missed an entire pay check from the shutdown, will likely miss another if this keeps up. Please vote to override the veto." Of course, we don't have a chance to override the veto because we haven't passed legislation that is pending here in the United States Senate.

Mr. Wheeler, I have here in my hand the mission statement for the EPA. First line, the mission of the EPA is to protect human health and the environment. EPA works to ensure that. It goes on to list a number of things, starting with Americans have clean air, land and water. I assume you are familiar with the EPA mission statement.

Mr. Wheeler. Yes, I am.

Senator Van Hollen. And there is nothing in this statement about how the EPA is the lead agency when it comes to issues of border security, is there?

Mr. Wheeler. Border security, no.

Senator Van Hollen. Border security, homeland security.

Mr. Wheeler. We do a lot of border work, that is, a lot of pollution.

Senator Van Hollen. I am referring, Mr. Wheeler, to the security aspects of the job with respect to border security. That is done primarily by the Department of Homeland Security, is it not? This is not a trick question?

Mr. Wheeler. Well, no, because we do a lot of inspections along the border.

Senator Van Hollen. I know you do stuff along the border. But here is my question. You are familiar that last August the United States Senate pass the appropriations bill for the EPA by a vote of 92 to 6? Are you familiar with that?

Mr. Wheeler. Yes, Senator.

Senator Van Hollen. It was an overwhelming vote.

Mr. Wheeler. Yes.

Senator Van Hollen. That bill is now before the Senate again, as part of other bills that had overwhelming bipartisan support in the United States Senate. And the Republican leader says that we can't vote on this bill, because the President of the United States won't sign them. My question to you is, why won't the President, you are the senior Administration official here today in this middle of this shutdown, and this committee,

why won't the President sign a bill to fund EPA, which has nothing to do with the government shutdown, a bill that passed this body 92 to 6? Can you just explain to people, including the people that wrote in to me, why that is the position of the President of the United States?

Mr. Wheeler. Well, the President takes border security very seriously.

Senator Van Hollen. I am asking about the EPA bill, Mr. Wheeler. Why is it that he refuses to support a bill that passed the Senate by 92 to 6? We care about border security, too. Why is it that he says he won't sign a totally unrelated bill? Why is that?

Mr. Wheeler. Well, I believe the President has been very up front about his desire to have all the appropriation bills pass at the same time, along with the border security. The border security, as you mentioned, is outside of the, outside of our authority at the EPA. I do want to take a moment to thank you for helping pass legislation guaranteeing that all the furloughed employees will get back pay. That is very important to the employees. On behalf of my employees at EPA, I thank you for your work on that, and Congress. I think that was a very important message to send.

Senator Van Hollen. I am grateful that you mentioned that. Thank you for saying that. And I just have one request as we

leave here. The President has not yet signed that bill. Will you urge the President of the United States to sign that bill?

Mr. Wheeler. I think it is important to have all the appropriations bills signed along with the border security that the President, that the American people want.

Senator Van Hollen. No, we passed this is in the Senate and the House separately, right? And I have no reason to believe that the President is not going to sign, in fact, the Republican leader said that the President was going to sign it. My question is, will you on behalf of your employees urge the President to sign the bill?

Mr. Wheeler. I am sure that the wants to reopen the government as much as you do.

Senator Van Hollen. No, this is not a question of reopening the government. This is a bill that has already passed during the government shutdown to provide some confidence and certainty that at the end of the day people will be made whole. I appreciate your mentioning the importance of that bill. On behalf of your employees at EPA, can you ask the President to sign the bill?

Mr. Wheeler. Senator, I also know that this is part of a larger negotiation, and I hope that all the parties can come to the table and negotiate and end this shutdown as soon as possible.

Senator Van Hollen. Well, this Senate, on a bipartisan basis, was able to do this for the reasons you say in the middle of a shutdown. I hope the President will sign the bill, and I really encourage you to let your employees know that you support the bill.

Senator Barrasso. The Senator's time has expired. This is the end of the first round of questioning. We are going to proceed, if we could, to the second round. Probably fewer members will want to ask a second round of questions, and we do have a roll call vote coming up at 12:30.

So I just want to go into round two. I understand that when considering a small refinery's petition for hardship relief, under the Renewable Fuels Standard, RFS, the EPA consults with the Department of Energy, as you mentioned.

Mr. Wheeler. Yes.

Senator Barrasso. These two agencies conduct a detailed, objective analysis based on the small refineries confidential business information. Under the Clean Air Act, the agencies must look at each small refinery on an individual basis, which you had mentioned in a comment earlier, regardless of whether the refinery is part of a larger company. Is that your understanding of the law?

Mr. Wheeler. Yes, it is, sir.

Senator Barrasso. Okay. Now, I also want to thank you for

withdrawing the Obama Administration's proposed duplicative rule on groundwater monitoring on in situ uranium recovery. This rule was a midnight regulation the EPA issued the day before President Obama left office. When you talk about a midnight regulation, that by definitely really, really fits it.

The Nuclear Regulatory Commission, our Nation's principal nuclear regulator, stated that there was no health or safety justification for the rule. The NRC has also said that the rule interfered with its jurisdiction over uranium recovery activities. To ensure this doesn't happen again, I have written EPA, asking the agency to sign a memorandum of understanding, which would clarify the NRC's and the EPA's jurisdiction over those activities.

Do you know if this work has begun on that memorandum of understanding?

Mr. Wheeler. It has begun, it began before the end of last year. At this point, we are not working on it because it is part of the shutdown. But it has begun, sir, yes.

Senator Barrasso. Great. The cost of regulations coming out of the EPA was staggering before President Trump took office. According to the Office of Management and Budget, major EPA rules cost between $54 billion and $86 billion a year, between the years 2006 and 2016. That total was more than the cost of major rules from seven other Cabinet level federal

agencies combined. Seven agencies combined.

Has this Administration taken a hard look at those costs, and in your opinion, has the EPA better balanced regulatory costs with environmental protection?

Mr. Wheeler. We have. And we have a cost benefit rule that we proposed in early last year, we received 3,200 comments on it. We are reviewing those comments and plan to go forward with that, which will help define how we look at cost benefit analysis across the board.

Senator Barrasso. I have seen some stories in the press the EPA enforcement cases have fallen. In my opinion, how many enforcement cases are filed isn't the best metric to measure the EPA's successes. Our goal should be to actually make sure that people are following the law in the first place. This is called the compliance assurance, making sure that businesses across the Country comply with the law up front, so that enforcement actions aren't needed.

What is the EPA doing to improve compliance assurance?

Mr. Wheeler. We are working very hard on compliance assurance. I think the agency has for a number of years. I think the more compliance assurance that we have, the fewer enforcement actions that we need to take.

But there has been lot of misleading information in the news media about our enforcement program. I would like to

correct two items real fast if you don't mind. Last summer, a group, EGGI, released a report on what they thought our enforcement numbers were. We went over it and we went over it again, and our career people went over it, and it appears that they made some simple mathematical errors in their report. They claimed, for example, that our administrative compliance orders were down 42 percent, but actually they were up 3 percent.

And just recently, PEER released a report on our criminal enforcement program. They said that we are making the criminal referrals. We don't actually make criminal referrals. We make requests for prosecutorial assistance. And at the agency, the metric that we use is to track the number of new criminal enforcement cases that open each year. Last year, we opened more criminal enforcement cases than in 2017. That reversed a downward trend that started in 2011. So, since 2011, we have been on a steady decline. Last year, we reversed the decline for the first time.

Senator Barrasso. Anything else from the first round of questions that something has just come to you and you say, gee, I would like to clarify something?

Mr. Wheeler. Well, I would like to clarify, because there has been a lot of discussion on our CAFE proposal. And a lot of it having to do with the CO2 remissions and reductions from the CAFE proposal. And yes, under President Obama's proposal on

CAFE, that was their one goal for the program, was energy efficiency, CO2.

We have multiple goals for the program, multiple policy goals, including protecting lives. Under our proposal, we have submitted that there will be 1,000 lives saved a year under our CAFE proposal. I neglected to mention that earlier, but I think that is very important for everyone to understand. It would decrease the cost of a new care by $2,300. And that will get older cars off the road. And when you get an older car off the road, people are buying safer cars and it will save 1,000 lives a year. I think that is a very important fact to get out there in the public.

Senator Barrasso. Thank you. Senator Inhofe, do you have a unanimous consent?

Senator Inhofe. I do have a unanimous consent request. I would like to submit these studies into the record. Both are from the Department of Agriculture and Consumer Economics at the University of Illinois Urbana. The first study is from September 2018. Its conclusion, "Little if any evidence that the blend rate for ethanol has been reduced by small refinery exemptions." The second one, "The updated analysis in this article shows even less evidence that the blend rate for ethanol has been reduced by SREs."

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Barrasso. Senator Carper.

Senator Carper. I have a couple UC requests, Mr. Chairman. First of all, Mr. Chairman, I ask unanimous consent to submit for the record articles that describe Mr. Wheeler's troubling decision to continue his predecessor's efforts to weaken EPA's enforcement power, including maintenance of the sue and settle directive changes, and the Clean Water Act enforcement, and the twice-introduced proposal to eliminate the Office of Environmental Justice.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Carper. And second, I would like to ask unanimous consent to submit for the record materials that indicate that the safety analysis that Mr. Wheeler referred to with respect to the previous Administration's CAFÉ proposals, that that his safety analysis, which I think is badly flawed from this Administration, I would like to have for the record an analysis that indicates as much.

Senator Barrasso. Without objection, and please feel free to proceed with your round two of questions.

[The referenced information follows:]

Senator Carper. Thank you.

I have sat in this hearing room for 18 years. I have always looked for, and I think my colleagues for the part, always look for win-win situations. I always look for situations where we can have good things for our air, water, public health, and do so in a way that does not impinge or degrade economic opportunity, economic growth.

I have raised in conversations with you, Mr. Wheeler, and here today, three instances where I believe we can do good things for our planet, for those of us who live here, and actually provide economic opportunity for American business. I have just talked two days ago with a cross-section of auto companies from all over the world. We talked about fuel efficiency standards, tailpipe emission standards. They are pleading for certainty.

They said to me repeatedly, we don't want to spend the next four or five years in a court battle with California and 13 other States, including Delaware, on what these standards should be. We need certainty, we need predictability. We need near-term relief. And in the out years, we can, with a lot of electric powered vehicles and hydrogen powered vehicles, we can prescribe for and meet much more rigorous standards for CAFÉ.

I am troubled by something you said here. I think you said you have talked to the woman who runs CARB out in California,

Mary Nichols, three times in I think nine months about this. We are talking about the greatest source of carbon emissions on our planet is our mobile sources, our cars, trucks and vans. California is critical to getting a deal, so are the other 13 States, including Delaware. And the idea that you spoke with her, whether it is her fault, your fault, three times in the course of a year, is deeply troubling.

One of the thoughts that keeps coming back to me in this conversation today, this hearing today, is the thought, I don't feel a sense of urgency. We do in Delaware. I live in the lowest-lying State in the Country. Our State is sinking, the oceans are rising.

We are not too far away from a place called Ellicott City. They have had two 500-year floods in a year. In a year. I live in not a very big State, but there are wildfires, bigger than the size of my State, in Oregon, Montana, Washington and California, just in the last year. We used to measure rainfall by the inch, now we measure it by the foot. And one of the things I just don't sense of here is a sense or urgency to do something about it. We had 13 agencies that came together and said, this is a huge issue and it is getting worse, not better. And they didn't do this because of something that Obama law would compel them to do. I think that was legislation signed by George Herbert Walker Bush, many, many years ago.

I am looking for some passion here. I just don't feel it. And that is deeply troubling. I am also looking for win-wins. We talked about hydrofluorocarbons and the threat that they pose to our atmosphere. And it is American technology that has a follow-on to HFCs, and there is a great interest in being able to adopt the Kigali Treaty that actually allows for the phase-down of HFCs and the introduction of replacements, from American-made companies with American-made technologies. It is not some wild-eyed, liberal, tree-hugging idea. This is the U.S. Chamber of Commerce. This is the American Chemical Council. It is all these American businesses. And EPA, rather than being a good partner and helping to expedite this and make it happen, if anything else, I think the agency is an impediment.

And the other thing that I would say, I will never forget, my colleagues have heard me say this before, I beg their indulgence, I will never forget when Lamar Alexander and I, Senator Alexander and I were working on a four-P legislation to deal with, you may recall this, to deal with sulfur dioxide, nitrogen oxide, carbon, and mercury. The issue that we were kind of hung up on was mercury. And the idea, could we actually reduce mercury emissions by as much as 80 percent. Lamar Alexander said no, no, we can reduce it by 90 percent.

We had a hearing right here, and a guy sat right at the end

of the table. Everybody who was from a utility at this table, said, oh, we can't even get to 80 percent, much less 90 percent. The guy who was representing the association that said, no, no, they can do better, they can do 90 percent, he said, they can do better than that. And you know what? They did. They reached 90 percent reduction.

And if you look at the MATS rule, the reason why the utilities are essentially sanguine about this is, they make investments, it costs a third as much money to make the investments. It is actually working. And not only do we do, I think, a beneficial thing for children, infants, for those who haven't even been born, we actually do a lot of goodness, not collateral damage, but collateral good things. And we do so in other areas, particulate matter and all kinds of stuff, to save lives. And to somehow say that that just doesn't add up enough, and in terms of cost benefit analysis for us just to say, all right, they got it right, they actually got something right, in the Obama Administration. That's on MATS, and all these other folks, all these other stakeholders, are for it, but maybe we should be as well.

What we are afraid of is you are going to do something, your agency is going to do something that gives some of us, not EPA, but somebody else the ability to come in and have standing in court and undo MATS, undo the Mercury Air Toxics Standard.

That is what we are afraid of. That is what we are afraid of. And those are three instances where I think we can have, I think a lot of us think we can have cleaner air, cleaner water, better public health, more jobs.

And why we don't take that ball and run it right down the field, I don't know. I don't know. That is what frustrates me. I am sure it frustrates others on this panel, and frankly, a lot of people in this audience and who might be watching.

I don't normally give long speeches, I normally ask short questions and look for short answers. But respond to that, if you would. I am looking for passion. I am looking for a sense of urgency. I am looking for a real commitment. And that might not be your nature, but we need it. I think this agency needs that kind of leadership.

Mr. Wheeler. Senator, you and I have discussed the CAFE standard and a number of issues multiple times now. I want you to understand and believe that I really do want a 50-State solution. I really do.

When I met with Mary Nichols, that was one-on-one meetings with Mary Nichols, there were three over the last six months, that doesn't mean we haven't been working with California more than that. I know she has met with other people at the agency, we have had technical meetings between her technical staff and our technical staff. There have been a lot more meetings that

just those three. Those are the three one-on-one meetings that I had with Mary Nichols in my office. We have also been on phone calls and she has met with Department of Transportation. Again, this is a joint rulemaking with DOT.

But at the end of the day, I want a 50-State solution. I want a regulation that provides certainty to the consumers, the automobile manufacturers and to all the interested parties. And that is what I want at the end of the day and that is what I hope we can get.

Senator Carper. Yes, methylene chloride. Methylene chloride. I want you to impart a sense of urgency on getting a rule done on that. It is actually something that Scott Pruitt did that we thought was right. And here it is two years later and we still haven't followed through. Let's get it done.

Mr. Wheeler. As I shared with you Tuesday, our hope had been to publish that last week. It is at OMB, it is ready to go as soon as the Federal Register opens. That is something that I have taken seriously, and it is something that we have spent a lot of time, I have spent a lot of personal time on that issue. And I hope we can get that out as quickly as possible.

Senator Carper. Methylene chloride, for the record, is a paint stripper. It kills people. It must be a really good paint stripper, but unfortunately, it kills people. Thank you.

Senator Barrasso. Senator Inhofe.

Senator Inhofe. Thank you, Mr. Chairman.

First of all, I want our witness to recognize that I am not at all offended that you found your leadership in the Eagle Scouts to be more rewarding than your leadership under me for 14 years.

[Laughter.]

Mr. Wheeler. Thank you, Senator.

Senator Inhofe. Also, I appreciate the fact that you brought up the, and someone else did, Senator Braun, I believe it was, brought up the fact that, how much more that our land owners, property owners are good stewards of their land. This is kind of interesting, because under the previous Administration, Dan Ashe was the head of the Fish and Wildlife. He came, at my invitation, out to Oklahoma. This is the first time that I think in his career he realized this was true. He was actually in the western part of the State, and in the central part of the State. This is a recognition that I really appreciate.

Since the previous questioner brought up the CAFE standards, let me just share with you something you already know, but it needs to be in the record. That is that in 1975, the Congress created a law to help with the fuel shortage situation by establishing the corporate average fuels, or CAFE standard. Now, we no longer have a fuel shortage, and yet, that

didn't stop the Obama Administration and California from ensuring that standards kept increasing beyond what technology can do to force their electric car fantasies and the rest of this.

Now, the consumers want trucks and SUVs, they make up about two-thirds of the market. And electric vehicles don't even make up 1 percent of the Nation's auto sales. But auto manufacturers are producing more and more of them. Why do you suppose that is?

Mr. Wheeler. I believe they are producing what the consumers want to buy.

Senator Inhofe. Yes, but what does this do to -- I guess the question, my follow-up question would be, is it your understanding that many car manufactures are not technically complying with the current Obama standards?

Mr. Wheeler. Yes.

Senator Inhofe. Aren't they paying penalties and cashing in credits to comply?

Mr. Wheeler. Yes.

Senator Inhofe. Now, what does that do to the ultimate price to the consumer?

Mr. Wheeler. It adds additional price to the consumer. There is a misconception out there that all the automobile manufactures are currently complying with the CAFE standards.

They are not, some of them are not. There is a penalty basis in the regulation and they are paying penalties for not complying.

It is projected over the life, if the Obama regulations were to stay in place, that the amount of penalties will be increasing, I believe up to a billion dollars over the life span of the Obama regulations. That, those penalties would be passed on to the consumer.

Senator Inhofe. They will be passed on to the consumer. I mean, there's nothing else they can do to accommodate that.

So I think that is important. Is it really the role of government to dictate what people are buying in America and enforcing that? That is something that I have watched and you have seen it over the years. It is something that we have a serious problem with.

Mr. Wheeler, the EPA has been taking a lot of criticism for supposed lack of enforcement actions under Trump. Would you like to talk a little bit about the enforcement standards that have been imposed under your administration so far?

Mr. Wheeler. Absolutely. First of all, I think it is important to note that we did not have a political head of our enforcement office for all of 2017. Susan Bodine was not confirmed until the end of 2017, which is actually the first quarter of 2018. So we have only had a political head for the three quarters of 2018, yet our enforcement numbers, important

enforcement numbers, are up.

As I mentioned a little while ago, our criminal prosecutorial, the number of criminal cases we opened was up in 2018, compared to 2017. We initiated 140 lead enforcement actions in fiscal year 2018, compared to 127 in 2017. And we are using all of our tools, including compliance assistance. The environmental benefits, as I mentioned in my opening statement, we removed 809 million pounds of pollution and waste through enforcement actions in 2018, which is almost double what we removed in 2017.

What our enforcement program needed, in the Trump Administration, was a head of the office, and I am glad that the Senate confirmed Susan last year. We still have, the head of our emergency response office has not been confirmed yet. I hope the Senate will move forward and confirm Peter Wright. I think it is important to have a head of the office that is responsible for responding to the California fires, the hurricanes and all the other disasters that EPA is responsible for the response efforts. And we have not had a head of that office now for two years.

Senator Inhofe. I think you make that point very well, and let me compliment you on your responses to the questions that have been given to you during the course of this hearing.

Mr. Wheeler. Thank you.

Senator Inhofe. Thank you, Mr. Wheeler.

Senator Barrasso. Thank you, Senator Inhofe. Senator Cardin?

Senator Cardin. Thank you, Mr. Chairman.

Mr. Wheeler, you and I had a chance yesterday to talk about the WRDA bill, a bipartisan bill to pass this committee that provides new tools in dealing with water issues in this Country. And we both talked about the fact that you are going to be restrained by funding, because some of the issues have not been funded at the level I think this committee would like to see funded. I agree with you on that, and we are going to work to get you not only the legislative authority but also the resources.

In one case there is funds, and that is new Lead Service Line Replacement grant program. Congress did appropriate $10 million for the program for fiscal year 2018. Will you commit to standing up the program and providing this committee a status update on how we are dealing with the lead service line replacements?

Mr. Wheeler. Absolutely. That is an important part of our lead strategy and our drinking water strategy, is to try to make sure that people have safe drinking water and we get the corrosive pipes taken care of, and the lead service lines replaced as quickly as possible as well.

Senator Cardin. I appreciate that, and you will keep us informed as to how that is going?

Mr. Wheeler. Yes, Senator. And the legislation you are referring to is the WIA legislation passed as part of WRDA. That was passed after our appropriations for fiscal year 2019 was passed, a bill that Senator Van Hollen mentioned earlier today, the appropriations bill.

So it is my understanding there is no funding in the fiscal year 2019, except for the $10 million that you just mentioned for that one program, there is no additional funding for the other parts of the legislation that was passed. I will note that there is a lot of deadlines in the legislation that we are going to try to work on.

Senator Cardin. Let's hope you have a fiscal year 2019 budget. We talked about that at the beginning of this hearing.

I think I understand what you are saying in regard to MATS, and in regard to the mercury standards. There is a process that is going through in your agency, including a comment process. But you are very confident that the current enforcement that is currently being done that is restricted to mercury emissions, that there will be no weakening in regard to the mercury emissions into our environment?

Mr. Wheeler. Under our preferred option, which is, when we put out the proposal, we took comments on everything, and you

often do that in order to make sure that your proposals are legal sound in case they are challenged later. But under our preferred option, I do not believe there would be a weakening in the mercury standards at all, as far as the equipment that has already been deployed and implemented across the board.

I get accused of rolling back the Clean Power Plan. I don't think you can roll back a regulation that never took effect. And on MATS, I don't think you can roll back a regulation that has been fully implemented. And the MATS requirements for the pollution control equipment has been fully implemented. And I don't believe, I honestly do not believe that that equipment will be turned off or removed under our proposal.

Senator Cardin. And then let me just respond more to my good friend Senator Inhofe's comments on energy efficiency in our autos, with CAFE standards. There are a lot of reasons to be interested in that, in regard to energy efficiency issues, particularly in transportation. Part of that is security issues, part of that is economic issues.

But under your jurisdiction, it is the environmental impact. There is a cost associated with the unnecessary use of fossil fuels as it relates to emissions into our environment.

So there is a real reason why we like to see more efficiency in the way that we transport. Part of that is the

individual vehicle, part of that is transit policies, part of it is the whole way of making people happier but also more efficient in the use.

So I just really want to underscore the point of your very first comments, when you were saying the progress that you have made in protecting the environment. To me, this is an extremely important, urgent issue in transportation efficiency and protecting our environment. I hope that as the leader, if you are confirmed as the Administrator of EPA, that you will be focused on the environment and the impact transportation has on the environment, so that we can use technology that has been developed here in America to help our economy as well as our environment, and also by the way, quality of life, if we can get less emissions coming out of our transportation sector.

Thank you, Mr. Chairman.

Mr. Wheeler. Absolutely. It is not just the energy efficiency or the CO2 from the automobile industry. But we are also, as I mentioned in my opening statement, moving forward on removing NOX from the heavy-duty trucks. That is a program that is not required under statute. It is not required by court order. But we are moving forward with that, because it makes sense, because it will protect the health and get more non-attainment areas into attainment around the Country.

Senator Cardin. Thank you. Thank you, Mr. Chairman.

Senator Barrasso. Senator Carper, do you have some unanimous consent requests?

Senator Carper. I do, Mr. Chairman. Let me, if I could, just very briefly follow up on something that Senator Cardin was raising with Mr. Wheeler. I would ask you to forgive me if I don't feel fully comfortable about the notion that the MATS rule implemented, not rolled back, doesn't somehow leave us in a situation that we have in Delaware and Pennsylvania, for nitrogen oxide, for NOX pollution.

In my State, we literally could cut off our economy, all our cars off the road, all the businesses shut down, and we would still be out of compliance for NOX. The reason why is because of pollution from Pennsylvania, three utility plants, coal-fired. And I think one in West Virginia.

The cruel irony is, each of those plants had installed the technology to stop the pollution and to relieve it to us in the downwind States. They turned it off. They still have it turned off. And when we applied through a Section 126 waiver to try to get EPA to do something about it, they declined. So forgive me for being concerned and cautious on this front.

I have a couple of unanimous consent requests to put forward, if I may. I would ask unanimous consent to submit for the record materials that demonstrate the growing demand for electric and hybrid vehicles and the efforts by the oil industry

to lobby in support of this Administration's fuel economy rollback.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Carper. Thank you. I would also ask unanimous consent, Mr. Chairman, to submit for the record a comprehensive science report from Syracuse University, Harvard School of Public Health and other universities that finds that the benefits of reducing mercury to our society is around $4 billion per year, not $4 million to $6 million, as EPA claims in its report.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Carper. Mr. Chairman, I ask unanimous consent to submit for the record two letters I sent to this Administration regarding EPA's proposal to undermine the Mercury and Air Toxics rule. This includes an August 24th, 2018 letter to Mr. Wheeler from Senator Alexander and myself expressing our support to keep the MATS rule in place and effective.

The second is a December 28th letter to OMB's Office of Information Regulatory Affairs, affectionately known as OIRA, outlining why I have grave concerns about the EPA's flawed cost benefit analysis used in the MATS proposal.

And finally, one last one.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Carper. Thank you. Mr. Chairman, I ask unanimous consent to submit for the record a variety of materials. They include news articles, letters from stakeholders and other materials relating to Mr. Wheeler's time as EPA Acting Administrator.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Carper. Thank you.

Senator Barrasso. And members may submit follow-up questions for the record. By 5:00 p.m. is the deadline, Friday, January 18th. I will need you to respond to the questions by 5:00 p.m., Friday the 25th of January.

I want to thank the nominee for his time, his testimony today. That concludes the hearing. The hearing is adjourned.

[Whereupon, at 2:42 p.m., the hearing was concluded.]