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ONE HUNDRED SIXTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115
Majority (202) 225–2927
Minority (202) 225–3641

January 28, 2019

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Acting Administrator Wheeler:

Pursuant to Rules X and XI of the U.S. House of Representatives, we write to express our deep concern regarding the Environmental Protection Agency (EPA) efforts to rollback critically important environmental and public health protections, and undermine decades of progress of scientific advancement. In particular, we are concerned that EPA has taken, or is contemplating taking, action in five major areas:

- weakening mercury and air toxics standards;
- undermining protections against toxic air pollution by withdrawing the longstanding "Once in Always in" (OIAI) policy;
- undermining human health protections against harmful exhaust from certain freight trucks;
- undermining scientific integrity in reviewing and setting National Ambient Air Quality Standards (NAAQS) under the Clean Air Act (CAA); and
- weakening and discrediting the role of science in Agency proceedings.

These actions are particularly alarming in light of the recent warnings underscoring the impacts of climate change on air quality and the health of the American people. Congress and the public require a more detailed explanation of EPA's actions to assess the consequences of these policy changes. We request information to enable the Committee to evaluate the potential effects of these actions on public health and the environment.

On November 23, 2018, the Fourth National Climate Assessment warned that climate change "creates new risks and exacerbates existing vulnerabilities in communities across the United States, presenting growing challenges to human health and safety, quality of life, and the

rate of economic growth."[1] According to the report, more than 100 million people in the United States are living in communities where air pollution exceeds health-based air quality standards.[2] The report warns:

> "Unless counteracting efforts to improve air quality are implemented, climate change will worsen existing air pollution levels … increas[ing] the incidence of adverse respiratory and cardiovascular health effects, including premature death."[3]

Additionally, climate change impacts on air quality increasingly threaten the health of Americans, particularly older adults, children, low-income communities, and communities of color.[4]

A recent study conducted by two Harvard University scientists found that 80,000 more lives will be lost per decade if the Trump Administration completes planned rollbacks of clean air and water protections.[5] According to the study, the most significant health consequences are likely to come through changes in air quality.[6]

Despite these warnings, the Trump Administration is working to dismantle five key public health protections and promote policies that would result in massive increases of pollutants:

1. EPA is weakening mercury and air toxics standards which reduce emissions of hazardous air pollutants linked to cancer and other serious health effects.

EPA recently released a proposal to weaken human health protections against mercury,[7] a toxic chemical emitted from coal-fired power plants, which can lead to brain and nervous system

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[1] U.S. Global Change Research Program, *Fourth National Climate Assessment, Volume II: Impacts Risks, and Adaptation in the United States,* at 25 (Nov. 23, 2018).

[2] *Id.* at 513, 519.

[3] *Id.*

[4] *See* note 1 at 28.

[5] David Cutler and Francesca Dominici, *A Breath of Bad Air: Cost of the Trump Environmental Agenda May Lead to 80,000 Extra Deaths per Decade,* Journal of the American Medical Association Forum (Jun. 12, 2018).

[6] *Id.*

[7] Environmental Protection Agency, Regulatory Actions – Final Mercury and Air Toxics Standards (MATS) for Power Plants (www.epa.gov/mats/regulatory-actions-final-mercury-and-air-toxics-standards-mats-power-plants).

damage in young children.[8] According to EPA's own data, these protections would reportedly avoid up to 11,000 premature deaths annually, prevent 130,000 asthma attacks and 4,700 heart attacks, and save up to $90 billion annually in human health costs.[9]

2. EPA has undermined protections against toxic air pollution by withdrawing the longstanding OIAI policy.

A January 25, 2018 EPA memorandum withdrawing the longstanding OIAI policy will have significant and harmful health and environmental effects, as we and many of our colleagues explained in our April 25, 2018 letter.[10] EPA's withdrawal would allow certain sources currently controlling hazardous air pollution (HAP) with maximum achievable control technology (MACT) standards the ability to massively increase their HAP emissions with no consequence.[11] One study by the Environmental Integrity Project found emissions from 12 major sources in the Midwest could more than quadruple with this rollback from 121,082 pounds of HAPs per year to over 540,000 pounds of HAPs per year with this rollback.[12]

3. EPA has taken actions which undermine human health protections against harmful exhaust from certain freight trucks.

We have further concerns regarding EPA policy with respect to glider vehicles— heavy-duty trucks manufactured with heavily polluting, refurbished engines that do not comply with modern emissions standards. A July 26, 2018 EPA memorandum instructed the Office of Air and Radiation (OAR) to develop regulatory revisions affecting the introduction of these vehicles into commerce.[13] The Committee seeks additional information on this process in order to ensure EPA policies are consistent with the Agency's own scientific conclusions and do not benefit a small set of manufacturers at the expense of human health and the environment.

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[8] *Trump Administration Prepares a Major Weakening of Mercury Emissions Rules,* New York Times (Sept. 30, 2018); *In Rollback of Mercury Rule, Trump Could Revamp How Government Values Human Health,* Washington Post (Oct. 1, 2018).

[9] Environmental Protection Agency, Mercury and Air Toxics Standards: Healthier Americans (www.epa.gov/mats/healthier-americans).

[10] Letter from Rep. Debbie Dingell, Member, Committee on Energy and Commerce, et al., to Scott Pruitt, Administrator, U.S. Environmental Protection Agency (April 25, 2018).

[11] *Id.*

[12] Environmental Integrity Project, *Toxic Shell Game: EPA Reversal Opens Door to More Hazardous Air Pollution* (March 26, 2018).

[13] Memorandum from Andrew Wheeler to Susan Parker Bodine and William Wehrum, Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles (July 26, 2018).

4. EPA continues to undermine scientific integrity in reviewing and setting NAAQS under the CAA.

EPA issued a memorandum on May 9, 2018 changing the process for reviewing and setting NAAQS, allowing for the consideration of technologies— essentially the costs of complying with the NAAQS— in the standard setting process.[14] Consideration of costs in setting a NAAQS directly contradicts the U.S. Supreme Court's ruling in *Whitman v. American Trucking Association*, ignores Congressional intent by effectively amending the CAA, and risks exposing communities to unsafe levels of pollution.

5. EPA continues to systematically undermine and discredit the role of science in Agency proceedings.

The Trump Administration has imposed a series of changes which, taken in aggregate, constitute an ongoing assault on EPA science. EPA has proposed changes to how the Agency defines and quantifies the benefits of clean air protections by blocking the consideration of real public health benefits resulting from pollution reductions other than those specifically targeted by a rulemaking.[15] For example, in October 2018, EPA disbanded an expert advisory panel on particle pollution,[16] a dangerous pollutant linked to premature death, heart attacks, and other severe health problems.[17] The former panel included about 20 scientists,[18] raising concerns that the full Clean Air Science Advisory Committee (CASAC) will lack sufficient expertise on this dangerous pollutant.[19] According to one former committee member, "[t]his is very dangerous because these are the scientific experts who work hard at unbiasedly reviewing the health-based findings."[20] EPA also banned those who receive any Agency research grants from serving on

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[14] Memorandum from E. Scott Pruitt, Administrator, U.S. Environmental Protection Agency to Assistant Administrators, U.S. Environmental Protection Agency, Back to Basics Process for Reviewing National Ambient Air Quality Standards (May 9, 2018).

[15] *See* note 8.

[16] *E.P.A to Disband a Key Scientific Review Panel on Air Pollution,* New York Times (Oct. 11, 2018).

[17] Environmental Protection Agency, Particulate Matter (PM) Pollution (www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm).

[18] *Scientist: EPA Changes Are An Effort to 'Gut Rules' That Protect Public,* CNN (Oct. 15, 2018).

[19] *Id.*

[20] *Id.*

scientific advisory committees, and plans to prohibit rulemakings from using scientific research if the underlying data is not publicly available.[21]

We request EPA provide information relevant to each of these five areas and their impact on human health and the environment. Specifically, please respond to the questions below:

EPA's Actions to Weaken Human Health Protections Against Mercury

1. EPA's stated mission is to protect human health and the environment. Please explain how EPA's recent proposal regarding mercury advances the agency's stated mission to protect human health and the environment?

2. Specifically, what is EPA's justification for the proposal to change protections found in the Mercury and Air Toxics Standards (MATS)?

3. Please provide a summary of the Agency's current understanding of the human health impacts of mercury exposure and risks posed to the food supply chain, including any EPA presentations, briefings, or memorandums, from January 20, 2017 to present, describing or detailing these human health impacts delivered to or prepared for:

    a. EPA Acting Administrator Wheeler;

    b. Former Administrator Scott Pruitt;

    c. Office of Policy Associate Administrator Brittany Bolen;

    d. Office of Air and Radiation (OAR) Assistant Administrator William Wehrum;

    e. OAR Senior Counsel to the Assistant Administrator David Harlow;

    f. OAR Deputy Assistant Administrator Clint Woods; or

    g. OAR Senior Policy Advisor Mandy Gunasekara.

4. With regard to specific facilities subject to the current MATS rule:

    a. How many electric generating units nationwide installed pollution controls to limit mercury emissions under the current MATS rule?

    b. How many facilities requested an extension on their MATS compliance deadline?

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[21] *Pruitt Unveils Controversial 'Transparency' Rule Limiting What Research EPA Can Use,* Washington Post (April 24, 2018).

c. Please provide a list of facilities that are currently not in compliance with the requirements of the MATS rule. Please provide these numbers for electric generating units nationwide and include a subtotal for each figure for coal-refuse burning facilities.

d. Please also provide the following for both electric generating units nationwide, and for coal-refuse burning facilities:

i. An estimate of the public health impacts of these non-compliant facilities for the surrounding and downwind communities;

ii. An estimate of the economic cost of the public health impacts in (i); and

iii. An explanation whether EPA has initiated or concluded enforcement actions against any of the facilities out of compliance with MATS? Please explain why or why not, and provide a list of such actions.

EPA Actions to Undermine Protections Against Toxic Air Pollution by Withdrawing the Longstanding OIAI Policy

5. How many sources are covered by OIAI policy change, and has EPA identified their locations and the magnitude of their potential HAP increases?

a. Has EPA conducted an analysis of the public health impacts of this policy change on surrounding and downwind communities?

b. Please provide any such analyses and a summary of the analyses.

EPA Actions to Undermine Human Health Protections Against Harmful Exhaust from Certain Freight Trucks

6. With respect to EPA regulation of gliders, glider engines, and glider kits, please provide the following:

a. Any electronic communications between or among OAR Assistant Administrator William Wehrum, OAR Deputy Assistant Administrator Clint Woods, OAR Senior Counsel to the Assistant Administrator David Harlow, OAR Senior Policy Advisor Mandy Gunasekara, Office of Enforcement and Compliance Assurance Assistant Administrator (OECA) Susan Bodine, OECA Deputy Assistant Administrator Patrick Traylor, and Office of Policy Associate Administrator Brittany Bolen from February 2018 to present regarding EPA regulation of gliders, glider engines, and glider kits.

b. Copies of any communications between or among the individuals identified in (a) and any employee or representative of Fitzgerald Glider Kits.

c. Copies of any briefing materials prepared for or provided to OAR Assistant Administrator William Wehrum from June 2018 to present regarding gliders, glider engines, and glider kits.

d. Copies of all emails and other communications between EPA political appointees from January 20, 2017 to present with the White House or the Office of Management and Budget (OMB) regarding EPA regulation of gliders, glider engines, and glider kits, including but not limited to those regarding White House or OMB requests for additional study of associated environmental and economic impacts.

e. A description of any current Agency efforts to amend EPA regulation of gliders, glider engines, and glider kits.

f. An explanation of whether EPA has initiated or conducted any enforcement activities relating to Fitzgerald Glider Kits, including but not limited to requesting information pursuant to CAA Section 208.

EPA Actions to Undermine Scientific Integrity in Reviewing and Setting NAAQS under the CAA

7. Please provide any electronic communications between or among OAR Assistant Administrator William Wehrum, OAR Deputy Assistant Administrator Clint Woods, OAR Senior Policy Advisor Mandy Gunasekara and CASAC Chair Tony Cox from April 1, 2018 to May 15, 2018 discussing the development of the "Back to Basics Process for Reviewing National Ambient Air Quality Standards" May 9, 2018 memorandum.

EPA's Effort to Undermine and Discredit the Role of Science in Agency Proceedings

8. Please explain why EPA disbanded the CASAC particle pollution subcommittee, and include any corresponding Agency actions intended to replace the expertise of these subcommittee members.

Please provide all requested answers and documents no later than February 11, 2019. If you have any questions, please contact Jon Monger with the Committee staff at (202) 225-2927. We look forward to your timely response.

Sincerely,

Frank Pallone, Jr.
Chairman

Diana DeGette
Chair
Subcommittee on Oversight
and Investigations

Paul D. Tonko
Chairman
Subcommittee on Environment
and Climate Change

Cc: The Honorable Greg Walden, Ranking Member, Committee on Energy and Commerce
The Honorable Brett Guthrie, Ranking Member, Subcommittee on Oversight and Investigations
The Honorable John Shimkus, Ranking Member, Subcommittee on Environment and Climate Change

Responding to Document Requests from the Committee on Energy and Commerce

In responding to the document request from the Committee on Energy and Commerce, please apply the instructions and definitions set forth below.

Instructions

1. In complying with the request, you should produce all responsive documents in your possession, custody, or control.

2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.

3. In the event that any entity, organization, or individual denoted in the request has been, or is currently, known by any other name than that herein denoted, the request should be read also to include them under that alternative identification.

4. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.

5. Documents produced in electronic format should also be organized, identified, and indexed electronically. Documents produced in an electronic format should also be produced in a searchable format.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. When you produce documents, you should identify the paragraph or clause in the Committee's request to which the documents respond.

8. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. To the extent that documents were not stored with file labels, dividers, or identifying markers, they should be organized into separate folders by subject matter prior to production.

9. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph or clause of the request to which the documents are responsive, should be provided in an accompanying index.

10. It is not a proper basis to refuse to produce a document because another person or entity possesses a nonidentical or identical copy of the same document.

11. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer backup tape), you should consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (8) and (9) above.

12. In the event that a responsive document is withheld on any basis, you should provide the following information concerning the document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author, and addressee; and (e) the relationship of the author and addressee to each other.

13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.

14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

15. Unless otherwise specified, the time period covered by this request is from January 1, 2017 to the present.

16. This request is continuing in nature and applies to any newly discovered document. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.

17. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.

18. All documents should be bates-stamped sequentially and produced sequentially.

19. Two sets of documents should be delivered, one set to the majority staff and one set to the minority staff. The majority set should be delivered to the majority staff in Room 316 of the Ford House Office Building, and the minority set should be delivered to the minority staff in Room 564 of the Ford House Office Building. You should consult with Committee staff regarding the method of delivery prior to sending any materials.

20. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee or identified in a privilege log provided to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto). The term also means any graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "documents in your possession, custody, or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that you have placed in the temporary possession, custody, or control of any third party.

3. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, email (desktop or mobile device), text message, instant message, MMS or SMS message, or otherwise.

4. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of the request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

5. The terms "person" or "persons" means natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures,

proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.

7. The terms "referring" or "relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

8. The term "employee" means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.

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