Senate Committee on Environment and Public Works
Hearing entitled, *"Examining EPA's Agenda: Protecting the Environment and Allowing America's Economy to Grow."*
August 1, 2018
Questions for the Record for Andrew Wheeler

Chairman Barrasso:

1. The administration has indicated that it plans to issue a Reid Vapor Pressure (RVP) waiver for fuels with ethanol concentrations higher than ten percent. However, in 2011, EPA formally reaffirmed that it did not have the authority to issue a RVP waiver for these fuels. Specifically, EPA stated that: "In sum, the text of section 211(h)(4) [of the Clean Air Act] and this legislative history supports EPA's interpretation, adopted in the 1991 rulemaking, that the 1 psi waiver only applies to gasoline blends containing 9 - 10 vol% ethanol." 76 Fed. Reg. 44406, 44433 (July 25, 2011). Please explain the process by which EPA has re-evaluated its statutory authority and come to a new conclusion.

   On October 9, 2018, President Trump directed EPA to undertake a Clean Air Act rulemaking to modify our regulations to allow E15 to take advantage of the 1-pound per square inch (psi) Reid Vapor Pressure (RVP) waiver that currently applies to E10 during the summer months. We are currently working on the proposed rulemaking, which will provide stakeholders and the public with relevant legal and technical information. The rulemaking will be subject to a notice-and-comment process and will therefore present an opportunity for all stakeholders to review the proposal and provide input.

2. On June 29, 2018, EPA published a report entitled, "Biofuels and the Environment: Second Triennial Report to Congress." The report documents how activities associated with biofuel production and use have negatively affected the environment. Specifically, it shows how activities associated with biofuel production and use have reduced air quality, polluted waters, destroyed wildlife habitat and ecosystems, and depleted already stressed aquifers. Has EPA evaluated how a RVP waiver for fuels with more than ten percent ethanol would affect demand for biofuel feedstocks and the use of biofuels, and, in turn, make the impacts to the environment worse? If not, will EPA do so before issuing a RVP waiver for these fuels?

   EPA has begun work on a Clean Air Act rulemaking to modify our regulations to allow E15 to take advantage of the 1-pound per square inch (psi) Reid Vapor Pressure (RVP) waiver that currently applies to E10 during the summer months. We are currently developing the proposed rule, which will provide stakeholders and the public with relevant legal and technical information. The rulemaking will be subject to a notice-and-comment process and will therefore present an opportunity for all stakeholders to review the proposal and provide input.

ED_002674_00009392-00001

3. EPA is currently taking public comment on its proposed renewable fuel volume obligations for 2019 and biomass-based diesel volume obligations for 2020. EPA issued this proposal three days before issuing its second triennial report to Congress on biofuels and the environment.

   a. How does EPA plan to incorporate the findings of its second triennial report into the final renewable fuel volume obligations for 2019 and biomass-based diesel volume obligations for 2020?

      The 2018 *Biofuels and Environment* report fulfills our obligation under section 204 of the Energy Independence and Security Act of 2007. The final renewable fuel obligation (RVO) rule will fulfill our obligations under section 211(o) of the Clean Air Act in keeping with the requirements and authorities provided by Congress in 211(o) for doing so.

      The final RVO rule will take into consideration the 2018 *Biofuels and Environment* report. For additional context see answer included in Part B below.

   b. Will EPA seek to mitigate the impacts to the environment, as documented in the second triennial report, in its final volume obligations for 2019 and 2020, respectively?

      The final renewable fuel obligation (RVO) rule will fulfill our obligations under section 211(o) of the Clean Air Act in keeping with the requirements and authorities provided by Congress in section 211(o) for doing so. Section 211(o) provides EPA the authority to "waive the requirements of paragraph (2) in whole or in part…based on a determination by the Administrator, after public notice and opportunity for public comment, that implementation of the requirement would severely harm the economy or environment of a State, a region, or the United States." In our proposal for the 2019 RVO rule, we did not propose to exercise this waiver authority.

      The 2018 Biofuel and Environment report was based on a review of the literature related to biofuels up until April 2017. As the report noted, attributing environmental impacts to biofuels is complicated and uncertain. For example, crops such as corn and soy are produced for many other purposes besides biofuels and it remains unclear what portion and severity of the impacts can be attributed to biofuel production. In addition, the report did not include a comparative assessment of the impact of biofuels on the environment relative to the impacts of other transportation fuels or energy sources, including fossil fuels, for every environmental endpoint. Furthermore, the *Biofuels and Environment* report also notes that environmental impacts associated with large scale agriculture can be reduced if efficient technologies, best management practices, and conservation techniques are widely implemented. In this regard, EPA continues to work

closely with USDA and supports the efforts by USDA to promote and advance sustainable agricultural practices.

4. Historically, EPA and DOE have protected the confidential business information, including the identities, of small refineries, which petition for hardship relief under the Renewable Fuel Standard (RFS). Failure to protect this information would: (1) give entities that sell refined products in the same market as a small refinery a competitive advantage over that refinery; (2) give entities that sell renewable identification numbers (RINS) to a small refinery the opportunity to extract a higher price from that refinery; (3) move the secondary RINs market, which is measured in billions of dollars; and (4) increase the risk of insider trading and securities fraud with respect to publicly-traded companies that own small refineries. Will EPA continue to protect the confidential business information, including the identities, of small refineries petitioning for hardship relief?

   EPA is committed to protecting confidential business information (CBI). Both EPA and DOE staff understand the sensitivity of CBI and take very seriously the need to maintain confidentiality of such information, consistent with our regulations at 40 CFR part 2, subpart B, Confidentiality of Business Information (specifying the requirements for protecting information for which a claim of business confidentiality has been made and the procedures for resolving a claim and protecting or disclosing information).

5. The public, state governments, members of Congress, and others have shown a growing interest in and concern about per- and polyfluoroalkyl substances (PFAS). Among the issues that you are addressing as Acting Administrator, where do PFAS issues rank?

   Addressing per- and polyflouroalkyl substances (PFAS) remains among EPA's priorities.

6. Who within EPA has responsibility for managing EPA's efforts with respect to PFAS?

   a. Has EPA formed an intra-agency group to coordinate the agency's PFAS activities? If EPA has created such a group, which EPA offices are represented in that group?

      Yes. The EPA's Office of Water is leading a cross agency workgroup addressing per- and polyflouroalkyl substances (PFAS). The workgroup brings together expertise from across the EPA, including top scientists and senior officials from the Agency's air, chemicals, land, research, enforcement and water offices. In addition to a cross-program effort, the EPA is also working closely with the Agency's regional offices to enhance cooperation

with partners at the state and local levels, to provide on-the-ground knowledge about specific issues to address PFAS nationwide.

7. I understand that an inter-agency group exists to coordinate PFAS activities among federal agencies.

    a. Which agencies are represented in that group?
    b. How often does this group meet?
    c. Are there opportunities for public engagement with the group?

The EPA is coordinating each of the Agency's actions on per- and polyflouroalkyl substances (PFAS) with other federal agencies to ensure the Agency has input from experts with relevant expertise from across the federal government. For example, the EPA developed draft toxicity values for GenX chemicals and perfluorobutane sulfonate (PFBS) in cooperation with our federal partners, including agencies within the Department of Health and Human Services (such as Centers for Disease Control and Prevention, Agency for Toxic Substances and Disease Registry (ATSDR), and the National Institutes of Health), the Department of Defense (DoD), the National Aeronautics and Space Administration, the U.S. Geological Survey and the Office of Management and Budget.

In 2018, the EPA visited communities impacted by PFAS to hear directly from the public on how to best help states and communities facing this issue. To plan these events, the EPA coordinated closely with the states and local communities as well as with DoD and ATSDR. Each engagement included panelists and/or presentations from local governments, states, and federal partners. The EPA remains committed to continued collaboration with our federal partners and public engagement as the Agency works to protect public health.

8. In proposing actions to address ongoing PFAS concerns, will EPA seek public comment on its proposed actions?

The EPA is currently seeking public input on draft toxicity values for GenX chemicals and perfluorobutane sulfonate (PFBS) in cooperation with our federal partners. This action marks the first of the four actions the EPA announced at the May 2018 PFAS National Leadership Summit.

In 2018, the EPA visited communities impacted by PFAS to hear directly from the public on how to best help states and communities facing this issue. The EPA also collected public input through a docket which can be accessed at htts://www.regulations.gov (Docket No. OW-2018-0270). Information from the National Leadership Summit, community engagements, and public input provided in the docket will all help the EPA as the Agency considers potential actions to assist states, tribes, and local communities address PFAS contamination. Depending on

the nature of the action the EPA decides to undertake, the Agency will seek further public review and comment on the specific actions as appropriate. For example, the EPA will seek further public comment on any proposed regulatory actions the Agency determines are needed.

a. Will EPA seek peer review of those proposed actions through, for example, EPA's Science Advisory Board?

   The EPA is committed to using robust scientific analysis to inform decisions by the Agency regarding PFAS. The Science Advisory Board (SAB) provides valuable independent expertise that informs and improves the EPA's actions. On June 1, 2018, the EPA briefed the SAB on the Agency's efforts to help states and communities address PFAS contamination. Depending upon the additional actions the Agency decides to undertake, the EPA may seek further input from the SAB.

9. Does EPA have any plans to seek technical or scientific input on any PFAS issue from the National Academies of Sciences, Engineering, and Medicine?

   The EPA is committed to using robust scientific analysis to inform decisions by the Agency regarding PFAS. The National Academies of Sciences, Engineering, and Medicine (NAS) provides expert advice on some of the most pressing challenges facing the nation. Depending upon the additional actions the Agency decides to undertake, the EPA may seek input from the NAS.

<u>Ranking Member Carper:</u>

10. EPA's Science Advisory Board provides independent scientific and technical review, advice and recommendations to the Administrator on the science forming the basis for EPA's actions. In June, the Board wrote to former-Administrator Pruitt announcing that it would like to review the science forming the basis for six controversial rules before they are finalized. The request included the basis for the rule regulating greenhouse gas emissions from cars and SUVs, the rule exempting polluting glider trucks from emissions standards, the rule designed to curb greenhouse gas emissions from the oil and gas industry, the Clean Power Plan, the rule setting greenhouse gas emission standards for power plants, and EPA's proposed "secret science" rule to ignore some of the world's best scientific studies when writing regulations.

    a. Will you commit to making sure that the EPA Science Advisory Board gets access to any materials it needs to complete its reviews? If not, why not?
    b. Will you commit to wait to receive and review the advice the Board gives you ***before*** EPA finalizes any of these rules? If not, why not?

We are in the process of responding to 3 letters from the SAB (two dated June 21, 2018 and one dated June 28, 2018) and expect to send responses in the near future.

In our July 17, 2018 private meeting, I expressed my concerns about the manner in which EPA is implementing the Toxic Substances Control Act (TSCA). It is my belief that if EPA does not immediately reverse course, it risks having the majority of its TSCA implementation efforts overturned in litigation. I have several questions regarding some of my concerns. The attachments referenced in these questions consist of EPA technical assistance provided to Congress while the law was being negotiated, and are available at https://www.epw.senate.gov/public/_cache/files/f/0/f0729f1a-4385-453f-b7f8-442825a0721c/A681AA266D5CC024C98FCC85A944EB5E.senator-carper-questions-for-the-record-to-epa-nominees.pdf.

11. Section 26 of TSCA states that:

> "(4) CHEMICAL SUBSTANCES WITH COMPLETED RISK ASSESSMENTS.—With respect to a chemical substance listed in the 2014 update to the TSCA Work Plan for Chemical Assessments for which the Administrator has published a completed risk assessment prior to the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the Administrator may publish proposed and final rules under section 6(a) that are consistent with the scope of the completed risk assessment for the chemical substance and consistent with other applicable requirements of section 6."

Page 1 of Attachment 1 is an email sent by EPA on March 17, 2016, the substance of which was shared with the bipartisan and bicameral negotiators of the Toxic Substances Control Act. It states that EPA "just discovered a technical issue that will have significant policy implications for EPA's ongoing work under Section 6. As currently drafted, both Senate and House bills could frustrate EPA's ability to timely manage risks that have been (or may be) identified in our current Work Plan risk assessments." The email goes on to describe several risk assessments on chemical substances (TCE, NMP, MC and 1-BP) that had been completed or were near completion by EPA, and stated that "EPA is *not* looking at all the conditions of use for these chemicals. This approach, which might be characterized as a *partial* risk evaluation or *partial* safety determination, we see as simply not contemplated under the Senate and House bills. The section 6 structure in both bills would require EPA to assess a chemical in its entirety, based on all conditions of use – not just a subset of those uses." EPA then went on to state that if it were to move forward with rulemakings to restrict or ban some or all of these substances (which it has subsequently proposed to do), there would be some risk that the rules would be found to be inconsistent with the new statutory requirement to assess all conditions of use. EPA said that it would "welcome an opportunity to work with you on a drafting solution to this issue."

a. Do you agree with EPA's March 17, 2016 view that if it had moved forward with these partial risk evaluations and rulemakings absent explicit statutory authority to do so even though the risk evaluations had not considered all conditions of use, that EPA could have been sued for not complying with the law's requirements? If not, please provide specific reasons why not.

EPA agrees that proper implementation of the statutory requirements for evaluating existing chemicals is key to ensuring the safety of chemicals in the marketplace under amended TSCA. EPA is committed to implementing the amended TSCA law as written by Congress, and taking actions consistent with the rules EPA has promulgated, via notice and comment rulemaking as required by TSCA, to implement the law.

b. Pages 2 and 3 of Attachment 1 consist of April 2, 2016 Technical Assistance from EPA that was provided to the Senate on a drafting solution to address the problem identified by EPA on March 17, 2016. Do you agree that this language, which is also drafted as an amendment to Section 26, bears a close resemblance to the language that was enacted into law, and, like the enacted text, provides EPA with statutory authority to complete rulemakings on the chemical substances on which it completed risk assessments prior to the enactment of the new law even though the risk assessments were not undertaken for all conditions of use? If not, please provide specific reasons why not.

EPA is not precluded from finalizing proposed regulations based on risk evaluations conducted prior to the enactment of amendments to TSCA. For TCE and NMP, EPA has concluded that the Agency's previous assessments of the potential risks will be more robust if the potential risks from these conditions of use are evaluated by applying standards and guidance that EPA has developed under amended TSCA. EPA is committed to using the best available science and information to implement the amended TSCA law as written by Congress, and taking actions consistent with the rules EPA has promulgated, via notice and comment rulemaking as required by TSCA, to implement the law. For MC, the agency is currently considering information received during the public comment period for the proposed rules.

12. The newly enacted TSCA, for new chemicals, states that:

"(e) REGULATION PENDING DEVELOPMENT OF INFORMATION.—(1)(A) If the Administrator determines that—

(i) the information available to the Administrator is insufficient to permit a reasoned evaluation of the health and environmental effects of a chemical substance with respect to which notice is required by subsection (a); or

(ii)(I) in the absence of sufficient information to permit the Administrator to make such an evaluation, the manufacture, processing, distribution in commerce, use, or disposal of such substance, or any combination of such activities,

may present an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use; or (II) such substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance, the Administrator shall issue an order, to take effect on the expiration of the applicable review period, to prohibit or limit the manufacture, processing, distribution in commerce, use, or disposal of such substance or to prohibit or limit any combination of such activities to the extent necessary to protect against an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, and the submitter of the notice may commence manufacture of the chemical substance, or manufacture or processing of the chemical substance for a significant new use, including while any required information is being developed, only in compliance with the order."

Attachment 2 consists of a portion of EPA's Technical Assistance on an April 7, 2016 draft of Section 5 of TSCA that EPA provided to the Senate. Comment A7 provides EPA's views on section 5(e). This comment noted a change from previous drafts, observing that the draft allowed manufacture of a new chemical to proceed even if EPA did not have enough information to determine whether it posed an unreasonable risk. This is because the draft as written allowed for manufacture to proceed if EPA *either* took steps to obtain sufficient information about the chemical substance (but before it received and evaluated that information) OR if it imposed a risk management order. EPA also suggested some edits to this draft to restore the "functionality of the prior draft," which ensured that manufacture could not proceed unless/until the information about the chemical substance was sufficient and EPA made the necessary risk determination, or in compliance with an EPA-issued order to protect against unreasonable risk under the conditions of use while the information was being developed.

a. Do you agree that the statute requires EPA to issue an order to protect against an unreasonable risk a new chemical substance may pose under the conditions of use, either while information EPA needs to assess the chemical substance is developed, or if EPA determines that the substance may present an unreasonable risk under the conditions of use, or if such substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance? If not, please provide specific reasons why not, using statutory text to explain your reasoning.

EPA appreciates the significant responsibility conferred under Section 5 of amended TSCA and is dedicated to fully utilizing all authorities under

section 5, including the use of consent orders, as applicable, to protect the public against any unreasonable risk a new chemical substance presents or may present. EPA is committed to implementing its new chemicals responsibilities consistent with TSCA section 5 as amended by Congress.

13. Section 5(f)(4) of TSCA states that:

"(4) TREATMENT OF NONCONFORMING USES.—Not later than 90 days after taking an action under paragraph (2) or (3) or issuing an order under subsection (e) relating to a chemical substance with respect to which the Administrator has made a determination under subsection (a)(3)(A) or (B), the Administrator shall consider whether to promulgate a rule pursuant to subsection (a)(2) that identifies as a significant new use any manufacturing, processing, use, distribution in commerce, or disposal of the chemical substance that does not conform to the restrictions imposed by the action or order, and, as applicable, initiate such a rulemaking or publish a statement describing the reasons of the Administrator for not initiating such a rulemaking."

Attachment 3 is an April 9, 2016 email from EPA providing responses to questions on the April 7 draft included in Attachment 2. The email asks whether the removal of provisions 5(e)(4) and 5(f)(1)(C) in that draft would also remove EPA's requirement to consider whether to issue a Significant New Use Rule (SNUR) when it issued orders to a submitter of a pre-manufacturing notice (PMN) (and explain its decision if it chose not to do so). EPA responded in the affirmative.

a. Do you agree that the enacted law retained the April 7 draft's requirement to consider whether to issue a Significant New Use Rule (SNUR) when EPA has issued an order to a submitter of a pre-manufacturing notice (PMN) (and explain its decision if it chooses not to do so)? If not, please provide specific reasons why not, using statutory text to explain your reasoning.

EPA appreciates the significant responsibility conferred under Section 5 of amended TSCA and is dedicated to fully utilizing all authorities under section 5, to protect the public against any unreasonable risk a new chemical substance presents or may present. EPA is committed to implementing its new chemicals responsibilities consistent with TSCA section 5 as amended by Congress. Section 5(4) of the statute does allow EPA to consider whether to issue a Significant New Use Rule when EPA has made a determination under subsection (a)(3)(A) or (B).

14. The newly enacted TSCA requires EPA, for existing chemicals that are designated a high-priority chemical substance or otherwise designated for a risk evaluation, to:

> "conduct risk evaluations pursuant to this paragraph to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation by the Administrator, under the conditions of use."

In the statute, 'conditions of use' is defined as:

"the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of.''

Attachment 4 is a December 12, 2016 (post-enactment) email conveying Technical Assistance from EPA that responded to several questions posed about how EPA was required to do risk evaluations for a chemical substance under the conditions of use.

a. Do you agree with EPA's responses to these questions as well as the narrative that precedes the specific responses to questions? If not, please provide specific reasons why not, indicating in your response how your views are consistent with the statutory text excerpted above (or, as applicable, how EPA's responses are inconsistent with the statutory text excepted above).

   EPA is committed to implementing the amended TSCA law as written by Congress, and taking actions consistent with the rules EPA has promulgated, via notice and comment rulemaking as required by TSCA, to implement the law. As EPA stated in the Risk Evaluation Process final rule (40 CFR 702) promulgated in 2017, regarding the conditions of use, as EPA interprets the statute, the Agency is to exercise that discretion consistent with the objective of conducting a technically sound, manageable evaluation to determine whether a chemical substance—not just individual uses or activities—presents an unreasonable risk. In that regard, EPA will be guided by its best understanding, informed by legislative text and history, of the circumstances of manufacture, processing, distribution in commerce, use and disposal Congress intended EPA to consider in risk evaluations.

15. Attachment 5 is a document that includes EPA's technical assistance and observations that compared an April 12 2016 Senate draft of section 5 to an April 18, 2016 House draft.

    a. On pages 2 and 15, EPA provides comments related to the 90-day period for review of a PMN. Do you agree that the enacted law includes text that reflects EPA's input in these comments? If not, please provide specific reasons why not, using statutory text to explain your reasoning.
    b. On Page 14, EPA notes the deletion of the requirement not to consider costs or other non-risk factors when considering section 5(h) exemption requests. Do you agree that the enacted law retained this deletion in this subsection, but included the requirement in sections 5(a), 5(e) and 5(f)? If not, please provide specific reasons why not, using statutory text to explain your reasoning.

    EPA is committed to following all section 5 statutory requirements for the conduct and timing of PMN reviews. EPA is committed to implementing its new chemicals responsibilities consistent with TSCA section 5 as amended by Congress. Section 5(h) does not prohibit EPA from considering costs or other non-risk factors when considering exemption requests.

16. Attachment 6 consists of EPA's comments to a draft of Senate section 5 dated around April 12, 2016.

    a. EPA's comment A22 notes the absence of the requirement not to consider costs or other non-risk factors when considering section 5(h) exemption requests. Do you agree that the enacted law does not include the requirement in this subsection, but does include the requirement in subsections 5(a), 5(e) and 5(f)? If not, please provide specific reasons why not, using statutory text to explain your reasoning.
    b. Do you agree that while this same EPA comment identifies one inconsistency between the above-described text that is absent from subsection 5(h) but appears throughout the rest of section 5, it does not identify another difference, namely the presence of the term "specific uses identified in the application" in subsection 5(h) versus the term "conditions of use" that appears throughout the rest of section 5? If not, why not?

    EPA is committed to following all section 5 statutory requirements, including those in section 5(h), for the conduct and timing of PMN reviews. EPA is committed to implementing its new chemicals responsibilities consistent with TSCA section 5 as amended by Congress. Section 5(h) does not prohibit EPA from considering costs or other non-risk factors when considering exemption requests.

17. Attachment 7 consists of EPA's comments to an April 3, 2016 Senate draft of section 5.

a. On page 1, EPA observes that "5(e) requires no action on the part of the Administrator whatsoever: it is wholly discretionary authority to impose requirements on the manufacture pending development of information." Do you agree that the enacted law requires EPA to either prohibit manufacture or issue an order to mitigate against potential risk while information is being developed by a manufacturer? If not, please provide specific reasons why not, using statutory text to explain your reasoning.
b. On page 2, EPA responds to a question posed by Senate staff, stating "We think it is important not to limit review to the uses identified in the notice. If the identified uses seem fine, and EPA therefore does nothing, the submitter is free to submit an NOC and then manufacture in any way he or she wants. EPA often uses 5(e) orders to address uses beyond those specified in notices." Do you agree that the enacted statute requires EPA to review the conditions of use (as that term is defined in the statute) of a chemical substance when it reviews a PMN as EPA advised the Senate in this comment? If not, please provide specific reasons why not, using statutory text to explain your reasoning.
c. On page 9, EPA says that "It seems like the best solution, per above comment, may be to drop the limitation above that the order pertain only to the conditions of use specified in the notice." Do you agree that the enacted statute incorporated EPA's proposed 'best solution' and did not limit orders only to the conditions of use specified in the notice? If not, please provide specific reasons why not, using statutory text to explain your reasoning.
d. A second EPA comment on page 9 states that "A possible solution would be, in line with the Senate bill and offer, to drop (e) and require EPA to issue an order under what is now (f) any time EPA either makes a may present finding or lacks sufficient info, as necessary to make the unlikely to present finding." Do you agree that the enacted text retains section 5(e) and also requires EPA to issue an order any time EPA either makes a may present finding or lacks sufficient information before manufacturing can commence? If not, please provide specific reasons why not, using statutory text to explain your reasoning.
e. On page 16, EPA responds to a question from Senate staff about whether, in the 5(h) exemptions section, it makes sense to deviate from the rest of the section's references to 'conditions of use' and instead limit EPA's exemption determination to the uses of the chemical substance identified in the exemption request. EPA responds by stating "We agree that the reference to specific uses makes sense, but not because of anything having to do with a SNUR. It seems to us that, if a party is seeking a partial section 5 exemptions, we would consider only the uses for which they are seeking the exemption, since the exemption would limit them to those." Do you agree that the enacted statute follows EPA's advice to retain the authority for EPA to consider just the uses of a chemical substance included in an exemption request, but does not make the same limiting change anywhere else so as not to so limit its review of all conditions of use of a chemical substance subject to a PMN? If not, please provide specific reasons why not, using statutory text to explain your reasoning.

EPA is committed to following all section 5 statutory requirements for the conduct and timing of PMN reviews, including those related to the conditions of use. EPA is committed to implementing its new chemicals responsibilities consistent with TSCA section 5 as amended by Congress. Section 5(e) states that "the Administrator shall issue an order . . . to prohibit or limit the manufacture, processing, distribution in commerce, use, or disposal of such substance or to prohibit or limit any combination of such activities to the extent necessary to protect against an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use." EPA acknowledges that only Section 5(h)(1)(A) contains the phrase "including an unreasonable risk to a potentially exposed or susceptible subpopulation identified by the Administrator for the specific conditions of use identified in the application" in Section 5. For Section 5(a)(3) reviews, EPA reviews the conditions of use and does not limit its review to the intended uses identified in a PMN.

18. What actions is EPA currently taking and planning to take to enforce emissions requirements for glider trucks?

    a. Is EPA requiring Fitzgerald and other glider truck manufacturers to demonstrate compliance with these rules, for example, by regularly reporting to EPA on its sales of glider trucks? If not, why not, and how does EPA plan to ensure that the rules are being complied with?

    Manufacturers of glider vehicles are required by regulation (40 CFR 1037.250 and 1037.635) to annually report to EPA specific information on their manufacturing operations, including total U.S.-directed production volume in the prior year, and whether the vehicles complied with the standards or were exempt.

19. EPA's proposed revision to its Phase 2 Medium- and Heavy-Duty greenhouse gas rules proposes to repeal the emission standards and other requirements for glider vehicles, glider engines, and glider kits. This proposal, if finalized, would conclude that that glider vehicles are not "new motor vehicles" within the meaning of CAA section 216(3), glider engines are not "new motor vehicle engines" within the meaning of CAA section 216(3), and glider kits are not "incomplete" new motor vehicles. The result of these re-interpretations would be that EPA would lack authority to regulate glider vehicles, glider engines, and glider kits under CAA section 202(a)(1). Many Clean Air Act experts do not agree with EPA's proposed re-interpretations, and have announced plans to litigate if the proposal is finalized.

a. If courts agree with these prospective petitioners and reject EPA's proposed re-interpretations, do you agree that glider vehicles, glider engines, and glider kits would remain subject to EPA's Phase 2 greenhouse gas rules in the way contemplated by that rule? If not, why not?

We continue to consider each of these factors as we revisit whether or not the Phase 2 requirements for glider vehicles are consistent with the Clean Air Act.

20. Section 209 of the Clean Air Act prohibits States or any subdivision thereof from adopting or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines (unless the State to adopt or enforce such a standard is California, it is granted a waiver by EPA to do so, and states that are subject to section 177 of the Clean Air Act subsequently adopt California's standard).

    a. In the event that EPA finalizes its proposed revision to its Phase 2 Medium- and Heavy-Duty greenhouse gas rules, and those reinterpretations are upheld in court, do you agree that section 209's preemption provision would no longer apply to any state requirements relating to control of emissions from glider vehicles or glider engines? If not, why not?
    b. Do you also agree that in this event, there could be 50 different state standards for gliders (in addition to the standards California has already set)? If not, why not?

We continue to evaluate EPA's authority to regulate glider vehicles under the Clean Air Act. The evaluation of EPA's authority under the Clean Air Act may or may not have an impact on preemption applicable to California and other states under sections 209 and 177 of the Clean Air Act.

21. During the development of the "Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-26 Passenger Cars and Light Trucks", EPA officials met with OMB and NHTSA officials to convey their concerns about the proposal several times. They left numerous documents with OMB officials that are now part of the rulemaking docket[1].These documents indicate that there are significant problems with the model that was used by NHTSA to develop the proposal to freeze fuel economy and greenhouse gas tailpipe standards from 2020-26. One such example is a document titled "Email_5_-_Email_from_William_Charmley_to_Chandana_Achanta_-_June_18,_2018%20(1).pdf". This 122 page long document includes a number of PowerPoint presentations EPA made to OMB and NHTSA staff along with additional documentation and analysis.

[1] https://www.regulations.gov/document?D=EPA-HQ-OAR-2018-0283-0453

a. The document notes that "EPA analysis to date shows significant and fundamental flaws in CAFE model (both the CAFE version and the "GHG version").... These flaws make the CAFE model unusable in current form for policy analysis and for assessing the appropriate level of the CAFE or GHG standards." Do you believe that each of these flaws were fully remedied before the rules were proposed? If so, please list the specific remedies that addressed each of EPA's concerns. If not, will you ensure that all necessary technical input from EPA's Office of Transportation and Air Quality is incorporated into the final rule in order to ensure that the rule cannot be successfully over-turned in court on grounds that the model on which it is based is significantly or fundamentally flawed?
b. One of the main contributors to the NHTSA conclusions that the augural standards would cause thousands of additional deaths is NHTSA's "consumer choice" module, which asserts that making the fleet more fuel efficient will cause people to keep their less safe, older vehicles for longer, and that this will mean there are more unsafe vehicles on the road (because newer vehicles have more safety technologies). The document states that EPA believed this NHTSA model was flawed, because it predicts an additional 26 million non-existent vehicles would be in the 2016 fleet and 46 million additional non-existent vehicles in the 2030 fleet. For context, this would represent a 15-20% increase in registered vehicles. The document also notes that this problem appeared to be un-remedied several months after EPA first raised it. Was this problem remedied in the proposed rule? If so, how? If not, will you ensure that it is remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on which it is based is significantly or fundamentally flawed?
c. The document also found that NHTSA's consumer choice model predicts an unexplained, and apparently fictitious 10-15% increase in vehicle miles traveled (VMT). Specifically, the model somehow predicts people will drive an extra 239 billion miles in 2016 and 302 billion more miles in 2030. The increased deaths associated with higher efficiency standards in the NHTSA model are highly correlated to VMT (more driving equals more accidents equals more deaths). It would thus seem that EPA believes that the NHTSA safety numbers are predicated on an entirely fictitious driving scenario. Was this problem remedied in the proposed rule? If so, how? If not, will you ensure that it is remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on which it is based is significantly or fundamentally flawed?
d. The document also notes that NHTSA does not accurately model the manner in which automobile manufacturers trade credits as part of their compliance strategies, observing that NHTSA does not assume that compliance credits are traded between manufacturers' car and truck fleets (which is what manufacturers currently do), and that this has the effect of over-estimating compliance costs. Was this problem remedied in the proposed rule? If so, how? If not, will you ensure that it is remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on

which it is based is significantly or fundamentally flawed?

e. The document observes that NHTSA's model overestimates the costs of particular technologies compared to their actual costs and use in the real world. The model also reportedly selects the most expensive technology packages to meet the standards, which overestimates the most cost-effective ways to do so by $1-2,000 per vehicle. Do you agree that manufacturers would be more likely to select the most cost-effective set of technologies with which to meet standards, rather than the least cost-effective set of technologies? If not, why not? Was this problem remedied in the proposed rule? If so, how? If not, will you ensure that it is remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on which it is based is significantly or fundamentally flawed?

f. The document stated that the NHTSA model omitted the benefits of some fuel-efficient technologies entirely, while others were erroneously inputted into the model. For example, 'start/stop' technology, a technology that causes engines to automatically shut off while vehicles are stopped in traffic (and thus use no fuel), is estimated to have a negative effect on fuel-efficiency, which is simply not plausible. Were these problems remedied in the proposed rule? If so, how? If not, will you ensure that they are remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on which it is based is significantly or fundamentally flawed?

g. The document observed that NHTSA's model appears to add vehicle miles travelled in unexplained ways. For example, it observed that as many as 25 billion more miles of driving were predicted in a given year, even when the rebound effect (a measure of how much extra driving consumers are expected to do as a result of having more fuel-efficient vehicles) was set to 0 percent. The document observes that NHTSA's model actually predicts *less* driving when the rebound effect was set to 20 percent (meaning 20% more driving by consumers in more fuel-efficient vehicles would have been included in the model) than when it was kept to 0 percent. This suggests that NHTSA's model is incapable of predicting anything accurately, separate and apart from whether one agrees with its policy premise. Was this problem remedied in the proposed rule? If so, how? If not, will you ensure that it is remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on which it is based is significantly or fundamentally flawed?

h. The document states that NHTSA's "Proposed standards are detrimental to safety, rather than beneficial" once NHTSA's modeling errors were corrected. In fact, EPA found that the proposed standards result in "an average increase of 17 fatalities per year in VYs 2036-2045" relative to the current standards. Do you agree with this conclusion? If not, why not?

i. The document states that the NHTSA model projects that the current standards result in 8,000 fewer new automobiles sold annually in CYs 2021-2032, but that the used vehicle fleet would grow by 512,000 vehicles per year. That means that for every new fuel-efficient vehicle that consumers do not purchase (because NHTSA predicts their costs will be too high), somehow an additional 60 used vehicles will remain in the fleet. Do you agree that this scenario is simply

implausible in the real world, as the EPA document points out? If not, why not? Was this problem remedied in the proposed rule? If so, how? If not, will you ensure that it is remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on which it is based is significantly or fundamentally flawed?

j. In draft comments submitted to OMB on June 29, EPA commented that more than 90% of the net benefits for which the proposed rule to freeze fuel economy and greenhouse gas tailpipe standards takes credit are in fact benefits associated with vehicles manufactured prior to 2021. EPA attributed this to NHTSA's flawed consumer choice model, and questioned whether these could technically be attributable to the actual post-2021 rule. What would the net benefits of the preferred alternative— and for each of the other seven alternatives included in the NPRM — be if the agencies were to compare the costs to the benefits of cars manufactured within the MY 2021-29 cohort timeframe?

The documents you reference were made available by EPA in the rulemaking docket, because they are part of the documentation of interagency review of the draft proposed rule. Working through modeling methods and technical inputs and assumptions is a necessary and critical aspect of the agencies' joint rulemaking development efforts. EPA looks forward to reviewing the public comments on this proposal.

22. On March 14, 2018, I wrote with several of my colleagues to former EPA Administrator Scott Pruitt about our deep concern over the reversal of the EPA's longstanding policy under Section 112 of the Clean Air Act to continuously regulate hazardous air pollution from major industrial sources. We believe revoking the "once in, always in" policy will lead to greater levels of arsenic, lead, mercury, and almost two hundred other air toxic pollutants in communities around the United States. In the letter, we asked that the "once in, always in" policy be reinstated at least until EPA has performed, and received public comment on, a thorough analysis of the expected increases in air toxic pollution and its corresponding impacts on human health.

    a. When former EPA Administrator Scott Pruitt was before the EPW Committee on January 30, 2018, he acknowledged the agency failed to do any analysis before making its ill-advised decision. Please provide all EPA analysis and modeling of the impacts of this policy change, including cancer and other human health effects, environmental effects, effects on state air pollution emissions, cost-benefit analysis, and effects on interstate emissions. If none still exists today, I request that EPA complete such analysis and provide a timeline for completion.
    b. How many individual facilities in the country were considered a "major source" under Section 112 on January 24, 2018?
    c. Please identify, as of January 24, 2018, how many of the "major source" facilities identified in question 1(b) had complied with one or more MACT standards with the result being the source no longer emits more than 10 tons per year of any hazardous air pollutant or more than 25 tons per year of any combination of

hazardous air pollutants? Please group these facilities by source categories (for example, there were X number of chemical plants meeting a MACT standard that resulted in lower emissions than the major source threshold).

d. Please provide state-by-state data and a national total for facilities identified in 1(c)
e. Please provide the potential maximum amount of pollution increases for all 187 hazardous air pollutants as a result of EPA's decision to revoke the "once in, always in" policy.
f. How much additional particulate matter, ozone, lead and other criteria pollution will be added to the atmosphere as a result of revoking the "once in, always in" policy?
g. Under the new memorandum, have any major source facilities in the power plant source category requested to be re-designated as an area source? If so, please provide a list of all such facilities, also indicating whether EPA has approved the re-designation.
h. Under the new memorandum how many major sources facilities, other than facilities in the power plant source category, have asked to be re-designated as an area source? Please provide a list of all facilities, also indicating whether EPA has approved the re-designation.

The January 25, 2018 Wehrum guidance memo builds upon a 2007 proposed rule that addressed the same issue. In that proposal, EPA asserted that, "The environmental, economic, and energy impacts of the proposed amendments cannot be quantified without knowing which sources will avail themselves of the regulatory provisions proposed in this rule, and what methods of HAP emission reductions will be used. It is unknown how many sources would choose to take permit conditions that would limit their potential to emit (PTE) to below major source levels. Within this group, it is also not known how many sources may increase their emissions from the major source MACT level (assuming the level is below the major source thresholds). Similarly, we cannot identify or quantify the universe of sources that would decrease their HAP emissions to below the level required by the NESHAP to achieve area source status." (72 FR 77, January 3, 2007). In the 2007 proposed rule, EPA concluded that, "we believe it is unlikely that a source that currently emits at a level below the major source thresholds as the result of compliance with a MACT standard would increase its emissions in response to this rule. However, even if such increases occur, the increases will likely be offset by emission reductions at other sources that should occur as the result of this proposal. Specifically, this proposal provides an incentive for those sources that are currently emitting above major source thresholds and complying with MACT, to reduce their HAP emissions to below the major source thresholds." (72 FR 73-74, January 3, 2007).

As we noted in the 2018 Wehrum Memorandum, EPA anticipates that it will be publishing a Federal Register notice to take comment on adding regulatory text that will reflect EPA's plain language reading of the statute in early 2019. Further, as we proceed through the rulemaking process, we will prepare appropriate economic and other analyses with respect to the action and provide details about the length of the comment period and location of any public hearing.

23. On July 10, 2018, every major electrical utility trade organization representing coal-fired and other utilities joined with labor organizations on a letter to EPA confirming power plants have "reduced mercury emissions by nearly 90 percent over the past decade" and that "all covered plants have implemented the regulation [Mercury and Air Toxics Standards Rule, MATS] and that pollution controls—where needed—are installed and operating."[2] The letter goes on to say, "leave the underlying MATS rule in place and effective."[3] States, environmental and health groups have echoed industry's message – leave MATS alone. Is the EPA considering a rule making that will change the current status of MATS? If so, please provide why and detailed information on what the EPA is considering.

In an April 2017 court filing, the EPA requested that oral argument for MATS litigation be stayed to allow the current Administration adequate time to review the Supplemental Cost Finding, which was the Agency's response to the U.S. Supreme Court decision in Michigan v. EPA which held that the EPA erred by not considering cost in its determination that regulation of hazardous air pollutant (HAP) emissions from coal- and oil-fired electric utility steam generating units (EGUs) is appropriate and necessary under section 112 of the Clean Air Act (CAA). After reviewing the cost finding, the EPA plans to propose and solicit comment on the results of the review and any changes that result from that review.

24. I'm proud to have had the opportunity to work with your former bosses – Senators Voinovich and Inhofe – on establishing the Diesel Emissions Reduction Act, known as DERA. Cleaning up dirty diesel engines through DERA is a win-win for economic and health benefits. I'm concerned that all the gains we've made in the past decade through DERA will be negated if EPA moves forward with the glider kit proposal. The DERA Coalition, a broad coalition of environmental, science-based, public health, commercial and industry groups, shares my concerns. The DERA Coalition wrote to the agency on January 5, 2018, opposing EPA's glider kit proposal, stating, "EPA's decision to encourage the continued proliferation of older engines through the glider industry would increase emissions from medium and heavy-duty vehicles and undermines the work of the Coalition and cooperative federalism with the EPA and states."[4] It is clear that allowing some of the dirtiest heavy-duty diesel trucks, called glider trucks, to circumvent clean air cleanups is bad for the environment, bad for health and bad for the economy.

---

[2] https://www.eenews.net/assets/2018/07/11/document_gw_04.pdf
[3] https://www.eenews.net/assets/2018/07/11/document_gw_04.pdf
[4] http://www.lung.org/assets/documents/advocacy-archive/dera-coalition-comments-re.pdf

Should the federal government continue to focus on replacing and retrofitting dirty diesel engines, rather than putting dirty diesel engines back on the road?

Thank you for your support for the DERA program. It aims to help address the pollution coming from older diesel engines, and its widespread support from many different stakeholders is indicative of the role it serves in addressing these legacy fleet emissions. EPA received many comments on the November 2017 glider proposal (82 FR 53442, November 16, 2017). We will consider each of these factors as we revisit whether or not the Phase 2 requirements for glider vehicles are consistent with the Clean Air Act.

25. During the August 1, 2018 EPW hearing, you fielded several questions from my colleagues on the Renewable Fuel Standard (RFS). Several times you mentioned that under your leadership, EPA would focus more on transparency when it comes to implementing the RFS program. This is welcome news since I've tried to get EPA to take this step for years. However, I am concerned that you may only be focused on transparency when it comes to the small refinery waiver process and not the entire program. I remain concerned about the volatility in the RFS compliance trading system used by EPA, known as the Renewable Identification Number (RIN) market, and believe market transparency is a big part of the solution.

    a. In your answers, you talked about creating a dashboard –without disclosing proprietary information – on who is getting the small refinery waivers and why. Can you discuss further what this dashboard may look like and a timeline on when it may be released?

    EPA posts RIN transactional and compliance information on our RFS Data website. We recently implemented revisions to the website to incorporate additional data through a more interactive dashboard. Please visit the following link for additional information: https://www.epa.gov/fuels-registration-reporting-and-compliance-help/public-data-renewable-fuel-standard.

    b. The State of California has created a dashboard to provide weekly, monthly, quarterly and annually trading data for its own renewable fuel program. After talking to many stakeholders involved in that process, it seems that California's renewable fuel trading dashboard has been able to provide valuable insight into trading and helped reduced market volatility. EPA could implement something similar for the RFS RIN trading market. Is EPA considering a RIN dashboard that provides the public weekly, quarterly and annual RIN trading data? If not, why not?

    EPA posts RIN transactional and compliance information on our RFS Data website. We are open to comments and suggestions for improving and expanding program and market insight. Currently, information is updated

the third Thursday of each month to reflect all transactions submitted through the end of the prior month.

c. What further transparency measures is the EPA considering regarding the RFS program?

As mentioned in our response to question "a" above, we recently implemented revisions to the website to incorporate additional data through a more interactive dashboard. Please visit the following link for additional information: https://www.epa.gov/fuels-registration-reporting-and-compliance-help/public-data-renewable-fuel-standard. Furthermore, On July 10, 2018, EPA published proposed volume requirements (83 FR 32024, July 10, 2018) under the Renewable Fuel Standard program for cellulosic biofuel, advanced biofuel, and total renewable fuel for calendar year 2019, and biomass-based diesel volume standards for calendar year 2020. In addition to seeking comment on the proposed volumes, EPA sought public comment on additional transparency measures for the Agency to implement. The Agency is still processing the large volume of comments received and will take all relevant comments into consideration when developing further RFS transparency measures.

26. Currently, the EPA has a Memorandum of Understanding with the Commodity Futures Trading Commission (CFTC) on RFS RIN market manipulation. In my questions for the record for the EPW January 30, 2018 hearing, I asked former Administrator Pruitt about the coordination between CFTC and EPA to assess potential RIN market manipulation – I wanted to know how often EPA staff communicated with the CFTC on RIN market manipulation and why EPA wasn't asking for more help from the CFTC. Former Administrator Pruitt did not provide clear answers to these questions and in part of his answer he stated,
"EPA is always looking for ways to improve implementation and transparency of the program, while balancing resource needs and our duty to protect confidential business information as required by our regulations. EPA will continue to work with CFTC and seek to utilize their market oversight expertise and authority."[5]
I've seen no action to date from EPA on the issue of RIN market manipulation and still do not have a clear answer on how EPA is coordinating with other agencies to address this issue.

a. What have you and your staff done with the CFTC to assess potential RIN market manipulation?

[5] *See* Scott Pruitt, Administrator Environmental Protection Agency, Responses to Questions for the Record, Hearing Before the U.S. Senate Committee on Environment and Public Works entitled "*Oversight Hearing to Receive Testimony from Environmental Protection Agency Administrator Scott Pruitt*" (Jan. 30, 2018).

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

b. How often has EPA staff communicated with the CFTC on RIN market manipulation?

EPA and CFTC have engaged in dialogue since the MOU on RIN market manipulation was signed and EPA is committed to continuing these discussions.

c. Please provide dates, times and details of any communication, including any emails and phone calls, between CFTC and EPA since the MOU on RIN market manipulation was signed.

EPA and CFTC have engaged in dialogue since the MOU on RIN market manipulation was signed and EPA is committed to continuing these discussions.

d. Provide any suggestions from CFTC on what data EPA should be collecting to mitigate RIN market manipulation.

On October 9, 2018, President Trump directed EPA to undertake a Clean Air Act rulemaking that, among other things, would change certain elements of the RIN compliance system under the RFS program to improve both RIN market transparency and overall functioning of the RIN market. While details of the proposal have yet to be finalized, EPA is currently considering a number of regulatory reforms that could be included in the proposal, such as: prohibiting entities other than obligated parties from purchasing separated RINs; requiring public disclosure when RIN holdings held by an individual actor exceed specified limits; limiting the length of time a non-obligated party can hold RINs; and changing the timelines that apply to obligated parties regarding when RINs must be retired for compliance purposes. We are currently working with CFTC to evaluate some of these proposals, and as part of that process we will take into consideration any relevant suggestions CFTC makes related to data collection or how to improve market functioning as a whole.

e. The CFTC has successfully used position limits to protect against excessive speculation and market manipulation, which helped stabilize markets. Has EPA had any discussions with the CFTC about establishing position limits for the RFS RIN market? If not, why not? If so, please provide further details of those discussions.

EPA recognizes and values CFTC expertise with regard to ensuring market stability. We are currently developing a proposed rule intended to improve both RIN market transparency and overall functioning of the RIN market, and we are working with CFTC to evaluate some of the policy proposals before the agency.

27. Last year, I asked the Federal Trade Commission (FTC) staff to offer their expertise to EPA to help address RFS RIN market manipulation. I was told by former Administrator Scott Pruitt that on February 8, 2018, EPA and FTC did have a meeting to "initiate dialogue on this matter."[6]

a. Have there been further conversations with the FTC? If so, please provide further details. If not, why not?

As you noted, on February 8, 2018, EPA and FTC held a meeting to initiate dialogue on this matter, in which FTC discussed their authority and expertise, and we exchanged information to facilitate future discussions.

b. Please provide any suggestions received from FTC on what data EPA should be collecting to mitigate RIN market manipulation.

During a February 8, 2018 call, FTC discussed their authority and expertise, which are largely focused on investigating fraudulent reporting of information to governmental agencies and other acts with intent to deceive or gain advantage in market. Given the nature of the call, FTC did not offer any specific suggestions on what data EPA should collect to mitigate RIN market manipulation.

c. On August 6, 2009, the FTC finalized a rule that prohibited market manipulation in the petroleum industry. So far, EPA has not taken similar steps. Why is market manipulation banned for the wholesale petroleum markets and not for the RFS RIN markets?

---

[6] *See* Scott Pruitt, Administrator Environmental Protection Agency, Responses to Questions for the Record, Hearing Before the U.S. Senate Committee on Environment and Public Works entitled "*Oversight Hearing to Receive Testimony from Environmental Protection Agency Administrator Scott Pruitt*" (Jan. 30, 2018).

ED_002674_00009392-00023

Based on our internal reviews, EPA has not seen evidence of manipulation in the RIN market. CFTC analysis, discussed above, also did not find evidence of manipulation. Even so, we understand concerns about potential manipulation, and we are open to the prospect of discussing possible steps that could be taken by CFTC or others in this area.

d. Is the EPA considering a similar rulemaking to prohibit market manipulation in the RFS RIN market? If not, why not? If so, please provide further details and a planned timeline.

As mentioned above, EPA is currently working on a Clean Air Act rulemaking that, among other things, would change certain elements of the RIN compliance system under the RFS program to improve both RIN market transparency and overall functioning of the RIN market. As part of the rule development process we are assessing a wide range of policy options that could be pursued. Our current goal is to issue a proposed rule in early 2019, and in that rule we will provide our assessment of the various approaches that could be taken to help deter market manipulation.

28. For Fiscal Years 2018 and 2019, the Administration's budget proposal included plans to dramatically reduce the size of EPA's workforce. When Congress enacted the FY'18 Omnibus in March of this year, it made clear that EPA was to not seek to reduce EPA's workforce through buyouts of other active measures.

a. As of August 1st, what is the number of full-time employees at EPA?

As of July 30, 2018, EPA had 13,780 full-time employees (this includes permanent and temporary employees).

b. How does this number compare to the number of FTEs on March 23, 2018, when the Omnibus was signed into law?

As of March 26, 2018, EPA had 13,981 full-time employees (this includes permanent and temporary employees).

c. If there are fewer EPA FTEs today than there were on March 23, please explain why this is the case.

Due to attrition and hiring lags the number of Agency full-time employees has gone down. In FY 2018, EPA has set an on-board target of 14,172, including temporary and part time employees.

29. Congress is currently working to finalize EPA's FY 2019 appropriations. Will you abide by all Congressional directives regarding staffing levels in FY 2019?

We appreciate the attention to our staffing levels under the current federal budget landscape. Our intent is to abide by all Congressional directives.

30. The 2018 Omnibus contained a provision related to reporting requirements under CERCLA for air emissions from animal waste, known as the FARM Act. On April 27th, EPA published guidance on its website entitled "How does the Fair Agricultural Reporting Method Act Impact reporting of air emissions from animal waste under CERCLA Section 103 and EPCRA Section 104?" On May 25, I along with other members of the EPW committee wrote to then-Administrator Pruitt that the information contained in the guidance document was contrary to the clear Congressional intent and legislative history behind the FARM Act. We requested that the guidance be rescinded, and the EPA website be updated accordingly. As of today, this guidance is still online. When do you intend to rescind this guidance?

    In November 2018, EPA published a proposed rule for public comment on the agency's interpretation that air emissions from farm animal waste do not need to be reported under EPCRA. The final rule would maintain consistency between the emergency release notification requirements of EPCRA and CERCLA. The agency is actively considering many of the substantive issues raised in your letter throughout the rulemaking process. The guidance is no longer available on EPA's website.

<u>Senator Duckworth:</u>

31. The Renewable Fuel Standard (RFS) includes a provision that requires the Administrator of the Environmental Protection Agency (EPA) to "reset" the renewable volume obligations (RVO) if certain conditions are met.

    a. With regard to this reset authority, can you please explain what would trigger this process and what the authority allows you to do?

        The statute specifies the conditions under which this "reset" authority is triggered, which include waivers of the renewable fuel volumes laid out in the statute by more than 50% in one year or more than 20% in two consecutive years. These criteria have been met in the past for both the cellulosic biofuel and advanced biofuel categories in the statute. The proposed renewable fuel volume obligations for 2019, if finalized, would satisfy the reset criteria for the total renewable fuel volume category. The statute requires that EPA undertake a rulemaking to modify the volumes otherwise specified by Congress in the statute for the remaining years (2019-2022) and to complete such rulemaking within one year (e.g., by November 30, 2019).

b. Do you expect the final 2019 RVOs to trigger the reset process?

The proposed renewable fuel volume obligations for 2019, if finalized, would satisfy the reset criteria for the total renewable fuel volume category.

c. Do you expect the final 2019 RVOs to trigger the reset process?

The proposed renewable fuel volume obligations for 2019, if finalized, would satisfy the reset criteria for the total renewable fuel volume category.

Senator Fischer:

32. Administrator Wheeler, during questioning, I discussed with you small refinery exemptions awarded to petitioners for the reason of disproportionate economic hardship. When EPA conducts its analysis to determine disproportionate economic hardship, please clarify if the EPA compares the high cost of compliance to only small refiners (those that produce 75,000 barrels of crude per day) **or** if the EPA compares the high cost of compliance to the entire refining industry.

EPA conducts its analysis of whether a petitioning refinery is experiencing disproportionate economic hardship by evaluating the specific economic and other conditions that may be in play at that refinery, on a case-by-case basis. Each case-by-case evaluation is performed in coordination with DOE. For additional information on the DOE studies that define "disproportionate economic hardship" and the process for evaluating each petitioning facility, please visit the following website: https://www.epa.gov/renewable-fuel-standard-program/small-refinery-exemption-studies-department-energy**.**

Senator Gillibrand:

33. Acting Administrator Wheeler, as you may know, a number of communities in my state of New York have been negatively impacted by the presence of PFOA and PFOS in their drinking water. The residents of Hoosick Falls and Petersburgh were consuming water tainted by PFOA from a plastic manufacturing plant in their community. The drinking water supplies in Newburgh and East Hampton are tainted with PFOS from firefighting foam used at Air National Guard bases nearby. I appreciate that the EPA has made addressing these chemicals a priority. I note that, to date, the EPA has conducted community engagement meetings in New Hampshire and Pennsylvania, and has scheduled meetings in Colorado and North Carolina later this month. When will EPA hold a PFAS community engagement meeting in New York State?

The EPA coordinated closely with states and local communities on a series of per- and polyflouroalkyl substances (PFAS) community engagement events. The locations were selected based on state and community interest as well as logistical considerations related to geographic distribution and timing. Additionally, the EPA worked to ensure the Agency was able to balance the need to take action with the EPA's desire to hear from as many communities as possible.

Community engagements have been held in Exeter, New Hampshire (June 25-26); Horsham, Pennsylvania (July 25); Colorado Springs, Colorado (August 7-8); Fayetteville, North Carolina (August 14); and Leavenworth, Kansas (September 5). The EPA also engaged with tribal representatives at the Tribal Lands and Environment Forum in Spokane, Washington, on August 15.

The EPA appreciates your interest and understands the importance of this issue to New Yorkers. We appreciated the participation of New York's Department of Environmental Conservation and Department of Health in our May 22-23 PFAS National Leadership Summit in Washington, D.C., and the EPA will continue to work with both agencies to address PFAS contamination in New York State.

Also, to ensure that everyone who wanted to provide input to the EPA had the opportunity to do so, the Agency opened a docket for input from the public. This docket is available at https://www.regulations.gov/docket?D=EPA-HQ-OW-2018-0270.

34. The EPA's regulations for implementing the recent TSCA reform bill passed by Congress limits the EPA from considering the "legacy uses" of a chemical when deciding whether to regulate it under the TSCA program. Drinking water contamination from a plant that is no longer manufacturing PFOA would be considered a legacy use. Despite Congress's very clear direction, those rules ignore the public's current exposure as a result of the past uses of chemicals. Legacy uses pose risks to public health because the past manufacturing and disposal of those chemicals can still contaminate groundwater, as is currently the case with PFOA in Hoosick Falls, NY. Will you review those implementation rules and direct your staff to revise them to ensure that EPA is considering all potential uses and potential pathways of exposure for these chemicals?

As a general matter, EPA will address in its risk evaluations those uses for which it is known, intended, or reasonably foreseen that the chemical is being manufactured, processed, or distributed (i.e., the use is prospective or on-going). However, as stated in the 2017 final rule *Procedures for Chemical Risk Evaluation Under the Amended Toxic Substances Control Act,* in a particular risk evaluation, EPA may consider background exposures from legacy use, associated disposal, and legacy disposal as part of an assessment of aggregate exposure or as a tool to evaluate the risk of exposures resulting from non-legacy uses. For example, EPA's Office of Water has developed health advisories for PFOA and PFOS based on the agency's assessment of peer-reviewed science to provide drinking water system operators, and state,

tribal and local officials who have the primary responsibility for overseeing these systems, with information on the health risks of these chemicals, so they can take the appropriate actions to protect their residents. EPA also has an agency-wide PFAS workgroup developing human health toxicity values for GenX and PFBS, evaluating the current universe of PFAS manufactured and in use, gathering scientific information and undertaking robust public outreach and engagement.

35. Last December, the US Court of Appeals for the 9th Circuit faulted EPA for taking too long to develop new rules updating the outdated lead-based paint and dust-lead hazard standards. The court compelled your agency to take action to propose and finalize a rule. This is critically important in New York, where a special report published by Reuters this past November found 69 New York City census tracts where at least 10 percent of small children had elevated lead levels. While lead paint and dust are not the only factors contributing to these high lead levels, it remains a serious concern for children under the age of 6 years and a major environmental justice concern, particularly for residents of public housing and older buildings.

    a. While the EPA proposed more stringent standards for lead dust in July, it did not propose to lower the standards for lead-based paint, citing lack of sufficient information to support a change. What specific action will you direct EPA staff to take to address that data gap identified in the proposed rule, so that you can make a more informed decision on the definition of lead based paint?

    Pursuant to TSCA section 401 (15 U.S.C. 2681(9)), EPA will work with the Department of Housing and Urban Development (HUD) to make any appropriate changes to the definition of lead-based paint. EPA, working with HUD, has identified a number of specific data and information needs to inform consideration of revising the definition of lead-based paint. EPA also solicited input from the public regarding data or information that could be useful in this effort. The public comment period for the proposed rule closed on August 16, 2018, and EPA is now carefully considering all comments and input received, including any data or information that may inform any change to the definition of lead-based paint.

    b. Is the EPA on track to finalize the lead dust rules in compliance with that court order?

    Yes, EPA published, in the Federal Register on July 2, 2018, the proposed rule, *Review of the Dust-Lead Hazard Standards and the Definition of Lead-Based Paint* in compliance with the court deadline and EPA is on track to take final action within the timeframe stipulated by the court.

36. Will you commit that, before issuing a certificate of completion for the PCB cleanup of the Hudson River, the EPA will continue to work in close coordination with New York State to fully review and consider sediment samples from the Upper Hudson River, and the supplemental studies of the Lower Hudson River?

    EPA is currently working with our state partner, the New York State Department of Environmental Conservation (NYSDEC), to review the results of some 1,800 sediment samples collected by NYSDEC. EPA is working towards developing joint findings on the results of the sampling. EPA will not make any final decisions with respect to whether General Electric has completed its work or about the protectiveness of the work so far until we have completed our review of input from the public and our government partners and completed analyses of data from the samples collected by NYSDEC. The supplemental studies of the Lower Hudson River are ongoing, although they are not tied to certifying completion of remedial action under the consent decree, which is limited to the area defined as the Upper Hudson.

Senator Inhofe:

37. When EPA promulgated the existing Section 111(b) "new source" rules for carbon dioxide, the agency did not adequately contemplate the emerging value of natural gas-fired "Quick Start" Simple Cycle Combustion Turbines (CTs) to maintain the reliability of our nation's electricity grid. Unlike traditional coal-fired and gas-fired electric generation units that take hours to come on line from a cold start, "Quick Start" CTs can achieve full operating capacity in as little as 9 minutes. Consequently, "Quick Start" CT units are uniquely valuable to the nation's power pools to address reliability challenges that commonly occur due to changes in the generation mix. However, the existing EPA 111(b) regulations limit the operation of "new" electric generation plants, including new "quick start" CTs, to less than 40% of their annual operating capacity. This mitigates the ability of power pool operators to call on CTs to respond quickly to unpredictable changes certain types of generation transmitted to the grid. It also restricts the flexibility that these generators and power pool operators need to respond to a variety of other market conditions, including weather-related events or transmission or generation outage events on the grid.

    Several industry comments were filed with EPA during the rulemaking that produced the existing 111(b) rule expressing concern about this artificial operating restriction, which was also believed to be overreaching under statute. Given that EPA is working on revising its "new source" regulations affecting utilities under Section 111(b), what regulatory changes could be included in the revision to insure that the existing 111(b) regulations do not needlessly restrict the use of "quick start" CT units to redress reliability challenges to the electric grid?

EPA staff is currently focused on reviewing requirements for new coal-fired EGUs. Those standards are legally contentious and the subject of multiple petitions for review. EPA conducted an extensive analysis of the role of "quick start" aeroderivative simple cycle combustion turbines as part of the Section 111(b) GHG NSPS for EGUs. The requirements for combustion turbines were a balance of providing sufficient flexibility to account for potential future changes to the electric grid, affordability, achievability, not artificially distorting the electricity market, or providing perverse incentives to increase GHG emissions. While no petitions were filed on the standards for combustion turbines, EPA staff continues to monitor the operation of EGUs to determine if the role of new high efficiency "quick start" aeroderivative simple cycle combustion turbines in the electricity market has changed sufficiently since 2015 to warrant revising the current standards.

38. From 2009 through 2015, the General Electric Company conducted one of the largest environmental cleanup projects in U.S. history, dredging about 40 miles of the Hudson River to remove PCBs. EPA developed an aggressive plan to remove most of those PCBs, deciding on the appropriate scope of the removal to realize the strongest environmental outcomes over time. GE spent almost $2 billion implementing that plan and removed almost twice the amount of PCBs originally estimated, and EPA lauded the efforts as an "historic accomplishment." On December 23, 2016, GE submitted a completion report outlining all of the steps the company took to complete the plan and asking EPA to certify that the project is complete, in accordance with a 2005 Consent Decree signed by GE and the EPA. In that Consent Decree, EPA agreed to grant a Certification of Completion within 1 year of GE's submission of the completion report. It is now seven months past the deadline, yet the agency has not issued a certification of completion.

    a. Will you decide GE's certification of completion based on the specific criteria set forth in the consent decree?
    b. When can we expect EPA will make the decision on the certification of completion?

EPA will comply with the Consent Decree for the Hudson River PCBs Site in deciding whether to provide the Certification of Completion of the Remedial Action to General Electric. The Consent Decree states:

> **If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion of the Remedial Action and after a reasonable opportunity for review and comment by the State and by the Federal Trustees for Natural Resources, that the Remedial Action has been performed in accordance with this Consent Decree, EPA will so certify in writing to [General Electric]. This certification shall constitute the Certification of Completion of the Remedial Action….**
> **(Consent Decree, paragraph. 57.d)**

The Consent Decree defines Remedial Action as "those activities, except for Remedial Design and Operation, Maintenance and Monitoring, to be undertaken to implement the [2002 Record of Decision], in accordance with the [Statement of Work], the final Remedial Design plans and reports, the Remedial Action Work Plans, and other plans approved by EPA." (Consent Decree, paragraph 4).

General Electric (GE) has informed EPA that it believes that it completed the Remedial Action portion of the cleanup as required by the Consent Decree and has requested EPA's Certification of Completion of the Remedial Action. EPA is reviewing input from the New York State Department of Environmental Conservation (NYSDEC), including results of some 1,800 sediment samples it collected, the National Oceanic and Atmospheric Administration, the U.S. Fish & Wildlife Service, and the New York State Attorney General's office as it considers GE's request. EPA will not make any final decisions with respect to whether GE has completed the Remedial Action or about the protectiveness of the work so far until we have completed our review of input received from the public and our government partners and completed analyses of data from the samples collected by NYSDEC.

39. In April, EPA issued a policy statement announcing that it would proactively address congressional directives and stakeholder concerns, by treating biogenic emissions from forest biomass as carbon neutral in a forthcoming regulatory action. What is the timeframe in which we can expect the proposed regulation will issue?

    An action to address the treatment of biogenic CO2 emissions in the context of Clean Air Act permitting is currently under development. In the 2018 Fall Unified Agenda of Federal Regulatory and Deregulatory Actions, we noted that this was a long term action, with a date for a proposed rule to be determined.

40. It is my understanding that IRIS is not a statutorily mandated program and that IRIS assessments have no direct regulatory impact until they are combined with other information by EPA's program offices. Currently, EPA has regulations in place managing exposures to formaldehyde.

    a. Is there a need or added benefit, then to developing this assessment?

    The IRIS program is a mechanism to implement the risk assessment requirements contained in a variety of environmental statutes. Therefore, the authority for the IRIS Program's mission of developing of human health assessments that evaluate potential health effects that may result from exposure to environmental contaminants is contained in the relevant research and risk assessment requirements within statutes governing the Environmental Protection Agency. ORD is currently developing a new approach of soliciting program input on current and future IRIS

assessments, to ensure IRIS assessment activities are focused on the highest priority needs. The formaldehyde assessment will be included in this activity, which will inform our next steps.

b. If so, what higher priority assessments could be prioritized instead?

See answer to 40a.

c. Are there any program offices that have a regulatory need for a revised formaldehyde IRIS assessment to inform ongoing or pending Agency action? If so, please provide the specific program offices and the specific Agency action.

See answer to 40a.

41. The National Academies was highly critical of EPA's last public draft IRIS formaldehyde assessment. Based on recent leaks to the media, it appears that the conclusions in the current unreleased draft assessment have not changed even though published science supports that formaldehyde does not cause leukemia and that safe thresholds for exposure exist.

a. With new science and credible criticisms by the National Academies, will EPA not modify its assessment?

Any IRIS assessment would consider all relevant scientific information – for formaldehyde that would include considering all science which has been published since the release of the NAS report. In addition, any revised assessment for formaldehyde would address all the recommendations from the 2011 NAS report. More broadly, IRIS has been incorporating principles of systematic review into the assessment development process in response to the recommendations from the 2011 and 2014 NAS reports.

b. Will you review and integrate all science published since the release of the 2010 draft IRIS assessment has been reviewed and integrated into any revised draft?

Yes, any development of a draft formaldehyde assessment would carefully review and consider new, peer-reviewed science as it becomes available. A new draft IRIS assessment would consider and incorporate this information, as appropriate, to ensure that the assessment reflects the state-of-the-science on any chemical, including formaldehyde.

42. EPA's previous draft IRIS formaldehyde assessment suggested that human breath might pose an unacceptable risk of cancer. Given that the human body naturally produces formaldehyde, this does not seem reasonable or realistic. Will you ensure that IRIS values reflect real life human exposure scenarios and include a reality check as recommended by the National Academies?

    IRIS assessments address the first two steps of the risk assessment process, hazard identification and dose-response. EPA program and regional offices estimate the amount of human exposure under different exposure scenarios. The exposure information developed by the Agency is combined with the toxicity values developed by the IRIS program to characterize the potential public health risks of a chemical. Any updated assessment would reflect all comments received by the 2011 NAS report.

43. Given the recent media attention around the EPA's draft IRIS formaldehyde assessment and the appearance that the Agency is circumventing its own peer review process by releasing unvetted conclusions to the media, would you consider:

    a. Identifying a small panel of independent 3rd party scientists to review the revised draft IRIS assessment and provide you input on its scientific rigor before it is released for public review?

       EPA will follow the 7-step process established for IRIS assessments, which includes an independent peer review process.

    b. Identifying an independent 3rd party arbiter to confirm that all 2011 and 2014 NAS recommendations are fully and adequately resolved before the IRIS assessment is finalized?

       EPA has been moving forward to ensure that both programmatic and assessment-specific recommendations are being addressed by the IRIS Program. These advances were most recently presented to the NAS in February 2018, and the ensuing report by the National Academies, building on the recommendations in the 2014 report, concluded that EPA had made substantial progress. Any future IRIS assessments would consider and address all recommendations from the NAS 2011 report.

Senator Markey:

44. Formaldehyde is a toxic carcinogen widely used in everything from furniture to lotion. During the last administration, EPA scientists began an analysis of the human health impacts of formaldehyde that I understand has been completed for over a year. When Pruitt was here in January, I asked him about this scientific analysis, which he admitted was completed. However, despite the desire by EPA staff to make this critical analysis

available for public review, lobbying by special interest groups who have a stake in suppressing information about formaldehyde's dangerous impacts met a friendly and abiding audience with Mr. Pruitt. I, and several members of this committee, are significantly concerned about this attempt to silence scientists and scientific data under the last Administrator.

a. At this month's hearing, you refused to say when you would publicly release EPA's formaldehyde assessment for peer review. Will you now commit to publicly release this report, without any additional political interference, within the next thirty days?

ORD is currently developing a new approach of soliciting program input on current and future IRIS assessments, to ensure IRIS assessment activities are focused on the highest priority needs. The formaldehyde assessment would be included in this activity, which will inform our next steps.

45. The EPA is a pivotal player in our national fight against toxic substances and has historically worked to protect the public from the health risks posed by unsafe chemicals. Last year, on a bipartisan basis, Congress worked to enact reforms to the Toxic Substances Control Act (TSCA) intended to, among other things, significantly strengthen new chemical reviews. These changes made as a part of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, have been significantly weakened by this administration.

For example, the EPA now appears to no longer release the results of its initial reviews of new chemicals or new uses of existing chemicals that identify risk concerns or data gaps.[7] Under previous administrations going back decades, the EPA would provide public notice of its initial recommendations that new chemicals be determined to be "not likely to present an unreasonable risk"; that they would or could present an "unreasonable risk of injury"; that they lacked sufficient information to conduct a reasoned evaluation; or that further review was needed. An EPA presentation dated December 6, 2017 noted that the agency was developing "revised terminology."[8] Now, rather than publish these interim statuses, the EPA is only informing the public that a "Focus Meeting Occurred,"[9] and is not communicating the recommendations of its professional staff made at that meeting. The EPA appears to have stopped providing this information to the public, despite the agency's continued interim and final decision-making on dozens of new chemicals each month. This information was invaluable to the public in ensuring the

[7] Hiar, Corbin. "At Trump's EPA, one-public chemical safety reviews go dark." E&E News, January 20, 2018. http://www.sciencemag.org/news/2018/01/trump-s-epa-once-public-chemical-safety-reviews-go-dark

[8] Environmental Protection Agency, "Other Advance Questions" Presentation by Tanya Hodge Mottle, Acting Deputy Director of Programs, U.S. EPA Office of Pollution Prevention and Toxics. December 6, 2017. As found on January 17, 2018 at https://www.eenews.net/assets/2018/01/10/document_gw_04.pdf

[9] Environmental Protection Agency, "Review New Chemicals under the Toxic Substances Control Act (TSCA): Premanufacture Notices (PMNs) and Significant New Use Notices (SMUNs) Table." As found on January 17, 2018 at https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/premanufacture-notices-pmns-and

accountability of EPA judgments as to whether new chemicals will be safe when they enter the market. While there may be legitimate reasons for the amelioration of initial concerns about a new chemical by the time the EPA makes a final decision on it, transparency and good governance warrant the EPA explaining to the public the steps it took to remove the concern—not to hide from the public any evidence of the EPA's initial concern.

a. Can you provide examples of the "confusion"[10] that the EPA alleges was produced by providing the public with the interim statuses? Please provide any documentation or communications between EPA staff and the public that evidence this confusion.

   Prior to amended TSCA, EPA posted the interim status, but not the final status for cases that had gone through the multidisciplinary Focus meeting. EPA continued this approach for a short time after the passage of the TSCA amendments. However, in certain cases, a submitter provided additional information for EPA to consider after the Focus meeting occurred and after the interim status was posted. Following EPA's review of the new information, the recommended determination listed in the interim status may have differed from the final determination. These changes were leading to confusion among our stakeholders.

b. Please provide an explanation as to how the new terminology was developed, including any meetings held (and related documentation) on the topic and how the new terminology will better protect public health?

   EPA temporarily stopped posting the interim status for PMN/SNUN/MCAN cases until language could be discussed with the Office of General Counsel and senior management. This was discussed at the December 6, 2017, new chemicals public meeting. In mid-December 2017, it was decided that the best approach would be to inform submitters that their case had made it to the Focus stage as the interim status and the final status should be the only determination listed in the table. Since early January, the interim status now simply notes that a case was considered at the Focus meeting and the date of the meeting. This change was made to be consistent with the fact that if the intended conditions of use in a PMN submission raise risk concerns, and the submitter makes a timely amendment to address those concerns, EPA will consider the conditions of use in those amended submissions. The tables are current for all cases that have been discussed at a Focus meeting and will continue to be updated on a weekly basis.

[10] Environmental Protection Agency, "Other Advance Questions" Presentation by Tanya Hodge Mottle, Acting Deputy Director of Programs, U.S. EPA Office of Pollution Prevention and Toxics. December 6, 2017. As found on January 17, 2018 at https://www.eenews.net/assets/2018/01/10/document_gw_04.pdf

c. Can you commit to updating the public with more information on potentially hazardous chemicals or presumed safe chemicals, beyond simply stating that a focus meeting has occurred? Please include in your response the type of information the EPA could provide to improve transparency into this process and a date by when this change will take place.

EPA is committed to providing the public timely and accurate information on the status of its safety reviews of pre-manufacture notices (PMNs) for new chemicals submitted by industry under section 5 of the Toxic Substances Control Act (TSCA), as amended. For example, the Agency posts weekly statistics on the EPA web site to reflect the numbers and types of new chemicals cases under review, the number of completed reviews, and the determinations made to date. (See https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/statistics-new-chemicals-review).

In addition, the Agency has provided a case-specific table where submitters and others can look up individual new chemical submissions to see the current status of the review and, when complete, a final status. The table includes hyperlinks to the publicly available final determination documents. Cases are added to the table once they pass the multi-disciplinary team risk characterization meeting called the Focus meeting.

46. Under your leadership, the EPA has indefinitely delayed finalizing its proposed bans on high-risk uses of methylene chloride, N-methylpyrrolidone, and trichloroethylene.[11,12] The 2016 Lautenberg Act specifically authorized the EPA to pursue needed restrictions on these chemicals. The law allowed for prioritized action on high-risk uses of these chemicals—which the EPA has declared to present unreasonable risk. Dozens of deaths have been linked to methylene chloride-based paint strippers, and agency experts have noted connections between trichloroethylene and developmental damage. Trichloroethylene was one of the chemicals found in the water around Camp Lejeune, a Marine base in North Carolina. Potentially 900,000 service members were exposed to this dangerous chemical, which causes cancer and is linked to fetal cardiac defects.[13]

---

[11] Kaplan, Sheila. "E.P.A. Delays Bans on Uses of Hazardous Chemicals." New York Times, December 19, 2017. https://www.nytimes.com/2017/12/19/health/epa-toxic-chemicals.html

[12] Environmental Protection Agency, "New Chemicals Decision-Making Framework: Working Approach to Making Determinations under Section 5 of TSCA." November 2017. As found on January 17, 2018 at https://www.epa.gov/sites/production/files/2017-11/documents/new_chemicals_decision_framework_7_november_2017.pdf

[13] Agency for Toxic Substances and Disease Registry. "Camp Lejeune, North Carolina: Health effects linked with trichloroethylene ((TCE), tetrachloroethylene (PCE), benzene, and vinyl chloride exposure." April 11, 2017. As found on January 17, 2018 at https://www.atsdr.cdc.gov/sites/lejeune/tce_pce.html

a. Can you provide a detailed justification for the indefinite delay of the proposed bans for high-risk uses of methylene chloride, N-methylyprrolidone, and trichloroethylene?

EPA is continuing to work expeditiously on this rule and on making sure that it is fully consistent with the new risk management provisions of the Frank R. Lautenberg Chemical Safety Act.
EPA is evaluating identified uses of MC, , trichloroethylene (TCE), and N-methylyprrolidone (NMP) as part of the first ten chemicals undergoing chemical risk evaluations under amended TSCA. These evaluations will be completed in accordance with statutory timelines.

While EPA is not precluded from finalizing proposed regulations based on risk evaluations conducted before enactment of amendments to TSCA, EPA has concluded that the Agency's previous assessments of the potential risks from TCE and NMP will be more robust if the potential risks from these conditions of use are evaluated by applying standards and guidance under amended TSCA.

b. Was Michael Dourson involved in any capacity on the evaluation of trichloroethylene while he was working as an EPA advisor? If so, please detail and provide any written documents of his work, including any memos, meeting notes, or other correspondence.

Dr. Dourson, along with other Senior Leaders new to the Agency, was briefed (provided a synopsis) on the content and conduct of the risk assessment for trichloroethylene that EPA completed in 2015. This meeting was informational and did not include solicitation or nor providing of advice or direction related to evaluation.

Also, under the previous administration, the EPA had proposed to ban the use of the chlorpyrifos, a neurotoxic pesticide used on a variety of fruits and vegetables.[14] Residential and indoor use of chlorpyrifos was banned in 2000.[15] However, you opted to reject the EPA's earlier findings and deny the petition to ban the use of chlorpyrifos,[16] despite the EPA analyses that found widespread risk from pesticide residues, drinking water contamination, and drift. Chlorpyrifos has been linked to neurological damage, with children particularly at risk for learning disabilities.

---

[14] New York Times, "EPA's Decision Not to Ban Chlorpyrifos." October 21, 2017. https://www.nytimes.com/interactive/2017/10/21/us/document-EPA-Chlorpyrifos-FOIA-Emails-to-NYT.html
[15] Environmental Protection Agency, "Dursban Announcement" Archived Speech by Carol M. Browner, June 8, 2000. As found on January 17, 2018 at http://archive.is/ANPup#selection-803.0-819.477
[16] Environmental Protection Agency, "News Release: EPA Administrator Pruitt Denies Petition to Ban Widely Used Pesticide." March 29, 2017. As found on January 17, 2018 at http://archive.is/XAUYw

c. Can you provide a detailed explanation of why the EPA chose to refute earlier analyses performed by Science Advisory Panels, including those done in 2016,[17] 2012,[18] and 2008[19], which provided independent scientific review and reaffirmed the health risks connected with chlorpyrifos exposure? Please include any and all new studies, or analyses, performed since the November 2016 Human Health Risk Assessment that provide the basis for this decision.

Over the course of several years, the FIFRA Scientific Advisory Panel provided numerous recommendations for additional study, and sometimes conflicting advice, for how EPA should consider (or not consider) the epidemiology data in conducting EPA's human health risk assessment for chlorpyrifos. Comments received in response to EPA's proposed rule demonstrate that the science on this question is not completely resolved. EPA is conducting a full and appropriate review of all of the neurodevelopmental data.

d. Can you provide a detailed timeline for the "ongoing registration review"[20] that the agency is performing to continue its evaluation of the risks of chlorpyrifos, despite the body of evidence previously collected by EPA researchers?

EPA must complete registration review by October 1, 2022, for all pesticides registered as of October 1, 2007. EPA continues to work to obtain access to original datasets that should allow the EPA to sufficiently address concerns around the use of certain studies in risk assessment, and move forward with its decision for the registration review of chlorpyrifos.

e. Can you provide the times and dates of every meeting and any relevant communication that you or your senior administration officials had regarding chlorpyrifos or toxic chemical standards, including with employees of or lobbyists working on behalf of Dow Chemical, the American Chemistry Council, the American Farm Bureau, or CropLife America?

---

[17] Environmental Protection Agency, "Memorandum on Meeting Minutes of the April 19-21 2016 FIFRA SAP Meeting Held to Consider and Review Scientific Issues Associated with "Chlorpyrifos: Analysis of Biomonitoring Data." July 20, 2016. As found at https://www.epa.gov/sites/production/files/2016-07/documents/chlorpyrifos_sap_april_2016_final_minutes.pdf

[18] Environmental Protection Agency, "Memorandum on Meeting Minutes of the FIFRA Scientific Advisory Panel Meeting held April 10-12, 2012 on "Chlorpyrifos Health Effects." As found on January 17, 2018 at https://www.epa.gov/sites/production/files/2015-06/documents/041012minutes.pdf

[19] Environmental Protection Agency, "Memorandum: Transmittal of Meeting Minutes of the FIFRA Scientific Advisory Panel Meeting held September 16-18, 2008 on the Agency's Evaluation of the Toxicity Profile of Chlorpyrifos." December 17, 2008. As found on Regulations.gov on January 17, 2018 at https://www.regulations.gov/document?D=EPA-HQ-OPP-2008-0274-0064

[20] Environmental Protection Agency, "Revised Human Health Risks Assessment on Chlorpyrifos." As found on January 17, 2018 at https://www.epa.gov/ingredients-used-pesticide-products/revised-human-health-risk-assessment-chlorpyrifos

Making a final decision on whether chlorpyrifos meets the safety standards under the Federal Insecticide, Fungicide, and Rodenticide Act and the Federal Food Drug and Cosmetic Act is an important priority for the EPA. We would like to work with your staff to better understand the scope of this information request so that the agency can provide the information you are seeking.

47. Environmental protection requires the use of sound science. The EPA's own mission states that "national efforts to reduce environmental risks are based on the best available scientific information." Science is the beating heart of the EPA's work. You can imagine my concern in April when former Administrator Scott Pruitt proposed a "secret science" rule –or more properly named "censoring science." Because this proposal would prevent the EPA from using scientific studies that include data that aren't publicly available.

    If the EPA can't use public health studies that include confidential participant data, it will not be able to properly implement numerous environmental laws under EPA's jurisdiction, like the Clean Air Act which requires the use of the best available science for implementation. Under the Administrative Procedure Act, the EPA cannot refuse to consider any comment submitted to the agency—including scientific findings based on confidential data. This proposed "censored science" rule allows for such refusal, and it wouldn't hold up in court.

    a. Will you commit to withdrawing then-Secretary Pruitt's proposed "censored science" rule, which is a violation of numerous laws?

    EPA has started reviewing the more than 500,000 comments received on the proposed Strengthening Transparency in EPA Science rule. EPA will be reviewing these comments through the fall. EPA will determine a timeline for a decision after it has more fully assessed the comments.

    It appears that EPA staff have been dissuaded from communicating to the public and to other scientists about climate risks. In October 2017, an EPA scientist, research fellow, and consultant withdrew from planned speeches at a workshop about the health of the Narragansett Bay and Watershed. Though former Administrator Pruitt responded to the October 31, 2017 letter sent by New England members of Congress expressing our concern, that reply was vague.[21] In this response letter, it was indicated that "[p]rocedures have been put in place to prevent such an occurrence in the future." When another set of follow-up questions was asked to clarify that statement, the answers provided on May 10, 2018 were incomplete.

[21] "Response Letter from the Environmental Protection Agency on the Narragansett Bay Estuary Program," December 4, 2017. https://www.whitehouse.senate.gov/imo/media/doc/2017-12-04%20EPA%20Response%20to%20NBEP%20Letter.pdf

b. What are the exact procedures put in place to ensure that EPA scientists continue to be able to speak at public events about climate science?
c. How have you evaluated whether these new procedures are successful and staff are not discouraged from participating in similar scientific forums? If no evaluation has been made, why not?

EPA has one of the strongest Scientific Integrity policies and one of the most robust Scientific Integrity training programs in the federal government. EPA's Scientific Integrity Policy doesn't just apply to EPA scientists; it applies to all EPA employees, including scientists, managers, political appointees, and other staff. EPA regularly makes improvements to its Scientific Integrity program to make it even stronger. You can read more about this policy at epa.gov/osa/basic-information-about-scientific-integrity.

I am committed to upholding EPA's Scientific Integrity Policy, which ensures that the Agency's scientific work is of the highest quality, is presented openly and with integrity, and is free from political interference. The policy recognizes the distinction between scientific information, analyses, and results from policy decisions based on that scientific information. Policy makers within the Agency weigh the best available science, along with additional factors such as practicality, economics, and societal impact, when making policy decisions.

48. The EPA Strategic Plan for FY 2018 through 2022, finalized in February 2018, does not contain a single mention of climate change, despite the major threats that it poses to public health and the economy—threats that will only continue to increase during the next five years.[22]

    a. Why was climate change not included in the EPA's draft strategic plan for 2018-2022?
    b. Were EPA political appointees involved in writing the draft strategic plan? If so, what role did political appointees play in creating this document, and did any political appointee remove any reference to climate change?

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

49. The EPA's staff of dedicated researchers and scientists have worked hard to present the most accurate climate change data and information to the American public. This information is critical to illustrate what climate change is, why it matters, and what the EPA is doing to confront its effects. It is also a central component of the EPA's mission

[22] Environmental Protection Agency, *Strategic Plan for FY 2018-2022.* https://www.epa.gov/planandbudget/fy-2018-2022-epa-strategic-plan

statement, which declares that the EPA should work to ensure that "all parts of society – communities, individuals, businesses, and state, local and tribal governments – have access to accurate information sufficient to effectively participate in managing human health and environmental risks."[23]

Unfortunately, outside groups and news organizations have documented a complete overhaul of the EPA's website that resulted in relevant climate change data and information being hidden from the general public or removed entirely. The Environmental Data and Governance Initiative issued a report on January 10, 2018 that documented the removal of more than 200 climate-related pages from the EPA website.[24] On April 28, 2017, the EPA removed the content of its main informational webpage[25] on climate change, which had existed in some form since at least 1997, and replaced it with a page that states, "We are currently updating our website to reflect EPA's priorities under the leadership of President Trump and Administrator Pruitt."[26] The American public is entitled to have easily accessible and factual information regarding climate change—something the EPA is uniquely positioned to provide.

a. Can you please provide a list of the specific changes to the climate change webpage, and justification for how each will "reflect EPA's priorities under President Trump and Administrator Pruitt," what they will entail?
b. On what date will the climate change webpage will be reposted on EPA's website?
c. Please explain how, under the current EPA since Administrator Pruitt's departure, the removal of climate change science fits under the Administration's set of priorities?
d. Were any EPA political appointees involved in discussions and/or development of recommendations to remove EPA webpages on climate change? Who was responsible for authorizing the removal of EPA webpages on climate change?
e. Were any EPA career scientists or authors of the reports on climate change involved in discussions regarding the decision to remove EPA webpages on climate change or the decision itself? If not, why not?
f. How does the EPA and its communications team handle discussion and mention of climate change in the EPA's social media and other public-facing communications? Have EPA staff or other personnel been instructed to not use the term "climate change" in social media posts? If so, was this decision made by EPA political staff? When was this decision finalized and announced to staff?

---

[23] Environmental Protection Agency, "Our Mission and What We Do" as visited on January 17, 2018. https://www.epa.gov/aboutepa/our-mission-and-what-we-do
[24] Environmental Governance and Data Initiative. "Changing the Digital Climate: How Climate Change Web Content is Being Censored under the Trump Administration." January 2018. https://envirodatagov.org/wp-content/uploads/2018/01/Part-3-Changing-the-Digital-Climate.pdf
[25] Environmental Protection Agency. "Climate Change" Main Webpage, Historical Material and Snapshot of January 19, 2017. https://19january2017snapshot.epa.gov/climatechange_.html
[26] Environmental Protection Agency. "This page is being updated." As visited on January 17, 2018. https://www.epa.gov/sites/production/files/signpost/cc.html

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

50. Each year, over 100 million tons of coal ash, laden with numerous toxic chemicals like arsenic, cobalt, and lithium, are produced when coal is burned. This past March, coal plants were required for the first time to publicly post groundwater monitoring data. A preliminary analysis of that data has found that ninety-two percent of sampled groundwater sites had unsafe levels of at least one toxic contaminant.

    a. Mr. Wheeler, can you commit that the EPA will review all of the significant and concerning data at hundreds of existing coal ash sites as reported earlier this year before moving forward to weaken the 2015 rule that protects the health of Americans?

    Over the past few months, EPA has been actively reviewing the posted groundwater monitoring data and the agency remains committed to reviewing the available data in the coming months. Furthermore, EPA will consider the facility-reported groundwater monitoring data as it considers any additional amendments to the 2015 CCR rule.

51. Late last April, former EPA Administrator Scott Pruitt announced that the EPA will reconsider its methane emissions rule set by the last administration that aimed to combat climate change and protect public health, and simultaneously stated that during the "reconsideration process," the EPA would place a 90-day stay on oil and gas companies' compliance with the rule. Methane is the second-biggest driver of climate change after carbon dioxide. Even though the D.C. Circuit Court of Appeals ruled 2-1 against the EPA's suspension of the rule, the EPA's rationale for pursuing this issue still raises significant questions.

    a. What are the existing regulations that would curb the leaking of methane and other harmful pollutants without this rule?

The 2016 New Source Performance Standards (NSPS) built on requirements of a 2012 NSPS to reduce emissions of volatile organic compounds. The 2016 rule added requirements that the oil and natural gas industry reduce emissions of greenhouse gases. It did this through an emissions limit for methane. The updated rule also covered additional sources in the sector that were not covered in the 2012 rule. After the final rule was issued, EPA received administrative petitions seeking reconsideration of various aspects of the 2016 NSPS, as well as several petitions for judicial review of the rule. As you are aware, EPA granted reconsideration of the rule in 2017. As part of the reconsideration process, EPA has been considering comments we received on stays to the NSPS that we proposed last summer, along with comments on notices of data availability. In March of this year, we made narrow final changes to the rule based on those comments, to address two aspects of the rule that posed significant and immediate compliance concerns. For the remainder of the reconsideration of the rule, we have been focused on two broad areas:

- **One covers technical issues identified in petitions for reconsideration on the 2016 NSPS. On October 15, 2018, we proposed this technical package. The comment period closed on December 17, 2018. We held a public hearing for the proposed rule in Denver on November 14, 2018.**
- **The other area is more policy focused, including the issue of regulating greenhouse gases for the oil and gas sector. We anticipate releasing a proposed rule in the coming months.**

52. On August 15, you said that the EPA will prioritize communication with vulnerable communities about environmental contamination and exposure to hazardous substances. However, on April 27, 2018, the EPA issued guidance that stated animal waste emissions do not need to be reported under the Emergency Planning and Community Right-to-Know Act (EPCRA), as they were exempted from being reported under the Comprehensive Environmental Response, Compensation, and Liability Act through the Consolidated Appropriations Act of 2018.

    a. How does EPA's move to exempt extremely hazardous substances released by animal agriculture operations from being reported under EPCRA further your stated priority of ensuring that communities know when they are being exposed to hazardous substances?

    The April 27, 2018, Q&A explains EPA's interpretation of the relationship between the CERCLA and EPCRA statutory release reporting requirements and is consistent with the agency's prior statements interpreting EPCRA section 304(a)(2), as well as the agency's prior regulatory actions. *See, e.g.*, 52 Fed. Reg. 13,378 (Apr. 22, 1987).

b. Can you commit to responding within the next two weeks to the letter sent by all the Democrats of the Committee on Environment and Public Works concerning this guidance on May 25, 2018?

See attached letter.

53. On May 22, 2017, former Administrator Scott Pruitt created a Superfund Task Force, which was made up of 107 EPA employees[27] and headed by Albert Kelly, [28] a senior advisor and former bank executive with no experience in pollution cleanup, who was recently banned from participating in banking activity by the Federal Deposit Insurance Corporation for unspecified violations.[29] The Task Force's recommendations[30] include no mention of considerations that should be made to Superfund sites in areas prone to flooding or sea-level rise. According to an Associated Press analysis, 327 Superfund sites are vulnerable to flooding or climate-change-related sea-level rise, and 2 million people live within a mile of these sites.[31] The damage done during the most recent hurricane season emphasizes the need for the EPA to seriously consider how to address both the threat of flooding and how flooding will get worse as sea levels continue to rise.

Although the 2014 Climate Change Adaptation Implementation Plan[32] instructed cleanup managers of toxic sites to prepare for extreme rain, higher floods, and more intense hurricanes, and recommended that the EPA work to protect people from an increased risk of toxic chemical releases, this report was removed from the EPA website following President Trump's election.[33] It is therefore unclear what guidance is being provided to the public and stakeholders at Superfund sites regarding the threats posed by climate change and how these threats may change prioritization, assessments, cleanup, and other actions at these sites.

---

[27] Public Employees for Environmental Responsibility. "Pruitt Superfund Plan Leaves No Fingerprints." Posted on December 20, 2017. https://www.peer.org/news/news-releases/pruitt-superfund-plans-leave-no-paper-trail.html

[28] Environmental Protection Agency. "EPA Announces Superfund Task Force Recommendations: Recommendations to Streamline and Improve the Superfund Program." As visited on January 17, 2018. https://www.epa.gov/newsreleases/epa-announces-superfund-task-force-recommendations

[29] Federal Deposit Insurance Corporation. "Order of Prohibition from Further Participation" delivered to Albert Kelly. July 27, 2017. https://www.eenews.net/assets/2017/08/28/document_gw_10.pdf

[30] Environmental Protection Agency, "Superfund Task Force Recommendations." July 25, 2017. https://www.epa.gov/sites/production/files/2017-07/documents/superfund_task_force_report.pdf

[31] Dearen, Jason, Michael Biesecker and Angeliki Kastanis. "AP finds climate change risk for 327 toxic Superfund sites." Associated Press, December 22, 2017. http://www.chicagotribune.com/lifestyles/pets/sns-bc-bc-us--flood-prone-toxic-sites-20171222-story.html

[32] Environmental Protection Agency, Office of Solid Waste and Emergency Response, "Climate Change Adaptation Implementation Plan." June 2014. As found on January 17, 2018 at https://www.documentcloud.org/documents/4059995-EPA-Superfund-Climate-Adaptation-Report.html

[33] Hersher, Rebecca. "An Absent EPA Climate Report, and a Tale of Two Flooded Superfund Sites." National Public Radio, September 29, 2017. https://www.npr.org/sections/thetwo-way/2017/09/29/553696314/an-absent-epa-climate-report-and-a-tale-of-two-flooded-superfund-sites

On December 4, 2017, a group of ten Senators requested an investigation from the Government Accountability Office (GAO) into the risks posed by natural disasters to Superfund sites and how the federal government can mitigate those risks.[34] However, the EPA should be working to address this concern immediately. At least two Superfund sites were severely flooded during Hurricane Harvey, neither of which had finalized cleanup agreements in place, and one of which resulted in the release of high levels of hazardous dioxins.[35]

a. Please provide us with the EPA's specific plan to prioritize and respond to the 327 Superfund sites that are threatened by rising seas from a warming climate. If the EPA does not currently have a plan, please provide a timeline by when one can be expected.

Since the inception of the program, Superfund remedy selection has considered durability and resilience of remedial designs to extreme weather events and site conditions. In 2014, EPA identified specific key actions to implement over the next several years to address climate change at National Priorities List sites. The plan includes technical guidance, information tools, and training to raise stakeholder awareness of considerations for ensuring remedy resilience. These guidance documents remain in effect. A key stakeholder group is EPA's remedial project managers. The Superfund program's climate change adaptation efforts are summarized and posted on EPA's website: https://www.epa.gov/superfund/superfund-climate-change-adaptation.

The 2014 actions that EPA identified were informed, in part, by the agency's Superfund remedy vulnerability analysis undertaken in 2011-2012, which resulted in an internal 2012 report, *Adaptation of Superfund Remediation to Climate Change* (EPA, 2012). This analysis (shared with AP under a FOIA request in August 2017) considered to what degree Superfund National Priorities List and Superfund Alternative Approach sites were vulnerable to flooding and sea-level rise. In the analysis, EPA identified case study candidate sites to use for assessing how project managers evaluated and responded to climate change's effects on Superfund remedial actions.

b. How is the EPA's Superfund program working to reduce risks from flooding and managing an increase in future risks from sea-level rise?

[34] Letter to the Comptroller General of the United States, Government Accountability Office, December 4, 2017. https://www.harris.senate.gov/imo/media/doc/GAO_Superfund_CC_Letter_Final.pdf

[35] Environmental Protection Agency, "EPA Statement – San Jacinto River Waste Pits Superfund Site Data." September 28, 2017. As found on January 17, 2018 at https://www.epa.gov/newsreleases/epa-statement-san-jacinto-river-waste-pits-superfund-site-data

The Superfund remedial program's climate change adaptation efforts include: training remedial project managers; providing adaptation tools; capturing and sharing best practices to ensure vulnerability assessments are conducted as needed; and ensuring that conceptual site models, remedy system designs and operations, and National Priorities List site remedies all reflect consideration of resiliency measures.

c. What lessons were learned from the flooding at two Superfund sites in Texas during Hurricane Harvey and the release of dioxins from the San Jacinto Waste Pits Superfund site?

Hurricane Harvey presented a number of challenges for protecting Superfund sites along the Gulf coast. The hurricane, which produced record rainfall and flooding in Harris County, Texas, required both pre-event planning and post-event response work. EPA employed many past practices in response to Hurricane Harvey; however, our experience underscored the need for several important actions:

- **Undertake advance site preparation; it is key for large-scale tropical events. Generally, advance warnings are available for tropical storms and hurricanes allowing for site security measures to be conducted in advance. EPA project managers contact the site's responsible entity (e.g., EPA contractor, private responsible party, state or tribal agency) and request implementation of appropriate actions to secure the site.**
- **Conduct post-storm site assessments as soon as safely possible. Using the available site information, a site-specific site assessment needs to be performed immediately upon safe site access. Depending on the site conditions, additional investigations, including soil or water sampling, may be necessary.**
- **Maintain clear communication with the surrounding communities. It is important to quickly share information regarding the status of a Superfund site with the community to effectively alleviate public health concerns.**

Hurricane Harvey's flood waters heavily affected the San Jacinto Superfund site; and several days passed before the water had receded enough to allow a full site inspection. Due to this site's location in the San Jacinto River, EPA implemented a response plan, which was in place prior to Hurricane Harvey, that detailed site inspection and response actions. The plan includes:

- **Inspection and repair contractors on standby;**
- **Coordination with nearby business on storm preparation/notification;**

- **Site monitoring using Texas Department of Transportation & site cameras;**
- **River flow monitoring using an online upstream river gauge and dam release data;**
- **Access site when safe to do so;**
- **Stock pile rock near the site for cover system repairs;**

In October 2017, following Hurricane Harvey, EPA decided to permanently remove the dioxin waste from the San Jacinto site in a Record of Decision issued by the EPA Administrator. The severity of tropical events and the frequency of repairs following storm events were key reasons for the dioxin wastes' full removal requirement.

d. What guidance is the EPA providing to responsible parties and other stakeholders about the risk of climate change and how this should impact assessment or cleanup activities at a Superfund site?

EPA's Superfund Climate Change Adaptation website (https://www.epa.gov/superfund/superfund-climate-change-adaptation) contains resources to help guide responsible parties and other stakeholders in assessing and addressing climate change's effect on Superfund cleanups. These resources include technical fact sheets designed to help project managers and other cleanup stakeholders identify, prioritize, and implement site-specific measures for increasing remedy resilience to account for climate change effects. The web content is part of EPA's ongoing efforts to raise awareness among external stakeholders of the need to ensure remedy protectiveness, including remedy resilience to extreme weather events.

In addition to the guidance found on the Superfund Climate Change Adaptation website, the agency uses other communication approaches to convey remedy resilience information to stakeholders, including webinars and engaging target audiences with technical conference presentations. For internal EPA audiences such as project managers, the agency's Intranet site, EPA's Adaptation Resource Center, provides a "One-Stop" solution to finding and using Climate Change Adaptation resources. It contains training specifically geared toward land cleanup programs, including Superfund.

e. How do flooding risks and other climate-related impacts factor into the EPA's prioritization and decision processes for Superfund sites?

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) are key parts of the basis for consideration of potential extreme weather impacts at Superfund sites.

As part of the Superfund removal process, extreme weather events are included as one of the eight factors that should be considered in determining whether a threat to public health or welfare or environment exists and that an action should be taken to mitigate that threat, which is outlined in 40 CFR 300.415(b)(2) with the following language, "Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released." This factor is usually cited with several of the other factors, but requires analyzing future weather conditions and determining how those weather conditions can affect contaminant migration.

The Superfund remedial process for planning and implementing contaminated site cleanups provides structure to consider both potential extreme weather effects and, as warranted, to take actions that increase remedy resilience. Extreme weather vulnerability analyses and adaptation planning are integrated throughout the Superfund process. For example:

- **The Hazard Ranking System, which provides the framework for EPA to determine which sites should be included on the National Priorities List, considers flooding risks.**
- **Remedial investigations characterize the extent of a site's contamination and associated risk, while the feasibility study evaluates cleanup alternatives, including the nine evaluation criteria of which the following are most relevant. (See: Remedial investigation/feasibility study and selection of remedy; 40 CFR 300.430(e)(9)(iii)):**
    - **Protective of human health and the environment;**
    - **Long-term effectiveness and permanence;**
    - **Reduction of toxicity, mobility or volume through treatment;**
    - **Short-term effectiveness;**
    - **Implementability.**

- **The record of decision (ROD) explains which cleanup alternative will be used and how it addresses these evaluation criteria. Leading up to a ROD's issuance, the EPA releases, for public comment, a proposed plan containing a preferred cleanup remedy. Following the public comment period and state and tribal review, the EPA issues the final ROD.**

ED_002674_00009392-00048

- **Remedial designs provide an opportunity to consider site vulnerabilities and adaptation measures to help maximize the remedy resilience.**
- **Five-year reviews evaluate existing remedies' protectiveness by considering whether "any other information has come to light that could call into question the protectiveness of the remedy." The EPA's 2001 five-year review guidance includes consideration of changing floodplain boundaries. Supplementary guidance issued in 2016 recommends consideration of "site changes or vulnerabilities" that may not have been apparent during remedy selection, such as "sea level rise, changes in precipitation, increasing risk of floods, changes in temperature, increasing intensity of hurricanes and increasing wildfires, melting of permafrost in northern regions, etc." See p. 4-9 of the 2001 Comprehensive Five-Year Review Guidance: http://semspub.epa.gov/src/document/11/128607 and p. 10 of 2016 Five-Year Review Recommended Template: https://semspub.epa.gov/src/document/11/100000001.pdf**

Information provided in response to a FOIA lawsuit filed by Public Employees for Environmental Responsibility indicate that the "Superfund Task Force" that you commissioned on May 22, 2017 generated no record of its deliberations beyond the final recommendations that were published on June 21.[36] This means that there was no agenda, no meeting minutes, no written drafts, and no attendance records for a task force that was working on one of your stated top priorities as EPA Administrator. The use of task forces to guide the decision-making process can lead to decisions being made in secret, away from the public eye, and outside the established public rulemaking process—something that raises serious alarms to those of us in the Senate concerned with transparent governance.

f. Please describe in detail the drafting of the Superfund Task Force Recommendations report, including EPA political and career staff involvement, and provide all draft interim reports with dates and redlines.

The Superfund Task Force was established on May 22, 2017, to provide recommendations on an expedited timeframe on how the agency can restructure the Superfund cleanup process, realign incentives of all involved parties to promote expeditious remediation, reduce the burden on cooperating parties, incentivize parties to remediate sites, encourage private investment in cleanups and sites and promote the revitalization of properties across the country. Specifically, the Administrator asked the Task Force to provide recommendations on promoting site reuse, improving the timeliness of EPA activities and promoting stakeholder

[36] "Pruitt Superfund Plan Leaves No Fingerprints." Public Employees for Environmental Responsibility. December 20, 2017. Accessed January 18, 2018. https://www.peer.org/news/news-releases/pruitt-superfund-plans-leave-no-paper-trail.html

involvement. The Task Force report containing 42 recommendations was released on July 25, 2017. More than 100 EPA career staff from Headquarters and the ten Regions volunteered and were engaged in the Task Force in developing these recommendations. Furthermore, the instructions to the Task Force were to refrain from any recommendation that involved or required a statutory change.

54. News media[37] and advocacy groups[38] have uncovered a major shift in EPA enforcement activities since January 2017. As the EPA is tasked with protecting public health and the environment, a rapid decrease in activities meant to prevent and penalize pollution is cause for significant concern.

    a. Can you provide a justification for the memo[39] that directs EPA investigators to seek special authorization from the EPA Office of Enforcement and Compliance Assurance (OECA) headquarters for requests for information in circumstances where state authorities object to the request or the interpretation of the law, the media or politicians may be interested in the request, or requests will require sampling or testing beyond that already required by law and not completed by the entity?

    The memorandum entitled *Interim Procedures for Issuing Information Requests Pursuant to the Clean Air Act § 114, Clean Water Act § 308, and RCRA § 3007* (May 31, 2017) was issued prior to the confirmation of the current OECA Assistant Administrator. OECA has not disapproved any information requests pursuant to the review process established by this memorandum. The reviews, however, gave OECA an awareness of a lack of consistency with respect to how the Agency handles information requests. OECA staff issued a memorandum entitled *Best Practices for Compliance and Enforcement-Related Information Requests* on November 21, 2018, to the Regions recommending best practices for information requests. Having established these best practices, the November 21, 2018, memorandum also withdrew the May 31, 2017, memorandum.

---

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

[38] Environmental Integrity Project. "Civil Penalties Against Polluters Drop 60 Percent So Far Under Trump." August 10, 2017. As visited on January 18, 2018. https://www.environmentalintegrity.org/news/penalties-drop-under-trump/

[39] Shinkman, Susan. "Interim Procedures for Issuing Information Requests Pursuant to Clean Air Act § 114, Clean Water Act § 308, and RCRA §3007." Environmental Protection Agency. May 31, 2017. Accessed January 18, 2018. https://www.documentcloud.org/documents/4324892-EPA-Clean-Air-Act-and-Its-Power-to-Request.html#document/p60/a392202

b. What is the longest and what is the average time that it takes for requests for information submitted to OECA headquarters to be approved or denied and returned to regional EPA offices?

EPA did not track the time for review of information requests under the interim procedures.

c. Did your predecessor, you or other political appointees at the EPA tell state officials or industry representatives that the EPA will cease to investigate or enforce some pollution cases? If so, please provide the dates of those conversations and how this decision was reached, as well as transcripts, if possible.

In January 2018, the OECA Assistant Administrator issued a memorandum entitled "Interim OECA Guidance on Enhancing Regional-State Planning on Compliance Assurance Work in Authorized States." That memo sets forth an expectation of joint work planning between the Region and an authorized state, to divide up enforcement work and to maintain a collaborative relationship with "no surprises." The memo contemplates situations where EPA has identified violations but the state requests to take the lead on enforcement. According to the memo, such a request must come from the state, not an industry representative. Such a request may take the form of a letter from the state commissioner to the Regional Administrator or may result from conversations among senior managers from the state and the Region. The memo sets forth the expectation that if the state takes the lead, the Region should periodically assess the state's progress. As these conversations pertain to ongoing enforcement actions, the details are confidential.

d. Have your predecessor, you or your political appointees restricted the ability of EPA enforcement officers to order pollution tests under Clean Water Act, Clean Air Act, or Resource Conservation and Recovery Act authority in any way beyond requiring them to proactively submit requests for information to OECA headquarters for approval? If so, please describe exactly how this ability has been changed since January 2017, detailing what additional steps EPA staff must take to order requests for information.

See response to Part A above.

ED_002674_00009392-00051

e. Please provide a detailed list of the companies and plants that have received notices of violation under the Clean Water Act, Clean Air Act, or the Resource Conservation and Recovery Act during the final nine months of Obama Administration, but that have not yet had any EPA penalties levied upon them.

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

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

f. Please provide a detailed list of the times and occasions where, since January 2017, the EPA has asked to delay a consent decree that was proposed during the final nine months of the Obama Administration.

EPA has not asked for a delay of any consent decree.

g. A subsidiary of Koch Industries has challenged the EPA's authority to issue requests for air pollution testing. Please provide a list of all meetings your predecessor, you or other political appointees took with Koch Industries or its subsidiaries or any entity representing these organizations, as well as with the North Dakota Petroleum Council, which has also criticized the EPA's use of requests for information.[40]

The EPA has a centralized search currently underway that we expect to yield documents relevant to your request. We anticipate delivering documents to you on a rolling basis as they become available.

[40] Ness, Ron. North Dakota Petroleum Council. March 31, 2017. Accessed January 19, 2018. https://www.documentcloud.org/documents/4324892-EPA-Clean-Air-Act-and-Its-Power-to-Request.html#document/p52/a392199

h. Please provide a detailed list of occasions where, since January 2017, the EPA withdrew or accepted lower civil monetary penalties than were recommended under the previous administration and the rationale for these decisions.

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

Actions Reported	CY08	CY09	CY10	CY11	CY12	CY13	CY14	CY15	CY 16	CY17	CY 18
Total**	70	130	64	110	97	58	64	34	40	37	29

**** In an effort to provide complete and accurate data, we conduct continuous data quality assessments of federal compliance and enforcement data. As a result, the total number of enforcement actions reported as withdrawn or not pursued in this table updates what EPA provided in prior responses. The data is current as of December 20, 2018.**

55. On December 1, the EPA announced that it would be reversing a rule[41] proposed under the last administration that would have required that companies mining non-coal minerals (like gold, silver, copper or lead) demonstrate to the EPA that they can afford cleanup costs once the mine is closed, through mechanisms like bonds, insurance, or self-insurance.[42]
    a. Please provide the EPA's views as to who would be responsible for any necessary cleanup costs once these mines are closed, including any estimated costs to the U.S. Treasury over the next 10 fiscal years in the absence of this rule.

[41] Environmental Protection Agency. "Financial Responsibility Requirements Under CERCLA § 108(b) for Classes of Facilities in the Hardrock Mining Industry." Federal Register. January 11, 2017. Accessed January 18, 2018. https://www.federalregister.gov/documents/2017/01/11/2016-30047/financial-responsibility-requirements-under-cercla-108b-for-classes-of-facilities-in-the-hardrock.

[42] Cama, Timothy. "EPA seeks to ensure mining companies can pay cleanup costs." The Hill. December 02, 2016. Accessed January 18, 2018.http://thehill.com/policy/energy-environment/308474-epa-seeks-to-ensure-mining-companies-can-pay-cleanup-costs

In developing its final action, EPA analyzed the need for financial responsibility based on risk of taxpayer funded cleanups at hardrock mining facilities operating under modern management practices and modern environmental regulation, i.e., the type of facilities to which financial responsibility regulations would apply. That risk is identified by examining the management of hazardous substances at such facilities, as well as by examining federal and state regulatory controls on that management and federal and state financial responsibility requirements. With that focus, the record demonstrates that, in the context of CERCLA section 108(b), the degree and duration of risk associated with the modern production, transportation, treatment, storage, or disposal of hazardous substances by the hardrock mining industry does not present a level of risk of taxpayer funded response actions that warrant imposition of financial responsibility requirements for this sector.

The Regulatory Impact Analysis (RIA) for the proposed rule estimated that the projected level of taxpayer liability that would have been avoided by the proposed rule was relatively small, and that the costs of meeting the proposed financial responsibility requirements were an order of magnitude greater than the costs avoided by the federal government as a result of such requirements. EPA did not require evidence of financial responsibility under section 108(b) at hardrock mining facilities in its final action. EPA therefore did not conduct an RIA for it.

b. In a statement, former Administrator Scott Pruitt said that he was "confident that modern industry practices, along with existing state and federal requirements address risks from operating hardrock mining facilities."[43] Please detail the federal requirements that address those risks and what industry practices are in place that would prevent cleanup costs from being passed along to the American taxpayer.

With respect to federal regulatory requirements, EPA discusses these in the Federal Register preamble to its final action (see 83 FR 7565 et seq.). With respect to industry practices, EPA evaluated information received in comments on the proposed rule that argued that new facilities are specifically designed, constructed, operated and closed in a manner to prevent environmental degradation and to avoid the types of problems that were caused by past practices. Further specifics can be found at 83 FR 7577-80.

[43] "EPA Determines Risks from Hardrock Mining Industry Minimal and No Need for Additional Federal Requirements." Environmental Protection Agency. December 1, 2017. Accessed January 19, 2019. https://www.epa.gov/newsreleases/epa-determines-risks-hardrock-mining-industry-minimal-and-no-need-additional-federal

c. Please provide my office with any memos, meeting notes, emails, or other documentation on this proposed rule reversal during the year of 2017 between the Office of the Administrator or political appointees, including your predecessor, you, and any one or combination of the following groups: the Western Governors' Association, the National Mining Association, the state of Utah, the state of Arizona, or the state of Idaho.

The agency is currently working on responding to a FOIA request from Earth Justice regarding the same information. EPA expects that it will take several months to compile the information to respond to the FOIA and the Congressional requests. We will update the Committee when we have this information.

56. Since 2010, the EPA had argued that construction undertaken by the DTE Energy Company at DTE's Monroe Power Plant in Michigan, one of the largest coal-powered plants in the country, required a preconstruction permit under the new source review (NSR) program. The EPA filed an enforcement action as a result of projected emissions increases of sulfur dioxide and nitrogen that would have resulted from this facility overhaul.[44] On Dec. 7, 2017, former Administrator Pruitt issued a memo reversing the position the EPA had taken since 2010 on pollution management for DTE Energy.[45] The memorandum states that the EPA will no longer "initiate enforcement in such future situations unless actual post-project emissions data indicate that a significant emissions increase or significant net emissions increase did in fact occur." The memo also details how the EPA will now apply the NSR regulations in a way that defers to the "intent of an owner or operator to manage emissions," rather than basing decisions solely on quantifiable information like the projections of future emissions.

a. Please provide a justification for this regulatory change from December 2017, which could be read as preventing the EPA from conducting any enforcement activities until after companies release dangerous pollutants into American communities.

The December 7, 2017 Memorandum from Administrator Pruitt that you identified was not a regulatory change. The memorandum explains, among other things, that it "is not a rule or regulation" and that it does not "change or substitute for any law, regulation, or other legally binding requirement and is not legally enforceable" (p. 2). Rather, the

[44]Evans, Carlos. "U.S. v. DTE Energy Co. (DTE II)." American Bar Association. Accessed January 18, 2018. https://www.americanbar.org/groups/environment_energy_resources/committees/dch/aq/20170613_us_v_dte_energy_co.html

[45] Pruitt, E. Scott. "New Source Review Preconstruction Permitting Requirements: Enforceability and Use of the Actual-to-Projected-Actual Applicability Test in Determining Major Modification Applicability." Environmental Protection Agency. December 7, 2017. Accessed January 18, 2018. https://www.epa.gov/sites/production/files/2017-12/documents/nsr_policy_memo.12.7.17.pdf

ED_002674_00009392-00055

memorandum sought to resolve uncertainty related to the application of certain existing requirements in the NSR regulations at issue in two appellate court decisions from 2013 and 2017, respectively, identified in the memorandum. In particular, the memorandum communicated the EPA's intended approach, for future matters, to the application of the procedures in the NSR regulations that apply to sources using "projected actual emissions" in determining NSR applicability and the associated pre- and post-project source obligations. Administrator Pruitt explained in the memorandum that he believed the memorandum was necessary to provide greater clarity for sources and states implementing the NSR regulations.

b. Will you continue to pursue changes to new source review regulations?

Yes. Consistent with presidential priorities, the EPA continues to review the NSR permitting program regulations and associated policies for opportunities to clarify and streamline requirements while maintaining environmental protections.

c. How does the EPA plan to assess the intent of an owner or operator to manage future emissions from the project on an ongoing basis to prevent a significant net emissions increase from occurring?

The NSR regulations contain recordkeeping, monitoring and reporting requirements that are designed to ensure the integrity and validity of pre-project applicability analyses. The regulations require owners or operators to perform a pre-construction applicability analysis to determine whether a proposed project would result in a significant emissions increase and a significant net emissions increase, thus triggering the requirement to obtain an NSR permit. The regulations also specify that all relevant information be used in determining the projected actual emissions for use in that analysis. As explained in the December 7, 2017 Memorandum, EPA intends to apply the NSR regulations such that this could include information related to the intent of an owner or operator to manage future emissions from an affected unit after the project that could be considered along with other relevant information in making an emissions project. The NSR regulations further provide that, when certain criteria are met, certain information shall be documented, maintained, and in certain cases submitted to the reviewing authority prior to beginning actual construction. The NSR regulations also contain post-project monitoring, recordkeeping and reporting obligations that can apply for a period of 5 or 10 years following a project, depending on the type of source involved. These post-project monitoring, recordkeeping

and reporting provisions can provide a means to evaluate whether a project actually did result in a significant emissions increase as well as the validity of the source's pre-project determination that there would be no such increase.

d. As the memo states that "decisions about how to proceed in ongoing enforcement matters will be made on a case-by-case basis," please provide a list of any other NSR enforcement cases that will no longer be pursued under this new standard and the status of the decision-making process on any case that has not yet been resolved.

It is not our practice to comment on individual enforcement matters.

e. Does the EPA now intend to no longer pursue enforcement of its projection regulation in any cases where source owners or operators are determined to have failed to perform a required pre-project applicability analysis or failed to follow the calculation requirements of the regulations, or only in the DTE Energy case? If so, what is the EPA's justification for this decision, and how will the agency continue to ensure that air quality is protected?

Decisions about how to proceed in ongoing enforcement matters will be made on a case-by-case basis in accordance with the December 2017 Memorandum. This includes taking enforcement action on a case-by-case basis when a source owner or operator fails performs a pre-project NSR applicability analysis or fails to follow the calculation procedures in the regulations.

f. Do you intend to notify and consult the public on this important issue through open comment and public meetings advertised in the Federal Register, as required by the Administrative Procedures Act?

The December 2017 Memorandum communicated how the EPA intends to apply certain aspects of the applicability provisions of the NSR regulations. As explained above, the guidance contained in that memorandum is an interpretive rule that does not constitute a legislative rule, regulation, or other legally binding requirement under the Administrative Procedure Act. Nor does the guidance change or substitute for any law, rule or regulation, or other legally binding requirement. For these reasons, the Administrative Procedure Act does not require the EPA to provide for either open comment or public meetings on this issue, as the question wrongly assumes. The EPA does not currently plan to pursue rulemaking or other action requiring public notice and comment on the specific issues addressed in the memorandum.

57. Former EPA Administrator Scott Pruitt issued a memo preventing anyone receiving an EPA grant from serving on scientific advisory panels.[46] As a result, many expert researchers can no longer provide advice on technical questions and scientific best practices to the EPA. In answers provided to me by Administrator Pruitt on May 10, 2018, he indicated that he relied on the use of "Administrator's discretion" to enact this directive. However, no guidance was issued on how to prevent improper conflicts of interest for panel appointees who have worked for companies or trade groups (either directly or as a contracted lobbyist) that could be subject to EPA regulations.[47]

    a. Will you reverse this directive?

    There are no plans to reverse the directive.

    b. Please provide a list of Advisory Panel members who have worked in or lobbied for industries regulated by the EPA over the five years preceding their nomination to the panel, noting in which industries and what capacity the member worked.

    Information about current members of EPA's federal advisory committees can be found here: https://www.epa.gov/faca/all-federal-advisory-committees-epa. To the extent you seek a more extensive inquiry, please reach out to EPA's Office of Congressional and Intergovernmental Relations.

    c. Please provide a rationale for discerning between this financial conflict of interest and the alleged conflict of interest possessed by scientists who have received EPA grant money.

    Every candidate for a federal advisory committee position must disclose to EPA potential conflicts of interest. The directive builds on that requirement by further ensuring that any person serving on an EPA federal advisory committee be as fully independent as possible from the agency. Any potential lack of independence or potential conflict with EPA, including financially, could affect the advice that is given.

    d. Please describe the ethics review process for Advisory Panel members with financial ties to industries regulated by the EPA.

---

[46]Pruitt, E. Scott. "Strengthening and Improving Membership on EPA Federal Advisory Committees." Environmental Protection Agency. October 31, 2017. Accessed January 18, 2018. https://www.epa.gov/sites/production/files/2017-10/documents/final_draft_fac_directive-10.31.2017.pdf

[47] Dennis, Brady, and Juliet Eilperin. "Scott Pruitt blocks scientists with EPA funding from serving as agency advisers." The Washington Post. October 31, 2017. Accessed January 18, 2018. https://www.washingtonpost.com/national/health-science/scott-pruitt-blocks-scientists-with-epa-funding-from-serving-as-agency-advisers/2017/10/31/959d91ac-be5a-11e7-959c-fe2b598d8c00_story.html?tid=a_inl&utm_term=.908e2b75273c

Information responsive to this question can be found in EPA guidelines and public documents, including:

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

e. Please provide an explanation on how existing conflict of interest policies for EPA advisory boards were insufficient to prevent scientific researchers receiving EPA grants from being unethically partial or biased.

The directive builds on preexisting policies by further ensuring that any person serving on an EPA federal advisory committee be as fully independent as possible from the agency. Any potential lack of independence or potential conflict with EPA, including financially, could affect the advice that is given.

58. Since January 2017, more than 700 EPA employees have left the agency or been forced to leave or retire, and more buyouts are expected. This number includes about 200 scientists, nearly 100 environmental protection specialists, and nine department directors.[48] The EPA, which is responsible for protecting the health and environment of the American people, is now at its smallest size since the last year of the Reagan Administration—despite the fact that the U.S. population has grown by 80 million people since that time.[49]

    Scientists are not being replaced, accounting for only 5 percent of the new hires this year. At the same time that the EPA is hemorrhaging technical expertise, the number of political appointees and administrator is disproportionately increasing. The Office of Chemical Safety and Pollution Prevention hired seven people and lost 54, and the Office of Water hired one person and lost 26, but the Administrator's office has grown by 20 people.

    a. Please provide data on the number of political appointees hired at the EPA since January 2017, and on political appointees hired under the three preceding EPA administrators.

[48] Friedman, Lisa, Marina Affo, and Derek Kravitz. "E.P.A. Officials, Disheartened by Agency's Direction, Are Leaving in Droves." The New York Times. December 22, 2017. Accessed January 18, 2018. https://www.nytimes.com/2017/12/22/climate/epa-buyouts-pruitt.html

[49] Cama, Timothy. "EPA staffing falls to Reagan-era levels." The Hill. January 09, 2018. Accessed January 18, 2018. http://thehill.com/policy/energy-environment/368090-epa-staffing-hits-reagan-levels

The number of political appointees hired at the EPA since January 21, 2017 is 96.

The chart below contains the number of political appointees with an accession/ start date during the specified time periods and does not account for political appointees that may already be on-board during those timeframes.

Political Appointees Hired

Date Range	Administrator	Count
01/26/2009 - 02/14/2013	Jackson	99
02/15/2013 - 07/18/2013	Perciasepe	10
07/19/2013 - 01/20/2017	McCarthy	65

b. Please provide data on the number of career EPA staff since January 2017 and the number of career staff under the three preceding EPA administrators. What is the current number of Full-Time Equivalent (FTE) staff at the EPA?

Please see the response to question 28 for the current number of Full-Time Equivalent staff at EPA.

Below is the number of career EPA staff (all employees except experts, consultants, and political appointees) hired 01/21/2017 – 08/21/2018 and the number of career EPA staff (all employees except experts, consultants, and political appointees) hired under the three preceding EPA administrators.

Career Employees Hired

Date Range	Administrator	Count
01/26/2009 - 02/14/2013	Jackson	1624
02/15/2013 - 07/18/2013	Perciasepe	28
07/19/2013 - 01/20/2017	McCarthy	2275
01/21/2017 – 08/21/2018	01/21/2017 – 08/21/2018	293

c. Former Administrator Pruitt provided data to the press indicating that the EPA could cut its staff by 47 percent by 2021[50] -- can you commit to reversing this trend, or alternatively cutting the number of political appointees by an equal amount by the same time? If not, why not?

[50] Bedard, Paul. "Success: EPA set to reduce staff 50% in Trump's first term." Washington Examiner. January 09, 2018. Accessed January 18, 2018. http://www.washingtonexaminer.com/success-epa-set-to-cut-nearly-50-of-staff-in-trumps-first-term/article/2645362

The Agency is working to carefully manage its workforce to support progress toward the goals and objectives of the EPA's FY 2018-2022 Strategic Plan.

59. News reports indicate that the EPA is now using a business efficiency system known as "lean" in agency activities.[51] The "lean" management philosophy was developed to minimize waste within a manufacturing system, and originated within the Toyota Production System in the 1990s. I am deeply concerned that the integration of "lean" philosophy into environmental protection has resulted in the prioritization of industry over public safety. A former EPA employee said that the use of "lean" principles required her to curb requests for further information regarding pollution on Superfund sites.[52]

    a. Does the EPA agree with the conclusion drawn in the Arizona "lean" method instructional video[53] that the "customer" of environmental protection work is not the American taxpayer, but actually the company being regulated? If so, how does that correspond to the EPA's mission to protect public health and the environment?

    EPA's utilization of Lean is not new. EPA has used Lean to improve its processes for over 10 years. A list of Lean projects at EPA through fiscal year 2017 is attached to this response. In fiscal year 2018, EPA has focused on developing a management system that supports lean process improvement efforts and promotes continuous problem identification and the use of a range of approaches to solving problems. The Lean method is just one type of problem solving approach. Delivering EPA's important mission in a more effective and efficient manner for American taxpayers is the explicit goal of the EPA Lean Management System.

    b. Has the "lean" method been implemented at any EPA projects, including at Superfund sites? If so, please provide a list of which projects and at what time the implementation directive occurred.

    As a result of EPA's continued utilization of Lean, several projects have been undertaken in fiscal year 2018 for the following processes: acquisitions, Freedom of Information Act responses, environmental permitting, Toxic Substances Control Act Premanufacture Notice Final Determinations, Superfund Sitewide Ready for Anticipated Use

---

[51] Stern, Marcus. "EPA Using Controversial Process to Push Cleanup of America's Most Toxic Sites." The Weather Channel. Accessed January 18, 2018. https://weather.com/science/environment/news/2017-12-19-epa-scott-pruitt-lean-superfund-sites

[52] Ibid.

[53] Arizona Management System. "Knowing your Customer." Office of the Arizona Governor Doug Ducey. Accessed January 18, 2018. https://ams.az.gov/knowing-your-customer

ED_002674_00009392-00061

(SWRAU) process, and the brownfields Ready for Anticipated Use process.

With regard to the Sitewide Ready for Anticipated Use (SWRAU) effort:

- **SWRAU is an agency performance measure that was developed to comply with EPA's responsibility to report long-term, outcome-based accomplishments under the Government Performance and Results Act. The SWRAU measure reflects the importance of considering future land use as part of the cleanup process by tracking the number of sites meeting certain criteria.**
- **In March 2018, EPA held a Lean event to focus on increasing the number of Superfund sites that meet the SWRAU performance measure each year. In addition to EPA HQ participation, the lean event was attended by representatives from EPA Regions 1-9, and from the states of Delaware, Maryland, Oklahoma, and Virginia. Outcomes from the event include: updating the current SWRAU Best Practices document to include ideas discussed during the Lean event; forming the National SWRAU Workgroup; creating a visual management tool to track SWRAU sites; developing a form to track performance improvements; and reviewing legacy sites that have reached construction completion but not SWRAU.**

In addition, EPA has used Lean approaches at the following Superfund sites:

- **In August 2017, EPA Region 9 began talks with Atlantic Richfield Co. to discuss holding a Lean event at the Leviathan Mine Site, an abandoned open-pit sulfur mine on the eastern slope of the Sierra Nevada in Alpine County, California. The purpose of the application of Lean at this site was to examine the Remedial Investigation/Feasibility Study (RI/FS) schedule along with the Administrative Order on Consent (AOC) deadlines and form the most efficient process to meet the expectations of the stakeholders and RI/FS/AOC requirements.**
- **In November 2017, EPA met with the Washoe Tribe to discuss the potential Lean event. EPA Region 9's Leviathan Lean team met with other Leviathan Lean team members. After subsequent check-ins with the Washoe Tribe, the Tribe decided that they did not have time to commit to the Leviathan Lean process, as the Leviathan Site Characterization Report had recently been submitted.**

c. Please detail employment information, including title, for Veronica Garcia, who has been reportedly teaching "lean" management to EPA staff.[54]

Veronica Garcia Darwin is a Senior Advisor to EPA's Office of Land and Emergency Management. Ms. Darwin is responsible for implementing the recommendations of the EPA Superfund Task Force (https://www.epa.gov/superfund/superfund-task-force). The 2018 update on EPA's progress on the Superfund Task Force's recommendations was published on July 23, 2018 (https://semspub.epa.gov/work/HQ/197209.pdf). Prior to joining EPA, Ms. Darwin spent more than 18 years working extensively on environmental waste issues, including roles as a compliance officer in EPA Region 9 and as deputy division director of the Arizona Department of Environmental Quality's Waste Divisions Program.

d. Please provide any documents related to how the "lean" principles are being integrated into Superfund site management.

In October 2015, EPA held a Lean kaizen event for the Applicable or Relevant and Appropriate Requirements (ARARs) identification and selection process. An outcome of the Lean event was to pilot a best practice process for two years and then evaluate its implementation. In October 2017, EPA issued a memo outlining the pilot process. The memo is attached to this response. The agency expects to start evaluating the pilot in October 2019.

60. In February 2017, President Trump directed agencies to establish task forces that would develop a list of regulations that should be targeted for elimination, edit, or replacement. While former Administrator Pruitt issued an agency-wide memorandum of implementation that included the names of EPA staff who would lead and work on the Regulatory Reform Task Force on March 24, 2017,[55] no further details about the task force or its process have been made public. The president's Executive Order required that this task force submit a progress report to the Administrator by mid-May 2017.[56]

---

[54] Stern. "EPA Using Controversial Process to Push Cleanup of America's Most Toxic Sites."
[55] Pruitt, E. Scott. "Executive Order 13777: Enforcing the Regulatory Reform Agenda." Environmental Protection Agency. March 24, 2017. Accessed January 18, 2018. https://www.epa.gov/sites/production/files/2017-04/documents/regulatory_reform_agenda.pdf
[56] Executive Office of the President. "Enforcing the Regulatory Reform Agenda." Federal Register. February 24, 2017. Accessed January 18, 2018. https://www.federalregister.gov/documents/2017/03/01/2017-04107/enforcing-the-regulatory-reform-agenda

a. Please provide the May progress report for the Regulatory Reform Task Force, any subsequent progress reports, and the schedule by which further progress reports will be requested.

The May 2017 progress report was an internal, deliberative agency document that was not produced publicly. Nonetheless, the work of the Regulatory Reform Task Force, including agendas for public meetings and teleconferences, can be found at https://www.epa.gov/laws-regulations/regulatory-reform. For other document requests, please reach out to EPA's Office of Congressional and Intergovernmental Relations.

b. Please provide the calendar and schedule for the Regulatory Reform Task Force members, dating back to March 24, 2017.

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

c. Please provide any documents relating to or criteria being used by the Regulatory Reform Task Force to determine which regulations it will focus on.

The Regulatory Reform Task Force has drawn from the thousands of comments in response to a *Federal Register* notice seeking input on regulations that may be appropriate for repeal replacement or modification. The Task force has also been informed by public meetings and teleconferences discussing regulatory reform. EPA's regulatory reform efforts, including the work of the Regulatory Reform Task Force, and information on the meetings and teleconferences, including agendas, is publicly available at https://www.epa.gov/laws-regulations/regulatory-reform.

Can you commit to a more transparent process for task forces going forward, including publishing of planning documents, meeting minutes and attendees, reports, and timelines for decision-making?

Some discussions among the Regulatory Reform Task Force may be internal or pre-decisional agency actions protected from disclosure. Nonetheless, information involving the Regulatory Reform Task Force such as public meetings and teleconferences, including agendas, is accessible through EPA's Regulatory Reform webpage: https://www.epa.gov/laws-regulations/regulatory-reform.

Senator Sanders

65. In response to my questions for the record from your nomination hearing to become the EPA's Deputy Administrator, you committed to "relying on independent scientists with relevant expertise to evaluate and review the data that EPA uses when making decisions related to the implementation of environmental regulations."

    This commitment stands in opposition to then-Administrator Pruitt's October 31, 2017 directive to prohibit scientists who receive EPA grants from serving on EPA Federal Advisory Committees (FAC). As we know from administrative records released on May 23, 2018 in response to a federal court order, the EPA did not solicit or receive input from scientific or technical organizations while formulating this rule. Instead, the EPA relied mostly on input from political and industry groups. Given that the EPA did not rely on independent scientists with relevant expertise when formulating this October 31 directive, and that the directive has and will continue to block independent scientists with relevant expertise from evaluating and reviewing the data used to make regulatory decisions, please describe your plan, including a timeline, for reversing then-Administrator Pruitt's directive regarding membership on EPA FACs.

    There is no plan to reverse the directive. The directive's beneficial purpose is to strengthen existing membership on EPA Federal Advisory Committees by improving member independence, diversity, and breadth of participation on these committees. The directive builds on measures already in place to address potential conflicts of interest.

66. Your commitment to rely on independent scientists also contradicts then-Administrator Pruitt's appointment of many representatives from the regulated fossil fuel and chemical industries to these commissions.

    Given that these industry representatives are not independent, and their scientific conclusions are not always peer-reviewed, please describe your plan, including a timeline, for replacing them with truly independent scientists who will ensure the EPA's use of peer-reviewed scientific studies to support the EPA's mission to protect human health and the environment.

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

    - https://www.epa.gov/faca/strengthening-and-improving-membership-epa-federal-advisory-committees

- https://www.epa.gov/sites/production/files/2015-02/documents/ethicsadvisory.pdf
- https://yosemite.epa.gov/sab/sabproduct.nsf/Web/ethics?OpenDocument

67. On April 24, 2018, then-Administrator Pruitt proposed the "Strengthening Transparency in Regulatory Science" (STRS) rule to bar the EPA from considering important peer-reviewed public health studies in making decisions about vital protections for human health and the environment. Emails obtained by the Union of Concerned Scientists show that EPA officials significantly altered this rule prior to its release in order to avoid imposing "enormous burdens on industry."

    As you know, the proposed rule gives the EPA Administrator unilateral authority to determine what constitutes "pivotal regulatory science." You are not a scientist, so any use of this unilateral authority would constitute a violation of your pledge to rely on independent scientists when making decisions related to the implementation of environmental regulations.

    Were you aware that EPA officials adjusted this proposed rule to avoid imposing "enormous burdens on industry"? If so, please provide a timeline for withdrawing the STRS rule. If not, do you commit to investigate the regulatory capture inherent in the STRS rule?

    The proposed rule *Strengthening Transparency in Regulatory Science* seeks to ensure that the regulatory science underlying EPA's actions is publicly available in a manner sufficient for independent validation. Where available and appropriate, EPA will use peer-reviewed information, standardized test methods, consistent data evaluation procedures, and good laboratory practices to ensure transparent, understandable, and reproducible scientific assessments. The public comment period for this rule was open from April 30 to August 16, 2018. EPA also held a public hearing in July to get feedback on the proposed rule. EPA is now reviewing public comments and will follow the agency's regulatory process.

68. In response to my questions for the record from your nomination hearing to be the EPA's Deputy Administrator, you stated that you were unfamiliar with the EPA's December 2016 report on hydraulic fracturing's (fracking) impacts on drinking water. In this report, the EPA found "hydraulic fracturing activities can impact drinking water resources under some circumstances." You committed to working with career EPA employees on the issue. You also stated that you believe that "all of the environmental laws function better with the information in the hands of the communities most-impacted."

    a. Now that you have had ample time to work with career EPA employees on the issue, do you concur with the conclusions of the EPA's final report on fracking and drinking water?

EPA's study of the potential impacts of hydraulic fracturing on drinking water in the United States was conducted with active engagement with states, tribes, industry, and multiple non-governmental organizations. The study produced over 25 peer-reviewed reports and journal publications that advanced understanding of hydraulic fracturing activities. The study culminated with the publication of EPA's December 2016 assessment entitled "Hydraulic Fracturing for Oil and Gas: Impacts from the Hydraulic Fracturing water cycle on drinking water resources in the United States." That assessment was based upon the latest science available at the time and cites over 1,200 sources of data and information. Those conclusions are being used by federal, tribal, state, and local officials; industry; and the public to better understand and address vulnerabilities of drinking water resources to hydraulic fracturing activities.

b. What further actions are you taking with career employees to regulate fracking's impacts on water quality?

The EPA is working with states, the oil and gas industry, and stakeholders such as the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission to ensure that oil and gas development occurs safely and responsibly to protect drinking water resources. Consistent with the EPA's Memorandum to the EPA Regions and State and Tribal Underground Injection Control (UIC) Program Directors in February 2014 and an associated technical "Permitting Guidance (UIC Program Guidance #84) for Oil and Gas Hydraulic Fracturing Activities Using Diesel Fuels," the EPA continues to issue Safe Drinking Water Act UIC permits, where EPA directly implements the UIC Program, for the injection of diesel fuels for hydraulic fracturing related to oil and gas operations. Additionally, in May 2018, the EPA initiated a study to evaluate approaches to managing both conventional and unconventional oil and gas extraction wastewaters generated at onshore facilities. Currently, the majority of this wastewater is managed through underground injection, where that water can no longer be accessed or used. A key component of the study is to engage with states, tribes, and stakeholders, including industry and non-governmental organizations, to facilitate discussion and solicit information on topics surrounding produced water management.

c. What actions have you taken to ensure that impacted communities have information about the ways in which fracking may be impacting their water quality?

EPA actively engages with a very wide range of stakeholders to better understand hydraulic fracturing activities. Throughout the conduct of the hydraulic fracturing drinking water study, EPA has engaged with states, tribes, industry, and others to both collect information and to discuss the results of our findings. For example, the EPA recently launched a new study to look at how the EPA, states, tribes, and stakeholders regulate and manage wastewater from the oil and gas industry. This fall, the EPA will conduct a public meeting to report on what the Agency has learned to date and provide stakeholders with

an additional opportunity to provide input. Additionally, where the EPA directly implements the Safe Drinking Water Act Underground Injection Control Program, permitting decisions are subject to public notice and comment, affording communities with the opportunity to learn more about a proposed project within their community and submit comments to EPA for consideration. The EPA is also currently working to stand up a web-based compliance assistance center for stakeholders, including the public, to better understand the oil and natural gas sector and the regulations that ensure protection of water quality. Other EPA activities are highlighted on the Agency's web site for unconventional oil and gas activities (https://www.epa.gov/uog).

69. In response to my questions for the record from your nomination hearing to be the EPA's Deputy Administrator, you stated that you had not been briefed on the EPA's Environmental Justice 2020 plan but looked forward to working with career agency employees on its implementation.

    Have you been briefed on the plan? If you have been briefed, please describe how you are working to ensure that the EPA's Environmental Justice 2020 plan is fully implemented. If you have not been briefed, please include a timeline for when you will receive this important information. Please also include a timeline for then fully implementing the Environmental Justice 2020 plan.

EPA continues to further environmental justice through implementation of important strategic priorities within the Agency, through the leadership of the Interagency Working Group on Environmental Justice and through continued direct support of and engagement with community-based organizations throughout the United States. EPA has taken meaningful steps towards implementing the Environmental Justice 2020 plan. For example, earlier this year the Office of Policy issued an Agency-wide memorandum containing numerous environmental justice strategic priorities. These priorities were purposefully aligned with key elements of the EJ 2020 Action Agenda. Examples of this alignment are a continued focus on engaging with states, tribes and other governmental partners to support their interest in integration of environmental justice into their programs; developing metrics to track the meaningful implementation of environmental justice considerations and tools into program activities throughout EPA; advancing our ability to engage directly with vulnerable and overburdened communities to provide tangible improvements that meet their needs; and making progress on key national measures of EPA's impact on issues critical to furthering environmental justice.

Moreover, this past year EPA also released our annual EJ report, which contains numerous examples of how EPA has continued to make significant progress on environmental justice strategic priorities from across our regional and national program offices. We have also recently formed an agency-wide senior decision-making body for environmental justice and community revitalization efforts called

the Environmental Justice and Community Revitalization Council. As we continue to implement these important steps, we are in the process of evaluating the EJ 2020 Action Agenda in whole in preparation for an update to the multi-year strategic plan. We estimate this process to conclude during the winter of 2018/19.

70. As you know, many of former Administrator Pruitt's proposed rulemakings have generated lawsuits from outside groups due to their questionable legality. You recognized the questionable legality of at least one of these rules in reversing former Administrator Pruitt's decision to lift the sales limits on so called "glider trucks." Given that many of former Administrator Pruitt's rules and proposed rulemakings were based on the same questionable legal ground as the glider trucks rule, please describe your plan, including a timeline, for withdrawing all other proposed rulemakings signed by former Administrator Pruitt.

    EPA does not have a comprehensive plan to rescind "all other proposed rulemakings signed by former Administrator Pruitt."

    The decision to withdraw the conditional no action assurance regarding small manufacturers of glider vehicles was a decision specific to the facts and law relevant to that matter. As explained in the July 26, 2018 memo, "[a]fter consultation with OAR, OECA and OGC, and after further consideration of the No Action Assurance and information before me, including the administrative and judicial petitions and motions, and the application of agency guidance regarding no action assurances to these particular facts, I have concluded that the application of current regulations to the glider industry does not represent the kind of extremely unusual circumstances that support the EPA's exercise of enforcement discretion." EPA will similarly continue to consider all relevant factors, including legal authority, as we take regulatory action.

71. As you know, the EPA Office of Investigator General (IG) has opened nine investigations into former Administrator Pruitt's ethical conduct. Given that several of these investigations are related to potential conflicts of interest that could have influenced Mr. Pruitt's conduct and decisions as EPA Administrator, will you commit to suspending all proposed rulemakings he signed until the EPA IG concludes all its investigations?

    EPA is committed to cooperating with the IG. EPA takes very seriously the findings or recommendations made by the IG with regard to EPA's agency actions, including rulemakings.

72. During this hearing, Chairman Barrasso asked you the following question:

    The state of Washington is abusing section 401 of the Clean Water Act in order to block the development of coal export terminal in that state. The terminal would

ship coal from Wyoming, Montana, Utah, and Colorado to markets in Asia. The state of Washington has cited reasons for objecting to the terminal that have nothing to do with water quality, yet they're using section 401 of the Clean Water Act. I introduced a bill this week to address this problem, we can't allow states to block the export of American energy, so will you commit to working with me to identify both legislative and regulatory solutions to stop these abuses?

You responded by committing to helping to stop these "abuses."

The state of Washington found that construction of this terminal would permanently destroy more than 30 acres or wetlands, and that operation of this terminal would deposit coal dust to nearby surviving wetlands. As you may know, coal dust has a significant and negative impact on the ecological functions of wetlands.

Do you consider the state of Washington's decision to prevent the permanent destruction and environmental contamination of its wetlands to be an "abuse" of its authority under the Clean Water Act to ensure permitted activity will comply with applicable water quality standards? If not, do you commit to informing Chairman Barrasso that you will not help him reverse the decision made by the state of Washington?

Section 401 of the Clean Water Act (CWA) provides states with an opportunity to evaluate and address aquatic resource impacts of federally-issued licenses and permits. It is a direct grant of authority from Congress to the states. The statute does not provide the EPA with the authority to review, approve, or deny state section 401 certification programs or individual state certification decisions. The EPA supports the appropriate use by the states of their section 401 authority consistent with the goals of the CWA and promotes timely coordination, planning, and review.

Senator Whitehouse:

73. I appreciate the steps you've already taken to right the ship at EPA. While I expect many of the ethical lapses during Scott Pruitt's tenure will not continue after his departure, his behavior exposed systemic failures within EPA that need to be addressed. Specifically, I still wait for complete answers about:

    a. Who was responsible for prohibiting EPA scientists from presenting their work at a Narragansett Bay Estuaries Project conference in October last year;

As explained in our December 4, 2017 letter to you, the EPA understands your concerns about the cancellation of planned presentations at the October 23, 2017 State of Narragansett Bay Estuary Program workshop. We have since put in place procedures to prevent such an occurrence in the future. Senior agency leadership – both political and career – have been assured that they have the authority to make decisions about event participation.

b. Why, after multiple requests, I have never received a copy of Assistant Administrator William Wehrum's recusal statement, a statement which under ethics rules should have been completed many months ago;

Please find attached a copy of Mr. Wehrum's recusal statement.

c. Who was responsible for the no-bid contract EPA gave to Definers, a Republican opposition research firm associated with dark money efforts behind Scott Pruitt's confirmation;

As explained in our April 27, 2018 letter to you, in July 2017 the EPA began acquisition planning to procure real-time coverage of media stories for specific topics, event, and announcements relevant to the agency. After determining that Definers would be able to provide that real-time coverage, and that such coverage for specific events was not provided by other companies, the EPA awarded a purchase order to Definers for those services on December 7, 2017. At Definers' request, the EPA terminated the awarded purchase order on December 19, 2017, before any work was initiated. The EPA incurred no costs from the date of award to the date of termination.

As explained in our April 27, 2018 letter and discussed with your staff, the EPA has a centralized search for records related to Definers currently underway. We have delivered records to your staff on April 27, 2018, May 10, 2018, July 23, 2018, and August 23, 2018, and we will continue to deliver responsive documents on a rolling basis as they become available.

d. Why EPA has never disclosed copies of Bob Murray's action plan, either through FOIA or in response to my requests, when a copy of that plan addressed to Scott Pruitt was disclosed under FOIA by the Department of Energy;

As explained in our November 28, 2017 and February 1, 2018 letters to you, the agency has conducted centralized Outlook searches of EPA officials that would have been engaged on this topic. These searches did not capture any instances of "action plan." We are conducting additional searches and continuing to locate and review documents relating to the Clean Power Plan, including those that may yield documents responsive to your request. We will be in touch if and when responsive documents are available for release.

e. Why the formaldehyde assessment has been blocked from moving through the normal review process.

As explained in our July 5, 2018, response to your May 17 letter, the EPA's Integrated Risk Information System (IRIS) program informs decisions under a number of statutes, including the Comprehensive Environmental Recovery, Compensation, and Liability Act, the Safe Drinking Water Act, the Clean Water Act, the Clean Air Act, and the Toxic Substances Control Act. The EPA is committed to ensuring that the IRIS Program provides high-quality, health-based assessments that adhere to the highest standards of scientific review. Prior to releasing any assessment, the EPA conducts a rigorous and robust review process to ensure agency decisions to protect human health and the environment are based on high quality science. The agency continues to discuss the formaldehyde assessment internally and has no further updates to provide at this time.

If you can't commit to providing full answers to these inquiries within two weeks of your response to this question, please explain the continued delay.

74. The hearing at which you testified was entitled "Examining EPA's Agenda: Protecting the Environment and Allowing America's Economy to Grow." You and I had a chance to discuss two climate change-related issues that touch on both of these subjects. The first of these subjects is the carbon bubble, which refers to the risk that too much investment in the fossil fuel industry will lead to a situation in which many fossil fuel assets wind up stranded, setting up a chain reaction economic crash in which total losses may equal or exceed those of the 2008 financial crisis. The economic literature we discussed all suggests that the best way to avoid such a crash is to begin decarbonizing our economy now rather than later. The Bank of England happens to agree with this view as well. In light of this, please explain how:

a. EPA's plan to repeal the Clean Power Plan and replace it with something far weaker is consistent with sending the sort of clear signal economists and policy makers recommend that we will begin decarbonizing our economy now in order to reduce the future risk of stranded fossil fuel assets provoking an economic crash;

The EPA proposed to repeal the CPP on October 16, 2017 (82 FR 48035). In that proposed repeal, EPA asserted that the best system of emission reduction (BSER) in the CPP exceeded EPA's authority under CAA section 111 because it established the BSER using measures that applied to the power sector as whole, rather than measures that apply at and to, and can be carried out at the level of, individual facilities. On August 21, 2018, the administrator issued a proposed replacement rule (the Affordable Clean Energy Rule) that he believes is more consistent both with the authorities under 111(d) and the types of technologies currently available to reduce CO_2 emissions at existing coal-fired power plants.

b. EPA's plan to roll back fuel economy standards for cars is consistent with sending the sort of clear signal economists and policy makers recommend that we will begin decarbonizing our economy now in order to reduce the future risk of stranded fossil fuel assets provoking an economic crash.

The EPA and the Department of Transportation's Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule, issued on August 1, 2018, projects economic benefits, including a reduction in regulatory costs, of more than $252 billion (present value estimate, 3% discount rate) through model year 2029, and societal net benefits of $176 billion (present value estimate, 3% discount rate). The corresponding estimates using 7% discount rates are $192 billion and $131 billion. The agencies' proposal reflects a balance of a number of factors, including safety, costs, benefits, technology, fuel conservation, and pollution reduction, and we also seek comment on a wide range of alternatives.

75. The other economic risk that we discussed involves the prospect of a coastal real estate crash. Numerous highly regarded sources are warning that this country faces the prospect of seeing hundreds of billions of dollars if not trillions of dollars in coastal residential and commercial real estate value wiped out over the coming decades as sea levels rise due to climate change. Freddie Mac, the Union of Concerned Scientists, and the insurance industry trade publication *Risk & Insurance* are all warning of this prospect. One new study indicates that $7.4 billion in real estate values have already been wiped out due to sea level rise along the southeast coast since 2005. In light of this, please explain how:

a. EPA's plan to repeal the Clean Power Plan and replace it with something far weaker is consistent with the kind of serious decarbonization we need if we are to avoid the most catastrophic consequences of sea level rise;

The EPA proposed to repeal the CPP on October 16, 2017 (82 FR 48035). In that proposed repeal, EPA asserted that the best system of emission reduction (BSER) in the CPP exceeded EPA's authority under CAA section 111 because it established the BSER using measures that applied to the power sector as whole, rather than measures that apply at and to, and can be carried out at the level of, individual facilities. On August 21, 2018, the administrator issued a proposed replacement rule (the Affordable Clean Energy Rule) that he believes is more consistent both with the authorities under 111(d) and the types of technologies currently available to reduce CO_2 emissions at coal-fired power plants.

b. EPA's plan to roll back fuel economy standards for cars is consistent with the kind of serious decarbonization we need if we are to avoid the most catastrophic consequences of sea level rise.

Under the EPA/DOT SAFE Vehicles Rule proposal, EPA relied on the estimates of climate impacts presented in the NHTSA Draft Environmental Impacts Statement. The NHTSA analysis indicates that by 2100, the proposed

alternative would result in an increase of 7,400 million metric tons of CO2, an increase in global temperature of 3/1000th of one degree Celsius, and a projected sea level rise ranging from 76.28 centimeters (30.03 inches) under the No Action Alternative (i.e., the existing EPA GHG standards) to 70.34 centimeters (30.06 inches) under the proposed alternative, for a maximum sea level increase of 0.06 centimeters (0.02 inches) by 2100. Although GHG emissions would be higher under this proposal compared to EPA's existing standards, in light of the assessment presented in the proposal indicating higher vehicle costs and associated impacts on consumers, safety, and other factors including the increase in GHG emissions, EPA believes the proposal is an appropriate balancing of the factors EPA must consider when setting these standards.

76. Your predecessor instituted a policy that prohibited scientists who receive EPA grant money from serving on EPA's science advisory boards under the pretext that this constituted a conflict of interest. However, he appointed many individuals from regulated industries to EPA's science advisory boards.

    a. Please explain how serving on an EPA science advisory board while receiving EPA grant money constitutes a conflict of interest but serving on an EPA science advisory board while working for or receiving funding from a regulated industry does not.

    The directive supports that any person serving on an EPA science advisory committee must be fully independent from the EPA. Any potential lack of independence or potential conflict with EPA, including financially, could affect the advice that is given. Past and current members of federal advisory committees come from a wide range of backgrounds, including academia, state/local/tribal governments and from the regulated community. Furthermore, the process for serving on a federal advisory committee requires disclosure of financial conflicts of interest. Agency policies, including ethics-related and conflict of interest guidelines, can be found at:

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

    b. Will you commit to reversing your predecessor's policy prohibiting scientists who receive EPA grant money from serving on EPA's science advisory boards?

    There is no plan to reverse the directive.

77. There have been reports that EPA political appointees are refusing to put new policies in writing and are instead insisting that career staff follow verbal instructions. Will you commit to requiring that all policies, guidance, and other similar complex instructions be put in writing before career staff are instructed to follow them?

I do not have any specific knowledge of these practices and always seek to provide my directions clearly in writing.

78. During Administrator Pruitt's tenure, scientists associated with the Narragansett Bay National Estuary Program were stopped from presenting their work. What steps have you taken since becoming acting administrator to ensure scientists are not silenced, including those working and presenting on climate change and its consequences?

It is the EPA Office of Research and Development's (ORD) decision about scientists participating in events. ORD will continue to conduct research outlined in our STRAPs reflecting Congressional appropriations.

EPA has one of the strongest Scientific Integrity policies and one of the most robust Scientific Integrity training programs in the federal government. EPA's Scientific Integrity Policy doesn't just apply to EPA scientists; it applies to all EPA employees, including scientists, managers, political appointees, and other staff. EPA regularly makes improvements to its Scientific Integrity program to make it even stronger. You can read more about this policy at epa.gov/osa/basic-information-about-scientific-integrity.

I am committed to upholding EPA's Scientific Integrity Policy, which ensures that the Agency's scientific work is of the highest quality, is presented openly and with integrity, and is free from political interference. The policy recognizes the distinction between scientific information, analyses, and results from policy decisions based on that scientific information. Policy makers within the Agency weigh the best available science, along with additional factors such as practicality, economics, and societal impact, when making policy decisions.

I have met with the EPA Scientific Integrity Official, Francesca Grifo, and supported the scheduling of the EPA Scientific Integrity Program's Annual Employee Conversation with the Scientific Integrity Official on Tuesday, June 12, 2018.

79. What is the EPA's role in helping states and coastal communities mitigate or adapt to the challenges projected for the shellfish industries or the thousands of individuals that make their living off of this billion-dollar resource?

The EPA has a number of regulatory and non-regulatory efforts in place to help states and coastal communities address current and projected challenges for the shellfish industry.

The EPA uses the Agency's grant and regulatory authorities under the Clean Water Act (CWA) to protect and improve water quality, with an emphasis on ensuring that shellfish resources can thrive and continue to be safe for human consumption. This includes providing training and monitoring support to states and tribes in developing and refining water quality standards, listing impaired waters, developing Total Maximum Daily Loads (TMDLs), and addressing both nonpoint and point sources of pollution. The EPA also provides guidance to states, territories, and tribes about issuing fish and shellfish consumption advisories, and determining safe human consumption rates of fish and shellfish, and has jointly issued EPA/FDA safe eating guidelines.

In addition, the EPA serves as the co-chair of the Hypoxia Task Force, a coalition of states, federal agencies, and tribes working to better manage the pollution sources that threaten the fish and shellfish industries in targeted areas. The EPA also works directly with coastal communities through a number of federal and local partnerships, including the National Estuary Program, to improve local resilience by helping coastal communities to develop adaptation strategies for future impacts to infrastructure, fish and shellfish industries, and natural resources. This type of work includes conducting vulnerability assessments in order to identify, analyze, prioritize, and reduce risk at the community level and water quality monitoring to better understand and reduce the impacts of changing water chemistry. The EPA is also conducting research to examine the effect of nutrients in coastal systems and an economic analysis of the impacts of ocean and coastal acidification on the shellfish industry.

80. The Save Our Seas Act, which passed the Senate last August and the House last week, urges the administration to pursue a number of activities aimed at reducing the influx of plastic waste into the oceans, including investing in research into ocean biodegradable plastic alternatives, pursuing new international agreements focused on land-based plastic pollution, providing technical assistance to improve waste management in developing countries, and considering marine debris in future trade agreements.

    a. What role can or does EPA play in achieving these goals?
    b. Where does addressing marine debris rank in your priorities at EPA?

The EPA recognizes the severity of the global problem of trash pollution in the ocean, and in freshwater systems as well, and is contributing to the Administration's activities to address marine litter. The EPA, in coordination with NOAA and other federal partners, is taking proactive steps to address this problem, primarily through the work of our multi-faceted Trash Free Waters (TFW) program. The EPA's TFW program assists states, municipalities, and

businesses to work together to define more effective ways to reduce litter, prevent trash entry into water, and minimize packaging waste through stakeholder consultation, strategic planning, pilot initiatives, and public/private collaboration.

In addition to the EPA's efforts under the TFW program, the Agency is engaging in a variety of international marine trash forums, exploring new opportunities to reduce plastic trash loadings into the ocean from China and other high-contributing nations. The EPA has also identified microplastics as a research priority, focusing on quantifying the extent of plastic pollution in all aquatic systems and assessing the possibility of human health impacts from microplastics in the environment. In addition, the EPA's recycling and sustainable materials management programs are working to reduce the volume of plastic trash in the waste management system and consider how the Agency's waste system expertise could benefit countries that lack effective waste management infrastructure.

Senator Wicker:

81. On July 20, 2018, the U.S. Court of Appeals for the Fourth Circuit vacated and remanded the EPA's denial of a 2016 petition for small refinery hardship filed by Ergon – West Virginia, Inc., under the Renewable Fuel Standard. What actions is the EPA prepared to take to respond to this court ruling? What is the expected timeline for such actions?

    EPA continues to review next steps in light of the court's ruling. We are not in a position to share a timeline at this point, but understand the need to move quickly.