Senate Committee on Environment and Public Works
Hearing entitled, *"Oversight of the Environmental Protection Agency"*
May 20, 2020
Questions for the Record for Administrator Andrew Wheeler

Chairman Barrasso:

1. When defending its decisions to grant hardship relief to three small refineries in *Renewable Fuels Association et al. v. EPA et al.*, No. 18-9533 (10th Cir. Jan. 24, 2020), EPA did not challenge petitioners' standing claims. I find that very troubling given that a federal bankruptcy court had previously ruled that a similarly situated biofuels lobby did not have standing to challenge EPA's decision to forgo retiring 426 million RINs for a large refinery. *In Re PES Holdings, LLC*, No. 18-10122 (Bankr. D. Del., Apr. 4, 2018). That is over triple the amount of relief that EPA granted the three small refineries at issue in the *RFA* case. I'm also told that the draft brief, which the Department of Justice (DOJ) prepared for EPA in the *RFA* case, challenged petitioners' standing claims. I understand that your agency directed DOJ to remove the challenge(s) to petitioners' standing claims prior to filing the brief with the U.S. Court of Appeals for the Tenth Circuit.

   Why did EPA decide not to challenge petitioners' standing claims in the *RFA* case?

2. EPA's Guidelines for Carcinogen Risk Assessment apply to all offices within EPA, including the Integrated Risk Information System (IRIS) program. The Guidelines define and explain how "mode of action" may be used to evaluate the potential carcinogenicity of a chemical compound. I understand that, for some chemical compounds, the findings of health effects studies are sufficient to establish a mode or modes of action. However, the Guidelines also state that: "In the absence of sufficiently, scientifically justifiable mode of action information, EPA generally takes public health-protective, default positions regarding the interpretation of toxicologic and epidemiologic data: animal tumor findings are judged to be relevant to humans, and cancer risks are assumed to conform with low dose linearity."

   a. Would you please list all the pending IRIS risk assessments that have not used a mode or modes of action?

   b. For each of the pending IRIS risk assessments that have not used a mode or modes of action, has IRIS correctly determined that there is an absence of sufficiently, scientifically justifiable mode of action information?

3. How will EPA's proposed "Strengthening Transparency in Regulatory Science" rule affect the public disclosure of the scientific studies and underlying data upon which IRIS bases its risk assessments?

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a. Will the proposed rule result in public disclosure of that information in advance of the publication of IRIS' draft risk assessments?

Senator Capito:

4. The replacement of the Obama Administration's illegal *Clean Power Plan* – which would have been disastrous for ratepayers and was a gross overreach of the EPA's statutory authority – with the new *Affordable Clean Energy Rule* is one of the most closely watched rulemakings of the Trump Administration. The new rule balances the rule of law with what is economically feasible and protective of the environment, while continuing the progress this country has made on reducing emissions of carbon dioxide and criteria pollutants.

    a. Can you provide a status update on the implementation of the rule?

    b. Any regulatory protections for compliant electric generators now being slammed by the suppressed demand resulting from COVID-19 economic upheaval would at least remove a major source of regulatory uncertainty from the list of current headwinds facing utilities. Is the EPA making any accommodations for "early compliance" for coal and natural gas plants that can currently meet the emissions criteria in the final rule, so that thermally efficient coal and gas units can benefit from a degree of regulatory certainty?

5. The West Virginia Department of Environmental Protection (WVDEP) and the staff at EPA Region III have been working collaboratively to finalize the federal review of the state's hardness-based aluminum water quality standard. I am encouraged to hear that the pace of interactions between the state and EPA has picked up and we may be nearing the end of a regulatory process that has been pending since 2016. Any efforts to expeditiously conclude this process would be greatly appreciated by the state. When do you think the EPA will be able to finalize its review of this standard for WVDEP?

6. As long as the Renewable Fuel Sstandard (RFS) remains the law of the land, I believe the federal government should be prioritizing the transition from renewable fuels that disrupt agricultural markets and consumer food prices in favor of cellulosic, biomass, and other advanced biofuels. To that end, a constituent company in West Virginia, Air Liquide, has submitted three of the 19 pathway petitions currently pending before EPA to generate cellulosic renewable identification numbers (RINs) associated with production of a renewable transportation fuel from waste-derived biogas. Similar pathways have been approved by EPA, but these three petitions have been pending, in some cases, for years. It is my understanding they have been reviewed by EPA technical and political staff and await your approval. What is the status of these petitions and can you provide a timeline to complete their review?

Senator Cramer:

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7. North Dakota is a major energy producer including coal, gas and oil. The last administration wanted to just keep driving emissions down under the Regional Haze program without stopping to think about what the program is all about: visibility improvement. However, the cost of compliance can actually lead to plant closures, which seems like a steep price to pay for visual improvements unnoticeable to the naked eye. North Dakota is already a national leader in air quality and we are one of the few states that is in compliance with all of the National Ambient Air Quality Standards. In August 2019, the EPA under your leadership released final guidance outlining the flexibilities states have to comply with the program under the Clean Air Act. Can you provide examples of some of the flexibilities available to states as they create their State Implementation Plans?

8. East and West coast states have abused their authority under section 401 of the Clean Water Act. In the case of Washington state, they denied a water quality certification with prejudice, meaning the applicants cannot even refile. This is despite the fact, their own environmental review said: "There would be no unavoidable and significant adverse environmental impacts on water quality." Similarly, New York recently rejected the Northeast Supply pipeline on section 401 grounds, yet one of the reasons cited was the pipeline was incompatible with New York's newly minted climate law. The 401 permit is restricted to water quality. States should stick to that test. The Obama administration's WOTUS and Clean Power Plan proposals were found illegal and burdensome because they overstepped the bounds of the law. Similarly, some states are overstepping their 401 authority to make it about everything but water quality. What is EPA doing to ensure these sorts of abuses do not happen in the future?

9. In the last year, the Supreme Court and EPA have considered whether discharges that travel underground or through groundwater to Waters of the U.S. are subject to the Clean Water Act. Last month, the Supreme Court issued its decision in County of Maui v. Hawaii Wildlife Fund, finding that these discharges may be subject to the Clean Water Act when they are "functionally equivalent" to a direct discharge. If interpreted liberally, the vagueness of this decision could put other non-point sources at risk, specifically farmers and ranchers who use fertilizer, recycle their waste, and utilize subsurface tiling to manage water within their fields. These discharges were clearly never meant to be regulated by the federal government. What clarity can EPA provide to stakeholders and constituents following the County of Maui decision?

10. EPA has a premier audit and inspection program for Good Laboratory Practices (GLPs), recognized worldwide. However, EPA does not issue certificates of GLP compliance for laboratories, as other nations do, that would make it easier for many regulatory authorities in countries around the world to recognize the GLP credentials of regulatory studies conducted in the US. This places US contract research laboratories and US businesses at an economic and competitive disadvantage in seeking product marketing approvals in those countries and exporting their products and services. EPA has recently received additional funding from PRIA4 to enhance the GLP program. What specific changes to US regulations and/or legislation would be necessary to allow/require EPA to issue such GLP certificates? What changes could be made under President Trump's May

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19, 2020 Executive Order 13924 on economic recovery from COVID-19 to accomplish this?

11. The robust and rigorous pesticide regulatory program administered by the EPA is highly regarded by governments around the world. Many trading partners welcome imports of trusted pesticide products from US sources, which have the benefit of our regulatory program, but they need reasonable assurance of the source of the products, in order to combat contraband and counterfeits that are significant problems in some countries. Such counterfeit products can have a potentially harmful effect here at home in the form of residues on foods imported into the United States, from pesticide products of unknown origin and dubious quality. Four years ago, EPA discontinued its policy of providing Certificates of Origin for exported pesticide products to provide this assurance to importing countries, causing no small disruption for US businesses and their international customers. The fee-for-service language of FIFRA authorizes EPA to issue "Letters of Certification" for pesticide products, but the Agency has chosen not to include Certificates of Origin under this provision. What policy change could be made under the recent Executive Order 13924 (May 19, 2020; "Regulatory Relief To Support Economic Recovery") to resume issuing Certificates of Origin?

Senator Braun:

12. At the staff level, EPA has noted to several agriculture industry representatives that the agency believes that there is a conflict in the scientific literature regarding the biogenic carbon emissions from the processing of annual crops. EPA has privately noted that this conflict makes it difficult for the Agency to provide regulatory clarity.

    However, as I noted during my testimony, on May 18, 2020, 21 scientific experts sent a letter to the agency noting that the science is relatively straightforward.

    a. Clarity on this question is critical as the agency works on a de minimis standard for annual crops. Please provide a detailed statement indicating which specific studies or sources, if any, EPA has identified that currently prevent it from establishing a de minimis standard for biogenic carbon emissions associated with the processing of annual crops.

    b. If, in fact, the Agency believes that there is a scientific conflict that inhibits rulemaking, please state in detail what that conflict is and what steps the Agency has taken since 2011 to address any conflicts, uncertainties, or relevant questions.

13. It is also important to note EPA's current regulatory environment pertaining to biogenic carbon emissions stands in sharp contrast to that taken by most other OECD countries. Why is that the case?

14. In September 2018, EPA issued a draft "EPA Tampering Policy" to amend outdated enforcement policies.

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The draft EPA Tampering Policy will provide industry with the tools it needs to produce and test twenty-first century emissions-compliant products. Technology advances in the decades since the agency issued Mobile Source Enforcement Memorandum 1A (Memo 1A) (1974), the aftermarket catalytic converter enforcement policy for light-duty gasoline engines (1986), the exhaust-system-repair guidelines (1991), and the engine switching fact sheet (1991), justify new updates to these policies.

However, EPA has not yet indicated when enforcement guidelines will be issued. Can you provide an update as to when the EPA intends to finalize a Tampering Policy that provides the aftermarket auto-parts industry with an effective and efficient means for compliance?

15. Senate Bill 2754 provides for a 15-year phasedown of hydrofluorocarbons (HFC), and is generally modeled on EPA programs that, over the past 30 years, guided transitions out of earlier generations of refrigerants, such as chlorofluorocarbons (CFC) and hydrochlorofluorocarbons (HCFC).

    a. If S.2754 were enacted, would you foresee EPA implementing the program in a manner that is substantially similar to these existing EPA programs?

    b. The U.S. air conditioning and refrigeration industry is by far the largest user of HFCs and would be the most heavily affected by the bill. However, during a recent effort by the Committee on Environment and Public Works to seek stakeholder comments on the bill, concerns were raised by other sectors that use small amounts of HFCs. I understand that, in prior chemical transitions in the 1990s and early 2000s, these same sectors raised similar concerns, and that the EPA was able to implement the program in a manner that granted enhanced flexibilities to specific sectors.

       Can you discuss how EPA was able to provide flexibilities to niche applications and small users under past transitions under the Clean Air Act and whether that would be possible in a future transition?

16. In September 2019, Congress included report language in the Interior and Environment Appropriations Bill urging the EPA to provide regulatory certainty with respect to production, transfer, and use of biointermediates. This report language follows a July 2019 bipartisan Senate letter requesting the same.

    I urge you to act quickly on this matter, as a major investment in Indiana is awaiting regulatory clarity on biointermediates before it can begin commercialization.

    Can you provide a date certain for final action on this rule?

Senator Wicker:

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17. On June 11, 2015, I sent a letter to the Environmental Protection Agency regarding the electronic delivery of certain federally mandated Safe Drinking Water Act (SDWA) notices. Tier 2 notices inform consumers about violations and situations with potential to have adverse health impacts on human health, and Tier 2 notices are currently required to be mailed to customers. This can be expensive for rural and small communities, and many ratepayers now check their email more frequently than their physical mailbox. In 2013, EPA interpreted that SDWA authorizes the use of electronic delivery for Consumer Confidence Reports (CCRs). Last year, the EPA Inspector General issued a report affirming that electronic delivery of Tier 2 public notices is authorized under SDWA. However, electronic delivery methods are not being utilized because EPA has not stated this in policy. Allowing small and rural communities to deliver Tier 2 notices electronically would save ratepayers money while expanding public access to this information.

    Does EPA's 2013 memorandum regarding Safe Drinking Water Act - Consumer Confidence Reports Rule Delivery Options extend the authorization of "electronic delivery" of federally mandated public notices to Tier 2 notices?

Senator Ernst:

18. On November 18, 2019, a bipartisan group of 18 Senators wrote to you expressing the need for clarity regarding EPA's regulation of biogenic CO2 emissions from the processing of annual crops. This is just one of many communications that have occurred over the last decade on this issue with EPA, including a letter from five governors. During your testimony before this committee on May 20th, you stated that EPA is taking a three-phase approach over the next 1.5 years to providing clarification on biogenic CO2. Your comment at the hearing implied that regulatory clarification regarding annual crops' status could continue to be delayed to a third phase, more than a year from now. Please respond to the following questions:

    a. Describe the Agency's three-phase approach to biogenic CO2 policy and the reasoning that informed this approach.

    b. Provide the current plan, including timing and the dedicated resources, that the Agency will implement in order to clarify its biogenic CO2 policy for annual crops

    c. Has EPA consulted with USDA, with respect to its biogenic CO2 policy for annual crops? Please describe those consultations, including any exchange of scientific studies and materials that may have occurred. If not, when and how will EPA work with USDA to achieve timely agreement and resolution on this matter?

    d. If insufficient resources are a hurdle to the Agency issuing a new final standard for annual crops within that 1.5 year schedule, what additional appropriations would the Agency recommend beyond the FY20 appropriated amounts or

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described in the FY21 budget request? What would those funds enable EPA to do that it currently cannot in order to complete this regulatory action expeditiously?

19. EPA stated in its Waste Reduction Model (WARM) that biogenic CO2 is not a contributor to climate change. The Agency's GHG inventory recognizes that biogenic emissions from agricultural feedstocks are both a source and a sink of emissions, with little net addition of GHGs to the atmosphere. Why then are biogenic carbon emissions from the processing of annual crops subject to different treatment in the PSD context?

20. Mr. Wheeler, following up on my question from the hearing, you indicated that it was "more complicated" to allow E15 to be dispensed from existing infrastructure already approved for ethanol-blended fuel. In particular, you mentioned concerns about underground storage tanks and the potential for leaks. All double-walled, fiberglass tanks manufactured for the last 30 years (since 1990) and all steel tanks are already approved for up to 100% ethanol [https://afdc.energy.gov/files/u/publication/e15_infrastructure.pdf]. For dispensers, the vast majority of dispensers are also approved for E15. Wayne Fueling Systems and Gilbarco have more than 90% of the combined dispenser market in North America. Wayne has approved all of its dispensers to carry E15, and since 2016, they've approved their dispensers for use of ethanol blends up to E25 (https://wayne.com/en/press-releases/2016-08-30-wayne-standardizes-offering-for-all-north-american-retail-fuel-dispensers-to-e25/). Gilbarco has approved their dispensers since 2008 for use with E15 (https://csnews.com/gilbarco-expands-dispenser-warranty-e15).

    a. When can we expect the agency to move forward with expediting the sale of E15 through existing infrastructure?

21. Mr. Wheeler, your own agency approved E15 for all 2001 and newer light-duty vehicles nearly a decade ago after 6 million miles of testing. Since that time, consumers have driven more than 14 billion miles on E15 and retailers have had millions of transactions with the fuel without a single reported issues. As I mentioned at the hearing, model year 2001 and newer vehicles represent more than 9 out of 10 cars on the road today and more than 95 percent of the vehicle miles traveled. Quite simply, it has been two decades since a car was produced that is not approved by EPA for use with E15, so it seems unnecessary to continue to require unnecessary labeling for this fuel.

    a. When can we expect the agency to move forward with removing the label as you committed last fall?

22. Corn producers are staring at economic conditions not seen since the farm crisis of the 1980s, and biofuel facilities are closing and shedding high-paying jobs across the country. One low cost way to add value to the corn crop and improve margins for ethanol producers is to approve corn fiber applications to produce cellulosic biofuel from corn kernel fiber, turning what is otherwise a waste material into fuel.

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a. There are corn fiber applications that have been pending at the EPA for almost three years, during which EPA has done nothing but throw up roadblock after roadblock. This isn't anywhere close to the regulatory certainty this Administration has promised. Will you commit to personally reviewing this situation and ensure these applications have a clear path to resolution consistent with the regulatory pathway EPA established in 2014?

Ranking Member Carper:

23. COVID-19 will be with us for many months, if not years, even if rapid vaccine development efforts are successful. EPA has frequently observed that some of the early studies linking air pollution and adverse COVID-19 outcomes have not yet been peer reviewed. The Centers for Disease Control has warned that people with diabetes and heart disease (among other pre-existing conditions) may be at higher risk for serious illness from COVID-19. Moreover, in the May 20th hearing, you agreed that EPA's own work has demonstrated that there is a clear link between exposure to air pollution and higher incidences of diabetes and heart disease. I then asked you to commit to ensuring that these health effects and risks are factored into all of the Agency's future air pollution rule-makings as well as its environmental justice efforts. You responded that "we factor diseases such as that into all our rulemakings already," that "we also factor that into our environmental justice programs," and that "all of our rules make things better."

    a. Please provide citations and descriptions of all EPA rulemakings and environmental justice efforts, since January 20, 2017, that factor in diabetes, heart disease, or other systemic health risks, and provide the supporting documentation factoring in such risks or citations to the relevant pages in the documents.

    b. Please describe EPA's efforts to focus the Agency's Office of Research and Development and its Air, Climate and Energy Centers on determining whether exposure to air pollution (or having an underlying condition with a known link to air pollution) is linked to more adverse outcomes from COVID-19, a higher risk of contracting the disease, more difficult recovery from the disease, or a higher susceptibility to other diseases following COVID-19.

24. It is already clear that COVID-19 is having a far more serious impact on lower income communities and communities of color, which often experience more air and water pollution. EPA has used funding Congress provided in the CARES Act to study disinfectants and whether COVID-19 can be detected in wastewater. But, because it is clear that there is much to be learned about this disease and its impacts on Americans, I asked you to commit to re-allocate unused EPA funds to study whether exposure to air pollution causes people with COVID-19 to have worse outcomes or more difficult recoveries, or to be more susceptible to other diseases once they have recovered. You responded that "you are looking at those areas," noted that "a lot of other people are

researching that," criticized a recent study from Harvard University, and declined to make such a commitment.

a. Please describe how EPA plans to re-focus its enforcement, compliance, and monitoring activities in a manner that prioritizes the early detection of high exposure to air pollutants in communities that have both historically experienced such exposures and those at greatest risk of adverse outcomes from COVID-19.

b. Please describe how EPA plans to enhance its environmental justice grants, tools, and other policy and forms of assistance in light of the disproportionate threats air pollution and COVID-19 pose to residents of lower-income and communities of color.

25. On April 1, 2020, 10 of my Senate colleagues joined me in asking you for materials describing how EPA is fulfilling its mission while protecting its employees against the spread of COVID-19.[1] We also asked you to describe any anticipated relaxation of regulatory requirements, and we stressed that modifications to environmental enforcement obligations must be taken only as necessary, temporarily and with full transparency. Your May 8th response was not fully responsive to our requests.

a. Please provide and post on EPA's website all COVID-related regulatory modifications and enforcement waivers issued thus far.

b. Please describe EPA's process for publishing any new enforcement or regulatory changes the Agency takes because of COVID-19 within 48 hours of their issuance going forward.

26. On May 21, 2020, you informed EPA employees that agency would begin the process of starting Phase 1 of reopening facilities in Regions 4, 7, and 10 (Atlanta, GA; Lenexa, KS; and Seattle, WA).

a. The EPA reopening plan allows employees with childcare responsibilities that have been interrupted by the COVID-19 pandemic to continue to telework during phases 1 and 2 of reopening. Other federal agencies such as the Department of Commerce, the Department of the Interior and Consumer Financial Protection Bureau have also allocated employees with child care responsibilities a limited amount of administrative or excuse leave, so that employees may address unforeseen child care complications during this unprecedented crisis. Will EPA follow this practice and establish the same flexible leave practice to help employees with the lack of adequate child care options during the crisis?

[1] https://www.epw.senate.gov/public/_cache/files/6/6/6612fe54-451c-491c-9ebf-b94accc1f197/DA9BF82AB71666433E7ECA4A1842D038.04-01-20-tc-et-al-continuity-of-operations-letter-to-epa.pdf

b. EPA's reopening plan does not provide adequate consideration for employees who use public transit to commute to EPA facilities for work. Encouraging people to enter into enclosed spaces with large groups of other people may result in increased transmission of the virus and could endanger public health. Will EPA allow employees who usually rely on public transportation to get to work the option of continued telework through phases 1 and 2?

c. For each day beginning May 27, 2020, please provide the data and 'gating' criteria used to make decisions related to re-opening the EPA regional offices around the country, along with copies of all instructions provided to the Regions regarding re-opening. Please additionally indicate the dates on which EPA provided such instructions and data to regional leaders, representatives of EPA's employee unions and facilities partners such as co-tenants or major contractors, along with any additional written materials you included in those communications.

27. On April 29, 2020, I sent a letter to EPA about an EPA proposal to permanently relax air emissions monitoring requirements using COVID-19 as a pretext.[2] Specifically, EPA had tried to propose the relaxation of these requirements automatically whenever a national emergency was in place despite the fact that not all national emergencies involve contagious diseases that require social distancing (e.g., the 1979 Iran hostage crisis national emergency that remains in place today). EPA's proposal would have effectively made the air monitoring requirements' relaxation permanent but was wisely rejected in the interagency review process. On May 19, 2020 the President issued an "Executive Order on Regulatory Relief to Support Economic Recovery" that urges federal agencies to address the economic impacts of COVID-19 "by rescinding, modifying, waiving, or providing exemptions from regulations and other requirements that may inhibit economic recovery." [3]

    a. Please identify each rule, policy, guidance, enforcement response, or other action that EPA has made or intends to make i) permanent or ii) extend beyond the duration of the COVID-19 pandemic, and state what action will be taken, when, and whether you commit to providing at least 30 days public notice before the effective date of any such regulatory or enforcement relaxation.

    b. Please provide a description of, and all documents discussing, EPA's plans for implementing the May 19th "Executive Order on Regulatory Relief to Support Economic Recovery."

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[2] https://www.epw.senate.gov/public/_cache/files/9/7/9704cdcc-e62b-4183-8a47-7d3adcd23ed4/326BC15EAD82DCA1179799CC2B03A49A.04-29-20-tc-cems-rule-letter-to-wheeler.pdf

[3] https://www.whitehouse.gov/presidential-actions/executive-order-regulatory-relief-support-economic-recovery/

28. Nationwide, residential wood heaters emit five times more particulate matter pollution than U.S. petroleum refineries, cement manufacturers, and pulp and paper plants combined. On February 3, 2015, EPA issued Clean Air Act New Source Performance Standards (NSPS) for New Residential Wood Heaters and New Residential Hydronic Heaters and Forced-Air Furnaces, which set more stringent emissions requirements on wood heaters to be phased-in over five years. The first emissions standards, known as Step 1, went into effect on May 15, 2015. At the time of implementation, over 85% of the wood heaters on the market required to meet Step 1 met the emissions standards. More stringent emissions reductions, known as Step 2, were scheduled to go into effect five years later on May 15, 2020. After that date, manufacturers and retailers were no longer allowed to make or sell wood heaters that did not meet the Step 2 emissions requirements. In 2018, EPA proposed allowing retailers more time to sell Step 1 wood heaters, but in April 2020, rejected this proposal and decided to maintain the original Step 2 deadline. On May 8, 2020, I sent a letter asking EPA to respond to press reports that the agency was planning to reverse its April 2020 decision, and instead propose allowing retailers to sell wood heaters that failed to meet Step 2 requirements for an additional six months. This decision would lead to more harmful air pollution in the midst of a deadly respiratory pandemic and into the future.[4] I asked for you to respond to my letter by May 19, 2020 and as of June 3, 2020, I still have not received a response. On May 15, 2020, EPA issued a proposal to delay the deadline for retailers to sell Step 1 wood heaters through November 30, 2020.[5] Please answer and provide the following:

    a. In the hearing, you commented that Step 1 wood heaters were not "antiquated" and "meet the Obama 2015 standard." Isn't true that the "Obama 2015 standard" established Step 1 *and* Step 2 requirements and after May 15, 2020, any wood heaters that do not meet the Step 2 standards would not, in fact, be meeting the 2015 New Source Performance Standards (NSPS) for New Residential Wood Heaters and New Residential Hydronic Heaters and Forced-Air Furnaces? And isn't true that for some wood heaters, Step 2 is the first emissions requirement?

    b. According to EPA, the Step 2 emissions standards for wood stoves would cut emissions rates by over half compared to the Step 1 standards.[6] Similar reductions are also found across the other wood heater technologies. Of the health benefits calculated for the 2015 New Source Performance Standards (NSPS) for New Residential Wood Heaters and New Residential Hydronic Heaters and Forced-Air Furnaces, please quantify the amount of benefits that will be achieved by the

[4] https://www.epw.senate.gov/public/_cache/files/c/5/c50f80ad-397a-40bb-bd74-ad43face8b0e/EADF696BD1CE57852FFFE1089169AFC0.05-08-20-senator-carper-wood-stove-heater-letter-to-admin-wheeler.pdf

[5] https://www.epa.gov/sites/production/files/2020-05/documents/eo_12866_wood_heaters_nsps_2060-au87_proposed_amendments_may_15_2020.pdf

[6] https://www.epa.gov/burnwise/choosing-right-wood-burning-stove

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implementation of Step 2 versus Step 1.

c. In the Regulatory Impact Analysis for EPA's 2018 proposal to allow retailers two additional years to sell Step 1 wood heaters, EPA estimated "the annual monetized fine particulate matter-related forgone health benefits of the proposed amendments, from 2019–2022, were $100 million to $230 million (2016 dollars)." These "large forgone net benefits" and the fact that retailers had plenty of time to meet the standard are the major reasons why EPA decided not to delay the standard in April 2020.[7] Has EPA calculated the estimated additional pollution and possible forgone health benefits of the May 15, 2020 wood heater proposal? If not, why not? If so, please provide the results of this analysis.

d. Provide a statement about whether EPA would consider another extension beyond November 30, 2020, and whether it plans to allow the sale of Step 1 wood stoves indefinitely or permanently.

e. Provide copies of all documents supporting, opposing, analyzing, or otherwise discussing, the above-noted wood heater rule, including, but not limited to, emails or other documents related to the decision to reverse the agency's April 2020 decision not to extend the prohibition on the sale of older and dirtier wood stove models, analyses of economic impacts, analysis of the long term air pollution effects and the legal basis for the extension.

f. A robust explanation of what changed since EPA determined in April 2020 that an extension was not warranted and why a six month extension -- and not a shorter time period -- is needed at this time. This is especially true given that even in the proposal EPA admits COVID only impacted sales in the last 60 days. Yet EPA is allowing retailers to donate and receive a tax credit for any remaining, out of date heaters, even though according to testimony from the wood heater industry, retailers had to make plans to meet the 2020 standard in 2018 and 2019.[8] Please explain why EPA is allowing retailers to donate Step 1wood heaters to nonprofits that plan on distributing the out of date wood heaters to Tribal communities and other at-risk communities after the compliance deadlines. In the explanation, please provide any health analysis that was conducted by EPA before making this decision.

g. Because the May 15, 2020 proposed wood heater rule is not yet final, it provides interim relief by stating that "EPA will treat the sale of Step 1 devices as a low enforcement priority." Although this is not a firm commitment not to enforce the May 15 wood stove deadline, it is effectively the same. Prior "low enforcement

[7] https://www.govinfo.gov/content/pkg/FR-2020-04-02/pdf/2020-05961.pdf
[8] https://www.epw.senate.gov/public/_cache/files/b/6/b6e0f779-2204-4586-ade2-b6bdcaea7341/B767516456C2FFCAF391126CFB88BF66.williams-testimony-11.14.2017.pdf

priority" statements by EPA have been very rare but always have been conditioned upon meeting certain conditions designed to assure environmentally responsible behavior, and implicitly held out the specter of enforcing if such conditions were not met or for very bad actors. The wood heater statement of low enforcement priority imposes no such conditions. EPA's sole justification is also economic, i.e., "to mitigate the impact of the ongoing COVID-19 pandemic on retailers who have lost valuable sales opportunities." When does EPA's low enforcement priority for Step 1 wood heater sales end? If not upon issuance of a final rule, why not?

h. Are there any circumstances in which EPA will consider initiating enforcement action against an entity that sells Step 1 wood heaters? If so, what are they?

i. Please explain why EPA's low enforcement priority policy statement that is included in the proposed rule is not in effect a final rule.

j. Please explain why the proposed rule's efforts to provide financial assistance to the wood stove industry in the absence of any efforts to justify it on the basis of environmental impacts does not impermissibly usurp Congress' role in funding COVID-relief.

29. On May 19, 2020, EPA signed a proposed rule[9] that would establish procedures and requirements for how EPA will manage the issuance of guidance documents subject to the requirements of Executive Order 13891 issued on October 9, 2019.[10] These procedures would chill and politicize the guidance development process. Among other things, the rule would require that, "Before issuing a new guidance document covered by this rule that is developed by an EPA Regional Office, the EPA is proposing that the EPA Regional Office must receive concurrence from the corresponding Presidentially-appointed EPA official (i.e., the relevant Assistant Administrator or an official who is serving in the acting capacity) at EPA headquarters who is responsible for administering the national program to which the guidance document pertains." Moreover, any guidance documents deemed "significant" under the rule could not be issued, absent exigent circumstances, without first providing notice and an opportunity for 30 days of public comment, and the public would gain a new right to petition EPA for modification or withdrawal of existing guidance documents.

a. Please list all guidance documents issued since January 21, 2017 that would meet the proposed rule's definition of "significant" requiring advance public notice and opportunity for comment.

[9] https://insideepa.com/sites/insideepa.com/files/documents/2020/may/epa2020_0862.pdf
[10] https://www.govinfo.gov/content/pkg/FR-2019-10-15/pdf/2019-22623.pdf

b. Please list all guidance documents issued since 2008 in which a Presidentially-appointed EPA official has concurred, and provide the total number of documents since that time in which such officials have and have not concurred.

c. Identify all guidance documents issued since 2008 for which parties have petitioned EPA or a court pursuant to the Administrative Procedure Act or otherwise to have EPA modify or withdraw a guidance document and the results of each such petition.

30. I recently sent two oversight letters to EPA that also released hundreds of pages of internal EPA documents:

On May 18, 2020, I sent a letter to EPA's Inspector General describing how the Transportation Department repeatedly ignored EPA's input to the recently-finalized roll-back of the clean cars rule, how EPA improperly withheld significant documents from the rulemaking record, and how EPA was aware that the mistakes in the rule left it extremely vulnerable to legal challenge.[11]

On April 17, 2020, I sent a letter to you which described how Dr. Nancy Beck, a White House official who has been nominated to lead the Consumer Product Safety Commission, over-ruled EPA career and political officials and weakened a proposed rule to limit the use of PFAS in consumer products.[12] This Committee's PFAS package that was enacted into law in last year's defense bill includes a provision that requires the proposed PFAS rule that Dr. Beck delayed and sought to weaken to be finalized by June 22, 2020.

In a recent hearing, you told Congresswoman Watson Coleman, in response to her question about an earlier letter I wrote on the clean cars rule rollback, that "Nobody's going to be retaliated at all for--for any issues that they bring forward," further stating "No, absolutely not" when the Congresswoman reiterated "And no one's going to be retaliated against because they disagree.".

a. Please indicate whether you will continue to ensure that no efforts are made to identify or retaliate against any individual who may have provided internal information or documents to my office.

b. Please describe the manner in which you plan to personally engage and ensure not only that the Significant New Use Rule is finalized by the date the law requires, and that it reflects EPA's views that the weakening changes sought by Dr. Beck are not included.

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[11] https://www.epw.senate.gov/public/_cache/files/9/2/9225bb67-dff1-4711-aebe-2eea6fc7da76/649E0C532863CA79917CDE2593A14C62.02-26-20tctoepaigcarssecretscience.pdf

[12] https://www.epw.senate.gov/public/index.cfm/press-releases-democratic?ID=BB799C4E-FCEB-447F-BB13-2E73CD58539D

31. For more than two years, EPA has promised to propose to designate PFOA and PFOS as hazardous substances under the Superfund law, which will help communities clean up contamination and recover costs from those responsible. Is it accurate that EPA's proposal to designate PFOA and PFOS as hazardous substances under the Superfund law has been completed for many months, but that the White House Office of Management and Budget has told you not to submit it? If not, please provide a specific date by which this proposal will be submitted for interagency review.

32. In my Questions for the Record for Mr. Benevento following his nomination hearing on March 11, 2020, I noted that throughout the Trump Administration, EPA has failed to provide adequate responses to dozens of requests for information and documents from myself and other Democratic Senators. I asked him to provide complete responses to the following letters, which are a sub-set of the outstanding requests made of the Agency, and again renew my request for full and complete responses to these requests:

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

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

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

33. As part of Questions for the Record for Mr. Benevento, I asked EPA to provide any notes, record, emails, or other documents since January 20, 2017, between EPA political officials, including but not limited to yourself, Doug Benevento, and Matthew Leopold and outside parties, including but not limited to Bill Wehrum (or his former colleagues at Hunton Andrews Kurth) and Jeff Holmstead (or his colleagues at Bracewell), concerning the development or consideration of an EPA proposed rule, *Modernizing the Administrative Exhaustion Requirement for Permitting Decisions and Streamlining Procedures for Permit Appeals*,[13] that some observers say would diminish the independence of the Environmental Appeals Board and politicize the administrative appeals process. EPA responded that, "As documents responsive to your request are identified, we will provide information as appropriate to you on a rolling basis as they become available" but EPA has provided no documents, and failed to state whether any exist or that EPA even conducted a search for such documents.

[13] https://www.govinfo.gov/content/pkg/FR-2019-12-03/pdf/2019-24940.pdf

Please provide the documents requested. If none exist, please confirm that and describe fully the persons, offices, and locations searched and methods used to try and locate such documents.

34. In a November 2018 email to EPA employees, you wrote, "Throughout the history of the U.S. Environmental Protection Agency (EPA), Administrators have reaffirmed a commitment to transparency in our agency's operations." During this most recent decade, part of this commitment to transparency has included releasing records of the calendars of the agency's senior leaders. During their tenures, Administrators Gina McCarthy and Lisa Jackson regularly released details of their daily schedules. After taking office, you continued this practice, although with less frequency and detail than your predecessors included. However, this practice appears to have further changed starting on November 22, 2019. Starting on that day, the calendar entries that you have shared with the public are exceedingly vague and contain very few meaningful details that would enable the public to understand how you are conducting yourself in the leadership of the agency. The vast majority of calendar entries are simply listed as "Staff Briefing", with no information on the subject of the event or the major participants involved.

    This problem is also reflected in the calendars of other senior leaders at EPA. Associate Deputy Administrator Benevento's, Principal Deputy Assistant Administrator Anne Idsal's, Assistant Administrator Alexandra Dunn's, Acting Chief Financial Officer David Bloom's, Associate Administrator Joseph Brazaukas's, General Counsel Matthew Leopold's, Assistant Administrator Peter Wright's, and Associate Administrator Brittany Bolen's public calendars all suffer from the same lack of transparency. Assistant Administrator Chad MacIntosh has not made any calendar entries available for public viewing since 2019. Similar issues exist for EPA regional leaders.

    Within EPA headquarters, Assistant Administrator Ross's public calendar are only modestly more transparent than the standard practice among EPA senior leaders, but still far from sufficient to inform the American public as to his activities. Only Assistant Administrator Bodine has posted public calendars that have any degree of useful detail. In order to conduct meaningful oversight of EPA, I request that you share your and all other senior EPA leaders' full detailed calendar records from November 22, 2019 until the present. Also, I request that you provide daily detailed information related to all the entries on your calendars that are released on the EPA website and insist the other EPA senior leaders do likewise.

35. On May 14, 2020, the Department of Justice lodged a proposed consent decree in the *DTE Energy Company and Detroit Edison* Clean Air Act civil judicial case alleging major modifications of several air pollution-emitting power plants.[14] Although the decree "resolves a claim and releases Defendants from any liability" for its Monroe Unit 2 facility, it states that "none of the relief in this Consent Decree is attributable to the United States' Monroe Unit 2 2010 claim" because of "the specific circumstances of this

[14] https://www.justice.gov/enrd/consent-decree/file/1276421/download

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case" and in reliance on a policy memorandum issued by former Administrator Scott Pruitt on December 7, 2017. The 2017 memorandum[15] reversed EPA's longstanding position that it can use its own projections for calculating potential future air emissions, and instead defers to companies to assess whether they believe New Source Review (NSR) rules apply. Notably, the decree is not signed by the Director of EPA's Air Enforcement Division (AED) as is customary, and EPA's Co-Plaintiff in the case (the Sierra Club) signed a separate Consent Decree with DTE on May 22, 2020,[16] which EPA and the Department of Justice (DOJ) reportedly refused to sign because it contains provisions committing to the retirement of several old and inefficient DTE coal plants.

a. Please explain why the Director of EPA's Air Enforcement Division (AED) did not sign the Consent Decree lodged on May 14, 2020, and provide all documents discussing or otherwise related to his signature or decision to withhold it, and identify all other Clean Air Act judicial consent decrees since January 21, 2017, in which EPA Headquarters but not the AED Director signed the settlement.

b. Provide all documents discussing the injunctive relief that EPA or DOJ considered, proposed, rejected, and adopted in the DTE case identified above, Civil Action No. 2:10-cv-13101-BAF-RSW (E.D. Mich.).

36. Please describe how EPA has utilized the groundwater monitoring data at coal ash disposal sites that has been made available since 2017 to characterize the extent of groundwater contamination at these sites. Please provide copies of all documents that describe EPA's analysis of this information. Please also describe how this analysis further informed EPA's efforts to regulate or engage in enforcement actions related to coal ash disposal. If no such analysis was conducted, why not?

37. Please describe the steps has EPA taken to update the 2014 risk assessment[17] for coal ash that utilizes the 2017 industry data described above. If no such steps have been taken, why not?

38. Please describe all actions EPA has taken to ensure that the closure of coal ash storage ponds and any corrective measure assessments comply with EPA's Coal Combustion Residuals (CCR) rule.

39. Please describe all actions EPA has taken to provide oversight, assistance and/or enforcement on Indian Lands to ensure compliance with the requirements of the CCR rule.

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[15] https://www.epa.gov/sites/production/files/2017-12/documents/nsr_policy_memo.12.7.17.pdf
[16] https://insideepa.com/sites/insideepa.com/files/documents/2020/may/epa2020_0899a.pdf
[17] EPA, Human and Ecological Risk Assessment of Coal Combustion Residuals, EPA-HQ-OLEM-2019-0173-0008 (Dec. 2014)

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40. For each of Fiscal Years (FYs) 2017, 2018, 2019 and 2020, please provide: a) EPA's budget for enforcement of the CCR rule, b) how many full time employees (FTEs) were tasked with enforcing it, c) the number of site inspections that were conducted at coal ash disposal sites.

41. When does EPA plan to establish protections for coal ash legacy surface impoundments in response to the August 2018 order of the D.C. Court of Appeals to do so?

42. Please describe the steps EPA taken to a) identify the universe of coal ash legacy surface impoundments, b) identify the former and current owners of coal ash legacy surface impoundments, and c) assess the environmental and human health threat posed by coal ash legacy surface impoundments.

43. Executive Order 12898 requires that "each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands." EPA admitted in its latest CCR rollback (Part B) that the impacts of the proposed rule "are generally expected to increase the risk of releases of CCR into the environment, and therefore reduce the human health and environmental benefits of the 2015 CCR Rule."[18] EPA further admitted that "because the 2015 CCR Rule demographic screening assessment determined that coal-fired power plants tend to be located in areas characterized by low-income populations, *the likely increased disposal of CCR on site at coal-fired power plants under this rule may have a disproportionate impact on those populations*."[19] Please specifically describe the actions EPA has taken to comply with EO 12898 to address the risks to low-income populations it identified.

44. EPA's "Technical Guidance for Assessing Environmental Justice in Regulatory Analysis"[20] requires EPA to consider the following three questions to determine potential environmental justice impacts for all regulatory actions:

    "Are there potential environmental justice concerns associated with environmental stressors affected by the regulatory action for population groups of concern in the baseline?"

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[18] EPA, [Draft] Regulatory Impact Analysis: EPA's 2019 RCRA Proposed Rule, Hazardous and Solid Waste Management System: Disposal of CCR; A Holistic Approach to Closure Part B: Alternate Demonstration for Unlined Surface Impoundments; Implementation of Closure, Docket ID No. EPA-HQ- OLEM-2019-0173-0021, at 4-1 (Dec. 2019, rev. Feb. 2020)
[19] EPA, Regulatory Impact Analysis (RIA): EPA's 2019 RCRA Proposed Rule Hazardous and Solid Waste Management System: Disposal of CCR; A Holistic Approach to Closure Part B: Alternate Demonstration for Unlined Surface Impoundments; Implementation of Closure, Docket ID No. EPA-HQ-OLEM-2019-0173-0020 (Feb. 2020) at 5-3, emphasis added.
[20] EPA, Technical Guidance for Assessing Environmental Justice in Regulatory Analysis (June 2016), https://www.epa.gov/sites/production/files/2016-06/documents/ejtg_5_6_16_v5.1.pdf

"Are there potential environmental justice concerns associated with environmental stressors affected by the regulatory action for population groups of concern for the regulatory option(s) under consideration?"
"For each regulatory option under consideration, are potential environmental justice concerns created or mitigated compared to the baseline?"

Please describe how EPA has addressed each of these questions for the CCR Rollbacks proposed in 2018-2020.

45. On April 12, 2019, the U.S. Court of Appeals for the Fifth Circuit issued a decision in *Southwestern Electric Power Co. v. EPA*, 920 F.3d 999 (5th Cir. 2019), holding that EPA must set new "best available technology economically achievable" (BAT) limits for power plant legacy wastewater and leachate. Does EPA plan to rely on the continued use of surface impoundments as a 'technology', and if so, why, in light of the fact that some power plants are using or testing wastewater treatment technologies such as thermal or membrane-based systems to treat scrubber wastewater which are far more effective?

46. The Environmental Law and Policy Center found a reduction in Clean Water Act enforcement activities in EPA's Region 5, much like other analysis has demonstrated nationwide.

    a. Please describe EPA's plans to increase enforcement staffing levels nationwide.

    b. For each of EPA's regional offices, please state the percent of EPA regional staff that are dedicated to enforcement efforts.

    c. For each of EPA's regional offices and for each of the last three FYs, please state the percent of EPA's enforcement and compliance monitoring spending that was spent in the region.

47. In response to a question that Senator Merkley asked, you stated "When a chemical under the TSCA review process is already being regulated under a different program, we decided early on in setting out the parameters for the TSCA risk evaluations that we would not double regulate that in order to focus the time on the areas of the chemicals that are unregulated at this point."

    Section 9(b) of TSCA states, in part:

    "If the Administrator determines that a risk to health or the environment associated with a chemical substance or mixture could be eliminated or reduced to a sufficient extent by actions taken under the authorities contained in such other Federal laws, the Administrator shall use such authorities to protect against such risk unless the Administrator determines, in the Administrator's discretion, that it is in the public interest to protect against such risk by actions taken under this Act."

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A decision to regulate a chemical under more than one environmental statute, which the above excerpt contemplates, is not the same as a decision not to bother to determine whether the chemical poses an unreasonable risk under the known and reasonably foreseeable conditions of use of that chemical in the risk evaluation. Please provide the legal justification for EPA's decision to exclude uses, the risks from which could in theory be addressed under other environmental statutes, from even being part of the risk evaluation in the first place.

48. EPA recently has lost or is litigating several lawsuits concerning its failure to comply with the Clean Air Act (CAA) Section 110 "good neighbor" requirement to protect downwind northeastern states from air pollution. This includes an October 2019 ruling from the U.S. Court of Appeals for the D.C. Circuit, in which the court sided with New York and five other northeastern states and vacated EPA's December 2018 final rule that did not require 20 upwind states to take any further steps to reduce ozone pollution that drifts into downwind states.[21] Several northeastern states are currently suing EPA for failing to produce plans to reduce ozone, NOx, and smog from upwind states.[22] Describe in detail EPA's plans and timelines for complying with the court decisions and properly implement the CAA 110 good neighbor provisions to protect downwind states.

49. I continue to hear complaints from industry stakeholders that EPA is not processing advanced biofuel applications or petitions for new advanced biofuel pathways for the Renewable Fuel Standard (RFS) in a timely manner. In some instances, companies have been waiting four or more years for a decision from EPA. Please identify how EPA plans to address the backlog of applications and petitions within the RFS.

50. On April 14, 2020 EPA proposed not to develop newer, more protective standards for particulate matter (PM) pollution and instead continue to implement the current National Ambient Air Quality Standards (NAAQS) for PM. This was despite EPA career recommendations to tighten the standard and the fact that a stronger standard could save up to 12,200 lives.[23] This decision makes even less sense given what Americans are now facing a respiratory pandemic whose effects are likely exacerbated by particulate air pollution. Please answer the following:

    a. This proposal was made after EPA eliminated a special PM Review Panel within the Clean Air Scientific Advisory Committee (CASAC), which was intended to help EPA review the PM science and PM NAAQS. Will you reinstitute the PM CASAC panel to help review the latest science before making a final decision, especially in light of the possible links between PM and COVID ? If not, why not?

[21] https://www.law.nyu.edu/sites/default/files/dc-cir-csapr-decision.pdf
[22] https://www.law.nyu.edu/centers/state-impact/issues/clean-air/clean-air-act-and-upwind-pollution
[23] https://www.washingtonpost.com/health/2020/04/14/epa-pollution-coronavirus/

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b. In the Clean Air Scientific Advisory Committee's review of the PM Integrated Science Assessment for the proposed PM NAAQS, CASAC noted that it "does not provide a sufficiently comprehensive, systematic assessment of the available science relevant to understanding the health impacts of exposure to PM, due largely to a lack of a comprehensive, systematic review of relevant scientific literature; inadequate evidence and rationale for altered causal determinations; and a need for clearer discussion of causality and causal biological mechanisms and pathways.[24] What more is EPA doing to address the gaps identified by CASAC?

c. The COVID pandemic is having a devastating effect on impoverished and disadvantaged communities, communities of color and indigenous communities and the long-term health effects are unknown. Will you commit before finalizing the rule to consider the new respiratory and health stresses that may be exacerbated by PM pollution for our most vulnerable populations?

51. Now that you have had plenty of time to read and be briefed on the 2018 National Climate Assessment, do you still question the conclusions of the Fourth National Climate Assessment that concludes our nation's economy is at risk if we do not take climate actions? If so, please specifically describe what you disagree with and why.

52. What specifically is EPA doing to help U.S. communities become more resilient in the face of a growing climate and more frequent and extreme weather?

Senator Cardin:

53. According to language included in the FY2020 Further Consolidated Appropriations Act (P.L. 116-94), EPA may not proceed with the next round of Water Infrastructure Finance and Innovation Act (WIFIA) funding until an agreement is reached between Office of Management and Budget (OMB), Department of the Treasury, and Congressional Budget Office (CBO) about budget scoring for the WIFIA program. WIFIA, a highly cost-efficient federal loan program able to leverage up to $97 for every $1 appropriated, has issued 21 loans totaling $4.4 billion in credit assistance to help finance $9.8 billion in water infrastructure projects and create 19,000 jobs. Can you provide assurances that the final agreement will be consistent with this Committee's intent in S. 3591, America's Water Infrastructure Act of 2020? The budget approaches approved unanimously in S. 3591 are in line with other federal credit programs, including the longstanding Transportation Infrastructure Finance and Innovation Act (TIFIA) program.

54. Do you agree that the plain meaning of the above-mentioned appropriations provision concerning budget scoring does not empower EPA, nor OMB, Treasury, or CBO, to make substantive changes to the WIFIA program, including project eligibility criteria?

[24] https://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebReportsLastMonthCASAC/E2F6C71737201612852584D20069DFB1/$File/EPA-CASAC-20-001.pdf

Senator Sanders:

Vermont

55. On May 7th, the EPA announced that the Green Mountain Economic Development Corporation and the Southern Windsor County Regional Planning Commission had been selected to receive $500,000 and $300,000, respectively, in grants to assess and clean up contaminated properties under the agency's Brownfields program.

    a. When does the EPA expect to deliver this grant funding to these organizations? Does the EPA anticipate any delays in administering these funds?

    b. Please describe the EPA's plan, including a timeline, for providing ongoing support and technical assistance to these organizations, as well as the other 153 grant recipients that were included in the May 7th funding announcement.

56. In 2016, the EPA established Total Maximum Daily Load (TMDL) standards to ensure that the EPA's Clean Water Act obligations are satisfied in regard to the clean-up of phosphorus in Lake Champlain. In my questions for the record to consider your nomination for EPA Administrator, I asked whether you had found the appropriations levels provided to the EPA by Congress to be sufficient for the Agency to meet its obligation to oversee the clean-up of Lake Champlain. You responded with the following statement:

    "The EPA is committed to working with the states of Vermont and New York on their implementation of the Lake Champlain TMDLs. Once Congress provides appropriations, the EPA will continue to perform the agency's oversight responsibilities."

    Given that this statement did not answer my question, please provide a yes or no answer to the following question: Have you found the appropriations levels provided to the EPA by Congress to be sufficient to ensure that the EPA's Clean Water Act obligations are satisfied in regard to phosphorus levels in Lake Champlain? If so, please provide a timeline for when the EPA will fulfil its obligations under the TMDL. If not, please describe the funding amounts and specific areas for which congressional appropriations have been insufficient to fulfil the EPA's Clean Water Act obligations, as well as your plan for requesting sufficient funds in the EPA's FY 2022 budget request.

Climate Change

57. According to a recent E&E News article, *How a Revised Calculation Could Hurt Future Climate Rules*, the EPA is in the process of finalizing a draft rule that would modify its methodology for calculating costs and benefits under the Clean Air Act. According to the article, experts widely expect this draft rule to minimize the co-benefits derived from reductions in harmful air pollutants, in effect reducing the EPA's reliance on protecting human health and the environment when formulating new regulations. This proposed rule's impacts are evident in the altered cost-benefit analysis the EPA used in its proposal to repeal the Clean Power Plan, which would drastically increase carbon and other

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emissions from power plants. The proposed rule could cause as many as 1,400 premature deaths, 48,000 new cases of asthma, and 21,000 new missed school days each year compared to the Clean Power Plan.

Given that reducing the EPA's reliance on protecting human health and the environment when considering the benefits of new regulations clearly violates its mission to protect human health and the environment, as well as its statutory obligations under the Clean Air Act to protect and improve the nation's air quality, please provide a plan, including a timeline, for withdrawing the EPA's proposed rule to alter the EPA's cost-benefit methodology.

58. On June 1st, the EPA finalized a rule that guts the Clean Water Act by restricting the ability of states and tribes to block federal energy projects, such as pipelines or industrial plants, which could pollute rivers and drinking water. In your statement announcing the rule, you stated that its intended purpose was to "curb abuses of the Clean Water Act that have held our nation's energy infrastructure projects hostage, and to put in place clear guidelines that finally give these projects a path forward."

    a. States like Washington have found that construction of fossil fuel infrastructure like coal export terminals would permanently destroy significant amounts of wetland, and that operation of this infrastructure would deposit fossil fuel pollution like coal dust in nearby surviving wetlands. As you may know, coal dust has a significant and negative impact on the ecological functions of wetlands.

       Do you consider decision by states to prevent the permanent destruction and environmental contamination of its ecological resources to be "abuses" of their authority under the Clean Water Act to ensure permitted activity will comply with applicable water standards?

    b. Given that the goal of giving fossil fuel projects a path forward clearly runs counter to the EPA's mission to protect human health and the environment because it could cause unacceptably high levels of pollution, this final rule violates EPA's mission. Therefore, please provide your commitment to uphold the EPA's mission by ensuring the agency will not in any way narrow the scope of states' and tribes' ability to object to federal projects under Section 401 of the Clean Water Act.

59. During this hearing, you stated that the EPA's Safer Affordable Fuel-Efficient Vehicles (SAFE) rule to roll back automobile efficiency standards would "save more lives than not." However, according to the Union of Concerned Scientists, the new rule would lead to up to 1,444 more premature deaths, an additional 20,000 cases of exacerbated asthma, and hundreds of cardiovascular and respiratory illness-related hospitalizations. The increased air pollution from this rule will also put communities across the country at increased risk of death from respiratory diseases like COVID-19.

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Given that the EPA's decision to roll back automobile efficiency standards will lead to more deaths than if the EPA had not rolled back these standards, would you like to amend your statement that the SAFE rule will save "more lives than not"? If you do not wish to amend your claim, please describe how over a thousand additional premature deaths represents more lives saved compared with this rule.

60. On April 24, you tweeted that under President Trump, our "air, water, and land is cleaner." However, according to EPA's own air quality data, there were 15 percent more days with unhealthy air in our country over each of the past two years compared to 2013 through 2016, and a 2019 study posted in the National Bureau of Economic Research found that our country's fine particulate pollution increased by 5.5 percent between 2016 and 2018 after it declined by 24 percent between 2009 and 2016. Furthermore, the EPA's decision to roll back automobile emissions standards and Mercury and Air Toxics standards will lead to even more toxic pollution being spewed into our nation's air.

    Given that air pollution has demonstrably increased under President Trump, would you like to amend your claim that our nation's "air, water, and land" is cleaner under President Trump? If you do not wish to amend your claim, please describe how a 15 percent increase in days with unhealthy air and a 5.5 percent increase in fine particulate pollution represents cleaner air.

Toxics

61. On February 14, 2019, the EPA issued a PFAS Action plan that promised a regulatory determination on the establishment of a maximum contaminant level (MCL) for perfluroalkyl (PFAS) or polyfluoroalkyl (PFOA) substances in drinking water by the end of 2019. This past March, more than a year later, the EPA finally published a notice in the Federal Register announcing the EPA's intent to simply consider regulations for these toxic chemicals over the next five years. Meanwhile, the Environmental Working Group estimates that over 110 million Americans may be currently drinking water that contains toxic levels of PFAS or PFOA chemicals.

    a. Do you consider this contamination to be a public health crisis? If not, please describe how the presence of toxic chemicals in the drinking water of over a third of our country is not a public health crisis.

    b. Given this level of likely contamination, a five year timespan for establishing an MCL for PFAS and PFOA chemicals is completely unacceptable to fulfil the EPA's mission of protecting human health and the environment. Please describe your planfor fulfilling the EPA's mission by drastically shortening the current five-year timespan for setting a robust MCL for the class of PFAS substances.

62. Several states, including my home state of Vermont, have set health advisories for drinking water containing PFAS chemicals that are significantly more stringent than the EPA's lifetime health advisory level. The most recent update to the Toxic Substances Control Act (TSCA) contained a provision that protects states that had more stringent standards on the books before April 22, 2016 (15 USC 2617(e)(1)(A)).

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In my questions for the record for the August 1, 2018 Senate Environment and Public Works Committee hearing "Examining EPA's Agenda: Protecting the Environment and Allowing America's Economy to Grow", I asked you whether you would commit to avoiding any actions to preempt states' ability to enforce health advisory levels for PFAS enacted before April 22, 2016 that are more stringent than the EPA's standards. You refused to make that commitment, and responded with the following statement:

"The preemption provisions of the Lautenberg Amendments to TSCA contain important directions that address when state actions will be preempted or not. EPA will follow all requirements of the statute with regard to preemption."

Please describe the specific circumstances in which the preemption provisions of the Lautenberg Amendments to TSCA would lead the EPA to take actions that would preempt Vermont's ability to enforce health advisory levels for PFAS enacted before April 22, 2016 that are more stringent than the EPA's standards, and how the preemption provisions of the Lautenberg Amendments to TSCA would lead the EPA to preempt the state's health advisory levels for PFAS in those circumstances.

63. On May 29th, the EPA finalized a rule to regulate emissions of ethylene oxide, a toxic substance used in the production of industrial chemicals. Although this rule states that ethylene oxide poses an "unacceptable" public health threat, it would allow highly elevated risks of cancer to persist in communities across the country, in some cases as high as 200-in-1 million – twice as high as the EPA's presumptive benchmark for "acceptable" cancer risks. In order to justify this weak rule, the EPA used a risk factor for cancer five times weaker than EPA's own scientists recommended in a 2016 Integrated Risk Information System analysis of ethylene oxide.

    a. Why did the EPA choose to ignore its own scientists' cancer risk assessment, found in the 2016 Integrated Risk Information System analysis, when formulating this rule?

    b. Given the EPA's failure to properly consider established science, including the findings of its own scientists, as well as its statutory obligation under the Clean Air Act to protect and improve the nation's air quality, please describe your plan, including a timeline, for withdrawing this rule and replacing it with one that truly protects our nation's communities from ethylene oxide.

64. Last month, the EPA decided against continuing the work of the previous administration to ban the chemical perchlorate, which causes serious developmental disorders in children. In 2011, the EPA found that perchlorate poses serious health risks to up to 16 million people, and that high concentrations of this toxic substance are present in at least 26 states. Based on the EPA's mission to protect human health and the environment, please outline the EPA's plan, including a timeline, to establish robust regulations for perchlorate.

Senator Whitehouse

65. Please provide a list of anyone at EPA who met with or spoke to representatives of Marathon Petroleum, the dates of any such meetings or conversations, and the subjects discussed.

66. In your testimony, you mentioned that you know one or more lobbyists for Marathon Petroleum and/or Marathon Oil and that one of them worked at your former law firm. Please identify the lobbyist at your former firm to whom you were referring, as well as any other lobbyists for Marathon Petroleum whom you know.

67. Do you know a Marathon Petroleum lobbyist named Michael Birsic? If so, how?

68. Are you aware of any contacts between Marathon Petroleum and the U.S. Department of Justice, and in particular, the anti-trust division of DOJ? If so, please describe the nature of these contacts and which individuals were involved and what was discussed.

69. Did anyone at EPA communicate with DOJ's anti-trust division on the subject of fuel economy and greenhouse gas emissions standards for cars and light trucks and/or DOJ's decision to investigate certain automakers' decision to negotiate standards with the state of California? If so, please list who was involved in such communications, when they occurred, and the nature of the conversation.

70. What line of business is Marathon Petroleum in?

71. Please provide a list of anyone at EPA who met with or spoke to representatives of Marathon Petroleum regarding litigation surrounding fuel economy and greenhouse gas emissions standards for cars and light trucks, the dates of any such conversations, and the nature of the conversation.

72. You testified you were surprised that EPA's "secret" science rule is the brainchild of a few tobacco and fossil fuel industry lobbyists. Steve Milloy spent over two decades working for first the tobacco industry and then the fossil fuel industry lobbying to limit the use of science in rulemaking under the guise of enhancing transparency. Milloy used to work at Murray Energy when you lobbied for Murray Energy. Do you know Milloy? Did Milloy ever discuss with you his desire to limit the types of scientific studies that can be used in rulemaking? Did anyone at Murray Energy or any of your other former industry clients ever discuss this subject with you? If so, who?

73. Why is it in the public interest to pursue a proposal dreamt up and pushed by the tobacco and fossil fuel industries that would prevent EPA from considering some of the best available science on the relationship between air pollution and public health, including studies that specifically look at the relationship between air pollution and COVID-19?

74. A draft report from EPA's Science Advisory Board said the "secret" science proposal could be viewed as a "license to politicize scientific evaluation." The final draft of the SAB's report stated, among other things, that "[m]oving forward with altered transparency requirements beyond those already in use, in the absence of such a robust

analysis, risks serious and perverse outcomes." Do you think the exclusion of relevant, peer-reviewed scientific studies in the middle a pandemic could be considered a "serious and perverse outcome?"

75. Will you commit that EPA's final "secret" science rule will not exclude from agency consideration any relevant, peer-reviewed studies examining the connection between air pollution and public health, including the "Six Cities" study and studies examining the connection between air pollution and increased human vulnerability to infectious diseases including COVID-19?

76. In light of your stated interest in scientific transparency, why is EPA stonewalling the state of California's FOIA requests for the data, models, and other information the agency used in developing its rule on fuel economy and greenhouse gas emissions standards for cars and light trucks? Due to EPA's failure to respond to these requests, California has had to twice sue the agency in order to obtain this information. If data transparency is so important to you that you're attempting to promulgate a proposal against the advice of your own Science Advisory Board, why can't you provide California with the data and models and other information it's requesting?

Senator Merkley:

77. Please provide a timeline for completion of the supplemental Risk Evaluation that will address legacy uses of asbestos.

78. Will EPA wait until the supplemental Risk Evaluation is completed to make the final risk determination or any risk management decisions for asbestos?

79. You mentioned that a recently finalized Supplemental New Use Rule (SNUR) for asbestos will cover the forms of asbestos not evaluated in the Risk Evaluation. The SNUR will only address new uses of asbestos, so is not an acceptable way to deal with risks from other forms of asbestos that are already present in the environment. For example, Libby amphibole is estimated to contaminate the vermiculite insulations in 50 million homes in the U.S. This contaminated insulation poses a threat to workers and homeowners during building remodeling and demolition and when water and sewer lines rupture.

    a. How is EPA addressing risks from forms of asbestos other than chrysotile asbestos that are present in the environment?

80. The TSCA revisions were designed to improve EPA's evaluation of the chemical risks to health and the environment. By spreading the asbestos risk evaluation across the primary risk evaluation, a supplemental risk evaluation, and only considering one form of asbestos out of six recognized asbestos fibers, the EPA has subverted the intent of the TSCA revisions and created a complicated evaluation of risks that will be challenging for the public to understand and the Agency to regulate.

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a. As required by statue, will EPA commit to creating a comprehensive risk evaluation that includes all uses, including those reasonably foreseen and legacy uses, for all substances under review?

81. Please provide a list of other statutes regulating chemicals undergoing risk evaluations in the environment, water, and air, and please provide the references to the CFR for any limits or controls imposed by those statutes. In addition, please describe how those limits or controls meet the statutorily required safety standards in TSCA.

    a. Please address whether or not limits on the manufacturing of chemicals under TSCA could lead to less of that chemical showing up in the environment in drinking water, air, and soil.

82. In response to Senator Duckworth's question about the status of the air monitoring network, you replied that you were not aware of any monitors that have been offline during the pandemic. A review of the ambient and air toxics monitoring data suggests that there are in fact monitors that have been suspended during the pandemic. On the IMPROVE network monitoring website, the updates indicate that 27 of 160 IMPROVE monitors have been suspended at some point during the pandemic.

    a. Please provide a list of all air monitors, including criteria pollutants monitors, National Air Toxics Trend Stations, NCORE Sites, and IMPROVE sites that have been suspended for any period of time during the pandemic.

    b. Please provide the location of the monitor, reason for the suspension, and duration of the time the monitor was offline.

    c. For monitors that continue to be offline, please provide an estimated date for when they will be fully operational.

Senator Gillibrand:

83. Mr. Wheeler, I would like to ask you about the incineration of PFAS chemicals at the Norlite facility in Cohoes, New York which I briefly touched upon during the hearing before my time expired. In February, we learned that between 2018 and 2019, more than 2.4 million pounds of toxic firefighting foam was sent by the Department of Defense to Norlite to be destroyed by incineration. Local elected officials were not informed, no environmental impact statement was conducted and no test burn ever occurred. The City of Cohoes has adopted a new local law prohibiting the burning of firefighting foam containing PFAS for one year, but recent reporting has raised questions about whether DOD and Norlite are complying with that moratorium.

    a. Is it typical practice to require a test burn prior to new waste streams being burned?

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b. I understand that the EPA does not have methods in place to test burn AFFF, which, by definition is a fire suppressant. Is that true?

c. In the absence of those methods, how do we know whether it is safe for AFFF to be incinerated at this time?

84. Last year's NDAA required EPA to develop interim guidance on the disposal and destruction of PFAS, including by incineration within a year after enactment.

a. What is the status of the development of that guidance?

b. Until the guidance is issued, is there anything EPA can do to get DOD to stop its policy of incineration and comply with the Cohoes moratorium?

85. The local community is very concerned about the lack of testing. Specifically, the City is requesting help from EPA to conduct soil and water testing in and around the facility. Can you commit to working with my office and with the City of Cohoes to get testing in place?

86. Mr. Wheeler, as you know, current evidence from the Centers for Disease Control (CDC) suggests that COVID-19 spreads through person-to-person contact, and through respiratory droplets produced when an infected person coughs, sneezes or talks. In light of this pandemic that effects the respiratory system, the EPA needs to ensure that when states start re-opening schools, child care facilities, and offices around the country, the indoor air quality inside these facilities is safe to breathe and does not add to an already growing public health crisis. Twenty years of published research has shown that indoor environmental exposure to pollutants can be more intense than outdoor exposures and that school facilities have been neglected for decades. In fact, a 2017 American Society of Civil Engineers' report rated school infrastructure a D+. There is clearly a significant need to educate, train, and encourage schools and childcare facilities on child-safe and effective preventive management of facilities, which EPA has the current ability to do.

a. In light of the pandemic, have you shifted any resources within the EPA into the Indoor Environments Division to expand its educational and training efforts on Indoor Air Quality nationwide? If not, why?

87. Early evidence is emerging that, as was established with SARS, there may be a correlation between air pollution and COVID-19 mortality.

a. Does the EPA consider long-term exposure to indoor air pollutants a risk factor that could contribute to more severe cases of COVID-19?

b. Has the EPA consulted with the CDC or any other relevant federal agency about the long-term health effects of exposure to indoor air pollutants as a potential risk factor for more severe cases of COVID-19? If not, do you plan to?

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c. Given that poor indoor environments in schools increase asthma and other respiratory health events, how does the EPA plan on working with states and local communities before they start re-opening schools, childcare facilities, and offices to ensure that the indoor air quality is safe to breathe, and does not contribute to or exacerbate the current public health crisis?

Senator Booker:

88. The rollbacks of health protections that EPA is pursuing under your leadership are a death sentence for communities around the country that are already suffering from high levels of pollution. And even during this pandemic, as we see African Americans and others who have medical conditions associated with higher levels of air pollution getting sick and dying in higher numbers, you have still continued to push forward with your reckless agenda. One example is your recent proposed rule to not create a stricter air quality standard for particulate matter despite peer reviewed science showing that African Americans have increased risks of premature death from exposure to particulate matter.

    a. Given that EPA is required by Executive Order to consider environmental justice and the impact of its rulemakings on minority communities, please describe what weight you gave to the harm caused by particulate matter on African American communities in your decision to not create a more protective standard?

89. Another recent regulatory action you have taken during this pandemic is EPA's release of a draft risk evaluation for the toxic chemical TCE. TCE is a known carcinogen that has been linked to kidney cancer, leukemia, and birth defects. On April 16th the American Academy of Pediatrics, the American Public Health Association, and other groups wrote to EPA asking for an extension of time to submit comments related to this dangerous chemical. In their request letter the groups stated as "stakeholders on the front line of COVID-19" that "there is simply not capacity to focus on the draft TCE risk evaluation until the national emergency is over." EPA did not respond to this request, but instead moved forward and closed the public comment period.

    a. Yes or no, will you commit to reopening the public comment period for TCE so that the American Academy of Pediatrics, the American Public Health Association, and others can provide you with their input on this dangerous chemical?

90. Congress is in the middle of working through a follow up to the CARES Act, but I anticipate that after its completion we will shift from "disaster response" to "long-term economic recovery." Infrastructure is the smartest way to accomplish this. In fact, this Committee has already passed bipartisan water and transportation legislation that will form the base of anything the Senate considers.

    However, the Superfund program has been underfunded in recent years despite the fact that a robust Superfund program would provide both short-term jobs as well as long-term growth by eliminating contaminated sites and the associated health risks and allowing

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communities to create other productive uses for these sites such as new business districts, commercial buildings, or manufacturing.

a. Do you believe that a federal funding boost to the Superfund program would accelerate the pace of site clean-up and provide an economic boost?

Senator Markey:

91. According to reports, you have decided not to issue a protective drinking water standard for perchlorate, a chemical which has been found to cause neurological damage in utero and in infants and young children. The EPA's own flawed modeling, which underestimates the risk, shows that this decision will result in anticipated IQ losses in children: a level of 56 parts per billion is linked to a two-point average decrease in IQ. This decision not to regulate this chemical goes directly against the recommendation of the American Academy of Pediatrics and it contravenes a 2018 court order, which requires a final standard for this dangerous chemical.

    a. Do you think there is any acceptable level of damage to children's brains from perchlorate?

    b. Did Nancy Beck have any input into or review the agency's potential actions with respect to the perchlorate, or the models or studies used to estimate their risk, including the question of whether any IQ-point loss is acceptable? If yes, please provide the dates and details of her involvement.

    c. Did you or any others at EPA discuss or receive input on the perchlorate decision from or on behalf of the Department of Defense (DOD), DOD contractors, or other industry representatives? If yes, who was the contact with, and what was the substance of the input?

92. Trichloroethylene, or TCE, is a chemical known to cause cancer as well as damage to the brain, kidneys, and immune system. Your EPA is ignoring the risks that TCE poses to infants and children, refusing to set appropriate limits that would protect infant health.

    a. Do you consider it to be acceptable, and consistent with the law, that EPA would allow children to be exposed in the womb to TCE at levels that would lead to heart malformations?

    b. Did Nancy Beck review the TCE draft risk evaluation during the interagency review process? If yes, did she have any input on how the EPA decided to ignore fetal heart malformation as a key parameter for limiting TCE?

93. Some of your emails showed how you tried to discredit the work of National Climate Assessment researchers, including by amplifying a campaign to politicize and undermine the report's findings about the dangers of climate change.

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a. Do you agree that our global change research should include an assessment of high-end climate scenarios, so we know how to plan for and work to avoid the worst effects of climate change?

b. Can you commit to not interfering with or politicizing our federal global change research in any way?

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