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

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Wednesday, October 4, 2017

United States Senate

Committee on Environment and Public Works

Washington, D.C.

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

Present: Senators Barrasso, Carper, Inhofe, Capito, Boozman, Wicker, Fischer, Rounds, Ernst, Sullivan, Cardin, Whitehouse, Merkley, Gillibrand, Booker, Markey, Duckworth, and Harris.

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

Senator Barrasso. Good morning. I call this hearing to order.

Today we are going to be considering the nomination of four individuals to serve as Assistant Administrators of the U.S. Environmental Protection Agency and one individual to serve as a member of the Nuclear Regulatory Commission, the NRC.

First, I am going to address the four nominees before us today to be Assistant Administrators of the EPA. Each one is a well-qualified individual who will bring a wealth of experience and expertise to a critically important role in protecting America's public health and safety. I applaud the President's nomination of such accomplished Americans and dedicated public servants.

President Trump has nominated Michael Dourson to lead the EPA's Office of Chemical Safety and Pollution Prevention. The Office of Chemical Safety and Pollution Prevent protects the American people and the environment from potential risks posed by pesticides and toxic chemicals.

Dr. James Klaunig, who has served on numerous EPA scientific advisory panels, stated of Dr. Dourson, "Dr. Dourson is a leader in the field of risk assessment. He has been instrumental in bringing scientists of different disciplines and

representing different constituents together to address current and future approaches to the risks of humans to exogenous chemicals."

President Trump also nominated Matthew Leopold to lead the EPA's Office of the General Counsel. The Office of General Counsel serves as the EPA's chief legal advisor. John Cruden, former Obama Justice Department Assistant Attorney General, said this of Mr. Leopold, "He is committed to the rule of law and can be counted on to give sound and candid advice to EPA decisionmakers."

President Trump nominated David Ross to lead EPA's Office of Water. The Office of Water ensures drinking water is safe. The Office also restores and maintains oceans, watersheds, and their aquatic ecosystems to protect human health, to support economic and recreational activities, and to provide healthy habitat for fish, wildlife, and plants.

Todd Parfitt, the Director of Wyoming's Department of Environmental Quality, said this of Mr. Ross. He said, "Mr. Ross possesses the necessary tools to effectively and appropriately oversee EPA's water program in a fair, balanced, and practical way.

When we get to the witness introductions, I will be introducing Mr. Ross and will say more about his accomplishments in the time he spent in the State of Wyoming.

President Trump also nominated William Wehrum to lead the EPA's Office of Air and Radiation. The Office of Air and Radiation develops national programs, policies, and regulations for controlling air pollution and radiation exposure. Former environmental Obama Justice official John Cruden of Mr. Wehrum: "I believe he is committed to achieving clean air for all citizens and carefully following sound and current science."

I believe we must act quickly to confirm all these EPA nominees so the Agency will be even better prepared to protect human health and the environment, enforce our environmental laws, and respond effectively when disasters strike.

It is deeply unfortunate that blind opposition to all of these Administration EPA nominees, including the well-respected Susan Bodine to be EPA's Enforcement Chief has stalled the confirmation process. Susan was reported in July and has been held up by the Minority ever since.

I want to be clear. The EPA's Office of Enforcement and Compliance Assurance, the office whose vital mission is to hold polluters accountable, is without a confirmed leader. It is without its confirmed leader because the Minority feels compelled to block all nominees to the EPA, regardless of all the pollution and environmental needs of our communities, including those communities struggling to recover from the hurricanes that have ravaged our shores.

A primary complaint of the Minority that they cite is that blocking all nominees to the EPA is that the EPA is not being responsive to Minority's oversight requests. The EPA has already sent the Minority over 2,800 pages in response to its seemingly never-ending requests. And I have those responses here. Twenty-eight hundred pages. And these are printed on both sides of the pages throughout. Two thousand eight hundred pages in response to its seemingly never-ending requests of the Minority. These from the EPA. Claiming the EPA is not responsive as an excuse for not confirming important nominees does not pass the smell test.

Now, I regret that I can't strike the same positive note that I have for the EPA nominees for the nomination of Jeffery Baran to serve on another term as member of the Nuclear Regulatory Commission. Mr. Baran is currently on the NRC and though his term does not expire until June of 2018, he has been nominated at the request of the Senate Democrats. Senate Democrats have refused to advance the nominations of Annie Caputo and David Wright to the NRC until Commissioner Baran is confirmed to a new five-year term.

Let me be clear. Mr. Baran's nomination is a big ask. Mr. Baran has been nominated for a term that is effectively three years longer than the term for which Mr. Wright has been nominated and two years longer than the term for which Ms.

Caputo has been nominated. If Mr. Baran is confirmed, his term would outlast those of all Republican nominees to the NRC, including Chairman Svinicki.

In December of 2014, the last time the Senate confirmed Mr. Baran, only one Republican voted in favor of his confirmation. I, along with many Republicans on this Committee, have voted against his nomination on six separate occasions. Since then, Commissioner Baran has given me little reason to reconsider my vote. I hope this hearing gives us an opportunity to hear from Commissioner Baran and get more clarity regarding his record at the NRC.

I will now turn to the Ranking Member for his statement. Thank you, Senator Carper.

[The prepared statement of Senator Barrasso follows:]

STATEMENT OF THE HONORABLE THOMAS R. CARPER, A UNITED STATES SENATOR FROM THE STATE OF DELAWARE

Senator Carper. Thanks, Mr. Chairman.

I want to welcome our witnesses today, our nominees. I want to welcome your family members; spouses, parents, children, sisters-in-law, brothers-in-law. We are happy that you are here and we thank you for your willingness to share with our Country those that you love.

Let me just say our Chairman has stacked up here answers that he explains are answers to requests and inquiries that we have made on the Minority side. Senate Democrats on this Committee have sent Mr. Pruitt, the Administrator of the EPA, some 26 letters. To seven of them we have received generally full responses. Seven out of 26.

I have stacked up right here the pages of the responses for the other 19 requests, the other 19 requests. I have said more than a few times if the shoe were on the other foot and we had a Democrat in the White House and we had a Democrat majority in the House and the Senate, and the Republicans on this Committee or any committee were trying to do oversight and get the kind of responses from EPA and from an Administrator from EPA, you would be pulling your hair out, and ours, too. This is just unacceptable.

I am seen in the Senate, and before that as governor of

Delaware, as a fair and impartial person. I like to work with my Republican colleagues. I have gone to bat for my Republican colleagues when we did have a Democrat in the White House and the responses to them and to us were not what I thought they should be.

But we can do better than that. EPA needs to do better than that. They need to show us more progress, and when we do we will be happy to move these nominations forward. I don't think that is asking too much.

And with respect to the nomination of Jeff Baran to serve another term on the Nuclear Regulatory Commission, if he is confirmed, I hope that he will be, there will be, get this, three Republicans on the Nuclear Regulatory Commission, three, and there will be two Democrats. And they are all good nominees and I look forward to supporting them all.

Having said that, fast forward to the present to today's hearing. We are four days into the new fiscal year and our EPA Administrator, Scott Pruitt, has yet to appear before this Committee to discuss EPA's proposed budget. Since Mr. Pruitt was confirmed, I mentioned a number of letters that we submitted and the responses that we have gotten, or not gotten.

Let me just say the idea that we are nine months into a new Administration, an Administration that has proposed deep cuts in the budget for EPA, deep cuts to the number of people who work

there, deep cuts to the programmatic support of clean water, clean air, cleanups for brownfields, hazardous waste sites, and we have yet to see the EPA Administrator sit at this table and talk to us to defend this budget. That is just unheard of. I have never seen anything like this.

Turning to today's hearing, we have five nominees before us. For the most part, I believe that presidents, governors, mayors, and other elected CEOs should generally be allowed to assemble their leadership teams. As governor, I used to say to the legislature, I have been elected to serve as governor of our State; allow me to at least nominate the people that I think would enable me to serve well, and they did. And that is why I find it hard, though, I have always tried to find a way to support Democrat or Republic administrations with their nominees, and I am certainly trying to do that in this Administration, too. They don't always make it easy. They don't always make it easy.

But I have some serious and unresolved concerns with two of our nominees today. The majority of our nominees I expect to support, but two I am troubled by, and I know a number of my colleagues are as well.

Just over a year ago, members of this Committee celebrated a rare bipartisan achievement when Congress almost unanimously enacted comprehensive reform of the Toxic Substances Control

Act. Jim Inhofe provided great leadership. Others on this Committee did as well. From Jim Inhofe all the way to Ed Markey, that covers a pretty broad spectrum here.

And we are trying to get that legislation implemented now, and all of us want to see it implemented well. And it was enacted because of a decades old lawsuit that made it all but impossible for EPA to otherwise regulate some of the most dangerous chemicals known to humankind. And we all share a strong bipartisan interest in seeing the new law implemented in an impartial, credible, and responsible way.

Regrettably, I am concerned that Dr. Dourson is not the leader that we need for that job. Never in the history of the EPA has a nominee to lead the Chemical Safety Office had such deep ties to industry. Never has a nominee had such a long record of recommending chemical safety standards that are as much as thousands of times less protective, thousands of times less protective than those recommended by regulators. Never has a nominee, to my knowledge, so consistently underestimated the risks of chemical exposures to the most vulnerable among us.

And I would like to recognize the presence of a number of people who are here in this hearing today who have suffered greatly due to exposure to harmful chemicals. These people traveled all the way from across the Country to be here today. I am not going to ask them to stand, but we know you are here.

We appreciate your presence.

Having said that, Dr. Dourson did make a good faith effort to respond to a number of the prehearing questions that I sent him and others sent to him. That is the good news.

Now, Mr. Chairman, I ask unanimous consent to place those materials in the record.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Carper. Unfortunately, though, the bad news is that his answers did not alleviate my concerns about his nomination and his suitability to serve.

I regret to say that my second concern with our nominees today before us is the nomination of Bill Wehrum, whose mom is here today, his wife is here today, sisters-in-law are here today, and we welcome you. He asked me to introduce him, and I have declined to do that, respectfully. I think my doing that might hurt you more than help you, and I don't want to make the situation more difficult for you or for me.

He is a Delawarean. This is a little State, and, you know, in Delaware you know just about everybody. We run many races together. I usually have to see him run from behind. He is always running far ahead of me; he is a great runner. Sometimes we ride the same train together from Wilmington to Washington. I think he is a good person. I think he is a good person, but he is not, in my judgment, a good choice for this particular job.

In 2005, Bill was nominated for the very same post, and I opposed his nomination then due to concerns that he deferred too frequently to industry rather than to protecting our public, public health. Moreover, he has suppressed scientific information and was not responsive to congressional requests. Mr. Wehrum's nomination failed to receive Senate approval.

Though unconfirmed, he served for two years as the head of the Air Office. Sadly, I fear that too little has changed since he last appeared before this Committee.

I just want to take briefly, and then I will close, a look at some numbers. One of the numbers is 31, 31, the number of times that Mr. Wehrum has represented industry in lawsuits against EPA since 2009. Against EPA.

Twenty-seven, the number of times that public health groups prevailed in court when challenging clean air regulations that Mr. Wehrum helped to craft at EPA because the rules didn't follow the law or protect public health. Twenty-seven.

Ten, the number of additional years that children were exposed to toxic power plant emissions due to regulatory delays that Mr. Wehrum put in place while he was at EPA.

And one, the number of times that industry supported language from Mr. Wehrum's old law firm and made it verbatim into a clean air regulation that he helped to write at EPA.

As best we can tell, zero is also the number of times that Mr. Wehrum advocated in court for stronger clean air regulations since leaving the EPA, an especially troubling number for those in downwind States like Delaware. Zero is also the number of times that Mr. Wehrum expressed a desire to protect public health when he and I met prior to this hearing in my office.

My time is short. Thank you for being generous with it,

Mr. Chairman, but I would ask unanimous consent to submit my full statement for the record, including my views on the other three nominees before us who I hope to support.

I look forward to hearing from all of you. Again, welcome. Thank you.

[The prepared statement of Senator Carper follows:]

Senator Barrasso. Thank you very much, Senator Carper.

Senator Inhofe.

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

Senator Inhofe. Thank you, Mr. Chairman. I am delighted to join Congressman Chabot and Dunn in making introductions of nominees.

I will be introducing Bill Wehrum. I am his second choice for an introduction. However, I am honored to do so. He has been a friend during the years I chaired this Committee. I just know his knowledge and expertise is second to none. His career spans more than 31 years in the environmental field, including work as an environmental engineer, a public servant with the EPA, and an environmental lawyer. As a result, he is known across the field as an expert on the issues he will be overseeing at the EPA when he is confirmed.

He has consistently been recognized as a leader and top lawyer in environmental laws for such groups as the Chambers USA, Legal 500 United States, and Washingtonian Magazine. Those who have worked with Bill praise him, like his former EPA boss, Jeff Holmstead, who said, "There is no better person to serve as the Assistant Administrator of the EPA's Office of Air and Radiation."

Former EPA Deputy Administrator Marcus Peacock said, "Bill Wehrum, his understanding of the Clean Air Act may be second to none. His desire to pull up his sleeves and actually make the

Clean Air Act work as a practical matter is second to none."

And that gets to what we are doing here. Congress and our other agencies should not be in the business of creating laws and regulations that are unworkable and impossible to implement, and I trust that Bill will be able to navigate the line between the healthy environment and ensuring standards and regulations are achievable and practical without undue harm to our economy, and that is the law, I would remind you.

So, Mr. Wehrum, thank you for your willingness to do this tough job, and I look forward to many more year of service with you.

[The prepared statement of Senator Inhofe follows:]

Senator Barrasso. Thank you, Senator Inhofe.

We have two members of the House who have joined us today, Congressman Chabot from Ohio and Congressman Dunn from Florida, to introduce two of the nominees. I would like to welcome both of you to the Senate and invite Congressman Chabot to introduce Dr. Dourson.

STATEMENT OF THE HONORABLE STEVE CHABOT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. Chabot. Thank you very much, Chairman Barrasso and Ranking Member Carper and all the members of this Committee for inviting me here today to introduce a fellow Cincinnatian, Dr. Michael Dourson.

As everyone on the Committee is aware, Dr. Dourson has been nominated to be the Assistant Administrator for the EPA's Office of Chemical Safety and Pollution Prevention.

I am sure that most of you are also aware that Dr. Dourson's impressive credentials and distinguished career, so I won't delve into every aspect of his resume, but I would like to mention just a few highlights.

Currently, Dr. Dourson is a professor in the Risk Science Center at the University of Cincinnati College of Medicine, which is located in my congressional district in Cincinnati. Prior to his current position, he founded and led the Center's predecessor for 21 years, the nonprofit corporation Toxicology Excellence for Risk Assessment. And these two positions occurred following the 15 years Dr. Dourson worked at the U.S. EPA, where he held numerous leadership positions.

Throughout his career, Dr. Dourson has served on numerous government panels and authored or co-authored an impressive array of publications, including more than 150 papers on risk

assessment methods or chemical-specific analyses, and over 100 government risk assessment documents. And he has been elected as a fellow or an officer for numerous professional organizations, including the Academy of Toxicological Sciences, the Society for Risk Analysis, the American Board of Toxicology, and the Society of Toxicology. Currently, Dr. Dourson is the President of the Toxicology Education Foundation.

Dr. Dourson's excellence in his field of expertise has been recognized time and time again. Over the years, he has received four bronze medals from the EPA, the Arnold A. Lehman Award from the Society of Toxicology, and the International Achievement Award from the International Society of Regulatory Toxicology and Pharmacology.

In addition to his stellar qualifications, I would be remiss if I did not also mention that Dr. Dourson is a fellow graduate of La Salle High School. And I would also be remiss if I didn't mention that La Salle has won the Ohio Division II State football championship the last three years, and we hope they win it again this year.

Dr. Dourson, thank you for being here today, and congratulations on your distinguished career and this prestigious nomination. I wish you the best as this process moves forward, and again I want to thank Chairman Barrasso and Senator Carper and all the Committee members for allowing me to

be here today. And if I could be excused, I have the parents of Otto Warmbier, who was kidnapped and brutalized by North Korea, waiting for a meeting.

[The prepared statement of Mr. Chabot follows:]

Senator Barrasso. Well, thank you for your time. Thank you for your testimony. You are certainly excused.

Representative Dunn, welcome to the Committee and we look forward to your introduction.

STATEMENT OF THE HONORABLE NEAL DUNN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Dunn. Thank you very much, Chairman Barrasso, Ranking Member Carper, and members of the Committee. Thank you for the opportunity to introduce Matt Leopold, President Trump's nominee to serve as the Assistant Administrator to the Office of General Counsel of the United States Environmental Protection Agency.

I have the honor of serving Matt in Congress as his representative for Florida's 2nd Congressional District. Over many years in public service to the State of Florida, Matt has earned a reputation for his commitment to the rule of law and as a man of integrity.

Matt's record is well known to the members of this panel by now. He served with distinction as the General Counsel for Florida Department of Environmental Protection and is the attorney for the U.S. Department of Justice's Environment and Natural Resources Division. Along the way, he earned the high regard of his colleagues and of the diverse group of stakeholders served by those institutions.

Matt has twice been awarded the Attorney General's Award for Excellence and was awarded a prestigious James Madison Institute Leaders Fellowship during the 2015-16 years. I also know him as a champion during his legal career on behalf of Florida's coastal economies, particularly the oyster men and

small businesses of Apalachicola, who depend on the bay for their livelihood.

Matt is an alumnus of the University of Florida and obtained his JD from Florida State University College of Law, so this is perhaps another indicator that he is uncommonly capable of bridging diverse interests on complicated issues.

In closing, I thank you for the opportunity to introduce a favorite son of Florida and a distinguished public servant to the Committee today. I applaud the President's recognition of Matt's unique qualifications for this critical role at the EPA and I look forward to his continued service on behalf of our communities throughout our Nation.

Thank you very much, Mr. Chair, for the opportunity.

[The prepared statement of Mr. Dunn follows:]

Senator Barrasso. Thanks very much, Congressman Dunn, and you are excused as well. I know you have pressing items of business elsewhere, so thank you for being with us today.

I would like to introduce David Ross, who is the nominee for the Assistant Administrator of EPA's Office of Water. Mr. Ross is a graduate of the University of Wisconsin-Madison and the Vermont Law School. He currently serves as Assistant Attorney General and Director of Environmental Protection Unit for the Wisconsin Department of Justice. Before that, Mr. Ross served as Wyoming's Senior Assistant Attorney General in the Water and Natural Resources Division for the Wyoming Attorney General's Office.

Mr. Ross has a total of two decades of environmental, legal, and consulting experience in both the public and private sectors. His nomination has elicited bipartisan praise and support within my home State of Wyoming.

Dave Freudenthal, the former Democrat governor of Wyoming, has said "Mr. Ross's private practice experience in D.C., combined with his service in two State environmental protection agencies, make him uniquely qualified to implement America's nuanced structure of Federal and State environmental protection."

Likewise, Wyoming's current governor, Matt Mead, Republican, expressed his unequivocal support for Mr. Ross,

saying "Dave is a talented attorney, an excellent advisor, and a person who can get things done. I recommend Dave without reservation for this position."

So now I would like to welcome to the committee our nominees. Please take your seats.

Congratulations to each of you. I welcome you to the Committee. I would like to remind each of you that your full written testimony will be made a part of the record. We look forward to hearing your testimony today.

We will start first with Dr. Michael Dourson, and would you like to introduce your brother?

STATEMENT OF MICHAEL DOURSON, PROFESSOR, RISK SCIENCE CENTER, DEPARTMENT OF ENVIRONMENTAL HEALTH, UNIVERSITY OF CINCINNATI, COLLEGE OF MEDICINE

Mr. Dourson. Yes. Chairman Barrasso, thank you very much. My brother, David Dourson, is behind me, my younger brother. He is a Cincinnati native and a businessman extraordinaire. So, if you get a chance to talk with him, I am sure he would be happy to speak with you.

Senator Barrasso. Thank you. Welcome to the Committee. Welcome as a guest, and please proceed with your testimony.

Well, thank you, Chairman Barrasso, Senator Carper, and distinguished members of the Committee. I thank you for the privilege of coming before you today as a nominee for the position of Assistant Administrator of the Office of Chemical Safety and Pollution Prevention. I am honored and humbled that President Trump, Administrator Pruitt, and this Committee are considering me for this position.

I would also like to thank my many current and former colleagues with the University of Cincinnati College of Medicine and the independent, non-profit Toxicology Excellence for Risk Assessment, and the U.S. Environmental Protection Agency for their support and friendship.

I also wish to thank my many friends and family, and especially my much better half of 39 years, Martha Dourson, who

apologizes for not being here due to a family obligation involving grandchildren.

I have worked on chemical safety and pollution prevention issues for my entire professional career as a board certified toxicologist in three different organizations and as an officer in one or more groups with five different scientific societies. The work included developing scientific positions to support the rulemaking under congressional legislation, such as the Clean Water Act, or pollution control prevention measures as in my role as EPA's first leader of its Integrated Risk Information System, or IRIS.

I have also served as a chair or member of well over 100 scientific peer review panels to review others' efforts. For example, as chair of the panel that reviewed the nine government response to the World Trade disaster, or as chair of the panel that reviewed the government response to a West Virginia river spill and recommended lowering the existing safe dose by eightfold. We made it eightfold more safe.

If confirmed as the Assistant Administrator of the Office of Chemical Safety and Pollution Prevention, I will dedicate my mind, body, and spirit to the work of this office, to working with its dedicated staff, to the protection of the American public, including its most vulnerable, and its environment from exposure to pesticides and otherwise unregulated chemicals, and

to answering any and all of your questions and those of your constituents on chemical-specific matters at any time.

In contrast, I will not deviate in my decisions from the scientific principles of toxicology and risk assessment that have been taught to me by my mentors and co-workers, nor deviate from the code of ethics by my Society of Toxicology or my Society for Risk Analysis, nor ever stop listening to my colleagues whose expertise I do not have but otherwise cherish.

As you would expect, if confirmed, I will work with my Office of Enforcement and Compliance Assurance colleagues in the enforcement of environmental laws that you, the representatives or our Nation have established. I strongly support those laws and will do everything in my power to assure that they are being administered fairly and without prejudice.

Finally, I will strongly foster, without reservation, a collaborative spirit with our Federal and State colleagues, and those from other nations, organizations, and the public on pesticides and otherwise unregulated chemicals. It is through such collaboration, exemplified throughout my career with EPA, TERA, and U.C., University of Cincinnati, it is through such collaboration that EPA's practice of safety assessment and pollution prevention will meet the needs of the 21st century and will best protect the public health and the environment.

Your passing of the Lautenberg Chemical Safety Act was a

significant milestone, and I know it was celebrated here in Washington, but it was widely celebrated outside of Washington, D.C. by many folks. So congratulations on that. It was enabled by a bipartisan effort that included collection of diverse outside groups. If confirmed, nothing less should be expected of myself and the talented people of the Office of Chemical Safety and Pollution Prevention who now carry your torch.

I appreciate the time and effort you have devoted to reviewing my credentials and background materials, and look forward to questions that you or your colleagues may have regarding this or related information.

Thanks again for the opportunity to serve.

[The prepared statement of Mr. Dourson follows:]

Senator Barrasso. Thank you very much, Mr. Dourson.

Mr. Leopold. And if you would like to introduce your family, please go ahead and then proceed with your testimony.

STATEMENT OF MATTHEW LEOPOLD, COUNSEL, CARLTON FIELDS JORDAN BURT, P.A.

Mr. Leopold. Thank you, Mr. Chairman. With me I have today my wife, Kim, my daughter, Ava, my son, Zane, and my son, Luke. And at home with her grandparents is our two-year-old daughter, Abby. And not able to be with us here today is my father, Zane, who couldn't make the trip from Florida.

Chairman Barrasso, Ranking Member Carper, distinguished members of the Committee, I am thankful for the privilege of being here before you today as the nominee for the position of General Counsel of the Environmental Protection Agency. I am honored that President Trump, Administrator Pruitt, and the members of this Committee are considering me for this position.

The role of EPA's General Counsel, overseeing the implementation of laws entrusted to the Agency, is a public trust. If I am fortunate enough to be confirmed, I would pledge to execute those duties with the utmost diligence and care.

The EPA is quickly approaching its fiftieth birthday, and over those years it has already tackled some of the Nation's most pressing problems. When President Nixon and the Congress created the Agency in 1970, there were environmental issues that abounded; from the choking smog in Los Angeles, to toxic dumping in our oceans, to an infamous burning river in Ohio. The environmental laws passed by the Congress in the decades that

followed EPA's creation have been essential to securing the promise of environmental and human health protections, while at the same time allowing for economic growth and prosperity.

There is no question that EPA has made great strides, significantly improving the quality of the air we breathe and the water we depend on. EPA must always continue to ensure that we don't backslide from those important protections.

To accomplish this important mission, the Federal environmental laws harness the strength not only of the Federal Government, but the resources of the States in a unique partnership known as cooperative federalism. Having served in the Florida Department of Environmental Protection, as well as the Environment and Natural Resources Division of the Department of Justice, I saw firsthand how that cooperation could yield incredible results on issues big and small.

For example, the Federal-State partnership to restore America's Everglades is the largest ecosystem restoration project in the world and has significantly improved water quality and delivery in a vast and rare environment, benefitting State, Tribal, and Federal lands. On a smaller scale, I observed the State issue permits, inspect facilities, and collect air and water quality data which enabled EPA to better understand, manage, and ultimately prevent pollution. Leveraging the assets of State and Federal environmental

agencies continues to be a key strategy for protecting and improving the environment.

On enforcement of our environmental laws, I have also seen how the Federal Government and States came together to address what has been called the greatest environmental disaster of our time, the Deepwater Horizon oil spill of 2010. I am proud to say that I played a small part in securing funding for restoration by participating in the United States civil enforcement case.

This massive effort, led by the Department of Justice, resulted in a $20 billion settlement that has already begun flowing to Federal, State, and local government entities around the Gulf of Mexico. These funds are going largely to restore and enhance the environment, creating a once in a generation opportunity to address damages to natural resources and conserve sensitive lands in the Gulf.

I have been engaged in environmental law and policy issues for my entire legal career, and for most of those years I have been in public service. Through that experience, I developed great respect for my fellow career civil servants who carry out the day-to-day work of the Federal agencies. And I think it is important for political appointees in any administration to listen to, understand, and collaborate with the career staff. I plan to do nothing less, should I have the opportunity to lead

the Office of General Counsel.

Having been in private practice, I would also emphasize to EPA employees the importance of listening to the regulated community who understand, oftentimes better than government, what it takes to comply with environmental regulation in the real world.

In closing, Mr. Chairman, I again thank the President and this Committee for the opportunity to be here today. I would be humbled to join Administrator Pruitt to carry out EPA's important mission. I respectfully request your support and I look forward to any questions you or your colleagues may have.

[The prepared statement of Mr. Leopold follows:]

Senator Barrasso. Thank you very much, Mr. Leopold, and congratulations.

Mr. Ross.

STATEMENT OF DAVID ROSS, ASSISTANT ATTORNEY GENERAL, STATE OF WISCONSIN, AND DIRECTOR, WISCONSIN DEPARTMENT OF JUSTICE ENVIRONMENTAL PROTECTION UNIT

Mr. Ross. Chairman, I would like to first introduce my family. With me are my wife, Tiffany, and my girls, Payton and Kennedy, who are sitting behind me. The girls are here on special assignment from their social study classes back in Waunakee, Wisconsin.

[Laughter.]

Mr. Ross. My brother, Admiral Eric Ross, is also here. Eric is taking time out of his busy schedule to attend today. Eric had the honor of being confirmed by the U.S. Senate as a Rear Admiral in the U.S. Navy earlier this year, and I thank the Senate for that family honor.

My mother, Sue, and my sister, Debbie, are back home, hopefully participating, watching right now.

Chairman Barrasso, Senator Carper, and distinguished members of this Committee, I am honored to be here today, and I want to thank President Trump and Administrator Pruitt for placing their trust in me and for providing me with this amazing opportunity to serve the public as the Assistant Administrator for EPA's Office of Water.

I also want to thank my wife, Tiffany, my amazing girls, Payton and Kennedy, and the rest of my family for their support

as I continue my career in public service.

And, Chairman Barrasso, I want to thank you for the introduction and for your support during my time working for the great State of Wyoming.

I have worked on water quality and resource management issues my entire career. My experience ranges from serving as a consultant on wastewater reclamation and reuse projects, to advising members of the regulated community on Clean Water Act compliance and related matters, to serving as the lead water quality attorney for the State of Wyoming and currently as the lead environmental prosecutor for the State of Wisconsin. I, therefore, understand water resource issues from multiple perspectives, and I have a deep appreciation for the complexity inherent in managing those waters.

Our waterways help transform the Nation into an economic power, and they continue to support economic activity that sustains our position in the world. They move commerce, supply power, provide drinking water, sustain wildlife, grow crops, and serve as playgrounds for outdoor enthusiasts. These competing uses highlight the critical importance of our Nation's water resources, but they result in divergent views on how best to manage those resources.

The Office of Water must consider those diverse perspectives while pursuing common objectives, including

protecting and enhancing the quality of our water, ensuring that our citizens have access to safe and reliable drinking water, and promoting regulatory certainty.

I will pursue those objectives based on a few core principles. First, we must manage our Nation's waters within the statutory framework established by Congress, while respecting the constitutional limitations imposed by our founding fathers. If I have a bias as a lawyer, it is a profound respect for the rule of law.

Second, I will respect the role of States, Tribes, and local governments as key partners in managing our Nation's water resources. I have been fortunate to observe firsthand the expertise and professionalism of State environmental officials and their dedication to the protection of the resources that they know best. I have also witnessed the frustration those environmental experts experience when the Federal Government fails to engage with them on matters of critical importance to the States. Should I be confirmed, I will embrace cooperative federalism as envisioned by Congress when it enacted many of the statutes that govern the work of EPA.

Third, and finally, I will manage with an open mind; I will seek the input and expertise of the dedicated career professionals at EPA; I will listen to the advice and recommendations of the regulated community and the rest of the

American public; I will engage with the States, Tribes, and local governments; and I will pursue the objectives of my management with dedication, while always striving to give them my best counsel.

The Nation has made great progress improving the quality of our waters over the past 50 years. There is certainly more work to do, but I am confident that we can continue to make progress while pursuing the twin goals of environmental protection and economic prosperity for the Nation. Indeed, to be successful, I think those goals are, and must be, interdependent.

Thank you for your time today and the opportunity to appear. I look forward to answering any questions that you may have and, more importantly, to working collaboratively with all members of this Committee and your colleagues in both chambers, should I have the honor of being confirmed.

[The prepared statement of Mr. Ross follows:]

Senator Barrasso. Well, thank you very much, Mr. Ross, and congratulations.

Mr. Wehrum, welcome to the Committee. We look forward to your testimony.

STATEMENT OF WILLIAM WEHRUM, PARTNER, HUNTON & WILLIAMS LLP

Mr. Wehrum. Thank you, Mr. Chairman. I would first like to introduce my family who are here with me today. My wife, Cindy, is sitting immediately behind me, my mother, Mary Ann, and my sisters, Lisa and Laura, who, believe it or not, are twins, fraternal, of course.

Senator Carper, my wife came down on 111 this morning and will be on 188 tonight, so if you happen to be on the train, please be sure to say hello to her.

Chairman Barrasso, Ranking Member Carper, and members of the Committee, thank you for the opportunity to appear before you today as the nominee for the position of Assistant Administrator for the Office of Air and Radiation at U.S. EPA. I am honored that President Trump nominated me for this position.

I would also like to thank, in particular, Senator Inhofe for your very kind introduction. Under your leadership, previously in 2005, my nomination was voted out of this Committee, and I very much appreciate that. That meant a whole lot to me.

President Trump and Administrator Pruitt have set a clear agenda that I intend to implement if confirmed to this position. The President has issued executive orders that will eliminate needless and burdensome regulations, simplify and streamline

compliance obligations, and strike a better balance between the twin goals of protecting human health and the environment and promoting the economic vitality of the Nation.

Administrator Pruitt emphasized three key objectives in his remarks to this Committee during his confirmation hearing. First, we are a Nation of laws. He explained that EPA's role is to administer those laws faithfully and that the Agency should avoid the temptation to bootstrap its own powers and tools through rulemaking.

Second, Administrator Pruitt committed that the Agency would acknowledge, respect, and promote the critical role of States in implementing Federal environmental laws and in protecting human health and the environment. Cooperative federalism is one of the cornerstones of the Clean Air Act. In fact, in the very first section of the Act, Congress declares that air pollution control at its source is the primary responsibility of States and local governments. Administrator Pruitt's commitment to State involvement carries out Congress's stated intent.

Third, Administrator Pruitt emphasized the important role that the public plays in the regulatory process. He said, "it is critical to me that EPA also truly listen to the diverse views of the American people and learn from them." He rightly stated that, "we simultaneously pursue the mutual goals of

environmental protection and economic growth," but cautioned that that can only happen if EPA listens, listens to the views of all interested stakeholders.

These are goals and objectives that have been established by our leadership. I concur in them and, if confirmed, will do all I can to achieve them.

Mr. Chairman and members of the Committee, thank you again for the opportunity to be here, and I would be happy to answer any questions you may have today.

[The prepared statement of Mr. Wehrum follows:]

Senator Barrasso. Well, thank you very much and congratulations, Mr. Wehrum.

Mr. Baran, welcome to the Committee.

STATEMENT OF JEFFERY BARAN (REAPPOINTMENT), COMMISSIONER, U.S. NUCLEAR REGULATORY COMMISSION

Mr. Baran. Thank you. Chairman Barrasso, Ranking Member Carper, and members of the Committee, thank you for the opportunity to appear before you today. I am honored to have been nominated to continue my service on the Nuclear Regulatory Commission for another term.

I want to thank my wife, Michelle, and our kids, Mia, Gus, and Max for their love and support. My dad, Marty, also deserves special recognition for the many, many hours of Commission meetings he has watched online. He probably set some kind of record there.

When I was confirmed as a commissioner almost three years ago, I committed to bringing an open-minded and collegial approach to the issues that come before the Commission, and I have worked very hard to meet that commitment. My focus has been on crafting thoughtful, balanced, and timely votes after hearing from a broad range of stakeholders. I value the relationships I have formed with my Commission colleagues, the NRC staff, licensees, unions, States, and public interest organizations, and have benefited greatly from their ideas and input.

My frequent visits to nuclear plants and other NRC-regulated facilities not only give me an opportunity to view

equipment and technologies firsthand, they also give me the chance to hear directly from NRC's resident inspectors, as well as the workers and managers at the sites about their priorities and concerns.

If confirmed, I look forward to continuing to serve with Chairman Svinicki and Commissioner Burns. We work very well together. We don't always agree on policy, but we always have constructive and collegial discussions; and I think that is how the Commission is supposed to work, bringing together people with different backgrounds, perspectives, and experiences, and have them grapple with tough policy issues together. Ultimately, we make sure that important regulatory decisions are carefully and thoroughly considered.

If they are confirmed, I also look forward to working closely with my fellow nominees, Annie Caputo and David Wright.

Several important initiatives are underway at NRC, and I am eager to see them through to their conclusion. If I am confirmed for another term, I will continue to focus on these efforts, including the power reactor decommissioning rulemaking, implementation of post-Fukushima safety enhancements, development of an effective and an efficient licensing framework for advanced reactors, and the pending small modular reactor design review.

Managing the Project Aim reductions while fulfilling NRC's

vital mission of protecting public health and safety and the environment is one of the Agency's most significant challenges in the coming years, so ensuring that the Agency has the resources, talent, and leadership to succeed is another top priority for me. I am happy to discuss these or any other issues of interest to members of the Committee in greater detail today or in the future.

Prior to my service on the Commission, I had the privilege of working for Congress for more than a decade. I have a deep respect for the importance and value of congressional oversight. If confirmed, I will continue to do everything I can to ensure that the Committee has the information it needs to meet its oversight responsibilities.

Thank you, and I look forward to your questions.

[The prepared statement of Mr. Baran follows:]

Senator Barrasso. Well, thank you all for your testimony.

Throughout the hearing and with questions for the record, the Committee members are going to have an opportunity to learn more about your commitment to public service and this Nation. I would ask that throughout the hearing please respond to the questions, as well as those written questions that will be submitted after the hearing. Please submit those for the record.

I have to ask the following questions that we ask all nominees. I do this on behalf of the entire Committee.

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

Mr. Dourson. Yes, I will.

Mr. Leopold. Yes, I will.

Mr. Ross. Yes, I will.

Mr. Wehrum. Yes, Mr. Chairman.

Mr. Baran. Yes.

Senator Barrasso. Do you agree to ensure that testimony, briefings, documents, and electronic and other forms of information are provided to this Committee and its staff and other appropriate committees in a timely manner?

Mr. Dourson. Yes, Senator.

Mr. Leopold. Yes, Mr. Chairman.

Mr. Ross. Yes, I will.

Mr. Wehrum. Yes, Mr. Chairman

Mr. Baran. Yes.

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

Mr. Dourson. No, Mr. Chairman.

Mr. Leopold. No, Mr. Chairman.

Mr. Ross. No, I do not, Mr. Chairman.

Mr. Wehrum. No, Mr. Chairman.

Mr. Baran. No, I do not.

Senator Barrasso. Based on a prior agreement with the Ranking Member, we will have two rounds of questions, not the customary one round. Each Senator will have five minutes of questions per round. I will begin with my questions.

Commissioner Baran, as you know, in 2013, the U.S. Court of Appeals for the D.C. Circuit ordered the NRC to resume the licensing process for Yucca Mountain. The Court found that the NRC, under former Chairman Jaczko, had illegally terminated the licensing process. Under that chairman, the NRC argued that it suspended the licensing process because it said Congress had not appropriated the funds necessary to complete it. The NRC also

speculated that Congress would not appropriate additional funds in the future.

In the order, the Court rejected the NRC's rationale. It explained, "Federal agencies may not ignore statutory mandates simply because Congress has not yet appropriated all of the money necessary to complete a project." The Court also stated, "An agency may not rely on political guesswork about future congressional appropriations as a basis for violating existing legal mandates."

Well, last month the NRC, under Chairman Svinicki, voted to spend funds on activities related to the licensing process of Yucca Mountain. The NRC took this step to comply with the Court's order. The NRC took this step on a bipartisan basis and you were the lone person to dissent. You wrote that you did not believe, you said, that the NRC should take such a step without knowing whether Congress will decide to appropriate funds for the licensing proceeding. You suggested that Congress might not appropriate the funds. You stated, "It has been six years since Congress last appropriated monies for the Nuclear Waste Fund."

Commissioner, I just find your rationale deeply troubling. The Court has ordered the NRC to resume the licensing process. Why are you following the footsteps of former Chairman Jaczko and using a discredited rational, uncertainty about appropriations, as an excuse not to follow the law in the

courts?

Mr. Baran. Well, thank you for the opportunity to clarify my vote. Back when the D.C. Circuit looked at this issue, I believe there were about $13 million of appropriated funds remaining, and at that time the D.C. Circuit said there is more you can do with those funds, NRC, you should go ahead and do that; and in the intervening years that is exactly what NRC has done. In that time, the NRC staff completed the safety evaluation report, prepared a supplemental environmental impact statement that addressed groundwater issues, worked on making sure documents were available online that were previously held in the system for the adjudication.

In that time, the amount of appropriated funds we have left that were previously appropriated has dropped to, I think, around $600,000 or $700,000. We are also in the midst of some litigation that requires the use of some of those funds.

So the question that was presented to the Commission is does it make sense, in fiscal year 2017, to use most of those remaining funds to start doing some preliminary steps toward a potential adjudication. My view is that it did not make sense to expend the very little that we had left of those Nuclear Waste Fund monies during the fiscal year to prepare for an adjudication until we knew whether Congress was going to appropriate funds for the adjudication in fiscal year 2018.

And I kind of share the view that you expressed, which is that we shouldn't, as a Commission, be making predictions about what Congress is going to do. My view is we should wait a few months, see what Congress decides to do. Some of the items that would have been funded, for example, like a real estate search for a facility to hold the hearing in Nevada, are very kind of short shelf life type items, so I didn't think it made sense to start doing that work until we knew we were actually going to begin the adjudication in fiscal year 2018.

Senator Barrasso. With all due respect, it just seems that agencies do rely on guesswork about appropriations in an effort to comply with the law. What the Court said is that agencies may not rely on guesswork about appropriations to avoid complying with the law. So I just find it disturbing that perhaps your opposition to Yucca Mountain is so strong that you wouldn't even follow the legal court order on this one.

Mr. Wehrum, last week you argued a case before the U.S. Court of Appeals for the D.C. Circuit. You did it on behalf of clients who were challenging the Silica Rule. Do you have any concerns that this litigation is going to interfere with your work, if confirmed as the EPA Assistant Administrator for the Office of Air and Radiation?

Mr. Wehrum. No, Mr. Chairman, no concerns whatsoever. The issues related to the Silica Rule we were litigating have

absolutely nothing to do with the issues for which I would be responsible, if confirmed to the position of AA for OAR at EPA.

Furthermore, as we all know, there are comprehensive ethics rules that will govern my transition from private practice into government service. I already am working very closely with EPA's ethics officers to make sure I fully understand those obligations and have their counsel, and I commit that I will strictly follow the regulations that apply to this transition, Mr. Chairman.

Senator Barrasso. Thank you very much.

Senator Carper.

Senator Carper. Thanks, Mr. Chairman.

Again, our thanks to all of you for joining us today and for your statements.

I want to go back to something that Mr. Leopold said, and I thought he really nailed it and I thought he spoke from his heart with respect to his commitment to protecting our air and our water and our natural resources in this role, if he is confirmed. Here is what he said. He said the environmental laws passed by Congress in the decades that followed EPA's creation have been essential to securing the promise of environmental and human health protections while at the same time allowing for economic growth and prosperity. He went on to say there is no question that EPA has made great strides,

significantly improving the quality of the air we breathe and the waters we depend on. EPA must always continue to make sure that we don't backslide from these important protections.

When our four nominees for EPA appeared before, I was looking for that kind of commitment to protecting our air, our water, our natural resources, and I must say I was disappointed not to hear it today from at least two of our witnesses and, sadly, not to hear it in the meetings that we had in my office.

I repeated those words because that is the kind of commitment we are looking for. That is what we are looking for.

I have a poster I just want to hold up, if I can, and probably ask my first question, if I may, of Dr. Dourson. As I mentioned in my opening statement, Dr. Dourson, one of the main reasons that Congress worked so hard to reauthorize the Toxic Substances Control Act was because everyone recognized that EPA needed to have the authority to credibly and impartially assess chemical safety and regulate the chemicals that were found to be dangerous.

This poster shows some examples of the chemicals that you were funded by industry to study. In each and every case you concluded that the right safety standard for the chemicals should be tens, hundreds, even thousands of times less protective, less protective than the Federal or State regulators did. It is regrettably difficult to look at your record and

conclude that you could be an impartial regulator.

One way you could remedy the perception that you may not be able to be an impartial regulator would be to promise to recuse yourself, if you are confirmed, from working on any chemical that industry has paid you, has paid you to study. And I am not interested in a long answer, but I would like a very brief answer. Yes or no will do. Would you make that commitment today?

Mr. Dourson. Senator, I can give you as many or more examples of situations where the science that we brought forward as a team actually lowered the safe dose or risk position for various sponsors. If confirmed, I will rely on the guidance of EPA ethics officials to determine any issues for which I am to be recused.

Senator Carper. Let me just say all of us here try to figure out the right thing to do and do it: not the easy thing, not the expedient thing. When I apply the "right thing to do" test to this, the idea that I represented industry combatting EPA on a particular substance, and later on I am going to have the opportunity, as part of the EPA leadership team, to determine whether or not, presumably impartially, we are going to allow that substance to be approved or in our environment, I would recuse myself. I would just say I am going to recuse myself. It wouldn't be right for me to represent industry

opposing EPA with respect to that particular substance and then turn around and go to work for EPA and take the other position. I just don't see why you can't just say I would recuse myself. I don't get it.

Mr. Dourson. Well, Senator, again, the majority of our work is done for government organizations, and several of the chemicals up there we were doing, we did work with teams of individuals and groups, including government and industry organizations. So, again, I will rely on the guidance of U.S. EPA ethics officials to determine any issue for which I am to be recused.

Senator Carper. Mr. Chairman, I want to just ask unanimous consent to submit for the record a list of over 150 organizations from across our Country who are opposed to Dr. Dourson's nomination. This list consists of environmental groups, labor groups, health, justice and consumer groups, and the American Association of Justice. I submit this list for the intention that it will allow the record to better reflect the considerable national opposition to his nomination.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Carper. I also want to ask unanimous consent to back up the re-nomination of Mr. Baran to submit for the record a release, I guess it was just yesterday, October 3rd, a release from the Nuclear Energy Institute, the nuclear industry's association. This press release echoes my support for Mr. Baran and his re-nomination to serve as Commissioner to the Nuclear Regulatory Commission. I ask unanimous consent.

Senator Barrasso. Without objection.

Senator Carper. Thank you.

[The referenced information follows:]

Senator Carper. Thanks very much.

Senator Barrasso. Thank you, Senator Carper.

For the record, on September 15th of this year, 14 doctors, each of whom has won the Arnold Lehman Award, the Society of Toxicology's highest honor, submitted a letter of support for Dr. Dourson's nomination. They wrote, "Dr. Dourson is highly qualified to serve as an Assistant Administrator of the Office of Chemical Safety and Pollution Prevention." They go on to say, "Dr. Dourson's deep understanding of the scientific elements of toxicity testing, data interpretation, weight of evidence evaluation procedures, and risk assessment is just what it will take to ensure effective implementation of the TSCA reform legislation."

I ask unanimous consent to enter this letter into the record.

[The referenced information follows:]

Senator Barrasso. Senator Inhofe.

Senator Inhofe. Thank you, Mr. Chairman.

Mr. Baran, a recent report from the Energy Futures Initiative, a group formed by former Secretary of Energy Ernest Moniz, and a lot of other people, too, were involved in this, concluded that a healthy U.S. civilian nuclear power industry is a national security imperative; not opportunity, imperative. The report found, "The nuclear sector helps the U.S. military meet specific defense priorities, supports implementation of U.S. nonproliferation policy, and is essential to the global protection of U.S. military capability. The flip side is that an eroding nuclear enterprise will compromise nuclear securities capabilities and make them more costly."

Do you agree that the erosion of the U.S. commercial nuclear power industry presents a threat to the United States national security?

Mr. Baran. As an NRC Commissioner, Senator, it is my job to focus on nuclear safety and security, not to weigh in on --

Senator Inhofe. No, I think it is an easy answer. Do you believe that that is related to our national security?

Mr. Baran. Well, again, as a Commissioner, it is not my job to weigh in on the pros and cons of the merits of nuclear power.

Senator Inhofe. All right, let me reword something, then.

As the former report said, the U.S. ability to influence nonproliferation was "rooted in the historically unique capabilities in U.S. technology, services, and know-how."

At this time, at this time, Mr. Baran, there is one new nuclear plant under active constructive and at least 16 existing nuclear plants under the threat of closure. Meanwhile, the rest of the world is advancing. We are falling behind. Does this bother you?

Mr. Baran. Well, again, it is our job at NRC, we stay focused on our mission, which is to ensure the safe, secure use of nuclear power to protect human health and the environment. That is our focus. It is our responsibility to make sure that we have --

Senator Inhofe. You don't have an opinion on this as to whether or not this affects our national security? You have a problem with the fact that the rest of the world is passing us up in nuclear progress?

Mr. Baran. Well, the part I focus on, and my job as a Commissioner, is to make sure we have an effective, efficient process for licensing new reactors, and that we do a good job overseeing the construction that is underway.

Senator Inhofe. All right. Thank you very much.

Mr. Wehrum, in 2015, the Supreme Court found that the EPA, under the Obama Administration, violated the Clean Air Act by

not looking at the cost of compliance. This is required, looking at the cost of compliance before issuing new regulations on the emission of mercury and other toxins from coal-fired power plants, as Congress required. That is in the law. In fact, the Clean Air Act calls for EPA to conduct ongoing evaluations of job losses, economic shifts in costs, and so forth.

Do you believe that EPA should follow that law?

Mr. Wehrum. Senator Inhofe, absolutely.

Senator Inhofe. You have demonstrated that in the past, haven't you?

Mr. Wehrum. I have tried very hard to achieve the dual goals of the Clean Air Act, Senator, which is to protect human health and the environment, but also promote the economic vitality of this Nation.

Senator Inhofe. And if you are confirmed to this position, you will do so and continue to do it?

Mr. Wehrum. Yes, Senator, I will.

Senator Inhofe. Mr. Wehrum, you previously served for six years on the EPA. You did great work, and I thank you for that service. Can you talk about a project that you worked on which you are most proud? You and I talked about this in the past. I think we should share it on the record here. How did that project protect the public health and our environment?

Mr. Wehrum. Well, Senator, one of the key achievements during my time at EPA was implementation of the so-called Tier 4 Nonroad Rule, which is a comprehensive set of emissions limits and fuel requirements for engines in vehicles that are used off the highway. That program was unprecedented at the time, achieved millions of tons of emissions reductions, and did it in a very smart way, such that was also achieved even greater amounts of benefits to health and the environment.

Senator Inhofe. It has been very effective.

Senator Whitehouse.

Senator Whitehouse. Thank you very much, Chairman.

Mr. Dourson, the tobacco industry has manipulated and obfuscated scientific research into the dangers of smoking for decades. Your name comes up over 460 times in the tobacco industry documents made public as part of the tobacco master settlement agreement. Some of your emails are there, corresponding with Philip Morris over the work they hired you to do. Even the articles of incorporation for your organization, TERA, are there in the files of R.J. Reynolds, with a handwritten note next to your bio that the document should be filed under Consultants: Dourson.

In the late 1990s, TERA, the organization you founded, received funding from the Center for Indoor Air Research to study the effects of secondhand smoke. TERA's name pops up

throughout the tobacco database and it has been well documented that the Center for Indoor Air Research was a front group for the tobacco industry.

In 1999, you were the coauthor of a paper that underestimated the effects of exposure to secondhand smoke in the workplace. To reach this industry-favored conclusion, you and the other authors relied on inappropriately combined exposure data collected from workplaces that allowed smoking anywhere and those that allowed it only in designated areas, which skewed the results. That study is also in the tobacco database, compliments of the Philip Morris collection.

Can you and will you provide a full accounting of all the work you and TERA did for the tobacco industry, all the money you and TERA received from the tobacco industry, and the role that you played in the campaign to hide the truth about the dangers of smoking?

Mr. Dourson. Senator, the roles that we played in the tobacco work are a matter of public record in the House Science Space and Technology 2015 hearing. The total value of our tobacco work was approximately $13,000.

The bottom line is that throughout my career, with EPA, TERA, and now with the University of Cincinnati, I have been objective in my work and applied sound science to come to my conclusions.

Senator Whitehouse. And, Mr. Wehrum, you have been leading the fight against EPA's air standards, so it is unclear to me how you are appropriate to serve in the position to enforce those standards. In particular, Executive Order 13770, Ethics Commitments by Executive Branch Appointees, prohibits appointees from participating in any particular matter involving specific parties that is directly and substantially related to their former employer or former clients for the first two years after their appointment. Your ethics agreement states that you intend to sign the pledge.

We are aware of dozens of separate air cases you have worked on during your time at Hunton & Williams. To ensure compliance with the pledge, will you provide for the record all of Hunton & Williams' clients and cases or work from the past two years, noting all clients with whom you have worked, cases on which you have worked, and regulatory work you have done?

Mr. Wehrum. Senator, as I stated previously, there are comprehensive rules of ethics that govern transition of someone like myself from private practice into government service. I already have had extensive conversations with EPA ethics officials, and will continue to consult with them closely if this transition goes forward, if confirmed.

Senator Whitehouse. Do you understand that the Senate has an independent role and has a right to independent investigation

and independent information; that we aren't just an adjunct of the EPA ethics department?

Mr. Wehrum. I am sorry, Senator, I missed the beginning of your question. I apologize.

Senator Whitehouse. Do you understand that the Senate has its own independent oversight responsibility here and that we are not an adjunct to the EPA ethics office?

Mr. Wehrum. I understand, Senator, yes.

Senator Whitehouse. And will you provide the materials to us so we can engage in that oversight?

Mr. Wehrum. Senator, as I said, my commitment is to understand the comprehensive rules of ethics that apply, to get the best advice that I can in understanding what I am required to do and to comply with them and to make every effort to strictly comply.

Senator Whitehouse. Well, that sounds like a no with regards to the Senate.

Did you or your firm do any pro bono work? Pro bono work need not be disclosed. Did you do any pro bono work for the Oklahoma Attorney General's Office while Scott Pruitt was the attorney general?

Mr. Wehrum. I personally have done no work for the State of Oklahoma, and I can't speak for the rest of my partners and associates; I have never made that inquiry, Senator.

Senator Whitehouse. You don't know whether the firm did or did not?

Mr. Wehrum. I do not know, Senator.

Senator Whitehouse. Would you provide the Committee a list of the firm's pro bono work so that we can make an assessment of whether or not pro bono clients ought to be covered by the ethics pledge? At the moment, we simply would never know.

Mr. Wehrum. Well, as I said, Senator, there are comprehensive rules that apply, very strict, including the voluntary agreement that you referred to, which I have committed to sign and --

Senator Whitehouse. And which pro bono work does not apply to, right?

Mr. Wehrum. I am sorry, Senator, I don't understand your question.

Senator Whitehouse. The ethics pledge does not require you to disclose pro bono work, does it?

Mr. Wehrum. I don't know the answer to that, Senator. I believe it applies to any work. There is no difference between pro bono work and work that is done for pay. We owe all clients a common commitment of zealous representation.

Senator Whitehouse. Well, my time has gone by. I hope that these questions and the independent role of this Committee to do oversight is not something that is going to be overrun in

the pursuit of getting these nominees in place.

Senator Inhofe. [Presiding.] Thank you.

Senator Capito.

Senator Capito. Thank you, Mr. Chairman.

Thank all of you for being here today.

Dr. Dourson, you have a long career in industrial chemical risk assessments, including with your consulting firm. As you know, TERA, we talked about this when you came to my office, you have been involved with two cases that are very much touched the lives of my fellow West Virginians, one being the DuPont C8 and Teflon manufacturing issues and the other being the Freedom Industry spills of 2014, a spill of MCHM and PPH.

The accuracy of these safety standards, having lived through these spills personally, myself, the accuracy of safety standards is absolutely critical. It is imperative to have it as quickly as possible and as accurately as possible to protect constituents and to also can have significant implications for liabilities.

This issue is particularly sensitive, as I mentioned earlier, so I believe that we must conduct rigorous enforcement of appropriate safety standards; that we must hold those illegally exposing human health and the environment to harmful substances accountable; and that we must support timely and effective mitigation and cleanup efforts when spills do occur;

and we need to apply the lessons of past incidents to prevent a recurrence of harmful spills and emissions.

Do you share those goals, Dr. Dourson?

Mr. Dourson. Yes, Senator, I share those goals.

Senator Capito. If you are confirmed, how would you direct the Office of Chemical Safety and Pollution Prevention to achieve these goals?

Mr. Dourson. Well, several of these goals reside in the authorities of other EPA offices, but, if confirmed with the Office of Chemical Safety and Pollution Prevention, I will work with other EPA offices, as appropriate, to fulfill these goals.

Senator Capito. In the past, in your past work, I would imagine, in order to get the appropriate process for setting scientifically sound safety levels, that you need to advocate for a transparent peer-reviewed body of science to back reviews of safe levels of potentially harmful substances. Would you agree with that, and what have you done in the past that would convince me that this is the direction you would take the office?

Mr. Dourson. Well, absolutely I agree with this. TERA, the capacity of TERA as the nonprofit 501(c)(3) organization, and then University of Cincinnati, we have had over 100 independent peer review panels. We have different groups come to the panels, different sector representation. We have well-

established conflict of interest statements, and also we have been reviewed by the EPA's Inspector General in 2009 as a way of showcasing our particular independent peer review panel. So I very much agree with your views of independent peer review and transparency as paramount.

Senator Capito. Thank you, Dr. Dourson.

Mr. Ross, you and I talked about intractable water systems. I am still on water because we have had some issues. We have a lot of kind of abandoned former coal camps where the systems are just defunct, but they don't have the money or there isn't the money there to maintain or to get them back into compliance. A lot of these communities, unfortunately, are under boil water orders, and in many cases the EPA continues to issue citations, including fines, but there is no real help here for them in an official management capacity to get them into compliance, and it is my understanding that we really haven't studied this issue as deeply as we should.

I am working on a legislative solution to help deal with this problem and hope that the EPA will be a willing partner. So, I am asking you are you willing to work with me and others to study the challenge posed by intractable water systems?

Mr. Ross. Yes, Senator, very much so. You have put your finger on a very critical priority for me, should I be confirmed, addressing these challenges going forward. It is an

issue that we addressed in Wyoming, we struggle with and we deal with in Wisconsin, and I look forward to working on that at a national level.

Senator Capito. Lastly, Mr. Ross, I would like to give you the opportunity to respond a little bit to what Senator Carper had mentioned. At least the implication that I heard was that because it wasn't expressly in your statements, several of your statements, that you are less committed to the end goal of clean water and environmental safety standards of the highest order, and I would like to know if you have a response to that.

Mr. Ross. Thank you, Senator, for that opportunity. I do. In fact, I wish Senator Carper was here because he gave me a research assignment when I met with him, and to go to him, and the opening lines were for the beauty of this earth and for the beauty of the skies. And he put his finger on why I do what I do for a living. Now, I may disagree a little bit on some approaches, but the ultimate objective I share deeply. So I am fully committed to protecting public health and the environment, should I be confirmed.

Senator Capito. Thank you.

Thank you, Mr. Chair.

Senator Inhofe. Thank you, Senator.

Senator Duckworth.

Senator Duckworth. Thank you, Mr. Chairman.

Mr. Dourson, when your nomination was announced in July of this year, the Trump Administration's EPA circulated press releases proclaiming that there was a "widespread praise for Dr. Michael Dourson." Yet, when I reviewed this glowing yet highly misleading document, I was struck by the absence of public health leaders and dug a little deeper to figure out why. And I say what I found was not pretty.

From the American Petroleum Institute to the Koch brothers, it appears that you have no compunction about accepting millions of dollars from the chemical industry to conduct scientific studies on their behalf. This included a study conducted in Chicago that was paid for by a Koch Industry subsidiary, KCBX Terminals, which is an amazing coincidence. Their study concluded that petroleum coke, or pet coke, as it is known, which KCBX was pushing into the air and lungs of my constituents in the south side of Chicago, was unlikely to harm human health.

This finding, that was bought and paid for by the Koch brothers, dramatically diverges from health assessments published last year by the U.S. Department of Health and Human Services experts on toxic substances and related diseases. Their assessment was consistent with the commonsense observations of Illinois families who literally could see the chemical byproducts floating in the air that they and their children were breathing in.

My constituents needed experts such as yourself to stand up for them and their health, rather than running cover for polluters who are wealthy and willing to poison our children as they put profits first.

Now, look, I understand that you were being paid by a client to produce a result that would benefit the client's own financial interests, and, frankly, over the years, you seem to have become quite good and quite comfortable at producing this type of pseudoscience for the highest bidders. But manipulating science to achieve a predetermined outcome is not what the EPA's Office of Chemical Safety and Pollution Prevention should be about. So you are applying for a very different job now.

In fact, EPA's own website makes clear that pet coke is dangerous to human health. It defies common sense that inhaling toxic particulate matter could be anything but poisonous for people, and especially for children.

Olga Batista, one of my constituents who fought for her family's right to clean air, told me, "When I fought to get the industrial pet coke out of our neighborhood in Chicago, Michael Dourson was working with Koch Industries to minimize our concerns. To charge him with seeing the chemical safety for the entire Country might be good for families like the Kochs, but it certainly would not be good for families like mine."

Anyone who could turn a blind eye to the environmental

injustices that the residents of Chicago have had to bear, as you did, does not deserve my support, and I urge all of my colleagues to join me in opposing your nomination.

Mr. Chairman, I would like to ask unanimous consent to submit for the record a September 7 article from Midwest Energy News.

Senator Fischer. [Presiding.] Without objection.

[The referenced information follows:]

Senator Duckworth. Thank you. This article details the concerns of environmental consumer groups about Dr. Dourson's troubling history of working for Koch Industries to the detriment of public health. The article states, "A study funded by Koch Industries and carried out by Dourson and two other scientists paid for by Koch found no risk of adverse health impacts from exposure to petroleum coke in the air or on surfaces in neighborhoods around the company's two facilities. CDM environmental experts retained by the City of Chicago issued several reports which flatly disagreed with the conclusions by Dourson's colleagues and others hired by KCBX that KCBX's operations were having little impact on the neighborhood."

Mr. Dourson, on EPA's website it states, "Significant quantities of fugitive dust from pet coke storage and handling operations present a health risk." Yes or no, do you agree with this statement?

Mr. Dourson. Senator, first of all, thank you very much. The people of Chicago have every right to --

Senator Duckworth. No, reclaiming my time. My question is, yes or no, do you agree with the EPA's website as it currently states "significant quantities of fugitive dust from pet coke storage and handling operations present a health risk." Do you agree with that, yes or no? You are looking to go to work at EPA. Do you agree with what is on their website right

now?

Mr. Dourson. With all due respect, Senator, what we did with the City of Chicago was looked specifically --

Senator Duckworth. I am not asking about what you did with the City of Chicago. I would like to know do you agree with the current statement. And if you are not willing to answer, that is fine, but I am asking a very simple question. You are applying for a job here at the EPA, and they say on their website, right now, "significant quantities of fugitive dust from pet coke storage and handling operations present a health risk." Yes or no?

Mr. Dourson. Senator, I am not really ready to answer that question without --

Senator Duckworth. Okay. Then I don't think you are ready to go work at the EPA. Thank you.

I yield back.

Senator Barrasso. [Presiding.] Thank you very much, Senator.

Senator Ernst.

Senator Ernst. Thank you, Mr. Chair.

And thank you to all of our witnesses for appearing today.

Mr. Wehrum, I would like to start with you, please. You had stated that Administrator Pruitt had stated, even during his own confirmation process, that he will uphold the law. And I

know in my meetings with Administrator Pruitt he continuously told me time and again that he will uphold the law. And last week the EPA put forward a Notice of Data Availability that would lower the annual biodiesel blending targets by the number of gallons imported, yet still allow those imported gallons to receive compliance credits.

The EPA is also considering allowing exported ethanol gallons to qualify for compliance credits. Both of these moves are contrary to the spirit of the renewable fuel standard and would undermine the program.

Administrator Pruitt pledged to me, both in person and before this Committee, to enforce the RFS as intended by Congress. Will you pledge to uphold the spirit and the letter of this law?

Mr. Wehrum. Senator, if I am confirmed, I would look forward to working on these issues with you.

Senator Ernst. It is a law. Will you uphold the law?

Mr. Wehrum. As I said in my opening statement, Senator, I share the Administrator's commitment to rule of law. That is a big reason why I want to come to EPA and work with Administrator Pruitt. He has a palpable commitment to that outcome. The RFS is incorporated in the Clean Air Act, and my goal, if confirmed, is to understand the law and implement the law.

Senator Ernst. The intent would be to uphold the law,

correct?

Mr. Wehrum. Absolutely, Senator.

Senator Ernst. Okay. That is the commitment that Administrator Pruitt has given to me, has given to many others, and this Committee, is to uphold the law. And I am hoping that you will also uphold the letter of the law, which is the renewable fuel standard.

Do you believe the major regulatory actions that change the underlying operation of the RFS should be subject to full notice and comment period?

Mr. Wehrum. Yes, Senator. If the RFS regulations are changed, that should be done through notice and comment rulemaking.

Senator Ernst. Absolutely. Thank you. And as part of the EPA's 2018 RVO Rule, the Agency proposed reducing the amount of cellulosic biofuel by 150 million gallons, despite evidence of growing production and demand for the second generation biofuel. If confirmed, can you commit to ensuring that the cellulosic RVO numbers are based on an objective analysis of expected production capability?

Mr. Wehrum. Senator, I am going to take half a step back and just say this. The RFS is a very complex program, and there are extensive provisions within the law that govern how it should be implemented, and even more extensive regulations that

EPA has adopted. So I have to say I know a bit about the RFS. I don't know everything about the RFS. So I said this before, but I really mean it, if confirmed, part of what I need to do is fully understand the program, and part of what I need to do is fully understand your concerns, and I commit to you that I will do that, Senator.

Senator Ernst. I do appreciate that and we are happy to assist in any way with the education process there.

The RFS is part of our code, it is the law, and we need to ensure that that law is upheld. Regardless of ideology, the goals of the RFS should be upheld. It is the law.

President Trump has repeatedly stated his strong support for the renewable fuel standard on multiple occasions, and just a few weeks back President Trump made a personal phone call to Senator Chuck Grassley, reemphasizing how much he loves ethanol, loves those biofuels; and so far his EPA is on track to meet the deadline for annual rulemaking. That is important.

Will you commit to upholding the timeliness of the yearly renewable volume obligations required under the RFS?

Mr. Wehrum. Senator, if confirmed, I will do everything I can to make sure we stay on schedule. I understand that there have been concerns with that in the past and EPA has had difficulty keeping up with the schedule, so, if I am confirmed, I will do everything I can to try to keep us on track.

Senator Ernst. Okay. I appreciate your answers very much. We will hold Administrator Pruitt to his commitment to uphold the law. We will do the same of you. If there is a way that we can be helpful in the education process when it comes to the renewable fuel standard, I am ready to assist, my staff is ready to assist, and I appreciate your commitment.

Thank you very much, Mr. Chair.

Senator Barrasso. Thank you, Senator Ernst.

Senator Merkley.

Senator Merkley. Thank you, Mr. Chairman.

Mr. Dourson, chlorpyrifos is a pesticide that is widely used; you find it on a lot of the produce in the fresh vegetable aisle at the grocery store. A lot of that produce has been sprayed with this. A simple yes or no, has chlorpyrifos been linked to brain damage in children?

Mr. Dourson. Although it would be inappropriate for me to prejudge an issue within U.S. EPA since there are some staff deliberations I am not privy to, if confirmed, I will ensure that the issue is fully and fairly --

Senator Merkley. You have no knowledge about the studies that have been done on this insecticide?

Mr. Dourson. No, I am knowledgeable of the studies.

Senator Merkley. Has it been linked to brain cancer in peer-reviewed studies?

Mr. Dourson. I am aware of the studies.

Senator Merkley. Brain damage. Has it been linked in these studies? Can you answer yes or no? Has it been linked to brain damage in children in peer-reviewed studies?

Mr. Dourson. There are peer-reviewed epidemiology studies that show an association in one study and not others.

Senator Merkley. Mr. Chairman, I would like to submit for the record the following peer-reviewed study showing that chlorpyrifos has been linked to brain damage in children.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Merkley. You have been paid to assess the safety of this chemical. Who paid you or TERA to assess the safety of this chemical?

Mr. Dourson. In 2006, in 2005, we did two manuscripts --

Senator Merkley. Who paid you? That is the question.

Mr. Dourson. It was Dow AgroScience.

Senator Merkley. Thank you. So, my understanding of your organization is that you ultimately recommended a safe level of 10 micrograms per kilogram per day. That standard is quite different from the EPA floor for safety for children ages 1 to 2 of .0017 micrograms per kilogram per day. In fact, the safety level you proposed in your study, paid for by Dow Chemical, the very same company that makes this chemical, is 5,822 times less protective than the level proposed by the EPA.

I would like to turn to alachlor and acetochlor, two herbicides that are widely used. Simple yes or no, have they been linked to cancer?

Mr. Dourson. We did the study for a collection of industries --

Senator Merkley. Have they been linked? This is a yes or no question. Your knowledge, your background, your life's work, are you aware of these studies linking these chemicals to cancer?

Mr. Dourson. I am aware of studies with neurological

disturbances with acetochlor.

Senator Merkley. But not cancer?

Mr. Dourson. I am not so sure I recall those data.

Senator Merkley. Mr. Chairman, I would like to submit for the record the following peer-reviewed study linking alachlor and acetochlor to cancer.

Senator Barrasso. Without objection.

Senator Merkley. Thank you very much.

[The referenced information follows:]

Senator Merkley. Mr. Dourson, I understand you have been paid to assess the safety of both of these chemicals; therefore, your familiarity with them I anticipate to be significantly more. What organization paid you to assess the safety of these two chemicals? Just the name, please.

Mr. Dourson. Dow AgroSciences. And we also had Monsanto. I believe both of them contributed to a collaborative project that included a group of people, including government scientists, that helped with the assessment

Senator Merkley. Thank you. That is my understanding, those two companies.

Mr. Dourson. Right.

Senator Merkley. Your organization ultimately recommended reference dose for the degradates or breakdown products that would translate to a safety level of 5,600 parts per billion. That is a significantly weaker standard than the standard set by the State of Wisconsin of 20 parts per billion, of Minnesota at 60 parts per billion. In fact, the safety standard proposed is 280 times weaker than standards set by Wisconsin and 70 times weaker than that of Minnesota.

The same trend is true for acetochlor. Your standards were 15 times weaker than standards set by Minnesota. This is a disturbing pattern for someone charged with representing the safety of our citizens from these chemicals.

Mr. Chairman, I would like unanimous consent to submit for the record a letter from a wide range of worker advocacy organizations, including many farm worker advocacy organizations.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Merkley. Thank you.

This letter states, "The nomination of Mr. Dourson to be in charge of chemical safety at the EPA is a threat to our Nation's children, farm workers, communities at the front lines of exposure to chlorpyrifos."

Flame retardants are chemicals that are used in everything from car seats to couches. EPA has placed many of these chemicals on its list of chemicals it wishes to examine first under TSCA. Ten years ago, the biggest companies that made these chemicals formed an organization, Citizens for Fire Safety, to promote their use.

In 2012, the group was found to have paid doctors to testify against proposed legislation to ban the chemicals. These doctors described heartbreaking stories about burned children who died in their arms, but might have been saved if only flame retardants had been used on their burning sheets and pillow cases.

Just one problem: those children did not exist. These stories were fabricated. Citizens for Fire Safety folded in 2012, right after this shameful scam was exposed. And I note this because the very same flame retardant manufacturers that backed Citizens for Fire Safety then announced they would continue their advocacy efforts through the North American Flame Retardant Alliance, which was part of the American Chemistry

Council. That Alliance consistently promotes the use of flame retardants, downplays the risk to health, lobbies against proposals to regulate them.

Mr. Dourson, according to documents you provided the Committee, you were a member of the North American Flame Retardant Alliance Scientific Advisory Council from early 2012 until just a couple months ago. You list being paid $10,000 in consulting fees. You have led research funded by the same flame retardant companies that were backing the Citizens for Fire Safety and the Alliance.

Having taken this employment, this advocacy, it is simply hard to conclude how you can be an objective and impartial regulator when it comes to these flame retardants. If confirmed, do you commit to recuse yourself from working on any chemical safety matter related to flame retardants?

Mr. Dourson. Senator, we have, TERA and the University of Cincinnati, has worked with a number of organizations for flame retardants, including Consumer Product Safety Commission, Health Canada, the National --

Senator Merkley. That is not the question I am asking.

Senator Barrasso. Senator, your time has expired.

Senator Merkley. It is a simple yes or no question.

Senator Barrasso. And there is a second round. We will have plenty of time for a second round of questions.

Senator Merkley. Yes or no, Mr. Dourson? Can you answer the question?

Senator Barrasso. I ask all members to keep this in their five minute rounds.

Senator Merkley. Well, we would be done if he would answer the question, Mr. Chairman. It is a simple yes or no question.

Mr. Dourson. I will rely on the guidance from the EPA ethics --

Senator Merkley. That is not sufficient. Thank you.

Mr. Dourson. -- to determine any issues --

Senator Barrasso. You will have time for a second round of questions to further pursue.

I would like to introduce for the record a letter from Dr. James Klaunig, who served as Indiana's State Toxicologist for over a decade, is now Professor of Indiana University School of Public Health, who wrote, "Dr. Dourson is an exceptional scientist and leader in the fields of risk assessment and toxicology. As the Assistant Administrator of the EPA Office of Chemical Safety and Pollution, he would bring over a generation of experience in chemical safety and human risk assessment" to submit for the record.

[The referenced information follows:]

Senator Carper. Mr. Chairman, I would like to ask unanimous consent, if I could, to submit for the record an October 3rd letter from the International Association of Firefighters to members of this Committee. This letter expresses the Association's strong opposition to the nomination of Dr. Dourson.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Barrasso. Senator Fischer.

Senator Fischer. Thank you, Mr. Chairman.

Mr. Wehrum, last week the EPA proposed to dramatically change the RFS in a proposal that is typically just a request for additional data. Moreover, there are press reports that EPA wants to attach a compliance credit to exported biofuels, an act that would completely undermine the integrity of the program, not to mention, I believe, harm the reputation of the United States as a fair trading partner.

I have some real concerns with the approach that the Agency has recently taken on the RFS, especially after Administrator Pruitt committed to me, in this room, as he did to Senator Ernst, he also committed to me in two private meetings to uphold the law as intended.

As you are aware, the RFS is the law until 2022. Are you aware of that?

Mr. Wehrum. And beyond, Senator, yes.

Senator Fischer. And beyond. The EPA could look at it after 2022, is that correct?

Mr. Wehrum. That is correct, Senator.

Senator Fischer. What are your thoughts on the EPA's, I believe, attacks on the RFS that we have been seeing lately?

Mr. Wehrum. Senator, as I responded to Senator Ernst earlier, the RFS is a very complicated program, and I am not

apprised of all of the recent actions and all of the recent activity under the RFS, but it certainly will be one of my primary responsibilities, if confirmed to this position; and as I committed to Senator Ernst, I will commit to you that I will work very closely with you and with your staff and with your constituents to understand your concerns, and my goal would be to implement the RFS as faithfully and completely as I could, Senator.

Senator Fischer. And as Senator Ernst asked, would you commit that the RFS is the law and it is in law until 2022?

Mr. Wehrum. Senator, there is no doubt the RFS is in law. It is included in the Clean Air Act; it was an amendment to the Clean Air Act.

Senator Fischer. Until 2022, at the earliest, when the EPA could look at it?

Mr. Wehrum. Yes, Senator. So the statute specifies renewable volume obligation goals through 2022, and then leaves it to the discretion of the Administrator, in consultation with others, to determine what those goals might be beyond 2022.

Senator Fischer. The Assistant Administrator of the Office of Air and Radiation plays a key role in ensuring the RFS functions according to congressional intent. And with the President's commitment to the RFS and the biofuel production that we see, would you commit to upholding the President's

commitment?

Mr. Wehrum. The President, Senator, would be my ultimate boss, so our job is to implement the policy as the President specifies.

Senator Fischer. According to the law.

Mr. Wehrum. According to the law, that is absolutely correct.

Senator Fischer. Do you think that the EPA has the authority to artificially reduce biofuel blending that runs counter to the intent and the literal reading of the RFS law?

Mr. Wehrum. Well, Senator, I have said a couple times the statute is pretty extensive, the statutory provisions; they go on for many pages in the Clean Air Act, and the regulations are even more extensive than that. What I do know is that there is discretion built into the law for the Agency and others to use in making sure that the law can be implemented according to the law, but also be effective as a practical matter.

So I understand much of the concern is with regard to how that discretion has been implemented and, again, I will fully commit to you that, if confirmed to this position, that I would work very closely with you to understand your concerns, to understand the concerns of your constituents, and to try to implement the law as best we can.

Senator Fischer. Do you believe it is the intent of the

RFS to increase the production of American-made renewable fuels and also to decrease our Country's reliance on foreign oil?

Mr. Wehrum. I believe there is no doubt that that is the case, Senator.

Senator Fischer. And is it in the best interest of our national security that we have a reliable, stable fuel supply?

Mr. Wehrum. I believe that to be true, and energy security clearly was one of the motivating factors behind the enactment of the RFS, Senator.

Senator Fischer. And do you believe it was also the intent of the legislation to have a balanced portfolio when it comes to our energy sources in this Country?

Mr. Wehrum. Senator, I am not exactly sure what you mean by that. I would be happy to respond; I am just not sure what you are getting at.

Senator Fischer. Well, I look forward to furthering our understanding of the situation in future conversations.

Mr. Wehrum. As do I, Senator.

Senator Fischer. Thank you.

Thank you, Mr. Chairman.

Senator Barrasso. Thank you, Senator Fischer.

Senator Markey.

Senator Markey. Thank you, Mr. Chairman.

Mr. Dourson, you and the organization you have led, known

as Toxicology Excellence for Risk Assessment, have been routinely paid and funded by chemical companies and polluters defending the need for weakened chemical safety standard. For example, in 2014 and 2017, you led two industry-funded studies that defended a safe level of exposure to the carcinogen 1,4-dioxin that is 1,000 times greater than EPA's health-based safety level; 350 parts per billion versus EPA's .35 parts per billion. One thousand times greater exposure to dioxin.

Dioxin is an industrial chemical found in a wide range of products and known to frequently contaminate water systems. According to water sampling studies conducted by the environmental working group Water Surprise, for more than 7 million Americans in 27 States are contaminated with the chemical at a level higher than EPA's health-based standard. Just last year the EPA announced dioxin to be one of the first chemicals to be evaluated by the office to which you were nominated under the new Toxic Substances Control Act, which I helped to write.

Given your recent work defending a 1,000 times weaker safety standard for dioxin than what the EPA determined will cause cancer, will you recuse yourself from working on this chemical if you receive confirmation for this position?

Mr. Dourson. Senator, I worked with a team of groups, including five different U.S. States, three different

international organizations --

Senator Markey. Will you recuse yourself from the consideration of dioxin?

Mr. Dourson. -- several consulting firms, and several industries to advance the science that EPA put out in its 2013 document --

Senator Markey. Will you recuse yourself? Will you promise not to weaken the standard the EPA has set to protect the public's health against the carcinogen dioxin? Will you not weaken that standard?

Mr. Dourson. If confirmed, I would bring new science and thinking into the Agency and --

Senator Markey. Your science says that dioxin can be exposed to by human beings at 1,000 times greater rate than the EPA has determined is safe for human beings. Will you recuse yourself?

Mr. Dourson. This new information is new information and new science since the time of the EPA document --

Senator Markey. I hear you. You are not going to give us a commitment, Mr. Dourson. And what is going to happen is, when you arrive at the EPA, you are going to have been the defendant's chemical lawyer, who then becomes the judge over the very science, bogus science which you have been propounding. You are not just an outlier on this science; you are outrageous

in how far from the mainstream of science you actually are.

They are giving out the Nobel Prizes in chemistry this week. If there was a Nobel Prize in chemistry in reverse, you would be the clear winner this week in the United States and the world. This is an absolute atrocity.

Let me move on, then, to TCE, a volatile organic compound and common industrial solvent that has been linked to cancer, congenital heart defects, other health issues. It is a root by which humans actually contract cancer. Because of the wide range of health concerns that can occur through even short-term exposure to TCE, the EPA has proposed banning TCE in commercial vapor degreasing and dry cleaning. Other uses of the chemical have been prioritized by the EPA for assessment under the updated TSCA law.

A study you led and funded, Mr. Dourson, in 2016 proposed a safety range for TCE that is 1.5 to 15 times less protective than the EPA's own drinking water standard. Given that the EPA will soon be finalizing its proposals on TCE for certain uses, and assessing the remaining uses for regulation, will you commit to not working to weaken the standards the EPA has already proposed?

Mr. Dourson. Again, Senator, based on existing science, EPA came out with an assessment. Subsequent to that science, I worked with a consortium of individuals and groups of various

sectors to bring additional science to EPA's good questions. It is inappropriate for me to prejudge an issue, but, if confirmed, I will ensure that the issue is fully and fairly considered in a publicly transparent manner.

Senator Markey. Mr. Dourson, it is pretty clear that you have never met a chemical you didn't like, and your previous studies have already prejudged the exposure. You are a scientist who already did work on this subject and you have come to conclusions which are fundamental threats to the public health and safety of this Country. You should commit here to recusal on the issues where you have already reached conclusions.

Mr. Dourson. The published paper we used, Senator, was using U.S. EPA safe doses and also EPA's method for estimating ranges.

Senator Markey. EPA found 1.5 to 15 times higher risk than you did, and that is not consistent with the conclusion --

Senator Barrasso. There will be a second round of questions, Senator, for your opportunity.

Senator Boozman.

Senator Boozman. Thank you, Mr. Chairman. I am about to lose my voice, but I did want to ask a couple questions.

Mr. Ross, in recent years EPA has made it increasingly difficult for Arkansas to manage its delegated national

pollutant discharge elimination program and responsibilities under the Clean Water Act.

Too often, permits, rulemakings, or other actions sent to EPA for review were returned with demands for more restrictive requirements, additional expensive data collection, or other costly, onerous requirements. New leadership at EPA has an opportunity to correct this coercive federalism and, instead, restore cooperative federalism, as intended.

The States have the expertise and local knowledge necessary to administer our environmental programs. The EPA has been proud to say that the States are essentially in charge and that they will defer to them, and that is true, as long as they agree with what the States come up with.

I guess the question is EPA has the opportunity to play a significant role in supporting a move back to cooperative federalism. Can you please explain how you plan to change the EPA's State dynamic?

Mr. Ross. Thank you for the question, Senator. I do believe strongly in cooperative federalism. One of the things that I have heard in the run-up to this hearing, and also working for two different States over the last several years, is the frustration in the relationship between the Federal Government and the State government; and I commit to taking that head-on. And one of the ways that I have heard is to make sure

we get outside the Beltway; to go out, work with States, figure out the relationships, and listen and develop a common relationship on how best to manage our Nation's resources.

Senator Boozman. Very good.

Mr. Wehrum, more than 1,000 U.S. companies and organizations sent a letter to Congress and the Administration calling for lawmakers to preserve the voluntary Energy Star program that was recently proposed for elimination. This program, founded in 1992 during the Bush Administration, is an extremely successful public-private partnership model. Consumers enjoy the benefits of the program, which encourages innovation and has saved taxpayers over $430 billion since 1992.

Do you view the Energy Star program as a successful public-private partnership?

Mr. Wehrum. Senator, Energy Star is a unique program, and products that are allowed to carry the Energy Star label must be shown to be cost-effective, energy efficiency technologies, which means they pay for themselves over time, so a very strict criteria are applied to deciding where the Energy Star label can be applied. So it is a different kind of program because it is a voluntary program and not a mandatory regulatory program, and it is a program that has been widely used in many different industries.

Senator Boozman. So you think it has been successful?

Mr. Wehrum. Personally, I do believe it has been successful, Senator, yes.

Senator Boozman. Thank you.

Dr. Dourson, for the past eight years EPA has acted as a political arm of the Obama Administration. Time and time again we have seen rules developed not based on sound science, but on political ideology. When rules have been released, States, the private sector, and even Congress have had trouble getting EPA to show the science that helped develop these rules. As an Assistant Administrator of the Office of Chemical Safety and Pollution Prevention, can we expect EPA to be more transparent as to how rules are developed?

Mr. Dourson. Yes, Senator. My career has been based on transparency and collaboration, and I intend to do so if confirmed.

Senator Boozman. Good. That is very, very important, to have access. It is one thing to come out with a finding, but certainly that needs to be transparent. We need to have the ability to see the science behind it.

Thank you, Mr. Chairman.

Senator Barrasso. Thank you, Senator Boozman.

Senator Booker.

Senator Booker. Thank you, Mr. Chairman.

Mr. Dourson, I have to say, and you have heard from my

colleagues, that I have only been in the Senate for four years. But your nomination is one of the more shocking that I have seen, and your job that you are being nominated to, as my colleague just said, is to the Chemical Safety and Pollution Prevention Office, and the mission, as I hope you have memorized, frankly, is to protect families and the environment from the potential risks from pesticides and toxic chemicals.

You heard already from some of my colleagues; Senator Duckworth talking about the south side of Chicago. I live in a community that has seen the effects of corporate villainy to the point now that our soil is poisoned, we can't plant many places in our city. The air is poisoned, asthma rates, lead poisoning rates, the water is poisoned because corporations, pressing their hand and their power and their money, have been able to poison communities to the extent that you have autism rates, birth defects, cancers in our children in places in this Country that are unconscionable.

And I really hope, as you sit there on your perch right now, that you have the capacity to have empathy for those people, many of whom are sitting behind you right now, who view your nomination with fear, with anguish. And that fear and anguish is not partisan; it is not coming from the thin air. As you have heard from my colleagues, it is coming from looking at your record.

I would imagine that somebody would be nominated that has a track record of standing up for those vulnerable people in our Nation. But my colleague after colleague has now pointed out what you have been doing with your professional career. And I will just go through, because it almost seems like a bit of a scene out of some Disney movie where there are corporate villains that do harm to our environment, or at least seek to if it weren't for the heroic actions of others.

So, this is the process. First, a company or industry identifies a problem, and you have already talked to Dow and Monsanto and chemical companies like this, and they want to exercise influence to stop safety measures being done by governments. So, what happens is that the corporation hires your organization, TERA, to come up with a recommendation, a safety standard so that they can try to defend their desire to put more poisons into the atmosphere, into the soil, and to our water. So, what happens is that you come up with the science to back up these corporations.

But I try to give this a fair measure. I mean, the surface information I received was so astonishing that you would be sitting where you are as a nominee that I wanted to dig into some of the stuff, and came up with the same things that other folks came up with. You have heard these chemicals now mentioned by my colleagues: alachlor and acetochlor. They are

banned in the European Union. Literally banned. You all advocated for limits in the water based on your science that ended up being 280 times higher than the State of Wisconsin believed was safe for their kids.

So, I know that you can pick your chemical here. The pattern I have seen from just looking at your record, sir, goes again and again and again. Corporations fund studies from TERA and have science on here is chlorpyrifos that literally comes out. Your studies, this one, in the case of that chemical, that affects farm workers and children, was 1,000 time higher than the ultimate EPA standard. A thousand times higher.

So clearly, to me, we have a situation where you are about to be the person that is a head of an office that has the mission of protecting children, and you have a pattern of working with corporations to advocate for a position that is hundreds, if not thousands, of times more dangerous than the standards we set and that we see other nations who are moving to ban the very chemicals that you have been advocating for as safe at higher levels.

The Chairman said that you have been a leader, read a letter that calls you a leader in human risk assessment. I don't see this as leadership when you are advocating for levels that will literally poison people. It doesn't make you seem like a leader in your career; it seems like you are a lackey, a

corporate lackey doing the bidding of people that are trying to create in communities like the one I live in, where my niece was born, to create environments that are chemically toxic.

So, I have heard you not answer this question over and over again, but I am appealing to you to recuse yourself. It seems logical and legal that you would recuse yourself from making decisions on chemicals from companies that have paid you. And I don't understand any defense to that. If these corporations were going to be advocating for standards that you set at levels that poison human beings, it seems logical that you should not be now the judge of whether those chemicals should be released, or changing standards that now will reflect what those corporations wanted.

So, I doubt I am going to get it, but will you recuse yourself, sir?

Mr. Dourson. Senator, I will follow the EPA ethics officials' determination for any recusal.

Senator Booker. And that is the point I will conclude with, sir, because you are going to follow the ethics that you think that the EPA is going to give you, and I am talking to you not just about ethics and law, but I am talking to you about conscious and moral values.

And it seems like you have been willing to bend those ideals, because I don't know if you have children, I don't know

if you have grandchildren, I don't know if you have nieces or nephews like me, but I doubt you would let them live next to the companies that are spewing this stuff in the air. You would not let them live there and accept standards in their atmosphere that you have been claiming for your entire career are safe. You would not do it. But you are advocating for positions, and there are people here right now, you are advocating for positions that are going to endanger those children that are in those communities.

Thank you very much.

Senator Barrasso. And there will be time for a second round of questioning.

I would like to submit for the record a letter by Dr. Jennifer Seed, who has worked for 23 years in various positions at the Office of Pollution Prevention and Toxics at the EPA who wrote that Dr. Dourson has a long history of supporting regulatory agencies both at the State and Federal level. As an EPA employee, he played a paramount role in the development of risk assessment practices that are now used internationally.

Unanimous consent that the letter be admitted.

[The referenced information follows:]

Senator Carper. Mr. Chairman, I would also like to ask unanimous consent to submit for the record a September 19th letter from several environmental organizations to members of our Committee, and on behalf of their millions of members, these organizations write to oppose the nominations of Dr. Dourson and Mr. Wehrum. It has raised serious concerns regarding the nominations of Mr. Ross and Mr. Leopold to their respective positions at the Environmental Protection Agency.

Senator Barrasso. Without objection.

Senator Carper. Thank you.

[The referenced information follows:]

Senator Barrasso. Senator Rounds.

Senator Rounds. Thank you, Mr. Chairman.

Dr. Dourson, if you are confirmed to lead the Office of Chemical Safety, you will be responsible for implementing the TSCA reforms passed by Congress last year. This Committee has a strong interest in making certain that TSCA reforms are implemented properly and in a timely fashion.

Can you commit to us that you will keep Congress apprised of the status of TSCA implementation and answer congressional requests for information about the program?

Mr. Dourson. Yes, Senator. As I said in my opening statement, the Lautenberg Chemical Safety Act was a significant milestone, celebrated broadly by scientists in my sector, so I will commit to working with this Committee and Congress to make sure it is implemented correctly.

Senator Rounds. Dr. Dourson, in the prior administration we heard reports of the EPA not using up-to-date or the most relevant science when making chemical safety decisions. Can you explain to me your views on the importance of science at the Agency, particularly in the decisions being made by the Office of Chemical Safety?

Mr. Dourson. Senator, good science and use of good science is a touchstone of everything that U.S. EPA does, and other Federal agencies, I am sure, as well. Bringing good science and

doing it in a collaborative and transparent manner has been my life's passion. Collaboration is important and, if confirmed, I will work with the talented people of the Office of Chemical Safety and Pollution Prevention and make sure that the best science is looked at and reviewed, and used to protect the public health, including the most vulnerable members of our population.

Senator Rounds. Let me get into this a little bit more, because when we talk about sound science and we talk about good science, the science community has a unique way of looking at the way that it is reviewed, the way that we go about establishing the processes and so forth. You are a scientist. Can you share with the Committee your analysis of what makes good science and sound science, and what the expectations should be of this Committee of the EPA in the way that they set up work with the science community to develop recommendations based on sound science? What goes into it?

Mr. Dourson. Well, the sound science, if you would take a particular chemical, it doesn't matter which one for an example, you would look at all the available information on that particular chemical.

Senator Rounds. Who looks at it? Who looks at the information?

Mr. Dourson. Well, it would be the scientists within the

Office of Chemical Safety and Pollution Prevention, and it could be exposure science, it could be toxicology, it could be epidemiology. But you bring all this together and you work with teams within the organization to review all this data. The next step is to look and winnow out and use the most significant or credible science on which to make the basis, your assessment of chemical safety or exposure. And once that determination is made, you do this in an open fashion, you ask for information, then you have an independent peer review.

Senator Rounds. Talk about that a little bit. I think that is the important part here that sometimes gets missed.

Mr. Dourson. Well, the independent peer review, U.S. EPA has several ways to do this, and they have several very good organizations within U.S. EPA. The Science Advisory Board, of which I have served as a member until just a couple days ago when my six-year term was up, is an example of very good independent peer review. They are independent of the Agency, the group within EPA that does this and they bring scientists from the outside sector that are multiple disciplines and also multiple sectors in to review the information that EPA puts out. That is very important.

Another important thing is access to all of the available data. There are sometimes studies you don't have access to the raw data. Sometimes that is difficult to make decisions in that

case.

Senator Rounds. Okay.

Mr. Ross, in the last administration we uncovered several instances in which regulations were promulgated by the EPA without taking into consideration the opinions of the Science Advisory Board or not properly submitting information to the Science Advisory Board to review prior regulating.

If confirmed, will you commit to relying on the best available science when regulating?

Mr. Ross. Absolutely, Senator. I think sound science, together with the proper application of law, are the twin pillars of sound government policy decision-making, so absolutely.

Senator Rounds. Thank you.

Thank you, Mr. Chairman.

Senator Barrasso. Thank you very much, Senator Rounds.

Senator Harris.

Senator Harris. Thank you.

Mr. Wehrum, Section 209(b) of the Clean Air Act recognizes California's authority to increase air pollution standards for new motor vehicles. I am sure you are familiar with that.

Mr. Wehrum. I am, Senator.

Senator Harris. And I have an email that is dated March 15th, 2006, from you to the EPA staff, where you told staff that

you thought the EPA should preempt California and deny the waiver.

And, Mr. Chairman, I would like to enter that into the record.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Harris. Also, in 2008, there was a House Committee on Oversight and Government Reform investigation showing that the EPA career staff and lawyers unanimously and uniformly thought the waiver should be granted.

And I have that document as well, Mr. Chairman, that I would like entered.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Harris. Will you commit, if confirmed, to follow the science and law, and heed the advice of career staff in the Department, and recognize and preserve California's authority to issue its own new motor vehicle standards as it relates to emissions?

Mr. Wehrum. Senator, the provision that you refer to, in appropriate circumstances, certainly does allow California to implement its own motor vehicle standards, and my commitment to you would be to understand that provision as much as possible and implement it as faithfully as possible.

Senator Harris. And are you familiar with the several decades of practice and court decisions that make it clear that the EPA should be deferential to California and only deny the waiver if the EPA could "affirmatively demonstrate that California, or any State, was arbitrary and capricious"?

Mr. Wehrum. Senator, EPA has an obligation to review waiver requests and make a determination if they are adequate in light of the criteria set out in that provision, yes.

Senator Harris. Okay. And you are familiar with these decades of practice that have made that finding?

Mr. Wehrum. I can't say I am familiar with every single waiver that has been issued, but I am familiar with the waiver process, Senator.

Senator Harris. Okay. I would urge you to become familiar

with it, if confirmed. Thank you.

Mr. Dourson, in my home State of California, the City of Santa Clarita has struggled with groundwater contamination from perchlorate. The toxic chemical is a byproduct of producing munitions and rocket fuel, and it affects the thyroid's ability to regulate metabolism and guide a child's development.

In Santa Clarita, for more than 50 years, the Whittaker Bermite Corporation contaminated the soil and groundwater across a 1,000-acre site in the heart of the city. You, sir, were hired by companies that have used perchlorate, like Lockheed Martin and Boeing, to study this toxic chemical, and you rewarded them by marking that the safe level would be eight times higher than what the EPA said would be safe.

In 2013, the EPA's own independent Science Advisory Board asked you to recuse yourself from perchlorate matters because of this conflict of interest.

Can you commit to this Committee that you will recuse yourself from any EPA decision having to do with perchlorate?

Mr. Dourson. Again, Senator, I am going to rely on guidance from EPA ethics officials to determine any issues for which I need to be recused.

Senator Harris. Sir, you profess to be a professional. And you must be, then, aware that professional standards as it relates to ethics, and as my colleague has mentioned, also moral

standards, would demand that we are aware of not only an appearance of conflict, but actual conflict. And if we are to be leaders, it would suggest to me that you, as a leader, as you say, in this field, would understand the importance of making the decision yourself, instead of waiting for someone else to tell you that you should recuse yourself from these matters.

Are you going to wait for permission from the ethics to exercise your discretion as it relates to other matters? Do you believe you possess discretion in this position, if confirmed?

Mr. Dourson. Senator, as I stated in my opening statement, I commit my mind, body, and spirit to protecting the public health, if confirmed, in this organization, the Office of Chemical Safety and Pollution Prevention. The staff is very talented. I would be humbled and honored to serve with them, but ultimately protect the public health, including those sensitive members of the population.

Senator Harris. Are you aware that, if confirmed, you would have the discretion to recuse yourself and would not have to be ordered to do so by anyone?

Mr. Dourson. Again, I can depend on EPA ethics officials to advise me in that capacity.

Senator Harris. Are you aware that you would have the discretion to make that decision, sir?

Mr. Dourson. I would, again, defer to EPA ethics officials

to advise me in that capacity.

Senator Harris. I have nothing else.

Senator Barrasso. Thank you, Senator Harris.

Senator Wicker. Thank you, Mr. Chairman

Dr. Dourson, am I pronouncing your name right?

Mr. Dourson. Yes, sir.

Senator Wicker. My first question deals with the Federal Insecticide, Fungicide, and Rodenticide Act, FIFRA. As we all know, pesticide policy in the United States is supposed to involve a balancing act between the potential hazards of a pesticide and the benefits of the product based on real-world impacts. Pesticides can poison you, can hurt people. But without pesticides, we would not be able to supply the world with food and fiber as we do; hence, the balancing act with real-world facts under FIFRA.

There is a feeling that, under the Obama Administration, decisions were made by EPA that were beginning to resemble not what we call facts on the ground, but a precautionary approach to regulation, where regulatory action was taken to prevent theoretical risks, unproven risks. So would you please comment on that issue and will you tell the Committee about your commitment to science-based risk assessment of pesticides under FIFRA?

Mr. Dourson. Senator, my career, including more than a

decade as an EPA scientist, focused on protecting public health by developing, reviewing, and communicating risk assessment values done in an impartial and objective and transparent way. If confirmed, I commit myself to you and this Committee, and to the American people, to continue in that effort.

Senator Wicker. Well, okay. Do you have any insights to give to the members of the Committee about my concern or the concerns of people like me that there has been too far of a move toward precautionary regulation and prevention of theoretical and unproven risks, rather than facts on the ground?

Mr. Dourson. The area that I study and work in, and the area of the Office of Chemical Safety and Pollution Protection risk assessment is preventive medicine. In some regards, it is precautionary. However, there have been tendencies in certain cases to be additionally precautionary, more protective than needed, and you are correct, Senator, in those particular situations you might have an erosion of this balancing act within FIFRA.

If confirmed, I will go in and work with the talented staff of the Office of Pesticide Programs and bring impartiality to it, or maybe maintain that balance if it is already there, so that you can be assured and the American people can be assured that FIFRA is regulated in the way it is intended to be regulated as a balance between risk and benefit.

Senator Wicker. Okay.

Well, let me move, then, to federal procurement of wood and guidelines from the Federal Government and from EPA in that regard.

I can tell you that folks in my State of Mississippi feel that the Federal Government has unduly discriminated against domestic lumber and domestic wood production by this adherence to one form of certification from the Forest Stewardship Council, ignoring and to the detriment of other initiatives such as the Sustainable Forestry Initiative, SFI, or the American Tree Farm System, ATFS.

What do you know about that and do you have any information to share with the Committee about guidelines issued for purchasing lumber and wood discriminating against domestically produced wood?

Mr. Dourson. Senator, I am not familiar with that particular issue but, if confirmed, I would be more than happy to work with you individually or this Committee and appropriate Chemical Safety and Pollution Prevention staff to make sure that such discrimination is at least understood and, if not appropriate, to be removed.

Senator Wicker. And I will note, Mr. Chair, that I asked Administrator Pruitt essentially the same thing when he was here in January.

So, doctor, I would just like to make sure, will you commit to working with me and your colleagues at EPA to fix this flawed policy so that EPA promotes the use of all domestic forest products in its purchasing policy?

Mr. Dourson. I would be happy to work with you, Senator, on that.

Senator Wicker. Now, Mr. Chairman, my time has expired. I understand we are going to have a second round. If I could squeeze in a quick question, I could be out of your hair.

Senator Barrasso. Senator Gillibrand, you are next. Are you okay with him doing that?

Senator Wicker. I am sure she will love the question.

[Laughter.]

Senator Wicker. Because I was going to ask Dr. Dourson, Mr. Leopold, Mr. Ross, and Mr. Wehrum did they agree or disagree that Waters of the United States and the Clean Power Plan involved a reach beyond the authority granted the EPA by Congress.

And we will start with Mr. Wehrum down here.

Mr. Wehrum. Well, I can speak to the Clean Power Plan, Senator, and I think I would just refer to the action of the U.S. Supreme Court, which, in an unprecedented move, stayed implementation of the Clean Power Plan even before the D.C. Circuit had rendered a decision on the underlying litigation.

The Court has never taken an action like that in its history, and I think it says a lot about that Court's perspective on the legal viability of the CPP.

Mr. Ross. Senator, I can speak to the Waters of the United States litigation, and I will defer to the same thing. There are two Federal courts who have taken the extraordinary step of staying implementation of a rule both on procedural and substantive concerns. So I think the courts have sent the message as to whether or not there are some legal infirmities there.

Mr. Leopold. Senator, I will echo the comments of my colleagues here and that courts have taken extraordinary steps that are unprecedented in staying both of those regulatory actions. Thank you.

Mr. Dourson. Senator, as a scientist and not a lawyer, I think I will withhold comment about the legalities of this particular thing. As a member of EPA's Science Advisory Board, however, this rule came through us and I had some comments on that and some scientific risk issues that were raised during the meeting. But, again, I have no comments on the legality.

Senator Wicker. Are those a matter of public record?

Mr. Dourson. Yes, Senator, they are.

Senator Wicker. Okay. Could you make those available to the Committee?

Mr. Dourson. Sure. Absolutely.

Senator Wicker. Thank you.

And let the record reflect that I owe Senator Gillibrand at least my three minutes.

Senator Gillibrand. I will hold you to that.

Senator Barrasso. Senator Gillibrand, thank you for your patience. Thank you. Appreciate it.

Senator Gillibrand. Thank you, Mr. Chairman.

Mr. Dourson, today, in the audience, are New Yorkers whose lives have been personally impacted by the chemical PFOA: Michael Hickey, Laureen Hackett, Gwyneth Young, and Lee Marby. They live in the village of Hoosick Falls, New York and the town of Petersburg, New York, two neighboring communities that together are going through a gut-wrenching experience of discovering that their drinking water, the water that they drink, the water they give their children, the water they cook in, the water they bathe in, is contaminated by PFOA. Michael Hickey has lost his father to kidney cancer and they have family members, friends, and neighbors affected by illnesses that aren't known to be linked to PFOA.

These families are so frightened. I live so close to where they live. I can't imagine what it would be like to live and not know if the water that your children are being bathed in is safe; if they are going to get cancer when they are 25; if they

are ever going to be able to have kids. Their lives are so affected by the decisions that you have made, and I don't think you recognize when you are hired by a company, when you are hired by the DuPonts of the world, when you are hired by the Monsantos of the world, you are being asked to change how governments, how leaders look at these risks and whether they say it is safe or not.

We have lived through this. After 9/11, the EPA said the air was safe. Do you know how many people in their 40s and 50s and 60s have died of cancers you would not see in people who are younger than 80? Because you have such a responsibility. You are no longer being paid for your opinions. You are here as a public servant. Your job is to serve the people sitting behind you. Your job is to look at their children in the same way you would look at your own children or any other person you love. And the decisions that you are going to make will affect hundreds and hundreds of more children just like them.

Now, you have refused to answer the question that my colleagues have asked you, if you would recuse yourself. If I was you, I would recuse myself over and over again if I was paid for a determination that in many instances were multiples, hundred times, thousand times more than what the EPA has recommended.

Now, I can take you through the drill. Do you believe that

PFOA has been linked to cancer, including kidney cancer?

Mr. Dourson. I believe the scientific studies associated with PFOA indicates that it is linked to some kinds of cancers.

Senator Gillibrand. Concerns about PFOA are not unique to upstate New York, but your organization, TERA, was hired to assess the safety of PFOA in West Virginia in 2002. We know that DuPont manufactures PFOA in Parkersburg, West Virginia, and I understand they paid you for that assessment, correct?

Mr. Dourson. The State of West Virginia hired us to do that assessment, Senator.

Senator Gillibrand. Was DuPont involved at all?

Mr. Dourson. Senator, I don't know about where the State of West Virginia got its money.

Senator Gillibrand. Did TERA recommend, in a risk assessment, that water with PFOA levels of up to 150 parts per billion was safe to drink?

Mr. Dourson. No, Senator, TERA did not; that was a collection of 10 individuals, five of them government agents, government employees, three of them U.S. EPA that made a consensus decision on that.

Senator Gillibrand. But it was 150 parts per billion.

Mr. Dourson. The science at the time indicated in a consensus manner of all the scientists at the table that that was the appropriate level to base it on.

Senator Gillibrand. Did you know that DuPont had an internal recommendation guideline of 1 part per billion at the time?

Mr. Dourson. Our understanding at the time was the 1 part per billion was a placeholder; it wasn't based on a full reading of the science. They were waiting for the science panel to do it.

Senator Gillibrand. Do you know that EPA has a health advisory level of .07 parts per billion?

Mr. Dourson. The science has progressed, significantly advanced since the time of 2004 and the new science indicates a lower level.

Senator Gillibrand. Do you know that in Hoosick Falls they have found contamination at .66 parts per billion, which at the level you determined would save 150 parts per billion is 228 times higher than the parts per billion that is actually occurring today in Hoosick Falls?

Mr. Dourson. Well, again, the science has progressed since the time of the consensus decision of the 10-member panel in 2004. I am not aware of the specific --

Senator Gillibrand. So here is my fundamental question.

Mr. Dourson. -- exposure in that particular location, however.

Senator Gillibrand. In the job you are about to take, will

you commit that you will maintain the .07 parts per billion standard?

Mr. Dourson. Senator, if confirmed, I will commit to protecting the American public and its most vulnerable members using the best science and working with the talented people of the Office of Chemical Safety and Pollution Prevention. We will bring the best science forward; we will be transparent; we will be collaborative. I commit to that.

Senator Gillibrand. Mr. Chairman, can I just ask unanimous consent to submit for the record two articles from West Virginia, a West Virginia news source? The first quotes a watchdog group formed to ensure companies remain liable for pollution for damages of PFOA and the article concluded Michael Dourson spent his career helping chemical companies cover up deadly chemical contamination and he was directly complicit in the PFOA contamination crisis that seriously harmed thousands of West Virginians and Ohioans. This nomination is a classic example of the fox guarding the hen house.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Barrasso. Thank you, Senator Gillibrand. Thank you for your patience.

Senator Cardin.

Senator Cardin. I am not exactly sure how to begin on this, but I think I will start with Mr. Leopold. I have a major concern for the safety of the people in Baltimore. On September the 18th of this year, a cloud of chlorosulfonic acid leaked through a valve at Solvay Industry plant in Baltimore. I don't know if you are familiar with that or not.

Thousands of my constituents were told to shelter in place for several hours that morning and early afternoon over fear of their health and safety. It is my understanding that this bill is colorless and it is very difficult to know its presence other than the effect it has on your skin and respiratory tract. It can be fatal. It is extremely dangerous.

And I would like to get your understanding of what role you will play as counsel in dealing with protecting the people of Baltimore and this Nation on this issue. On June 9th, Administrator Pruitt signed a final order to further delay the effective date of the RMP Rule amendment, known as the Chemical Accident Safety Rule, for 20 months, until February 19th, 2019.

So I want to get some of your views as to what role you are going to play on implementing the laws of this Country through regulations so that we are not bearing in Baltimore this type of

safety condition. This is not hypothetical; it happened just a few weeks ago.

So how do you see your role, if confirmed, in using the enforcement of our laws to protect the public health of the people of this Country?

Mr. Leopold. Thank you, Senator. I think the general counsel's role on this issue, and my concerns are certainly with the people of Baltimore and those who have experienced releases of chemicals, I think the role of the general counsel of the EPA is to approach this issue as it would any legal issue; to look at the statutes, the regulation the EPA administers.

And in this case EPA has emergency response authority, which in an Office of Emergency Response, which it could activate. I am not privy to any details about what is occurring in the Agency at the moment, but --

Senator Cardin. Emergency response is one thing. Preventing this is something else. The delay of the rule is delaying protection. Do you believe that you would have a role in making sure that we get timely action taken on these types of rules?

Mr. Leopold. Well, I think the General Counsel's Office, again, the role is to advise the program offices and the Administrator on their authority, and if the Agency has discretion, we would advise the discretion and the statutory

bounds in which the Agency has to operate. Again, that is the role of the counsel, but certainly my commitment, as is the Administrator's, is to the rule of law. And if the law requires a substance to be regulated, I would advise of that, Senator.

Senator Cardin. And, of course, delay is denying the regulation of the law. So they may have discretion of delay, but do you see an obligation to make sure that the laws that we passed are carried out?

Mr. Leopold. Absolutely, Senator. The obligation of the EPA is to implement the laws that are passed by Congress. In certain instances, the Agency has discretion on when to exercise that discretion, and in other instances statutes are very specific about when the Agency has to take action.

Senator Cardin. I hear you. I would like to get a greater comfort that public safety is the reason why we pass these laws. There may be discretion on delay, but delay can cost people lives, so there needs to be a sense of urgency on public health.

Mr. Ross, quickly, if I might. We have had several discussions about the Chesapeake Bay Program and the fact that it is a unique program; it is local governments up, we have all the stakeholders working together. Mr. Pruitt, in his confirmation hearing, said very nice things about the Chesapeake Bay, so I assume you are going to say nice things about the Chesapeake Bay Program.

Mr. Ross. Yes. Thank you for the question. A couple months ago I had the distinct pleasure of driving 16 hours across country with the little ones back here to go from Wisconsin. We dropped our children off at a YMCA camp along the Chesapeake Bay in Maryland, in your State, and my wife and I continued out to the Delaware shore in your State, Senator Carper. So I care very deeply about where my kids play and swim, and the water quality, and I think the Bay is a treasure.

Senator Cardin. Let me just point out that this Committee just reauthorized the Chesapeake Bay Program, the Federal role in the Chesapeake Bay Program by unanimous vote, and we authorized it at a higher level than the current appropriation levels. It is a clear signal that this program is supported, and, for the benefit of your children, we hope that you will be a strong advocate to help us as one of the stakeholders; because without the Federal Government's significant role in this, it is hard for the other stakeholders to work together, because Federal participation is the glue in a program that is really popular among the six States and the District of Columbia and the stakeholders. So we will hold you to helping your children preserve this great heritage.

Thank you.

Senator Barrasso. Thank you, Senator Cardin.

Mr. Ross, having served both the State of Wyoming and

Wisconsin, I think you have an immediate understanding and an intimate understanding of many of the different types of water issues faced by States across the Country. Senator Wicker raised some questions about the Waters of the U.S. Could you please just explain to the Committee how you intend to work with western States to solve some of the water and water scarcity issues faced in Wyoming and elsewhere?

Mr. Ross. Yes. You put your finger on it. I have worked in California and I studied in Vermont, I have worked in Wisconsin, I spent time in D.C., I spent a lot of time in Wyoming, and what I have learned is that each region, each State has unique challenges; and the issues out west are both water quality and water quantity, and that is a really difficult intersection.

And there are some amazing folks, including in Wyoming, the State engineer, the director of the Department of Environmental Quality, they are subject matter experts that understand the issues as well as anyone. My job is to go learn from them and to make sure that the Federal Government works collaboratively with the States to protect the resources.

Senator Barrasso. And Mr. Baran, I wanted to just follow up. The National Environmental Policy Act, NEPA, that requires agencies to prepare an environmental impact statement. They have to do it for every major Federal action. Well, at the NRC

major Federal actions can include the issuance of licenses, license amendments. NEPA requires an agency to provide notice and to take public comments as it prepares an environmental impact statement.

But in contrast to many Federal agencies, the NRC has voluntarily decided to take steps beyond those required by NEPA. Specifically, the NRC allows parties to challenge the NRC's environmental impact statement at its evidentiary hearing on security and safety measures. So, recently what we have seen are anti-nuclear activists. They have argued that if new information is presented at the hearing, then the NRC can't supplement its environmental impact statement.

Instead, these activists are arguing that the NRC has to go back and rewrite the entire environmental impact statement before issuing a license or license amendment. So, if the NRC has already issued a license, these activists argue that the NRC has to then vacate and suspend a license that has already been issued.

A bipartisan majority of the NRC commissioners has repeatedly rejected this argument by the extremists, but you are the only commissioner who agrees with these anti-nuclear activists, the only one. So, the issue is now before a federal appeals court. So, if these activists succeed, it is going to add significant delays, I think, to any NRC licensing processes.

This is going to make nuclear energy much more expensive to produce, and in some ways could potentially jeopardize safety.

So, is it still your position, I know how you voted, but is it still your position that if new information is presented at NRC's evidentiary hearings, that the staff must rewrite the environmental impact statement before the NRC issues a license or license amendment? And if the NRC has already issued a license or license amendment, they must then vacate or suspend the license or the license amendment?

Mr. Baran. Well, my concern is a little bit more specific than that. In the cases I think you are citing, the issue there was that the NRC staff, as you mentioned, made a licensing decision on the basis of an environmental review that our administrative law judges, the agency's administrative law judges later found to be inadequate. So that is the key factor there.

My concern is that at the point we make a decision, when the agency issues a license, at that point we should do so on the basis of an adequate NEPA review. In my view, in the cases you mentioned, that did not happen. And, as you mentioned, this question is now pending before the D.C. Circuit Court of Appeals, which will hold arguments on it next week.

Senator Barrasso. Thank you.

Senator Carper.

Senator Carper. Thanks, Mr. Chairman.

I think this is a question for Bill Wehrum. Virtually every major clean air regulation that you helped to craft during the Bush Administration has been thrown out, I am told, thrown out by federal courts. Twenty-seven times the courts found that you failed to protect public health as directed by the law. All of the failed regulations you worked on created greater uncertainty for businesses and left the life of those that are most vulnerable at risk.

When you left the EPA in 2007, I am sure you reflected on your time at the Agency in different ways, but one of the ways, the only one we are aware of, is really captured in the following quote from you, and I am going to read what the poster over my head says. It is put in juxtaposition to what Mr. Leopold said earlier in his testimony, and I think it was heart-felt, in his opening statement about a commitment, sort of a moral commitment to clean air, water, and so forth.

I was out of the room when Mr. Ross invoked the verse for the beauty of the earth to talk about his commitment, and the juxtaposition of those two statements and what I am about to quote here from you just could not be stronger. Your quote is saying "I am a much better lawyer now than when I first joined the Agency. To really get to know how the Agency works and how it ticks, I think that is very valuable. I have expanded my

capabilities, which will hopefully allow me to be effective in generating business and clients."

Since then you have represented industry 31 times in lawsuits that I am aware of, against EPA, arguing for weaker air toxic mercury and climate protections. Would you just take a minute and tell us why the American people should believe that you will be impartial in making decisions when it comes to protecting public health over the interest of the industries that you spent many years representing?

Mr. Wehrum. I would love to, Senator. Thank you. First of all, with regard to the cases you cited and also the quote that you provided, both of them are tip-of-the-iceberg situations. With regard to the cases, what gets litigated in the D.C. circuit is a very, very small fraction of what gets done in the Office of Air and Radiation, so I think it is a misrepresentation of my experience at EPA previously to say that that somehow is an indicator that I am not committed to faithfully implementing the law and committed to protecting human health and the environment, so I think that is not representative.

Senator Carper. Let me just follow up, if I could. I am particularly concerned about your legal efforts against the Obama Administration's mercury and air toxic rule for power plants. You argued in court that EPA has not proven that it is

appropriate to regulate mercury and air toxic power plant emissions, despite the fact that most utilities are meeting the rule's deadlines and health benefits are being realized faster than predicted.

Administrator Pruitt is reviewing the rule, and you made it clear you in our private meeting that you will not recuse yourself from working on this issue. If the mercury and air toxic rule is revoked, how is that good for public health? And if the rule is revoked, will power plants stop running pollution control technology they have already bought, paid for, and installed, and how is that good for ratepayers?

Mr. Wehrum. Well, Senator, I think a point you are trying to make is rule of law is important, and there is no better example than this particular standard. It went all the way up to the U.S. Supreme Court. The U.S. Supreme Court said that EPA made a fundamental flaw in deciding whether to implement this regulation because it did not consider cost in making the threshold judgment as to whether power plants should be regulated as part of the Clean Air Act.

That question is still an open question before U.S. EPA. The Obama Administration implemented a rule to address that court finding, but the litigation is still pending and I believe has now been stayed, and that is an issue that we will have to take up if I am confirmed.

Senator Carper. My time is almost expired, so I will ask you to hold it there. Thank you for that response.

Mr. Chairman, I ask unanimous consent to submit four cases where Mr. Wehrum represented oil interests against biofuel, biodiesel, and renewable fuel standard regulations. These cases show or suggest that Mr. Wehrum should be very familiar with renewable fuel standard and flexibility given to the Administrator to implement the RFS. I make that unanimous consent request.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Barrasso. Thank you, Senator Carper.

Senator Carper. And if I could, just one more unanimous consent. I would like to ask unanimous consent to submit for the record two LA Times articles from 2004. These articles report two instances where Mr. Wehrum ignored the EPA career staff and inserted industry language from his former law firm, Latham & Watkins, into two different rules dealing with formaldehyde and mercury emissions. Both professions ended up failing in court. For the mercury rule, the L.A. Times reported that, "Several complete paragraphs were lifted from three memos provided by Latham & Watkins, a national law firm whose clients include large coal-fired utility plants."

I ask unanimous consent.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Barrasso. And I also have a statement for unanimous consent. We have multiple State officials who are supporting Mr. Wehrum's nomination. The Association of Air Pollution Control Agencies is a consensus-driven organization, brings together officials from 20 States, a host of local agencies.

Clint Woods, who is the Executive Director of the organization, stated that "Through his comprehensive knowledge of the law and experience in the Federal Government, Bill possesses the background to manage challenging Clean Air Act issues at U.S. EPA and to help continue the tremendous air quality progress that has been achieved in our Country over the last several decades."

Without objection, that will be submitted as well.

[The referenced information follows:]

Senator Barrasso. Senator Inhofe.

Senator Inhofe. Thank you, Mr. Chairman.

During the first round of questions I was critical of the previous administration, Mr. Wehrum, for not following the law. It was ruled that they were not accurately following the law in terms of coming out with the costs and evaluations of various emissions standards, and you said that you would comply with the law if that happens.

But there is another condition that they have where they had not been complying with the law, and that is the Clean Air Act also calls for the Clean Air Scientific Advisory Committee to evaluate implementation issues related to air quality standards. Yet, that wasn't done.

Should it have been done and will it be done, if you are confirmed?

Mr. Wehrum. Senator, CASAC has a role specified by statute and advising the Administrator on setting national ambient air quality standards, and there has been a suggestion that CASAC has not been implementing its complete, full set of obligations, focusing only on certain aspects of the job and not others, so I believe it is important for CASAC to fulfill its complete role, sir.

Senator Inhofe. Okay.

Mr. Dourson, I have 20 kids and grandkids, and you have a

bunch out there, too, and despite what the critics think, we want them to grow up in a healthy environment. I care about the world we are going to leave behind for them, and you, too, are a father and grandfather, and I imagine that your family is a big driver for you in your work over the last 38 years. What led you to pursue this field and why do you want this job?

Mr. Dourson. Thank you very much for the question. No, what led me to this field was some time in West Africa with a medical doctor, and I got enamored with the idea of preventive medicine. So after school, graduate school, I went into toxicology. It was funded by the U.S. Government on a stipend. I learned that this particular area was preventive medicine, and so I became enamored with that.

To fulfill my duties of the stipend, I started working with U.S. EPA immediately thereafter and I have grown to admire the people of the U.S. EPA and, of course, I have had the good time to work with a nonprofit organization since then. So, in each of these cases it is the lifelong career objective of protecting the American people and their sensitive individuals and the environment from chemical pollution

Senator Inhofe. Out of curiosity, where in West Africa was it?

Mr. Dourson. Liberia, West Africa, before the wars. It was a very peaceful country.

Senator Inhofe. Yes, I know that. When we met in the office last month, you said of your nonprofit that only a third of the research was at the request of industry. What was the majority of the organization's work focused on?

Mr. Dourson. Two-thirds of our work is government organizations, over 70 different government organizations. And also a big part of the work is collaborative opportunities. So we worked with government and industry often in collaborative modes. Many of the chemicals that came up before where all these numbers were up or down, or something like that, were collaborative ventures, including government and other groups.

Senator Inhofe. Were you involved in pro bono type work? It is my understanding that some 10 percent to 20 percent of TERA's work was also pro bono. Can you provide us with an example of pro bono work?

Mr. Dourson. Yes. Thank you, Senator. So, when we started TERA, we did this free State help, what we call it SHELP, State Hazard Evaluation Lending Program, and we gave free assistance to any State. We have worked with many States in that capacity.

Another example of scientific societies, the one that is most fulfilling to me is we are a public organization; we have members of the public come in. We had a young mother come in to my office one day. She was distraught. No one had been

listening to her; she had nowhere to turn. She went to the web, found our site. As she relayed her story, her family had been poisoned, and it became obvious to me that the poisoning was likely to be hydrogen sulfite, which is a very serious poison. Her four children were affected; her horses were affected; the dogs were dead. I mean, it was a really pretty severe case.

So, after a little bit additional study, we were able to get her the medical attention and then the legal support that she needed to carry on, and that made the local news several times. That was very gratifying, although, honestly, dealing with the public one-on-one like that is not always the most direct part of our pro bono.

Senator Inhofe. Well, good for you.

Mr. Leopold, you have worked on several large-scale environmental issues in your time in private practice and on behalf of the State of Florida. Could you give us a quick overview of these and your work on these issues?

Mr. Leopold. Thank you, Senator. Yes, I have been fortunate to work on some of the biggest environmental cases going. I am very proud that I worked on the BP oil spill enforcement case, spent a couple years helping the Justice Department hold BP accountable for that spill and resulted in the biggest Clean Water Act penalty in U.S. history.

Also, the Everglades litigation. I helped support the

State of Florida in advancing restoration on the Everglades.

So those are two of the big ones.

Senator Inhofe. Good.

Thank you, Mr. Chairman.

Senator Barrasso. Senator Merkley.

Senator Merkley. Thank you, Mr. Chairman.

Mr. Wehrum, do you believe with high confidence that human activity is a major driver of climate change?

Mr. Wehrum. Senator, I am sorry, your question, I didn't hear --

Senator Merkley. Do you believe with high confidence that human activity is a major driver of climate change?

Mr. Wehrum. I think human activity contributes to climate change, Senator, yes.

Senator Merkley. When you say yes, do you believe it the major driver of climate change?

Mr. Wehrum. I believe that is an open question, Senator.

Senator Merkley. That is certainly the type of answer that we hear continuously. That is the coached answer that the Koch brothers are asking people to sew this uncertainty, so we have seen that in answer after answer that comes before this Committee, such as statements from Mr. Pruitt, statements from Mr. Tillerson, statements from Mr. Perry, all citing this, oh, we are just not sure if it is significant or not. Maybe it is

contributing, but we are just not sure if it is significant.

So let's take a look at the NASA charts. I am going to put up a chart that shows NASA's evaluation of the contribution of solar energy. We see the yellow line on this chart, the flat line that goes across. Virtually no variation over the course of 125 years. And we see the enormous variation in the climate. Do you see any correlation, significant correlation between the yellow line and the black line?

Mr. Wehrum. Senator, I have no idea what that depicts.

Senator Merkley. Well, I just explained it to you, so let's try it again. I think you are supposed to have a background capable of understanding this sort of thing. Solar energy, temperature of the planet. NASA statistics. Does there appear to be any correlation between those two lines?

Mr. Wehrum. Senator, I will respond to you as I did to questions on the renewable fuel standard. These are very complex issues and they are very important issues, and I understand that they are important to you, so --

Senator Merkley. Okay, thank you. We will go on to the next question, because anyone slightly familiar with statistics would say a flat line and a rising line do not show correlation.

Another argument is that volcanic activity, the Earth's orbit, as well as solar activity contribute. That is what NASA has compiled collectively under the bottom chart. We have the

natural factors, those three that I just summarized, and then we have the rising temperature in the black line. Does there appear to be any correlation in this case?

Mr. Wehrum. Again, Senator, I will say I am not familiar with those data; I have no idea what it shows.

Senator Merkley. Okay. Well, if you can't read a chart, are you qualified to have this role?

Mr. Wehrum. Senator, what is important is to understand the data underlying the depiction, and I have had no opportunity to see those data or understand how they have been depicted.

Senator Merkley. You have been working in air pollution for these decades, and you have no acquaintance with data related to the warming of the planet or the factors that contribute to that?

Mr. Wehrum. Senator, all I said is I have no idea what data contributed --

Senator Merkley. Okay. Well, let's turn to the third chart, then. NASA has compiled a third chart. This one, again, shows the rising temperature in the same color, in black, and it shows the rising greenhouse gas emissions. Can you, without great familiarity, acknowledge that these lines generally track each other?

Mr. Wehrum. Once again, Senator, I am not familiar with those data; I have no idea what it depicts.

Senator Merkley. You can see the lines. Do the lines track each other?

Mr. Wehrum. What is important, Senator, is to know how the data are depicted. Understanding the underlying data and understanding the --

Senator Merkley. Yes, it is, but I am just asking you a question. Can you see those two lines and do they generally track each other?

Mr. Wehrum. Well, again --

Senator Merkley. Okay, thank you.

What we have seen is this Koch Brother-inspired determination not to acknowledge even the most fundamental facts, and continuous excuses that perhaps the temperature of the climate is going up because of solar activity. Oh, no. No, wait, maybe it is volcanic activity. But when NASA presents the information that shows there is no correlation from those factors, and extensive correlation from carbon dioxide and other global warming gases, individuals like you simply refuse to acknowledge it.

Why should the American people put into an office of significant influence someone who refuses to look at the facts directly that are so important to the health of this planet?

Mr. Wehrum. Senator, as I said a second ago, these are complex issues and very important issues, and I commit myself,

if confirmed, to speak --

Senator Merkley. Do you think on such a serious -- so, in Oregon we have lost a billion oysters due to the increasing acidity of the ocean that is caused by carbon dioxide becoming carbonic acid. Are you familiar with this problem? Yes or no, are you familiar with the increased acidity?

Mr. Wehrum. I am not familiar with the oyster industry in Oregon, no, sir.

Senator Merkley. Are you familiar with the increasing acidity of the ocean?

Mr. Wehrum. I understand there is an allegation that --

Senator Merkley. Oh, my goodness. You have to be kidding me. Really?

Mr. Wehrum. I understand --

Senator Merkley. You are in this field and you have never read anything about the increasing acidity of the ocean? Well, how about the fact that we have a fire season that is two months longer than it was four years ago? Are you familiar with the growing length of the fire season?

Mr. Wehrum. I have not --

Senator Merkley. Are you familiar with the extending range of pine beetles that are having a devastating impact on our forests and creating an area that you can fly over called the red zone?

Mr. Wehrum. As I said, Senator --

Senator Merkley. Are you familiar with the snow pack in the Cascades? All of these things, no one can look at what is happening on the planet and see that there is nothing happening unless you are deliberately determined to ignore that information, and that makes you really, quite frankly, unacceptable to serve in this capacity.

Thank you, Mr. Chairman.

Senator Barrasso. Senator Carper.

Senator Carper. Mr. Chairman, I have a unanimous consent request to enter an op-ed written by Senator Whitehouse that is in my hands, and I would like to ask unanimous consent to be inserted into the record.

Senator Barrasso. Without objection.

Senator Carper. Thank you.

[The referenced information follows:]

Senator Carper. I would also like to ask unanimous consent to insert a number of other letters and articles about today's nominees into the record, please.

Senator Barrasso. Without objection.

Senator Carper. Thank you.

[The referenced information follows:]

Senator Carper. Some of you have been in this room before, some of you several times. I joined this Committee almost 17 years ago, and I have sat through a lot of hearings. Senator Inhofe has sat through more. Our Chairman has sat through a bunch of them, too.

This has been an extraordinary hearing. Extraordinary hearing. And these decisions that we are going to make, that you would make, if confirmed, are really life and death decisions. No question. And you have witnessed, in some cases, an outpouring of emotion, almost fear about what your service, not all of you, but some of you, what your service might lead to.

And I just want to say, Dr. Dourson, I try to treat other people the way I want to be treated. I met with you and I appreciate the time you spent with me, and I care about surrounding myself with people who have good mind, also a good heart, and there is no question you have a good mind. You are well educated. You are a scientist. You are smart.

I think what we are hearing from the Senators on our side, there is a question about your heart. And I don't mind people saying to me that they think I am dumb. I don't like it, but what really hurts me is when they question my heart. And there are really serious questions about your heart.

A woman named Maya Angelou, now deceased, a great poetess.

She used to say these words. She used to say, people won't remember what you said. People may not remember what you do or did. They will always remember how you made them feel. They will always remember how you made them feel.

And, honestly, some of the people in this audience here that have lived through exposure of materials that we are talking about, they are afraid. They are afraid. And they represent a lot of other people as well. And I am afraid what you said here today does not diminish those concerns or those fears. I just have to say that to you.

Thanks very much.

Mr. Dourson. Thank you, Senator.

Senator Barrasso. Thank you, Senator Carper.

Thanks to all of the members.

I am going to submit for the record a final letter from Sean Alteri, who is the Director of Kentucky Division of Air Quality, stating that "Considering his education regarding Mr. Wehrum, his education and experience as a chemical engineer and environmental attorney, Mr. Wehrum will be well positioned to provide clear, concise director to address the many diverse, complex air quality issues." He goes on to say, "As a study of the Clean Air Act, Mr. Wehrum's knowledge and experience will greatly benefit EPA, State, and local air pollution control agencies."

Without objection, that will be submitted.

[The referenced information follows:]

Senator Barrasso. Finally, with regard to the Nuclear Regulatory Commission and the issues of NEPA and licensing, I find the position that the nominee today has taken deeply troubling and outside the mainstream. I think it is just tailored-made to those looking to delay the NRC's licensing process indefinitely and to stop nuclear energy production from going forward in the United States, and I believe we need all the sources of energy.

Finally, Mr. Ranking Member, if no one else has questions today, members are going to be able to submit written follow-up questions for the record. We will do it by the close of business on Friday. The nominees will then respond to those questions by the close of business Thursday, October 12th.

So, I want to thank each of the nominees, commend you and congratulate you on the nominations, and the hearing is adjourned.

[Whereupon, at 12:58 a.m. the committee was adjourned.]