Senate Committee on Environment and Public Works
Hearing entitled, *"Hearing on the Fiscal Year 2022 Proposed Budget for the U.S. Environmental Protection Agency"*
April 28, 2021
Questions for the Record for Administrator Michael S. Regan

Senator Markey:

1. Recent testing documented the presence of per- and polyfluoroalkyl substances (PFAS) in a pesticide product sprayed across Massachusetts. Follow-up tests by the Environmental Protection Agency (EPA) found that at least nine PFAS chemicals were leaching from the PFAS-coated plastic containers in which the pesticide product was stored. This disturbing incident highlights serious concerns about the ubiquity of PFAS and their prevalence throughout our supply chains.

    a. When will the EPA designate PFAS as a hazardous substance?

RESPONSE: As EPA's Administrator, tackling PFAS pollution is one of my top priorities. We will take meaningful action, following the science and following the law, to better understand and ultimately reduce the potential risks caused by these chemicals. I am committed to listening to the public and working collaboratively with states, tribes, local governments, industry, water systems, and impacted communities to identify pragmatic approaches that will deliver critical protections across the country. Recently, I established the EPA Council on PFAS (ECP) to strategize the best way to use EPA's authorities, expertise, and partnerships to mitigate and reduce PFAS pollution and protect public health and the environment. I have asked the ECP to make initial recommendations to me within 100 days of the Council's establishment. As an important part of EPA's work to address PFAS pollution, EPA is considering options for designating PFOA and PFOS as CERCLA hazardous substances and is committed to protective steps guided by science and law.

    b. How is the EPA working to phase out the nonessential use of PFAS?

RESPONSE: EPA is working on several PFAS initiatives to gather data, including on current and past uses of PFAS, that will allow EPA to focus research and monitoring efforts to prioritize PFAS actions. We are requiring certain facilities to report to EPA releases of nearly 200 PFAS via the Toxics Release Inventory. EPA has also drafted a proposed rule that would require any company that manufactured PFAS since 2011 to report to EPA, among other things, what they made, how much they made, what it is or was used for, and any health or environmental effects information they have. More broadly, EPA is contemplating the creation of a national testing strategy on PFAS to require, in a targeted way, the development of data and other information we need to bridge the data gaps across the sub-classes of these chemicals.

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2. Approximately 144,000 genetically engineered mosquitos are set to be released in the Florida Keys over the coming weeks. Residents and scientists have expressed concern over the lack of environmental and health reviews and independent scientific analysis, as well as the absence of EPA regulations for the use of genetically engineered insects.

    a. Will the EPA rescind the permit to release genetically engineered mosquitoes until after developing new regulations, convening a Scientific Advisory Panel, and deploying caged trials?

RESPONSE: EPA stands by its decision to grant the experimental use permit to Oxitec. EPA's decision was made after extensive evaluation of the best available science, consideration of public input, and consultation with technical experts at the U.S. Centers for Disease Control and Prevention. The experimental use permit contains significant protections, including weekly monitoring and sampling of the mosquito population in the treatment areas. If an unforeseen event occurs, EPA can cancel the experimental use permit at any point during the 24-month period.

Successful field testing of Oxitec's technology could benefit all communities, including low-income areas. The range of disease spreading mosquitoes is rapidly expanding in the United States, and climate change could increase their range. Breeding habitats for these mosquitoes most often overlap with densely populated areas, including urban low-income communities of color. These communities could be at higher risk for exposure to mosquitoes, virus transmission, and chemicals used during mosquito control efforts. The use of species-specific modified mosquitoes has the potential to reduce the use of chemicals for mosquito control, while simultaneously culling populations of mosquitoes that spread disease.

3. Federal funding levels for air quality monitoring and management are notoriously low, and have remained unchanged for nearly two decades.
    a. Would additional funding for air quality monitoring and management help support EPA's air quality goals?
    b. How could additional support be deployed to help communities with poor air quality, such as Chelsea and Springfield in Massachusetts?

RESPONSE: Yes. For FY 2022, EPA requests a $100 million increase for air quality grants to states and tribes to help expand the efforts of air pollution control agencies to implement their programs. Every American deserves to know their exposure to air pollution. Toward that goal, and in concert with section 222 of the Executive Order on Tackling the Climate Crisis at Home and Abroad, the Budget invests $100 million to develop a community air quality monitoring and notification system to provide real-time data to overburdened and marginalized communities and enforcement officials. By maximizing the transparency of air pollution levels at the community scale, we can better ensure that places with the most significant exposure are being targeted for action and measurable progress.

As described in the President's budget, in FY 2022, EPA will initiate a nationwide effort to ensure and enhance the resiliency, capacity, and capability of air monitoring systems for National Ambient Air Quality Standards (NAAQS) and local-scale monitoring implemented by state, local, and tribal organizations (SLTs) through: 1) system modernization (e.g., infrastructure improvements, enhanced network automation, greater system reliability, and data integration for assessments); 2) expanded functionality (e.g., increased use of continuous monitoring equipment); and 3) local-scale monitoring to, for example, characterize air toxics and better address air quality burdens in environmental justice communities. Key to the success of this effort will be close, meaningful collaboration with our state, local and tribal air partners, including those in Massachusetts. EPA continues to work closely with local communities and states. For example, with EPA assistance, the Massachusetts Department of Environmental Protection recently established a new monitoring location in Chelsea to help address community concerns about air quality. More resources could help Massachusetts and other states to assess local community needs and respond appropriately.

Senator Kelly:

1. The Coronavirus Response and Relief Supplemental Appropriations Act, which was passed in December of last year, included $638 million for a first-of-its-kind water bill utility assistance program. While this program is currently temporary, and administered by HHS, I support efforts to make this program permanent. Given that EPA is the primary federal agency which provides assistance to drinking water utilities, what role is EPA playing to support HHS in establishing this program? And if a water utility assistance program is made permanent, what role do you believe EPA should play in such a program?

   RESPONSE: EPA appreciates Congress' assistance in appropriating more than $1 billion to support low-income water ratepayers through a new program at the Department of Health and Human Services (HHS). EPA is actively assisting our colleagues at HHS in their critical work to develop and implement this program. At the same time, this Committee has continued to shine a light on these important issues through the Drinking Water and Wastewater Infrastructure Act (S. 914), which includes many provisions related to water and wastewater affordability. EPA looks forward to providing technical assistance to Congress on these efforts and any additional programs Congress creates.

2. It is clear that the water and wastewater infrastructure of Arizona and the Southwest is put at risk by climate change and extreme weather events. The state is already experiencing dust storms, heavy thunderstorms, flash flooding and high winds, among other impacts. The Central Arizona Project has noted that these events are stressing existing infrastructure, and "can cause significant damage to [water] infrastructure that require higher and more frequent levels of maintenance." How does EPA's FY22 budget approach water and wastewater infrastructure resiliency?

RESPONSE: The Budget provides a total of $3.6 billion for water infrastructure, an increase of $625 million over FY 2021 enacted levels. EPA will use these funds to help finance the upgrade and replacement of aging infrastructure for drinking water and wastewater systems and make them more resilient to the impacts of climate change.

a. In 2018, America's Water Infrastructure Act created a new Drinking Water System Infrastructure Resilience and Sustainability Program at EPA, which is intended to help small and disadvantaged community water systems prepare their infrastructure to withstand the effects of climate change and extreme weather. What are the successes and failures of this program to date, and do you believe it could or should be expanded to help promote water infrastructure resiliency in even more communities?

RESPONSE: As you note, Congress authorized a new Drinking Water System Infrastructure Resilience and Sustainability Program in America's Water Infrastructure Act of 2018, and Congress provided first-time appropriations for this program in Fiscal Year 2020. EPA is in the final stages of preparing a Request for Applications (RFA) for this inaugural round of funding. At the same time, EPA appreciates Congress' continued attention toward increasing the resilience of our nation's water infrastructure to climate change and extreme weather, including through the Drinking Water and Wastewater Infrastructure Act (S. 914). EPA looks forward to providing technical assistance to Congress as it considers this important issue. We are confident the Agency would be able to implement an expanded program, which the Budget would fund at $5 million over FY 2021 enacted levels.

Ranking Member Capito:

1. At the recent White House Climate Summit, you stated that you intend to tackle climate issues through "urgent" and "aggressive" actions. President Biden's budget proposal provides EPA with $110 million to "to restore EPA's critical staff capacity and to rebuild programmatic capabilities." This increase includes $48 million for the Office of Air and Radiation to focus on implementation of Clean Air Act climate regulations. Would any part of the $48 million for increasing staff capacity in the Office of Air and Radiation be used to develop a reiteration of the Clean Power Plan?

RESPONSE: The FY 2022 President's Budget is rooted in EPA's commitment to advancing environmental justice, tackling climate change, protecting public health, improving infrastructure, and rebuilding the EPA workforce to accomplish the EPA's mission.

The power sector is a leading source of many harmful air pollutants, including sulfur dioxide, nitrogen oxides, and mercury. It is also the second-largest source of greenhouse gas emissions in the United States. EPA staff are working to determine the next steps on power plants—guided by science, the law, and our Clean Air Act

obligations—to protect public health and the environment and advance environmental justice and ensure reliable, affordable electricity.

2. A significant proportion of the $2 billion funding increase for EPA proposed by President Biden is focused on the air and climate policy area. How is EPA prioritizing protecting other aspects of the environment, such as water and land, and does this budget request reflect this prioritization?

   RESPONSE: In the FY 2022 Budget, EPA proposes to increase funding for several existing water infrastructure programs, including the Clean Water State Revolving Funds (CWSRF), Drinking Water State Revolving Funds (DWSRF), the Water Infrastructure Finance and Innovation Act (WIFIA) program, and grant programs authorized in the America's Water Infrastructure Act of 2018 (AWIA) and the Water Infrastructure Improvements for the Nation Act of 2016 (WIIN). Specifically, the FY 2022 Budget provides $3.2 billion across the two SRF programs, a $464 million increase above the FY 2021 enacted levels, representing nearly 30 percent of EPA's total resource request. These financing programs will advance the Agency's ongoing commitment to infrastructure repair and replacement while creating hundreds of thousands of good-paying jobs across the country.

   Many communities face the challenge of cleaning up contaminated lands so that they can be redeveloped and reused. The FY 2022 request enables the Agency to expedite the cleanup of hazardous waste sites that litter communities across the country, particularly low-income communities and communities of color. Of the total funding requested for Superfund, $1.108 billion and 1,261 FTE would support Superfund cleanup programs, a $299.4 million increase over last year. This investment will enable the start of cleanup work at more than 20 National Priority List (NPL) sites with new remedial construction projects currently awaiting funding. It also will accelerate cleanup work at more than 15 NPL sites with large, ongoing construction projects, which require a substantial funding allocation over multiple years, and allow for enhanced engagement at lead-contaminated sites.

3. Is climate the top priority for EPA's regulatory development and implementation?

   RESPONSE: Developing policy and regulatory action to address the climate crisis while advancing environmental justice is one of the top priorities for EPA.

4. Do you believe that the US must end coal use to meet the targets that President Biden laid out in reducing greenhouse gas emissions by 50 to 52 percent from 2005 levels by the end of this decade?

   RESPONSE: When considering regulatory policies related to the power sector, EPA will adhere to science and the law—including our obligations to protect public health under the Clean Air Act. EPA also will consider relevant market trends and technological innovations, including advances in Carbon Capture and Storage (CCS) technology that could help to address pollution and keep coal in the mix.

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5. Do you believe that China should be considered a "developing" country when pledging to emissions reductions in international agreements?

   RESPONSE: China is the world's second largest economy and is the world's largest greenhouse gas emitter. The Paris Agreement calls for action by all countries to reduce greenhouse gas emissions. China's efforts to reduce emissions this decade need to be consistent with China's position as a leading economy and the world's largest GHG emitter.

6. The President recently announced his intent to reach a 100-percent carbon emissions-free power sector by 2035 to comply with the US target under the Paris Agreement. Do you believe EPA has the statutory authority to issue regulations that require elimination of carbon emissions from the power sector by 2035?

   RESPONSE: In 2007, the U.S. Supreme Court, in *Massachusetts v. EPA*, found that the Clean Air Act obligates EPA to regulate emissions of greenhouse gases, given their threat to public health and welfare. EPA has found that six greenhouse gases—including carbon dioxide (CO_2)—"may reasonably be anticipated both to endanger public health and to endanger public welfare." When considering future regulatory policies related to the power sector, EPA will adhere to science and the law, including our obligations to protect public health under the Clean Air Act.

7. Do you intend to regulate a power plant's carbon dioxide emissions beyond, or "outside," the fence line?

   RESPONSE: The Agency will review prior efforts to reduce greenhouse gas emissions from power plants, including the Clean Power Plan and the Affordable Clean Energy rules, and apply lessons learned from those efforts to moving EPA forward. EPA will continue working with stakeholders and the rest of the Administration, as well as with Congress, to address greenhouse gas emissions from power plants.

8. How do you plan to ensure that low-income families are not impacted by job losses or energy rate hikes associated with closing down more power plants?

   RESPONSE: As a matter of course in agency rulemakings and per relevant federal executive orders and guidance, EPA performs regulatory impact analyses to quantify, when feasible, the likely benefits and costs of certain regulatory options. When relevant to the rulemaking, EPA examines industry compliance costs, impacts on fuel and electricity prices, and impacts on electricity bills. EPA takes these quantified costs and benefits into account when choosing a regulatory path.

   The cost of carbon pollution-free electricity sources has dropped dramatically over the prior decade. It is now cheaper to build new carbon pollution-free electricity

than to continue to run polluting power plants across a growing majority of the country. We expect the clean electricity system to be affordable and reliable.

Through the Interagency Working Group on Coal and Power Plant Communities and Economic Revitalization, EPA is working with other federal agencies to make sure that we support hard-hit energy workers and communities by creating good-paying union jobs and spurring economic revitalization and remediating environmental degradation. The Interagency Working Group will "promote job-creating investments in communities already impacted by coal mine and power plant closures and will also be pro-active, investing now in the communities likely to be impacted by additional, near-term declines in coal production and generation from coal-fired power plants." (Initial Report to the President on Empowering Workers Through Revitalizing Energy Communities, April 2021, *available at* https://netl.doe.gov/IWGInitialReport.) The working group's initial report identified $38 billion of potentially available funding that could be used to provide immediate investments in energy communities, including EPA programs to remediate and redevelop brownfields, which create jobs as well as clean up environmental hazards. The working group has engaged stakeholders from energy communities, including labor unions; community development organizations; local, regional, and tribal governments; the private sector; and philanthropic interests, and will continue to expand its outreach to key constituencies as it shapes federal support for economic revitalization of these communities.

9. With the Agency's definition of "environmental justice" in mind, do you believe that rural communities hurt by environmental regulations applied to the energy sector are environmental justice communities?

<u>RESPONSE</u>: EPA defines "environmental justice" as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." This goal will be achieved when everyone enjoys (1) same degree of protection from environmental and health hazards, and (2) equal access to the decision-making process to have a healthy environment in which to live, learn, and work.

As a matter of course in agency rulemakings and per relevant federal executive orders and guidance, EPA performs regulatory impact analyses to quantify, when feasible, the likely benefits and costs of certain regulatory options. When relevant to the rulemaking, EPA examines industry compliance costs, impacts on fuel and electricity prices, impacts on electricity bills, and net employment impacts. EPA takes these quantified costs and benefits into account when choosing a regulatory path. On April 7, 2021, I directed EPA staff to take immediate and affirmative steps to incorporate environmental justice considerations into their work, including assessing impacts to pollution-burdened, underserved, and Tribal communities in regulatory development processes and considering regulatory options to maximize benefits to these communities.

10. When EPA opened nominations for the National Environmental Justice Advisory Committee (NEJAC), the website stated that they were not prioritizing representation from EPA Regions 3, 4, 5, or 6. Why did you make this decision?

    RESPONSE: A hallmark of the NEJAC has always been that it has both a broad cross-stakeholder representation as well as a broad regional representation. During new membership recruitment, EPA regularly advertises which categories and geographic areas are currently most in need of representation in order to maintain balance, although all are still welcomed and encouraged to apply as EPA holds applications received over several cycles of consideration.

    The current list of NEJAC members, which includes representation from EPA Regions 3, 4, 5, and 6, is available at: https://www.epa.gov/environmentaljustice/national-environmental-advisory-council-nejac-members-and-biographies.

11. Will you commit to increase rural representation on NEJAC from EPA Regions 3, 4, 5, and 6?

    RESPONSE: When selecting members for the NEJAC, EPA works to ensure representation from rural areas as part of our commitment to diversity.

12. The Electric Power Research Institute (EPRI) recently published a report that identified major issues with how the "Social Cost of Greenhouse Gas" (SC-GHG)—separate calculations of the cost of carbon dioxide, nitrous oxide, and methane—is being used to conduct cost-benefit analysis for environmental regulations and how the SC-GHG is calculated. When asked about submitting revisions to the SC-GHG through a full regulatory review process, Janet McCabe, the then-nominee for EPA Deputy Administrator, said "I don't think you will have any disagreement from us that any decisions such as [revising the SC-GHG] be based on sound science and well vetted studies that folks have an opportunity to see and weigh in on." Do you agree with Ms. McCabe that any SC-GHG estimates should be based on figures that go through the regulatory review process and public comment?

    RESPONSE: Executive Order 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, reaffirms that "[a]n accurate social cost is essential for agencies to accurately determine the social benefits of reducing greenhouse gas emissions when conducting cost-benefit analyses of regulatory and other actions." The E.O. instructs the Interagency Working Group on the Social Cost of Greenhouse Gases (IWG) to publish an interim update to the SC-GHG estimates within 30 days and to publish a more comprehensive update by January 2022. In doing so, the E.O. instructs the IWG to consider the recommendations of the National Academies of Science, Engineering, and Medicine (NASEM) as reported in *Valuing Climate Damages: Updating Estimation of the*

Social Cost of Carbon Dioxide **(NASEM 2017[1]) and other pertinent scientific literature; solicit public comment; engage with the public and stakeholders; seek the advice of ethics experts; and ensure that the SC-GHG estimates reflect the interests of future generations in avoiding threats posed by climate change.**

The interim SC-GHG estimates were published in the February 2021 ***Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990*** **(IWG 2021[2]). These estimates were developed over many years, using a transparent process, peer-reviewed methodologies, the best science available at the time of that process, and with input from the public. In developing the SC-GHG estimates in 2010, 2013, and 2016, the IWG used consensus-based decision making, relied on peer-reviewed literature and models, and took steps to disclose limitations and incorporate new information by considering public comments and revising the estimates as updated research became available (U.S. GAO 2014[3]).**

Going forward, EPA commits to continuing to participate in the IWG's consensus driven process for making evidence-based decisions pertaining to the update of SC-GHG methodologies that are guided by the best available science and input from the public, stakeholders, and peer reviewers. Although it is the government's position that the IWG's process for developing SC-GHG estimates is not a rulemaking subject to the Administrative Procedure Act's notice and comment requirements, the IWG has committed to early and robust interaction with the public and stakeholders, and plans to solicit public comments on the updated estimates. While the IWG assesses the current state of the science in each component of the SC-GHG modeling exercise, the IWG is already asking for public comment on how best to incorporate the latest, peer-reviewed science to develop an updated set of SC-GHG estimates. The IWG published a ***Federal Register*** **notice on May 7, 2021 soliciting comment on the February 2021 interim TSD as well as on how best to incorporate the latest peer-reviewed scientific literature in order to develop an updated set of SC-GHG estimates.**

13. The "Draft Regulatory Impact Analysis [RIA] for Phasing Down Production and Consumption of Hydrofluorocarbons (HFCs)"[4] uses a "Social Cost of Hydrofluorocarbons (SC-HFCs)" to estimate the economic benefits of reducing emissions of HFCs. To my knowledge, this is the first time EPA has publicly estimated SC-HFCs and the first use of SC-HFCs in a regulatory context. How does the use of SC-

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[1] National Academies of Sciences, Engineering, and Medicine (NASEM). 2017. Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide. Washington, D.C.: National Academies Press.
[2] Interagency Working Group on the Social Cost of Greenhouse Gases (IWG). 2021. Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990. United States Government. *Available at* https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf.
[3] U.S. Government Accountability Office (GAO). 2014. Regulatory Impact Analysis: Development of Social Cost of Carbon Estimates. GAO-14-663. July. Available at: https://www.gao.gov/products/GAO-14-663.
[4] https://www.epa.gov/sites/production/files/2021-05/documents/ria_omb_043021_0.pdf

HFCs prior to peer review or public input align with your commitment to scientific integrity and transparency?

RESPONSE: The SC-HFC estimates were developed using methodologies that are consistent with the methodology underlying the social cost of carbon, methane, and nitrous oxide estimates (SC-CO_2, SC-CH_4, and SC-N_2O) presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990* (IWG 2021[5]). These methods were developed over many years, using a transparent process, peer-reviewed methodologies, the best science available at the time of that process, and with input from the public. In particular, the approach used for developing the SC-HFC estimates used in the Draft Regulatory Impact Analysis (RIA) mirrors that of the peer-reviewed SC-CH_4 and SC-N_2O estimates (Marten et al. 2015[6], IWG 2016[7]), but is applied to HFCs based on data published as part of the IPCC's assessment reports. The modeling approach that extends the IWG SC-CO_2 methodology to non-CO_2 GHGs, has undergone multiple stages of peer review and estimates using this non-CO_2 methodology in regulatory analysis have been subject to public comment. The Marten et al. (2015) estimates underwent a standard double-blind peer review process prior to journal publication. EPA then sought additional external peer review of technical issues associated with its application to regulatory analysis. Following the completion of the independent external peer review of the application of the Marten et al. (2015) estimates, EPA began using the estimates in the primary benefit-cost analysis calculations and tables for a number of proposed rulemakings in 2015, and considered the public comments received before using them in final regulatory analyses in 2016. OMB has determined that the use of this methodology is consistent with the OMB's guidelines for conducting peer review and regulatory analysis.

EPA has invited the public to provide comment and data that would inform various analytic matters, including the use and application of the SC-HFC estimates in the Draft RIA. The Draft RIA was made available in the docket for the rule when the proposed rule was published in the *Federal Register* on May 19, 2021, which began a public comment period to close on July 6, 2021. Additionally, the Draft RIA was published on the EPA website. EPA will consider all public comments received, including those on SC-HFCs.

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[5] Interagency Working Group on the Social Cost of Greenhouse Gases (IWG). 2021. Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990. United States Government. Available at: https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf.

[6] Marten, A.L., Kopits, E.A., Griffiths, C.W., Newbold, S.C., and A. Wolverton. 2015. Incremental CH4 and N2O Mitigation Benefits Consistent with the U.S. Government's SC-CO2 Estimates. Climate Policy 15(2): 272-298.

[7] Interagency Working Group on the Social Cost of Greenhouse Gases (IWG). 2016. Addendum to Technical Support Document on Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866: Application of the Methodology to Estimate the Social Cost of Methane and the Social Cost of Nitrous Oxide. August. United Stated Government. Available at: https://www.whitehouse.gov/omb/information-regulatory-affairs/regulatory-matters/#scghgs.

14. Is the Interagency Working Group on Social Cost of Greenhouse Gases including the SC-HFCs in its ongoing review of the social cost of greenhouse gases?

<u>RESPONSE</u>: EPA continues to participate in the IWG that is in the process of meeting the directives set forth in Executive Order 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, pertaining to the update of SC-GHG estimates to ensure that they reflect the best available science. The E.O. specifically charges the IWG with considering CO_2, CH_4, and N_2O. If the IWG updates its methodology for evaluating the social costs of non-CO_2 GHGs, EPA will consider that information in developing future analyses.

15. The Final Information Quality Bulletin for Peer Review details that a scientific assessment is considered "highly influential'" if the agency or the Office of Information and Regulatory Affairs (OIRA) Administrator determines that the dissemination: could have a potential impact of more than $500 million in any one year on either the public or private sector; or that the dissemination is novel, controversial, or precedent-setting, or has significant interagency interest. [8]

    a. Does the development and use of SC-HFCs meet the threshold of highly influential scientific assessments set forth in the Final Information Quality Bulletin for Peer Review?

    b. Please explain why or why not, including whether you support undertaking an independent peer review before using SC-HFCs.

<u>RESPONSE</u>: The SC-HFC estimates were developed using methodologies that are consistent with the methodology underlying the social cost of carbon, methane, and nitrous oxide estimates (SC-CO_2, SC-CH_4, and SC-N_2O) presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990*, which were developed over many years, using a transparent process, peer-reviewed methodologies, the best science available at the time of that process, and with input from the public. The application of these estimates in the draft RIA is consistent with EPA's Peer Review Handbook 4th Edition (U.S. EPA 2015[9]), and OMB has determined that the use of this methodology is consistent with the OMB's guidelines for conducting peer review and regulatory analysis.

Further, as stated in Response 13, above, EPA has invited the public to provide comment and/or data that would inform various analytic matters, including the use and application of the Social Cost of Hydrofluorocarbons in the Draft Regulatory Impact Analysis. The Draft Regulatory Impact Analysis was made available in the

[8] https://www.govinfo.gov/content/pkg/FR-2005-01-14/html/05-769.htm.
[9] U.S. EPA. 2015. Peer Review Handbook 4th Edition. Available at: https://www.epa.gov/osa/peer-review-handbook-4th-edition-2015.

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docket for the rule when the proposed rule was published in the *Federal Register* on May 19, 2021 and is open for public comment through July 6, 2021.

16. While the EPA Office of Research and Development leads the Agency's scientific research activities, EPA's program offices, as well as state regulatory agencies, also carry out research and data analysis activities. How will you handle instances in which conflicting scientific opinions and data regarding peer-reviewed work exists within EPA?

    RESPONSE: Rigorous analysis and the frank expression of scientific views is a legitimate and necessary aspect of the scientific endeavor. Challenging ideas and assumptions guards against inadequate science, flawed analysis, and insufficient evidence. EPA has developed and implements a "differing scientific opinion policy" that recommends a progression of approaches that employees and managers can use to encourage the expression and satisfactory resolution of differing scientific opinions. That policy is available at https://www.epa.gov/osa/approaches-expressing-and-resolving-differing-scientific-opinions.

17. How will you handle instances in which there are conflicting conclusions between EPA and your state partners?

    RESPONSE: EPA will work with state and tribal partners to protect public health and the environment. There are certain baseline standards we expect states to meet to ensure we are fulfilling the public health and environmental protections that our communities deserve, and EPA is committed to ensuring the protection of communities regardless of where a person lives. However, the Agency believes the best way to create sustainable, durable environmental policy is to work collaboratively with states and tribes to meet EPA's statutory obligations on behalf of the American people.

18. Do you agree that posting all guidance documents on a public and easily accessible website is an effective measure to promote transparency in Agency operations?

    RESPONSE: EPA continues to believe in the importance of transparency and will continue to make relevant guidance available to the public on the EPA website.

19. Do you have plans to reinstate the EPA's searchable access portal websites for guidance documents?

    RESPONSE: Guidance documents are easily accessible on the EPA website, organized by topic, and may be found by using widely available search tools or by searching within a specific EPA web page that is of interest. EPA web pages also have a Contact Us link at the bottom of the page.

20. In explaining the rationale for rescinding EPA's 2020 guidance rule, EPA stated the rule "deprives the EPA of necessary flexibility in determining when and how best to issue public guidance based on particular facts and circumstances, and unduly restricts the

EPA's ability to provide timely guidance on which the public can confidently rely." Can you please explain which aspects of the 2020 rule resulted in this determination?

RESPONSE: The 2020 rule established unnecessary or duplicative procedures and as a result limited EPA's discretion to issue timely guidance.

21. EPA is frequently subject to legal action, including citizen suits. What is your approach to ensuring transparency and public participation in settlement agreements?

    RESPONSE: The EPA's mission is to protect human health and the environment, a hugely important task that requires public trust and accountability. EPA is committed to operating in a transparent manner as we restore integrity and public trust in the Agency's operations and decision-making. I will ask my legal team to brief me on this issue.

22. Will you commit to providing the public with notice and an opportunity to comment on any proposed settlement agreements?

    RESPONSE: The EPA's mission is to protect human health and the environment, a hugely important task that requires public trust and accountability. EPA is committed to operating in a transparent manner as we restore integrity and public trust in the Agency's operations and decision-making. The Agency will continue to follow all statutory requirements in this regard such as Clean Air Act section 113(g). In addition, consistent with President Biden's Executive Orders, the Agency is evaluating a directive from the last Administration on this topic.

23. On March 10, 2021, Office of Chemical Safety and Pollution Prevention (OSCPP) Acting Assistant Administrator Michal Freedhoff sent an email to the OCSPP staff and provided three alleged examples of political interference that compromised the integrity of EPA science. The Agency has a formal process associated with the EPA Scientific Integrity Policy for conducting reviews of scientific integrity violations and issues formal determinations at the conclusion of the process.

    a. Was this formal process completed for each of the three examples prior to the March 10th email being sent?

    RESPONSE: President Biden's Memorandum on Scientific Integrity and Evidence-Based Policymaking directs agencies to make evidence-based decisions guided by the best available science and data, which are central to sound policy. This Memorandum sends a clear message that the Biden-Harris Administration will protect scientists from political interference and ensure they can think, research, and speak freely to provide valuable information and insights to the American people.

    EPA is committed to upholding scientific integrity and has taken action to address these instances that compromised the integrity of EPA science. For example, the

EPA Office of the Inspector General (OIG) completed an investigation regarding EPA's 2018 registration decision for dicamba and found that then-OCSPP senior leadership at the time of the 2018 decision directed career staff to change or omit information from scientific documents. The Agency has responded to the OIG's report and is implementing several actions to ensure that our pesticide registration decisions are free from political interference and that the agency's scientific integrity policy is upheld. In the instance of TCE, the Scientific Integrity Official is currently reviewing this case for potential scientific integrity violations. Lastly, the version of the PFBS assessment that was published on January 19, 2021 was compromised by political interference as well as infringement of authorship and the scientific independence of the authors' conclusions. This constituted a violation of EPA's Scientific Integrity Policy, and it was removed from the EPA website on February 9, 2021. In these, and other instances, we are working to restore scientific integrity and evidence-based policymaking throughout EPA, including through the use of best available science.

b. Please identify any other examples you are aware of and whether the formal process has been completed for them.

RESPONSE: EPA is committed to upholding scientific integrity. The EPA Scientific Integrity Annual Reports summarizes the activities and initiatives that supported the implementation of EPA's Scientific Integrity Policy, as well as giving an annual update on the number and type of queries received. These are available at https://www.epa.gov/osa/annual-reports-scientific-integrity-polices-and-additional-resources.

24. Will reviews and determinations conducted under the Scientific Integrity Policy be made public?

RESPONSE: The EPA Scientific Integrity Annual Reports summarize the activities and initiatives that support the implementation of EPA's Scientific Integrity Policy, as well as giving an annual update on the number and type of queries received. The report includes the type and topic of the query, as well as the number of withdrawn, substantiated, and unsubstantiated allegations. EPA does not disclose detailed information about specific queries or allegations in its Annual Report. Allegations of research misconduct or waste, fraud, or abuse are referred to the Office of Inspector General.

25. As part of the development of the "Human Health Toxicity Assessment for PFBS," OCSPP staff issued a memorandum that expressed a difference of scientific opinion with the Office of Research and Development staff. Have the career staff in those two offices resolved this difference of opinion?

RESPONSE: The PFBS assessment that was released on April 8, 2021 went through all appropriate reviews, includes input EPA received from external peer review, and was authored by expert career scientists in EPA's Office of Research and

Development (ORD). OCSPP was included in the review process. ORD and OCSPP staff scientists agree on the foundational science of the assessment and are committed to working together to protect human health and the environment.

26. Can you identify which changes to the PFBS assessment violated the EPA Scientific Integrity Policy in your judgement?

    RESPONSE: The version of the PFBS assessment that was published on January 19, 2021 was compromised by political interference as well as infringement of authorship and the scientific independence of the authors' conclusions. This constituted a violation of EPA's Scientific Integrity Policy, and it was removed from the EPA website on February 9, 2021.

27. In March, you fired all 44 members of the Science Advisory Board (SAB) and the 7 members of the Clean Air Scientific Advisory Committee (CASAC). You stated that purging the advisory committee was necessary since they were "out of balance," and that the problem was not "the individuals that were in the seats, but more so [that] the collective seats were not representative of the needs that the Agency has." Can you clarify what your understanding of the current "needs of the Agency" are?

    RESPONSE: This was not a political decision. After consulting with career staff and career scientists, I determined that the Science Advisory Board and Clean Air Scientific Advisory Committee needed a fresh start to ensure the quality and independence of their science advice. In 2019, the Government Accountability Office concluded that the previous administration did not follow EPA's normal, established process for recruiting and appointing experts to these boards, which are critical to the integrity of EPA's regulatory process.[10] This is a process that Democratic and Republican administrations have always followed, until the Trump administration. To move forward, we thanked current members for their service and sent out a *Federal Register* notice to recruit new members. We have invited former members to reapply. We will follow standard processes for identifying and appointing top experts in their fields. This will ensure that EPA is receiving the best and most scientifically sound input on all of EPA's priorities, including climate change and environmental justice. EPA will move quickly and expects to have the SAB and CASAC reset within this fiscal year.

28. GAO reported in 2019 that the SAB member composition was about 50 percent academic affiliation, with the other 50 percent including governmental, industry, NGO, and consultants. Do you view this as balanced?

    RESPONSE: The Federal Advisory Committee Act requires that a committee be balanced in points of view for the function the committee is to perform. The SAB is a scientific and technical committee, not a representative committee. As such, the balance in points of view pertains to scientific points of view, not organizational affiliation (which are more pertinent for representative committees). Scientific

[10] https://www.gao.gov/products/gao-19-280

points of view pertain mainly to scientific and/or technical expertise, knowledge, and experience. However, they can be influenced by geographical, economic, social, and cultural factors, as well as educational backgrounds and organizational affiliation. Therefore, organizational affiliation is only one part of the considerations for balance for a scientific/technical Federal Advisory Committee (FAC). Agency policy requires all FAC membership to be reviewed by the Office of General Counsel and the Federal Advisory Committee Management Division to ensure that the committees are balanced in points of view for the function the committee is to perform.

29. In January 2009, the SAB had the following membership—33 academic, two governmental, three industry, and two NGOs. Do you view this as balanced?

    RESPONSE: The Federal Advisory Committee Act requires that a committee be balanced in points of view for the function the committee is to perform. The SAB is a scientific and technical committee, not a representative committee. As such, the balance in points of view pertains to scientific points of view, not just organizational affiliation (which are more pertinent for representative committees). Scientific points of view pertain mainly to scientific and/or technical expertise, knowledge, and experience. However, they can be influenced by geographical, economic, social, and cultural factors, as well as educational backgrounds and organizational affiliation. Therefore, organizational affiliation is only one part of the considerations for balance for a scientific/technical Federal Advisory Committee (FAC). Agency policy requires all FAC membership to be reviewed by the Office of General Counsel and the Federal Advisory Committee Management Division to ensure that the committees are balanced in points of view for the function the committee is to perform.

30. EPA has stated that the plan is to reconstitute both panels by the end of September. What is the impact of not having a functioning SAB or CASAC for nearly half a year?

    RESPONSE: Having CASAC and SAB in place before the next fiscal year (10/1/21) remains our goal, and we are on target at this point to meet that schedule. Running the public process for nominations and public comment, analyzing nominations, and working towards final decisions, then hiring new members as Special Government Employees takes several months from start to finish. During this reset, SAB and CASAC are not available for their peer review functions, but once seated, these Federal Advisory Committees will quickly get into the workflow and contribute to multiple activities in FY22.

31. When reviewing the Trump Administration's decision to maintain the particulate matter (PM) National Ambient Air Quality Standards (NAAQS), the Clean Air Scientific Advisory Committee's (CASAC) peer review of the 2020 proposal to retain the standard found that, "CASAC also finds, in agreement with the EPA, that the available evidence does not reasonably call into question the adequacy of the current 24-hour PM2.5 standard, PM10 standard, or secondary PM standards and concurs that they should be

retained." Can you please explain your decision to revisit standards given they were supported by CASAC?

<u>RESPONSE</u>: Executive Order 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, directed Federal agencies to immediately review, and take action to address certain Federal regulations taken during the last four years that conflict with national objectives to improve public health and the environment. The final rule entitled, "Review of the National Ambient Air Quality Standards for Particulate Matter," 85 Fed. Reg. 82684 (December 18, 2020), is one such rule that EPA was directed to review.[11]

Following that review, on June 10, EPA announced that it will reconsider the previous administration's decision to retain the particulate matter (PM) National Ambient Air Quality Standards (NAAQS), which were last strengthened in 2012. EPA is reconsidering the December 2020 decision because available scientific evidence and technical information indicate that the current standards may not be adequate to protect public health and welfare, as required by the Clean Air Act. EPA's 2020 Policy Assessment concluded that the scientific evidence and information support revising the level of the annual standard for the PM NAAQS to below the current level of 12 micrograms per cubic meter while retaining the 24-hour standard. The Agency also received numerous petitions for reconsideration as well as lawsuits challenging the December 2020 final action. The previous CASAC, which was constituted under a shadow of process irregularities, recommended retaining the current 24-hour standard and did not reach consensus on the annual standard. Some CASAC members supported retaining the current standard, while others supported revision. Opinions differed on how to interpret recent epidemiologic studies reporting health effect associations and what those studies mean in judging the adequacy of the current annual standard. As such, a review of the standards is warranted.

EPA will move expeditiously to reconsider the decision to retain the particulate matter NAAQS, in a manner that adheres to rigorous standards of scientific integrity and provides ample opportunities for public input and engagement. As part of this process, the Agency will develop a supplement to the 2019 Final Integrated Science Assessment (ISA) that will take into account the most up-to-date science, including new studies in the emerging area of COVID-related research.

32. According to emails obtained through a Freedom of Information Act (FOIA) request, Democratic Attorneys General consulted with EPA Office of Air and Radiation (OAR) Acting Assistant Administrator Joseph Goffman on using a more stringent ozone National Ambient Air Quality Standard (NAAQS) as a "backdoor" method to regulate greenhouse gas (GHG) emissions. Do you believe the NAAQS program should be used as a "backdoor" to directly or secondarily regulate greenhouse gases?

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[11] Fact Sheet: List of Agency Actions for Review, January 20, 2021, available at: https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/.

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RESPONSE: When considering future regulatory policies related air pollution, EPA will adhere to science and the law, including our obligations to protect public health under the Clean Air Act.

33. On February 5, 2021, EPA removed the briefing paper titled "Renewable Energy Waste Streams: Preparing for the Future" from the EPA website and updated the landing page and the associated press release stating that the briefing paper "did not follow the appropriate review process and it contained misleading and incorrect information." Can you please describe which aspects of the briefing paper were identified as "misleading and incorrect information"?

    RESPONSE: EPA's career subject matter experts found the briefing paper to contain misleading and incorrect information. The paper also failed to position the concerns with waste from renewable energy technologies either in the context of their benefits for air pollution and climate change or in the context of the many significant waste management challenges from other, non-renewable energy sources. Therefore, EPA made the decision to archive this briefing paper and remove it from the EPA's website. https://www.epa.gov/aboutepa/archived-briefing-paper-january-2021. EPA has no plans to revisit this paper, but the Office of Land and Emergency Management continues to evaluate and implement policies and programs regarding emerging waste streams to reduce the amount of waste disposed in landfills and promote waste prevention and materials reuse across waste generation sectors.

34. Does the EPA plan to post a corrected version of the briefing paper?

    RESPONSE: EPA's career subject matter experts found the briefing paper to contain misleading and incorrect information. The paper also failed to position the concerns with waste from renewable energy technologies either in the context of their benefits for air pollution and climate change or in the context of the many significant waste management challenges from other, non-renewable energy sources. Therefore, EPA made the decision to archive this briefing paper and remove it from the EPA's website. https://www.epa.gov/aboutepa/archived-briefing-paper-january-2021. EPA has no plans to revisit this paper, but the Office of Land and Emergency Management continues to evaluate and implement policies and programs regarding emerging waste streams to reduce the amount of waste disposed in landfills and promote waste prevention and materials reuse across waste generation sectors.

35. During the hearing, you stated that EPA is "looking at the science behind designating PFAS as a hazardous substance." Specifically, what scientific information is EPA evaluating related to designating PFAS as a hazardous substance?

    RESPONSE: EPA is looking at various types of scientific information related to designating certain PFAS, specifically PFOA and PFOS, as CERCLA hazardous substances. This information includes the most up to date chemical and physical

characteristics, toxicity and kinetics, environmental prevalence, and manufacturing and use data.

36. During the hearing, I appreciated your commitment to transparency regarding the development of President Biden's pledged Nationally Determined Contribution (NDC). You stated: "EPA is central to the NDC number that was developed" and that "we attempted to quantify EPA's role and its contribution to meeting that NDC." You stated, "I think the information that we generated that focuses on conceptually where these regulations might land within a range, that information can be made available." Can you please provide that information?

    RESPONSE: EPA participated in a White House led interagency process providing input to the development of the United States' Nationally Determined Contribution. As noted in the NDC document, the process of developing the target included consultation with relevant departments and agencies across the federal government and reviewing a range of pathways for each sector of the economy that produces greenhouse gases. As part of this process, EPA provided qualitative information about our regulatory and voluntary programs and discussed approaches to quantitative analysis. EPA never prejudged the impact of individual rules that have not been adopted.

    In addition to participation in these interagency discussions, EPA provided the White House with a pre-publication version of the U.S. Greenhouse Gas Inventory (now published with data highlights available at https://www.epa.gov/sites/production/files/2021-04/documents/us-ghg-inventory-1990-2019-data-highlights.pdf). EPA also provided the White House with a spreadsheet comparison between the GHG inventory and other publicly-available models projecting U.S. greenhouse gas emissions.

    As EPA proposes new regulations to reduce pollution from stationary and mobile sources, we will be fully transparent and provide a thorough, detailed analysis of the proposal and solicit robust public comment. As a matter of course in Agency rulemakings and per relevant federal executive orders and guidance, EPA performs regulatory impact analyses to quantify, when feasible, the likely benefits and costs of certain regulatory options.

37. We do not hear enough about the bipartisan ways Congress has addressed climate – including through bills in this Committee's jurisdiction. At the end of last year, President Trump signed into law both the bipartisan American Innovation and Manufacturing (AIM) Act that would phase down hydrofluorocarbons (HFCs) and the Utilizing Significant Emissions with Innovative Technologies (USE IT) Act that would support carbon capture, utilization, and sequestration. During your testimony, I asked you if the AIM Act was still a top priority for the Agency. As you know, this bipartisan legislation was signed into law by President Trump. In response, you stated, "We can get the specific timeline. But we recognize the urgency and the importance of the legislation. We can provide you with those details." My office did not receive any details before you

signed the proposed rule on April 30, 2021. Can you commit to outreach to my office on AIM Act implementation to ensure a smooth implementation of this bipartisan law?

RESPONSE: The AIM Act contains clear timelines for the implementation of the HFC phasedown and the statutory requirement is to have a phasedown allocation and trading program in place 270 days after the bill was enacted, which will be September 23, 2021. On May 19, 2021, EPA published a proposed rule to create an HFC allowance and allocation program, which we intend to finalize by the end of September 2021. EPA is committed to outreach to congressional offices, stakeholders, and the public as we implement the AIM Act to ensure the smoothest implementation of this bipartisan law.

EPA held a number of stakeholder meetings to gather feedback while developing this proposal, including a general stakeholder meeting on February 25, 2021, with more than 200 participants, and five sector-specific workshops on March 11 and March 12. In addition, EPA held another sector workshop on April 26. EPA has also held more than 60 individual meetings with interested companies, associations, and environmental and public health organizations, as well as federal and state agencies. EPA held the virtual hearing on June 3 with more than 275 participants, and the comment period will be open through July 6, 2021. In addition, we have worked with congressional committee staff—including yours—to schedule a briefing for them on this topic.

38. In a response to my question for the record to you concerning the Kigali Amendment from your nomination hearing, you stated that you were not familiar with the relationship between the Kigali Amendment and the AIM Act.

    a. Have you have been briefed by EPA staff on this question?

RESPONSE: Yes, I have been briefed on the AIM Act, which included information on the Kigali Amendment similarities and differences.

    b. If so, what did you learn?

RESPONSE: The AIM Act provides EPA the legal framework to implement a HFC phasedown consistent with the requirements of the Kigali Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer.

39. EPA has received a number of petitions from industry and environmental groups under the "Technology Transitions" provision of the AIM Act. Have you responded or made any decisions on the petitions that you have received?

RESPONSE: As outlined in the AIM Act, EPA has 30 days after receiving a petition to make the petition publicly available and 180 days to grant or deny the petition. We received our first five petitions on April 13, 2021, and within 30 days we opened a docket and posted links to the petitions on our website. We published a Notice of

Data Availability on May 25, 2021, to provide notice of the new docket where these and additional petitions will be made publicly available. Interested parties can submit relevant information related to petitions in the docket as we consider the petitions.

40. Numerous public comments were submitted to EPA's Notice of Data Availability related to non-defense related uses of HFCs that are exempted under the AIM Act. These comments highlighted large amounts of uncertainty surrounding the availability of data to accurately account for current use of HFCs, for example in metered-dosed inhalers (MDIs). EPA's own market characterization study found that the number of MDI's using HFCs ranges between 56 and 123 million per year. Such a discrepancy between the high and low-end estimates of usage complicates the ability for EPA to set an accurate baseline for the phasedown of HFCs. Do you agree with commenters on the Notice of Data Availability that there are significant discrepancies in available data that complicate setting an accurate baseline?

    RESPONSE: Commenters on the NODA provided statements suggesting which sources of information were likely to be more accurate for the estimated consumption amounts of HFCs in the specialized medical-grade propellant sector. Based on these comments and additional information, EPA's updated market characterization, available in the docket for the proposed rule, narrows the ranges for the MDI application. EPA requested and will consider comments and additional information provided during the public comment period.

    With regard to setting the baseline, Congress established the methodology based on historic production and consumption of HFCs. EPA has proposed to determine these values based on the total quantity of bulk HFCs entering the U.S. market (e.g., through production and import), not the number of individual products, such as MDIs, that are sold in the United States. The AIM Act directs EPA to establish HFC baselines for production and consumption as equal to the sum of:

    1. The average annual quantity of all 18 statutorily listed HFCs produced or consumed, respectively for 2011, 2012, and 2013;
    2. 15 percent of the production or consumption respectively, of hydrochlorofluorocarbons (HCFCs) in 1989; and
    3. 0.42 percent of the production or consumption, respectively, of chlorofluorocarbons (CFCs) in 1989.

41. Because the AIM Act and the USE IT Act contain explicit directions to EPA, will you commit to prioritize implementation of the AIM Act and USE IT Act over other climate efforts in the Office of Air and Radiation where you lack clear Congressional timelines?

    RESPONSE: The AIM Act and USE IT Act include clear statutory timelines for implementation, and EPA will continue to work to meet these deadlines while also continuing to work on other climate efforts in the Office of Air and Radiation. Similarly, EPA is working to implement the USE IT Act.

42. Do you plan to include a specific line item on your Fiscal Year (FY) 2022 budget to implement the AIM Act and the USE IT Act?

RESPONSE: The FY 2022 President's Budget reprioritizes addressing climate change with the urgency the science demands. The Budget includes an increase of $1.8 billion in programs across EPA to tackle the climate crisis while also delivering environmental justice to marginalized and over-burdened communities, investing in local economies, and creating good-paying jobs. Activities related to AIM Act and USE IT Act implementation do not have a specific line item for FY 2022. For more information on AIM Act implementation, please refer to the Program Project description regarding Stratospheric Ozone: Domestic Programs at the following website: https://www.epa.gov/sites/production/files/2021-05/documents/fy-2022-congressional-justification-all-tabs.pdf.

43. The Renewable Fuel Standard (RFS) poses challenges for refiners. Several refineries have already shuttered, idled, or transitioned. With the added challenge of the pandemic, there is a concern that more will follow suit, affecting thousands of good-paying jobs. How do you plan to protect refining jobs as EPA implements the RFS?

RESPONSE: I understand the concerns you and others are raising with regard to the economic situation facing the oil refining sector, and I have heard from stakeholders directly about the challenges that the pandemic has posed to both the refining and biofuel industries. I'm committed to moving forward in a way that follows the law, follows the science, is transparent, preserves the integrity of the program, and provides certainty.

44. The Water Infrastructure Finance and Innovation Act (WIFIA) program typically operates on an approximately 100-to-1 appropriations funding multiplier, increasing its leveraging power, and making it a very successful tool for local governments to finance water infrastructure projects. A "federal project" receives a scoring of dollar-for-dollar appropriations under the Federal Credit Reform Act—far from the 100-to-1 appropriations funding multiplier. To address the confusion and rectify this scoring issue, the water infrastructure legislation passed recently by this Committee and the Senate EPW included language addressing the issue. Do you believe that just because a prospective project—otherwise entirely eligible for WIFIA funding—is near a federal project, it should automatically be effectively ineligible for participation in the WIFIA loan program?

RESPONSE: EPA is committed to implementing the WIFIA program consistent with direction provided by Congress. EPA is operating the program pursuant to the WIFIA statute and guidance developed in response to language in the Further Consolidated Appropriations Act, 2020. EPA looks forward to providing any technical assistance Congress may seek on this issue.

45. What is your plan to work with the Office of Management and Budget to ensure that these types of truly "non-federal" projects not defined as "federal project" under the WIFIA program?

RESPONSE: As noted above, EPA is committed to implementing the WIFIA program consistent with direction provided by Congress. EPA is addressing this issue, in coordination with the Office of Management and Budget (OMB) and the Department of the Treasury, consistent with the process laid out in the June 30, 2020, criteria pursuant to the Further Consolidated Appropriations Act, 2020 (85 FR 39189).

46. As of May 11, 2021, calendars for the Office of General Counsel leadership has not been publicly released as they have been for other EPA offices. Do you plan on requiring the leaders of Office of General Counsel to display their calendars on this website?

RESPONSE: It is important for all public servants to be as transparent as possible with Congress and the public as we look at information and develop decisions at EPA. As I pledged before you at my nomination hearing in February, I am committed to conducting the Agency's work in a transparent manner as we restore scientific integrity and evidence-based policymaking throughout EPA. To that end, I have put in place a process to provide a simplified version of my appointment calendar showing my meetings with the public at https://www.epa.gov/senior-leaders-calendars. This is updated on a regular basis. Pursuant to my memo on transparency issued on April 12, 2021, other senior leaders will also be sharing their simplified calendars. For example, the Acting General Counsel's simplified calendar is available at https://www.epa.gov/senior-leaders-calendars/calendar-melissa-hoffer-acting-general-counsel. EPA is in the process of onboarding the Agency's leadership into a new process that allows us to keep these regularly updated. We will be adding more calendars soon.

47. In an April 7, 2021 letter to you, I requested EPA provide calendars for the Agency's senior leaders that included the subject and participants in the calendar entries. The simplified versions of the calendars currently on the EPA website do not contain these details. Will you work to establish a process for EPA to transmit the calendars with the requested detail to Committee staff on at least a monthly basis?

RESPONSE: EPA understands the importance of Congress' need to obtain information necessary to perform its legitimate oversight functions, and the Agency is committed to working with your staff to accommodate Congress' interests. My staff provided an initial production of information responsive to your request on April 23, 2021, and they anticipate delivering additional responsive documents to your office on a rolling basis as they become available.

48. Senator Blackburn sent a letter to the Agency on February 3, 2021 regarding Senior Counselor to the Administrator Avi Garbow. In response, the EPA's Designated Agency Ethics Official stated that Mr. Garbow was appointed as a Special Government Employee

(SGE) as defined under 18 USC § 202(a) and was able to serve up to 130 days in a 365-day period.

a. Can you provide the date when Mr. Garbow's 130 days service period will end?

b. In his SGE-appointed role as Senior Counselor to the Administrator, what issues has Mr. Garbow counseled the Administrator on and was he recused from working on any issues?

c. Can you please provide a list of any other current SGE appointments and the role each appointee has within the Agency?

RESPONSE: On January 22, 2021, Mr. Garbow returned to EPA under a Special Government Employee (SGE) appointment as defined by 18 U.S.C. § 202(a). An SGE serves up to 130 days in any 365-day period but those days of service need not be consecutive. Those days need not be consecutive; any portion of a day worked counts as a full day. SGEs are not expected to work over weekends or holidays. Career federal ethics officials briefed Mr. Garbow about his obligations, noting that the federal ethics rules apply differently to SGEs than to regular government employees. As an SGE, Mr. Garbow could not work on any particular matter in which Patagonia or any of the boards on which he serves is a party or represents a party. Mr. Garbow concluded his service to EPA as a SGE on June 30, 2021. Attached is a list of SGEs as of April 2021.

Senator Inhofe:

1. Administrator Regan, there are a number of measures that we must take to eradicate the COVID-19 pandemic. Vaccinations are an important and effective measure against the virus but there are additional measures that can be utilized to reduce the spread of COVID-19, including through long-lasting disinfectants. Long-lasting disinfectants minimize the required number of regular disinfectant applications, thereby reducing the potential negative health impacts that come from over application of regular disinfectants. Allied BioScience (ABS), a biotech firm, created "SurfaceWise2", which is a continuously active antiviral surface coating that kills viruses, including SARS-CoV-2. Accordingly, ABS has submitted an application for nationwide use of the product under the standard authority laid out in Section 3 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). If approved for use, Americans would have access to a long-lasting disinfectant that has been approved by EPA for residual efficacy of up to 30-days. When do you expect the final Section 3 approval process to be completed?
   a. Are there any steps you can take to expedite the regulatory review process?
   b. And will you please keep my staff updated on EPA's review and actions related to this application?

RESPONSE: To respond to the public's needs over this past year of the pandemic, EPA expedited review and approval of surface disinfectant products for use against SARS-CoV-2, the coronavirus that causes COVID-19, created List N, a public

listing of products expected to be effective against SARS-CoV-2, and then added over 500 products to it. Over the course of the last year, EPA reacted to unprecedented circumstances by activating its Emerging Viral Pathogens guidance, minimizing disinfectant supply chain disruptions through regulatory flexibilities, releasing new and updated scientific protocols, and providing several pathways for expedited review.

EPA is following the evolving science of the pandemic by shifting resources to the evaluation of novel products, such as those that kill airborne SARS-CoV-2. We will keep Congress informed on EPA actions, including communicating with your office, regarding Allied BioScience's application for registration of their SurfaceWise2 product.

2. Administrator Regan, the COVID-19 pandemic has caused severe economic hardship to a number of job creators, including to the refining sector in Oklahoma. In February, EPA received hundreds of comments about the need for EPA to use its authority to waive or significantly reduce the 2020 renewable volume obligation (RVO) under the RFS. I, along with Sen. Toomey, other senators and a bipartisan group of governors, respectively urged you to waive or significantly reduce the RVO. Even Growth Energy, a trade association representing ethanol producers, has admitted, "…the 2020 RFS standards would have at most a negligible effect on production or use of ethanol…" This is further evidence waiving the RVO would not harm ethanol production. With this in mind, can you explain why RVOs should continue to increase when even their purported beneficiaries question their value?
    a. How will EPA protect refining jobs as you consider implementation of the RFS?

<u>RESPONSE</u>: I understand the concerns you and others are raising with regard to the economic situation facing the oil refining sector, and I have heard from stakeholders directly about the challenges that the pandemic has posed to both the refining and biofuel industries. I'm committed to moving forward in a way that follows the law, follows the science, is transparent, preserves the integrity of the program, and provides certainty.

<u>Senator Shelby:</u>

1. As you may know, working forests are a vital part of Alabama's economy and wood energy is a critical component of what can be described as the circular forest economy. Private working forests are considered carbon sinks, meaning they reduce the net amount of CO2 in the atmosphere as they grow.

   I believe climate mitigation strategies must prioritize keeping these forests in working condition, which means supporting strong forest products markets in all sectors of the industry and also preserving well-paid rural jobs. Renewable energy is an important and valuable market for low value trees and residuals removed from private working forests and from public lands – especially for onsite generation in often remote locations. As

such, will you work with the forestry and forest products sector to ensure that this circular economy can be preserved?

a. And in particular, will you work with the forestry and forest products sector, including forestry-focused research institutions, to devise an easier way for forest owners to comply with the federal forest carbon offset programs? Currently, these programs have onerous requirements that are difficult for forest owners, especially family forest owners, to meet.

RESPONSE: While there is no federal forest carbon offset program in the United States, EPA does work closely with the U.S. Forest Service to compile forest carbon estimates as part of the national Inventory of U.S. Greenhouse Gas Emissions and Sinks. EPA has also provided technical input to external groups developing offset protocols that aim to balance rigor with implementation burden and to USDA in their development of GHG quantification tools for landowners.

Senator Wicker:

1. Currently, the Environmental Protection Agency (EPA) is seeking applications for its technical assistance program for small and rural wastewater systems. This program was authorized through legislation I introduced in 2018, the Small and Rural Community Clean Water Technical Assistance Act. The legislation was included in the America's Water Infrastructure Act (P.L. 115-270). EPA neglected to mention a key part of my legislation in its notice, which requires funding to go toward technical assistance that small treatment works find most beneficial and effective. I appreciate EPA's efforts to establish this program. However, it is important that the agency follows congressional intent and funds training that small and rural communities find most beneficial, such as on-site technical assistance. As EPA awards this funding, how will the agency ensure that the priorities of small treatment works are considered?

RESPONSE: EPA was pleased to announce in March 2021 the inaugural Request for Applications (RfA) for Training and Technical Assistance for Wastewater Treatment Works for the Prevention, Reduction, and Elimination of Pollution. The Agency's intent is to consider the priorities of small, rural, and tribal treatment works and to provide awards that support training and technical assistance that is most beneficial to these communities. Eligible applicants under this announcement are public and private nonprofit organizations that are qualified and experienced in providing on-site training and technical assistance to small publicly owned treatment works and onsite/decentralized wastewater treatment systems. In the inaugural RfA, EPA asks applicants to describe an approach for providing on-site training and technical assistance. EPA also identifies specific criteria by which to evaluate applications. For example, EPA will evaluate applications on the ability to tailor the training and technical assistance techniques and resources to address the specific needs of the target audience, on the approach to effectively reach out to facilities, and on the use of innovative techniques. EPA also will evaluate

applications on the process to consult with and stay in contact with state, tribal, and territorial authorities, as these authorities have information and experience on the needs of their small treatment works. EPA also consulted via letter with states regarding what technical assistance approaches their small publicly owned treatment works find to be most beneficial and effective.

Senator Sullivan:

1. The City of Ketchikan water system serves approximately 8,050 people. The city utility operates under Filtration Avoidance Criteria defined in 40 CFR 141.71. One of the requirements for filtration avoidance is that the fecal coliform concentration must be equal to or less than 20/100 ml in a minimum of 90% of samples collected for the six previous months. In October and November 2019, the rolling six-month average of samples was 89% and 88%, respectively. The Alaska Department of Environmental Conservation (ADEC) subsequently notified the city utility that it had failed to comply with the filtration avoidance criteria and had eighteen months to install water filtration, which is estimated will cost in excess of $70 million and add $2 to $3 million in additional annual operating costs.

   The Safe Drinking Water Act 42 U.S.C. § 300g-1(b)(7)(C)(v) provides an alternative compliance framework for some unfiltered surface water systems known as a Limited Alternative to Filtration (LAF). On March 9, 2020, Ketchikan requested ADEC evaluate its eligibility for the LAF provision. Due to the high cost and other challenges of constructing a filtration plant in southeast Alaska, Ketchikan is pursuing a Compliance Order by Consent (COBC) with EPA, which will detail what Ketchikan must do to qualify as a LAF system, including demonstrating: 1) The system has "uninhabited, undeveloped watersheds in consolidated ownership," 2) the system has control over both "access to, and activities in, those watersheds," and 3) The system's source water quality and the alternative treatment requirements established by the state must ensure greater removal or inactivation efficiencies of pathogens than would otherwise result from the treatment requirements stipulated by regulations.

   Ketchikan generally meets these requirements, however, its water is drawn from uninhabited, undeveloped watersheds, but not under consolidated ownership. The city utility has demonstrated an ability to control human activity and access to these watersheds supplying raw water to the utility's treatment facilities. Since Ketchikan does not own the lands within which the watersheds are located (they are U.S. Forest Service Bureau of Land Management lands), there is concern whether they can qualify for Limited Alternative to Filtration designation as the city does not have "consolidated ownership" of the lands that make up the watersheds. However, EPA also has precedent for approving a LAF in a similar situation. In the past EPA signed a Memorandum of Agreement with the Washington State Department of Health that granted the agency's first and only Limited Alternative to Filtration designation to the Seattle Cedar River Supply. The language within EPA's MOU explicitly states that the term "consolidated ownership" was never intended at the time of the 1996 SWDA amendments to "imply that there must be only one owner of the watershed ...."

a. When these factors are taken in their totality, can EPA assure Ketchikan that it does in fact have "consolidated ownership" of the watersheds and that the City is in a position to pursue a Limited Alternative to Filtration (LAF) designation through a Compliance Order by Consent (COBC) with the Alaska Department of Environmental Conservation?
b. Will you commit to working with me, EPA Region 10, and the City of Ketchikan to resolve this issue?

RESPONSE: Thank you for highlighting this important issue. EPA understands that at the request of the Alaska Department of Environmental Conservation (ADEC), EPA Region 10 and EPA Headquarters are in discussions with ADEC about the Limited Alternative to Filtration (LAF) provision in the 1996 Safe Drinking Water Act amendments. EPA also understands that both ADEC and EPA recognize that it will take time to assemble the request for ADEC's review and decision, and EPA concurrence for a LAF designation for Ketchikan. EPA will remain engaged and will continue to support ADEC's discussion of options with Ketchikan. EPA is committed to working with you, ADEC, and Ketchikan on this important issue.

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